

Nova Law Review

Volume 9, Issue 1

1984

Article 8

Parental Liability for the Torts of Their Minor Children: Limits, Logic & Legality

Robert Charles Levine*

*

Copyright ©1984 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

Parental Liability for the Torts of Their Minor Children: Limits, Logic & Legality

Robert Charles Levine

Abstract

Throughout history, children have had a tendency to cause mischief, damage and often injury to people and the property of others.

KEYWORDS: torts, minor, children

Parental Liability for the Torts of Their Minor Children: Limits, Logic & Legality

I. Introduction

Throughout history, children have had a tendency to cause mischief, damage and often injury to people and the property of others.¹ Under common law, minors are personally responsible for their torts.² However, children rarely possess the means to compensate their victims.³ This creates a dilemma: Either the children's victims are left without a remedy, or the children's parents must be held liable for the damages.

At common law, the mere existence of the parent/child relationship was not a sufficient basis to invoke liability upon parents for the torts of their minor children.⁴ The growth of modern tort law, however,

1. M. HASKELL & L. YABLONSKY, *JUVENILE DELINQUENCY* 2 (3d ed. 1982); H. SANDHU, *JUVENILE DELINQUENCY CAUSES, CONTROL, AND PREVENTION* 5 (1977).

2. See *Bieker v. Owens*, 234 Ark. 97, 99, 350 S.W.2d 522, 524 (1961); W. PROSSER & W. KEETON, *THE LAW OF TORTS* § 123 at 912, 913 (5th ed. 1984); Note, *Criminal Liability of Parents for Failure to Control their Children*, 6 VAL. U.L. REV. 332 (1972); Note, *Parent and Child—Civil Responsibility of Parents for the Torts of Children—Statutory Imposition of Strict Liability*, 3 VILL. L. REV. 529 (1958).

Section 895I of the second Restatement of Torts provides: "One who is an infant is not immune from tort liability solely for that reason unless the liability depends upon the enforceability of a contractual promise that the infant is privileged to disaffirm." RESTATEMENT (SECOND) OF TORTS § 895I (1979).

Comment (a) clarifies this general principle, adding that

[i]n intentional torts, the state of mind of the actor is an essential element. For example, an intent to bring about a harmful or offensive physical contact is essential to battery. . . . A child may be of such tender years that he . . . is in fact incapable of the specific intent that is required. It may thus be found that the tort has not been committed. . . .

RESTATEMENT (SECOND) OF TORTS § 895I comment a (1979).

3. W. PROSSER & W. KEETON, *supra* note 2.

4. See *Bieker*, 234 Ark. at 98, 350 S.W.2d at 523-24 (1961); *Martin v. Barrett*, 120 Cal. App. 2d 625, 628, 261 P.2d 551, 552-53 (1953); *Condell v. Savo*, 350 Pa. 350, 352, 39 A.2d 51, 52 (1944); W. PROSSER & W. KEETON, *supra* note 2; Comment, *Liability of Negligent Parents for the Torts of their Minor Children*, 19 ALA. L. REV. 123 (1966); Note, *A Constitutional Caveat on the Vicarious Liability of Parents*, 87 NOTRE DAME LAW. 1321 (1972).

has generally acknowledged the fact that parents, more than anyone else, have the ability and opportunity to regulate the conduct of their children.⁵ It has even been postulated that “[t]here are no delinquent children; there are only delinquent parents.”⁶ Thus, with this ability and opportunity to control has come a duty to exercise this control over one’s child;⁷ and a breach of this duty can result in liability.

The final acceptance of a policy establishing parental liability requires the resolution of numerous issues. Three questions are foremost among these: 1) When should this duty arise? 2) What will constitute a breach of this duty? and 3) What should the legal consequences be for a breach?

Focusing on the law in Florida, this note will discuss these and other related questions and will offer resolutions to the dilemma presented. An examination of the family’s role in the causes of juvenile delinquency will exemplify the need for this parental duty. Moreover, a survey of existing case law and legislation will demonstrate how Florida and other jurisdictions have dealt with this sensitive issue. With specific attention given to a case presently certified to the Florida Supreme Court,⁸ this note will present alternatives for clarification and modification of existing law.

II. Juvenile Delinquency - The Family’s Role

Although legal use of the term was not established until 1899,⁹ juvenile delinquency¹⁰ has plagued civilization throughout history.¹¹

5. See *Bellotti v. Baird*, 443 U.S. 622, 637-639 (1978); *Bieker*, 234 Ark. at 99, 350 S.W.2d at 524; W. PROSSER & W. KEETON, *supra* note 2 at 914; Comment, *Liability of Negligent Parents for the Torts of their Minor Children*, 19 ALA. L. REV. 123 (1966); cf. THE PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 215 (1967) [hereinafter cited as PRESIDENT’S COMMISSION REPORT].

6. Ludwig, *Delinquent Parents and the Criminal Law*, 5 VAND. L. REV. 719 (1952).

7. W. PROSSER & W. KEETON, *supra* note 2 at 914.

8. *Snow v. Nelson*, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

9. R. TROJANOWICZ & M. MORASH, *JUVENILE DELINQUENCY: CONCEPTS AND CONTROL* 12 (3d ed. 1983).

10. A “Delinquent Child” is defined as “[a]n infant of not more than specified age who has violated criminal laws or engages in disobedient, indecent or immoral conduct, and is in need of treatment, rehabilitation, or supervision.” BLACK’S LAW DICTIONARY 385 (5th ed. 1979).

11. See H. SANDHU, *supra* note 1.

Studies have attempted to determine the causes of and solutions to this problem;¹² with sociologists, psychologists, theorists and commentators all submitting opinions as to the causes of the maladjusted child.¹³ Summarizing these philosophies, one commentator noted that "widely accepted theories of causation fall into . . . [five] basic categories: (1) personality factors (including biological, psychological, character and behavior); (2) companions and peer group influence; (3) economic, cultural and environmental conditions; (4) . . . home and family conditions . . . [and] (5) opportunity as evoked by the victim himself. . . ."¹⁴

As a primary source for the inculcation of one's morals and values, the family has perhaps the greatest influence on the development of a 'good' or 'bad' child. The mixture of affection and discipline received in the home has a great effect on a child's ability to deal with authority.¹⁵ Studies reflect the fact that children from homes in which parents are consistent and fair in their means of discipline are less likely to become delinquents; whereas homes in which parents are inconsistent or use extreme measures of corporal punishment¹⁶ are subject to a greater risk of turning out a recalcitrant, unbalanced and often delinquent child.¹⁷

This risk intensifies when there is a lack of affection present in the home combined with an aura of parental apathy and acquiescence.¹⁸ The cumulative effect of these elements is crucial as "[r]ejected or neglected children who do not find love and affection, as well as support and supervision, at home, often resort to groups outside the family; frequently these groups are of a deviant nature."¹⁹ While the state cannot mandate familial love and harmony, arguably these studies evidence a need to encourage, if not demand, parents to act responsibly in raising

12. See, e.g., S. GLUEK & E. GLUEK, *OF DELINQUENCY AND CRIME, A PANORAMA OF YEARS OF SEARCH AND RESEARCH* (1974); *JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS* (1976); *PRESIDENT'S COMMISSION REPORT, supra* note 5, at 209-11.

13. See *PRESIDENT'S COMMISSION REPORT, supra* note 5, at 188-221; R. TROJANOWICZ & M. MORASH, *supra* note 9 at 38-132.

14. Shong, *The Legal Responsibility of Parents for Their Children's Delinquency*, 6 *FAM. L. Q.* 145, 152 (1972).

15. *PRESIDENT'S COMMISSION REPORT, supra* note 5, at 199.

