NOTES

IS AN AUTOMOBILE OWNER WHO LEAVES HIS KEYS IN THE IGNITION LIABLE FOR A THIEF'S NEGLIGENT DRIVING?

A parks his car leaving his keys in the ignition and the door unlocked. *B* steals the car and in making his escape drives negligently to the injury of *C*, an innocent third party. *C* brings an action against *A* for negligence. Is he entitled to recover? Does it make any difference whether there is a penal statute making it unlawful to park in this manner? The purpose of this note is to examine the judicial treatment of this general factual situation and to determine the proper analytical approach to the problems it presents.

In the recent Illinois case of *Ney v. Yellow Cab Co.*,[1] the defendant's taxicab driver left his vehicle parked with the motor running and the key in the ignition in violation of a penal statute. The statute, similar to enactments existing in several other jurisdictions, states:

> No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway.[2]

A thief stole the cab and while fleeing the scene of the crime negligently damaged the plaintiff's car. The defendant's motion to dismiss the plaintiff's petition for failure to state a cause of action was denied, and when defendant elected to stand by his motion, the trial court, after hearing plaintiff's evidence, gave judgment for the plaintiff. The intermediate appellate court affirmed.[3] The Illinois Supreme Court upheld the lower court decision, stating that it could not hold that as a matter of law there was no liability. The only other court which has predicated liability on a similar enactment is the Court of Appeals for the District of Columbia in *Ross v. Hartman*.[4] Indiana,[5] Massa-

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1. 2 Ill. 2d 74, 117 N.E.2d 74 (1954).
2. ILL. REV. STAT. c. 95½, § 189 (1953). Other "key-in-the-ignition" statutes are: ALA. CODE tit. 36, § 27 (Supp. 1953); ARK. STAT. ANN. § 75-651 (1947); COLO. REV. STAT. c. 13-4-76 (1953); TRAFFIC AND MOTOR VEHICLE REGULATIONS FOR THE DISTRICT OF COLUMBIA § 58; IDAHO CODE ANN. § 49-560.1 (Supp. 1953); IND. ANN. STAT. § 47-2124 (Burns 1952); KY. REV. STAT. § 189.430 (1953); MD. ANN. CODE GEN. LAWS art. 66½, § 212 (1951); MISS. CODE ANN. § 8219 (1942); N.M. STAT. ANN. c. 64-18-53 (1953); S.C. CODE ANN. § 46-491 (1952); UTAH CODE ANN. § 41-6-105 (1953); WYO. COMP. STAT. ANN. § 60-530 (1945). Missouri has a similar statute, MO. REV. STAT. § 304.150 (1949), but civil liability apparently cannot be predicated upon its violation. For a discussion of this statute, see 19 KAN. CITY L. REV. 112 (1951).
3. Ney v. Yellow Cab Co., 348 Ill. App. 161, 108 N.E.2d 508 (1952).
4. 139 F.2d 14 (D.C. Cir. 1943).
5. Kiste v. Red Cab, Inc., 122 Ind. App. 587, 106 N.E.2d 395 (1952).

chusetts[6] and Minnesota,[7] where such statutes are also in force, have held as a matter of law that there is no liability.

The primary matter to be considered in regard to these divergent results on identical fact situations is the applicability of the statute.[8] The three courts which have denied liability have avoided considering legislative intent in regard to the statute by holding that, even under an assumption that the statute was evidence that the defendant's initial conduct was negligent, the subsequent theft and negligent driving were superseding causes negating liability.[9] In the *Ney* case, the court found the requisite legislative intent to make a breach of the statute evidence of negligence and held that the issues of negligence and proximate cause were for the jury.[10] In the *Ross* case, Judge Edgerton found both that the statute was applicable and that there is no proximate cause question involved in this type of case; thus, since violation of a penal law is negligence per se in the District of Columbia,[11] the defendant was liable as a matter of law.[12]

Generally, the fact that a statute is penal in character and makes no provision for civil liability does not of itself prevent it from being used to impose such liability for harm resulting from its breach. It is, of course, the task of the court to determine legislative intent on this point in interpreting the statute.[13] It is apparent that generally there is no actual legislative intention to impose civil liability for the violation of a penal statute unless the enactment is expressly so worded.[14] The courts, however, have said that such intention may be implied where two requirements are met: (1) the plaintiff must be within the class of persons protected by the statute; and (2) the harm suffered must be the kind that the legislature intended to prevent.[15] The two requirements are realistically mere "canons of judicial good manners"[16] which courts feel must be complied with before they can engage

6. Galbraith v. Levin, 323 Mass. 255, 81 N.E.2d 560 (1948).

7. Anderson v. Theisen, 231 Minn. 369, 43 N.W.2d 272 (1950).

8. Whenever the word "statute" is used, it shall also include ordinances or similar provisions passed by legislative authority. See PROSSER, TORTS 264 (1941); RESTATEMENT, TORTS § 286 (1934).

