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be interpreted solely with reference to the standard of excessive punishment. This interpretation has been made in the well-considered New York decisions.²⁴

Besides the above statute in the Education Code, California needs a specific statute in the Penal Code for schoolteachers which states that, subject to the limitation of excessiveness, the use of force by a schoolteacher upon a pupil is not unlawful. This proper legal conception of corporal punishment, in the light of the exigencies of mass education, has been set forth in the Pennsylvania decisions.²⁵

*Charles H. Carpenter**

²⁴ *People v. Baldini*, 4 Misc. 2d 913, 159 N.Y.S.2d 802 (Mt. Vernon City Ct. 1957); *People v. Newton*, 185 Misc. 405, 56 N.Y.S.2d 779 (White Plains City Ct. 1945); *People v. Petrie*, 120 Misc. 221, 198 N.Y. Supp. 81 (Herkimer County Ct. 1923).

²⁵ *Chodkowski v. Beck*, 106 Pittsb. Leg. J. 115 (C.P. Allegheny County Pa. 1957); *Appeal of Old Forge*, 43 Pa. D. & C. 167, 43 Lack. 187 (C.P. Lackawanna County 1941); *Rupp v. Zinter*, 29 Pa. D. & C. 625 (C.P. Montgomery County 1937).

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DUTIES OF A GENERAL CONTRACTOR UNDER THE CALIFORNIA LABOR CODE

The general contractor on a large construction site performs little, if any, of the actual work. His efforts are confined to organization and supervision of the work of the many subcontractors employed on the project, so that completion will be achieved on schedule and according to the specifications of the owner. The presence of many laborers working in close proximity to each other, under the direction of different subcontractors, leads inevitably to accidents on the site. The purpose of this note is to examine the duties of the general contractor to the employees of subcontractors. Non-statutory duties will be discussed as well as certain provisions of the California Labor Code which seem to affect these duties.

Master and Servant and the Independent Contractor

The existence of a master and servant relation imposes upon the master the common law duty to provide his servant with a reasonably safe place to work and reasonably safe appliances.¹ The subcontractor is subject to these duties,² but this is of little importance because of the immunity from common law liability afforded him by the Workmen's Compensation Act.³

¹ PROSSER, TORTS § 67 (2d ed. 1955).

² *Ibid.*

³ The Workmen's Compensation Act is set out in Divisions 4 and 4.5 of CAL. LABOR CODE; 55 CAL. JUR. 2d *Workmen's Compensation* § 10 (1960), discusses the exclusive character of the remedy where it is applicable.

The subcontractor may be liable, however, for injuries to employees of other subcontractors, but only when his own affirmative negligence can be shown.⁴

Under common law principles the general contractor is not subject to these duties to provide a safe place and safe appliances, as he is not the master of his subcontractor's employees.⁵ Nor is he subject to liability for the negligence of the independent subcontractor under the doctrine of *respondeat superior*, because he maintains no control over the operative details of the work.⁶ This ability of the general contractor to insulate himself from *respondeat superior* liability is subject to the rule that, in certain instances, his duty to exercise reasonable care in the protection of the subcontractor's employees is considered non-delegable.⁷ Furthermore, if the general contractor assumes responsibility for the direction of the work, he then becomes liable for failure to exercise reasonable care in the exercise of his responsibility.⁸

Invitor Duties

As possessor of the premises, the general contractor is subject to the duties of an invitor to all workmen on the construction site.⁹ By virtue of this relationship, the general contractor is under a duty to exercise ordinary care to keep the premises in a reasonably safe condition or to warn of dangers.¹⁰ The duty is not limited to dangers created by him or of which he has knowledge but includes those which by the use of reasonable care he should have acquired knowledge.¹¹ Hence, the general contractor may become liable to an employee of an independent contractor for injuries occasioned by a dangerous condition negligently created by another independent

⁴ A subcontractor's duty to the employees of other subcontractors is merely to act as a reasonable man under the circumstances. See *Johnson v. Nicholson*, 159 Cal. App. 2d 395, 324 P.2d 307 (1958); *Hayden v. Paramount Prods.*, 33 Cal. App. 2d 287, 91 P.2d 231 (1939); *Bleser v. Thomas Haverty Co.*, 3 Cal. App. 2d 199, 38 P.2d 873 (1934).

