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THE CONCEPT OF "JOINT ENTERPRISE" IN AUTOMOBILE INJURY CASES

The dominating principle in a joint venture or enterprise between persons riding together as occupants in an automobile is the control or right of control which each party is capable of exercising over the other member or members of the undertaking. According to one text-writer, "A joint enterprise by two persons riding in an automobile along a public highway, the engagement in which will impute the negligence in operating the automobile of one of the persons, who is the driver, to the other person, must be a joint enterprise in controlling, directing, and governing the operation and running of the automobile, and not merely a joint interest in the objects and purposes of the trip." The degree of control necessary, what constitutes such control, the various facts indicating a joint adventure, and other like points have been treated in various ways by the several jurisdictions in this country; but the majority rule requires some control by each occupant of the automobile over the driver in order to have a joint venture between such parties. The concept of joint enterprise so as to impute the negligence of the driver of an automobile to the occupants, the idea of host-guest relation, and the liability of joint entrepreneurs to each other are all concerned with the essential element of control. In a recent Minnesota case, where several parties went on a hunting trip, each contributing to a common fund for all expenses, and where "each fellow had an equal voice in the running of the trip," there was a joint enterprise because each of the persons had a community of interest in the purposes and objects of the undertaking and an equal right in the control and management. The negligence of the driver is to be imputed to the other member or members of the joint enterprise where two or more persons have a common purpose in driving an automobile, whether for business or pleasure, and its operation is under their joint control.

The courts emphasize lack of control over the driver in determining that no joint venture exists between the parties, but they also point to a number of different reasons, in combination or separately, for saying that there is no joint venture. This is apparent from the various fact situations and opinions on which the courts' decisions are based. Where a husband and wife were moving to another city, and there was no evidence that the journey was undertaken merely at the request of the wife or any fact showing that the husband was acting as her agent, or that they were jointly operating or controlling the movements of

1 5 BERRY, LAW OF AUTOMOBILES (7th ed. 1935) § 5158.
2 Ruth v. Hutchinson, 296 N.W. 136 (Minn. 1941).
3 Counts v. Thomas, 63 S.W. (2nd) 416 (Mo. App. 1933).
the car at the time of the accident, it was held that there was nothing to indicate a joint enterprise. In another case the plaintiff was injured while riding in defendant's car operated by defendant's son. The plaintiff, who was going to see a person respecting a loan for defendant, suggested traveling a certain street. Upon these facts, the court held that there was no joint enterprise, because the joint interest of the parties on a trip was not considered enough to constitute the trip a joint venture. The court stated that to constitute joint enterprise in such a case there must be not only joint or community interest, but also an equal right, express or implied, to direct and control the management and movement of the car. Similarly, when plaintiff, defendant and another were riding in defendant's roadster to inspect mining property in which a fourth party was interested, and when there was no buying or selling of the property, and no money or other valuable thing passed to defendant from either of the other men by way of compensation, although the plaintiff acted as a guide to help defendant find the property, the court said that there was no indicia of joint venture shown by the excursion, and plaintiff was a mere passenger. Where a plaintiff was injured while riding in his superintendent's automobile on his way to do some work, the Louisiana court held that there was no joint enterprise, stating that such a defense may be imposed only when each occupant of the automobile has as much interest in the purpose of the enterprise as the other, and when each has a right to control the operation of the automobile. The driver's negligence will not be imputed to a passenger not the owner of the automobile, having no control over the operation of the car, and no authority to direct the driver.

The act on the part of an occupant of merely pointing out a certain way to proceed is not sufficient to constitute a joint venture between the driver and the occupant. To constitute a joint undertaking so as to impute the negligence of the driver to occupants of the automobile, it is not sufficient merely that the occupant indicate to the driver the route he wishes to travel, or the places to which he wishes to go, even though in this respect there exists between them a common enterprise of riding together. The circumstances must be such as to show that the occupant and driver together had such control and direction over the automobile as to be practically in the joint or common possession of it. That the driver and the occupant be practically in joint or common possession of the car is more than the usual requirement.

