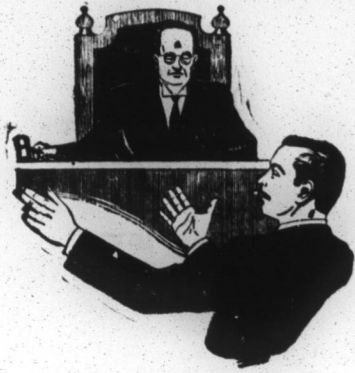


# This is the Law



BY CHARLES W. DANIEL  
(For the N. C. Bar Association)

## MAJOR DEFENSES

When a person is sued for damages because of injuries to the person or property of another, the "defense" most often used is "contributory negligence." The essence of this defense is that the person bringing suit, by his own careless conduct, contributed to the injury. If the facts show that complainant was unreasonably careless and that such carelessness (or "negligence") helped cause the damage, then, such person usually can not win in court.

It is the jury's job to decide whether the carelessness (if any) of the person suing actually was a cause of his own injury. The judge determines whether reasonable folks might disagree as to whether the complainant showed proper regard for his property or his own safety. If there could be doubt about it, the judge leaves the case with the jury under proper instructions. If, from the complainant's own evidence, only one reasonable conclusion could be drawn—that he contributed to his own harm—then, the judge will order the case thrown out of court.

The North Carolina rule is that a person who is himself negligent and, such negligence is a cause of the harm, cannot win in court. But there are some instances in which a careless plaintiff may win, irrespective of his own negligence. That is so when the facts show the defendant to have been so greatly negligent that his conduct is actually, or almost, deliberate.

## OTHER STATES

Nineteen other states have a different rule which they call the "doctrine of comparative negligence." Several unsuccessful attempts have been made to get this plan through the North Carolina Legislature. Under such a rule, the jury is allowed to decide the case even though the complainant is shown to have been careless. For example, suppose the law suit in question resulted from an automobile collision in which both drivers are found to have been at fault. By "comparing the negligence" of both, the jury determines the degree of fault against each driver. Then, the driver most at fault is ordered to pay up that percentage of the damage which he caused. As indicated earlier, this is not the North Carolina rule.

## "REASONABLE MAN"

What formula does the North Carolina court use in determining whether a man was "negligent" in a particular

case? If the person acts as an "ordinary, reasonable and prudent" man would act "under the circumstances" (of the particular case), he has not been "negligent."

## NEGLIGENT BRAKEMAN

Here's a case in which the defense of "contributory negligence" did not work, even though the injured plaintiff was himself very careless. A railroad brakeman was riding the cow-catcher on a train. As the train reached a highway crossing the engine was struck by a speeding tractor-trailer truck. The brakeman was severely injured and sued the truck company. The company defended, saying that the brakeman was contributorily negligent in riding the cow-catcher and should be tossed out of court. The court said, "Yes, the plaintiff was negligent all right, but, the incident which actually occurred could not have been foreseen by him." The brakeman knew that he might fall off his dangerous perch, or be hurt in some similar manner, but the law would not require him to foresee that a speeding truck would crash into the engine. So the brakeman won, even though he, too, was negligent.

Another "defense" to a suit for negligent damage to person or property is called "assumption of risk." This defense, as the words imply, is close kin to "contributory negligence." One astute legal scholar has given this definition of these defenses:

"If you walk close on the heels of a mule that is known to kick, that's 'assumption of risk.' If you pull the mule's tail, that's contributory negligence."

## STATUTE OF LIMITATIONS

Another important defense is the "statute of limitations." North Carolina statutes require that suits be brought within a specified period of time after the injury (or "cause of action") occurs, subject to exceptions. If the suit is not brought within the time allowed, and the defendant sets up the statute as a defense, the suit is barred and the injured person normally cannot recover. The time limit within which suit must be brought upon a broken contract, for example, is three years. Upon a "tort" (such as wrongful death in an automobile wreck), the time limit for bringing suit is two years. Actions for libel, assault, battery, false imprisonment and for a widow's years' allowance must be filed within one year.

There are, of course, other defenses too numerous to list here.

# HEALTH HORIZONS

## Migraine Headache

If you've ever suffered from migraine, you probably can't think of anything good to say about it. But, according to Dr. Sol Hirsch in the New York State Journal of Medicine, migraine is a protective mechanism that "may be likened to the popping of a safety valve." Stated very simply, he believes that migraine occurs when you have used up all the energy you can afford to, without serious danger. The attack, by "laying you low," forces you to stop, and gives you a chance to "wipe out the energy debt."

## "Mental Overtime"

"Prevention of migraine would be a relatively simple matter if we had tape recorders to measure total energy input and output," says Dr. Hirsch. Most people have no idea how much effort they expend each day. There's the man, for example, who keeps nine-to-five office hours — but takes his business problems home to worry about; "he is constantly paying time and a half for mental overtime." There was the young bookkeeper, good at her job but anxious to improve herself culturally. In her spare time "she devoured books" — and developed migraine. Eye tests showed nothing organically wrong but, comments Dr. Hirsch, "overuse of eyes, combined with mental effort, must result in energy depletion . . . 25% of our energy intake goes to the brain when the body is at rest." When "reading steals time from sleep," matters are even worse.

People don't even realize how much energy they are expending physically, either. One girl with migraine seemed, according to her story to the doctor, to indulge in no excessive activity — but when his telephone rang, she promptly



picked up her knitting. Inquiry showed that she actually knitted hours a day, even while waiting her turn shopping or in the movies — "a good try at perpetual motion!" exclaims the doctor.

