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Note

THE CHILD DRIVER UNDER THE KENTUCKY FAMILY PURPOSE DOCTRINE

I. INTRODUCTION

The family purpose doctrine, under which the head of a family is liable for his child's negligent operation of the family car, is firmly entrenched in Kentucky as it is in about half of the American states.\(^1\) The Kentucky Court adopted the doctrine at least\(^2\) fifty-four years ago\(^3\) and has upheld it steadfastly. The doctrine is clearly an exception to the rule that a parent is not liable for the torts of his child merely because of the parental relationship, but the text writers\(^4\) endorse it as an ameliorative device which shifts the loss resulting from negligent operation of an automobile to one financially able to compensate the injured party.\(^5\)

Beginning with the premise that the doctrine is solidly established in Kentucky law, this Note examines the development of the doctrine as it relates to the child driver. In addition to analyzing the development and current status of the family purpose rule, the Note discusses the impact of the Kentucky statutes\(^6\) which affect parental liability for a child's negligence with an automobile. Attention is focused on parental liability in three potentially troublesome situations: where it is questionable whether the person driving the car is a "child" within the meaning of the doctrine; where the child operates the vehicle on a trip wholly his own; and where parental consent is

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\(^1\) 60 C.J.S. Motor Vehicles § 483 (1949).
\(^2\) An earlier case, Lashbrook v. Patten, 62 Ky. (1 Duvall) 317 (1864), has been widely cited as the basis for the application of the doctrine in Kentucky. In that case a father was held liable for the negligence of his minor son in driving the family carriage, the theory of liability being the vicarious liability of a master for the tort of his servant, since the son was performing a task generally performed by the father's slave. Whether the Court was really bound by the rule of this case when it faced less picturesque cases involving the destruction resulting from the negligent operation of a motor vehicle is, at least, doubtful.
\(^3\) Stowe v. Morris, 147 Ky. 386, 144 S.W. 52 (1912).
\(^4\) MECHEN, AGENCY 324-25 (4th ed. 1952); PROSSER, TORTS 499 (3d ed. 1964); SEAVEY, AGENCY 155 (1964).
\(^5\) Prosser described the family purpose doctrine as "an ingenious fiction, resorted to as a partial and inadequate step in the direction of an ultimate rule which will hold the owner of the car liable in all cases for the negligence of the driver to whom he entrusts it..." PROSSER, Id. at 499.
lacking. An attempt to outline the doctrine's future in Kentucky and to arrive at an evaluation of the doctrine concludes the discussion.

II. THE "ADULT CHILD" RULE

When the Court of Appeals first confronted a case wherein the family purpose doctrine was invoked in an effort to place liability on the parent of an adult driver, it affirmed a directed verdict for the parent. The issue of whether the driver's age alone was sufficient to render the doctrine inapplicable was not presented to the Court directly, since the directed verdict was affirmed on the ground that the driver had not been serving a family interest in driving the automobile when the collision occurred.

But two years later, in 1928, the Court decided two cases in which it clarified its position. In one of these, Bradley v. Schmidt, the doctrine was relied upon by the plaintiff in an attempt to recover from the father of a self-supporting twenty-four year old son. As in the earlier case, the Bradley decision turned on the Court's belief that since the son was driving the family car for his own and not a family use, the agency relationship necessary to render the father liable under the family purpose doctrine was absent. But in Bradley the Court took the opportunity to state by way of dictum:

While it may be true that a parent may be responsible for the negligence of his child in operating, with the parent's consent, an automobile maintained by the parent for family use where the child is living in the household of the parent as an object of his bounty and is a person whom the parent is under a moral or legal obligation to support, . . . where these elements are not present, no ground of liability on the part of the parent can be discovered. (Emphasis added.)

In the second 1928 case, Malcolm v. Nunn, the Court faced the "adult child" question more squarely. It held that a mere allegation that the parent owned and maintained the car which his son negligently operated was insufficient to impose liability on the parent

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7 Rauchhorst v. Krout, 216 Ky. 323, 287 S.W. 895 (1926). In this case the driver was the defendant's twenty-three year old son. The son was independently employed and resided with his parents as a paying boarder, his rent payments being their chief source of income. He drove the family car to his own place of employment as well as driving his parents to their places of employment and on pleasure trips. On the day of the accident the son was returning home from work. While this case cannot be said to have established an "adult child" exception to the family purpose rule, it was soon cited as authority for the proposition that the doctrine is inapplicable in the absence of a showing that the driver drove as an agent of the owner or that the family as a whole benefited from the driving. See Kennedy v. Wolf, 221 Ky. 111, 298 S.W. 188 (1927).
8 223 Ky. 784, 4 S.W.2d 703 (1928).
9 Id. at 789. 4 S.W.2d at 705.
10 226 Ky. 275, 10 S.W.2d 817 (1928).
under the family purpose doctrine. A close examination of the opinion reveals that the Court believed the doctrine applicable only where the driver was under twenty-one years of age and was operating the vehicle on a family mission.\textsuperscript{11}

In a 1930 case, \textit{Creaghead v. Hafele's Adm'r},\textsuperscript{12} the Court of Appeals faced another case involving operation of a family car by a person not clearly a "child" within the doctrine. Since the decision turned once again on the absence of an agency relationship, the Court gave only scant attention to the age of the driver and the parent's duty of support.\textsuperscript{13} However, it did note that the defendant-parent was under no legal or moral obligation to support his "child," a college instructor some thirty years of age who was self-supporting and did not live with her parents. In 1932 the Court formulated a clear holding that the doctrine was applicable only where the owner-parent was under a legal or moral obligation to support the driver of the vehicle or where the driver was under twenty-one.\textsuperscript{14}

