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AGENCY—CAPACITY OF AN INFANT TO APPOINT AN AGENT IN MISSOURI—A STUDY IN CONTRADICTIONS

I. INTRODUCTION

In recent years many American jurisdictions have been disposed to re-examine their adherence, sometimes characterized as blind,¹ to the early English doctrine that the appointment of an agent by an infant is absolutely void for all purposes.² This familiar rule of Agency, which Williston has said to be supported by no reason save the antiquity of the rulings to that effect,³ is rapidly losing favor in many of the jurisdictions where a reconsideration of this problem has been pressed.⁴

Developments in related fields, notably Partnerships⁵ and Torts,⁶ have doubtless been instrumental in securing this change. No less important a reason would also seem to be the injustice worked by the rule in a variety of situations, particularly in the ever-increasing number of automobile collisions involving vehicles owned or possessed by infants, where the rule can be an effective bar to recovery from the infant of compensatory damages for negligence.⁷

Missouri, unfortunately, has been tardy in reacting to these developments in other jurisdictions. Although the opportunity to clarify the law on this point

1. *Carroll v. Harrison*, 49 F. Supp. 283 (W.D. Va. 1943).

2. *Zouch v. Parsons*, 3 Burr. 1794 (1765); *Thomas v. Roberts*, 16 M.&W. 778 (1847). To the effect that these cases do not require so sweeping a rule, see *Webb, Capacity of an Infant to Appoint an Agent*, 18 MODERN L. REV. 461 (1955); Note, 69 L. Q. REV. 446 (1953).

3. 2 WILLISTON, CONTRACTS § 227A (3d ed. 1959).

4. *Potter v. Florida Motor Lines*, 57 F.2d 313 (S.D. Fla. 1932); *Hastings v. Dollarhide*, 24 Cal. 195 (1864); *Benson v. Tucker*, 212 Mass. 60, 98 N.E. 589 (1912); *Simpson v. Prudential Ins. Co.*, 184 Mass. 348, 68 N.E. 673 (1903); *Coursolle v. Weyerhauser*, 69 Minn. 328, 72 N.W. 697 (1897); *Scott v. Schisler*, 107 N.J.L. 397, 153 Atl. 395 (Sup. Ct. 1931); *Casey v. Kastel*, 237 N.Y. 305, 142 N.E. 671 (1924).

RESTATEMENT (SECOND), AGENCY § 20 (1958) states: "A person who has capacity to affect his legal relations by giving consent to a delegable act or transaction has capacity to authorize an agent to do such act or to conduct such transaction for him with the same effect as if he were to act in person."

5. It is the law of Partnerships that an infant may be a partner. Furthermore, an adult partner may insist upon the assets of the partnership being applied to the payment of the partnership debts, and the infant partner's right of rescission is subject to this equity. *Hill v. Bell*, 111 Mo. 35, 19 S.W. 959 (1892); MECHEM, ELEMENTS OF PARTNERSHIP § 49 (2d ed. 1920); 1 ROWLEY, PARTNERSHIP § 6.4D (2d ed. 1961).

6. See *McKernall v. St. Louis-San Francisco Ry. Co.*, 257 S.W. 166 (Spr. Ct. App. 1923), where it was held that the negligence of the driver of an automobile is imputable to the infant owner when the infant is a passenger in the automobile at the time of the negligent act. See also *Scott v. Schisler*, *supra* note 4.

7. As in the situation where the infant owner has liability insurance which does not cover the driver unless he is driving as the agent of the owner. RESTATEMENT (SECOND), AGENCY, Appendix § 20 (1958); SEAVEY, STUDIES IN AGENCY 169 (1949).

periodically arises,⁸ our courts have not yet seen fit to act. As a result, our case law in this area can be described only as contradictory and confusing.⁹

It is the purpose of this article to examine briefly some of these Missouri holdings in the light of decisions from other jurisdictions, and to attempt to interject an element of clarity into an area where clarity often seems better known for its absence than for its presence.

