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Torts

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Assault — Use of Deadly Weapon Against Intruders

An innocent newsboy who, in the course of making his early morning deliveries, attempted to retrieve his dog from defendant's residential premises, was shot and seriously injured by defendant who believed he was a prowler attempting to enter the dwelling or to molest defendant, his wife, and children. Liability was denied on the ground that defendant's belief was reasonable despite the actual innocence of his victim.[1] The principles of law applicable to this situation are fairly simple: ordinarily the use of a deadly weapon is not justified for the purpose of expelling a mere intruder.[2] If, however, the intruder is, or reasonably appears to be, entering or about to enter the defendant's dwelling under such circumstances as to endanger the life or safety of the occupants and the defendant reasonably believes that the intrusion can be prevented only by the use of deadly force, he is privileged to wound or kill.[3] Without reviewing the facts, it is sufficient to observe that in view of the dark hours during which the incident occurred, the close proximity of plaintiff to defendant's window and the established fact that the neighborhood had been frequently molested in the past, the defendant could properly be found to have reason to believe that an unlawful and dangerous entry was imminent. However, it is not so clear from the reported facts that at the time of shooting defendant was justified in believing that an intrusion or even the risk of personal danger to himself or to his family could be prevented only by killing or wounding the apparent intruder. Defendant shouted a warning, whereupon, according to his testimony, the person "just sort of hesitated and then took off and ran on a diagonal and through my bush, which is further front than my window." Defendant shot "within a fraction of a second" after warning. Nevertheless, in view of the latitude permitted the trier in evaluating a fact picture such as this and in the light of the emergency facing the defendant one is not inclined to quarrel with the conclusion. But the general tenor of

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1. Smith v. Delery, 238 La. 180, 114 So.2d 857 (1959).
2. AMERICAN LAW INSTITUTE RESTATEMENT OF TORTS § 79 (1934).
3. *Ibid.*

the opinion does leave this reviewer with a very unpleasant impression that the courts might be inclined to sanction the shooting of any "prowlers, peeping toms, and intruders," or even persons who reasonably appear to be such, to the encouragement of trigger-happy householders. Conceding that any person should be permitted to use reasonable force less than deadly weapon to rid himself of these unwanted persons, yet the wounding of a human being or taking his life has always been regarded as a grave matter, particularly where, as here, an innocent boy will be permanently crippled. Again — and this is no criticism of the instant decision which represents the majority position— would it not be better in cases such as this where one of two innocent persons must suffer, that the individual who resorts to deadly force for his protection should bear the risk of a mistake rather than that the cost of the error should be saddled upon the wholly innocent victim?

Keeper of Animals

Although the Louisiana courts have frequently announced the proposition that the owner of a domestic animal is not liable for injuries inflicted through its vicious propensities except when he has failed to use "the highest degree of care," it is only on rare occasions that our courts have faced the problem of the liability of the harborer of a wild animal. In *Vredenberg v. Behan,*[4] decided in 1881, the Supreme Court held that all twenty-six members of a private shooting club which maintained a bear for several months as a shooting prize were liable without reference to fault when the beast escaped and killed a neighbor of the club. The animal had become enraged when a farmhand employed by the deceased deliberately set a dog on it in order to tease it. In imposing liability, the court relied indiscriminately on both civil and common law authorities. In particular, it quoted from the opinion in the much-discussed English decision, *Rylands v. Fletcher,*[5] and resorted to common law torts writers of the period (*Addison on Torts,* and *Sherman and Redfield on Negligence*). The court also threw in the old adage from medieval law, *sic utere tuo ut alienum non laedas,* and it summed the matter up by observing, "The law upon the subject is to the same effect under every enlightened system of jurisprudence." Despite

4. 33 La. Ann. 627 (1881).
5. Fletcher v. Rylands, [1866] L. R. 1 N.Ex. 265, affirmed in Rylands v. Fletcher, [1869] L.R. 3 H. L. 330.

these pronouncements, which would appear to be conclusive, the Court of Appeal for the Second Circuit recently refused to impose responsibility upon the harborer of a deer which escaped and injured a peace officer who was attempting to recapture it. The intermediate court became convinced that in several court of appeal decisions[6] subsequent to the *Vredenberg* controversy the courts had modified that decision so as to require a showing at least of slight fault. On appeal, however, the Supreme Court affirmed its former rule and pointed out that the intervening cases relied on by the court of appeal related to harms done by domestic animals.[7] The court might also have directed attention to the fact that in most, if not all the cases referred to, the injury was not due to a vicious trait of the animal. In cases involving the bites of dogs and cats the owner may escape liability under the Louisiana jurisprudence by showing that he was not guilty of even the "slightest fault." The same position with reference to domestic animals at one time prevailed in France,[8] and this doubtless was the inspiration for the original Louisiana decisions. The French jurisprudence and doctrine, however, have changed substantially since that time. Today the possessor or harborer of either a domestic or wild animal is fully responsible under French law for harms inflicted by it without reference to any fault in its keeping.[9] Contrary to an impression that prevails generally in this state, the common law is more lenient toward the owner of a domestic animal than is the French civil law, for under the accepted common law rule the owner of a domestic animal must be chargeable with knowledge of the vicious nature of the beast before he can be held strictly accountable for personal injuries inflicted by it.[10] The present Louisiana position on domestic animals, which rests liability upon a showing of at least some fault, is strictly a hybrid, even though it is arguably preferable to either of the generally prevailing views. Our decisions, however, imposing strict liability with reference to the harms inflicted by wild animals, accord with the law prevailing universally.

