

South Carolina Law Review

Volume 59
Issue 3 *ANNUAL SURVEY OF SOUTH CAROLINA
LAW*

Article 12

Spring 2008

Negligent Entrustment in South Carolina: An Analysis of South Carolina's Consistent Application and Inconsistent Statements of the Standard after *Gadson v. ECO Services of South Carolina, Inc.*

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Recommended Citation

McWilliams, Robert H. Jr. (2008) "Negligent Entrustment in South Carolina: An Analysis of South Carolina's Consistent Application and Inconsistent Statements of the Standard after *Gadson v. ECO Services of South Carolina, Inc.*," *South Carolina Law Review*. Vol. 59 : Iss. 3 , Article 12.

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**NEGLIGENT ENTRUSTMENT IN SOUTH CAROLINA:
AN ANALYSIS OF SOUTH CAROLINA'S
CONSISTENT APPLICATION AND INCONSISTENT STATEMENTS OF
THE STANDARD AFTER
*GADSON V. ECO SERVICES OF SOUTH CAROLINA, INC.***

I. INTRODUCTION

The tort of negligent entrustment embodies a basic principle based on both property and tort law: with a right of control comes a corresponding duty to exercise that control with due care;¹ “[c]onversely, one who has no control owes no duty.”² The *Restatement (Second) of Torts (Restatement)* recognizes this control principle and provides for liability where an entrustor has the right to control a thing, an activity, or a chattel and negligently entrusts it to a person who is likely to cause an unreasonable risk of harm to others.³ This principle makes sense—the person with control of the chattel has the unique power to prevent injury to third parties by using due care in entrustment.⁴ Though South Carolina has recognized this principle in terms of entrustment of chattel for many years,⁵ the South Carolina Supreme Court recently declined to adopt the *Restatement* sections for negligent entrustment in *Gadson v. ECO Services of South Carolina, Inc.*⁶ Unfortunately, the court’s decision was based on a very narrow statement of the standard of negligent entrustment in cases involving an intoxicated driver.⁷ The South Carolina Court of Appeals first articulated this narrow standard in *McAllister v. Graham*⁸:

The test of liability here under the theory of negligent entrustment is (1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking, (2) that the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated

1. *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) (citing *Dunbar v. Charleston & W.C. Ry. Co.*, 211 S.C. 209, 216, 44 S.E.2d 314, 317 (1947); *Peden v. Furman Univ.*, 155 S.C. 1, 16, 151 S.E. 907, 912 (1930)); *see also* DAN B. DOBBS, *THE LAW OF TORTS* § 330, at 894 (2000); F. PATRICK HUBBARD & ROBERT L. FELIX, *THE SOUTH CAROLINA LAW OF TORTS* 111 (3d ed. 2004) (“[T]he owner/occupier [of land] cannot be held liable if he does not in fact control the dangerous condition and thus could not make it safer.”).

2. *Miller*, 329 S.C. at 314, 494 S.E.2d at 815 (citing *Clark v. Greenville County*, 313 S.C. 205, 210, 437 S.E.2d 117, 119 (1993)).

3. *RESTATEMENT (SECOND) OF TORTS* §§ 308, 390 (1965).

4. *See, e.g.*, HUBBARD & FELIX, *supra* note 1, at 7 (“[T]he focus of the concern for avoiding injuries is on *efficient* accident prevention.”).

5. *See, e.g.*, *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981) (“The theory of negligent entrustment provides: ‘the owner or one in *control* of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable’” (quoting *Bahm v. Dormanen*, 543 P.2d 379, 381 (Mont. 1975)) (emphasis added)); *see also* cases cited *infra* notes 19–20.

6. 374 S.C. 171, 177, 648 S.E.2d 585, 588 (2007).

7. *Id.* at 176–77, 648 S.E.2d at 588 (citing *Jackson v. Price*, 288 S.C. 377, 381–82, 342 S.E.2d 628, 631 (Ct. App. 1986)).

8. 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986).

and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver.⁹

Though the supreme court correctly decided *Gadson* based on its facts, the court's narrow standard is troubling because it is inconsistent with many prior South Carolina negligent entrustment cases and with the general principle that the right to control imposes a corresponding duty to use due care in the exercise of that control. This inconsistency could present serious doctrinal problems in the future.

This Note reviews the elements of negligent entrustment in South Carolina and addresses the underlying theory guiding its application. Part II analyzes South Carolina decisions involving negligent entrustment and shows that the courts have used a theory of negligent entrustment consistent with the *Restatement* in many types of cases, including those not involving an intoxicated driver. Part II also discusses the broader concept of the duty to prevent a third party from using a chattel and analyzes the first party limitation on negligent entrustment. Part III analyzes the South Carolina Supreme Court's opinion in *Gadson* and discusses the court's decision not to adopt *Restatement* sections 308 and 390 in light of prior caselaw. Part IV examines the public policies behind South Carolina's negligent entrustment analysis and argues that the *Restatement* standard furthers policy goals emphasized by the supreme court. Finally, Part V concludes that South Carolina's cases are consistent with the *Restatement's* standard, and as a result, the South Carolina Supreme Court should adopt the standard and limit the narrow doctrinal statements in *Gadson* to its facts.

II. SOUTH CAROLINA'S NEGLIGENT ENTRUSTMENT DECISIONS

A. Introduction

In negligent entrustment cases, "the duty of care is not imposed . . . unless the defendant has the right to control the chattel."¹⁰ When a court finds that the defendant owed a duty, "the negligent entrustment case is an ordinary negligence case to which all the principles of negligence law apply."¹¹ Thus, if a defendant had control of a particular chattel, liability for the entrustment of that chattel depends on whether the facts constitute a breach of the defendant's duty of due care. For example, courts typically apply this principle in cases of "negligent entrustment of an automobile or a weapon" to a person a defendant knows or should know is likely to cause an unreasonable risk of harm to oneself and others.¹²

The *Restatement* provides a general statement of this accepted standard of liability for negligent entrustment. Section 308 provides as follows:

9. *Id.* (citing *Passmore*, 275 S.C. at 621, 274 S.E.2d at 418; *Nettles v. Your Ice Co.*, 191 S.C. 429, 436–38, 4 S.E.2d 797, 799–800 (1939)).

10. DOBBS, *supra* note 1, § 330, at 894; *see supra* text accompanying notes 1–2. This duty might require due care in entrusting the chattel, supervision after entrustment—for example, when a child is entrusted with a rifle—or prevention of misuse by a foreseeable third party. DOBBS, *supra* note 1, § 330, at 893–94.

11. DOBBS, *supra* note 1, § 330, at 893 (citing *Casebolt v. Cowan*, 829 P.2d 352, 355–56 (Colo. 1992); *Olguin v. City of Burley*, 810 P.2d 255, 258 (Idaho 1991)).

12. *Id.* (citations omitted).

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.¹³

Section 390 states a “special application of the rule stated in § 308”¹⁴ to cases involving entrustment of a chattel to a person the entrustor knows to be incompetent. This section provides as follows:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.¹⁵

The *Restatement* emphasizes the element of control as essential to negligent entrustment¹⁶ and notes that, although these sections most frequently apply “where the third person is a member of a class which is notoriously likely to misuse the thing [entrusted],” they also apply where “the peculiar circumstances of the case are such as to give the actor good reason to believe that the third person may misuse” the entrusted chattel.¹⁷

South Carolina’s negligent entrustment cases are consistent with the *Restatement* standard.¹⁸ More specifically, the cases apply the principle of negligent entrustment to a wide range of situations,¹⁹ including the entrustment of chattel other than automobiles.²⁰ The cases show that a defendant’s right to control a chattel imposes a duty of due care either (1) to prevent chattel from falling into the

13. RESTATEMENT (SECOND) OF TORTS § 308 (1965).

14. *Id.* § 390 cmt. b.

15. *Id.* § 390.

16. *See id.* § 308 cmt. a (“The words ‘under the control of the actor’ are used to indicate that the third person is entitled to possess or use the thing or engage in the activity only by the consent of the actor . . .”).

17. *Id.* § 308 cmt. b.

18. In a first party negligent entrustment case, the court of appeals stated that the “*Restatement* is a correct statement of the amalgamation of [negligent entrustment] cases decided in South Carolina.” *Lydia v. Horton*, 343 S.C. 376, 385, 540 S.E.2d 102, 107 (Ct. App. 2000), *rev’d*, 355 S.C. 36, 583 S.E.2d 750 (2003) (emphasis added). In reversing, the supreme court declined to adopt sections 308 and 390 “based on this set of facts,” *Lydia*, 355 S.C. at 43, 583 S.E.2d at 754, but it stated that comment c to section 390 “is consistent” with its decision to bar first party negligent entrustment claims, *id.* at 40 n.2, 583 S.E.2d at 753 n.2.

19. *See, e.g., Howell v. Hairston*, 261 S.C. 292, 296, 199 S.E.2d 766, 767–68 (1973) (parent-child); *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 479, 18 S.E.2d 331, 332–33 (1942) (employer-employee); *Mitchell v. Bazzle*, 304 S.C. 402, 405, 404 S.E.2d 910, 912 (Ct. App. 1991) (landlord-tenant).

