
TORTS

Parental Liability for Torts of Child

In West Virginia, the custodial parent or parents of any minor child are personally liable in an amount not to exceed five thousand dollars for damages which are the proximate result of any one or a combination of the following acts of the minor child:

- (1) The malicious and willful injury to the person or property of another; or
- (2) The malicious and willful setting of a forest fire; or
- (3) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

See W.Va. Code § 55-7A-2

Negligence Standard of Care Professionals (national v. community standard)

In evaluating a physician's disclosure of information to his or her patient, relative to whether that patient gave an informed consent to a particular medical procedure such as surgery, the West Virginia Supreme Court has held that the patient need standard, rather than physician disclosure standards based upon national or community medical disclosure practice. Pursuant to the patient need standard, the need of the patient for information material to his or her decision as to method of treatment, such as surgery, is the standard by which the physician's duty to disclose is measured.

Negligence Premises Liability

In most jurisdictions a landowner's premises liability is determined by the duty of care that is owed to another person who enters upon the land based on categories such as invitee, licensee, and trespasser. In some jurisdictions, however, those categories have been replaced with a requirement that the landowner's duty of care will be measured based upon the totality of the circumstances of the person's entry upon the land.

In West Virginia, the common law distinction between licensees and invitees was abolished. Landowners or possessors now owe any non-trespassing entrant a duty of reasonable care under the circumstances. The traditional rule with regard to trespassers - that a landowner or possessor need only refrain from willful or wanton injury - has been retained.

Negligence Negligent Infliction of Emotional Distress - Zone of Danger

West Virginia has rejected the "zone of danger" test.