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Seat Belts And Contributory Negligence

Over 53,000 Americans were killed in traffic accidents in 1967.¹ This is a rate of more than 1,000 a week or between 100 and 200 a day. Also in 1967, an additional 1,900,000 persons were injured² in automobile accidents and the total financial loss from deaths and injuries exceeded ten billion dollars.³

¹ NATIONAL SAFETY COUNCIL, ACCIDENT FACTS, at 51 (1968 ed.). 53,100 Americans were killed in automobile accidents in 1967.
² Id. at 40.
³ Id. at 5. This total includes $7,300,000,000 estimated cost of injuries and insurance administrative costs and an estimated $3,400,000,000 in property damage. Not included are costs of certain public agency activities such as police, fire, and courts; damages awarded in excess of direct cost; and indirect costs to employers.
Current information indicates that if all passenger car occupants used safety belts at all times, it would save 8,000 to 10,000 lives annually. However, despite the fact that safety belts are now available to about two-thirds of all passenger car occupants, the percentage of those using seat belts is estimated by the National Safety Council to be only about twenty-five per cent.

The implications of these statistics have caused a great deal of concern among safety officials and lawmakers and, as a result, thirty-two states have enacted legislation which requires the installation of seat belts in all new automobiles. In addition, five states have statutes which set standards for all seat belts sold or require the installation of anchors for seat belts in all new cars. It should be noted, however, that none of these jurisdictions provide for the mandatory use of available seat belts after installation except Rhode Island, which requires the use of seat belts in certain governmental and public service vehicles.

These statutes have presented the courts with a very perplexing legal question: should a person injured in an automobile accident caused by the negligence of another be denied recovery for his in-

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4 Id. at 53.
5 Id.
juries under the doctrine of contributory negligence because of his failure to wear an available seat belt?

To date, defense attorneys have attempted to establish the defense of contributory negligence under two theories. They may contend that since the legislature has enacted a statute requiring the installation of seat belts in all new cars, it intended that they be used, and a failure to use available belts is a breach of a statutory duty and constitutes negligence per se. If this theory fails, or if the state does not have a seat belt statute, it may be contended that the plaintiff did not exercise the care required of a reasonably prudent man under the same or similar circumstances, and he should be denied recovery under the common law defense of contributory negligence.\(^\text{10}\)

Statutory Standard of Negligence

Most seat belt statutes are of the same basic type. These statutes require that all automobiles manufactured after a certain period be equipped with seat belts in the front seat, and specify that the installed belts be of a quality approved by the Society of Automotive Engineers or an appropriate state agency. The West Virginia statute is typical in providing that:

No dealer in new or used automobiles shall sell, lease, transfer or trade, at retail, any passenger automobile which is manufactured after January one, one thousand nine hundred sixty-five, unless such vehicle is equipped with safety belts for the front seat, which seat belts shall meet the standards set and approved by the Society of Automotive Engineers, Inc.\(^\text{11}\)

The enactment of such a statute raises the question of whether a duty is imposed upon the occupant of an automobile to use an available seat belt in caring for his own safety. If so, the failure to use an available seat belt may be a defense since a violation of the statute would constitute conduct that is negligence per se. Such a defense would allege that since the installation of seat belts was made mandatory by the legislature, it impliedly intended that they be used. As yet, however, this defense has been uniformly rejected by those courts which have directly considered the question. In Bentzler


\(^{11}\) W. Va. Code ch. 17c, art. 15, § 43 (Michie 1967).
v. *Braun*,\(^{12}\) the Supreme Court of Wisconsin held that the Wisconsin installation statute could not be considered a safety statute which would make it negligence per se for an occupant of an automobile to fail to use available seat belts. In *Miller v. Miller*,\(^{13}\) the North Carolina Supreme Court held that seat belt enactments were not absolute safety measures and no statutory duty to use the belts could be implied from these statutes. A United States District Court reached a similar conclusion in *Robinson v. Bone*,\(^{14}\) when it held that, inasmuch as the Oregon legislation does not require the use of the belts, the failure to use them, under Oregon law, is not negligence per se.

