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

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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.

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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;
the duty of the motorist is nevertheless always that of reasonable care under the particular circumstances.

**Contributory Negligence of Minors**

Before considering specific cases of the young pedestrian, bicyclist and driver, a few general remarks should be made about the contributory negligence of minors. A distinction is generally drawn between whether the child is of sufficient age to be considered in law as possessing the requisite capabilities to exercise a minimum degree of care for its safety, and the standard of care which it must observe in order to avoid being contributorily negligent.¹ In order to be contributorily negligent, the minor must possess the capability of observing the appropriate standard and then fail to do so. The minor is generally considered as possessing the requisite capabilities to exercise a minimum degree of care for his safety when he is able to realize and appreciate the risk under the specific circumstances which his conduct entails.²

Louisiana, as well as the majority of Anglo-American jurisdiction,³ has adopted the rule that a person below the age of seven years lacks the requisite capacity to be contributorily negligent.⁴ This has been criticized as an arbitrary rule which

1. See Annot., 77 A.L.R.2d 917 (1961); Annot., 174 A.L.R. 1080 (1948) and cases cited therein.
3. Annot., 77 A.L.R.2d 917 (1961), 174 A.L.R. 1080, 1103 (1948); BLASHFIELD CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 1521 (1951). The author of the latest ALR article indicates that courts generally agree that three years of age is a minimum age below which no child can rationally be charged with any appreciable duty of self-care, while, on the other hand, most 10- and 20-year-olds are held to adult standards. Between these groups, however, there is much disagreement in determining the question of capacity vel non of the child. Most courts continue to apply the "Illinois rule" that there is a conclusive presumption of incapacity as to children under 7, a rebuttable presumption of incapacity of those 7 to 14, and a rebuttable presumption of adult capacity as to those 14 and over.
4. Government Employees Ins. Co. v. Davis, 266 F.2d 760 (5th Cir. 1959) (children under 7 incapable of contributory negligence); Hudson v. Byers, 73 So.2d 596 (La. App. 2d Cir. 1954) (four years old); Rainwater v. Boatright, 61 So.2d 212 (La. App. 2d Cir. 1952) (5 years old; "contributory negligence cannot be attributed to a child of such tender years"); Davis v. Consolidated Underwriters, 14 So. 2d 494 (La. App. 2d Cir. 1943) (30 months old); Doyle v. Nelson, 11 So.2d 645 (La. App. 2d Cir. 1942) (3 years old); Bodin v. Texas Co., 186 So. 390 (La. App. 1st Cir. 1939) (7 years old; not capable of contributory negligence); Millannos v. Fatter, 138 So. 878 (La. App. Orl. Cir. 1932) (6 years old; incapable in legal contemplation of being contributorily negligent). But see Bas-
has only its definiteness to recommend it, but which leads to
the absurd conclusion that one day's difference in age deter-
mines whether a child is capable of negligence or not. It is
submitted that this arbitrary distinction at seven years of age
should be eliminated and the question of contributory negligence
be determined in each case in light of the age, training, and
judgment of the particular child. Once the child is deemed to
possess the requisite capabilities to exercise some degree of care
for his safety, the standard of care required of the child has
been that his negligence must be judged in accordance with his
experience, age, understanding, development, intelligence and
capacity. This test has been applied to minor pedestrians and
bicycle riders. However, the standard which must be met by the
youthful automobile driver is not so certain.

The Youthful Pedestrian

Louisiana courts have gone far in imposing liability on
drivers of motor vehicles who injure youthful pedestrians, par-
ticularly where the surrounding conditions and circumstances
are such as to put the motorist on notice that young children
might undertake to cross ahead of him. A motorist who knows

ham v. Ohio Casualty Ins. Co., 106 So.2d 129 (La. App. Orl. Cir. 1958) (3-year-
old; children three years of age, in absence of exceptional intellect, cannot be
contributorily negligent)

One court stated that the age of seven and one-half is on the borderline for
a child being found contributorily negligent. Moreau v. Southern Bell Tel. & Tel.
Co., 158 So. 412 (La. App. 2d Cir. 1935). Many jurisdictions have affixed
specific ages below which a child is presumed to be incapable of contributory
all jurisdictions agree that below the age of three years a child is conclusively
presumed incapable of contributory negligence. BLASHFIELD, CYCLOPEDIA OF AU-
TO-MOBILE LAW AND PRACTICE § 1521 (1951).

