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## The Family Purpose Doctrine

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## NOTES

### THE FAMILY PURPOSE DOCTRINE

#### A. Introduction

The invention of the automobile and the inevitable accidents which followed required the creation and adoption of new principles of law. One of the initial propositions accepted by the courts was that the mere existence of a family relationship between the owner of an automobile and the individual who was negligently driving it when an accident occurred did not impose liability upon the owner.<sup>1</sup> Unless the parent was negligent in entrusting his automobile to his child who was known to be a reckless and careless driver,<sup>2</sup> a parent could not be held liable for the negligent operation of his automobile by his child unless at the time of the accident the parent and child were engaged in a joint adventure,<sup>3</sup> or the child was operating the car as an agent or servant of his parent.<sup>4</sup> This required that the child be driving in the furtherance of his parent's business<sup>5</sup> or under his direction and control.<sup>6</sup> Many courts began to realize that this judicial reasoning allowed the owner of an automobile, which had been purchased for use by his family, to escape liability when one of the members of his family, who was driving the car for his own business or pleasure, negligently injured the person or property of a third party. A second important consideration which led the courts to modify the above broad proposition was that in most instances the negligent driver was financially irresponsible.

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1. *Spence v. Fisher*, 184 Cal. 209, 193 Pac. 255 (1920); *Smith v. Callahan*, 34 Del. 129, 144 Atl. 46 (1928); *Pratt v. Clothier*, 119 Me. 203, 110 Atl. 353 (1920); *Trice v. Bridgewater*, 125 Tex. 75, 81 S.W.2d 63 (1935); *Ritter v. Hicks*, 102 W. Va. 541, 135 S.E. 601 (1926); *Hopkins v. Droppers*, 184 Wis. 400, 198 N.W. 738 (1924).

2. *Gardiner v. Solomon*, 200 Ala. 115, 75 So. 621 (1917); *Arkin v. Page*, 287 Ill. 420, 123 N.E. 30 (1919); *Blair v. Broadwater*, 121 Va. 301, 93 S.E. 632 (1917); Annot., 36 A.L.R. 1150 (1925).

3. *Lucey v. Hope & Sons Engraving & Mfg. Co.*, 45 R.I. 103, 120 Atl. 62 (1923); *Fox v. Lavender*, 89 Utah 115, 56 P.2d 1049 (1936).

4. *Jacobsen v. Dailey*, 228 Minn. 201, 36 N.W.2d 711 (1949); *Dement v. Summer*, 175 Miss. 290, 165 So. 791 (1936); *Wirth v. Gabry*, 120 N.J.L. 432, 200 Atl. 556 (Sup. Ct.), *aff'd*, 122 N.J.L. 95, 4 A.2d 281 (Ct. Err. & App. 1939).

5. *Trice v. Bridgewater*, 125 Tex. 75, 81 S.W.2d 63 (1935); Annot., 100 A.L.R. 1014 (1936).

6. "The presence of the owner in a motor vehicle driven by his daughter, whose operation he recognizes and counsels, is evidence that the driver is the owner's servant or agent, so as to render him liable for the driver's negligent injury to another." *Straffus v. Barclay*, 147 Tex. 600, 219 S.W.2d 65 (1949).

### B. Legal Principles Involved

Many courts began to stretch the principles of the law of agency and of master and servant to include the so-called "family purpose" doctrine under which the purchaser and title holder of an automobile bought for the use and pleasure of his family would be liable for negligent acts committed by members of his family while using the vehicle for their own pleasure.<sup>7</sup> This doctrine is an example of one of the many legal fictions created by the judiciary in order to reach a desired result.<sup>8</sup> Most of the states which have adopted this doctrine recognize that it is an instrument of policy intended to place the liability upon the party most easily held responsible. This sentiment was aptly expressed in *Turner v. Hall's Adm'x*.<sup>9</sup> "The Family Purpose Doctrine is a humanitarian one designed for 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."<sup>10</sup> This doctrine, obviously an application of the rule of respondeat superior,<sup>11</sup> should not be inappropriately applied in a situation in which a genuine agency relationship exists, such as where a member of the family is driving the motor vehicle for the transportation of the owner or in direct furtherance of the owner's business. An attempt to apply the family purpose doctrine should not be made unless the member of the owner's household was using the automobile for his own purposes.<sup>12</sup>

