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INTRODUCTION

The law creates two distinct duties of an employer to the public. The first is the employer's duty to answer for the wrongs of his employees committed within the scope of their employment.[1] The second is his duty not to entrust a vehicle to one he knows to be incompetent. The former duty is the well-known theory of respondeat superior. The latter, lesser known theory of negligent entrustment is a special application of the Restatement of Torts:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting therefrom.[2]

In *Willis v. Hill*,[3] a wrongful death action resulting from a motor vehicle collision, the Court of Appeals of Georgia held that, if a defendant is sued under both respondeat superior and negli-

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1. See generally Ferson, *Basis for Master's Liability and For Principals Liability to Third Persons*, 4 VAND. L. REV. 260 (1951); James, *Vicarious Liability*, 28 TUL. L. REV. 161 (1954); Laski, *The Basis of Vicarious Liability*, 26 YALE L.J. 105 (1916). RESTATEMENT (SECOND) OF AGENCY § 228 (1957) provides:

> (1) Conduct of a servant is within the scope of employment if, but only if:
> (a) it is of the kind he is employed to perform;
> (b) it occurs substantially within the authorized time and space limits;
> (c) it is actuated, at least in part, by a purpose to serve the master; and
> (d) if force is intentionally used by the servant against another, the use of force is not expectable by the master.

2. RESTATEMENT (SECOND) OF TORTS § 390 (1965). See also Perin v. Peuler, 373 Mich. 531, 533, 130 N.W.2d 4, 8 (1964); Gulla v. Straus, 154 Ohio St. 193, 93 N.E.2d 662, 666 (1950) which states:

> In a case such as the instant one, the burden is upon the plaintiff to establish that the motor vehicle was driven with the permission and authority of the owner; that the entrustee was in fact an incompetent driver; and that the owner knew at the time of the entrustment that the entrustee was incompetent or unqualified to operate the vehicle, or had knowledge of such facts and circumstances as would imply knowledge on the part of the owner of such incompetency.

3. 116 Ga. App. 848, 159 S.E.2d 145 (1964) *rev'd*, 224 Ga. 263, 161 S.E.2d 281 (1968). The Court of Appeals decision was reversed on a pro-

gent entrustment, his admission of scope of employment precludes the plaintiff from asserting the theory of recovery based on negligent entrustment.[4]

This Note will analyze the soundness of that decision in light of standard rules of evidence, common law negligence theories, special effects of the comparative negligence system, and the possibility of punitive damages.

SUMMARY OF WILLIS V. HILL

The plaintiff's husband was killed when his pick-up truck collided with defendant Southern Poultry, Inc.'s[5] tractor-trailer truck driven by Southern's employee Willis. The plaintiff pleaded two theories of recovery against Southern—respondeat superior and negligent entrustment. At the trial, over Southern's objection, evidence of specific instances of negligence concerning Willis' prior driving record was admitted. The trial resulted in a general verdict and judgment for the plaintiff.[6]

An appeal was brought on defendant's objection to the presence of the negligent entrustment issue, with its attendant consequence of rendering as relevant the evidence of Willis' prior driving record. At trial, Southern had made a motion for judgment on the issue of negligent entrustment and that such issue should be physically struck from the plaintiff's pleadings. In this same motion the defendant admitted that Willis was their employee and was acting within the scope of his employment at the time of the collision. The Court of Appeals reasoned that if the plaintiff could recover at all, she could get all the damages to which she was entitled under respondeat superior; thus, after the defendant admitted scope of employment, the theory of negligent entrustment became irrelevant and should have been struck.[7] The trial court's decision was reversed.

Hill, then, stands for three propositions: (1) the theories of respondeat superior and negligent entrustment are distinct theories of recovery involving separate acts of negligence on the part of two defendants; (2) the damages recoverable would be the same under either theory; and (3) the admission of scope of em-

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cedural point (duplicity of pleading) which in no way affected their position on the issue being discussed in this note.

4. Willis v. Hill, 116 Ga. App. 848, 851, 159 S.E.2d 145, 150 (1967).

5. Hereinafter defendant Southern Poultry, Inc. is referred to as Southern.

6. *Id.* at 851, 159 S.E.2d at 150.