20. *See, e.g., Howell*, 261 S.C. at 292, 199 S.E.2d at 766 (air rifle); *Dennis v. Timmons*, 313 S.C. 338, 338, 437 S.E.2d 138, 139 (Ct. App. 1993) (screwdriver); *Mitchell*, 304 S.C. at 403, 404 S.E.2d at 910 (land with a dangerous dog).

hands of an incompetent third party (safeguarding cases),²¹ or (2) to not permit a third party's use of a chattel (the *Restatement's* standard).²² While the duty to safeguard a chattel from use by a person who might cause harm is different from the *Restatement* standard, it is closely related and indicates the correlation between a defendant's right to control an object and the duty of due care in entrustment.²³ Thus, the safeguarding cases support the argument that South Carolina courts should use the *Restatement* approach for cases where a defendant entrusts a chattel to another who is likely to cause an unreasonable risk of harm to others.

B. Cases Using a Broad Test Based on a Defendant's Right to Control a Chattel

1. Motor Vehicles

The earliest South Carolina case to recognize negligent entrustment is *Nettles v. Your Ice Co.*²⁴ In *Nettles*, Whatley worked for Your Ice Company (Your Ice) for several years before the company fired him for habitually drinking alcohol at work.²⁵ Shortly thereafter, the company rehired Whatley as a delivery truck driver.²⁶ Nettles, another employee, accompanied Whatley on a delivery one evening.²⁷ Whatley and Nettles bought some liquor, and Whatley continued to drink as they made their final delivery.²⁸ Afterwards, Whatley drank to excess at two bars but insisted on driving.²⁹ On the way home, Whatley drove the truck off the road and it turned over, injuring Nettles.³⁰

Nettles received a jury verdict in his negligence suit against Your Ice.³¹ He "based [his complaint] upon the alleged reckless and wilful act" of Your Ice in allowing Whatley to drive a vehicle on a public highway knowing Whatley frequently drank "to excess."³² Based on this statement of negligent entrustment, the court concluded that there was sufficient evidence for the jury to conclude that Your Ice "consciously failed to exercise due care for the protection and safety of

21. See *Wineglass v. McMinn*, 235 S.C. 537, 541, 112 S.E.2d 652, 654 (1960); *Pfaehler*, 198 S.C. at 484–86, 18 S.E.2d at 335; *Dennis*, 313 S.C. at 341, 437 S.E.2d at 140–41.

22. See, e.g., DOBBS, *supra* note 1, § 330, at 893 ("[I]f harm is foreseeable, liability is appropriate not only when the defendant intentionally 'entrusts' the chattel to a dangerous person but also when he negligently leaves the chattel at a place where he should expect that a dangerous person is likely to find and use it." (citing *Kuhns v. Brugger*, 135 A.2d 395, 404–05 (Pa. 1957))).

23. See, e.g., Hazel Glenn Beh, *Tort Liability for Intentional Acts of Family Members: Will Your Insurer Stand by You?*, 68 TENN. L. REV. 1, 12–13 (2000) (citing DOBBS, *supra* note 1, § 330, at 893) ("[T]he [chattel] owner's failure to exercise due care in safeguarding a dangerous object and negligently allowing it to fall into the hands of another who might cause harm is also a species of negligent entrustment.").

24. 191 S.C. 429, 4 S.E.2d 797 (1939).

25. *Id.* at 436, 4 S.E.2d at 799.

26. *Id.*

27. *Id.* at 432, 4 S.E.2d at 797–98.

28. *Id.* at 432–33, 4 S.E.2d at 798.

29. *Id.* at 433–34, 4 S.E.2d at 798.

30. *Id.* at 434, 4 S.E.2d at 798.

31. *Id.* at 432, 4 S.E.2d at 797.

32. *Id.* at 434–35, 4 S.E.2d at 798–99.

others.”³³ *Nettles* illustrates the supreme court’s early emphasis on a defendant’s right to control an entrusted chattel and the defendant’s corresponding duty of due care. Because Your Ice knew Whatley was likely to drive the truck in a manner involving an unreasonable risk of harm to himself and others, the company breached its duty of due care in entrusting its vehicle to him.³⁴

Then, in *Pfaehler v. Ten Cent Taxi Co.*,³⁵ the South Carolina Supreme Court held a taxi company liable for its employee’s negligent act of leaving the car keys in the taxi with an extremely intoxicated person who later injured the plaintiff.³⁶ Rose, the taxi driver, agreed to pick up a passenger, Varn, at a bar.³⁷ Rose found Varn intoxicated to the point that “he was almost passed out,” so he placed him in the passenger’s seat.³⁸ A bar employee indicated that Rose had a phone call inside, so Rose left Varn in the taxi with the key in the ignition.³⁹ When Rose returned, Varn had driven off with the taxi which he later drove into the Pfaehlers’ car, injuring the Pfaehlers.⁴⁰

The supreme court found Rose negligent “in making it possible for [Varn] to take charge of the car and drive it away.”⁴¹ Further, the court stated that Rose’s decision to leave his ignition key in the car and the drunk passenger in the front seat instead of the “back seat, where he would probably put a man who he thought was so drunk that he would be asleep,” was “the initial act of negligence which set in motion the chain of events which culminated in the collision with Mr. Pfaehler’s car.”⁴² In support of its ruling, the court cited the principle that where one actor causes an initial wrong and an intervening actor does further harm, the initial actor is liable for all ensuing consequences if that actor set the intervening cause in motion.⁴³ Thus, the “test is to be found in the probable injurious consequences which were to be anticipated, not in the number of subsequent events” that arise.⁴⁴ This language illustrates the decision’s underlying principle: because Rose had the right to control the taxi, he had a duty of due care to anticipate and prevent third party use of it. Thus, this is the first South Carolina case to impose a duty on a person to safeguard a chattel from use by another who is likely to cause harm.⁴⁵ Rose breached this duty because Rose should have known of Varn’s likelihood to

33. *Id.* at 437, 4 S.E.2d at 799. However, the court found that *Nettles* was contributorily negligent as a matter of law and reversed the jury verdict. *Id.* at 438–40, 4 S.E.2d at 800–01.

34. This case is consistent with the *Restatement* section 390. “A lends his car to his friend B for B to use to drive a party of friends to a country club dance. A knows that B has habitually become intoxicated at such dances. On the particular occasion B becomes intoxicated and while in that condition recklessly drives the car into the carefully driven car of C, and causes harm to him. A is subject to liability to C.” *RESTATEMENT (SECOND) OF TORTS* § 390 cmt. b, illus. 4 (1965).

35. 198 S.C. 476, 18 S.E.2d 331 (1942).

36. *Id.* at 486–87, 18 S.E.2d at 336.

37. *Id.* at 479–80, 18 S.E.2d at 333.

38. *Id.* at 480, 18 S.E.2d at 333 (internal quotation marks omitted).

39. *Id.* at 481–82, 18 S.E.2d at 333–34.

40. *Id.* at 480, 482, 18 S.E.2d at 332, 333–34.

41. *Id.* at 485, 18 S.E.2d at 335–36.

42. *Id.* at 484–85, 18 S.E.2d at 335.

43. *Id.* at 486, 18 S.E.2d at 335 (quoting 22 *RULING CASE LAW* § 19, at 134–35 (William M. McKinney et al. eds., (1929))).

44. *Id.* (quoting *RULING CASE LAW*, *supra* note 43, § 19, at 135) (internal quotation marks omitted).

45. See *supra* notes 21–23 and accompanying text.

drive the vehicle in an intoxicated state, and yet he still failed to take reasonable steps to prevent Varn from doing so and thus injuring others.

In *Howle v. McDaniel*,⁴⁶ another early negligent entrustment case, the South Carolina Supreme Court addressed negligent entrustment in the context of a bailor-bailee relationship.⁴⁷ In this case, Brown, an employee of Howle, often took Howle's car home at night for travel to and from work.⁴⁸ The battery in Howle's car was old and "weak," resulting in the headlights dimming as the car started.⁴⁹ Additionally, Howle instructed Brown not to use the car at night and required Brown to ask his permission to use the car for other jobs.⁵⁰ On the night of the accident, Brown needed help from Rogers, a friend he was visiting, in push-starting the car.⁵¹ The evidence was contradictory as to whether the headlights on Howle's car were working properly.⁵² Brown saw McDaniel's car coming toward him and pulled over to the side of the road, but McDaniel struck Howle's car, causing Brown personal injury.⁵³

When Howle sued McDaniel for the damage to his car, McDaniel made a counterclaim for the personal injuries he suffered "as the result of Brown's negligent operation" of Howle's car.⁵⁴ The South Carolina Supreme Court reversed the trial court's directed verdict against Howle⁵⁵ but stated that a bailor may be liable to a third person injured by the bailed property "where he has entrusted a dangerous article to one whom he knows to be ignorant of its dangerous quality, or an automobile to one whom he knows to be so reckless or incompetent that danger to third persons would be a reasonably probable consequence" of its use.⁵⁶ In this case, Howle was not negligent because even if Brown negligently operated the car, Brown used the car most often and had better knowledge of the headlight malfunction.⁵⁷ Thus, although Howle owed a duty of due care in entrusting his car, he did not breach his duty because he did not entrust his car to a person ignorant of its dangerous quality or to a person that was reckless or incompetent. Importantly, the court's language in this case is consistent with the *Restatement* standard for negligent entrustment.