Since the emergence of these two adult child tests, the Court has referred more frequently to the "obligation" test. In the two most recent cases in which the driver's status as a child has been put in issue, the decision was couched in terms of "obligation."\textsuperscript{15} However,

\begin{itemize}
\item \textsuperscript{11} The Court cited the \textit{Bradley} case and stated:
\begin{quote}
As to Dr. Nunn there is neither allegation nor proof that Bruce Nunn was under 21 years of age, and neither is there any proof that he was driving the machine on any mission or business of his father's at the time of the accident. Under that state of facts he would not have been responsible, even if Bruce Nunn had been negligent. Id. at 277, 10 S.W.2d at 819.
\end{quote}
Whether the Court intended to establish a new test, one based only on the driver's age, in addition to the legal or moral obligation test to which it had alluded in the \textit{Bradley} case is doubtful. It would seem more probable that a loose reading of \textit{Bradley} led the Court to assume that a "twenty-one" test had already been established. The existence or non-existence of a "twenty-one" test might be significant in light of recent legislation to be discussed infra.
\item \textsuperscript{12} 236 Ky. 250, 32 S.W.2d 997 (1930).
\item \textsuperscript{13} The daughter in \textit{Craeghead} had driven the family car on a purely personal trip. Under the rule of \textit{Kennedy v. Wolf}, 221 Ky. 111, 298 S.W. 188 (1927), this fact was sufficient in itself to take the parent out of the doctrine.
\item \textsuperscript{14} Ludwig v. Johnson, 243 Ky. 583, 49 S.W.2d 347 (1932).
\item \textsuperscript{15} In \textit{McNamara v. Prather}, 277 Ky. 754, 755, 127 S.W.2d 160, 161 (1939) it was stated by way of dictum that "a parent who owns, maintains, or provides an automobile for the pleasure or convenience of the family is not liable for its negligent use by an adult child whom the parent is under no legal or moral obligation to support."
\end{itemize}

In \textit{Walker v. Farley}, 308 Ky. 163, 164, 213 S.W.2d 1016, 1017 (1948), where there was no evidence that the son whose negligence was sought to be imputed to the defendant father was a member of the father's household or was under twenty-one, the Court held, "the doctrine does not apply in the case of an adult child using his parents' car for his own purpose and pleasure unless he is living in the household of the parent as an object of his bounty and the parent is under a moral or legal obligation to support him."

It is interesting to note that no Kentucky decision has attempted to define (Continued on next page)
the "twenty-one" test continues to have efficacy despite its relative dormancy. Since its use in the 1928 and 1932 cases discussed above, the "twenty-one" test has been invoked at least twice.\textsuperscript{16} Admittedly, the Court has never been presented with a case where the applicability of the doctrine turned solely on the age of the driver. But until the cases which established the test have been overruled, the "twenty-one" test must be cautiously recognized. At its very least, the age of the driver will be one determinative factor in implementing the "obligation" test. It is worthy of recognition for this reason if for no other.

Another aspect of the "adult child" exception which has been troublesome is the confusion of the doctrine with pure agency principles. This is probably a result of the Court’s tendency to employ agency language when dealing with family purpose cases. An examination of two recent developments in the Kentucky family purpose law should clarify any misunderstanding. First, it should be clearly understood that a parent who escapes liability under the family purpose doctrine will be held liable under the traditional rules of agency if the child was in fact an agent of the parent.\textsuperscript{17} Therefore, the doctrine and the agency rule of respondeat superior afford the plaintiff two different theories under which to seek recovery from the parent. Second, while the family purpose rule was originally believed to be an agency doctrine,\textsuperscript{18} it is safe to say that the Kentucky Court now recognizes

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  \item[Footnote continued from preceding page] "moral or legal obligation" as the term is used in the doctrine. The conclusion seems to be that the definition would be that applied in the field of domestic law, but the question remains open.
  \item It is further noted that part of the quoted portion of the \textit{Farley} opinion which would require as a condition of application of the doctrine that the child be a resident of the defendant parents' household has never been tested. It is submitted that if a case ever arises where liability is sought to be avoided on this basis alone, the Court will hold the parent liable on the ground that the purpose of the doctrine requires it.
  \item In Miracle v. Cavins, 254 Ky. 644, 72 S.W.2d 25 (1934) the defendant parent, against whom the family purpose rule had been invoked, was held entitled to a directed verdict. The record showed that the son driving the family car was twenty-three years old and independently employed. Abell v. Whitehead, 266 Ky. 764, 99 S.W.2d 770 (1936) held that where the defendant's twenty-three year old son drove the car for his own pleasure and there was no evidence of an agency relationship between the defendant and the son, the defendant was outside the doctrine. In the \textit{Abell} case the Court said that the relationship between the defendant and his son and the latter's personal use of the family car on the occasion brought the case into the exception to the family purpose rule set up in \textit{Ludwig, Hall, Craeghead, and Bradley}. The facts of the \textit{Abell} case do not justify its loose language concerning the "obligation" test, since they show only that the defendant's son was twenty-three and was not serving as his father's agent. It is submitted that the use of "obligation" language in cases such as this has led to the mistaken belief that that test is exclusive.
  \item Wireman v. Salyer, 336 S.W.2d 349 (Ky. 1960).
  \item Sale v. Atkins, 206 Ky. 224, 267 S.W. 223 (1924).
\end{itemize}
the doctrine as one motivated by policy considerations which justify its extension beyond the limits of liability under agency law. In the future the Court will probably employ language which recognizes this change, and the drift from agency law will become more apparent.

By way of summary, it appears that the "adult child" exception to the family purpose rule, at least as far as the case law is concerned, is fairly static. The Court of Appeals has required that there be a showing that the driver was a person whom the defendant-parent was morally or legally obligated to support. There is at least a strong possibility that it also requires that the driver be under twenty-one. Since a person to whom a parent owes no support obligation can be expected to be financially responsible, the Kentucky Court has formulated an "adult child" rule consistent with the doctrine as a whole.

III. The Child's Use of the Vehicle for His Own Purposes

Assuming that a given automobile is a family vehicle within the meaning of the family purpose doctrine, should the doctrine impose liability upon a parent for the negligence of a child in operating the vehicle on a trip wholly his own? About half the courts which follow the family purpose rule have answered this question in the negative. Those courts have reasoned that the doctrine is applicable only where a "family" car is being driven for a "family" purpose and that a child who drives for his own pleasure is not furthering such a purpose. This line of reasoning rings with common sense, and its attractiveness to those courts which still conceptualize the doctrine as based on agency principles is understandable.