⁵ The master and servant relationship is similar in many ways to the employer-employee relationship under workmen's compensation. Regarding the importance of control over the putative servant or employee in determining the relationship see Comment, 10 U.C.L.A.L. Rev. 161, 168 (1960), for a discussion of the similarities; RESTATEMENT (SECOND), AGENCY § 220 (1958) lists the factors to be considered in determining the existence of these relationships.

⁶ Absence of control is the primary basis for determining the existence of an independent contractor. See PROSSER, TORTS § 64 (2d ed. 1955).

⁷ Thus where an ultrahazardous activity is involved, the general contractor is held to a duty of care toward the employee of the independent contractor, notwithstanding the existence of independent control. PROSSER, TORTS § 64 (2d ed. 1955). Further instances where the general contractor's duties have been held non-delegable and therefore to apply to the employee of an independent contractor have arisen when the work was done under a public license, where the general contractor created or allowed to be created a nuisance, and where the general contractor was under a duty to repair as owner of the premises. 2 WITKIN, SUMMARY OF CALIFORNIA LAW *Torts* § 312 (7th ed. 1960). Even at common law, one could not escape all liability by simply hiring another to do the work for him.

⁸ PROSSER, TORTS § 64 (2d ed. 1955).

⁹ *Florez v. Groom Dev. Co.*, 53 Cal. 2d 347, 1 Cal. Rptr. 840, 348 P.2d 200 (1960).

¹⁰ *Raber v. Tumin*, 36 Cal. 2d 654, 226 P.2d 574 (1951).

¹¹ *Austin v. Riverside Portland Cement Co.*, 44 Cal. 2d 225, 282 P.2d 69 (1955).

contractor.¹² If, however, the danger should be obvious to an employee, the general rule is that the invitor has no duty to warn.¹³ The question of obviousness is a question of fact to be decided by the jury.¹⁴

Labor Code Duties

The California Labor Code contains two definitions of employer and employee. For purposes of determining the existence of the employer-employee relationship for workmen's compensation coverage, an employer is defined in part as "Every person including any public service corporation, which has any natural person in service."¹⁵ An employee eligible for workmen's compensation benefits is ". . . every person in the service of an employer under any appointment or contract of hire or apprenticeship. . . ."¹⁶ These definitions are expressly confined to Division 4 of the Labor Code, which provides a system for determination and payment of workmen's compensation awards, but does not prescribe affirmative duties on an employer to take measures for assuring the safety of employees under his direction.

This latter function is performed by Division 5, entitled "Safety in Employment." In Part 1 of Division 5, entitled "Workmen's Safety," both employer and employee are defined more broadly than in Division 4. Section 6304 provides that employer includes ". . . every person having direction, management, control, or custody of any employment, place of employment, or any employee." An employee is defined in section 6305 as ". . . every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment."¹⁷ It was evidently the intention of the legislature to include within the employer-employee relationship, for purposes of protecting against employment injuries, persons who are not, with respect to each other, employer and employee in the traditional sense of those terms.

A general contractor on a construction project has custody of,¹⁸ and direction, management and control over, the construction site, which certainly qualifies as a place of employment. He would therefore seem to be an employer within section 6304. Since an employee of an independent subcontractor on a construction project is at least "in any place of employment" at the direction of "any employer," he would appear to be an employee within section 6305.

Under this interpretation, the "Workmen's Safety" provisions of the Labor Code impose on the general contractor statutory duties to take affirmative measures for the safety of all workmen on the construction site, in addition to his common law duties as invitor. Section 6400 requires the employer to

¹² See dicta in cases cited in notes 9-11 *supra*.

¹³ *Dingman v. A. F. Mattock Co.*, 15 Cal. 2d 622, 104 P.2d 26 (1940); PROSSER, TORTS § 78 (2d ed. 1955). The logic might as easily be that the employee is contributorily negligent or assumes the risk in such an instance.

¹⁴ *Dingman v. A. F. Mattock Co.*, *supra* note 13.

