New and updated instructions in this 2023 edition of
North Carolina Pattern Jury Instructions for Motor Vehicle Negligence Cases

This edition contains a new table of contents for the motor vehicle instructions, a number of replacement instructions for motor vehicle cases, and a new motor vehicle index. To update your printed edition, print and place the instructions listed below in the proper numerical sequence of your previous edition. Old instructions with the same number should be discarded.

Interim Instructions. As the Pattern Jury Instructions Committee considers new or updated instructions, it posts Interim Instructions that are too important to wait until June to distribute as part of the annual hard copy supplements to the School of Government Website at sog.unc.edu/programs/ncpji. You may check the site periodically for these instructions or join the Pattern Jury Interim Instructions Listserv to receive notification when instructions are posted to the website. Visit the following link to join the Listserv: http://lists.unc.edu/read/all_forums/subscribe?name=ncpjii.

This supplement contains the following replacements for existing instructions:

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103.10 Agency Issue—Burden of Proof—When Principal is Liable

103.25 Agency—Lent Employee Without Vehicle

103.40 Ownership of Vehicle as *Prima Facie* Evidence of Agency

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103.61 Agency—Use of Motor Vehicle by Transferee of Agent

*103.80 Financial Responsibility—Express of Implied Permission/Use of Motor Vehicle

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A. DEFINITIONS FROM THE MOTOR VEHICLE CODE. (~~2/89~~6/09)

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103.00 AGENCY—PREFACE

The operation of motor vehicles by persons other than the owner presents a number of possible scenarios in which the owner may be held liable for the negligent acts of the operator. The common law rule of agency is the most frequent example in which the principal (owner) is liable for the negligence of any agent (driver) during the course and scope of an agency relationship. *See, e.g.:*

- N.C.P.I.-Motor Vehicle 103.10—Agency Issue—Burden of Proof—When Principal is Liable;
- N.C.P.I.-Motor Vehicle 103.15—Independent Contractor;
- N.C.P.I.-Motor Vehicle 103.25—Agency—Lent Servant Doctrine;
- N.C.P.I.-Motor Vehicle 103.50—Agency—Departure from Employment;
- N.C.P.I.-Motor Vehicle 103.55—Agency—Willful and Intentional Injury Inflicted by an Agent;
- N.C.P.I.-Motor Vehicle 103.60—Use of Agent's Own Vehicle;
- N.C.P.-Motor Vehicle 103.70—Final Mandate—Agency Issue.

In addition to traditional agency relationships, there are other situations that apply specifically to the operation of motor vehicles by a person other than the owner, in which special rules apply, including the following:

1. N.C.P.I.—Motor Vehicle 103.40—Ownership of Vehicle as *Prima Facie* Evidence of Agency; N.C.G.S. § 20-71.1. By statute, proof of ownership of a motor vehicle at the time of an accident or collision is *prima facie* evidence that the vehicle was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which the injury or cause of action arose. This evidentiary rule creates a method for placing the issue before the jury, but still requires the proof of an agency relationship.

2. N.C.P.I.—Motor Vehicle 103.45—Registration as *Prima Facie* Evidence of Ownership and Agency; N.C.G.S. § 20-71.1. By statute, proof of the registration of a motor vehicle in the name of a [person] [firm] [corporation] at the time of an accident or collision is *prima facie* evidence of ownership and that the vehicle was then being operated by and under the control of a person for whose conduct the owner was legally responsible, that it was being operated for the owner's benefit, and that it was being operated within the course and scope of the driver's employment. In the same manner as proof of ownership, this evidentiary rule concerning proof of registration creates a method for placing the issue before the jury, but still requires the proof of an agency relationship.

