and *Donleavy* decisions and the *Stamets* case would seem to indicate a trend in the other direction and that at least certain claims may be allowed against the funds held by the surviving joint tenant.[48] Subjecting the surviving joint tenant's funds to the claims of creditors (at least to the extent of the deceased tenant's contributions) is the next logical step if one considers: the difficulty of adapting the nature of a joint tenancy to the established means of transferring property; the dispositive discretion which the depositor may exercise (approaching that of testamentation); and the policy of taxing the surviving joint tenant (at least to the extent of the deceased co-depositor's contribution).

MARION E. JAMES

Motor Vehicles—THERE IS A DUTY TO USE AVAILABLE SEAT BELTS WHILE RIDING IN AN AUTOMOBILE.—*Bentzler v. Braun* (Wis. 1967).

Plaintiff was a guest passenger in an automobile driven by Klimmer. The headlights from a stranded automobile temporarily blinded Klimmer, causing him to collide with the rear-end of Braun's car. As a result of the collision, the plaintiff received severe facial lacerations and other injuries. At the time of the accident Klimmer's automobile was equipped with seat belts as required by Wisconsin law; however the plaintiff was not using them. Plaintiff brought suit against Braun and Klimmer. Counsel for the defense requested an instruction to the jury to the effect that if Klimmer's automobile was equipped with seat belts and if the plaintiff was not using them at the time of the accident, then she was negligent; and if her injuries would have been reduced or eliminated by the use of seat belts, then the failure to use them would mitigate damages. The trial court refused the instructions on the ground that the defendant failed to prove a causal relationship between the plantiff's injuries and her failure to use seat belts. Judgment was for the plaintiff. On appeal to the Supreme Court of Wisconsin, *Held*, affirmed. There is a duty, based on the common law standard of ordinary care, to use available seat belts independent of any statutory mandate; however, due to the defendant's failure to prove a causal relationship between the plaintiff's failure to use available seat belts and her injuries, the requested instruction was properly refused. *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626 (1967).

In 1961, Wisconsin became the first state to enact seat belt legislation[1]

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48 *Cf.* text accompanying notes 43-45 *supra.*

1 WIS. STAT. ANN. § 347.48 (Supp. 1967) provides:
(1) Safety belts required. (1) It is unlawful for any person to buy, sell, lease, trade or transfer from or to Wisconsin residents at retail an automobile, which is manufactured or assembled commencing with the 1962 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed. (2) Type and manner of installing. All such safety belts must be of a type and must be installed in a manner approved by the motor vehicle department. The department

making seat belts mandatory commencing with 1962 model automobiles. The Wisconsin court has interpreted the statute as requiring merely the installation of seat belts, and not their use.[2] In addition to Wisconsin, twenty-two other states have enacted legislation pertaining to the installation of seat belts;[3] but only one of these states, Rhode Island, demands the actual use of seat belts, and this enactment only applies to drivers of certain public transportation and government vehicles.[4] Therefore, the courts have universally held that there is no statutory duty requiring the actual use of seat belts by drivers or guest passengers.

Regarding the question of whether or not there is a duty based on the common law standard of ordinary care to use available seat belts, most of the courts have concluded that the time has not yet arrived when the ordinary prudent man will always "buckle up," and thus, the failure to use seat belts is not negligence.[5] However, a Texas court in *Vernon v. Droeste*,[6] in finding that the plaintiff's injuries were a direct cause of his failure to fasten his safety harness, impliedly found a common law duty to use such safety devices and thereby found the plaintiff contributorily negligent.

The courts also have had difficulty in finding a causal relationship between the plaintiff's failure to use seat belts and the injuries sustained.[7] But again, in *Vernon v. Droeste*,[8] the plaintiff's failure to use a safety harness was pleaded as a defense. The jury concluded that the plaintiff was guilty of contributory negligence and that ninety-five per-cent of his injuries would have been avoided if he had used the safety harness.

In this area the two problem elements are duty and cause. Regarding the issues of duty and cause, two things must be shown: the conduct on the part of the plaintiff must fall below the standard to which he should conform for his own protection; and the plaintiff's conduct must be a legally contributing cause concurring with the negligence of the defendant in bringing about the plaintiff's harm.[9]

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shall establish specifications and requirements for approved types of safety belts and attachments thereto. The department will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

[2] Note, *Seat Belt Negligence In Automobile Accidents*, 1967 WIS. L. REV. 288 (1967).

[3] IOWA CODE § 321.445 (1966); CAL. VEHICLE CODE ANN. § 27309 (West Supp. 1966); CONN. GEN. STAT. § 14-100a (Supp. 1966); GA. CODE ANN. tit. 68, § 1801 (Supp. 1965); ILL. REV. STAT. c. 95½, § 217.1 (1963); IND. ANN. STAT. § 47-2241 (Burns 1965); MD. ANN. CODE art. 66½, § 296A (Michie 1967); MASS. GEN. LAWS c. 90, § 7 (Supp. 1966); MICH. STAT. ANN. § 9.2410(2) (Supp. 1965); MINN. STAT. ANN. § 169.685 (Supp. 1966); MISS. CODE ANN. § 8254.5 (Supp. 1966); MO. ANN. STAT. § 304.555 (1963); NEB. REV. STAT. § 39-7, 123.05 (Supp. 1963); N.M. STAT. ANN. § 64-20-75 (Supp. 1967); N.Y. VEHICLE & TRAFFIC LAW § 383(a)(g) (Supp. 1967); N.C. GEN. STAT. § 20-135.2 (Supp. 1965); ORE. REV. STAT. § 483.482 (1963); R.I. GEN. LAWS ANN. § 31-23-39 (Supp. 1966); TENN. CODE ANN. § 59-930 (Supp. 1966); VT. STAT. ANN. § 46.37510 (Supp. 1966); W. VA. CODE ANN. § 17C-15-43 (Supp. 1966).