II. CONTRACT CASES

A. *The Early American View*

The numerical weight of authority and all Missouri decisions which have had occasion to examine or pass on this specific question, with the possible exception of two cases which will be considered later,¹⁰ have held that the appointment of an agent by an infant is absolutely void.¹¹ Cases attempting to support such a holding on reason usually state that the question is too well settled to merit discussion and dismiss it by citing a string of supporting decisions. An examination of these authorities is usually very illuminating, however, for almost without exception they in turn seem to rest on little more than still older precedents, most of which are obiter dicta.¹² Reasons in support of the rule have from time to time been expounded in various jurisdictions, but a consideration of these earmark them more as excuses than reasons, with many begging the real question or merely paying lip service to it and others missing it completely.¹³

The most common arguments advanced in support of the rule seem to reason that if the acts of an agent on the infant principal's behalf are voidable at the mere whim of the infant, the agency is not operative according to its terms; or, if the acts of the agent are binding upon the infant, then the infant has accomplished through an agent that which he could not accomplish directly—entered into a binding contract.¹⁴

8. The most recent and graphic example is *State ex rel. Dyer v. Union Elec. Co.*, 309 S.W.2d 649 (St. L. Ct. App. 1958), where the court stated it felt bound by prior adjudications holding that the appointment of an agent by an infant was void for all purposes.

9. See cases cited notes 5 and 6 *supra*.

10. *Ward v. Steamboat Little Red*, 8 Mo. 358 (1844); *Anderson v. Middle States Util. Co.*, 231 Mo. App. 129, 98 S.W.2d 163 (K.C. Ct. App. 1936).

11. *Curtis v. Alexander*, 257 S.W. 432 (Mo. 1923); *State ex rel. Dyer v. Union Elec. Co.*, *supra* note 8; *Hodge v. Feiner*, 78 S.W.2d 478 (St. L. Ct. App.), *aff'd*, 338 Mo. 268, 90 S.W.2d 90 (1935), 21 CORNELL L.Q. 623; *Poston v. Williams*, 99 Mo. App. 513, 73 S.W. 1099 (K.C. Ct. App. 1903); *Turner v. Bondalier*, 31 Mo. App. 582 (K.C. Ct. App. 1888); *In re Cahill*, 74 Cal. 56, 15 Pac. 364 (1887); *Tucker v. Eastridge*, 51 Ind. App. 632, 100 N.E. 113 (1912); *Sawyer v. Northan*, 112 N.C. 261, 16 S.E. 1023 (1893); *Rocks v. Cornell*, 21 R.I. 532, 45 Atl. 552 (1900); *Delliger v. Foltz*, 93 Va. 729, 25 S.E. 998 (1896). See also *State v. Field*, 139 Mo. App. 20, 119 S.W. 499 (St. L. Ct. App. 1909).

12. Annot., 31 A.L.R. 1001 (1924); 2 WILLISTON, *op. cit. supra* note 3, § 227A.

13. 1 MECHEM, AGENCY § 141 (2d ed. 1914); TIFFANY, AGENCY § 68 (2d ed. 1924). Unfortunately, the question of the infant's liability for the torts of an agent often clouds the issue. See cases cited note 40 *infra*.

14. 1 MECHEM, AGENCY § 141 (2d ed. 1914); *Gregory, Infant's Responsibility for his Agent's Torts*, 5 WIS. L. REV. 453 (1930).

This reasoning seems based upon two illogical and incorrect assumptions: (1) That the act of an infant performed through an agent must in every instance be more binding on the infant than if he had undertaken to do the act himself; and (2) that an infant cannot perform voidable acts through an agent even though he can do so personally.¹⁵ However, it is generally, if not universally, accepted that an agency is merely an extension of the legal personality of the principal,¹⁶ by which the agent is accorded no more power than the principal personally possesses. Why, then, should it be assumed that the agent of an infant principal can bind the infant in a way that the infant cannot bind himself? If the principal can effect only voidable acts, should not his agent also be so limited? Given that this is true, the propositions that an agent's contract for his principal is voidable, and that the agent actually represent a principal at the time of contracting, do not seem inconsistent.¹⁷

