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The Automobile Dangerous Instrumentality Doctrine: The Scope of Consent

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not go to the question of admission, but rather to the weight of the evidence.[47] The defendant has an opportunity to explain why he pleaded guilty,[48] and to possibly neutralize the use of the plea.

The proper rule, therefore, appears to be to allow the introduction of the plea, with the judge having discretion to bar it if he is of the opinion that its introduction, even as tempered by the adverse party's explanation, would result in irreversible prejudice to the opponent.

JACK R. BLUMENFELD

THE AUTOMOBILE DANGEROUS INSTRUMENTALITY DOCTRINE: THE SCOPE OF CONSENT

The plaintiffs were awarded a money judgment against the defendant-dealer and others for injuries and damages received in an automobile collision. The automobile was owned by the defendant-dealer and was being driven by one of the co-defendants after he stole it, at the time of the accident. On appeal to the First District Court of Appeal, *held*, affirmed: A defendant-dealer is vicariously liable to third persons for the negligence of his permittee under Florida's application of the dangerous instrumentality doctrine to automobiles. Liability is placed on a defendant-dealer who consents to the use of its automobile for a "trial spin" even though the prospective purchaser takes the automobile with intent to steal it.[1] *Tillman Chevrolet Co. v. Moore*, 175 So.2d 794 (Fla. 1st Dist. 1965).[2]

A variety of doctrines have been formulated to impose financial responsibility upon owners who allow others to use their vehicles. Under common law theories, liability cannot be placed upon an owner merely because he has legal title to an automobile involved in a negligence action.[3] However, there are many situations when an owner is liable for damages and injuries resulting from an accident involving his automobile. The owner[4] who entrusts his vehicle to an incompetent is liable

47. 4 WIGMORE, EVIDENCE § 1059 (3d ed. 1940).
48. *Ibid.*

1. The "prospective purchaser" allowed the defendant-hitchiker to drive and he negligently injured the plaintiffs. It is clear from the opinion that the defendant-dealer would have been liable even if the "prospective purchaser" had caused the accident.

2. A writ of certiorari taken from the appellate court decision was discharged on the grounds that there was no conflict among the jurisdictions. Tillman Chevrolet Co. v. Moore, 184 So.2d 175 (Fla. 1966).

3. 6 BLASHFIELD, AUTOMOBILE LAW & PRACTICE § 254.4 (3d ed. 1966). In particular see the cases cited in n.36.

4. Generally *ownership* as referred herein does not only mean the *legal title* holder, but also includes those who lawfully possess or control.

for the permittee's negligence.[5] Moreover, the owner may be responsible for the negligence of his permittee, even if the permittee is a competent individual. An owner is held liable for the negligent act of his servant,[6] or a member of his family,[7] and may even be liable if he is present in the car with his permittee, although merely occupying the status of a passenger.[8] Similarly, the owner who violates a statute by allowing a minor to drive,[9] or who entrusts another with a defective vehicle[10] assumes the risk of being held accountable for the driver's negligence. A few jurisdictions hold an owner liable for the negligence of the driver-thief when he leaves his vehicle unattended with the keys in the ignition.[11] Twelve jurisdictions, by statute, make the owner financially liable for the acts

5. Anchor Hocking Glass Corp. v. Allen, 161 So.2d 853 (Fla. 1st Dist. 1964) (doctrine implied); Deck v. Sherlock, 162 Neb. 86, 75 N.W.2d 99 (1956); Payne v. Kinder, 147 W. Va. 352, 127 S.E.2d 726 (1962) (allowing a drunk person to drive). The liability of an owner who entrusts his vehicle to an incompetent has been based on the theory that the owner has turned his car into a dangerous instrumentality. Golembe v. Blumberg, 262 App. Div. 759, 27 N.Y.S.2d 692 (1941) (car entrusted to epileptic); Butler v. Spratling, 237 S.W.2d 793 (Tex. Civ. App. 1951), *rev'd on other grounds*, 150 Tex. 369, 240 S.W.2d 1016 (1951) Other jurisdictions predicate the owner's liability on his *negligence* of giving a car to an incompetent. Perin v. Peuler, 373 Mich. 531, 130 N.W.2d 4 (1964); Mezyk v. National Repossessions, Inc., 405 P.2d 840 (Ore. 1965) (Dictum).

