

THE FAMILY PURPOSE DOCTRINE

I.¹ The Family Purpose Doctrine (FPD) holds the head of household responsible for injuries arising out the use of vehicles they furnish to other family members. The court in *Brown v. Stogsdill*, 140 Ariz. 485, 487, 682 P.2d 1152, 1154 (App. 1984) explained:

“The head of a family who maintains a motor vehicle for the use, pleasure, and convenience of that family is liable for the negligence of a member of the family who has the general authority to drive it while the vehicle is used for family purposes.”

A. The general rule is that an owner is not liable for the negligence of a party borrowing the owner’s vehicle. See *Siverson v. Martori*, 119 Ariz. 440, 581 P.2d 285 (App. 1978). The FPD is an exception to the general rule.

1. Other exceptions include:

a. Negligent Entrustment.

(1) Plaintiff must establish that the party lending the car to another: (1) owned or controlled a vehicle; (2) gave the driver permission to operate a vehicle; (3) the driver, by virtue of his physical or mental condition, was incompetent to drive safely; (4) the Defendant knew or should have known that the driver, by virtue of his physical or mental condition, was incompetent to drive safely. *Acuna v. Droak*, 212 Ariz. 104, 128 P. 3d 221 (App. 2006).

b. Employers’ liability for accidents committed by employee while acting in the scope of employment. *Hansen v. Oakley*, 76 Ariz. 307, 263 P.2d 807 (1953).

c. A.R.S. § 12-661 imputes liability for a minor’s malicious or wilful misconduct to the parent or legal guardian that has custody or control of the child.

(1) Wilful/malicious conduct requires more than simple negligence. The child must commit an intentional act for liability to attach.

(2) The statute applies to all malicious or wilful misconduct of minors (including wilful misconduct while driving).

- (3) The statute limits the parents liability to \$10,000 per tort.
- (4) The \$10,000 damage limitation does not apply to the parent or guardians' liability under the FPD.

B. The FPD is based on the same agency theory that supports an employer's liability for the actions of his employee during the scope of employment. This means that a head of household can be held liable under the FPD even if they can avoid liability for negligent entrustment.

II.² Why is the FPD important to your clients?

Example: Father purchases a car for 17-year-old son to use for the purpose of traveling to and from school. The title is in the Father's name, but the son makes the payments from proceeds from a part-time job. The son also pays for the liability insurance for the vehicle, but can only afford a minimum-limits liability policy that provides bodily injury coverage of \$15,000 per person and \$30,000 per accident. The Father has a separate auto policy with 100/300 liability limits, but the Father's policy does not list the son's vehicle as a covered auto. There is no evidence that the son is incompetent to drive.

- A. What happens when the son is at fault for an accident that causes injuries in excess of his minimum-limits insurance policy?
 - 1. The father will escape liability for negligent entrustment, but will still be liable under the FPD because he furnished the car to his son for a family purpose.
 - 2. Will the father's auto policy provide liability coverage in excess of the son's minimum limits policy?
 - a. The answer is generally no because the son's car is not listed as a covered vehicle on the father's policy.
 - (1) Even if the son's car is listed on the father's policy, the insurer will generally pay no more than the liability limit applicable to the vehicle involved in the accident.
 - 3. Solution?
 - a. Advise the Father of the risks associated with negligent entrustment and the FPD and recommend that he obtain an automobile policy for his son with the same liability limits contained in the Father's policy.

