

Child Liability

7. As recognized in *Walker*, there is a very general view that minors are liable for their torts. An older view, still sometimes referred to, was that children under seven were “conclusively presumed to be incapable of harmful intent.” Several states still follow this “rule of sevens.”

8. What solutions are available for dealing with the problem of child-produced harms? Notice that the child’s age would be relevant to show that he could not form an adequate intent to touch, to offend or to harm. Should we say as a matter of law that a child of four cannot harbor an intent to strike a babysitter in a harmful or offensive way, or is it a matter of assessing the intent in the particular case? *Bailey v. C.S.*, 12 S.W.3d 159 (Tex.App.2000) (4-year-old hit babysitter in the throat, crushing larynx). What about holding a child liable for intended harms, but not for intended offense? This was approved in *Horton v. Reaves*, 186 Colo. 149, 526 P.2d 304 (1974).

POLMATIER v. RUSS

Supreme Court of Connecticut, 1988.
206 Conn. 229, 537 A.2d 468.

GLASS, JUSTICE.

... On the afternoon of November 20, 1976, the defendant and his two month old daughter visited the home of Arthur Polmatier, his father-in-law. Polmatier lived in East Windsor with his wife, Dorothy, the plaintiff, and their eleven year old son, Robert. During the early evening Robert noticed a disturbance in the living room where he saw the defendant astride Polmatier on a couch beating him on the head with a beer bottle. Robert heard Polmatier exclaim, “Norm, you’re killing me!” and ran to get help. Thereafter, the defendant went into Polmatier’s bedroom where he took a box of 30–30 caliber ammunition from the bottom drawer of a dresser and went to his brother-in-law’s bedroom where he took a 30–30 caliber Winchester rifle from the closet. He then returned to the living room and shot Polmatier twice, causing his death....

The defendant was taken to a local hospital and was later transferred to Norwich Hospital. While in custody he was confined in Norwich Hospital or the Whiting Forensic Institute. The defendant was charged with the crime of murder ... but was found not guilty by reason of insanity.... Dr. Walter Borden, a psychiatrist, testified at both the criminal and this civil proceeding regarding the defendant’s sanity.... He concluded that the defendant was legally insane and could not form a rational choice but that he could make a schizophrenic or crazy choice. He was not in a fugue state. The trial court found that at the time of the homicide the defendant was insane.

The substitute complaint for the wrongful death of Polmatier alleged in the first count that the death resulted from an assault, beating and shooting by the defendant, and included a second count for exemplary damages and a third count based on negligence....

The majority of jurisdictions that have considered this issue have held insane persons liable for their intentional torts. See 4 Restatement (Second), Torts § 895J. The majority rule has been applied to cases involving intentional homicide. . . .

A leading case is *Seals v. Snow*, 123 Kan. 88, 254 P. 348 (1927). [In that case, the Kansas Supreme Courts said:] “The great weight of authority is that an insane person is civilly liable for his torts. This liability has been based on a number of grounds, one that where one of two innocent persons must suffer a loss, it should be borne by the one who occasioned it. Another, that public policy requires the enforcement of such liability in order that relatives of the insane person shall be led to restrain him and that tort-feasors shall not simulate or pretend insanity to defend their wrongful acts causing damage to others, and that if he was not liable there would be no redress for injuries, and we might have the anomaly of an insane person having abundant wealth depriving another of his rights without compensation.”

. . . The defendant argues that for an act to be done with the requisite intent, the act must be an external manifestation of the actor’s will. . . . The defendant argues that if his “activities were the external manifestations of irrational and uncontrollable thought disorders these activities cannot be acts for purposes of establishing liability for assault and battery.” We disagree.

. . . Comment b . . . in pertinent part “A muscular reaction is always an act unless it is a purely reflexive reaction in which the mind and will have no share.” Although the trial court found that the defendant could not form a rational choice, it did find that he could make a schizophrenic or crazy choice. Moreover, a rational choice is not required since “[a]n insane person may have an intent to invade the interests of another, even though his reasons and motives for forming that intention may be entirely irrational.” . . .