5. E.g., Doyen v. Lamb, 75 S.D.77, 59 N.W.2d 550 (1953).
Cir. 1958), in which the court stated that "children three years of age, in absence
of exceptional intellect, cannot be contributorily negligent." (Emphasis added.)

The question of capacity at specific ages has come into sharp focus in Anglo-
American jurisdiction because of the prevalence of civil jury trials and because
the resolution of this question determines whether the jury will be allowed to
consider the minor's alleged contributory negligence. Thus it appears that since
Louisiana has relatively few civil jury trials, the transition to a rule which would
consider the particular child as compared with similar children of like ability
would be particularly easy.

7. E.g., Government Employees Ins. Co. v. Davis, 266 F.2d 760 (5th Cir.
1959); Jenkins v. Firemen's Ins. Co., 53 So.2d 494 (La. App. 2d Cir. 1955);
Cook v. Louisiana Public Utilities Co., 19 So.2d 297 (La. App. 1st Cir. 1944).
8. See notes 62-67 infra and accompanying text.
1950); Bechtold v. Commercial Standard Ins. Co., 31 So.2d 894 (La. App. 2d
Cir. 1947); Doyle v. Nelson, 11 So.2d 645 (La. App. 2d Cir. 1943); Moreau v.
Southern Bell Tel. & Tel. Co., 103 So. 412 (La. App. 2d Cir. 1955).
or should know that he will be confronted with a traffic situation involving a child must exercise the care of an ordinary prudent man under the circumstances. This means that he must take into account what a reasonably prudent man would expect the particular child to do under the same circumstances. He is not justified in assuming that the child will exercise the judgment of an adult. Thus it can be seen that the factors such as the child's age, experience, and development, insofar as they can be appreciated by the ordinary prudent man, are important in determining the standard of care due the child. It is out of the recognition by courts that very young children are not yet adequately able to exercise the proper care for their safety that there grows both the very high duty imposed on the motorist and the determination that children under the age of seven years are not to be deemed contributorily negligent.

Generally, child-pedestrian accidents arise out of one of two commonly recurring fact situations: where the child unexpectedly darts into the motorist's path without warning to the motorist; or, where the driver knows or should have known of the possibility of the presence of the child.

Darting and similar situations. Where a child darts into the path of an automobile under such circumstances that the motorist could not have seen the child and avoided the accident had he been keeping a proper lookout, the motorist is absolved from

13. Generally, the younger the child or the larger the group of children, the greater the caution required of the motorist. E.g., Jenkins v. Firemen's Ins. Co., 83 So.2d 494 (La. App. 2d Cir. 1955). The general rule for determining whether a driver has exercised due care was stated in Lopreare v. New Orleans Pub. Service, 27 So.2d 737, 739 (La. App. Orl. Cir. 1946): "His conduct is to be gauged in connection with the particular conditions and circumstances which are presented to him at the time of the accident and that the speed at which he is driving, the control he maintains over his vehicle and the alertness of his observation must reasonably conform at all times to the surrounding conditions." Louisiana courts have also generally required that the motorist maintain a proper lookout (Hughes v. Gill, 41 So.2d 536 (La. App. 1st Cir. 1949)), sound a warning of approach (McMorris v. Graham, 176 So. 630 (La. App. 1st Cir. 1937)), and operate at a reasonable speed (Doyle v. Nelson, 11 So.2d 645 (La. App. 2d Cir. 1942)).
liability. This result is usually based on a finding that either the motorist was not negligent or, in accidents involving older children, that the child was contributorily negligent. A similar situation arises where a child moves into a dangerous position near a parked automobile and is injured when the vehicle is set in motion. In such cases, if the child is under the care of an adult in the vicinity, the motorist can reasonably assume that the adult will control the child or give warning of any dangerous movement by the child. However, if the child is not under the care of an adult, the motorist must exercise “extreme caution” before putting his vehicle in motion.