¹⁵ CAL. LABOR CODE § 3300.

¹⁶ CAL. LABOR CODE § 3351.

¹⁷ CAL. LABOR CODE § 6301 confines these definitions of employer and employee to Part 1 of Division 5, "Workmen's Safety."

¹⁸ This element of custody is the basis of the invitor duties discussed above; see note 9 *supra*.

furnish employees a safe place to work. Section 6401 provides that "Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes, which are reasonably adequate to render such employment and place of employment safe." It further provides that an employer ". . . shall do every other thing reasonably necessary to protect the life and safety of employees." Additional duties are provided by section 6500 which gives the Division of Industrial Safety the authority to promulgate safety orders regarding safety devices, safeguards, and methods of work.¹⁹ The safety orders enacted under this section of the Labor Code establish minimum standards of care²⁰ but do not abrogate any higher standards which may be fixed by custom or statute in a particular locality.²¹

A literal reading of sections 6304 and 6305 seems clearly to justify this broad interpretation. The California courts, however, have experienced some difficulty in determining whether and under what conditions a general contractor is a section 6304 employer subject to the broad duties of sections 6400 and 6401.

Enacted in 1917 and revised in 1937, the provisions seemingly went unnoticed by injured construction workers until 1952. The first appellate case to construe the "Workmen's Safety" sections was *Hard v. Hollywood Turf Club*,²² decided in that year. The plaintiff employee of a painting subcontractor was injured when the scaffold on which he was working collapsed. The scaffold had been erected by the plaintiff's immediate employer, the subcontractor, in violation of Labor Code sections 7151 and 7152, relating to safety in scaffolding. The injured workman sued the general contractor, alleging that he was an employer with the definition of section 6304 and therefore subject to the duties imposed by sections 6401, 7151, and 7152. The trial judge so instructed and the jury returned a verdict for the plaintiff.

In a lengthy opinion, the district court of appeal reversed on the limited basis that the general contractor was not subject to the duties imposed by the safety-in-scaffolding provisions. The court reasoned that the section 6304 definition of employer is confined by section 6301²³ to Part I of Division 5, while the scaffolding provisions are found in Part 3 of the division.²⁴

Although it did not so hold, the court must have assumed that the general contractor was an employer within section 6304, for otherwise there would have been no reason to dispose of the case on the particular basis which the

¹⁹ These safety orders are not directed specifically to the general contractor or to the subcontractor responsible for performance of the details of the work, but merely state how certain work should be done when it is undertaken. See 8 CAL. ADMIN. CODE §§ 3200-4207 (1955), for explanatory material and examples of safety orders.

²⁰ CAL. LABOR CODE § 6318.

²¹ *Campbell v. Fong Wan*, 60 Cal. App. 2d 553, 141 P.2d (1943).

²² 112 Cal. App. 2d 263, 246 P.2d 716 (1952). The case came up again on appeal under the same name, 134 Cal. App. 2d 174, 285 P.2d 321 (1955).

²³ CAL. LABOR CODE § 6301, in Part I of Division 5, states: "As used in this part, the terms described in the following sections shall have the meaning therein given them." (Emphasis added.)

²⁴ 112 Cal. App. 2d at 268, 246 P.2d at 721.

court utilized.²⁵ If the general contractor were not a section 6304 employer, there could have been no basis for imposing on him the duties prescribed by sections 7151 and 7152. The opinion is puzzling, however, because although the court apparently assumed that the general contractor was an employer within the definition of section 6304, it did not dispose of the plaintiff's contention that he was subject to the duties prescribed by section 6401, which does appear in Part 1 of Division 5.²⁶ The failure of the court in *Hard* to clearly express the rationale of its decision was especially unfortunate since the case was one of first impression.

The ambiguous opinion in *Hard* seems to have brought the possibility of recoveries from the general contractor under the Labor Code to the attention of injured workmen. After lying dormant for thirty-five years, the "Workmen's Safety" provisions of the Labor Code have been invoked in a number of cases since *Hard*, with varying degrees of success, in attempts to recover from the general contractor for employment injuries.

