COURT WILL NOW TAKE UP THE CASE
OF EMERSON V. LAMBERT.
>> GOOD AFTERNOON AND MAY IT
PLEASE THE COURT.
FROM CHIEF JUSTICE, JUSTICES OF
THE SUPREME COURT --
>> IT SEEMS LIKE IT'S AFTERNOON,
BUT IT'S NOT ACTUALLY.
[LAUGHTER]
>> OH, IT'S -- IT DOES SEEM --
[LAUGHTER]
>> WELL, GOOD MORNING.
WE HAVE AN EXTRA HOUR.
I'M PLEASED TO REPRESENT BRUCE
'EM SOUTHERN -- EMERSON, THE
PETITIONER IN THIS CASE, AND WE
ASK THAT YOU QUASH THE DECISION
BELOW.
I'VE ALREADY, I BELIEVE,
RESERVED FIVE MINUTES FOR
REBUTTAL.
THE DANGEROUS INSTRUMENTAL THE
CITY DOCTRINE COMES FROM THE
COMMON LAW IN ENGLAND LAND WHEN
THIS COURT IN SOUTHERN COTTON
OIL IN 1920 APPLIED THAT
DOCTRINE TO THE AUTOMOBILE.
IT CITED THE DIXON V. BELL CASE
BACK FROM 1816 BEFORE THE KING'S
BENCH WHICH SAID THAT PERSONS
HAVING IN THEIR CUSTODY
INSTRUMENTS OF DANGER ARE TAKING
ON THE RISK WHEN THEY PUT IT TO
SOMEBODY ELSE OF THAT PERSON'S
JUDGMENT.
AND THEY ARE GOING TO BE LIABLE.
AND, AGAIN, IN 1920 THIS COURT
APPLIED THAT TO THE AUTOMOBILE.
TODAY'S CASE DEALS WITH THE
LIABILITY OF WHAT WE CALL AN
INTERMEDIATE BAILEE BECAUSE THE
TITLE OWNER HAS GIVEN THEM
POSSESSION AND CONTROL OF THE
VEHICLE TO DO AS THEY WISH.
THEY'RE A BAILOR AS TO THE
TORTFEASOR BECAUSE THEY THEN
ENTRUST TO THE TORTFEASOR.
AS EARLY AS 1951, THIS COURT
HELD THAT IT DOES NOT MATTER
WHETHER THE DEFENDANT HOLDS
TITLE OR HOLDS A BAILMENT
INTEREST UNDER THE DANGEROUS
INSTRUMENTALITY DOCTRINE.

IT WAS NOT -- BECAUSE IT'S NOT
NECESSARY TO PROVE ACTUAL TITLE,
BUT ONLY TO ESTABLISH WHO
EXERTED SUCH DOMINION TO OVER
THE TRUCK AS TO BE RESPONSIBLE
FOR DAMAGES CAUSED BY IT.
THAT WAS THE WILSON V. BERKE
DECISION.
A FEW YEARS LATER, IN 1959, THIS
COURT CONSIDERED TWO COMPANION
CASES, FLEMING V.AL TO HAVE AND
FRANKEL V. FRANKEL, WHERE IT
HELD THAT ALL THREE ENTITIES ARE
RESPONSIBLE.
THE TITLE HOLDERS -- THERE WERE
ACTUALLY TWO IN THAT CASE -- THE
INTERMEDIATE BAILEE WHO WAS
FRANKEL, I THINK IN A COUPLE OF
PLACES OUR BRIEF MISTAKENLY
CALLEDS HIM FLEMING, BUT --
>> A BAILEE FOR HIRE.
>> THAT WAS A BAILEE FOR HIRE,
AND SUBSEQUENTLY IT'S BEEN
POINTED OUT THE ACTUAL HOLDING
DIDN'T REFERENCE IT.
AND OTHER CASES HAVE MADE CLEAR
THAT IT IS NOT REQUIRED TO BE
FOR HIRE, AND THAT'S NOT AT
ISSUE IN THE CERTIFIED --
>> I'M SORRY, CAN I ASK YOU
ABOUT THIS?
SO IT SEEMS LIKE THE ORIGINAL
CASES RECEDED FROM THE PREMISE
THAT, YOU KNOW, THE COURT WAS AN
OWNER, AND THE COURTS KIND OF
ANALOGIZED LESSEES AND WHAT
YOU'RE CALLING AN INTERMEDIATE
BAILEE, AND ESSENTIALLY THE
RATIONALE SEEMED TO BE THAT
THESE PEOPLE ARE ALL SORT OF
IN THE SAME BOAT IS THE WAY, YOU
KNOW, THE LIABILITY SHOULD BE
SIMILAR.
YOU FAST FORWARD NOW, AND WE
HAVE A STATUTORY SCHEME THAT CAN
CHEERILY -- THAT CLEARLY,
DOESN'T TREAT THESE PEOPLE THE
SAME IN THE SENSE THAT YOU HAVE
THESE EXPERT OWNERS AND SUCH.
HOW IS IT, HOW IS IT RATIONAL
FOR US TO -- AND I UNDERSTAND
THAT YOU GUYS DISAGREE AS TO
WHETHER WE WOULD BE EXTENDING
THE, YOU KNOW, THE RULE OR

PRESERVING WHAT YOU SAY IS THE
WELL ESTABLISHED RULE.
BUT HOW WOULD IT BE RATIONAL FOR
US TO CONTINUE ON A PATH THAT
SORT OF TREATS WHAT WE SAW WERE
SIMILARLY-SITUATED THE SAME, BUT
BECAUSE OF THE STATUTORY THEME,
THEY NO LONGER ARE?
>> THAT WOULD BE BECAUSE OF THE
POLICIES TO TREAT OTHERWISE
SIMILARLY SITUATED PEOPLE
DIFFERENTLY, THAT'S A
LEGISLATIVE --
>> OKAY.
AND SO YOU'RE IMPLYING, I MEAN,
ARE YOU IMPLYING THAT WE SHOULD
READ THE STATUTE AS IMPLICITLY
HAVING, QUOTE-UNQUOTE, DECIDED
THAT THESE DISTINCTIONS ARE
RATIONAL?
>> NO, SIR.
THE STATUTE DOES NOT POSE
LIABILITY, IT LIMITS IT.
LIABILITY IS IMPOSED UNDER THE
COMMON LAW.
THE LEGISLATURE, THIS COURT
SAID, EXPRESSLY ADOPTED IT BY
NOT REJECTING IT AND INSTEAD
CREATING EXCEPTIONS.
THAT WAS AS EARLY AS THE
1920S.
AND EVER SINCE THEY'VE MADE 28
DIFFERENT DETERMINATIONS THAT WE
SHOULD CUT THIS BACK IN CERTAIN
WAYS.
CERTAIN PEOPLE, RENTAL CAR
COMPANIES, TITLE OWNERS SHOULD
HAVE NO LIABILITY OR LIMITED
LIABILITY.
BUT THEY HAVE NOT CHOSEN TO DO
THAT FOR BAILEE IS.
AND IF YOU'RE ASKING IS THAT A
REASONABLE DETERMINATION FOR THE
LEGISLATURE TO MAKE, I'M NOT
QUITE SURE THAT'S FINISH.
>> OKAY.
BUT, I MEAN, THE OTHER SIDE OF
THE COIN IS, IS IT REASONABLE
FOR US -- ARE YOU SAYING THAT
THIS IS ESSENTIAL THAT THE COURT
HAS SORT OF BEEN ACTING, YOU
KNOW, TO THE EXTENT THAT THERE'S
THIS COMMON LAW RULE THAT CAME
INTO EXISTENCE AS A

COURT-CREATED RULE AND THAT IT'S CONTINUING MANY EXISTENCE BECAUSE THE COURT CONTINUES TO APPLY IT?
I MEAN, ARE YOU SAYING THAT WE SHOULD BE OBLIVIOUS TO WHAT'S GOING ON STATUTORILY IN TERMS OF WHAT WE PERCEIVE TO BE KIND OF A RATIONAL COMMON LAW RULE?
>> NO, SIR, I'M NOT SAYING THAT AT ALL.
AND I WOULD -- THE FJA'S AMICUS BRIEF SPEAKS ABOUT THE COMMON LAW.
AND I THINK IT MAKES SOME VERY GOOD POINTS THAT ARE DIFFERENT FROM CHANGING A PRECEDENT UNDER POOLE.
AND THE COMMON LAW IS DESIGNED FOR THE COURTS TO FILL IN THE GAPS WHERE THE LEGISLATURE HAS NOT ADDRESSED THE SUBJECT YET.
BUT THERE ARE NO GAPS LEFT.
THE LEGISLATURE HAS ADDRESSED ALL THE GAPS THAT IT SAW FIT.
I MEAN, ARE THERE SOME UNUSUAL FACT CIRCUMSTANCES?
MAYBE WE NEED THAT.
BUT FOR HERE, THIS CIRCUMSTANCE, THERE'S BEEN CASE LAW SINCE THE 1950S THAT HAS MADE CLEAR THERE'S INTERMITTENT BAILEE LIABILITY.
THE LEGISLATURE COULD HAVE SAID, WELL, WE SHOULDN'T DO THAT WITHIN FAMILIES.
IT DIDN'T GET RID OF THE DOCTRINE.
IT SAID IT'S STILL FINE OUTSIDE THE FAMILY CONTEXT.
>> IT DOES SEEM LIKE THEN A BIG PART OF YOUR ARGUMENT HINGES ON THIS IDEA THAT THIS TYPE OF LIABILITY FOR ARGUING KIND OF WELL ESTABLISHED AND WOULD HAVE BEEN KNOWN TO THE LEGISLATURE, THAT WE CAN INFER THAT THEIR FAILURE TO ADDRESS IT IS SOMEHOW RATIFYING SOMETHING.
AND IT SEEMS LIKE THERE ARE SIGNIFICANT -- I UNDERSTAND SORT OF THE LABELING ARGUMENT.
BUT IT SEEMS LIKE FACTUALLY THERE'S A BIG DIFFERENCE BETWEEN