Kentucky, along with the other half of the family purpose jurisdictions, has rejected this view. Our Court reasons that, where the head

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19 Turner v. Hall's Adm'x, 252 S.W.2d 30 (1952).
20 Annot., 132 A.L.R. 981 (1941); Annot., 100 A.L.R. 1021 (1936); Annot., 88 A.L.R. 601 (1934); Annot., 64 A.L.R. 844 (1930). Examination of supplementary material discloses that the numerical alignment of the courts has remained substantially the same.
21 See, e.g., Clawson v. Schroeder, 208 Pac. 924, 926 (Mont. 1922): It is a rule well established that the father cannot be held responsible for the tort of his son, committed without his knowledge or authority, express or implied. The only ground upon which the father can be held answerable for the act of his son in the case under consideration excludes the idea of an independent venture on the part of the son.
22 Stowe v. Morris, 147 Ky. 386, 144 S.W. 52 (1912). In this case the family purpose rule was held to impose liability upon a father for his teenage (Continued on next page)
of the family purchases and maintains an automobile for the pleasure of his family, he makes their pleasure his "business." When the child drives the car for his own pleasure, he is furthering that "business" and is, therefore, an agent of the owner. Professor Mechem concurs in this approach, although he characterizes the issue as "a little difficult to answer." But it would be wrong to entertain the notion that the family purpose rule applies to any case of a minor driving an automobile which belongs to his parents. In the first place, the vehicle must be a family purpose vehicle. Thus the doctrine will not apply in the case of a son who drives his father's vehicle on a mission ordered by and beneficial to the father, where the vehicle was not purchased and maintained for the benefit and pleasure of the family. In such a case the father's liability will be determined by agency law. The difference between liability under agency law and under the doctrine is significant where the driver exceeds limitations imposed by the parent. In the second place, it must be kept in mind that the doctrine will impose liability upon the head of the family, even where the vehicle is in fact a "family" vehicle, only when the head of the family owns the vehicle. Thus, the Kentucky Court refused to hold a father liable for his daughter's negligent operation of a "family" car which, in fact, belonged to the daughter.

(Footnote continued from preceding page)

son's negligent operation of the family car while taking his friends on a joyride. The Court made crystal clear that the only ground upon which the father can be held answerable for this act of his son [is] . . . that the machine was bought and operated for the pleasure of the family; that, at the time of the accident, the son was engaged in carrying out the general purpose for which the machine was bought and kept; and that, as he took it out at the time, in pursuance of general authority from his father to take it when he pleased, for the pleasure of the family and himself as a member of it, the purpose for which it had been bought, he was engaged in the execution of his father's business, i.e., the supplying of recreation to the members of the father's family. Id. at 388, 144 S.W. at 53.
The continuing efficacy of Stowe is shown by its favorable citation in Wireman v. Sayer, 336 S.W.2d 349 (Ky. 1960).

23 Mechem, op. cit. supra note 4.
24 Ibid.
25 Sanders v. Lakes, 270 Ky. 98, 109 S.W.2d 36 (1937).
26 Ibid.
27 Suffice it for the present to say that the principal's liability under the agency rules of frolic and detour is less extensive than it would be under the doctrine's broadening rules of consent which are discussed infra.
28 Carricato v. Carricato, 384 S.W.2d 85 (Ky. 1964). The case involved an interesting question of emancipation which might be revived by recent legislation to be considered infra.
29 Ibid. An examination of the significance of "ownership" of the vehicle will be undertaken in the discussion of the future of the doctrine infra.
These considerations aside, however, it can safely be said that a child who drives the family car for his own pleasure is furthering a family purpose. The doctrine clearly applies in such an instance.

IV. Child Driving Surreptitiously or in Excess of Permission

The most stringent test of the theoretical basis of the family purpose doctrine arises in cases where the child injures the plaintiff while driving without the defendant parent's permission or, having obtained permission, in excess of restrictions imposed by the parent. Under the doctrine as it stood at that time, a 1932 writer correctly wrote, "As the doctrine is based on the relation of principal and agent, it has no application where a child surreptitiously obtains the family car and drives it without the consent of the owner."30 No other conclusion could have been reached in light of the decision in Sale v. Atkins,31 the first case in which the Kentucky Court was confronted with a child who obtained the use of the family car surreptitiously.

The defendant parent in Sale pleaded as an affirmative defense that the child had taken the car surreptitiously, without defendant's knowledge, and contrary to instructions, and that the child had never been permitted to drive alone. The evidence supported his allegations. In reversing a judgment for the plaintiff, the Court was obviously unwilling on the facts before it to hold that the child was an agent of the parent. Consequently, it was compelled to hold the doctrine inapplicable.32 However, the Court hinted at future development when it said, in effect, that a cause of action would be stated if the plaintiff showed that it was the custom or privilege of the child to use the car, even if there were no showing of express permission to use it.

Technically, the narrow rule of Sale may still be the law in Kentucky. Actually, since its inception the rule of Sale has been eroded by the "custom or privilege" approach mentioned above33 and by implied permission to use. The Court has indulged in a certain amount

30 Note, 21 Ky. L.J. 485 (1932).
31 206 Ky. 224, 267 S.W. 223 (1924).
32 Id. at 226, 267 S.W. at 224:
33 See Note, 38 Ky. L.J. 156 (1949).
of judicial legislation aimed at avoiding, but not overtly destroying, the rule of Sale. The result has been imposition of an almost absolute liability upon the parent for the negligence of the child in driving the family car. A study of the cases since Sale substantiates this contention.

