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Torts - Plaintiff's Violation of Municipal Ordinance as Contributory Negligence

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TORTS–PLAINTIFF'S VIOLATION OF MUNICIPAL ORDINANCE AS CONTRIBUTORY NEGLIGENCE

Plaintiff was injured while alighting from a taxicab in Richmond. The defendant taxicab company set up plaintiff's violation of a municipal ordinance as a defense. The ordinance provides in part:

> No passenger shall enter or leave any taxicab by way of the left rear door or side thereof except on one way streets when such vehicle is stopped on the left side of said street for the purpose of taking on or discharging a passenger and on publicly owned parking lots; nor shall any driver knowingly or willfully permit any passenger to enter or leave a taxicab by such door except as otherwise herein provided.[1]

The cab, with the plaintiff as a passenger, was traveling in a northward direction on Randolph Street. As the street is narrow, twenty feet from curb to curb, parking is permitted only on the east side, and there were two cars parked on that side of the street opposite plaintiff's home. Although there was sufficient parking space ahead, the driver stopped alongside of and about fourteen inches from one of the parked cars. The plaintiff paid her fare to the driver who then devoted his attention to writing. Seeing she could not leave by the right door, the plaintiff did not protest to the driver but attempted to leave by the left rear door. She could not open this door and so informed the driver who reached around and opened the door for her. The plaintiff did not leave her seat but caught hold of the inside of the door frame with her left hand. Before she could alight, an automobile traveling in a southward direction struck the cab's door, knocking it closed on her hand. In the trial court the plaintiff recovered a verdict against the defendant. On appeal, *held,* reversed. Plaintiff was guilty of contributory negligence as a *matter of law. National Cab Co.* v. *Bagby,* 196 Va. 703, 85 S.E.2d 270 (1955). (Two Justices were absent, and Buchanan and Smith, JJ., dissented.) On rehearing, *held,* affirmed. 196 Va. 1027, 85 S.E.2d 274 (1955) (Spratley, Buchanan and Smith, JJ., dissenting).

[1] National Cab Co. v. Bagby, 196 Va. 703, 705, 85 S.E. 2d 270, 272 (1955).

There is much diversity among the states as to the weight to be given to the violation of a statute or ordinance in determining whether or not the violator has exercised due care. Some courts hold that such a violation is negligence per se,[2] others hold it is prima facie evidence of negligence,[3] while still another group considers it as only evidence of negligence.[4] A number of jurisdictions have denied the same significance to violation of an ordinance that they give to violation of a statute.[5] The Supreme Court of Arkansas expressed the reasoning used by the courts making this distinction by saying:

> It is not within any of the general or special powers conferred upon municipal corporations in this state to create a right of action between third persons, nor to enlarge the common law or statutory liability of citizens among themselves.[6]

Courts following the majority view have found no reason for holding the violation of a statute negligence per se and not giving like effect to the violation of a municipal ordinance.[7] This majority view seems preferable, for to allow the jury to determine the weight to be given to the violation of an ordinance would be to place their will above that of the lawmakers.[8]

In Virginia, violation of a statute is negligence per se.[9] Furthermore, the Supreme Court of Appeals follows the majority view as it has repeatedly held that the violation of a municipal ordinance is negligence per se.[10]

When it is the plaintiff who violates a statute or ordinance intended for his own protection and such violation is the proximate cause of the injury sustained, it is the general rule that

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[2] Aldridge v. Hasty, 240 N.C. 353, 82 S.E.2d 331 (1954); Bissell v. Seattle Vancouver Motor Freight, Ltd., 25 Wash.2d 68, 168 P.2d 390 (1946); Prosser, *Torts* 274 (1941).

[3] Ney v. Yellow Cab Co., 348 Ill.App. 161, 108 N.E.2d 508 (1952); Rich v. Rosenshine, 131 W.Va. 30, 45 S.E.2d 499 (1947).

[4] Wainwright v. Jackson, 291 Mass. 100, 195 N.E. 896 (1935).

[5] Rotter v. Detroit United Ry., 205 Mich. 212, 171 N.W. 514 (1919); Temple v. Walker, 127 Ark. 279, 192 S.W. 200 (1917); Knupfle v. Knickerbocker Ice Co., 84 N.Y. 488 (1881).

