

Bad parenting does not always equal tort liability

California law may limit parental liability for harms their children cause

By Jeremy Cloyd
The Veen Firm, P.C.

Questions about the role of the parents often surface after their children cause injury or death. Public opinion often presumes that such bad acts do not naturally occur if the parents had been carefully supervising and managing their children. Injured parties often seek legal help with the expectation that California law presumes likewise and holds parents legally responsible for the acts of their children. But the general rule in California is that parents are not legally responsible for harms their children cause. This article looks at those limited circumstances where California law holds parents responsible.

Parent and child as principal and agent

Under the common law, agency was the only recognized theory of vicarious liability against a parent. There is little precedent for this theory because minor children do not typically act as their parents' agents. However, the theory of liability was recognized in *Van Den Eikhof v. Hocker* (1978) 87 Cal.App.3d 900. While borrowing her father's work vehicle to go to a movie, 16-year-old Gail drove negligently and injured others. Her father's work vehicle had removable magnetic business signs and the mileage was treated as a business expense. Although the jury found against the father on an agency theory, the court of appeal reversed because Gail's trip to the movie theater was purely personal. Nevertheless, the court recognized that a parent could be liable under an agency theory, though not in the circumstances there.

Exactly what circumstances would support this legal theory? What if Gail had been doing a business errand for her father? Based upon the analysis in *Van Den Eikhof,* the answer requires the application of agency law to the particular circumstances of each case. See also *Casas v. Maulhardt Buick, Inc.* (1968) 258 Cal.App.2d 692, 704 where the court noted that "[o]f course, a child may become an agent for his parent upon proof of facts which would be sufficient to establish an agency between the parent and a third person." Despite its limited

Copyright © 2013 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



applicability, one should not overlook this legal theory since it is the only form of vicarious liability by which a parent may be liable for the full measure of damages caused by their minor child.

Legislated vicarious liability

A number of statutes have created exceptions to California's general rule against liability based on nothing more than the parent-child relationship. These statutes, however, have strict limits on the amount and type of recoverable damages.

- **Willful Misconduct (Civ. Code, § 1714.1)** Civil Code section 1714.1 imputes liability to the parent or guardian who has "custody and control" of a minor for "[a]ny act of willful misconduct of [the] minor that results in injury or death to another person or in any injury to the property of another." As of January 1, 2011, parental liability is limited to $37,400 for each tort. And an insurers' indemnity liability is capped at $10,000.
- **Discharge of Firearm (Civ. Code, § 1714.3)** Civil Code section 1714.3 imputes liability to a parent or guardian who has "custody and control" of a minor that causes injury to a person or property of another by discharging a firearm. Parental liability is capped, however, at $30,000 per person and $60,000 in the aggregate.
- **Criminal Restitution (Welf. & Inst. Code, § 730.7(a)(d))** Welfare and Institutions Code section 730.7 provides that if a minor is convicted of a crime, a parent is liable for criminal restitution damages. Again, liability is limited to the caps in Civil Code sections 1714.1 and 1714.3 and the types of damages recoverable in restitution.
- **Minor's Use of Vehicle (Veh. Code, §§ 17707-17710)** A parent that signs a minor's driver's license application is jointly and severally liable for civil liability of the minor "arising out of his driving a motor vehicle upon a highway during his minority." A parent who allows his or her minor child to drive a vehicle, whether licensed or not, is jointly and severally liable for any damages resulting from the negligence or wrong of the minor in driving the vehicle. In either case, the parents' liability is limited to $15,000 per injury; $30,000 for all injuries per incident; and $5,000 for property damage.

Negligent failure to control

In order to avoid the general rule of non-liability and damages caps, the plaintiff must show that the parent's own negligence was a cause of harm. California follows Restatement 2d of Torts, section 316 "which finds a 'special relationship' between parent and child, and accordingly places upon the parent 'a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control.'" (*Robertson v. Wentz* (1986) 187 Cal.App.3d 1281, 1288.)

The limits of "opportunity to exercise control" was tested in *Costello v. Hart* (1972) 23 Cal.App.3d 898 where a lady took her 4½-year-old grandson to a department store where the boy "was running around all over the place." The boy was admonished by store employees to no avail and he eventually caused another person in the department store to trip, fracturing her femur. Based upon the sparse evidentiary record that the grandmother "was present in the said department at all of the times involved herein," the court found that whether the grandmother had notice and opportunity to control her grandson was a question for the jury.

General knowledge of a child's bad behavior is insufficient to establish parental liability. The parent must have prior knowledge of the specific type of behavior that caused the injuries at issue. In *Robertsen v. Wentz* (1986) 187 Cal.App.3d 1281, 1285 the surviving spouse of a gunshot victim sued the mother of Roy when he shot and killed the plaintiff's husband during a robbery. Plaintiff put forth evidence that Roy's parents exposed him to guns at age five and that Roy's mother learned that Roy was drinking, and using cocaine and marijuana at age 16. The shooting happened just before Roy turned 18 while he was under the influence of alcohol and hallucinogenic drugs.