The Court in two decisions following Sale made two points clear. First, it held that a parent who sought to bring himself under the protection of Sale must have made a realistic attempt to enforce his prohibition of the child's use of the family car. Second, it held that, where a parent gave his child permission to use the vehicle for a limited time and for a specific task, the permission would not render the parent liable for the child's use of the car on a subsequent trip undertaken without the parent's consent or knowledge. On the basis of these elaborations of Sale, a parent could protect himself from liability under the doctrine by prohibiting his child from driving the family car (providing he made a realistic effort to enforce the prohibition) or by permitting the child to operate the car for limited purposes or periods of time only.

Since 1950 the Court of Appeals has rendered three opinions which have effectively vitiated the rule of Sale. In Turner v. Hall's Adm'x the child had driven the family car to school and to extracurricular events for over a year. The defendant father had given the child express permission to use the car, with the only limitation being that the child should permit no other person to drive. The child violated this instruction by permitting a friend to drive; it was the negligence of the friend that caused the plaintiff's injury. Plaintiff sought recovery from the father on the theory that the driver was an agent of the son and the son, by operation of the family purpose doctrine, an agent of the father. The father requested an instruction that any agency relationship between him and his son was terminated when the son disobeyed his instructions. The Court of Appeals affirmed the circuit court's denial of this instruction. In so doing, the Court recognized that the case involved a new aspect of the exceeded permission problem, namely, whether a parent, after giving a child permission to use the car for

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34 Wells v. Lockhart, 258 Ky. 698, 81 S.W.2d 5 (1935). In this case the evidence showed that the defendant's son had habitually driven the car and that the car was kept in an unlocked garage. It was held that the defendant's testimony to the effect that he had "lectured" his son on driving alone did not entitle him to a directed verdict. The plaintiff's proof was that the child had been seen driving the car on a number of occasions. The Court remarked that this latter proof "was of such a nature and the occasions so numerous as to authorize the inference that appellant . . . acquiesced in such use. . . ." Id. at 701-02, 81 S.W.2d at 7.

35 Cook v. Hall, 308 Ky. 500, 214 S.W.2d 1017 (1948).

36 252 S.W.2d 30 (Ky. 1952).
the purpose for which it was purchased, "could limit the extent of his liability by specific instructions . . . concerning . . . its operation . . . ."

The Court answered its own question in the negative as follows:

The Family Purpose Doctrine is a humanitarian one designed for the protection of the public generally, and resulted from recognition of the fact that in the vast majority of instances an infant has not sufficient property in his own right to indemnify one who may suffer from his negligent act.

We believe the purpose of this doctrine would be destroyed entirely if a father could relieve himself of responsibility by specific instructions known only to himself and his son. Even in cases of the strict commercial relationship of master and servant, the courts have not permitted such a limitation.

The first paragraph of this quotation has been widely accepted as authority for the proposition that the Kentucky Court in Turner discarded agency principles as the conceptual foundation of the doctrine. However, the Kentucky doctrine, as affected by Turner, apparently retained its agency basis for a while longer. Examination of the second quoted paragraph shows that the Court was swayed by its belief that once the child had been placed in possession of the vehicle, and therefore was furthering the purpose of his father by using it for his own pleasure, the principal-agent relationship thus established could not be terminated by instructions limiting the child's use. It is the writer's conclusion that Turner, rather than abandoning agency principles, utilized them to nullify the defendant's attempts at restrictions on his liability. At the very least Turner could have been decided on agency law without resort to considerations peculiar to the family purpose doctrine.

In 1953 the Court considered Richardson v. True, where the child, at the time of the accident, was violating instructions from the defendant-mother that he was not to drive outside the city. The evidence showed that the mother knew that the child on many occasions, despite her objections, had driven outside the city and was in the habit of taking the car keys from their hiding place and driving without permission. Reversing a directed verdict for the mother, the Court of Appeals held that there was a jury question of whether the son, on the day he injured the plaintiff, had driven with the mother's

37 Id. at 82.
38 Ibid. (citing Restatement, Agency § 533).
39 Prosser quotes this paragraph as authority for his statement that the family purpose doctrine has often been recognized as an instrument of policy. Prosser, op. cit. supra note 4, at 497.
40 Stowe v. Monms, 147 Ky. 386, 144 S.W. 52 (1912).
41 259 S.W.2d 70 (Ky. 1953).
tacit or implied consent. The Court relied on *Turner v. Hall's Adm'x* as its authority.

A distinction between *Richardson* and *Turner* should be noted. The Court in *Turner* held that, once the parent had made the child his agent, he could not restrict that agency by placing limitations on the permission that he had granted the child. In *Richardson*, on the other hand, it does not appear that the parent ever gave such broad permission to use the family car. Indeed, the permission, if any existed at all, was so narrow that the son violated it by the very taking of the car. The agency rule, which the Court perhaps unknowingly applied in *Turner*, is inapplicable to the facts of *Richardson*. Apparently there is no rule of agency law which would allow a person, by his own unauthorized acts, to force another into a principal-agent relationship with him. On this basis it is submitted that in *Richardson* our Court abandoned agency law as the foundation of the family purpose doctrine. Since the Court decided the case on the strength of *Turner*, the transition was made without the benefit of a reasoned opinion to support it. To the extent that the Court never really met the problem head-on, the abandonment in *Richardson* was unfortunate and untimely.

The most recent case extends the rule of *Richardson* only slightly. In *First-City Bank and Trust Co. v. Doggett* the evidence showed that the son had standing permission to use the car and, although he usually obtained express permission, he had occasionally taken it without obtaining such permission. On the day in question the parent had expressly instructed the boy not to use the car because the parent might need it to go to the doctor. The son violated this direction, and while driving the car he injured the plaintiff. Affirming a directed verdict against the parent, the Court of Appeals held that where the family car is customarily available for use by a child, and a particular use of the car is denied because of family matters, the mere denial of permission does not render the parent immune from the family purpose doctrine.