7. *Id.* at 859, 159 S.E.2d at 157.

ployment makes the theory of recovery based on negligent entrustment and its accompanying evidential matter irrelevant to the proceedings.

Proof of Incompetency Under Negligent Entrustment

The evidence admissible under the negligent entrustment theory differs from that which the plaintiff may introduce under respondeat superior, even if it is alleged that the servant was incompetent and inexperienced. In the latter situation, mere allegation of incompetence of the servant does not permit the introduction of evidence thereof as tending to prove the particular negligence alleged.[8] This introduction would amount to evidence of the servant's character, obviously subject to the general rule that in a civil action the character of a party is inadmissible.[9]

Under negligent entrustment, where the character of the entrusted driver is in issue, proof of incompetency may be evidenced by reputation and by specific instances of carelessness, intoxication, or recklessness.[10] As noted above, the plaintiff must have pleaded that the owner of the vehicle entrusted it with knowledge of the driver's incompetency. Evidence is admissible of the owner's actual knowledge or reason to know of the driver's previous accidents or specific instances of his incompetency, carelessness, intoxication, or recklessness, or of driver's reputation for same.[11]

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8. Black v. Hunt, 96 Conn. 663, 115 A. 429 (1921); Nelson v. Seiler, 154 Md. 63, 139 A. 564 (1927); Flannagan v. Brown, 211 App. Div. 694, 208 N.Y.S. 211 (1925).

9. 1 Wigmore, Evidence § 64 (1940). Two reasons are given for this rule: (1) the party's character is usually of no probative value; (2) this evidence introduces prejudice, collateral issues, and waste of time.

10. *E.g.*, Breeding v. Massey, 378 F.2d 171 (9th Cir. 1967); Laney v. Blackburn, 25 Ala. App. 248, 144 So. 126 (1932); Ray v. Mays, 242 Ark. 79, 411 S.W.2d 865 (1967); Waller v. Yarborough, 232 Ark. 258, 337 S.W.2d 641 (1960); Tansey v. Robinson, 24 Ill. App. 2d 227, 164 N.E.2d 272 (1960); Elliott v. A.J. Smith Contracting Co., 358 Mich. 398, 100 N.W.2d 257 (1960); Guedon v. Rooney, 160 Ore. 621, 87 P.2d 209 (1939); Kennedy v. Crumley, 51 Tenn. App. 359, 367 S.W.2d 797 (1962). C. McCormick, Law of Evidence § 154 (1954) says:

> A persons possession of a particular character trait may be an operative fact which under the substantive law determines the legal rights and liabilities of the parties. When this is so, and when such character trait has been put in issue by the pleadings, the fact of character must of course be open to proof, and the courts have usually held that it may be proved by evidence of specific acts. While this is the method most likely to create prejudice and hostility, it is also the most decisive revelation of character, which is here the center of inquiry. We are willing to incur a hazard of prejudice here, and even supervise, which we are not when character is sought to be shown by specific acts on other occasions, only for a remoter and often doubtful inference as to the persons *acts* which are the subject of the suit.

11. See cases cited in note 10 *supra*.

INSTANCES WHERE BOTH RESPONDEAT SUPERIOR AND NEGLIGENT ENTRUSTMENT HAVE BEEN PLEADED

Respondeat superior and negligent entrustment are both pleaded where the defendant either specifically denies scope of employment or repudiates the employment relationship itself, and the plaintiff feels that proof of either may be difficult.[12] If the defendant, however, realizes that the existence of employment and scope of employment are provable, he will probably concede the agency issue. The plaintiff must still prove negligence; the admission of agency usually has the effect of precluding the cause in negligent entrustment and its attendant evidentiary matter, as it did in *Hill*.[13] The ultimate effect of defendant's admission of agency, then, is that the plaintiff must prove the employee-driver's negligence as the proximate cause of his injury; but he can introduce neither the driver's reputation of incompetence, nor specific instances of his incompetence.

a. *Cases Precluding Negligent Entrustment When Agency Is Admitted.*

Part of the authority relied on by *Hill* consisted of four opinions[14] from the Texas Court of Civil Appeals. These cases are substantially similar. Plaintiffs sued in both respondeat superior and negligent entrustment. After the defendants admitted scope of employment, the courts struck the claim of negligent entrustment. Evidence of the driver's previous acts of negligence were refused as irrelevant under respondeat superior. The source for these holdings was an earlier Texas case[15] which held that evidence of similar acts of negligence or habitual acts of negligence are not admissible to show that one has been negligent in doing or failing to do a particular act.

