Rights and Duties of Riders in Private Automobiles

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wanton indifference to the safety of others. The courts seem less ready to minimize contributory negligence where it is shown that the non-turning motorist has exhibited indifference towards the safety of others. Thus contributory negligence has been found where, just prior to the collision, the non-turning motorist was looking to the rear waving at a pedestrian and where he was grossly exceeding a municipal speed limit.

Conclusions

The Louisiana courts, viewing the left turn as a highly dangerous maneuver, have placed a high degree of responsibility upon a motorist turning left to “see to it” that his turn is safely made. So onerous is this standard of care that involvement in a collision while turning left gives rise to a presumption of fault. In absence of a showing that the conduct of the non-turning motorist bordered on “wilful and wanton” indifference to the safety of others, the courts tend to minimize negligence on the part of the non-turning driver except where he was attempting to overtake at an intersection. Even then, the doctrine of last clear chance may be available to him.

It is suggested that this approach towards left turn collisions has developed because it is rather simple to administer and because in most cases it seems to do justice between the parties. Evident, however, is a judicial distaste for the doctrine of contributory negligence as a complete bar to recovery by a plaintiff-non-turning motorist whose standard of care is rather slight as compared to the motorist turning left. Perhaps the courts would prefer to compare negligence and reduce plaintiff’s damages accordingly, but such is not permissible so long as the strict doctrine of contributory negligence remains a part of Louisiana law.

Gerald Le Van

Rights and Duties of Riders in Private Automobiles

The development of the automobile industry has not only revolutionalized transportation, but has brought about develop-
ment of a large area of tort law dealing with liability resulting from automobile accidents. This Comment will discuss the rights and duties of riders in private automobiles, with particular emphasis on the automobile guest and his rights and duties in Louisiana.1

Since no Louisiana statutory provisions have been adopted which pertain particularly to rights and duties of riders in automobiles,2 a consideration of general Anglo-American law on the subject will be included. As in other areas of torts, development of the Louisiana law relative to this subject has generally paralleled general Anglo-American law.

Duty of the Host Driver to His Guest

Generally, courts in the United States have determined the duties of automobile drivers toward riders in their automobiles by analogy to duties imposed upon an occupier of land toward persons on the premises.3 Thus, the duty of an automobile driver toward a rider in his automobile depends upon whether the rider is classified as a business guest, a social guest or a trespasser.4 A business guest5 is one whose presence confers some type of pecuniary benefit on the driver or owner,6 such as when a salesman drives a prospective customer for the purpose of making a sale.7 A gratuitous guest is one whose presence is

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1. This Comment will not discuss riders on common carriers. Common carriers owe their passengers a very high degree of care. For a general discussion of liability of carriers to riders, see Blashfield, Cyclopedia of Automobile Law and Practice §§ 2141-2224 (1946). For the Louisiana rule see Roux v. Henderson, 141 So.2d 163, 164 (La. App. 1st Cir. 1949).

Also, this Comment discusses the rights and duties of the parties who play a part in the accident. It is well to note that many of these cases are litigated against the insurer under Louisiana's direct action statute. La. R.S. 22:655 (1950).

2. In Louisiana, civil liability in accidents involving automobile guests is based on the articles of the Civil Code which pertain generally to offenses and quasi-offenses. La. Civil Code arts. 2315-2224 (1870). See also Jacobs v. Jacobs, 141 La. 272, 74 So. 992 (1917).


4. Blashfield, Cyclopedia of Automobile Law and Practice §§ 2291, 2296 (1946); 60 C.J.S. Motor Vehicles §§ 399, 401 (1949); Restatement, Torts § 490 (1934).

5. A business guest is often referred to as a “passenger.” McCann v. Hoffman, 9 Cal.2d 279, 70 P.2d 909 (1937); Bentley v. Oldtyme Distillers, Inc., 71 N.D. 52, 298 N.W. 417 (1941); Blashfield, Cyclopedia of Automobile Law and Practice §§ 2291 (1946); Prosser, Torts 451 (2d ed. 1955); 60 C.J.S. Motor Vehicles § 399 (1949).


not primarily for the purpose of conferring a pecuniary benefit on the driver or owner. Sharing expenses of a trip or assisting in driving are not of themselves benefits which will take one out of the gratuitious guest category. A trespasser is one who is riding without express or implied consent of the owner or driver.

