Hastings Law Journal

Volume 14 | Issue 4 Article 7

1-1963

Permitting an Unlicensed or Incompetent to Drive

Terrence A. Callan

PERMITTING AN UNLICENSED OR INCOMPETENT TO DRIVE

By TERRENCE A. CALLAN*

THE law requires that an owner use care in allowing others to operate his automobile. It seems obviously just to hold him liable if he entrusts it to a person whom he knows, or should know, to be inexperienced, incompetent, reckless or otherwise incapable of operating an automobile without endangering others.

California has felt the need to hold *every* owner of a motor vehicle liable for death or injury to property which results from the negligent operation of the vehicle by any person operating the vehicle with the owner's express or implied permission.[1] This statutory liability is imposed regardless of any relationship of master and servant or principal and agent.[2] Moreover, liability under section 17150 of the vehicle code is not dependent upon negligence in the selection of the driver.[3]

Section 17150 clearly creates a new right of action and has therefore been strictly construed.[4] Indeed, this liability under the statute partakes of the nature of a penalty.[5] The general necessity, under the common law, of showing a causal relation connecting the injury complained of, the driver's incompetency, inexperience or unfitness, and the owner's knowledge thereof, is abrogated by section 17150.[6] The legislative intent in enacting such a statute was to protect innocent third persons from the careless entrusting of automobiles to others, and to make this protection paramount to the right of the owner to permit others to use his car.[7]

Statutory Elements of Liability

A perusal of section 17150 discloses at once the basic factual conditions upon which it operates to impute liability to the owner for the negligence of the operator. These elements of liability are ownership,

---

* Member. Second Year Class.

[1] CAL. VEH. CODE § 17150.

[2] Burgess v. Cahill, 26 Cal. 2d 320, 158 P.2d 393, 159 A.L.R. 1304 (1945); Casey v. Fortune, 78 Cal. App. 2d 922, 179 P.2d 99 (1947).

[3] Burgess v. Cahill, 26 Cal. 2d 320, 158 P.2d 393, 159 A.L.R. 1304 (1945).

[4] Weber v. Pinyan, 9 Cal. 2d 226. 70 P.2d 183 (1937).

[5] Swing v. Lingo, 129 Cal. App. 518, 19 P.2d 56 (1933).

[6] Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183 (1937).

[7] Mason v. Russell, 158 Cal. App. 2d 391, 322 P.2d 486 (1958). For an exhaustive analysis of the statute and the legislative intent, see Bayless v. Mull, 50 Cal. App. 2d 66, 122 P.2d 608 (1942).

permission to operate, negligence and damages. The true owner is responsible, whether he be the registered owner or not.[8] The burden of proving the requisite permission is on the plaintiff and is a question of fact. Unless the burden is met there can be no liability under the statute.[9]

An owner's liability to the injured third party is, under section 17150, direct and primary, rather than merely secondary.[10] Furthermore, lack of a final judgment against the driver-permitee does not affect the statutory civil liability of the entrusting owner.[11]

This statutory liability is not, however, limitless. Vehicle Code section 17151 expressly places a $5000.00 limit on a judgment recoverable for the death of any one person, a $10,000.00 limit for the death of two or more persons, and a $5000.00 limit for any property damage in any one accident where liability is based upon section 17150 and where there is no principal-agent or master-servant relationship.[12]

Common Law Liability

In addition to statutory liability, the owner of an automobile may be subject to a common law liability if he entrusts his vehicle to a *known* incompetent, reckless, or inexperienced driver. The principle upon which this liability rests has been recognized in the Restatement of Torts[13] which declares that one who supplies chattels to a person he knows, or should know, to be likely to use such chattels in a manner involving unreasonable risk of bodily harm to himself or others is liable for bodily harm caused thereby.

