TORTS: NARROWING SCOPE OF THE PARENTAL IMMUNITY DOCTRINE

I. INTRODUCTION

Hewlett v. George,[1] an 1891 Mississippi decision, was the first judicial declaration of the doctrine of parental immunity in the United States.[2] In that case, an unemancipated minor brought suit to recover for personal injuries resulting from being falsely imprisoned at her mother's direction. The court held that because of the parent-child relationship, "no such action as this can be maintained."[3] The rationale enunciated in this opinion remains the dominant reasoning of courts today: "The peace of society, and of the families composing society, and a sound public policy . . . forbid to the minor child a right to appear in court in the assertion of a claim to civil redress . . . ."[4] No supporting precedent, at common law or otherwise, existed for the doctrine,[5] except by analogy to the domestic tranquillity argument traditionally used to bar tort actions between spouses.[6]

Subsequent judicial development has narrowed the parental immunity doctrine's original sweep, through the familiar piecemeal process of limitation and exception. The purpose of this note is to discuss the present scope of the doctrine and to make a critical evaluation of its present and future worth in the service of its purported objective.

The *Hewlett* case laid the broadest possible foundation for the granting of parental immunity in suits brought by a minor child. For example, a 1903 Tennessee case[7] held that a child was unable to sue her father and stepmother for cruel treatment. Two years later a Wash-

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1. 68 Miss. 703, 9 So. 885 (1891). For cases prior to the Hewlett case, see Bird v. Black, 5 La. Ann. 189 (1850); Faulk v. Faulk, 23 Tex. 653 (1859).

2. While characterization of the Hewlett decision as the foundation of the parental immunity doctrine is presumptive, subsequent decisions have either expressly or impliedly attributed the doctrine's origin in the United States to that case. Of parental immunity it has been said: "All the authorities are modern. What may be termed the earlier ones, those prior to 1891 [the date of the Hewlett case] are meager, conflicting, and obscure." McCurdy, Torts Between Persons in Domestic Relations, 43 Harv. L. Rev. 1030, 1059 (1930).

3. 68 Miss. at 711, 9 So. at 887.

4. Ibid.

5. The presence of a common law basis for the doctrine is disputed. The following sources indicate that little or no common law background exists: Dunlap v. Dunlap, 84 N.H. 352, 354, 150 Atl. 905, 906 (1930); Annot., 19 A.L.R.2d 425 (1951); Prosser, Torts 675 (2d ed. 1955).

6. See discussion in 34 Chi.-Kent L. Rev. 333, 336 (1956).

7. McKelvey v. McKelvey, 111 Tenn. 388, 77 S.W. 664.

ington court denied redress to a child raped by her father,[8] despite the fact that domestic harmony had obviously been destroyed.[9] However, by the end of the 1920's a definite judicial trend assailing both the value and the rationale of the parental immunity doctrine had taken shape.[10] Recognizing that indiscriminate application of the rule might not always be just, various courts demonstrated a growing inclination to narrow the scope of the doctrine. This laudable propensity, though continuing to grow, has not culminated in any uniform or clearly defined answer to the central problem involved—that of balancing the injured child's need for redress against society's interest in maintaining family harmony and discipline. The *Hewlett* rule baldly denying relief admittedly recognizes only one interest and totally disregards the other. Whether it truly fosters the interest which it does recognize is an inquiry which seems to have escaped the attention of far too many courts.

II. THE MAJORITY VIEW—PARENTAL IMMUNITY WITH EXCEPTIONS

The parental immunity rule has been attacked along two lines. One discredits its basic rationale and disposes of the rule entirely;[11] the other applies the rule, but creates exceptions when variant fact situations warrant. The latter approach is the prevailing one among courts today. The majority view is well typified by the following statement in *Baker v. Baker*,[12] a 1953 Missouri case: "A parent is not liable to an *unemancipated* minor child for injuries sustained through the *negligence* of the parent *while acting within parental authority or duty*."[13] Different results are reached depending on the courts' varied interpretations of the emphasized words.