A driver owes a duty of ordinary care to business and gratuitous guests riding in his vehicle. For the benefit of a business guest, a driver has the duty of inspecting his vehicle in order to warn the guest of safety defects which a reasonable inspection would reveal. Reasonableness of an inspection depends upon the circumstances of each case considering such factors as the mechanical skill or aptitude of the driver in question. On the other hand, for the gratuitous guest the driver is not required to make an inspection in order to ascertain defects in his driving or in the automobile. The driver is required only to warn the guest of those defects of which the driver has actual knowledge. Defects for which the driver


8. RESTATEMENT, TORTS § 490 (1934); 60 C.J.S. Motor Vehicles § 399 (1949).


11. Morales v. Employers' Liability Assurance Corp., 202 La. 755, 12 So.2d 804 (1943) (riding in rear of ambulance with daughter); Neuman v. Eddy, 15 La. App. 45, 130 So. 247 (1st Cir. 1930) (buying breakfast for driver); Ruel v. Langelier, 299 Mass. 240, 12 N.E.2d 735 (1938) (helping driver to get the car started); RESTATEMENT, TORTS § 490 (1934).


13. Beard v. Klusmeier, 158 Ky. 153, 164 S.W. 319 (1914); Morales v. Employers’ Liability Assurance Corp., 202 La. 755, 12 So.2d 804 (1943); Jacobs v. Jacobs, 141 La. 272, 74 So. 992 (1917); Aden v. Allen, 3 So.2d 905 (La. App. 2d Cir. 1941); Galbraith v. Dreyfus, 162 So. 246 (La. App. 2d Cir. 1935); Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956); Waters v. Markham, 204 Wis. 332, 235 N.W. 797 (1931); BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE §§ 2311, 2233 (1946); PROSSER, TORTS 447-48, 451, 459 (2d ed. 1955); GAMMON, THE AUTOMOBILE GUEST, 17 TENN. L. REV. 452 (1942); RESTATEMENT, TORTS §§ 342-343 (1934); 60 C.J.S. Motor Vehicles §§ 399, 403 (1949).

14. PROSSER, TORTS 459 (2d ed. 1955); RESTATEMENT, TORTS § 343 (1934).

15. BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2272 (1946); PROSSER, TORTS 459 (2d ed. 1955).

must inspect or of which he must give notice include deficiencies or conditions in himself which would make him an unsafe driver as well as mechanical conditions which would make the automobile unsafe to operate.\(^7\) To a trespasser in or on his vehicle, a driver is liable only for wilful or wanton negligence.

Some courts have held that when statutes require certain parts of the automobile to be maintained in safe mechanical condition, the host driver is responsible to a rider for failure to meet the statutory requirements. This result has been reached even in cases involving gratuitous guests. For example, if a statute requires that mufflers be maintained in a manner so as to prevent carbon monoxide from entering the cab of the automobile, the host driver is under a duty to make certain that such maintenance as required by the statute is performed.\(^8\) It would seem that statutes requiring periodic inspections, such as that in Louisiana,\(^9\) are designed in part to protect both business and gratuitous guests. Failure of a driver to comply with such statute should establish at least a rebuttable presumption of breach of duty on his part.\(^{20}\)

Some jurisdictions have enacted “guest statutes” which provide that the host driver is liable to the gratuitous guest only for acts of wilful or wanton negligence.\(^{21}\) These statutes are justified on the basis that host drivers should not be held responsible for acts of simple negligence while gratuitously furnishing transportation to the guest. They prevent recovery by hitch hikers for acts of simple negligence on the part of the driver, they reduce litigation, and they reduce automobile insurance claims and rates.\(^{22}\) A few jurisdictions have judicilly estab-

