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Agency -- Automobiles -- Liability of a Cab-Calling Company For the Torts of the Driver

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Agency—Automobiles—Liability of a Cab-Calling Company For the Torts of the Driver.

The defendant cab company owns no cars and hires no drivers, but merely operates a calling service and sells the right to use its name to private owners. The plaintiff is injured through the negligence of the driver of a cab which bears the company's insignia, and which she has ordered in response to one of its advertisements. The defendant Jackson admits the ownership of the cab, and that it is registered in his name, but denies liability on the grounds that the car was being operated by an independent contractor to whom he has leased it. *Held,* both defendants liable on the theory of agency by estoppel.[1]

Corporations similar to the one in the above case are becoming increasingly common in our larger cities, especially the city of Washington, where a recent price war has had the effect of temporarily eliminating some of the more responsible cab-owning companies. Persons sustaining injuries through the negligent operation of these cabs find it difficult to obtain redress, since the drivers are usually execution proof, and the company defends upon the grounds that the drivers are not its agents, but independent contractors.[2]

When an actual agency can be shown, the plaintiff may recover against the company, provided the tort was committed within the scope of the agent's employment, under the familiar doctrine of *respondeat superior.*[3] Or, when the fact of agency is left in some doubt, the plaintiff is aided by a presumption of agency which arises, in most jurisdictions, upon proof that the defendant was the owner of

[1] Rhone v. Try Me Cab Co., 65 F. (2d) 834 (D. C. C. A., 1933).

[2] It is often very difficult to determine whether the relationship is that of agent or independent contractor. In the latter case, as a general rule, there can be no liability except in cases where an estoppel exists. However, the mere fact that the driver operates on a commission basis, and has a great deal of latitude in the conduct of the cab, will not constitute him an independent contractor. Natchez Coca Cola Bottling Co. v. Watson, 160 Miss. 173, 133 So. 677 (1931); Dunbaden v. Castles Ice Cream Co., 103 N. J. L. 427, 135 A. 886 (1927). Nor does it seem to alter the situation when the driver owns the car. Montgomery v. Globe Grain & Milling Co., 293 P. 856 (Cal. App. 1930); Lassen v. Stamford Transit Co., 102 Conn. 76, 128 A. 117. A few states have passed statutes which make the owner of the car liable when it is being used with his consent, regardless of agency. For a discussion of these statutes (1926) 20 ILL. LAW REV. 405.

[3] Standard Oil Co. v. Anderson, 212 U. S. 215, 29 Sup. Ct. 252, 53 L. ed. 480 (1908).

the cab,[4] that it bears his name or insignia,[5] that the driver wears his uniform,[6] or that the cab is registered in his name.[7] When this presumption is rebutted, as in the principal case, there are several other possibilities. There may be such a concert of interest between the driver and the company that the plaintiff can hold the latter upon the theory of joint adventure.[8] This is doubtful, however, due to the fact that the company merely operates a calling service and sells the right to use its name, while the conduct of the cab is left entirely with the driver.

The theory of estoppel would seem the most likely one under the facts presented in the principal case. There is clearly a holding out by the defendant and a reliance upon this by the plaintiff to her detriment.[9] There is even the presence of a contractual element, which is deemed necessary by some authorities.[10] But in holding the defendant Jackson, the court seems to go a step further, perhaps,

[4] Judson v. Bee Hive Auto Service Co., 136 Ore. 1, 294 P. 588, 297 P. 1050 (1930); Burger v. Taxicab Motor Co., 66 Wash. 676, 120 P. 519 (1912). *Contra:* Welch v. Checker Taxi Co., 262 Mass. 310, 159 N. E. 622 (1928). For a general discussion, HUDDY, AUTOMOBILES (8th ed. 1927) §794; (1930) 8 N. C. L. REV. 309.

[5] Voegeli v. Waterbury Yellow Cab Co., 111 Conn. 407, 150 A. 303 (1930); Robeson v. Greyhound Lines, Inc., 257 Ill. App. 278 (1930); Weidnam v. St. Louis Taxicab Co., 182 Mo. App. 523, 165 S. W. 1105 (1914); Misenheimer v. Hayman, 195 N. C. 613, 143 S. E. 1 (1928); BERRY, AUTOMOBILES (6th ed. 1929) §§1360-1361.

[6] Teiman v. Red Top Cab Co., 3 P. (2d) 381 (Cal. App. 1931). *Contra:* Welch v. Checker Taxi Co., *supra* note 4.

[7] Irwin v. Pickwick Stage System, Inc., 21 P. (2d) 981 (Cal. 1933); Jones v. Detroit Taxicab & Trans. Co., 218 Mich. 673, 188 N. W. 394 (1922).

[8] Andrews v. Boedecker, 126 Ill. 605, 18 N. E. 651 (1888); Koplitz v. City of St. Paul, 86 Minn. 373, 90 N. W. 794 (1902); Stroher v. Elting, 97 N. Y. 102, 49 Am. Rep. 515 (1884); see Gallas v. Independent Taxi Owners Ass'n *et. al.*, 66 F. (2d) 192 (D. C. C. A. 1933).