6. Cooner v. United States, 276 F.2d 220 (4th Cir. 1960) (applying New York law where the owner is liable if the permittee's acts are furthering his business); Knight v. Handley Motor Co., 198 A.2d 746 (Dist. Ct. App. D.C. 1964) (applying Maryland law); Nichols v. McGraw, 152 So.2d 486 (Fla. 1st Dist. 1963); Micheli v. Toye Bros. Yellow Cab Co., 174 So.2d 168 (La. Ct. App. 1965); American Bankers Ins. Co. v. Leist, 117 Ohio App. 20, 189 N.E.2d 456 (1962).

7. This is commonly known as the family purpose doctrine. Burns v. Main, 12 Ala. 553, 87 F. Supp. 705 (1950) (car driven by son); Mortensen v. Knight, 81 Ariz. 325, 305 P.2d 463 (1956) (car driven by wife); Barjas v. Parker, 165 Neb. 444, 85 N.W.2d 894 (1957); Monko v. Cicioria, 46 Misc. 2d 565, 260 N.Y.S.2d 70 (Sup. Ct. 1965) (applying Connecticut law). *Contra*, National Sur. Corp. v. Wells, 287 F.2d 102 (5th Cir. 1961) (applying Texas law); Bieker v. Owens, 234 Ark. 97, 350 S.W.2d 522 (1961); Martin v. Brown, 240 La. 674, 124 So.2d 904 (1960); Wilson v. Herd, 1 Ohio App. 2d 195, 204 N.E.2d 389 (1965); Shaler v. Reynolds, 360 Mich. 688, 104 N.W.2d 779 (1960).

8. The liability is predicated on the owner's theoretical right to control. Generally this is a question of fact and any evidence showing the owner had abandoned his right to control may relieve him of responsibility. Watt v. United States, 23 F. Supp. 906 (E.D. Ark. 1954) (the owner's presence raises an inference that he had a right to control); Simaitis v. Thrash, 25 Ill. App. 2d 340, 166 N.E.2d 306 (Ct. App. 1960) (wife's negligence imputed to her husband); Service Fire Ins. Co. v. Johnson, 245 La. 253, 138 S.2d 410 (1962); Kieffer v. Bragdon, 278 S.W.2d 10 (Mo. 1955); Randle v. Rogers, 262 N.C. 544, 138 S.E.2d 248 (1964).

9. Wertergren v. King, 48 Del. 158, 99 A.2d 356 (1953); York v. Day's, Inc., 153 Me. 441, 140 A.2d 730 (1958).

10. Canadian Indem. Co. v. State Auto. Ins. Ass'n, 174 F. Supp. 71 (D.C. Ore. 1959) (interpreting Minnesota law); Rice v. Yellow Cab Co., 117 Ohio App. 183, 179 N.E.2d 139 (Ct. App. 1961); Continental Bus Sys. v. Toombs, 325 S.W.2d 153 (Tex. Civ. App. 1959).

11. R. W. Claxton, Inc. v. Schaff, 169 F.2d 303 (D.C. Cir. 1948), *cert. denied*, 355 U.S. 871 (1948); Ney v. Yellow Cab Co., 2 Ill. App. 2d 74, 117 N.E.2d 74 (1954). *Contra*, Midkiff v. Watkins, 52 So.2d 573 (La. Ct. App. 1957); Anderson v. Theisen, 231 Minn. 369, 43 N.W.2d 272 (1950); Permenter v. Milner Chevrolet, 229 Miss. 385, 91 So.2d (1956); Parker & Parker Constr. Co. v. Morris, 346 S.W.2d 922 (Tex. Civ. App. 1961). The view which does not impose liability upon the owner is the majority.

of his permittee merely because he *consented* to the use of his vehicle.[12] By case law and statute Florida holds the owner who consents to the use of his vehicle financially responsible because an automobile is considered a dangerous instrumentality.[13] It is noteworthy that in the jurisdictions that apply the consent doctrine the other common law liability theories, *i.e.*, respondeat superior, and the family purpose doctrine, are still applicable.[14]

The essential element for liability under a "consent doctrine" is the owner's consent,[15] express or implied.[16] Some jurisdictions make proof of ownership *prima facie* evidence of consent.[17] The scope of this casenote will be limited to an analysis of the element of consent, more specifically, the extent of the owner's liability when he consents to the use of his vehicle and the permittee deviates from the terms of that consent.[18]

A majority of the "consent doctrine" jurisdictions absolve the owner from liability if there is *any deviation* from the scope of consent.[19] Two

12. CAL. VEH. CODE §§ 17150-52; CONN. GEN. STAT. ANN. ch. 52 § 183 (1958); D.C. CODE tit. 40 § 424 (1961); IDAHO CODE ch. 49 § 1404 (1947); IOWA CODE ANN. § 321.493 (1958); MASS. GEN. LAWS ch. 231 § 85A (1959); MICH. STAT. ANN. § 9.2101 (1960); MINN. STAT. ANN. § 170.54 (1941); GEN. STAT. NO. CAR. § 20-71.1 (1961); N.Y. VEH. & TRAFFIC LAW § 388 (1960); R.I. GEN. LAW §§ 31-33-6 (1962); TENN. CODE ANN. §59-1037 (1956).