- (1) This includes extending the parents' existing umbrella coverage to include the son.
- B. Does the Father have FPD liability if the down payment for the car was paid by the son and the title of the car is in the son's name?
1. Yes, FPD liability does not rest on the ownership of the vehicle, but on its control and use. *Pesqueira v. Talbot*, 7 Ariz. App. 476, 441 P.2d 73 (App. 1968).
- a. In *Pesqueira*, the mother helped her minor daughter purchase a car. The daughter and mother each contributed towards the purchase price, but the car was titled in the daughter's name. The daughter agreed to make monthly payments to the mother to reimburse her for the amount she contributed towards the purchase of the car. The daughter used the car for work and pleasure and was not required to ask the mother's permission before using the car.
- b. The court stated that the following standard must be satisfied for the FPD to apply:
- “There must be a family with sufficient unity so that there is a head of the family, the motor vehicle responsible for the injury must have been one 'furnished' by the head of the family to a member of the family and this vehicle must have been used on the occasion in question by the family member with the implied or express consent of the head of the family for a family purpose.” (Emphasis added)
- c. The court held that the FPD applied to the above facts for the following reasons:
- (1) The “family-unity” element was satisfied because the daughter lived in the mother's house rent free.
- (2) The “furnished” element was satisfied because, absent the non-businesslike loan from the mother, the daughter would not have been able to purchase the car.
- (3) The “family-purpose” element was met because the mother was legally obligated to support the minor daughter and the daughter used the car for work.
- C. Is the Father liable if the son is an adult who lives in the house but pays rent and purchased the car from the parents?
1. The answer is generally yes. *Brown v. Stogsdill*, 140 Ariz. 485, 682 P.2d 1152 (App.

1984).

a. In *Stogsdill*, the son was involved in an accident that severely injured a passenger. The passenger sued the parents under the FPD. The son was an adult who lived in the parents' guest house. The son purchased the car involved in the accident from his father for \$600 and paid \$20 a week to rent the guest house. The parents argued that the FPD did not apply because the son was an emancipated adult who purchased the car with his separate funds.

(1) The court held that the FPD is not limited to parents and their minor dependent children, but turned instead on whether the son was sufficiently emancipated to not be considered a member of his parents' family unit. There was testimony that the \$20 a week rental payment was well under market value. The court reasoned that this fact provided sufficient evidence of financial dependence to raise a question of whether the son was still a member of the family unit.

(2) There was also evidence that the \$600 paid for the car was well under market value. The court reasoned that the substantial discount offered the son indicated that he was not able to purchase the vehicle without his parents' assistance. The court held that this fact could support the conclusion that the parents "furnished" the car by selling it to their son below market value.

(3) Finally, the court held that the mere fact that parents were not legally obligated to support their adult son did not mean that the son's actions were not in furtherance of a family purpose.

2. Does FDP liability attach if the son does not live at home?

a. Likely yes. The court in *Brown* cited with approval a Georgia case that held the parents of a minor on leave from military service liable for an accident caused while driving his parents' car. *Dunn v. Caylor*, 218 Ga. 256, 127 S.E.2d 367 (1962).

b. What does the *Brown* court's citation to *Dunn* mean for the parents who support their adult children while they're away at college.

(1) Does the financial support of an adult college student create family purpose liability when the child is visiting and borrows the parents' car?

(2) Is the parent liable when the college student uses the family car while

residing in the college dorm?

- (3) Is the parent liable when the adult child uses the family car while stationed overseas?

c. In *Platt v. Gould*, 26 Ariz. App. 315, 548 P.2d 28 (1976), the Arizona Supreme Court held the FPD inapplicable to the parents of an adult child that had moved from the family home to her own home and was generally self-sufficient.

- (1) The court's holding in *Platt* does not have broad application because the court did not deal with the specific facts concerning the adult child's financial independence.
- (2) Accordingly, parental liability for an adult child that does not reside in the parents' home is still an open question.
- (3) The court's ruling in *Brown* suggests that Arizona courts are more concerned with the adult child's reliance on the parents to provide financial support and furnish the car than they are with the residence of the child.

D. Is the Father liable under the FPD for punitive damages if the son causes an accident while drunk driving?

1. No, Arizona courts will not extend punitive damages to innocent parties under the FPD. *Jacobson v. Superior Court*, 154 Ariz. 430, 743 P.2d 410 (App. 1987).

a. Punitive damages are designed to punish a wrongdoer and deter others from emulating his conduct.

- (1) Punitive damages are similar to criminal punishment and generally only allowed against the wrongdoer.
- (2) To support a punitive damage claim, the plaintiff must establish that the defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.
- (3) In many states, punitive damages can only be recovered against the actual wrongdoer and not against those vicariously liable for the wrongdoer's conduct (i.e. employers, parents, etc.). Arizona creates an exception to this rule for punitive damage claims against employers based solely on the wrongful conduct of their employees.