The duty to safeguard against third party use⁵⁸ is also involved in *Wineglass v. McMinn*.⁵⁹ In *Wineglass*, the South Carolina Supreme Court held a company liable for its employee's actions in leaving the ignition keys in a delivery truck and in failing to anticipate and prevent his minor assistant from causing injury to others.⁶⁰ Inman operated a delivery truck for the defendant company, owned by McMinn,

46. 232 S.C. 125, 101 S.E.2d 255 (1957).

47. *Id.* at 130–31, 101 S.E.2d at 257–58.

48. *Id.* at 129, 101 S.E.2d at 256–57.

49. *Id.* at 136, 101 S.E.2d at 261.

50. *Id.* at 130–31, 101 S.E.2d at 257–58.

51. *Id.* at 136, 101 S.E.2d at 261.

52. *Id.* at 136–37, 101 S.E.2d at 261.

53. *Id.* at 136, 101 S.E.2d at 261.

54. *Id.* at 128, 101 S.E.2d at 256.

55. *Id.* at 139, 101 S.E.2d at 262.

56. *Id.* at 132, 101 S.E.2d at 259.

57. *Id.* at 136–37, 101 S.E.2d at 261.

58. See *supra* notes 21–23 and accompanying text.

59. 235 S.C. 537, 112 S.E.2d 652 (1960).

60. *Id.* at 541, 112 S.E.2d at 654.

and with its knowledge, Inman employed a fourteen-year-old assistant who did not have a driver's license and who had never driven a truck.⁶¹ On the day of the accident, Inman parked his truck behind the plaintiff Wineglass's station wagon, leaving the ignition key and the minor in the truck.⁶² A third driver asked the minor to move Inman's truck.⁶³ The minor did so but lost control of the truck, pinning Wineglass between the truck and his station wagon and causing him injuries.⁶⁴

Wineglass's complaint alleged negligence in "leaving the motor vehicle . . . in the care of and attended by an unlicensed and inexperienced driver."⁶⁵ In affirming the jury verdict against McMinn, the court noted that "the obvious ground for affirmance" was Inman's negligence "in leaving the inexperienced, fourteen-year-old boy to attend the truck, with [the] ignition key in it, when [Inman] should have foreseen as a reasonable and probable consequence . . . that the safety of others on the street would be endangered."⁶⁶ The court cited *Pfaehler* for the controlling principle that an actor is negligent in failing to safeguard against third party use of chattel if the actor should have, in the exercise of due care, foreseen an intermediate wrong.⁶⁷ Thus, Inman's right to control the delivery truck imposed on him a duty of due care. Because it was foreseeable that the minor assistant driving would cause an unreasonable risk of harm, Inman breached his duty by failing to prevent his use of the delivery truck.

In *Tucker v. United States*,⁶⁸ another case involving an intoxicated driver, a South Carolina federal district court applied the state's negligent entrustment law and found the United States not liable for a motor pool dispatcher's entrustment of an Army vehicle to a serviceman.⁶⁹ The serviceman had "consumed two or three beers and a shot of bourbon" within an hour of obtaining the vehicle⁷⁰ and later crashed into Tucker's car.⁷¹ Tucker alleged that the government negligently entrusted the vehicle to the serviceman, contending "the dispatcher knew or should have known [the serviceman] had been drinking alcoholic beverages."⁷²

The district court cited the decisions of *Wineglass*, *Howle*, and *Pfaehler* for "[t]he law of negligent entrustment in South Carolina."⁷³ It noted that *Howle* stands for the proposition that "a bailor may be negligent when he entrusts an automobile to one whom he *knows* to be so reckless or incompetent that danger to third persons would be a reasonable [and] probable consequence."⁷⁴ The court granted summary judgment in favor of the defendant, holding that there was no evidence "that the

61. *Id.* at 539–40, 112 S.E.2d at 653.

62. *Id.* at 539, 112 S.E.2d at 653.

63. *Id.* at 539–40, 112 S.E.2d at 653.

64. *Id.* at 540, 112 S.E.2d at 653.

65. *Id.* at 540, 112 S.E.2d at 654.

66. *Id.* at 541, 112 S.E.2d at 654.

67. *Id.* (citing *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 485–86, 18 S.E.2d 331, 335 (1942)).

68. 385 F. Supp. 717 (D.S.C. 1974).

69. *Id.* at 724–25.

70. *Id.* at 718.

71. *Id.* at 719–20.

72. *Id.* at 720.

73. *Id.* at 722 (citing *Wineglass v. McMinn*, 235 S.C. 537, 540–41, 112 S.E.2d 652, 653–54 (1960); *Howle v. McDaniel*, 232 S.C. 125, 132, 136–38, 101 S.E.2d 255, 259, 261–62 (1957); *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 485–87, 18 S.E.2d 331, 335–36 (1942)).

74. *Id.* at 723 (citing *Howle*, 232 S.C. at 132, 101 S.E.2d at 259).

dispatcher actually *knew* [the serviceman] was drinking . . . [or] was drunk, reckless, or incompetent.”⁷⁵ Thus, the government was not negligent in entrusting the vehicle to the serviceman because the evidence did not establish that it was foreseeable that he would operate the vehicle in a manner causing an unreasonable risk of harm to others.⁷⁶ Therefore, the district court’s interpretation of South Carolina’s negligent entrustment law is consistent with the *Restatement* because it recognized a broader standard of liability for negligent entrustment that encompassed more than intoxicated drivers.⁷⁷

In *American Mutual Fire Insurance Co. v. Passmore*,⁷⁸ the South Carolina Supreme Court emphasized the element of control in negligent entrustment cases.⁷⁹ In this case, Foxworth added Reed’s car to his insurance policy when Reed could not obtain liability insurance.⁸⁰ While driving Reed’s car, Reed’s girlfriend collided with Passmore, the plaintiff.⁸¹ The court reversed the trial court’s finding that Foxworth had an insurable interest under the theory that he had negligently entrusted the car to Reed.⁸² Importantly, the court clearly articulated the “theory of negligent entrustment”⁸³ as providing that “the owner or one in control of the vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment.”⁸⁴ The court then noted that the “[e]ssential elements” of the cause of action for negligent entrustment were absent: “Foxworth did not own the car, . . . he did not have control over the car, and . . . he was not responsible for its use.”⁸⁵ Because Foxworth did not have control of the vehicle, he did not owe a duty to Passmore and could not be liable for negligent entrustment. Thus, consistent with the *Restatement* standard, the South Carolina Supreme Court has recognized the importance of control as a prerequisite to liability for negligent entrustment.

A federal district court also interpreted South Carolina’s negligent entrustment standard in *Brantley v. Vaughan*,⁸⁶ a case involving an intoxicated driver, Vaughan, who was driving an automobile owned by Flippen.⁸⁷ Brantley, the plaintiff, was injured when Vaughan struck him.⁸⁸ Though the court cited *Passmore* in imposing a duty of due care in this situation,⁸⁹ it also purportedly adopted the test for negligent entrustment from *McAllister v. Graham*, which is narrower than the *Restatement* standard.⁹⁰ The court held that the complaint satisfied both the *Passmore* test and the narrower *McAllister* test, because the complaint specifically

75. *Id.*

76. *Id.*

77. See *supra* text accompanying notes 13–17.

78. 275 S.C. 618, 274 S.E.2d 416 (1981).

79. *Id.* at 621, 274 S.E.2d at 418.

80. *Id.* at 620, 274 S.E.2d at 417.

81. *Id.*

82. *Id.* at 621, 274 S.E.2d at 418.

83. *Id.*

84. *Id.* (quoting *Bahm v. Dormanen*, 543 P.2d 379, 381 (Mont. 1975)) (internal quotation marks omitted).

85. *Id.*

86. 835 F. Supp. 258 (D.S.C. 1993).

87. *Id.* at 262.

88. *Id.*

89. *Id.* (citing *Passmore*, 275 S.C. at 621, 274 S.E.2d at 418).

90. *Id.*; see also *supra* text accompanying notes 3–9.

alleged that “Flippen owned the automobile which Vaughan was driving at the time of the accident” and that “Flippen knew or should have known of [Vaughan’s] impairment.”⁹¹ Therefore, Brantley “unquestionably demonstrated a possibility of a right of recovery against Flippen.”⁹² If Flippen owned the vehicle, he had control and a duty of due care under *Passmore*, which would be breached if he entrusted his vehicle to an impaired driver.⁹³ If the court had actually considered Brantley’s claim under the narrow *McAllister* test—which the court claimed to follow—instead of the *Restatement* standard,⁹⁴ it could not have found for Brantley. Brantley did not allege Flippen knew Vaughan was either addicted to intoxicants or in the habit of drinking.⁹⁵ Thus, the court apparently analyzed the claim under a negligent entrustment standard consistent with the *Restatement*.⁹⁶ Furthermore, this case illustrates the importance of control in imposing a duty of due care, a prerequisite to liability under South Carolina’s negligent entrustment standard.