California has recognized the liability of a car owner who entrusts his car to a known incompetent, reckless or inexperienced driver whether or not the particular party driving at the time of the accident was within the scope of the owner's specific consent to use the car.[14]

The first California case directly to consider the question was *Rocca*

---

[8] McClary v. Concord Ave. Motors, 202 Cal. App. 2d 564, 21 Cal. Rptr. 1 (1962); Rody v. Winn, 162 Cal. App. 2d 35, 327 P.2d 579 (1958). See also Stoddard v. Pierce, 53 Cal. 2d 115, 364 P.2d 774 (1954) for conclusion that there may be several "owners" at any one time in the sense of the word owner as used in section 17150 of the Vehicle Code. See also Comment, 28 CAL. L. REV. 64 (1939).

[9] Krum v. Mallow, 22 Cal. 2d 132, 137 P.2d 18 (1943); Barcus v. Campbell, 90 Cal. App. 2d 768, 204 P.2d 65 (1949); Irvine v. Wilson, 137 Cal. App. 2d Supp. 843, 289 P.2d 895 (App. Dept., Super. Ct., San Diego, 1955).

[10] Broome v. Kern Valley Packing Co., 6 Cal. App. 2d 256, 44 P.2d 430 (1935).

[11] Harrington v. Evans, 99 Cal. App. 2d 269, 221 P.2d 696 (1950).

[12] CAL. VEH. CODE § 17151.

[13] RESTATEMENT, TORTS § 390 (1934).

[14] McCalla v. Grosse, 42 Cal. App. 2d 546, 109 P.2d 358 (1941).

v. *Steinmetz*.[15] The court reasoned that there was no difference in principle, but only in degree, between one who entrusts his car to a person whom he knows to be insane or intoxicated and one whom he knows, or should know, to be reckless or careless.[16] Consideration for the safety of others, said the court, "requires him to withhold his consent and thereby refrain from participating in any accident that is likely to happen. . . ."[17]

In the leading case of *McCalla* v. *Grosse*,[18] the car, though registered in Grosse's name, was owned by the defendant. Grosse was an aged and apparently feeble man, eighty years old, with eyesight so defective that he could not see for a distance of more than twenty-five feet. The defendant owner lived with Grosse and knew of his poor vision. Nevertheless, he permitted Grosse to drive the car, furnishing funds for gas and oil. Plaintiff was injured by the negligent driving of Grosse and alleged Grosse's incompetency, defendant's knowledge thereof, and defendant's permission that Grosse drive the car. The court upheld the compaint against a demurrer, stating: "[O]ne who knowingly permits an unfit driver to use his automobile is liable for damages caused by the negligent acts of the unfifit driver in the operation of the car."[19]

The reason for holding an owner liable for damage resulting from entrusting his car to one who is known to be incompetent or incapable of operating it seems clear. Liability rests not alone upon the fact of ownership. Rather, it is the combined negligence of the owner in entrusting the vehicle to a known incompetent driver, and that of the driver during its operation.[20] The owner can be said to be accountable because his negligence in entrusting the vehicle to an incompetent person is deemed to be the proximate cause of any damage done.[21] This liability attaches apart from any principle of agency such as *respondeat superior*.[22]

---

[15] 61 Cal. App. 102, 214 Pac. 257 (1923).

[16] *Ibid.*

[17] *Id.* at 109, 214 Pac. at 260 (1923).

[18] 42 Cal. App. 2d 546, 109 P.2d 358 (1941).

[19] McCalla v. Grosse, 42 Cal. App. 2d 546, 550, 109 P.2d 358, 360 (1941); *accord*, Easton v. United Trade School Con. Co., 173 Cal. 199, 159 Pac. 597 (1916); Hughes v. Wardwell, 117 Cal. App. 2d 406, 255 P.2d 881 (1953); Knight v. Grosselin, 124 Cal. App. 290, 12 P.2d 454 (1932); Kanananakoa v. Badalamente, 119 Cal. App. 231, 6 P.2d 338 (1931). See also Note, 29 CALIF. L. REV. 777 (1941).

[20] Buelke v. Levenstadt, 190 Cal. 684, 214 Pac. 42 (1923).

[21] Department of Water and Power of City of Los Angeles v. Anderson, 95 F.2d 577 (9th Cir. 1938); 2 BERRY, AUTOMOBILES § 1327 (6th ed. 1929).

