

“Parent Liability”

IT WON'T HAPPEN TO ME, INC.

And

TISINGER VANCE pc

Attorney at Law

John Harris

We have prepared the following information for your convenience and to better educate you on the Liabilities that parents have when having a teenager that is starting to drive. We hope that this information will be informative as well as educational and will help you to be a better parent and realize that as a parent you need to take your teens driving seriously. This can be done by educating your teen yourself on driving as well as seeking professional driver's education, advance driving courses and constant monitoring of your teens driving habits from time to time.

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QUESTION: As a parent, can I be sued for the mistakes (or "negligence") of my child?

ANSWER: Yes!

QUESTION: Even if my child is 18?

ANSWER: Yes, even if your child is 18!

QUESTION: I have full coverage insurance, is that enough?

ANSWER: Don't confuse "full coverage" with "enough coverage," particularly in the context of teenage indiscretion and automobile accidents.

Tell me more.....

Let's start with a general rule. Generally, the law does not attribute the mistakes of one person to another. Of course, as with many rules, there are exceptions and the context of automobile accidents presents very important and equally dangerous exceptions! Parents can be and oftentimes are sued as a result of the actions - the mistakes - the negligence of their children. This is particularly true when injuries (and/or death) result(s) in the context of automobile accidents.

Some lawsuits against parents are premised upon agency theories of liability. Agencies are like businesses where there is a boss (i.e. "principal") who hires employees (i.e. "agents.") The boss sometimes provides a vehicle for his employees to use in order to carry out the boss's business. In much the same way, there is a "head of the household" that often provides a vehicle (car, truck, boat, etc...) for the use, enjoyment and convenience of family members. What if an employee, while engaged in the boss's business, is involved in a car accident that's the employee's fault? In that context, doesn't it make sense that the boss (and his business) should bear at least some responsibility for the accident? The employee is an agent of the business. He is the alter-ego of the boss. He is a representative of the business.

In similar fashion, if/when a parent keeps a car for the pleasure or convenience of family members, the parent is essentially operating a business and is acting as a boss (i.e. "principal") who makes it his business of providing for the enjoyment, pleasure, comfort and convenience of family members (i.e. "agents") - including his children. As a "boss," the parent can be held responsible for accidents that are the child's fault. Actual ownership of the vehicle is not determinative, nor does it necessarily matter who has title to the vehicle, who has insurance on the vehicle, or who pays for the maintenance or upkeep of the vehicle.

In Georgia, there are two primary ways that an injured victim can successfully pursue a lawsuit against a parent resulting from a child's use of an automobile: 1) The Family Purpose Doctrine and 2) Negligent Entrustment. Although we'll discuss both, separately, parents are oftentimes sued under both theories.

I. THE FAMILY PURPOSE DOCTRINE

If a parent owns a vehicle and allows his child to use it, the parent, as the owner of the vehicle, can be held responsible ("liable") for the negligence of the child while using the vehicle. While liability under the Family Purpose Doctrine is fact sensitive, liability under

the doctrine is generally satisfied upon a showing that the parent had the right to exercise authority and control over the vehicle and/or over the child's use of the vehicle such that it is reasonable to conclude that an agency relationship existed between the parent and child with respect to the use of the vehicle at the time of the accident.

That may sound confusing. Here are some examples:

1. Let's suppose Mom (or Dad) is baking a pie and needs some sugar. Mom asks her child to go to the store to buy some sugar. While driving to the store, the child is involved in a car accident that's the child's fault. Since the child was performing an errand at his parent's request, liability for the accident could attach to the parent.
2. Let's now suppose Mom and Dad own two vehicles. They are out to dinner in one of them. The other is at home. So is their 17-year old son, Jimmy. Jimmy's friend calls and asks Jimmy to join him at the movies. Jimmy calls his parents at the restaurant and asks for permission to go and even gets permission to use the other vehicle. While Mom and Dad remain at dinner, Jimmy takes the other car to the movies and is involved in an accident that's his fault. He's running late and, while texting his friend, letting him know he's running late, he crosses the centerline and hits an on-coming vehicle head-on. Can Mom and Dad be held liable? Yes! While they enjoyed an evening out, the other vehicle was provided as a convenience so that Jimmy's parents didn't have to be inconvenienced by leaving dinner to return home to pick the child up to deliver him to the theatre. While the agency relationship isn't as clear in example 2, a family purpose was likely satisfied.
3. Let's add a twist. Suppose Mom and Dad issue the following order to Jimmy before agreeing to let him use the car to drive to the theatre. Before hanging up, Dad says to Jimmy: "Nobody, I mean nobody - none of your friends, nobody but you is authorized to drive our family car! Do you understand?" Jimmy replies: "Yes, sir!" Jimmy picks up his friend, Billy, on the way to the theatre. Billy talks Jimmy into letting him drive the family car. Billy causes an accident involving serious injuries. Can Jimmy's parents be sued under the Family Purpose Doctrine? Yes!! If the child remains in the car and retains authority/control over his friend's use of the vehicle, the parent/owner of the vehicle can still be sued under the family purpose doctrine.
4. What if I limit my child's use of the vehicle to a certain area and he's involved in an accident outside of that area? In other words, what if he violates the scope of authority I have given him - what if he's using the vehicle for his sole pleasure in an unauthorized place? What if he's on his cell phone when the accident occurs and I specifically instructed him to never use electronic devices while driving? It doesn't matter. As long as an agency relationship exists and your child is operating the vehicle as a result of the pleasure, comfort and enjoyment you have provided, you can be held liable for his mistakes.

5. As a parent, you buy a car for your child for her 16th birthday. It's "her" car. You bought the car specifically for her use and benefit. Can you still be liable if she has an accident that's her fault? Absolutely! As long as you're the head of the household, the law creates an inference that you have authority and control over your minor children such that an agency relationship exists.
6. You own a vehicle, but allow your child to drive it from time to time. You limit and control her use of the vehicle by requiring that she maintain a 90 grade-point average, cut the grass once every two weeks, wash dishes every night and babysit once per week. Your daughter has met all of the requirements and has never once faltered in her grades or chores. She has perfect school attendance and has never been in trouble - never! She's driving home from school one day and, while reaching for her cell-phone, is involved in an accident? Can you, as a responsible parent, be held responsible under the family purpose doctrine for the mistake of your very responsible daughter? Yes! The more authority and control you exercise over the vehicle, her use of it and even over her, the more likely an agency relationship exists and the more likely you can be held responsible for your daughter's accidents involving that vehicle.

There is a presumption that, when dealing with minors living at home, parents have sufficient control over both the minor child and/or the vehicles they drive such that an agency relationship is presumed. Age, alone, however is generally not a factor when determining liability under the family purpose doctrine. Again, agency is the primary factor. It doesn't matter if the negligence is committed by a minor, an 18-year old, a spouse or anybody else living in the immediate household. If an agency relationship exists, liability can attach. If you, as a parent, had the right to exercise authority and control over the child and/or vehicle, it may be concluded that an agency relationship exists and, if an agency relationship exists, it matters not that your agent (i.e. your child) was exceeding your scope of authority or permission when the accident and resulting injuries occurred.

II. NEGLIGENT ENTRUSTMENT

The starting point is that cars, boats, planes, trucks and the like are dangerous - VERY dangerous! Accordingly, if a parent entrusts such a vehicle to a child with knowledge that the child is incompetent to use the vehicle (perhaps as a result of age, inexperience, mental capacity, or a known habit of recklessness), a parent can (and should) be held liable. While a single instance of recklessness may not be sufficient to subject a parent to liability, a pattern of recklessness might suffice.

In Georgia, there is a law (a statute) that provides: "No person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under this chapter [Chapter 40 of the Georgia Code] or who is not licensed for the type or class of vehicles to be driven or in violation of any of the provisions of this chapter." O.C.G.A. § 40-5-122.