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17. See note 16 supra.
18. Lyngbaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956); Harper v. Wilson, 103 Miss. 199, 140 So. 693 (1932); Blashfield, Cyclopedia of Automobile Law and Practice § 2333 (1946); Prosser, Torts 451 (2d ed. 1955).
20. Knowingly riding in an automobile without an inspection sticker could be construed as assumption of risk or contributory negligence on the part of the guest.
21. For examples of these “guest statutes,” see Malcolm, Automobile Guest Statutes 265-94, § 5 (1937). Louisiana does not have a “guest statute.”
22. Crawford v. Foster, 110 Cal. App. 81, 293 Pac. 841 (1930) (“dog that bites the hand that feeds him” theory); Blashfield, Cyclopedia of Automobile Law and Practice § 2292 (1946); Malcolm, Automobile Guest Law §§ 3-4 (1937); Prosser, Torts 451-52 (2d ed. 1955); Cornish, The Automobile Guest, 14 B.U.L. Rev. 728, 750 (1934); Gammon, The Automobile Guest, 17 Tenn. L. Rev. 452, 458 (1942); Note, 5 Louisiana Law Review 488 (1943).
lished a rule similar to that provided by "guest statutes" by dividing automobile guests into two categories — invitees and licensees. An invitee is one who is present in the automobile at the request of the driver, while a licensee is present at his own request. The host driver owes the invitee the duty of exercising ordinary care, while he owes the licensee only the duty of not performing acts of willful or wanton negligence.23

The leading Louisiana case on automobile guest law has strongly indicated that the common law rules pertaining to liability of occupiers of land are applicable to automobile guests in Louisiana.24 However, the Louisiana courts have not distinguished between the business guest and the gratuitous guest because they have never been squarely faced with the problem of what duty the driver owes to a guest in regard to an inspection of the automobile. One case has implied that the driver does not owe any guest the duty to inspect the automobile,25 while another case has indicated that the driver owes all guests the duty of making a reasonable inspection.26 As the Louisiana courts have applied the land law in the past, it would seem that they would draw a distinction between the duties owed business and gratuitous guests.

Effect of Guest's Participation in the Accident in Suits Between the Guest and a Driver of Another Automobile

The duty of drivers toward guests or riders in other automobiles is merely to exercise reasonable care.27 Classification

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25. Sears v. Interurban Transportation Co., 14 La. App. 343, 125 So. 748 (2d Cir. 1930).
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of a rider as a business guest, social guest, or trespasser is immaterial. However, the doctrines or principles which may be used as a defense by the driver of another vehicle are more complicated and frequently arise in litigation.

Usually, when a driver of another vehicle negligently injures an automobile guest, the driver will attempt to bar recovery by the guest on the grounds that the guest was contributorily negligent. In the absence of a master-servant relationship, the mere fact that a host driver is negligent does not make a rider in his vehicle contributorily negligent as to a driver of another vehicle. There must be a finding of some independent negligence on the part of the guest himself before he can be held to be contributorily negligent.\(^2\)

A guest who encourages excessive speed or reckless driving is considered as engaging in an independent act of negligence and thus is deemed to be contributorily negligent.\(^2\) Also, a guest may be held contributorily negligent for failing to protest to his host driver when he has reason to believe that the host driver is operating the automobile in a negligent manner.\(^3\) In some situations, if it will not worsen his position, the guest may be required to get out of the automobile if he has the opportunity or at least request that the driver stop and let him out.\(^1\)

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29. Solomon v. Davis Bus Line, 1 So.2d 816 (La. App. 2d Cir. 1941); Blashfield, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2481 (1956).


guest may not sit idly by and disregard dangers which he knows are detrimental to his safety. He must warn the driver of those dangers of which he has or should have knowledge when he knows or has reason to know that the driver does not have knowledge of them.\footnote{22}

A guest is not required to exercise as high a degree of care as the driver. Generally an automobile guest may rely upon the driver for safe transportation and is not negligent if he engages in such activities as sleeping,\footnote{23} talking to other occupants,\footnote{24} or reading.\footnote{25} He need not continually watch the road and point out any possible danger. In fact, the law generally frowns on “back seat driving,” as it is distracting to the driver.\footnote{28} This does not mean that the guest must leave the driver in complete solitude; engaging in conversation with the driver is not necessarily contributory negligence.\footnote{27}

Another method utilized by negligent drivers of other automobiles to bar recovery by automobile guests is the joint enterprise doctrine.\footnote{38} This doctrine is to the effect that when an automobile driver and rider have a common interest in reaching their destination and each has a mutual right to control management of the automobile, each is responsible for the negligence

\footnote{22} S.C. 34, 88 S.E.2d 838 (1955); Webb v. Karstein, 308 S.W.2d 114 (Tex. Civ. App. 1957); Blashfield, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2415 (1946).