16. Corporal Punishment is defined as "physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body." *BLACK'S LAW DICTIONARY* 306 (5th ed. 1979).

17. See H. SANDHU, *supra* note 1 at 53.

18. *Id.* at 53, 54.

19. R. TROJANOWICZ & M. MORASH, *supra* note 9 at 90.

their children.

III. Snow v. Nelson:²⁰ A Question is Raised

Randall Snow was seriously injured while playing a game with Mark Nelson. The game, which Mark had invented,²¹ was played in the street and required "the use of two croquet mallets, two tennis balls and 'speed.'" ²² With each player continuously hitting his ball down the street, racing toward a pre-designated target,²³ the younger and faster Randall gained the lead.²⁴ In an effort to catch up, Mark took a "fast swing" . . . [despite the fact] that he saw 'a person' the whole time²⁵ Mark's errant swing struck Randall in the eye²⁶ causing the loss of his eye, as well as the permanent loss of his senses of taste and smell.²⁷

Randall's parents sued Mark's parents for negligent supervision of their son.²⁸ At trial, evidence indicated that Mark had a history of playing roughly with other children. Testimony of Mark's neighbors and playmates revealed that he was "a bully;"²⁹ that he "push[ed] . . . kids together . . . to make them fight;"³⁰ and that he "hit little kids because 'they did not listen to him.'" ³¹ Other neighbors, including Randall's father, testified "that they had never complained to Mark's parents . . . [about] Mark's activities."³² Apparently, Mark's father did have some prior notice of Mark's aggressive behavior,³³ although through testimony he characterized this notice as "normal kids tattling type things . . . [such as] 'Mark's playing too rough,' or one of the

20. Snow v. Nelson, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

21. Brief for Appellant at 2, Snow v. Nelson, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 2, 3.

28. *Id.* at 3.

29. *Id.*

30. *Id.*

31. *Id.*

32. Brief for Appellee at 2, Snow v. Nelson, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

33. *Id.* at 1.

other kids are [sic] playing too rough. . . ."³⁴

The trial judge granted a directed verdict in favor of Mark's parents, the Nelsons, finding them totally free from negligence as a matter of law.³⁵ The Snows appealed that decision to the Third District Court of Appeal of Florida, which reluctantly affirmed the trial judge's decision.³⁶ Although the court of appeal appeared sympathetic with the Snow's circumstances, it was bound by prior case law.³⁷ The Supreme Court of Florida had ruled on this issue in 1955³⁸ in the case of *Gissen v. Goodwill*.³⁹ That decision established very narrow requirements⁴⁰ for the finding of parental negligence, and the Snows did not fall within those requirements.

The Third District Court of Appeal, in a strongly worded *Snow* opinion, urged a modification of these rules, leaving no doubt that *Gissen* was the only barrier between an affirmance and a reversal of the trial court's directed verdict.⁴¹ Finding an issue of great public impor-

34. *Id.*

35. Brief for Appellant at 5, *Snow v. Nelson*, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

The trial judge did not immediately rule on the defendant's motion for a directed verdict. He reserved this decision and instructed counsel to proceed with their closing remarks to the jury. The jury was then instructed to consider the following issue in their deliberations:

Whether the defendants were negligent in the supervision of their child, Mark Nelson, and if so, whether such negligence was a legal cause of loss, injury or damage sustained by the plaintiffs, Robert E. Snow and Cynthia Snow, as parents and natural guardians of Randall K. Snow. . . .

Id. at 4.

After the jury left the courtroom to deliberate, the judge gave counsel a final opportunity to settle the case. Informed that a settlement was out of the question, he then granted the motion for the directed verdict and stated:

Keeping with the Court's policy, of course, the jury will still determine this matter. They will consider it and come back with a verdict. That verdict will not be filed, but will be available so that if, upon appeal, in the unlikelihood that this Court is reversed in its directed verdict, then we will not have to try the case again and the jury verdict will be reinstated.

Id. at 5.

Upon its return, the jury found Mark Nelson's parents seventy-five percent at fault, with damages totaling \$135,000. *Snow*, 450 So. 2d at 271.

36. *Snow*, 450 So. 2d at 270.

37. *Id.*

38. *Gissen v. Goodwill*, 80 So. 2d 701 (Fla. 1955).

39. *Id.*

40. See *infra* text accompanying note 46.

41. *Snow*, 450 So. 2d at 270. Portraying the *Gissen* opinion as "harsh doctrine

tance, the district court of appeal certified the following question to the Supreme Court of Florida: "*To what extent and in what manner may parents be held legally responsible for injuries inflicted by their minor children upon third parties?*"⁴²

Under the Florida Rules of Appellate Procedure, the state Supreme Court is not compelled to answer a certified question from a district court of appeal. A query of this type falls within the Supreme Court's discretionary jurisdiction.⁴³ In *Snow v. Nelson*, however, the Florida Supreme Court has granted certiorari, scheduling oral argument for early 1985.

IV. Judicial Expansion of the Common Law Standard

A. Florida

The necessity of the *Snow* certified question is a product of the confusion arising out of *Gissen v. Goodwill*.⁴⁴ Involving the claim of a Miami Beach hotel employee against the parents of a child-tortfeasor, *Gissen* established specific criteria in Florida for the determination of parental liability.⁴⁵ The Supreme Court of Florida delineated these standards as follows:

It is basic and established law that a parent is not liable for the tort of his minor child because of the mere fact of his paternity. However, there are certain broadly defined exceptions wherein a parent may incur liability: 1. Where he intrusts his child with an

created in a distant and dissimilar era," Judge Jorgenson declared:

Because we are restrained by supreme court precedent, we affirm the trial court's direction of a verdict for the parents of the alleged tortfeasor. However, because we are unable to reconcile the precedential supreme court holding, or our own with what we feel to be the dictates of justice and fairness and feel that it is time for a more enlightened approach to the questions involved, we respectfully certify to the Supreme Court of Florida that the present case passes upon a question of great public importance and warrants a re-examination of the principles announced in *Gissen v. Goodwill*.

Id. (citation omitted).

42. *Id.* at 275 (emphasis supplied).

43. FLA. R. APP. P. 9.030(a)(2)(A)(v).

44. 80 So. 2d at 701.

45. *Id.* at 703.

instrumentality which because of the lack of age, judgment, or experience of the child, may become a source of danger to others. 2. Where a child, in the commission of a tortious act, is occupying the relationship of a servant or agent of its parents. 3. Where the parent knows of his child's wrongdoing and consents to it, directs or sanctions it. 4. Where he fails to exercise parental control over his minor child, although he knows or in the exercise of due care should have known that injury to another is a probable consequence.⁴⁶

Mr. Julius Gissen, the plaintiff, asserted in his complaint that eight-year-old Geraldine Goodwill and her parents were "business invitees"⁴⁷ at a Miami Beach hotel where Gissen was employed when the claimed tort took place.⁴⁸ His complaint further alleged that Geraldine was a constant source of turmoil for the hotel's guests and employees,⁴⁹ and that these tantrums continued without any attempts by her parents to exercise restraint.⁵⁰ This conduct culminated in Mr. Gissen's injury when Geraldine slammed a hotel door, violently severing a portion of a finger from his hand.⁵¹ Alleging parental negligence in the "exercise of needful parental influence and authority," Mr. Gissen sued Geraldine's parents, claiming that their acquiescence was, in effect, a "sanctioning, ratif[ication], and consenting to the wrongful act . . . [thus causing] injury to another . . . [to be] a probable consequence. . . ."⁵²

The *Gissen* court looked to the language of section 316 of the second Restatement of Torts⁵³ and to prior decisions from seven other jurisdictions⁵⁴ for guidance in its ruling. From these cases, the court

46. *Id.*

47. *Id.* at 702.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. RESTATEMENT (SECOND) OF TORTS § 316 (1965) states:

A parent is under 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.