Another reason occasionally advanced in support of this rule maintains that it is inconsistent to allow an infant to affirm the beneficial acts of an agent and disaffirm the detrimental ones; this on the ground that by affirming the beneficial acts the infant principal is affirming the agency relation itself, and consequently all of the acts of the agent.¹⁸ This, the argument continues, is repugnant to the law's basic goal of the protection of infants. Consider the result, however, if the infant had done for himself everything that the agent purported to do for him. Could he not then affirm some of the transactions and repudiate others? If so, why should the existence of an agency deprive him of this privilege? To conclude that by affirming one contract made for him by his agent the infant is thereby affirming everything that the agent does in his behalf, including an obviously disadvantageous contract, would seem to be an unwarranted extension of the theory of ratification.¹⁹

The only other argument which is pursued with any vigor or regularity reasons that since an infant often lacks sufficient discretion to choose a good agent, the law should protect him by making all acts done by the agent void.²⁰

This is strange protection indeed. It would seem that the infant is better protected and his rights more fully safeguarded if the appointment and acts of the agent are held merely voidable by him, rather than absolutely void so that the other party to the contract is not bound thereby. In this connection, it is noteworthy that if the appointment of an agent by an infant is void and not merely voidable, it is an absolute nullity, and no matter how beneficial it may prove to the infant, he cannot ratify it after he reaches majority.²¹

15. 2 WILLISTON, *op. cit. supra* note 3, § 226.

16. TIFFANY, *op. cit. supra* note 13, § 72; 1 MECHEM, AGENCY § 129 (2d ed. 1914).

17. Gregory, *supra* note 14, at 454.

18. *Ibid.*

19. MECHEM, OUTLINES OF AGENCY § 200 (4th ed. 1952); TIFFANY, *op. cit. supra* note 13, § 46.

20. Shepard v. Cartwright, [1953] 1 Ch. 728, 755; Webb, *supra* note 2, at 463.

21. Cases cited note 11 *supra*; MECHEM, AGENCY § 142 (2d ed. 1914). In Poston v. Williams, *supra* note 11, the infant sued in replevin to recover a horse

One might assume that the Missouri courts have adopted one or more of these contentions in support of their holdings, but an examination of the cases leaves in doubt just exactly what rationale has been employed.

One of the earlier and better known Missouri decisions in this area is *Turner v. Bondalier*,²² where the question before the court was whether an infant could appoint an agent to make an affidavit that the infant's property had been injured in a replevin suit. In holding that he could not do so, it was stated that the only legal acts which an infant may perform are those which he does personally. The court also reasoned that an agent ought necessarily to have a principal who is sui juris, but neglected to say why this was so. Considerable weight was also apparently given to the fact that the jurisdiction in this case would depend upon the caprice of the infant if his appointment of an agent was to be treated as voidable and not void.²³

With due respect to the court, none of these propositions, it would seem, can be permitted to stand. It is everywhere admitted that the acts of an agent are not binding upon the infant principal, but what the court here overlooks is the additional fact that the infant's own acts are likewise not binding. That the jurisdiction of the court may in some cases depend upon the whim of the infant may well be true, yet would not such also be the case where he had performed the acts personally?

While the authority for the decision in *Turner* would thus at best appear flimsy, it has been sufficient to satisfy the Missouri courts for some seventy years, inasmuch as that case has repeatedly been cited as authority for the proposition that the question is a settled one.²⁴ The recent case of *State ex rel. Dyer v. Union Electric Co.*²⁵ is a graphic illustration of this. The court there said that *Turner* "stated the reasons" supporting the holding that the appointment of an agent by an infant is void.²⁶

As has been stated earlier,²⁷ the obvious result of such holdings is that an infant, upon reaching majority, is precluded from ratifying anything done in his behalf by another, no matter how advantageous it may be to him or how essential the agency relation was at the time.²⁸ It is difficult for this writer to perceive how

which the defendant, as plaintiff's agent, had received in trading for the plaintiff's horse. Recovery was denied upon the ground that replevin would be an action in the nature of affirmance and that an infant's appointment of an agent was a void act incapable of ratification. But see *Ward v. Steamboat Little Red*, *supra* note 10; *Anderson v. Middle States Util. Co.*, *supra* note 10.