9. Kiste v. Red Cab, Inc., 122 Ind. App. 587, 593-594, 106 N.E.2d 395, 397-398 (1952); Galbraith v. Levin, 323 Mass. 255, 261, 81 N.E.2d 560, 564 (1948); Anderson v. Theisen, 231 Minn. 369, 371-372, 43 N.W.2d 272, 273 (1950).

10. Ney v. Yellow Cab Co., 2 Ill. 2d 74, 83-84, 117 N.E.2d 74, 80 (1954).

11. Ross v. Hartman, 139 F.2d 14, 15 (D.C. Cir. 1943); Danzansky v. Zimbolist, 105 F.2d 457 (D.C. Cir. 1939).

12. Ross v. Hartman, 139 F.2d 14, 15, 16 (D.C. Cir. 1943). Violation of a statute is only evidence of negligence in Illinois; Ney v. Yellow Cab Co., 2 Ill. 2d 74, 78, 117 N.E.2d 74, 78 (1954).

13. See de Sloovère, *The Function of Judge and Jury in the Interpretation of Statutes*, 46 HARV. L. REV. 1086 (1933).

14. PROSSER, TORTS 265 (1941).

15. PROSSER, TORTS 266, 269 (1941); RESTATEMENT, TORTS § 286 (1934).

16. Lowndes, *Civil Liability Created by Criminal Legislation*, 16 MINN. L. REV. 361, 362 (1932).

in a measure of judicial law-making.[17] Judge Edgerton found both requirements with relative ease in the *Ross* case[18] as did the court in the *Ney* case.[19]

It should be pointed out that although the legislature has no specific intent to make violation of a penal statute a ground for civil liability, use of the statute for such a purpose would nonetheless seem appropriate because: (1) the statute theoretically provides notice to the public that such conduct is no longer socially acceptable, and certainly provides a means of obtaining such notice; (2) it indicates that some sort of practical problem exists which society, acting through the legislature, desires to eliminate.[20] Thus, it becomes apparent that it is the general policy of the statute that is of basic importance, and no search for a particular mythical intent should be attempted.[21] It appears that the two requirements the courts have applied before they will find civil liability for the breach of a penal statute are appropriate criteria to test whether the statute expresses a policy which should be the ground for civil liability.

The requirement that the plaintiff be within the class of persons the legislature intended to protect should be easily found in statutes requiring the key of a car to be removed from the ignition. Such an enactment is usually part of a series of measures concerning public safety and is written in conjunction with other provisions requiring a car to have a horn and headlights, the brake to be set, the wheels turned into the curb and similar provisions.[22] If the plaintiff has been personally injured while in another car, on the sidewalk or in the general vicinity of the street, he should be within the class of persons to be protected since the statute is for the safety of the public.

The second requirement, however, that the harm suffered must be the kind the statute was intended to prevent, presents rather difficult problems. If the court in an evidence of negligence jurisdiction finds a penal statute applicable, then the statute is presented to the jury to consider as evidence upon which to predicate liability; the jury may give the statute as much probative value as it wishes in determining the specific issue of negligence which it must decide.[23] To find the statute applicable in the "key-in-the-ignition" cases, the court should need to find no more than a general likelihood of injury from some

17. *Id.* at 363; PROSSER, TORTS 265 (1941). See PATTERSON, JURISPRUDENCE: MEN AND IDEAS OF THE LAW 300-304, 571-577 (1953).
18. Ross v. Hartman, 139 F.2d 14, 15 (D.C. Cir. 1943).
19. Ney v. Yellow Cab Co., 2 Ill. 2d 74, 78, 117 N.E.2d 74, 77 (1954).
20. See Morris, *The Role of Criminal Statutes in Negligence Actions*, 49 COL. L. REV. 21, 23 (1949).
21. See PROSSER, TORTS 269-271 (1941).
22. See, *e.g.*, the provisions adjoining the statutes cited in note 2 *supra*.
23. PROSSER, TORTS 275 (1941).

