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Torts - Recent Legislation - Parental Liability Statutes

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RECENT LEGISLATION

TORTS—RECENT LEGISLATION—PARENTAL LIABILITY STATUTES—Fourteen states now have statutes imposing vicarious liability upon parents for tortious acts of their children.¹ These statutes, with one exception,² all have been enacted within the past six years, and they present the most significant attempt to date by legislatures to control the incidence and remedy the effects of juvenile vandalism.³ The parental liability laws vary with respect

¹ *California*, Cal. Civ. Code Ann. (Deering, Supp. 1955) §1714.1; *Connecticut*, Conn. Gen. Stat. (Supp. 1955) §3231 (d); *Florida*, Fla. Stat. Ann. (Supp. 1956) §45.20; *Georgia*, Ga. Code Ann. (1956) §105-113; *Idaho*, Idaho Laws (1957) c. 32, S.B. No. 49; *Indiana*, Indiana Laws (1957) H.B. No. 7; *Louisiana*, La. Civ. Code (1945) art. 2318; *Michigan*, Mich. Stat. Ann. (Supp. 1955) §27.1408; *Nebraska*, Neb. Rev. Stat. (1943) (reissue of 1952) §43-801; *Nevada*, Nev. Laws (1957) c. 7, Assembly Bill No. 12; *Rhode Island*, R.I. Gen. Laws (1956) c. 3749; *South Dakota*, S.D. Laws (1957) S.B. No. 10; *Tennessee*, Tenn. Public Acts (1957) c. 76, S.B. No. 48; *West Virginia*, W.Va. Laws (1957) H.B. No. 48. Several other states have statutes containing similar provisions with respect to school property only. See, e.g., N.J. Stat. Ann. (1952) §18:14-15.

There is a likelihood that general parental liability statutes soon will be enacted in Arizona, Missouri and North Carolina. 47 NEWSWEEK, April 2, 1956, p. 95:1. See also "Parental Responsibility for Children's Acts," ILLINOIS LEGISLATIVE COUNCIL BULLETIN NO. 2-141, p. 11 (1955).

² The Louisiana statute is the exception.

³ Juvenile authorities agree that a change in the method of dealing with delinquents is desirable, but their approaches differ. The proponents of this type of legislation include law enforcement officers and also a large group of sociologists who feel that the family relationship is the most important single factor in determining whether or not a

to the ages of the children covered,⁴ and they place different pecuniary limits on the extent of the parent's liability.⁵ Coverage may extend to personal injuries as well as to property damage.⁶ All except the Louisiana statute, however, apply only to the child's intentional torts.⁷ The Louisiana law, modeled after those of civil law countries, imposes liability for negligent as well as intentional torts.⁸

At common law a child, as a separate legal individual, is liable for his own torts.⁹ The parental relationship is not a basis for vicarious liability,¹⁰ and the parent's liability for torts committed by his children is limited to instances in which the parent's own complicity can be established. Thus, if he encouraged the child's tortious act,¹¹ or ratified it by accepting its benefits,¹² or directed the tort to be committed,¹³ or if the child was his agent or servant and the tort was committed within the scope of the agency,¹⁴ or if the parent himself was somehow negligent in the matter,¹⁵ the parent could also be held liable. In civil law countries, on the other

given individual will be a delinquent. For Mr. J. Edgar Hoover's viewpoint, see 84 *ROTARIAN* 24:1 (Oct. 1956). 47 *NEWSWEEK* 95:1 (April 2, 1956) quotes Mr. Hoover as saying, "Juvenile crime could be abated if parents were made to face legal and financial responsibility for the criminal acts of their children." For the sociologist's view, see, e.g., *CARR, DELINQUENCY CONTROL* 348 (1941); *GLUECK, UNRAVELING JUVENILE DELINQUENCY* 115 (1950). Those opposed to imposing parental responsibility are not so certain that the family relationship is the chief cause. They see the individual as the cause of his own delinquency. See *BARRON, THE JUVENILE DELINQUENT IN SOCIETY* 147 (1954). They hesitate to make scapegoats of the parents, and feel that more stringent enforcement of existing laws, together with greater emphasis on education and guidance, will be the most effective deterrent. 38 *U.S. NEWS*, p. 64:1 (Jan. 14, 1955).

