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eastern states[28] also gives administrative authorities great latitude and discretion in the dispensing of public funds. Most of these statutes also are silent on the question of need arising solely and initially from a labor strike. Because public policy underlying statutory enactment is individually determined in each state,[29] it is difficult to speculate what effect, if any, the current interpretation of the Illinois Public Assistance Code will have in these other jurisdictions. Each state court will have to weigh the similarities and differences between its statute and the Illinois Public Assistance Code.

However, in Illinois, the impact of the *Strat-O-Seal Manufacturing v. Scott* decision is clear. The appellate court judicially has sanctioned the administrative policy of allowing strikers, who are otherwise eligible for public assistance, to receive public aid when their need arises solely by reason of a labor strike. This decision, in addition to financially involving the state in labor disputes,[30] gives strikers a substantive, unchallengeable right to such aid. Organized labor now can assure its members that they will be able to maintain a level of subsistence during periods of labor strikes. This right only can be impaired by a legislative amendment to the Public Assistance Code.

Ronald Greenberg

[28] N.Y. SOCIAL WELFARE LAW ANN. art. 5, tit. 1, § 131 (Thompson 1966); OHIO REV. CODE ch. 5113, § 5113.04 (1954); PA. STAT. ANN. tit. 62, § 2508.1 (Cum. Supp. 1965).

[29] Franklin Fire Ins. Co. v. Moll, 115 Ind. App. 289, 58 N.E.2d 947 (1945).

[30] *Supra* note 13.

TORTS–NEGLIGENCE–FAILURE TO USE SEAT BELTS HELD NOT TO CONSTITUTE A DEFENSE

The plaintiff brought an action against the driver of the automobile in which she was riding for injuries sustained by her when it collided with another automobile. The defendant asserted the defense that the plaintiff was contributorily negligent because of her failure to fasten the seat belt which was provided for her. After granting the plaintiff's motion to strike the defendant's defense, the jury awarded damages to the plaintiff. The District Court of Appeals of Florida affirmed the trial court by holding that a defendant cannot offer to the jury evidence of the plaintiff's failure to use a seat belt as constituting a defense to gross negligence on the part of the defendant driver. *Brown v. Kendrick*, 192 So.2d 49 (Fla. 1966).

Brown v. Kendrick is the first appellate court case in which the defense arising out of a plaintiff's failure to use a seat belt has been decided. The purpose of this note will be to trace the treatment of the problems springing from a plaintiff's failure to use a seat belt and the effect that this higher

court's decision will have upon them. In order to accomplish this, the discussion will concern itself with the present effectiveness of seat belts, the attitude of trial courts toward their use, the reasoning of the court in deciding the instant case, and the effect which the Florida Appellate Court's reasoning is having or will have upon other states confronted with the same issue.

Safety officials in the United States are convinced that seat belts do save lives[1] and that their increased usage would save even more lives.[2] The use of seat belts has increased[3] but a painfully small average percentage[4] in current use by the motorists is a cause for concern.[5] Recognizing the safety feature of seat belts, thirty-three states and the District of Columbia have enacted seat belt legislation;[6] however, none of these jurisdictions provide for the mandatory use of seat belts in passenger cars.[7]

Prior to the *Brown* decision, several trial courts have either fined motorists for their failure to use seat belts or denied them recovery when they were involved in accidents while not wearing them. Such a fine was levied upon a motorist in Elkhart County, Indiana, after he pleaded guilty to a

[1] The use of seat belts saved between 800 and 1,000 lives in 1965. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 53 (1966).

[2] Full use of seat belts would save at least 5,000 lives per year. *Ibid.*

[3] The net use of seat belts has risen from five per cent in 1962 to sixteen per cent in 1966. *Ibid.*

[4] On the average, only thirty per cent of motorists in the United States use the seat belts provided for them. *Ibid.*

[5] Time, April 1, 1966, p. 26.