13. Weber v. Porco, 100 So.2d 146 (Fla. 1958); In Southern Cotten Oil Co. v. Anderson, 80 Fla. 441, 443, 86 So. 629, 632 (1920), the court commented:

> [B]ut in operation they (automobiles) are dangerous instrumentalities, and the master who entrusts them to another to operate . . . cannot exonerate himself from liability for injury caused to others by negligence of those to whom they are entrusted.

American Fire & Cas. Co. v. Blanton, 182 So.2d 36 (Fla. 1st. Dist. 1966); Hankerson v. Wilcox, 173 So.2d 747 (Fla. 3d Dist. 1965); See generally, Carpenter, *The Dangerous Instrumentality Doctrine: Unique Automobile Law in Florida*, 5 U. FLA. L. REV. 412 (1952). Compare FLA. STAT. § 51.12 (1947). The statute actually codifies the *Anderson* doctrine for on trial proof of ownership raises a rebuttable presumption upon which to hold the owner liable for the negligent act of another driving his car.

14. Singerman Bus. Corp. v. American Fid. Fire Ins. Co., 44 Misc. 2d 4, 252 N.Y.S.2d 780 (Sup. Ct. 1964).

15. Although the all-important requirement is the owner's consent, there are other elements for owner's liability. For example, a majority of the consent statutes restrict the owner's liability to the times when his vehicle is used upon a *public highway*.

16. Hankerson v. Wilcox, 173 So.2d 747 (Fla. 3d Dist. 1965); Statutes which require express or implied consent: CAL. VEH. CODE §§ 17150-52; IDAHO CODE ch. 49 § 1404 (1957); IOWA CODE ANN. § 321.493 (1958); MINN. STAT. ANN. § 170.54 (1941); N.Y. VEH. & TRAFFIC LAW § 388 (1960).

17. Proof of ownership establishes a rebuttable presumption that the owner consented to the use of his car. MASS. GEN. LAWS Ch. 231 § 85A (1959); GEN. STAT. NO. CAR. §§ 20-71.1 (1961); R.I. GEN. LAW §§ 31-33-7 (1962); TENN. CODE ANN. § 59-1037 (1956).

18. Tillman Chevrolet Co. v. Moore, 175 So.2d 794, 795 (Fla. 1st Dist. 1965).

19. Note that in dealing with a deviation from consent, the issue is narrow since the consent had to be restrictive and not a blanket allowance to use the owner's car. Krausnick v. Haegg Roofing Co., 236 Iowa 985, 20 N.W.2d 432 (1945) (dictum); Robinson v. Shell Petroleum Corp., 217 Iowa 1252, 251 N.W. 613 (1933) (car driven on Sunday contrary to explicit instructions); Eicher v. Universal Underwriters, 250 Minn. 7, 83 N.W.2d 895 (1957) pointed out that if there is a deviation and then a return to the scope of consent, the owner would be liable; Harper v. Parker, 12 A.D.2d 327, 211 N.Y.S.2d 325

jurisdictions, however, require that there be a *substantial deviation* from the terms of the consent.[20] Only Rhode Island holds the owner strictly liable; however even in that state there may be certain situations when the owner may escape liability.[21] The Florida decisions are in conflict. Early Florida cases, as well as the present one, indicate that the owner is strictly liable,[22] while other Florida decisions seem to hold that the owner can escape liability when the actions of the permittee amount to a species of conversion or theft.[23]

Early Florida automobile law predicated the owner's liability on a theory of respondeat superior.[24] However, in 1931, in *Herr v. Butler*[25] the court relied on the rationale that an automobile is a *dangerous instrumentality* to extend the owner's liability to acts of his gratuitous bailee where no agency relationship was possible. Fifteen years later, the confusion as to the basis of liability was finally settled in *Lynch v. Walker*[26] in which liability was decisively placed on the owner because the automobile was deemed a dangerous instrumentality.[27]

Initially, the owner was held strictly liable for his permittee's negli-

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(Sup. Ct. 1961) (minor exceeded scope of parental consent); Lozada v. Copeland, 207 Misc. 382, 138 N.Y.S.2d 521 (Sup. Ct. 1955). *Cf.*, Scalora v. Shaughnessy, 151 Conn. 252, 196 A.2d 763 (1963); Kieszkowski v. Odlewany, 280 Mich. 388, 273 N.W. 741 (1937).

