2003


Christopher K. Iijima

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Part of the Torts Commons

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol30/iss2/15
TORT LAW—THE MOTORIST’S GUIDE TO STATE POLICY: VEHICLE OWNER VICARIOUS LIABILITY FOLLOWING GRANTS OF INITIAL PERMISSION—CHRISTENSEN V. MILBANK INSURANCE CO.

Christopher K. Iijima†

I. INTRODUCTION ........................................................................ 755
II. A NATIONAL HISTORY OF RESPONSIBILITY .............................. 756
   A. Respondeat Superior ........................................................ 757
   B. Emergence and Importance of Liability Insurance .......... 758
   C. Omnibus Clauses and Permission .................................... 761
   D. Vicarious Liability in Minnesota............................... 763
   E. Conversion ...................................................................... 767
III. THE CHRISTENSEN CASE.................................................. 768
   A. Facts........................................................................... 768
   B. The Hennepin County District Court .............................. 769
   C. The Minnesota Court of Appeals............................... 770
   D. The Minnesota Supreme Court ..................................... 771
IV. ANALYSIS OF THE MINNESOTA SUPREME COURT DECISION..... 773
   A. The Foundations of State Policy .................................... 773
   B. Examination of the Law................................................. 777
V. WARMING UP TO VEHICLE OWNERS: A PROPOSED PLAN .... 781
VI. CONCLUSION.............................................................................. 782

I. INTRODUCTION

Who should be liable for motor vehicle accident injuries when the driver is not the vehicle owner? According to Christensen v. Milbank Insurance Co., the owner is liable in virtually every circumstance upon

granting permission. 1 Minnesota policy attempts to guarantee recovery for automobile accident victims, and is the overriding factor in deciding the outcome of motor vehicle injury cases. 2

This note explores the Christensen decision and its effect on motor vehicle owner liability in Minnesota. 3 First, the note presents a historical perspective from which to view the Christensen decision and Minnesota’s motor vehicle liability and conversion laws. 4 Next, the note summarizes the factual and procedural history of the Christensen case. 5 Then the note discusses the Minnesota Supreme Court holding in Christensen. 6 The note goes further to present a policy and legal analysis of the Christensen decision. 7 Further, the note suggests an amendment to allow evenhanded treatment of vehicle owners, while satisfying state policy. 8 The note concludes that the Christensen decision is a necessary extension of existing legal interpretation because it supports Minnesota and tort law goals by ensuring compensation to injured accident victims. 9

II. A NATIONAL HISTORY OF RESPONSIBILITY

The automobile “threw America’s industrial revolution into overdrive,” created the middle class, and has become a symbol of American life. 10 Automobiles also injure and kill millions of people

1. 658 N.W.2d 580, 588 (Minn. 2003) (Blatz, C.J., concurring in part and dissenting in part) (stating vehicle owners will be liable in every circumstance except theft).

2. See id. at 587 (stating negligence will not be found where it contravenes public policy); Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 165-66 (Minn. 1983) (stating the legislature and supreme court adopt and interpret acts to favor public policy and that public policy is to give injured persons an “approximate certainty” of relief) (quoting Hutchings v. Bourdages, 291 Minn. 211, 214, 189 N.W.2d 706, 709 (1971) (quoting RESTATEMENT (FIRST) OF TORTS § 485 cmt. b (1939))); Lange v. Potter, 270 Minn. 173, 178, 132 N.W.2d 734, 737 (1965) (refusing to adopt an interpretation of vicarious liability that would narrow or defeat public policy); Bates v. Armstrong, 603 N.W.2d 679, 683 (Minn. Ct. App. 2000) (finding no conversion and giving weight to public policy goals).

3. See infra Parts II-VI.

4. See infra Part II.

5. See infra Part III.

6. See infra Part IV.

7. See infra Part IV.A-B.

8. See infra Part V.

9. See infra Part VI.

10. Lee A. Iacocca, Driving Force—Henry Ford, TIME, Dec. 7, 1998, at 78. “[I]f it hadn’t been for Henry Ford’s drive to create a mass market for cars, America wouldn’t have a middle class today,” Id. at 79. E. B. White tells us that in the early 1900s, the Ford Model T “practically was the American scene,” and that “[f]lourishing industries
Throughout the last century, legislatures and courts have looked to common law theories and enacted statutes to protect and provide for the injured.

### A. Respondeat Superior

Under the English common law theory of respondeat superior, also termed vicarious liability, a master was liable when his servants committed torts. The practical application of respondeat superior led to the theory of the “deep pocket,” under which courts held employers liable to injured parties solely on the basis of financial security.

Today, courts hold employers liable for their employees’ negligent acts. The primary contention is that injury is an inherent risk of conducting business. Consequently, public policy favors placing

---


12. See infra Part II.A-C.

13. Sutherland v. Barton, 570 N.W.2d 1, 5 (Minn. 1997) (defining vicarious liability as the “imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons”) (quoting BLACK’S LAW DICTIONARY 1566 (6th ed. 1990)); Lange v. Nat’l Biscuit Co., 297 Minn. 399, 404, 211 N.W.2d 783, 785-86 (1973) (stating the master is liable for the servant’s acts where the master and servant’s acts may be treated as one indivisible tort); Meyers v. Tri-State Auto. Co., 121 Minn. 68, 71, 140 N.W. 184, 184 (1913); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 69, at 499 (5th ed. 1984).


15. See, e.g., Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc., 597 N.W.2d 905, 910 (Minn. 1999) (“[A]cts committed within the scope of employment should be allocated to the employer as a cost of engaging in that business.”).

16. Marston v. Minneapolis Clinic of Psychiatry and Neurology, Ltd., 329 N.W.2d 306, 314 (Minn. 1982) (Peterson, J., dissenting). Two other justifications for vicarious liability are that the employer has the control over the employees, and that an employer who takes benefit from her employees’ acts should share the risk of those acts. Id. at 313-14. Weckerly v. Abear, 256 N.W.2d 79, 81 (Minn. 1977) (“[R]espondeat superior commonly is justified as a socially desirable distribution of risk and as a device to provide financially responsible indemnitors . . . .”); Laurie v. Mueller, 248 Minn. 1, 4, 78 N.W.2d 434, 437 (1956) (“[I]f an employer expects to derive certain advantages from the
liability on employers, who can distribute costs to society through pricing and liability insurance. In finding vicarious liability, courts require that an employee’s act was “foreseeable” and within the “scope of employment.”

B. Emergence and Importance of Liability Insurance

Liability insurance indemnifies the insured against claims, costly litigation, and financial ruin. Because liability insurance policies are acts performed by others for him, he, as well as the careless employee, should bear the financial responsibility for injuries occurring to innocent third persons. See W. Coal & Coke Co., 162 Minn. 213, 215, 202 N.W. 485, 486 (1925) (“[R]espondeat superior rests in part at least upon the power of the master to select, control, and dismiss his servants.”).

