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Parental Liability for Torts of Children

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A child is responsible for his torts or delinquent acts.\(^1\) Today many states, as a condition of probation, order children to make restitution for damages which resulted from their delinquent acts. Thirty-five states\(^2\) have passed laws placing an absolute liability on the parent for damages resulting from the delinquent acts of his child (see Appendix) in amounts ranging from $100 to $750. As far as is known, no study has been made relative to the effectiveness of such laws or to what extent they have been used.

The common law doctrine is that a parent is not liable for the torts of his minor child, on the basis of meer relationship.\(^3\)

The civil law doctrine is that a parent is liable for the torts of his minor child unless the parent was unable to prevent the child’s act or the child himself was under the legal age of responsibility.\(^4\)

In numerous situations, the civil law provides for redress against parents for damages resulting from their children’s torts; for example, where the child is acting as the agent of the parent, or commits a tort within the scope of an employment relationship with the parent, or in situations where the parent has been negligent in the control of the child, such negligence being the proximate cause of the damage, and in other situations where the parents have entrusted dangerous instruments to their children.\(^5\)

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\(^1\) Program analyst, Office of the Director, Division of Juvenile Delinquency Service, Department of Health, Education, and Welfare.

\(^2\) Does not include Ohio which places liability on parents of an adjudicated delinquent in certain instances. Ohio Code Supp. 1963, 2151.411.

\(^3\) See Stone, \textit{Liability for Damage Caused by Minors, A Comparative Study}, 5 Ala. L. Rev. 1, 6 (1952).

\(^4\) Prosser, \textit{Torts} § 101 (2d ed. 1955).

\(^5\) In \textit{Roca v. Steinmetz}, 61 Cal. App. 102 (1923), the parents were held liable as they had provided the child with a dangerous instrument.
Minors may be held civilly liable for their torts. A juvenile court has no civil authority in such matters. Generally, the jurisdiction of the juvenile courts over parents is extremely limited. The court can assess payment for parental support to institutions maintaining a child and can proceed against parents in a contempt action for failure to heed a court order of support. Juvenile courts cannot, without enabling legislation, render a civil judgment against parents for persons seeking damages for wrongs committed by minors. Juvenile courts may, however, order restitution to a victim, as a term of a minor's probation.

Social aspects and legal aspects of parental liability for the torts of a child warrant serious deliberation of legislation which imposes such liability. Present day vandalism has led to legislation which imposes restitution upon the child and/or responsibility upon the parent. Some laws are concerned primarily with destruction of school property, other laws place absolute responsibility upon the parents for the acts of their children. Parents in general do not condone the delinquent acts of their children such as vandalism, unauthorized use of cars, assault or breaking and entering; nor can parents; without proof of negligence, usually be held liable by mere notice or information of such acts.

Two mid-nineteenth century cases stated the civil law position. In one it was held “A father is not liable for the torts of his children, committed without his knowledge or consent, and not in the course of his employ” and another held it is a rule of common law that a father is not liable in damages for the torts of his child committed without his knowledge, consent, participation or sanction, and not in the course of his employment of the child. Knowledge by the father of the boy's careless use of a shot gun created liability in this case, however.

There has been a trend in recent years which tends by legislation and case decisions to hold parents liable for injurious, destructive and malicious acts of their children on the basis of parental relationship although at common law such relationship was not considered as a basis for imposing liability. The parental liability statutes which have been enacted, with but one exception—the State of Tennessee—place an absolute financial

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6 Wilson v. Garrard, 59 Ill. 51 (1871).
7 Paulin v. Howser, 63 Ill. 312 (1872).
responsibility upon parents without regard to fault or negligence. The trend in the civil law leans towards an assumption that the parents lacked control or guidance over the child who commits a tortious act.

In California parental liability for the torts of children was enacted by statute in 1955. Prior to that time, minors themselves were liable for torts and mere relationship did not impute liability.

