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Imputed Negligence in South Carolina

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LAW NOTES

IMPUTED NEGLIGENCE IN SOUTH CAROLINA

Scope of Note

Imputed negligence will bar a recovery when the person suffering the injury, although not personally chargeable with negligence, has been exposed to the injury by the negligence of a person in privity with him and with whose fault he is chargeable. This privity is said to be present when it is found that the person guilty of negligence is the agent, servant, partner or joint adventurer of the person injured. The problem facing the court is to determine when these relationships exist. The purpose of this note is to discuss how the courts have answered this question.

History

The theory of imputed negligence had its origin in England in the year 1849 in the case of *Thorogood v. Bryan.*[1] This case involved two omnibuses: omnibus A in which the decedent was riding and omnibus B which struck and killed the decedent. The action was brought by the decedent's wife as administratrix against the owner of omnibus B for damages sustained by reason of the death of her husband resulting from the negligence of the driver of the defendant's omnibus and that of the driver of the omnibus in which the decedent had been riding. The driver of omnibus A allowed the decedent to alight on the public highway while the vehicle was still in motion instead of at the curb. As a result, omnibus B, which was being negligently driven by the defendant's servant, struck and so seriously injured the decedent that he died thereafter. The trial court instructed the jury to the effect that if want of care on the part of the driver of omnibus A in not drawing up to the curb had been conducive to the decedent's injury, notwithstanding the defendants servant's negligence, their verdict must be for the defendant. These instructions were affirmed on appeal, the court's reasoning being based upon the theory referred to as "identification", that is, that since a passenger in a vehicle has trusted the owner and his servants by selecting the particular conveyance, he so far identifies himself with them that if any injury results from their negligence he is to be considered a party to it. In other words, the passenger is so far identified with the carriage in which he is traveling, that want of care on the part of the driver thereof will be a defense to a negligent third party in an action

1. 8 C. B. 115, 137 Eng. Rep. 452 (C. P. 1849).

by the passenger for personal injuries. The question of the decedent's personal negligence was not discussed by the court, but it is clear that he also was guilty of some negligence in alighting from the omnibus before it halted. It would seem, therefore, that the court reached a just result as to the parties involved, since the decedent's own negligence proximately contributed to his fatal injury, but the rule as laid down flatly held that the plaintiff would be barred whether personally negligent or not.

At the beginning the rule of imputed negligence was accepted to some extent in both the United States and England,[2] yet most of the courts that adopted its result had difficulty rationalizing the "identification" theory as set out in the *Thorogood* case.[3] But from an examination of these cases it would seem that this theory was in fact the basis for their decisions.[4] It was not long before the *Thorogood* rule began receiving waves of criticism on both sides of the Atlantic. The critics were quick to point out that there was no ground upon which this identification could rest, since the passenger in no way exercised any control over or interfered with the driver of the conveyance.[5] In 1886 the rule that the contributory negligence of a third party would be imputed to the plaintiff on the mere theory of identification was expressly rejected by the United States Supreme Court in the case of *Little v. Hackett,*[6] and the same rule was repudiated in England the following year.[7] But even with such a stormy career, the result which grew from the identification theory nevertheless became firmly imbedded in several jurisdictions of this country, and it was not until 1946 that the state of Michigan, the last state to do so, finally discarded the rule which automatically barred the plaintiff's recovery by imputing the negligence of the third person to him.[8]

2. Lockhart v. Lichtenthaler, 46 Pa. 151 (1863); Prideaux v. Mineral Point, 43 Wis. 513 (1878); Armstrong v. Lancashire & Y. Ry. Co., L. R. 10 Exch. 47 (1875).

3. Lockhart v. Lichtenthaler, *ibid.;* Armstrong v. Lancashire & Y. Ry., *ibid.*

4. Lockhart v. Lichtenthaler, note 2 *supra.* In Armstrong v. Lancashire & Y. Ry., note 2 *supra,* the court thus commented on the *Thorogood* case: "The only difficulty in it arises from the use of the word 'identified' in the judgment. If it is to be taken that by the word 'identified' is meant that the plaintiff, by some conduct of his own, as by selecting the omnibus in which he was traveling, has acted so as to make the driver his agent, this would sound like a strange proposition which could not be entirely sustained. But what I understand it to mean, is that the plaintiff, for the purposes of the action, must be taken to be in the same position as the owner of the omnibus or his driver." (Pollock, B.).

