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STATUTORY COMMENT

Parental Responsibility Statute

The North Carolina Supreme Court, in *Brittingham v. Stadiem*,¹ quoted with approval the common law rule that,

Relationship does not alone make a father answerable for the wrongful acts of his minor child. There must be something besides relationship to connect him with such acts before he becomes liable. It must be shown that he approved such acts, or that the child was his servant or agent.²

Our court has consistently followed this rule.³

The 1961 General Assembly, however, has amended the rule by enactment of G.S. § 1-538.1⁴ which provides:

Any person, firm, corporation, the State of North Carolina or any political subdivision thereof, or any religious, educational or charitable organization, or any nonprofit cemetery corporation, or organization, whether incorporated or unincorporated, shall be entitled to recover damages in an amount not to exceed five hundred dollars (\$500.00), in an action in a court of competent jurisdiction, from the parents of any minor under the age of eighteen (18) years, living with its parents, who shall maliciously or wilfully destroy

¹ 151 N.C. 299, 300, 66 S.E. 128, 129 (1909).

² See 39 AM. JUR. *Parent & Child* § 55 (1942); 67 C.J.S. *Parent & Child* § 66 (1950). Some courts have taken exceptions to this rule and broken them down into five categories: (1) respondeat superior; (2) where the parent entrusts a dangerous instrumentality to the child; (3) where the parent entrusts an instrumentality to the care of a child, knowing the child capable of inflicting injury with it; (4) where the parent has knowledge of the child's dangerous propensities but fails to take corrective steps; and (5) where the parent participated with the child by consenting to, or ratifying the tortious act. See Note, 30 NOTRE DAME LAW. 295 (1955).

The widespread application of the so-called "family purpose doctrine" indicates that because of the common law rule the courts have gone further to find an agency relationship in parent-child situations than in other situations.

³ *Lane v. Chatham*, 251 N.C. 400, 111 S.E.2d 598 (1959); *Hawes v. Haynes*, 219 N.C. 535, 14 S.E.2d 503 (1941); *Staples v. Bruns*, 218 N.C. 780, 11 S.E.2d 460 (1940); *Bowen v. Mewborn*, 218 N.C. 423, 11 S.E.2d 372 (1940); *Taylor v. Stewart*, 172 N.C. 203, 90 S.E. 134 (1916); *Linville v. Nissen*, 162 N.C. 95, 77 S.E. 1096 (1913); *Brittingham v. Stadiem*, 151 N.C. 299, 66 S.E. 128 (1909).

⁴ N.C. GEN. STAT. § 1-538.1 (Supp. 1961).

property, real, personal or mixed, belonging to any such person, firm, corporation, the State of North Carolina or any political subdivision thereof, or any religious, educational or charitable organization.

With the passage of this legislation, North Carolina joins thirty-one other states⁵ which have enacted statutes imposing civil liability upon parents for acts of their children solely because of the parent-child relationship, and has thereby added an element to our law which the common law had steadily refused to recognize.⁶

Questions of Interpretation

Several questions concerning the proper interpretation of this statute might be raised.⁷

- (1) Does the word "parents" include adoptive parents, step-parents, foster parents, or any other persons standing *in loco parentis*?
- (2) Does imposition of liability without fault violate any constitutional principles?
- (3) Does "living with its parents" include a child away at camp for the summer, visiting with relatives for a temporary period, or other situations where the child is residing away from the parents temporarily although his domicile is with the parents?
- (4) Does the statute include situations where the child is residing with one parent only?
- (5) Could \$500 be recovered from each parent?
- (6) Does this statute, by expressly providing for recovery against the parent and limiting that recovery to \$500, thereby limit recovery to this amount under circumstances where a plaintiff may have been able to recover considerably more under one of the exceptions to the common law rule?

⁵ See Appendix.

⁶ A parallel doctrine of parental liability is well entrenched in the civil law of Louisiana. See LA. CIV. CODE ANN. art. 2318 (1952).

⁷ See Peck, *Parental Liability for Wilful and Malicious Acts of Children*, 36 WASH. L. REV. 327 (1961). Our trial courts may have to deal with these questions of interpretation without the benefit of Supreme Court decisions as the amount involved would seldom justify the expense of an appeal.

(7) At what age may a child commit an act "maliciously or wilfully"?

Perhaps the most serious of these questions is whether the statute creates an exclusive remedy which supersedes all other previously existing remedies. Some parental responsibility statutes expressly provide that the remedies therein granted shall be in addition to all other remedies.⁸ The North Carolina statute makes no such declaration. Unless our court is willing to imply such a provision, our statute will limit recovery in some situations. For example, suppose a parent allows his seventeen year old son to drive the family car. The son sees his girl friend in an expensive sports car with another boy. The son becomes enraged and wilfully drives his car into the sports car, causing extensive damage to the sports car. Under the existing "family purpose doctrine"⁹ it is likely that full recovery could be had against the parent. To use one other example, suppose the parents of a fifteen year old child are aware of the fact that he has attempted to set fire to various buildings in the past, but fail to take any action to prevent his indiscriminate use of matches. Thereafter, the child maliciously sets fire to a neighbor's expensive dwelling, causing it to burn to the ground. Under present law the neighbors would probably be able to recover extensive damages from the parents.¹⁰ Would G.S. § 1-538.1 limit recovery in these two situations to \$500?

