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TORTS — LIABILITY OF U-DRIVE-IT CORPORATION TO THIRD PARTY

A recent Georgia decision¹ serves as a convenient starting point for a view of the liability of U-Drive-It companies to third parties because of negligence of the company or operator of the automobile. The basis of the Georgia decision is a statute forbidding the loan or rental of an automobile unless the person to whom it is rented exhibits a valid operator's license. Here, the agency rented an automobile to a young woman in violation of the statute. She had no license and was in fact incompetent to drive. The plaintiff, a pedestrian, was injured by the rented automobile and brought this action against the driver and the auto rental agency, alleging the negligence of the latter in renting the automobile in violation of the statute as the proximate cause of his injuries. The defendant argued that it could not be held liable since it was without actual knowledge of the renter's incompetency. The court ruled that actual knowledge of the incompetence was unnecessary to create liability when the owner was bound in law to ascertain whether or not she had a driver's license. This opinion represents a tendency of the courts and legislatures to broaden liability on the part of U-Drive-It companies as their services become more widely used.

The first cases of injuries to third parties by rented automobiles date from the early nineteen-twenties. In these cases the courts applied, in the absence of statute, the general principles of the law of bailment. The general rule is that the bailor is not responsible for the negligence of the bailee. An exception to the general rule arises when the owner is negligent in leasing a defective automobile or hiring it to one whom he knew or reasonably should have known was not a proper person to operate it on the highway². The courts in early decisions hesitated to fix liability in the absence of proof that the bailor was clearly negligent in renting to an obviously

¹ Jones v. Dixie Drive-It-Yourself System, Inc., 97 Ga. 669, 104 S.E.2d 497 (1958).

² 7 A Blashfield, *Cyclopedia of Automobile Law and Practice*, 5237 (1928).

incompetent operator. In *Otupalik v. Phelps*³ the court held that there was no common law rule making the bailor of an automobile liable to a third party unless the relation was that of master and servant or the bailment had been made to an infant, lunatic, or intoxicated person. In a Louisiana case⁴, an automobile had been rented to the same unlicensed operator on four previous occasions before an accident occurred. The court felt that since the renter had returned the car without an accident each time that there was no necessity for the defendant to make further inquiry before renting the car.

As a result of the increased hazards of the present widespread use of automobiles and the resultant volume of litigation, many jurisdictions have added regulations to their motor vehicle codes pertaining specifically to the U-Drive-It business. In *Hodge Drive-It-Yourself Co. v. City of Cincinnati*⁵ the Supreme Court of Ohio said:

The fact that automobiles of this class are operated by persons who have no ownership in the operated automobiles and that they operate under a contract which exempts the owner from the application of the doctrine of respondeat superior which operation has been found by the experience of insurance companies skilled in determining degrees of hazard to be extra-hazardous to the public—is quite sufficient to warrant a classification of this character of automobiles separate from all others and to warrant a reasonable regulation of the class.

These statutes, many of them similar to the Georgia decision under discussion, have put the U-Drive-It companies under greater control and have subjected them to greater liability in the event of injury to third parties. In addition to preventing the operation of vehicles by unqualified persons, the statutes establish a standard of care which must be followed in ascertaining to whom the automobiles may be rented. Vio-

³ 73 Colo. 433, 216 Pac. 541 (1923).

⁴ *Anderson v. Driverless Cars, Inc.*, 111 La. 515, 124 So. 312 (1929).

⁵ 123 Ohio St. 284, 175 N.E. 196, 77 A.L.R. 889 (1931).

lation of its statutory duty may render the U-Drive-It automobile owner jointly liable with the negligent operator. The fact that a U-Drive-It rents an automobile to an unlicensed driver in violation of a statute does not of itself impose liability for negligent injury caused by the driver. The evidence must show in addition to the violation of statute that the violation was the cause of the injury. If the evidence establishes the driver's competency, the question of proximate cause is one for the court and the violation is not negligence per se⁶.

A few jurisdictions impose liability upon the U-Drive-It agency whether or not there is negligence in the leasing of the automobile. As interpreted in *Graham v. Wilkens*⁷, the Connecticut statute reads:

Any person renting or leasing to another any motor vehicle owned by him shall be liable for any damage to any person caused by the operation of such motor vehicle while so rented or leased to the same extent as the operator would have been liable if he had also been the owner⁸.

A Kentucky statute⁹ attacks the problem differently, but the effects are similar.

The statute does not undertake to enlarge the common law liability of persons engaged in the U-Drive-It business and to fix upon them personal liability for the torts of their lessees. What the statute does require is that lessors who do business upon the highways for

⁶ *Hertz-Drive-It-Ur-Self System of Colo. v. Hendrickson*, 109 Colo. 1, 121 P.2d 483, 168 A.L.R. 1384 (1942).

⁷ *Graham v. Wilkens*, 145 Conn. 34, 138 At.2d 705 (1958).

⁸ Connecticut General Statutes, § 2479 (1949).

⁹ Kentucky Rev. St. 187.640 (1948). "No person shall engage in business of leasing, renting, or letting out for hire, motor vehicles to be used for the transportation of persons but for which no driver is furnished, such business being commonly known as the 'U-Drive-It' or 'Rent-A-Car' business, until he has filed with the Department of Revenue an insurance policy, covering the owner as the named insured, and meeting the requirements provided for in KRS 187.490, or has qualified as a self insuror in the same manner as provided for in KRS 187.600."

a profit give security (by filing an insurance policy with the Department of Revenue) that their lessees shall respond in damages for the latter's torts.

The Florida courts adhering to the doctrine that a motor vehicle while being operated on the highways is a dangerous instrumentality, have held that one entrusting a vehicle to any person is liable for the consequences¹⁰.

The preceding are representative of a number of jurisdictions which have imposed liability upon the U-Drive-It companies without negligence in renting their automobiles. A great many other jurisdictions have some regulatory statute; the most common being those which prohibit the rental of a vehicle unless the renter exhibits a valid operator's license.

In view of this it is surprising that Virginia has only one narrow statute on the subject. Section 46.1-14 of the Code¹¹ requires persons renting motor vehicles without drivers to keep a record of the identity of the person to whom the vehicle is rented, the time and place of rental, and provide for the inspection of these records by any person who has been damaged in person or property. No Virginia statute imputes the bailee's negligence in operation to his bailor. Protection of third parties injured by such negligence seems to be covered however by the requirement of an omnibus clause in every automobile liability policy issued within the Commonwealth¹². Under this section anyone operating an insured motor vehicle with the express or implied permission of the owner is covered by the owner's insurance whether or not the owner is liable¹³. Therefore the statute indirectly forces the auto rental agencies to exercise more than the legal minimum of care. Repeated instances of hiring to incompetent, unlicensed operators who later precipitate accidents will cause the insurance premiums of careless rental agencies to rise to prohibitive levels. Self

¹⁰ *Foremost Dairies v. Godwin*, 158 Fla. 245, 26 So.2d 773 (1946).

¹¹ Va. Code Ann.

¹² Va. Code Ann., § 38.1-381.

¹³ *Newton v. Employers Liability Assurance Corp.*, 107 F.2d 164 (1957).

interest will cause the U-Drive-It companies to check more carefully the qualifications of those to whom their cars are leased.

Nevertheless to assure full protection to third parties such indirect measures are not enough. The Virginia Code should be amended to include a provision similar to the Georgia statute which requires a rental agency to check the operator's license of every person seeking to rent a motor vehicle within the Commonwealth. Under present Virginia law an unlicensed, incompetent driver may legally rent a U-Drive-It automobile. Under present-day traffic conditions this situation should be quickly remedied.

D. B.