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8. Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905).

9. "There seems to be some reason in this argument [that any harmonious relations existing have been disturbed], but it overlooks the fact that courts, in determining their jurisdiction or want of jurisdiction, rely upon certain uniform principles of law, and, if it be once established that a child has a right to sue a parent for a tort, there is no practical line of demarcation which can be drawn. . . ." 37 Wash. at 244, 79 Pac. at 788-89.

10. See, e.g., Mesite v. Kirchenstein, 109 Conn. 77, 145 Atl. 753 (1929); Elias v. Collins, 237 Mich. 175, 211 N.W. 88 (1926); Taubert v. Taubert, 103 Minn. 247, 114 N.W. 763 (1908); Small v. Morrison, 185 N.C. 577, 118 S.E. 12 (1923); Matarese v. Matarese, 47 R.I. 131, 131 Atl. 198 (1925); Wick v. Wick, 192 Wis. 260, 212 N.W. 787 (1927).

11. Only a few cases attempt totally to discredit and dismiss parental immunity. See Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743 (1952); dissenting opinions in Small v. Morrison, and Wick v. Wick note 10 supra.

12. 364 Mo. 453, 263 S.W.2d 29 (1953).

13. Id. at 456, 263 S.W.2d at 31. (Emphasis added.)

1. Emancipation.

The interpretation of "emancipation" has been a decisive factor in numerous cases. The *Hewlett* case itself, while denying recovery by the child, conceded that "if, by her marriage, the relation of parent and child had been finally dissolved . . . then it may be that the child could successfully maintain an action against the parent for personal injuries."[14] When a child is emancipated, family harmony and discipline no longer present forceful public policy considerations. Further, although the possibility of collusive suits under such circumstances is clearly a risk, the danger of collusion is real only if the parent is insured. This danger will be treated in detail in later portions of this note dealing specifically with insurance.[15] The following limitations have been established which prevent suits by obviously unemancipated children: a general presumption against emancipation,[16] allocation of the burden of proof of emancipation to the party alleging it,[17] the rule that age twenty-one is not ipso facto emancipation,[18] and the rule that only complete emancipation will remove the immunity.[19] Decisions turning upon standards of emancipation well illustrate the judicial process of inclusion and exclusion in this area. In one case[20] a nineteen year old daughter held outside employment and lived at home, paying board to her family. In a negligence suit against her father, the court held that the evidence was not sufficient to establish emancipation. Yet, in another case[21] in which a seventeen year old child was employed away from home, paying neither room nor board to live at home, the court held the evidence sufficient to make a case for jury consideration. These results show that the courts' predispositions to allow or deny recovery, though perhaps based in reality on other considerations, may be articulated in terms of "emancipation." Unless emancipation is more clearly defined, results obtained by these courts will remain unpredictable.

2. Negligence Cases.

Most courts have barred a child's recovery in negligence suits against a parent. Although earlier cases applied the parental immunity doctrine even when injuries were characterized as willful and

14. 68 Miss. at 711, 9 So. at 887.

15. Text at notes 36-48 and 56-68 infra.

16. See Bulloch v. Bulloch, 45 Ga. App. 1, 2, 163 S.E. 708, 709 (1932).

17. See Brumfield v. Brumfield, 194 Va. 577, 580, 74 S.E.2d 170, 173 (1953).

18. See Goldstein v. Goldstein, 4 N.J. Misc. 711, 712, 134 Atl. 184 (Sup. Ct. 1926).

19. See Cafaro v. Cafaro, 118 N.J.L. 123, 127, 191 Atl. 472, 474 (1937). Also, see generally on emancipation, Note, 9 S.C.L.Q. 269 (1957).