20. Garmon v. Sebastian, 181 Cal. App. 2d 284, 5 Cal. Rptr. 101 (Dist. Ct. App. 1960); Senator Cab. Co. v. Rothberg, 42 A.2d 245 (D.C. Munic. Ct. App. 1945).

21. In Kernan v. Webb, 50 R.I. 394, 396, 148 Atl. 186, 188 (1929) the court pointed out that it did not wish to set down a rule by which an owner could escape liability by secret restrictions:

> The owner can avoid this liability by refusing to permit the use of his automobile by another. If he does permit such use, he cannot avoid the consequences of the operator's negligence and escape liability therefor by secret restrictions of the right to use a motor vehicle.

The court left unanswered a situation in which the restrictions could be ascertained by competent testimony so as to avoid the problem of fraud. However this is mere supposition and the bare facts are that Rhode Island imposes strict liability upon the owner.

22. In Boggs v. Butler, 129 Fla. 324, 326, 176 So. 174, 176 (1937) the court commented:

> Under the law of this state, if the owner once gives his express or implied consent to another to operate his automobile, he is liable for the negligent operation of it *no matter where the driver goes, stops, or starts.* (Emphasis added.)

American Fire & Cas. Co. v. Blanton, 182 So.2d 36 (Fla. 1st Dist. 1966); Keller v. Florida Power & Light Co., 156 So.2d 775 (Fla. 3d Dist. 1963).

23. In Susco Car Rental Sys. v. Leonard, 112 So.2d 832, 836 (Fla. 1959) *affirming* 103 So.2d 243 (Fla. 3d Dist. 1958) the court stated:

> When control of such a vehicle is voluntarily relinquished to another only a breach of custody amounting to a species of conversion or theft will relieve the owner of responsibility for its use or misuse. (dictum)

Pearson v. St. Paul Fire & Marine Ins. Co., 187 So.2d 343 (Fla. 1st Dist. 1966); Martin v. Lloyd Motor Co., 119 So.2d 413 (Fla. 1st Dist. 1960).

24. Warner v. Goding, 91 Fla. 260, 267, 107 So. 406, 408 (1926).

25. 101 Fla. 1125, 132 So. 815 (1931).

26. 189 Fla. 188, 194, 31 So.2d 268, 271 (1947).

27. For a clear exposition as to the owner's liability in relation to the degree of negligence see Carpenter, *The Dangerous Instrumentality Doctrine: Unique Automobile Law in Florida*, 5 U. FLA. L. REV. 412 (1952).

gence. In *Boggs v. Butler*,[28] the Supreme Court of Florida, in strong dictum, stated:

> Under the law of this state, if the owner once gives his express or implied consent to another to operate his automobile he is liable for the negligent operation of it *no matter where the driver goes, stops or starts.*

However, the question in that case was not whether the permittee deviated from the terms of consent, but rather whether the owner initially consented to the use of his car by another.[29] In *American Fire & Cas. Co. v. Blanton*[30] the owner was held liable for the negligence of the minor-driver who deviated from the terms of the consent by allowing his friend to drive. The appellate court affirmed basing its decision on the precedent of the *Boggs* case.[31] *Blanton* is typical of the Florida cases which place strict liability upon the owner for his permittee's negligence even when there is a deviation from the terms of the consent.

In *Susco Car Rental Sys. v. Leonard*,[32] the question presented was whether the owner-lessor was relieved from financial responsibility because the lessee significantly deviated from the terms of the rental contract by permitting another to drive.[33] The policy consideration that moved the court to uphold the owner-lessor's liability was termed the "non-delegable nature of this obligation."[34] However, the court went on to say,[35]

> [W]hatever may have been the deviations from this course, the logical rule, and we think, the prevailing rationale of the case, is that *when control of such a vehicle is voluntarily relinquished to another only a breach of custody amounting to a species of conversion or theft will relieve an ower of responsibility for its use or misuse.*

In *Pearson v. St. Paul Fire & Marine Ins. Co.*,[36] the court relieved the owner from financial responsibility on the basis that the driver's acts constituted such a species of conversion or theft.[37] Clearly, the strict

28. 129 Fla. 324, 176 So. 174, 176 (1937). (Emphasis added.)

