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LIABILITY OF SPONSOR OF DRIVER'S LICENSE IN INDIANA

Statutes in Indiana and twenty-one other states require the father of any applicant for an automobile operator's license under the age of eighteen to sign the application. This act constitutes an agreement to be jointly and severally liable with such applicant for any injury or damage the applicant might cause by reason of the operation of a motor vehicle. If the father is not living or does not have custody, provision is made for the mother, guardian, the person having custody of the applicant, employer, or any other responsible person, in that order, to sponsor the minor. The sponsor is automatically relieved of liability when the licensee reaches the age of eighteen, but may be relieved of liability at any time by requesting to have the license cancelled. Upon the death of the

1. IND. ANN. STAT. § 47-2706 (Burns 1952). The major provisions are:
   (c) The application, of any person, under the age of eighteen (18) years, for any permit or license to be issued under the provisions of this act, shall be signed and sworn to or affirmed before a person authorized to administer oaths, by the father of the applicant, if the father is living and has custody of such applicant, otherwise by the mother or guardian having the custody of such applicant, or in the event neither parent is living and the applicant has no guardian, then by the person having custody of him or by an employer of such applicant and in the event there is no parent, guardian, or employer, then by any other responsible person, who is willing to assume the obligations imposed upon him by the provisions of this section.
   (d) Any person so signing such application as above provided thereby agrees to be responsible, jointly and severally with such applicant, for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle, in all cases where the applicant is liable in damages.

2. ARIZ. REV. STAT. ANN. § 28-417 (1956); ARK. STAT. ANN. § 75-315 (1957); CAL. VEHICLE CODE § 350; COLO. REV. STAT. ANN. § 13-3-7 (1954); DEL. CODE ANN. tit. 21 § 6105 (1953); FLA. STAT. ANN. § 322.09 (1958); IDAHO CODE ANN. § 49-313 (1957); KY. REV. STAT. § 186.590 (1959); MD. ANN. CODE art. 66Y2 § 93 (1957); MISS. CODE ANN. § 8096 (1957); MONT. REV. CODES ANN. § 31-131 (1954); NEV. REV. STAT. § 483.300 (1957); N.M. STAT. ANN. § 64-13-44 (Supp. 1957); N.D. REV. CODE § 39-0608 (1943); OHIO REV. CODE § 4507.07 (Page 1954); OKLA. STAT. tit. 47 § 280 (1951); R.I. GEN. LAWS ANN. ch. 10, § 13 (1956); TENN. CODE ANN. § 59-704 (Supp. 1959); TEX. REV. CIV. STAT. art. 6687 b.7 (1948); UTAH CODE ANN. § 41-2-10 (1953); WIS. STAT. § 343.15 (1958). The constitutionality of these statutes has been upheld. Buelke v. Levenstadt, 190 Cal. 694, 214 Pac. 42 (1923); State Compensation Ins. Fund v. Scamell, 73 Cal. App. 285, 238 Pac. 780 (1925).

3. IND. ANN. STAT. § 47-2706 (d) (Burns 1952).

4. IND. ANN. STAT. § 47-2706 (e) (Burns 1952).

5. IND. ANN. STAT. § 47-2706 (f) (Burns 1952). The Indiana statute is so explicit this could not seriously be put in issue, but it has been litigated under other statutes. Carter v. Groves, 230 Miss. 463, 93 So. 2d 177 (1957); Garrett v. Lyden, 161 Ohio 385, 119 N.E. 289 (1954).

6. IND. ANN. STAT. § 47-2706 (e) (Burns 1952). This may be done by filing with the department a verified written request that the license be cancelled. It is uncertain just when the revocation is effective.
sponsor, the licensee is required to notify the department and obtain a new sponsor. To date the Indiana appellate courts have not had occasion to interpret this statute, but a consideration of the interesting questions which have arisen in the other jurisdictions should prove beneficial in determining how this statute should be construed. Specifically, the major questions are: Whether the action is contract or tort, whether the sponsor is primarily or secondarily liable, whether the licensee has to be joined in a suit against the sponsor, and whether the licensee's contributory negligence is imputed to the sponsor when the latter's automobile is damaged while being operated by the licensee.

The answer to the question of whether the action under this statute is *ex contractu* or *ex delicto* is pregnant with important legal consequences. In *Hickman v. Tullos*, the statute of limitations had run for tort actions, so the plaintiff's recovery was contingent upon the action being construed as *ex contractu*. After considering dicta in two cases which had compared the liability of the signor to that of a bondsman and a guarantor, the court held the action to be *ex delicto*. The brief opinion does not reveal the plaintiff's argument, but it is likely that the contention was made that the state and the sponsor had entered into a contract of a suretyship type with any potential plaintiff as a third party beneficiary. The fact that a writing was involved lends support to this theory. The consideration was acquiring the license for the minor.