AN INTERMEDIATE BAILEE WHO GOES
AND RENTS A CAR AND A COMMERCIAL
TRANSACTION AS OPPOSED TO THIS
SITUATION WHERE, YOU KNOW,
YOU'VE GOT THE ONE OWNER AND
THEN THEORETICALLY YOU COULD
HAVE ALL THESE DIFFERENT FAMILY
MEMBERS WHO ARE BAILEES.
HERE THE DEFINITION THAT WAS
GIVEN TO THE JURY IS VERY LOOSE.
SO IT DIDN'T SEEM LIKE THERE WAS
MUCH EVIDENCE OF THIS PRINCIPLE
AS APPLIED IN THIS FAMILY
CONTEXT.
YOU'VE GOT YOUR DICTA BACK, AND
YOU GOT THE SITUATION FROM THE
FRANKEL/FLEMING CASES.
AND THEN IN BETWEEN I DIDN'T SEE
THE WELL ESTABLISHED PRINCIPLE.
>> WELL, FRANKEL SAID THAT AS
BETWEEN THE INTERMEDIATE BAILEE
AND THE PERSON DRIVING IT, IT IS
ESPECIALLY APPROPRIATE TO PUT
LIABILITY WHERE IT'S NOT FOR
HIRE, WHERE IT'S BETWEEN HUSBAND
AND WIFE.
THEY SAID THAT IT'S ESPECIALLY
APPROPRIATE.
NOW, IT WASN'T --
>> BUT THAT BUSINESS ABOUT THE
WIFE, THAT'S VERY BIZARRE.
>> I UNDERSTAND.
>> BECAUSE WE KNOW SHE WASN'T
HIS WIFE, SHE WAS A GIRLFRIEND,
AND -- BUT WHEN YOU SAID ABOUT
FRANKEL THAT IT DOESN'T FOCUS AT
ALL, IF I UNDERSTOOD YOU
CORRECTLY, ON THE FACT THAT
FRANKEL WAS A BAILEE FOR HIRE, I
MEAN, I JUST, I QUESTION THAT.
BECAUSE WHEN THE COURT FRAMES
THE QUESTION, IT SAYS ONE OF THE
QUESTIONS POSED BY THE APPELLANT
SEEMS TO DESERVE AN ANSWER.
AND IN THAT QUESTION, IT MAKES
SPECIFIC REFERENCE TO A BAILEE
FOR HIRE.
>> RIGHT.
AND THEN WHEN IT GOES --
>> I UNDERSTAND THAT.
I UNDERSTAND THAT.
I UNDERSTAND THAT IT DOESN'T, IT
DOESN'T REPEAT THAT.
BUT THAT IS THE QUESTION THEY

SAY THEY'RE GOING TO ANSWER,
ISN'T THAT TRUE?
>> YES, SIR, THAT IS ABSOLUTELY
TRUE, AND THEY WERE NOT ACTUALLY
HUSBAND AND WIFE.
SO IT IS DISTINGUISHABLE FROM
THIS CASE.
MY POINT IS THAT A MADE IT
MORE --
>> JUST TO BE CLEAR THOUGH, THE
OTHER MAJOR DISTINCTION THAT
YOUR BRIEFS AND THAT YOU'RE KIND
OF ALIGNING HERE IS THAT IT'S
THE COMPARISON BETWEEN, IN OUR
CASE HERE, THE HUSBAND AND WIFE
AND THE CREATION OF THE
INTERMEDIATE BAILMENT VERSUS A
RENTAL CAR COMPANY AND
MR. FRANKEL.
AND THAT'S A CLEAR DIFFERENT --
WHETHER, WE DON'T NEED TO GET
INTO WHETHER THE MISTRESS SHOULD
BE CONSTRUED AS A WIFE OR
WHATEVER.
>> THAT'S A CLEAR DISTINCTION
THAT THE LEGISLATURE HAS SAID
BAILEES FOR HIRE, WE NEED RENTAL
CAR COMPANIES, WE'RE GOING TO
IMMUNIZE THEM
FROM -- WHAT WE'RE DEALING WITH
IS A FAMILY MEMBER WHO WAS IN A
POSITION TO DECIDE WHETHER THE
SON SHOULD DRIVE HER CAR.
HE SAID, CAN I DRIVE YOUR CAR
TONIGHT.
SHE SAID, YES, YOU CAN.
SHE'S THE ONE WHO GAVE HIM
CONTROL OF THE CAR.
SHE HAD THE LEGAL RIGHT TO DO
SO.
BY DOING THAT --
>> BUT DOESN'T, THIS ALL A TURNS
ON THE FACT THAT THEY HAVE
DECIDED THAT THE CAR WOULD BE
TITLED IN THE HUSBAND'S NAME AND
NOT JOINTLY IN THE HUSBAND AND
WIFE'S NAME.
BECAUSE IF IT HAD BEEN JOINTLY
TITLED, IF THE WIFE'S CAR HAD
BEEN TITLED IN HER NAME, THEN WE
WOULD NOT BE HERE, ISN'T THAT
CORRECT?
>> YES.
>> SO YOU WOULD CONCEDE THAT

THIS IS A LITTLE BIT OF AN
ANOMALOUS --
>> NOT AT ALL.
>> THE WIFE IS WORSE OFF BECAUSE
THE CAR WAS NOT ENTITLED IN HER
NAME.
>> SHE'S WORSE OFF IN THAT SHE
DOESN'T GET THE CAP.
BUT BY GETTING THE CAP, WHAT YOU
GIVE TO GET THE CAP IS YOUR NAME
ON THE DOTTED LINE THAT YOU'RE
THE DEFENDANT RESPONSIBLE.
WE DIDN'T HAVE THAT.
DEBBIE DIDN'T DO THAT.
WE HAD TO GO TO COURT AND PROVE
THAT SHE HAD THE LEGAL RIGHT TO
PREVENT THE FROM HAPPENING.
SHE IS THE PERSON WITH THE LEGAL
RIGHT WHO PUT THE DANGEROUS
INSTRUMENTALITY IN THE HANDS OF
THE NEGLIGENT DRIVER WHO HIT A
MOTORCYCLE.
AND SO I THINK IT'S VERY
DIFFERENT.
THIS IS A COMMON SCENARIO, AND
WHAT TYPICALLY HAPPENS IS YOU
TITLE IT -- YOU DON'T WANT TO
TITLE IT IN BOTH PARTIES BECAUSE
IF YOU DO, THEN THE JOINT
MARITAL ASSETS CAN BE SEIZED ON
THE JUDGMENT.
>> JUST GOING BACK TO BASICS
JUST A BIT, WHAT IS THE PURPOSE
OF --
[INAUDIBLE]
INVOLVING DANGEROUS
INSTRUMENTALITY?
>> I'M SORRY, THE PURPOSE OF --
>> THE PURPOSE OF IT.
WHY IS IT THAT WE HOLD PEOPLE
LIABLE FOR ENTRUSTING OTHER
PEOPLE WITH A DANGEROUS
INSTRUMENTALITY?
IS WHAT IS THE REASONING.
>> BECAUSE THEY ARE THE PERSON
THAT HAS CONTROL OF SOMETHING
VERY DANGEROUS, IN THIS CASE AN
AUTOMOBILE.
WE WANT THEM TO EXERCISE THE
UTMOST CARE IN DECIDING WHO IS
GOING TO TAKE IT.
AND WE -- AND IT'S SO DANGEROUS
THAT WE SAY THAT THEY ARE GOING
TO ASSUME THE LIABILITY OF