While the family purpose doctrine is premised upon "agency" theories of liability, negligent entrustment is premised upon the actual negligence of the owner in providing such a dangerous instrument to his child with knowledge that the child is incompetent and/or habitually reckless. Let's consider some examples:

Example I: Your 20-year old child is never on time. He's late to class, he's late to Church, he's late to practice, he's always late for dinner - he's run late for most of his life. You know that he likes to talk on his cell phone while driving and also has a habit of speeding. In fact, he's received several speeding tickets over the years and you have been involved with the disposition of all of his prior speeding tickets. He's home from college and wants to borrow the family car to go out on a date. You entrust your family vehicle to your child and toss him the keys. Your son spends a little too long meeting his date's parents. They're running a bit late for their dinner reservation. En route to the restaurant, he decides to pick up the pace a little. He sets the cruise control about 8 mph above the posted speed limit and calls the restaurant from the car, asking that it hold his reservation. While talking on his cell phone, your son is involved in an accident that's his fault. His girlfriend is catastrophically injured. Can you be held liable? Yes! Because you have actual knowledge of his tendency for running late and because you know that he can't resist talking on his cell phone while driving and are also aware of his speeding tendencies and because your son is involved in an accident involving all of the related issues you, as his parent, can be held responsible for negligently entrusting your vehicle to him. In fact, depending on the circumstances, the injured victim may even be able to recover punitive damages (i.e. damages designed both to punish and to prevent future similar behavior.) We'll talk about punitive damages later.

Example II: You live in a rural area. Your 15-year old daughter is learning to drive. She even has her learner's permit! As part of her education, you allow her to drive your vehicle on the dirt roads going around your farm. You think to yourself: "there's nothing wrong with that; it's what I did when I was growing up." As a precautionary measure, however, you give her some guidelines before letting her use your vehicle. Before entrusting the vehicle to her, you instruct her to not, under any circumstances, get on any of the main roads. She's to restrict her driving to the dirt roads around the farm and, as long as she does, it's OK with you that she drives your car. Is it? What if she leaves the dirt roads going around the farm and, upon entering a designated county road, is involved in an accident involving injuries? Can you be sued for negligent entrustment? Yes! But what about the fact that she went beyond the area you, as her parent, allowed her to go? It doesn't matter! Not only is she unlicensed and untrained, she's incompetent by reason of her age to drive alone, unaccompanied by a properly licensed driver. As her parent, you had a duty to prevent injuries to another. You have a duty always to exercise ordinary care to prevent injuries to other, innocent motorists who are rightfully using the roadways. As a parent, you fail in your duties to innocent motorists when you entrust your car to incompetent drivers. When you entrust your vehicle to incompetent drivers, it's foreseeable that mistakes can be made and that bad things can happen. Accordingly, you can be held responsible for the mistakes of the incompetent driver.

There are countless scenarios that might expose an owner of a vehicle to potential liability pursuant to allegations of negligent entrustment. If the owner knows about the driver's/entrustee's habitual recklessness: i.e. speeding, drug use, alcohol consumption, cell phone usage, texting while driving, etc...., he can incur liability. If the conduct of the driver is sufficient to demonstrate a pattern of continued recklessness that is known to the owner, the owner can be held liable for occurrences involving his entrustment of the vehicle to such person. In part, that's because negligence is premised on issues of foreseeability and if it's foreseeable that your son has bad habits or a propensity towards recklessness about which you are aware and, further, that he's involved in an accident involving the operation or use of your vehicle while engaged in such patterns or habits, you can incur liability and, potentially, even subject yourself to the imposition of punitive damages. The injury consequences are bad enough. The financial consequences could be similarly devastating and even ruinous!

III. DAMAGES / LIABILITY INSURANCE

Rarely does anybody intend for an accident to occur. Accordingly, liability for unintentional accidents is generally premised in "negligence" as opposed to "intentional" conduct. Of course, when accidents happen, innocent victims deserve compensation for their injuries. There are generally three types of damages to which injured victims may be entitled: general damages (i.e. pain and suffering); special damages (i.e. medical expenses, lost wages, etc.); and punitive damages (damages designed to punish and prevent future similar conduct.) Depending on the significance of the accident and/or resulting injuries, medical expenses alone can be STAGGERING!!