Presence of children known or reasonably to be expected. Cases involving situations in which the presence of children in

15. Patin v. Southwestern Fire and Casualty Co., 116 So.2d 134 (La. App. 1st Cir. 1959) (11-year-old darted into street from behind bus); Falmer v. Monroc, 100 So.2d 108 (La. App. App. Cir. 1959) (4-year-old stepped into street from behind bus); Basham v. Ohio Ins. Co., 106 So.2d 129 (La. App. 1958) (3-year-old darted from between parked cars); Lewis v. Goodman, 92 So.2d 723 (La. App. Cir. 1957) (7-year-old darted from behind bus; court stressed the fact that this was not a school bus); Kennix v. Burt, 81 So.2d 73 (La. App. Cir. 1957) (4-year-old darted from between parked cars); Rainwater v. Boatright, 61 So.2d 212 (La. App. Cir. 1952) (although motorist must exercise the highest standard of care when he sees children, he is not liable where child darts into street from behind parked car); Lopreare v. New Orleans Public Service, 27 So.2d 737 (La. App. Cir. 1956) (2-year-old ran into side of truck from behind parked car); Gauthier v. Foote, 12 So.2d 9 (La. App. Cir. 1943) (11-year-old darted from behind parked car).

16. E.g., Basham v. Ohio Casualty Ins. Co., 106 So.2d 129 (La. App. Cir. 1958). The court held that a motorist moving in a street at a lawful speed and obeying all the rules of the road is guilty of no negligence toward a 3-year-old child who darts from behind a parked auto so suddenly that the driver could not see nor reasonably anticipate his presence and then stop in time to avoid him.


18. Cases of this nature usually involve very young infants who run or crawl under a parked car or behind a car that has just begun to back up. Comer v. Travelers Ins. Co., 213 La. 176, 34 So.2d 511 (1948) (17-month-old crawled under rear wheel); Hahn v. P. Graham & Co., 148 La. 55, 85 So. 515 (1920) (truck driver backing up struck 4-year-old child; if driver had been able to see child he would have been under duty to “avoid the accident”); Cook v. Scarborough, 72 So.2d 500 (La. App. Cir. 1943) (14-month-old child crawled under automobile).


20. See cases cited note 19 supra. But in cases where the child is not being cared for by an adult and the driver knew or should have known of the presence of children in the area, he must exercise “extreme care” before proceeding. Jackson v. State Farm Mut. Auto. Ins. Co., 32 So.2d 52 (La. App. 1st Cir. 1947) (driver had left 16-month-old baby on porch; baby crawled under rear wheel in an attempt to follow the driver); Emery v. Reserve Natural Gas Co., 124 So. 572 (La. App. Cir. 1929) (3-year-old injured as driver started backing after driver had seen children in the area).
or adjacent to the street or highway is known to the motorist or reasonably to be expected by the motorist encompass a wide variety of factual situations.\(^{21}\) In order better to consider the cases within this category, the following division has been made for discussion purposes: (1) situations where the motorist saw or, had he been keeping a proper lookout, would have seen the child, and (2) situations where the motorist did not actually see the child but from the surrounding conditions should have expected the presence of children.

In situations where the motorist saw or should have seen the child, the motorist's duty is in large measure affected by the child's apparent age and development.\(^{22}\) The extreme youth of the child victim can affect the motorist's liability in two very significant ways. First, one important factor in accounting for the very high incidence of recovery in cases involving injury to very young children (those under seven years of age) is the fact that the motorist in this case is deprived of the defense of contributory negligence.\(^{23}\) Second, the fact that such infants cannot be expected to watch out for themselves serves to increase the degree of caution to be expected of the motorist. Thus the courts have apparently required the motorist confronted with the very young child to proceed so that he is able to "avoid the accident" irrespective of the heedlessness of the child.\(^{24}\) The result of this "high standard of care" imposed on

\(^{21}\) Generally, it may be said that in all cases where the driver knows or should know of the presence of children in or near the highway he is under a duty to exercise a "great or high degree of care." E.g., Rainwater v. Boatright, 61 So.2d 212 (La. App. 2d Cir. 1952) (highest degree of care); Vallery v. Teche Lines, Inc., 166 So. 946 (La. App. Orl. Cir. 1939) (unusual care and caution); Blassfield, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 1492 (1951).

