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and for your own profit and an injury results, the risk of paying for that harm should rest upon you rather than upon the person who quite innocently gets injured."[36]

Here it is not so much a matter of respective wealth, rather it is a matter of the company's capacity to absorb the loss.[37] In actuality all that is being done is simply distributing the risk to the general public. It has been demonstrated that "in the long run the burden we impose on an enterprise for the benefit of society, will be shifted to society."[38]

In the situation herein considered, the company has knowingly and voluntarily assumed the risk of litigation and, having thus assumed the risk, should now bear the burden. Only through such an approach will it be made certain that ". . . the insurance company no longer holds the assured 'in the hollow of its hands.'"[39]

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Parental Responsibility and the Financially Irresponsible Youthful Driver in Ohio

Motor vehicles travel an estimated thirty-six billion miles per year on the streets and highways of Ohio.[1] While the social advantages, in terms of communication and mobility, are great, the harm, in terms of personal injury and property damage caused by automobiles, cannot be considered less than appalling. During 1957, there were 154,544 reportable[2] accidents in Ohio, of which 79,385 resulted in personal injuries and 2,044 in fatalities.[3] This staggering rate of death and injury has produced many problems, both legislative and judicial, not the least of which has been the problem of compensation for accident victims. A blameworthy driver's inability to respond in damages has left many an innocent party without any recourse. There were 39,243 drivers under the age of twenty-one years involved in reportable accidents during 1957, and the problems of compensation involved in this area are particularly acute, since the youthful motorist is more likely to be financially irresponsible than is the adult driver.

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[36] ELDREDGE, *supra* note 33 at 34.

[37] PROSSER, TORTS § 4 (2d ed. 1955).

[38] Isaacs, *Fault and Liability*, 31 HARV. L. REV. 954 (1918).

[39] Ga. Life Ins. Co. v. Miss. Cent. R.R. Co., 116 Miss. 114, 76 So. 646 (1917) (dissent).

THE PROBLEM IN THE COURTS

With the advent of the automobile, countless accident victims found themselves in the following situation. Having been injured as a result of the negligence of a youthful driver, a victim learns that the youth has no assets of his own; he doesn't even own an automobile, having been driving the family car at the time of the accident. Realizing that a suit against the minor would be a futile effort, the victim feels he ought to be able to look to the youth's father for compensation. He finds this path blocked, however, by a formidable obstacle, in the form of the traditional rules of tort liability. The relation of parent and child involved no fusion of legal identity, and the parent was not responsible for the torts of the child merely because of the parental relationship.[4] Thus, many an innocent victim had to remain uncompensated even though the owner of the automobile involved may have been in a position to pay the damages. He could only recover against the father on some theory apart from the family relationship itself, such as ratification of the act,[5] or an actual master-servant relationship between the father and the child.[6]

Faced with the obvious hardship that the traditional rules of tort liability imposed upon such victims, many courts solved the problem by seizing upon a concept already firmly embedded in judicial precedent and "bending" it to fit the exigencies of the times. The concept utilized was that of agency, and the doctrine that was molded out of it was the "family purpose" or "family car" doctrine, a species of implied agency. The rationale was that the parent, having supplied a car for the pleasure and general use of his family, made the pleasure to be derived from its use his business or affair. The pleasure of each member of the family is a part of the family pleasure, so that a member driving the car solely for his own enjoyment can be said to be furthering the "business" of the parents.[7] Thus, these courts found a master-servant relationship, and

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[1] 1956 estimate furnished by the Ohio Department of Highway Safety, Statistical Division.

[2] OHIO REV. CODE § 4509.01 (J) defines accidents reportable under the Financial Responsibility Law to include all motor vehicle accidents resulting in bodily injury or death or damage to the property of any one person in excess of $100.

[3] These and other statistics cited in this paragraph were obtained from the 1957 Annual Summary of Motor Vehicle Traffic Accidents in Ohio, compiled by the Ohio Department of Highway Safety, Statistical Division.

[4] PROSSER, TORTS 680 (2d ed. 1955).

[5] Howell v. Norton, 134 Miss. 616, 99 So. 440 (1924).

[6] Broadstreet v. Hall, 168 Ind. 192, 80 N.E. 145 (1907).

