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# West Virginia Law Review

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## STUDENT NOTE

### PARENTAL LIABILITY STATUTE

At common law parental relationship is not, of itself, a basis for holding a parent liable for his child's tortious acts.<sup>1</sup> Unless some other relationship<sup>2</sup> can be established or the parent's own negligence<sup>3</sup> is found to be the proximate cause of the injury, the child bears sole responsibility for his tortious acts. Dissatisfaction with this common law rule, which often leaves the injured party with a worthless action against an insolvent minor, has been manifested by the court's circumvention of the rule through dubiously founded agency relationships<sup>4</sup> and through strained applications of the "foreseeability" rule<sup>5</sup> in order to find that some negligent act on the parent's part is the proximate cause of the injury.

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<sup>1</sup> *Mazzocchi v. Seay*, 126 W. Va. 490, 29 S.E.2d 12 (1944); *Sibes v. Johnson*, 16 Mass. 388 (1820); *Scott v. Watson*, 46 Me. 363 (1859).

<sup>2</sup> *Condell v. Savo*, 350 Pa. 350, 39 A.2d 51 (1944); *Smith v. Jordon*, 211 Mass. 269, 97 N.E. 761 (1912); *Hower v. Ulrich*, 156 Pa. 410, 27 Atl. 37 (1893).

<sup>3</sup> *Mazzocchi v. Seay*, 126 W. Va. 490, 29 S.E.2d 12 (1944); *Dickens v. Barnham*, 69 Colo. 349, 194 Pac. 356 (1920); *Meers v. McDowell*, 110 Ky. 926, 62 S.W. 1013 (1901).

<sup>4</sup> *Wyant v. Phillips*, 116 W. Va. 207, 179 S.E. 303 (1935); *Watson v. Burley*, 105 W. Va. 416, 143 S.E. 95 (1928); *Jones v. Cook*, 90 W. Va. 710, 111 S.E. 828 (1922).

<sup>5</sup> See *Kuchlik v. Feuer*, 267 N.Y. Supp. 256, 191 N.E. 555 (1933); *Gudziewski v. Stemplesky*, 263 Mass. 103, 160 N.E. 334 (1928); but see *Mazzocchi v. Seay*, 126 W. Va. 490, 29 S.E.2d 12 (1944).