Torts -- Negligence -- Car Key Statutes

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relationship of the parties.\textsuperscript{14} If the employer is allowed to exculpate himself from all liability by designating his employees as independent contractors, the court's decision is not in conformity with social policy.

Gerald N. Capps

TORTS — NEGLIGENCE — CAR KEY STATUTES

The defendant automobile owner, in violation of a statute,\textsuperscript{1} left his car unattended with the key in the ignition. The car was stolen and the thief, driving recklessly, injured the plaintiff. \textit{Held}, the thief's driving at a reckless rate of speed was an intervening cause which superseded the original act of negligence of the defendant automobile owner.\textsuperscript{2} \textit{Permenter v. Milner Chevrolet Co.}, 91 So.2d 243 (Miss. 1956).

Since the turn of the century the courts have been confronted with the problem of imposing liability on an automobile owner to compensate an injured third party when an unauthorized driver is at fault.\textsuperscript{3} In those jurisdictions that have decided claims arising through violation of so-called "car key legislation,"\textsuperscript{4} the majority have denied recovery as a matter of law on the rationale that the violation of a penal statute is not intended to result in civil liability;\textsuperscript{5} some of these jurisdictions further conclude that even assuming the violation of the statute\textsuperscript{6} is negligence per se, that the negligence of the thief and not the violation is the proximate cause of


\textsuperscript{2} Three justices dissented.


\textsuperscript{4} See note 1 supra.


the injury. Such majority resolve the question of proximate causation as a matter of law on the theory that the theft is not foreseeable. Conversely, a minority of courts have interpreted such statutes as imposing a duty upon the general public and violation thereof as resulting in liability as a matter of law. Still other minority jurisdictions have ruled that the violation of such an enactment is only prima facie evidence of negligence, and that the issue of proximate cause is a question of fact to be left to the jury in the determination of the owner's liability.

The instant case represents the reasoning of the majority. It concludes that although the automobile owner may have been negligent in violating the statute, it was solely the reckless driving of the thief that caused the accident, the thief's recklessness superseding the original negligent act of the owner. The dissenting justices point out that because reasonable men may differ as to whether the owner should have reasonably anticipated the act of a thief, the question should be left to the determination of the jury. In support of this rationale the following considerations are relevant: (1) the increasing frequency of car thefts; (2) the increased likelihood of negligence when a thief is in command of the wheel; (3) the rise in the number of cases involving the circumstances of the instant case.

The insoluble riddle of whether violation of a "car key" statute, penal in nature, is intended to result in civil liability can easily be remedied by the legislature making a clear declaration of the intention and purpose of such a statute. The need is apparent, as courts have reached diverse results in fact situations similar to the instant case. In those jurisdictions where there is no basis for civil liability under the statute, the better view is that the violation of the statute gives rise to a possibility that a thief will take the car and subsequently injure a third party.

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8. Ibid.
11. See note 7 supra.
12. The dissenting opinion in Permenter v. Milner Chevrolet Co., 91 So.2d 243, 252 (Miss. 1956).
14. Ibid.
15. A large majority of the cases have arisen within the last ten years. See cases cited in notes 5-10 supra.
17. See note 10 supra.
The Restatement of Torts seems to present the most logical solution to the problem of intervening cause. In essence it states that if it is foreseeable that a thief will steal the owner's automobile, the tortious conduct of the thief will not necessarily absolve the owner of liability to the injured third person. Thus, it is as anomalous to reason that the intervening criminal or tortious conduct of a thief is a superseding force absolving the owner of liability as it is to impose liability as a matter of law. Obviously, there can be no infallible method in the solution to this problem. The only logical alternative in the determination of the owner's liability is to leave this question of causation to the jury.

Alvin I. Malnik

CORPORATIONS — PIERCING THE CORPORATE VEIL — STOCKHOLDER LIABILITY

Appellant, who was the principal stockholder of a corporation, permitted the use of her funds for the corporate business. She was joined as a party defendant in supplementary proceedings in aid of execution following judgment against the corporation for defrauding the creditors. Held, that knowledge and participation in the fraud was imputed to the appellant; the corporate veil was properly pierced; and the stockholder was personally liable for the debts of the corporation. Codomo v. Emanuel, 91 So.2d 653 (Fla. 1956).

The general rule which has been almost universally accepted states that a corporation is a legal entity separate and apart from its stockholders, and will be recognized as such, unless this recognition would tend to

18. Restatement, Torts § 449 (1934). If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which make the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for the harm caused thereby.