Another case cited in *Hill* held that it is *unnecessary* to pursue the theory of negligent entrustment after agency had been ad-

12. *E.g.*, Breeding v. Massey, 378 F.2d 171 (8th Cir. 1967); Nehi Bottling Co. v. Jefferson, 226 Miss. 586, 84 So. 2d 684 (1956); National Trucking Convoy, Inc. v. Saul, 375 P.2d 922 (Okla. 1962); Crowell v. Duncan, 145 Va. 489, 134 S.E. 576 (1926).

13. See discussion under subsection a. *infra*.

14. Rogers v. McFarland, 402 S.W.2d 208 (Tex. Civ. App. 1966); Frasier v. Pierce, 398 S.W.2d 955 (Tex. Civ. App. 1965); Luvual v. Kenke and Pillot, Division of Kroger Co., 366 S.W.2d 831 (Tex. Civ. App. 1963); Patterson v. East Texas Motor Freight Lines, 349 S.W.2d 634 (Tex. Civ. App. 1961).

15. Missouri K. & T. Ry. v. Johnson, 92 Tex. 380, 48 S.W. 568 (1932).

mitted.[16] It is only *necessary* to prove negligence on the part of the driver. It was prejudicial error to allow cross-examination as to previous driving offenses because of the possible inference the jury might take, that is, if the driver had been negligent previously he was negligent on the occasion in question. Similarly, another court held that the effect of either respondeat superior or negligent entrustment is to impose the same liability upon the employer or entrustor as might be assessed against the employee or entrustee.[17] As such, since damages would be the same, the plaintiff was not prejudiced by negligent entrustment being struck after the defendant admited scope of employment.

The obvious gist of the above cases and others holding similarly[18] is that the courts are reluctant to take exception to the "character evidence rule." Further, they wish to prevent the needless expansion of trial time and introduction of collateral issues which would be involved in evidence concerning negligent entrustment. In short, after agency is admitted, negligent entrustment is merely "excess baggage."

If the action taken by the above courts deprives the plaintiff of his choice of theory or theories to sue, it is justified by the courts equating the causes of action after agency is admitted, so that the plaintiff has only one cause of action.[19]

Obviously, the reasoning of these cases has no validity where the agency relationship or scope of employment is in doubt, and the courts have held accordingly.[20]

b. *Cases Not Precluding Negligent Entrustment When Agency Is Admitted.*

Authority for the proposition that the admission of agency does not preclude the theory of recovery based on negligent entrustment is provided by only one case.[21] *Clark v. Stewart*[22]

16. Houlihan v. McCall, 197 Md. 130, 78 A.2d 661 (1951).
17. Armenta v. Churchill, 42 Cal. 2d 448, 267 P.2d 303 (1954).
18. *E.g.*, Drosser v. Richman, 133 Conn. 253, 50 A.2d 85 (1946) stated that negligent entrustment was limited to cases where agency was not involved. Nesbit v. Cumberland Contracting Co., 196 Md. 36, 75 A.2d 339 (1950) stated that since appellants admitted scope of employment, evidence relevant under negligent entrustment was no longer admissible. Heath v. Kirkman, 240 N.C. 303, 82 S.E.2d 104 (1954) recognized the negligent entrustment theory, but said that it was applicable only when the plaintiff attempted to cast liability on an owner not otherwise responsible for the conduct of the driver of a vehicle. Houston v. Watson, 376 S.W.2d 23 (Tex. Civ. App. 1964) stated that a minor's prior misconduct would be immaterial as concerns the father's cause of action in view of his stipulation that any negligence on the minor's part would be imputed to him.
19. See cases cited in note 17 *supra*.
20. See note 11 *supra*.
21. The following cases lend support, but are not authority on the particular issue. Perkin v. Peuler, 373 Mich. 531, 130 N.W.2d 4 (1964) involved pleading of liability based on Michigan's motor vehicle owner-

was an action for personal injury alleged to have been caused by a minor operating a motor vehicle as agent for his father. The father admitted scope of employment and moved to strike the plea of negligent entrustment. The court overruled the motion, noting that the admission fell far short of admitting actual liability. The court said that since the two theories are distinct, both could be pleaded and proven, unless the defendant admits liability. Specific instances of prior negligence on the part of the employee-driver were admitted which evidence the court said would not be admitted, had negligent entrustment been pleaded. Apparently, the court saw the admission as a tactic to deprive the plaintiff of his privilege to plead and prove alternative theories,[23] a tactic which in this instance was to no avail.