In some instances the court has required that the driver exercise such care as would be necessary to avoid the accident. Hahn v. P. Graham & Co., 148 La. 55, 86 So. 651 (1920) (4-year-old); Doyle v. Nelson, 11 So.2d 645 (La. App. 2d Cir. 1942); Moreau v. Southern Bell Tel. & Tel. Co., 158 So. 412 (La. App. 2d Cir. 1935). However, in one case this high standard of care was relaxed when the vehicle was part of a parade on a heavily congested street. Friedman v. Vedros, 68 So.2d 673 (La. App. Orl. Cir. 1953) (8-year-old injured by truck driven in Mardi Gras parade).

\(^{22}\) See note 13 supra.

\(^{23}\) See note 4 supra. Louisiana courts have apparently adopted the view that children under the age of seven are not capable of being contributorily negligent.

\(^{24}\) It appears that where the driver sees or should see a young child, he cannot assume that the child will remain in a place of safety. The motorist must maintain control over his automobile so that he will be able to avoid injuring the child at all costs. See Moreau v. Southern Bell Tel. & Tel. Co., 158 So. 412 (La. App. 2d Cir. 1935). One appellate court has even stated that in such cases the driver "must maintain such efficient control of it [the automobile] as to make impossible an accident from the heedlessness of any of the children." Doyle v. Nelson, 11 So.2d 646, 647 (La. App. 2d Cir. 1943).
the motorist appears almost to approach strict liability where
the presence of such children in the vicinity is known or should
have been known and where the child is not accompanied by
an adult. The negligence has at times been couched in terms
of failure to keep a proper lookout, to warn, or to anticipate
childish conduct; but the practical effect of the decisions thus
far has been to impose almost strict liability, since it has been
very difficult for the motorist to show that he has exercised
sufficient care when he has been confronted with very young
children.

On the other hand, a motorist who encounters older children
can reasonably expect that they will exercise more caution for
their own safety. Contrary to the duty placed on the motorist
in cases involving very young children, reasonable care in this
situation does not require that the motorist "avoid the acci-
dent." As stated by one court, "the question is not whether
the accident could have been avoided but rather whether he
[the driver] was guilty of negligence through failing to take
precautions indicated by the factual situation which existed."
For example, if it appears that an older child sees an approach-
ing motorist and gives no indication that it intends to cross the
street into the motorist's path, the motorist is not negligent in
proceeding at a reasonable speed. However, if the child gives
some indication that it intends to cross the street, recovery

25. See, e.g., Walker v. Jarnevich, 102 So.2d 770 (La. App. 2d Cir. 1958)
(driver should have anticipated 3-year-old would attempt to cross); Hughes v.
Gill, 41 So.2d 536 (La. App. 1st Cir. 1949) (although the driver stopped within
three feet of the point of contact, the court held that if watching properly he
could have avoided the accident); Davies v. Consolidated Underwriters, 14 So.2d
494 (La. App. 2d Cir. 1943).
26. Hudson v. Byers, 73 So.2d 596 (La. App. 2d Cir. 1954) (driver not liable
where 4-year-old accompanied by older brother); Doyle v. Nelson, 11 So.2d 645
(La. App. 2d Cir. 1942) (driver held liable when child darted into street from
position on sidewalk even though accompanied by older brother); Peperone v.
Lee, 100 So. 467 (La. App. Orl. Cir. 1935) (driver liable even though 3-year-old
child was accompanied by parent); Wise v. Eubanks, 159 So. 161 (La. App. 2d Cir.
1935) (driver not liable for 5-year-old was accompanied by parent; driver not
required to exercise same degree of care as in parent's absence).
27. See note 25 supra.
28. See note 7 supra.
29. Ferrand v. W. H. Cook & Co., 146 La. 17, 83 So. 362 (1919); Elmedorf
v. Clark, 143 La. 971, 79 So. 557 (1918); Shorty v. Travelers Indem. Co., 109
So.2d 114 (La. App. Orl. Cir. 1959); Jenkins v. Firemen's Ins. Co., 83 So.2d
494 (La. App. 2d Cir. 1955); Fontenot v. Freudenstein, 199 So. 677 (La. App.
Orl. Cir. 1941). But see Albert v. Munch, 141 La. 686, 75 So. 513 (1917).
31. Jenkins v. Firemen's Ins. Co., 83 So.2d 494 (La. App. 2d Cir. 1955);
Crowell, 171 So. 477 (La. App. 2d Cir. 1937).
against the motorist is usually allowed on the basis of last clear chance,\textsuperscript{32} failure to keep a proper lookout,\textsuperscript{33} or that the child's negligence is not the proximate cause of the accident.\textsuperscript{34}

