N.C.P.I.-Motor Vehicle 103.65
AGENCY-RIDERS IN PRINCIPAL'S VEHICLE.
MOTOR VEHICLE VOLUME
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103.65 AGENCY - RIDERS IN PRINCIPAL'S VEHICLE.

The defendant (*name defendant*) contends that (*name agent*) [had no authority] [had been expressly instructed not] to invite or permit others to ride in the defendant's vehicle and that, therefore, even if (*name agent*) was negligent, which *he* denies, the defendant (*name defendant*) is not liable to the plaintiff.

Ordinarily an agent driving *his* principal's vehicle has no implied authority to invite or permit others to ride in it (and in this case there is evidence tending to show that the defendant (*name defendant*) had expressly instructed (*name agent*) not to allow others to ride). If the driver lacked authority, express or implied, to invite or permit others to ride, ordinarily the principal is not liable to a rider for injuries sustained by the negligent conduct of the driver.[1]

On the other hand, the rider may recover from the principal for injuries sustained by the driver's negligence if: (*here use one or more of the following bracketed statements as the evidence justifies*)[2]

[the driver had (actual or) apparent authority to invite or permit the rider to ride]

[the driver's deviation from *his* actual authority was slight]

[the rider's presence in the vehicle was with the knowledge and consent of the principal (- that is, express consent or consent implied from the circumstances)]

[the principal, after learning of the rider's presence in the vehicle, ratified- that is, approved- the action of the driver in inviting or permitting the rider to ride]

[the invitation and transportation had some reasonable relation to furtherance of the principal's business-which relation may be implied from the nature of the business].

The burden is not on the defendant to prove that the plaintiff was an unauthorized rider. Rather, the burden is on the plaintiff to prove, by the greater weight of the evidence, that at the time of the plaintiff's injury, (*name driver*) was the agent of the defendant (*name defendant*), was engaged on the business of the defendant (*name defendant*), and was acting within the course and scope of the agency relationship in inviting or permitting the plaintiff to ride.

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1. In *Cole v. Motor Co.*, 217 N.C. 756 (1940) it is said that the unauthorized rider may recover "only for injury sustained through the wanton or willful act of the employee." In *Russell v. Cutshall*, 223 N.C. 353 (1942), it is said that such a rider may not recover for personal injuries "except, perhaps, when willfully or maliciously inflicted." (Emphasis supplied). Neither case involved such conduct. Assuming that recovery may in some cases be had, it would seem that if the wanton, willful or malicious conduct is motivated by the driver's personal spite or hatred, there could be no recovery, even if the ride was authorized. *See* N.C.P.I.-Civil 103.55.

2. Though the meaning of some of the bracketed statements is somewhat short of self-evident, support for one or more of them may be found in the cases cited in note 1 and: *Johnson v. Thompson*, 250 N.C. 665 (1957); *Bruce v. Flying Service*, 231 N.C. 181 (1949) (involving a plane, but illustrating consent by silence); *Wright v. Wright*, 229 N.C. 503 (1948) (circumstances showing consent); *Dark v. Johnson*, 225 N.C. 651 (1945) (ratification).