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Automobiles - Family Purpose Doctrine - Limitation on Application in North Dakota

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RECENT CASES

"Write an opinion, and read it a few years later when it is dissected in the briefs of counsel. You will learn for the first time the limitations of the power of speech, or, if not those of speech in general, at all events your own."

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AUTOMOBILES — FAMILY PURPOSE DOCTRINE — LIMITATION ON APPLICATION IN NORTH DAKOTA—Plaintiff brought this action to recover for damage to his automobile which, while driven by his minor son, was involved in an intersection collision with the defendant. The defendant alleged that the plaintiff was estopped from recovering on the grounds that under the family purpose doctrine the son's contributory negligence was imputed to the father. In affirming a judgment for the plaintiff, the North Dakota Supreme Court *held* that any negligence of the owner's minor son was not imputable to the owner under the family purpose doctrine. *Michaelsohn v. Smith,* 113 N.W.2d 571 (N.D. 1962).

The family purpose doctrine is founded on an extension of the law of agency,[1] but in reality rests on considerations of public policy by providing financial responsibility for negligent acts of the family members.[2] The doctrine is of comparatively late origin,[3] and although it could be applied with equal logic to any item furnished for the use of the family, it has been primarily confined to automobiles.[4]

Over one-half of the states have repudiated the family purpose doctrine.[5] Various reasons given for its repudiation in-

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1. Lynn v. Clark, 252 N.C. 289, 113 S.E.2d 427 (1960); Norwood v. Porthemos, 230 S.C. 207, 95 S.E.2d 168 (1956).

2. In Turner v. Hall's Adm'x, 252 S.W.2d 30 (Ky. 1952), the court stated that, "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 the instances an infant has not sufficient property in his own right to indemnify one who may suffer from his negligent act." See also Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W.2d 406, 417 (1943).

3. Dailey v. Maxwell, 152 Mo. App. 415, 133 S.W. 351 (1911) was one of the first cases to apply the Family Purpose Doctrine.

4. See Felcyn v. Gamble, 185 Minn. 357, 241 N.W. 37 (1932), where the court refused to apply the doctrine to motorboats. **But see** Meinhardt v. Vaughn, 15 Tenn. 272, 17 S.W.2d 5 (1929), where the court refused to apply the doctrine to motorcycles; Pflugmacher v. Thomas, 209 P.2d 443 (Wash. 1949) where it was held not to apply to bicycles.

5. See, **e.g.,** Parker v. Wilson, 179 Ala. 361, 60 So. 150 (1912); Spence v. Fisher, 184 Cal. 209, 193 Pac. 255 (1920); Smith v. Callahan, 144 Atl. 46, (Del. 1928); Anderson v. Byrnes, 344 Ill. 240, 176 N.E. 374 (1931); White v. Seitz, 342 Ill. 266, 174 N.E. 371 (1930).

clude the idea that the practical administration of justice between the parties is more important than preserving some secret theory concerning the law of agency;[6] that it is a fictional agency based on unsound legal theory;[7] that it is contrary to common sense to say that when a member of a family uses the family car for his own pleasure he is accomplishing his father's business;[8] and that there is a need for a stricter application of the laws of agency because the doctrine has no firm foundation in reason or common sense.[9]

The leading case in support of the family purpose doctrine in North Dakota is *Ulman v. Lindeman*,[10] wherein the court said, "In our opinion the legal reasons are sound which justify the imposition of a liability upon the owner of an automobile where injury through negligence occurs by means of an instrumentality used for his business or the pleasure of himself or family, through methods or agencies that he has provided or authorized." North Dakota has limited the scope of the doctrine, in that the car must have been used for the purpose for which the parent provided it, with authority expressed or implied.[11] A second limitation is that the negligent member of the family has to be a member of the household to which the car was furnished.[12]

The instant case also restricts the doctrine when it is shown that the defendant is guilty of contributory negligence. The damages for the injuries to the family member who was operating the automobile will be barred by his own contributory negligence. However, the son's contributory negligence will not bar the plaintiff's action for the damages to his automobile. It is submitted that such a limitation places the family purpose doctrine within its proper perspective, that of providing financial responsibility for members of the family. Where financial responsibility is absent from the case, an application of the family purpose doctrine defeats the public policy the doctrine is intended to serve.

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6. King v. Smythe, 140 Tenn. 217, 204 S.W. 296 (1918). See also Durzo v. Cazzolino, 128 Conn. 24, 20 A.2d 392 (1941).
7. See Trice v. Bridgewater, 125 Tex. 75, 81 S.W.2d 63 (1935).
8. Watkins v. Clark, 103 Kan. 629, 176 Pac. 131 (1918).
9. Hays v. Hogan, 273 Mo. 1, 200 S.W. 286 (1917).
10. 44 N.D. 36, 176 N.W. 25 (1919).
11. Carpenter v. Dunnell, 61 N.D. 263, 237 N.W. 779 (1931).
12. Bryan v. Schatz, 39 N.W.2d 435 (N.D. 1949).