Effect of Contributory Negligence

a. *Standard Negligence System*

The defendant's liability under negligent entrustment is based upon his negligence in entrusting his truck to an incompetent driver. The causation link, however, must be provided by the incompetency of the driver.[24] Sometimes the causation link may be established even though the driver himself is not negligent,[25] however, a more frequent situation is where the driver's incom-

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liability statute and on the common law negligent entrustment theory. The defendant's admission of scope of consent under the statute had the same effect as admission of scope of employment would under respondeat superior. The court did not preclude the theory based on negligent entrustment nor its accompanying evidentiary matter. The majority opinion, however, gave no cognizance to the fact that the admission had been made. See also LaRose v. Shanghnessy Ice Co., 197 App. Div. 821, 189 N.Y.S. 562 (1921) where plaintiff asserted negligent entrustment where agency relationship was obvious. Wishone v. Yellow Cab Co., 20 Tenn. App. 229, 97 S.W.2d 452 (1936) where although plaintiff brought suit in both respondeat superior and negligent entrustment, the court found that the driver, although incompetent, was not negligent so that respondent superior could not be applied.

22. 126 Ohio 263, 185 N.E. 71 (1933).

23. *Id.* at 264, 185 N.E. at 73:

> It will be noted that this admission falls far short of admitting liability, but counsel seems to think that by this admission the charge that the father was negligent in entrusting his car to his son, who was an incompetent driver, was taken out of the case entirely. This court cannot subscribe to that contention.

24. See note 3 *supra.*

25. See Wishone v. Yellow Cab Co., 20 Tenn. App. 229, 97 S.W.2d 452 (1936) where the entrusted driver was an epileptic, whose incompetence was the cause of plaintiff's injuries. The entrustor was held to be negligent, although the driver was not.

petency amounts to negligence.[26] In either situation, the contributory negligence of the plaintiff is available as a defense to the defendant,[27] in that it cuts off the necessary causation. Thus, to establish liability, proximate causation against the entrustor must be proven, one step of which is to prove actual causation by the incompetent entrusted driver.[28] The situation under respondeat superior is slightly different in that the only proof necessary, after agency is established, is that the negligence of the servant must be shown to be the proximate cause of the plaintiff's injuries. Clearly, contributory negligence is also a defense to the respondeat superior theory.

b. *Comparative Negligence System*

The dissent in *Hill*[29] took the position that under the comparative negligence system,[30] employed in Georgia,[31] the combined negligence of the entrustor and the entrusted driver should be balanced against the alleged contributory negligence on the part of the plaintiff. At first, this suggestion, although impractical,[32] seems equitable. After all, both the entrustor and his driver are negligent. Should not their total degree of negligence be balanced against the plaintiff's total degree of negligence? The answer becomes clear from an examination of a typical comparative negligence statute.

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26. See note 11 *supra.*

27. *See* PROSSER, THE LAW OF TORTS 426-436 (3d ed. 1964). *But* see Greenwood v. Gardner, 189 Kan. 68, 366 P.2d 780 (1961).

28. THE LAW OF TORTS 241 (3d ed. 1964), says: "Although it is not without its complications, the simplest and most obvious problem connected with "proximate cause" is that of causation in fact." More generally see: Malone, *Ruminations on Cause-in-Fact*, 9 STAN. L. REV. 60 (1956); Green, *The Causal Relation Issue in Negligence Law* (1962), 60 MICH. L. REV. 543 (1962).