[22] Knight v. Grosselin, 124 Cal. App. 290, 12 P.2d 454 (1932). See also RESTATEMENT, TORTS § 390, comment b (1934).

Permitting an Unlicensed Person to Drive

In addition to liability for damages resulting from entrusting an automobile to a *known* incompetent driver, there may also be liability on the owner resulting from the entrusting of his car to an *unlicensed* driver. The California Vehicle Code provides that: "No person shall employ or hire nor shall knowingly permit or authorize the driving of a motor vehicle, owned by him or under his control, upon the highways by any person, unless the person is then licensed under this code."[23] Violation of this statute has been held to make out a prima facie case against an owner in favor of a person who has sustained injury through the negligence of such an unlicensed driver.[24] It cannot be assumed, however, that lack of a driver's license can automatically be equated with *incompetency* in driving.[25] Such lack of a license, and knowledge thereof, may nevertheless be held sufficient to put the owner on inquiry as to the competency of the unlicensed permitee.[26] In short, neither possession nor lack of an operator's license is conclusive evidence that the defendant was, or was not, a competent driver.[27] Lack of a driver's license may, however, be admissible for consideration in connection with all other evidence bearing on the question of whether the owner knew, or was put on inquiry to know, that he was entrusting the operation of the vehicle to one who was not a competent driver.[28]

The key to the common law liability of the owner is whether the owner knew the driver was unlicensed. Such knowledge would impose upon the owner the duty of inquiry as to the competency of the driver,[29] for in the absence of such knowledge there is no legal duty or obligation to inquire.[30] Then, as seen before, the common law liability of an owner for entrusting his automobile to an incompetent driver may be imposed.[31]

[23] CAL. VEH. CODE § 14606. See also CAL. VEH. CODE § 14607: "Permitting unlicensed *minor* to drive." [Emphasis added.]

[24] Owens v. Carmichael's U-Drive Auto Inc., 116 Cal. App. 348, 2 P.2d 580 (1931).

[25] *Ibid.*

[26] Shifflette v. Walkup Drayage Etc. Co., 74 Cal. App. 2d 903, 169 P.2d 996 (1946) *But cf.* Strandt v. Cannon, 29 Cal. App. 2d 509, 85 P.2d 160 (1938).

[27] Shifflette v. Walkup Drayage Etc. Co., 74 Cal. App. 2d 903, 169 P.2d 996 (1946); Hunton v. Portland Cement Co., 50 Cal. App. 2d 684, 123 P.2d 947 (1942).

[28] Owens v. Carmichael's U-Drive Auto Inc., 116 Cal. App. 348, 2 P.2d 580 (1931).

[29] Wysock v. Borchers Bros., 104 Cal. App. 2d 571, 232 P.2d 531 (1951); Shifflette v. Walkup Drayage Etc. Co., 74 Cal. App. 2d 903, 169 P.2d 996 (1946); Owens v. Carmichael's U-Drive Auto Inc., 116 Cal. App. 348, 2 P.2d 580 (1931).

[30] Richards v. Stanley, 43 Cal. 2d 60, 271 P.2d 23 (1954); Perry v. Simeone, 197 Cal. 132, 239 Pac. 1056 (1925); Wysoek v. Borchers Bros., 104 Cal. App. 2d 571, 232 P.2d 531 (1951).

[31] See note 19 *supra.*

In *Owens* v. *Carmichael's U-Drive Autos Inc.*,[32] the gravamen of the plaintiff's cause of action was the alleged negligence of the owner in entrusting his automobile to a known incompetent. Defendant's agent, knowing the driver had only a temporary student permit, nevertheless permitted him to drive the car. The complaint alleged that the defendant "negligently permitted the driver to drive and operate said auto upon the highway" and that the defendant knew that said driver was "not licensed to drive or operate any automobile upon such highway."[33] In finding that a sufficient cause of action had been stated, the court held that defendant's knowledge that the driver possessed merely a temporary permit (allowing a person to drive only if accompanied by a licensed driver) was sufficient to put the defendant on inquiry as to the competency of the driver. It was then for the jury to determine whether the defendant was negligent[34] in permitting the unlicensed driver to operate the vehicle.

