

1961

Family Purpose Doctrine--Agency--Problems in Interpretation of the Words "Family Purpose"

C. T. Earle

University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Family Law Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Earle, C. T. (1961) "Family Purpose Doctrine--Agency--Problems in Interpretation of the Words "Family Purpose"," *Kentucky Law Journal*: Vol. 49 : Iss. 4 , Article 10.

Available at: <https://uknowledge.uky.edu/klj/vol49/iss4/10>

This Comment is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@sv.uky.edu.

Recent Cases

FAMILY PURPOSE DOCTRINE—AGENCY—PROBLEMS IN INTERPRETATION OF THE WORDS “FAMILY PURPOSE”—Defendant lived on a farm with his wife and adult son, all of whom worked on the farm. The son at his mother's direction and with defendant's express permission, hauled tobacco to market for his mother's father in the family truck. There was some conflict in the evidence as to whether the primary purpose of the wife's trip was to haul her father's tobacco to market or was to attend to business of her own family. Defendant's wife invited her sister, the plaintiff, to go along. On the return trip there was an accident due to the negligence of the son which resulted in injuries to the plaintiff who sued defendant for damages on the theory that the son was the agent of his father. From a verdict and judgment for plaintiff, defendant appealed. *Held*: Affirmed. Even if defendant's adult son did not come within the Family Purpose Doctrine, he was directed or permitted by his mother “who clearly was within its operation . . . to drive the truck on this occasion.” It was in fact “her trip” and the use of the truck was truly a “family” purpose and enterprise, regardless of the primary reason for making the trip. *Wireman v. Salyer*, 336 S.W.2d 349 (Ky. 1960).

The Family Purpose Doctrine was developed by the courts to impose liability on the owner of a family automobile for the result of the negligent driving thereof by a member of his family who was not ordinarily financially responsible.¹ The doctrine is supposedly based on an extension of the law of agency but in reality rests on considerations of policy.² In order to recover under the doctrine in Kentucky it is necessary for the plaintiff to show: (1) that the vehicle was owned or controlled by the defendant; (2) that the vehicle was maintained by the defendant for the use and benefit of members of his family; (3) that the vehicle was being used at the time of the accident by a person whom the defendant was under a legal or moral obligation to support; and (4) that the vehicle was

¹ Neither the theory of a car being a “dangerous instrumentality,” *Bradley v. Schmidt*, 223 Ky. 784, 4 S.W.2d 703 (1928), nor the mere relationship of parent and child, *Sale v. Atkins*, 206 Ky. 224, 267 S.W. 223 (1924), had proved sufficient to hold the owner of an automobile liable for the negligent operation thereof by a member of his family.

² “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.” *Turner v. Hall's Adm'x*, 252 S.W.2d 30 (Ky. 1952).

being used pursuant to a family purpose.³ The purpose of this comment is to discuss the meaning of the words "family purpose," as used by the court, in regard to the use of the family car⁴ by various members⁵ of the family. In analyzing the problem only the third and fourth criteria set out above will be discussed.

The words "family purpose" have been given two completely different meanings. In a strict sense, the words mean that the driver is using the family car for the benefit of the family as a whole or for the benefit of some individual member of the family. On the other hand, under the Family Purpose Doctrine, the words are held to mean that he is using the car for a purpose of his own, completely apart from any benefit or purpose of the family in a strict sense.⁶ Under the latter interpretation, there is no way to infer an "agency" in the conventional use of that term; this factor distinguishes the Family Purpose Doctrine from the rule of *Respondet Superior*.⁷ The doctrine, from its inception, was meant to apply only where some member of the car owner's family was using the car for his *own* pleasure and purpose as it was thought that the rule of *Respondet Superior* was sufficient to impose liability if the car was being used for the business or purpose of the owner.⁸ About half of the states have rejected the doctrine as based on an unsound legal theory, since action by an agent for his own benefit is legally incompatible with service for the principal's benefit, which is the essence of agency.⁹ From a purely legalistic viewpoint it would seem that the dissenters¹⁰ have the better argument. Most of these states

³ *Taylor v. Rawls*, 274 S.W.2d 50 (Ky. 1954). An additional requirement that the car be operated with the owner's permission, either express or implied, has been largely broken down. See *First-City Bank & Trust Co. v. Doggett*, 316 S.W.2d 225 (Ky. 1958), comment, 48 Ky. L. J. 169 (1959).

⁴ Although not discussed in the opinion, there was some dispute as to whether the truck was a family purpose vehicle, since the wife owned a car which was kept for the general use of the family and the truck was purchased by the defendant primarily for the purpose of transporting himself to and from work in a coal mine. Brief for Appellant, p. 6, *Wireman v. Salyer*, 336 S.W.2d 349 (Ky. 1960).