17. See Weckerly, 256 N.W.2d at 81; Fahrendorf, 597 N.W.2d at 910.

18. Schneider v. Buckman, 433 N.W.2d 98, 101 (Minn. 1988) (stating that it is a “well established principle that an employer is vicariously liable for the torts of an employee committed within the course and scope of employment.”). See Fahrendorf, 597 N.W.2d at 912 (stating foreseeability is a test for liability). In the context of respondeat superior, foreseeability means that “an employee’s conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer’s business.” Id. at 912 (quoting Rodgers v. Kemper Constr. Co., 124 Cal. Rptr. 143, 148-49 (Cal. Ct. App. 1975)). The scope-of-employment requirement exists because the basis for vicarious liability is not finding fault in the employer, but whether the employee was conducting the employer’s business. Lange, 297 Minn. at 404, 211 N.W.2d at 786 (stating liability is based on whether an employee’s actions are related to the employee’s duties and within the work-related limits of time and place); Ismil v. L.H. Sowles Co., 295 Minn. 120, 123, 203 N.W.2d 354, 357 (1972); Porter v. Grennan Bakeries, Inc., 219 Minn. 14, 21, 16 N.W.2d 906, 909-10 (1944). The phrase “scope of employment” has defied definition and created much litigation. See Laurie, 248 Minn. at 4, 78 N.W.2d at 437 (“[S]cope of employment’ is impossible of concrete definition . . . .”). See generally Lange, 297 Minn. at 399, 211 N.W.2d at 783 (discussing the intricacies of scope of permission). Some courts have required that an employee was acting to further an employer’s business. Lange, 297 Minn. at 401, 211 N.W.2d at 784. Yet “it would be a rare situation where a wrongful act would actually further an employer’s business.” Marston, 329 N.W.2d at 311. The most feasible definition to date requires an act “related to the duties of the employee . . . within work-related limits of time and place.” See Lange, 297 Minn. at 404, 211 N.W.2d at 786.

19. Dolly v. Old Republic Ins. Co., 200 F. Supp. 2d 823, 837 n.20 (N.D. Ohio 2002) (stating that insurance companies bet against catastrophic-type claims, while the insured pays premiums to protect against financial ruin that could result from a large claim); Bohna v. Hughes, Thorsness, Gantz, Powell & Brundin, 828 P.2d 745, 754 (Alaska 1992) (stating the purpose of liability insurance was to protect from financial ruin and to compensate for loss); Breland v. Schilling, 550 So. 2d 609, 610 (La. 1989) (“The purpose of liability insurance . . . is to afford the insured protection from damage claims.”). Modern liability insurance began in England in the late 1800s. Keeton et al., supra note 13, at 585. The purpose of insurance at that time was to indemnify employers against employers’ liability and workers compensation claims. Id. The successful implementation of liability insurance led to demands in other high-risk areas. Id.
contracts, courts should interpret policies to reflect the contracting parties’ intent. However, insurance policies also serve important public interests, such as protecting accident victims and limiting litigation. As a result, some states place statutory requirements and restrictions on liability insurance policies.

Mass production of motor vehicles began in the early 1900s. What began as an innovative idea eventually led to a staggering number of injuries and deaths. Financially irresponsible drivers left many accident victims without compensation and medical treatment. Early legislative efforts to protect the injured began with financial responsibility laws. These laws failed to consistently compensate

20. Smith v. Matthews, 611 So. 2d 1377, 1379 (La. 1993) (“An insurance policy is an agreement between the parties and should be interpreted by using ordinary contract principles.”); Hoeschen v. S. C. Ins. Co., 378 N.W.2d 796, 799 (Minn. 1985) (“[L]iability insurance contracts should, if possible, be construed so as not to be a delusion to those who have bought them.”) (citing Taulelle v. Allstate Ins. Co., 296 Minn. 247, 251, 207 N.W.2d 736, 739 (1973)); Bobich v. Oja, 258 Minn. 287, 294, 104 N.W.2d 19, 24 (1960) (“Contracts of insurance . . . must be construed according to the terms the parties have used, to be taken and understood . . . so as to give effect to the intention of the parties as it appears from the entire contract.”).


22. See MINN. STAT. § 65B.49 (requiring insurance policies to contain various types and amounts of coverage). Cf. Konrad v. Hartford Accident & Indem. Co., 137 N.E.2d 855, 860 (Ill. App. Ct. 1956) (stating such statutory provisions “form a part of such contract and should be construed in connection with the policy”) (citation omitted).

23. United States v. Robinson, 414 U.S. 218, 244 (1973). Ford began production of the Model T in 1908. Iacocca, supra note 10, at 76. In 1912 there were 7000 Ford dealers in the United States, and by 1914 “the world’s first automatic conveyor belt could churn out a car every 93 minutes.” Id. at 78. By 1927 Ford had sold 15 million cars. Id. at 77.


25. See 1 ALAN I. WIDISS, UNINSURED & UNDERINSURED MOTORIST INSURANCE § 1.1, at 3 (2d ed. 1992) (stating there have always been financially irresponsible drivers who left victims without compensation).

26. The first financial responsibility law was enacted in Connecticut in 1925. 1925 Conn. Pub. Acts 183. By 1969 every state except Massachusetts had “inferred a general legislative policy to protect the public from uncompensated injury by motor vehicles on the state’s highways from the passage of such statutes as financial responsibility laws . . . .” Mt. Beacon Ins. Co. v. Williams, 296 F. Supp. 1094, 1098 (D. Md. 1969). These laws required a motorist who failed to satisfy a judgment against him to provide assurance that he could satisfy future judgments. KEETON ET AL., supra note 13, at 601. If the motorist did not provide such assurance, he would lose his license or vehicle registration. Id.
accident victims. However, motor vehicle liability insurance arose as a convenient method for proving financial responsibility. Legislatures later enacted compulsory liability insurance statutes. This ensured compensation for accident victims, but only where the victims could prove fault. Thus, victims were without recourse if they could not demonstrate fault, and in a precarious position during lengthy litigation. Sixteen states went further by enacting “no-fault” statutes, which required all motor vehicle owners to carry no-fault insurance. Under such statutes an accident victim’s own insurance company provides compensation for medical expenses and lost wages, regardless of who caused the accident. The intent behind no-fault statutes is to avoid inadequate or excessive compensation of victims, to require motor vehicle registrants to procure liability insurance, and to provide benefits to vehicle occupants and other persons injured in accidents.

27. Three factors led to the demise of the early laws: (1) the laws came into effect only after an accident, (2) the injured did not sue when liability would be difficult to prove, and (3) some motorists preferred to lose driving privileges rather than provide security. Keeton et al., supra note 13, at 601-02; Widiss, supra note 25, at 4-7.

28. See Joseph P. Murphy & Ross D. Netherton, Public Responsibility and the Uninsured Motorist, 47 Geo. L. J. 700, 705 (1959) (“Insurance was the most obvious and practical method of maintaining financial responsibility.”).


30. See Keeton et al., supra note 13, at 603.

31. See id.

32. See id. at 607. The sixteen states are Colorado, Connecticut, Florida, Georgia, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Dakota, Pennsylvania, and Utah. Id. at n.46.


C. Omnibus Clauses and Permission

Most liability insurance policies include omnibus clauses. In some jurisdictions these clauses are a statutory requirement. Omnibus clauses extend policy protection to unnamed parties who receive permission to drive the insured vehicle. For example, an omnibus clause might read: “you are an insured for any covered auto and anyone else is an insured while using with your permission a covered auto you own, hire, or borrow.”