2. *Other Chattel*

The South Carolina Supreme Court has not limited the application of the control principle to automobiles. In *Howell v. Hairston*,⁹⁷ the court employed negligent entrustment analysis to impose liability on parents who entrusted an air rifle to their minor child.⁹⁸ The Hairstons purchased an air rifle for their son who had a reputation as a bully and displayed “aggressive and malicious tendencies.”⁹⁹ The Hairstons lived in close proximity to a playground neighborhood children regularly used.¹⁰⁰ When his parents were away from home, the child took his air rifle to the park where he shot another child in the eye.¹⁰¹ The other child’s parents sued the Hairstons, alleging negligence “in entrusting the air rifle to their son when they knew or should have known that . . . he was likely to fire the air rifle at other children.”¹⁰²

In reversing the trial court’s dismissal of the complaint, the court found the Hairstons “knew that under the circumstances their son should not have been allowed unsupervised possession of an air rifle.”¹⁰³ On the issue of “whether the parents knew or should have known the reputation of their child,”¹⁰⁴ the court stated that the evidence must show “that a prudent parent would not have entrusted [the child] with an air rifle under the same or similar circumstances.”¹⁰⁵ Based on the

91. *Brantley*, 835 F. Supp. at 260.

92. *Id.* at 262.

93. *See Passmore*, 275 S.C. at 621, 274 S.E.2d at 418.

94. *See supra* text accompanying notes 8–9.

95. *See Brantley*, 835 F. Supp. at 260.

96. *Compare id.* at 262, with text accompanying notes 13–17.

97. 261 S.C. 292, 199 S.E.2d 766 (1973).

98. *Id.* at 298–99, 199 S.E.2d at 768–69.

99. *Id.* at 296–97, 199 S.E.2d at 768.

100. *Id.* at 297, 199 S.E.2d at 768.

101. *Id.*

102. *Id.* at 296, 199 S.E.2d at 767–68.

103. *Id.* at 297, 199 S.E.2d at 768.

104. *Id.* at 298, 199 S.E.2d at 768.

105. *Id.* at 298, 199 S.E.2d at 769.

facts of the case, the court held that “the Hairstons failed to act as reasonably prudent parents.”¹⁰⁶

The *Howell* court, in effect, applied the standard of *Restatement* sections 308 and 390.¹⁰⁷ Because the Hairstons had control over the air rifle, they had a duty of due care in exercising that control.¹⁰⁸ Given Mrs. Hairston’s statement to the other child’s father that she tried to get her husband to store the air rifle in the attic “before someone got hurt,” the jury could infer that the Hairstons knew they should not have entrusted their son with the air rifle.¹⁰⁹ Thus, the Hairstons breached their duty of care. Furthermore, the facts parallel the language of section 390: the parents knew their son was likely, “because of his youth, inexperience, or otherwise”¹¹⁰—i.e., his age and malicious tendencies—to endanger others with the air rifle.¹¹¹ Indeed, the court, using language very similar to the *Restatement*, recognized that the case was based on the theory that the air rifle was “negligently entrusted by the defendants to a person who, on account of his youth and want of experience, was incapable of evaluating the danger[s] incident to its use.”¹¹²

Additionally, in *Mitchell v. Bazzle*,¹¹³ the South Carolina Court of Appeals emphasized the element of control to hold a landlord not liable for “injuries caused by a tenant’s dog.”¹¹⁴ Peebles, one of the defendants, owned a company that owned a mobile home park and rented mobile homes.¹¹⁵ Mitchell, who had a minor daughter, rented one of the mobile homes from Peebles.¹¹⁶ Bazzle, also a defendant, lived near Mitchell and owned a “vicious” dog that he kept inside of a fence.¹¹⁷ Mitchell’s daughter was playing in the lot adjoining Bazzle’s when Bazzle’s dog jumped the fence and seriously injured her.¹¹⁸ The court of appeals found that Peebles “knew of the dog’s dangerous propensities . . . [and] had adequate time to terminate” Bazzle’s tenancy before the attack.¹¹⁹ However, the court of appeals found “no authority imposing liability upon a landlord based upon a theory of negligent rental or entrustment of land.”¹²⁰ The court also cited common law precedent¹²¹ that did not impose a duty “on the part of a landlord to repair and keep

106. *Id.* at 298–99, 199 S.E.2d at 769.

107. *See* RESTATEMENT (SECOND) OF TORTS § 390 cmt. b, illus. 1 (1965) (“A gives a loaded gun to B, a feeble-minded girl of ten, to be carried by her to C. While B is carrying the gun she tampers with the trigger and discharges it, harming C. A is subject to liability to C.”); *supra* text accompanying notes 13–15.

108. *See* RESTATEMENT (SECOND) OF TORTS § 308.

109. *Howell*, 261 S.C. at 297, 199 S.E.2d at 768 (internal quotation marks omitted).

110. RESTATEMENT (SECOND) OF TORTS § 390.

111. *Howell*, 261 S.C. at 297–99, 199 S.E.2d at 768–69.

112. *Id.* at 301, 199 S.E.2d at 770.

113. 304 S.C. 402, 404 S.E.2d 910 (Ct. App. 1991).

114. *Id.* at 405, 404 S.E.2d at 912.

115. *Id.* at 403–04, 404 S.E.2d at 911.

116. *Id.* at 404, 404 S.E.2d at 911.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* at 405, 404 S.E.2d at 912.

121. At the time the court decided this case, South Carolina did not yet have a statute that imposed a duty on a landlord to prevent injury to a third party for injury caused by a tenant’s dog. *See* S.C. CODE ANN. § 27-40-440(a)(2) (2007); *Fair v. United States*, 334 S.C. 321, 323, 513 S.E.2d 616, 617 (1999) (holding that a landlord is only liable under section 440(a)(2) for “defects relating to the inherent physical state of the leased premises”).

in safe condition leased residential premises under the control of the tenant.”¹²² Because Peebles was Mitchell’s landlord and thus did not have control of the leased property, the court found that he did not owe a duty to Mitchell.¹²³ Therefore, it was not negligent for Peebles to permit Bazzle to keep a vicious dog near children even though Peebles knew the dog created an unreasonable risk of harm.

Then, in *Dennis v. Timmons*,¹²⁴ a case involving physical injury from a screwdriver, the South Carolina Court of Appeals applied negligent entrustment principles to hold the owners of the property on which the accident occurred not liable.¹²⁵ After repairs to their mobile home, the Weeks left a screwdriver out when they put away their tools.¹²⁶ Dennis and Timmons, both young children, came to the Weeks’s home to play with the Weeks’s children.¹²⁷ While playing, one of the Weeks children retrieved the screwdriver from underneath the mobile home.¹²⁸ Timmons “tossed the screwdriver” at Dennis, whose eye was irreparably injured.¹²⁹

The court of appeals affirmed a directed verdict for the Weeks family.¹³⁰ Because a screwdriver is “not an instrumentality which is almost always dangerous,”¹³¹ “the standard for imposing liability . . . is whether the person [who allowed access to the chattel] knew of the child’s proclivity or propensity for the specific dangerous activity which caused the harm.”¹³² Notably, the court’s statements are similar to the language of *Restatement* section 390¹³³ and impose the duty to safeguard a chattel from use by an incompetent third party.¹³⁴ Unlike the parents in *Howell* who entrusted their son with an air rifle,¹³⁵ “the Weeks did not entrust the screwdriver, negligently or otherwise, to a person who, on account of his youth and want of experience, was incapable of evaluating the dangers incident to its use.”¹³⁶ Although the Weeks had control over the screwdriver, they did not breach their safeguarding duty because they did not “furnish[] or negligently permit[] [Timmons] access to an instrumentality (the screwdriver) with which he would likely injure a third party.”¹³⁷

122. *Mitchell*, 304 S.C. at 405, 404 S.E.2d at 912 (citing *Conner v. Farmers & Merchs. Bank*, 243 S.C. 132, 139, 132 S.E.2d 385, 388 (1963)).

123. *Id.*

124. 313 S.C. 338, 437 S.E.2d 138 (Ct. App. 1993).

125. *Id.* at 343, 437 S.E.2d at 141.

126. *Id.* at 339, 437 S.E.2d at 140.

127. *Id.*

128. *Id.* at 339–40, 437 S.E.2d at 140.

129. *Id.* at 340, 437 S.E.2d at 140.

130. *Id.*

131. *Id.* at 341, 437 S.E.2d at 140.

132. *Id.* at 341, 437 S.E.2d at 141.

133. RESTATEMENT (SECOND) OF TORTS § 390 (1965); *see also supra* text accompanying notes 14–15.

134. *See supra* text accompanying notes 21–23.

135. *See supra* text accompanying notes 99–101.

136. *Dennis*, 313 S.C. at 341, 437 S.E.2d at 141.

137. *Id.* at 343, 437 S.E.2d at 141.

C. *Cases Stating a Narrower Test for Negligent Entrustment*

The South Carolina Court of Appeals first articulated a narrow three-part test for negligent entrustment in *McAllister v. Graham*.¹³⁸ For liability to be imposed, this test requires that a motor vehicle owner knowingly entrust the vehicle to a driver who is “either addicted to intoxicants or ha[s] the habit of drinking” and that the owner knows or should know is “likely to drive while intoxicated.”¹³⁹ Notably, the court cited both *Passmore* and *Nettles v. Your Ice Co.*, neither of which used a test similar to the *McAllister* test, but provided no discussion of its reasoning for using such a narrow test.¹⁴⁰ *Passmore* provided a much broader statement of the negligent entrustment theory,¹⁴¹ and *Nettles* provided an easy case for the court to find negligent entrustment without articulating a test.¹⁴² Given this inconsistency between the *McAllister* test and prior South Carolina caselaw regarding the theory of negligent entrustment, the court of appeals’ rationale seems unclear.

