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Automobile Accidents - Community Liability for Wife's Torts

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Notes

AUTOMOBILE ACCIDENTS—COMMUNITY LIABILITY FOR WIFE'S TORTS

Defendant wife negligently caused an accident while using the family car for the purpose of borrowing a knitting needle to knit herself a sweater. *Held*, defendant husband was liable in solido with his wife. *Brantley v. Clarkson*, 217 La. 425, 46 So. 2d 614 (1950).

In so holding the supreme court modified the doctrine of *Adams v. Golson*,[1] which the court of appeal had reluctantly followed.[2] In *Adams v. Golson* the wife's accident occurred while she was on her way to her evening meal after having attended a style show and before attending a social meeting. It was decided that the wife's trip was for her own pleasure and benefit.[3] The court concluded that such a trip was not a community errand[4] and so did not hold the husband liable in solido with his wife.

Under *Adams v. Golson* the wife could utilize the family car and negligently cause an accident, in which case the victim would go uncompensated unless the wife had separate property; yet the wife could continue living in the comfort of the untouched community wealth.

The principal case has eliminated such an undesirable situation. The supreme court has now decided that the community owes the wife recreation, enjoyment and pleasure as well as food and clothes and that the former are to be considered within the scope of community affairs. Perhaps the court best explained itself for this change when it quoted from the court of appeal opinion as follows: ". . . the legitimate pursuits of the wife whether for wholesome recreation and pleasure or for other purposes consonant with the intangible and imponderable obliga-

1. 187 La. 363, 174 So. 876 (1937).
2. Brantley v. Clarkson, 39 So. 2d 617 (La. App. 1948).
3. The evening meal, which apparently was within the scope of community affairs, was deemed merely incidental to the wife's trip.
4. Briefly, the rationale in *Adams v. Golson* is that even though the husband is not generally liable for his wife's torts he may be held for her negligent driving under a theory of agency, that is, when a wife uses the family car for community affairs with her husband's authorization, she is an agent of the community and therefore the husband, as head and master of the community, is responsible for her negligent driving.

tions of the marital relationship should be considered as within the scope of community activities."[5]

The courts will no longer be required to deal with the question of what errands of the wife are of such benefit to the community as to come within the scope of community affairs under the criteria of *Adams v. Golson*.[6] Neither will the courts have to tangle with the question of just what was the wife's primary purpose where her purposes were several.[7]

Furthermore, sound public policy demands solvency behind automobile operators. The decision in the principal case is in accord with that policy.

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PARTY IN DEFAULT—RIGHT TO PERFORM

A contract to sell real estate contained the provision, "possession to be given at act of sale." When the vendors failed to deliver the keys at the time set for the passage of the act of sale, purchaser sued for the return of twice his deposit. *Held*, recovery was allowed; defendants had breached the contract by not delivering the keys at the proper time. *Matthews v. Gaubler*, 49 So. 2d 774 (La. App. 1951).[1]

According to the rule laid down in *Southport Mills v. Ansley*,[2] in a commutative contract other than a completed sale of real estate, the delinquent party, while unable to perform *of right* after default, may nevertheless do so if the court, in its discretion, will allow performance.[3] This rule is based upon a literal inter-

5. See Brantley v. Clarkson, 39 So. 2d 617, 620 (La. App. 1948).

6. (a) Errands were within the scope of community affairs: Meibaum v. Campisi, 16 So. 2d 257 (La. App. 1944) (wife's trip to have coffee table repaired); Levy v. New Orleans & Northeastern R.R., 20 So. 2d 559 (La. App. 1945) (wife's trip to dressmaker).

(b) Errands were not within the scope of community affairs: Matulich v. Crockett, 184 So. 748 (La. App. 1938) (wife's trip for charitable works); Wise v. Smith, 186 So. 857 (La. App. 1939) (wife's visit to sick mother-in-law); Aetna Casualty and Surety Co. v. Simms, 200 So. 34 (La. App. 1941) (wife's visit to sick aunt).

All of these cases have relied on *Adams v. Golson*.

7. See Meibaum v. Campisi, 16 So. 2d 257 (La. App. 1944), for one example of difficulty in determining wife's primary purpose.

1. "In commutative contracts, where the reciprocal obligations are to be performed at the same time, or the one immediately after the other, the party who wishes to put the other in default, must, at the time and place expressed in, or implied by the agreement, offer or perform, as the contract requires, that which on his part was to be performed, otherwise the opposite party will not be legally put in default."

2. 160 La. 131, 106 So. 720 (1925).

3. See also Art. 2047, La. Civil Code of 1870.