5. Little v. Hackett, 116 U. S. 366 (1886).

6. *Ibid.*

7. Mills v. Armstrong, 13 App. Cas. 1 (House of Lords 1887).

8. Bricker v. Green, 313 Mich. 218, 21 N. W. 2d 105, 163 A. L. R. 697 (1946).

THE RULE AS IT STANDS TODAY

The general rule as it stands today is that the negligence of another will not be imputed to a party if he neither authorizes such conduct, nor participates in it, nor has the right or power to control it.[9] On the other hand, the negligence of the third person will be imputed to the plaintiff if it can be established that the plaintiff has control or the right of control of the negligent party, or if it can be said that the parties are engaged in the commission of a joint enterprise.[10]

CONTROL OR RIGHT TO CONTROL

The most important element today which must be present before the court will impute the negligence of one party to another is control of, or the right to control, the actions of the negligent party by the other, so as to constitute in fact the relationship of master and servant or principal and agent. In other words, if the party injured has any right to control, interferes with, or actually controls the negligent party, the negligence of the third party is imputed to the injured party. The element of control runs throughout the law of imputed negligence. If it is determined that the element of control is present to the necessary degree, then control alone is sufficient to impute the negligence of the third party to the plaintiff. But if it is determined that the element of control is lacking in the degree necessary to impute negligence, then the court will look further to see if there exists a common purpose, and if it does, then this common purpose is combined with the degree of control found to establish a joint enterprise. But in any case, the element of control must be present before one person's negligence can be imputed to another. It has been held that where the plaintiff was driving a car owned by her father, as she frequently did, and permitted a friend whom she met along the way to drive while she sat beside him, his negligence was imputed to her since she at all times had the legal right to direct the car to be stopped or to be driven where or as she wished. The young man, whom she had invited to ride with her, in undertaking to do the mechanical work of driving, was acting for her.[11] But this case can be criticized, for it is very doubtful if the girl actually exercised any control over her friend. Also, where the plaintiff was injured while riding in his own car driven by his nephew at the request of the

9. Richmond v. Va. Bonded Warehouse Corp., 148 Va. 60, 138 S. E. 503 (1927).
10. Nesbit v. Garner, 75 Iowa 314, 39 N. W. 516, 9 Am. St. Rep. 486, 1 L. R. A. 152 (1888).
11. Atchison, T. & S. F. Ry. v. McNulty, 285 Fed. 97 (8th Cir. 1922).

plaintiff and under his direction, the contributory negligence of the nephew under such a relationship was imputed to the plaintiff.[12] But the relation of master and servant was held not to exist between a physician and the driver of a coach hired of the owner by the physician to drive him to a patient.[13]

COMMON OR JOINT ENTERPRISE

The other frequent basis used by the courts to impute negligence to the plaintiff is the common or joint enterprise. This requirement represents a partial revival of the *Thorogood* idea since both doctrines impute the negligence of one person to another on some theory of agency. The joint or common enterprise is something like a partnership,[14] although it is more limited in time and purpose.[15] It is an undertaking to carry out a small number of acts or objectives, which are entered into by associates under such circumstances that each has an equal voice in directing the conduct of the enterprise.[16] The law then considers that each is the agent or servant of the other and that the acts of any one within the scope of the enterprise are to be charged vicariously to the rest.[17]

The rule is generally stated that if two or more persons unite in the joint prosecution of a common purpose under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means or agencies employed to execute the common purpose, the negligence of one in the management thereof will be imputed to the others.

Today, the question of imputed negligence most frequently arises in motor vehicle cases. In the case of *Lusk v. State Highway Dept.*,[18] Mr. Justice Baker thus set out the general rule of joint enterprise:

> . . . the negligence of the driver of a motor vehicle would not be imputed to a person riding in the car unless such person controls the driver or had the right to do so . . . .

But Mr. Justice Baker went on to say that in his opinion the general rule was much too narrow and that the rule should be

> that where two or more persons plan a trip with a common purpose of pleasure or profit, and are familiar with the conditions which obtain or may obtain in connection with the trip, and with

12. Beck v. Hooks, 218 N. C. 105, 10 S. E. 2d 105 (1940).
13. Sluder v. St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648, 5 L. R. A. (N. S.) 186 (1905).
14. Kokesh v. Price, 136 Minn. 304, 161 N. W. 715 (1917).
15. Hobart-Lee Tie Co. v. Grodsky, 329 Mo. 706, 46 S. W. 2d 859 (1931).
16. Long v. Carolina Baking Co., 190 S. C. 367, 3 S. E. 2d 46 (1939).
17. Howard v. Zimmerman, 120 Kan. 77, 242 Pac. 131 (1926).
18. 181 S. C. 101, 186 S. E. 786 (1936).