A motorist driving in a vicinity where the presence of children may be reasonably expected from the surrounding circumstances must exercise more caution to avoid injuring children than when driving in other areas.\textsuperscript{35} For example, when driving near a school zone or school bus, a motorist must exercise "unusual care and caution"\textsuperscript{36} provided adequate notice is given of such special circumstances.\textsuperscript{37} "Extreme caution" must also be exercised when one encounters a group of children.\textsuperscript{38}

Where a child is accompanied by an adult, the approaching motorist's standard of care is diminished.\textsuperscript{39} In a recent decision the Supreme Court stated that: "greater care should be exer-

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  \item \textsuperscript{32} E.g., Haywood v. Fidelity Mutual Ins. Co., 47 So.2d 59 (La. App. 1st Cir. 1950); Gonzales v. Hanle, 46 So.2d 309 (La. App. Orl. Cir. 1950).
  \item \textsuperscript{33} Guillory v. Lemoine, 87 So.2d 798 (La. App. 2d Cir. 1956); Griffin v. Yellow Cab Co., 61 So.2d 225 (La. App. 2d Cir. 1952).
  \item \textsuperscript{34} Gonzales v. Hanle, 46 So.2d 309 (La. App. Orl. Cir. 1950); Stamps v. Henderson, 29 So.2d 305 (La. App. 2d Cir. 1946); Smith v. City of Alexandria, 178 So. 737 (La. App. 2d Cir. 1938).
  \item In very few cases involving minor pedestrians has the issue of violation of a statute by the minor been seriously considered. This writer has been able to discover only one case in which the court attributed any merit to the motorist's contention that the minor-pedestrian had violated an ordinance or statute. Fontenot v. Freudenstein, 199 So. 677 (La. App. Orl. Cir. 1941). However, in situations involving minors riding bicycles or driving automobiles, this is not the case. See notes 48-51 infra.
  \item \textsuperscript{35} See note 11 supra.
  \item \textsuperscript{36} Griffin v. Yellow Cab Co., 61 So.2d 225 (La. App. 2d Cir. 1952); Cavanaugh v. Blaum, 125 So. 160 (La. App. Orl. Cir. 1929); Giangrosso v. Schweitzer, 123 So. 127 (La. App. Orl. Cir. 1929); BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE §1500 (1951). It is interesting to note that the same standard of care required of the motorist with respect to children in a school zone was also required in one case arising from an accident occurring in a school zone even though the victim was an adult. Norwood v. Gahm, 127 So. 475 (La. App. 1st Cir. 1930) (teacher crossing street in school zone; school zone requires unusual care and caution by drivers). In the case of a school bus, it is said that the very presence is a warning that small children may run across in front of approaching cars. Annot., 30 A.L.R.2d 5, 105 (1953).
  \item \textsuperscript{37} Thus, where a bus being used as a school bus was not clearly marked to indicate its use, the higher duty of care was not applied. Falmer v. Monroe, 109 So.2d 108 (La. App. Orl. Cir. 1959); Lewis v. Goodman, 92 So.2d 723 (La. App. Orl. Cir. 1957).
  \item \textsuperscript{38} See note 13 supra. In one case the defendant was liable where an approaching motorist had come to a complete stop to allow a group of children to cross the road. After the group was safely across, the defendant started forward and struck a child which had not crossed with the others when it darted from behind the approaching automobile. Moreau v. Southern Bell Tel. & Tel. Co., 158 So. 412 (La. App. 2d Cir. 1935).
cised when a motorist encounters children, unaccompanied by adults, at or near his path of travel. . . . But when accompanied by parents or other adults the degree of care diminishes." An earlier appellate court decision had held that the motorist's standard of care is not diminished by the presence of a twelve-year old boy accompanying a younger child. Therefore, from the Supreme Court case, it appears that the precautions which will constitute reasonable care in such cases are in large measure to be determined by the age and ability of the accompanying person.