WHOEVER THEY CHOOSE TO ENTRUST
IT.
>> SO IF THAT IS THE PURPOSE OF
IT, AND LET'S CHANGE, LET'S TAKE
AWAY -- LET'S NOT THINK ABOUT A
CAR.
THINK ABOUT A DANGEROUS
INSTRUMENT, LET'S SAY A FIREARM,
A HANDGUN.
YOU KNOW, DAD BUYS A HANDGUN,
GIVES IT TO MOM BECAUSE HE'S
AWAY ALL THE TIME.
HE BOUGHT THE GUN.
HE'S ON TITLE.
GIVES IT TO HER FOR PROTECTION
AT HOME.
>> RIGHT.
>> HE IS GOING OUT ONE NIGHT,
SHE SAYS YOU BETTER TAKE THIS,
YOU MAY IF NEED THIS IF
SOMETHING HAPPENS.
ISN'T THAT THE IDEAL SITUATION
TO APPLY VICARIOUS LIABILITY?
>> ABSOLUTELY.
I MEAN --
>> THE PERSON WHO ACTUALLY HAD
POSSESSION OF THE GUN --
>> RIGHT.
>> -- WHO WAS MORE KNOWLEDGEABLE
AS TO WHO'S GOING TO GET THE GUN
AND WHATEVER, IS THE ONE HANDED
THE FIREARM TO THE CHILD TO GO
OUT TO A PARTY OR WHATEVER.
>> THAT'S EXACTLY CORRECT.
AND ONE COULD MAKE THE OPPOSITE
ARGUMENT, PERHAPS EMBRACED BY
THE LEGISLATURE, THAT A MERELY
HOLDING TITLE YOU SHOULDN'T BE
LIABLE FOR ANYTHING.
BUT WHEN YOU'RE THE PERSON WHO
DOESN'T HAVE STATUTORY CAP, THEY
HAVEN'T GIVEN A CAP, AND YOU'RE
THE PERSON -- YOU DON'T HAVE
TITLE, YOU HAVEN'T PUT YOUR NAME
ON, YOU HAVEN'T SHOWN THE WORLD
YOU'RE RESPONSIBLE FOR THIS CAR,
YET YOU ARE, IN FACT,
RESPONSIBLE FOR IT AND YOU PUT
IT IN THE HANDS OF A NEGLIGENT
DRIVE, THAT'S WHEN THE POLICIES
BEHIND THE DANGEROUS
INSTRUMENTALITY REALLY KICK IN
AT THEIR HEIGHT.
THAT'S WHY THERE SHOULD BE

LIABILITY UNLESS A POLICY
DECISION IS MADE AS THE SECOND
DISTRICT DID HERE, THAT WE HAVE
THIS INTER-FAMILY DYNAMIC THAT,
OH, THERE'S A POLICY, WE SHOULD
PROTECT AGAINST THAT.
AND MY FIRST SONS -- RESPONSE TO
THAT IS THAT'S WHAT THE HOUR
BACH CASE WAS, AND THIS WASN'T
DICTA.
THERE WERE THREE THEORIES OF
LIABILITY.
THE FOURTH DISTRICT CONSIDERED
THE LIABILITY OF A
NONTITLE-HOLDING PARENT WHO
ALLOWS A CHILD TO DRIVE THE CAR.
THE FIRST THEORY WAS PARENTAL
LIABILITY.
YOU'RE JUST LIABLE FOR THE TORTS
OF YOUR CHILDREN.
THE FOURTH DISTRICT SAYS, NO,
YOU'RE NOT.
AND THIS COURT SAID NO YOU'RE
NOT AS WELL UNLESS THERE'S A
STATUTE IF YOU SIGN A DRIVER'S
LICENSE APPLICATION, YOU ARE.
SO THAT'S NOT A BASIS OF
LIABILITY.
THAT'S WHY WE'VE NEVER ASSERTED
THAT AS A BASIS OF LIABILITY.
IT IS IRRELEVANT TO US THAT
THEY'RE FAMILY MEMBERS.
THAT'S THEIR ISSUE.
THE SECOND WAS THIS CONCEPT OF
BENEFICIAL IF OWNERSHIP, WHICH
THERE'S BEEN A LOT OF CONFUSION
THAT THAT'S A THEORY OF
LIABILITY.
WELL, AS THIS COURT HAS MADE
CLEAR AND SO DID THE FOURTH
DISTRICT, IT'S NOT A THEORY OF
LIABILITY, IT'S A DEFENSE FROM
LIABILITY FOR THE TITLE OWNER TO
SAY I'M NOT LIABLE BECAUSE
SOMEBODY ELSE HAS BENEFICIAL
TITLE.
SO THAT CAN'T BE A BASIS FOR
OPPOSING LIABILITY.
THAT'S WHY WE'VE NEVER ASSERTED
THAT AS A BASIS.
THEY KEEP SAYING WE'RE TALKING
ABOUT BENEFICIAL OWNERSHIP, BUT
WE ARE NOT.
WE'RE TALKING ABOUT BAILMENT.

AND THIS COURT APPROVED BOTH OF THOSE, AND IS WE DIDN'T DO ANYTHING ABOUT THAT.
WHAT WE PURSUED WAS THE THIRD GROUNDS THAT THE FOURTH DCA SAID THAT THERE SHOULD BE AN EXCEPTION WITHIN THE FAMILY BECAUSE OF THE FUZZY DYNAMICS.
WELL, THIS COURT DID NOT AGREE AND IT WAS NOT DICTA.
>> IT WAS, SIR.
I MEAN, WITH ALL DUE RESPECT, I MEAN, THE FOURTH DCA, THE BAILMENT ISSUE I WAS NOT AN ISSUE IN THE CASE.
FOURTH DCA EXPLICITLY SAID THIS PERSON ISN'T A BAILEE, THEN OUR COURT IS KIND OF GRATUITOUSLY AT THE END OF THE OPINION SAID, OH, BY THE WAY, IF THERE'S A BAILMENT INTEREST.
BUT THAT WAS NEVER LITIGATED.
IT WAS NEVER AN ISSUE IN THE CASE.
AND SO THE HOLDING OF HOURBACH HERE WAS JUST TO AFFIRM THE RESULT OF THE FOURTH DCA'S DECISION THAT, YOU KNOW, ESSENTIALLY REJECTING THIS BENEFICIAL OWNERSHIP STEMMING FROM THE CONTROL OF THE CAR.
ASK ONE OF THE PROBLEMS THAT I HAVE IS THAT THE, ESSENTIALLY, AS I THINK AS THE OTHER SIDE POINTS OUT IT WOULD BE VERY TRAINING -- STRANGE FOR US TO COME TO THE CONCLUSION THAT IT WOULDN'T MAKE SENSE TO HOLD THE PARENT LIABLE IN THE HOURBACH CASE ESSENTIALLY JUST BASED ON THEIR ACCESS TO THE CAR AND CONTROL OF THE CAR AND ALL OF THAT --
>> CONTROL OF THE CAR.
>> AND THEN TO TURN AROUND AND SAY HERE THAT, YOU KNOW WHERE, BECAUSE OF THE MAGIC WORD BAILMENT, THAT ALL OF A SUDDEN WE'RE GOING TO, WE WOULD, YOU KNOW, ALLOW THE LIABILITY.
>> I DON'T BELIEVE YOU'RE READING THIS COURT'S OPINION CORRECTLY IN TWO REGARDS ARE.
FIRST OFF, IT WASN'T DICTA.

IT WAS A DISPUTED ISSUE
NECESSARY FOR THIS COURT EVEN TO
HAVE JURISDICTION.
TO HAVE JURISDICTION, THIS COURT
HAD TO CONCLUDE THERE WAS
CONFLICT.
AND IT CONCLUDED THERE WAS
CONFLICT WITH THE FRANKEL CASE.
NOW, THIS COURT MIGHT SAY, WELL,
MAYBE THAT'S NOT TOO DIRECT, BUT
IT WAS UNANIMOUS AT THAT POINT
THAT THE HOLDING IN THE TRIAL
COURT OR THE DISTRICT COURT
CONFLICTED WITH FRANKEL.
>> RIGHT.
I THINK IT'S BEING -- I MEAN, I
UNDERSTAND THAT YOU NEED TO
ASSUME THAT THE COURT PROPERLY
FOUND JURISDICTION.
THERE WAS NO CONFLICT WITH
FRANKEL.
AND IN HOURBACK IT SAID TO THE
EXTENT THAT IT COULD BE, TO THE
EXTENT THAT THE FOURTH DCA'S
OPINION COULD BE CONSTRUED AS,
SO I THINK EVEN THE COURT ITSELF
BY THE TIME IT LOOKED AT IT, IT
IMPLICITLY RECOGNIZED --
>> THAT WAS THE BASIS FOR IT TO
ISSUE AN OPINION, AND IT DID
ISSUE AN OPINION.
AND THE OPINION HELD THAT
APPROVED THE FIRST TWO POINTS,
BUT IT SAID THE FOURTH DISTRICT
SEEMS TO BE SUGGESTING EXACTLY
AS THE SECOND DISTRICT HAS NOW
HELD, THAT ANOTHER REASON FOR
LETTING THE FATHER OFF THE HOOK,
SO AN ALTERNATIVE GROUND FOR
RULING ON THIS BASIS TO LET THE
FATHER OFF THE HOOK IS THAT
THERE WAS NO BAILMENT.
THIS COURT SAID -- OR IT WAS
BECAUSE THEY WERE FAMILY
MEMBERS.
AND THIS COURT SAID, NO, YOUR
FIRST TWO REASONS SUPPORT THIS,
BUT YOUR THIRD REASON DOES NOT
SUPPORT IT, AND HERE'S WHY.
AND SO JUST BECAUSE THERE'S
THREE ALTERNATIVE BASES, EACH OF
WHICH WERE ADDRESSED, DOES NOT
RENDER TWO OF THEM DICTA AND
ONLY ONE A HOLDING.