22. 31 Mo. App. 582 (K.C. Ct. App. 1888). For an even earlier case, see *Jeffrie v. Robideaux*, 3 Mo. 33 (1831).

23. *Turner v. Bondalier*, *supra* note 22, at 587.

24. *Curtis v. Alexander*, *supra* note 11; *Hodge v. Feiner*, *supra* note 11; *Poston v. Williams*, *supra* note 11.

25. 309 S.W.2d 649 (St. L. Ct. App. 1958).

26. *Id.* at 653.

27. Cases cited note 22 *supra*; Annot., 31 A.L.R. 1001 (1924).

28. The hardships which may be worked by this rule are obvious and constitute one of the most persuasive arguments in favor of a rule which makes the acts of an agent voidable only. *Fonda v. Van Horne*, 15 Wend. (N.Y.) 631, 30 Am. Dec. 77 (1836), is an excellent example. Here the infant plaintiff's father had sold her cow, later purchasing another cow and giving it to her in place of the

such a rule can be supported on the ground that it is essential to the protection of infants when, as a practical matter, its application can often prove only detrimental to them.

B. *The Modern American View*

It would appear clear that the preferred view would be that both the appointment of an agent by an infant and the acts of the agent pursuant thereto are to be treated as voidable only, requiring a disaffirmance by the infant within a reasonable time after reaching majority.²⁹ This cause has long been advanced by a vocal group of text and law review writers.³⁰ Such a rule obviously works to the advantage of the infant in that it permits him to affirm those contracts made by an agent which are to his benefit. In addition, such a rule would add uniformity to the law by placing all contracts of an infant on the same plane, where, theoretically at least, they belong.

Perhaps the leading case repudiating the older view is *Casey v. Kastel*,³¹ wherein Judge Pound succinctly stated that:

Notwithstanding numerous general statements in the books, sound principles compel the conclusion that no satisfactory distinction can be drawn between a sale and delivery by the infant and a sale and delivery by an agent for him. . . . Dicta and general statements to the contrary are no longer respectable authority.³²

The New York court's direct approach to this problem is commendable and has much to recommend itself to other jurisdictions, which, for one reason or another, while recognizing the modern trend, are reluctant to become a part of it.³³

As inconspicuous as snow in summer, *Ward v. Steamboat Little Red*³⁴ and *Anderson v. Middle States Util. Co.*³⁵ stand alone as Missouri authority for this proposition. In holding that infant co-owners of a steamboat had, by joining in a suit upon a contract of lease executed by the other co-owners, affirmed the contract, the court in *Ward*, without discussing reasons, said that: "[A]n infant can become a party to a contract made without authority from him, by his subsequent

first. The father's creditors took the cow and the plaintiff then brought suit to recover it. The court held that she could set up no claim to the cow even though she had assented to the trade, on the ground that since an infant could not have an agent, the appointment of the father was void and his subsequent actions were not capable of being ratified.

29. This is the view of the better reasoned modern cases. See cases cited note 4 *supra*.

30. A partial listing would have to include 2 WILLISTON, *op. cit. supra* note 3, § 227A; MECHEM, *OUTLINES OF AGENCY* § 20 (4th ed. 1952); Webb, *supra* note 2, at 471; Gregory, *supra* note 14, at 458.

31. 237 N.Y. 305, 142 N.E. 671 (1924).

32. *Id.* at 673.

33. The Missouri case of *State ex rel. Dyer v. Union Elec. Co.*, *supra* note 8, noted that the trend of modern cases was away from the rule making the appointment of an agent by an infant void, but held that the question in Missouri had long been a closed one.

34. 8 Mo. 358 (1844).