In *McAllister*, Graham was a long-time employee of APAC, which provided him with a company truck to drive between his home and job sites.¹⁴³ APAC instructed Graham not to drive the truck while off duty and never to drive under the influence of alcohol.¹⁴⁴ One evening after visiting his son, Graham collided with McAllister, causing him personal injury; Graham was intoxicated at the time.¹⁴⁵ The trial court found that APAC had actual or constructive knowledge that Graham had been convicted of driving under the influence approximately ten years earlier.¹⁴⁶ However, the court of appeals affirmed summary judgment for APAC because “the DUI conviction . . . was too remote, in itself, to meet the test”¹⁴⁷ and there was insufficient evidence to infer that APAC knew or should have known of Graham’s addiction to intoxicants or habitual drinking.¹⁴⁸

Although the court of appeals decision is correct under the *Restatement* standard, its statements are troublesome because the *Passmore* court’s theory of negligent entrustment¹⁴⁹ is at odds with the *McAllister* standard. Whereas *Passmore* contemplated only an entrustor’s negligence in entrusting a vehicle,¹⁵⁰ *McAllister* emphasized an entrustor’s actual knowledge of an entrustee’s habitual abuse of intoxicants.¹⁵¹ Thus, it appears that the *McAllister* court stated its test in terms of the

138. 287 S.C. 455, 339 S.E.2d 154 (Ct. App. 1986).

139. *Id.* at 458, 339 S.E.2d at 156 (citing *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981); *Nettles v. Your Ice Co.*, 191 S.C. 429, 436–38, 4 S.E.2d 797, 799–800 (1939)); see also *supra* text accompanying notes 8–9 (detailing the *McAllister* test).

140. *McAllister*, 287 S.C. at 458, 339 S.E.2d at 156.

141. See *supra* text accompanying notes 78–85.

142. See *supra* text accompanying notes 32–34.

143. *McAllister*, 287 S.C. at 456, 339 S.E.2d at 155.

144. *Id.*

145. *Id.* at 456–57, 339 S.E.2d at 155.

146. *Id.* at 457, 339 S.E.2d at 155.

147. *Id.* at 458, 339 S.E.2d at 156; see also *supra* text accompanying notes 8–9 (detailing the narrow *McAllister* test).

148. *Id.* at 458, 339 S.E.2d at 156.

149. See *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981).

150. See *id.*

151. *McAllister*, 287 S.C. at 458, 339 S.E.2d at 156.

facts, rather than the underlying theory, of the earlier *Nettles* case.¹⁵² However, the South Carolina Supreme Court in *Nettles* did not set forth a test for negligent entrustment for courts to apply in subsequent cases. Instead, it correctly concluded that Your Ice “failed to exercise due care for the protection and safety of others”¹⁵³ because it had control over a delivery truck, rehired an employee it knew to be a habitual drinker, and entrusted him with the truck when it should have known that doing so would cause an unreasonable risk of harm to others.¹⁵⁴ Your Ice likely breached its duty under any of the standards for negligent entrustment discussed above.¹⁵⁵ Still, in light of the South Carolina Supreme Court’s unambiguous articulation of the theory of negligent entrustment in *Passmore* decades after its decision in *Nettles*, the standard set forth in *McAllister* seems much too narrow.

In *Jackson v. Price*,¹⁵⁶ decided during the same term as *McAllister*, the court of appeals cited the *McAllister* test but did not discuss the test’s application.¹⁵⁷ Davis, the owner of the car involved in the accident, drank six beers in the seven hours leading up to the accident; Price, the driver of the car, drank two or three beers in the hour before the accident.¹⁵⁸ Davis allowed Price to drive his car because Price “seemed sober, . . . was in better shape, and . . . had driven safely earlier” in the day.¹⁵⁹ Price drove into the oncoming lane to avoid a stopped car¹⁶⁰ and collided with Jackson, who died instantly.¹⁶¹

Jackson’s estate sued Davis and Price, alleging that Davis negligently entrusted his car to Price, and the jury returned a verdict against both defendants.¹⁶² On appeal, the court of appeals cited the *McAllister* test for “the elements of negligent entrustment” in South Carolina.¹⁶³ Without extended discussion of the test, the court found that Davis had “negligently entrusted his car to Price in that even though Davis knew that Price had consumed three beers within an hour and a half of the accident, he permitted him to drive his car.”¹⁶⁴

Notably, the court of appeals provided no discussion of the first element of the *McAllister* test: knowledge that the driver was either addicted to intoxicants or had

152. Even if the *McAllister* test only applies to negligent entrustment cases “where the claim is based on the driver’s alleged impairment due to alcohol use,” Kayce H. McCall, Note, *Lydia v. Horton: You No Longer Have to Protect Me from Myself*, 55 S.C. L. REV. 681, 683 (2004), such a narrow formulation is unnecessary. South Carolina’s cases have consistently applied a broader standard consistent with the *Restatement*, see discussion *supra* Part II.B, and the *McAllister* test may deny liability to a deserving injured plaintiff where the entrustor knew the entrustee was intoxicated but not addicted to intoxicants, see *infra* text accompanying notes 216–18.

153. *Nettles v. Your Ice Co.*, 191 S.C. 429, 437, 4 S.E.2d 797, 799 (1939)).

154. *Id.* at 436, 4 S.E.2d at 799.

155. Compare *supra* text accompanying notes 8–9, with *supra* text accompanying notes 13–17.

156. 288 S.C. 377, 342 S.E.2d 628 (Ct. App. 1986).

157. *Id.* at 381–82, 342 S.E.2d at 631 (citing *McAllister v. Graham*, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986)).

158. *Id.* at 378–79, 342 S.E.2d at 629–30.

159. *Id.* at 379, 342 S.E.2d at 630.

160. *Id.*

161. *Id.* at 378–79, 342 S.E.2d at 629–30.

162. *Id.* at 378–79, 342 S.E.2d at 629.

163. *Id.* at 381–82, 342 S.E.2d at 631 (citing *McAllister v. Graham*, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986)).

164. *Id.* at 382, 342 S.E.2d at 631.

the habit of drinking.¹⁶⁵ Although it cited *McAllister*,¹⁶⁶ the court actually applied a broader test; the court held Davis liable for negligent entrustment because Davis had control of his car and should have known Price was likely to drive it in a manner that would create an unreasonable risk of harm.¹⁶⁷ Davis was negligent in entrusting his car to Price regardless of whether Davis knew Price was either addicted to intoxicants or had the habit of drinking. Therefore, although the court of appeals purported to apply the narrower *McAllister* test, its reasoning in holding Davis liable for negligent entrustment actually parallels the broader *Restatement* standard.¹⁶⁸

D. The First Party Limitation on Negligent Entrustment

Although the *Restatement* contemplates a first party action for negligent entrustment,¹⁶⁹ South Carolina does not recognize such an action.¹⁷⁰ In *Lydia v. Horton*, the South Carolina Supreme Court reversed the court of appeals decision and held that South Carolina's public policy, as well as its modified comparative negligence system, bars an intoxicated plaintiff from recovering on a first party negligent entrustment cause of action.¹⁷¹ To highlight the policy considerations that bar a first party claim and to show that these policies support adoption of the *Restatement* standard, a brief discussion of the *Lydia* case is provided.

Lydia was intoxicated, and Horton, the owner of the vehicle involved in the accident, entrusted his car to Lydia.¹⁷² The court found that Horton "knew or, by reason of plaintiff's obvious intoxicated condition, should have known that [Lydia] was incompetent to operate the motor vehicle."¹⁷³ Lydia lost control of the vehicle and hit a tree, causing him serious injury and rendering him a quadriplegic.¹⁷⁴

The South Carolina Court of Appeals adopted *Restatement* sections 308 and 390¹⁷⁵ and reversed the trial court's judgment for Horton.¹⁷⁶ Notably, the court stated that "South Carolina has acknowledged that giving control of property, such as an air rifle, can be negligent" and although not specifically labeled negligent entrustment, "the same rationale is utilized in finding liability."¹⁷⁷ Furthermore, the

165. See *id.*

166. *Id.* at 381–82, 342 S.E.2d at 631 (citing *McAllister*, 287 S.C. at 458, 339 S.E.2d at 156).

167. *Id.* at 382, 342 S.E.2d at 631.

168. See RESTATEMENT (SECOND) OF TORTS § 308 cmt. b, illus. 2 (1965) ("A lends his car to B, whom he knows to be intoxicated. B's intoxicated condition leads him to cause harm to C. A is negligent toward C."); *supra* text accompanying note 13.

169. See RESTATEMENT (SECOND) OF TORTS § 390 cmt. c, illus. 7. This illustration contemplates a first party action in a "lessee/lessor relationship where a third party is injured, which is not analogous" to a "pure first party claim," like the one at issue in *Lydia*. See *Lydia v. Horton*, 355 S.C. 36, 39, 583 S.E.2d 750, 752 (2003).

170. See *Lydia*, 355 S.C. at 38, 583 S.E.2d at 751; McCall, *supra* note 152 (discussing first party negligent entrustment and implications of the supreme court's decision in *Lydia*).

171. *Lydia*, 355 S.C. at 39, 583 S.E.2d at 752.

172. *Lydia v. Horton*, 343 S.C. 376, 379, 540 S.E.2d 102, 104 (Ct. App. 2000), *rev'd*, 355 S.C. 36, 583 S.E.2d 750 (2003).

173. *Id.*

174. *Id.*

175. *Id.* at 385, 540 S.E.2d at 107.

