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## Agency--Family Purpose Doctrine in Case of Adult Child

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There has been much discussion in the cases as to the extent to which the means employed must be adapted to the accomplishment of the intended crime, in order to render one guilty of an attempt. And at this stage of the law, we may consider it well established both in England and this country, that an apparent possibility to commit the crime is sufficient, but means used must not be so preposterous that there is not even an apparent intent.

D. T. MARTIN.

AGENCY—FAMILY PURPOSE DOCTRINE IN CASE OF ADULT CHILD.—A mother who was living with her son, aged 30 and self supporting, was given by him an automobile upon which a liability insurance policy was issued in her name with an omnibus coverage clause. The son who did all the driving was using the car for business purposes with his mother's permission and later took some friends to a road house near the city. On the return trip he collided with a street car injuring the automobile and some of the guests. One of the injured parties brought suit for personal injuries against the driver, the owner and the street car company, and was given a judgment against the driver only who was found to be execution proof. A second action was then brought against the insurance company and recovery allowed on the grounds that the omnibus coverage clause in the owners insurance policy was broad enough to include her son who was driving. *U. S. Fidelity and Guaranty Company v. Hall*, 237 Ky. 393, 35 S. W. (2nd) 550 (1931).

While the statement in the case that the family purpose doctrine does not apply where an adult son inflicts injury while driving his mother's car with her permission, is perhaps no more than dictum, as the case apparently turns upon another point, still, it presents an interesting problem.

It seems well settled in those states which have adopted the family purpose doctrine that the liability of the parent must rest upon the doctrine of agency, or the master and servant relationship of which agency is an outgrowth and expansion. (31 Cyc. 1191). *Sale v. Atkins*, 206 Ky. 224, 267 S. W. 223 (1924), *Grier v. Woodside*, 200 N. C. 759, 158 S. E. 491 (1931). It cannot rest upon the theory that an automobile is a dangerous instrumentality, for it is not so considered. *Tyler v. Stephan's Administratrix*, 163 Ky. 770, 174 S. W. 790 (1915). Neither can it rest upon the relation of parent and child, for a parent is not generally liable for his children's torts. *Arkin v. Page*, 287 Ill. 420, 123 N. E. 30, 5 A. L. R. 216 (1919). It follows that, regardless of whether the child is an adult or a minor, the parent is not liable unless it is found from the facts that there is the relationship of principal and agent.

It does not, however, follow that when a child becomes of age, he can no longer be his parent's agent under the family purpose doctrine. In *Malcolm v. Nunn*, 226 Ky. 275, 10 S. W. (2nd) 817 (1928), the court

in denying the liability of the father for injuries inflicted by the son while driving the family car, put it on the grounds that it was not shown the son was under twenty-one, and was acting as the agent of his father, or on any mission of his father. In spite of this statement, which is at the most dictum to the contrary, the law seems to be that the owner of an automobile is not relieved from liability under the family purpose doctrine merely because the use of the car was made by an adult child. *Watson v. Burley*, 105 W. Va. 416, 143 S. E. 95 (1928).

Where a child takes the family car for pleasure with the consent of his parent, the parent's liability as principal is predicated upon the theory that a parent makes it his purpose or business to provide pleasure and recreation for his family, and the child, using the car for pleasure, is engaged in his business and is therefore his agent. *Stowe v. Morris*, 147 Ky. 386, 144 S. W. 52, 39 L. R. A. (N. S.) 224 (1912). It would appear when the child reaches his majority and becomes self supporting, his recreation and pleasure is no longer the business of his father. An adult son living in his father's family and paying board, is not the servant of his father within the family purpose doctrine, in taking the latter's car with his tacit permission for a pleasure ride of his own. *Bradley v. Schmidt*, 223 Ky. 784, 4 S. W. (2d) 703, 57 A. L. R. 1100 (1928).

In the case just cited, Judge Dietzman appears to have clearly and correctly stated the law when he said. "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 the 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 and legal obligation to support, although the child may be using the machine for a trip for his own pleasure, yet, where these elements are not present, no grounds of liability on the part of the parent can be discovered."

After a careful search, no cases have been found where a parent has been held liable under the family purpose doctrine for the negligence of an adult child driving the family car. When the cases have arisen, liability has always been denied, usually on the grounds that the driver did not have his parent's permission or was not on his business. The way, however, does not seem to be closed to establish such liability should the facts warrant.

Does the law make any distinction, as regards liability under the family purpose doctrine, whether the owner of the family car is the father or mother of the driver? This is our remaining problem.

No distinction was found in any of the cases examined, and no reason is seen why such a one should be made. The Kentucky courts have definitely established the law that the family purpose doctrine is just as applicable where the mother, though married, owns the car and maintains it for the general use, pleasure, and convenience of

members of her family, as it is when the father owns the machine. *Wallace v. Hall*, 235 Ky 749, 32 S. W (2nd) 324 (1930), *Steele v. Age's Administratrix*, 233 Ky. 714, 26 S. W (2nd) 563 (1930).

From a comparison of the cases found, the conclusion is reached that the Kentucky courts have gone further in the development of the family purpose doctrine in general, and this phase of it in particular, than any of the other jurisdictions where the doctrine has been adopted. Very few cases were found in other states on the problem here discussed, but those found, were in general accord with the Kentucky decisions. It does not appear that this question has ever been raised in any of the Federal courts.

In the light of this discussion, the statement in *U. S. Fidelity and Guaranty Company v. Hall* that where an adult son inflicts injury while driving his mother's car with her permission, the family purpose doctrine does not apply, seems to be a correct statement of law when considered in connection with the facts there given. As a general statement, however, it is perhaps too broad, for a situation might arise where the doctrine would apply to a mother and her adult son.

D. L. THORNTON.

JURISDICTION—SITUS OF CRIME.—A news item of September 30, 1931, issue of the *Courier-Journal* carried the following news story: Huntington, West Virginia, September 30, 1931.

"A federal court here gave a directed verdict for the defendant, S. T. Lambert, for the fatal shooting of Prussej Lowe, of Pike County, Kentucky" The United States District Attorney said that West Virginia lacked jurisdiction, because the defendant stood in West Virginia and fired across the Tug River and killed the deceased, in Kentucky.

This is not an unusual occurrence, and the courts are frequently faced with this problem of jurisdiction. And if he is to be tried in either state, for what offenses can he be tried? Because of this perplexing problem, most of the states have enacted statutes to simplify this question, however, this will be treated as far as possible by the common law of the various states. And as far as possible, from the standpoint of State A, where the culpable person was standing at the time.

In the treatment of this crime, it is apparent that there is a lack of the elements which complete the crime; for here the defendant is standing in West Virginia with intent to do certain things which, if completed in that state, would be a felony; but instead, he releases a force sufficient to span the distance to his victim, who is in an adjoining state. Now let us follow this leaden messenger in its course across the boundary to the intended person. Here are other elements which constitute a crime, whereby the injured person receives a mortal blow from a force set in motion in a foreign state. To make this problem more complex, let the injured man be removed to a third