54. *See Bateman v. Crim*, 34 A.2d 257 (D.C. 1943) (affirmed directed verdict in

found “[o]ne common factor . . . [to be] salient in the assessment of liability to the parents, . . . [this being] that the child had the habit of doing the particular type of wrongful act which resulted in the injury complained of.”⁵⁵ This holding, creating what has since been referred to as the “*particular acts rule*,”⁵⁶ precluded Julius Gissen from obtaining compensation for his injury. The Florida Supreme Court entered judgment against him because he had not claimed that Geraldine “had a propensity to swing or slam doors at the hazard of persons using such doors.”⁵⁷ In the absence of an assertion of such particular acts, his petition failed to allege actionable negligence.

At first blush, this holding appeared to logically follow from the rule which the court set down. A discrepancy, however, surfaced when the opinion apparently contradicted this particular act requirement with the subsequent declaration that “a wrongful act by an infant which climaxes a course of conduct involving *similar* acts may lead to

favor of defendants as there was no evidence to indicate that boys who injured plaintiff while playing football in street “had previously played with a football on the public streets or had conducted . . . [themselves] in other than an orderly manner.” *Id.* at 258.); *Steinberg v. Cauchois*, 249 A.D. 518, 293 N.Y.S. 147 (N.Y. App. Div. 1937) (parents were not liable as evidence was not sufficient to show that they had notice that child who hit plaintiff with bicycle on sidewalk was accustomed to riding on sidewalk); *Condell v. Savo*, 350 Pa. 350, 39 A.2d 51 (1944) (parents who had been notified of their child’s “habit of mauling, pummeling, assaulting and mistreating smaller children,” were negligent in failing to exercise reasonable care so to control . . . [him and] prevent him from intentionally . . . [assaulting the plaintiff’s child and throwing him] down a steep and precipitous embankment.” *Id.* at 351, 39 A.2d at 52.); *Norton v. Payne*, 154 Wash. 241, 281 P. 991 (1929) (child with “habit of striking smaller children in the face with sticks . . . struck [plaintiff’s] child in the eyeball with a stick . . . and parents encouraged her in her habit.” *Id.* at 241, 281 P. at 991); *Martin v. Barrett*, 120 Cal. App. 2d 625, 261 P.2d 551 (1953) (*see infra* notes 102, 103 and accompanying text); *Ellis v. D’Angelo*, 116 Cal. App. 2d 310, 253 P.2d 675 (1953) (“parents negligently . . . failed to warn . . . [babysitter of their] child’s . . . [habit of] ‘violently attacking and throwing himself forcibly . . . against other people’ . . . and shortly after plaintiff entered . . . [their] home the child attacked her to her resultant injury.” *Id.* at 317, 261 P.2d at 679.); *Ryle v. Lafferty*, 45 F.2d 641 (D. Idaho 1930) (child with “habit of persuading and inveigling smaller boys into secluded places . . . and of beating, bruising, maiming, and punishing [them] . . . persuaded and inveigled the plaintiff . . . to go with him to a secluded place . . . and . . . beat . . . him [Defendant P]arents had knowledge of . . . [this habit] and had failed to take steps to restrain him from continuing. . . .” *Id.* at 641-643).

55. *Gissen*, 80 So. 2d at 705.

56. *See, e.g., Snow*, 450 So. 2d at 274 (emphasis supplied).

57. *Gissen*, 80 So. 2d at 705.

the parents' accountability."⁵⁸ A question arises as to the specific effect of this additional "similar acts" language: Whether the decision actually established a "particular acts rule" or a "similar acts rule" for the state of Florida. From the result in *Gissen* it would appear that a particular act rule is the standard.⁵⁹ Arguably, Mr. Gissen's claim did demonstrate a course of conduct involving similar acts by Geraldine Goodwill.⁶⁰ However, that showing was insufficient for the court to impose liability.⁶¹

At least one Florida district court of appeal has followed the narrow interpretation of the *Gissen* standard. In the 1972 case, *Spector v. Neer*,⁶² the Third District Court of Appeal held that the plaintiffs failed to establish negligence on the part of the parent/defendants⁶³ because the plaintiffs did not allege that the defendant's child "had a habit of doing the particular type of wrongful act which resulted in the injuries. . . ."⁶⁴ A review of other case law, however, indicates that *Gissen* has been subject to various interpretations.⁶⁵ In *Seabrook v. Taylor*,⁶⁶ for example, the Fourth District Court of Appeal stated:

58. *Id.* (emphasis supplied).

59. The Third District Court of Appeal in *Snow* was convinced of this fact, Judge Jorgenson emphatically stating:

[W]e feel that as the rule was applied to the facts in *Gissen* even fact patterns where the injury should reasonably have been foreseen to flow, under the similar acts rule, as a natural and probable consequence from the child's course of conduct involving similar acts would be insufficient to survive a legal preclusion of submission to the factfinder. If the facts in *Gissen* were not sufficient for a determination that the child's course of behavior would naturally and probably result in injury, what facts could be?

Snow, 450 So. 2d at 274.

60. Mr. Gissen's complaint alleged that prior to the door slamming incident, Geraldine Goodwill "committed . . . [other acts] about the hotel premises, such as striking, knocking down and damaging objects of furniture . . . disturbing and harassing the guests and employees . . . [as well as] striking . . . [them] so that . . . [her] persistent course of conduct would as a probable consequence result in injury to another." *Gissen*, 80 So. 2d at 702.

61. *Id.* at 705-706.

62. 262 So. 2d 689 (Fla. 3d Dist. Ct. App. 1972).

63. *Id.* at 690.

64. *Id.*

65. The *Snow* court made this assertion in harsher terms. See *infra*, text accompanying note 76.

66. 199 So. 2d 315, (Fla. 4th Dist. Ct. App.), *cert. denied mem.*, 204 So. 2d 331 (Fla. 1967).

[T]he *Gissen* case does not hold specifically that those exceptions enumerated therein are exclusive. In all cases the question of liability is to be determined on the broad basis of whether or not the parent has been guilty of negligence, that is, a failure to exercise due care in the circumstances.⁶⁷

The latter part of this language was subsequently cited with approval in *Southern American Fire Insurance Co. v. Maxwell*,⁶⁸ a case falling within the dangerous instrumentality exception⁶⁹ asserted in *Gissen*. Also coming within this exception was *Bullock v. Armstrong*,⁷⁰ where the Second District Court of Appeal looked to the states of Georgia⁷¹ and North Carolina⁷² for guidance. From these states *Bullock* quoted case law which effectively held that parental liability is to be determined by "the ordinary rules of negligence and not upon the relation of parent and child."⁷³

While these Florida cases do not expressly disaffirm the holding in *Gissen*,⁷⁴ the Third District's opinion in *Snow v. Nelson*⁷⁵ stated the following:

Implicit in these holdings is a rejection of the rule expressed in *Gissen*, both in its broader, similar acts, and narrower particular acts, senses and an adaptation of what we here characterize as the reasonable care in the circumstances rule: a determination based upon the unique facts of each case and an application of the lan-

67. *Id.* at 317.

68. 274 So. 2d 579 (Fla. 3d Dist. Ct. App.), cert. dismissed mem., 279 So. 2d 32 (Fla. 1973) ("trial judge was correct in submitting . . . case to the jury to conclude whether or not . . . [defendants] failed to exercise the . . . parental duty to ascertain if the [ir five year old] child was competent to control [a] bicycle without supervision." *Id.* at 581.)