In *Ellis v. D'Angelo*, 116 Cal. App. 2d 310, 253 P.2d 679 (1953), the complaint alleged that parents employed the plaintiff as babysitter for a four year old son; that the parents knew and failed to warn the sitter that the son habitually engaged in violently attacking and throwing himself against other people. Shortly after the plaintiff entered the home the child attacked her and injuries resulted. The court held the complaint stated a cause of action for negligence against the parents on the grounds that a parent may become liable for an injury caused by a child where the parents' negligence made it possible for the injury to occur.

In 1963 Governor Brown of California vetoed a legislative bill which would have extended parental liability for wilful misconduct of a minor to include injury to property and to increase limitation of liability from $300 to $1,000.8

In *Kelly v. Williams*, 346 S.W.2d 434 (Tex. 1961), a father was held liable to the sum of $300 for damages to a car stolen by his son. The act which authorized such recovery was held constitutional with the court declaring that legislative bodies in enacting parental liability statutes had decided "it is better that the parents of these young tort feasors be required to compensate those who are damaged even though the parents be without fault, rather than to let the loss fall upon innocent victims."9

In a number of cases the courts seem to have difficulty in finding a basis for parental liability beyond mere relationship, which at common law does not make the parent liable as such.10

8 "While I agree with the aim of this legislation, to generate a higher degree of supervision by parents over the actions of their children with respect to vandalism and physical attacks," Governor Brown declared, "I cannot consent to the enforcement of such a high maximum where no fault is required to be shown on the part of the parent." *From the State Capitals*, Aug. 12, 1963.

9 Court made reference in its decision to 37 Texas L. Rev. 924 and 3 Vill. L. Rev. 529.

10 See Minick v. Luchy, 87 Pac. 1141 (Kan. 1919); Capps v. Carpenter 283 Pac. 655 (Kan. 1930).
There is, however, an affirmative duty on the parent to make him liable when he has failed to exercise proper parental control over a bullying child.\textsuperscript{11}

In \textit{Bieker v. Owens}, 350 S.W.2d 522 (Ark. 1961), it was held that a parent has responsibility to control minor children while they are in their formative years. The court emphasized that where the parent has the opportunity to control a minor, and knowledge of the tendency of the minor to commit acts which could be injurious to others, and having such opportunity has failed to exercise reasonable control, the parent should be made to respond to those who have been injured by such acts of the minor.\textsuperscript{12}

In a recent case, \textit{General Ins. Co. of America v. Faulkner}, 259 N.C. 317, 180 S.E.2d 645 (1963), North Carolina became the third state to uphold the constitutionality of parental liability statutes.\textsuperscript{13} An eleven year old, living with his parents, was admitted to have maliciously and wilfully set fire to school furnishings causing damage in the amount of almost $3,000. The plaintiff insurer, as subrogee to the school, brought action for $500, the maximum limit under the North Carolina Statute. The Supreme Court of North Carolina conceded that the statute reversed the established common law rule, whereby parents were not liable for the torts of their children, but held that such statute was not a failure of due process of law under state or federal constitutions.

In \textit{Board of Educ. v. Hansen}, 56 N.J. Super. 567, 153 A.2d 393 (1959), a public school student and his parents were jointly sued by reason of statutory liability for damages to school property—in this instance in the amount of $344,000 for damages caused by setting fire to the school. The court held that the statute in question was in derogation of the common law and should be strictly construed, but was not unconstitutional as

\textsuperscript{11} In a leading case, \textit{Ryley v. Lafferty}, 45 F.2d 641 (5th Cir. 1930) the court said, "While it is true that parents are not liable for torts committed by their minor children without their consent or knowledge yet the principle applicable... is that the parents are liable if it appears that they knew that their child was guilty of committing the particular kind of tort habitually... and made no effort to correct or restrain him."