The term “permission” in the context of omnibus clauses is widely debated. Although courts treat “permission” and “consent” as synonyms when interpreting omnibus clauses, the tasks of defining permission and determining its scope remain. Courts may find

36. See Christensen v. Milbank Mut. Ins. Co., 658 N.W.2d 580, 584 (Minn. 2003) (stating that policies contain omnibus clauses to hold owners liable for acts of permittees); 7 A.M.JUR. 2d Automobile Insurance § 225 (2003) (“[A]utomobile insurance policies generally contain a standard omnibus clause that provides coverage to any person using the named insured’s car, if its use is within the scope of the named insured’s consent.”).


40. See Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 165 n.7 (Minn. 1983) (“[T]he word ‘permission’ has bred a most costly and wasteful type of litigation.”).


42. See Christensen v. Milbank Mut. Ins. Co., 658 N.W.2d 580, 586 (Minn. 2003) (finding permission when an employee violates express limitation by driving under the influence and using employer’s van for his own purposes); Allied Mut. Cas. Co., 274 Minn. at 305, 143 N.W.2d at 641 (finding coverage when a mother limited vehicle use to driving to a movie theater, but daughter and daughter’s friend did not go to a movie and instead drove to another town); Anderson v. Hedges Motor Co., 282 Minn. 217, 222, 164 N.W.2d 364, 368 (1969) (finding no permission where mechanic was to repair the owner’s vehicle, had prior permission to use the vehicle for personal errands, but used the vehicle a second time for personal reasons); Abbey v. N. States Power Co., 199 Minn. 41, 46, 271 N.W. 122, 124 (1937) (finding no permission where an electric company employee was to raise wires above a house that was being moved, and the employee used the vehicle to procure equipment for the house mover).
permission to use a vehicle through express words, or may imply permission from the general circumstances.\textsuperscript{43} Most jurisdictions have adopted one of three rules interpreting the scope of permission in omnibus clauses.\textsuperscript{44}

The “strict” or “conversion” rule is the least accepted interpretation.\textsuperscript{45} Under this rule, the slightest deviation from permission in time, place, or use defeats liability under the omnibus clause.\textsuperscript{46} Of the three, this rule most accurately represents the intent of the contracting parties and is the most favorable to vehicle owners.\textsuperscript{47} However, the “strict” rule runs contrary to public interest in providing recovery to injured persons.\textsuperscript{48}

The initial permission rule, also termed the “liberal” or “hell or high water” rule, extends omnibus coverage even for ludicrous deviations from permission.\textsuperscript{49} Jurisdictions that adopt the initial permission rule tend to focus on public policy and accident victims rather than on owners and insurers.\textsuperscript{50} The initial permission rule serves three purposes: (1) to further public policy and protect accident victims from financial ruin, (2) to discourage lenders and lendees from conspiring to escape liability, and (3) to reduce litigation.\textsuperscript{51} On the other hand, the initial permission rule

\begin{flushright}
\textsuperscript{43} Christensen, 658 N.W.2d at 584.\\
\textsuperscript{44} Id. (citing Drechsler, \textit{supra} note 41, at 622).\\
\textsuperscript{45} See Drechsler, \textit{supra} note 41, at 625.\\
\textsuperscript{46} State Farm Mut. Auto. Ins. Co. v. Ragatz, 571 N.W.2d 155, 159 (S.D. 1997).\\
\textsuperscript{47} See 18 AM. JUR. 3D \textit{Proof of Facts} § 5 at 433 (1992) (stating that “the actual use . . . must be the exact use that was contemplated when permission or consent was granted,” and that the “strict” rule favors the insurer).\\
\textsuperscript{48} See 8 LEE R. RUSS & THOMAS F. SEGALLA, \textit{COUCH ON INSURANCE}, § 113:7 (3d ed. 1997) (“[C]ourts should be encouraged to adopt a less strict rule in light of the legislative history and public policy which favors finding coverage where reasonably possible.”).\\
\textsuperscript{50} See 18 AM. JUR. 3D \textit{Proof of Facts} § 5 at 433 (1992) (stating some jurisdictions adopt the rule to further public policy to provide insurance protection to as many people as possible).\\
\textsuperscript{51} Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 166 (Minn. 1983). \textit{See also} Vanliner Ins. Co. v. Sampat, 320 F.3d 709, 712 (7th Cir. 2003) (stating the initial permission rule “is based on the theory that . . . it is not in the public interest to permit litigation on the details of a permission and use”); Manzella v. Doe, 664 So. 2d 398, 402 (La. 1995) (“[O]ne justification for this rule is that it prevents collusion between the lender and the lendee to avoid liability.”); North Star Mut. Ins. Co. v. Raincloud, 563 N.W.2d 270, 273 (Minn. 1997) (stating the purpose is to “protect the public at large on public roads and highways”); Barry v. Tanner, 547 N.W.2d 730, 733
\end{flushright}
“lends itself to gross abuse by an unscrupulous individual who, in violation of his express instructions, might retain possession of the automobile indefinitely and operate it over unlimited territory with the insurance still in effect.” Jurisdictions differ over whether omnibus clause coverage should extend to second permittees who have permission from original permittees.

The minor deviation rule or “moderate” rule voids coverage after material or gross deviation from the insured’s permission, but sustains coverage for slight deviations. The minor deviation rule is a compromise between the “strict” rule and the initial permission rule. It “furthers the public policy of compensating victims, recognizes that permittees are engaged in various activities and may stray from the exact letter of their permission, and . . . attempts to be fair to the insurer. . . .” Arguments against the minor deviation rule are that it encourages litigation over what constitutes a “minor deviation,” and that it does not ensure coverage for injured parties.

D. Vicarious Liability in Minnesota

Historically, the Minnesota Supreme Court has held vehicle owners vicariously liable for the acts of their permittees. The Safety Responsibility Act (“SRA”), initial permission rule, and the Minnesota No-Fault Automobile Insurance Act (“No-Fault Act”) are further evidence of Minnesota’s focus on accident victims.

(Neb. 1996) (“Proponents of this rule justify it on the ground that it is good public policy to protect persons injured in automobile accidents against uninsured motorists.”).

58. See Turner v. Gackle, 168 Minn. 514, 515, 209 N.W. 626, 627 (1926) (holding defendant liable for his father’s conduct where car was owned for family and business, but no express permission was granted to the father); Jaffa v. Libman, 153 Minn. 557, 557, 190 N.W. 894, 894 (1922) (holding defendant liable for minor son driving with permission); Johnson v. Evans, 141 Minn. 356, 360, 170 N.W. 220, 221-22 (1919) (implying permission and holding defendant liable for son who had permission to drive to one town, but traveled to another); Ploetz v. Holt, 124 Minn. 169, 174, 144 N.W. 745, 747 (1913) (stating that a father may be liable where a son used a family vehicle for personal purposes).
1. The Safety Responsibility Act

The legislature passed the SRA in 1933, and codified it as Minnesota Statute section 170.54 in 1945. The SRA expanded the operative field of respondeat superior to make vehicle owners vicariously liable when their permittees injured third parties. The SRA states that “[w]henever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof.” The purpose of the SRA was “to make the owner of motor vehicles liable to those injured by their operation . . . where no such liability would otherwise exist.” The legislature believed that the SRA would encourage vehicle owners to procure liability insurance and ensure recovery for accident victims. Minnesota courts liberally construe the SRA to serve these purposes.

