CHAPTER 1

General Provisions

**SECTION 15‑1‑10.** Rules of construction.

The rule of common law that statutes in derogation of that law are to be strictly construed has no application to this Title.

HISTORY: 1962 Code Section 10‑1; 1952 Code Section 10‑1; 1942 Code Section 902; 1932 Code Section 902; Civ. P. ‘22 Section 850; Civ. P. ‘12 Section 487; Civ. P. ‘02 Section 448; 1870 (14) Section 470.

Editor’s Note

1985 Act No. 100, Section 3, provides as follows:

“SECTION 3. In event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory provisions as to practice and procedure not repealed in this act, the provision of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.”

CROSS REFERENCES

Appeals, generally, see Section 18‑1‑10 et seq.

Applicability of rules of evidence applicable to civil actions under the Eminent Domain Procedure Act, see Section 28‑2‑330.

Attachment, see Section 15‑19‑10 et seq.

Banks, etc., doing a trust business, see Section 34‑21‑10 et seq.

Banks and trust companies acting as fiduciaries, see Section 34‑15‑10 et seq.

Computation of time with respect to regulations governing fair hearings before the Department of Social Services, see S.C. Code of Regulations R. 114‑100.

Constitutional provision for homestead exemption, see SC Const. Art. III, Section 28.

Constitutional provisions concerning jurisprudence generally, see SC Const. Art. V, Section 1‑27.

Construction of statutes with respect to evidence, see Section 19‑1‑10.

Courts, generally, see Section 14‑1‑10 et seq.

Executions and judicial sales, generally, see Section 15‑39‑10 et seq.

Juries and jurors, generally, see Section 14‑7‑10 et seq.

Jurisdiction of State and United States, generally, see Section 1‑1‑10 et seq.

Landlord and tenant, generally, see Section 27‑33‑10 et seq.

Magistrates and constables, generally, see Section 22‑1‑10 et seq.

Mortgages and other liens, generally, see Section 29‑1‑10 et seq.

Peace officers, generally, see Section 23‑1‑15 et seq.

Prisons and other methods of correction, generally, see Section 24‑1‑10 et seq.

Privileges and immunities and equal protection of the laws, see SC Const. Art. I, Section 3.

Rule that the Eminent Domain Procedure Act will prevail over the Rules of Civil Procedure in the event of a conflict between the two, see Section 28‑2‑120.

LIBRARY REFERENCES

Westlaw Key Number Searches: 13k20; 361k239.

Action 20.

Statutes 239.

C.J.S. Actions Section 67.

C.J.S. Actions Section 67.

C.J.S. Statutes Section 382.

C.J.S. Statutes Section 382.

NOTES OF DECISIONS

In general 1

1. In general

Legislation in derogation of common law (Code 1962 Sections 10‑702, 58‑1481, 58‑1482 [Code 1976 Sections 15‑15‑20, 58‑23‑910, 58‑23‑920]) must be strictly construed under settled principles enunciated by Supreme Court. Major v. National Indem. Co. (S.C. 1976) 267 S.C. 517, 229 S.E.2d 849.

**SECTION 15‑1‑30.** “Real property” and “real estate” defined.

The words “real property” and “real estate” as used in this Title are coextensive with lands, tenements and hereditaments.

HISTORY: 1962 Code Section 10‑3; 1952 Code Section 10‑3; 1942 Code Section 897; 1932 Code Section 897; Civ. P. ‘22 Section 845; Civ. P. ‘12 Section 482; Civ. P. ‘02 Section 444; 1870 (14) Section 466.

CROSS REFERENCES

Definition of “real property” as used by courts, see Section 14‑1‑20.

Definition of “real property” as used in reference to courts and court procedures with respect to appeals, see Section 18‑1‑20.

Property and conveyances, see Title 27.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k188.

Statutes 188.

C.J.S. Statutes Sections 321, 324 to 326, 330, 334.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 6:1 , Legal Principles.

NOTES OF DECISIONS

In general 1

1. In general

Court properly refused to allow buyer to avoid contract to purchase property on basis of geologist’s report indicating existence of substrata of sand, where record established that buyer’s agents knew at inception of contract that substrata existed; the right to terminate a contract because the geologist’s report is unsatisfactory to buyer requires that geologist report disclose condition of which parties were unaware. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432.

**SECTION 15‑1‑40.** “Personal property” defined.

The words “personal property,” as used in this Title, include money, goods, chattels, things in action and evidences of debt.

HISTORY: 1962 Code Section 10‑4; 1952 Code Section 10‑4; 1942 Code Section 898; 1932 Code Section 898; Civ. P. ‘22 Section 846; Civ. P. ‘12 Section 483; Civ. P. ‘02 Section 445; 1870 (14) Section 467.

CROSS REFERENCES

Other definitions of personal property, see Sections 12‑37‑10 and 18‑1‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k188.

Statutes 188.

C.J.S. Statutes Sections 321, 324 to 326, 330, 334.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Covenants Section 16, Plaintiffs.

NOTES OF DECISIONS

In general 1

1. In general

The tort action of a wife against her husband for wilfully beating her, is a “thing in action,” being a wrong to her person, and is construed as being “property” in view of this section [former Code 1962 Section 10‑4]. Prosser v Prosser, 114 SC 45, 102 SE 787 (1920). Messervy v Messervy, 82 SC 559, 64 SE 753 (1909).

Under former Code 1962 Sections 10‑923 and 10‑924, authorizing the attachment of the “personal estate” of the debtor, debts evidenced by notes and bonds may, under this section [former Code 1962 Section 10‑4], be attached “as personal property.” Williamson v. Eastern Building & Loan Ass’n (S.C. 1899) 54 S.C. 582, 32 S.E. 765, 71 Am.St.Rep. 822.

**SECTION 15‑1‑50.** “Property” defined.

The word “property,” as used in this Title, includes both real and personal property.

HISTORY: 1962 Code Section 10‑5; 1952 Code Section 10‑5; 1942 Code Section 899; 1932 Code Section 899; Civ. P. ‘22 Section 847; Civ. P. ‘12 Section 484; Civ. P. ‘02 Section 446; 1870 (14) Section 468.

CROSS REFERENCES

Definition of “property” applied by courts, see Section 14‑1‑10.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k188.

Statutes 188.

C.J.S. Statutes Sections 321, 324 to 326, 330, 334.

NOTES OF DECISIONS

In general 1

1. In general

Cited in D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791.

**SECTION 15‑1‑60.** “Clerk” defined.

The word “clerk”, as used in this title, signifies the clerk of the court where the action is pending and, in the Supreme Court or the court of appeals, the clerk of the county mentioned in the title of the complaint or in another county to which the court may have changed the place of trial, unless otherwise specified.

HISTORY: 1962 Code Section 10‑6; 1952 Code Section 10‑6; 1942 Code Section 900; 1932 Code Section 900; Civ. P. ‘22 Section 848; Civ. P. ‘12 Section 485; Civ. P. ‘02 Section 447; 1870 (14) 469; 1999 Act No. 55, Section 18.

CROSS REFERENCES

Other sections applying such definition of “clerk,” see Sections 14‑1‑40, 19‑1‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k188.

Statutes 188.

C.J.S. Statutes Sections 321, 324 to 326, 330, 334.

**SECTION 15‑1‑220.** Filing of undertakings.

The various undertakings required to be given by this Title must be filed with the clerk of the appropriate court unless the court expressly provides for a different disposition thereof, except that the undertakings provided for by Chapter 69 of this Title shall, after the justification of the sureties, be delivered by the sheriffs to the parties, respectively, for whose benefit they are taken.