69. See the exceptions enumerated in *Gissen*, *supra* text accompanying notes 45, 46.

70. 180 So. 2d 479 (Fla. 2d Dist. Ct. App. 1965) (the negligence of a "parent entrusting a [five year old] child . . . with a stroller, with instructions to push it in a crowded department store without supervision [was] . . . a jury question rather than one of law. . . ." *Id.* at 481.)

71. *Hulsey v. Hightower*, 44 Ga. App. 455, 161 S.E. 664 (1931).

72. *Langford v. Shu*, 258 N.C. 135, 128 S.E.2d 210 (1962).

73. *Bullock*, 180 So. 2d at 481 (quoting *Langford*, 258 N.C. at 139, 128 S.E.2d at 213.

74. 80 So. 2d at 701.

75. 450 So. 2d at 269.

guage of [section 316 of] the Restatement [(Second) of Torts].⁷⁶

It is apparent that confusion does exist within the state of Florida as to not only what the standard is, but also what it should be. A survey of the laws of other jurisdictions will be helpful in achieving an objective resolution of these controversies.

B. The Law in Other Jurisdictions

Most courts recognize, as a general rule, the common law caveat that parents cannot be held liable for their children's acts simply because of the parent-child relationship.⁷⁷ In fact, any such vicarious liability,⁷⁸ imposed as an exception to the general rule, occurs only when provided by statutes, which allow limited monetary damages,⁷⁹ or when the family relationship is not a determining factor. For example, when the parent and the child maintain a master/servant relationship,⁸⁰ the laws of agency⁸¹ and respondeat superior⁸² govern their acts and the parent/master will be vicariously liable for the child/servant's torts.

Parental liability, in most cases, is based on the parent's own negligent conduct which has caused or at least allowed the child's wrongful acts to occur. Parental liability is, therefore, direct rather than vicari-

76. *Id.* at 274.

77. *See supra* note 4.

78. Vicarious liability is defined as "[i]ndirect legal responsibility; for example, the liability of an employer for the acts of an employee, or, a principal for torts and contracts of an agent." BLACK'S LAW DICTIONARY, 1404 (5th ed. 1979).

79. *See infra* note 115.

80. As defined in the Restatement of Agency:

(1) A master is a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.

(2) A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.

RESTATEMENT (SECOND) OF AGENCY § 2 (1958).

81. An agency is defined as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Id.* at § 1.

82. *Respondeat superior* is a maxim meaning "that a master is liable in certain cases for the wrongful acts of his servant. [This d]octrine applies only when relation of master and servant existed between defendant and wrongdoer at time of injury sued for, in respect to very transaction from which it arose." BLACK'S LAW DICTIONARY 1179 (5th ed. 1979). (citation omitted).

ous.⁸³ For example, parents have been held responsible for damage which results from the accessibility⁸⁴ or entrustment⁸⁵ of dangerous instrumentalities to their children. These devices are either inherently dangerous,⁸⁶ or they become so due to the young age or lack of experience of the child.⁸⁷ The parental indiscretion in making these instruments available to the child is the basis for liability in these cases. In fact some jurisdictions impose a duty on parents to be aware of their child's inability to use certain instruments responsibly.⁸⁸ Direct liability is also levied on parents who consent to,⁸⁹ ratify⁹⁰ or direct⁹¹ the delin-

83. See *supra* note 78.

84. See, e.g., *Seabrook*, 199 So. 2d at 315 (parents who kept loaded pistol in unlocked place were not negligent as a matter of law as case was properly submitted to jury). But see *Bell v. Adams*, 111 Ga. App. 819, 143 S.E.2d 413 (1965) (intentional shooting of plaintiff's son by defendant's son was an independent criminal act intervening between the defendant's negligence and the injury and thus could not have been foreseen by the defendant).

85. See *Gissen*, 80 So. 2d at 703. The Second Restatement of Torts describes under what circumstance a person is liable for negligent entrustment:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

RESTATEMENT (SECOND) OF TORTS § 390 (1965).

See also W. PROSSER & W. KEETON, *supra* note 2, at 914; Comment, *Liability of Negligent Parents for the Torts of their Minor Children*, 19 ALA. L. REV. 123 (1966).

86. An inherently dangerous object is defined as one "which has in itself the potential for causing harm or destruction, against which precautions must be taken. Dangerous per se, without requiring human intervention to produce harmful effects; e.g., explosives." BLACK'S LAW DICTIONARY 703 (5th ed. 1979).

87. See *infra* NOTE 91; see also *Southern American Fire Insurance Co. v. Maxwell*, 274 So. 2d 579 (Fla. 3d Dist. Ct. App. 1973); *Gudziewski v. Stemplesky*, 263 Mass. 103, 106, 160 N.E. 334, 335 (1928) (question of defendant's son being fit to possess and use an air gun was for the jury); *Wilbanks v. Brazil*, 425 So. 2d 1123 (Ala. 1983) (mother was not liable for entrusting golf clubs to eight year old son. "If it is found to be negligent to entrust golf clubs to an ordinary eight-year-old, then parents would have to keep the golf clubs and similar sports equipment . . . under lock and key and never allow a child to play with them except when he or she is under some sort of expert supervision." *Id.* at 1125.); *Thibodeau v. Cheff*, 24 Ont. L.R. 214 (Div. Ct. 1911) (child with habit of lighting matches destroyed plaintiff's property—father liable for failure to control upon notice).

88. See *supra* note 87.

89. See, e.g., *Ryle v. Lafferty*, 45 F.2d 641, 642 (D. Idaho 1930); *Gissen v. Goodwill*, 80 So. 2d at 703; *Langford v. Shu*, 258 N.C. 135, 139, 128 S.E.2d 210, 212;

quent acts of their minor children.

This note focuses upon the most controversial type of direct parental liability: Parental negligence for the failure to control one's child. Such negligence stems from the parental duty to exercise restraint and control over the child.⁹² Recognizing this "guiding role of parents in the upbringing of their children"⁹³ the Supreme Court of the United States declared:

[D]eeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, 'constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.'⁹⁴

Thus, it is clearly established that parents must exercise some degree of control over the conduct of their children. However, questions still exist as to when this duty should be imposed and how its breach should be treated. Arguably, the best method for determining these questions is to apply the same test necessary to establish a *prima facie* case in any other negligence action;⁹⁵ i.e. a failure to exercise reasonable care

W. PROSSER & W. KEETON, *supra* note 2, at 914.

90. *See, e.g.*, Ryle, 45 F.2d at 642; *Gissen*, 80 So. 2d at 703; *Hulsey v. Hightower*, 44 Ga. App. 455, 458, 161 S.E. 664, 666 (1931); W. PROSSER & W. KEETON, *supra* note 2, at 914.

91. *See, e.g.*, *Gissen*, 80 So. 2d at 703; *Seabrook*, 199 So. 2d at 317; Ryle, 45 F.2d at 642; W. PROSSER & W. KEETON, *supra* note 2, at 914.

92. When imposed, this duty is based on the parents' opportunity and ability to control the child, as was stated by the Supreme Court of Arkansas in *Bieker v. Owens*, 234 Ark. 97, 350 S.W.2d 522 (1961):

[H]ere we are not concerned with the negligence of a child but with the negligence of the parent in permitting, either actively or passively, a minor willfully or negligently to commit such acts which could reasonably be expected to cause injury to another. It is within reason and good logic to say that the parent has a responsibility to control minor children while they are in their formative years. For while they are not in the custody of the parents, absent any official action to the contrary, no other source of control may be found.

Id. at 99, 350 S.W.2d at 524. *See also* W. PROSSER & W. KEETON, *supra* note 2, at 914.

93. *Bellotti v. Baird*, 443 U.S. 622, 637 (1979).