   a. The Minor Deviation Rule

   In the early and mid-1900s, Minnesota courts used the minor deviation rule to define the scope of permission under the SRA. The minor deviation rule relieved vehicle owners from liability where servants, employees, and others acted grossly outside the owner’s initial grant of permission. The determining factor in motor vehicle liability

60. 1933 Minn. Laws 351.
63. Minn. Stat. § 170.54 (1945).
67. See Milbank Mut. Ins. Co., 332 N.W.2d at 162 (stating the early cases in essence applied the minor deviation rule).
68. See Lausche v. Denison-Harding Chevrolet Co., 185 Minn. 635, 638, 243 N.W. 52, 53-54 (1932) (finding no permission when employee had permission to drive employer’s car home, but employee used vehicle to attend a carnival after drinking); Langan v. Nathanson, 161 Minn. 433, 437, 201 N.W. 927, 928 (1925) (finding an employee who took another employee to a physician was outside the scope of permission); Mogle v. A. W. Scott Co., 144 Minn. 173, 177, 174 N.W. 832, 834 (1919) (finding no permission when an employee used a company-owned vehicle for work, then
eventually became whether the permittee was outside the express restrictions or uses contemplated by the parties at the “time and place” of an accident.69

b. The Initial Permission Rule

In 1969, the Minnesota Supreme Court applied the minor deviation rule in Anderson v. Hedges Motor Co., but noted that only a liberal interpretation of the SRA could achieve the public policy goal of compensating injured parties.70 That early realization foreshadowed the 1982 decision in Jones v. Fleischhacker.71 The Jones court adopted the initial permission rule for the limited purpose of holding adults liable for a minor’s negligent vehicle use.72 The following year, in Milbank Mutual Insurance Co. v. United States Fidelity and Guaranty Co., the court expanded the Jones decision to include adult-to-adult transactions.73 In doing so, the Milbank court overruled previous minor deviation rule-based decisions.74 Under the initial permission rule, “when the owner of a motor vehicle grants another person permission to use the vehicle, major departures from the initial scope of permission, short of conversion or theft, do not relieve the owner from vicarious liability for the permittee’s negligent use of the vehicle.”75 Although vicarious liability under both the minor deviation rule and the initial permission rule is contingent upon permission, the initial permission rule

drove family members to the park); Wilde v. Pearson, 140 Minn. 394, 397, 168 N.W. 582, 583-84 (1918) (finding no permission when a minor permitted a third party to drive a family vehicle, and the third party drove the vehicle in absence of said minor).

69. See Anderson v. Hedges Motor Co., 282 Minn. 217, 220, 164 N.W.2d 364, 367 (1969); Eicher v. Universal Underwriters, 250 Minn. 7, 14, 83 N.W.2d 895, 899 (1957); Truman v. United Prods. Corp., 217 Minn. 155, 159-60, 14 N.W.2d 120, 122 (1944); Ranthum v. Ferguson, 202 Minn. 209, 212, 277 N.W. 547, 548 (1938); Patterson-Stocking v. Dunn Bros. Storage Warehouses, 201 Minn. 308, 312, 276 N.W. 737, 739 (1937).

70. Anderson, 282 Minn. at 218, 164 N.W.2d at 366.

71. 325 N.W.2d 633, 637 (Minn. 1982) (stating public policy requires holding parents liable for the acts of a child even though the minor disobeyed the parents’ instructions).

72. See id.


74. Id.

makes the scope of such permission irrelevant.\textsuperscript{76} Minnesota’s interpretation of the SRA using the initial permission rule is consistent with trends in other jurisdictions and the “weight of authority.”\textsuperscript{77}

2. \textit{The Minnesota No-Fault Automobile Insurance Act}

The legislature passed the No-Fault Act in 1974,\textsuperscript{78} and codified it as Minnesota Statutes sections 65B.41 to 65B.71 in 1978.\textsuperscript{79} The purpose of the No-Fault Act was to stay the “[t]he detrimental impact of automobile accidents on uncompensated injured persons [and] upon the orderly and efficient administration of justice . . . .”\textsuperscript{80} To effectuate this purpose, the No-Fault Act requires motor vehicle owners to provide a plan of reparation security, such as liability insurance.\textsuperscript{81} The Act also specifies minimum coverage amounts and benefits.\textsuperscript{82} The net effect of the NoFault Act is a guarantee of prompt payment regardless of who caused an accident.\textsuperscript{83} However, Minnesota’s system does not truly disregard fault.\textsuperscript{84} An accident victim must meet certain tort thresholds and then sue the at-fault party for any non-economic losses or losses that exceed policy limits.\textsuperscript{85} Although the legislature has enforced state policy through various laws, the Minnesota Supreme Court, in adopting the initial permission rule, created an exception for instances of conversion.\textsuperscript{86}

\textsuperscript{76} See id.


\textsuperscript{78} 1974 Minn. Laws ch. 408.

\textsuperscript{79} MINN. STAT. §§ 65B.41-.71 (1978).

\textsuperscript{80} MINN. STAT. § 65B.42 (2002).

\textsuperscript{81} MINN. STAT. § 65B.48 subd. 1 (2002).

\textsuperscript{82} MINN. STAT. § 65B.49 (2002).

\textsuperscript{83} MINN. STAT. § 65B.42 (2002).

\textsuperscript{84} See Luna v. Zeeb, 633 N.W.2d 540, 543 (Minn. Ct. App. 2001) (stating a plaintiff must prove “$4,000 of medical expenses or an injury producing a disability of sixty days or more, a permanent injury or disfigurement, or death” and then sue to recover non-economic losses).

\textsuperscript{85} See id.

\textsuperscript{86} See Christensen v. Milbank Ins. Co., 658 N.W.2d 580, 585 (Minn. 2003) (explaining the initial permission rule).
E. Conversion

1. Generally

The tort of conversion grew from the early common law action of trover, under which a plaintiff alleged that she lost a chattel that the defendant found and converted to his own use. Eventually, losing and finding became a fiction, and courts extended trover to cover any interference with an owner’s possessory rights. In the United States, the modern tort of conversion may have emerged in Johnson v. Weedman. Following precedent such as Johnson, the Restatement (Second) of Torts section 222 states that where a dispossession seriously interferes with another’s possessory right, the actor may be subject to liability for conversion. The terms “seriously interferes” and “may be” add complexity to the application of conversion. According to the Restatement comments, conversion “has been limited to those exercises of dominion or control over the chattel which so seriously interfere with another’s right to control it that the actor may justly be required to pay the full value of the chattel.” To qualify as a serious interference, a person must have acted with the intent “to deal with the chattel [so] as to deprive the other of its possession.” This does not require the intent to commit a conversion, but requires knowledge that the act is “destructive of any outstanding possessory right . . . .” For example, if a person destroyed a borrowed car by negligently striking a tree, there would be no conversion unless the destruction was intentional. Accordingly, while negligence might result in the destruction of an owner’s chattel,
negligence is not conversion absent the intent to interfere with the owner’s possessory right.97

2. In Minnesota

Minnesota courts have consistently defined conversion as “an act of wilful interference with a chattel, done without lawful justification, by which any person entitled thereto is deprived of use and possession.”98 In 1978, the Minnesota Supreme Court relied upon the Restatement (Second) of Torts section 222 in Herrmann v. Fossum.99 Thus, Minnesota limited conversion to situations where an actor intended to seriously interfere with an owner’s right to possess and control a chattel.100 The Christensen decision changed “conversion” in the context of motor vehicle liability.101

III. THE CHRISTENSEN CASE

A. Facts

Appellant Harvey Christensen worked for Independent School District Number 787 (“ISD”) as a drivers’ education instructor.102 ISD owned and provided a van for Christensen to use for that instruction.103 Christensen had permission to park the van at his home, but not to use the van for personal reasons.104 On July 1, 1994, Christensen completed instruction at noon and drove home to wash ISD’s van.105 Throughout that afternoon Christensen drank a number of beers.106 At about 6:30 p.m. Christensen took a cooler of beer and went for a drive in the van.107
After drinking more beer between 6:30 p.m. and 8:15 p.m., Christensen destroyed the van when he collided with Veronica Wagner on State Highway 10 at 8:30 p.m. Wagner and her passengers sued Christensen and ISD for damages resulting from the accident. Christensen pled guilty to driving under the influence of alcohol.

