

Across the Line

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PARENT'S LIABILITY FOR CHILDREN'S ACTS

If your client's 17-year old accidentally shoots someone or crashes the family car or crashes his or her own car, is your client liable? What if your client's 16-year old fights at school or scribbles graffiti and gets caught or signs a contract to buy a sports car without any money. What are the legal responsibilities of a parent of minor children?

Parent's Liability for Their Children's Contracts

Under early California law, minors were males under the age of 21 and females under the age of 18. That was subsequently changed to age 21 for both males and females, then in 1971 to age 18. Parents are generally not liable for their children's contracts unless the parent co-signs or the child is acting on behalf of the parents as an agent. If Junior routinely charges on dad's account at the local hardware store, dad will be paying.

Under Family Code § 6700 et seq. a minor may generally make a contract in the same manner as an adult. However, almost all contracts with minors are voidable and may be disaffirmed by the minor before they are 18 or within a reasonable time afterwards. However, minors entering into guilty pleas in criminal cases as part of a plea bargain are bound. A contract with a minor

relating to real property is void. Being a one-way street, adults are generally bound by contracts with minors.

Amazingly, to me anyway, if a minor disaffirms a contract, there is no requirement of restitution or restoration. Sum: contract with a minor at your peril.

Parents Generally Not Responsible for Children's Torts

What about liability for a child's negligent acts or willful misconduct? What if a child crashes a car, smashes another boarder on the slopes, or accidentally burns down a building, or worse yet, intentionally beats someone up or vandalizes property.

Generally in the absence of a statute, a parent is not liable for the torts of his or her minor children. (**Hudson v. Von Hamm (1927) 85 Cal. App. 323.**) This can result in hardships, so California has adopted laws making parents liable for their children's acts in a few specific situations.

Parents Knowledge of Child's Prior Misconduct

Parents are liable for their child's negligent act if they know or have reason to know of specific problems from prior misconduct. For example, a babysitter may recover from the parent for not being warned that the child habitually attacked children—particularly babysitters. (*Ellis v. D'Angelo* (1953) 116 Cal. App 2d 310.)

Continual rock throwing by a child and complaints by neighbors to the mother, justified the inference that she had notice of his dangerous proclivities and past misconduct, unlike the father who had no personal knowledge. (*Singer v. Marx* (1956) 144 Cal. App. 2d 637.)

Civil Code §1714—Willful Misconduct

Civil Code §1714.1(a) imputes liability to the parents or guardians having custody and control of minors for acts of willful misconduct that result in injury or death or injury to the property of another. Joint and several liability of the parent or guardian may not exceed \$37,100 (adjusted per CPI) for each tort of the minor.

Parents and guardians face liability for willful misconduct resulting in the defacement of property with paint or a similar substance, with a CPI-adjusted \$37,100 cap. (Civil Code §1714.1(b). Also see Government Code §38772 for parental liability for graffiti without a cap.

Insurers are not liable for the conduct imputed to a parent or guardian for any amount in excess of \$10,000 (Civil Code §1714.1(e).

A parent or guardian is liable for damages caused by (a) willful misconduct resulting in injury or death to a student, employee, or volunteer for a school, or (b) willful cutting, defacement or other injury to school property, or property of a school employee. Education Code §904(a). Liability is limited to \$10,000.

A parent or legal guardian is liable to a merchant or library for their kid's theft—not less than \$50 nor more than \$500, plus costs, plus liability for the retail value of the merchandise if it is not recovered. Penal Code §490.5(b).

Firearm Liability

Discharge of a firearm by a minor is imputed to the parent or guardian having custody and control. Liability is capped at \$30,000 for one person, \$60,000 for a single occurrence. (Civil Code §1714.3.) Liability, like that for

willful misconduct, is in addition to liability otherwise imposed by law. E.g., negligent entrustment of a firearm.

Vehicle Liability

Under Vehicle Code §17707, any person co-signing an application for a driver's license, including a parent or guardian, is liable for the minor's automobile torts with a liability cap of \$15,000 for one person, \$30,000 for a single occurrence and \$5,000 for property damage.

If a minor, whether licensed or not, drives with the express or implied permission of the parent or guardian, responsibility is imputed with a \$15,000, \$30,000, \$5,000 limit. Vehicle Code §17707-17709. If a minor is driving as an agent of the parent, perhaps on an errand, there may be no liability limit.

While there appear to be no cases finding parents responsible for allowing their minor children to drive friends, or drive at night, in violation of laws restricting minors driving with a learner's permit, I believe it's only a matter of time.

Permissive Driver

Under Vehicle Code §17150, car owners that allow others, minors being no exception, to drive their cars are responsible for injuries caused, with a \$15,000, \$30,000, \$5,000 limit. The owner is not liable for punitive damages imposed on the driver. These statutes were found constitutional in *Milgate v. Wraith* (1942) 19 Cal. 2d 297. "Owner" means registered owner, thus the importance of properly notifying the DMV of a vehicle sale.

In sum, parents and guardians are generally not responsible for the contracts of their minor children, and are generally liable for their civil torts by statute only.

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