176. *Id.* at 395–96, 540 S.E.2d at 113.

177. *Id.* at 382, 540 S.E.2d at 105.

court observed that negligent entrustment actions often center on “the same premise: an item may be used by someone who is, on account of his youth and want of experience, . . . incapable of evaluating the dangers incident to its use.”¹⁷⁸

The court surveyed South Carolina’s negligent entrustment decisions, noting that the “cases are illustrative of the Court applying the underlying theory of negligent entrustment in a situation other than an intoxicated driver.”¹⁷⁹ The court cited six states that base their negligent entrustment cause of action on *Restatement* section 390,¹⁸⁰ and stated “[m]any of our decisions follow closely the logic of the *Restatement*.”¹⁸¹ However, in light of South Carolina’s comparative negligence system, the court of appeals “conclude[d] this case was decided prematurely” and remanded the case for a comparative negligence determination.¹⁸²

The South Carolina Supreme Court reversed,¹⁸³ finding that Lydia was more than fifty percent negligent as a matter of law, thus barring his claim.¹⁸⁴ Further, the court declined to adopt *Restatement* sections 308 and 390 “on this set of facts.”¹⁸⁵ But the supreme court did not disagree with the court of appeals’ conclusion that South Carolina’s negligent entrustment decisions are in line with the *Restatement*, stating that comment *c* to section 390 was “consistent with” its disposition of the case.¹⁸⁶ Instead, the court grounded its decision in public policy.¹⁸⁷ The court concluded that “the policy considerations which support the legal theory of third party negligent entrustment are undermined by applying them to a first party cause of action.”¹⁸⁸ By examining its decision in *Tobias v. Sports Club, Inc.*,¹⁸⁹ which held that an intoxicated adult could not bring a first party action against a tavern owner who violated the state’s dram shop statutes,¹⁹⁰ the supreme court recognized that the “essence” of that case and *Lydia* were similar: in both cases, a voluntarily intoxicated plaintiff was “attempting to deflect the responsibility that should be imposed upon himself towards another.”¹⁹¹ Further, the court recognized that a third party claim provides adequate deterrence.¹⁹²

178. *Id.* at 383, 540 S.E.2d at 106 (quoting *Dennis v. Timmons*, 313 S.C. 338, 341, 437 S.E.2d 138, 141 (Ct. App. 1993)) (internal quotation marks omitted).

179. *Id.* at 382, 540 S.E.2d at 106 (citations omitted).

180. *Id.* at 383–84, 540 S.E.2d at 106–07 (citing *Keller v. Kiedinger*, 389 So. 2d 129, 132 (Ala. 1990); *Joseph v. Dickerson*, 754 So. 2d 912, 916 (La. 2000); *Sharp v. Odom*, 743 So. 2d 425, 430 (Miss. Ct. App. 1999); *Splawnik v. DiCaprio*, 540 N.Y.S.2d 615, 617 (N.Y. App. Div. 1989); *Meachum v. Faw*, 436 S.E.2d 141, 144 (N.C. Ct. App. 1993); *Denby v. Davis*, 188 S.E.2d 226, 229 (Va. 1972)).

181. *Id.* at 385, 540 S.E.2d at 107 (emphasis added).

182. *Id.* at 395–96, 540 S.E.2d at 113.

183. *Lydia v. Horton*, 355 S.C. 36, 43, 583 S.E.2d 750, 754 (2003).

184. *Id.* at 39–40, 583 S.E.2d at 752.

185. *Id.* at 43, 583 S.E.2d at 754.

186. *Id.* at 40 n.2, 583 S.E.2d at 753 n.2. Comment *c* states that “one who is himself careless in the use of the chattel after receiving it[] is usually in such contributory fault as to bar recovery.” RESTATEMENT (SECOND) OF TORTS § 390 cmt. c (1965).

187. *Lydia*, 355 S.C. at 41–43, 583 S.E.2d at 753–54.

188. *Id.* at 38, 583 S.E.2d at 752.

189. 332 S.C. 90, 504 S.E.2d 318 (1998).

190. *Id.* at 93, 504 S.E.2d at 320.

191. *Lydia*, 355 S.C. at 42, 583 S.E.2d at 754.

192. *Id.* (noting that allowing a third party claim against a tavern owner imposes a duty on the owner to use “judgment and discretion,” which the court did not believe would be exercised “less prudently” if the owner could only be sued by third parties (citing *Tobias*, 332 S.C. at 92, 504 S.E.2d at 320)); see also *infra* text accompanying notes 243–52 (discussing other public policy considerations

The narrow *McAllister* test¹⁹³ does not serve the court's articulated policy of holding an actor responsible for the actor's own negligence. Under the *McAllister* test, an entrustor who would be negligent under the *Restatement*¹⁹⁴ could possibly deflect responsibility for a third party's injury if the entrustor did not know the trustee was addicted to intoxicants. Therefore, the South Carolina Supreme Court has recognized that the policy goals that support denying a first party negligent entrustment claim are consistent with the broader *Restatement* standard for third party claims.

III. *GADSON V. ECO SERVICES OF SOUTH CAROLINA, INC.*

In *Gadson v. ECO Services of South Carolina, Inc.*,¹⁹⁵ the most recent South Carolina Supreme Court opinion regarding negligent entrustment, the court declined to adopt *Restatement* sections 308 and 390 in a third party action based on the facts of the case.¹⁹⁶ In doing so, the supreme court reversed the court of appeals, which had applied *Restatement* section 308 and imposed liability for negligent entrustment.¹⁹⁷ Without extended discussion of the appropriate standard, the supreme court applied the *McAllister* test to determine that an employer was not liable for its employee's entrustment of a company vehicle to a friend who had consumed wine coolers and later caused an accident.¹⁹⁸ Although the court would be correct under either the narrow *McAllister* test or the broader *Restatement* standard, the court's language implies that the standard in South Carolina is narrower than it actually is. Therefore, in light of the preceding discussion of negligent entrustment caselaw in South Carolina,¹⁹⁹ and to demonstrate that *Gadson* should be limited to its facts, an extended discussion of the case is provided.

Jenkins was an employee of ECO Services of South Carolina, Inc. (ECO), and was driving ECO's truck the night of the accident.²⁰⁰ Instead of returning the vehicle to his employer's office in Hilton Head, Jenkins drove the truck to Hardeeville and picked up several passengers, including his cousin, John Jenkins (John), and Gadson.²⁰¹ Jenkins took them to a restaurant and then to a store where John purchased "one or two wine coolers," which he shared with one of the passengers, and then the group drove to Purrysburg Landing.²⁰² John drove back to Hardeeville, ultimately losing control of the truck, causing injuries to several passengers, including Gadson, who were thrown from the truck and injured.²⁰³

supporting the court's decision in *Lydia*).

193. See *supra* text accompanying notes 8–9.

194. See *supra* text accompanying notes 2–4.

195. 374 S.C. 171, 648 S.E.2d 585 (2007).

196. *Id.* at 177, 648 S.E.2d at 588.

197. *Id.* at 175–76, 648 S.E.2d at 587–88 (citing *Gadson v. ECO Servs. of S.C.*, No. 2005-UP-130, slip op. at 4, 7 (S.C. Ct. App. Feb. 18, 2005)).

198. *Id.* at 176–79, 648 S.E.2d at 588–89.

199. See discussion *supra* Part II.

200. *Id.* at 174, 648 S.E.2d at 587.

201. *Id.*

202. *Id.*

203. *Id.*

Gadson sued ECO and Jenkins, alleging negligence and negligent entrustment.²⁰⁴ The jury returned a verdict against the defendants, finding ECO negligently entrusted the vehicle to Jenkins, and Jenkins negligently entrusted the vehicle to John.²⁰⁵ Applying *Restatement* section 308, the court of appeals reversed as to ECO's liability, finding ECO "neither knew nor should have known [Jenkins] intended or was likely to use the truck in such a manner as to create an unreasonable risk of harm to others."²⁰⁶ However, the court of appeals affirmed the verdict as to Jenkins, finding that Jenkins "knew or should have known John's use of the vehicle was likely to cause harm," given the family relationship between the two men and John's consumption of alcohol before driving.²⁰⁷

When Jenkins appealed, the supreme court cited to *Jackson v. Price* for the *McAllister* test for negligent entrustment.²⁰⁸ After noting that the court of appeals had applied a different definition of the cause of action based on the *Restatement*,²⁰⁹ the supreme court "decline[d] to adopt sections 308 and 390 of the *Restatement* based on this set of facts."²¹⁰ The court then concluded that the court of appeals erred in finding Jenkins "knew John would cause harm because [he] knew John had been drinking alcohol prior to driving the vehicle."²¹¹ The court also concluded that the court of appeals erred in finding Jenkins knew John "would cause harm simply because John was [his] cousin."²¹² Specifically, the court found that

[t]he sole evidence supporting the claim for negligent entrustment against [Jenkins] is the fact John had one or two wine coolers prior to driving. Knowledge that a driver has had a drink or two is a far cry from meeting the first element of negligent entrustment that there be knowledge [by] . . . the owner that the driver was either addicted to intoxicants or had the habit of drinking.²¹³

Further, based on evidence that John consumed "as little as half of a wine cooler," there was no reason for either Jenkins or Gadson to know that John was intoxicated.²¹⁴ Also, because there was no evidence Jenkins knew of John's "drinking habits, driving record, or general behavior," it was error to assume that Jenkins "was aware of John's character simply because [they] are cousins."²¹⁵

Justice Pleicones, who concurred in the decision, would have adopted sections 308 and 390 "as alternative methods of proving negligent entrustment."²¹⁶ Justice

204. *Id.*

205. *Id.* at 174–75, 648 S.E.2d at 587.