29. *Ibid.*

30. 182 So.2d 36 (Fla. 1st Dist. 1966).

31. *Id.* at 39. It is noteworthy that the circuit court's ruling was based on Susco Car Rental Sys. v. Leonard, 112 So.2d 832 (Fla. 1959), which held the owner liable because the permittee's acts did not constitute a species of conversion or theft.

32. 112 So.2d 832 (Fla. 1959).

33. *Id.* at 834

34. *Id.* at 836.

35. *Id.* at 835. (Emphasis added.)

36. 187 So.2d 343 (Fla. 1st Dist. 1966). *Cf*, Martin v. Lloyd Motor Co., 119 So.2d 413 (Fla. 1st Dist. 1960).

37. *Id.* at 346. The defendant brother-in-law, entered his brother's bedroom and took the keys to the car without express permission but he was planning to return the automobile after he ran an errand.

liability rule of prior decisions has been weakened by the statement in *Susco* and its subsequent application by other courts.

In the instant case,[38] the prospective purchaser was given permission to show the car to his wife.[39] Instead, he drove the car across the county line and proceeded to place a different license tag on it.[40] Appellant unsuccessfully argued that the chain of causation was broken by the criminal acts of the prospective purchaser.[41] The court distinguished the instant case from other decisions where the taking was unlawful *ab initio*.[42] In addition, appellant contended that the acts of the prospective purchaser constituted larceny[43] and under the *Susco* ruling the defendant-dealer should have been relieved of liability. The court, however, held that "the statutory definition of larceny" had no "bearing upon the question of civil liability here involved."[44]

In light of *Susco*[45] it is unclear why the statutory definition of larceny should have no bearing on the issue of the owner's civil liability. What easier avenue of approach is open to prove a conversion or theft than to point out that defendant's conduct amounted to larceny? The taking of an automobile and the subsequent change of its registration tag has been held by the Florida courts to constitute larceny.[46] Even more compelling is the fact that larceny, conversion, and theft have the same basic element in common; the intent to permanently deprive the owner of the benefit and use of his property.[47] Logically then, larceny is a species of conversion. It might well be that the court, determining a question of civil liability could not adjudge the prospective purchaser guilty of larceny. However, nothing prevented the court from noticing the fact that the acts of the prospective purchaser constituted larceny. In the instant case the acts of the prospective purchaser clearly exhibited an intent to permanently deprive the owner of the benefit and use of his property, and thus the owner should have been relieved of liability.[48]

38. Tillman Chevrolet Co. v. Moore, 175 So.2d 794 (Fla. 1st Dist. 1961).

39. *Id.* at 795.

40. Brief for Appellant p. 3.

41. Lingerfelt v. Hanner, 125 So.2d 325 (Fla. 1960); Bryant v. Atlantic Car Rental, Inc., 127 So.2d 910 (Fla. 2d Dist. 1961).

42. *Supra* note 38, at 795.

43. *Supra* note 38, at 796.

44. *Ibid.*

45. *Supra* note 35, at 835.

46. Groover v. State, 82 Fla. 427, 90 So. 473 (1921).

47. Firemans Fund Ins. Co. v. Boyd, 45 So.2d 499 (Fla. 1950); Casso v. State, 182 So.2d 252 (Fla. 2d Dist. 1966); S.S. Jacobs Co. v. Weyrick, 164 So.2d 246 (Fla. 1st Dist. 1964).

48. The prospective-purchaser crossed the county line and changed the registration tag on the vehicle. Clearly he intended to permanently appropriate the vehicle to his own use. Therefore, even though there was initial consent, his theft of the car should have relieved the owner from liability for the thief's negligence under the law promulgated in the *Susco* decision.

There is one other basic question involved in the present decision. As previously noted, the requisite element upon which the owner's liability attaches is his consent to the use of his car by another.[49] Generally, consent induced by fraud is no consent at all.[50] The record of the instant case clearly reveals that the defendant-purchaser had no intent to return the car.[51] In a similar case,[52] a Minnesota court absolved the defendant-dealer from liability specifically on the basis that the consent was fraudulently induced. The court in *Roehrich v. Holt Motor Co.*[53] stated:

> The fraud perpetrated by him [the prospective purchaser] vitiated the alleged assent itself. There was no meeting of minds under the circumstances. How could there be consent? . . . So too, it must be apparent here, where liability of the owner is dependent under the statute upon his consent being given to the user, that essential element being absent, that there can be liability on the owner's part.