35. 231 Mo. App. 129, 98 S.W.2d 163 (K.C. Ct. App. 1936).

adoption of it, as well as by his previous express consent." In *Anderson*, an infant's curatrix had made certain purchases for the infant's benefit in violation of her statutory authority. Upon reaching majority, the infant purported to ratify this action. The court held that while the curatrix, as such, had no power to make the purchases, the acts were capable of being ratified by the former infant, citing the *Ward* case as authority.

That these decisions are sound would appear obvious from the previous discussion; that they have been either overlooked or ignored is evident from a consideration of the other Missouri cases.

The holding that the appointment of an agent is merely voidable has been given practical effect in those jurisdictions which have adopted the rule that the acts of such agent thereunder may be ratified or confirmed by the infant according to the usual rules respecting ratification.³⁶ Here again, in Missouri, the *Ward* and *Anderson* cases stand alone.

III. RELATED AREAS

Further reasons, if such be required, in support of the rule making the appointment of an agent by an infant voidable only, can be discovered through an examination of the law of Torts and Partnerships.

A. Torts

In the area of torts Missouri has long held, as have most jurisdictions, that the negligence of the driver of an automobile is imputable to the infant owner if the infant is a passenger in the car at the time of the negligent act.³⁷ Yet, if he should happen to remove himself from the automobile seconds before the negligent act, he cannot be held liable for any damage occasioned by the negligence, since under existing Missouri law he is incapable of having an agent. Inasmuch as the doctrine of imputed negligence is based on the theory of agency or joint enterprise,³⁸ the distinction between the situation where the infant is a passenger and where he is not seems illogical, in the absence of the infant's personal negligence.³⁹ The issue in such cases should be whether it is sound public policy to apply the doctrine of respondeat superior to infant masters and principals, and not whether an infant can appoint an agent. Unfortunately, many of the courts which have held that an infant cannot appoint an agent have done so apparently for the purpose of relieving the infant from liability for the torts of another which are not the

36. *Hardy v. Waters*, 38 Me. 450 (1853); *Hall v. Jones*, 21 Md. 439 (1864); *Whitney v. Dutch*, 14 Mass. 457, 7 Am. Dec. 229 (1817); *Coursolle v. Weyerhauser*, 69 Minn. 328, 72 N.W. 697 (1897); *Alsworth v. Cordtz*, 31 Miss. 32 (1856); *Scott v. Scott*, 29 S.C. 414, 7 S.E. 811 (1888).

37. See note 6 *supra*; RESTATEMENT (SECOND), AGENCY, Appendix § 20 (1958); Note, 21 CORNELL L.Q. 623 (1936).

38. 1 SHEARMAN & REDFIELD, NEGLIGENCE § 65A (6th ed. 1913).

39. RESTATEMENT (SECOND), AGENCY, Appendix § 20 (1958).

direct consequence of any act of the infant,⁴⁰ but have failed to base their decisions upon the more supportable grounds of public policy.

This is of primary importance in automobile accident cases where the infant owner has liability insurance which does not cover the driver unless he is driving as the servant or agent of the infant. In these cases, at least, it would appear just not to allow the defense of infancy to prevail.⁴¹ Even in the absence of such circumstances, Professor Seavey believes that imposition of liability upon the infant is the preferable view.⁴² Whichever path the courts choose to follow in the future, however, the result should not be based upon the capacity of the infant to appoint an agent, but rather upon the social desirability of relieving him from liability for such torts.

B. Partnerships

In the law of Partnerships it is uniformly held that an infant has capacity to become a partner,⁴³ and although he can avoid the partnership and thereby escape personal liability to his co-partners and firm creditors, he cannot avoid liability to the extent of his contribution to the firm assets.⁴⁴ The reasons advanced in support of this rule occasionally vary from jurisdiction to jurisdiction,⁴⁵ but since a partnership is generally considered as being nothing more than a mutual agency,⁴⁶ it seems anomalous to say that the liability of an infant partner incurred before the avoidance of the partnership becomes fixed to the extent of his contribution, while in the same breath holding that the infant in an ordinary agency never incurs liability.⁴⁷ Such, nonetheless, would clearly seem to be the existing state of Missouri law, for in the case of *Hill v. Bell*⁴⁸ the court held that: "The adult partner has a right to insist upon the assets of the firm being applied to the payment of the firm debts, and the infant's right to rescind is subject to this equity."⁴⁹

