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Torts

University of the Pacific; McGeorge School of Law

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Torts

Torts; liability of parent or guardian

Education Code §10606 (amended); Government Code §53069.5 (amended).

AB 3516 (Dixon); STATS 1974, Ch 1062

Prior to amendment of section 10606 of the Education Code, the parents of any minor were liable for damage caused by his cutting, defacing, or otherwise injuring the real or personal property of a school district. Chapter 1062 has amended section 10606 to provide that the parents or guardian of an *unemancipated* minor shall be civilly liable for the willful acts of the minor which result in the personal injury or *death* of a student, employee, or volunteer of a school district. In addition, section 10606 creates liability on the part of the parents or guardian for any reward paid pursuant to Government Code Section 53069.5, although in any situation the *total* liability for the civil damages and the reward may not exceed \$2,000.

Government Code Section 53069.5 has been amended to authorize local agencies to offer a reward for any information leading to the identification or apprehension of any person causing the injury or death of a student, employee, or volunteer worker of a local agency, through an act of willful misconduct.

COMMENT

Pursuant to section 1714.1 of the Civil Code, a parent or guardian is liable for damages not exceeding \$2,000 resulting from the tortious conduct of his minor child. Section 10606 of the Education Code applies only to tortious conduct perpetrated on school grounds and creates a ceiling on damages identical to that of the Civil Code provisions.

Torts; property defacement

Civil Code §1714.1 (amended); Penal Code §594.5 (new).

SB 1338 (Song); STATS 1974, Ch 340

Section 594.5 has been added to the Penal Code to provide that any person who defaces the property of another with paint or any other liquid without the permission of the owner is guilty of a misdemeanor. Such defacement is punishable by a maximum fine of \$500, or not more than 30 days in the county jail, or both. As an alternative to a jail sentence, the court in its discretion may place the defendant on probation. As a condition of such probation, the court may require that the violator either wash, paint, or repair the damage, or provide some other form of compensation to the owner. Section 594.5(c) specifically states that nothing in the section should be construed to invalidate or prevent passage of local ordinances regulating the sale of aerosol paint containers or other liquids capable of defacing property.

Civil Code Section 1714.1 has been amended to specify that when a *minor* willfully defaces property of another with paint or a similar substance the parents having custody and control of the minor will be jointly and severally liable for the damage up to a maximum of \$2,000 for each tort, *including* court costs and attorney's fees. Prior to amendment, section 1714.1 provided for general parental liability for a minor's torts up to a maximum of \$2,000 for each tort.

Torts; good samaritan immunity

Business and Professions Code §2861.5 (new).

AB 896 (Fong); STATS 1974, Ch 824

Support: California Medical Association; California Nurses' Association; California Licensed Vocational Nurses' Association

Section 2861.5 has been added to the Business and Professions Code to provide that vocational nurses who act in good faith to render care at the scene of an emergency which occurs outside the place and scope of their employment shall not be liable for civil damages as a result of any acts or omissions occurring during the course of the emergency care. This immunity does not extend to any acts or omissions which are the result of gross negligence.

Section 2861.5 appears to be another codification of the common law principle which immunizes a rescuer from civil liability resulting from injuries sustained as a consequence of his acts or omissions. The immunity granted by section 2861.5 is similar to that provided for registered nurses (§2727.5) and to licensed physicians (§2144), although section 2144 does not specifically state that the immunity shall be lost if the physician is "grossly negligent." As a "good samaritan"

statute, this legislation should encourage vocational nurses to volunteer emergency aid at the scene of an accident without fear of liability.

See Generally:

- 1) W. PROSSER, *HANDBOOK ON THE LAW OF TORTS* §33, at 168 (4th ed. 1974).

Torts; defamation immunity—medical competency

Civil Code §43.8 (new).

AB 3633 (Waxman); STATS 1974, Ch 1086

Support: California Medical Association; California Hospital Association

Chapter 1086 has added section 43.8 to the Civil Code to protect from civil liability any person furnishing information concerning the qualifications, fitness, or character of a practitioner of the healing arts to any of the specified medical and dental organizations which are evaluating the practitioner. The information must be furnished in good faith and extend only to evaluations conducted by hospitals, hospital medical staffs, professional societies, medical and dental schools, or professional licensing boards. The privilege may be lost if the information represents to be true any matter not reasonably believed to be true by the declarant. This provision is supplemental to, and not in lieu of, the privileges afforded by Civil Code Section 47 (privileged broadcasts and communications).

COMMENT

Chapter 1086 has apparently been enacted to encourage the free exchange of relevant information regarding the competence of medical practitioners by providing protection against defamation actions that may result from the revelation of such information. This type of information is desired by various medical organizations for the purpose of self-regulation and discovery of incompetence before any harm occurs.

Prior to the enactment of chapter 1086, protection against possible defamation actions was provided by Civil Code Section 47(3), which encompasses defamation actions in general. Apparently, there was concern that section 47(3) was not specific enough in offering protection for one who has in good faith furnished information to an interested party regarding the competency or fitness of a medical or dental practitioner. Note that for a communication to be privileged under section 47(3), it must be made to a party who is interested in the

information by one who: (1) also has a legitimate interest; (2) stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication is innocent; or (3) is requested by the recipient to render the information. Any such communication must be made without malice. However, one who communicates to another regarding the fitness of a medical practitioner may not be able to convincingly show that his interest or that of the recipient is protected under the general provisions of section 47(3).

Newly added section 43.8, which specifically concerns communications of evaluations of *medical* practitioners, offers a slightly different level of protection than the prior section. The key difference is that under the new statute, the communicator cannot avail himself of the protection afforded if he has represented to be true any matter not reasonably believed to be true. It would seem, then, that one may lose this narrowly drawn privilege if he communicates information which a reasonable person would not believe to be true. This is comparable to, but certainly different from, the malice requirement of the earlier statute. Thus, it seems surprising that in an attempt to provide more adequate protection than section 47(3) affords, chapter 1086 appears to have set a higher standard of care than was formerly required.

See Generally:

- 1) *Warfield v. McGraw-Hill, Inc.*, 32 Cal. App. 3d 1041, 108 Cal. Rptr. 652 (1973) (defendant, who slandered plaintiff by reporting to his employer that he was unfit for his executive position, successfully invoked section 47(3) because he showed a legitimate interest not motivated by malice).