94. *Id.* at 638.

95. *See, e.g.*, *Lane v. Chatham*, 251 N.C. 400, 402, 111 S.E.2d 598, 601 (1959); *Hulsey v. Hightower*, 44 Ga. App. 455, 460, 161 S.E. 664, 667 (1931); *Langford v.*

under the circumstances.⁹⁶ This seems to be the true essence of the language which is found in section 316 of the second Restatement of Torts. Moreover, it is also the standard applied in the Florida cases of *Seabrook v. Taylor*,⁹⁷ *Bullock v. Armstrong*⁹⁸ and *Southern American Fire Insurance Co. v. Maxwell*⁹⁹ and advocated by the Third District Court of Appeal in *Snow v. Nelson*.¹⁰⁰

As an alternative to this general negligence approach, some courts require specific criteria to be present before this parental duty arises and its breach occurs. The most restrictive of these alternatives is found in states which hold parents liable only if their child has had a propensity or habit to commit the same exact wrongful act as that being alleged.¹⁰¹ The narrower, particular act interpretation of *Gissen* would bring Florida within this category of states.

In *Martin v. Barrett*¹⁰² a California district court of appeal established such a rule by affirming the dismissal of a complaint against the parents of a twelve-year-old boy who shot the plaintiff's child in the eye with an air rifle. The court found that the defendant/father was unaware of any prior misuse of the gun or that his boy was using it on the occasion of the injury. Although the boy's mother was aware of the gun's use on this occasion, she had no previous notice of any prior misuse of the gun by her son.¹⁰³ In *Bieker v. Owens*¹⁰⁴ the Arkansas Supreme Court found that the defendants had knowledge of their two sons' habits of "striking, beating and abusing other younger men less physically endowed than themselves. . . ." ¹⁰⁵ Despite this knowledge the parents took no action to correct this behavior. Thus, the parents

Shu, 258 N.C. 135, 139, 128 S.E.2d 210, 213 (1962); cf. *Mitchell v. Wiltfong*, 4 Kan. App. 2d 231, 234, 604 P.2d 79, 82 (1979).

96. See *supra* note 53.

97. See *supra* notes 66-67 and accompanying text.

98. See *supra* notes 70-73 and accompanying text.

99. 274 So. 2d at 581; see *supra* note 68.

100. See *supra* text accompanying note 76.

101. This is the nature of the controverted 'particular acts' rule which may or may not currently exist in Florida. See, e.g., *Ross v. Souter*, 81 N.M. 181, 464 P.2d 911 (N.M. Ct. App. 1970); *Horton v. Reaves*, 186 Colo. 149, 526 P.2d 304 (1974); *Bocock v. Rose*, 213 Tenn. 195, 373 S.W.2d 441 (1963); *Norton v. Payne*, 154 Wash. 241, 281 P. 991 (1929); *Linder v. Bidner*, 50 Misc. 2d 320, 270 N.Y.S.2d 427 (N.Y. Sup. Ct. 1966).

102. 120 Cal. App. 2d 625, 261 P.2d 551 (Cal. Dist. Ct. App. 1953).

103. *Id.* at 628, 261 P.2d at 553.

104. 234 Ark. 97, 350 S.W.2d 522 (1961).

105. *Id.* at 98, 350 S.W.2d at 523.

were held liable for the injuries when their sons dragged the plaintiff from a car and severely beat him. In *Caldwell v. Zaher*¹⁰⁶ the Supreme Court of Massachusetts found that a cause of action was stated against the parents of a child with a "tendency and propensity toward assaulting, accosting, tormenting, and molesting young children."¹⁰⁷ This cause of action was predicated on the fact that they had received notice of this conduct.¹⁰⁸

The general negligence approach to the resolution of this issue is a fairly broad means of determining liability while the particular acts approach, on the other hand, is highly restrictive, with liability imposed in a very limited scenario. A compromise or middle ground can be found between these two extremes in the 'similar acts' or 'course of conduct' approach. This latter method, employing features of the other two,¹⁰⁹ is the less restrictive interpretation of the standard set down in *Gissen*.

While these various applications of parental negligence contain different degrees of notice requirements, it seems that the failure to attempt some type of restraint over the child is fundamental to the finding of liability under each theory. This is reflected in cases in which the plaintiff has failed to establish this point.¹¹⁰ In *Ross v. Souter*,¹¹¹

106. 344 Mass. 590, 183 N.E.2d 706 (1962).

107. *Id.* at 591, 183 N.E.2d at 706.

108. *Id.* at 591, 183 N.E.2d at 706-07; *cf.* *Lane v. Chatham*, 251 N.C. 400, 111 S.E.2d 598 (1959) (mother with prior knowledge of son's misuse of air rifle found liable, while father with no such knowledge was not liable).

109. *See, e.g., Moore v. Crumpton*, 306 N.C. 618, 295 S.E.2d 436 (1982). In this case the Supreme Court of North Carolina declared:

Before it may be found that a parent knew or should have known of the necessity for exercising control over the child, it must be shown that the parent knew or in the exercise of due care should have known of the propensities of the child and could have reasonably foreseen that failure to control those propensities would result in injurious consequences. This does not mean that the particular injury occurring must have been foreseeable, but merely that consequences of a generally injurious nature might have been expected.

Id. at 624, 295 S.E.2d at 440. (citations omitted).

110. *See, e.g., Horton v. Reaves*, 186 Colo. 149, 526 P.2d 304 (1974). In that case plaintiff's infant was severely injured when assaulted by the defendant's two children. Testimony indicated that the defendant/mother had "reprimanded her children for . . . previous assault-like behavior." The Supreme Court of Colorado found this "testimony [to] indicate . . . that [the mother] . . . exercised due care in watching over [her sons]. . . ." Thus the Court of Appeals decision that the "issue of . . . [defendant/mother's] negligence should not have been submitted to the jury . . ." was

for example, evidence indicated that the parents of a minor tortfeasor had knowledge of their child's "disposition to engage in fights and injure other children."¹¹² However, the plaintiff's case did not demonstrate a failure to act by the defendants. In fact a school principal testified that the defendant/mother had reprimended her son in the school office.¹¹³ Thus, New Mexico's Court of Appeals, in *Ross*, held that the defendants were not responsible for the injuries sustained by the plaintiff's child.

While these various theories hold parents directly liable for their own negligence, modern tort law has seen a movement among American states to hold parents vicariously liable, at least to a limited extent, for some torts committed by their minor children.

V. Statutory Vicarious Liability

As previously indicated, common law did not allow the imputation of parental liability from the mere existence of the parent/child relationship.¹¹⁴ Today, however, every American state¹¹⁵ has statutorily im-

upheld. *Id.* at 154, 526 P.2d at 307.

111. 81 N.M. 181, 464 P.2d 911 (1970).

112. *Id.* at 184, 464 P.2d 914.

113. *Id.*

114. See *supra* note 4.

115.