ISD held insurance through the Minnesota School Board Association Insurance Trust (“MSBAIT”). Christensen had personal insurance for his own car through Milbank Mutual Insurance Company (“Milbank”). The MSBAIT policy provided coverage for vehicles ISD owned, but for unowned vehicles it limited coverage to debts remaining after all other collectible insurance policies had paid. The Milbank policy provided similar coverage. MSBAIT initially defended ISD and Christensen, but later tendered defense to Milbank.

Christensen settled the suit for $78,000 pursuant to a loan receipt from MSBAIT. MSBAIT conditioned the loan receipt upon Christensen’s promise to seek declaratory relief against Milbank for costs and attorney’s fees arising from the original and declaratory actions. Christensen sought declaratory relief and summary judgment against Milbank for breach of duty to defend and indemnify him.

B. Hennepin County District Court

The District Court of Hennepin County entered judgment for Christensen. Three facts were prominent in the court’s analysis: (1) it

108. Id.
109. Id.
111. Christensen, 658 N.W.2d at 583 n.1.
112. Id. at 583.
113. Id.
114. Id.
115. Id.
116. Id. The record does not state why MSBAIT tendered the defense to Milbank. However, the language in the policies indicates ISD’s insurance would be the default policy. MSBAIT probably presumed that Christensen was outside the scope of ISD’s permission, and not covered as a permissive user of the van. See id.
117. Id.
118. Id.
119. Id. at 583-84.
120. Id. at 584.
121. Id.
was undisputed that Christensen had permission to use ISD’s van, (2) the omnibus clause in the MSBAIT policy stated that permissive drivers were plan participants, and (3) the initial permission rule contained a “conversion or theft” exception.\footnote{Christensen v. Milbank Ins. Co., 643 N.W.2d 639, 643 (Minn. Ct. App. 2002).} Thus, unless Christensen converted the van, ISD would be vicariously liable and the MSBAIT policy would cover Christensen.\footnote{See id.} After considering general definitions of conversion, the court held that Christensen converted the van when he took the vehicle, failed to return it, and destroyed it.\footnote{Id. at 644-45.}

\section*{C. Minnesota Court of Appeals}

The court of appeals reversed the district court decision.\footnote{Id. at 644-45.} In making this decision, the court looked to the SRA, the initial permission rule, and precedent.\footnote{See id. at 642-44.} The court highlighted Minnesota’s policy to “ensure members of the public injured by the negligent operation of a motor vehicle ‘an approximate certainty of an effective recovery’ when liability would not otherwise exist.”\footnote{Id. at 642 (quoting Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 165 (Minn. 1983)).} The court of appeals argued that the district court’s definition of conversion was overly broad and did not effectuate state policy.\footnote{See id. at 642-43.} The court then stated that the supreme court had not defined “conversion” within the context of the initial permission rule,\footnote{Id. at 643.} but that conversion was an intentional tort.\footnote{Id.} Based on this reasoning, the court held that “in a situation in which the property is destroyed, conversion may be shown only if the destruction was intentional.”\footnote{Id. at 644 (quoting Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 165 (Minn. 1983))).} As all parties agreed that Christensen did not intend to destroy ISD’s van,\footnote{Id.} the court found no conversion.\footnote{Id. at 644.} Also, because the scope of permission was irrelevant under the initial permission rule, the court did not find conversion in Christensen’s use of the van for personal reasons.\footnote{Id.} Christensen appealed,\footnote{Id.} and the Minnesota
Supreme Court granted review to consider what constitutes “conversion” under the “conversion or theft” exception to the initial permission rule.\textsuperscript{136}

\textbf{D. Minnesota Supreme Court}

In a five-to-two split decision, the Minnesota Supreme Court affirmed the court of appeals and remanded the case to the district court for entry of summary judgment for Milbank.\textsuperscript{137}

The supreme court explained that the SRA and omnibus clauses exist to extend liability insurance to permissive drivers.\textsuperscript{138} The court then stated that its own role was to determine the meaning of “scope of permission.”\textsuperscript{139} The opinion began with three arguments supporting the initial permission rule.\textsuperscript{140} The first argument was that the initial permission rule supports the policy behind the SRA.\textsuperscript{141} Next, the court pointed to a trend of interpreting the SRA and omnibus clauses to “[favor] protection of the uncompensated victims of automobile accidents over any interest of an owner-insured or his insurer that he be not subject to liability when his permittee exceeds the scope of the initial permission.”\textsuperscript{142} Finally, the court stated its reliance on legislative history (such as the No-Fault Act).\textsuperscript{143}

After justifying the initial permission rule, the court considered whether Christensen’s actions constituted conversion.\textsuperscript{144} Although Christensen argued that intent was immaterial to finding conversion,\textsuperscript{145} the court agreed with Milbank that intent was a key element.\textsuperscript{146} In defining conversion, the court looked to case law definitions and Restatement comments.\textsuperscript{147} The court concluded that “[a] wrongful intent to appropriate chattel for one’s own purposes is the essence of the ‘conversion or theft’ exception.”\textsuperscript{148} The supreme court refused to adopt the court of appeals’ intentional destruction requirement because it

\begin{itemize}
\item\textsuperscript{136} Id.
\item\textsuperscript{137} Id. at 588-89.
\item\textsuperscript{138} Id. at 584.
\item\textsuperscript{139} Id.
\item\textsuperscript{140} See id. at 585.
\item\textsuperscript{141} Id.
\item\textsuperscript{142} Id. (quoting Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 166-67 (Minn. 1983)).
\item\textsuperscript{143} See id. at 585.
\item\textsuperscript{144} Id. at 585-86.
\item\textsuperscript{145} Id. at 585.
\item\textsuperscript{146} Id.
\item\textsuperscript{147} Id. at 585-86.
\item\textsuperscript{148} Id. at 586.
\end{itemize}
would unnecessarily narrow the meaning of conversion.\textsuperscript{149} However, the court agreed that accidental destruction of the van could not supply the requisite intent for conversion.\textsuperscript{150} The court further found that Christensen’s use of the van for personal reasons, without permission and under the influence of alcohol, did not show intent to deprive ISD of its right to use or control the van.\textsuperscript{151} Finding no intent for conversion, the court heeded the SRA and applied the initial permission rule to hold ISD vicariously liable for Christensen’s conduct.\textsuperscript{152}