HISTORY: 1962 Code Section 10‑22; 1952 Code Section 10‑22; 1942 Code Section 824; 1932 Code Section 824; Civ. P. ‘22 Section 772; Civ. P. ‘12 Section 458; Civ. P. ‘02 Section 420; 1870 (14) 521 Section 438.

CROSS REFERENCES

Clerks of court generally, see Sections 14‑17‑10 et seq.

Filing of undertakings under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 79k64; 392k1 to 392k8.

Clerks of Courts 64.

Undertakings 1 to 8.

C.J.S. Courts Sections 249, 254.

C.J.S. Undertakings Sections 1 to 17.

**SECTION 15‑1‑230.** Bonds in judicial proceedings.

In all judicial proceedings, whenever it may become necessary for any party thereto to give a bond for any purpose, the bond of such party having as surety thereon any surety company authorized to do business in this State may be accepted by any officer or court whose duty is to approve such bond, without other surety. The provisions of this section shall apply to bonds given in connection with any appellate proceeding for the purpose of obtaining supersedeas or for any other purpose. And in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such company executing or guaranteeing any bond or undertaking therein. No person having the approval of any such bond shall exact that it be furnished by a guaranty company or any particular guaranty company.

HISTORY: 1962 Code Section 10‑23; 1952 Code Section 10‑23; 1942 Code Section 3058; 1932 Code Section 3058; Civ. C. ‘22 Section 749; Civ. C. ‘12 Section 667; Civ. C. ‘02 Section 599; R. S. 517; 1892 (21) 76; 1894 (21) 757; 1896 (22) 28; 1912 (27) 703; 1947 (45) 322.

CROSS REFERENCES

Bonds and judicial proceedings under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 79k64.

Clerks of Courts 64.

C.J.S. Courts Sections 249, 254.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 79, Chapter 1 General Provisions.

Forms

Am. Jur. Pl. & Pr. Forms Appeal and Error Section 269 , South Carolina‑Supersedeas Bond.

Attorney General’s Opinions

When a defendant fails to pay the premium to a bonding company, it is proper for the bonding company to surrender him to the court and be discharged from their obligation. 1976‑77 Op Atty Gen, No 77‑271, p 208.

The State is under no obligation to produce all of its evidence at a preliminary hearing, and it is proper to use hearsay to support a finding of probable cause at a preliminary hearing. 1976‑77 Op Atty Gen, No 77‑271, p 208.

A magistrate has authority to refuse to accept bonds submitted by a bondsman or surety company who present either a financial or moral risk. 1974‑75 Op Atty Gen, No 4172, p 230.

**SECTION 15‑1‑240.** Sheriff shall not take attorney at law or officer of court as bail.

No sheriff shall take any attorney at law or officer of court as bail for any person whomsoever in any civil case.

HISTORY: 1962 Code Section 10‑24; 1952 Code Section 10‑23.1; 1942 Code Section 3526; 1932 Code Section 3526; Civ. C. ‘22 Section 2069; Civ. C. ‘12 Section 1176; Civ. C. ‘02 Section 851; G. S. 667; R. S. 731; 1839 (11) 45.

CROSS REFERENCES

Giving bail in civil actions, see Sections 15‑17‑210 to 15‑17‑280.

Prohibition of attorneys and other officers from acting as sureties under South Carolina Rules of of Civil Procedure, see Rule 11, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 49k1.

Bail 1.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 11.1, Reporter’s Notes.

**SECTION 15‑1‑250.** Cash deposit in lieu of bond.

Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties he may, in lieu thereof, deposit with the officer or into the court, as the case may require, money to the amount for which the bond or undertaking is to be given. The court in which such action or proceeding is pending may direct what disposition shall be made of such money, pending the action or proceeding. In any case in which, by this section, the money is to be deposited with an officer, a judge of the court, in term or at chambers, upon the application of either party, may, before such deposit is made, order it to be deposited in court instead of with such officer and a deposit made pursuant to such order shall be of the same effect as if made with such officer.

HISTORY: 1962 Code Section 10‑25; 1952 Code Section 10‑25; 1942 Code Sections 347, 783; 1932 Code Sections 347, 783; Civ. P. ‘22 Sections 303, 648; Civ. C. ‘12 Section 3936; Civ. P. ‘12 Section 386; Civ. C. ‘02 Section 2833; Civ. P. ‘02 Section 347; 1870 (14) 502 Section 360; 1897 (22) 424.

CROSS REFERENCES

Deposit of cash percentage in lieu of bond, see Section 17‑15‑15.

Substituting bail for deposit, see Section 15‑17‑240.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k9; 392k1 to 392k8.

Bail 9.

Undertakings 1 to 8.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 193 to 194.

C.J.S. Undertakings Sections 1 to 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 79, Chapter 1 General Provisions.

NOTES OF DECISIONS

In general 1

1. In general

One purpose of this section [former Code 1962 Section 10‑25] is to relieve a plaintiff in attachment proceedings of the absolute requirement to enter into a written undertaking with proper surety as provided for in former Code 1962 Section 10‑908, but one may be relieved from such condition precedent only by strictly pursuing the terms of this section [former Code 1962 Section 10‑25]. McDaniel v. Patterson (S.C. 1931) 159 S.C. 378, 157 S.E. 72.

A check is not money. McDaniel v. Patterson (S.C. 1931) 159 S.C. 378, 157 S.E. 72.

**SECTION 15‑1‑260.** Payment of deposit in lieu of bond.

Whenever such bond, recognizance or undertaking is required or authorized to be given in any civil proceeding:

(1) In the courts of common pleas of this State the sum of money deposited in lieu thereof shall be paid to the clerk of the court of common pleas in which such proceeding is pending;

(2) In the Supreme Court or court of appeals of this State the sum of money shall be paid to the clerk of that appellate court;

(3) In the probate courts of this State such sum of money shall be paid to the judge of the court of probate in which the proceeding is pending; and

(4) In a magistrate’s court or other court of inferior jurisdiction, such sum of money shall be paid to the clerk of the court of common pleas for the county in which such magistrate’s court or other court of inferior jurisdiction shall be.

HISTORY: 1962 Code Section 10‑26; 1952 Code Section 10‑26; 1942 Code Section 348; 1932 Code Section 348; Civ. P. ‘22 Section 304; Civ. C. ‘12 Section 3937; Civ. C. ‘02 Section 2834; 1897 (22) 424; 1999 Act No. 55, Section 19.

CROSS REFERENCES

Substituting bail for deposit, see Section 15‑17‑240.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k9; 392k1 to 392k8.

Bail 9.

Undertakings 1 to 8.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 193 to 194.

C.J.S. Undertakings Sections 1 to 17.

**SECTION 15‑1‑270.** Receipt for deposit.

Whenever any sum of money is so deposited in lieu of a bond, recognizance or undertaking the person depositing it shall be entitled to a receipt therefor, stating that such sum of money has been deposited and is held for the same purpose as would have been specified and conditioned in the bond, recognizance or undertaking in lieu whereof such sum of money is so deposited.

HISTORY: 1962 Code Section 10‑27; 1952 Code Section 10‑27; 1942 Code Section 349; 1932 Code Section 349; Civ. P. ‘22 Section 305; Civ. C. ‘12 Section 3938; Civ. C. ‘02 Section 2835; 1897 (22) 424.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k9; 392k1 to 392k8.

Bail 9.

Undertakings 1 to 8.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 193 to 194.

C.J.S. Undertakings Sections 1 to 17.

**SECTION 15‑1‑280.** Return of deposit.

The person so depositing a sum of money in lieu of a bond, recognizance or undertaking shall be entitled upon application to the court wherein such deposit has been made and subject to the order on which such funds are held to receive back such sum whenever the purposes for which it has been received and deposited have been accomplished and the person is entitled to repayment thereof.