\textsuperscript{12} Also, \textit{Caldwell v. Zaher}, 344 Mass. 590, 183 N.E.2d 706 (1962), and \textit{Bocock v. Rose}, 373 S.W.2d 441 (Tenn. 1963).

depriving parents of their property without due process of law. In this case there would have been no liability if the Hansen boy were not a "pupil" of the public school system. The liability comes about by reason of the provisions of the statute, a condition under which free public education becomes available. In sending their son to public school, the parents became amenable to the liability of the statute.\textsuperscript{14}

In \textit{Steinberg v. Cauchois}, 249 App. Div. 518, 293 N.Y. Supp. 147 (1937), a child was held liable for injuries to another child caused by negligent use of a bicycle, but the parents of the defendant were absolved of liability because of insufficient evidence of knowledge of child's careless operation of his bicycle. Unless made so by statute, the court found there is no liability on the part of a parent as such for the tort of a child. A child is in general liable for his own torts, absent the parents' negligence, consent, knowledge, or participation.


\begin{quote}
Although there are some decisions which have failed to recognize this principle, the general rule is that a parent may be liable for the consequence of failure to exercise the power of control which he has over his children, where he knows, or in the exercise of due care, should have known, that injury to another is a probable consequence. Thus a father may be held liable where he knows that a tortious act is in contemplation, or that his children are persisting in a course of conduct likely to result in injury to another. Failure to restrain the child, it is said, amounts to a sanction of or consent to his acts by the parent. It is questionable whether mere knowledge by the parent of his child's mischievous or reckless disposition is enough to make him liable for torts of the child. Certainly where there is nothing to show any knowledge and therefore any approval by the parent of a line of conduct on the part of the child, the parent is not liable.\textsuperscript{15}
\end{quote}

\textsuperscript{14} The Annual Report of Juvenile and Domestic Relations Court of Essex County, New Jersey (1955) states that "a search of the records discloses no single case where any New Jersey school board over the past fifty-two years has in fact made use of this statute by filing suit against a parent. If the psychological effect of this law had real value then we could have long since expected an absence or a diminution of such vandalism. This, however, does not seem to be the case."

\textsuperscript{15} See, Condel v. Savo, 350 Pa. 350, A.2d 51 (1944), 155 A.L.R. 81 where the parents knowledge of their son's habit of beating smaller children was sufficient to charge the parents with negligence for which they may be answerable for injuries caused by such tortious act. And, Bateman v. Crim, 34 A.2d 257 (D.C. (Continued on next page)
In *Langford v. Shu*, 258 N.C. 185, 128 S.E.2d 210 (1962), the case involved a practical joke which caused unintended injury to the plaintiff when the eleven year old son of the defendant sprung a trap mechanism purporting to release a live mongoose. Defendant’s actions in encouraging her son was held sufficient to incur liability. A parent is liable for act of his child if parents’ conduct was such as to render his own negligence proximate cause of the injury complained of—based on the ordinary rules of negligence and not upon the parental relationship.\(^\text{16}\)

\(^{16}\) 67 C.J.S. *Parent and Child* § 68 (1938) says, “As a general rule a parent

The cases cited herein hold the parent liable in a civil action for a child’s tortious act... as distinguished from cases in which a juvenile court with a limited jurisdiction over parents, imposes liability upon parents for vandalism or other delinquent acts of a minor child.

Several questions concerning the proper interpretation of statutory vicarious liability of parents could be raised. Are foster parents and prospective adoptive parents similarly liable for the child’s tortious act?\(^{27}\) If the child is at a resident school or camp when the tortious act is committed does parental liability still exist? Is the plaintiff in a parental liability action precluded from recovery of greater amount than the statutory maximum?

Further questions could be raised on the efficacy of parental liability statutes. Has a “Let’s get tough with parents” attitude actually reduced juvenile delinquency?\(^{218}\)

Bar associations, state officials, the National Council of Juvenile Court Judges\(^{19}\) and civic organizations have issued strong statements of caution on the legislative imposition of vicarious

(Footnote continued from preceding page)

Cir. 1943), which held the negligence of the parents must have some specific relation to the tortious act, thus the parental supervision or lack of it was held to be a question for jury to determine.

may be liable for an injury which is caused directly by the child, where the negligence of the parent has made it possible and probable that such injury would occur. ... Generally speaking liability of the parent is based on the rules of negligence rather than the relationship of parent and child. ... The distinction has been made that any liability of the parent is for his own fault and not for the fault of the child and the fact that the child is liable for the particular tort does not prevent the imposition of liability on the parent for his negligence with respect to such tort.”