20. Wurth v. Wurth, 313 S.W.2d 161 (Mo. Ct. App. 1958).

21. Wood v. Wood, 135 Conn. 280, 63 A.2d 586 (1948).

wanton,[22] today, with few exceptions,[23] courts permit minors to sue parents for willful and wanton conduct.[24] Two groups of cases, involving excessive punishment and automobile accidents, comprise most of the litigation concerning wanton and willful conduct. In the excessive punishment cases the majority of courts concede the parent's discretionary right to administer disciplinary measures, but only if accompanied by proper motives of duty.[25] Courts will tolerate parental error of judgment in excessive punishment cases, but will not excuse malice,[26] and the determination of what is *reasonable* punishment in a particular case is a jury question.[27] One court has stated, "There is no such thing as reasonable punishment from a malicious motive."[28] Most automobile accident cases of significance in the parental immunity area are based on allegations of drunken driving, excessive speed,[29] or both. A court's determination that the parent's acts in such a case exceeded ordinary negligent conduct is sufficient to eliminate the parental immunity. At least one court has forthrightly stated that the rule should be modified to allow recovery for a willful or malicious tort.[30] The rule of the punishment and auto accident cases is equally applicable to the occasional bizarre case like *Mahnke v. Moore*,[31] in which a five year old girl was allowed to recover damages sustained by watching her father murder her mother and then take his own life.

Thus, courts have allowed recovery by a minor in instances where the parent's conduct has transcended negligence. This is clearly desirable in view of society's strong interest in permitting children to re-

22. See Hewlett v. George, 68 Miss. 703, 9 So. 885 (1891); McKelvey v. McKelvey, 111 Tenn. 338, 77 S.W. 664 (1903); Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905).

23. E.g., Chastain v. Chastain, 50 Ga. App. 241, 177 S.E. 828 (1934); Cook v. Cook, 232 Mo. App. 994, 124 S.W.2d 675 (1939) (foster parent).

24. E.g., Mahnke v. Moore, 197 Md. 61, 77 A.2d 923 (1950); Cowgill v. Boock, 189 Ore. 282, 218 P.2d 445 (1950).

25. Emery v. Emery, 45 Cal. 2d 421, 430, 289 P.2d 218, 224 (1955); Cowgill v. Boock, 189 Ore. 282, 301, 218 P.2d 445, 453 (1950). See generally, Reeve, Domestic Relations 357 (4th ed. 1888).

26. Reeve, op. cit. supra note 25, at 357.

27. Clasen v. Pruhs, 69 Neb. 278, 284, 95 N.W. 640, 642 (1903).

28. Haycraft v. Grigsby, 88 Mo. App. 354, 359 (1901). This case involved a schoolteacher and a child, rather than a parent-child relationship. A teacher, however, is one who acts in loco parentis and for the purposes of punishment has the same immunity as a parent.

29. E.g., Buttrum v. Buttrum, 98 Ga. App. 226, 105 S.E.2d 510 (1958); Henderson v. Henderson, 169 N.Y.S.2d 106 (Sup. Ct. 1957); Cowgill v. Boock, 189 Ore. 282, 218 P.2d 445 (1950).

30. Cowgill v. Boock, 189 Ore. 282, 301, 218 P.2d 445, 453 (1950).

31. 197 Md. 61, 77 A.2d 923 (1950).

cover in cases of parents' aggravated or reprehensible conduct. Further, in the punishment cases, the reason for granting a parent immunity from suit is eradicated, since there could be little harmony in a home beset with fears of wanton or malicious treatment.

3. Parental Authority and Duty.

Finally, the majority view as expressed in the *Baker* case[32] states the limitation that parental immunity applies only to a suit for injuries sustained while the parent was acting within parental authority and duty. However, a child may circumvent this limitation and successfully sue his parent if certain factors are present. First, there must be a consensual relationship between parent and child, in addition to the parent-child relation itself. This extra-parental relationship may arise in business situations, as where a father employs his son, and also in non-business cases, as where a mother drives the family car with her child as passenger. Because the relationship must be consensual, this classification excludes the situation where a parent-driver injures a child-pedestrian, since there is no consent. Another factor which undoubtedly has been an important cause for abrogation of parental immunity in this area has been the existence of personal or business liability insurance.[33] A study of all cases in which a child brought a negligence action against an insured parent reveals twenty decisions to date which may be categorized into four groups: (1) a dual relationship plus personal liability insurance,[34] (2) a dual relationship plus liability insurance on behalf of a business,[35] (3) no dual relation-