The Court anticipated the argument that this decision would render it impossible for a parent to protect himself from liability under the doctrine. It countered the argument with the following dictum:

> [W]e are of the opinion that a complete revocation of previous general permission should not be given recognition unless a sufficient period of time has lapsed following the revocation, during which the revocation

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42 252 S.W.2d 30 (Ky. 1952).
43 316 S.W.2d 225 (Ky. 1958).
has been enforced, to justify the conclusion that it was a bona fide revocation rather than a mere temporary suspension of permission as a disciplinary action.\footnote{Id. at 230.}

A reading of the cases from \textit{Sale} through \textit{Doggett} shows that the Court has made a complete about-face in its attitude toward the parent’s liability for the negligence of the child who drives without, or in excess of, parental consent. This reversal was made possible only by sacrificing the agency basis of the doctrine. The writer is not satisfied with the way in which this was done. However the result, \textit{i.e.}, supplying the motoring public with a cause of action against the parent under the doctrine, is consistent with the purposes of the doctrine since it supplies a remedy for injuries caused by a child driving without parental consent or beyond parental limitations. The parent who wants to protect himself from the doctrine should take measures which effectively prevent his child from driving the family car, and he should continue these measures long enough to make them appear meaningful and realistic.

\textbf{V. The Future of the Doctrine}

The ever-increasing motorization of our society will inevitably cause corresponding increases in injuries caused by the negligent operation of family vehicles by children. The very nature of the family purpose doctrine will lead the Court to broaden its scope and thereby extend relief to a greater number of injured litigants. Considerations of general policy which will prompt the Court are too nebulous and speculative for useful discussion in this Note, but there are other, more concrete, factors which will shape the doctrine’s development.

Legislation—past, present, and future—has affected and will continue to affect the rule. Assuming the General Assembly does not render the doctrine moot by enactment of a compulsory automobile insurance statute,\footnote{See, \textit{e.g.}, \textit{MASS. ANN. LAWS} ch. 90, § 1A (1964); \textit{N.Y. VEHICLE AND TRAFFIC LAW} § 312 (1960).} our bench and bar must adapt themselves to the doctrine as it exists within the framework of two related statutes.\footnote{\textit{KRS} § 2.015 (1964); \textit{KRS} § 186.590 (1942).}

The first of these, \textit{KRS} 186.590, has been on the books for thirty years, so there is some indication of what its impact on the doctrine will be. The statute provides, in effect, that the negligence of a driver under eighteen years of age will be imputed to the person who signed his application for an operator’s license, to every motor vehicle owner who permits a child under eighteen to drive his car, or to any person
who gives or furnishes a motor vehicle to such a child.\footnote{KRS § 186.590 provides: (1) Any negligence of a minor under the age of eighteen who has been licensed upon an application signed as provided by KRS 186.470, when driving any motor vehicle upon a highway, shall be imputed to the person who signed the application of the minor for the license. . . . (3) Every motor vehicle owner who causes or knowingly permits a minor under the age of eighteen to drive the vehicle upon a highway, and any person who gives or furnishes a motor vehicle to the minor shall be jointly and severally liable for damages caused by the negligence of the minor in driving the vehicle.} Although the family purpose doctrine and this statute do not "clash" and although most litigation under the statute has been on the issue of whether the statute imputes the minor's contributory negligence to the adult,\footnote{Kentucky has taken the minority position that contributory negligence is not so imputed by the statute. Sizemore v. Bailey's Adm'r, 293 S.W.2d 165 (Ky. 1956); \textit{Amd. Jur. 2d Automobiles and Highway Traffic} § 676 (1963).} the statute does affect the doctrine to a limited extent. That is, a plaintiff injured by a child driver's negligent operation of a family car has two possible theories of recovery if the child is under eighteen. First, of course, is the doctrine. Second, the plaintiff can sue under the statute, provided the defendant fits one of the three classes of persons whom the statute renders jointly and severally liable. The statute's practical effect is to render the doctrine unnecessary in cases where the statute applies.

One important difference in recovery under the doctrine and under the statute should be emphasized. As discussed above, the Court has adopted a liberal "implied permission to use" theory in family purpose cases involving a child driving without parental permission or contrary to parental restrictions.\footnote{First-City Bank and Trust Co. v. Doggett, 318 S.W.2d 225 (Ky. 1958).} Under the statute, however, the Court has not formulated such a liberal rule. By the terms of the statute, the "permission" problem does not arise if liability is charged because the adult defendant signed the child's application for a license.\footnote{But the adult who has signed the application can avoid liability under KRS 186.590(1) if the youth files or has filed in his behalf a proof of financial responsibility. See KRS § 186.590(2) (1942).} If the plaintiff seeks to bring his suit under the other provisions of the statute, however, he must prove that the adult defendant had actual knowledge\footnote{Cook v. Hall, 308 Ky. 500, 214 S.W.2d 1017 (1948).} that the child was driving the car made available to him, or at least present strong evidence that the youth drove with the consent of the adult.\footnote{Meadows v. Bailey, 350 S.W.2d 630 (Ky. 1961).}

So a plaintiff injured by the negligent driving of a family vehicle\footnote{In this respect it should be remembered that the statute goes far beyond the doctrine since it applies to \textit{any} person putting a youth behind the wheel of any automobile. However, this will not serve to place liability upon the vendor of an automobile. Falendar v. Hankins, 296 Ky. 396, 177 S.W.2d 382 (1944).}
by a child below the age of eighteen will have a statutory remedy against the owner parent if the latter signed the child's application for a driver's license, consented to the child's driving of the vehicle, or had actual knowledge that the child was driving. Since the owner parent is likely to fall into one of these three categories, as far as children under eighteen are concerned, the family purpose doctrine is not of great utility to plaintiffs.

The second statute which must be considered in studying the doctrine is the 1964 enactment lowering the age of majority to eighteen:

Persons of the age of eighteen years are of the age of majority for all purposes in this Commonwealth except for the purchase of alcoholic beverages and treatment of handicapped children, for which twenty-one years is still the age of majority.

This statute will not control the case of majority in a situation for which a previously-enacted statute prescribes a different age. But where a contrary statutory age of majority is not specified, the statute will govern. The Court of Appeals has recognized that the statute might well play havoc with the family purpose rule. An attempt will be made to explore in some detail what the statute's impact will be.