The first case to hold that the general contractor was a section 6304 employer was *Atherley v. MacDonald, Young & Nelson, Inc.*²⁷ In that case an employee of a subcontractor sued the general contractor to recover for an injury sustained when he fell down the stairs of a building under construction by the defendant. Plaintiff alleged that the general contractor was subject to stricter duties than those of an invitor: that he was subject to the broad duty to provide a safe place to work under section 6400 and subject to the minimum standards of a safety order which had been violated. The trial court gave instructions to this effect and the jury returned a verdict for the plaintiff.

The district court of appeal affirmed, holding that the general contractor was a section 6304 employer because there was "substantial evidence" that he had maintained "direction, management, control"²⁸ of the stairs where the plaintiff was injured. The court stated that these provisions were meant to impose greater duties on the general contractor than those to which he is subject as an invitor.²⁹ *Hard* was distinguished on the basis that in that case there had been no evidence of any control by the general contractor over the employees of the subcontractor, nor did the general con-

²⁵ By way of dictum the court stated that it would impose an "extremely onerous burden" upon the general contractor to hold him liable for the negligence of subcontractors in failing to comply with safety provisions. 112 Cal. App 2d at 271, 246 P.2d at 722.

²⁶ On consolidation and subsequent appeal the plaintiff employee of the subcontractor urged that the earlier decision had done no more than hold that sections 7151 and 7152 were not applicable, and he suggested that section 6401 did impose a statutory duty on the general contractor. The court agreed that the first case had made only the limited holding but declined to consider whether section 6401 would apply. 134 Cal. App 2d 174, 285 P.2d 321, *supra* note 22.

²⁷ 142 Cal. App. 2d 575, 298 P.2d 700 (1956).

²⁸ *Id.* at 582, 298 P.2d at 705. A subcontractor had left the stairs in the dangerous condition in violation of the safety order but had finished his work, so informed the general contractor, and returned custody to the general contractor whose duty it was to finish the work and make the stairs safe. See also *Jean v. Collins Constr. Co.*, 215 Cal. App. 2d 410, 30 Cal. Rptr. 149 (1963).

²⁹ 142 Cal. App. 2d at 581, 298 P.2d at 704.

tractor have anything to do with the construction of the scaffold. This is quite true, but absence of control was not the basis of the *Hard* decision.³⁰ Though the general contractor might have been held liable as an invitor, *Atherley* must be taken to stand for the proposition that a general contractor will be subjected to Labor Code duties to employees of a subcontractor when he exercises or assumes control, presumably more than mere supervisory control, over the particular area on the site in which the employee is injured.

The next significant development occurred in *Gonzales v. Robert J. Hiller Constr. Co.*,³¹ where the district court of appeal once again held a general contractor subject to Labor Code duties to an employee of a subcontractor. The action was brought by the widow of an employee of a subcontractor engaged in installing reinforcing steel in a building under construction by the defendant general contractor. The decedent was working on the second floor of the building, which at that time was a framework of steel beams. He was struck by a metal pan which had fallen down the outside of the building from the seventh floor and had been deflected into the building where it struck the deceased. The pan had been used by a flooring subcontractor as a form for concrete which had been poured on the seventh floor. It was the procedure of the flooring subcontractor to knock these pans loose when the concrete was almost dry and let them fall to a scaffold immediately below. The scaffold was poorly constructed so that the fatal pan fell through it and out of the building.

It appeared that the general contractor's supervisor knew of the flooring subcontractor's dangerous method of removing the pans and had failed to provide any kind of a protective device around the outside of the building, though another workman had been injured by a falling object some weeks earlier. However, it did not appear that the general contractor had exercised any more than general supervisory control over the flooring subcontractor. He did not direct the subcontractor in performing the operative details of the work,³² which is the traditional basis on which the courts have held an employer accountable for the negligence of an independent contractor.³³

Nevertheless, the court affirmed the judgment for the plaintiff,³⁴ holding that the general contractor had breached the duties imposed on him by section 6400 in failing to provide the decedent with a safe place in which to work. The court quoted verbatim sections 6304, 6400, and 6401 and stated that "These statutes apply to the general contractor."³⁵ Thus without

³⁰ See note 24 *supra*.

