Buffalo Law Review

Volume 5 | Number 2 Article 73

1-1-1956

Torts—Duty Owing to Licensee

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cause of the injury in the *Hovey* case. The danger there was not perceivable by use of plaintiff's "ordinary senses," whereas in the instant case the partially obstructed handrail by its obviousness offered warning of any potential danger, which is all the law demands.

Duty Owing to Licensee

In *Jesselson v. Moody*,[33] defendant's employee accommodated plaintiff by driving him in defendant's automobile to the airport, without the express direction of defendant. En route plaintiff incurred fatal injuries resulting from the employee's negligence. In a wrongful death action against the employer the Court held, plaintiff was a mere licensee, to whom defendant owed only the obligation of refraining from committing acts wantonly or wilfully injurious.[34]

The New Jersey courts have not recognized as sufficient for purposes of recovery in this type of action the fact that plaintiff was riding at the invitation of an employee;[35] rather, proof is required that plaintiff was an invitee of the owner.[36] Under New Jersey common law, the duty of the owner of a motor vehicle to a licensee is said to be analogous to that owed to a trespasser by a property owner.[37] In order for the doctrine of respondeat superior to justify recovery in these instances, the driver must not only be acting within the scope of his employment in driving the car, but must also be acting in furtherance of his master's business in transporting the guest.[38]

New York Vehicle and Traffic Law §59 covers this type of suit by stating that the owner of a motor vehicle shall be deemed liable for injury caused by anyone legally using the vehicle, whether in pursuit of the owner's business or otherwise. In addition New York Insurance Law§109 provides, *inter alia,* that all contracts of insurance are to include under the liability coverage any personal or property damage caused by the named insured or his permittee. Thus the two enactments considered together evince the New York legislative policy preference for a broader risk distribution[39] than was possible under common law auspices.

33. 309 N. Y. 148, 127 N. E. 2d 921 (1955).
34. *Struble v. Bell,* 126 N. J. L. 168, 17 A. 2d 800 (1941).
35. *Yanowitz v. Pinkham,* 111 N. J. L. 448, 168 Atl. 770 (1937).
36. Consent of the owner of an automobile may be express or implied in New York, in determining his liability for damages inflicted by his permittee. *Fuegel v. Coudert,* 244 N. Y. 393, 155 N. E. 686, *reargument denied,* 245 N. Y. 539, 157 N. E. 849 (1927).
37. *Cowan v. Kaminow,* 128 N. J. L. 398, 26 A. 2d 258 (1942). *Heinemann v. Jewish Agr. Soc.,* 178 Misc. 897, 37 N. Y. S. 2d 354; *aff'd,* 266 App. Div. 907, 43 N. Y. S. 2d 746 (4th Dep't 1942).
38. *Yanowitz v. Pinkham, supra* note 35.
39. Douglas, *Vicarious Liability and Administration of Risk,* 38 YALE L. J. 584, 720 (1929); Laski, *The Basis of Vicarious Liability,* 26 YALE L. J. 106 (1916).