4 Brubaker v. Iowa County, 174 Wis. 574, 183 N.W. 690 (1921).
8 Applebee v. Ross, 48 S.W. (2nd) 900 (Mo. 1932).
to show control. Where the plaintiff went with the defendant in defendant's automobile across the country, each having a separate interest in so doing, and plaintiff was only to pay her personal expenses while defendant was to pay all driving expenses, there was held to be no joint enterprise. The mutuality of control and direction over the operation of the car, vital to the establishment of a joint venture, was lacking. The mere presence of mutual or joint interest is not sufficient. Again, where there was an understanding that the plaintiff was to pay a part of the expenses and do a part of the driving, but the control and management of the automobile were left to the defendant owner, the court held that to constitute a joint enterprise between a passenger and driver of an automobile, there must be such a community of interest in the operation as to give each an equal right of control. An injury resulting from an accident occurring while riding toward a destination in pursuance of an agreement to pay a part of the operating expenses, so that all the parties could obtain transportation at the lowest possible expense, did not necessarily occur during a joint venture. The payment of a portion of the expenses of a journey does not of itself prove an agreement of joint venture; the essential elements of a joint venture are a contract, a common purpose, a community of interest, and an equal right to a voice, accompanied by an equal right of control. There was held to be no joint enterprise where a party was killed while riding in an automobile belonging to and driven by defendant's decedent, when the occupant was in the habit of riding home from work with the driver, but made no contribution toward the upkeep of the car, never drove it, and exercised no control over the driver. There must be a finding that the occupant had a "voice in the control, management or direction of the vehicle." Several people riding together in defendant's car to help put out a fire in a neighbor's buildings were held not to be engaged in a joint enterprise. This was a host-guest relation; the relation of joint adventurers does not arise out of social relations, but grows out of a financial or business enterprise, and springs from contract.

In a late Michigan case, where the plaintiff offered to buy the necessary gasoline, bought the defendant driver a dinner, and indicated the way to travel on a fishing trip, the court held that the plaintiff could not recover for injuries sustained in an accident occurring when the driver lost control of the car, because the parties were engaged in a joint venture or enterprise for pleasure and recreation, undertaken

14 Sommerfield v. Flury, 198 Wis. 163, 223 N.W. 408 (1929).
for the mutual benefit and satisfaction of each of the parties. Here it seems that the court entirely overlooked the essential element of control. However, this jurisdiction has apparently followed the majority rule requiring control over the driver to constitute a joint enterprise so that the negligence of the driver will be imputed to an occupant, for in an earlier case it was said that to constitute a joint enterprise between a passenger and the driver of an automobile, within the meaning of the law of negligence, there must be such a community of interest in its operation as to give to each an equal right of control.

Another jurisdiction has held that a joint venture existed on the grounds that the plaintiff jointly contributed to the expenses of a hunting trip undertaken with defendant in defendant's automobile. And where the plaintiff went on a pleasure trip with defendant driver in defendant's car, and plaintiff was to pay for the gasoline for the automobile, and for her own expenses, these facts were held to constitute a joint enterprise, as an undertaking for the mutual benefit or pleasure of the parties. The cases which hold that there is a joint adventure without making a finding that the occupant had a right to control the operation of the automobile or the driver in some way, and without mentioning the element of control at all, are clearly in the minority.

Closely interrelated with the idea of what constitutes a joint venture between occupants of an automobile so that the driver's negligence is imputable to the other occupants, is the consideration of an automobile guest. Where a plaintiff was injured while riding in an automobile which was being demonstrated to the plaintiff by the defendant, the court said, "A guest is one who accepts the hospitality of the driver, takes a ride either for his own pleasure or his own business, and makes no return nor confers any benefit upon the driver of the car, other than the mere pleasure of his company." This seems to indicate that the fact of social benefit between the parties is not sufficient to create a joint enterprise. That parties are engaged in a common pleasure enterprise will not prevent the one riding with the driver from being a "guest" passenger. Where the plaintiff and defendant were business women and personal friends, and the defendant invited plaintiff to take a trip with her to a nearby town to see a friend of defendant who was opening a store, it was held that this was not a joint enterprise for a common purpose, plaintiff having accepted an invitation from defendant to ride in the car. The plaintiff was

