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Recent Decisions

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COMMUNITY PROPERTY: ALLOCATION OF PROFITS OF HUSBAND'S SEPARATE PROPERTY ENTERPRISES: *Estate of Neilson,* 57 Cal.2d 733, 371 P.2d 745, 22 Cal.Rptr. 1 (1962)

> The appellant does not dispute the proposition that, if Pepper had, year after year, sown his land to grain, the resulting crops would have formed a part of his separate estate.[1]

The above concession was a decisive factor in the much criticized decision of the supreme court in *Estate of Pepper.* In *Pepper,* feeling that the proceeds of an agricultural enterprise could not be accurately apportioned, the court ruled that the proceeds of such labor by a husband on his own separate property would be part of his separate estate. This exception to the rule of apportionment of income from the labors of a husband on his separate property has been formally eliminated by the recent ruling in *Estate of Neilson.*[2]

The litigation in the *Neilson* case arose out of a probate matter involving several plots of agricultural property. The original controversy concerned the ascertainment of the amount of the community property. The matter came before the supreme court after the trial court had rejected the following jury instruction.

> If the income and profits of separate property of a husband can be accurately identified and segregated, they would be his separate property and not community property. Thus the income and earnings from the farming operations of a husband conducted by him upon his separate real property constitute his separate property, and are not community property even though he has devoted his personal skill and attention to the cultivation and care of such property.[3]

The supreme court affirmed the decision of the trial court which had held that the ruling in *Pepper* was no longer effective. Speaking of *Pereira v. Pereira*[4] and subsequent cases, the court stated:

> These cases have established the rule that when part of the proceeds from a separate enterprise or investment arise from the husband's efforts, there must be an apportionment. *Estate of Pepper* . . . is therefore overruled.[5]

The court reasoned that the mere fact that the profits from an agricultural enterprise could not be apportioned with mathematical certainty in no way meant that apportionment was impossible or improper. Thus the rule of apportionment has now been made uniform in California, and any income derived by

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[1] Estate of Pepper, 158 Cal. 619, 623, 112 Pac. 62, 64 (1910).
[2] 57 Cal.2d 733, 371 P.2d 745, 22 Cal.Rptr. 1 (1962).
[3] *Id.* at 738, 371 P.2d at 748, 22 Cal.Rptr. at 4.
[4] 156 Cal. 1, 103 Pac. 488 (1909).
[5] Estate of Neilson, 57 Cal.2d 733, 741, 371 P.2d 745, 749, 22 Cal.Rptr. 1, 5 (1962).

a husband from labor on his separate property regardless of the nature of such property must now be apportioned.

Anthony B. Varni

TORTS: GUEST STATUTES: PASSENGER FOR COMPENSATION: *Tucker v. Landucci*, 57 Cal.2d 762, 371 P.2d 754, 22 Cal.Rptr. 10 (1962).

Litigation in the area of passenger and guest recoveries for the negligent operation of an automobile has been numerous. The recent ruling in *Tucker v. Landucci*[1] seems to have liberalized and possibly expanded the test as to who is a passenger for compensation. The effect of this change has been to extremely limit the definition of a "guest."

The test as to who falls into the classification of a guest for compensation is basically that found in *McCann v. Hoffman*.[2] As stated in that case, the guide lines are as follows.

> [W]here a special tangible benefit to the Defendant was the motivating influence for furnishing the transportation, compensation may be said to have been given. . . . [W]here the relationship between the parties is one of business and the transportation is supplied in the pursuit thereof for their mutual benefit, compensation has been given and the Plaintiff is a passenger and not a guest.[3]

In *Tucker v. Landucci* the supreme court, using the above guide posts, ruled that the fact situation there involved justified a jury determination that the plaintiff was a passenger for compensation.

Plaintiff was a rider in the car which defendant owned and was driving when the accident occurred which gave rise to this case. The defendant, Landucci, a saleslady in the junior wear department of a dry goods store, asked the head buyer of her department, Mrs. Castle, to join her for dinner. Mrs. Castle, in the course of the day, invited the plaintiff, an assistant buyer in the ladies wear department, and Mrs. Abbot, the chief buyer of that department, to join her and the defendant for cocktails after work. The purpose of the Saturday gathering was to celebrate the birthdays of Mrs. Abbott and the plaintiff.

Later, at the cocktail lounge, a discussion arose concerning a future fashion show of which Mrs. Castle was in charge and in which the plaintiff was to perform extensive duties. While still in the lounge, Mrs. Castle suggested that the plaintiff join the defendant and herself for dinner in order to allow the three of them to continue their discussion of the show, which was to be held the following Monday. The defendant's part in the show was to help with the models, as all salesladies were expected to do. By coming to dinner the plaintiff

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[1] 57 Cal.2d 762, 371 P.2d 754, 22 Cal.Rptr. 10 (1962).
[2] 9 Cal.2d 279, 70 P.2d 909 (1937).
[3] *Id.* at 286, 70 P.2d at 913.

and Mrs. Castle could finish their discussion and avoid a proposed Sunday meeting. On the way to dinner, the automobile in which the three women were riding was involved in a collision caused by the negligence of the defendant.

The supreme court ruled that this situation plainly met the test of "motivating influence," "tangible benefit," and the other requirements outlined in *McCann.* It found that the relationship between the parties was primarily one of business, that the defendant as well as the plaintiff benefited from the meeting, and that the primary purpose of inviting Mrs. Castle was for business rather than social reasons.

The aspect of this decision which tends to broaden the McCann test is the fact that the defendant was compensated, but not by the plaintiff. The plaintiff and defendant were both employees, but in different departments; the plaintiff was in no position to benefit the defendant in her employment. In *McCann,* on the other hand, the relationship between the parties was that of employer and employee. Any benefits derived by the defendant in this case, however, by establishing a closer relationship with influential members of the firm or securing inside information regarding latest fashions was compensation derived from Mrs. Castle. Furthermore, the plaintiff rather than the defendant appeared to have benefitted from the cocktail lounge gathering, since she was able to avoid the proposed Sunday meeting.

Apparently the test as to what constitutes compensation has thus been expanded to the point where a mere business relationship between the parties is sufficient; and such a relationship exists where the parties are merely fellow employees. Therefore it would seem to follow that where the parties are related in a business connection and one of the riders in the automobile affords some compensation to the driver, all the riders have the status of passengers.

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