In addition, financial responsibility for injuries may also be extended beyond what is imposed in an agency relationship by virtue of statute and case law in North Carolina pertaining to mandatory liability insurance coverage on motor vehicles. In particular, N.C.G.S. § 20-279.21(b)(2) provides that an owner's policy of liability insurance "[s]hall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle. *Belasco v. Nationwide Mut. Ins. Co.*, 73 N.C. App. 413, 415, 326 S.E.2d 109, 110 (1985). Disputes over insurance coverage most often are presented through Declaratory Judgment actions, but these actions may also include issues of fact for the jury. *See, e.g.,* N.C.P.I.—Motor Vehicle 103.80—Financial Responsibility—Express or Implied Permission/Use of Motor Vehicle.

NOTE WELL: When instructing a jury on issues relating to insurance coverage, the presiding judge should take care not to

mention the existence or non-existence of liability insurance. See *N.C.G.S. § 8C-1; N.C.R. Evid. 411.*

103.10 AGENCY ISSUE—BURDEN OF PROOF—WHEN PRINCIPAL IS LIABLE.

This issue reads:

"Was (*state name of agent*) the agent of the defendant (*state name of defendant*) at the time of the collision?"[1]

> *NOTE WELL: If the testimony presented at trial is in terms of employment rather than agency, the Court may choose to replace references to "principal" with "employer" and references to "agent" with "employee."*

You will answer this issue only if you have answered Issue (*state number of issue addressing agent's negligence*) "Yes" in favor of the plaintiff.

Agency is the relationship which results when one person, called the principal, authorizes another person, called the agent, to act for the principal. This relationship may be created by word of mouth, or by writing, or may be implied from conduct amounting to consent or acquiescence. A principal is liable to third persons for the [acts] [negligence] of [his] [her] [its] agent in the transaction of the principal's business if the agent [himself] [herself] is liable.[2]

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the following three things:

<u>First</u>, that there was a principal-agent relationship between *(state name of principal*) and (*state name of agent*) at the time of the collision.

<u>Second</u>, that (*state name of agent*) was engaged in the work, and was about the business of (*state name of principal*) at the time of the collision.

<u>Third</u>, that the business in which (*state name of agent*) was engaged at the time was within the course and scope of [his] [her] authority or

employment. It would be within the course and scope of (*state name of agent*)'s authority or employment if it was done in furtherance of the business of (*state name of principal*), or was incident to the performance of duties entrusted to (*state name of agent*), or was done in carrying out a direction or order of (*state name of principal*)[3], and was intended to accomplish the purposes of the agency.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that there was a principal-agent relationship between (*state name of principal*) and (*state name of agent*) at the time of the collision, that (*state name of agent*) was engaged in the work, and was about the business of (*state name of principal*) at the time of the collision, and that the business in which (*state name of agent*) was engaged at the time was within the course and scope of [his] [her] authority or employment, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. "Unless there is but one inference that can be drawn from the facts, whether an agency relationship exists is a question of fact for the jury. If only one inference can be drawn from the facts then it is a question of law for the trial court." *Hylton v. Koontz*, 138 N.C. App. 629, 635-36, 532 S.E.2d 252, 257 (2000) (citation omitted), *disc. review denied and dismissed*, 353 N.C. 373, 546 S.E.2d 603-04 (2001).

2. *See Egen v. Excalibur Resort Professional & Travelers Insurance Co.,* 191 N.C. App. 724, 729, 663 S.E.2d 914, 918 (2008) (noting that "[t]he general agency doctrine holds the principal responsible for the acts of his agent"); *see also Keller v. Deerfield Episcopal Ret. Cmty., Inc.*, 271 N.C. App. 618, 629, 845 S.E.2d 156, 164 (2020) ("Where the agent has no liability, there is nothing from which to derive the principa's liability.").

3. *Hendrix v. Town of West Jefferson*, 273 N.C. App. 27, 33, 847 S.E.2d. 903, 908 (2020) ("To be within the scope of employment, an employee, at the time of the incident, must be acting in furtherance of the principal's business and for the purpose of accomplishing the duties of his employment. If an employee departs from that purpose to accomplish a purpose of his own, the principal is not [vicariously] liable.") (quoting *Troxler v. Charter Mandala Center*, 89 N.C. App. 268, 271, 365 S.E.2d 665, 668 (1988)).