> the means of transportation that will be employed, and with the person who will have control of the vehicle in which they are riding, and voluntarily takes the trip knowing the dangers and hazards that may be incident thereto, they are engaged in a joint enterprise and the negligence of the person in control of the vehicle is and should be imputed to each person engaged in the trip and riding in the vehicle used.

In the case of *Funderburk v. Powell*,[19] decided during the same term of court as the *Lusk* case, it would seem that our Court followed the "Baker rule" to some extent, for emphasis was placed on the common purpose, the Court saying that

> . . . the parties must have some common purpose of pleasure or profit and must be acting toward the accomplishment of such purpose at the time when the relationship is sought to be established in order to constitute a joint enterprise.

Mr. Justice Baker concurred in the result of this case, but instead of relying on the rules as laid down in the majority opinion, he applied his broader "common purpose" test as set out in the *Lusk* case and reached the same conclusion. In the later case of *Long v. Carolina Baking Co.*[20] the South Carolina Court said that the test as to a joint enterprise was ". . . whether or not the occupants were jointly operating and controlling the movements of the automobile." In the case of *Padgett v. Southern Ry.*[21] the rule that was said to be supported by the greater weight of authority and to have the approval of our Court was set out by Mr. Chief Justice Baker as follows:

> In order to constitute a joint enterprise there must be a common purpose and a community of interest in the object of the enterprise and an equal right to direct and control the conduct of each other with respect thereto. In other words, the passenger as well as the driver must be entitled to a voice in the control and direction of the vehicle. There must be a community in the object and purpose of the undertaking and an equal right to direct and govern the movements and conduct of each other in respect thereto. Each must have the control of the means or agencies employed to prosecute the common purpose.

It would seem that Chief Justice Baker had yielded to the greater

19. 181 S. C. 412, 187 S. E. 742 (1936).
20. 190 S. C. 367, 3 S. E. 2d 46 (1939). Although this case was based upon North Carolina law, it was stated (190 S. C. at 372) that the Supreme Court of that state was committed to substantially the same general rule which is followed in South Carolina.
21. 219 S. C. 353, 65 S. E. 2d 297 (1951).

weight of authority, for he said that if he had applied his "common purpose" test of joint enterprise as set out in the *Lusk* case to this particular case, the trial court would have been warranted in submitting the issue of joint enterprise to the jury; but under the prevailing view there were insufficient facts to go to the jury on the issue of joint enterprise, for even though there was a common purpose, there was no equal right of control.[22] And in the case of *Rock v. A. C. L. R. R.*[23] the South Carolina Court again said that there must be a common purpose and a community of interest in the object of the enterprise and an equal right to direct and control the conduct of each other with respect thereto. From these decisions it can be seen that today our Court follows the general rule, requiring that there be a common purpose *and a right of control* before a joint enterprise will be found to exist. But as to the weight given to each of these elements by the Court, there is little doubt that the element of control tends to be greater.

The following cases illustrate the weight given to the element of control and show that its presence or absence is controlling. It has been held that a mere guest or gratuitous passenger riding with the operator of a conveyance by invitation was not engaged in a common or joint enterprise even though the guest asked to be driven to a certain place, indicated the route to be taken, or pointed out the dangers to be encountered.[24] Also a husband and wife were held not to be engaged in a joint enterprise while riding in the family automobile for the purpose of taking their children for a pleasure ride and "airing", the Court holding that there may have been a common enterprise as to the object of the trip, but not as to the control and management of the vehicle.[25] The same result was reached where a basketball coach was driving some guests to an out of town game and paying the expenses. The Court held that a common enterprise in riding is not enough; the circumstances must be such as to show that the plaintiff and the driver had such control over the car as to be substantially in joint possession of it.[26] There is also no joint enterprise between a hired driver and his passenger since neither was interested in the other's purpose of the trip.[27] But in the case of *Flo v. Plowden*[28] where a brother, who was visiting his sister, set out with