[7] 2 HARPER & JAMES, TORTS § 26.15 (1956).

the father was held vicariously liable for the tort of his child, regardless of the fact that the child was on a mission of his own.[8] This doctrine has been adopted in about one-half of the states.[9]

The remaining half of the jurisdictions have expressly rejected the doctrine, however, being unwilling to disrupt the well settled principles of tort liability.[10] Ohio has cast its lot with this group of decisions. In *Elms v. Flick*,[11] the Ohio Supreme Court firmly rejected the family car doctrine. Defendant's unemancipated son was driving the family car, as he had general permission to do, when he negligently struck the plaintiff. The trial court submitted the case to the jury under a charge embodying the theory that the father would be liable if he purchased the car for the use of his family and permitted his son to drive it. This was held to be erroneous. The opinion reiterated the principle that a parent is not liable for the torts of his child unless the parent in some way participates in that tort.

> The mere fact of the relationship as father and son therefore does not give rise to liability of the former for the acts of the latter. The principle of *respondeat superior* has no application where there is no relation of master and servant or principal and agent.[12]

In Ohio, therefore, a victim of a youth's negligent driving of his father's car was left without recourse if the child proved financially irresponsible. In order to reach the pocket-book of a parent, the plaintiff would have to qualify for relief under one of the settled principles of tort liability, such as negligent intrustment or actual agency. Thus, when a father intrusted his car to an inexperienced fourteen year old son for a pleasure trip, it was held that there was a jury question presented as to the competence of the boy; the father could thus be held liable, not on a theory of ownership or agency, but on the combined negligence of the owner and the driver, the negligence of the father being founded upon intrusting the car to an incompetent driver.[13] It is important to

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[8] Lattin, *Vicarious Liability and the Family Automobile,* 26 MICH. L. REV. 846 (1928).

[9] Typical among the cases which announce the doctrine are the following: Watson v. Burley, 105 W. Va. 416, 143 S.E. 95 (1928); Kayser v. Van Nest, 125 Minn. 277, 146 N.W. 1091 (1914); Graham v. Page, 300 Ill. 40, 132 N.E. 817 (1921); Philips v. Winchester, 100 Conn. 12, 122 Atl. 792 (1923). Cases collected in Annot., 132 A.L.R. 981 (1941).

[10] Some cases which rejected the doctrine are: Doran v. Thomsen, 76 N.J.L. 754, 71 Atl. 296 (1908); Van Blaricom v. Dodgson, 220 N.Y. 111, 115 N.E. 443 (1917); Spence v. Fisher, 184 Cal. 209, 193 Pac. 255 (1920); Markle v. Perot, 273 Pa. 4, 116 Atl. 542 (1922).

[11] 100 Ohio St. 186, 126 N.E. 66 (1919).

[12] *Id.* at 193, 126 N.E. at 68.

[13] Elliot v. Harding, 107 Ohio St. 501, 140 N.E. 338 (1923).

note that in the area of negligent intrustment the normal rule is that intrustment of a car by the owner to a person who has no operator's license will not in itself constitute negligence as a matter of law.[14] It is negligence per se, however, to intrust a motor vehicle to a minor under the age at which he would be eligible to obtain a license, the theory being that the prohibitory enactment[15] itself is a conclusive declaration that a minor under the specified age is incompetent to drive an automobile.[16]

In addition to these theories of negligent intrustment, the law of agency may also provide a means of recovery against a parent. The owner of a motor vehicle is liable for its negligent or reckless operation by an employee or agent acting within the scope of employment,[17] and there is no reason why a member of one's family may not be an agent or servant of the head of the family. Even the cases rejecting the family purpose doctrine have expressly stated that the parent would be liable if the child was operating the car as the agent or employee of the parent.[18] Moreover, if the owner was present in the car, there arises a rebuttable presumption that the driver is acting as his agent; in the absence of rebutting evidence, the negligence of the driver is imputable to the owner.[19] The courts have, however, been steadfast in their adherence to strict principles of agency; doctrinal grounds have not been overly stretched to alleviate the situation fostered by the rejection of the family purpose doctrine. It has, for instance, been held that the statutory duty to send a child to school creates no agency when the son drives his father's car to school, where there is no evidence that he had express or implied authority to do so.[20]

THE PROBLEM IN THE LEGISLATURE

I. OHIO REV. CODE § 4507.07

Cognizant of the tremendous problems that existed in the area of

[14] Mt. Nebo Baptist Church v. Cleveland Crafts Co., 154 Ohio St. 185, 93 N.E.2d 668 (1950).