⁴ The Georgia statute applies to torts committed by children under 17. The California, Connecticut, Louisiana, Nebraska and Rhode Island laws apply to minors or unemancipated minors generally. In the other statutes the stated age limit is 18 years.

⁵ The Georgia, Louisiana and Nebraska laws place no limitation on the amount of damages for which the parent may be liable. The Indiana statute sets an upper limit of \$500, and the Connecticut and Rhode Island statutes limit liability to \$250. The other laws specify a \$300 limitation.

⁶ Connecticut, Georgia, Louisiana and Rhode Island provide for recovery for personal injuries as well as for property damage.

⁷ See *Honeycutt v. Carver*, (La. App. 1946) 25 S. (2d) 99.

⁸ In terms the Louisiana statute appears to impose absolute liability upon the parent for the injurious acts of the child, but the Louisiana courts, in applying the law, have required a showing of some fault on the part of either parent or child. *Phillips v. D'Amico*, (La. App. 1945) 21 S. (2d) 748.

⁹ *Neal v. Gillett*, 23 Conn. 436 (1855); *Conway v. Reed*, 66 Mo. 346, 27 Am. Rep. 354 (1877). See 5 *TULANE L. REV.* 644 at 645 (1931).

¹⁰ *Steinberg v. Cauchois*, 249 App. Div. 518, 293 N.Y.S. 147 (1937); *Arkin v. Page*, 287 Ill. 420, 123 N.E. 30 (1919).

¹¹ *Stewart v. Swartz*, 27 Ind. App. 249, 106 N.E. 719 (1914); *Condell v. Savo*, 350 Pa. 350, 39 A. (2d) 51 (1944).

¹² *Hower v. Ulrich*, 156 Pa. 410, 27 A. 37 (1893); *Howell v. Norton*, 134 Miss. 616, 99 S. 440 (1924).

¹³ *Trahan v. Smith*, (Tex. Civ. App. 1922) 239 S.W. 345 (1922); *Smith v. Jordan*, 211 Mass. 269, 97 N.E. 761 (1912).

¹⁴ Cf. *Hagerty v. Powers*, 66 Cal. 368, 5 P. 622 (1885); *Smith v. Jordan*, note 13 supra.

¹⁵ *Meers v. McDowell*, 110 Ky. 926, 62 S.W. 1013 (1901); *Dickens v. Barnham*, 69 Colo. 349, 194 P. 356 (1920).

hand, the general rule is that the parent is liable for all the torts of the child.¹⁶ Parental liability statutes, then, do not rest upon a wholly new conception of liability, but rather represent a trend away from the common law notion of liability based on complicity toward the civil law idea of vicarious liability arising out of the parental relationship itself.

The primary purpose of these statutes is to provide some practical hope of recovery for the innocent victims of juvenile vandalism, for in the vast majority of cases the child himself does not have sufficient property in his own right to satisfy a judgment if one should be rendered against him. As an ancillary purpose, it is hoped that the imposition of liability on the parents will induce them to exercise greater control over their children, which in turn will strengthen the influence of the home, encourage a sense of responsibility on the part of the parents with respect to their children, and ultimately, perhaps, reduce the incidence of juvenile vandalism.¹⁷ To the extent that they are successful in achieving these purposes, the parental liability laws will provide a wholesome regulatory effect which was lacking under the common law.