The duty toward child pedestrians is also affected by the type of street or highway involved. This notion is manifest in a rule which requires of motorists a "higher degree of care" when approaching pedestrians on rural roads or highways than on urban streets. This rule applies to motorists encountering mature adults as well as to children and is based on the proposition that in urban areas pedestrians may walk on the sidewalk, while in rural areas he must, of necessity, enter the roadway or its shoulder. A recent appeals court case, however, casts some doubt upon the present force of this rule. There it was said that the duty on the motorist traveling a rural road is not appreciably greater if he has no indication that the child intends to cross and there are no surrounding conditions which would warrant such an inference.

Youthful Bicyclists

A bicycle, even though not motor-driven, is considered a vehicle within the definitions contained in the Highway Regulatory Act and bicyclists are granted the same statutory right as automobile drivers to use the streets and highways. Although the courts demonstrate great leniency toward the minor pedestrian, it appears that the bicyclist is not so favored. The youth-

41. Doyle v. Nelson, 11 So.2d 645 (La. App. 2d Cir. 1942) (3-year-old injured when she broke away from older brother and attempted to cross a street). But see Hudson v. Byers, 73 So.2d 596 (La. App. 2d Cir. 1954) (4-year-old injured when broke away from 14-year-old brother who was holding child's hand while standing on curb).
44. La. R.S. 32:1(27) (1950) ; Lawrence v. Core, 132 So.2d 82 (La. App. 3d Cir. 1961) ; Fuller v. Buckner, 38 So.2d 422 (La. App. 2d Cir. 1943).
45. Piggot v. Barnes, 143 So. 535 (La. App. 1st Cir. 1932) ; BLASHFIELD,
ful bicyclist is generally required to exercise such care for his safety as prudent persons of like age, intelligence, and experience would exercise under the same or similar circumstances.46

A motorist passing or approaching a bicyclist, where the highway is clear and no circumstances indicate that the bicyclist is about to swerve into the driver’s path, is free to proceed down the highway in the normal manner. He is required only to reduce his speed and to maintain a proper lookout.47 The duty imposed on the passing motorist has been stated thusly:

“The defendant [driver] had a right to pass to the left . . . and was not required to anticipate that the boy would suddenly run or fall into the right side of the car. . . . To say that it was the duty of the motorist to come to a stop until the boy got out of danger would be equivalent to saying that the defendant could not pass the boy at all, as the driver could never anticipate when the boy might swerve or run into the side of his car.”48

Although generally a motorist must sound his horn before passing a bicyclist, one court has held that this is unnecessary where the street is heavily traveled and the bicyclist is far enough to the right to allow sufficient room for the motorist to pass in safety.49 However, where it is or should be apparent that the bicyclist must swerve to avoid an obstruction in his path, the motorist owes the “highest duty” to avoid injuring the bicyclist50 and the fact that the bicyclist fails to signal as required by the

Cyclopedia of Automobile Law and Practice § 1502 (1951); Annot., 174 A.L.R. 736 (1948).

46. See note 47 infra. One factor which might explain the “lesser duty” thus far imposed on the motorist in this situation might lie in the fact that of the reported cases, none involves minors below six years of age. Thus it may be wondered whether this lesser standard of care imposed on the motorist, when approaching a bicyclist, will be applied to a case in which a very young bicyclist is injured.