Chief Justice Blatz, joined in dissent by Justice Page, argued that Christensen’s decision to drink and drive provided the requisite intent for conversion.\textsuperscript{153} The dissent favored a strict reading of conversion definitions.\textsuperscript{154} Citing a definition from *Larson v. Archer-Daniels-Midland Co.*,\textsuperscript{155} the dissent implied that because ISD did not give Christensen authority to drink and drive and Christensen knew the limits imposed by ISD, drinking and driving constituted willful interference.\textsuperscript{156} Furthermore, because Christensen broke the law by driving under the influence, he was without lawful justification.\textsuperscript{157} Finally, accidental or not, Christensen destroyed the vehicle and deprived ISD of its use and possession of the van.\textsuperscript{158} The dissent admonished the majority for interpreting the Restatement’s phrasing, “intention to deal with the chattel so that such dispossession results,”\textsuperscript{159} to mean “intent to appropriate chattel for one’s own purposes . . . .”\textsuperscript{160} The dissent argued that such interpretation redefined conversion to mean theft,\textsuperscript{161} and reduced the “conversion or theft” exception to a theft exception.\textsuperscript{162}

In rebutting the dissent, the majority explained that if drinking and driving constituted conversion, the initial permission rule would preclude coverage for uninsured permittees.\textsuperscript{163} The majority stated that such a
decision would contravene state policy to provide recovery to injured people. The court expressed concern that the dissent’s opinion might exempt many negligent behaviors such as drag-racing or speeding. In addition, the court noted that driving under the influence is not negligence per se, so the dissenting opinion would negate insurance coverage for non-negligent behaviors. The court supported these arguments with persuasive authority from the Colorado Supreme Court, which held that “even ‘ludicrous’ uses are within the insured’s permission as long as they do not constitute theft or conversion.”

IV. ANALYSIS OF THE MINNESOTA SUPREME COURT DECISION

The Christensen court correctly interpreted legislative intent and state policy by refusing to relieve vehicle owners of liability where a permittee exceeds initial permission. However, the decision lacks important information, such as whether state policy is well founded, the purpose of the “conversion or theft” exception, and the limits of the new “conversion” definition. The answers to these questions hold the key to the Christensen decision.

A. Foundations of State Policy

Christensen succumbs to the hefty weight of Minnesota’s historical focus on accident victims. The policy behind the SRA was to make motor vehicle owners liable to those injured by permissive drivers when no liability would otherwise exist, and to provide certainty of recovery for injured parties. In addition, Minnesota “favors protection of the uncompensated victims of automobile accidents over any interest of an owner-insured or his insurer that he be not subject to liability when his permittee exceeds the scope of the initial permission.” The supreme

164. See id. at 587.
165. Id. at 586.
166. Id.
168. See id. at 585-87 (relying on MINN. STAT. § 170.54 (2002); Milbank Mut. Ins. Co. v. United States Fid. and Guar. Co., 332 N.W.2d 160 (Minn. 1983); Larson v. Archer-Daniels-Midland Co., 226 Minn. 315, 32 N.W.2d 649 (1948); RESTATEMENT (SECOND) OF TORTS § 222 (1965)).
170. Milbank Mut. Ins. Co., 332 N.W.2d at 166-67. See also Schwalich v. Guenther, 282 Minn. 504, 507, 166 N.W.2d 74, 78 (1969) (stating the SRA effected legislative
court adopted the initial permission rule because public policies required liberal interpretation of the SRA. The initial permission rule satisfied this requirement by holding owners liable regardless of deviation from initial permission. As a result, the interests of Minnesota employers and vehicle owners took a back seat to state policy.

1. **Defense Against the “Deep Pocket”**

Minnesota’s policy and laws enforce the “deep pocket” theory of recovery. While offering a practical means of recovery for injured persons, the “deep pocket” theory retains a twinge of unfairness from the time of masters and servants. However, the loss-distribution attribute of liability insurance substantially changes the “deep pocket” theory.
In procuring liability insurance, each insured pays a relatively small fee to gain indemnity from accident claims and litigation; so what began as the deep pocket of a single employer has become a societal blanket covering all motorists.\(^{177}\)

Mandatory insurance laws, omnibus clauses, and Minnesota's SRA followed the success and practicality of liability insurance.\(^{178}\) Today the law seems less concerned with blaming vehicle owners than with providing a means of compensation and medical attention to the injured.\(^{179}\) Of course the system is imperfect; an owner's premium may rise, some people may become uninsurable, and many vehicle owners refuse to maintain insurance despite the laws.\(^{180}\) From a broad perspective, the assurance that society will care for injured accident victims who face financial ruin makes such issues a small price to pay and justifies favoring the injured.\(^{181}\)

2. Justifying the Initial Permission Rule

The minor deviation rule used scope of permission to limit liability under the SRA and omnibus clauses.\(^{182}\) In 1983, the Minnesota Supreme Court adopted the initial permission rule, noting a “trend toward the expansion of omnibus clauses” and an increase in social concern to

---

177. See Kenneth S. Abraham, Distributing Risk 2 (1986).
178. See supra Part II.
179. See Christensen v. Milbank Ins. Co., 658 N.W.2d 580, 585 (Minn. 2003) (stating public policy is to protect injured victims); Milbrandt v. Am. Legion Post of Mora, 372 N.W.2d 702, 705 (Minn. 1985) (stating that under the No-Fault Act an insurer “has a duty to pay basic economic loss benefits to its insured without regard to fault”); Keeton et al., supra note 13, at 615 (stating compensation may now be paid on the basis of strict accountability rather than fault).
182. See supra Part II.
provide compensation to injured parties. The court also noted that insurance companies were willing to provide broader coverage in lieu of high litigation costs.

Under the No-Fault Act, a motorist must carry liability insurance, including provisions for uninsured motorists. Thus, when an uninsured motorist causes an accident, the victim’s own insurance company provides compensation. Because insurance is mandatory and the victim’s policy provides coverage, the purpose of discarding the minor deviation rule in favor of the initial permission rule comes into question. One rationale is that the tremendous number of motor vehicle accidents presents limitless factual situations. Courts following the minor deviation rule must determine case-by-case whether a motorist was within the scope of permission. Because litigation is expensive and time-consuming, expeditious claim settlement serves the interests of the state and the litigating parties. Another problem arises when courts relinquish liability based on deviations from the scope of permission. Medical treatment, rehabilitation programs, and an inability to work may lead to financial ruin for permittees and their victims. Even where the permittee injures a driver who has no-fault insurance, serious injury could exceed policy coverage. The injured party could then directly sue the uninsured permittee, which may only add unpaid legal fees to unpaid hospital bills. By holding vehicle

---

184. Id.
185. MINN. STAT. § 65B.41-.71 (2002).
186. MINN. STAT. § 65B.43 (2002).
187. See supra note 11.
189. See MINN. STAT. § 65B.42 (2002); Universal Underwriters Ins. Co. v. Taylor, 408 S.E.2d 358, 364 (W. Va. 1991) (stating the initial permission rule “best effectuates the legislative policy of providing certain and maximum coverage, and is consistent with the language of the standard omnibus clause automobile liability insurance policies” (quoting Matis v. Nationwide Mut. Ins. Co., 166 A.2d 345, 349 (1960)).
192. See MINN. STAT. 65B.49 subd. 3a (2002) (requiring only $25,000 of uninsured motorist coverage for injury or death).
193. See Rehnelt v. Stuebe, 397 N.W.2d 563, 564 (Minn. 1986); Kleeman v.
owners liable for the acts of permittees regardless of scope of permission, the initial permission rule supports state policy and makes use of the insurance infrastructure. Thus, the number, complexity, and seriousness of motor vehicle accidents, the benefits of limiting litigation, and social policies demanding coverage for the injured justify the initial permission rule in Minnesota.