Let's consider a potential injury claim. What if the injured victim in one of the above-described accidents requires life flight from the scene to a trauma center? Upon presentation, the victim requires intensive care stabilization for 10 days before surgery can be conducted to repair a compound fracture to her tibia. Doctors also have to wait for the brain swelling to diminish so that they can begin conducting extensive neurological testing to determine the extent of a closed head injury. The victim also has multiple facial lacerations as well as deep cuts throughout other parts of her body as a result of hitting the windshield before being ejected from the vehicle. The cuts require the use of sutures too numerous to count and, upon healing, will result in permanently disfiguring scarring to her face, among other body parts. She lost two fingers on her left hand (one of them being her ring finger) and, upon discharge, will require home health care and, when able, will require physical therapy at the rate of at least twice per week for eight months. Although the victim might walk again, she will walk with a permanent limp (requiring a cane) that may require a hip replacement in 20 years as a result of compensation techniques. Before her discharge from the hospital, the attending physicians ultimately diagnose the extent of her closed-head injury. Testing confirms that the victim has lost all short term memory. She has also lost her ability to taste as a result of the trauma to her head. She also has permanent double vision that requires special corrective lenses. Of course, she can no longer swim as a result of her vision issues and normal activities of daily living are impaired (to include showering) since she can't wear her glasses in the shower. Although she can move her arms and legs, she has permanent numbness and tingling in her extremities and her doctors determine that

it's too dangerous to operate on her spine as a result of concern over severing her already compromised spinal cord. She'll have to learn to live with the changed sensations. It's too bad, too, because the victim was a sophomore at Ga. Tech, with a 3.9 GPA in chemical engineering and plans to enter the military to satisfy her ROTC scholarship obligation. Believe it or not, claims like these are made every day.

The law requires that vehicles carry liability insurance. Let's assume that the at-fault driver in the injury claim above has only \$50,000 in liability limits. In the above example, it's likely that the medical expenses alone could exceed \$900,000. What about the promise of this very bright student - what about her economic earning power (and the fact that she already had a job awaiting her upon college graduation?) What if the "damages" exceed the amount of your liability insurance?

Insurance companies are generally obligated to pay only the amount equivalent to the liability limits you have selected and upon which you have paid your premiums. If your child is involved in an accident causing the above injuries/damages, then you (the parent) may be required to tap into your personal resources/assets to help satisfy a potential claim. In fact, one of the primary reasons that parents get named as defendants in lawsuits that result from car accidents involving their children is because most children don't have assets. Most children don't have jobs, they don't have resources, they don't have trust accounts, stocks, property, etc... with which to satisfy potential judgments. Parents do. Accordingly, crafty attorneys not only sue parents, but they find a way to get parents "to put skin in the game." For example, they may require that the parent sell property, garnish wages, sell off assets, etc.... While children usually don't have such assets, parents who have worked hard all their life do and, whenever they incur liability under the family purpose doctrine and/or negligent entrustment for car accidents that are the fault of their children, they put all their assets at risk. They put all of their life's savings at risk. They put all of their hard work at risk - ALL of it!!!!

Some people believe that bankruptcy is an option to avoid judgments. For some, bankruptcy is the only option. The law doesn't always allow bankruptcy as an option to avoid all judgments, however.

IV. SUMMARY

Accidents happen in an instant and lives are forever changed in an instant when they do. The ripple effects are far and wide. They're also unpredictable and the consequence of reckless, aggressive, careless, inattentive, unsafe driving - whatever you want to call it - has an impact not only on injured (or dead) victims (and their families,) but also upon the "purse" of those that cause their injuries. Most teenagers and parents think "it won't happen to me." But it can. It does and it will happen to you unless you change behavior - unless you change your driving behavior. Parents, you are not immune from the mistakes of your children. The law is designed to make injured victims whole. Lawyers who represent injured victims will find a way to make their clients whole and while they may never be able to affect a "cure" for their clients, they will find a way to award just compensation for their loss. Accordingly, parents and teenagers alike are well-advised to govern their driving behaviors in a way that minimizes the risk of injury or death to others.