Insurance policies frequently have a provision excluding liability assumed by the assured under any contract or agreement. This has led insurance companies to contend that liability under statutes similar to the Indiana statute is *ex contractu*. In three cases, courts have held insurance companies liable under the terms of their policies, saying that liability was imposed on the assured by statute rather than by contract. A federal case reached the opposite result in construing the Indiana statute. The court sustained the contention of the insurance company that the assured had agreed to assume this liability and held that the insurance com-

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7. INDIAN ANN. STAT. § 47-2706 (g) (Burns 1952).
pany had no obligation to defend. Despite this holding, it is doubtful if the court intended to imply that the action under the statute was *ex contractu*. It is more probable that in construing the insurance contract it was thought that the insurer had not contracted for this type of liability and little or no thought was given to the type of action under the statute.

The liability of the sponsor for acts of the licensee which occur outside the licensing state may also turn upon the nature of the right of action. As the only case arising under this fact situation does not answer our question, it is necessary to consult the general conflict of laws authority. If the action is construed as *ex contractu*, there is no question but that the signor would be liable as the law of the state where the contract was made applies under basic conflict of laws principles. If the action is construed as *ex delicto*, however, the law of the state in which the cause of action arose is applied. Assuming the action is in tort, the only way the signor can be held liable is if the Indiana statute is given extra-territorial effect because even if the state in which the accident occurred had a statute exactly like the Indiana statute, the license was not granted under it. At one time the law seemed settled that a statute providing a right of action for personal injury had no extra-territorial effect and did not confer a right of action for an injury inflicted in another state.


15. Even if this federal decision could be interpreted as holding the action *ex contractu*, it is not binding on the Indiana courts. Joseph T. Ryerson & Sons v. Penden, 303 Ill. 171, 135 N.E. 423 (1922); Susser v. Cambria Chocolate Co., 300 Mass. 1, 13 N.E.2d 609 (1938); Maxey v. American Cas. Co. of Reading, Pa., 180 Va. 285, 23 S.E.2d 22 (1943).

16. In Herr v. Holohan, 131 F. Supp. 777 (Md. 1955), the licensee was licensed under a Maryland statute and the wreck occurred in Pennsylvania. The question on extra-territorial effect was easily disposed of because the statute, unlike the one in Indiana, imposed liability only for accidents occurring on the public highways of Maryland.


19. The sponsor may be vicariously liable under a statute in the state where the accident occurred, however. In Young v. Masci, 289 U.S. 253 (1933), the United States Supreme Court said a state statute imposing liability on an owner for personal injuries caused by the negligent operation of an automobile by one to whom he had loaned it, did not violate due process as applied to a non-resident owner.

20. Indiana decided this question as early as 1880 when an unmarried woman under the age of twenty-one attempted to recover under an Indiana statute for a seduction that occurred in Illinois. The court said, "a statute, providing a right of action for a personal injury, has no extra-territorial force, and does not confer a right of action for an injury inflicted in another state." Buckles v. Ellers, 72 Ind. 220, 224 (1880).
Although the Indiana precedents are clear, there is a significant amount of pressure from modern writers to replace the vested rights approach to the conflict of laws with a policy of interpreting and applying local statutes so as to effectuate their basic objectives. The courts have been reluctant to do this and instead have rationalized their holdings with fictions while paying lip service to the vested rights approach. In Levy v. Daniel's U-Drive Auto Renting Co., the defendant rented a car to one Sack in Connecticut where a statute imposed liability on anyone renting or leasing a motor vehicle for any damage caused by the operation of the motor vehicle while rented or leased. Sack took the car to Massachusetts and was involved in an accident which was partially caused by his negligence. The plaintiff, a passenger in Sack's car, brought suit in a Connecticut court against the bailor. The plaintiff conceded that if the cause of action were tort, he could not prevail against the defendant because Massachusetts law would be applied. The court, in holding for the plaintiff, said this statute did not create liability, but made the acceptance of the statutory liability part of every contract in which the defendant voluntarily entered into and made every member of the public a third party beneficiary.

Although a different type of statute was involved in the Levy case, the same principles are involved as in the Indiana statute. Of course, if the action under the statute is held to be ex contractu, the parties to the contract will have to be the sponsor and the state because there is no other contract which this agreement may be made a part of, as in the Levy case. Should the situation under discussion arise, a court might feel a better result would be reached if the action were held ex contractu. If once so construed, it might prove embarrassing in future cases where the better result seems to call for an application of tort principles.