Roy's mother was unaware, though, of any prior violent tendencies and did not live with Roy at the time of the shootings. In affirming summary judgment in favor of the mother, the *Robertson* court focused on the mother's lack of knowledge of her son's violent tendencies and an inability to control him. The court concluded that "lacking physical custody and care of Roy at the critical time, and without notice of his propensity to commit violent crimes, [Roy's mother] cannot be found liable…for her son's conduct on the theory that she negligently controlled and supervised him." (*Id*. at 1290.) General knowledge of Roy's troubles and failure to obtain counseling or control abuse of drugs were insufficient to impose liability. Rather, "only the manifestation of specific dangerous tendencies" would trigger a "parental duty to exercise reasonable care to control the minor child." (*Ibid.*)

In contrast, the mother of nine-year-old Tim could be liable for his known habit of throwing rocks. *Singer v. Marx* (1956) 144 Cal.App.2d 637 tells the story of how that habit caused the loss of an eight-year-old girl's eye. A neighbor reported that she seldom saw Tim doing anything but throwing rocks and that when she would scold him, he would give her "a couple of hits on the back." Tim's mother admitted knowing of the rock-throwing and thereafter punishing him with time-outs and sentence-writing. The *Singer* court felt that a jury could thereby infer that Tim's mother had "notice of Tim's dangerous proclivities and did not

Copyright © 2013 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**



administer effective discipline." In a distinction that perhaps highlights the decade during which the opinion was written, the court found that Tim's father could not be liable because he had only given advice to Tim's mother about how to punish Tim.

Negligent failure to warn

Recognizing that children can sometimes be dangerous instrumentalities themselves, California recognizes a duty to warn others when the child is out of the parents' control. In *Ellis v. D'Angelo* (1953) 116 Cal.App.2d 310 a babysitter was found to have stated a viable legal claim against the parents of a four-year-old child because the parents failed to warn the babysitter that their son "habitually engaged in violently attacking and throwing himself forcibly and violently against other people, and violently shoving and knocking them, all of which said defendant parents knew." The son pushed the babysitter to the floor causing fractures of her arms and wrists.

Negligent storage of dangerous instrumentalities

California imposes a legal duty on parents to use due care in the storage of dangerous instrumentalities such as firearms so that children do not harm themselves or others. In *Reida v. Lund* (1971) 18 Cal.App.3d 698, 702 sixteen-year-old Michael took his father's rifle and fired on several motorists on the freeway, causing injury and death. Michael's parents denied any forewarning of their son's violent tendencies but the father had kept the rifle, along with ammunition, in a place accessible to his children. Although the parents could not be held liable for failing to control Michael because they were unaware of any prior violent tendencies, the court held the jury could decide that Michael's father failed to use due care in the storage of a dangerous instrumentality.

Reida's analysis is not expressly limited to firearms and should apply equally well to other dangerous instrumentalities such as prescription medications, unattended motor vehicles, or alcohol. Liability depends on whether the parent uses due care under all of the circumstances.

Negligent supervision of a driver

Although vicarious liability for a minor's negligent driving under Civil Code sections 1714.1 and 1714.3 are subject to damages caps as discussed above, a licensed driver teaching another to drive may be directly liable for failing to use reasonable care in supervising and advising the driver. Vehicle Code section 12509(d) provides:

> An accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

Kostecky v. Henry (1980) 113 Cal.App.3d 362 explained that section 12509's lack of specific guidelines for the required type of instruction and advice means that a duty of reasonable care applies. At a minimum, the licensed driver's instructions should be consistent with the Vehicle Code and California Driver's Handbook.

Furnishing alcohol to minors

As of January 1, 2011, Civil Code section 1714(d)(1) establishes that a plaintiff may state a claim where an adult causes injuries to others by providing alcohol to a minor at the adult's residence. Thus, a parent who provides alcohol to their minor child during a family celebration could be liable if the minor then causes injury to others due to intoxication. Note that the plaintiff must still prove a causal link between the furnishing of alcohol and any resulting injuries.

Conclusion

California has taken a measured approach to parental liability. One court answered the presumption posed at the outset of this article by suggesting that tragedies caused by minors are not customary and when those incidents do occur, the question of "why" is too complex to presume parental fault. The plaintiff's attorney should investigate parental liability with the above theories in mind and a focus on concrete ways that the parent could have prevented a known problem from turning into a tragedy.


Cloyd

Jeremy Cloyd is a member of the Label Trial Team at The Veen Firm, P.C. *He litigates complex catastrophic injury cases involving negligence, wrongful death, products liability and industrial accidents. For more information on this article, please email j.cloyd@veenfirm.com or visit The Veen Firm's Web site at www.veenfirm.com.*

William Veen founded The Veen Firm, P.C. *as a sole practitioner in 1975, gradually developing it into a firm of talented attorneys and staff who represent severely injured workers and consumers. He is a member of the American Board of Trial Advocates and honored as the Trial Lawyer of the Year by the San Francisco Trial Lawyers Association in 2003.*

Copyright © 2013 by the author.
For reprint permission, contact the publisher: **www.plaintiffmagazine.com**