

Washington University Law Review

Volume 13 | Issue 2

January 1928

Parent and Child—Liability of Parent for Torts of Minor Child

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Recommended Citation

Parent and Child—Liability of Parent for Torts of Minor Child, 13 ST. LOUIS L. REV. 160 (1928).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol13/iss2/14

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the South Dakota Pharmaceutical Association contended that the licensing of pharmacists tended to raise the average moral character, that pharmacy is a profession with its code of ethics, and that pharmacists have knowledge of the effects of elements in patent medicines. The court attacks each point with the arguments that others than druggists also have good moral characters, that other professions have codes of ethics, and that knowledge of the contents of proprietary medicines is not required of those who become registered pharmacists.

H. B., '28.

PARENT AND CHILD—LIABILITY OF PARENT FOR TORTS OF MINOR CHILD.—Action for personal injuries against the parents of a child five years of age, for knowingly permitting their child to ride a velocipede upon the public sidewalk, at night. The child while riding upon the velocipede collided with the plaintiff, and caused the injuries complained of. *Held*, that the parents were negligent in permitting the child to ride the velocipede upon the sidewalk at night, and that the parents were liable. *Davis v. Gavalas et al.*, 139 S. E. 577 (Ga., 1927).

It is undoubtedly the universal common law rule that the parent is not liable for the torts of his minor child on the basis of relationship. *Baker v. Halde-man*, 24 Mo. 219; *Johnson v. Glidden*, 11 S. D. 237; *Schultz v. Morrison*, 154 N. Y. S. 257; *Ringhaver v. Schlueter*, 155 N. E. 242 (Ohio).

In *Ringhaver v. Schlueter*, *supra*, the defendant's son injured the plaintiff's son by throwing a rubber automobile casing against the plaintiff's son. The court in rendering judgment for the defendant, stated that a parent is not liable for the torts of his minor child on the basis of relationship; that in order for the parent to become liable for the torts of his child, there must be some knowledge on the part of the parent with respect to the act, or some act of the parent that connects him with the circumstances which are the basis for recovery. Illustrative of a number of cases in which the defendants had purchased rifles or guns for their children, and the children carelessly injured the plaintiffs, is the case of *Fleming et al v. Kravitz*, 103 At. 831 (Pa.). In that case, the defendant's son, six years of age, discharged a toy air rifle which contained in its barrel a match, and injured the plaintiff's son. The negligence of the defendant was charged by the plaintiff to have consisted of being notified by a number of persons that defendant's child was inexperienced and immature, and that it was dangerous for a child of such tender years to use a toy air rifle. The court in affirming a non-suit laid stress upon the fact that the injury sustained by the plaintiff's child was very slight. It seems that the true reason for the court's decision was that it is not negligence to purchase a toy air rifle for a young child, and the decision further rests upon the circumstance that the method by which the match found its way into the barrel of the rifle was unknown.

The parent may become liable for the torts of his child if he knows that the child is negligent with respect to the use of an instrument purchased by the father. *Johnson v. Glidden*, 11 S. D. 237.

The doctrine of the principal case is sound and in accordance with established rules for the foundation of legal liability. The case must be considered upon its particular facts. The tender age of the child, and the fact that it was riding upon the velocipede at night, are the facts which ultimately establish the legal liability of the parent. The test for determining whether or not a parent is liable for the torts of his minor child, must be, (1) was the parent negligent in permitting child to use the instrument causing the injury? This must depend of course upon the degree of control the parent can exercise over the child. (2) Could the parent reasonably have anticipated that the injury would occur? The negligence of the parent and not the negligence of the child is then the basis

for the parent's liability. (3) Does the parent know that the conduct of his child is such that it endangers the safety of others? If the parent has knowledge that his child's conduct is likely to result in injury, and he does not use his influence to change the child's conduct but by word or conduct encourages the child, the parent is liable for the injury.

M. L. M., '29.