\footnote{33} Murphy v. Rowan, 84 So.2d 743 (La. App. Orl. Cir. 1956); Weddle v. Phelan, 177 So. 407 (La. App. 1st Cir. 1937); Lea v. Gentry, 167 Tenn. 604, 73 S.W.2d 170 (1944); Blashfield, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2432 (1948).

\footnote{34} Theriot v. Tassin, 149 So. 729 (La. App. 1st Cir. 1933); Hyman v. Salser Plumbing Co., 135 So. 703 (La. App. Orl. Cir. 1931).

\footnote{35} Singley v. Thomas, 49 So.2d 465 (La. App. 2d Cir. 1950).


\footnote{38} This doctrine is also called “joint venture” or “common venture.”
of the other.\textsuperscript{39} Thus, if a driver and a guest are riding in an automobile pursuant to a certain agreement between the two, such as where they have rented an automobile together in order to take a trip to a certain location, they are considered to be engaged in a joint enterprise. In this situation, each will be responsible for the negligent acts of the other.\textsuperscript{40} Therefore, negligence of the one driving at the time of an accident will preclude the other from recovering against the negligent driver of another vehicle.

Since on most trips there is a common destination, this element of joint enterprise has not been extensively litigated. The problem in most joint enterprise cases is in determining whether or not the guest had a right to control the management of the automobile. In order to control the management of the automobile, it is not necessary to maintain actual physical control over the driver. It is sufficient if each party has the right to have his wishes respected in the operation, management, and destination of the automobile.\textsuperscript{41} Whether one has this right to control or not is generally a question of fact which must be decided on the circumstances of each case. An equal right to control has been held to have existed where the driver and guest borrowed an automobile\textsuperscript{42} or where they both owned the automobile.\textsuperscript{43} On the other hand, right to control has been held not to have existed where the driver and guest were going to a dance,\textsuperscript{44} an athletic event,\textsuperscript{45} visiting friends,\textsuperscript{46} or riding in a car pool.\textsuperscript{47} The situation in Louisiana is in accord with the


\textsuperscript{40} Harper & James, Torts § 26.13 (1956).

\textsuperscript{41} Blashfield, Cyclopedia of Automobile Law and Practice § 2494 (1946); Prosser, Torts 365-66 (2d ed. 1955).


\textsuperscript{44} Hudson v. Yellow Cab & Baggage Co., 145 Kan. 66, 64 P.2d 43 (1937).

\textsuperscript{45} Capital Transportation Co. v. Compton, 187 F.2d 844 (8th Cir. 1951).

\textsuperscript{46} Cornelius v. Fields, 122 So.2d 704 (La. App. 1st Cir. 1960); Lawson v. Nossek, 130 So. 669 (La. App. 2d Cir. 1930).

\textsuperscript{47} Shockman v. Union Transfer Co., 220 Minn. 334, 19 N.W.2d 812 (1945).
general view, except that the Louisiana courts seem more cautious in finding a right to control the automobile.\textsuperscript{48}

Another method by which a negligent driver of another automobile may bar recovery by a guest is by showing that there was a master-servant relationship existing between the driver and the guest. In such situations negligence of the driver-servant will be imputed to the master-guest, thereby barring recovery against a third party.\textsuperscript{49} Such a master-servant relationship arises where the guest has a right to control the operation of the vehicle. Thus, it has been held that when a father is riding in his automobile while permitting his son to drive\textsuperscript{50} or when a lady allows her escort to drive her automobile while she sits beside him,\textsuperscript{51} the rider has made the driver his agent for purposes of operating the automobile and the driver's negligence is imputed to the rider.\textsuperscript{52} The mere existence of a family relationship will not establish a master-servant relationship.\textsuperscript{53} However,