HISTORY: 1962 Code Section 10‑28; 1952 Code Section 10‑28; 1942 Code Section 349; 1932 Code Section 349; Civ. P. ‘22 Section 305; Civ. C. ‘12 Section 3938; Civ. C. ‘02 Section 2835; 1897 (22) 424.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k9; 392k1 to 392k8.

Bail 9.

Undertakings 1 to 8.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 193 to 194.

C.J.S. Undertakings Sections 1 to 17.

**SECTION 15‑1‑290.** Liability for injury to guests in car.

No person transported by an owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such motor vehicle or its owner or operator for injury, death or loss in case of an accident unless such accident shall have been intentional on the part of such owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

This section shall not relieve a public carrier or any owner or operator of a motor vehicle which is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger while being transported by such public carrier or while such motor vehicle is being so demonstrated.

HISTORY: 1962 Code Section 46‑801; 1952 Code Section 46‑801; 1942 Code Section 5908; 1932 Code Section 5908; 1930 (36) 1164; 1935 (39) 356.

CROSS REFERENCES

Motor vehicles, generally, see Section 56‑1‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 48Ak181.

Automobiles 181.

C.J.S. Motor Vehicles Section 791.

NOTES OF DECISIONS

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1. Validity

Guest statute is unconstitutional denial of equal protection when non‑paying guest is required to prove more than simple negligence as a basis of recovery, since classification bears no rational relation to ostensible purpose of protection of hospitality or elimination of collusive law suits. Ramey v. Ramey (S.C. 1979) 273 S.C. 680, 258 S.E.2d 883, certiorari denied 100 S.Ct. 1028, 444 U.S. 1078, 62 L.Ed.2d 761.

2. In general

Applied in Augustine v Christopoulo, 196 SC 381, 13 SE2d 918 (1941). Shockley v Cox Circus Co., 204 SC 353, 29 SE2d 491 (1944). Alexander v United States, 98 F Supp 453 (1951). Parker v Parker, 230 SC 28, 94 SE2d 12 (1956). Willard v McCoy, 234 SC 317, 108 SE2d 113 (1959). Conyers v Stewart, 247 SC 403, 147 SE2d 640 (1966). Travelers Ins. Co. v Allstate Ins. Co., 249 SC 592, 155 SE2d 591 (1967).

For evidence sustaining verdict against driver under this section [former Code 1962 Section 46‑801], see Fuller v. Bailey (S.C. 1961) 237 S.C. 573, 118 S.E.2d 340.

As to complaint failing to show in what capacity decedent was riding in defendant’s vehicle, see Bailey v. Seymore (S.C. 1953) 224 S.C. 162, 77 S.E.2d 803.

For complaint stating cause of action under this section [former Code 1962 Section 46‑801], see Ralls v. Saleeby (S.C. 1935) 178 S.C. 431, 182 S.E. 750.

3. Purpose

It restricts liability to a guest to cases where the injury has resulted from either intentional or reckless misconduct on the part of the owner or operator. Benton v Pellum, 232 SC 26, 100 SE2d 534 (1957). Jackson v Jackson, 234 SC 291, 108 SE2d 86 (1959). Fuller v Bailey, 237 SC 573, 118 SE2d 340 (1961). Ardis v Griffin, 239 SC 529, 123 SE2d 876 (1962). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962). Lynch v Alexander, 242 SC 208, 130 SE2d 563 (1963). Elrod v All, 243 SC 425, 134 SE2d 410 (1964). Christy v Reid, 244 SC 27, 135 SE2d 319 (1964). Singleton v Hughes, 245 SC 169, 139 SE2d 747 (1965). Ray v Simon, 245 SC 346, 140 SE2d 575 (1965). Benton v Davis, 248 SC 402, 150 SE2d 235 (1966). Kennedy v Carter, 249 SC 168, 153 SE2d 312 (1967). Powell v Simons, 258 SC 242, 188 SE2d 386 (1972).

Under this section [former Code 1962 Section 46‑801], a guest cannot recover against the owner and operator of an automobile for simple negligence. Elrod v All, 243 SC 425, 134 SE2d 410 (1964). Kennedy v Carter, 249 SC 168, 153 SE2d 312 (1967).

Under this section [former Code 1962 Section 46‑801], a guest cannot recover against the operator for simple negligence. Powell v. Simons (S.C. 1972) 258 S.C. 242, 188 S.E.2d 386. Automobiles 181(1)

Recovery under this section [former Code 1962 Section 46‑801] cannot be based upon simple negligence but only upon evidence sustaining an inference that the driver of the motor vehicle was guilty of either intentional or reckless misconduct. Jones v. Dague (S.C. 1969) 252 S.C. 261, 166 S.E.2d 99. Automobiles 244(20)

Under the terms of this section [former Code 1962 Section 46‑801], the liability of a motorist for injury to a guest is restricted to harm intentionally inflicted or caused by the driver’s heedlessness and his reckless disregard for the rights of others. Yaun v. Baldridge (S.C. 1964) 243 S.C. 414, 134 S.E.2d 248.

The purpose of this section [former Code 1962 Section 46‑801] is to deny a guest a right of action for simple negligence and require for liability more than that. Oswald v. Weiner (S.C. 1950) 218 S.C. 206, 62 S.E.2d 311. Automobiles 181(1)

It does not serve to relieve a master or principal from the ordinary burden of liability under the rule of respondeat superior. Oswald v. Weiner (S.C. 1950) 218 S.C. 206, 62 S.E.2d 311. Automobiles 181(1)

4. Definition and construction of statutory terms

Standard of “heedlessness and reckless disregard of plaintiff’s rights” applied to measure tort liability of hospitals is the same as under the Automobile Guest Statute, former Code 1962 Section 46‑801 [Code 1976 Section 15‑1‑290]. Brown v. Anderson County Hospital Ass’n (S.C. 1977) 268 S.C. 479, 234 S.E.2d 873. Negligence 1659

When a man actually acts negligently and he realizes that he is acting negligently, the law says he is reckless or willful and wanton, which terms mean the conscious failure to exercise due care. Yaun v. Baldridge (S.C. 1964) 243 S.C. 414, 134 S.E.2d 248. Negligence 275

The court has construed the words “his heedlessness or his reckless disregard of the rights of others” as meaning “his heedless and his reckless disregard of the rights of others.” Brown v. Hill (S.C. 1955) 228 S.C. 34, 88 S.E.2d 838. Automobiles 181(1)

“Intentional,” as used in this section [former Code 1962 Section 46‑801], means causing of the act purposely, willfully or designedly; “heedless” means careless; and “reckless disregard of the rights of others” means improper or wrongful conduct, and constitutes wanton misconduct evincing a reckless indifference of consequences to life, limb, health, reputation, or property rights of another. Fulghum v. Bleakley (S.C. 1935) 177 S.C. 286, 181 S.E. 30.

The word “or” (preceding “reckless disregard of the rights of others”) was interpreted to mean “and.” Otherwise, this section [former Code 1962 Section 46‑801] would have imposed liability for mere negligence and would have effected no change in liability. Fulghum v. Bleakley (S.C. 1935) 177 S.C. 286, 181 S.E. 30.

Where, at time of passage of this section [former Code 1962 Section 46‑801], the Connecticut Supreme Court of Errors had construed provision of Connecticut guest statute, of which this section was exact copy, that owner or operator of motor vehicle should not be liable to guest in case of accident, unless accident was intentional on part of owner or operator or caused by his heedlessness or his reckless disregard of rights of others, to mean heedless and reckless disregard of right of others, the presumption is that the South Carolina legislature intended such interpretation to form part of this section. Fulghum v. Bleakley (S.C. 1935) 177 S.C. 286, 181 S.E. 30. Automobiles 181(1)

5. Guest or passenger

Contribution toward the cost of gasoline and oil does not relieve the rider of his guest status within the meaning of the statute. Edens v. Cole (S.C. 1973) 261 S.C. 556, 201 S.E.2d 382.