Because this doctrine changed the existing common law,<sup>13</sup> very little uniformity has been achieved in the application of the doctrine among the state courts. Approximately half of our states, South Carolina included,<sup>14</sup> have adopted it<sup>15</sup> while many others

7. *Grindstaff v. Watts*, 254 N.C. 568, 119 S.E.2d 784 (1961); *Davis v. Littlefield*, 97 S.C. 171, 81 S.E. 487 (1913); *Eagon v. Woolard*, 122 W. Va. 565, 11 S.E.2d 257 (1940); PROSSER, *TORTS* 496-99 (3d ed. 1964); See generally Lattin, *Vicarious Liability and the Family Automobile*, 26 MICH. L. REV. 846 (1928).

8. *Hutchins v. Haffner*, 63 Colo. 365, 167 Pac. 966 (1917); *King v. Smythe*, 140 Tenn. 217, 204 S.W. 396 (1918); 20 TENN. L. REV. 376 (1948).

9. 252 S.W.2d 30 (Ky. 1952).

10. *Id.* at 32.

11. *Redding v. Barker*, 33 Tenn. App. 132, 230 S.W.2d 202 (1950); 24 VA. L. REV. 931 (1938).

12. *Rauckborst v. Krant*, 216 Ky. 323, 287 S.W. 895 (1926); *Hildock v. Grosse*, 339 Pa. 222, 5 A.2d 565 (1939).

13. See cases cited *supra* note 1.

14. *Davis v. Littlefield*, 97 S.C. 171, 81 S.E. 487 (1913).

15. *Burns v. Main*, 87 F. Supp. 705 (D. Alaska 1950); *Bolty v. Bonner*, 95 Colo. 350, 35 P.2d 1015 (1934); *Dibble v. Wolff*, 135 Conn. 428, 65 A.2d 479 (1949); *Goode v. Barton*, 238 N.C. 492, 78 S.E.2d 398 (1953); *Masser v. Reid*, 186 Tenn. 94, 208 S.W.2d 528 (1948); COOLEY, *TORTS* (4th ed. 1932).

have expressly rejected it.<sup>16</sup> The remaining states which honor the policy considerations of this doctrine have accomplished the same results by enacting specific legislation which holds the owner of a vehicle responsible for all injuries negligently inflicted while his motor vehicle is being used by another with the owner's consent, express or implied,<sup>17</sup> including members of his family.<sup>18</sup>

### *C. Requirements of the Doctrine*

There are three basic requirements of the family purpose doctrine. First, at the time of the accident the automobile in question must have been maintained by the owner for the pleasure and use of his family.<sup>19</sup> The intended use for which the automobile was purchased is immaterial. The use actually made of the car is the determining factor and one which is a question to be decided by a jury.<sup>20</sup> Where an automobile is maintained for business purposes and not for the convenience and use of the family, this doctrine will not apply.<sup>21</sup> The second requirement is that at the time of the accident the automobile in question must have been used by a member of the owner's family.<sup>22</sup> Generally, the owner of the vehicle is not liable for the negligent acts of a relative who is not a member of the immediate family,<sup>23</sup> however, the relationship which exists between these two parties is a question for the jury.<sup>24</sup> Liability has been denied under this doctrine in cases in which the driver of the automobile was a brother-

16. *Taylor v. Bennett*, 323 F.2d 607 (7th Cir. 1963); *Karrh v. Brown*, 35 Ala. App. 308, 46 So. 2d 430 (1950); *Richardson v. Donaldson*, 220 Ark. 173, 246 S.W.2d 551 (1952); *Haskey v. Williams*, 360 Pa. 78, 60 A.2d 32 (1948); *Ener v. Gandy*, 138 Tex. 295, 158 S.W.2d 989 (1942).

17. *Weber v. Pinyan*, 9 Cal. 2d 226, 70 P.2d 183 (1937); *Johnson v. Johnson*, 225 Iowa 7, 279 N.W. 139 (1938); *Moore v. Palmer*, 350 Mich. 363, 86 N.W.2d 585 (1957); *Naso v. Lafata*, 4 N.Y.2d 585, 152 N.E.2d 59 (1958).

18. *McKnight v. Gilgean*, 29 Cal. App. 2d 218, 84 P.2d 213 (1938); *Maine v. Maine & Sons Inc.*, 198 Iowa 1278, 201 N.W. 20 (1924); *Koski v. Muccilli*, 201 Minn. 549, 277 N.W. 229 (1938).