103.25 AGENCY—LENT EMPLOYEE[1] WITHOUT VEHICLE

A [principal] [employer] who lends or hires out an [agent] [employee] to another person remains responsible to third persons for the negligence of the [agent] [employee] unless, as to the work involved, [he] [she] [it] completely surrenders any control over the [agent] [employee].

The test in determining whether a lent [agent] [employee] becomes the agent of the person to whom the [agent] [employee] is loaned is whether [he] [she] [it] passes under the control of that person with regard not only to the work to be done, but also to the manner of performing it.[2]

LENT EMPLOYEE WITH VEHICLE

Where a [principal] [employer] furnishes to another person a motor vehicle and driver, [principal] [employer] remains responsible for the negligent act(s) of the driver unless [he] [she] [it] so completely surrenders control over the driver as virtually to suspend, temporarily at least, the responsibility normally associated with control.

The test in determining whether a lent [agent] [employee] becomes the agent of the person to whom the [agent] [employee] is loaned is whether [he] [she] [it] passes under the control of that person with regard not only to the work to be done, but also to the manner of performing it.[3]

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1. The Lent Employee Doctrine was previously known in antiquated terms as the "Borrowed Servant Rule" or "Lending-Servant Doctrine" and was referred to as such in previous versions of these Pattern Jury Instructions.

2. *See* generally, *Lewis v. Barnhill*, 267 N.C. 457 (1966); *Weaver v. Bennett*, 259 N.C. 16 (1963); *Leonard v. Tatum & Dalton Transfer Co.*, 218 N.C. 667 (1940).

A continuance of the general employment is indicated if one rents a machine and operator to another, particularly if the instrumentality is of considerable value. The general employer normally expects the employee to protect the employer's interests. The fact that

the general employer is in the business of renting automobiles with drivers is relevant, since in such cases there is more likely to be an intent to retain control. A person who is not in such business and who, gratuitously or not, as a matter not within his general business enterprise permits his employees and his automobile to assist another, is more apt to intend to surrender control. *Moody v. Kersey*, 270 N.C. 614 (1967) (concerning a crane) *Lewis v. Barnhill*, 267 N.C. 457 (1966) (same); *Weaver v. Bennett*, 259 N.C. 16 (1963) (concerning a unit backhoe); *Jones v. Douglas Aircraft Co*., 251 N.C. 832 (1960) (concerning a crane); *Hodge v. McGuire*, 235 N.C. 132 (1952) (concerning a bulldozer).

3. *See supra* n.2.

103.40 OWNERSHIP OF VEHICLE AS *PRIMA FACIE* EVIDENCE OF AGENCY.

The motor vehicle law provides that proof of ownership of a motor vehicle at the time of an accident or collision is sufficient evidence that the vehicle was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which the injury or cause of action arose.[1] In other words, proof of ownership of the vehicle is sufficient evidence from which you could find, but are not compelled to find, that the driver was an agent of the owner.

The owner may offer evidence tending to show that, in fact, no agency existed. Whether or not the owner offers such evidence, the owner does not have the burden of proving the absence of agency.[2]

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1. *Biggs v. Brooks*, 285 N.C. App. 64, 68, 877 S.E.2d 406, 409 (2022) ("By law, proof of ownership of a motor vehicle at the time of a collision is *prima facie* evidence that the motor vehicle was being operated with the authority, consent, and knowledge of the owner and 'being operated by and under the control of a person for whose conduct the owner was legally responsible.'").

2. When a plaintiff relies upon proof of ownership through N.C.G.S. § 20-71.1(a), "the defendant may offer positive, contradicting evidence which, if believed, would establish the absence of an agency relationship. This contradictory evidence entitles the defendant to a peremptory instruction that if the jury does believe the contrary evidence, it must find for defendant on the agency issue. In other words, when the defendant presents evidence contradicting this statutory agency principle, the statutory presumption is not weighed against defendant's evidence by the trier of facts. Instead, the plaintiff must present affirmative evidence supporting the agency theory." *Biggs v. Brooks*, 285 N.C. App. 64, 69, 877 S.E.2d 406, 410 (2022) (internal quotation marks and citations omitted). For an example of a peremptory instruction, see N.C.P.I. 101.65—Peremptory Instruction.