6. Willis v. Schuster, 28 So.2d 518 (La. App. 2d Cir. 1946); Raziano v. T. J. James & Co., 57 So.2d 251 (La. App. Orl. 1952) (auto struck straying mule on highway, injury not related to viciousness of animal); Thomas v. Wright, 75 So.2d 559 (La. App. 2d Cir. 1954) (similar; frightened horse collided with auto on highway).

7. Briley v. Mitchell, 238 La. 551, 115 So.2d 851 (1959).

8. 2 MAZEAUD AND TUNC, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSIBILITÉ CIVILE nº 1073 (5th ed. 1958).

9. *Id.* nº 1115.

10. PROSSER, THE LAW OF TORTS § 57 (2d ed. 1955).

Traffic and Transportation

Most of the Louisiana cases involving injuries in traffic rested upon only a dispute of fact. At least two decisions, however, deserve attention. In *Brown v. S. A. Bourk & Sons, Inc.*,[11] the Supreme Court reaffirmed the proposition that failure to comply with the mandatory requirements of a traffic law enacted in the interest of safety is negligence *per se*, and it is actionable negligence if it has causal connection with the accident. The statute violated in this case was La. R.S. 32:280, which requires the provision of a red light upon the tail end of any load that extends beyond the rear bed of a vehicle. This provision concededly had not been complied with by the defendant trucking company. The accident involved a rear end collision with a taxi following the truck and occurred on the Morgan City Bridge over the Atchafalaya River. In view of the fact that the tail lights of the truck were illuminated and that the unlit load of pipes protruding from the rear extended only about eighteen inches beyond the body of the vehicle, it would seem that the most difficult issue was as to whether the absence of the statutory light played a causal part in bringing about the fatal accident.

The Louisiana courts have often had occasion to emphasize the duty of care to be obeyed by a motorist who, having the right of way, nevertheless proceeds blindly without regard to the safety of those who have entered or are about to enter the intersection from a less favored thoroughfare.[12] Where, however, a traffic light determines the right of way the situation of the favored motorist is somewhat different. The driver who moves with the green light is in general entitled to assume that the other motorist at such an intersection will not arbitrarily violate the light. Hence he need not be as cautious as one who is favored merely by the rules of the road. In adopting this position the Louisiana courts have absolved the motorist favored by the light from a charge of negligence (or contributory negligence) in numerous Louisiana cases.[13] Yet it is noteworthy that in most instances where this conclusion was reached the accident occurred at a time after the traffic had been evacuated from the unfavored street.[14] Several times the courts have found that

11. 239 La. 473, 118 So.2d 891 (1960).
12. Comment, 5 LOUISIANA LAW REVIEW 432, 434-438 (1946).
13. The most recent of these is Youngblood v. Robinson, 239 La. 338, 118 So.2d 431 (1960), Hamiter, J., and Hawthorne, J., dissenting.
14. *The Work of the Louisiana Supreme Court for the 1945-46 Term — Torts*

the favored motorist had failed to use even the "slight care" required of him when the accident occurred immediately after the light had shifted and the other party had made the kind of improper adjustment to the change of light that common experience shows is to be expected with fair regularity at urban intersections.[15] Recently, however, the Supreme Court in *Bryant v. Ouachita Coca Cola Bottling Co.*,[16] faced with a situation of this latter variety, absolved the driver of the vehicle favored by the light of any carelessness. The opinion observed that even under the circumstances suggested above the alleged acts of negligence by the motorist on the road favored by the light must have been "most substantial, and they must have been such a direct factor that without them the accident would not have occurred."[17]

Damages — Death

It has been difficult to determine from cases decided in the past few years whether the amount of damages recoverable by a widow for the wrongful death of her husband should be determined on the basis of her loss of support or, on the other hand, by reference to community property rights in the wife of one-half of what the deceased husband would have earned had he survived to his normal life expectancy, discounted to its present value.[18] Recently in *Brown v. S. A. Bourg & Sons, Inc.*,[19] the Supreme Court made clear its position that such damages are based solely upon the loss of anticipated support by the wife, reduced to its present value. The court also pointed out some of the factors to be taken into consideration in fixing the loss of support:

> "The life expectancy of the survivor, the divorce rate, the percentages of remarriage of widows, particularly to second husbands whose earnings are greater than those of the first, the condition of the health of the decedent, his possible retirement, the possibility of an increase or decrease in his annual earnings, and the change in the value of the dollar over a long period of years."[20]

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and Workmen's Compensation, 7 LOUISIANA LAW REVIEW 246, 247 (1947).
15. *Ibid.*
16. 239 La. 83, 117 So.2d 919 (1960).
17. *Id.* at 94, 117 So.2d at 922.
18. See discussion in Comment, 20 LOUISIANA LAW REVIEW 357, 360 (1960).
19. 239 La. 473, 118 So.2d 891 (1960).
20. *Id.* at 484, 118 So.2d at 895.