[9] Maloney Tank Mfg. Co. v. Midcontinental Petroleum Corp., 49 F. (2d) 146 (C. C. A. 10th, 1931); Pennsylvania R. Co. v. Hoover, 142 Md. 251, 120 A. 526 (1923); *cf:* Burgenthall v. State Garage & Trucking Co., 179 Wis. 42, 190 N. W. 901 (1922). Perhaps, the rule is best illustrated by a line of cases in which department stores have advertised independently operated dentists's offices or beauty shops as a part of the store. The few courts which have passed on this question have uniformly held that an estoppel does arise in favor of a person who has relied upon these representations and have been injured through the negligence of the employes of the beauty shop or dentist's office. Agusta Friedman's Shop v. Yeats, 216 Ala. 434, 113 So. 299 (1927); Hannon v. Seigel-Cooper Co., 167 N. Y. 244, 60 N. E. 597 (1901) (A leading case); Fields, Inc. v. Evans, 36 Ohio App. 153, 172 N. E. 702 (1929) commented upon (1931) 11 B. U. L. REV. 85, (1931) 29 MICH. L. REV. 640; Christiansen v. Fantle Bros., Inc. *et. al.*, 56 S. D. 350, 228 N. W. 407 (1929). AGENCY RESTATEMENT (Am. L. Inst., 1930) §490.

than the facts would warrant. It does not appear that the plaintiff relied on any representations which might have been made by him,[11] nor does it appear that he made any representations, other than the registration of the cab in his name.

If a corporation is chartered for the purpose of owning and operating taxicabs, it would seem only just to say that, since this is a business affected with a public interest, this responsibility could not be avoided by renting their name to independent contractors;[12] but, where no such authority is contained in the charter, it would not be unreasonable to force the actual owners and operators of the cabs to give bond or take out liability insurance as a condition precedent to obtaining their licenses. This policy has been adopted by statute,[13] with regard to taxicab and bus operators, in many states, and these laws have been uniformly held to be constitutional, and not in violation of the "Due Process" clause.[14] This whole situation presents a rather elusive problem, and such requirements are, undoubtedly, the most satisfactory solution.

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[10] Agusta Freidman's Shop v. Yeats, *supra* note 9; *cf.* Denver & R. G. R. Co. v. Gustafson, 21 Colo. 393, 41 P. 505 (1895) (Where the apparent agent was the watchman at a grade crossing.).

[11] Jung v. New Orleans Ry. & Light Co., 145 La. 727, 82 So. 870 (1919); Dressler v. McArdle, 85 Misc. Rep. 444, 147 N. Y. S. 821 (1914); MECHEM, AGENCY (2d ed. 1914) §724.

[12] Dixie Stage Lines v. Anderson, 134 So. 23 (Ala., 1931); Robeson v. Greyhound Lines, Inc., *supra* note 5; King v. Brenham Automobile Co., 145 S. W. 278, 279 (Tex. Civ. App. 1912) ("Taking for granted the truth of the statements of the officers of the company, we are of the opinion that a corporation, chartered for certain purposes, cannot evade its responsibilities to the general public by delegating its authority to others, whether responsible or irresponsible. . . . No responsible person or corporation could be held liable for the most outrageous acts of negligence if they should be allowed to place a 'middleman' between them and the public, and escape liability by the manner in which they recompense their servants.").

[13] IDAHO CODE ANN. (1932) §59-806; NEB. COMP. STAT. (1929) §60-202; N. Y. CONSOL. LAWS (Cahill, 1930), c. 64-a, §17; WASH. COMP. STAT. (Remington, 1931) §6382 *et seq.* The North Carolina statute, N. C. CODE ANN. (Michie, 1931) §2621 (112) *et seq.* applies to all automobile owners against whom a judgment of $100 has been docketed and remains unsatisfied. Nichols *et al* v. Maxwell, 202 N. C. 38, 161 S. E. 712 (1932).

[14] Packard v. Banton, 264 U. S. 140, 44 Sup. Ct. 257, 68 L. ed. 596 (1923). In some jurisdictions it has been held that a municipal corporation has the power to demand such bond or insurance under its general authority to regulate motor vehicles within its borders: Lutz v. City of New Orleans, 237 Fed. 1018 (C. C. A. 5th, 1917); Kruger v. California Indemnity Exch., 201 Cal. 672, 258 P. 602 (1927); Commonwealth v. Kelley, 229 Ky. 722, 17 S. W. (2d) 1017 (1929); Commonwealth v. Slocum, 230 Mass. 180, 119 N. E. 687 (1919); Jitney Bus Ass'n of Wilkes-Barre *et al* v. City of Wilkes-Barre, 256 Pa. 462, 100 A. 954 (1917); *cf.* Sprout v. City of South Bend, 277 U. S. 163, 48 Sup. Ct. 502, 72 L. ed. 833 (1928); West *et al* v. Sun Cab Co., Inc., 154 A. 100 (Md., 1931).