206. *Id.* at 175, 648 S.E.2d at 587.

207. *Id.* at 175, 648 S.E.2d at 587–88.

208. *Id.* at 176, 648 S.E.2d at 588 (citing *Jackson v. Price*, 288 S.C. 377, 381–82, 342 S.E.2d 628, 631 (Ct. App. 1986)).

209. *Id.* at 176, 648 S.E.2d at 588.

210. *Id.* at 177, 648 S.E.2d at 588 (emphasis added).

211. *Id.*

212. *Id.* at 178, 648 S.E.2d at 589.

213. *Id.* at 177, 648 S.E.2d at 588–89.

214. *Id.* at 177, 648 S.E.2d at 589.

215. *Id.* at 178, 648 S.E.2d at 589.

216. *Id.* at 179, 648 S.E.2d at 589 (Pleicones, J., concurring).

Pleicones identified a “loophole” in the majority’s “current” formulation of the elements for negligent entrustment: the test would not impose liability on a person who allowed another to drive a vehicle “knowing that the driver was intoxicated” but would only impose liability if the person knew that “the driver was a habitual drinker or addicted to alcohol.”²¹⁷ Justice Pleicones argued that “adoption of sections 308 and 390 would eliminate this loophole.”²¹⁸ Still, Justice Pleicones thought the case was correctly decided under either standard because there was no evidence that Jenkins “knew or should have known that [John] was likely to operate the vehicle in a manner which created an unreasonable risk of harm.”²¹⁹

Although Jenkins did not breach his duty of care under either the *McAllister* test²²⁰ or the *Restatement*,²²¹ and thus application of the *McAllister* test was not outcome determinative, the majority’s opinion is still troublesome. The opinion narrowly defines the standard of negligent entrustment without recognizing South Carolina precedent applying a broader standard. For example, the court noted that “[a]ccording to [South Carolina] case law, the elements of negligent entrustment” are stated in the *McAllister* test.²²² The court thus looked to two decisions by the court of appeals for the elements of negligent entrustment without first considering its own precedent in *Passmore*, where it cited a broader standard that is consistent with prior caselaw and the *Restatement*.²²³ Additionally, the court concluded by noting that the trial court should have granted Jenkins’s motion for a directed verdict because “[Gadson] failed to submit any evidence establishing the necessary elements of negligent entrustment.”²²⁴ This statement seemingly limits the doctrine’s scope, implying that liability would not attach for entrusting an automobile without knowledge of addiction to intoxicants or habitual alcohol use, even where the entrustor knew the driver was intoxicated. However, South Carolina has employed the negligent entrustment analysis in cases involving chattel other than automobiles,²²⁵ automobile cases not involving an intoxicated driver,²²⁶ and automobile cases involving an intoxicated driver without requiring addiction to

217. *Id.*

218. *Id.*

219. *Id.*

220. See *supra* text accompanying notes 8–9.

221. See *supra* text accompanying notes 2–4.

222. *Gadson*, 374 S.C. at 176, 648 S.E.2d at 588.

223. See *supra* text accompanying notes 83–84.

224. *Gadson*, 374 S.C. at 179, 648 S.E.2d at 589.

225. See, e.g., *Howell v. Hairston*, 261 S.C. 292, 296, 199 S.E.2d 766, 767 (1973) (air rifle); *Dennis v. Timmons*, 313 S.C. 338, 339, 437 S.E.2d 138, 140 (Ct. App. 1993) (screwdriver).

226. See, e.g., *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981) (holding that the “[e]ssential elements” of negligent entrustment were absent where the named insured did not own or have control over the car and was not responsible for its use); *Wineglass v. McMinn*, 235 S.C. 537, 541, 112 S.E.2d 652, 654 (1960) (holding a defendant liable where the defendant’s employee left his fourteen-year-old assistant in the defendant’s delivery truck with the keys in the ignition and the assistant backed the truck into the plaintiff’s car, injuring the plaintiff); *Howle v. McDaniel*, 232 S.C. 125, 136–37, 101 S.E.2d 255, 261 (1957) (finding a bailor of an automobile with a weak battery and headlights not liable for negligent entrustment where the defendant was injured after colliding with the automobile).

intoxicants or habitual alcohol consumption.²²⁷ Therefore, the court's narrow statements in *Gadson* are inconsistent with prior South Carolina precedent recognizing a broader standard of negligent entrustment.

Interestingly, the facts of *Gadson*²²⁸ are very similar to those of *Jackson*,²²⁹ which the majority cited for the elements of the *McAllister* test²³⁰; both cases involved a person in control of a motor vehicle who entrusted his vehicle to a person who had consumed alcohol before driving,²³¹ and in both cases the courts defined the negligent entrustment standard narrowly.²³² In *Jackson* the court of appeals found the defendant liable for negligent entrustment²³³ under a broader standard analogous to the *Restatement*, even though it cited the narrow *McAllister* test.²³⁴ Conversely, in *Gadson*, the court found that Jenkins was not liable under the *McAllister* test or the *Restatement*, because “[k]nowledge that a driver has had a drink or two is a far cry from meeting the first element of negligent entrustment.”²³⁵ Hypothetically, if Jenkins had known John was intoxicated when he entrusted him with the vehicle, the *Restatement* would impose liability while the *McAllister* test would not. This distinction illustrates Justice Pleicones's loophole,²³⁶ which the supreme court could close by adopting *Restatement* sections 308 and 390.

IV. THE IMPORTANCE OF SOUTH CAROLINA'S DECISION TO ADOPT THE RESTATEMENT STANDARD

In light of South Carolina's caselaw recognizing a standard of negligent entrustment consistent with the *Restatement*,²³⁷ it may not matter whether its courts adopt sections 308 and 390. However, to facilitate a standard consistent with prior caselaw that applies in all negligent entrustment cases and to support South Carolina's policy goals, the South Carolina Supreme Court should adopt the *Restatement* sections.

Ultimately, only two negligent entrustment cases in South Carolina have discussed and applied the first element of the *McAllister* test.²³⁸ In both cases, the

227. See, e.g., *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 486–87, 18 S.E.2d 331, 336 (1942) (holding a taxi company liable for its employee's negligence in placing an intoxicated passenger in his cab with the keys in the ignition and leaving the cab, thus allowing the passenger to drive the cab and injure the plaintiffs).

228. See *Gadson*, 374 S.C. at 174, 648 S.E.2d at 587.

229. See *Jackson v. Price*, 288 S.C. 377, 378–79, 342 S.E.2d 628, 629–30 (Ct. App. 1986).

230. *Gadson*, 374 S.C. at 176, 648 S.E.2d at 588 (citing *Jackson*, 288 S.C. at 381–82, 342 S.E.2d at 631).

231. See *id.* at 174, 648 S.E.2d at 587; *Jackson*, 288 S.C. at 379, 342 S.E.2d at 630.

232. See *Gadson*, 374 S.C. at 176, 648 S.E.2d at 588; *Jackson*, 288 S.C. at 381–82, 342 S.E.2d at 631.

233. *Jackson*, 288 S.C. at 382, 342 S.E.2d at 631.

234. *Id.* at 382, 342 S.E.2d at 631 (“There is evidence in the record that Davis negligently entrusted his car to Price, in that even though Davis knew that Price had consumed three beers within an hour and a half of the accident, he permitted him to drive his car.”); see also source cited *supra* note 168 (noting an analogous situation illustrated in *Restatement* section 308).

235. *Gadson*, 374 S.C. at 177, 648 S.E.2d at 588–89.

236. See *supra* text accompanying notes 216–18.

237. See discussion *supra* Part II.A–B.

238. See *Gadson* 374 S.C. at 177–78, 648 S.E.2d at 588–89; *McAllister v. Graham*, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986).

court found that the defendants were not liable under that test.²³⁹ However, under the facts of those cases, the defendants would not have been liable under the *Restatement* either.²⁴⁰ Additionally, in *Jackson*, decided the same year as *McAllister*, the court, without discussion of the first element of the *McAllister* test, held an actor liable for negligent entrustment despite his lack of knowledge that the trustee was addicted to intoxicants or had the habit of drinking.²⁴¹ Furthermore, South Carolina courts have articulated and applied broader standards consistent with the *Restatement* before *McAllister*.²⁴² Thus, courts have not uniformly applied the *McAllister* test, and the test is inconsistent with prior caselaw.

