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TORTS — RIGHT OF WAY AT INTERSECTIONS IN LOUISIANA —
PREEMPTION DOCTRINE

In Louisiana, the problem of who has the right of way¹ at intersections² is determined by right of way statutes³ or ordinances,⁴ and by the jurisprudential doctrine of preemption. Where no other statute or ordinance specifically provides who shall have the right of way,⁵ R.S. 32:237A states the general rule thusly: "When two vehicles approach or enter an intersection at approximately the same time, the driver approaching from the right shall have the right of way. The driver of any vehicle traveling at an unlawful rate of speed or in an unlawful manner shall forfeit any right of way he might otherwise have."⁶ Under this provision, the right of way granted is not

1. LA. R.S. 32:1(19) (1950): "'Right-of-way' means the privilege of the immediate use of a highway."

2. LA. R.S. 32:1(9) (1950): "'Intersection' means the area embraced within the prolongation of the lateral curb lines, or if none then the lateral boundary lines to two or more highways which join one another at an angle whether or not such highway crosses the other."

3. The following statutes provide for the designation of through highways:

LA. R.S. 32:239 (1950): "Whenever the department designates any highway (over which local authorities have not exercised jurisdiction pursuant to R.S. 32:344) as a through highway and has erected signs at entrances thereto pursuant to R.S. 32:343, no person shall fail to stop his vehicle in obedience to such signs when entering or crossing such through highway."

LA. R.S. 32:342 (1950): "The department is authorized to classify, designate, and mark both intrastate and interstate highways lying within the boundaries of this state, and to provide a uniform system of marking and signing the public highways of this state, and this system shall correlate with, and so far as possible, conform to the system adopted by the United States and the other states."

LA. R.S. 32:343 (1950): "The department is authorized to designate main travelled or through highways by erecting at the entrance thereto from intersecting highways signs notifying drivers of vehicles to come to a full stop before entering or crossing such highway.

"Whenever such sign has been erected as provided by R.S. 32:239 of this Chapter, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto."

In *National Retailers Mutual Ins. Co. v. Harkness*, 76 So.2d 95 (La. App. 1954), the court stated that, in the absence of a law, the mere placing of a stop sign at the intersection of a street will not make the street a right of way or favored street.

4. The authority for local governing bodies to regulate rights of way is provided in LA. R.S. 32:344 (1950): "Local authorities, in their respective jurisdictions, may cause appropriate signs to be erected and maintained, designating residence and business districts, highways, railway grade crossings, and other signs necessary to carry out the provisions of this Chapter, or appropriate to give notice to an ordinarily observant person of local parking and other special regulations. However, the erection of signs at railway grade crossings shall not relieve travelers or vehicles of the duty to 'stop, look, and listen' before proceeding thereon as is provided in R.S. 32:243 or other laws of this state."

5. In *Pacific Fire Ins. Co. v. Employers' Liability Assurance Corp.*, 34 So.2d 796 (La. App. 1948), the court stated that an ordinance, like any other fact, must be alleged and proved to be considered.

6. LA. R.S. 32:237A (1950) has been applied where travelers of neither street

absolute and the driver who would avail himself of it remains under the duty of using reasonable care.⁷ Nevertheless, he can assume that others, by proper observation of traffic regulations, will respect his right of way.⁸ If he does enter the intersection the question then arises if he has sufficiently preempted it so that others must respect his right. This doctrine of preemption, as it is called, is often used by the courts to allow recovery to a motorist regardless of whether or not he initially had the right of way. The courts of Louisiana have developed two divergent concepts of the meaning of this doctrine.

One concept of the preemption doctrine is that enunciated in *Butler v. O'Neal*,⁹ where the court stated that "pre-emption of an intersection . . . does not mean the prior entry of a vehicle simply by a matter of a few feet, or, in relation to the time element, by a fraction of a second ahead of another vehicle, but . . . such pre-emption must be construed to mean an entry into an intersection *with the opportunity of clearing the same without obstruction of the path of another vehicle under normal and reasonable circumstances and conditions.*" (Emphasis added.) A similar concept of preemption was announced by the court in the recent case of *Gauthreaux v. Southern Farm Bureau Casualty Co.*,¹⁰ where a motorist entered a favored thoroughfare and was struck in the center of the intersection by one who had the right of way. The court refused to grant the right of preemption to the driver who blindly entered the favored street

have been given an advantage by ordinance, *Lottinger v. Yellow Cab Co. of Shreveport, Inc.*, 75 So.2d 56 (La. App. 1954), even though one intersecting street carries a greater amount of traffic than the other, *Lake Charles Stevedores, Inc. v. Streater*, 6 So.2d 242 (La. App. 1942). The latter case was decided under La. Acts 1938, No. 286, Title II, § 3, rule 11 (a).