103.45 REGISTRATION AS *PRIMA FACIE* EVIDENCE OF OWNERSHIP AND AGENCY.

The motor vehicle law provides that proof of the registration of a motor vehicle in the name of a [person] [firm] [corporation] at the time of an accident or collision is sufficient evidence of ownership and that the vehicle was then being operated by and under the control of a person for whose conduct the owner was legally responsible, that it was being operated for the owner's benefit, and that it was being operated within the course and scope of the driver's employment. In other words, proof of registration is sufficient evidence from which you could find, but are not compelled to find, that the driver was an agent of the [person] [firm] [corporation] in whose name the vehicle was registered.

The [person] [firm] [corporation] may offer evidence tending to show that, in fact, (the [person] [firm] [corporation] was not the owner and that) no agency existed. Whether or not this evidence is offered, that [person] [firm] [corporation] does not have the burden of proving the absence of (ownership or) agency.[1]

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1. *Biggs v. Brooks,* 285 N.C. App. 64, 69, 877 S.E.2d 406, 410 (2022) reasons that when a plaintiff relies upon proof of ownership through N.C.G.S. § 20-71.1(a), "the defendant may offer positive, contradicting evidence which, if believed, would establish the absence of an agency relationship. This contradictory evidence entitles the defendant to a peremptory instruction that if the jury does believe the contrary evidence, it must find for defendant on the agency issue. In other words, when the defendant presents evidence contradicting this statutory agency principle, the statutory presumption is not weighed against defendant's evidence by the trier of facts. Instead, the plaintiff must present affirmative evidence supporting the agency theory." *Id.* (internal quotation marks and citations omitted). While *Biggs* discusses the peremptory instruction in the context of proof of ownership under N.C.G.S. § 20-71.1(a), absent case authority otherwise, it appears *Biggs*' rationale would apply equally to N.C.G.S. § 20-71.1(b). *See also Thompson v. Three Guys Furniture Co*., 122 N.C. App. 340, 344, 469 S.E.2d 583, 586 (1996) (discussing N.C.G.S. § 20-71.1 generally). For an example of a peremptory instruction, see N.C.P.I. 101.65—Peremptory Instruction.

103.61 AGENCY—USE OF MOTOR VEHICLE BY TRANSFEREE OF AGENT.[11]

The law of North Carolina provides that a person authorized by the owner to drive a vehicle does not have authority to permit another to drive the vehicle in the absence of express or implied authority by the owner, and unless this authority is present, the owner is not liable for the negligent acts of the other driver.

> *NOTE WELL: The recitation of North Carolina law set forth above is applicable under general agency principles, but may not necessarily be accurate for claims implicating the Motor Vehicle Safety and Financial Responsibility Act, N.C.G.S. § 20-279.1,* et seq. *See* N.C.P.I.—Motor Vehicle 103.80—Financial Responsibility—Express or Implied Permission/Use of Motor Vehicle.

[Express authority is authority definitively and clearly given either orally or in writing and not left to inference or implication.]

[Implied authority is authority inferred from the circumstances, conduct, or language of the parties.]

[However, if the [agent] [employee] is confronted with an emergency which makes it necessary for the [agent] [employee] to get aid, and for this reason the [agent] [employee] authorizes another driver to operate the [principal's] [employer's] vehicle, the [principal] [employer] would be liable for [injuries] [damages] proximately caused by the other driver's negligence while rendering the aid requested by the [agent] [employee].]