If failure to wear available seat belts were found to be a violation of a statutory duty and thus negligence, it would raise several questions. It could be inferred that since the statute only requires seat belts in the front seat, occupants in the front seat are held to a higher standard of care than occupants in the rear seat. Such a determination would also imply that drivers or passengers in automobiles manufactured after January 1, 1965 are required to exercise a higher degree of care than persons in pre-1965 automobiles. Moreover, sustaining such a defense might also raise the constitutional question of a "denial of equal protection."\(^{15}\) These installation statutes normally require seat belts to be installed in automobiles manufactured after a certain period. They do not require installation in all automobiles in use on the highways. It would thus become a question of whether such a classification is a reasonable one. It may then follow that since such a distinction imposes a higher duty on those persons operating a newer automobile than on those operating an automobile manufactured before the required statutory installation period, the classification is unreasonable in that it is an arbitrary and discriminatory classification which constitutes a denial of equal protection of the laws.

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\(^{13}\) 273 N.C. 228, 160 S.E.2d 65 (1968).


\(^{15}\) U.S. Const. amend. XIV, § 1. Questions may also arise as to whether federal legislation dealing with safety belts and other safety devices has pre-empted the area of establishing safety standards for automobiles. See 15 U.S.C. § 1392(a) (Supp. 1967). Congress has provided that whenever a federal motor vehicle safety standard has been established, no state or political sub-division of a state shall have any authority to establish or continue in effect any safety standard which is not identical to the federal standard unless such a provision imposes a higher standard. See 15 U.S.C. § 1392(d) (Supp. 1967).
Common Law Standard of Ordinary Care

If failure to use a seat belt is not negligence per se, it could be contributory negligence only when the plaintiff's failure to use the seat belt amounted to a lack of the ordinary care required of a reasonably prudent man under the same or similar circumstances.\textsuperscript{16} Contributory negligence is generally an affirmative defense, and the burden is on the defendant to prove such conduct.\textsuperscript{17} The first difficulty the defendant will encounter in meeting this burden will be the necessity of persuading the trial court that evidence concerning the failure to wear seat belts should be admissible.

In the first reported seat belt case, \textit{Sams v. Sams},\textsuperscript{18} the South Carolina Supreme Court held that an allegation in the defendant's pleading relating to the plaintiff's alleged contributory negligence in failing to use a seat belt "should not have been stricken and that the ultimate questions raised by the alleged defense should be decided in light of all the facts and circumstances adduced upon the trial, rather than being decided simply on the pleading."\textsuperscript{19} This view appears to have been partially accepted by the Indiana Appellate Court in \textit{Kavanagh v. Butorac}\textsuperscript{20} when the court stated that admissibility of the particular evidence in each case is within the discretion of the trial judge. After taking judicial notice of public records and surveys, however, the court held that it could not "in this case say as a matter of law that failure to use available seat belts is contributory negligence."\textsuperscript{21}

However, the District Court of Appeals of Florida rejected the impliedly far reaching decision of the \textit{Sams} case and refused to adopt a similar rule for Florida.\textsuperscript{22} In this case, the Florida court upheld a motion to strike the defense of contributory negligence based on the plaintiff's failure to use available seat belts and upheld the denial of the trial court to permit evidence of the failure to use the belt. The court noted that "the plaintiff and defendant could each have argued on the merits of the use of seat belts, but each argument would necessarily have been conjectural and of doubtful propriety."\textsuperscript{23} Addi-

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\textsuperscript{16} Miller v. Miller, 160 S.E.2d 65, 70 (N.C. 1968).
\textsuperscript{17} W. Prosser, \textit{Torts} § 64 at 426 (3d ed. 1964).
\textsuperscript{18} 247 S.C. 467, 148 S.E.2d 154 (1966).
\textsuperscript{19} \textit{Id.} at 470, 148 S.E.2d at 155.
\textsuperscript{20} 221 N.E.2d 824 (Ind. 1966).
\textsuperscript{21} \textit{Id.} at 831.
\textsuperscript{22} Brown v. Kendrick, 192 So. 2d 49 (Fla. 1966).
\textsuperscript{23} \textit{Id.} at 51.
\end{flushleft}
tionally, other courts refuse to consider the use of seat belts as a defense by reasoning that such a determination should be made by the legislature.  

It thus becomes apparent that the issue of whether evidence of plaintiff's alleged contributory negligence for failure to wear an available seat belt should be admitted has been treated in three different ways: first, leave the question of admissibility to the discretion of the trial judge in each case; second, refuse to admit evidence on the issue at all; third, leave the determination of a standard to the legislature. The legislature has made such a determination in at least two states.