[6] 32 Fed. Reg. 2408-16 (1967); ARK. STAT. ANN. §§ 75-733-734 (Supp. 1965); CALIF. VEH. CODE ANN. §§ 27300-302 (West 1960); CONN. STAT. ANN. § 14-100a (1963); FLA. STAT. ANN. § 317.951 (Supp. 1966); GA. CODE ANN. § 68-1801 (Supp. 1966); ILL. REV. STAT. ch. 95½ § 217.1 (1965); IND. STAT. ANN. §§ 47-2241-2243 (1965); IOWA CODE ANN. § 321.445 (1966); KAN. STAT. ANN. §§ 8-5, 135 (Supp. 1965); ME. REV. STAT. ANN. tit. 29, § 1368-a (Supp. 1966); MD. ANN. CODE art. 66½ § 296a (Supp. 1966); MASS. GEN. LAWS ANN. ch. 90 § 7, ch. 94 § 295y (Supp. 1966); MICH. STAT. ANN. § 9.2410(1) (1960); MINN. STAT. ANN. § 169.685 (Supp. 1966); MISS. CODE ANN. § 8254.5 (Supp. 1964); MO. STAT. ANN. § 304.-555 (1963); MONT. REV. CODE ANN. §§ 32-21-150.1-150.3 (Supp. 1965); N.J. STAT. ANN. § 39:3-76.2 (Supp. 1966); N.M. STAT. ANN. §§ 64-20-75-76 (Supp. 1966); N.Y. CONSOL. LAWS, VEH. AND TRAF. § 383 (McKinney Supp. 1966); N.C. GEN. STAT. ANN. §§ 20-135.1-135.3 (1965); N.D. CENT. CODE § 39-21-41.1 (Supp. 1965); OHIO REV. CODE ANN. § 4513.26.2 (1965); OKLA. STAT. ANN. ch. 47 §§ 12-413-415 (Supp. 1966); ORE. REV. STAT. ch. 315 §§ 443.482, 483.991 (1963); PA. STAT. ANN. tit. 75 § 843 (1960); R.I. GEN. LAWS ANN. §§ 31-23-39, 41 (Supp. 1966); TENN. CODE ANN. § 59-930 (Supp. 1966); UTAH CODE ANN. § 41-6-148.10 (Supp. 1966); VT. STAT. ANN. tit. 23 § 4 (29) (Supp. 1965); VA. CODE ANN. §§ 46.1-309.1-310 (Supp. 1966); WASH. REV. CODE ANN. § 46.37.510 (Supp. 1966); W.VA. CODE ANN. § 17c-15-43 (1966); WIS. STAT. ANN. § 347.48 (Supp. 1966).

[7] Rhode Island is the only state which requires the use of seat belts but such use is required only in certain government and public service vehicles. R.I. GEN. LAWS ANN. § 31-23-41 (Supp. 1966).

charge of failing to wear his seat belt while in a motor vehicle. The trial judge reasoned that the Indiana statute requiring the installation of seat belts[8] implied their mandatory use by passengers.[9] A similar interpretation of the Wisconsin statute requiring the installation of seat belts[10] by the Circuit Court for Sheboygan County, Wisconsin, in the case of *Stockinger v. Dunisch*[11] was the reason for reducing the plaintiff's award of damages by ten percent, as that was the amount of negligence the jury attributed to her from her failure to use her seat belt. A subsequent trial court case in the State of Wisconsin, *Busick v. Budner*,[12] resulted in a total denial of recovery for the plaintiff where the jury was instructed by the judge that the plaintiff's failure to fasten her seat belt could be considered to constitute contributory negligence on her part. A Texas jury reached the same conclusion in the case of *Vernon v. Droeste*[13] by finding the plaintiff, who had failed to use the harness and seat belt device in his automobile, to be ninety-five percent contributorily negligent.

The court's interest in fining motorists or penalizing claimants as it has done in the above mentioned trial court cases is to promote highway safety by requiring the use of seat belts; however, doing so may be subverting essential and formerly well established principles of law. An indication of this came from the Florida District Court of Appeals treatment of the problems arising from nonuse of seat belts in the case of *Brown v. Kendrick*. While the Florida seat belt statute[14] contains the word "use," as does the Indiana and Wisconsin statutes, none of the statutes expressly state that the motorists must use them.[15] Unlike the Indiana and Wisconsin trial courts, the Florida court in the *Brown* case refused to imply that their use was required. In doing so, the Florida court adhered to the well established doctrine of separation of powers, characteristic of United States government, in that it refrained from adding anything not expressly stated within the statute[16] or expanding its meaning to include something which was not

[8] IND. STAT. ANN. § 47-2241 (1965).

[9] La Porte Herald-Argus, Dec. 3, 1964, p. 6, col. 1-2.

[10] WIS. STAT. ANN. § 347.48 (Cum. Supp. 1967).

[11] Civil No. 981, C. C. for Sheboygan County, Wisconsin, Oct., 1964.

[12] Civil No. 381.602, C. C. for Milwaukee County, Wisconsin, Civ. Branch 5, Dec., 1965.

[13] Civil No. 17205, D. C. of Brazos County, Texas, 85th Jud. Dist., June, 1966.

[14] FLA. STAT. ANN. § 317.951 (Supp. 1966).

[15] By comparison, a New York safety statute requiring motorcyclists to have crash helmets and face guards expressly requires their use as well. N.Y. SESS. LAWS ch. 979 §§ 6-7 (1966).

