

## **The Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors**

In September 1985, the Commission published its Report on [\*The Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors \(LRC 17–1985\)\*](#).

The Report began by noting the mental ingredients of different classes of torts. Some torts involve strict liability and the minority of the tortfeasor does not afford a defence in such cases. The Report made no recommendations that there should be any alteration in this position.

To establish other torts such as defamation or malicious prosecution, proof of malice on the part of the wrongdoer must be established. The Report did not recommend any amendment of the law as it affects minors in such cases.

In the case of torts where the negligence of the wrongdoer or the contributory negligence of the person injured is an issue, the Report recommended that the standard for determining whether a child is guilty of contributory negligence should be that appropriate to a reasonable child of the same age, mental development and experience as the child whose conduct is in issue in the case. This would not involve any amendment of the existing law. However, the Report went on to recommend that the legislation should specify that the special standard proposed in respect of children should not apply to persons over 16 years.

Detailed consideration was given to whether, as an exception to the general rule, the standard of care required of a minor should be that of an adult when the minor performs adult activities such as driving a car, using a gun or playing sports normally played by adults. It was noted that in some other common law jurisdictions an adult standard has been imposed upon minors in respect of some of these activities. However, the report concluded that, having regard to the inherent injustice and uncertainty of this approach, no such qualification to the general criteria for determining the negligence and contributory negligence of children should be introduced into our law. To meet the special problem created by the negligence of drivers of motor cars who are minors the Report recommended that a compensation fund should be established to compensate persons injured by child drivers where the children, by reason of the application of the special standard of care applicable to children, are held not to have been negligent.

The Report recommended that in proceedings against a child under 16 for trespass, where it has been established that the child's action was voluntary and intentional, liability should be imposed unless the child can show, to the satisfaction of the Court, that having regard to his or her age, mental development and experience he or she has not such personal responsibility of the action that it would be just to impose liability.

As regards the law relating to the liability of parents and other persons for the wrongful act of a minor, the Report recommended that existing rules should continue to apply and that, outside their scope, parents should not be vicariously or strictly liable for the children's torts. A proposal that a presumption of parental negligence should obtain wherever a tort is committed by a child was rejected by the Commission.

Draft legislative provisions are included in the Report.

<b>Information on Implementation</b>
--------------------------------------