intermeddler.[24] The jury then determines the specific issue of negligence on which the statute bears, *i.e.*, whether, under all the circumstances of the case, the likelihood of injury from a thief exposed the plaintiff to an unreasonable risk of harm. This procedure, of course, is in keeping with the premise of fault liability that a person should not be liable unless he is guilty of specific acts of negligence under the circumstances, and is the proper approach in these cases. The latter proposition, however, raises problems in a negligence per se jurisdiction. If the court finds a penal statute applicable in this type of jurisdiction, then it is obligated to direct a verdict for the plaintiff if the facts are undisputed and there is no question of proximate cause.[25] Since there is no jury to which the task of finding specific negligence can be delegated, the court should also make this determination. Therefore, the second requirement, that the harm suffered should be of the kind the statute was intended to prevent, should not be satisfied merely by finding that there is a general likelihood that some third party might meddle with the car; a specific finding should be made that there is a likelihood that a thief might take the car and operate it in a negligent manner.[26]

In view of the following relevant considerations it seems a court would be justified either in finding the statute applicable in an evidence of negligence jurisdiction or in imposing liability as a matter of law in a negligence per se jurisdiction:[27] (1) the notorious increase in

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24. There is no direct authority on this point, but it is submitted that it is the proper view. In Ney v. Yellow Cab Co., 2 Ill. 2d 74, 78, 117 N.E.2d 74, 77 (1954), the court did say:

> We . . . conclude that this entire section is a public safety measure. This being so, what harm did the legislature foresee and attempt to prevent by prohibiting the leaving of an unattended motor vehicle with the key in the ignition? The motor vehicle with the key in its ignition in itself could obviously do no harm.

The quoted passage would seem to indicate that the court was interested only in finding a general likelihood of injury by some intermeddler and not a specific likelihood of injury by a thief.

25. PROSSER, TORTS 274 (1941). In a majority of jurisdictions, violation of a statute is negligence per se. *Ibid.*

26. There is no direct authority on this point, but it is submitted that it is the proper view. See Ross v. Hartman, 139 F.2d 14, 15 (D.C. Cir. 1943).

27. In a negligence per se jurisdiction, the determination of whether the statute is applicable would seem to depend, as a practical matter, on the area in which the case is being tried. If suit is brought in a rural area, where likelihood of theft is remote, it would be an undue hardship on the plaintiff to impose liability; if the case occurs in an urban area, on the other hand, the imposition of liability would seem more appropriate. If the general factual situation under discussion arises for the first time in a city, and an imposition of liability is affirmed on appeal to the highest court in the state, a judge sitting in a rural area in a negligence per se jurisdiction would be bound to direct a verdict for the plaintiff if the same situation later arose in his jurisdiction. This would be inequitable because of the remote chance of theft and the frequency with which keys are left in the ignition in the country. The only appropriate solution to this problem is to keep legislative enactments of this type on a local level in the form of ordinances. This is especially so in states which have both large urban popula-

automobile thefts;[28] (2) the probability that a thief will be something less than the "reasonably prudent man"; (3) the increasing problem of "car-borrowing" by juvenile delinquents;[29] (4) the increased likelihood of negligence with a juvenile "car-borrower" or thief at the wheel; (5) the increase in the number of accidents caused by careless driving; and (6) the increasing number of cases involving circumstances of the very type under consideration.[30]

In a majority of the cases involving the factual situation under discussion, however, there was no statute involved, and all but one court[31] have decided as a matter of law that there is no liability.[32] The usual ground for so holding is that the antecedent negligence is not the proximate cause of the injury.[33] One court has held that there is no antecedent negligence at all,[34] and another has said that there is no duty owed by the owner to the injured party.[35] From whatever standpoint the problem is attacked, however, it appears that the basic decision of the court in all cases denying liability is that, under the circumstances, this particular sequence of events is so far removed from the original act that there should be no liability as a matter of law.

Of all the opinions written which make such a finding, the one by Judge Traynor in *Richards v. Stanley*[36] is the most unusual because it is the only decision saying that there is no *duty* owed to the plaintiff by the defendant under the circumstances. In the *Richards* case the defendant left his car unattended, unlocked and with the key in the ignition on a public street in a populous section of San Francisco at about 5:30 P.M. Within fifteen minutes after the defendant had so

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tions and substantial rural areas. The problem would not be as acute in jurisdictions where violation of a legislative enactment is merely evidence of negligence, since there it is for the jury to make the final decision as to defendant's liability.

