Insurance & Personal Injury

Do Parents Have Liability to Third Party for the Wrong Done by Their Child?

Personal injuries caused by minors are not uncommon in Hong Kong. Are the parents, being the caretakers, liable for the torts committed by their child? This article aims to discuss the general legal principles on parental responsibility to third party under the tort of negligence.

Do Parents Owe Duty to Third Party?

In Chan Wai Nga v Tam Chi Wai [2006] HKCU 1097, when a group of parents and children are having lunch in a restaurant, a 8 year-old boy toppled a jug when turning a turntable and sent scalding hot tea onto the plaintiff, a 2 year-old toddler, resulting in second degree burns on 11% of the plaintiff's skin. At the time of the incident, both of them were at a children's table while their parents were at another table. The plaintiff's case was that the parents of the 8 year-old boy, the defendants, have failed to properly supervise their son as they were not accompanying him at the relevant time. In the alternative, the defendants have failed to stop the boy playing with the turntable where the presence of a jug made it a potential danger.

The Court held that there is no general duty arising simply from parenthood to prevent a child from causing damage to third parties and a parent is not vicariously liable for his child’s wrong doing. Constant supervision of a child is not always required. The duty of a parent is to exercise a reasonable degree of supervision and control over the child, in view of any foreseeable danger in the activities the child was involved in at the relevant time, taking into account that particular child's propensity to meddle.

As the boy was a well behaved independent 8 years old boy with no aggressive temperament, and that there was no evidence that the defendants could have foreseen any danger or special circumstances, the Court found that requiring close and constant supervision under these circumstances would be imposing an impossible task on parents. It was, therefore, held that the parents were not negligent and not liable for the plaintiff’s injuries.

Reasonable Degree of Supervision and Control

What would be considered as a reasonable degree of supervision and control then? It will depend on the facts of each case. The following factors are to be considered in determining the liability of the parents.
As young children are considered immature and inexperienced, their parents could not ensure that they would certainly behave in a proper manner. Therefore, it is more likely that parental supervision and control required in such case would be higher. However, the extent of responsibility varies with the age of the child. One would expect an adolescent, as compared to a toddler, requires more freedom and less supervision.

If the parents knew or ought reasonably to have known that their child has a particular dangerous propensity, they might be liable if necessary steps were not taken in protecting others from their child’s particular propensity. For instance, if the child has an aggressive temperament, the Court might expect a closer and more constant supervision from the parents.

In Smith v. Leurs (1945) 70 C.L.R. 256, the Court considered that where there is knowledge of a child’s unusual characteristics, the analogy of knowledge-based liability for domestic animals may be applicable. In the cases involving the owner’s liability for domestic animals, the Court held that if a tamed dog of mild disposition bites someone as a result of a spontaneous act which is wholly out of character, the act of biting is unforeseeable and the owner will not be liable. On the other hand, if the dog is a fierce and dangerous breed and it is reasonably foreseeable that the dog will bite, the owner will be liable if proper precautions are not taken.

Moreover, parents may be liable if he or she leaves a dangerous object with a child without proper warning. In Newton v Edgerley [1959] 1 W.L.R. 1031, the defendant, a farmer, gave his 12 year-old son a gun and showed him how to use it. Despite being given instructions not to take the gun off the farm and not to use it when other children are present, the 12 year-old son accidentally shot one of his friends when they went out for a shooting expedition. As the defendant could not ensure that his child would adhere to the instructions, the Court held that he was liable for negligence as he had entrusted a dangerous thing to a child in circumstances where injury to others is foreseeable.

To conclude, there is no general duty on the parents to keep a child under constant supervision. The duty of parents is to exercise a reasonable degree of supervision and control over the child, in view of any foreseeable danger in the activities the child was involved in at the relevant time, taking into account the age of the child and the child’s propensity to meddle.
For enquiries, please contact our Insurance & Personal Injury Department:

E: insurance_pi@onc.hk  T: (852) 2810 1212  
W: www.onc.hk            F: (852) 2804 6311
19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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