- b. *Jacobson* involved an automobile accident caused by a minor child that was drunk driving when he lost control of his parents' car, rendering a passenger quadriplegic. The passenger sued the minor's parents for negligence and punitive damages under the FPD. The passenger argued that the FPD arose from the same agency principles that supported an employer's vicarious liability for the actions of his employee. The passenger reasoned that since Arizona courts allow punitive damages against employers for the vicarious liability of their employees, the same rule should apply to parents under the FPD.
 - c. The court conceded that the FPD was initially based on a theory of agency analogous to the employee-employer relationship, but stated that courts have long recognized that the parent-child relationship does not square with general principles of agency. The court acknowledged that the FPD survived primarily for its social usefulness in providing an injured party to recovery from the financially responsible person.
 - (1) "There is obviously an element of unblushing fiction in this manufactured agency; and it has quite often been recognized, without apology, that the doctrine is an instrument of policy, a transparent device intended to place the liability upon the party most easily held responsible."
 - d. The court refused to extend the legal fiction that provided the underpinnings for the FPD to punish innocent parents that were not guilty of any independent wrong.
2. Can parents be held liable for punitive damages arising out of a negligent entrustment claim?
- a. Likely yes. While no Arizona court has squarely addressed the award of punitive damages on a negligent entrustment claim, the court in *Jacobson* took care to note the passenger had not alleged a theory of negligent entrustment against the minors' parents.
 - (1) It is easy to imagine how a parent's independent wrongdoing for negligent entrustment could support a punitive damage claim.
 - ii. For example, a parent that serves a minor alcohol and then gives the minor the keys to the family car would have knowingly created the kind of significant harm necessary to support a claim for punitive damages.

- E. Does the FPD apply only to adult and minor children?
 - 1. No. The FPD applies to any member of a family unit that is furnished a car by the head of the household.

III.³ What impact does A.R.S. § 28-3160 (D) have on the FPD?

- A. A.R.S. § 28-3160 (A) requires a parent, guardian or adult to sign a minor's driving license/permit application.
 - 1. A.R.S. § 28-3160 (B) imputes the negligence of the minor to the adult that signs the application.
 - 2. A.R.S. § 28-3160 (D) creates immunity for the parent or guardian that signs the application if the minor maintains proof of financial responsibility.
- B. Does A.R.S. § 28-3160 (D) abrogate the FPD?
 - 1. No, the statutory liability created by A.R.S. § 28-3160 is different from the liability created by the FPD and, accordingly, was not abrogated by A.R.S. § 28-3160 (D). *Country Mutual Insurance Company v. Hartley*, 204 Ariz. 596, 65 P.3d 977 (App. 2003).
 - a. In *Country Mutual*, the parents signed their minor daughter's driving application and obtained a separate liability policy for the daughter for the statutorily mandated amount of \$15,000 per person and \$30,000 per occurrence. The parents had liability limits of \$100,000/\$300,000. The daughter was at fault for an accident that caused injuries in excess of the minimum policy limits. The injured victims sued the parents under the FPD. The parents defended by arguing that they were immune from liability because they complied with A.R.S. § 28-3160 (D)'s requirement that the daughter maintain mandatory liability coverage.
 - b. The court noted that the FPD is a common law doctrine (Judge-made law) that has existed in Arizona since 1919. The court acknowledged that the legislature could abrogate the common law doctrine by statute, but only if the legislature indicated a clear intention to do so.
 - (1) Unlike the FPD, A.R.S. § 28-3160 is limited to minors and creates liability for any person who signs the application, regardless of whose vehicle the minor drives or the purpose for which the vehicle is used.

The court found that these differences between the statute and the common law did not evidence the necessary legislative intent to abrogate the FDP.

- (2) Even if the legislature intended to abrogate the FDP, it would still have to overcome the Arizona Constitution's bar to abrogating a cause of action. *See Article 18, Section 6, of the Arizona Constitution.*