In the first place, this statute, by operating in conjunction with KRS 186.590, might well be the death knell of the doctrine, at least as far as the child driver is concerned. It was shown earlier in this Note that the test of whether a person is a child for purposes of the doctrine is whether the parent is under a moral or legal duty to support him. Kentucky law does not require a parent to support an adult child, except in very limited circumstances, so it may well follow that the parent is no longer under any legal obligation to support his issue after they reach eighteen. A parent's moral obligation to support an adult child is at best a nebulous concept, but it could at least give the Court a peg upon which to hang a decision applying the

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54 KRS § 2.015 (1964).
55 Commonwealth v. Hallahan, 391 S.W.2d 378 (Ky. 1965).
57 Commonwealth v. Hallahan, 391 S.W.2d 378, 380 (Ky. 1965).
58 In the earlier discussion of the "moral or legal obligation" and "twenty-one" tests for determining whether a person is a child within the scope of the family purpose doctrine, it was assumed that "twenty-one" was synonymous with "age of majority." In light of KRS 2.015, if the Court believed an age test should be applied in conjunction with an obligation test, or exclusively, it would be compelled to substitute "eighteen" for "twenty-one."
59 Breuer v. Dowden, 207 Ky. 12, 268 S.W. 541 (1925).
60 Ibid.
doctrine to the parent of a negligent eighteen year-old. Since the doctrine exists for the recognized purpose of supplying a more effective source of indemnification to the motoring public, it is highly improbable that the Court would hold the doctrine inapplicable to the parent of a person over eighteen on the sole ground that the statute in question had lowered the age of majority to eighteen. It is submitted that the Court will continue to apply the doctrine to eighteen to twenty-one year-olds and adjust to the statute by evolving a different "adult child" rule.

But the age of majority statute's impact will go further than this. While the Court may well refuse to hold that the doctrine's upper limits reach only to the age of eighteen merely because the age of majority has been lowered to eighteen, the statute might lead to the same shrinking of the doctrine in a more roundabout way. It can be safely said that the theoretical basis for vicarious liability under the doctrine is the belief that the parent can control his child's use of the family automobile. Even when the doctrine is conceptualized as no more than a policy-oriented rule, the belief in the parent's right and ability to exercise such control is apparent. If the eighteen year old is, by virtue of the new statute, no longer subject to the control of his parents, or at least the threat of it, an important theoretical leg of the doctrine will be lacking. An interesting analogy is the youth who is freed from potential parental control by reason of his marriage. No case has been found where the child's marital status alone caused him to be held to be an adult, but it may be significant that in those Kentucky cases where the driver's status as a child was at issue, there has never been a holding that a married driver was a child.

In still another way the age of majority statute will at least indirectly affect the family purpose doctrine. This will be a result of the eighteen year old's newly-created ability to contract for the

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63 In the Kentucky case which pushes parental liability for the child's negligent driving in violation of instructions to the furtherest extent to date, the Court makes it clear that if the parent does, in fact, realistically and effectively with draw his permission for the child to drive the family car, the parent will be immune.Implicitly the Court recognizes the right to control. It is the exercise, not the existence of this control, that determines liability where a child disobeys parental prohibitions or limitations on his driving. First-City Bank and Trust Co. v. Doggett, 316 S.W.2d 225 (Ky. 1958).
64 67 C.J.S. Parent and Child § 89 (1950).
65 Walker v. Farley, 308 Ky. 163, 213 S.W.2d 1016 (1948); Rauckhorst v. Krout, 216 Ky. 323, 287 S.W. 895 (1926). It may be that marriage, by emancipating the child, would be sufficient in itself to make the child an "adult" regardless of his relationship with his parents.
purchase of an automobile. Although it is still too early to document an increase in purchases of cars by youths between the ages of eighteen and twenty-one, there is no reason to believe an appreciable increase will not be forthcoming.

The Court of Appeals has long since held that the niceties of legal title will not detract it from inquiring whether the head of the family actually provides and maintains the car for the pleasure of his family.\(^6\)

This is the position taken by the few courts which have faced the issue.\(^6\) Perhaps in the last analysis the test will be whether the head of the family pays for the automobile. If so, the Court should remember that a youth who pays for a car with his own earnings can be said not to have paid for it if his parents are supporting him and thereby freeing his wages to be spent for other purposes.\(^6\) But one overriding consideration must be kept in mind—the family purpose doctrine does not apply in a case where the negligently-operated car was not a "family" car within the meaning of the doctrine.\(^6\) If the parent did not buy the car or free the youth from living expenses and thereby enable him to buy it, and if the parent has no control over the child,\(^7\) there is no basis for parental liability under the doctrine. It is strongly urged that the courts should look closely into each situation to see if the child does in fact "own" the car which he "purchased." If he does not own it in the sense indicated above, the situation is no different from that of a family car which has been

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\(^{6a}\) Gray v. Golden, 301 Ky. 477, 192 S.W.2d 371 (1945).

\(^{6b}\) Pouliot v. Box, 56 N.M. 566, 256 P.2d 1050 (1952); Stevens v. Van Deusen, 159 N.M. 128, 241 P.2d 331 (1951); Meinhardt v. Vaughn, 159 Tenn. 272, 17 S.W.2d 5 (1920); Robinson v. Ebert, 180 Wash. 387, 39 P.2d 992 (1935).

\(^{6c}\) See 6 BLASHFIELD, AUTOMOBILE LAW AND PRACTICE 468 (3d ed. 1966).

\(^{6d}\) In Stevens v. Van Deusen, 56 N.M. 128, 241 P.2d 331 (1951) the defendant's son purchased the car with his own earnings, but at the time of the collision he was attending college, living at defendant's home, and supported by defendant. The earnings were from a job he held while he had "run away" from home. Although the case was determined on the basis of a statute which, like KRS 405.010, provided that the parent is entitled to his minor child's earnings, the court held the defendant liable under the family purpose rule. The court was impressed by the fact that the defendant helped pay upkeep expenses and that the son was a minor supported by the defendant.