THE HOLDING WAS THAT THE FATHER
WASN'T LIABLE.
THE THREE REASONS WERE THERE'S
NO PARENTAL LIABILITY, THERE'S
NO BENEFICIAL INTEREST
LIABILITY, AND THERE IS,
CONTRARY OR TO WHAT THE FOURTH
DISTRICT SAYS, BAILMENT
LIABILITY AVAILABLE, BUT IT
WASN'T PROVEN IN THIS CASE.
SO FOR REASONS DIFFERENT THAN
THE FOURTH DISTRICT, WE AGREE
THERE'S NO BAILMENT LIABILITY.
>> I DON'T UNDERSTAND HOW THAT'S
NOT DICTA, BECAUSE IT'S ABOUT
THE HYPOTHETICAL CASE --
>> RIGHT.
>> -- WHERE IT WAS PROVEN.
AND I JUST, IT SEEMS TO ME TO BE
A HYPOTHETICAL, THAT THE COURT'S
DEALING WITH A -- I'M NOT SAYING
IT'S WRONG.
>> IT'S AN ALTERNATIVE GROUND.
ANYTIME YOU HAVE AN ALTERNATIVE
GROUND, YOU COULD MAKE THAT
STATEMENT.
WHAT THE COURT SAID IS THERE ARE
THREE BASES FROM THE FOURTH
DISTRICT.
WE APPROVE OF TWO, WE DISAPPROVE
OF THE THIRD, THE REASONING, AND
THAT'S A HOLDING.
AND THE HOLDING WAS CONTRARY TO
WHAT THE FOURTH DISTRICT SAYS,
BAILMENT LIABILITY IS AVAILABLE
IN THE FAMILY, BUT IT GOT THE
RIGHT RESULT BECAUSE IT HASN'T
BEEN PROVEN IN THIS CASE.
>> BUT, COUNSEL, THE FOURTH DCA
OPINION IN THIS CASE, LOUIS
GALENA, WAS NOT AN OWNER, BAILEE
OR LESS SEE.
AND THERE WAS NO --
>> I KNOW THEY SAID THAT, AND
THEN THEY ALSO SAID --
>> EXCUSE ME.
THERE WAS NO ANALYSIS IN OUR
CASE THAT WAS GOING INTO WHETHER
THE FOURTH DCA WAS RIGHT TO SAY
THAT HE WAS RIGHT TO SAY THAT HE
WASN'T A BAILEE, THAT WE JUST
MADE THIS GRATUITOUS
ANNOUNCEMENT AT THE END ABOUT
BAILMENT LIABILITY, BUT WEAVER

WE NEVER SAID WHAT IT WOULD TAKE
TO ESTABLISH THAT IN A FAMILY
CONTEXT.
>> WELL, WHAT YOU SAID IS THIS
IS NO DIFFERENT RULE IN THE
FAMILY CONTEXT.
>> COUNSEL --
>> BUT THE FOURTH TICKET,
RESPECT ANY --
>> COUNSEL, YOU ARE.
>> IN YOUR REBUTTAL TIME.
WE HELPED YOU, ADMITTEDLY.
I WILL GIVE YOU THREE ADDITIONAL
MINUTES, BUT THE CLOCK'S
GOING.
>> THANK YOU.
YOU'RE RESPECTFULLY OVERLOOKING
THE PASSAGE THAT THE SECOND
DISTRICT CITED AND THAT THIS
COURT RESPONDED TO WHICH WAS THE
PASSAGE IN THE FOURTH DCA'S
OPINION THAT SAID THE FUZZY
DYNAMICS AMONG FAMILY MEMBERS
MAKE THIS AN INAPPROPRIATE PLACE
TO APPLY THE DANGEROUS
INSTRUMENTAL ROLE.
THEY HAD BOTH BASES.
THEY SAID THERE WAS EVIDENCE AND
EVEN IF THERE WAS, THERE WAS
EVIDENCE THAT THERE WAS A JURY
FINDING THAT HE HAD CONTROL.
AND THIS COURT SAID THAT WAS NOT
BAILMENT CONTROL, THAT'S CONTROL
JUST AS THE PARENT.
THAT'S NOT SUFFICIENT.
BUT THIS COURT MADE CLEAR THAT
IT IS SUFFICIENT IF THERE'S
PROOF OF A BAILMENT.
THAT'S BEEN CLEAR SINCE THE
1950S.
AND WHETHER IT WAS DICTA OR NOT,
THE LEGISLATURE CAN READ ALL
THIS.
IT WAS AS CLEAR, IT WAS AS DEAD
ON TO THIS CASE AS SAYING IF YOU
CAN'T PROVE BAILMENT, THEN THE
FOURTH DISTRICT WAS WRONG
BECAUSE THAT GETS YOU LIABILITY.
AND THAT'S WHAT WE'VE DONE HERE.
AND THE LEGISLATURE COULD MAKE
THE POLICY DECISION TO IMMUNIZE
FAMILY MEMBERS, BUT THERE'S
GREAT REASONS NOT TO.
I TALKED ABOUT ALREADY BY

PUTTING YOUR NAME ON THE TITLE, YOU PROVED TO THE WORLD THAT YOU'LL ALLEVIATE THE BURDEN OF OWNERSHIP.
WE HAD TO PROVE THAT SHE HAD A BAILMENT INTEREST.
AND THIS ISN'T PITTING FAMILY MEMBERS AGAINST FAMILY MEMBERS.
MOTHER DOESN'T AVOID LIABILITY BY SHIFTING LIABILITY TO FATHER OR VICE VERSA.
IT'S NOT PITTING ANYBODY ELSE AT ALL.
IT'S PUTTING US TO THE BURDEN OF PROVING THAT SOMEBODY WHO'S NOT EVEN ON THE TITLE NONETHELESS HAD AN OWNERSHIP INTEREST, A BAILMENT INTEREST, AND WE DID THAT --
>> I HOPE THE CHIEF DOESN'T MIND ME ASKING ONE MORE QUESTION.
WE'RE MAKING -- YOU'RE ASKING US TO MAKE WHAT I THINK IN TERMS OF THE ORDINARY LIVES OF PEOPLE ARE A PRETTY BIG DECISION BASED ON THIS BAILMENT ISSUE, AND I'M CURIOUS IF THE JURY INSTRUCTION THAT WAS GIVEN HERE ON BAIL ISN'T A CORRECT STATEMENT OF THE LAW ARE.
I MEAN, IS THIS ALL IT TAKES?
YOU KNOW, THE INSTRUCTION WAS A BAILEE OF A VEHICLE IS ONE TO WHOM THE VEHICLE HAS BEEN FURNISHED OR DELIVERED BY ITS OWNER FOR A PARTICULAR PURPOSE WITH THE UNDERSTANDING THAT IT WILL BE RETURNED.
YOU'RE ACTING LIKE YOU'VE DISCOVERED SOME HUGE HURDLE BY CREATING A BAILMENT.
IT SEEMS TO ME THAT IF THAT'S THE CORRECT TEST, THEN EVERY MARRIED DOWN AND THEIR IN-LAWS -- HOLD ON -- COULD BE BAILEES.
AND I KNOW WE'RE NOT HERE TO DECIDE THE LAW OF BAILMENT, BUT IS THIS AN ACCURATE STATEMENT OF THE LAW?
>> I BELIEVE IT IS, YES.
AND IT CAN'T BE IN EVERY INSTANCE.
IT HAS TO BE WHERE ONE PERSON IS