19. *Kentucky v. Maryland Cas. Co.*, 112 F.2d 352 (5th Cir. 1940); *Rubenstein v. Williams*, 61 F.2d 575 (D.C. Cir. 1932); *Botty v. Bonner*, 95 Colo. 350, 35 P.2d 1015 (1934); *Haley v. Litzinger*, 131 Pa. Super. 559, 200 Atl. 165 (1938); *Ritter v. Hicks*, 102 W. Va. 541, 135 S.E. 601 (1926).

20. *Redding v. Barker*, 33 Tenn. App. 132, 230 S.W.2d 202 (1950).

21. *Ibid.*

22. *Ibid.*

23. *Schneider v. Schneider*, 160 Md. 18, 152 Atl. 498 (1930); *Smith v. Burns*, 71 Ore. 133, 142 Pac. 352 (1914); *Compare, Levy v. Rubin*, 181 Ga. 187, 182 S.E. 176 (1935).

24. *Hewitt v. Fleming*, 172 S.C. 266, 173 S.E. 808 (1934).

in-law,<sup>25</sup> stepdaughter,<sup>26</sup> son-in-law,<sup>27</sup> or nephew.<sup>28</sup> In order to be a "member" of the owner's family within the purview of the doctrine, the owner must be under some legal or moral obligation to support the driver.<sup>29</sup> Third, the automobile must have been used with the permission, either express or implied, of the owner.<sup>30</sup> This requirement may also be fulfilled when a member of the owner's family to whom the owner first gave permission allows a third party to drive the automobile.<sup>31</sup> The critical criterion in the latter instance is that a member of the family must have been present in the automobile at the time the accident occurred.<sup>32</sup>

When these three requirements have been met, the doctrine can be imposed. Liability is founded on the use of the vehicle for the purpose for which it was provided<sup>33</sup> and not on the existence of the family relationship<sup>34</sup> or the fact that the vehicle was entrusted to a minor.<sup>35</sup>

#### *D. Liability of the Owner*

Normally, liability is imposed on the head of the family who maintains the automobile for the convenience and use of the members of his family.<sup>36</sup> Where title to the automobile is in the father's name, but the car was purchased for and is used almost exclusively by his child, the doctrine will not apply<sup>37</sup> unless the father has possession or control of the vehicle.<sup>38</sup> However, a

25. *Jones v. Golick*, 46 Nev. 10, 206 Pac. 679 (1922).

26. *Wolfson v. Rainey*, 51 Ga. App. 493, 180 S.E. 913 (1935).

27. *Bryant v. Keen*, 43 Ga. App. 251, 158 S.E. 445 (1931); *Robinson v. Lunsford*, 330 S.W.2d 473 (Ky. 1959).

28. *Samples v. Shaw*, 47 Ga. App. 337, 180 S.E. 389 (1933).

29. *Robinson v. Lunsford*, 330 S.W.2d 423 (Ky. 1959).

30. *Redding v. Barker*, 33 Tenn. App. 132, 230 S.W.2d 202 (1950).

31. *Turner v. Hall's Adm'x.*, 252 S.W.2d 30 (Ky. 1952); *Ulman v. Lindeman*, 44 N.D. 36, 176 N.W. 25 (1919); *Eagon v. Woolard*, 122 W. Va. 565, 11 S.E.2d 257 (1940).

A good example of this situation is presented in *Driver v. Smith*, in which the owner's daughter allowed her boyfriend to drive her father's car. 47 Tenn. App. 505, 339 S.W.2d 135 (1959).

32. *Griffith v. Fannin*, 306 Ky. 279, 206 S.W.2d 965 (1947).

33. *Grier v. Woodside*, 200 N.C. 759, 158 S.E. 491 (1931).

34. *Messer v. Reid*, 186 Tenn. 94, 208 S.W.2d 592 (1948); 20 TENN. L. REV. 376 (1948).

35. *Scates v. Sanderfer*, 163 Tenn. 558, 44 S.W.2d 310 (1931).

36. *Kentucky v. Maryland Cas. Co.*, 112 F.2d 352 (6th Cir. 1940); *Mitchell v. Muller*, 45 Ga. App. 285, 164 S.E. 278 (1932); Hope, *The Doctrine of the Family Automobile*, 8 A.B.A.J. 359 (1922).