⁵ Generally, family members are limited under the doctrine to the spouse and minor children of the car owner. However, for an extreme case, see *Smart v. Bissonette*, 106 Conn. 447, 138 Atl. 365 (1927), where it was held that defendant's "housekeeper" was a member of his family for purposes of the doctrine.

⁶ *Stowe v. Morris*, 147 Ky. 386, 144 S.W. 52 (1912).

⁷ See *Spence v. Fisher*, 184 Cal. App. 209, 193 Pac. 255 (1920).

⁸ See *Trice v. Bridgwater*, 125 Tex. 75, 81 S.W.2d 63 (1935); see also *Van Blaricom v. Dodgson*, 220 N.Y. 111, 115 N.E. 443 (1917).

⁹ *Smith v. Callahan*, 34 Del. 129, 144 Atl. 46 (1928).

¹⁰ See especially *Trice v. Bridgwater*, 125 Tex. 75, S.W.2d 63 (1935); *Arkin v. Page*, 287 Ill. App. 240, 123 N.E. 30 (1919); *Watkins v. Clark*, 103 Kan. 629, 176 Pac. 131 (1918); *Van Blaricom v. Dodgson*, 220 N.Y. 111, 115 N.E. 443 (1917).

have enacted financial responsibility statutes¹¹ which achieve the same result as the doctrine in those instances where orthodox principles of agency cannot be applied.¹²

Although the strict interpretation of the words "family purpose" might seem to impose only a remote agency, an agency may be formed for other than commercial purposes and is not of necessity formed by express words.¹³ The real test of agency depends upon whether the act was for the benefit of the principal and with his knowledge and assent.¹⁴ In *Lashbrook v. Patten*,¹⁵ decided long before the advent of the automobile, defendant was held liable for the negligence of his minor son in driving the family carriage against plaintiff's carriage despite the fact that defendant had not directed his son to drive the carriage. The case was decided on the theory that the son was the servant of his father since he was performing an errand usually done by the family slave. Although the decision was expressly based on the rule of *Respondeat Superior*, it is often cited as the origin of the Family Purpose Doctrine.¹⁶

The doctrine was expressly adopted by Kentucky in *Stowe v. Morris*,¹⁷ but was subsequently limited by *Rauckhorst v. Kraut*,¹⁸ where it was held that a primary requisite of the doctrine was that the car be used within the scope of the family purpose, and that an adult son was not operating within such "scope" when using the car to drive to and from work. While trying to limit the doctrine itself, the court was really espousing the rule that an adult son is not within the doctrine where he is using the family car for his own purpose. As developed in subsequent cases, this limitation has become known as the "adult son" rule.¹⁹

¹¹ E.g., N.Y. Sess. Laws 1924, ch. 534 § 282-e provides:

Every owner of a motor vehicle operated upon a public highway shall be liable . . . for death or injuries to person or property resulting from negligence in the operation of such motor vehicle . . . by any person . . . operating the same with the permission, express or implied of such owner.

See also N.Y. Sess. Laws 1959, ch. 775; 11 N.Y. Consol. Laws Serv., Vehicle and Traffic Law § 388 (Law Co-op. Pub. Co. 1960).

¹² See *Trice v. Bridgwater*, 125 Tex. 75, 81 S.W.2d 63 (1935).

¹³ *Ambrose v. Young*, 100 W. Va. 452, 130 S.E. 810 (1925).

¹⁴ *Doran v. Thomsen*, 76 N.J.L. 754, 71 Atl. 296 (1908).

¹⁵ 62 Ky. (1 Duv.) 317 (1864).

¹⁶ *Stowe v. Morris*, 147 Ky. 386, 144 S.W. 52 (1912). Although another member of defendant's family was riding in the car in *Stowe*, she was invited along by the son as contrasted with *Lashbrook*, 62 Ky. (1 Duv.) 317 (1864), where the inference is strong that the purpose of the trip was to drive his sisters to a picnic. In the latter case an agency can be implied while in the former the Family Purpose Doctrine is needed to impose liability.

¹⁷ 147 Ky. 386, 144 S.W. 52 (1912).

¹⁸ 216 Ky. 323, 287 S.W. 895 (1926).