7. *Wilson v. Yellow Cab Co. of Shreveport, Inc.*, 64 So.2d 463, 466 (La. App. 1953). The court stated: "But it is strenuously urged by counsel for defendant that the driver of the cab had the right to rely upon his preferred status due to the fact that he was traveling on a favored or right-of-way street. As has been many times observed by our courts the superior right which is accorded vehicular traffic on a preferred thoroughfare is not an invitation to negligence and certainly it does not relieve drivers from the results of their negligence. On the contrary the superior right is forfeited by the negligence of a driver. Among the most common acts of negligence which are unexcused by such preferred right are excessive speed and failure to maintain a lookout." Quoted by the court in *Hickerson v. Southern Farm Bureau Casualty Ins. Co.*, 77 So.2d 124, 131 (La. App. 1955).

8. *Mejheardt v. Reboul*, 158 So. 235 (La. App. 1935). In this case, plaintiff, who had entered an intersection after the light turned green, was struck by defendant, who entered on a red light. In granting recovery, the court stated that while the right of way accorded a vehicle cannot be exercised in disregard of the course of the other vehicle, the driver on a favored street may assume that other traffic will respect the traffic regulations and not violate the law.

9. 26 So.2d 753 (La. App. 1946).

10. 83 So.2d 667 (La. App. 1955).

and who then attempted to absolve himself of liability simply because he was there first.¹¹ Both the *Butler* and *Gauthreaux* cases express a preemption doctrine that complements R. S. 32:237A. The statute only determines who has the right to the "first use" of an intersection when the motorists arrive there at "approximately the same time." When the motorists arrive at the intersection at different times, so that it is reasonable to assume that the one arriving first could traverse the intersection before the second vehicle reaches it, then the doctrine of preemption governs and the motorist arriving first may proceed without regard to any preexisting right of way.

A broader concept of the preemption doctrine was announced in *Gauthier v. Fogleman*.¹² The court there stated: "It is well settled that where a collision occurs between two automobiles at a street intersection, *the automobile which first entered the intersection has the right to proceed, . . . even though the car entering the intersection secondly in point of time is being driven on a right of way street.*" (Emphasis added.) Although the motorists in that case arrived at the intersection at "approximately the same time," the court did not apply R.S. 32:237A, but held the defendant liable because his excessive speed was the proximate cause of the accident.¹³ In a 1955 case, *Booth v. Columbia Casualty Co.*,¹⁴ where the defendant was apparently traveling at a *lawful rate of speed* on a favored street and where both drivers arrived at the intersection at "approximately the same time,"¹⁵ the Louisiana Supreme Court allowed recovery to the plaintiff under the broad language used in the

11. *Id.* at 669. The court stated: ". . . it does not appear to us, even if Gauthreaux [plaintiff] observed Mrs. Barrow failing to stop at the stopsign, that he had — thus far having proceeded free of negligence and under no duty up until that time to anticipate the inferior motorist's failure to observe her legal duty to stop — physical opportunity to avoid the collision." The defendant's entry into and crossing of the intersection occurred within 1 to 1½ seconds.

12. 50 So.2d 321 (La. App. 1951).

13. The court also stated that a "right of way is not a right of pre-emption and vehicles traveling on a favored street may not disregard the rights of other vehicles by undue insistence upon that right."

14. 227 La. 932, 80 So.2d 869 (1955). In this case, the plaintiff slowed down and entered a blind intersection at 7 mph. The defendant's garbage truck, approaching from the right at a speed of approximately 20 mph., struck plaintiff's car in the middle of the intersection. Testimony of plaintiff taken in the trial court — 74 So.2d 776 (La. App. 1954) — indicated that the street plaintiff was crossing was 18 feet wide and that the plaintiff had proceeded 4 or 5 feet into the intersection before becoming cognizant of the defendant's truck.

15. The plaintiff motorist entered the intersection approximately one second prior to the collision.

Gauthier case.¹⁶ Under these circumstances, the application of this rule of preemption nullified, in effect, the provisions of R.S. 32:237A and displaced the concept of preemption as defined in the *Butler* case. Since both parties reached the intersection at "approximately the same time," it is submitted that the court should have applied R.S. 32:237A and denied recovery.

The more plausible concept of the doctrine of preemption is that stated in the *Butler* and *Gauthreaux* cases. The concept stated in the *Gauthier* and *Booth* cases is basically in conflict with Louisiana statutory right of way provisions and would tend to nullify the important benefits they seek to achieve.

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16. The court stated: "The plaintiff having pre-empted the intersection had the right to proceed and under the well-settled jurisprudence the automobile which first enters an intersection has the right of way over an approaching automobile and the driver who does not respect this legal right of the automobile which first entered the intersection to proceed through in safety, is negligent, even though the car thereafter entering the intersection is being driven on a right of way street." *Booth v. Columbia Casualty Co.*, 227 La. 932, 935, 80 So.2d 869, 870 (1955).