

Detailed Lesson Plan
Brian Hunt
February 10, 1992

Anticipatory Set

Ask how many of the students have their own cars ? Their own auto insurance ? Drive their parents' cars ? Covered under their parents' auto insurance ?

Ask if the students have been told that they cannot let others (e.g. friends) under 25 years of age drive their car or their parents car ? Or that they could not drive a car because drivers under 25 years of age were excluded from coverage by the terms of the insurance policy ?

Ask if any of the students have heard of Viking v. Petersen ?

Objective of the Lesson

Students will be exposed to studying case law as a method of learning.

Students will have a better understanding of Oregon's Financial Responsibility Law, requiring all cars operated on Oregon roads to be insured.

Students will have a better understanding of the concept of freedom to contract.

Students will be exposed to an example of what occurs when rights and laws come into conflict.

Presentation of Materials

1. Summarize typical auto insurance policy exclusion excluding coverage for drivers under 25 years of age not named on the policy declaration page as a named insured.

2. Prompt class discussion as to what happens when someone under 25 drives a car insured under a policy with such an exclusion (i.e. no coverage ?).

3. Summarize ORS Chapter 806, the Oregon Financial Responsibility Law, and discuss what it means. Answer questions as to the many uninsured drivers in Oregon.

4. Role play Viking v. Petersen. Select individual students to be Petersen, Randle, the Medinas (2 students, "Luis" and "Patricia"), the Viking Ins. Co. claims adjuster, and the Medinas' estate representative; divide the rest of the class evenly to represent Viking Ins. Co. lawyers and Petersen (Medinas' estate, in reality) lawyers. Petersen borrows Randle's car with Randle's permission. Randle is insured by Viking. Petersen (19) causes an accident with the Medinas, killing both. The Medinas' estate representative sues Petersen for negligence. Petersen seeks

insurance coverage and legal defense from Viking. The Viking claims adjuster says no coverage for damages arising out of the operation of the insured vehicle by one other than the named insured if that driver is under 25, and brings this declaratory action to deny coverage on that basis. Have the Petersen lawyers discuss why it should not prevail and the Viking lawyers discuss why it should. Act as judge and suggest arguments should one side or both be lacking.

5. Pass out Viking v. Petersen. Explain the cover page of the decision (i.e. parties, summary of facts, counsel) and how to extract meaningful information from it. Read pertinent portions of case aloud while class follows along. Stop for clarification when necessary.

6. Assist class in ascertaining the holding of the case from the decision. Discuss how this holding affects them. Discuss who the decision is binding on. Discuss what changes one might see as a result of the decision (e.g. no longer see those exclusions on policies, higher premiums or application rejections for families with children)

Monitoring to Check for Understanding

Conduct in a discussion and debate format so that understanding will be evident. Encourage student opinions and participation.

Closure

Suggest to students that they examine the automobile policies that cover them.

CASE: Viking Ins. Co. v. Petersen, 308 Or 616 (Dec. 1989)

KEY LEGAL ISSUE: Whether the Oregon Financial Responsibility Law renders invalid automobile liability insurance policy endorsements excluding drivers under the age of 25 who are not named insureds.

Major questions/issues:

- may insurers exclude certain types of drivers from coverage ?
- if so, is an otherwise insured vehicle uninsured when driven by one of those certain types of drivers ?
- does the Oregon Financial Responsibility Law require the driver of the car to have insurance ?
- what prevents a driver from buying his own insurance ?

Relevant Facts

The Medinas were killed in a car accident involving a vehicle operated by Petersen, age 19. The Medinas' estate filed suit, alleging, in part, that Petersen was negligent. The vehicle was owned by Randle, who insured it through Viking Insurance Company. The Viking policy contained an endorsement which excluded coverage when the insured vehicle was being operated by a person under the age of 25 unless that person was a named insured on the policy declaration page. Petersen was not a named insured on the policy declaration page. Viking sought a declaratory judgment releasing it from liability to defend or provide coverage.

Key Arguments For Viking

They have a clear contract with Randle which provides in part that they do not provide liability coverage when the insured vehicle is driven by a person under the age of 25 unless that person is a named insured on the policy declaration page.

The burden to comply with the Financial Responsibility Law is on persons who drive cars; insurance companies merely sell a product which may or may not meet those persons' burden.

Insurance companies determine the premiums they charge by the risk each individual insured represents. That risk is altogether different when people other than the named insured(s) operate the insured vehicle. Because drivers under the age of 25 represent that portion of the car driving public responsible for the most automobile accidents, insurance companies exclude those drivers from coverage unless they are known to the insurance company and named as an insured driver on the policy declaration page.

Key Arguments for Petersen

ORS 806.270(3)(a)[attached] requires that an automobile liability insurance policy cover not only the owner of the vehicle insured, but all persons who, with the consent of the insured, use the vehicle. Because Petersen used the vehicle and the vehicle was insured, Petersen is insured.

/// /// ///

The burden to comply with the Financial Responsibility Law is on the insurance companies; the statutes require that each policy issued in Oregon comply, as such, no policy can offer less than what is required by the Law.

Public policy and Oregon law dicates that all cars on the road be insured. Uninsured vehicles causing damage to others may leave those damaged parties with no source from which to recover for their damages, or require that their own insurers pay their damages under uninsured motorist coverage, which drives the overall price of insurance up.

As the JUDGE in this case, how would you rule ?
The policy exclusion is valid. There is no coverage.

Rationale:

Insurance companies are private entities, enjoying the freedom to contract for whatever and to whomever they choose. If a person needs insurance that will cover anyone who might drive her car, including those under 25, so as to comply with the Financial Responsibility Law, then they can find an insurer who will offer that product.

Does the actual court decision agree with your personal view ?
No. The case holds that the Financial Responsibility Law requires that all policies issued in the state provide the statutorily required coverages, which includes that a policy cover not only the named insured, but also anyone else who operates the insured vehicle with the consent of the insured. The exclusion violated the Law and is invalid. Viking must provide coverage.

What do you foresee as the results of this decision:

1. Insurance policies will no longer have endorsements excluding coverage for drivers under 25 not named as an insured on the policy declaration page.
2. Insurance companies will charge more for policies in households containing members under 25 not named as an insured on the policy declaration page, or reject applications for such outright.
3. Parents will no longer have a valid argument for not allowing their children to drive the family car.
4. Insurance applications will go much further in depth with respect to questions of household members and who else may drive the insured vehicle.
5. Generally, insurance costs will increase.