We recognize that the defendant made conflicting statements about the incident when discussing the homicide. At the hospital on the evening of the homicide the defendant told a police officer that his father-in-law was a heavy drinker and that he used the beer bottle for that reason. He stated he wanted to make his father-in-law suffer for his bad habits and so that he would realize the wrong that he had done. He also told the police officer that he was a supreme being and had the power to rule the destiny of the world and could make his bed fly out of the window. When interviewed by Dr. Borden, the defendant stated that he believed that his father-in-law was a spy for the red Chinese and that he believed his father-in-law was not only going to kill him, but going to harm his infant child so that he killed his father-in-law in self-defense. The explanations given by the defendant for committing the homicide are similar to the illustration of irrational reasons and motives given in comment c to § 895J of the Restatement. . . .

Under these circumstances we are persuaded that the defendant's behavior at the time of the beating and shooting of Polmatier constituted an "act" within the meaning of comment b, § 2, of the Restatement. . . .

As discussed above, the defendant gave the police and Borden several reasons why he killed Polmatier. Under comment c to § 895J of the Restatement, it is not necessary for a defendant's reasons and motives for forming his intention to be rational in order for him to have the intent to invade the interests of another. Considering his statements to the police and to Borden that he intended to punish Polmatier and to kill him, we are persuaded that the defendant intended to beat and shoot him. Because the defendant was found not guilty by reason of insanity, it is uncontested in this civil action that he was incapable of forming the intent necessary for criminal responsibility for Polmatier's death. Under General Statutes § 52-555, the wrongful death statute, however, intent is not an essential element of the cause of action.

There is no error.

Notes

1. *Majority rule.* Polmatier states the usual American view that the defendant's insanity is not, in itself, an excuse from tort liability.

2. *Role of fault.* Should we regard this as an exception to the principle that liability is based upon the defendant's fault? Or is it merely that fault is defined by an objective standard, not by the plaintiff's subjective capacities? Should liability be based upon moral fault of the defendant and his responsibility for that fault? Or should it be based on compensation for the victim?

3. *Common law.* Canada, like the United States, is a common law country in which most tort law is made by judicial decision in concrete cases. Canadian case law, like American, refuses any blanket immunity for insane persons. The question is whether the defendant had the requisite intent; if he did, the fact that it arose from insanity is not relevant. Sparse English authority seems to agree.

4. *Civil law.* The civil law, as contrasted with the common law, begins with general principles formally stated in codes of law. Civil law courts of course decide particular cases, but they begin analysis by considering a Code provision. Civil law, rooted in Roman jurisprudence, is the dominant legal system in Europe, Central and South America, and elsewhere outside the Anglo-American legal communities. It is also an important heritage in Louisiana by way of the French connection and in the Southwest by way of the Spanish connection. The traditional civil law held that a mentally unsound person "cannot commit a fault." This can be seen today in the German Civil Code § 827, excluding civil responsibility for one who is unable to exercise free will, except where he brought on temporary disability by use of alcohol or similar means. But civil law countries today are divided. In Mexico, the Código Civil para el Distrito Federal § 1911 provides that the incompetent person is liable unless some other person such as a guardian is liable. ("El incapaz que cause daño debe repararlo, salvo que la responsabili-

dad recaiga en las personas de él encargadas, conforme lo dispuesto en [otros artículos].”)

5. *Options.* If you were writing a statute to resolve the problem of injury caused by insane persons, would you want to consider any other options besides liability or non-liability? Crime victims' compensation statutes have been enacted in many states. Under these statutes the state may create a fund for the partial compensation of crime victims, at least where the criminal himself is not made to pay. See Charlene Smith, *Victim Compensation: Hard Questions and Suggested Remedies*, 17 RUTGERS L. J. 51 (1985). Would this be a good solution for the problem represented by *Polmatier*?

6. *Bases for general rule.* What are the bases for the general rule that refuses to shield insane persons? First consider whether they are persuasive. Could you convince some judges to reject them? Second, consider the nature of the reasons. Are they arguments about justice or about policy?