ENTRUSTED WITH CONTROL OF THE VEHICLE AND USES THAT CONTROL TO GIVE TO SOMEBODY ELSE.
WE'RE ADVISED IF YOU PUT THE TITLE IN THE NAME OF THE SPOUSE THAT'S GOING TO DRIVE THE CAR, AND THEN THEY CAN BE CAREFUL ABOUT WHO ELSE THEY ALLOW TO USE THE CAR.
HERE THAT DIDN'T HAPPEN.
AND THE WHOLE POINT OF BAILMENT LIABILITY, OF DANGEROUS INSTRUMENTALITY LIABILITY, IS THE PERSON WHO HAS THE LEGAL CONTROL OF THE VEHICLE IS GOING TO BE RESPONSIBLE.
THIS KILLED, KYLE, IF HE'D LET HIS FRIEND DRIVE THE VEHICLE, SAID, HERE, MOM GAVE ME THE CAR, YOU DRIVE IT, AND THE FRIEND CAUSES THE CRASH, HE'S GOING TO BE LIABLE AS AN INTERMEDIATE BAILERS E AS WELL BECAUSE HE WAS ENTRUSTED WHERE THE VEHICLE, AND IF HE MAKES THAT DECISION TO ALLOW A NEGLIGENT PERSON TO DRIVE THE CAR, HE'S --
>> OKAY.
COUNSEL, WE'VE ALREADY GONE TWO MINUTES OVER.
I'M GOING TO GIVE YOU TWO ADDITIONAL MINUTES FOR REBUTTAL.
>> THANK YOU VERY MUCH.
>> MORNING.
CHIEF JUSTICE CANADY, JUSTICES AND MAY IT PLEASE THE COURT, SARAH LAHLOU-AMINE ON BEHALF OF THE RESPONSIBILITIES, THE LAMBERTS.
LIKE ALL COMMON LAW, THE DANGEROUS INSTRUMENTALITY DOCTRINE HAS DEVELOPED INCREMENTALLY OVER TIME LARGELY BY DECISIONS FROM THIS COURT.
BUT THIS NEXT STEP IN THAT DEVELOPMENT THAT PETITIONER OR ASKS THIS COURT TO MAKE IS AN A UNWORKABLE ONE FOR TWO REASONS.
ONE, IT'S INCONGRUENT WITH A CENTURY OF LAW CAREFULLY DEVELOPED BY FLORIDA'S APPELLATE COURT AND, TWO, IT WOULD THWART THE RESOLUTION OF AUTO ACCIDENT CASES TO SUCH A DEGREE FROM

CREATING UNCERTAINTY PRESUIT
ABOUT WHO COULD POSSIBLY BE
LIABLE THROUGH MESSY DISCOVERY
THAT A PITS FAMILIES AGAINST
EACH OTHER, AND IT DOES, PRYING
INTO THEIR PERSONAL INFORMATION
ALL THE WAY, THROUGH MESSY
TRIALS WITHIN TRIALS ON THESE
ISSUES, ON QUESTIONS OF USE AND
PERMISSION THAT, AS JUDGE LUCAS
PUT IT, MAY BE SO LOOSE AND
VACILLATING AS TO BE
INDISCERNIBLE.
>> I UNDERSTAND THE IMPORT OF
THOSE JURISPRUDENTIAL POLICY
CONCERNS, BUT I WONDER IF,
FIRST, YOU COULD ADDRESS WHAT
THE EFFECT IS OF THE
LEGISLATURE'S ACTION IN THIS
SPACE.
THAT IS, HAVING CAPPED LIABILITY
FOR TITLE OWNERS OF A VEHICLE,
IS IT FAIR TO SAY THAT THE
ACTION IN THAT A SPACE WOULD BE
NONSENSICAL OR RENDER RENDERED
IRRATIONAL IF THAT CAP ALSO
DIDN'T OPERATE TO SHIELD FROM
LIABILITY AN INTERFAMILY BAILEE?
IS THAT YOUR POSITION?
>> OUR POSITION IS THAT'S
PRECISELY WHY YOU DON'T HAVE
THOSE LIABILITY, VICARIOUS
LIABILITY INSTANCES ARISING FROM
INTRA-FAMILY BAILEES.
AND SO WHEN THE LEGISLATURE
ENACTED THAT PROVISION AND THAT
CUTE AND BACK IN 1999, IT DID SO
AGAINST THE BACKDROP OF
VICARIOUS LIABILITY FOR THE
OWNER PRIMARILY.
AND THEN IN ADDITION, FOR
BAILEES FOR HIRE, AS YOU NOTED,
IN THE LESSOR/LESS SEE CONTEXT,
THAT'S ADDRESS AS WELL IN THE
STATUTE.
WHAT'S NOT ADDRESSED IN THE CASE
LAW OR IN THE STATUTE BECAUSE IT
HAS NOT BEEN CONTEMPLATED --
>> WELL, WHAT DO YOU MAKE OF
YOUR OPPONENT'S ARGUMENT THOUGH?
THAT, IN GENERAL, FROM
LEGISLATIVE SILENCE WHAT WE TAKE
IS AN AWARENESS OF THE COMMON
LAW SUCH AS IT WAS AT THE TIME

OF LEGISLATIVE ACTION AND A
DECISION TO ONLY ABROGATE OR
FILL SOME OF THE COMMON LAW
SPACE?
CAN YOU RESPOND TO THAT
ARGUMENT?
>> YES, YES.
THANK YOU YOUR
HONOR.
THE ANSWER IS TWOFOLD, WE ARE IN
THE STATE OF FLORIDA WERE
DANGEROUS INSTRUMENTALITY AS A
BACKDROP.
BY VIRTUE 100 YEARS AGO IT'S
BECOME A FABRIC OF OUR COMMON
LAW.
THAT IS A BACKDROP ON WHICH WE
OPERATE.
NOW IT IS UP TO THE LEGISLATURE.
IT IS VERY DIFFERENT THAN MOST
STATES.
NOW IT'S UP TO THE LEGISLATURE
TO CARVE OUT FROM THE LIABILITY
LIMITATIONS AND SO FORTH.
WHAT THIS REALLY GETS DOWN TO,
THE SECOND PART, THE NOTION IT
IS BEEN CLEAR TO EVERYONE ALL
ALONG, THAT CLIENTS LIKE MINE,
DEBBIE LAMBERT WOULD BE LIABLE
HERE IN A HOUSEHOLD.
I THINK WHAT WOULD BE ESPECIALLY
HELPFUL IF THE COURT COULD
INDULGE ME, I THINK IT IS
HELPFUL TO CONSIDER ALL OF THE
INSTANCES AND FORESEEABLE
DEFENDANTS WHO COULD BE HELD
LIABLE.
IF THE COURT WOULD INDULGE ME
FOR A MOMENT I WOULD LIKE TO
OFFER A HYPOTHETICAL IF I MAY.
I SUBMIT, THIS IS NOT UNCOMMON
IN MANY HOUSEHOLDS IN FLORIDA.
MOM OR DAD OR BOTH HAVE TITLE TO
MULTIPLE CARS.
THEY HAVE TWO KIDS WHO LIVE WITH
THEM, ADULT CHILDREN.
LIKE HERE.
THESE TWO ADULT CHILDREN HAVE
PERMISSION TO USE ALL OF THE
CARS.
BUT THIS CAR IS PRIMARILY FOR
JACK AND HE TAKES IT TO WORK.
IN THIS CAR IS PRIMARILY FOR
JANE AND SHE DRIVES IT TO

SCHOOL.
ONE DAY JACK'S CAR BREAKS DOWN.
HE SAYS JANE, CAN I USE YOUR
CAR.
AND SHE SAYS YES AND HE GETS IN
AN ACCIDENT.
THE ENTIRE FAMILY GETS SUED, WHO
IS LIABLE?
UNDER THE PETITIONER THEORY IF
THAT WERE ADOPTED BY THIS COURT
YOU WOULD HAVE ONE PARENT OR
BOTH DEPENDING ON WHETHER
THEY'RE BOTH TITLE OWNERS.
IN ADDITION, YOU WOULD HAVE
JANE, SHE WOULD BE LIABLE AS
WELL.
WHAT WE'RE PROMOTING WITH A
POLICY LIKE THAT IS TO LOOK AT
EVERYONE IN THE HOUSEHOLD.
LOOK AT EVERYONE WHO HAD
CONTROL, SO TO SPEAK.
>> I GET IT, MY QUESTION IS
GOING BACK TO MY STATUTORY
QUESTION.
SO WHAT, ISN'T THAT THE CHOICE
THE STATUTE REFLECTS?
DOESN'T THE STATUTE SAY THAT THE
ONLY PERSON THAT GETS THE CAP IS
THE TITLE OWNER?
ISN'T THAT A LEGISLATIVE CHOICE
ENTITLED TO SOME DISCRETION BY
THIS COURT?
THAT IS THE ARGUMENT I'M ASKING
YOU TO RESPOND TO.
>> THANK YOU, YOUR HONOR.
I'LL TRY TO BE MORE SPICE AS I
RESPOND, JUDGE LUCAS PUT IT THE
JUDGE LEGISLATURE HAS SEEN THIS
ALL ALONG THE WAY WE HAVE AND
THAT'S HOW JUDGE LUCAS PUT IT
BELOW AND IT DOES COME BACK TO
THIS QUESTION, DID ANYONE FATHOM
THAT SOMEONE LIKE DEBBIE IN THE
SAME HOUSEHOLD COULD BE LIABLE
AND THAT'S WHY WE DON'T SEE IT
THERE.
TO ANSWER YOUR QUESTION IS
PRECISELY AS I CAN, IT WAS NOT A
CHOICE BY THE LEGISLATURE.
JUSTICE, THAT WOULD NOT BE
RATIONAL FOR THEM TO DO THAT.
THAT WOULD NOT MAKE ANY SENSE.
>> WHAT MAKES US SO DIFFERENT,
HISTORICALLY THE CAP, THE CAP