The sharing of the cost of operating an automobile on a trip, when the trip is undertaken for pleasure or social purposes and the invitation is not motivated by, or conditioned on, such contribution, is nothing more than the exchange of social amenities and does not transform into a paying passenger one who without the exchange would be a guest. Edens v. Cole (S.C. 1973) 261 S.C. 556, 201 S.E.2d 382. Automobiles 181(2)

The limitation of liability under this section [former Code 1962 Section 46‑801] applies only to a guest who is transported by the host without payment. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816. Automobiles 181(1)

Payment does not necessarily mean that a pecuniary consideration has been paid directly to the host. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

It is generally agreed that the payment or compensation which the carrier derives from the undertaking need not consist of cash or its equivalent, but may consist of some other substantial benefit, recompense, or return making it worthwhile for him to furnish the ride. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

When used in distinction to the term “guest,” the term “passenger” ordinarily designates an occupant of the motor vehicle who has contributed some tangible and substantial benefit to the owner or operator for the ride, rendering the owner or operator liable for ordinary negligence. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816. Automobiles 181(2)

A person riding in a motor vehicle is a guest if his transportation confers a benefit only upon himself and no benefit upon the owner or operator except such as is incidental to hospitality, social relations, companionship, or the like as a mere gratuity; but if his transportation contributes such tangible and substantial benefits as to promote the mutual interests of both the passenger and the owner or operator, or is primarily for the attainment of some tangible and substantial objective or business purpose of the owner or operator, he is not a guest. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

Whether one is a passenger or a guest depends largely upon the facts and circumstances of each particular case. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

Where the testimony was susceptible of an inference that defendant sought out the deceased and secured his company for some mission or purpose beneficial to defendant, a jury issue was presented as to the status of the deceased in the automobile at the time; and the trial judge was in error in instructing the jury that, as a matter of law, the relationship between defendant and the deceased was that of host and guest. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

Where there is any evidence to sustain a reasonable inference that the status of the deceased was that of a “passenger,” the right of recovery is not governed solely by this section [former Code 1962 Section 46‑801]. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

This section [former Code 1962 Section 46‑801] concludes with an exceptive provision which makes it inapplicable to a public carrier, which the context fairly shows to be a carrier of passengers. Bailey v. Seymore (S.C. 1953) 224 S.C. 162, 77 S.E.2d 803.

6. Duty of owner or operator

Under this section [former Code 1962 Section 46‑801] the only duty an owner or operator owes to a guest is not to injure him willfully or by conduct in reckless disregard of his rights. Johnson v Griffin, 228 SC 526, 90 SE2d 913 (1956). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962). Elrod v All, 243 SC 425, 134 SE2d 410 (1964). Ray v Simon, 245 SC 346, 140 SE2d 575 (1965). Kennedy v Carter, 249 SC 168, 153 SE2d 312 (1967). Powell v Simons, 258 SC 242, 188 SE2d 386 (1972). Martin v Martin, 262 SC 168, 203 SE2d 385 (1974). Garrett v Reese, 262 SC 327, 204 SE2d 432 (1974).

The basic standard of care by which the conduct of the driver is to be judged is that of a reasonably prudent person in the same or similar circumstances. Jones v Dague, 252 SC 261, 166 SE2d 99 (1969). Dearybury v Albert, 253 SC 263, 170 SE2d 15 (1969).

This section [former Code 1962 Section 46‑801] modifies the common‑law rule that the owner or operator of a motor vehicle owes to a guest the duty to exercise ordinary care to avoid injuring him. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

The fact that an action is brought under the guest statute, which limits liability to intentional or reckless conduct, does not change the standard of care for determining the responsibility of the driver. Jones v. Dague (S.C. 1969) 252 S.C. 261, 166 S.E.2d 99.

7. Sudden emergency

When the driver of automobile is confronted with a sudden peril brought about by the negligence of another, he is not held to the exercise of the same degree of care as when he has time for reflection. If he has used due care to avoid meeting such an emergency and after it arises he exercises such care as a reasonably prudent driver would use under the attendant circumstances, he is not negligent. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410.

An automobile driver, who, by the negligence of another and not by his own negligence, is suddenly placed in an emergency and compelled to act instantly to avoid a collision or an injury, is not guilty of negligence if he makes such a choice as a person of ordinary prudence placed in such a position might make, even though he did not make the wisest choice. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410.

Ordinarily, the question of sudden emergency is for the jury, but if the proof shows no actionable negligence on the part of the defendant, it is the duty of the court to so declare as a matter of law. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410. Negligence 1698

Evidence was susceptible of no other reasonable inference than that the defendant was faced with a sudden emergency and exercised due care, in turning his automobile to the left, in the effort he made to avoid a collision with another automobile. In so doing, he was not guilty of either willful, intentional or reckless misconduct in the operation of the automobile in which the plaintiff was riding. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410. Automobiles 181(1)

8. Establishing heedlessness and recklessness

The greater weight of the evidence was such as to establish heedlessness and recklessness of the defendant in the operation of his car to satisfy the requirements of this section [former Code 1962 Section 46‑801]. Wade v Dargan, 195 F Supp 1 (1961). Stewart v Combs, 206 F Supp 19 (1962).

Where testimony was not so clear as to foreclose the inference that a guest was not negligent or reckless in same degree as the driver, the trial court properly refused to direct a verdict for the defendants, the owner and driver of the car. Hardigg v. Inglett (C.A.4 (S.C.) 1957) 250 F.2d 895.

The defendant was heedless and reckless in failing to maintain a proper lookout and in failing to have his car under proper control so as to be able to avoid leaving the road and turning over, and in continuing to drive after having previously dozed off and in disregard of other premonitions, warnings and other manifestations of approaching sleep. Stewart v. Combs, 1962, 206 F.Supp. 19. Automobiles 244(20)

A mere failure to operate an automobile skillfully under all conditions, or to be alert and observant, and to act intelligently and operate an automobile at a low rate of speed may, or may not, be a failure to do what an ordinarily prudent person would have done under the circumstances and thus amount to lack of ordinary care; but such lack of attention and diligence, or mere inadvertence, does not amount to wanton or reckless conduct or constitute culpable negligence for which defendant would be responsible to an invited guest. Martin v. Martin (S.C. 1974) 262 S.C. 168, 203 S.E.2d 385.

Where the only reasonable inference to be drawn is that the defendant was not guilty of intentional willful or reckless misconduct in the operation of his automobile there is no liability of the defendant to the plaintiff under the Guest Statute. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410.

Jury could reasonably infer actionable recklessness by driver in failing to keep a proper lookout, in failing to have his car under control, and in driving at an excessive rate of speed. Benton v. Pellum (S.C. 1957) 232 S.C. 26, 100 S.E.2d 534.

Blowout of tire known by driver to be weak while driving truck with shifting cargo on very warm day at a high rate of speed, in disregard of warnings of guest, was sufficient to support jury finding that driver’s conduct was willful or reckless. Saxon v. Saxon (S.C. 1957) 231 S.C. 378, 98 S.E.2d 803.

9. Reckless disregard of others’ rights

The test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner and under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of plaintiff’s rights. This standard applies in this State regardless of the driver’s experience in operating a motor vehicle, and whether the question is one of ordinary negligence, or recklessness under the guest statute. Jones v Dague, 252 SC 261, 166 SE2d 99 (1969). Dearybury v Albert, 253 SC 263, 170 SE2d 15 (1969). Powell v Simons, 258 SC 242, 188 SE2d 386 (1972).