	MAX RECOV.	PI COV?	AGE LIMITS	STATE OF MIND
ALA. CODE § 6-5-380 (1975).	500	N	18	Int/M/W
ALASKA STAT. § 34.50.020 (1975).	2000	N	18	M/W
ARIZ. REV. STAT. ANN. § 12-661 (1956 & Supp. 1982).	2500	Y	Minor	M/W
ARK. STAT. ANN. § 50-109 (Supp. 1983).	2000	N	18	M/W
CAL. CIV. CODE § 1714.1 (Deering 1984).	10000	Y	Minor	M/W
COLO. REV. STAT. § 13-21-107 (Supp. 1973 & 1983).	3500	Y	18	M/W
CONN. GEN. STAT. ANN. § 52-572 (West Supp. 1984).	3000	Y	Minor	M/W
DEL. CODE ANN. tit. 10 § 3922 (1974 & Supp. 1980).	5000	N	18	Int/R
FLA. STAT. § 741.24 (1983).	2500	N	18	M/W
GA. CODE ANN. § 51-2-3 (1976 & Supp. 1984).	5000	N	18	M/W
HAWAII REV. STAT. § 577-3 (1976).	none	T	Minor	*
IDAHO CODE § 6-210 (1979).	1500	N	18	M/W
ILL. ANN. STAT. ch. 70 §§ 53-57 (Smith-Hurd Supp. 1983).	1000	Y	11-19	M/W
IND. CODE ANN. § 34-4-31-1 (Burns Supp. 1984).	2500	Y	Child	Int
IOWA CODE ANN. § 613.16 (West Supp. 1983).	1000	Y	18	Unlaw
KAN. STAT. ANN. § 38-120 (1981).	1000	Y	18	M/W
KY. REV. STAT. ANN. § 405.025 (Supp. 1982).	2500	N	Minor	W
LA. CIV. CODE ANN. art. 2318 (West 1979).	none	D	Minor	*
ME. REV. STAT. ANN. tit. 19, § 217 (Supp. 1979).	800	Y	7-17	M/W
MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (1984).	5000	Y	Child	*

posed some type of vicarious liability upon parents for their children's acts. Legislatures give consideration to numerous issues when composing these statutes. For example, twenty of the fifty states permit redress for property damage only, while the remainder redress personal injury as well.¹¹⁶ Age of the tortfeasor is often a consideration, with some states establishing a minimum age¹¹⁷ and all setting a maximum. Other criteria for recovery include a requirement in most states that the child's actions be willful, wanton or malicious.¹¹⁸

MASS. GEN. LAWS ANN. ch. 231, § 85G (West 1984).	2000	Y	7-18	W
MICH. COMP. LAWS ANN. § 600.2913 (1983).	2500	Y	Minor	M/W
MINN. STAT. ANN. § 540.18 (West 1984).	500	Y	18	M/W
MISS. CODE ANN. § 93-13-2 (1983).	2000	N	10-18	M/W
MO. ANN. STAT. § 537.045 (Vernon 1984).	2000	Y	18	Pur
MONT. CODE ANN. § 40-6-237 (1983).	2500	N	18	M/W
NEB. REV. STAT. § 43-801 (1978).	1000	Y	Minor	W/Int
NEV. REV. STAT. § 41.470 (1979).	10000	Y	Minor	W
N.H. REV. STAT. ANN. § 592-A:16 (1974).	fine	N	Minor	*
N.J. STAT. ANN. § 2A:53A-15 (West 1984).	none	N	18	M/W
N.M. STAT. ANN. § 32-1-46 (1981).	2500	Y	Child	M/W
N.Y. GEN. MUN. LAW § 78-a (Consol. 1983).	1500	N	10-18	M/W
N.C. GEN. STAT. § 1-538.1 (1983).	1000	Y	Minor	M/W
N.D. CENT. CODE § 32-03-39 (1976).	1000	N	Minor	M/W
OHIO REV. CODE ANN. §§ 3109.9 to 3109.10 (Page 1980).	3k/2k	Y	18	M/W
OKLA. STAT. tit. 23, § 10 (West Supp. 1983).	2500	Y	18	Crim
OR. REV. STAT. § 30.765 (1983).	5000	Y	Minor	Int
PA. STAT. ANN. tit. 11, §§ 2001-2005 (Purdon Supp. 1983).	1000	Y	18	W/T
R.I. GEN. LAWS § 9-1-3 (Supp. 1983).	1500	Y	Minor	M/W
S.C. CODE ANN. § 20-7-340 (Law. Co-op. Supp. 1983).	1000	N	17	M/Int
S.D. CODIFIED LAWS ANN. § 25-5-15 (Supp. 1983).	750	Y	18	M/W
TENN. CODE ANN. §§ 37-10-101, -102, -103 (1984).	10000	N	18	M/W
TEX. FAM. CODE ANN. §§ 33.01, -.02 (Vernon 1975 & Supp. 1984).	15000	N	12-18	M/W
UTAH CODE ANN. §§ 78-11-20, -21 (1977).	1000	N	Minor	Int
VT. STAT. ANN. tit. 15, § 901 (1974).	250	Y	17	M/W
VA. CODE §§ 8.01-43, -44 (1984).	500	N	Minor	M/W
WASH. REV. CODE ANN. § 4.24.190 (Supp. 1984).	3000	Y	18	M/W
W. VA. CODE § 55-7A-2 (Supp. 1984).	2500	Y	Minor	M/W
WIS. STAT. ANN. § 895.035 (West 1983).	1000	Y	Minor	M/W
WYO. STAT. § 14-2-203 (1978).	300	N	10-17	M/W

MAX RECOV. = Maximum amount recoverable from tortfeasor's parent(s).

none = no limit; k = thousand; fine = fine imposed on parent.

PI COV? = Personal Injury Covered by statute.

Y = Yes; N = No; T = Torts; D = Damages.

AGE LIMITS = Limits on age of tortfeasor.

STATE OF MIND = Tortfeasor's state of mind at time tort was committed.

M = Malicious; W = Willful; Unlaw = Unlawful; Int = Intentional; R = Reckless;

Pur = Purposeful; Crim = Criminal; Del = Delinquent; T = Tortious; * = Statute does not refer to state of mind.

116. See table of statutes in note 115.

117. *Id.*

118. *Id.*

Florida enacted a Parental Liability Statute in 1965.¹¹⁹ In its current form it provides victims with recovery of "actual damages . . . not to exceed \$2,500."¹²⁰ This is characteristic of all such statutes which usually reward the victim a limited sum, no matter how great his or her loss.¹²¹ These limits are fairly low, ranging from \$250 to \$15,000, depending on the jurisdiction.¹²² The imposed cap on these rewards indicates that the legislative intent of such statutes is to punish parents and discourage juvenile delinquency, while compensation of victims seems to be a secondary consideration.¹²³

If the legislative goal in enacting these laws is indeed the prevention of juvenile delinquency through parental responsibility, one commentator suggests that a barrier might exist to the fulfillment of this objective.

An underlying assumption of the legislation is that parents, indif-

119. FLA. STAT. § 45.20 (1965).

120. FLA. STAT. § 741.24 (1983) is entitled "Civil action against parents; willful destruction or theft of property by minor." It provides:

(1) Any municipal corporation, county, school district, or department of Florida; any person, partnership, corporation, or association; or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in an amount not to exceed \$2,500, in a court of competent jurisdiction, from the parents of any minor under age of 18 years, living with the parents, who shall maliciously or willfully destroy or steal property, real, personal, or mixed, belonging to such municipal corporation, county, school district, department of the state, person, partnership, corporation, association, or religious organization.

(2) The recovery shall be limited to the actual damages in an amount not to exceed \$2,500, in addition to taxable court costs.

121. See Note, *The Iowa Parental Responsibility Act*, 55 IOWA L. REV. 1037, 1041 (1970).

122. See table of statutes in note 115.

123. The Supreme Court of North Carolina explicitly noted its observation of this factor in *General Insurance Company of America v. Faulkner*, 259 N.C. 317, 130 S.E.2d 645 (1963):

[These] statutes appear to have been adopted not out of consideration for providing a restorative compensation for the victims of injurious or tortious conduct of children, but as an aid in the control of juvenile delinquency. Thus, the limitation . . . of liability to malicious or wilful acts of children, as well as the limitation of liability to an amount not to exceed . . . [X dollars] . . . fails to serve any of the general compensatory objectives of tort law.