\(^{27}\) See, Landers v. Medford, 133 S.E.2d 403 (Ga. 1963) wherein a stepfather was held not liable for minor’s conduct.

\(^{218}\) See, Jhan and June Robins, Punishing Parents Dosen’t Work! This Week Magazine, February 3, 1957; and Note, 36 Wash. L. Rev. 328 (1961).

\(^{19}\) See The Seattle Times, June 28, 1961, p. 9, col. 2.
liability of parents for the tortious acts of minor children. One state official, Governor Otto Kerner of Illinois, in vetoing parental liability legislation said in his message,

This Bill makes parents or legal guardians of minor children under the age of 18 liable for damage to property inflicted by their children when the children are acting maliciously or wilfully. The Bill authorizes an action at law in any court of competent jurisdiction; and it places a limit of $300 on the amount of damages which may be recovered.

Under Illinois law the courts have consistently held that parents are liable for torts committed by their minor children only under certain circumstances: when the children were acting at the direction of the parents or in furtherance of the parents' business. The Bill is intended to extend parental responsibility to all cases of property damage where the child is acting wilfully or maliciously.

There appears to be no valid reason to expand this area of tort liability only in cases of injury to property. If the existing law of parental liability is to be expanded, it should also encompass injury to persons.

Moreover, the Bill might also serve in one important respect to restrict existing law by placing a limitation of $300, regardless of actual damages, on the amount that might be recovered in those cases where the Illinois courts have held parents liable. Thus, the parents of a child operating an automobile so negligently as to be wilful might—because the child is found to have been acting in furtherance of his parents' business—be held liable for only a fraction of actual damages inflicted.

For these reasons, I veto and withhold my approval of House Bill No. 191.20

Governor Averell Harriman of New York said on similar legislation,

This Bill provides that parents shall be liable for damage done by a child up to $250. It was passed after spirited debate and discussion, and has been the subject of unusual controversy. The vote in the Senate was very close.

Both the proponents and the opponents of the legislation are agreed as to the seriousness of the problem of juvenile delinquency and are agreed as to the importance of strengthening the influence of the home and of encouraging a sense of responsibility on the part of parents with respect to the

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behavior of their children. The only question is whether or not this bill will contribute to that objective.

The sponsors of this bill are to be commended for having brought it forward for legislative and executive consideration. They believe that it would cause parents to exercise greater control over their children and hence to reduce the number of acts of vandalism.

On the other hand, the opponents of the bill seriously question whether it will have that effect. They point out that its burden will fall particularly on low income families and that it could conceivably limit the liability of parents who are financially able to pay considerably more than $250 for damage caused by their children. They also stress the fact that the bill may lead to added strain in families where relationships are already tense and might even give to troublesome delinquents a weapon against their parents which they would not hesitate to use.

Among the responsible agencies and officials which have registered their opposition to this legislation are: The Chairman of the Temporary Commission on Youth and Delinquency, the Chairman of the State Youth Commission, the New York City Bar Association, the New York State Bar Association, the Jewish Child Care Council, the United Parents Association, the New York City Council of Churches and the Citizens Committee for Children of New York City.

I must conclude that the value of this legislation has not been established.

The Bill is disapproved.21

A Bill on the same general subject was introduced at the 1964 session of the New York legislature. It passed the Assembly, but failed to pass the Senate.

The Committee on the Domestic Relations Court of the Bar Association of New York in commenting on the proposed legislation said,

The proposed bill would change these common law rules by imposing, in effect, an absolute liability on the parent for any injury to property resulting from any malicious, wilful or unlawful act of his child, without regard to whether or not the parent had any knowledge of any dangerous propensities of the child or whether or not the parent exercised reasonable restraint over the child. In the view of this Committee the bill is unduly harsh and inflexible and is unrealistic. Although

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one of the purposes of the measure is undoubtedly to deter
acts of juvenile delinquency which result in damage to prop-
erty of others, it would not appear that any great degree of
deterrence will be effected where liability is imposed without
respect to whether the parent has been at fault.