One operating a motor vehicle on a public highway owes an urgent duty to keep a proper lookout and to keep the vehicle under proper control, and inattention to these duties by a driver, while lighting a cigarette and passing a box of matches to a passenger on the back seat, raised an issue for the jury as to whether the driver acted in reckless disregard of the rights of others. Yaun v Baldridge, 243 SC 414, 134 SE2d 248 (1964). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962).

It was held that an act or conduct in reckless disregard of the rights of others is improper or wrongful conduct, constituting wanton misconduct and evincing reckless indifference of consequences to the life, limb, health, reputation, or property rights of another, in Proctor v Southern Ry. Co., 61 SC 170, 39 SE 351 (1901). Spurlin v Colprovia Products Co., 185 SC 449, 194 SE 332 (1937). Cummings v Tweed, 195 SC 173, 10 SE2d 322 (1940).

The test for determining whether a tort may be deemed reckless, willful or wanton is whether it has been committed in such a manner and under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the rights of the injured party. Martin v. Martin (S.C. 1974) 262 S.C. 168, 203 S.E.2d 385. Negligence 275

Whether an automobile is being operated in such a manner as to amount to wanton and willful conduct in disregard of the rights of others must be determined by the facts and circumstances of each individual case; it is one thing to persistently pursue a course of driving in a reckless and dangerous manner over the protest of the occupant of the car, and an entirely different thing to act in a negligent manner on the spur of the moment. Saxon v. Saxon (S.C. 1957) 231 S.C. 378, 98 S.E.2d 803.

For a case where the court held that there was testimony from which a reasonable inference could be drawn that the death of plaintiff’s intestate was caused by the reckless disregard of his rights by the driver of the automobile, and that the lower court erred in granting defendant’s motion for a nonsuit, see Peak v. Fripp (S.C. 1940) 195 S.C. 324, 11 S.E.2d 383.

10. Sufficiency of allegations of recklessness

If any testimony is introduced touching or supporting the allegations of failure to keep a proper lookout or have proper control, it would ordinarily be a question for the jury whether such conduct constitutes a reckless disregard of the rights of a passenger within the meaning of the guest statute. Shearer v. DeShon (S.C. 1962) 240 S.C. 472, 126 S.E.2d 514.

Allegations as to “proper lookout,” “proper control,” and “proper warning” upon entering a street “muchly used” when substantiated by testimony would, if it is shown by the testimony that the deceased was a guest, prove those things which would hold one liable in causing the death or injury of a guest passenger. Spurlin v. Colprovia Products Co. (S.C. 1937) 185 S.C. 449, 194 S.E. 332.

11. Vehicle race participants

All who willfully participate in speed competition between motor vehicles on a public highway are jointly and concurrently negligent and, if damage to one not involved in the race proximately results from it, all participants are liable, regardless of which of the racing cars actually inflicts the injury, and regardless of the fact that the injured person was a passenger in one of the racing vehicles. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

In cases in which an automobile race was apparently over before the accident occurred, the courts have approved the submission to the trier of fact of the issue of the contributory recklessness of the guest or passenger and have sustained the finding that he was free of such. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

Where a guest voluntarily continues to ride with a reckless driver, the guest is reckless in the same degree as the driver, provided the guest has had the opportunity to remove himself from such danger by not continuing as a guest in the automobile so operated. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

Where one consents to ride in a motor vehicle which he knows is about to be used in racing on a public highway he is guilty of contributory, willful and wanton misconduct as a matter of law, which precludes his recovery for injuries sustained during the race. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

It was proper to instruct the jury that if they should find that the deceased knew that the defendant was going to engage in a race with another automobile, and had the opportunity to get out of such automobile, then he would be guilty of contributory recklessness and could not recover. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

It was proper to instruct the jury that if they should find from the testimony that an automobile race had in fact occurred, but that such was over and the deceased lost his life solely as a result of the negligence, recklessness, willfulness and wantonness of the defendant, the plaintiff would be entitled to recover. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

12. Proximate cause

Recklessness need not be the sole cause of injury to render driver liable; it is sufficient to show that it is a proximate concurring cause. Benton v Pellum, 232 SC 26, 100 SE2d 534 (1957). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962).

Under the guest statute intentional or reckless misconduct of the owner or operator of a motor vehicle is not actionable unless it is either a proximate or a concurring proximate cause of the injury complained of, and may be deemed such a cause only when without such intentional or reckless misconduct the injury would not have occurred or could have been avoided. Kennedy v. Carter (S.C. 1967) 249 S.C. 168, 153 S.E.2d 312. Automobiles 201(1.1)

Negligence of guest must be proximate cause of injury to bar recovery. That plaintiff thought defendant was driving at an unreasonable speed and failed to protest did not bar his recovery for injuries which were caused by an unrelated act of recklessness which plaintiff had no reason to anticipate and against which he had no opportunity to protect himself. Hicks v. Herring (S.C. 1965) 246 S.C. 429, 144 S.E.2d 151. Automobiles 224(5)

Even if plaintiff were negligent in remaining in an automobile, being driven at an unreasonable speed, the question would still remain whether his negligence in that respect contributed to his injury as a proximate cause thereof. Hicks v. Herring (S.C. 1965) 246 S.C. 429, 144 S.E.2d 151.

There was no evidence, either direct or circumstantial, from which it might reasonably have been inferred that the accident would not have happened if the defendant had been driving at a lower rate of speed; hence, there was no evidence that excessive speed was a proximate cause of the accident. Guyton v. Guyton (S.C. 1964) 244 S.C. 357, 137 S.E.2d 273.

The fact that plaintiff was (1) driving at night, (2) on a highway with which he was not familiar, (3) which had a dark surface, was not a circumstance which made driving at the prima facie legal rate of speed inappropriate. Guyton v. Guyton (S.C. 1964) 244 S.C. 357, 137 S.E.2d 273.

13. Contributory negligence

A guest is barred from recovery for injuries caused by the host’s reckless disregard of the guest’s safety, if knowing of the host’s reckless misconduct and the danger involved to such guest, the guest recklessly exposes himself thereto. Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962). Singleton v Hughes, 245 SC 169, 139 SE2d 747 (1965). Benton v Davis, 248 SC 402, 150 SE2d 235 (1966).

To bar recovery under this section [former Code 1962 Section 46‑801], the plaintiff’s intestate must have been guilty of the same degree of contributory negligence as that of the defendant, that is, contributory recklessness and willfullness. Ardis v Griffin, 239 SC 529, 123 SE2d 876 (1962). Lynch v Alexander, 242 SC 208, 130 SE2d 563 (1963).

Questions as to the contributory recklessness and willfullness of a guest in an automobile must be determined from the facts of the particular case and are usually for determination by the jury. Ardis v Griffin, 239 SC 529, 123 SE2d 876 (1962). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962). Lynch v Alexander, 242 SC 208, 130 SE2d 563 (1963).

To be guilty of contributory negligence, a guest must have had the opportunity to remove himself from danger. Jackson v Jackson, 234 SC 291, 108 SE2d 86 (1959). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962).

When a guest voluntarily continues to ride with a driver who, because of intoxication, is not in possession of his faculties, or who so persistently drives in a reckless manner, after warning, as to make the guest conscious of the danger in remaining in the automobile, the guest is negligent or reckless in the same degree as the driver. Hardigg v Inglett, 250 F2d 895 (1957). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962).

Contributory negligence on the part of a plaintiff will not bar recovery under this section [former Code 1962 Section 46‑801]. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242.