17 Lloyd v. Mowery, 158 Wash. 341, 290 Pac. 710 (1930).
18 O'Brien v. Woldson, 149 Wash. 192, 270 Pac. 304 (1928).
19 Crawford v. Foster, 110 Cal. App. 81, 293 Pac. 841 (1930).
There was held to be no joint venture when a girl went with her escort and his friend to get refreshments during a dance intermission. She was considered to be merely a guest of the driver, because there was no preparation for the trip as a joint venture, and there was no purpose of proceeding to a fixed destination to participate in and to consummate an agreed and common purpose. In a case where the plaintiff was invited by the driver to make a 335-mile trip, at no expense to the plaintiff, and where there was no agreement as to plaintiff's doing part of the driving, it was held that there was no joint enterprise. The plaintiff was considered the driver's guest. Where there is nothing in the nature of a mutual agency existing between the parties, or any joint or common obligation on their part, and no contractual relationship between plaintiff and the defendant, nor any joint financial interest in the trip between the parties, there is no joint enterprise, but a gratuitous guest relation. The control element is clearly indicated in a case in which the deceased was killed in an automobile accident while on a fishing trip with defendant motorist. The deceased purchased gasoline, and there was evidence that the men were to pay their equal shares of expenses on the trip. It was held that deceased was a guest of the defendant and that the question of joint enterprise was not for the jury. If the driver invites others to accompany him on a trip, and he has sole charge and control of the automobile and is the only person operating it on the entire trip, the others are his guests, and the negligence of the driver cannot be imputed to a guest riding in the car who has no control or right to control the operation thereof. Also, a person riding with the driver of an automobile on a week-end trip, who took no part in the operation and had no control over the automobile at any time, was the defendant driver's guest. There is a host-guest relation even where there is a tacit understanding that the parties to a trip will equally share the cost of the gasoline necessary for the trip. To constitute a joint venture the relationship must possess the element of equal right to a voice in the manner of performance of the enterprise, and thus each party must have an equal right of control over the agencies used.

It is interesting to note the consideration of this subject in the states which have statutes prohibiting recovery by an automobile guest unless the driver is shown to be guilty of what amounts to gross negli-
gence. A few examples will suffice to illustrate the point. In Illinois, if carriage confers only a benefit incident to hospitality, companionship or the like, the passenger is a guest (within the meaning of a statute prohibiting recovery by a guest unless willful and wanton misconduct on the part of the driver is shown to have contributed to the plaintiff's injury); but if the carriage tends to promote mutual interests of both the person carried and the driver, the passenger is not such a guest. In a case where plaintiff was being driven by the defendant to defendant's house to work as a laundress, a Connecticut court held that "guest", within the statute barring recovery for injuries received while being transported by the owner or operator of a motor vehicle, does not include persons who are being transported for the mutual benefit of both the passenger and operator or owner of the car.

As the basis for imputing the negligence of the driver to the other occupants of an automobile while on a joint enterprise, the majority courts follow the theory that there must be a mutual agency, thereby inferring the consequent control. As a necessary corollary to this, the imputed negligence "must be in respect of a matter within the joint enterprise." That his negligence be imputed to an occupant, the driver of an automobile must be the agent of the occupant, as ascertained by the joint enterprise relation. There was no joint enterprise in a case where the facts showed nothing in the nature of a mutual agency existing between the parties; such mutual agency is the characteristic of the relation of joint adventurers. The rule of joint enterprise in negligence cases is founded on the law of principal and agent, and only on this theory is the negligence of the driver imputable to a passenger. However, members of joint enterprises are allowed to recover from another member on the basis of responsibility for negligence as arising from a personal tort. It has been said that the doctrine of imputed negligence will not be applied to allow a negligent joint adventurer "to take refuge behind his own wrong."

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29 Smith-Hurd Stats., c. 95½, § 58a (Ill. 1939).
30 Connett v. Winget, 374 Ill. 531, 30 N.E. (2nd) 1 (1940).
31 Kruy v. Smith, 108 Conn. 628, 144 Atl. 304 (1929).
32 See Note 1, supra.
34 See Note 14, supra.
35 See Note 16, supra.
37 Note (1939) 23 Minn. L. Rev. 666.
Note (1934) 82 U. of Pa. L. Rev. 549.