

815.90 PARENTS' STRICT LIABILITY FOR PERSONAL INJURY OR
DESTRUCTION OF PROPERTY BY MINOR.

The (*state number*) issue reads:

"[Is] [Are] (*name defendant(s)*) liable to (*name plaintiff*) for [injury]
[damage] caused by (*name minor*)?"¹

On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:

First, that (*name minor*) [maliciously] [willfully] [injured the plaintiff] [damaged the plaintiff's property]. A person acts maliciously when *he* acts out of a motive of ill will, spite, grudge, revenge or oppression.² A person acts willfully when *he* intentionally fails to carry out some duty imposed by law or contract which is necessary to protect the safety of [another] [another's property].³

Second, that, at the time of the [injury] [damage], (*name minor*) had not reached the age of eighteen years.⁴ (All of the evidence tends to show that, at the time of the [injury] [damage], (*name minor*) had not reached the age of eighteen years.)

Third, that (*name defendant(s)*) [is] [are] the parent(s) of (*name minor*). (All of the evidence tends to show that (*name defendant(s)*) [is] [are] the parent(s) of (*name minor*).)

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that (*name defendant(s)*) [is] [are] liable to (*name plaintiff*) for [injury] [damage] caused by (*name minor*), then it would be your duty to answer

this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, it would be your duty to answer this issue "No" in favor of the defendant(s).

1. N.C. Gen. Stat. § 1-538.1 makes parents of unemancipated minors strictly liable for their willful or malicious torts. *Gen. Ins. Co. of America v. Faulkner*, 259 N.C. 317, 130 S.E.2d 645 (1963). There is no recovery under this statute for mere negligence. The maximum recovery under this provision is \$2,000.00. However, the statute expressly provides that it does "not preclude or limit recovery of damages from parents under common law remedies available in this State." *Id.* See, e.g., N.C.P.I.-Civil 102.32 ("Negligence Issue-Breach of Parents' Duty to Supervise Minor Children"). The jury should not be informed of the statutory cap. If an award under this statute is made which exceeds \$2,000.00, the Court should reduce it to \$2,000.00.

2. See *Cook v. Lanier*, 267 N.C. 166, 171, 147 S.E.2d 910, 915 (1966), citing with approval *Brown v. Martin*, 176 N.C. 31, 33, 96 S.E.2d 642, 643 (1918).

3. *Abernathy v. Consolidated Freightways Corp.*, 321 N.C. 236, 362 S.E.2d 559 (1987).

4. N.C. Gen. Stat. § 48A-2 establishes the age of minority as under eighteen years.