Contributory heedlessness or contributory recklessness on the part of the guest passenger will bar recovery. This matter is ordinarily for determination by the jury. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242. Automobiles 226(3); Automobiles 245(67.1)

Where plaintiff joined in a riding and drinking party from 11 A.M. until the wreck at 4 P.M., with the driver, known to be reckless, joining in the drinking; and, although he knew the driver was of a reckless disposition and drinking, continued in the vehicle until the wreck occurred, although ample opportunity existed for him to leave the car, such conduct would support a finding by the jury that the plaintiff recklessly failed to take any care or precaution for his own safety, which barred him from recovery. Benton v. Davis (S.C. 1966) 248 S.C. 402, 150 S.E.2d 235. Automobiles 244(56)

Questions as to the contributory negligence or recklessness of a guest in an automobile are ordinarily for determination by the jury and become a matter of law for determination by the court only when the evidence admits of but one reasonable inference thereabout. Benton v. Davis (S.C. 1966) 248 S.C. 402, 150 S.E.2d 235. Automobiles 245(87)

Even if plaintiff were negligent in remaining in an automobile being driven at an unreasonable speed, the question would still remain whether his negligence in that respect contributed to his injury as a proximate cause thereof. Hicks v. Herring (S.C. 1965) 246 S.C. 429, 144 S.E.2d 151.

The question as to contributory recklessness is usually for the determination by the jury, and becomes an issue of law for the court only where the conclusion that the guest was guilty of contributory recklessness is the only reasonable inference to be drawn from the evidence. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 245(87)

The question of whether or not a guest is guilty of contributory recklessness as a matter of law must be determined from the facts of the case, considering the testimony and the reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 224(1)

The defense of contributory recklessness is an affirmative one and the burden of establishing it by the preponderance of the evidence was upon the defendant. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 239(2); Automobiles 244(56)

Test of guest’s contributory negligence is not whether guest, knowing that driver’s conduct is improper, has reasonable opportunity to leave automobile, but whether a reasonable opportunity being afforded a person in exercise of ordinary care would have done so under the circumstances. Lynch v. Alexander (S.C. 1963) 242 S.C. 208, 130 S.E.2d 563. Automobiles 224(6)

Ordinarily, contributory recklessness and willfullness is an issue for the jury and rarely becomes a question of law for the court. Crocker v. Weathers (S.C. 1962) 240 S.C. 412, 126 S.E.2d 335. Negligence 1717(1)

A guest in an automobile who voluntarily and knowingly entrusts his safety and security to a driver who is intoxicated, is equally at fault with the driver and is precluded from recovery for injuries sustained in an accident if the intoxicated condition of the driver was a proximate cause thereof. In such a situation, the guest, in knowingly entrusting his safety to a driver who is intoxicated, is guilty of a conscious failure to exercise due care. The conscious failure of the guest to exercise due care for his own safety would constitute willfullness and recklessness and, where such conduct on the part of the guest contributes as a proximate cause to his injury, he is guilty of contributory recklessness and willfullness which bars recovery under the guest statute. Ardis v. Griffin (S.C. 1962) 239 S.C. 529, 123 S.E.2d 876.

A guest himself is not relieved from the duty of exercising due care, and he may not abandon the exercise of his own faculties and entrust his safety absolutely to the driver. But, on the other hand, in the absence of any fact or circumstance indicating that the driver is incompetent or careless, an occupant of a vehicle is not required to anticipate negligence on the part of the driver. Cummings v. Tweed (S.C. 1940) 195 S.C. 173, 10 S.E.2d 322. Automobiles 224(3)

14. Anticipation of driver negligence

In the absence of any fact or circumstance indicating that the driver is incompetent or careless, an occupant of a vehicle is not required to anticipate negligence on the part of the driver. Wade v Dargan, 195 F Supp 1 (1961). Stewart v Combs, 206 F Supp 1 (1962).

In the absence of any fact or circumstance indicating the contrary, a passenger need not anticipate that the driver, who has exclusive control and management of the vehicle, will enter a sphere of danger, failing to exercise proper care, observe warning signals, or keep the speed of the vehicle within proper limits, or otherwise improperly increase the common risks of travel. Wade v Dargan, 195 F Supp 1 (1961). Stewart v Combs, 206 F Supp 19 (1962).

15. Failure to wear seat belt

The mere failure of a guest passenger to use a seat belt does not constitute negligence or a failure to minimize damages. Jones v. Dague (S.C. 1969) 252 S.C. 261, 166 S.E.2d 99. Automobiles 224(1); Damages 62(2)

16. Obligation to inspect automobile

A guest passenger, without some reason to suspect a particular defect, has no duty to inspect the automobile before accepting an invitation to ride in it. Mann v. Bowman Transp., Inc. (C.A.4 (S.C.) 1962) 300 F.2d 505. Automobiles 224(1)

17. Burden of proof

The burden is upon plaintiff‑guest to establish that her injuries were the result of the defendant’s willful or reckless misconduct in the operation of the automobile. Guyton v Guyton, 244 SC 357, 137 SE2d 273 (1964). Ray v Simon, 245 SC 346, 140 SE2d 575 (1965). Gause v Livingston, 251 SC 8, 159 SE2d 604 (1968).

The burden of proof is upon the passenger to establish that the sustained injuries were the proximate result of the owner’s intentional, willful or reckless conduct in the operation of the automobile. Martin v. Martin (S.C. 1974) 262 S.C. 168, 203 S.E.2d 385. Automobiles 242(7)

The burden is upon the guest to establish that the injury was the result of willful or reckless misconduct on the part of the defendant in the operation of his automobile. Powell v. Simons (S.C. 1972) 258 S.C. 242, 188 S.E.2d 386.

In order to prevail under this section [former Code 1962 Section 46‑801], the plaintiff must introduce evidence that the operator of the vehicle in which the guest was riding acted intentionally or acted heedlessly and recklessly in causing the injury. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242. Automobiles 245(24)

The defense of contributory recklessness is an affirmative one, and the burden of establishing it by the preponderance of the evidence was upon the defendant. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 239(2); Automobiles 244(56)

18. Evidence

There was no evidence, either direct or circumstantial, from which it might reasonably have been inferred that the accident would not have happened if the defendant had been driving at a lower rate of speed; hence, there was no evidence that excessive speed was a proximate cause of the accident. Guyton v. Guyton (S.C. 1964) 244 S.C. 357, 137 S.E.2d 273.

Where the plaintiff and her passenger witnesses testified in support of the allegations of the complaint that the defendant was inattentive to his duty to keep a lookout, and plaintiff urged that this raised a jury issue, it was held that this testimony was admissible as bearing upon defendant’s state of mind, but raised no issue for the jury as to causal misconduct since the complaint did not allege that failure to keep a proper lookout was a proximate cause of the accident. Guyton v. Guyton (S.C. 1964) 244 S.C. 357, 137 S.E.2d 273.

The fact that an automobile, in the city limits, in a thirty‑five mile per hour zone, while making a left turn, skidded to the right, jumped the curb, traveled approximately sixty‑four feet before striking a telephone pole with such force as to completely sever it and turn over, was held to be susceptible of the inference that the driver acted in reckless disregard of the rights of its passengers and sufficient to require submission of the case to the jury. Christy v. Reid (S.C. 1964) 244 S.C. 27, 135 S.E.2d 319. Automobiles 245(24)

If any testimony is introduced touching or supporting the allegations of failure to keep a proper lookout or have proper control, it would ordinarily be a question for the jury whether such conduct constitutes a reckless disregard of the rights of a passenger within the meaning of the guest statute. Shearer v. DeShon (S.C. 1962) 240 S.C. 472, 126 S.E.2d 514.

19. Jury questions

Questions as to the contributory recklessness and willfullness of a guest in an automobile must be determined from the facts of the particular case and are usually for determination by the jury. Ardis v Griffin, 239 SC 529, 123 SE2d 876 (1962). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962). Lynch v Alexander, 242 SC 208, 130 SE2d 563 (1963).