37. *Smith v. Doyle*, 98 F.2d 341 (D.C. Cir. 1938).

38. *Euster v. Vogel*, 227 Ky. 735, 13 S.W.2d 1028 (1929).

father cannot transfer liability by putting title to an automobile, which he purchased for the use and convenience of his family, in the name of one of the other members of the family.<sup>39</sup>

In situations in which someone other than the head of the family is the owner of the vehicle,<sup>40</sup> the family purpose doctrine has also been applied. For example, *Ficklen v. Heichelheim*<sup>41</sup> held that a married woman who permitted her family to drive a car which was her separate property was liable for the negligent driving of her minor son even though she was not the head of the family. However, in situations where a child, rather than a parent, is the owner of the vehicle, the courts generally have denied application of the doctrine. Exemplary of this holding are *Posey v. Krogh*,<sup>42</sup> which involved a self-supporting child who was not the head of his family but who owned and maintained a car for the use of his family, and *White v. McCade*,<sup>43</sup> which concerned a daughter who owned and maintained her own car but who allowed her father to drive it at various times. In both these situations, the courts held that the family purpose doctrine was not available to impose liability on the owner of the car.

Under most circumstances the family purpose doctrine will not apply to a corporation with respect to vehicles owned by it,<sup>44</sup> but a family corporation may be held liable under this doctrine if it maintains an automobile for the general use of the family.<sup>45</sup>

### *E. Statutory Liability*

There are two types of statutes holding the owner liable for damages and injuries caused by his automobile. The first and most efficient type codified the principles of the family purpose doctrine<sup>46</sup> and in most instances rendered the owner of a motor vehicle liable for the negligence of anyone operating his vehicle with his permission, express or implied, whether acting for the

39. *Emanuelson v. Johnson*, 148 Minn. 417, 182 N.W. 521 (1931).

40. *Ficklen v. Heichelheim*, 49 Ga. App. 777, 176 S.E. 540 (1934); *McNamara v. Prather*, 277 Ky. 754, 127 S.W.2d 160 (1939); *Hill v. Smith*, 32 Tenn. App. 172, 222 S.W.2d 207 (1949).

41. 49 Ga. App. 777, 176 S.E. 540 (1934).

42. 65 N.D. 490, 259 N.W. 757 (1935).

43. 208 N.C. 301, 180 S.E. 704 (1935).

44. *Whiteman v. Al's Tire & Serv. Garage, Inc.*, 115 Conn. 379, 161 Atl. 519 (1932).

45. *Durso v. A. D. Coggolino, Inc.*, 128 Conn. 24, 20 A.2d 392 (1941).

46. *Weber v. Pinyan*, 9 Cal. 2d 226, 70 P.2d 183 (1937); *Moore v. Palmer*, 350 Mich. 363, 86 N.W.2d 585 (1957); *Holmes v. Lilygren Motor Co.*, 201 Minn. 44, 275 N.W. 416 (1937); *Trauk v. Dinyler*, 309 N.Y. 395, 131 N.E.2d 564, 566 (1955).

owner or otherwise.<sup>47</sup> Such statutes impose liability upon an owner for injuries resulting from "negligence in operation" of the vehicle with negligence being defined by the laws of the various states. These definitions include ordinary and gross negligence<sup>48</sup> but usually do not cover wilful misconduct or intoxication of the driver.<sup>49</sup> These statutes have superseded the common law for they make the individual who drives the vehicle with the owner's consent, either express or implied, the agent of the owner, thereby dispensing with the common law requirement of *actual* agency as a condition of the owner's liability.<sup>50</sup>

The constitutional validity of these statutes has been attacked on the grounds of deprivation of liberty or property without due process of law,<sup>51</sup> lack of equal protection of the law,<sup>52</sup> and upon the grounds that they are arbitrary or oppressive.<sup>53</sup> However, the Supreme Court of the United States has sustained these statutes as a valid exercise of the police power of the state.<sup>54</sup>

These statutes do not create an independent liability on the part of the owner<sup>55</sup> but only hold him liable when liability attaches to the operator of the vehicle. The imposition by statute of liability on the owner of a motor vehicle has no effect upon the liability of the operator, for the injured party may sue either the operator or owner alone, or both jointly.<sup>56</sup> When the action is brought against the owner alone, he may, if free from fault himself, secure indemnity from the operator.<sup>57</sup> However, in the absence of a prior agreement, the operator may not secure indemnity from the owner.<sup>58</sup> A judgment rendered against the

47. *Ibid.*

48. *Goodwin v. Goodwin*, 5 Cal. App. 644, 43 P.2d 332 (1935); Compare, *Peyton v. Delnay*, 348 Mich. 238, 83 N.W.2d 204 (1957).