29. Willis v. Hill, 116 Ga. App. 848, 869, 159 S.E.2d 145, 165 (1967).

30. There are only six jurisdictions in the United States with general comparative negligence statutes. The theory was instituted to do away with the harsh common law doctrine of contributory negligence, under which the slightest negligence will bar plaintiff's recovery. *See* ARK. STAT. ANN. § 27-1730.1 (1947); GA. CODE ANN. § 105-603 (1933); NEB. REV. STAT. § 25-1151 (1943); MISS. CODE ANN. § 1454 (1942); S.D. CODE § 47.0304 (1939); WIS. STAT. ANN. § 331.045 (1953).

31. GA. CODE ANN. § 105-603 (1933):

> If the plaintiff by ordinary care could have avoided the consequences to himself caused by defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

32. It is suggested that to compare "non-physical" negligence, such as the act of entrustment combined with one part of the actual cause, the driver's incompetence, against the other part of the actual cause, the plaintiff's contributory negligence would be beyond the human facility. However, multiple party suits, where all parties contribute to the actual cause have been tried in comparative negligence jurisdictions. For an example of the result, see Quady v. Sickl, 260 Wis. 348, 51 N.W.2d 3 (1952) where parties were found 47.08%, 23.33%, 14.17% and 15.42% contributory.

> The fact that the person injured . . . may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured.[33]

The text of the statute points out that the plaintiff's recovery is to be *diminished* by his contribution. The defendant is viewed as bearing 100% responsibility, and the plaintiff's contribution, for example, 20%, is to be subtracted therefrom.[34] In this instance the plaintiff would get 80% of his damages, the amount deemed to have been caused by the defendant. It is submitted that to allow the jury to total both the entrustor's and the driver's negligence as compared to the plaintiff's, could only have the effect of starting the defendants with more than 100% responsibility. Such a system would tend to be more admonatory than compensatory. As such, the *Hill* dissent turns out to be both impractical and inequitable.

Effect of Punitive Damages

The dissent in *Hill*, arguing against striking the negligent entrustment claim, stated that punitive damages were an issue under this theory.[35] Under negligent entrustment it is not necessary that the entrusted driver be guilty of gross negligence in order to show that the entrustor is grossly negligent. If the entrustor allows one whom he knows to be very incompetent to operate his vehicle, then it would seem that there is a jury question as to whether the entrustor has been guilty of such a high degree of negligence as to render him liable for punitive damages.[36]

Without a full explanation, the *Hill* dissent points out the left-handed function of the tort system—admonishment.[37] Certainly, the primary purpose of tort liability is to *compensate* the plaintiff, but an important secondary purpose is to discourage the de-

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33. Miss. Code Ann. § 1454 (1942).
34. *E.g.*, Southern Ry. v. Neely, 284 F.2d 633 (5th Cir. 1960); Hatton v. Wright, 115 Ga. App. 4, 153 S.E.2d 669 (1967).
35. Willis v. Hill, 116 Ga. App. 848, 870, 159 S.E.2d 145, 166 (1967).
36. Breeding v. Massey, 378 F.2d 171 (8th Cir. 1967); *cf.* Jackson v. Co-op Cab Co., 102 Ga. App. 688, 117 S.E.2d 627 (1960); *But see* Thomasson v. Winsett, 310 S.W.2d 33 (Mo. App. 1958).
37. Webster's Third New International Dictionary (Merrian-Webster 1967) defines admonish:
> [T]o indicate duties, obligations, or requisite action to (a person); express warning or disapproval to about remissness or error esp. gently, earnestly, and solicitously in urging duty, caution, or amendment.

fendant from further negligent conduct.[38] When the defendant acts with such a high disregard for the rights of others as to make it likely that he will continue in this course, the courts exercise their admonatory function by awarding punitive damages.[39]

What effect should the possibility of punitive damages have when the defendant admits agency after respondeat superior and negligent entrustment have been pleaded by the plaintiff? Under respondeat superior, the employer is not necessarily negligent, and the reason that he is held liable is simply because he has the "deeper pockets."[40] However, the whole gist of negligent entrustment is that the entrustor negligently put an incompetent behind the wheel. If the entrustor shows an indifference to the consequences of his action, punitive damages become an important part of plaintiff's case. An example of this is a recent Arkansas case[41] where the plaintiff sued in both respondeat superior and negligent entrustment. Punitive damages were claimed only on the negligent entrustment claim and only against the entrustor. The plaintiffs recovered $130,000 in compensatory damages and $35,000 in punitive damages. At the opposite extreme, evidence of the entrusted driver's thirty-seven prior traffic convictions, including manslaughter, was excluded after the defendant admitted agency.[42] Clearly, this evidence would have pointed to punitive damages against the entrustor. In such a situation, should the savings in trial time outweigh the exercise of the admonatory function of the courts?