\(^{6e}\) Using "family" in the broad sense enunciated in Stow v. Morris, 147 Ky. 386, 144 S.W. 52 (1912), whereby the car is a family vehicle even if the child drives it to the exclusion of others, since he thereby achieves the purpose (the child's use and enjoyment of the car) of the father in furnishing the car.

But consider this case: A purchases a car for the use of his family. He purchases another car for the sole use of his teenage son, B. By freeing the family car from use by B, can A be said to have furthered a family purpose in such a way as to make him liable for B's use of his "own" car?

\(^{6f}\) In this regard KRS 186.590 and 2.015 are complimentary, since the parent, by KRS 2.015, is undoubtedly entitled to control his child during the period in which he might be held liable under KRS 186.590. Whether the family purpose doctrine will be "shrunk" to the point that it is equally complementary to KRS 2.015 is perhaps the basic issue in the future of the doctrine.
given to a child and title placed in his name. The head of the family should be liable in either situation.

The last aspect of the future of the doctrine to be considered is whether the Court of Appeals will continue to restrict it to automobiles. Only a handful of courts have determined whether the doctrine should be extended to cover vehicles other than automobiles and trucks. Of these, Tennessee has held the doctrine applicable to motorcycles, while Minnesota and North Carolina have held it inapplicable to motorboats and Washington has refused to apply it to bicycles. The Tennessee court reasoned that the family purpose doctrine was applicable to any vehicle when that vehicle's operation posed a “threat” to the motoring public comparable to that created by the operation of an automobile. The other courts were of the opinion that the family purpose doctrine exists only because the operation of automobiles creates a hazard of serious proportions and that it should not be extended to cover vehicles which do not pose such hazards. These courts weigh the hazard posed by a vehicle without comparing it to automobile hazards.

71 The Tennessee court ruled that a family car given to a child with title in his name is still a family purpose car. Meinhardt v. Vaughn, 159 Tenn. 272, 17 S.W.2d 5 (1929). Said the court:

The furnishing, maintainence, and control are . . . the essential predicates of liability of the responsible parent. If this responsibility may be evaded by merely giving over to an irresponsible minor child the title to such an instrumentality . . . evil consequence[s] will be invited. 17 S.W.2d at 7.

72 Meinhardt v. Vaughn, 159 Tenn. 272, 17 S.W.2d 5 (1929).

73 Feley in v. Gamble, 185 Minn. 357, 241 N.W. 37 (1932).

74 Grindstaff v. Watts, 254 N.C. 568, 119 S.E.2d 784 (1961). But the North Carolina court indicated that it believes legislation to extend the doctrine to motorboats is desirable.


76 It should be noted that “threat,” as the Tennessee court uses the term, does not mean the dangers are so great that the automobile is a “dangerous instrumentality” within the meaning of the tort doctrine imposing strict liability upon a person who turns a dangerous instrumentality loose upon the public. Nichols v. Smith, 21 Tenn. App. 478, 111 S.W.2d 911 (1937). Although most courts reject the notion that a car is a “dangerous instrumentality,” they recognize that it is, in fact, capable of being a dangerous instrument. 2 BLASHFIELD, AUTOMOBILE LAW AND PRACTICE § 101.3 (1965).

77 159 Tenn. at 272, 17 S.W.2d at 6.

78 The Minnesota court justified its decision with language which thirty years of nautical advancement have rendered humorously rustic:

The number of motorboats, even in the state of Minnesota with its more than 10,000 lakes, is extremely limited when compared with the number of automobiles upon its highways. Boats, in far greater numbers, are propelled by oars. Considering the wide expanse of the water surface of our lakes and rivers and the comparatively small number of motorboats thereon, which do not move in lanes or prescribed routes, a situation is not presented justifying, much less requiring . . . the extension of the family purpose doctrine to cover them. 185 Minn. at 358, 241 N.W. at 38.
With the current mass purchase and use of such instrumentalities as motorscooters, air planes, powermowers, motorboats, and other power-driven vehicles, our Court must prepare to determine whether the doctrine is applicable to any or all of these vehicles. By using the Tennessee court’s reasoning the Court will have a good standard: does the vehicle pose a hazard comparable to that created by an automobile? Whether the Court compares the particular hazard with the “automobile” hazard of today or of the era when Kentucky adopted the doctrine may affect the outcome. But if the Court should be inclined, as other courts have done, to simply weigh the hazards created by the vehicle without reference to the hazards from automobiles, it will still have a workable standard. In either case the ultimate issue will be whether protection of the public demands extension of the doctrine. Should the increase in the number of such machines continue, it seems inevitable that the Court will be compelled by considerations of policy to broaden the doctrine to a greater extent.

VI. EVALUATION OF THE DOCTRINE

Having traced the development of the family purpose doctrine from its origins in the respondeat superior principle of agency to its present status as a humanitarian ameliorative doctrine, the remainder of this Note discusses whether the doctrine is effectively achieving its purpose and suggests alternatives.

The loopholes through which a parent can escape liability under the doctrine are numerous. To summarize those already examined, a parent will not be liable for his child’s negligence if the automobile was not a family car, if the child was an adult within the meaning of the doctrine, or if the child drove in violation of meaningful and realistic prohibitions. The new age of majority statute will in all likelihood broaden these exceptions. In light of these exceptions, then, a certain number of motorists injured by youthful drivers will

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79 In 1960 (when records were initiated) there were approximately 25,000 motorboats registered for use on Kentucky waterways. In May of 1963, 34,000 craft were registered. 53,000 craft were registered as of July 15, 1966, and officials expected a total registration of 60,000 before the end of August, 1966. This information was secured by a telephone interview with Mr. William K. King, Director of the Kentucky Division of Boating, on July 29, 1966. The reader is asked to take notice of comparable increases in other types of vehicles.