³¹ 179 Cal. App. 2d 522, 3 Cal. Rptr. 832 (1960).

³² The general contractor's supervisor had "watched the operations" of the subcontractor on the day of the accident. *Id.* at 531, 3 Cal. Rptr. at 837.

³³ PROSSER, TORTS § 64 (2d ed. 1955).

³⁴ The trial below was before a court sitting without a jury so that there was no question concerning instructions, as there was in *Hard*, *supra* note 22, and in *Atherley*, *supra* note 27.

³⁵ 179 Cal. App. 2d at 530, 3 Cal. Rptr. at 837. The court cited three cases for this proposition. The first was *Atherley v. MacDonald, Young & Nelson, Inc.*, 142 Cal. App. 2d 575, 298 P.2d 700 (1956), *supra* note 27, in which control by the general contractor

even considering whether the general contractor had exercised more than general supervisory control over the work, the court found that he was subject to Labor Code duties.³⁶ The case appears to go beyond *Atherley* to hold that a general contractor is subject in all cases to Labor Code duties to employees of subcontractors. However, any value which *Gonzales* may have as precedent for such a proposition was nullified by the supreme court in *Kuntz v. Del E. Webb Constr. Co.*³⁷

Kuntz was a case similar in many significant respects to *Gonzales*. The plaintiff was an ironworker employed by a subcontractor in the construction of a building under the supervision of the general contractor. He sued the general contractor for injuries sustained when steel decking panels, negligently laid by a flooring subcontractor, gave way beneath him, precipitating him to the floor below. The general contractor had not assumed direct supervision over the operations of the flooring subcontractor but, as in *Gonzales*, he was aware of the method used in installing the panels. In fact, the general contractor's supervisor had been informed by a state safety engineer that the decking was being laid in an improper manner, but he had failed to communicate this information to the flooring subcontractor. As "generalissimo"³⁸ of the project, he could of course have compelled the subcontractor to discontinue the unsafe practice.

Admitting that the Labor Code was applicable in certain situations to a general contractor, and that its effect was to impose greater duties than common law invitor duties, the supreme court nevertheless reversed the judgment for the plaintiff because the trial court had instructed that the general contractor was subject to Labor Code provisions. The court found

was the ostensible basis of the decision. The other two cases dealt with the application of Labor Code provisions to owners and not general contractors. In *Johnson v. A. Schilling & Co.*, 170 Cal. App. 2d 318, 339 P.2d 139 (1959), *rev'd on other grounds*, 194 Cal. App. 2d 123, 14 Cal. Rptr. 684 (1961), the provisions were applied to an owner who had turned the premises over to the contractor when they were in an unsafe condition. The employee of the contractor was injured because of this danger. In *Maia v. Security Lumber & Concrete Co.*, 160 Cal. App. 2d 16, 324 P.2d 657 (1958), the employee of a subcontractor was injured by the active negligence of an employee of the owner who had maintained custody of the premises.

³⁶ Despite the language of *Atherley*, *supra* note 35, which is one of the leading cases in this field, the Labor Code cases have not always turned on the basis of the general contractor's control. The *Schilling* case, *supra* note 35, held an owner subject to Labor Code provisions who had relinquished control but had left a latent danger on the premises. In *Delgado v. W. C. Garcia & Associates*, 212 Cal. App. 2d 5, 27 Cal. Rptr. 613 (1963), the court held the general contractor to the duties of the Labor Code because he had contracted at the beginning of the project that he would comply with all applicable safety provisions. In *Seckler v. Yamin*, 212 Cal. App. 2d 67, 27 Cal. Rptr. 711 (1963), the court held the general contractor liable under the provisions because he had given the subcontractor a general plan which was unsafe, rather than on any showing that he maintained control over the operative details of the work.

³⁷ 57 Cal. 2d 100, 18 Cal. Rptr. 527, 368 P.2d 127 (1961).

³⁸ *Hard v. Hollywood Turf Club*, 112 Cal. App. 2d 263, 269, 246 P.2d 716, 720 (1952), *supra* note 22. The use of this word is indicative that the courts recognize that the general contractor has a great deal of control over subcontractors if he wishes to exercise it.

that there was sufficient evidence in the record to sustain a judgment based on the defendant's breach of his duty as invitor to use reasonable care in maintaining the premises in a safe condition, but held that it was error to instruct that the defendant was subject to the Labor Code duties.