If the defendant is permitted to introduce evidence concerning the failure to wear seat belts, he must then prove his defense. To meet this burden and establish the defense, three elements must be shown: first, a standard of care; second, a failure to meet the requirements of the standard resulting in an injury to the plaintiff; and third, a causal relation between the failure to conform to the standard and the resulting injury.

To establish common law contributory negligence the same standard is used as when negligence is the issue. The plaintiff is required to conform to the same broad standard of conduct as would be followed by a reasonable man of ordinary prudence under similar circumstances. It thus becomes a question of whether a reasonable man of ordinary prudence would use an available seat belt. If he would, this creates a standard of self-protective care.

Certain statistical studies have indicated that occupants of passenger cars utilize seat belts only about twenty-five percent of the time. This may be rationalized on the ground of fear of entrapment in a burning or submerged car or on the belief that seat belts increase the frequency or severity of injury to the spine, pelvis and abdomen. Whatever the reason, it is evident that the average ordinary man has not yet accepted seat belts or their utility. Accordingly, some courts have reasoned that the scant use made of seat belts and the difficulty

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26 W. Prosser, Torts § 64 (3d ed. 1964).
27 Id.
28 National Safety Council, Accident Facts at 53 (1968 ed.).
incident to determining a proper standard indicates that the courts should not impose a duty on occupants of cars to wear seat belts.\textsuperscript{30}

If the court or jury is satisfied that a reasonably prudent man would have made use of available seat belts under the circumstances, the next obstacle in establishing contributory negligence would be the showing that the plaintiff's failure to use an available seat belt was a factor which contributed to his injury.\textsuperscript{31} However, this would be very difficult to prove because of the speculation and conjecture involved in trying to ascertain which injuries were caused by the defendant's negligence, and which were caused by the plaintiff's failure to use an available seat belt.\textsuperscript{32}

Conclusion

In recent years, the American public has been subjected to an extensive safety campaign aimed at encouraging the use of seat belts, and more courts will ultimately be forced to decide whether failure to use a seat belt constitutes contributory negligence. At present, sixty per cent of all occupants of automobiles do not use seat belts which are available to them.\textsuperscript{33} If contributory negligence is imposed, many of these people could be denied recovery for injuries caused by the negligence of another. Moreover, it would seem inconsistent to allow seat belt legislation, which is designed to aid and protect automobile passengers, to be used as a basis to deny recovery to them. It would be a windfall for negligent defendants, and instead of encouraging safety, it would reward carelessness. The utility of seat

\textsuperscript{30} E.g., Miller v. Miller, 160 S.E.2d 65 (N.C. 1968).

\textsuperscript{31} In Barry v. Coca Cola Co., 239 A.2d 273, 276 (N.J. 1967), Judge Lynch stated that this type of proof would have to be by expert testimony and many difficulties would be encountered.

It would have to be based upon a hypothetical question of detailed specificity, strictly tailored to the facts proved with respect to the kind of seat belt used, its adjustment, the distance of the passenger from, let us say, the windshield, and many other imponderables which I would not attempt to fully envision here.

\textsuperscript{32} Kleist, The Seat Belt Defense—An Exercise in Sophistry, 18 HASTINGS L.J. 613, 615 (1967).

In any given collision, no doctor can say exactly what injuries would have been suffered had the victim been wearing a seat belt as compared to those he suffered without it. There are too many unknown variables such as exact number, degree, direction, duration, and kinds of forces that might have been acting in any given accident to answer the question with any accuracy. The problem is further complicated when one considers the effect of these forces in conjunction with the positions of potential obstacles such as dashknobs, turn signal levers, etc.

\textsuperscript{33} NATIONAL SAFETY COUNCIL, ACCIDENTS FACTS at 53 (1968 ed.).
belts as a safety device must be clarified, and they must be generally worn by the public before a judicially imposed standard would be acceptable.  

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The issue of the social utility of the use of seat belts is definitely not clarified in the minds of the public and the courts. Doubts remain as to whether seat belts cause injury, and the real usefulness of the seat belt in preventing injuries has not become public knowledge. . . . . The social utility of wearing a seat belt must be established in the mind of the public before failure to use a seat belt can be held to be negligence. Otherwise the court would be imposing a standard of conduct rather than applying a standard accepted by society.