[15] OHIO REV. CODE § 4507.31 prohibits any person from permitting any minor under eighteen years of age to drive, unless such minor first obtains an operator's license.

[16] Wery v. Seff, 136 Ohio St. 307, 25 N.E.2d 692 (1940).

[17] Fowler v. Cleveland, 100 Ohio St. 158, 126 N.E. 72 (1919).

[18] Elms v. Flick, 100 Ohio St. 186, 126 N.E. 66 (1919); Bretzfelder v. Demaree, 102 Ohio St. 105, 130 N.E. 505 (1921).

[19] Riley v. Speraw, 42 Ohio App. 207, 181 N.E. 915 (1931). The rule was also applied to a situation in which a wife was driving in the presence of her husband, who owned the car. The contributory negligence of the wife was imputable to the husband, barring him from recovery for damage to his car. Ross v. Burgan, 163 Ohio St. 211, 126 N.E.2d 592 (1955).

[20] Littler v. Voigt, 21 Ohio App. 285, 153 N.E. 311 (1925).

compensation of accident victims, and of the lack of remedial action forthcoming from the courts, the Ohio General Assembly has enacted a statute which forbids the granting of driving license to any person under eighteen years of age, unless the application is signed by a parent, guardian, or some other responsible person.

> Any negligence or wilful misconduct of a minor under eighteen when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application, which person shall be jointly and severally liable with such minor for any damage caused by such negligence or wilful misconduct.[21]

This statute and its counterpart in other states have been construed fairly literally. The negligence imputable comprehends all negligence, including contributory negligence.[22] Furthermore, this section does not relieve a guest from meeting the requirements of the guest statute;[23] wanton misconduct on the part of the son must be found in order to create liability against the father who has signed the application.[24] Similar laws have been elsewhere held to impose liability on the signing parent even after the subsequent marriage of a minor daughter;[25] but parental liability will cease upon expiration of the license, notwithstanding the fact that the child has not yet reached his eighteenth birthday.[26] Similarly, the liability of the parent extends only to the time when the minor reaches his eighteenth birthday, even though the original license, the application for which was signed by the parent, is still in effect.[27]

This statute, insofar as it goes, solves many of the problems dealt with by this note. Its weaknesses and shortcomings are, however, only too apparent. As noted, its operation ceases when the minor reaches eighteen; thus, the situation remains unchanged in regard to unemancipated youths over eighteen. It also fails to alter the situation respecting an unlicensed driver who has attained driving age, and it must be borne in mind that the theory of negligent intrustment cannot here be absolutely relied upon as a means of recovery against the parent, since the intrustment of an automobile to an unlicensed driver who is of age to drive will not be negligence as a matter of law.[28] Thus, this statute alone cannot be considered a panacea to the ills dealt with in this note.

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[21] OHIO REV. CODE § 4507.07.

[22] Hartough v. Brint, 101 Ohio App. 350, 140 N.E.2d 34 (1955).

[23] OHIO REV. CODE § 4515.02.

[24] Tighe v. Diamond, 149 Ohio St. 520, 80 N.E.2d 122 (1948).

[25] Easterly v. Cook, 140 Cal. App. 115, 35 P.2d 164 (1934).

[26] Houston v. Holmes, 202 Miss. 300, 32 So.2d 138 (1947); Sommers v. Van Der Linden, 24 Cal. App.2d 375, 75 P.2d 83 (1938).

[27] Garrett v. Lyden, 161 Ohio St. 385, 119 N.E.2d 289 (1954).

[28] Mt. Nebo Baptist Church v. Cleveland Crafts Co., 154 Ohio St. 185, 93 N.E.2d 668 (1950).