FOR OWNERSHIP IF YOU HAVE THE
TITLE AND THE LEGISLATURE HAS
SAID YOU HAVE A CAT 4 THE FIRST
TIME, WHEN DID THE STATUTE GET
CHANGED?
>> THAT WAS AMENDED IN 1999 TO
PROVIDE FOR THE CAT FOR OWNERS
WHO ARE NATURAL PERSONS.
THERE WERE ALSO LIMITATIONS,
LIMITATIONS FOR LESSEES AND SO
FORTH AND THEN WE HAVE THE
GRAVES AMENDMENT.
EVERY TIME THE DANGEROUS
INSTRUMENTALITY DOCTRINE IS
APPLYING TO A CLEAR CATEGORY OF
FOLKS, THAT IS WHAT THIS COMES
DOWN TO TODAY THE CLEAR
STANDARD.
THIS IS A COMMON LAW DOCTRINE IN
THE COMMON LAW SHOULD BE CLEAR.
IT IS NOT A PROBLEM FOR THE
LEGISLATURE TO HANDLE BECAUSE
THE DOCTRINE ITSELF IS FUZZY
THAT IS THE WORK OF THIS COURT.
>> LET ME GO BACK AND
PHILOSOPHICALLY TALK ABOUT SOME
BASIC THINGS.
FIRST THE NATURE OF OUR ROLE IS
TO ESSENTIALLY GET THE BALL
RIGHT, CORRECT?
>> YES, YOUR HONOR.
>> ONLY LIMITED TO THE SPECIFIC
CASES BROUGHT BEFORE US.
WE COULD NOT GET THE WALL RIGHT
IN ANOTHER AREA WHEN IT IS NOT
THE CASE IS BEFORE US.
SO YOU AGREE WITH THAT?
>> I AGREE WITH THAT.
>> THAT I WANT TO TALK ABOUT THE
NATURE OF PRESTON.
WHEN WE ARE TALKING ABOUT
STATUTORY OR CONSTITUTIONAL LAW
ISSUES, OUR APPROACH, WHAT IS
THE LAW?
CORRECT?
>> CORRECT.
>> IS A STRICT LEGAL ANALYSIS.
IS THAT A CORRECT INTERPRETATION
OF THE STATUTE, THAT KIND OF
THING.
WE ARE TRYING TO GET IT RIGHT IN
THE CONTEXT.
WE WERE IN THE COMMON LAW ARENA.
HOW DOES GETTING IT RIGHT DIFFER

IN THE COMMON LAW ARENA THEN IT
DOES WHEN WE'RE TALKING ABOUT AN
ISSUE THAT IS CONTROLLED BY
STATUTE OR THE CONSTITUTION, A
CONSTITUTION?
>> I THINK THAT IS UNIQUE TO
FLORIDA AS WELL BECAUSE OF THE
NATURE OF THE DOCTRINE.
>> I'M JUST TALKING IN GENERAL.
>> SURE, HOW IS THAT DIFFERENT?
IN COMMON LAW --
>> THE CASE COMES BEFORE US,
WERE DESTROYED TO FIX THE COMMON
LAW THE CASES BEFORE US AND WERE
TRYING TO GET A RIGHT AND IF WE
APPLIED THE TRADITIONAL ILLEGAL
ANALYSIS WHAT IS OUR CASE SAY IN
HOW THE LAW HAS BEEN AND HOW IT
MAKES SENSE TODAY.
IT SEEMS LIKE WE COULD GET A BAD
RESULT ON A POLICY BASIS,
CORRECT?
>> I SUPPOSE THAT DEPENDS ON HOW
THE COURT CONSTRUES ITS
PRECEDENT IN OUR BLOCK.
>> I'M TALKING GENERALLY.
>> WE HAVE A POLICYMAKING ROLE
HERE, CORRECT?
>> ABSOLUTELY.
>> IF AN ISSUE IS PRESENTED,
ISN'T THE RIGHT ANSWER TO LOOK
AT NOT ONLY OUR PRESIDENT AND
WHAT UNDERLIES OUR PRESIDENT,
THE LEGAL CONCEPTS BUT THE
CURRENT LEGAL LANDSCAPE AND
PRACTICAL LANDSCAPE.
>> ABSOLUTELY.
>> AND ANSWER MIGHT BE A BAILEE
TODAY SHOULD BE TREATED LIKE AN
OWNER?
WOULD THAT BE A LEGITIMATE
COMMON-LAW ANSWER TO THE
QUESTION OF WHAT IS THE RIGHT
ANSWER HERE.
>> PERHAPS IT WOULD, THAT'S
SOMETHING WORTH CONSIDERING AT
THE END OF THE DAY THAT'S WHY WE
FRAME THE QUESTION, TO THE
EXTENT SHE COULD BE CONSIDERED A
BAILEE SHE'S NOT THE TYPE OF
BAILEE OR BAILMENT THAT GIVES
RISE TO INSTRUMENTALITY
LIABILITY UNDER FOR THE LAW.
HOW WE GET THERE CERTAINLY COULD

BE BY STATING IT MUST BE AN
OWNER THAT'S WHAT THE
LEGISLATURE HAS DONE TO DIG OUT
THE DEFINITION OF OWNER AND
EXCEPT SOME ENTITIES FROM THE
OWNERSHIP.
>> LET ME ANSWER THIS, HAVE WE
EVER SAID WHEN THE LEGISLATURE
ACTS WITHIN THE REALM OF
COMMON-LAW DOCTRINE AND THEY
ADDRESS A PARTICULAR ISSUE THAT
SOMEHOW THAT FREEZE IN THE
COMMON LAW IT IS NOT SUBJECT TO
FURTHER DEVELOPMENT AS THE
COMMON LAW ORDINARILY WOULD BE
THROUGH THE DIGITAL PROCESS?
>> NOT AT ALL, THAT IS NOT WHAT
THE COURT HAS DONE IF THE
LEGISLATURE HAS ACTED IN A REALM
AND TAKEN OVER THE REALM, THIS
WAS THE COURTS TO BEGIN WITH.
THIS IS A COMMON LAW DOCTRINE TO
BEGIN WITH.
THIS IS A LEGAL LANDSCAPE THE
DEVELOPMENT OF THIS DOCTRINE
LARGELY THROUGH THIS COURT'S
PRECEDENT.
SEWED TO DIFFER, IT'S REALLY TO
SUGGEST ANYONE WOULD BE
DEFERRING TO THE LEGISLATURE AT
THIS POINT ON THE SCOPE OF THIS
LIABILITY.
BECAUSE WITH THE LEGISLATURE'S
TASK IS.
IN THE DANGEROUS INSTRUMENTALITY
REALM IS TO CARVE OUT.
AGAIN, I THINK IT HAS BEEN NOTED
HERE.
THERE IS A PHILOSOPHICAL DISPUTE
PERHAPS.
IS THIS AN EXPANSION OR IS IT A
LIMITATION. IT IS ABSOLUTELY AN
EXPANSION TO HOLD CLIENTS LIKE
MINE WITHIN THE SAME HOUSEHOLD
LIABLE WHEN THE OWNER DOES NOT
DISCLAIM LIABILITY.
THAT IS VERY IMPORTANT HERE.
IN THAT REGARD I THINK IT IS
IMPORTANT TO CONSIDER WHY WE ARE
HERE, WHAT IS THE PROBLEM THAT
NEEDS TO BE FIXED.
IT'S NOT THAT PLAINTIFFS DON'T
HAVE RECOURSE, THE ABSOLUTELY
DO.

THE DRIVER IS ALWAYS FULLY
LIABLE.
AND ACCOMPLISH, THE TITLE OWNER
THE ONE CHARGED WITH LEGAL
RESPONSIBILITY FOR THE VEHICLE
IS ALSO LIABLE VICARIOUSLY
THROUGH THE STATUTORY LIMIT.
THERE IS NO PROBLEM THAT NEEDS
SOLVING BY ADDING ANOTHER LAYER,
AN UNLIMITED LAYER OF VICARIOUS
LIABILITY WITHIN THE SAME FAMILY
AND HOUSEHOLD.
BEING PLACED ON A JUDGMENT,
ESPECIALLY A MULTIMILLION ONE,
MULTIBILLION-DOLLAR JUDGMENT
LIKE DEBBIE LAMBERT HERE IS A
CRUSHING FINANCIAL OBLIGATION.
I DO THINK IT IS IMPORTANT THAT
WE CONSIDER HOW THIS CAN BE
EXPANDED TO OTHER POTENTIAL
DEFENDANTS AND WHAT'S GOING TO
HAPPEN IN THAT REGARD.
WHAT THESE CASES ARE GOING TO
START LOOKING LIKE.
THIS IS JUST THE BEGINNING IF
THIS COURT WERE TO GO THIS
ROUTE, THIS IS JUST THE
BEGINNING.
THIS WAS ARGUED ON LEGAL
GROUNDS.
BUT IF THIS IS THE CASE PRE-SUIT
AND A BE IMPOSSIBLE TO SETTLE
THESE CASES.
>> YOUR SUGGESTING FAMILY
MEMBERS IN THE HOUSEHOLD, THAT'S
WHAT YOU'RE SUGGESTING.
IF IT'S AN EX-HUSBAND WHO HAS
LEGAL TITLE, NOT IN THE SAME
HOUSEHOLD, THEN THE LIABILITY
WOULD A LOT TO THE MOM WHO IS IN
THE HOUSE?
>> LET ME MAKE SURE I UNDERSTAND
THE HYPOTHETICAL.
IF IT'S AN EX-HUSBAND IN A
DIFFERENT HOUSEHOLD.
>> BUT HE HAS THE TITLE, AND SHE
HAS THE VEHICLE?
>> SHE HAS THE VEHICLE, LOANS IT
TO THE KID INSIDE OF THE HOUSE.
>> YOUR HONOR, THAT IS A
DIFFERENT QUESTION CERTAINLY.
>> ISSUE LIABLE?
>> YES.
>> WHEN WERE TALKING ABOUT A