32. Text at note 13 supra.

33. As Prosser says, "Still others [courts] have allowed recovery where the child is injured in the course of a business, rather than a personal activity of the parent; and here they have been visibly influenced by the presence *or possibility* of liability insurance." Prosser, Torts 677 (2d ed. 1955). (Emphasis added.) Three of the five cases found which allow recovery do so because of the insurance. The above statement may indicate that the courts are more influenced by the presence or possibility of insurance than the formal opinions explicitly indicate.

34. The following cases are so categorized: Villaret v. Villaret, 169 F.2d 677 (D.C. Cir. 1948); Owens v. Auto Mut. Indem. Co., 235 Ala. 9, 177 So. 133 (1937); Mesite v. Kirchenstein, 109 Conn. 77, 145 Atl. 753 (1929); Elias v. Collins, 237 Mich. 175, 211 N.W. 88 (1926); Lund v. Olson, 183 Minn. 515, 237 N.W. 188 (1931); Levesque v. Levesque, 99 N.H. 147, 106 A.2d 563 (1954); Damiano v. Damiano, 6 N.J.Misc. 849, 143 Atl. 3 (Cir. Ct. 1928); Small v. Morrison, 185 N.C. 577, 118 S.E. 12 (1923); Parks v. Parks, 390 Pa. 287, 135 A.2d 65 (1957); Norfolk So. R. Co. v. Gretakis, 162 Va. 597, 174 S.E. 841 (1934); Schwenkhoff v. Farmers Mut. Auto Ins. Co., 6 Wis. 2d 44, 93 N.W.2d 867 (1959); Munsert v. Farmers Mut. Auto Ins. Co., 229 Wis. 581, 281 N.W. 671 (1938); Ball v. Ball, 73 Wyo. 29, 269 P.2d 302 (1954). These are all host-passenger cases, none of which involved common carriers.

35. The following cases are so categorized: Belleson v. Skilbeck, 185 Minn. 537, 242 N.W. 1 (1932) (passenger-carrier); Taubert v. Taubert, 103 Minn. 247, 114

ship, but personal liability insurance,[36] and (4) no dual relationship, but liability insurance on behalf of a business.[37]

Thirteen of the twenty cases fall in the first category. All involve automobile liability insurance in guest-host type situations and none allows recovery. Of the five cases in the second category, three allow recovery. Two of these involve a guest-host relationship and the other a master-servant relationship; the two denying recovery are also split between these two relationships. Thus, the only possible distinction between the cases in this category allowing recovery and the cases in the first category which deny recovery is the type of insurance. Possibly the courts feel that a suit by a child against his parents in a business capacity is less likely to contravene public policy by disrupting family harmony. Only one case is present in each of the last two categories. Again where business insurance is present, recovery is allowed; where there is personal insurance, recovery is denied. Therefore, it may be concluded that if both business insurance and a dual relationship are present, some courts will allow recovery. Personal insurance with or without a dual relationship will not serve to eliminate immunity. One case in which business insurance was present, but a dual relationship was not, allowed recovery but specifically excluded insurance as a reason for decision.[38]

The three cases of the second category which allow recovery deserve special notice to indicate the significance attached to the insurance factor. In *Worrell v. Worrell*,[39] there was a guest-host relationship and business insurance. The court in allowing recovery interpreted the state's compulsory insurance statute as a legislative declaration of public policy superseding other public interests, i.e., family harmony. In *Lusk v. Lusk*[40] and *Dunlap v. Dunlap*,[41] the courts based recovery squarely on the insurance factor. The court in the former, a guest-host case, said it was not persuaded by "nice vocational distinctions," since the suit was still essentially between parent and child. However, the court said further: "A different situation arises where the parent is

N.W. 763 (1908) (master-servant); Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905 (1930) (master-servant); Worrell v. Worrell, 174 Va. 11, 4 S.E.2d 343 (1939) (passenger-carrier); Lusk v. Lusk, 113 W. Va. 17, 166 S.E. 538 (1932) (passenger-carrier).