80 See, e.g., the reasoning of the court in Pflugmacher v. Thomas, 34 Wash. 2d 687, 209 P.2d 443, 445 (1949): We are not convinced from what has been presented to us by the record . . . or from what we can judicially notice, that the use of a bicycle . . . although capable of doing harm to others if negligently operated, requires or would justify . . . extending . . . the . . . doctrine to . . . [such] a case.
have no claim for relief against the parent under the doctrine. Moreover, the doctrine may already have been legislated into uselessness. As previously discussed, a plaintiff might well have a statutory remedy against the parent of a child below eighteen without resort to the doctrine. By reason of the majority statute it is quite possible that a person eighteen or older will not be a child for purposes of the doctrine. Since this statute, presumably, will give him the financial standing of an adult, a remedy against the parent for such a youth's negligence may no longer exist.

From the plaintiff's standpoint, these shortcomings make the doctrine less than ideal as a remedial theory. In a given case the doctrine will be of no use whatsoever, but its retention could not be detrimental to the plaintiff's cause. At its worst, then, the doctrine's shortcomings do not warrant discarding it.

By the same line of reasoning, it appears that some effective remedy must be provided for a plaintiff who finds himself unable to invoke the family purpose rule. Assuming that no unforeseen judicially-created remedy is formulated, the General Assembly must act to achieve this purpose. A close examination of potential legislation to provide the motoring public with effective remedies is beyond the scope of this Note. However, a few possibilities are worth mentioning.

First, the Legislature might require an effective showing of financial responsibility by the parent, or by the child, or by both, before a license will be issued to the child. Our present financial responsibility law is a step in the right direction, but it needs strengthening.

81 Writings dealing with the public's protection from negligent driving are voluminous. A few of them are the following: BLUM & KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM: AUTO COMPENSATION PLANS (1965); Calabresi, The Decision for Accidents: An Approach to Nonfault Allocation of Costs, 78 Harv. L. Rev. 713 (1965); Comm. on Compulsory Automobile Insurance of the Minnesota State Bar Ass'n, Auto Accidents—What Shall We Do About Them?, 27 Minn. L. Rev. 103 (1943); Keeton and O'Connell, Basic Protection—A Proposal for Improving Automobile Claims Systems, 78 Harv. L. Rev. 329 (1965); Vorys, Laws to Exclude Irresponsible Drivers, 150 Ohio St. L.J. 101 (1954); Note, The Problem of the Financially Irresponsible Motorist—New York’s MVAIC, 65 Colum. L. Rev. 1075 (1965).

82 Note that the Legislature has taken a half-hearted step in this direction by providing that a child under eighteen will be licensed only if his parent or some adult assumes the responsibilities imposed upon him by KRS 186.590. See KRS 186.470. The provision is "half-hearted" because it does not require that the parent or adult be financially responsible. The plaintiff might well find himself in the position of having a cause of action against the child and/or the adult who signed the application, both of whom are judgment proof.

83 KRS ch. 187 (1942).

84 Kentucky's "financial responsibility" laws, like most states', began as pure financial responsibility laws. They provided that after a judgment entered against an irresponsible driver remained unsatisfied for a certain length of time, his
Another alternative would be implementation of a compulsory insurance program.\(^5\) The General Assembly's persistent refusal to supply the public with effective protection from uncompensated injury on Kentucky highways is a disgrace to that institution and to our state.

Another legislative possibility is a bailor liability statute,\(^8\) unrestricted by an age limit and operative whether or not the owner of the vehicle consented to or knew of the operation by the bailee,\(^7\) except in cases of flagrant disregard of limitations and stolen vehicles. Finally, the General Assembly should weigh the advantages of an automobile "compensation" system similar to the workmen's compensation system.\(^8\)

But the family purpose doctrine, like a man, is to be praised for its virtues as well as criticized for its vices. While the doctrine's vice, namely, its exceptions, may preclude recovery in a given case, its virtue is that if an exception is not applicable the parent will bear the

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(Footnote continued from preceding page)

driver's license and automobile registration would be revoked. Again following the trend in most states, the Kentucky law was soon broadened to include "security-responsibility" provisions. By these provisions, any driver involved in a collision would have his driving privileges suspended if he failed to deposit security to perfect a potential adverse judgment within a few days after the collision. Even with the added security provision the present financial responsibility laws have one glaring weakness—they allow the irresponsible driver a "first bite," since they afford no protection to the first victim of his negligence. See Grad, Recent Developments in Automobile Accident Compensation, 50 COLUM. L. REV. 300, 306-07 (1950); Vorys, Laws to Exclude Irresponsible Drivers, 15 OHIO ST. L.J. 101, 102-03 (1954).


\(^6\) Again, the General Assembly has met this problem half-way. KRS 186.590 supra achieves the desired purpose to the extent its terms allow.

\(^7\) It is submitted that any objections to removing the consent and knowledge barriers to bailor liability could be overcome by the legislature's recognition of the need for such a provision to protect the motorist. An analogy can be found in the Court's willingness to continually extend liability under the family purpose doctrine.

\(^8\) Admittedly this legislative alternative is the most extreme in terms of departure from traditional fault-liability concepts. Speaking in the most general of terms, such a plan would offer the plaintiff the assurance of some recovery for his injury. The proponents of such a plan seem in the last analysis to support it for this reason. See Grad, Recent Developments in Automobile Accident Compensation, 50 COLUM. L. REV. 300, 313 (1950). But there is dissatisfaction with the compensation theory. One writer's dissatisfaction results from his belief that deterrence as well as compensation is a goal of shifting the loss arising from automobile accidents from the injured party to the negligent party. For this reason he would add tort or criminal sanctions to the compensation plan. Calabresi, The Decision for Accidents: An Approach to Nonfault Allocation of Carts, 78 HARV. L REV. 713 (1965). Others feel that such a plan, in addition to lessening deterrence, would achieve an undesirable extension of governmental involvement in an area properly reserved for individual autonomy. BLUM & KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM: AUTO COMPENSATION PLANS 85 (1965).
cost of his child's negligence. Until and unless the General Assembly enacts legislation imposing liability without regard to the common law notion of liability based only on fault, the doctrine will continue to be a vital link in the motoring public's chain of defense against negligent drivers.

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