FAMILY AND A QUESTION PERHAPS OF
WHETHER AT SOME POINT YOU GET
INTO QUESTIONS IS THAT FAMILY
BUT THE BEAUTY OF THE STANDARD
THAT IS OFFERED BY JUDGE LUCAS
IS THAT WE ALMOST NEVER WILL
NEED TO ASK THOSE QUESTIONS.
UNLESS THE TITLE OWNER IS
DISPUTING LIABILITY WE DO NOT GO
AROUND LOOKING AT TO ADD CHANGE
TO THE VICARIOUS LIABILITY STORY
TO MAKE OTHER PEOPLE THE SAME
FAMILY LIABLE.
ARGUABLY, DEPENDING ON THE
STANDARD SET BY THE COURT IF THE
TITLE OWNER FATHER DID NOT
DISCLAIM HIS OWN TO CARRY IT.
THAT'S DEPEND ON THE SCOPE THAT
THE ANSWER THAT THIS COURT
PROVIDES.
>> YOU OBJECTED AT TRIAL TO THE
JURY BEEN INSTRUCTED ON THE
MATTER OF VICARIOUS LIABILITY IN
THE WAY OF BAILMENT IS A
POSITION BEFORE THE COURT OR
INDEED OF DROPPING THE ROLE THAT
YOU PROPOSE IS WISE TO SAY NO
BAILMENT WAS CREATED BECAUSE
INDEED BOTH OF THESE PEOPLE GAVE
THE CONSENT TO KYLE TO USE THE
CAR AND IN ANY EVENT THE NATURE
OF THE RELATIONSHIP THE NATURE
OF THE USAGE IS NOT A BAILMENT
IN THE WAY THAT A RENTAL CAR
TRANSACTION IS A BAILMENT.
IS IT YOUR POSITION THAT THERE
WAS NO BAILMENT?
>> I THINK IT IS FAIR TO SAY
THERE WAS NOT A BAILMENT BUT AS
NOTED EARLIER THIS IS THE
STANDARD JURY INSTRUCTION IN ITS
VERY BROAD.
>> I GET THAT BUT IT MATTERS
BECAUSE AS THE JUSTICE WAS
ASKING EARLIER.
FOR THAT SPECIAL WORD WE ARE NOT
HERE TODAY.
I THINK IT MAKES US THINK HARD
AND WANT YOUR VIEWS ON WHAT IT
TAKES TO CREATE A BAILMENT IN
THE CONTEXT OF SHARED CHATTEL IN
THE FAMILY.
WHAT MORE, THIS IS MY QUESTION
WHAT MORE WOULD'VE HAD TO HAVE

HAPPEN IN ORDER FOR A BAILMENT
TO HAVE BEEN CREATED IN THIS
CASE?
>> THANK YOU FOR THAT, IN THIS
CONTEXT IT WOULD BE WHERE THE
DAD DISPUTES THE VICARIOUS
LIABILITY AND SAYS THAT WAS A
THEFT OR CONVERSION AS SPECIES
OF THEFT OR CONVERSION, WHICH IS
WHERE THIS DOES COME UP.
THE ONLY TIMES THAT WE TYPICALLY
SEE THIS ARE WHEN THE
VICARIOUSLY LIABLE OWNER
DISCLAIMS THE VICARIOUS
LIABILITY SAYING I NEVER GAVE
PERMISSION FOR THIS.
WE'VE SEEN THAT IN SOME OF THE
CASES IN THE CASES THAT THE
PETITIONER RELIES UPON ARE ALL
OF THOSE CASES THOSE CASES WHERE
YOU CANNOT GET THE OWNER AND THE
OWNER SAYS I'M NOT THE ONE WHO
GAVE PERMISSION.
I THINK THAT IS INTERESTING
BECAUSE THE PETITIONER IS
ARGUING THAT MOM WAS THE ONE WHO
GAVE PERMISSION WHEN THE RECORD
IS VERY CLEAR THEY BOTH DID.
THE RECORD ENTRUSTMENT AND
PERMISSION AS THOSE
CONSIDERATIONS ARE LEGALLY
ANALYZED WAS GIVEN BY BOTH
PARENTS.
I DON'T THINK THERE IS A WAY TO
DO IT IS THE ANSWER TO YOUR
QUESTION.
I JUST DON'T THINK IT'S A
WORKABLE CONCEPT WITHIN A
FAMILY.
CERTAINLY AMONG SPOUSES WHO LIVE
IN THE SAME HOUSEHOLD.
AND IT'S GOING TO CHANGE ALL THE
TIME.
BY THE TIME YOU'VE TAKEN A
STATEMENT BEFORE LAWSUIT AND NOW
YOU'RE AT DEPOSITION, THE FACTS
HAVE ALREADY CHANGED.
>> I'M SORRY TO INTERRUPT, IF WE
ARE PERSUADED THAT FRANCO WAS
BAILMENT FOR HIGHER AND THERE
HASN'T BEEN AN EXTENSION
PREVIOUSLY, AND IF WE SAY
ESSENTIALLY BETWEEN THE HUSBAND
AND THE WIFE OR I CAN'T REMEMBER

WHO IS THE TITLE OWNER.
BUT IF THERE IS NO BAILMENT CREATED IN THE FIRST PLACE THEN DOES IT MATTER WHETHER THE PERSON TO WHOM THE CAR IS LOAN IS ALSO THE THIRD PERSON WHETHER THEY ARE ACTUALLY IN THE FAMILY OR NOT.
IT SEEMS LIKE JUDGE LUCAS BAKES THAT INTO THE TEST.
BUT IT SEEMS LIKE WE AGREE THERE WAS NO BAILMENT IN THE FIRST PLACE IF THE INTERMEDIATE PART DID NOT HAPPEN THEN WHY SHOULD IT MATTER WHETHER IT'S A FAMILY MEMBER.
>> I THINK THAT'S AN IMPORTANT QUESTION THAT IS SOMETHING THAT THIS COURT WILL NECESSARILY HAVE TO DECIDE WHETHER TO KEEP A BROAD AND FOCUS ON THE ALLEGED DAD TO MOM OR WHETHER WE ARE ALSO GOING TO ANALYZE THE THIRD PERSON AS WHAT HAPPENED IN FRANKEL WHERE THE FOCUS GETS MISPLACED AND EVERYBODY IS LOOKING AT THE THIRD PERSON, THE DRIVER WHO WAS THE GIRLFRIEND OF THE PERSON WHO RENTED THE VEHICLE.
IT IS IMPORTANT TO CONSIDER THAT.
I THINK THE SIMPLEST TEST THAT GIVES FLORIDIANS THE MOST CLARITY AND JUDGES THE MOST CLARITY AND LITIGANTS TO FOCUS ON THE INITIAL RELATIONSHIP, FOCUS ON THE OWNER IN THE BAILEE.
AND REALLY AS JUDGE LUCAS BRING THE CERTIFIED QUESTION THAT IS WHERE IT ENDS.
BUT IF YOU WERE TO KEEP IT WITHIN THE FAMILY IN TERMS OF FAMILY MEMBERS USE OF THE VEHICLE BE IN THE THIRD PERSON IN THE CHAIN.
IF THE COURT WERE TO DO THAT I THINK THAT WOULD BE AN ABSOLUTELY REASONABLE TAILORING THIS CASE TO THE FACTS OF THIS CASE BUT ULTIMATELY THE THRESHOLD QUESTION AS IT IS FRAMED SHOULD BE WHEN THE