\textsuperscript{48} Squyres v. Baldwin, 191 La. 249, 185 So. 14 (1938) (rider paying expenses of trip); Delaune v. Breaux, 174 La. 43, 139 So. 753 (1932) (driver and rider as co-owners of bottle of gin drinking it on pleasure trip); Lorance v. Smith, 173 La. 883, 138 So. 871 (1931) (riding to picture show); Lawrason v. Richard, 172 La. 696, 135 So. 29 (1931) (riding to fraternity initiation); Vitale v. Checker Cab Co., 166 La. 527, 117 So. 579 (1928) (husband and wife riding together); Cornelius v. Fields, 122 So.2d 704 (La. App. 1st Cir. 1960) (visiting friends); Benson v. Metropolitan Casualty Insurance Co., 79 So.2d 345 (La. App. 2d Cir. 1955) (riding to baseball game); Hubble v. Bourg, 68 So.2d 639 (La. App. 1st Cir. 1953) (riding with brother); Jones v. Burke, 51 So.2d 322 (La. App. 1st Cir. 1951) (two ministers returning daughter of one of ministers from hospital); Singley v. Thomas, 49 So.2d 465 (La. App. 2d Cir. 1950) (riding on trip with son); Russo v. Aucoin, 7 So.2d 744 (La. App. 1st Cir. 1942) (employees going on pleasure ride on lunch hour); Prudhomme v. Continental Casualty Co., 169 So. 147 (La. App. 2d Cir. 1936) (auto salesman riding from call on prospective customer); Rhodes v. Jordan, 157 So. 811 (La. App. 8d Cir. 1934) (riding with deputy sheriff to show deputy a still); Ponder v. Ponder, 157 So. 627 (La. App. 2d Cir. 1934) (daughter riding with parents to football game); Richard v. Roquevert, 148 So. 92 (La. App. 5th Cir. 1933) (attorney and client's son-in-law riding on client's business); Denham v. Taylor, 131 So. 614 (La. App. 1st Cir. 1930) (rider and driver going dancing); Neuman v. Eddy, 130 So. 247 (La. App. 1st Cir. 1930) (buying breakfast for driver).

\textsuperscript{49} LA. CIVIL CODE art. 2320 (1870); RESTATEMENT (SECOND), AGENCY § 243 (1957).

\textsuperscript{50} Siocum v. Hawn, 155 So. 24 (La. App. 2d Cir. 1934).

\textsuperscript{51} Riggs v. F. Strauss & Son, 2 So.2d 501 (La. App. 2d Cir. 1941).

\textsuperscript{52} BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2498 (1946).

\textsuperscript{53} Vitale v. Checker Cab Co., 166 La. 527, 117 So. 579 (1928); McLehaney v. Great American Indemnity Co., 116 So.2d 69 (La. App. 1st Cir. 1959); Benoit v. Commercial Casualty Insurance Co., 79 So.2d 647 (La. App. 1st Cir. 1955); Cassard v. Mansfield Lumber Co., 35 So.2d 797 (La. App. 2d Cir. 1948); Girolando v. Maitrejean, 22 So.2d 564 (La. App. 5th Cir. 1945). See also Hubble v. Bourg, 68 So.2d 639 (La. App. 1st Cir. 1953) (brother and sister); Weitkam v. Johnston, 5 So.2d 582 (La. App. 5th Cir. 1942) (mother and daughter); Horn v. Barras, 172 So. 451 (La. App. 1st Cir. 1937) (rider riding with brother); Driefus v. Levy, 140 So. 259 (La. App. 2d Cir. 1932) (rider riding with sister); BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2498 (1946).
when the husband is present in the family automobile, he is generally deemed to have the right to control its operation whether he is driving or not. Although an owner may be classified as a guest in his automobile, he is usually presumed to have the right to control and will be barred from recovery from another negligent driver when his driver is contributorily negligent. In Louisiana, the mere theoretical right to control the automobile will establish a master-servant relationship, even where the owner is sleeping while riding in the automobile.

In Louisiana, as elsewhere, the driver of another automobile may not invoke the doctrine of assumption of risk to bar recovery by an automobile guest. When a guest assumes certain risks by riding with the host driver, he generally assumes only those risks incidental to riding with the host driver. He does not ordinarily assume the risk of being injured by the negligent acts of third parties.

Under some circumstances a driver of another automobile may recover from an automobile rider. If a negligent host driver is the agent of the rider, the driver of another automobile may recover from the rider since the negligence of the host driver is imputed to the rider. In a few cases the rider has been held liable to a driver of another automobile when a joint enterprise existed between the host driver and the rider. No cases were found in Louisiana which allowed recovery by a driver of another automobiles on the basis of joint enterprise, although at least one case has implied that this may be possible. It would seem that the doctrine should apply equally in both situations.