Thus, it seems clear that the owner's *knowledge* that the driver is a reckless and careless person is the vital feature in imposing common law liability on the owner.[35] Without a showing of such knowledge, the lack of a license is apparently immaterial. In the recent case, *Johnson* v. *Casetta*,[36] the driver *was* unlicensed, and had virtually no experience. There was no proof, however, that the defendants knew this or any facts from which they should have known of the inexperience or incompetency, or from which they should have been put upon inquiry as to his competency. Therefore, having no legal duty or obligation to inquire, there was no common law liability.[37]

Penal Liability

The general rule is that permitting an unlicensed driver to drive is not enough in itself to render the owner liable for any injurious consequences aside, of course, from the statutory liability of section 17150.[38] This is true even if the owner knew that the driver was unlicensed, if it be shown that the driver was *not* incompetent. However, violation of

[32] 116 Cal. App. 348, 2 P.2d 580 (1931).

[33] *Ibid.*

[34] *Ibid.*

[35] *Accord,* Owens v. Carmichael's U-Drive Auto Inc., 116 Cal. App. 348, 2 P.2d 580 (1931); Ormston v. Lane, 90 Cal. App. 481, 266 Pac. 304 (1928); Rocca v. Steinmetz, 61 Cal. App. 102, 214 Pac. 257 (1923).

[36] 197 Cal. App. 2d 272, 17 Cal. Rptr. 81 (1961).

[37] *Ibid.*

[38] *Accord,* Wysock v. Borchers Bros., 104 Cal. App. 2d 571, 232 P.2d 531 (1951); Hunton v. Portland Cement Co., 50 Cal. App. 2d 684, 123 P.2d 947 (1942); Strandt v. Cannon, 29 Cal. App. 2d 509, 85 P.2d 160 (1938).

section 14606[39] of the Vehicle Code, which prohibits one from knowingly permitting an unlicensed driver to drive his car, is a misdemeanor.[40] As such it is punishable by a fine not exceeding five hundred dollars or by imprisonment in the county jail for up to six months, or by both fine and imprisonment.[41]

Thus, even if incompetency of the unlicensed driver-permitee cannot be established—indeed, even if there is no damage done by the unlicensed driver—the owner who knowingly permits an unlicensed driver to drive is nevertheless subject to *penal* liability. Again it should be emphasized that, as there can be no *civil* liability, aside from section 17150, unless the owner *knows* of the incompetency of the driver (or knows of facts which would lead him to inquire as to competency as where he knows the driver to be unlicensed)[42] there is no *criminal* liability under section 14606 unless the owner *knows* the driver not to be licensed.[43]

In summary, it appears that the owner who permits a known incompetent to drive his car is civilly liable for damages resulting therefrom, either under the owner's liability statute or because of the common law liability for entrusting the car to a known incompetent. In addition, he may be criminally liable if it is found that he has entrusted his automobile to one known to be unlicensed.

The need for recognizing both theories of the owner's civil liability becomes abundantly clear when it is noted that vehicle code section 17151 limits the damages recoverable from the owner when liability is based solely upon section 17150.[44] The cases, however, seem to uphold the proposition that when the owner has entrusted his car to a known incompetent driver the damages recoverable are *not* limited by section 17151.[45]

In *Walling* v. *Rugen*[46] the plaintiff joined the car owner as defendant on the theory of imputed negligence under the car owner's liability statute, and pleaded a separate cause of action charging the car owner

[39] CAL. VEH. CODE § 14606.

[40] CAL. VEH. CODE § 40000. See also Annot., 137 A.L.R. 475 (1942); 6 CAL. JUR. 2d. *Automobiles* § 55 (1952).

[41] CAL. VEH. CODE § 42002.