49. *Weber v. Pinyan*, 9 Cal. 2d 226, 70 P.2d 183 (1937).

50. *Forrester v. Jerman*, 90 F.2d 412 (D.C. Cir. 1937).

51. *Selaine v. Wisner*, 200 Iowa 1389, 206 N.W. 130 (1925); *Bowerman v. Sheehan*, 242 Mich. 95, 219 N.W. 69 (1928).

52. *Young v. Masie*, 289 U.S. 253 (1933).

53. *Bowerman v. Sheehan*, 242 Mich. 95, 219 N.W. 69 (1928).

54. *Young v. Masci*, 289 U.S. 253 (1933).

55. *Arnett v. Illinois Cent. R.R.*, 188 Iowa 540, 176 N.W. 322 (1920); Compare, *Baugh v. Rogers*, 24 Cal. 2d 200, 148 P.2d 633 (1944).

56. *Milburn v. Foster*, 8 Cal. App. 2d 478, 480, 47 P.2d 1106, 1107 (1938); *Hutch v. Lovejoy*, 142 Misc. 137, 254 N.Y. Supp. 35 (Sup. Ct. 1931).

57. *Kramer v. Morgan*, 85 F.2d 96 (2d Cir. 1936); *Lunderberg v. Bierman*, 241 Minn. 349, 63 N.W.2d 355 (1954); *Trauk v. Dinyler*, 309 N.Y. 395, 131 N.E.2d 564 (1955).

58. *Kennedy v. Travelers Ins. Co.*, 127 Misc. 665, 217 N.Y. Supp. 261 (Sup. Ct. 1926).

operator alone is not *res judicata* and does not establish any liability of the owner as a matter of law where the owner was not a party to the action.<sup>59</sup>

The second type of statute places a lien on the automobile causing the injury where the vehicle was operated in violation of the provisions of the law or in a negligent or careless manner, except where it has been stolen and the thief caused the injury.<sup>60</sup> The South Carolina statute is illustrative of this type and provides:

When a motor vehicle is operated in violation of the provisions of law or negligently, carelessly, recklessly, wilfully or wantonly and any person receives personal injury or property is damaged thereby or a cause of action for wrongful death arises therefrom, damages recoverable therefor shall be and constitute a lien next in priority to the lien for State and county taxes upon such motor vehicle, recoverable in any court of competent jurisdiction, and the person sustaining such damages or personal representatives of the deceased or any one or more of the beneficiaries for whom such cause of action shall be brought under §§ 10-1951 and 10-1952 for the benefit of all such beneficiaries may attach such motor vehicle in the manner provided by law for attachments in this State. But this lien shall not exist if the motor vehicle was stolen by the breaking of a building under a secure lock or when the vehicle is securely locked.<sup>61</sup>

This statute would hold the owner liable to the extent of the value of the car and yet establish no personal liability unless there was a master-servant relationship between him and the driver or unless he was negligent in entrusting his automobile to an incompetent driver. Actually, no further statutory language is needed in South Carolina because this state recognizes the "family purpose doctrine" which does impose personal liability.<sup>62</sup>

It should be noted further in connection with this lien that any judgment obtained may be enforced against the car in the hands of an innocent purchaser for value.<sup>63</sup> The Uniform Com-

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59. *De Laurentis v. Firemans Fund Indem. Co.*, 5 Misc. 2d 706, 165 N.Y.S.2d 942 (Sup. Ct. 1956).

60. S. C. CODE ANN. § 45-551 (1962).

61. *Ibid.*

62. *Hewitt v. Fleming*, 172 S.C. 226, 173 S.E. 808 (1934).