36. See Baker v. Baker, 364 Mo. 453, 263 S.W.2d 29 (1953). In this case the father backed his automobile over his fifteen month old infant.

37. See Signs v. Signs, 156 Ohio St. 566, 103 N.E.2d 743 (1952). Here a gas pump on the business premises of the father exploded with consequent injury to the child who was playing there.

38. Ibid.

39. Supra note 35.

40. Supra note 35.

41. Supra note 35.

protected by insurance in his vocational capacity."[42] The *Dunlap* case was a master-servant situation, and the court in allowing redress said: "There is evidence that the father understood that he had done whatever was necessary to make him accountable to his son for failure to perform a *master's* duty. His taking out insurance against such liability is competent evidence of that fact."[43]

Three recent cases indicate that the immunity doctrine is being subjected to attack on broader grounds. In *Borst v. Borst*,[44] a Washington case not classified above because no insurance was involved, a child while playing in the street was run over by its father. At the time, the father was driving his company's truck on company business. In refuting all the usual arguments for parental immunity, the court said: "The reasons for the rule do not exist, and the mantle of immunity therefore disappears, where the tort is committed by the parent in a non-parental transaction."[45] By way of dictum the court implied that it would make no difference whether or not there was insurance. Thus, at least in Washington, no dual relationship is needed to destroy parental immunity. Moreover, in *Signs v. Signs*,[46] the case placed above in the fourth category, recovery was allowed though there was no dual relationship, as the child was hurt while playing near its father's gas pump at his gas station. It may be inferred that insurance was present in the case, but this fact loses significance in view of the court's declaration that insurance had no effect upon the cause of action and that the issue should be solved irrespective of insurance. Finally, in *Brennecke v. Kilpatrick*,[47] a 1960 Missouri Supreme Court case, the court held that a child may sue a deceased parent's estate, citing a long list of husband and wife cases as indirect support, and arriving at its decision by saying that the reason for the parental immunity rule failed because family harmony cannot be impaired when the parent has died. Nowhere does the court consider that the plaintiff's recovery might cause family disharmony because of its consequent diminution of the inheritable estate. The court denominated the bar procedural rather than substantive and referred to insurance

42. Lusk v. Lusk, 113 W. Va. 17, 19, 166 S.E. 538, 540 (1932.

43. Dunlap v. Dunlap, 84 N.H. 352, 364, 150 Atl. 905, 911 (1930).

44. 41 Wash. 2d 642, 251 P.2d 149 (1952).

45. Id. at 657, 251 P.2d at 156.

46. 156 Ohio St. 556, 103 N.E.2d 743 (1952). The inference that insurance was present in the case is based partially on the citation of the Signs case in Borst v. Borst, supra note 44, where in reference to the Signs case, it is said: "Although public liability insurance was present . . . ." 41 Wash. 2d at 649, 251 P.2d at 152. Further in the Signs case itself, the court said: "[W]e are of the opinion that the problem presented to us should be solved irrespective of the question of such insurance . . . ." 156 Ohio St. at 573, 103 N.E.2d at 747.

47. No. 47, 577, Mo. Sup. Ct., March 14, 1960.

as being immaterial. A strong dissent in the case argued that if the court wanted to limit parental immunity, it should repudiate the doctrine completely, rather than create artificial distinctions. The dissent also found disconcerting the majority's statement that the cause of action survived, but the immunity did not.[48]

It is believed that the above three cases demonstrate a progressive step toward abrogation of parental immunity. Until this final goal is attained, the cases which allow an injured minor to recover when insurance is present seem wholly justifiable, for if the insurer pays, domestic tranquillity is not disturbed and the reason for the immunity fails.

III. Reasons for Majority's Adherence to the Rule

Although the doctrine of parental immunity has been narrowed by limitation and exception, the vast majority of courts still adhere to it tenaciously. Four reasons stand out to explain this tenacity.