The question whether very young children may destroy property "maliciously or wilfully" was discussed in the Nebraska case of *Connors v. Pantano*,¹¹ the only appellate court decision (outside of Louisiana)¹² construing a parental responsibility statute.¹³ There

⁸ For example, the California statute provides in part: "The liability imposed by this section is in addition to any liability now imposed by law." CAL. CIV. CODE ANN. § 1714.1 (Supp. 1961).

⁹ This doctrine is defined in *Watts v. Lefler*, 190 N.C. 722, 725, 130 S.E. 630, 632 (1925), as follows: "[O]ne who keeps an automobile for the pleasure and convenience of himself and his family, is liable for injuries caused by the negligent operation of the machine while it is being used for the pleasure or convenience of a member of his family." This case also points out that this doctrine has been adopted as the law of this jurisdiction.

¹⁰ This would seem to follow from our holding in *Lane v. Chatham*, 251 N.C. 400, 111 S.E.2d 598 (1959).

¹¹ 165 Neb. 515, 86 N.W.2d 367 (1957).

¹² For the Louisiana cases construing the Louisiana Civil Code provisions regarding parental liability, see Annot., 155 A.L.R. 85, 96 (1945).

¹³ Perhaps this fact is due to the low maximum recoveries allowed by the statutes, thereby making an appeal too expensive for the amount of recovery possible.

a child four years and seven months old set fire to the neighbor's garage. The neighbor sued the child's parents under a Nebraska statute making parents liable for "wilful and intentional" destruction of realty by their children. The Nebraska court held that the child was legally incapable of committing a wilful and intentional act because he had not, at that tender age, sufficiently attained those qualities of attention, intelligence, judgment, and reason that would enable him to commit the act charged wilfully and intentionally. The court drew an analogy between inability to commit a wilful and intentional act and inability of a child of tender age to be contributorily negligent.¹⁴ Should our court determine that the words "maliciously or wilfully" in the North Carolina statute mean the same thing as "wilfully and intentionally" in the Nebraska statute, and should it further follow the Nebraska court and hold that a child incapable of contributory negligence is incapable of committing a malicious and wilful act, the statute would be inapplicable to acts of children under seven years of age, since they are *conclusively* presumed to be incapable of contributory negligence.¹⁵ It would also be of doubtful applicability to acts of children between seven and fourteen, since they are *presumed* to be incapable of contributory negligence.¹⁶ Perhaps a more accurate analogy, but one which reaches the same result, is that between inability to commit an act maliciously or wilfully and inability to commit a criminal act.¹⁷ A still better approach might be to determine wilfulness solely on the basis of the particular child and the particular circumstances involved.

Advisability of Statute

There is a considerable difference of opinion concerning the advisability of statutes which in any way place liability or responsi-

¹⁴ The Nebraska court quotes from RESTATEMENT, TORTS § 283, comment *e* (1934): "If he is so young as to be manifestly incapable of exercising those qualities of attention, intelligence, and judgement which are necessary to enable him to perceive a risk and to realize its unreasonable character, he is generally held incapable of contributory negligence."

¹⁵ *Walston v. Greene*, 247 N.C. 693, 102 S.E.2d 124 (1958).

¹⁶ *Wilson v. Bright*, 255 N.C. 329, 121 S.E.2d 601 (1961); *Adams v. Board of Educ.*, 248 N.C. 506, 103 S.E.2d 854 (1958).

¹⁷ In *State v. Yeagan*, 117 N.C. 706, 707, 23 S.E. 153, 154 (1895), the court stated: "An infant under seven years of age cannot be indicted and punished for any offense, because of the irrebuttable presumption that he is *doli incapax* Between 7 and 14 years of age an infant is presumed to be innocent and incapable of committing crime, but that presumption in certain cases may be rebutted. . . ."

bility upon parents for acts of their children.¹⁸ There are those who feel that such statutes serve a valid purpose in that they tend to discourage juvenile delinquency.¹⁹ Others doubt this result.²⁰ Still others feel that such statutes in effect punish the parents, and that this has no effect whatever in curbing juvenile delinquency or in achieving any other desirable social end.²¹

Aside from the effect of these statutes on the juvenile delinquency problem, they do appear to the writer to have value to the extent that they provide restorative compensation to the victims of tortious conduct by children. When a loss has been thus sustained it seems more equitable to require the parents to pay than to say to the innocent victim, "too bad." Although the child is liable for his own torts,²² it is doubtful that this is of any real value to the innocent victim of his acts in most instances since children seldom have assets with which to compensate the victim. It is believed that responsible parents normally feel a moral obligation to pay for damages caused by their children, and that what responsible people consider to be a moral obligation is generally a good guide for determining what our legal responsibilities should be.²³

If the element of fairness leads us to the conclusion that it is better to require parents, even though they be without fault, to bear the financial loss occasioned by the tortious acts of their children, rather than to let the loss fall upon the innocent victim, questions arise whether the liability should be limited to damage to property,²⁴

¹⁸ In addition to articles cited in notes 19-22 *infra*, see Comments, 3 VILL. L. REV. 529 (1958); 34 CHI.-KENT L. REV. 222 (1956); *Your Legal Responsibility as a Parent*, Changing Times, Feb. 1958, p. 33.