¹⁹ The *Rauckhorst* case does not preclude an adult son from coming within the doctrine where he is using the family vehicle for a family purpose in the

(Footnote continued on next page)

The majority of cases which have applied the doctrine concern the use of the family automobile by a family member for his own purpose. Such cases present little difficulty, but where facts are presented which raise a question of *conventional* agency, should the doctrine apply notwithstanding?²⁰ While it might appear that if the doctrine applies where the driver is using the vehicle for his own purpose, surely it would apply where the vehicle is used for a family purpose in the strict sense. But does this result necessarily follow? Since it is widely recognized that the doctrine is based on considerations of policy, would it not be better to base the decision on sound *conventional* agency principles where possible?²¹

In the principal case the court chose to apply the Family Purpose Doctrine rather than apply *conventional* principles of agency. However, liability was traced through the wife who was riding in the truck, rather than the customary procedure of imposing liability through the driver of the vehicle. Of course, if the doctrine was to be applied, this was the only alternative without abolishing the "adult son" rule. But this rule is based on use of the car for the adult son's own purpose. Here he was not using the car for his own purpose, but for a family purpose in the strict sense.²² Thus, it would seem that the real issue is whether the adult son was his father's agent or servant, since according to the court's own analysis, "it

(Footnote continued from preceding page)

strict sense. However, the language used in *Bradley v. Schmidt*, 223 Ky. 784, 789, 4 S.W.2d 703, 706 (1928)—"where the parent is under no . . . moral or legal duty [to support his son, lending a vehicle to him for a pleasure trip of his own does not establish the necessary agency relationship]"—has been interpreted in subsequent cases to require proof that the defendant was under a legal or moral obligation to support the driver of the vehicle. See *Malcolm v. Nunn*, 226 Ky. 275, 10 S.W.2d 817 (1928); *Creaghead v. Hafele's Adm'r*, 226 Ky. 250, 32 S.W.2d 324 (1931); *Taylor v. Rawls*, 274 S.W.2d 50 (Ky. 1954); *Commonwealth ex. rel. Kern v. Maryland Cas. Co.*, 112 F.2d 352 (6th Cir. 1940).

²⁰ The Appellee argued for affirmance of the judgment below in the alternative: (1) that the son was the agent of his father; or (2) that the facts were sufficient to bring the case within the provisions of the Family Purpose Doctrine. Brief for Appellee, p. 66, *Wireman v. Salyer*, 336 S.W.2d 349 (Ky. 1960).

²¹ Apparently Kentucky and other jurisdictions which apply the doctrine take the position that the doctrine is applicable in *all cases* where the family car is used for a "family purpose" without distinguishing between the strict and liberal interpretation of those words. See *Turner v. Hall's Adm'x*, 252 S.W.2d 30, 32 (Ky. 1952), where it was stated:

The act of a parent who has purchased and who keeps an automobile for family use does not involve the same principle of law as does the act of an owner in lending his machine to his servant when that servant is not engaged in the performance of the master's business. Where the automobile is purely a business vehicle we apply strict rules concerning deviation by the servant from the path of his employment, but in cases where the vehicle is maintained for the use and benefit of the family, the first determination that must be made is whether or not at the time of the accident the car was being devoted to that use.

²² For a development of the "adult son" rule, see cases cited note 19 *supra*.

was in fact 'her trip,' he was performing an act which a chauffeur would ordinarily have performed.²³

It is difficult to criticize the application of the doctrine in the principal case as it is certainly liberal enough to fit this or practically any case dealing with a family car, but the language used by the court to justify the result is somewhat confusing. The court stated that it did not matter whether the adult son was within the doctrine since it was in fact the mother's trip, and that "the use of the car was truly a 'family' purpose and enterprise, regardless of the primary reason for going to Winchester." The words "her trip" can only mean a trip for her sole purpose (the liberal interpretation of the words "family purpose"), while the words "truly a family purpose and enterprise" of necessity mean for the benefit of the family as a whole (the strict interpretation of the words "family purpose"). And if the word "enterprise" had been used in its conventional sense, the Family Purpose Doctrine would not have been needed to reach the desired result.²⁴ This confused language or terminology is probably the result of a judicial attempt to justify the doctrine as based on sound legal principles.

Undoubtedly the correct result was reached in the principal case. However, it is to be hoped that the court will clarify its position on the interpretation of the words "family purpose" at its first opportunity. If the facts presented fairly raise a question of conventional agency the Family Purpose Doctrine should not be applied. Furthermore, if the doctrine is to continue, there seems to be no reason why the "adult son" rule should not be abolished, since few drivers in their early adulthood have attained financial responsibility.²⁵

C. T. Earle

²³ Lashbrook v. Patten, 62 Ky. (1 Duv.) 317 (1864).

²⁴ It is difficult to believe the term "enterprise" was used as applying to the liberal interpretation of the words "family purpose" as the facts reveal that all members of the family lived and worked on the farm, and at least a part of the reason for making the trip was to secure the check for *their* family's tobacco which had been delivered but was not scheduled for sale until the day of the trip in question.

²⁵ If the doctrine is based on considerations of policy there can be no doubt that the injured party should be able to proceed against the car owner where the driver of the car is not financially responsible, regardless of the age of the driver. In this respect, jurisdictions which have enacted financial responsibility statutes are more liberal than those which apply the doctrine, since under the statutes liability is not limited to members of defendant's family. See *e.g.*, New York statute quoted note 11, *supra*.