VICARIOUSLY LIABLE OWNER
DISCLAIMS LIABILITY.
WHEN YOU HAVE THAT ADMISSION WE
DON'T EVEN NEED TO GET INTO THE
COMPLICATED QUESTIONS READ THAT
PERHAPS IS WHERE YOU WOULD GET
INTO QUESTIONS OF THIS PERSON
FAMILY?
AND THEN THE BUSINESS OF
DEFINING FAMILY.
>> COUNSEL QUESTIONING.
>> YES.
>> LET'S SAY THE OWNER SAYS NO I
DID NOT GET PERMISSION, MAYBE IT
IS THE EX-HUSBAND.
SO NOW THERE IS A VICARIOUSLY
LIABLE INTERMEDIATE BAY LORD,
BAILEY.
SHOULD THAT PERSON'S DAMAGES BE
CAPPED SIMILAR TO THE STATUTORY
CAT FOR THE TITLE OWNER.
BECAUSE THEY'RE ESSENTIALLY
STEPPING INTO THE SHOES.
OR IS THAT OPEN FOR ANY AMOUNT
OF DAMAGES?
>> IF THAT WAS SET CLEARLY BY
THE COURT, I WOULD SUBMIT AND
CONCEDE THAT WOULD BE A MATTER
FOR THE LEGISLATURE.
I DON'T THINK THIS COURT CAN
ASCEND A STATUTORY CAT BY
PLACING SOMEONE ELSE IN THE
CATEGORY.
HOWEVER, IF THE COURT WERE TO
REDEFINE OWNER IN THIS CONTEXT.
THEN THAT COULD WORK.
I THINK IT'S DEPENDENT UPON HOW
THE COURT APPROACHES THE
SOLUTION TO THE PROBLEM.
I THINK THE ONE PRESENTED IN THE
CERTIFIED QUESTION IS A
REASONABLE SOLUTION AND RATIONAL
SOLUTION THAT IN THE VAST
MAJORITY OF CASES WILL BE FAIR
TO BOTH SIDES PLAINTIFF AND
DEFENDANT.
I SEE MY TIME IS EXPIRED READ IF
THE COURT HAS NO FURTHER
QUESTIONS WE WOULD RESPECTFULLY
REQUEST THAT THE COURT ANSWER IN
THE NEGATIVE AND APPROVE THE
DECISION OF THE SECOND DISTRICT.
THANK YOU.
>> REBUTTAL?

>> JUST REAL QUICK ON THE FACTS
READ THE FATHER SAID ANYONE CAN
DRIVE SUBJECT TO WHAT MOM SAYS
BECAUSE HIS MOM'S CAR.
THE NIGHT OF THE ACCIDENT DAD
WAS NOT THERE, MOM WAS THERE AND
MOM SAID CAN I DRIVE YOUR CAR
AND SHE SAID YES AND HE DROVE IT
AND HIT A MOTORCYCLE.
AS FOR THE NEED OF CLARITY EVEN
ANYBODY READING WHAT THIS COURT
SAID BACK TO WHERE WHAT THE
SECOND DISTRICT SET IN STANFORD
KNEW WHAT THE RULE OF LAW WAS
WERE WITH THE COURT SAID IT WAS.
>> IT WOULD BE NUTS FOR US TO
SET SOMETHING THAT SAYS IN
ADDITION TO MAKING THESE ABOUT
WHAT THE LEGISLATURE CONSIDERED
ABOUT THE ACTUAL LAW WHICH IS A
TALL ORDER WERE ALSO CAN ASSUME
THE LEGISLATURE WAS AWARE OF OUR
DICTA TREATED THAT AS LAW AND
LEGISLATED ACCORDINGLY.
>> I THINK THAT'S A GOOD POINT
BUT I THINK YOU NEED TO
UNDERSTAND THAT DICTA IS A
LITTLE BIT DIFFERENT WHEN WERE
TALKING ABOUT COMMON LAW WHEN
THIS COURT IS ANNOUNCING A RULE
OF HOW THE CITIZENS OF FLORIDA
WILL GOVERNOR THEMSELVES IT'S A
ROLE PERSPECTIVE OF ALMOST
ALWAYS, BUT MORE IMPORTANTLY.
>> MOST OFTEN OBVIOUSLY WE
SOMETIMES HAVE DONE THAT THAT WE
ANNOUNCE THE PROSPECTIVE RULES
THAT THAT IS NOT THE ORDINARY
COURSE.
WE DECIDE ORDINARILY WE DECIDED
CASE AND EVEN WITH THE COMMON
LAW GETS CHANGED IT'S CHANGED IN
THE CASE BEFORE US.
IN THE HOFFMAN CASE THEY HAD A
WHOLE SET OF DICTA WE ANNOUNCED
A CHANGE IN THE RULE FROM
CONTRIBUTING TO COMPARATIVE
THESE ARE THE KINDS OF CASES
THAT THIS WILL APPLY TO IT TO
APPLY TO CASES WHERE THIS IS
RAISED THERE IS A WHOLE LITANY
OF THINGS.
THAT IS WHEN THE COURT CHANGES
THE COMMON LAW AND MAKES AN

EXCEPTION TO A RULE THAT IS
ESTABLISHED IT'S CREATING A RULE
OF LAW THAT PEOPLE NEED TO
GOVERN THEIR CONDUCT.
>> IS IT THAT THE POINT RULES
ARE NOT ESTABLISHED IN DICTA?
>> THEY SHOULDN'T BE.
, THAT IS EXACTLY WHY THIS COURT
SHOULD NOT CHANGE THE LAW IN THE
AREA WHERE THE LEGISLATURE HAS
OCCUPIED THE SPACE.
>> ON THAT COUNSEL, IT CANNOT BE
YOUR POSITION THAT THE COMMON
LAW IS FROZEN, WHENEVER THE
LEGISLATURE ASK IN THE BROAD
AREA AT ALL.
THAT DOESN'T SEEM TO BE AN ODD
LIMITATION ON JUDICIAL AUTHORITY
IN A COMMON-LAW AREA.
>> I WOULD SAY THERE'S A
SPECTRUM IN THIS COURT HAS GONE
UP AND DOWN ON THE SPECTRUM ON
ONE END OF THE SPECTRUM IS
TREMENDOUS JUDICIAL LAWMAKING
WHERE THEY CAN CHANGE A
COMMON-LAW YOU CAN HAVE A
COMMITTEE MEETING LIKE IT SEEMS
LIKE WE HAVE ON THE POLICIES IN
THIS COURT TO DECIDE THE LAW
SHOULD BE AND THAT IS A
LAWMAKING FUNCTION.
ON THE OTHER END OF THE
SPECTRUM, ARE JUDGES WHO SAY
JUDGES SHOULD NOT MAKE LAWS WE
SHOULD JUST INTERPRET THE LAW IN
THE LEGISLATURE SHOULD MAKE THE
LAW AND WE SHOULD SIT BACK AND
DO THAT.
I THINK WHERE THIS COURT IS ON
THE SPECTRUM IS YES WE'VE HAD
THE AUTHORITY TO DO THAT BUT WE
QUESTION OUR LEGITIMACY THE MORE
WE MAKE LAW AND CREATE
REGULATION INTO THINGS.
WE ARE NOT ELECTED TO DO THAT.
THE BETTER RULE EVEN IF WE HAVE
THE POWER TO SHOW THE RESTRAINT
TO SAY WE ESTABLISHED A PRETTY
BROAD RULE OF LIABILITY.
THESE PEOPLE SAY HERE'S A GOOD
REASON TO LIMIT THAT.
TAKE THAT TO THE LEGISLATURE
BECAUSE THEY CAN LOOK AT WHEN
YOU CHANGE THE LAW AND CREATE

REGULATION THERE IS UNFORESEEN
CIRCUMSTANCES, THERE IS WINNERS
AND LOSERS HOW WILL THAT IMPACT
THE WHOLE INDUSTRY.
HOW WILL THIS IMPACT THE
INSURANCE INDUSTRY WHICH FACTORS
IN WHETHER IT'S DICTA OR NOT
WHEN THE SUPREME COURT SAYS THIS
IS THE RULE OF LAW BASED ON
CONFLICT FOR THE FULL SOLE
PURPOSE OF SAYING THIS IS THE
RULE OF LAW.
PEOPLE CHANGE THEIR CONDUCT TO
FOLLOW IT.
IF YOU KEEP CHANGING THAT.
>> I LET YOU GO OVER QUITE A BIT
SUMMIT UP IN 32ND.
>> THIS COURT SHOULD DEPART FROM
THE TRADITIONAL ROLE THIS COURT
HAS HAD A BEEN A LAWMAKING BODY.
SOMETIMES YOU WILL HAVE TO
ANSWER COMMON-LAW QUESTION WHERE
THERE IS A TRUE GAP BUT
OTHERWISE YOU SHOULD LEAVE IT TO
THE LEGISLATURE TO DECIDE WHEN
TO CONTRACT OR EXPAND THE RULE
OF LIABILITY THAT THIS COURT HAS
SET.
IN WORDS PRINTED FOR EVERYBODY
TO READ FOR ALL OF US TO DECIDE
HOW WE TITLE OUR CARS AND ENSURE
OUR CARS, ET CETERA.
IT SHOULD NOT BE UPSET ON THE
POLICY PREFERENCES OF WHO'S IN
OFFICE AT ANY GIVEN TIME.
WE ASK THAT YOU ANSWER IN THE
AFFIRMATIVE IN THE QUESTION
BELOW.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE TODAY.
THAT IS THE FINAL CASE ON
TODAY'S DOCKET.
THE COURT WILL NOW STAND IN
RECESS.