Id. at 323, 130 S.E.2d at 650.

ferent to the current activities of their children, have a sufficient interest in the law to be familiar with the limitations of the existing rules concerning their liability for consequences of those activities. It is further assumed that those indifferent parents, informed of the change made by the legislature, will undertake their responsibilities of instruction and supervision of their children.¹²⁴

While this may often be the case, it is submitted that the parent who is penalized for his or her child's activities will have no choice but to take notice of such laws and act accordingly. With this threat, perhaps the parent will begin to undertake these responsibilities in a more serious manner.

These statutes have been the subject of other types of criticism as well.¹²⁵ For example, it has been contended that many states have passed laws which are inherently vague.¹²⁶ The main assertion is that statutes which purport to apply to "parents" do not specify as to the scope of this word. In Florida this question was raised in *Wyatt v. McMullen*¹²⁷ with the First District Court of Appeal holding that "[t]here is no difference, so far as common law tort liability is concerned, between one in loco parentis¹²⁸ and a natural parent."¹²⁹

In a number of cases these statutes have been challenged as unconstitutional.¹³⁰ However, in only one instance has a statute been ad-

124. Note, *Parental Liability for Wilful and Malicious Acts of Children*, 36 WASH. L. REV. 327, 327-28 (1961).

125. See, e.g., Note, *supra* note 124 at 327-331; Note, *supra* note 121 at 1041-1048; Note, *A Constitutional Caveat on the Vicarious Liability of Parents*, 87 NOTRE DAME LAW. 1321, 1326-34 (1972).

126. Note, *supra* note 121 at 1044.

127. 350 So. 2d 1115 (Fla. 1st Dist. Ct. App. 1977).

128. One who is in loco parentis is said to be "[i]n the place of a parent; charged, factitiously, with a parent's rights, duties and responsibilities." BLACK'S LAW DICTIONARY 708 (5th ed. 1979).

129. *Wyatt*, 350 So. 2d at 1117.

130. See *Bryan v. Kitamura*, 529 Fed. Supp. 394 (D. Hawaii 1982); *Alber v. Nolle*, 98 N.M. 100, 645 P.2d 456 (1982); *Stang v. Waller*, 415 So. 2d 123 (Fla. 4th Dist. Ct. App. 1982); *Haywood v. Ramick*, 248 Ga. 841, 285 S.E.2d 697 (1982); *Board of Education of Piscataway Township v. Caffiero*, 173 N.J. Super. 204, 413 A.2d 981 (1980), *aff'd*, 88 N.J. 308, 431 A.2d 799, *appeal dismissed*, 454 U.S. 1025 (1981); *Vanthournout v. Burge*, 69 Ill. App. 3d 193, 387 N.E.2d 341 (1979); *Rudnay v. Corbett*, 53 Ohio App. 2d 311, 374 N.E.2d 171 (1977); *Watson v. Gradzik*, 34 Conn. Super. 7, 373 A.2d 191 (Conn. C.P. 1977); *In Re Sorrell*, 20 Md. App. 179, 315 A.2d 110 (1974); *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971); *Mahaney v. Hunter Enterprises, Inc.*, 426 P.2d 442 (Wyo. 1967); *General Insurance Company v.*

judicated as such. In *Corley v. Lewless*,¹³¹ the Georgia Supreme Court held the Georgia parental liability statute void because the statute violated both state and Federal due process requirements.¹³² However, the Georgia statute was distinguishable from other state statutes because Georgia's contained no limits on recovery.¹³³ It sought to provide full redress for both personal injury and property damage. Since the 1971 *Corley* ruling, the Georgia General Assembly has adopted a new statute,¹³⁴ omitting the defects which plagued its predecessor.¹³⁵ This new legislation expressly states an intention to control delinquency as it places a limit on parental liability.¹³⁶ In 1982 this new statute withstood a constitutional challenge in *Hayward v. Ramick*.¹³⁷ The Georgia Supreme Court declared:

We hold that this statute, intended to aid in reducing juvenile delinquency by imposing liability upon parents who control minors is neither unreasonable, arbitrary nor capricious. We further hold that the state has a legitimate interest in the subject (controlling juvenile delinquency), and that there is a rational relationship between the means used (imposing liability upon parents of children who wilfully or maliciously damage property) and this object.¹³⁸

This language was quoted with approval in *Stang v. Waller*,¹³⁹ the Fourth District Court of Appeal of Florida ruling "that the better view [of Florida's Parental Liability Statute] supports constitutionality. . . ."¹⁴⁰

Other challenges to statutory constitutionality have been unsuccessful. In *General Insurance Company of America v. Faulkner*,¹⁴¹ for example, the Supreme Court of North Carolina held that these statutes

Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963); Kelly v. Williams, 346 S.W.2d 434 (Tex. Civ. App. 1961).

131. 227 Ga. 745, 182 S.E.2d 766 (1971).

132. *Id.* at 751, 182 S.E.2d at 770.

133. *Id.* at 749-750, 182 S.E.2d at 769-770.

134. GA. CODE ANN. § 51-2-3 (1976 & Supp. 1982).

135. *Id.*; *Hayward v. Ramick*, 248 Ga. 841, 285 S.E.2d 697 (1982).

136. GA. CODE ANN. § 51-2-3(c) (1976 & Supp. 1982).

137. 248 Ga. at 841, 285 S.E.2d at 697.

138. *Id.* at 843, 285 S.E.2d at 699.

139. 415 So. 2d 123, 124 (Fla. 4th Dist. Ct. App. 1982).

140. *Id.*

141. 259 N.C. at 317, 130 S.E.2d at 645.

fall within the state's police power.¹⁴² A unique assertion of unconstitutionality was made in the case of *Watson v. Gradzik*¹⁴³ in 1977 when the defendant parents of a child tortfeasor claimed that Connecticut's parental liability statute "interfere[d] with the fundamental right to bear and raise children."¹⁴⁴ The court found the challenged statute to be constitutional, stating that:

[We] cannot accept the defendant's premise that the fundamental right to bear and raise children has been interfered with merely because a parent is held responsible for his child's torts. With the right to bear and raise children comes the responsibility to see that one's children are properly raised so that the rights of other people are protected.¹⁴⁵

While beyond the scope of this note, it bears mentioning that the Civil law jurisdictions of Louisiana and Hawaii have statutory laws which are unhampered by common law principals. These statutes hold parents strictly liable, with certain exceptions, for their child's wrongs. In these states, such liability is based solely on the familial relationship.¹⁴⁶

VI. Proposed Direction for Parental Liability in Florida

*Snow v. Nelson*¹⁴⁷ provides Florida's Supreme Court with the opportunity to take another look at the issue of parental liability for the acts of minor children, specifically in the area of negligent parental supervision. The 1955 decision in *Gissen v. Goodwill*¹⁴⁸ created confusion in this area of Florida tort law. As the Third District Court of Appeal said of *Gissen* in *Snow*, "the Supreme Court's holding in *Gissen*, purporting to adopt the similar acts rule, . . . instead creat[ed] a 'particular acts' rule."¹⁴⁹ The Snows, in their Petitioner's brief to

142. *Id.* at 323-24, 130 S.E.2d at 650.

143. 34 Conn. Super. 7, 373 A.2d 191 (1977).

144. *Id.* at 8, 373 A.2d at 192.

145. *Id.*

146. See HAWAII REV. STAT. § 577-3 (1976); LA. CIV. CODE ANN. art. 2318 (West 1979). See also *Bryan v. Kitamura*, 529 Fed. Supp. 394 (D. Hawaii 1982); *Turner v. Bucher*, 308 So. 2d 270 (La. 1975); Marvin, *Discerning the Parent's Liability for the Harm Inflicted by a Nondiscerning Child*, 44 LA. L. REV. 1213 (1984).