B. Examination of the Law

1. Conversion in the Context of the Initial Permission Rule

The Christensen court applied the initial permission rule and refused to find conversion even where a permissive driver’s intentional and negligent act resulted in the destruction of a vehicle and injuries to third parties. The SRA was the basis for the decision, and states that anyone using a vehicle with the owner’s permission is the owner’s agent. The supreme court interpreted the SRA using the initial permission rule to make scope of permission irrelevant. The single exception to the rule is where the court finds “theft or conversion.”

Although the court adopted the initial permission rule to guarantee recovery to injured parties and reduce litigation, the exception is justified because permission, not scope of permission, is the bright line courts use to limit liability. This rationale for requiring permission stems from the negligence and foreseeability test of respondeat superior. While the general purpose of the initial permission rule is to

Cadwell, 414 N.W.2d 433, 440 (Minn. Ct. App. 1987) (Randall, J., concurring specially) (“In a complex personal injury or products liability case... out of pocket costs for discovery and experts through a trial can run into thousands of dollars.”).

194. See Milbank Mut. Ins. Co. v. United States Fid. & Guar. Co., 332 N.W.2d 160, 166 (Minn. 1983) (adopting the initial permission rule to effectuate state policy by holding owners and their insurers liable to injured accident victims).

195. See generally MINN. STAT. 65B.41-.71; Christensen v. Milbank Ins. Co., 658 N.W.2d 580 (Minn. 2003); Milbank Mut. Ins. Co., 332 N.W.2d at 160.

196. See Christensen, 658 N.W.2d at 586-87.

197. MINN. STAT. § 170.54 (2002).


199. See Bates, 603 N.W.2d at 682 (“[T]he conduct required to terminate permission must be tantamount to theft or conversion.”).

200. See Milbank Mut. Ins. Co., 332 N.W.2d at 166.

201. See Bates, 603 N.W.2d at 681 (“Liability depends not on the scope of permission, but on whether permission was given in the first instance.”).

202. See supra note 13 and accompanying text.
make scope of permission irrelevant when interpreting the SRA and omnibus clauses, the “conversion or theft” exception negates liability where a vehicle owner has given no permission and therefore has not been negligent.203

In Christensen, the majority, the dissent, and the parties argued over the purpose of conversion within the context of the initial permission rule.204 The central dispute was whether and what type of intent the court should require for finding conversion.205 Christensen mistakenly argued that intent was irrelevant.206 Conversion is an intentional tort and by definition requires intent.207 In addition, “[m]ere proof of the happening of an accident is not enough to establish negligence or its causal relation to the damage.”208 The dissent argues that by requiring “intent to appropriate chattel for one’s own purposes” the majority redefines conversion to mean theft.209 The dissent would follow the Restatement and case law definitions of conversion that require only the intent to deprive an owner of use and possession through dominion, or control.210 Such definitions would allow courts to find conversion after a vehicle owner granted permission.211 According to the majority, finding conversion after an uninsured and intoxicated driver received initial permission would conflict with state policy.212 The majority states that if driving under the influence constituted conversion, courts might withhold relief even where the driver was not negligent.213 The majority cites Minnesota law and precedent under which driving while intoxicated

---

203. See supra notes 201, 202 and accompanying text. See also Verriest v. INA Underwriters Ins. Co., 662 A.2d 967, 972 (N.J. 1995) (stating that two questions will determine coverage: (1) whether an owner gave initial permission, and (2) whether subsequent use constituted theft or the like).


205. See id. at 585-88.

206. Id. at 585.

207. See Herrmann v. Fossum, 270 N.W.2d 18, 20 (Minn. 1978) (stating conversion is an intentional tort).

208. State v. Paskewitz, 233 Minn. 452, 461, 47 N.W.2d 199, 204 (1951).

209. Christensen, 658 N.W.2d at 588 (Blatz, C.J., concurring in part, dissenting in part).


211. See sources cited supra note 210.

212. See Christensen, 658 N.W.2d at 586 (stating that following the dissent’s opinion would preclude recovery for accident victims).

213. See id. (arguing that because traffic violations are not negligent per se, finding conversion for intoxicated driving would preclude coverage without negligence (citing MINN. STAT. § 169.96 (2002))).
is evidence of negligence, not negligence per se.\textsuperscript{214} Such arguments complicate the matter, however, and other jurisdictions provide insight into the \textit{Christensen} decision.\textsuperscript{215}

The majority opinion is consistent with jurisdictions where the exception is not “conversion or theft,” but “theft or the like.”\textsuperscript{216} Legislative intent in these jurisdictions is to except only situations involving no express or implied permission.\textsuperscript{217} In fact, Nebraska derived their “theft or conversion” exception directly from the “theft or the like” exception in Illinois and New Jersey.\textsuperscript{218}

\textsuperscript{214} See id. at 586-87 (citing \textsc{Minn. Stat.} § 169.96(b)); \textsc{Raitz v. State Farm Mut. Auto. Ins. Co.}, 960 P.2d 1179, 1183, 1187, n.15 (Colo. 1998); \textsc{Wiglesworth v. Farmers Ins. Exch.}, 917 P.2d 288, 292 (Colo. 1996); \textsc{Kedrowski v. Czech}, 244 Minn. 111, 118, 69 N.W.2d 337, 342 (1955); \textsc{Kirsebom v. Connelly}, 486 N.W.2d 172, 175 (Minn. Ct. App. 1992); \textsc{Mueller v. Sigmond}, 486 N.W.2d 841, 843-44 (Minn. Ct. App. 1992).

\textsuperscript{215} See infra notes 216-18 and accompanying text.


\textsuperscript{217} United States Fire Ins. Co. v. Kendle, 318 N.E.2d 644, 648 (Ill. Ct. App. 1974) (stating “theft and the like” includes only situations where there is no permission from the insured owner).

\textsuperscript{218} \textsc{Allstate Ins. Co.}, 788 P.2d at 345 n.4 (stating that some courts list “conversion” as an exception but that the court’s “research indicates . . . only one court has addressed the meaning of conversion in this context and has rejected the application of the definition of tortious conversion to the exception recognized”); \textsc{State Farm Mut. Auto. Ins. Co.}, 553 N.W.2d at 740 (restating the initial permission rule exception as “theft or conversion” after adopting the rule from jurisdictions that recognize a “theft or the like” exception).
The dissent is correct that under general definitions of conversion Christensen converted the van through a willful and illegal act that deprived ISD of its possessory rights. However, because the purpose of the conversion exception is to limit liability where a vehicle owner did not grant permission, legislative intent and state policy do not support the dissent opinion in the context of motor vehicle liability. ISD gave Christensen permission to use the van. The exceptions to the initial permission rule apply only in absence of permission. Thus, the majority was correct in finding no conversion.