1. The Evidentiary Rule Denying Admissibility of Insurance.

Most courts maintain a strict rule excluding evidence of insurance.[49] Consequently, it is arguable that juries will be reluctant to grant a child recovery against his parent for fear that the parent is not insured. However, in a suit by a minor when insurance is not present, the suit itself will reflect current family strife. Therefore, the rationale underlying the parental immunity rule should fail and hence the rule should fail. On the other hand, if insurance is present a recovery cannot produce disruption of family harmony. Further, the presence of insurance can often be made known to the jury either through voir dire examination of prospective jurors or in questioning of witnesses.[50] In such instances the rules of evidence denying admissibility of insurance are specious, for when the fact of insurance becomes known the jury will almost always consider it.

2. Partial Indemnification Will Not Assure Harmony.

Some courts maintain that since the indemnification provided by insurance may not cover the entire judgment, the family finances will be depleted and harmony will be threatened.[51] This argument was

48. Judge Eager, on pages 2-3 of his dissent said, "We believe, however, that in such a tort as the present one an immediate disability is imposed upon the right of action; that this attaches to the right and that it is permanent in nature. If the right of action survives, it survives only with the disability attached."

49. 2 Wigmore, Evidence § 282a, at 133 (3d ed. 1940).

50. Ratner, Insurance: The Forbidden Word, 3 Kan. L. Rev. 328 (1955).

51. See, e.g., Rambo v. Rambo, 195 Ark. 832, 114 S.W.2d 468 (1938); Luster v. Luster, 299 Mass. 480, 13 N.E.2d 438 (1938).

sensibly discredited in the *Dunlap* case,[52] on the ground that liability greater than the amount of insurance would be rare. Further, even if the parent should become liable for the uninsured portion of the judgment, the payment of a substantial part of the damages by the insurance company would tend to minimize any disruptive influence.

3. Danger of Collusion.

Many courts argue that fraud and collusion will inevitably result from any rule that allows recovery when the parent is insured.[53] However, the research of one court "failed to reveal any case upholding the immunity rule which has actually relied upon this argument."[54] The same court noted that the arguments of public policy based on family harmony and the collusion argument are mutually exclusive. A family could scarcely be disrupted by a suit it had cooperated in initiating; thus, the use of both arguments is contradictory. As another case indicated,[55] rather than prevent redress through fear of collusion, the courts should have faith in the efficacy of judicial processes to weed out fraudulently collusive suits from meritorious ones. Should this process fail and the problem become serious, the legislatures could abolish redress as has been done in guest-host motorist statutes.[56] Similarly, liability insurance companies could protect themselves by clauses precluding recovery in parent-child actions.

4. Insurance Cannot Create Liability When It Does Not Otherwise Exist.

Perhaps the most significant objection to abolishing the parental immunity rule is that mere issuance of a liability insurance policy creates no cause of action when no cause of action would exist in the absence of insurance.[57] The validity of such an argument hinges upon the relation of insurance to the cause of action. By one analysis, parental immunity is taken to mean that the parent owes the child no duty. Absent a duty, there can be no liability or recovery. If the introduction of insurance permits the child to recover, no conclusion can be drawn but that insurance has created the duty and consequent liability. But

52. Dunlap v. Dunlap, 84 N.H. 352, 150 Atl. 905 (1930).

53. See, e.g., Villaret v. Villaret, 169 F.2d 677 (D.C. Cir. 1948); Luster v. Luster, 299 Mass. 480, 13 N.E.2d 438 (1938); Parks v. Parks, 390 Pa. 287, 135 A.2d 65 (1937).