When the evidence admits of but one reasonable inference it becomes a matter of law for determination by the court. Ardis v Griffin, 239 SC 529, 123 SE2d 876 (1962). Lynch v Alexander, 242 SC 208, 130 SE2d 563 (1963).

One operating a motor vehicle on a public highway owes an urgent duty to keep a proper lookout and to keep the vehicle under proper control, and inattention to these duties by a driver, while lighting a cigarette and passing a box of matches to a passenger on the back seat, raised an issue for the jury as to whether the driver acted in reckless disregard of the rights of others. Yaun v Baldridge, 243 SC 414, 134 SE2d 248 (1964). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962).

Where there was testimony from which the jury could conclude that the defendants’ automobile was being operated at a speed of seventy to seventy‑five miles per hour and on the wrong side of the road, though this testimony was sharply contradicted by other witnesses, the issue of credibility was for the jury. Meek v. Harris (C.A.4 (S.C.) 1958) 256 F.2d 579. Automobiles 244(4)

The question of heedlessness or recklessness is ordinarily one for the jury. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242.

Contributory heedlessness or contributory recklessness on the part of the guest passenger will bar recovery. This matter is ordinarily for determination by the jury. Berry v. Hall (S.C. 1972) 258 S.C. 63, 187 S.E.2d 242. Automobiles 226(3); Automobiles 245(67.1)

Where the testimony was susceptible of an inference that defendant sought out the deceased and secured his company for some mission or purpose beneficial to defendant, a jury issue was presented as to the status of the deceased in the automobile at the time; and the trial judge was in error in instructing the jury that, as a matter of law, the relationship between defendant and the deceased was that of host and guest. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

Questions as to the contributory negligence or recklessness of a guest in an automobile are ordinarily for determination by the jury and become a matter of law for determination by the court only when the evidence admits of but one reasonable inference thereabout. Benton v. Davis (S.C. 1966) 248 S.C. 402, 150 S.E.2d 235. Automobiles 245(87)

As a verdict for actual damages carried the implication that defendant operated his automobile in reckless disregard of the rights and safety of his guest passenger and of others lawfully using the highway, it was, therefore, the right and duty of the jury to assess punitive damages. Hicks v. Herring (S.C. 1965) 246 S.C. 429, 144 S.E.2d 151. Automobiles 249.2

The question as to contributory recklessness is usually for the determination by the jury, and becomes an issue of law for the court only where the conclusion that the guest was guilty of contributory recklessness is the only reasonable inference to be drawn from the evidence. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747. Automobiles 245(87)

The fact that an automobile, in the city limits, in a thirty‑five mile per hour zone, while making a left turn, skidded to the right, jumped the curb, traveled approximately sixty‑four feet before striking a telephone pole with such force as to completely sever it and turn over, was held to be susceptible of the inference that the driver acted in reckless disregard of the rights of its passengers and sufficient to require submission of the case to the jury. Christy v. Reid (S.C. 1964) 244 S.C. 27, 135 S.E.2d 319. Automobiles 245(24)

Ordinarily, the question of sudden emergency is for the jury, but if the proof shows no actionable negligence on the part of the defendant, it is the duty of the court to so declare as a matter of law. Elrod v. All (S.C. 1964) 243 S.C. 425, 134 S.E.2d 410. Negligence 1698

If any testimony is introduced touching or supporting the allegations of failure to keep a proper lookout or have proper control, it would ordinarily be a question for the jury whether such conduct constitutes a reckless disregard of the rights of a passenger within the meaning of the guest statute. Shearer v. DeShon (S.C. 1962) 240 S.C. 472, 126 S.E.2d 514.

Ordinarily, contributory recklessness and willfulness is an issue for the jury and rarely becomes a question of law for the court. Crocker v. Weathers (S.C. 1962) 240 S.C. 412, 126 S.E.2d 335. Negligence 1717(1)

The question of whether the guest was guilty of contributory willfulness, which contributed as a proximate cause of her injuries, should have been submitted to the jury. Jackson v. Jackson (S.C. 1959) 234 S.C. 291, 108 S.E.2d 86.

For a case where the question of defendant’s reckless disregard of the plaintiff’s rights was held to be a jury question, see Cummings v. Tweed (S.C. 1940) 195 S.C. 173, 10 S.E.2d 322.

20. Instructions

Where the testimony was susceptible of an inference that defendant sought out the deceased and secured his company for some mission or purpose beneficial to defendant, a jury issue was presented as to the status of the deceased in the automobile at the time; and the trial judge was in error in instructing the jury that, as a matter of law, the relationship between defendant and the deceased was that of host and guest. Owens v. Gresham (S.C. 1972) 258 S.C. 46, 186 S.E.2d 816.

It was proper to instruct the jury that if they should find that the deceased knew that the defendant was going to engage in a race with another automobile, and had the opportunity to get out of such automobile, then he would be guilty of contributory recklessness and could not recover. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

It was proper to instruct the jury that if they should find from the testimony that an automobile race had in fact occurred, but that such was over and the deceased lost his life solely as a result of the negligence, recklessness, willfulness and wantonness of the defendant, the plaintiff would be entitled to recover. Singleton v. Hughes (S.C. 1965) 245 S.C. 169, 139 S.E.2d 747.

21. Punitive damages

As a verdict for actual damages carried the implication that defendant operated his automobile in reckless disregard of the rights and safety of his guest passenger and of others lawfully using the highway, it was therefore, the right and duty of the jury to assess punitive damages. Hicks v. Herring (S.C. 1965) 246 S.C. 429, 144 S.E.2d 151. Automobiles 249.2

Jury verdict for actual damages in amount demanded by complaint, without award of punitive damages, does not absolve defendant of willfulness or recklessness in view of trial courts’ instruction that jury could find for plaintiff only if they found defendant guilty of willfulness or recklessness. Saxon v. Saxon (S.C. 1957) 231 S.C. 378, 98 S.E.2d 803. Automobiles 247

**SECTION 15‑1‑300.** Contributory negligence shall not bar recovery in motor vehicle accident action.

In any motor vehicle accident, contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such contributory negligence was equal to or less than the negligence which must be established in order to recover from the party against whom recovery is sought.

HISTORY: 1962 Code Section 46‑802.1; 1974 (58) 2718.

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NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

In action for wrongful death arising out of an accident in which the two victims had been killed when their automobile crashed into a bridge under construction, the failure of the builder to challenge the constitutionality of the comparative negligence statute, Section 15‑1‑300, until its motion for judgment n.o.v. constituted a waiver of its right to raise the issue on appeal since a motion for judgment n.o.v. is limited to the grounds previously presented on a motion for a directed verdict; the judgment against the builder would be affirmed where the evidence established that it had failed to abide by the standards for adequate warning devices at highway construction sites contained in the contract and in Section 56‑5‑920 and where the presence of car tracks and litter at the site had given notice to the builder of the use of the restricted area by the public, and where the absence of proper warning lights or barricades, and not the high rate of speed of the accident vehicle, had been the major contributing factor in the accident. Taylor v. Bridgebuilders, Inc. (S.C. 1980) 275 S.C. 236, 269 S.E.2d 337.

Comparative negligence statutes of general application are valid, and violate neither due process nor equal protection clause and are enacted pursuant to police power of state; however, a comparative negligence statute applying only to motor vehicle accidents renders the provision constitutionally defective. Marley v. Kirby (S.C. 1978) 271 S.C. 122, 245 S.E.2d 604. Constitutional Law 3751; Constitutional Law 4419

This statute violates equal protection clause of South Carolina and United States Constitutions. Marley v. Kirby (S.C. 1978) 271 S.C. 122, 245 S.E.2d 604.