II. *The Financial Responsiblity Law*

The other major piece of legislation having to do with this problem of parental responsibility is the Financial Responsibility Law. It was first enacted in 1935, amended in 1943, and its present form codified by the ninety-ninth General Assembly in 1953.[29] The avowed purpose of the act was to "eliminate the reckless and irresponsible driver from the highways, and to provide for the giving of security and proof of financial responsibility by persons driving or owning motor vehicles."[30]

There are three principal facets to the law designed to achieve these goals. The first involves accident reporting; the driver or owner must file a report with the Registrar of Motor Vehicles of any accident involving death or personal injury or property damage of $100 to the property of any one person. If the report shows that no insurance was in effect, then the amount of damages for which each person could be held liable will be determined. The person will be notified, and must then deposit security in that amount.[31] In no case will the required amount exceed $5,000 for death or injury to one person, $10,000 for two or more persons, or $5,000 for property damage.[32] Failure to deposit security will result in suspension of driving and registration privileges for one year. The security will be returned after one year if no suit is pending, but all judgments before that time will be paid out of the deposited security. The second phase of the law requires the suspension of the registration and driving privileges of any person convicted of one of five major traffic offenses[33] unless the motorist gives, and thereafter maintains, evidence of financial responsibility.[34] The third major provision requires the Registrar of Motor Vehicles to suspend driving and registration privileges of a person who has not satisfied a judgment within thirty days after it has become final. The privileges cannot be restored until the judgment is satisfied or an agreement is made for its payment in installments, and the individual will also have to give and

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[29] OHIO REV. CODE c. 4509.

[30] 124 OHIO LAWS 563 (1951).

[31] OHIO REV. CODE § 4509.12.

[32] OHIO REV. CODE §§ 4509.15 and 4509.20.

[33] The offenses are: 1) automobile manslaughter, 2) perjury in making out a false affidavit under the driver's license laws, 3) use of a car in commission of a felony, 4) driving while intoxicated, 5) failure to stop after an accident. OHIO REV. CODE § 4507.16.

[34] Proof of financial responsibility is defined as proof of the ability to respond in damages in the amount of $5,000 because of bodily injury or death of one person, $10,000 for two or more persons, and $5,000 for the property damage. OHIO REV. CODE § 4509.01 (K).

maintain proof of financial responsibility. The judgment is deemed satisfied for the purpose of reinstatement of privileges, however, if payment is made to the extent of the standard $5,000-$10,000-$5,000 limits.[35]

Even a cursory examination of the provisions of this law reveals that it goes a long way toward effectuating its ostensible purpose. It is manifest that insurance coverage has been greatly increased, a fact which obviates a large portion of the problem herein contemplated. Specifically, our problem is greatly relieved by this act due to the fact that both the driver *and* the owner will be subject to the sanctions made available by the act.[36] In other words, if the accident report does not show financial responsibility on the part of the driver, the security and suspension requirements will operate against him; if he doesn't comply, the owner is required to comply; if he fails to do so, then he, too, can suffer loss of driving and registration privileges.

The shortcomings of this act as a solution to the problem are obvious. It must be borne in mind that no tort liability is created or extended by the act. All it does is to apply the sanction of loss of privilege as an inducement to procuring insurance and satisfying judgments. Liability of the head of the family is not created, rather, it still rests with the son; but if the father doesn't see to it that the judgment is paid he may have to suffer the consequences. Thus, the consequences become all important as an evaluating factor, and it is to be noted that the sanctions themselves are fairly weak. Some might prefer to suffer loss of privileges rather than pay a judgment. Furthermore, a situation in which the father does not himself have a driver's license and does not care about owning a car for his family is conceivable, and the sanctions would be no inducement whatsoever to such a person. The $5,000-$10,000-$5,000 limits also point up a weakness, since no sanctions at all will be applied to induce satisfaction beyond that limit.

Pragmatically, the effectiveness of any sanctions can best be measured in terms of the number of times that they need be invoked — a threat is only as strong as the unwillingness of those to whom it is directed to succumb to the consequences of non-compliance. The following figures represent the total numbers of revocations of privileges for 1957, including all cases processed through December:[37]

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[35] OHIO REV. CODE § 4509.41.

[36] OHIO REV. CODE § 4509.11.

[37] Figures obtained from the Bureau of Motor Vehicles, Safety Responsibility Division, Columbus 16, Ohio.

Revoked for failure to report	1,323
Revoked for failure to deposit	12,069
Revoked for conviction of certain offenses	14,057
Revoked for unsatisfied judgments	1,593
TOTAL	29,042

Since the suspension provisions are invoked to such an extent, it becomes apparent that the reckless and financially irresponsible driver has not been completely excluded from the highways of Ohio. While the possibility of compensation has admittedly been greatly improved by this legislation, the problem must still remain for a substantial number of victims.