28. See Comment, 38 MARQ. L. REV. 99 (1954).

29. *Ibid.*

30. A large majority of the cases have arisen within the last twelve years. See cases cited in notes 3-7 *supra* and notes 31, 32 *infra*.

31. Schaff v. Claxton, 144 F.2d 532 (D.C. Cir. 1944). The statute involved in the *Ross* case was not applicable because the vehicle was not parked on a street or other public place. See TRAFFIC AND MOTOR VEHICLE REGULATIONS FOR THE DISTRICT OF COLUMBIA § 58.

32. Richards v. Stanley, 271 P.2d 23 (Cal. 1954); Fulco v. City Ice Service, Inc., 59 So.2d 198 (La. App. 1951); Midkiff v. Watkins, 52 So.2d 573 (La. App. 1951); Curtis v. Jacobson, 142 Me. 351, 54 A.2d 520 (1947); Reti v. Vaniska, Inc., 14 N.J. Super. 94, 81 A.2d 377 (1951); Saracco v. Lyttle, 11 N.J. Super. 254, 78 A.2d 288 (1951); Lotito v. Kyriacus, 272 App. Div. 635, 74 N.Y.S.2d 599 (4th Dep't 1947); *cf.* Howard v. Swagart, 161 F.2d 651 (D.C. Cir. 1947).

Several of these courts have carefully distinguished the non-statutory situation from cases in which a statute is involved: Richards v. Stanley, 271 P.2d 23 (Cal. 1954); Midkiff v. Watkins, 52 So.2d 573 (La. App. 1951); Curtis v. Jacobson, 142 Me. 351, 54 A.2d 520 (1947).

33. Midkiff v. Watkins, 52 So.2d 573 (La. App. 1951); Curtis v. Jacobson, 142 Me. 351, 54 A.2d 520 (1947); Reti v. Vaniska, Inc., 14 N.J. Super. 94, 81 A.2d 377 (1951); Lotito v. Kyriacus, 272 App. Div. 635, 74 N.Y.S.2d 599 (4th Dep't 1947); *cf.* Howard v. Swagart, 161 F.2d 651 (D.C. Cir. 1947).

34. Fulco v. City Ice Service, Inc., 59 So.2d 198 (La. App. 1951).

35. Richards v. Stanley, 271 P.2d 23 (Cal. 1954).

36. 271 P.2d 23 (Cal. 1954).

parked, a thief had stolen the car and due to his negligent operation the vehicle had collided with the plaintiff's motorcycle about three miles from the scene of the theft.

Judge Traynor's holding that no duty was owed to the plaintiff by the defendant under these circumstances apparently was based in part on the theory that the general duty owed to the public by a driver to manage his automobile without creating an unreasonable risk of harm to others ceased when the defendant left the car in a position where it could harm no one.[37] After this point in time, no *new* duty to protect the plaintiff from harm which might be inflicted by a third party could arise, for it is clearly a general rule of tort law that in the absence of a special relationship between the defendant and the plaintiff, or between the defendant and the third party, no person owes a duty to control the conduct of a third party to prevent him from causing harm to another.[38] The statement that the duty of reasonable management of the vehicle ended when it was left in a "harmless" condition seems to beg the question whether the car was, in fact, in a "harmless" condition, and seems merely another way of stating the proposition that the injury was too far removed from the original act to permit the case to go to the jury.

It appears, however, that the fundamental basis for the decision was Judge Traynor's feeling[39] that it would be anomalous to hold that there could be liability where one leaves his key in the ignition and a third party takes the car without permission and injures the plaintiff, when it is also a part of the common law of California that one is not liable for injuries to third persons if he actually hands over the keys and lends the car to a third party unless he knows of, or has reason to know of, the borrower's incompetence.[40] Also, according to a California motor vehicle statute,[41] the owner of an automobile entrusting it to a third party is liable for the negligent operation of the car by that party but only for a sum restricted to a maximum of $10,000. In the *Richards* case, however, if there could be liability at all, it would be common law liability with no restriction except that found by the jury.