The Committee is concerned with the possible impact of the
bill on matters before the Children's Court. Experience in
that Court shows that many acts of delinquency stem from a
disturbed parent-child relationship. In such cases, arbitrarily
penalizing the parent for the acts of the child not only will
not provide a deterrent against repetition on the part of the
child but may well aggravate the existing antagonisms be-
tween the parent and child which lie at the source of the
child's delinquent conduct. The corrective measures which
the Children's Court attempts to apply to these situations
may well be nullified by the additional penalty on the parents
which the proposed measure imposes.

A later and similar bill was passed by the New York Legisla-
ture and was vetoed by Governor Nelson Rockefeller on April 23,
1964. In his veto message, Governor Rockefeller said,

This bill would amend the Family Court Act to impose
liability upon the parent of a 10 to 16 year old child for prop-
erty damages caused by such child, in amounts less than $250.

Under present law there is no general liability on the part
of a parent as such, for the civil wrongs of his child. Liability
may be imposed upon the parent, however:

(1) Where the relationship of master and servant exists and
the child is acting within the scope of his authority ac-
corded by the parent;

(2) Where a parent is negligent in entrusting to the child
an instrument which, because of its nature, use and pur-
pose, is so dangerous as to constitute, in the hands of
the child, an unreasonable risk to others;

(3) Where a parent is negligent in entrusting to the child
an instrumentality which, though not necessarily a danger-
ous thing of itself, is likely to be put to a dangerous use
because of the known propensities of the child;

(4) Where the parent's negligence consists entirely of his
failure reasonably to restrain the child from vicious con-
duct imperilling others, when the parent has knowledge
of the child's propensity toward such conduct, and

(5) Where the parent participates in the child's tortious act
by consenting to it or by ratifying it later and accepting
the fruits. Steinberg v. Cauchois, 249 App. Div. 518, 519
This Bill is intended to extend these common law rules of liability. Without reaching its merits, it must be disapproved because of serious deficiencies in its present form. Chief among these is that, while the bill purports to impose liability for acts of vandalism, in its present form it would hold a parent responsible for all property damage caused by his child, without regard to fault or malice. In addition, it would limit to $250 the damages which may be awarded against a parent, although at common law there is no such limit. There is also a serious question whether the grant of jurisdiction over such proceedings to the Family Court exceeds the constitutional authority of that Court (Article VI, Section 13).

The Attorney General, Citizens Committee for Children and United Parents Association, among many others, recommend disapproval.

The bill is disapproved.

Yet, in spite of this sober reflection at the gubernatorial level and the cautionary words of Bench and Bar plus the protestations of social and civic groups, the trend toward the imposition of vicarious liability upon parents increases in scope and degree. Ironically in some states where parental liability legislation has been enacted, the child is an adult at age sixteen or seventeen for the purpose of criminal jurisdiction, yet under the statutes the parents are vicariously liable civilly for the child's criminal acts. The efficacy of this type of legislation is questionable on socio-economic grounds. Studies have shown that many families of delinquent children have a low income level, with more than an average number receiving economic assistance. Recovery in such cases would be limited or even impossible. Comprehensive insurance coverage for children has been suggested. This would place an untenable financial burden on many parents in the low economic category.

It is difficult to determine the salutary effect of parental liability legislation on juvenile delinquency. Comparable data over a long period of time are often not available even for the same court; good data for a control group of courts not having parental liability laws are often not available to indicate the net impact

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of the parental liability laws. Without the latter, where states with parental liability laws have experienced an increase in delinquency, one cannot answer the question as to how much greater the increase might have been without the laws.