[4] R.I. GEN. LAWS ANN. § 31-23-41 (Supp. 1966).

[5] Brown v. Kenderick, 192 S.2d 49 (Fla. Dist. Ct. App. 1966); Lipscomb v. Diamiani, 226 A.2d 914 (Del. Super. Ct. 1967).

[6] No. 17, 1705 Dist. Ct. Brazos co., Texas, 85th Jud. Dist. (June 9, 1966).

[7] Kavanagh v. Butorac, 221 N.E.2d 824 (Ind. App. Div. 1966).

[8] No. 17, 1705 Dist. Ct. Brazos co., Texas, 85th Jud. Dist. (June 9, 1966).

[9] RESTATEMENT (SECOND) OF TORTS § 463 (1964).

There have been many studies conducted as to the effect of seat belts in reducing injuries resulting from automobile accidents.[10] Most of these studies have strongly endorsed the use of safety belts or harnesses. This has resulted in many safety campaigns[11] that have attempted to educate the American automobile owner of the safety benefits derived from the installation and use of seat belts. However, it is the consensus of the courts that, notwithstanding these studies and safety campaigns, the use of seat belts has not yet reached the point where the ordinary prudent man will always fasten his safety belt; and thus, the first requirement of contributory negligence, conduct falling below an accepted standard, cannot be met.

The second requirement necessary to show contributory negligence is proof that the plaintiff's negligent conduct constitutes a legal cause of the harm he has suffered. The Indiana Court of Appeals in *Kavanagh v. Butorac*[12] concluded that only by speculation could it be stated that the plaintiff's injuries would not have occurred if the seat belts were fastened.

Thus, most courts have concluded that it is not negligence per se to fail to use seat belts where the only statutory standard is one that requires merely the installation of seat belts in an automobile; and further, that the time has not yet come when the common law standard of ordinary care requires their use.

Although the jury did not find the plaintiff negligent, the Wisconsin Supreme Court stated that had there been a causal relationship between the plaintiff's injuries and her failure to use the available seat belts, the jury could have found her to be negligent. Counsel for the defense presented only one witness, an orthopedic surgeon, to testify as to the causal relationship between the plaintiff's particular injuries and her failure to use the safety belts. The witness did not purport to be able to testify as to what effect the use of seat belts might have had in the case. If the defense had offered more testimony, the outcome of the case may have been different. True, the jury must not be allowed to speculate as to the legal cause of the plaintiff's injury; however, with the use of statistical data and studies pertaining to the injury reducing value of seat belts, combined with expert testimony on the part of witnesses for the defense, the guesswork as to the cause of the plaintiff's injuries may disappear and logical, justifiable inferences drawn. With more statistics on seat belts being compiled daily and expert testimony by qualified witnesses, another jury could conclude that a plaintiff's injuries were caused by a failure to fasten his seat belt.

It has been suggested that the courts take judicial notice that seat belts are injury-reducing devices.[13] The Wisconsin court took notice of several statis-

10 TOURIN, EJECTION AND AUTOMOBILE FATALITIES, 73 U.S. PUBLIC HEALTH REPORTS 381-83 (1958).

11 One of the most aggressive safety campaigns conducted to promote the use of seat belts was a joint effort by the National Safety Council and the American Seat Belt Council which began in the early part of 1967. The campaign includes booklets, posters, fact sheets, program guides, news releases, radio-TV spots, film lists, and other sources of information regarding seat belts.

12 221 N.E.2d 824 (Ind. App. Div. 1966).

13 Note, *Seat Belts and Contributory Negligence*, 12 S. DAKOTA L. REV. 130 (1967).

tical reports and publications[14] pointing out the injury reducing value of safety belts and stated that as a matter of common knowledge, an occupant of an automobile either knows or should know of the additional safety factor produced by the use of seat belts.

In discussing the issue of whether or not the plaintiff's failure to use available seat belts constituted negligence, the Wisconsin court concluded that there is a duty, based on the common law standard of ordinary care, to use available seat belts independent of any statutory mandate. Hence, the court is saying that the time has come when the reasonably prudent man would or should "buckle up."

The problem of whether the non-use of available seat belts by an injured driver or guest passenger constitutes contributory negligence is new, but it is one the courts must soon face. The Wisconsin court has faced the problem realistically. However, it must be noted that Wisconsin also employs the comparative negligence concept, and acceptance of this view will not necessarily have the harsh results that it would have in a jurisdiction which accepts contributory negligence as an absolute defense. Whether the Wisconsin court's opinion in *Bentzler* will be followed in such jurisdictions remains to be seen.

MICHAEL J. LAUGHLIN

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14 TOURIN & GARRETT, SEAT BELT EFFECTIVENESS IN RURAL CALIFORNIA ACCIDENTS, AUTOMOTIVE CRASH INJURY RESEARCH OF CORNELL UNIVERSITY (Feb. 1960; Cornell Aeronautical Laboratory, Inc.).