Neither of the reasons advanced by Judge Traynor seems compelling. His first argument is based on the belief that the owner of a car exposes the public to a greater risk of harm when he entrusts his

37. *Id.* at 27.
38. *Ibid.* See PROSSER, TORTS 190-200 (1941); RESTATEMENT, TORTS § 315 (1934).
39. Richards v. Stanley, 271 P.2d 23, 28 (Cal. 1954).
40. Lane v. Bing, 202 Cal. 590, 262 Pac. 318 (1927). Suit can be brought in California both under common law principles and under California's motor vehicle statute, *infra* note 41. See McCalla v. Grosse, 42 Cal. App. 2d 546, 109 P.2d 358 (1941).
41. CAL. VEHICLE CODE ANN. § 402 (Supp. 1953).

automobile to a third party than when he does not entrust it but leaves the keys in the ignition.[42] However, if that is the premise, then there should never be liability when there is no entrustment; but Judge Traynor is unwilling to take this position, and maintains that there may be liability for harm caused by intermeddlers other than thieves.[43] Also, the premise itself is open to serious question. Foreseeability of harm is the test of negligent conduct. Clearly under some circumstances the act of entrusting a car to a third party subjects the public to no risk of harm at all, while leaving a car unattended but in a place where intermeddlers are likely to tamper with it does create a very substantial likelihood of injury. The answer to the second argument seems to be that there is a distinction between damages imposed for liability *without* fault as in the case involving the motor vehicle statute and liability *with* fault as in cases involving the facts under discussion.

In the District of Columbia, Judge Edgerton has displayed a complete understanding of the problem both in statutory[44] and non-statutory[45] situations. In *Schaff v. Claxton*,[46] a case similar to *Ross v. Hartman*[47] except that no statute was involved because the vehicle was not parked on a public street,[48] Judge Edgerton held that the question of liability should be submitted to the jury.[49] This is the only decision not involving a statute in which a court has held that there is a submissible case for the jury.

Judge Edgerton's position apparently is that in the non-statutory situation there is a general duty of due care owed to the plaintiff by the defendant; therefore, the decision whether the question of liability should be taken from the jury depends on the circumstances of the particular case. It is submitted that this is the proper viewpoint, and that the court was in error in holding that there was no jury question in the *Richards* case. The fact that the events of that case took place in a populous section of a large city seems to increase the likelihood of a theft.[50] This factor, in addition to all the other considerations previously discussed[51] which bear on a judge's decision in a negligence per se jurisdiction on whether there should be liability as a matter

42. Richards v. Stanley, 271 P.2d 23, 28 (Cal. 1954).
43. *Id.* at 27.
44. Ross v. Hartman, 139 F.2d 14 (D.C. Cir. 1943). See text supported by notes 4-19 *supra*.
45. Schaff v. Claxton, 144 F.2d 532 (D.C. Cir. 1944).
46. *Ibid.*
47. 139 F.2d 14 (D.C. Cir. 1943).
48. Schaff v. Claxton, 144 F.2d 532, 533 (D.C. Cir. 1944). See note 31 *supra*.
49. Schaff v. Claxton, 144 F.2d 532, 533 (D.C. Cir. 1944). This holding followed some dicta expressed by Judge Edgerton in Ross v. Hartman, 139 F.2d 14, 15 (D.C. Cir. 1943), where he said:
> In the absence of an ordinance, therefore, leaving a car unlocked might not be negligent in some circumstances, although in other circumstances it might be both negligent and a legal or "proximate" cause of a resulting accident.

50. See text supported by note 36 *supra*.
51. See text supported by notes 27-30 *supra*.

of law, seems to justify sending cases like the *Richards* case to the jury. If, on the other hand, the events take place in a small town where the stealing of cars and the possibility of juvenile delinquents taking a "joy-ride" are small, the court should find no negligence as a matter of law.[52] By a consideration of all relevant factors, a court should decide whether there is a jury question, but it is submitted the courts should not be as reluctant as they have been to submit the problem to the jury.

In either a negligence per se or evidence of negligence jurisdiction, the court should consider the proximate causation problem only after it has held a statute applicable, or where there is no statute, only after it has decided there is a question of negligence for the jury.[53] The proximate cause question, although arising under similar factual circumstances, has been treated in diverse manners by the courts. Judge Edgerton in the *Ross* case,[54] and Judge Traynor in the *Richards* case,[55] have said there is no question of proximate causation involved. The court in the *Ney* case[56] said there is such a problem and that the jury should decide whether the antecedent negligence was the proximate cause of the injury. Courts in several other jurisdictions have said that a proximate cause question exists, but that, as a matter of law, the negligent operation of the car by a thief is a superseding cause cutting off liability.[57]

The analysis of Judges Edgerton and Traynor on the proximate cause problem appears to be the most sound. If the court decides that the statute is applicable, or, absent a statute, that under the circumstances there is a submissible case of negligence for the jury, there is no proximate cause problem concerning the intervening force of the negligent operation of the car by a thief. Section 449 of the *Restatement of Torts* points this out:

> If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for the harm caused thereby.[58]

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52. See, *e.g.*, Midkiff v. Watkins, 52 So.2d 573 (La. App. 1951). See note 27 *supra*.