Conclusion

From a practical point of view, the dismissal of a cause of action in negligent entrustment, after admission of agency under respondeat superior, seems logical. Dismissal lessens trial time and precludes the collateral issues involved in proving a case in negligent entrustment.

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38. *See generally* Leflar, *Negligence in Name Only*, 27 N.Y.U. L. Rev. 564 (1952).

39. *E.g.*, Ford Motor Credit Co. v. Hill, 245 F. Supp. 796 (D.C. Mo. 1965) (punishment and deterrance); Miami Beach Lerner Shops, Inc. v. Walco Mfg., 106 So. 2d 233 (Fla. App. 1958) (warning and example to deter from comitting similar offenses); Smith v. Hill, 147 N.E.2d 321, 12 Ill. 2d 588 (1958) (in the interest of society); Harrod v. Fraley, 289 S.W.2d 203 (Ky. App. 1956) (discourage similar future conduct); Allison v. Simmons, 306 S.W.2d 206 (Tex. Civ. App. 1957) (as an example for good of public); Gladfeller v. Doenel, 2 Wis. 2d 635, 87 N.W.2d 490 (1958) (deterrant and punishment).

40. See George v. Bekins V. & S. Co., 33 Cal. 2d 834, 205 P.2d 1037 (1949), *citing from* Car v. Wm. C. Cromwell Co., 28 Cal. 2d 652, 171 P.2d 5 (1946); Chase v. New Haven Waste Material Corp., 111 Conn. 377, 150 A. 107 (1930); Goodyear T. & R. Co. v. Paddock, 219 Ind. 672, 40 N.E.2d 697 (1942); Kohlman v. Hyland, 54 N.D. 710, 210 N.W. 643 (1926); Carroll v. Beard-Laney, Inc., 207 S.C. 339, 35 S.E.2d 425 (1945).

41. Breeding v. Massey, 378 F.2d 171 (8th Cir. 1967).

42. Armenta v. Churchill, 42 Cal. 2d 448, 267 P.2d 303 (1954).

It seems, however, that negligent entrustment promotes the admonatory function of the tort system. Certainly, with more vehicles on the road, the entrustment of even one of these vehicles to an incompetent can have far reaching effects. Such conduct should not only be discouraged, but prohibited to the fullest extent possible. In a case where both respondeat superior and negligent entrustment are pleaded, the entrusted drivers often turn out to be men who drive trucks regularly[43] as part of their work. If these men are incompetent drivers, certainly there is a more desirable place (from the public's point of view) for them to work. This "message" is delivered through the courts, by way of punitive damages.

Evidence of prior instances of negligence, admissible under negligent entrustment, is highly prejudicial to the defendant on the issue of respondeat superior and certainly should not be admitted if unnecessary. It is submitted that the cause of action in negligent entrustment with its attendant evidentiary matter, should neither be admitted nor dismissed *as a matter of course* when agency is conceded under respondeat superior. To dismiss it as a matter of course as was done in *Hill* gives the defendant an easy tactic to avoid punitive damages. To admit it as a matter of course gives the plaintiff a tactic to introduce highly prejudicial evidence.

It is suggested that the judge, without the hearing of the jury, consider the evidence under the claim of negligent entrustment and decide as a matter of law if there is a question for the jury as to punitive damages. Certainly, considerations on this issue should be the previous instances where punitive damages have been granted; but perhaps the foremost consideration should be the particular situation of the defendant, the opportunity and probability of his repeated conduct, and the necessity for discouragement of his conduct.[44]

If this suggestion were adopted it is clear that the courts in *Hill* and similar cases were too hasty in their decision and perhaps deprived the plaintiff of a substantial part of his damages and neglected the admonatory function of the tort system.

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43. See note 11 *supra.*

44. J. C. Penny Co. v. O'Daniell, 263 F.2d 849 (10th Cir. 1959) stated: "[Punitive damages] are awarded for the benefit of society."