[16] In re Hewett's Estate, 153 Fla. 137, 13 So.2d 904 (1943); People v. Moore, 229 Cal. App. 2d 221, 40 Cal. Rptr. 121 (1964); Robertson v. Robertson, 217 S.W.2d 132 (Tex. Civ. App. 1949).

evidenced by the express terms of the statute.[17] Thus, the court made it clear that it would not usurp the function of the Florida legislature to promote highway safety by requiring the use of seat belts when such use was not expressly provided for by the existing statute. It necessarily follows, then, that the Indiana and Wisconsin trial courts have subverted their traditional concept of separation of powers in an attempt to promote highway safety through implying mandatory seat belt use from their statutes.

After eliminating the possibility of making the plaintiff negligent for her failure to use her seat belt through interpretation of Florida's existing seat belt legislation, the Florida court went on to consider the question of whether or not the defense of contributory negligence for failure to use a seat belt was one which could be argued on its merits before the jury.

In order for a cause of action based upon negligence to go to a jury or have a final verdict be determined by a jury, the court as a trier of issues of law, must first determine if the facts support the allegation; or, could the court "affix some element of negligence for the failure to use . . ."[18] a seat belt? To determine this the court noted that there was a controversy over the safety feature of seat belts and that neither the Florida legislature nor the United States Congress had enough information on their effectiveness to make their use mandatory.[19] On this basis, the court concluded that the effectiveness of seat belts in preventing injury or death was conjectural. Since an allegation of negligence cannot be based on mere conjecture or surmise,[20] the court held that it was not error for the trial court to refuse to allow the evidence of the plaintiff's failure to use the seat belt to go to the jury. By such refusal, the trial court had in effect sustained a demurrer to the defense thereby rendering it inadequate in law.[21]

The position of the Florida court as to whether or not the failure to use a seat belt presented an adequate issue of law was exactly opposite to the view taken by the Supreme Court of South Carolina in the case of *Sams v. Sams*.[22] In discussing the trial court's striking the defendant's allegation of

[17] Radio Tel. Communication, Inc. v. Southeastern Tel. Co., 170 So.2d 577 (Fla. 1964); Silverman v. City Eng'r Const. Co., 338 Ill. 154, 170 N.E. 250, *aff'd* 252 Ill. App. 275 (1929); Thruway Motel of Ardsley v. Hellman Motel Corp., 170 N.Y.S.2d 552 (1958); Ex parte Malcolm M. Levinson, 160 Tex. Cr. R. 606, 274 S.W.2d 76 (1955); State *ex rel.* Muttek v. Langlade County, 204 Wis. 311, 236 N.W. 125 (1931).

[18] Brown v. Kendrick, 192 So.2d 49, 51 (Fla. 1966). [19] *Ibid.*

[20] Kapp v. Bob Sullivan Chevrolet Co., 234 Ark. 395, 353 S.W.2d 5 (1962); Miller v. Dexheimer, 37 Ill. App. 2d 295, 185 N.E.2d 519 (1962); Towt v. Pope, 168 Cal. App. 2d 520, 336 P.2d 276 (1959); Jones v. Hunt, 208 N.Y.S.2d 581, *aff'd* 13 App. Div. 2d 1012, 218 N.Y.S.2d 1001 (1963).

[21] Seven-Up Bottling Co. v. Grocery Drivers Union, 40 Cal. 2d 368, 254 P.2d 544 (1953).

[22] 247 S.C. 467, 148 S.E.2d 154 (1966).

the plaintiff's contributory negligence for failure to use a seat belt, the South Carolina Supreme Court stated that:

> The question before us is whether the pleading should have been stricken, or, on the other hand, should the defendant be allowed to prove, if he can, that the failure of the plaintiff to use a seat belt, under the facts and circumstances of this case, amounted to a failure to exercise such due care as a person of ordinary reason and prudence would have exercised under the same circumstances, and that such failure constituted a contributing proximate cause of the plaintiff's injuries. We think that the pleading should not have been stricken and that the ultimate questions raised by the alleged defense should be decided in the light of all of the facts and circumstances adduced upon the trial, rather than being decided simply on the pleadings.[23]

From this divergent treatment comes the inception of two methods of solving the problem of seat belt usage in tort law. By ascribing to the position taken by the District Court of Appeals of Florida in the *Brown* case, the question is decided as a matter of law; however, by following the South Carolina Supreme Court's holding in the *Sams* case, the questition becomes one of fact to be argued before a jury or the court.