147. 450 So. 2d at 269.

148. 80 So. 2d at 701.

149. *Snow*, 450 So. 2d at 274.

Florida's Supreme Court have emphatically asserted that "[t]here exists in this state no '*particular acts*' rule!"¹⁵⁰ The Nelsons, on the other hand, stated in their brief to the District Court of Appeal that "[a]bsent the specific type of notice that is set out in *Gissen*, no liability can be found as a matter of law."¹⁵¹

The Third District Court of Appeal examined the various alternatives and stated that the "broader rule, . . . a requirement of reasonable care in the circumstances, short of some form of vicarious liability, is the better rule."¹⁵² This is similar to the position advocated by the *Snow* petitioner.

It is submitted that the particular acts rule, if it indeed exists, should be modified. Currently, under this type of law the parents of a chronic but creative delinquent can dodge serious liability with a total disregard for their parental duties.¹⁵³ It is inconsistent with the tort principle of accountability that the parental duty to exercise restraint and control arises only upon notice of a child's habitual performance of a single wrongful act. For that matter, a requirement that the child's actions constitute a course of conduct containing 'similar acts' is not without its problems either. How many acts make up a course of conduct? Three? Ten?

Arguably, the better rule would allow the jury to consider the seriousness of the child's previous act or acts to determine the need, in each situation, for parental action. As previously submitted, the underlying question is: When does this parental duty to exercise control arise? It appears that the Florida Supreme Court has already answered this question in the general negligence case *Stevens v. Jefferson*,¹⁵⁴ by stating, "[t]he extent of the defendant's duty is circumscribed by the scope of the anticipated risks to which the defendant exposes others."¹⁵⁵

150. Brief for Petitioner at 21, *Snow v. Nelson*, No. 65,391 (Fla. filed June 4, 1984) (emphasis in original).

151. Brief for Appellee at 10, *Snow v. Nelson*, 450 So. 2d 269 (Fla. 3d Dist. Ct. App. 1984).

152. *Snow*, 450 So. 2d at 272-73.

153. See generally Murray, *Domestic Relations, Second Survey of Florida Law*, 12 U. MIAMI L.Q. 317, 352 (1956).

154. 436 So. 2d 33 (Fla. 1983).

155. *Id.* at 35, (quoting with approval *Crislip v. Holland*, 401 So. 2d 1115, 1117 (Fla. 4th Dist. Ct. App. 1981)). The full summary of state negligence law was stated as follows:

An action for negligence is predicated upon the existence of a legal duty

Thus, the parents of a child who maliciously beats another child on one occasion might have a greater duty to reprimand him than the parents of a child who has played roughly on a few occasions. This general negligence approach would allow each case to be examined on its merits, with the ultimate determination of negligence being made by the jury. Logically, the requirements for parental negligence should be commensurate with the requirements of any other negligence action. Upon receiving notice of their child's scurrilous disposition, parents are to protect the world at large by deterring continuance of this activity. The extent of this duty will depend on the severity of the child's misdeeds and the probability that others will be harmed if such actions continue. With this duty the parent should at least make an effort to exercise restraint over the child. It is the parents' failure to act which is the basis for liability. Parents who try but fail to control their child's conduct should not be accountable for this failure. However, those parents who merely acquiesce to the actions of their mischievous offspring effectively sanction the resulting consequences.

Considering the unique procedural posture in *Snow*,¹⁵⁶ the first issue in resolving this case under a general negligence approach should be whether the notice received by Mark Nelson's parents was of such a nature that it imposed on them the duty to reprimand their son. If in fact they were told only that "Mark plays too rough,"¹⁵⁷ the sufficiency of this notice is questionable. The threshold question is whether Mark's prior conduct, *as conveyed to his parents*, was severe enough to warrant his reprimand. To determine this severity, the necessary inquiry is whether his 'rough play' would expose others to an unreasonable risk of harm. If so, was the type of harm suffered by Randall Snow "within

owed by the defendant to protect the plaintiff from an unreasonable risk of harm. The extent of the defendant's duty is circumscribed by the scope of the anticipated risks to which the defendant exposes others. In order to prevail in a lawsuit, the plaintiff must demonstrate that he is within the zone of risks that are reasonably foreseeable by the defendant. The liability of the tortfeasor does not depend upon whether his negligent acts were the direct cause of the plaintiff's injuries, as long as the injuries incurred were the reasonably foreseeable consequences of the tortfeasor's conduct. If the harm is within the *scope of danger* created by the defendant's conduct, then such harm is a reasonably foreseeable consequence of the negligence. The question of foreseeability and whether an intervening cause is foreseeable is for the trier of fact.

Id. (citations omitted) (emphasis in original).

156. *See supra* note 35.

157. *See supra* text accompanying note 34.

the zone of risks . . . reasonably foreseeable by [Mr. and Mrs. Nelson]?¹⁵⁸ Arguably, this foreseeability requirement has not been met in this case. It appears that the Snows have attempted to show that Mark's previous actions constituted a pattern such that a subsequent incident and injury was a foreseeable consequence of his prior conduct. A close examination of this pattern reveals that all prior alleged conduct was intentional.¹⁵⁹ It is submitted that Mark Nelson's behavior which resulted in Randall's injury, amounted to negligence. The Snows have not contended that Mark willfully, maliciously or intentionally struck Randall with the croquet mallet.

A distinction should be made between injuries which a minor inflicts intentionally versus those inflicted negligently. While plausible, it does not seem likely that a child's negligent conduct becomes reasonably foreseeable upon notice that he has committed prior wrongful acts which were intentional. Of course, these are considerations which go towards proximate cause and foreseeability, and as such they are questions for the trier of fact. The *Snow* trial judge granted a directed verdict in favor of the Nelsons, but still allowed the jury to reach a verdict for judicial economy.¹⁶⁰ In that jury's determination, Mark Nelson's parents were negligent in the supervision of their son.¹⁶¹

VII. Conclusion

While minors inflict large amounts of damage, they rarely compensate their victims. The common law rules which disallowed vicarious liability from being imputed on parents have been relaxed to allow such liability on more occasions. In fact, every American state has passed a parental liability statute, holding parents vicariously liable, to a limited extent, for their children's torts.¹⁶² With a single exception, these statutes have withstood constitutional challenges.¹⁶³ Some courts have held that these statutes promote valid public interests and are thus within the state's police power.¹⁶⁴ Their provisions for limited recovery indicate that redress of the victim is not always the 'interest' being promoted. In fact some courts have acknowledged that these statutes are

158. See note 155 for full summary of state negligence law.

159. See *supra* text accompanying notes 29-31.

160. See *supra* note 35.

161. See *supra* note 35.

162. See table of statutes in note 115.

163. See *supra* notes 130-45 and accompanying text.

164. See *supra* note 142 and accompanying text.

more punitive in nature than they are compensatory.¹⁶⁵

Florida's statute, providing limited vicarious liability for property damage, has been held constitutional.¹⁶⁶ However, its common law based counterpart, providing unlimited liability for negligent parental supervision, has been characterized by an intermediate state appellate court as "harsh doctrine from a distant and dissimilar era."¹⁶⁷ Thus, the Supreme Court of Florida has an opportunity to give new consideration to this sensitive issue. While faced with various alternatives, the state should treat this type of negligence action as it does all negligence actions. It is a parental duty to protect the world at large from unreasonable risks of harm which become foreseeable upon notice of their child's wrongful conduct. The extent of this duty shall rise as the magnitude of the threatened harm becomes more severe.

Robert Charles Levine

165. See *supra* note 123 and accompanying text.

166. See *supra* note 139 and accompanying text.

167. See *supra* note 41.