53. Another issue which could arise is that of factual causation—the defendant's act must be a substantial factor in bringing about the result. PROSSER, TORTS 321-326 (1941). This issue is usually no problem in the general situation under discussion because, usually, the injury would not have occurred but for the leaving of the key in the ignition. See Ross v. Hartman, 139 F.2d 14, 15 n.10 (D.C. Cir. 1943).

54. Ross v. Hartman, 139 F.2d 14, 16 (D.C. Cir. 1943).

55. Richards v. Stanley, 271 P.2d 23, 25 (Cal. 1954).

56. Ney v. Yellow Cab. Co., 2 Ill. 2d 74, 83, 117 N.E.2d 74, 80 (1954).

57. See note 33 *supra*.

58. RESTATEMENT, TORTS § 449 (1934).

The possibility that a thief will take the car and injure a third party is the very circumstance which makes leaving the keys in the ignition negligent. It would indeed be anomalous then to say that, although the conduct may be negligent, the intervening criminal and tortious conduct is a superseding cause cutting off liability.

There is, however, a different proximate causation problem which might arise. This revolves around the question of how soon after the theft the plaintiff suffered damage.[59] The lapse of time should be considered in determining whether the negligence is the proximate cause of the injury; as a matter of substantial justice the defendant should not be held liable when the time lag between the intervening events of theft and negligence is too great.[60] The problem of time involves three factual possibilities: the negligent act occurred (1) immediately after the theft, (2) a moderate time after the theft, or (3) long after the theft.

The majority of cases which arise come within the first situation.[61] Here, there should be no proximate cause question for the jury because the injury occurred so soon after the theft that time cannot be considered a substantial factor in determining liability. In the second situation, the question of the importance of time should always be for the jury;[62] whether the time lag is too great for there to be liability is a question on which reasonable minds could differ, and therefore the court cannot decide the question as a matter of law. In the third situation, *i.e.*, where the negligent act occurred long after the theft, reasonable men could not differ and the court should hold that there is no liability as a matter of law.[63] It is only in the second situation, therefore, that there is a proximate cause question for the jury.

In summary, the general factual situation which has been discussed is somewhat unusual in that there is both a criminal and negligent act occurring after the original conduct of leaving the keys in the ignition. The question is whether these two acts remove the original conduct so far from the injury that there should be no liability as a matter of law. This is a question of policy. It is submitted that if there is a statute making the original conduct unlawful, in a negligence per se jurisdiction the court should be willing to apply it and

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59. The distance between the place of the theft and the place of injury presents a problem of the same nature as the time factor. Often, both can be considered directly proportional to each other. That is, the greater the time lapse the greater will be the distance.

60. See RESTATEMENT, TORTS § 433(d), comment *h;* Edgerton, *Legal Cause,* 72 U. OF PA. L. REV. 211, 343 (1924).

61. All the cases discovered by the writers came within the first situation except Galbraith v. Levin, 323 Mass. 255, 81 N.E.2d 560 (1948) (two or three hours apparently elapsed). Unfortunately, the courts rarely indicate exactly what time lapse there was between the theft and the injury.

62. Galbraith v. Levin, *supra* note 61, apparently falls within this situation.

63. See Howard v. Swagart, 161 F.2d 651 (D.C. Cir. 1947).

find negligence as a matter of law,[64] and a court in an evidence of negligence jurisdiction should be willing to submit the case to the jury.[65] Although a court must proceed without the indirect support of the legislature in a jurisdiction where there is no "key-in-the-ignition" legislation, it is submitted that, as a general proposition, the question of liability should be allowed to go to the jury. In all cases, the view of Section 449 of the *Restatement of Torts*, should be applied to eliminate the problem of an intervening force, and the only proximate cause issue arising should be the question of the time lapse between the theft and the injury to the plaintiff.

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64. But consider the implications of note 27 *supra*.
65. But consider the text supported by note 52 *supra*.