INSURANCE-AUTOMOBILE LIABILITY-MEANING OF "PERMISSION" IN OMNIBUS CLAUSE

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Insurance—Automobile Liability—Meaning of "Permission" in Omnibus Clause—Plaintiff's car was damaged in a collision with a truck driven by \( W \), owned by \( M \), and insured in the name of \( M \) by defendant. The policy contained an omnibus clause extending coverage to "any person legally using or operating the [motor vehicle] with the permission, express or implied, of such owner." \( S \) had general charge of the truck, as an employee of \( M \), and had previously used it for his own purposes to the knowledge of \( M \), who made no objection. At the time of the accident, \( S \) was returning from a tavern with \( W \), another employee of \( M \), and \( S \), under the influence of liquor, and feeling too sleepy to drive, had asked \( W \) to take the wheel. The trial court rendered judgment for plaintiff against defendant insurer. Held, affirmed. The evidence warranted the conclusion that \( S \) had \( M \)’s implied permission to use the
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truck at the time of the collision. *State Farm Mutual Automobile Insurance Co. v. Cook,* (Va. 1947) 43 S.E. (2d) 863.

The common omnibus clauses in automobile insurance policies extend coverage to persons operating the car with the permission of the owner. Some clauses, as in the principal case, use the words "express or implied permission," which precludes any question as to whether or not the permission may be implied, but the courts have held that when the words "permission" or "knowledge and consent" appear without definition, they may be read as if the word "implied" preceded them. When the permission relied upon is "express" it must be shown to have been directly and distinctly stated and not merely left to inference. Whatever the nature of the permission, a mutuality of agreement must exist; but an implied permission is not confined to affirmative action and is usually shown by usage and practice, known to both parties and not objected to. In regard to deviation from the purpose and use for which the permission was granted, the courts have taken three views. First there is the strict or "conversion" rule: for the use of the car to be with the permission of the assured within the meaning of the omnibus clause, the permission, express or implied, must have been given not only to the use of it in the first instance, but also to the particular use being made of the car at the time in question. The car must have been used for a purpose reasonably within the scope of the time limits expressed, and within the geographical limits contemplated. The court in the principal case stated that it was following this view, and held that the trial court's holding was warranted by the evidence. Another view is the liberal or "Hell or High Water" rule: the bailee need only to have received permission to take the vehicle in the first instance, and any use while it remains in his possession is "with permission" though that use may be for a purpose not contemplated by the assured when he parted with possession of the vehicle. The courts following this view do so on the theory that the insurance contract is as much for the benefit of the public as it

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is for the assured and it is undesirable to permit litigation as to the details of the
details of the
permission and use. The third rule is the moderate or "Minor Deviation" rule: a
slight deviation from the scope of the authority or permission granted will not be
sufficient to exclude the operator from the coverage under the omnibus clause. This
view is obviously difficult of application, because the question to be answered
is whether the deviation from the authorized use was slight or gross, and that
turns on the facts of each case. The extent of the deviation in actual distance, the
purpose for which the vehicle was lent, and other factors, must be taken
into consideration. Despite these apparent difficulties, this rule appears to be
the most sensible of the three.

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6 Lloyds America v. Tinkelpaugh, 184 Okla. 413, 88 P. (2d) 356 (1939);
Peterson v. Maloney, 181 Minn. 437, 232 N.W. 790 (1930); Rikowski v. Fidelity
& Casualty Co. of N.Y., 116 N.J.L. 503, 185 A. 473 (1936), aff'd., 189 A. 102
(1937). See also Vezolles v. Home Indemnity Co. of N.Y., (D.C. Ky. 1941) 38 F.
8 Lloyds America v. Tinkelpaugh, 184 Okla. 413, 89 P. (2d) 356 (1939).
9 The accident occurred when the operator had gone only ten blocks from his
authorized course.