54. Pierrotti v. Huff Truck Lines, 63 So.2d 886 (La. App. 1st Cir. 1953); Welch v. Louisiana Oil Refining Corp., 135 So. 617 (La. App. 1st Cir. 1931).
55. Prosser, Torts 368 (2d ed. 1955).
57. Riggs v. F. Strauss & Son, 2 So.2d 501 (La. App. 2d Cir. 1941).
58. Note, 22 LOUISIANA LAW REVIEW 275 (1961); see discussion of assumption of risk infra. See also note 71 infra.
59. See discussion of imputed negligence because of a master-servant relationship between driver and rider, supra p. 480.
60. Crescent Motor Co. v. Stone, 211 Ala. 516, 101 So. 49 (1924); Strauffus v. Barclay, 147 Tex. 600, 219 S.W.2d 65 (1949); HARPER & JAMES, TORTS § 26.13 (1956); Prosser, Torts 363-64 (2d ed. 1955); Note, 1 BAYLOR L. REV. 492 (1949).
with the joint enterprise doctrine mainly as a defense rather than as a basis for recovery.

In the absence of any master-servant relationship or joint enterprise, there are few cases holding a guest liable for injuries to drivers of other automobiles. The duty of the guest generally is to exercise reasonable care for his own safety. If a guest does not exercise such care, his negligence may bar recovery for himself, but he will not be held liable to third persons. 62

**Effect of Guest's Participation in the Accident in Suits Against his Host Driver**

In suits by the guest against his host driver, the doctrines of joint enterprise and respondeat superior as discussed above are not available defenses to the host. An agency relationship exists in both of these situations and the master and servant are liable to each other for personal negligence under the same circumstances in which each would be liable to a third person. 63 However, the guest's recovery may be barred by both the doctrine of assumption of risk and contributory negligence. Most jurisdictions, including Louisiana, require three elements in order to constitute assumption of risk: (1) a hazard to the safety of the guest, (2) knowledge and appreciation of the hazard by the guest, and (3) acquiescence or a willingness to proceed in the face of danger. 64 Thus, if a guest knowingly and voluntarily rides with an intoxicated 65 or incompetent 66 driver

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63. Lawson v. Richard, 172 La. 696, 135 So. 29 (1931); Prosser, TORTS 367 (2d ed. 1955); Restatement (Second), Agency § 470 (1957).
or in a defective automobile,\textsuperscript{67} the guest is held to assume the risk of any injuries incurred as a result of the defect in the driver or the automobile. On the other hand, if the guest does not know of a condition indicating that the driver may not be able to operate the automobile safely,\textsuperscript{68} or the defect in the automobile,\textsuperscript{69} or does not voluntarily ride with the driver,\textsuperscript{70} he is not held to assume the risk.

A guest is not considered as assuming the risk of every possible injury which may occur. He only assumes those risks which are incidental to the danger to which he has exposed himself. For example, if the guest is riding on the fender of an automobile with a competent driver, he only assumes those risks incidental to riding on the fender, such as falling off the fender. He does not assume the risk of injuries brought about by the negligence of the host driver or the driver of another vehicle.\textsuperscript{71}

A guest may assume the risk of injury when he knows that the driver is negligent or incompetent. If prior to entering the automobile the guest does not know that the driver is prone to negligence or is incompetent but later discovers this and fails to protest, he may be held to have acquiesced in the negligent

\textsuperscript{67} Sloan v. Gulf Refining Co., 139 So. 2d 420 (La. App. 2d Cir. 1959) (sleepy driver.)

\textsuperscript{68} Branch v. Bug Ride, Inc., 63 N.Y. Supp. 2d 409 (1948) (defective steering apparatus); Blasfield, Cyclopaedia of Automobile Law and Practice § 2515 (1946).

\textsuperscript{69} Constantin v. Bankers Fire and Marine Insurance Co., 129 So.2d 269 (La. App. 3d Cir. 1961) (guest did not know that driver had no license); Dowden v. Bankers Fire & Marine Insurance Co., 124 So.2d 254 (La. App. 2d Cir. 1960) (guest had no knowledge of intoxication of driver); Warner v. Home Indemnity Co., 123 So.2d 518 (La. App. Orl. Cir. 1960) (guest did not know that drinking had affected host's driving); Upshaw v. Great American Indemnity Co., 112 So.2d 125 (La. App. 2d Cir. 1959) (guest did not know that host's fatigue was affecting his driving); Blasfield, Cyclopaedia of Automobile Law and Practice § 2512 (1946).