Statistical data that are available, however, do not seem to support the contention that parental liability laws have reduced delinquency. Delinquency data for 1957 through 1962 are available for courts in 16 states that had enacted parental liability laws in 1957 or before. The year 1957 was selected because comparable data were available for the 16 states beginning with that year. Similar data for 19 states that enacted parental liability laws in 1957 or before were not available. While the 16 states examined were not necessarily statistically representative of all the states having parental liability laws, they do comprise a sizeable proportion of the total group. The following are the percentage changes from the previous year in delinquency cases disposed of by the courts in the 16 states combined, as compared with the United States as a whole:

<table>
<thead>
<tr>
<th>Percent change from previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Courts in 16 States Combined</td>
</tr>
<tr>
<td>1958: +3.4</td>
</tr>
<tr>
<td>1959: +6.7</td>
</tr>
<tr>
<td>1960: +8.7</td>
</tr>
<tr>
<td>1961: -1.1</td>
</tr>
<tr>
<td>1962: +7.5</td>
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<tr>
<td>U. S. Total</td>
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<tr>
<td>1957: +7.5</td>
</tr>
<tr>
<td>1959: +2.1</td>
</tr>
<tr>
<td>1960: +5.6</td>
</tr>
<tr>
<td>1961: -1.4</td>
</tr>
<tr>
<td>1962: +10.3</td>
</tr>
</tbody>
</table>

As a group, the percentage changes for the courts in the 16 states combined, while varying somewhat for individual years, show the same general trend in delinquency cases as do all courts in the United States. The percentage increase over the entire period (1957-1962) was 26.1 percent for the United States and 27.5 percent for the courts in the 16 states combined. With but few exceptions, most states where parental laws have been passed, show an increase in delinquency cases disposed of by the courts in one or more years subsequent to the passage of the law.

The above relates to delinquency as a whole. Even where some data are available for the specific offenses of delinquency most directly related to parental liability laws (vandalism, damage to property or acts of carelessness or mischief), there is no evidence of a reduction following the passage of parental liability laws. In one state for example, where the parental liability law was passed in 1955, acts of damage to property increased from
618 in that year to 1,000 by 1962. In another state which passed a law in 1956, acts of carelessness or mischief (including vandalism) increased from 1,672 in 1956 to 3,151 in 1961 (the latest year for which data have been published). In still another state which passed a law in 1953, court cases of damage to property increased from 502 in 1955 to 785 in 1959. Statistics in articles appearing in some popular magazines concerning parental liability laws and purporting to show a percentage reduction in malicious destruction of property are often misleading. These statistics are for the most part based on very small numbers, in one instance,—reduction of 69 cases to 30 cases, and in a large metropolitan area, from 244 cases to 192 cases. In another instance a reported 50 per cent reduction in property damage cases involved the difference between 12 cases one year and 6 cases the year following.

In seeking a cure for juvenile delinquency many experimental remedies are suggested and some even applied. The remedial effect of parental liability legislation does not appear to be surviving the test of time, yet the passage of such laws goes on apace. The concept of state indemnification to persons injured or damaged by the criminal acts of others may be the next step in alleviating an unreasonable vicarious liability for the acts of another by mere reason of consanguinity.

APPENDIX

Parental Liability Legislation

<table>
<thead>
<tr>
<th>State</th>
<th>Stat. Ref.</th>
<th>Year</th>
<th>Maximum Liability</th>
<th>Age</th>
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<tr>
<td>Alaska</td>
<td>Ch. 98 and 34-50-020</td>
<td>1957,</td>
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<td>18</td>
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<tr>
<td>Arizona</td>
<td>12-661</td>
<td>1956</td>
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<td>50-109</td>
<td>1959</td>
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<td>Civil Code 1714.1</td>
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<td>300</td>
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<td>1959</td>
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1 Includes personal injury liability.
2 Includes motor vehicle liability.
3 In addition to any other civil liability.
4 Property liability.
5 School vandalism only—by pupil.
6 Public property only.
7 Due care and diligence of parent or guardian is a bar to recovery.