[6] Bain v. Ft. Smith Light & Traction Co. 116 Ark. 125, ..., 172 S.W. 843, 845 (1915).

[7] James v. Carolina Coach Co., 207 N.C. 742, 178 S.E. 607 (1935); Chesapeake & O. Ry. v. Meyer, 150 Va. 656, 143 S.E. 478 (1928); Stevens v. Luther, 105 Neb. 184, 180 N.W. 87 (1920); Restatement, Torts §285 (1934).

[8] 14 Va.L.Rev. 591 (1928).

[9] Va. Code §8-652 (1950); Crist v. Fitzgerald, 189 Va. 109, 52 S.E.2d 145 (1949); Lavenstein v. Maile, 146 Va. 789, 132 S.E. 844 (1926).

[10] Moore v. Virginia Transit Co., 188 Va. 493, 50 S.E.2d 268 (1948); Atlantic Coast Line Co. v. Tyler, 124 Va. 484, 98 S.E. 641 (1919). See 14 Va.L.Rev. 591 (1928).

he is guilty of contributory negligence.[11] In *Basset & Co.* v. *Woods*[12] the Virginia Court stated:

> There is really no distinction between negligence in the plaintiff and negligence in the defendant and where their negligence concur to produce the injury there can be no recovery.[13]

Those statutes that are passed for the protection of members of a class who are considered incapable of protecting themselves constitute one exception to the general rule that violation of a statute or ordinance by plaintiff as well as by defendant is negligence. The child labor laws are a notable example. "It is universally held that the employment in violation of the statute is in itself negligence and the proximate cause of the injury independent of the circumstances under which the injury occurred."[14] As a general rule, even violation of the law by the child through misrepresentation of his age is not a bar to recovery.[15]

Inasmuch as none of the exceptions to the general rule apply in the instant case, it is submitted that the decision of the Court in finding the plaintiff guilty of contributory negligence as a *matter of law* was correct. Although the taxicab driver was highly culpable, and the aggregate of his actions manifested his lack of consideration and care for his passenger, she was not relieved of the standard of care required of her by the ordinance.

The minority judges' contention that plaintiff did not violate the ordinance because she did not leave her seat and only placed her hand in the inside of the door does not appear tenable. The plaintiff's actions in leaving the taxicab had gone beyond preparation, and the purpose of the ordinance was to prevent such an accident as did occur.

Any criticism of the result should be directed at the framers of the ordinance. This ordinance has placed the taxicab companies in a better position than drivers of other vehicles and such

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[11] Lanier v. Johnson, 190 Va. 1, 55 S.E.2d 442 (1949); Standard Oil Co. of N.J. v. Roberts, 130 Va. 532, 107 S.E. 838 (1921); Restatement, Torts §469 (1934).
[12] 146 Va. 654, 132 S.E. 700 (1926).
[13] *Id.* at 664, 132 S.E. 700, 703 (1926).
[14] Ocean Accident & Guarantee Corp. v. Washington Brick Co., 148 Va. 829, 838, 139 S.E. 513, 516 (1927). *Cf.* Restatement, Torts §483 (1934).
[15] Ocean Accident & Guarantee Corp. v. Washington Brick Co., *supra* note 14.

a result is highly inconsistent with the Virginia rule that common carriers owe their passengers the highest degree of practical care,[16] whereas other compensated drivers owe their passengers only ordinary care,[17] and a host must be grossly negligent before he is liable to his guest.[18] The taxicab companies have been relieved of almost all responsibility for their negligence when a passenger leaves by the left door and are only discouraged from allowing such unsafe practices by a remote possibility of a small fine for violation of a city ordinance not easily capable of strict enforcement.

An ordinance which would place responsibility for passengers using the left doors on the taxicab driver, leaving the reasonable, prudent man test for the passenger, would be preferable. The driver is in a better position than the passenger to know laws which he is concerned with every day, and such an ordinance would tend to promote safety among the cab companies.

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[16] Atlantic Greyhound Corp. v. Shelton, 184 Va. 684, 36 S.E.2d 625 (1946).
[17] Dickerson v. Miller, 196 Va. 659, 85 S.E.2d 275 (1955).
[18] Va. Code §8-646.1 (1950); Mountjoy v. Burton, 185 Va. 936, 40 S.E.2d 803 (1947).