\textsuperscript{70} Clinton v. City of West Monroe, 187 So. 561 (La. App. 2d Cir. 1939) (rider had passed out from drinking and was thrown into driver's automobile).

\textsuperscript{71} Keowen v. Amite Sand & Gravel Co., 4 So.2d 79 (La. App. 1st Cir. 1941). See also Jackson v. Young, 99 So.2d 400 (La. App. 1st Cir. 1957) (guest sitting on side of truck did not assume risk of driver's reckless driving); Elliott v. Coreil, 158 So. 698 (La. App. 1st Cir. 1935) (guest sitting in box seat in rear of automobile did not assume risk of negligent driving by third party); McDonald v. Stellwagon, 140 So. 133 (La. App. 2d Cir. 1932) (boy scouts riding on running board did not assume risk of scoutmaster's reckless driving); Stout v. Lewis, 15 La. App. 207, 123 So. 346 (La. App. Orl. Cir. 1928) (guest riding on running board did not assume risk of recklessness of driver); Blasfield, Cyclopaedia of Automobile Law and Practice § 2511 (1946).
driving and thereby assumed the risk of such driving. 72 Also, when the guest has the opportunity to leave or request to leave the automobile without worsening his position and does not do so, he may be held to have assumed the risk of the faulty driving. 73

A guest who is contributorily negligent cannot recover from a host driver. Some courts, including those of Louisiana, consider the doctrine of assumption of risk as a type of contributory negligence. 74 A guest will be considered contributorily negligent if he fails to take affirmative action when he knows or should know that the host driver is operating the automobile negligently. Contributory negligence would also bar recovery against a host driver where the guest knows or should know of a danger and he knows or should know that the driver is not aware of it.

The distinction between contributory negligence and assumption of risk seems to be that actual knowledge and appreciation of the danger is necessary for assumption of risk, whereas these requirements are not necessary for contributory negligence. 75 The distinction is important whenever a host driver's negligence may be classified as wilful and wanton because assumption of risk is a defense to wilful and wanton negligence, whereas contributory negligence is not. 76 In all cases not involving wilful or wanton negligence, the same result would be obtained whether a guest's conduct is considered an assumption of risk or contributory negligence.

Conduct amounting to contributory negligence on the part of a plaintiff guest does not necessarily make him liable if he


73. Curley v. Mahan, 288 Mass. 369, 193 N.E. 34 (1934) (failure of rider to discontinue journey when the driver had stopped for five minutes when he knew that driver was driving at excessive speed); BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2512 (1946).


75. PROSSER, TORTS 309-10 (2d ed. 1955).

is a defendant. It would take an extremely rare factual situation to allow such recovery by a host driver because in most cases the host driver would be contributorily negligent. For example, if an automobile accident resulted because the guest was diverting the driver’s attention, the driver, by allowing his attention to be diverted, would probably be held contributorily negligent. No cases were found on this subject.

**Conclusion**

Although there are a few areas in need of clarification, the Louisiana rules pertaining to riders in automobiles are generally well settled. The Louisiana courts have adopted the rules of the majority of general Anglo-American jurisdictions in most instances. It would seem that the major task in this area is applying factual situations to the rules which have been formulated by the courts. It is hoped that this Comment will be of assistance in this process.

*Frank F. Foil*

**Significance of the Youthfulness of a Party in Louisiana Automobile Accident Cases**

With the great number of children daily exposed to the hazards of modern automobile traffic, the question of the effect which their youth plays on the liability of the injuring motorist becomes increasingly important. This Comment will consider the effect of the victim’s youth on the liability of the motorist who injures a youthful pedestrian, bicyclist, or automobile driver. More specifically, the duties imposed on the motorist and the availability of contributory negligence of the victim will be discussed. At the outset it is also important to note that although frequently language in the opinions use terms such as “highest degree of care,” “extreme care,” and “unusual care and caution” the significant inquiry in each situation is to determine if the particular motorist exercised reasonable care under the circumstances. Therefore, although a motorist must certainly exercise more caution when approaching a very young child than when confronted with an adult, and courts often use language such as “highest degree of care” to stress this fact;