In spite of these laudable objectives, however, parental liability statutes have not met with unanimous approval. The Governor of New York, in vetoing such a law last year, gave two reasons for his disapproval.¹⁸ First, the primary burden of the law, he felt, would fall on people of lower incomes. Secondly, in families where the relationship between parent and child is already tense, the existence of such a law could increase the strain and might even provide a weapon which troublesome delinquents would not hesitate to use against their parents. There seem to be adequate answers to both of these objections. In response to the first, it may be countered that most states have statutes immunizing a certain portion of the parent's wealth and income from judgments.¹⁹ These statutes serve to protect the very low income families from undue hardship which might otherwise result from the parental liability laws. In reply to the second argument, one may well question the Governor's conclusion that the law would increase intra-family tension. The instances in which a child would use the statute as a weapon are doubtless extremely rare—certainly too infrequent to override the salutary aspects of the law. On the contrary, the statute can as easily be imagined to have a beneficial strengthening effect upon the family relationship by encouraging parents to spend more time in training the child and in correcting his attitudes toward society. Moreover, even if both of the Governor's arguments are conceded, it may still be doubted

¹⁶ See Takayanagi, "Liability Without Fault in the Modern Civil and Common Law," 16 *ILL. L. REV.* 163, 291 (1921).

¹⁷ All authorities agree that juvenile vandalism is on the increase. See 38 *U.S. NEWS*, p. 64:1 (Jan. 14, 1955). See especially West Virginia Laws (1957) H.B. No. 48, art. 7-A, §1.

¹⁸ McKinney's Session Laws of New York (179th Session, 1956) p. 1712.

¹⁹ See, e.g., Mich. Comp. Laws (1948) §§623.43, 623.44, 623.45, 623.73, 623.74.

that the interests which he sought to protect by his veto outweigh the general social good that would result from the parental liability laws.²⁰

It is yet possible that a constitutional objection to these laws might be raised. While the issue is still an open question, an estimate of the probable constitutionality of the laws can be made by comparing them to the so-called "family car" statutes.²¹ These statutes are also designed to meet the public need for a basis of recovery for the torts of infants without property.²² The constitutional validity of the family car statutes seems to depend upon a balancing of the interests of the public at large with the interest of the parent in maintaining his common law immunity from liability for torts other than his own. On this basis the family car statutes have been upheld as properly within the police power of the state.²³ The same conflict of interests is involved in the question of the constitutionality of the parental liability laws, and the same arguments can apply, so it is probable that these laws will be sustained in the face of constitutional objections. In any event, it seems more just and equitable for the parent, who may be at least partly to blame for the child's tortious conduct, rather than the innocent injured party, to bear the losses caused by juvenile vandalism.

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20 68 READER'S DIGEST 161:1 (1956) reports an impressive diminution in juvenile crime in Michigan. Malicious destruction cases in Wayne County (Detroit) Juvenile Court dropped 20%, and in many parts of the state decreased 50%, following the passage of the Michigan parental liability law. The cited article presents a number of case studies demonstrating the effectiveness of the statute.

²¹ E.g., Mich. Comp. Laws (1948) §256.29.

²² See *Turner v. Hall's Admx.*, (Ky. 1952) 252 S.W. (2d) 30 at 32.

²³ *Young v. Masci*, 289 U.S. 253 (1933); *Holmes v. Lilygren Motor Co.*, 201 Minn. 44, 275 N.W. 416 (1937); *Stapleton v. Independent Brewing Co.*, 198 Mich. 170, 164 N.W. 520 (1917).

Note: Since this note on recent legislation was written, five more states have enacted parental liability statutes similar to those listed in note 1 supra. *Arizona*, Ariz. Rev. Stat. (1956) §12-661; *Montana*, Mont. Rev. Code Ann. (Supp. 1957) §61-112.1; *New Mexico*, N.M. Stat. Ann. (Supp. 1957) §22-21-1; *North Dakota*, N.D. Laws (1957) H.B. 556; *Texas*, Tex. Civ. Stat. (Vernon, 1948) c. 320, art. 5923-1 (Vernon's Leg. Serv. 1957, No. 5, p. 783).—*R.C.C., S. Ed.*