63. *Stewart v. Martin*, 232 S.C. 483, 102 S.E.2d 886 (1958)



mercial Code, which will become effective in this state on January 1, 1968, will not change the law in regard to this priority.<sup>64</sup>

#### *F. The Law in South Carolina*

"The family purpose doctrine is applied in this state. . . ."<sup>65</sup>

The decision which determined the course for South Carolina in this area and one which presents a clear illustration of the family purpose doctrine is *Davis v. Littlefield*.<sup>66</sup> In this case the defendant's son negligently injured the plaintiff while driving the family car in pursuit of his own pleasure. The South Carolina Supreme Court relied upon the principles of a master-servant relationship in holding the defendant liable for the negligent acts of his son. The court reasoned that since the defendant-father would have been liable if his son had been driving his mother on an errand when the accident occurred, or if the defendant-father had hired a chauffeur to drive his son on pleasure trips, he should also be held liable in this case. The fact that the son drove himself did not in any way change the business for which the machine was used for, in any event, the automobile was used for the pleasure of the defendant's family.

*Mooney v. Gilreath*<sup>67</sup> widened the scope of the doctrine and established the fact that the genesis of the family purpose doctrine in South Carolina is agency. In this case the driver of the car at the time of the accident was the eighteen-year-old son of the defendant. The automobile, of which the defendant's son owned a one-half interest, was purchased at the request of the son who had subsequently spent approximately one hundred fifty dollars "fixing it up." On the night of the accident the defendant's son was sent on an errand for his father. Unable to carry out this errand, the son proceeded to drive about town entirely for his own pleasure. The South Carolina Supreme Court affirmed the circuit court which had held the defendant liable for the negligent acts of his son committed during the time the son was driving the car about town. The court stated that since the car was jointly owned by the defendant and his son and since use of the car for the son's convenience and pleasure was part of the common purpose and joint business for which the car had been purchased, liability could be found, although it was not

64. UNIFORM COMMERCIAL CODE § 3-112.

65. *Hewitt v. Fleming*, 172 S.C. 226, 173 S.E. 808 (1934).

66. 97 S.C. 171, 81 S.E. 487 (1913).

67. 124 S.C. 1, 117 S.E. 186 (1922); Annot., 5 A.L.R. 226 (1920).

necessary to do so, under the principles of partnership agency or under the law of master and servant.

It should be emphasized that simply because title to the automobile is in the defendant-father's name, liability does not necessarily attach under this doctrine. In *Porter v. Hardee*<sup>68</sup> the family purpose doctrine was held not to apply even though title to the automobile, negligently driven by the defendant's son, was in the defendant-father's name. This case is distinguishable from others because the son had purchased the car with his own money and operated it almost exclusively as his own. In order for the doctrine to apply under these circumstances, the automobile in question must have been kept for the general use and convenience of the family and at the time of the accident there must have existed the relationship of principal and agent which would have rendered the father liable for the acts of his son.<sup>69</sup>

Two factors related to this problem should be noted. The doctrine would still apply even though the automobile was operated by a companion of the child for whom the car was maintained and to whom it was furnished by the defendant.<sup>70</sup> It would be illogical to hold otherwise for if liability were not imposed in this situation the family purpose doctrine could easily be circumvented by merely allowing a friend or companion of the driver to operate the vehicle. Under these circumstances there is an implied agency that places liability on the owner. Also, in situations in which the doctrine would apply, constructive service on the nonresident owner may be had by service of process on the Chief Highway Commissioner.<sup>71</sup>

### G. Conclusion

Our courts and legislatures have come to realize that the social needs of the populace greatly outweigh the advantage of having the law kept within the bounds established at a time before the automobile was invented. Undoubtedly, this is a desirable realization for nothing breeds injustice to a greater degree than does an unchanging and unyielding concept of law. As a matter of policy the family purpose doctrine is superior to the more logical strict

68. 241 S.C. 474, 129 S.E.2d 131 (1963).

69. *Norwood v. Coley*, 235 S.C. 314, 111 S.E.2d 550 (1959).

70. *Golden v. Medford*, 62 Ga. App. 229, 8 S.E.2d 531 (1940); *Gross v. Williams*, 196 N.C. 213, 145 S.E. 169 (1928); *Burbage v. Curry*, 127 S.C. 349, 121 S.E. 267 (1924).

71. S. C. CODE ANN. § 46-104 (1962).

agency concept. The average child or wife who drives the family car is usually financially unable to pay any judgment that might be obtained against him. On the other hand, the owner of the automobile is more normally in a position to meet financial obligations that might arise as the result of an accident. Justice Cardozo said: "Finally, when the social needs demand one settlement rather than another, there are times when we must bend symmetry, ignore history and sacrifice custom in the pursuit of other and larger ends."

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