22. *Id.*, 219 S. C. at 358.
23. 222 S. C. 362, 72 S. E. 2d 900 (1952).
24. Key v. Carolina & N. W. Ry., 165 S. C. 43, 162 S. E. 582 (1931).
25. Fuller v. Mills, 36 Ga. App. 357, 136 S. E. 807 (1927).
26. Newman v. Queen City Coach Co., 205 N. C. 26, 169 S. E. 808 (1933).
27. Funderburk v. Powell, note 19 *supra;* Cotton v. Willmar, 99 Minn. 366, 109 N. W. 835 (1906).
28. 192 F. 2d 291 (4th Cir. 1951).

her in her automobile to find a job for himself, the Court of Appeals for the Fourth Circuit held that there was a joint enterprise, thus barring the sister's estate from recovery. It seems that the brother was unfamiliar with the roads and was following the sister's directions; from this fact the Court found an equal right of control. It was also held that there was a common purpose to be gained from the trip, for the sister would surely be interested in helping her brother obtain a job, and even more so since he had been a non-paying guest at her home for some time. Also, in the earlier case of *Langley v. Southern Ry.*[29] it was held that where one is driving a car by the common consent of the others and is heedful of the directions of those sitting beside and behind him, the management of the automobile is the concurrent act of the driver and the occupants, and they are responsible for his negligence while all are traveling in the automobile for pleasure.

The doctrine of joint enterprise whereby the negligence of one member of the enterprise is imputed to the others, resting as it does upon an agency relationship, does not apply in actions between members of the joint enterprise, and therefore does not prevent one member of the enterprise from holding another member liable for personal injuries inflicted by the latter's negligence in the prosecution of the enterprise. This defense is applicable only as regards third persons and not as to parties to the enterprise.[30]

MOTOR VEHICLES

As previously pointed out, in the great majority of cases in which the rule of imputed negligence is applied, the plaintiff's injuries have been caused by the negligence of both the defendant and the third person who operated the motor vehicle in which the plaintiff was riding. The plaintiff will not be barred unless it can be established by applying the alternative tests of control or joint enterprise that the plaintiff is connected with the third person.[31]

The doctrine that the negligence of the driver of a public conveyance is to be imputed to the passenger who rides in it is no longer the law today.[32] A person who hires a public hack and gives the driver directions as to the place to which he wishes to go, but exercises no control over the conduct of the driver, is not responsible for

29. 113 S. C. 45, 101 S. E. 286 (1919).
30. McJunkin v. Waldrep, 225 S. C. 73, 81 S. E. 2d 284 (1954).
31. Miller v. A. C. L. R. R., 140 S. C. 123, 138 S. E. 675 (1926); Bober v. Southern Ry., 151 S. C. 459, 149 S. E. 257 (1929).
32. Odom v. A. C. L. R. R., 193 N. C. 442, 137 S. E. 313 (1937); Cotton v. Willmar, 99 Minn. 366, 109 N. W. 835 (1906).

the driver's acts or negligence; nor is the plaintiff prevented from recovering against the defendant for injuries suffered from a collision of its train with the hack caused by the negligence of both the managers of the train and the driver of the hack;[33] and this was the position taken by the South Carolina Court in the case of *Dozier v. Charleston Consol. Ry.*,[34] where the negligence of a cab driver was not imputed to his passenger.

Originally a distinction was made between private conveyances and those for hire, but this is no longer observed. Nearly all the courts have expressly and unmistakably repudiated the doctrine that the contributory negligence of the driver of a private conveyance will be imputed to a person riding in the conveyance with him because of the mere fact of his riding in the vehicle.[35] The law now almost universally recognized is that when one accepts an invitation to ride in a vehicle of another, or is a passenger for hire therein, without any authority or purpose to direct or control the driver or the movements of the vehicle and without any reason to doubt the competency of the driver, the contributory negligence of the owner or driver of the conveyance will not be imputed to the guest or passenger so as to bar him of the right to recover damages from third persons.[36] In the case of *Key v. Carolina & N. W. Ry.*,[37] Mr. Chief Justice Blease quoted the rule from *Corpus Juris* with approval:

> . . . a mere guest or gratuitous passenger riding with the driver of a motor vehicle by invitation is not engaged in a common enterprise with the driver and this was so notwithstanding the fact that the guest asked to be driven to a certain place, indicated the route to be taken, pointed out the dangers to be encountered, or that both parties had certain plans in common.