2. In general

The defense of contributory negligence does not depend on any duty owed by the injured party to the party sued. All that is necessary to establish the defense is to prove to the satisfaction of the jury that the injured party did not in his or her own interest take reasonable care of himself or herself and contributed, by this want of care, to his or her own injury. Woods v. Rabon (S.C.App. 1988) 295 S.C. 343, 368 S.E.2d 471. Negligence 453; Negligence 502(1); Negligence 503

In a personal injury action that was tried before the comparative negligence statute was declared unconstitutional, defendant was not entitled to an unconditional charge that contributory recklessness, willfulness, and wantonness would be a complete bar to recovery; the legislature used the term “negligence” in the comparative negligence statute in its broadest sense, so as to encompass the kindred concepts of “recklessness,” “willfulness,” and “wantonness.” Stockman v. Marlowe (S.C. 1978) 271 S.C. 334, 247 S.E.2d 340. Automobiles 246(23.1)

Although the court in an action for personal injuries sustained in an automobile collision incorrectly stated that plaintiff would be denied recovery if her contributory negligence equaled the negligence of defendant, it could not be reasonably inferred that the jury was misled when the entire charge of the trial judge on the issue was considered. Williams v. Barry (S.C. 1978) 271 S.C. 295, 247 S.E.2d 319.

**SECTION 15‑1‑310.** Liability for emergency care rendered at scene of accident.

Any person, who in good faith gratuitously renders emergency care at the scene of an accident or emergency to the victim thereof, shall not be liable for any civil damages for any personal injury as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person, except acts or omissions amounting to gross negligence or wilful or wanton misconduct.

HISTORY: 1962 Code Section 46‑803; 1964 (53) 2164.

CROSS REFERENCES

Education, pupils, epinephrine auto‑injectors, obtaining, storing, dispensing, administering, and self‑administering, immunity from liability, see Section 59‑63‑95.

Emergency Anaphylaxis Treatment Act, immunity, see Section 44‑99‑60.

LIBRARY REFERENCES

Westlaw Key Number Search: 48Ak184.

Automobiles 184.

C.J.S. Motor Vehicles Sections 863, 869, 873, 1296.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 39, Assault Requires Element of Intent.

LAW REVIEW AND JOURNAL COMMENTARIES

Social fraternity liable for causing initiate’s death. 39 S.C. L. Rev. 189, Autumn 1987.

The Rescue Doctrine Following the Advent of Comparative Negligence in South Carolina. 58 S.C. L. Rev. 641 (Spring 2007).

Attorney General’s Opinions

Under most circumstances, school personnel not licensed in medicine or nursing may not treat sick or injured students. While they may administer care in emergencies, they may be held liable for any negligence on their part unless they and their acts come within the protection of the Good Samaritan statute. 1979 Op Atty Gen, No 79‑139, p 222.

Section 15‑1‑310 provides statutory immunity to those rendering emergency care gratuitiously to the victim, except in cases of gross negligence. 1976‑77 Op Atty Gen, No 77‑386, p 317.

Unless an ambulance is within one of the exceptions in Section 44‑61‑100, the ambulance may not be staffed with an individual who is not properly certified. 1976‑77 Op Atty Gen, No 77‑386, p 317.

Calhoun County Rescue Squad would not qualify under the Good Samaritan Law if it charged a fee for its services. 1975‑76 Op Atty Gen, No 4482, p 342.

NOTES OF DECISIONS

In general 1

1. In general

The Medical Malpractice Liability Joint Underwriting Association (JUA) did not breach its covenant of good faith with emergency room physician by settling malpractice action against several physicians, charging one physician’s policy with a portion of the settlement, and failing to provide an avenue for input regarding JUA’s apportionment decision; the JUA had the authority to settle even groundless or fraudulent claims, owed a duty to settle within the policy limits if settlement was reasonable, was faced with eyewitness testimony of the physician’s negligence, and had secured a legal opinion that immunity under the Good Samaritan statute would depend on the facts. Doe v. South Carolina Medical Malpractice Liability Joint Underwriting Ass’n (S.C. 2001) 347 S.C. 642, 557 S.E.2d 670. Insurance 3349

Section 15‑1‑310 immunizes a rescuer from civil liability only where the rescuer is guilty of nothing more than ordinary negligence. Ballou v. Sigma Nu General Fraternity (S.C.App. 1986) 291 S.C. 140, 352 S.E.2d 488.

**SECTION 15‑1‑320.** References to minors in State laws mean persons under age of 18 years; exceptions; presumption that minors were persons under age of 21 in certain wills, trusts and deeds.

(a) All references to minors in the law of this State shall after February 6, 1975, be deemed to mean persons under the age of eighteen years except in laws relating to the sale of alcoholic beverages; provided, however, that any person performing any act or receiving any property, rights or responsibilities pursuant to an instrument executed prior to February 6, 1975, shall have his majority or minority determined by the law relating to majority or minority in existence at the time of the execution of such instrument.

(b) Persons executing wills, trusts and deeds prior to February 6, 1975, shall be presumed to have intended that minors were persons under the age of twenty‑one years in the absence of facts which would indicate a contrary intention.

HISTORY: 1976 Act No. 695, Sections 2, 3.

LIBRARY REFERENCES

Westlaw Key Number Search: 211k1.

Infants 1.

C.J.S. Infants Sections 2 to 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 7, Sunday Employment of Children.

S.C. Jur. Children and Families Section 172, Legislative Enactments.

S.C. Jur. Children and Families Section 174, Post‑Emancipation Rights and Responsibilities.

Treatises and Practice Aids

Williston on Contracts Section 9:3, The Age of Majority.

Attorney General’s Opinions

A parent or guardian is generally required to support his or her minor child, meaning any child under the age of eighteen. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391642.

NOTES OF DECISIONS

In general 1

1. In general

A divorced father’s duty to pay child support under a divorce decree ended once the child reached age 18, even though the age of majority was 21 at the time of the decree and the determination of his liability for support. Cason v. Cason (S.C. 1978) 271 S.C. 393, 247 S.E.2d 673.

**SECTION 15‑1‑330.** “Year 2000” computer failure immunity.

A governmental entity is not liable for a loss arising from the failure of a computer, software program, database, network, information system, firmware, or any other device, whether operated by or on behalf of the governmental entity, to interpret, produce, calculate, generate, or account for a date which is compatible with the “Year 2000” date change. However, this immunity does not apply to a governmental entity which programmed and operated the device itself in a wilful, wanton, reckless, or grossly negligent manner thereby causing a Year 2000 computer failure.

HISTORY: 1999 Act No. 100, Part II, Section 69.

LIBRARY REFERENCES

Westlaw Key Number Searches: 104k208; 268k1016; 360k191; 381k64.

Counties 208.

Municipal Corporations 1016.

States 191.

Towns 64.

C.J.S. Counties Sections 184, 254.

C.J.S. Municipal Corporations Sections 1935, 1938.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

C.J.S. Towns Section 274.

**SECTION 15‑1‑340.** Right of service member to proceed in civil action; providing evidence by video‑camera or other electronic means.

(A) A service member who is entitled to a stay in civil proceedings pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. Section 501, et seq. may elect to proceed while the service member is reasonably unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video‑conferencing, Internet camera, email, or another reasonable electronic means. Testimony presented must be made under oath, in a manner viewable by all parties, and in the presence of a court reporter. In matters when a party who is physically present in the State is permitted to use affidavits or seek temporary relief, the service member may submit testimony by affidavit.

(B) The court must allow a party to proceed pursuant to this section unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right.

HISTORY: 2009 Act No. 25, Section 2, eff June 2, 2009.