Another interesting question is whether the sponsor is primarily liable or only secondarily liable with a right of indemnity against the licensee. One court said, "The primary liability for acts of negligence

22. 108 Conn. 333, 143 Atl. 163 (1928).
23. Goodrich criticized this case, saying the liability is a vicarious liability imposed by law and did not arise out of any contract. GOODRICH, CONFLICT OF LAWS, 280 (3d ed. 1949). Stumberg said the decision is unsound in regard to usual rules of law and that employing the concept of quasi-contract (the case talks in terms of contract, not quasi-contract) was simply a device to rationalize the holding, but seems to justify the result by insinuating that the usual rule of law need not be the only one applied and that the Connecticut court is more competent to determine the policy behind its statutory law than its critics. STUMBERG, CONFLICT OF LAW, 204 (2d ed. 1951).
24. Whether the action is ex delicto or ex contractu is immaterial as there can be
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rests on the operator of the automobile whether he is a minor or adult. 25
As between the licensee and the sponsor this is true. It is a well-
recognized rule, that, where one has been subjected to liability on ac-
count of the negligence or wrongful act of another, the former has an
action on an implied contract of indemnity against the latter. 26 Another
court 27 said that a statute which imputes the negligence of the driver of
an automobile to the owner makes the owner in effect a surety and gives
him the right of indemnity against the driver even though the statute
was silent on that point. The Indiana statute imposes liability “jointly
and severally” and is not conditioned on the licensee’s default in paying
an adverse judgment. Indeed, the sponsor’s liability is quite analogous
to that of a surety.

A concomitant problem is whether the licensee has to be joined in a
suit against the sponsor. In Bosse v. Marye, 28 the plaintiff sued both the
licensee and the sponsor, but in finding against the sponsor, the jury was
silent as to the licensee. The court said the omission of the jury to hold
the licensee liable did not deprive the plaintiff of a judgment against the
sponsor because it was optional with the plaintiff whether to sue either
or both where the liability is joint and several. There is nothing in the
Indiana statute which suggests a contrary result would be reached. 29

The decisions are uniform in holding that marriage or loss of cus-
tody does not release the sponsor from liability. 30 As the Indiana statute
provides for the sponsor to be released from liability for any reason by
requesting a cancellation of the license, failure to comply with the statute
before an accident should be considered a waiver of that privilege.

The two states that have considered whether the licensee’s contribu-
tory negligence is imputed to the sponsor have reached opposite results.
Ohio says the statute imputes the negligence of the licensee to the spon-
sor for all purposes and that the sponsor stands in exactly the same posi-
tion as the licensee. 31 A later Kentucky case held that the statute merely
gave an injured party an additional source of recovery and did not im-

indemnity in either case. Westfield Gas and Milling Co. v. Noblesville and Eagletown
Gravel Road Co., 13 Ind. App. 481, 41 N.E. 955 (1895).
26. Staples v. Central Surety & Ins. Corp., 62 F.2d 650 (10th Cir. 1932); Dipple
27. Kramer v. Morgan, 85 F.2d 96 (2d Cir. 1936).
29. IND. ANN. STAT. § 47-2706 (d) (Burns 1952).
132 Cal. App. 57, 22 P.2d 19 (1933); Bispham v. Mahoney, 37 Del. 285, 183 Atl. 315
(1936); Rogers v. Wagstaff, 120 Utah 136, 232 P.2d 766 (1951).
31. Hartough v. Brint, 101 Ohio App. 140 N.E.2d 34 (1955); McCants v. Che-
The court was strengthened by the fact that the Kentucky statute had a provision permitting the sponsor to be relieved of liability if the licensee submitted proof of financial responsibility. Ohio had this same provision and the Ohio court was criticized for failure to construe this provision with the one imputing negligence. Since the Indiana statute neither "imputes negligence" nor has a provision permitting the sponsor to be relieved of liability if the licensee submits proof of financial responsibility, the absence of this latter provision from the Indiana statute should not affect the analysis in determining what the legislature intended as to imputing contributory negligence. Another type of statute which imputes the negligence of the operator to the owner of an automobile has been construed inconsistently in determining whether it imputes contributory negligence. Iowa and Wisconsin say it does while New York, Delaware, and Minnesota say it does not. The latter states say the purpose of such a statute is only to provide for the establishment of liability of the owners of motor vehicles and not to create a general principal-agent relationship. The Indiana statute says the sponsor is responsible, jointly and severally with such licensee, in all cases when the licensee is liable in damages. There is nothing in the statute which would lead one to believe it was meant to impute contributory negligence to the sponsor. This question will arise only when the sponsor is the owner of the automobile and as the statute does not seem to impute contributory negligence to the sponsor, the question will be determined by the common law which says an owner is not vicariously contributorily negligent.