The court expressed agreement with the dictum in *Hard* that to enforce Labor Code duties against the general contractor would be to place an "extremely onerous burden"³⁹ upon him, and reasoned that the Labor Code was intended to apply to a general contractor who exercised more than "general supervision and control"⁴⁰ over the work. For this proposition, the court relied on *Hard*, noting that there the court had held that the "safety provisions of the code relating to the work done by the subcontractor were not applicable in determining the [general contractor's] liability."⁴¹ This is not an accurate statement of the holding in *Hard* for it will be remembered that there the court decided merely that the general contractor was not subject to the specific scaffolding provisions of sections 7151 and 7152,⁴² without deciding the question whether he was subject to the more general duties of sections 6400 and 6401.

The supreme court agreed with *Atherley* that control was the determining factor and distinguished *Gonzales* on the basis that there the general contractor had agreed with the negligent subcontractor on the dangerous method employed. Since an agreement would be merely evidence that the general contractor had exercised control over the manner in which the subcontractor had performed the work, and since *Gonzales* did not consider the question of control, *Kuntz* is in effect a rejection of *Gonzales*.⁴³ This pronouncement by the supreme court in *Kuntz* established that, despite the broad definition of employer in section 6304, a general contractor is subject to Labor Code duties only when he exercises control over the manner in which the work is performed.

The Problem of Control

The effect of the *Kuntz* decision, that a general contractor is subject to Labor Code duties only when he exercises more than general supervisory control, is to make the Labor Code of limited usefulness to employees of subcontractors. Whether the general contractor in the particular case exercises more than general supervisory control will often be a difficult question of fact, which should be decided by the jury. Since the supreme court did not say what constitutes sufficient control, presumably the test is much like that used in determining whether an employee is an independent contractor so as to insulate the employer from liability under the doctrine of *respondeat*

³⁹ 57 Cal. 2d at 107, 18 Cal. Rptr. at 531, 368 P.2d at 131. See note 25 *supra*.

⁴⁰ *Id.* at 106, 18 Cal. Rptr. at 531, 368 P.2d at 131.

⁴¹ *Id.* at 107, 18 Cal. Rptr. at 531, 368 P.2d at 131.

⁴² See note 24 *supra*.

⁴³ *Kuntz v. Mitchell Steel, Inc.*, 14 Cal. Rptr. 881 (Cal. Ct. App. 1961), is the district court of appeal treatment of the case eventually reaching the supreme court. This opinion contains a good discussion of the Labor Code cases up to that time, including *Hard*, *Atherley*, and *Gonzales*. The court criticized *Gonzales*, pointing out that by failing to discuss the element of control the *Gonzales* court had ignored the distinction which *Atherley* made so important in holding the general contractor to Labor Code duties.

superior.⁴⁴ This means that the jury should be instructed that the general contractor is an employer within the definition of section 6304 and subject to the duties imposed by Part 1 of Division 5 if he exercises control over the operative details of the work.⁴⁵ Without an instruction to the jury to determine this question of fact, the plaintiff-employee of the subcontractor faces the possibility of reversal of a judgment on a verdict in his favor in a higher court any time he brings his action against the general contractor on the basis of these Labor Code duties.⁴⁶

Apparently the court in *Kuntz* was concerned that if it held the general contractor to be subject to the duties imposed by Part 1 of Division 5 in all cases, it would subject him to vicarious liability for the negligence of any subcontractor on the job. But a careful reading of the provisions shows that they do not place an absolute duty upon the section 6304 employer to provide a safe place for all employees on the construction site. The duty to furnish a safe place to work does not expose the employer to liability for every accidental injury occurring on the premises, for the duty merely contemplates the use of reasonable care.⁴⁷ Thus the general contractor, even if subject in all cases to Labor Code duties, would be liable only for his own negligence in failing to inspect and correct defective conditions and practices of which he has or reasonably should have knowledge. In addition to being under the common law duty of an invitor, the general contractor would be under a statutory duty to exercise reasonable care to maintain a safe place to work and comply with applicable safety orders.