## What's Your Record?

As a first step in treating a person with migraine, Dr. Hirsch recommends keeping a notebook called "My Twenty-Four Hours" in which to record "as many details as possible of what he or she does the clock round." This includes what you eat (after all, energy comes from food) as well as what you do. If you suffer from migraine, that may be a good tip: find out how much you really do in a day, see where you might cut corners to eliminate unnecessary energy expenditure — and possibly your migraine!

## State Farm Bureau Meets In Asheville

### Impressive List of Prominent Speakers on Program

An impressive list of state and national speakers headed the program for the 19th annual convention of the North Carolina Farm Bureau Federation, which was held in Asheville

this week, Sunday through Wednesday. Headquarters for the four-day event was the George Vanderbilt Hotel, where between 1,200 and 1,500 persons representing the 70,000 member organizations of Farm Bureau officials attended.

### Among the outstanding speakers on ENJOY AMERICA'S BEST COMIC FEATURES

All the best known comics and adventure features appear regularly in the Baltimore Sunday American. Printed in bright color, the big two-section Comic Weekly and the enjoyable Comic Book provide hours of fun and thrills for youngsters and oldsters alike.

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this year's program were Allan B. Kline of Chicago, president of the American Farm Bureau Federation; U. S. Senator Sam J. Ervin of Morganton; U. S. Senator-Elect W. Kerr Scott of Haw River; W. E. Hamilton of Chicago, American Farm Bureau research director; William G. Lodwick of Washington, D. C., director of the U. S. Foreign Agriculture Service; Dr. D. W. Colvard of Raleigh, State College dean of agriculture; and Mrs. Charles N. DeShazo of Tappan, Va., president of the American Farm Bureau Women. Numerous state and national commodity leaders were also on the program.

## No Stable

Ill-mannered Diner—Hey, waiter! Waiter—Don't serve it here, sir!

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LIQUID OR TABLETS - SAME FAST RELIEF

**Silly Question**  
Tramp—Could you spare me something for a cup of coffee?  
Scotsman — "Hoots, man! D'ye think I carry lumps of sugar around in my pockets?"

## Kidney Slow-Down May Bring Restless Nights

When kidney function slows down, many folks complain of nagging backache, headache, dizziness and loss of pep and energy. Don't suffer restless nights with these discomforts if reduced kidney function is getting you down—due to such common causes as stress and strain, over-exertion or exposure to cold. Minor bladder irritations due to cold, dampness or wrong diet may cause getting up nights or frequent passages. Don't neglect your kidneys if these conditions bother you. Try Doan's Pills—a mild diuretic. Used successfully by millions for over 50 years. While often otherwise caused, it's amazing how many times Doan's give happy relief from these discomforts—help the 15 miles of kidney tubes and filters flush out waste. Get Doan's Pills today!

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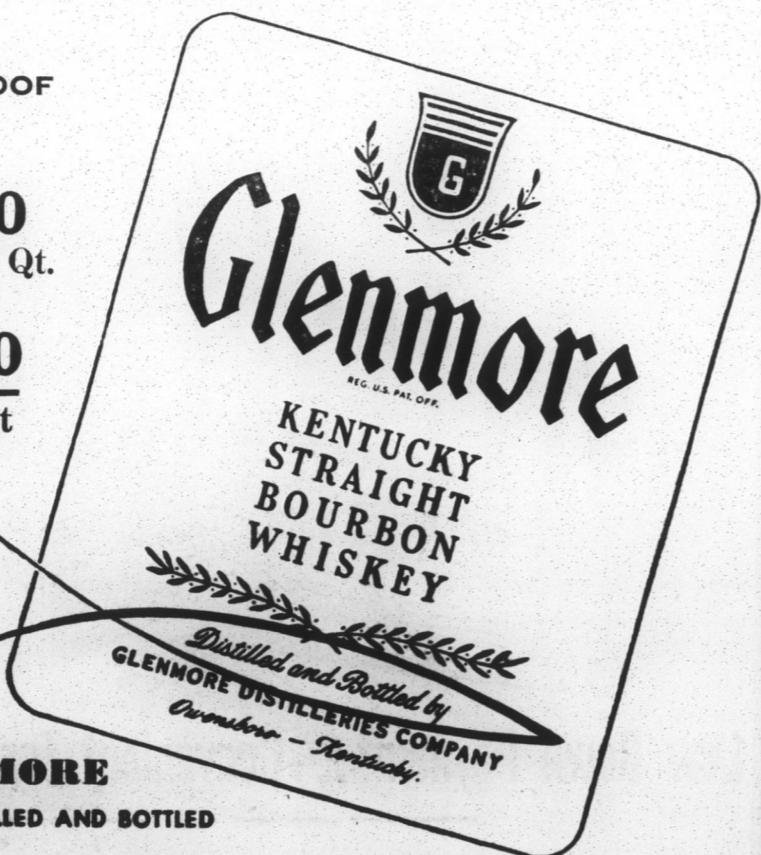
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# Thanksgiving

Following their first harvest in 1621, the Pilgrims of New England set aside "an especial day to give especial thanks for all our mercies." This was the origin of the oldest American holiday.

In observing our Thanksgiving Day, let us remember the courage and determination of our forefathers, with the same faith in the future, the same gratitude for our many blessings.

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