Under both the Minnesota statute[54] and Florida law[55] the same liability factor is present—the element of consent. The Florida decisions, however, have patently failed to consider the reality that fraud vitiates consent.

The instant decision leaves two problems unanswered. Firstly, what is the Florida position on the question of deviation from the terms of consent? Secondly, what weight is to be afforded the *Susco* decision? The answer to the second will clearly lead to a determination of the first.

The answer may well hinge upon a new determination as to the extent an automobile is a dangerous instrumentality. If it is as dangerous as an explosive, then a non-delegable duty standard should be imposed requiring an owner to be strictly liable when he entrusts his vehicle to another. If the more realistic viewpoint is taken that an automobile is not *extremely* dangerous, the owner could escape liability in limited situations. An owner, such as the dealer in the instant case, would be afforded protection from situations where he was clearly not negligent in entrusting the car to a prospective purchaser.[56] Paradoxically, the owner's insurance policy will not afford him coverage once his permittee deviates from the scope of his consent. However, under the theory of

49. *Supra* note 16.

50. Mehr v. State, 59 So.2d 259 (Fla. 1952); Casso v. State, 182 So.2d 252 (Fla. 2d Dist. 1966).

51. This is corroborated by the fact that he did not have a wife staying at a nearby hotel to whom he wished to show the car. Brief for Appellant p. 3.

52. Roehrick v. Holt Motor Co., 201 Minn. 586, 277 N.W. 274 (1938).

53. *Id.* at 588, 277 N.W., at 276.

54. MINN. STAT. ANN. § 170.54 (1941).

55. *Supra* note 16.

56. The prospective purchaser did nothing to put the dealer on notice that he might steal the car. If anything, by already taking the car and returning it once, he lulled the dealer into a false sense of security.

strict liability the owner will still be open to a liability judgment without adequate insurance protection. It remains for the courts to resolve the problem with a clear and precise pronouncement.

SANFORD N. REINHARD

LIBEL—ABSOLUTE PRIVILEGE OF A COUNTY EXECUTIVE OFFICIAL

Defendant, County Manager of Metropolitan Dade County, dismissed the sheriff from his job. The manager explained his reasons for the dismissal in a written communication delivered to each of the individual members of the Dade County Commission. The former sheriff, alleging that the publication defamed him, brought action for libel against the county manager. The defendant's motion to dismiss was granted in the circuit court on the grounds that the defendant had, as a matter of law, an absolute privilege to publish the alleged libelous matter. The Third District Court of Appeal reversed, holding that executive officials of county government are only qualifiedly privileged as to defamatory publications made in connection with their office.[1] On certiorari[2] to the Supreme Court of Florida, *held*, reversed: executive officials of government are absolutely privileged as to defamatory publications made in connection with the duties and responsibilities of their office. *McNayr v. Kelly*, 184 So.2d 428 (Fla. 1966).

The tort action for libel affords the individual a means to recover damages for injury done to his reputation.[3] Privilege is a defense to the action. Privilege may be absolute or it may be qualified.[4] The proper assertion of the defense of absolute privilege, when its existence is evident on the face of the answer, is sufficient to cause the suit to be dismissed as a matter of law.[5] A qualified privilege, on the other hand, will be lost upon a showing by the plaintiff that the defamatory statement was uttered with malice.[6] However, where there is an absolute privilege, the defamer is shielded from the threat of civil liability, regardless of malice.[7]

Absolute privilege was developed to facilitate governmental func-

1. Kelly v. McNayr, 175 So.2d 568 (Fla. 3d Dist. 1965).
2. Certiorari was granted by the Supreme Court of Florida as a matter of public interest.
3. Note, *Developments in the Law of Defamation*, 69 HARV. L. REV. 875 (1956).
4. The qualified privilege is sometimes termed "conditional."
5. *Supra* note 1.
6. Gray v. Mossman, 88 Conn. 247, 90 Atl. 938 (1914); Raymond v. Croll, 233 Mich. 268, 206 N.W. 556 (1925).
7. See, *e.g.*, Glass v. Ickes, 117 F.2d 273 (D.C. Cir. 1940).