The effect of imposing these statutory duties upon the general contractor would be to give the plaintiff employee a procedural advantage. Provisions of the Labor Code and the safety orders enacted thereunder receive judicial notice by the courts.⁴⁸ In accordance with the general rule in California, a violation of these provisions gives rise to a rebuttable presumption of negligence.⁴⁹ This presumption is evidence sufficient to sustain a verdict even in the face of conflicting evidence.⁵⁰ The effect of the presumption is to shift the burden of going forward with the evidence to the defendant

⁴⁴ RESTATEMENT, TORTS § 414 (1934), deals with the element of control in determining whether there is an independent contractor relationship.

⁴⁵ See Cal. Jury Instructions, Civil No. 54-F (1958), for the approved instruction under which the jury determines the existence of an independent contractor or agency relationship.

⁴⁶ See, e.g., *Kuntz v. Del E. Webb Constr. Co.*, 57 Cal. 2d 100, 18 Cal. Rptr. 527, 368 P.2d 127 (1961); *Hard v. Hollywood Turf Club*, 112 Cal. App. 2d 263, 246 P.2d 716 (1952).

⁴⁷ The definition of "safe" and "safety" in CAL. LABOR CODE § 6310 are also couched in terms of reasonable care.

⁴⁸ CAL. CODE CIV. PROC. § 1875 provides that statutes receive judicial notice. Construction safety orders were held to receive judicial notice in *Martin v. Food Machinery Corp.*, 100 Cal. App. 2d 244, 223 P.2d 293 (1950).

⁴⁹ *Satterlee v. Orange Glenn School Dist.*, 29 Cal. 2d 581, 177 P.2d 279 (1947). Statements that violation of a safety statute is negligence as a matter of law appear in many Labor Code cases. See, e.g., *Atherley v. MacDonald, Young & Nelson Inc.*, 142 Cal. App. 2d 575, 298 P.2d 700 (1956).

⁵⁰ 18 CAL. JUR. 2d *Evidence* § 67 (1954).

general contractor.⁵¹ Evidence that, despite violation of the statutory duty, his conduct was that of a reasonable man is sufficient to rebut the presumption and sustain a verdict in his favor.⁵²

The Labor Code provisions would also be of advantage to the injured workman because it is easier to establish negligence from breach of a specific statutory duty than it is to prove it by means of a more broad "duty of care," in the face of what may often be conflicting expert testimony. These rules of evidence would not be unduly harsh on the general contractor, for even where the plaintiff employee is able to establish negligence under the broad Labor Code provisions or a specific safety order, the general contractor will have available the defense of contributory negligence, though assumption of risk is not available to him where violation of a safety statute is involved.⁵³

Conclusion

By imposing Labor Code duties on a general contractor only when he exercises more than general supervisory control over the work of subcontractors, the supreme court has failed to abide by clear legislative intent. Furthermore, the court has overlooked the realities of the construction industry by reasoning that it would be an "onerous burden" to subject the general contractor to the duty of complying with the statutory provisions and safety orders. As the court stressed in *Gonzales v. Robert J. Hiller Constr. Co.*,⁵⁴ the general contractor as overseer of the project is in a position to insure compliance with safety provisions by his subcontractors. His standing as supervisor and co-ordinator should enable him to discover methods which, while safe for the employees of one subcontractor, may be unsafe for the employees of others on the construction site. Placing the general contractor under an affirmative duty to provide all workmen on the site with a safe place to work should have a recognizable effect in deterring construction accidents. Whatever burden this would impose on the general contractor would surely be outweighed by the benefits to the industry from prevention of accidents.

James B. Cuneo*

⁵¹ *Ibid.*

⁵² *Ornales v. Wigger*, 35 Cal. 2d 474, 218 P.2d 531 (1950).

⁵³ *Mula v. Meyer*, 132 Cal. App. 2d 279, 282 P.2d 107 (1955).

⁵⁴ 179 Cal. App. 2d 522, 3 Cal. Rptr. 832 (1960), *supra* note 31.

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