

## All In The Family

### "Dad, Can I Borrow The Car Keys?"

by Lawrence Savell

It's a request that can strike terror in any parent. What if Junior (or his sister), heaven forbid, gets into an accident and is injured? What if my beloved collector car comes home with an unintended structural redesign? And what if someone else gets hurt or suffers damage to his or her property?

The latter question raises the issue of liability of a parent to a third party for the driving limitations of the parent's child. In such a situation, several different doctrines and theories of liability may potentially come into play. One of them is the "family purpose doctrine."

The family purpose doctrine provides that, if the owner of an automobile gives it over to the use of his family and permits it to be used by them, he or she may be liable for injuries inflicted while it is being operated by a family member. It states that where one purchases and maintains a vehicle for the comfort, convenience, pleasure, entertainment, and recreation of his or her family, any family member operating it will be regarded as the agent or servant of the owner. As a result, the owner may be held responsible for injuries sustained because of the negligent operation of the car by a family member.

In recent years, the family purpose doctrine has been rejected, or limited in its operation, in many states. Nevertheless, it still survives in some jurisdictions to varying degrees. For example, under Georgia law, "[a] defendant is liable under the Family Purpose Doctrine 'if he had the right to exercise such authority and control that it may

be concluded that an agency relationship existed between him and the family member with respect to the use of the vehicle.'"

The doctrine was recently explored in the context of an old car in *Wahnschaff vs. Erdman*, decided on April 3, 1998 by the Court of Appeals of Georgia.

According to the Court, on August 12, 1988, a 1976 Chevrolet Vega driven by Jennifer Erdman rear-ended Lorain C. Wahnschaff's vehicle. Wahnschaff sued Ms. Erdman and her father, Gerard Erdman, under the family purpose doctrine. Wahnschaff claimed that the "Vega ...driven by Defendant Jennifer B. Erdman...was provided to Defendant Jennifer B. Erdman by her father, Gerard Erdman, as a family purpose automobile as defined by the laws of Georgia" and that "[a]t the time of the above described collision, [the Vega] was being operated by Defendant Jennifer B. Erdman within the scope of the Family Purpose Doctrine as defined by the laws of Georgia."

Although Erdman initially admitted those allegations, he subsequently amended his answer to deny that the Vega had been used under the family purpose doctrine. At trial, Wahnschaff introduced evidence that the vehicle was titled in Erdman's name as the sole title owner; he had purchased the vehicle and signed the back of the title as purchaser. Erdman however, contended that the vehicle was purchased with his daughter's money and was titled in his name only because of her

age. (Ms. Erdman testified that her father paid one-half the cost of the car and that she paid the other half.)


The interrogatory answers of both Erdmans stated that he owned the vehicle on the date of the collision. Ms. Erdman testified that she was the sole user of the car; that she had the only keys to it; that she paid for the maintenance and gas for the car; and that she did not have to ask permission to use the vehicle. She was a minor, living in her father's house, at the time of the collision. After the accident, Erdman sold the car.

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At the close of all of the evidence, Wahnschaff made a motion for a directed verdict as to Erdman's vicarious liability under the family purpose doctrine. The trial court denied the motion. The jury returned a verdict for Erdman. Wahnschaff moved for judgment notwithstanding the verdict and in the alternative for a new trial, which were both denied. Wahnschaff appealed.

The Court of Appeals affirmed the trial court's ruling in favor of Erdman. Quoting its opinion in a prior case, it observed, "in a family purpose situation the crucial issue may be whether the defendant supplied or furnished the vehicle for family purposes. Consequently, a mere showing that the vehicle was registered in the head of household's name and utilized by a family member alone is not sufficient to establish this to be a family purpose car." 

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