CONCLUSION

The advent of the automobile presented a difficult problem to the nation's courts, viz., the uncompensated accident victim. To alleviate the problem in one area, the family purpose doctrine was adopted by many courts. These courts recognized that the exigencies of the times required a drastic step, and were not hesitant in taking that step, realizing that some of the traditional precepts of tort liability would have to give way in the process. As Justice Cardozo said: "When the social needs demand one settlement rather than another, there are times when we must bend symmetry, ignore history and sacrifice custom in pursuit of other and larger ends."[38]

Notable among the states rejecting this doctrine was Ohio.[39] Our courts found themselves unwilling to indulge in such a fiction. There can be no question of the fictitious reasoning of the family purpose doctrine, ". . . yet the same kinds of considerations put forward to justify the new doctrine are essentially those which justify the whole fabric of vicarious liability."[40] Vicarious liability was created by the courts, and there seems to be no reason why social considerations of such magnitude as were presented by the automobile should not warrant a judicial extension of its limits.

This was not the position of our courts, however. In the leading case on the subject, the Ohio court intimated that the problem was one for the legislature.

> If contrary to the ordinary rule, the owner of a car ought to be responsible for the carelessness of everyone whom he permits to use it, that liability ought to be sought by legislation as a condition of issuing a license rather than by some new and anomalous slant applied by the courts to the principles of agency.[41]

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[38] CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 65 (1921).

[39] Elms v. Flick, 100 Ohio St. 186, 126 N.E. 66 (1919).

[40] 2 HARPER & JAMES, TORTS § 26.15 (1956).

[41] Elms v. Flick, 100 Ohio St. 186, 197, 126 N.E. 66, 69 (1919), quoting Van Blaricom v. Dodgson, 220 N.Y. 111, 117, 115 N.E. 443, 445 (1917).

This call for legislation has not been answered to the fullest extent possible. Neither the licensing of minors section[42] nor the Financial Responsibility Law,[43] both of which are discussed above, fully solve the problem. The former is desirable in that it actually extends liability to the parent, but its scope limits its protection to the person injured by a youth who is under eighteen and has a driving license. The latter type of legislation has not actually increased any liability, but does apply certain inducements to make it more likely that victims will be compensated; the inducements are, however, limited in application and inherently weaker than might be desirable.

The courts have refused to depart from settled principles, and the legislative action has been only partially successful. There are many situations in which the victim of the negligence of a youthful driver will still remain uncompensated, due to the financial irresponsibility of the tortfeasor. What Ohio needs, then, is an extension of legislative action in this area. Several possible solutions are found in the plans that have been promulgated in other jurisdictions. Massachusetts has compulsory insurance.[44] Unsatisfied judgment funds are found in New Jersey[45] and North Dakota.[46] These statutory developments would help our problem immeasurably, but they are designed to cope with a wider range of problems and are beyond the scope of this note.[47]

Narrowed down to our specific problem, the simplest solution would seem to be a statute, such as may be found in several other jurisdictions, which provides that the owner of an automobile is liable for the negligence of any person using it with his express or implied consent.[48] This statute would completely abrogate the necessity of the family purpose doctrine. It also would fill the void left by the shortcoming of our licensing statute,[49] in that it would extend liability to all drivers, regardless of age or the possession of a driving license. It would accomplish more than the Financial Responsibility Law,[50] in that it would extend actual liability to the parent, and not just the sanctions of possible loss

[42] OHIO REV. CODE § 4507.07.

[43] OHIO REV. CODE c. 4509.

[44] MASS. ANN. LAWS c. 90 §§ 34A et seq. (1954).

[45] N.J. STAT. ANN. §§ 39:6-62 et seq. (Supp. 1957).

[46] N.D. REV. CODE c. 39-17 (Supp. 1953).

[47] The various plans are treated in Note, 66 HARV. L. REV. 1300 (1953). See also a symposium on the subject of motorist responsibility, 15 OHIO ST. L. J. 101 (1954).

[48] Statutes of this sort have been enacted in at least twelve jurisdictions. PROSSER, TORTS 371 (2d ed. 1955). See, for example, N.Y. VEHICLE & TRAFFIC LAW § 59.

[49] OHIO REV. CODE § 4507.07.

[50] OHIO REV. CODE c. 4509.