[42] See note 35 *supra.*

[43] See Shifflette v. Walkup Drayage & Warehouse Co., 74 Cal. App. 2d 903, 169 P.2d 996 (1946); CAL. VEH. CODE § 14606: "No person shall *knowingly* permit. . . ." [Emphasis added.] See also, People v. Shapiro, 4 N.Y. 2d 597, 176 N.Y.S.2d 632, 152 N.E.2d 65, 69 A.L.R.2d 973 (1958). (Statute similar to CAL. VEH. CODE § 14606.)

[44] CAL. VEH. CODE § 17150.

[45] Caccamo v. Swanston, 94 Cal. App. 2d 957, 212 P.2d 246 (1949); Kanananakoa v. Badalamente, 119 Cal. App. 231, 6 P.2d 338 (1931).

[46] 3 Cal. App. 2d 471, 39 P.2d 827 (1935).

with independent negligence on the theory that he deliberately permitted a known incompetent driver to operate his car. The court recognized that one cause of action might be pleaded against the owner under the statute and another pleaded for negligence in permitting an incompetent to drive the car.[47] The court rejected the argument that, because the statute imposed liability on the owner in absolute terms, it would be error to instruct the jury that the owner might be liable under the separate theory of independent negligence in permitting an incomptent driver to drive the car.[48]

At least one California court has recently gone so far as to hold that an entrusting owner may be liable for damages to a guest riding with an incompetent driver where the owner knows of such incompetency.[49] This position is based on the theory that there is nothing inherent in the California guest statute[50] which insulates an owner of a vehicle from his own negligence in entrusting it to a known incompetent driver.[51] The owner in such a case is not charged with the *conduct* of the driver but incurs liability by his dispatching of the vehicle with a known incompetent driver.[52] The guest statute immunizes the owner where he would be vicariously liable for the driver's conduct because of the relationship of the parties, as principal-agent or because of imputed negligence under section 17150. The statute does *not,* however, "limit the common law liability of the owner for his own negligence as owner."[53]

Thus, clearly, the provisions of section 17150 relating to the primary liability of a non-negligent owner do not release him from common-law liability for his own negligence such as in lending the vehicle to a known incompetent or careless driver.[54]

Conclusion

The policy in California is manifestly oriented toward protecting the general public against the irresponsible lending and use of automo-

---

[47] *Ibid.*

[48] *Accord,* Weber v. Pinyan, 9 Cal. 2d 226, 70 P.2d 183 (1937); Caccamo v. Swanston, 94 Cal. App. 2d 957, 212 P.2d 246 (1949); Walling v. Rugen, 3 Cal. App. 2d 471, 39 P.2d 827 (1935).

[49] Nault v. Smith, 194 Cal. App. 2d 257, 14 Cal. Rptr. 889 (1961).

[50] CAL. VEH. CODE § 17158.

[51] Nault v. Smith, 194 Cal. App. 2d 257, 14 Cal. Rptr. 889 (1961).

[52] *Ibid.*

[53] Nault v. Smith, 194 Cal. App. 2d 257, 268, 14 Cal. Rptr. 889, 896 (1961), quoting Benton v. Sloss, 38 Cal. 2d 399, 403, 240 P.2d 575, 578 (1952).

[54] See Harrington v. Evans, 99 Cal. App. 2d 269, 221 P.2d 696 (1950).

biles. The owner who entrusts his car to another is liable for resultant damage in the following cases:

1) The owner who expressly or impliedly permits another to drive his car must answer in damages for any death or injury to property resulting from negligence in the operation of the vehicle by virtue of California Vehicle Code section 17150. The only requisites for liability are ownership and permission, which can be either express or implied. This liability exists irrespective of any principle of *respondeat superior* or negligence in the selection of the driver. The amount of damages recoverable are, however, limited.

2) The owner is subject to a common law liability for damages proximately caused by his negligence in allowing an incompetent operator to drive his automobile. This liability is not limited, nor is it abrogated, by the statutory liability. The owner must, however, know or have been put on notice of the driver's incompetency.

3) There may also be a penal sanction for violation of the statutory prohibition against entrusting an automobile to one who is unlicensed to drive.