Although the question has arisen whether a sponsor is liable for wilful misconduct when the statute only mentioned negligence in imposing liability, this should not arise in Indiana because the statute imposes liability on the sponsor "for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle."

It is not clear under our statute whether the sponsor is liable when

32. Sizemore v. Bailey's Adm'r., 293 S.W.2d 165 (Ky. 1956).
33. 17 Ohio St. L.J. 242, at 244 (1956).
the accident was caused by the negligence or wilful misconduct of one driving a car under the licensee’s control with the latter’s permission. In *Bosse v. Marye* 42 the sponsor was held liable for damage caused by an unlicensed driver who was driving with the permission of the sponsor’s daughter. The statute imposed liability on the sponsor for the negligence of the operator in “operating and driving” a motor vehicle. The court said “to operate” is superintending and the daughter was still legally in control of the automobile which was being operated under the authority of her license. The statute was subsequently changed by omitting the word “operating” and in a subsequent case, 43 the court held the sponsor not liable when the licensee’s automobile, while being driven by another with the consent of the licensee, hit a pedestrian. 44 The Indiana statute imposes liability on the sponsor “for any injury or damage which such applicant may cause by reason of the operation of a motor vehicle.” Did the legislature intend “operation” to be used in the way the *Marye* court defined it or was it used as a synonym to the word drive? This question is important only if the “operation” referred to is that of the licensee. If “operation” may be by one other than the licensee, and this seems to be the plain meaning of the statute, the question becomes one of causation. Thus, if the licensee negligently permits an incompetent person to operate the automobile, he will have caused an injury or damage and under the statute the sponsor is liable. 45

Wisconsin and California have construed their statutes to impose liability on the sponsor for damage done to the automobile the licensee was driving and there is dicta in Ohio 46 tending toward the same result. In *Employer’s Mut. Fire Ins. Co. v. Haucke* 47 the plaintiff was an insurance company suing the sponsor under the subrogation clause for damage caused to an automobile which the licensee wrecked while attempting to escape after stealing it. The appellate court reversed the trial court’s sustaining of the defendant’s demurrer, saying the lack of the sponsor’s consent to the licensee’s stealing and driving the automobile was immaterial. In *Brown v. Roland,* 48 an automobile dealer permitted a licensee to take a car for demonstration purposes and when the licensee’s negligence caused damage to the car, sued the sponsor. The appellate court affirmed a judgment for the plaintiff saying liability under the

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42. 80 Cal. App. 107, 250 Pac. 693 (1926).
45. For law on question of negligently permitting an incompetent person to operate an automobile see Fisher v. Fletcher, 191 Ind. 529, 133 N.E. 834, 22 A.L.R. 1392 (1922).
47. 267 Wis. 72, 64 N.W.2d 426 (1954).
statute did not depend on the sponsor's consent to the licensee to drive on any particular occasion.

A New York statute imputes the negligence of the driver to the owner of the car if the driver was driving with the owner's permission. This statute imposes an agency relationship on the owner and operator where there was none at common law, irrespective of family relationship or the age of the operator. Under the New York law the result in the Roland case would have been different and it seems preferable to place the loss on the one who has placed the car in the minor's hands rather than on the signor who has no control over a situation such as that.

A PERSPECTIVE ON NON-LEGAL SOCIAL CONTROLS: THE SANCTIONS OF SHAME AND GUILT IN REPRESENTATIVE CULTURAL SETTINGS

INTRODUCTION

Particular modes of behavior tend to characterize any human community and distinguish it from all others. The observation that "morals are relative" is familiar enough, but disapproval of conduct in one society that merits praise in others is not the only factor making a group unique. Certain mannerisms and patterns of behavior simply remain outside the moral code or customs of any one society for the reason that it would seldom occur to its members to act differently, or at the very least, they would have no difficulty resolving the question if faced with a choice between the accepted way and possible alternatives. Folkways in this category (shaving the face and not the scalp, rather than the reverse, would be an instance, as would the use of eating utensils) are wholly accepted by the community and are contravened by virtually no one in it because there is no strong motivation to induce an alien course of action. Murder, theft, rape and adultery, on the other hand, are examples of behavior which at times have motivational roots deeply embedded in biological or psychological bases, and as might be expected, are inclined to manifest themselves in every society to some extent.

Of the behavior patterns actually found in a community, it may be said that they are either "sanctioned" or that they are not. In its technical usage unsanctioned behavior, contrary to appearances, does not signify disapproval of a particular act by the group, but rather indifference:

49. N.Y. Vehicle and Traffic Law § 59.