¹⁹ The Assistant Director of Operations and Assistant Supervisor of Plant Security for the Dade County, Florida, schools takes the position that the Florida parental responsibility law has resulted in a leveling off of vandalism in the Dade County schools, and that the statute has increased the parents' awareness of their responsibility. Colmey & Valentine, *Stop Vandalism with Parent Responsibility Laws*, Am. Sch. Bd. Jour., July 1960, p. 9.

Gerald O'Brien, Prosecution Attorney of Wayne County (Detroit), Michigan, had this to say about the Michigan parental liability law: "It has made parents keep closer watch over the children. . . . Vandalism cases have dropped 60 per cent in Detroit parks and playgrounds. In Battle Creek, vandalism is down 55 per cent; in Pontiac 41 per cent. Last year fifteen youth gangs operated in Detroit. Now there are none." Wyden, *Are Parents Responsible*, Newsweek, April 2, 1956, pp. 95-96.

²⁰ See, e.g., Peck, *supra* note 7.

²¹ See Pollack, *Should Parents Be Punished for their Children's Wrong Doing*, Parents Magazine, March 1955, p. 50.

²² Smith v. Kron, 96 N.C. 392, 2 S.E. 533 (1887).

²³ Insurance is available to protect against losses of this nature.

²⁴ Many of the statutes cited in the Appendix limit recovery to damages to property and a few limit recovery to damages to school property.

and the award limited to \$500. Are the same considerations not present when the damage is to the person? And, is liability to the extent of \$500 of very much value to an innocent victim of tortious conduct amounting to several thousands of dollars?

Conclusion

North Carolina, along with thirty-one other states,²⁵ apparently has taken the position that the two common law theories of imposing vicarious liability upon parents for acts of their children are not sufficiently extensive, and that it is therefore desirable to have a statute making the parents liable for the child's torts under certain conditions. The statute that has been enacted raises several questions of interpretation and advisability. It is hoped that the 1963 General Assembly will take another look at this matter and consider the following:

- (1) Should the problems of interpretation discussed above be clarified by amendment?
- (2) Should liability be extended to damages to the person?
- (3) Should the \$500 limitation be increased or removed?

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²⁵ Another state, Wisconsin, enacted a parental responsibility act in 1956 but repealed it in 1959. Wis. Laws 1959, ch. 562, § 2m.

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APPENDIX

State	Statutory reference	Year of original passage*	Maximum liability	Age
Alaska	22-1-7	1957	\$500	18
Arizona	12-661	1956	\$500	Minor
Arkansas	50-109	1959	\$300	18
California	Civil Code 1714.1	1955	\$300	Minor
Colorado	41-2-7	1959	\$300	18
Connecticut	52-572	1955	\$750	Minor
Delaware	10-3923	1958	\$300	18
Florida	45-20	1956	\$300	18
Georgia	105-113	1956	none stated	17
Hawaii	330-3	1859	none stated	Minor
Idaho	6-210	1957	\$300	18
Indiana	2-520	1957	\$500	18
Kansas	33-120,121	1959	\$300	18
Maine	166-22-A	1959	\$250	7-17
Maryland**	26-76(i)	1959	\$500	Minor
Michigan	27.1408 (1) 27.1408 (2)	1958	\$300	18
Montana	61-112.1, -112.2	1957	\$300	18
Nebraska	43-801	1951	none stated	Minor
Nevada	41.470	1957	\$300	18
New Mexico	22-21-1 22-21-2	1957	\$500	18
North Carolina	1-538.1	1961	\$500	18
North Dakota	32-03-39	1957	\$300	18
Oklahoma	23-10	1957	\$300	18
Oregon	30.770	1959	\$100	18
Rhode Island	9-1-3	1956	\$250	Minor
South Dakota	14.0309-1	1957	\$300	18
Tennessee***	37-1001-1003	1957	\$300	18
Texas	Civil Stat. 5923-1	1957	\$300	10-18
Vermont	15-901	1959	\$250	17
Virginia	8-654.1	1960	\$200	18
Washington	Laws 1961 Ch. 99	1961	\$300	18
West Virginia	5482(2),(3)	1957	\$300	18

* Note that most of these statutes were enacted in very recent years.

** Applies to Montgomery County only.

*** No recovery is to be had, however, if the parent or guardian of the person shows due care and diligence in his care and supervision of such minor.