In *Lydia v. Horton*, the South Carolina Supreme Court stated that “the policy considerations which support the legal theory of third party negligent entrustment are undermined by applying them to a first party cause of action.”²⁴³ The court then recognized that the policy goal of holding voluntary actors responsible for injuries caused by negligence is undermined in a first party action where a plaintiff “is attempting to deflect the responsibility that should be imposed upon himself towards another.”²⁴⁴ Further, the supreme court stated that the public policy considerations that govern the tort of negligent entrustment stem from “South Carolina’s regulation of the sale of alcohol”²⁴⁵ and noted that the “same policy considerations” announced in *Tobias v. Sports Club, Inc.*²⁴⁶ apply.²⁴⁷ In *Tobias*, the supreme court agreed with the court of appeals that the purpose of South Carolina’s dram shop statutes²⁴⁸ is “to promote public safety”²⁴⁹ and to “impos[e] upon the tavern owner a duty to use judgment and discretion.”²⁵⁰ However, the court disagreed with the view that a first party action would deter a tavern owner from over-serving a plaintiff.²⁵¹ Moreover, the court continued to allow third party actions, stating that it did not believe “the owner will exercise . . . judgment and discretion [in serving intoxicated patrons] less prudently if he risks a law suit only when the intoxicated person injures others.”²⁵² Given the decision by the court to allow third party actions, South Carolina’s standard for third party negligent

239. See *Gadson*, 374 S.C. at 178–79, 648 S.E.2d at 589; *McAllister*, 287 S.C. at 458–59, 339 S.E.2d at 156.

240. See *Gadson*, 374 S.C. at 179, 648 S.E.2d at 589 (Pleicones, J., concurring).

241. See *Jackson v. Price*, 288 S.C. 377, 382, 342 S.E.2d 628, 631 (Ct. App. 1986).

242. See, e.g., *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981) (“[An] owner or one in control of [a] vehicle and responsible for its use who is negligent in entrusting it to another can be held liable for such negligent entrustment.” (quoting *Bahm v. Dormanen*, 543 P.2d 379, 381 (Mont. 1975)) (internal quotation marks omitted)); *Howle v. McDaniel*, 232 S.C. 125, 132, 136–37, 101 S.E.2d 255, 259, 261 (1957) (providing that the owner of an automobile will only be liable for entrusting a vehicle to another when the owner entrusts the “automobile to one whom he knows to be so reckless or incompetent that danger to third persons would be a reasonably probable consequence of his operation of it”).

243. 355 S.C. 36, 38, 583 S.E.2d 750, 752 (2003).

244. *Id.* at 42–43, 583 S.E.2d at 754.

245. *Id.* at 41, 583 S.E.2d at 753.

246. 332 S.C. 90, 92, 504 S.E.2d 318, 319–20 (1998).

247. *Lydia*, 355 S.C. at 42, 583 S.E.2d at 754.

248. S.C. CODE ANN. §§ 61-4-580(2), -6-2220 (Supp. 2006).

249. *Tobias*, 332 S.C. at 92, 504 S.E.2d at 319.

250. *Id.* at 92, 504 S.E.2d at 320.

251. *Id.* at 93, 504 S.E.2d at 320.

252. *Id.* at 92, 504 S.E.2d at 320.

entrustment should further the state's policy goals of responsibility, public safety, and discretion.

As a matter of policy, the *McAllister* test does not deter conduct that endangers the general public because it only holds an actor liable for entrusting a vehicle to another person only if the actor knows that the person is intoxicated *and* that the person either is addicted to intoxicants or habitually drinks.²⁵³ Thus, an actor may escape liability under this standard even if the actor knows the other person is intoxicated. Surely such a standard does not promote citizen responsibility, public safety, or enhanced discretion. The *Restatement* sections do promote South Carolina's policy goals. First, these sections hold a supplier of a chattel liable for resulting injuries where the supplier knows or should know the person entrusted with the chattel is likely to use it in a manner involving an unreasonable risk of harm, regardless of whether the supplier knows the other person's habits.²⁵⁴ If an actor knows another person is intoxicated and still entrusts a vehicle to the other person, South Carolina public policy requires the actor to be held responsible for any resulting injury.²⁵⁵ Next, as illustrated by Justice Pleicones's articulation of the *McAllister* test's loophole,²⁵⁶ public safety is not protected where actors are permitted to entrust their vehicle to others they know are intoxicated, as long as they have no knowledge of their trustee's habits.²⁵⁷ Finally, through its broader standard that requires actual *or* constructive knowledge of incompetence, the *Restatement* furthers the policy goal of discretion by encouraging actors to use good judgment when entrusting a chattel to another.²⁵⁸ Because almost all South Carolina negligent entrustment cases have applied a standard consistent with the *Restatement*,²⁵⁹ the South Carolina Supreme Court should adopt sections 308 and 390 to provide consistency in the standard and further the state's policy goals.²⁶⁰ Likewise, because the *McAllister* test contravenes South Carolina public policies

253. See *supra* text accompanying notes 216–18 (discussing Justice Pleicones's loophole); cf. HUBBARD & FELIX, *supra* note 1, at 6 (discussing the importance of liability as a deterrent to wrongful conduct). Indeed, a court might use this narrow test to deny liability when liability should be and would be found under the *Restatement*.

254. See RESTATEMENT (SECOND) OF TORTS §§ 308, 390 (1965).

255. See HUBBARD & FELIX, *supra* note 1, at 5 (“[O]nce it has been determined that the defendant’s act was wrongful and that it has caused injury to the victim, then the presumption in favor of liability is both useful and understandable . . .”).

256. See *supra* text accompanying notes 216–18.

257. Cf. HUBBARD & FELIX, *supra* note 1, at 6 (“One reason for making a defendant liable in tort for injuries resulting from a breach of his duty is to *prevent such injuries from occurring*.”) (emphasis added). Thus, the wrongful conduct of drinking and driving is deterred less where the defendant’s duty is defined narrowly, as it is by the *McAllister* test.

258. See *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92, 504 S.E.2d 318, 320 (1998); HUBBARD & FELIX, *supra* note 1, at 7–8, 8 n.16 (discussing the role of the “calculus of risk” in making informed decisions).

259. See discussion *supra* Part II.A–B.

260. The cases involving a defendant’s duty to safeguard a chattel from use by a third party who might cause harm further illustrate that South Carolina has recognized the connection between control and tort duties. Because the *Restatement* emphasizes the right to control a chattel as the source of the duty, these cases also support adoption of sections 308 and 390. See *supra* text accompanying notes 21–23.

announced in supreme court precedent,²⁶¹ the holdings in cases such as *Gadson* should be limited to their facts.

V. CONCLUSION

South Carolina has consistently applied a negligent entrustment standard analogous to *Restatement* sections 308 and 390,²⁶² even in cases other than those involving automobiles and intoxicated drivers.²⁶³ In every case where the court found liability, the defendant had the right to control the entrusted chattel.²⁶⁴ Moreover, the South Carolina Supreme Court has recognized that when the “[e]ssential elements” of negligent entrustment, like “control over the car” or “responsib[ility] for its use,” are missing, the defendant will not be held liable for injury resulting from entrustment.²⁶⁵ Although a minority of South Carolina decisions involving intoxicated drivers cite a narrower standard for negligent entrustment,²⁶⁶ the large majority of cases recognize that where an actor has the right to control a chattel, the actor breaches the corresponding duty of due care by entrusting the chattel to a person the actor knows or should know will use it in a way that causes an unreasonable risk of harm to others.²⁶⁷

However, *McAllister* and *Gadson* present two exceptions to use of the general standard, as they are the only two cases to discuss and apply the first element of the narrow *McAllister* test. In both cases the defendants did not breach their duty even under the broader *Restatement* standard, and thus, it is unclear what purpose the *McAllister* test advances. It is clear, however, that the *McAllister* test creates a loophole²⁶⁸ that does not further the important South Carolina policy goals of citizen responsibility, public safety, and informed judgment and discretion.

Finally, because South Carolina’s courts have applied a standard consistent with the *Restatement* in a majority of negligent entrustment cases, the supreme court’s overly broad language in *Gadson* regarding the duty and the elements of the

261. See *Lydia v. Horton*, 355 S.C. 36, 42–43, 583 S.E.2d 750, 753–74 (2003); *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 92–93, 504 S.E.2d 318, 319–20 (1998).

262. See discussion *supra* Part II.B. South Carolina has also recognized the importance of a defendant’s right to control a chattel in creating a duty of due care to safeguard the chattel from use by a person who might cause harm. See *supra* text accompanying notes 21–23.

263. See cases cited *supra* notes 19–20.

264. See discussion *supra* Part II.B.

265. *Am. Mut. Fire Ins. Co. v. Passmore*, 275 S.C. 618, 621, 274 S.E.2d 416, 418 (1981). Notably, the theory of negligent entrustment in *Passmore* is quoted from *Bahm v. Dormanen*, 543 P.2d 379, 381 (Mont. 1975), a case involving an intoxicated driver that explicitly recognized the importance of control in creating the defendant’s duty of due care in entrustment. *Passmore*, 275 S.C. at 621, 274 S.E.2d at 418. In *Bahm*, Tripp loaned a truck to the defendant and the defendant’s friend, and the defendant’s friend drove the truck while intoxicated and injured the plaintiff. *Bahm*, 543 P.2d at 380–81. The Montana Supreme Court examined “the scope of the concept of control as it relates to negligent entrustment” under *Restatement* sections 308 and 390. *Id.* at 381–82. Although Tripp loaned the truck to both men, the court affirmed summary judgment for the defendant because he proved “the absence of one of the elements of negligent entrustment—the *right of control* over the vehicle.” *Id.*

266. See discussion *supra* Part II.C.

267. See discussion *supra* Part II.B.

268. See *supra* text accompanying notes 216–18.

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tort of negligent entrustment is inconsistent with its precedent. Thus, to facilitate consistency and clarity in the law of negligent entrustment, the Supreme Court of South Carolina should adopt *Restatement* sections 308 and 390, and the holdings of cases like *Gadson* should be viewed in light of their particular facts.

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