In the situation where the owner of the automobile is present in it but someone else is driving it at the time the act of negligence is committed, the law of imputed negligence has not yet been completely settled. The view which seems to be followed by many of the courts is that the owner's presence raises a rebuttable presumption that the driver is the agent of the owner.[38] In an action against the owner of

33. Little v. Hackett, 116 U. S. 366 (1886); Duval v. A. C. L. R. R., 134 N. C. 331, 46 S. E. 750, 65 L. R. A. 722 (1904).
34. 133 S. C. 335, 131 S. E. 592 (1926).
35. Southern Ry. v. King, 128 Ga. 383, 57 S. E. 687 (1907); Brannen v. Kokomo, 115 Ind. 115, 17 N. E. 202 (1888).
36. Latimer v. Anderson County, 95 S. C. 187, 78 S. E. 879 (1913); Bolt v. Gibson, 225 S. C. 538, 83 S. E. 2d 191 (1954).
37. 165 S. C. 43, 162 S. E. 582 (1931).
38. Harper v. Seaboard A. L. Ry., 211 N. C. 398, 190 S. E. 750 (1937) (dictum); Thompson v. Malone, 16 Tenn. App. 152, 65 S. W. 2d 1079 (1932) (holding). *But see* Southern Ry. v. Priester, 289 Fed. 945 (4th Cir. 1923).

an automobile to recover for an injury resulting from its negligent operation by a third person while the owner was riding therein, our Court held that the question of agency of the driver is to be determined from all the facts and circumstances of the case.[39] If the owner is not present, but entrusts the automobile to a driver who is not his servant, there is merely a bailment, and usually no basis can be found for imputing the negligence of the bailee to the bailor. It was held in the recent South Carolina case of *Howle v. McDaniel*[40] that the negligence of a bailee would not be imputed to his bailor.

If the driver is, perchance, the child of or a member of the owner's family, then the owner may be held responsible for the negligence of that person in the operation of the vehicle on the theory of the family purpose doctrine; and under such circumstances it is not even necessary for the owner to be present.[41] The family purpose doctrine is recognized in South Carolina.[42]

Domestic Relations

Attempts to impute the negligence of one member of a family to his fellow member, simply because of the relationship, have uniformly failed. But this rule may be otherwise where a parent is attempting to recover damages for loss of services or for medical expenses incurred because of an injury negligently inflicted to its child by a third person.[43]

There seems to be little or no dissent from the proposition that the negligence of the husband is not to be imputed to the wife, nor that of the wife to the husband, unless they are engaged in an enterprise giving the husband or the wife the right to control the acts or omissions of the other which contributed to the cause of the injury. It may be said with reasonable certainty that South Carolina would follow the rule that the mere existence of the marital status would not have the effect of imputing the negligence of the husband or wife to the other.[44]

39. Neece v. Toms, 196 S. C. 67, 12 S. E. 2d 859 (1941).
40. 232 S. C. 125, 101 S. E. 2d 255 (1957), noted 10 S. C. L. Q. 515 (1958).
41. Davis v. Littlefield, 97 S. C. 171, 81 S. E. 487 (1914).
42. Norwood v. Parthemos, 230 S. C. 207, 95 S. E. 2d 168 (1957).
43. Callies v. Reliance Laundry Co., 188 Wis. 376, 206 N. W. 198, 42 A. L. R. 712 (1925). A similar rule is applied where the parent is suing for wrongful death of the child and the parent's own contributory negligence is held to bar recovery, though such a situation is not strictly within the rule of imputed negligence. See Atlantic Coast Line R. R. v. Truett, 249 F. 2d 215 (4th Cir. 1957) in which the Court made the statement that under South Carolina law the parents' negligence would be imputed to the child. For discussion and criticism of this statement, see King, *Survey of South Carolina Law: Torts*, 11 S. C. L. Q. 141 (1958).
44. Long v. Carolina Baking Co., 190 S. C. 367, 3 S. E. 2d 46 (1939).

In one of the earlier cases decided in South Carolina concerning the question of imputed negligence, it was held that the negligence of the parent or custodian is not imputed to a child *non sui juris*.[45] In so holding, the Court flatly rejected the New York rule that the negligence of the parent of a child too young to exercise any self-reliant care for his own safety would be imputed to the child.[46] But Mr. Justice Jones, who spoke for the Court, did make a distinction between actions by or in the name of the infant for personal injuries, and actions by their parents for injuries to the parent resulting from injuries to the child, as for example, for loss of services of the child. The Court held that in the latter situation the parent's negligence would be imputed to the child and bar any recovery. This view was reaffirmed in the case of *Limehouse v. Southern Ry.*[47] It was said in the case of *Cirsosky v. Smathers*,[48] an action by the administrator of a child under Lord Campbell's Act, that the administrator will not be precluded by the contributory negligence of the custodian when the beneficiaries under the Act are not persons charged with such contributory negligence. It also seems well settled that the negligence of a child is imputed to the parent when, but only when, the parent controls or has the right to control the conduct of the child with respect to the acts or omissions which contributed to the injury of the parent.[49] In the case of *Nettles v. Southern Ry.*[50] Mr. Justice Oxner said:

> . . . if the parent of a child entrusts it to the temporary custody of another and the negligence of the custodian proximately contributes to an accident resulting in death to the child, the negligence of the custodian is, on principles of agency, imputed to the parents and has the same effect on their right to recover as if they had been guilty of the negligent act.

But in the determination of this case it was unnecessary for the Court to pass upon the question of the custodian's negligence.

MASTER AND SERVANT

The negligence of the servant who is acting as such within the scope of his employment, which negligence concurs with the negligence of a third person to cause injury to his master, is imputed to

45. Watson v. Southern Ry., 66 S. C. 47, 38 S. E. 1008, 44 S. E. 375 (1902).
46. Hartfield v. Roper, 21 Wend. 615, 34 Am. Dec. 273 (N. Y. 1839).
47. 216 S. C. 424, 58 S. E. 2d 685 (1950).
48. 128 S. C. 358, 122 S. E. 864 (1924).
49. Lammey v. Central Coal Mining Co., 144 Iowa 640, 123 N. W. 356 (1909); Peabody v. Haverhill, 200 Mass. 277, 85 N. E. 1051 (1908).
50. 211 S. C. 187, 44 S. E. 2d 321 (1947).

the master as a rule; but the negligence of the master ordinarily will not be imputed to the servant.[51] The reasoning is that the master is responsible for the acts of his employees and therefore assumes such responsibility. But the mere relationship standing alone is insufficient: in order to impute the negligent acts of a servant to his master, they must have occurred while the servant was acting as the servant of the master and within the scope of his employment.[52] Once this relationship is established, the familiar rules of agency will apply. In this area the line between imputed negligence and respondeat superior is a thin one, and often the courts will use these terms interchangeably.

LANDLORD AND TENANT

The negligence of a landlord which concurs with the negligence of a third person to cause injury to a tenant will not be imputed to the tenant merely because such relationship exists. The South Carolina Court said in the case of *Contos v. Jamison*[53] that there is nothing in the mere relationship of lessor and lessee which should link a lessee, without fault himself, with the negligence of the lessor. There is no agency, joint enterprise or power of the lessee to control applicable here which should excuse the negligence of the other. There is privity between the lessee and the lessor in the lessee's right of possession, but such privity cannot excuse the negligence of another whether combined with that of the lessor or not. The South Carolina Court seems to be one of the few that have passed upon this particular question.

CONCLUSION

Mr. Chief Justice Baker's common purpose theory as to joint enterprise was never accepted by the South Carolina Court as a separate test of imputed negligence, so there is no doubt today that we follow the general rule. The general rule is that one person's negligence will be imputed to another (1) when he controls or has the right to control the actions of the other, or (2) when he is engaged in a joint enterprise with the other. Under the general rule either of these two elements alone — control (including right to control) or joint enterprise — is sufficient to impute negligence from one person to the other.

The question that arises is whether control is an indispensable element of joint enterprise. The Court, in following the general definition

51. O'Brien v. Janelle, 321 Mass. 316, 73 N. E. 2d 460 (1947).
52. Dorchester County v. Wright, 138 Md. 577, 114 Atl. 573 (1921).
53. 81 S. C. 488, 62 S. E. 867, 19 L. R. A. (N. S.) 498 (1908).

of joint enterprise, speaks of both common purpose *and* right to control as elements of that relationship, but it seems certain that the feature of control is the dominant element; and common purpose is only used to support it. In situations where control or right to control is not clearly evident from the facts, the Court looks to the element of common purpose as being some evidence that control or the right to control did in fact exist. In those cases where the element of control was found to exist there was no necessity to consider the element of common purpose, for control alone is sufficient to impute negligence. Moreover, in every case where negligence has been imputed on a finding of joint enterprise, the element of control was also present and in no case was it lacking. Therefore it is apparent that control or the right to control is the only real test used to determine the application of the imputed negligence doctrine.

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