I charge you that the [defendant] [plaintiff] is not responsible for the negligent operation of the vehicle by a driver other than the [[defendant’s] [plaintiff’s]] [[agent] [employee]] unless you find from the greater weight of the evidence that (1) the [[defendant's] [plaintiff's]] [[agent] [employee]] had the authority, either express or implied, to allow the other driver to

operate the vehicle, or (2) the [[defendant's] [plaintiff's]] [[agent] [employee]] was confronted with an emergency which made it necessary for the [defendant] [plaintiff] to authorize the other driver to operate the vehicle.

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1. *See Torres v. Smith*, 269 N.C. 546 (1967); *Barrier v. Thomas & Howard Co.*, 205 N.C. 425 (1933).

103.80 FINANCIAL RESPONSIBILITY[1]—EXPRESS OR IMPLIED PERMISSION/ USE OF MOTOR VEHICLE.

NOTE WELL: This instruction is to be used with claims implicating the Motor Vehicle Safety and Financial Responsibility Act, N.C.G.S. § 20-279.1, et seq. *and is most likely to arise in a declaratory judgment action related to insurance coverage.*

This (*state number*) issue reads:

"Did the driver have permission to operate the owner's vehicle at the time of the accident?"

On this issue the burden of proof is on the [party seeking to establish permission].

[Express permission is directly and distinctly stated, clear and outspoken, and not merely implied or left to inference.[2]]

[Implied permission involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent or approval. The relationship between the owner and the driver, such as kinship, social ties, and the purpose of the use, should all be taken into consideration to determine the owner's implied permission for the actual use.[3]

Implied permission may be found where the owner has knowledge of a violation of instructions and fails to make a significant protest. Knowledge may be actual or constructive.[4] Actual knowledge is direct and clear knowledge of a fact.[5] Constructive knowledge is knowledge that a person using reasonable care or diligence should have, and therefore that knowledge is attributed to the person by law.[6]

Additionally, use must fall within the scope of implied permission. A person is permitted to slightly deviate from the authority or permission granted by the owner of the vehicle to operate the vehicle. However, a material deviation from the permission or authority granted, if any, constitutes a use of the automobile without the owner's implied permission.[7] If the permission granted is general in nature, then specific trip permission would not have to be shown.]

Finally, as to this (*state number*) issue on which the (*the party who is attempting to establish permission*) has the burden of proof, if you find, by the greater weight of the evidence, that the driver had [express] [implied] permission to operate the owner's vehicle at the time of the accident, then it would be your duty to answer this issue "Yes" in favor of [the party who is attempting to establish permission].

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" against (*the party who is attempting to establish permission*).

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1. *Belasco v. Nationwide Mut. Ins. Co*., 73 N.C. App. 413, 416, 326 S.E.2d 109, 111 (1985) outlines lawful possession of another's vehicle pursuant to the Motor Vehicle Safety and Financial Responsibility Act, N.C.G.S. § 20-279.1, *et seq*.

2. *Hawley v. Indem. Ins. Co. of N. Am*., 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

3. *Hawley v. Indem. Ins. Co. of N. Am*., 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

4. *Hawley v. Indem. Ins. Co. of N. Am*., 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

5. *Phillips ex rel. Bates v. N. Carolina Dep't of Transp*., 200 N.C. App. 550, 558, 684 S.E.2d 725, 731 (2009) (citing *State v. Poteat*, 163 N.C. App. 741, 746, 594 S.E.2d 253, 255–56 (2004)); *see also Knowledge*, BLACK'S LAW DICTIONARY (11th ed. 2019).

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6. *Phillips ex rel. Bates v. N. Carolina Dep't of Transp.*, 200 N.C. App. 550, 558, 684 S.E.2d 725, 731 (2009) (citing *State v. Poteat*, 163 N.C. App. 741, 746, 594 S.E.2d 253, 255–56 (2004)); *see also Knowledge*, BLACK'S LAW DICTIONARY (11th ed. 2019).

7. *Hawley v. Indem. Ins. Co. of N. Am.*, 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962); *see also Nationwide Mut. Ins. Co. v. Baer*, 113 N.C. App. 517, 522, 439 S.E.2d 202, 205 (1994).