2. Effects of the Christensen Decision

Prior to Christensen, motor vehicle owners were not liable for injuries that occurred materially outside the scope of permission where common law conversion disarmed the SRA and omnibus clauses. Now, owners who give permission to drive their vehicles are liable for subsequent injuries, with virtually no exception. Theft would preclude liability; however, it is unlikely a court would find theft following a grant of permission. The Christensen decision is not limited to alcohol-related incidents, and applies to vehicle liability cases generally. Although the court’s analysis revolved around defining “conversion,” the net effect was merely a clarification of legislative intent behind the initial permission rule. Thus, common law conversion should never have been an exception to the initial permission rule, and remains

219. See supra Part II.D (discussing the dissent’s argument in favor of conversion).
220. See supra notes 216-18 and accompanying text.
222. See supra notes 216-18 and accompanying text.
223. See Christensen v. Milbank Ins. Co., 643 N.W.2d 639, 643 (Minn. Ct. App. 2002) (“There are no supreme court cases defining the term ‘conversion’ when used in this context.”). Previous cases considering conversion in the context of the SRA and initial permission rule used the common law definition of conversion. See Herrmann v. Fossum, 270 N.W.2d 18, 21 (Minn. 1978); Larson v. Archer-Daniels-Midland Co., 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948).
224. See Christensen, 658 N.W.2d at 588. There have been no reported cases absolving a vehicle owner from liability in Minnesota since Christensen. It remains to be seen if any factual situations beyond theft will become exceptions to the rule.
225. See id. See also 7 AM. JUR. 2d Automobile Insurance § 111 (2002) (stating that when an insured gives consent to use his or her vehicle, such consent may preclude coverage for theft).
226. See Christensen, 658 N.W.2d at 586-87 (expressing concern over drag-racing, speeding, and other “ludicrous” vehicle uses).
227. See id. at 585-86.
228. See supra notes 216-18 and accompanying text.
unaffected by Christensen.229

V. WARMING UP TO VEHICLE OWNERS: A PROPOSED PLAN

The Christensen decision may have a negative impact on employers and others who will hesitate to grant permission for business and other beneficial purposes 230. While more lenient methods, such as the minor deviation rule, increase litigation and ultimately inhibit state policy,231 current laws may create unfair situations.232 With Minnesota’s policy in mind, the supreme court correctly chose the initial permission rule, and correctly defined the role of conversion within that rule.233 Moving forward, the legislature must give consideration to business practices and the interests of vehicle owners. One option is to take a stance between the minor deviation rule and the initial permission rule.234 However, Minnesota policy backs the initial permission rule,235 and a better choice may be to create an exception that fulfills state policy while allowing

229. See id. The words of Mark Twain (Samuel Clemens) characterize this issue well: “The difference between the almost right word and the right word is really a large matter—’tis the difference between the lightening-bug and the lightning.” Letter from Mark Twain to George Bainton (undated), in THE ART OF AUTHORSHIP, LITERARY REMINISCENCES, METHODS OF WORK, AND ADVICE TO YOUNG BEGINNERS, PERSONALLY CONTRIBUTED BY LEADING AUTHORS OF THE DAY, at 87-88 (George Bainton ed., 1890).

230. Cf. Christensen, 658 N.W.2d at 588 (Blatz, C.J., concurring in part and dissenting in part) (stating vehicle owners will be liable in every circumstance except theft).

231. See supra note 57 and accompanying text.

232. See supra note 175.

233. See Christensen, 658 N.W.2d at 585-86 (discussing the reasons for adopting the initial permission rule and definition of conversion). Thomas Jefferson once wrote:

With your talents and industry, with science, and that stedfast honesty which eternally pursue right, regardless of consequences, you may promise yourself everything—but health, without which there is no happiness. An attention to health then should take place of every other subject. The time necessary to secure this by active exercises, should be devoted to it in preference to every other pursuit.


234. AIG Hawaii Ins. Co., Inc. v. Vicente, 891 P.2d 1041, 1048 (Haw. 1995) (stating the court will “construe the scope of permission more broadly than under the minor deviation rule, [but will] not go so far as to construe it so broadly as to adopt the initial permission rule”).

235. “[W]here the legislature has enacted a comprehensive scheme of motor vehicle legislation designed to assure that persons who cause automobile accidents are able to answer financially to their innocent victims, the liberal or ‘initial permission’ rule . . . should be adopted . . . .” 8 LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE, §113:9 (3d ed. 2003).
vehicle owners a choice in liability. For example, the SRA could read:

Whenever any motor vehicle shall be operated within this state, by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident be deemed the agent of the owner of such motor vehicle in operation thereof. Major departures from the initial scope of permission, short of theft or the like, do not relieve the owner from vicarious liability for the permittee’s negligent use of the vehicle, except where a permittee insured in accordance with state law expressly accepts liability on behalf of the owner.

Under such a provision, employers could require employees to accept liability and show proof of insurance before using company vehicles. The employer’s insurance would cover business-related vehicle use, while the employee’s insurance would cover personal use. Friends and neighbors could loan and borrow vehicles after agreeing which party’s insurance would be responsible for accident injuries. Such amendments could tame any negative impact that state policy has on society, yet assure recovery for injured persons.

This solution would require employers to define the scope of employment, which has proven difficult in the past. On the other hand, even broad definitions of personal use such as driving after drinking alcohol or driving a specified distance off-course could provide a flexible guideline for courts. This solution may also increase litigation. Individual vehicle owners and their permittees may disagree over who was liable for accidents. Placing the burden of proof on the permittee to show the owner accepted liability may limit such litigation.

VI. CONCLUSION

The Christensen decision is the most recent link in Minnesota’s long chain of vehicle owner liability cases. The Christensen court essentially eliminated the initial permission rule’s conversion exception. This is a necessary extension of existing legal interpretation, and owners who give initial permission should expect to

236. Fruit v. Schreiner, 502 P.2d 133, 140 (Alaska 1972) ("'[S]cope of employment' [has] produced confusing and contradictory legal results . . . ."); id. at 141 ("'[N]o categorical statement can delimit the meaning of 'scope of employment' once and for all times.'"); Laurie v. Mueller, 78 N.W.2d 434, 437 (Minn. 1956) ("'[S]cope of employment' is impossible of concrete definition . . . .").

237. See Christensen, 658 N.W.2d at 588.
be vicariously liable for subsequent injuries in virtually every instance.\textsuperscript{238}

The \textit{Christensen} decision supports the goal of Minnesota policy and tort law by ensuring compensation to injured accident victims.\textsuperscript{239} However, legislative and judicial efforts have failed to create a satisfactory balance between state policy and a general moral sense that vehicle owners should not be penalized for another person’s wrongful actions.\textsuperscript{240} Furthermore, laws and rules purporting to serve the best interests of society should not encourage people to distrust others for fear of liability. The notion that vehicle owners can foresee and control a permittee’s future acts is mere fiction used to justify risk-distribution.\textsuperscript{241}

Over the years, the legislature and courts have made great progress toward protecting accident victims through policies, laws, and rules. Now the laws must be refined until the system provides for the injured, minimizes litigation, and allows businesses and individuals to use and limit use of their motor vehicles as they see fit.

\textsuperscript{238} See \textit{id}.
\textsuperscript{239} See \textit{supra} note 2.
\textsuperscript{240} See \textit{supra} note 175.
\textsuperscript{241} See sources cited \textit{supra} note 16.