47. Thus where the bicyclist, without warning, falls into the motorist’s path, the motorist is not liable. Veillon v. Muffoletto, 77 So.2d 118 (La. App. 1st Cir. 1954) (bicyclist turned left into approaching automobile); Cantrell v. H. G. Hill Stores, 193 So. 389 (La. App. Orl. Cir. 1940) (bicyclists, riding double, fell under passing truck); Williams v. Werner, 189 So. 300 (La. App. 2d Cir. 1939) (bicyclist attempting to pass truck fell under wheels); Clark v. DeBeer, 188 So. 517 (La. App. 2d Cir. 1939) (driver proceeding across intersection on favorable light collided with bicyclist; not liable); McMorris v. Graham, 176 So. 630 (La. App. 1st Cir. 1937) (bicyclist fell or turned into right front of passing automobile); Piggot v. Barnes, 143 So. 535 (La. App. 1st Cir. 1932) (bicyclist turned left in front of approaching automobile).


traffic ordinance does not relieve the driver of liability. The motorist must also exercise extreme caution when he sees that the bicyclist is not maintaining a proper lookout.

Apparently in order for the motorist who turns from his original line of travel and collides with a bicyclist, to be deemed to have exercised reasonable care it is necessary that he exercise more caution than when passing or approaching a bicyclist. Thus it has been held that the turning motorist who either sees or should have seen the approaching bicyclist is liable for the resulting injury where it is or should be apparent to the motorist that his altered course will cause the approaching bicyclist to collide with the motorist's vehicle.

Youthful Drivers

Some writers indicate that both primary negligence and contributory negligence of youthful drivers is measured by an objective standard requiring the same degree of care to be exercised by all highway users regardless of age. Others, however, contend that although such a criterion may be advisable when the youthful driver is the defendant charged with primary negligence, the same should not apply when the youthful driver is a plaintiff and the defense urged by the adult motorist-defendant is contributory negligence. This distinction, it is said, is

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51. Lambert v. Cire, 173 So. 112 (La. App. Orl. Cir. 1938). See also Andrews v. Carber, 128 So.2d 460 (La. App. 1st Cir. 1961), where motorist rapidly approached from the rear a motorcyclist traveling in the same lane of traffic and the cyclist attempted to turn left to avoid the overtaking motorist, the motorist, was liable for resulting collision. The court pointed out, however, that had the motorist been in the act of passing when the cyclist turned left, such an act would be considered negligent on the part of the cyclist.

52. Gray v. Great American Indemnity Co., 121 So.2d 381 (La. App. 1st Cir. 1960) (driver saw bicyclist emerge from driveway and noticed that he was looking back at his dog).

53. McCandeless v. Southern Bell Tel. & Tel. Co., 239 La. 383, 120 So.2d 501 (1960) (truck driver turning left at intersection; bicyclist collided with truck as bicyclist attempted to cross street).

54. Ibid. But see Bergeron v. Department of Highways, 221 La. 595, 60 So.2d 4 (1952). In the Bergeron case turning motorist's view of the bicyclist, who was riding on the sidewalk, was obscured by a parked truck. The motorist was attempting to turn into a parking area. The court stated that "assuming that the driver was not negligent in beginning the turn, his duty then was to concentrate his attention on making the turn and . . . to keep a sharp lookout ahead to discover the presence of those who might be in danger. . . . Assuming that even though he might, by a casual glance, have seen the young man at the beginning of his turn, there is nothing to indicate that at that moment, the latter was in peril." The court concluded that the bicyclist had the better opportunity to observe the situation and apprehend the danger before it became imminent.


justified because where the youthful driver has inflicted an injury to another, the principal object is to "compensate the injured party and not to punish the child." The underlying notion in requiring the child to meet the standard of care imposed on adult drivers basically appears to be that when loss must be borne by one of two innocent persons, it should be borne by him who occasioned it. However, when the youthful driver is the party injured and brings suit, it is said that the notion of compensation tends to play a secondary role and thus contributory negligence of the minor should be measured by a subjective standard because of the "hardship inflicted by demanding that the youth conform to a standard which he is incapable of meeting." Though obviously an approach such as this would create dual standards for determining primary negligence and contributory negligence, such a result has been expressly advocated by some writers.