Although it is at odds with the decision in the *Sams* case, the Florida Court unnecessarily went on to point out one of the difficulties encountered in adopting the reasoning in *Sams*—the factual problem of ascertaining contributory negligence. It is apparent that the element of proximate cause is missing where a claimant has been injured in an automobile accident without his or her seat belt fastened because one cannot say that the failure to use it caused the accident and that but for the nonuse of the seat belt the accident would not have occurred. It is a widely held view that in order for contributory negligence to bar recovery it must be shown that the plaintiff's act or omission was the proximate cause of his injury.[24] Thus, the alternative to the *Brown* case does not ease the difficulty of promoting highway safety through penalizing motorists for nonuse of seat belts since the existing law can infer no liability upon nonusers.[25]

Without having to decide the issue of contributory negligence, the Florida court has shown a way for other courts to follow which will provide an easier answer to the problem of seat belt usage in tort law. However, the means adopted by the court does not answer the overriding

[23] *Id.* at 470, 148 S.E.2d at 155.

[24] Camp v. Polk, 26 Conn. Sup. 263, 219 A.2d 72 (1965); Arendt v. Tallman, 10 Ill. App. 2d 66, 134 N.E.2d 120 (1956); Holt v. Bills, 189 Kan. 261, 366 P.2d 1009 (1961); Baltimore County v. State, 232 Md. 350, 193 A.2d 30 (1962); George v. Wheeler, 404 S.W.2d 426 (Mo. 1966); Ramirez v. Perlman, 131 N.Y.S.2d 124, *rev'd* 284 App. Div. 82, 130 N.Y.S.2d 398 (1954); Loehr v. Crocker, 191 Wis. 422, 211 N.W. 299 (1926).

[25] For a discussion of the possible application of the doctrines of contributory negligence and avoidable consequences to reduce the damages awarded to a plaintiff who fails to fasten his seat belt, see Kavanagh v. Butorac, 221 N.E.2d 824 (Ind. App. 1966).

problem of increasing highway safety and reducing injuries and fatalities on the nation's highways. The problem of nonuse of seat belts as a defense in tort actions must be met with more than an eager intimation for legislative action[26] to make use mandatory and the easy disposition of a defense on the basis of its being conjectural and thereby inadequate in law.

John Simon

[26] The National Safety Council is in the process of drafting a model seat belt code requiring the use of seat belts which it may distribute to state legislatures at their request after its final approval. Conversation with Mr. Edwin Kirby of the National Safety Council in Chicago, February 21, 1967.

TRUSTS AND ESTATES–DISPOSITIVE EFFECT OF PERSONAL RECEIPT CLAUSES ON REMAINDER INTERESTS

Testatrix established a spendthrift trust wherein one half of the income was to go to a friend for life with a remainder in testatrix's adopted son. The will further provided that in the event the son did not live to collect the remainder, it was to go to testatrix's brother and sister, or the survivor of them. A spendthrift clause contained a statement that any payments were to be made in person or upon the personal receipt of the beneficiary. The adopted son, the brother, and the sister died before the remainder interest could be distributed upon the death of the life tenant. The trial court held that the personal receipt language of the spendthrift clause had no dispositive effect and ordered distribution to be made one half to the brother's estate and one half to the sister's. The Appellate Court of Illinois affirmed the trial court's holding. *Northern Trust Co. v. North*, 73 Ill. App. 2d 469, 220 N.E.2d 28, *appeal denied*, 222 N.E.2d v (1966).

The Illinois courts have held, in the three cases in which it was an issue,[1] that a personal receipt clause in a spendthrift clause had the effect of requiring the individual named in the remainder to be living at the termination of the life estate in order to claim the interest. The Illinois courts have not been alone in this view. The four other states[2] which have considered the effect of a personal receipt clause on distribution have likewise held that the remaindermen must be alive at the termination of the life estate. *Northern Trust Co. v. North* is therefore an important case in that it represents a marked departure in the effect given these clauses.

[1] Routt v. Newman, 253 Ill. 185, 97 N.E. 208 (1912); First Nat'l Bank of Chicago v. Cleveland Trust Co., 308 Ill. App. 639, 32 N.E.2d 964 (1941); Cowdery v. Northern Trust Co., 321 Ill. App. 243, 53 N.E.2d 43, *appeal denied*, 326 Ill. App. xiii (1944).

[2] California, Massachusetts, Nevada, and Pennsylvania. Union Nat'l Bank of Pasadena v. Hunter, 93 Cal. App. 2d 669, 209 P. 2d 621 (1949); Hemenway v. Hemenway, 171 Mass. 42, 50 N.E. 456 (1898); Barringer v. Gunderson, 81 Nev. 288, 402 P. 2d 470 (1965); *In re* Nixon's Estate, 306 Pa. 261, 159 Atl. 442 (1932).