54. Borst v. Borst, 41 Wash. 2d 642, 652, 251 P.2d 149, 154 (1952).

55. Rozell v. Rozell, 281 N.Y. 106, 22 N.E.2d 254 (1939).

56. See Prosser, Torts § 77 (2d ed. 1955).

57. See, e.g., Villaret v. Villaret, 169 F.2d 677 (D.C. Cir. 1948); Rambo v. Rambo, 195 Ark. 832, 114 S.W.2d 468 (1938); Norfolk So. R. Co. v. Gretakis, 162 Va. 597, 174 S.E. 841 (1934).

of course insurance cannot create original liability, so courts accepting the "no duty" analysis are consistent in denying recovery. By another approach, in an ordinary negligence case the parent would owe a duty to *anyone;* thus there *is* a duty to the child who is injured. If the duty is breached, there is liability, but no recovery, because the courts have created the defense of parental immunity. If insurance is added in this analysis, and recovery allowed, the conclusion cannot be that insurance has created liability or duty, as both were already present. Insurance has simply removed immunity, and has restored the liability. This is the common understanding of the function of insurance. The court in the *Dunlap* case recognized the already existing duty, stating: "It is always to be borne in mind that denial of recovery has not been put upon the ground that the parent was not a wrongdoer."[58] Further, the court said insurance does not create liability, rather it "removes a barrier to the enforcement of a right."[59] The second analysis appears more cogent and logical, for courts accepting it can decide cases uninfluenced by metaphysical fears that they are creating a duty by the use of insurance.

Some courts unfortunately have shifted the burden of deciding what effect insurance should have to the legislature.[60] The legislature, however, did not create the parental immunity doctrine. "The doctrine of parental immunity . . . was created by the courts. It is especially for them to interpret and modify that doctrine to correspond with prevalent considerations of public policy and social needs."[61]

IV. CONCLUSION

There are three possible futures for the parental immunity doctrine: (1) Immunity could be reinstated in the completeness of *Hewlett v. George.* However, as previously indicated, an all-pervasive parental immunity rule would unnecessarily and arbitrarily deny relief to minors in all manner of suits against parents. (2) The present course by which the broad immunity rule has been narrowed by limitation and exception could be continued. But this has resulted in a highly unpredictable, cumbersome, and impractical body of law. (3) Immunity might be totally abrogated. This is the most logical course of action if it can be achieved without impairing family harmony. An analysis of each of the following four factual situations in which a child might sue his parent indicates that abolition of the parental immunity rule would not lead to any substantial impairment of family harmony. In

58. Dunlap v. Dunlap, 84 N.H. 352, 362, 150 Atl. 905, 910 (1930).

59. Id. at 367, 150 Atl. at 912.

60. See Elias v. Collins, 237 Mich. 175, 211 N.W. 88 (1926); Levesque v. Levesque, 99 N.H. 147, 106 A.2d 563 (1954).

61. Nudd v. Matsoukas, 7 Ill. 2d 608, 619, 131 N.E.2d 525, 531 (1956).

the first case the child has questionable or ulterior motives and the parent has faithfully discharged his duties. The initiation of the suit per se indicates a lack of family harmony, and the immunity rule is without any useful purpose. In the second case, the parent has failed to fulfill his duty, and the child brings the suit in good faith. Here again the very initiation of the suit indicates a lack of harmony, although in this case the parent, not the child, is responsible for disruption of the family. In the third case there is collusion between the child and the parent, usually because the parent is insured. Since collusion is the product of harmony, the reason for application of the immunity rule once again fails. If recovery is denied, it should not be articulated upon the grounds of parental immunity but rather because protection of the insurer is desired. In the fourth case, both the parent and the child act in good faith. In reality, this situation will arise only when there is insurance. Here the fact of good faith *and* family harmony obviates the need for immunity. Should suits within either of the last two classes become too prevalent, the remedy lies with the legislature. It thus seems clear that in all these cases abrogation of the immunity doctrine would have no adverse effect on family harmony and discipline.

In consideration of the fact that the primary justification of immunity is its purported tendency to protect family harmony, and in view of its demonstrated failure to do this, the doctrine has nothing left to recommend it. The limiting rule enunciated in the *Baker* case and the possible use of insurance to abrogate immunity do manifest progress; however, such rules merely show the doctrine to be in a transitional stage. Only through complete abolition of the immunity doctrine will courts achieve the most desirable results.