There are few reported decisions in which it appears that the effect of the youthfulness of the driver was expressly considered. Of these, the majority have dealt with the youthful driver as a defendant and the question of primary negligence. Here the youthful driver has been required to meet the same standard of care imposed on all adult users of the highway. Only two cases, one of which was a federal district court case, have involved the specific question of the effect of the youth of the driver when the youth was the plaintiff. Although finding nothing negligent in the youthful driver's operation of his vehicle, the court in Nelson v. Carrier, in answer to a contention that the youth of the driver be considered, merely stated that youth per se does not brand the driver as incompetent. However, Nehrbrassu v. Home Indem. Co. applied the subjec-
tive test in determining the contributory negligence of the youthful driver. 65

Thus, with respect to the youthful driver as a defendant, it would appear that in determining primary negligence Louisiana courts have required the youthful driver to observe the same standard of care as required of competent adult drivers. As to the youthful plaintiff-driver, however, only the federal district court case furnishes any indication as to whether the subjective or objective standard will be applied in determining the question of contributory negligence of the youthful driver in Louisiana. 66

Conclusion

An awareness on the part of the courts of the heedlessness of youthful children has resulted in the requirement that motorist's encountering such children must exercise extreme caution in order that the motorist's conduct be deemed reasonable. Although liability still rests on a finding of negligent conduct, the caution required when encountering very youthful pedestrians is so demanding that in some cases almost strict liability appears to result. When youthful bicyclists venture into the highway and actively participate in the stream of traffic, however, the caution required of the motorist is appreciably lessened.

65. If the minor is an unemancipated child residing with the parent, Louisiana Civil Code Article 2318 imposes liability upon the parent for the torts of his child. If the minor's liability is established and these requisites are present, the parent is a virtual insurer for the negligent driving of his child. Honeycutt v. Carver, 25 So.2d 99 (La. App. 1st Cir. 1946); Savoie v. Walker, 183 So. 530 (La. App. 1st Cir. 1938); Whipple v. Lirette, 124 So. 160 (La. App. 1st Cir. 1929). However, if the son is no longer a minor (Alfred v. Lee, 71 So.2d 601 (La. App. 2d Cir. 1954)), or no longer residing with the parent, this strict liability ceases. It is important to note that the interpretation given to the phrase "children, residing with them" in Article 2318 by the jurisprudence has been to the effect that the defending parent must prove that by operation of law the father has been deprived of the control of the minor or that by some act of law the residence of the minor has been made different from his own. Watkins v. Cupit, 130 So.2d 720 (La. App. 1st Cir. 1961) (minor son residing in Louisiana and parents domiciled in Mississippi—court stated that responsibility of father obtains even when minor quits the parental roof, unless the parental authority and control has been suspended by operation of law). Accord, Toca v. Rojas, 152 La. 317, 93 So. 111 (1922); Jackson v. Ratliff, 84 So.2d 103 (La. App. Orl. Cir. 1956); Simmons v. Sorenson, 71 So.2d 377 (La. App. 1st Cir. 1954).

66. Another problem sometimes raised has been the effect of the violation of a licensing statute. That such a violation does not automatically subject the youthful driver to liability was decided in an early appeal court case in which the court stated that the "[V]iolation of a statute does not render liability absolute. No matter how young the driver may be, if the facts show that he operated the automobile carefully . . . there is no liability." Millannos v. Fatter, 138 So. 878 (La. App. Orl. Cir. 1932).
This perhaps is in part due to the fact that, as a class, youthful bicyclist's are somewhat older and thus the motorist is reasonable in assuming that such children are capable of exercising more caution for their own safety. Furthermore, since these bicyclists have entered into the stream of traffic, the imposition of a "high degree of care" as in the pedestrian cases would seriously impede the free flow of traffic. In cases involving youthful drivers, the use of an objective standard requiring them to observe the same standard as required of all other drivers, would seem to be a desirable result, especially when considering the question of primary negligence, since to require less of youthful drivers perhaps would increase the already hazardous conditions now attendant to highway travel.

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