In both Torts and Partnerships then, a needless, irreconcilable, and, in all likelihood, unknown contradiction exists in Missouri law with respect to the rule

40. *Thompson v. Bell*, 129 F.2d 211 (6th Cir. 1942); *Potter v. Florida Motor Lines*, 57 F.2d 313 (S.D. Fla. 1932); *Hodge v. Feiner*, 78 S.W.2d 478 (St. L. Ct. App.), *aff'd*, 338 Mo. 268, 90 S.W.2d 90 (1935); *Messer v. Reid*, 186 Tenn. 94, 208 S.W.2d 528 (1948).

41. SEAVEY, *STUDIES IN AGENCY* 169 (1949). See also note 7 *supra*.

42. SEAVEY, *op. cit. supra* note 41, at 169.

43. *Kerr v. Bell*, 44 Mo. 120 (1869); *Huffman v. Bates*, 348 S.W.2d 363 (Spr. Ct. App. 1961); *Gordon v. Miller*, 111 Mo. App. 342, 85 S.W. 943 (St. L. Ct. App. 1905); 1 BATES, *PARTNERSHIP* § 142 (1888); MECHEM, *ELEMENTS OF PARTNERSHIP* § 49 (2d ed. 1920); 1 ROWLEY, *PARTNERSHIP* § 6.4D (2d ed. 1961).

44. *Kuehl v. Means*, 206 Iowa 539, 218 N.W. 907 (1928); *Kelly v. Halox*, 256 Mass. 5, 152 N.E. 236 (1926); CRANE, *PARTNERSHIP* § 7 (2d ed. 1952); 1 ROWLEY, *op. cit. supra* note 43, § 6.4D.

45. For a survey of these reasons see Bennett, *Rights and Liabilities of the Infant Partner*, 25 GEO. L.J. 351 (1937).

46. 1 MECHEM, *AGENCY* § 185 (2d ed. 1914); BURDICK, *PARTNERSHIP* § 176 (3d ed. 1917).

47. Note, 21 CORNELL L.Q. 623 (1936).

48. 111 Mo. 35, 19 S.W. 959 (1892).

49. *Id.* at 961. See also authorities cited note 5 *supra*.

forbidding an infant from having an agent for contractual purposes. It is suggested that the proper way to resolve this conflict is through a change in the latter holdings, which by any standards seem archaic and in need of re-examination.

IV. OTHER SITUATIONS

A. *Where The Infant's Direct Act Would Be Void*

All American jurisdictions are in agreement that where the particular act involved is one which would be void if performed by the infant himself, the act is not valid if performed by the infant through an agent.⁵⁰ To the same effect, it would seem, are those cases which hold that an infant of tender years cannot appoint an agent.⁵¹ These decisions are not inconsistent with the cases holding that the appointment of an agent is voidable, as the basis of all such latter determinations is that the power delegated to the agent is a power possessed initially by the infant and capable of being exercised by him.

In the interesting case of *State v. Field*,⁵² the Missouri court demonstrated the practical utility of the rule by holding, on a prosecution for selling intoxicating liquor to a minor, that the minor could not make a valid appointment of the defendant as the former's agent to buy liquor for him, and that the theory of agency could not be interposed as a defense to the action.⁵³

B. *Confession of Judgment*

Accepting for the moment the premise that the appointment of an agent by an infant should be voidable only, there appears to be some reason, nevertheless, for the view that an infant's power of attorney to confess judgment is absolutely void.⁵⁴ Such decisions may well have had their inception in the era when the courts, and not the infants themselves, determined which contracts were beneficial and which were not, but even in the present day this result seems based on sound public policy. The paramount purpose of the "voidable" rule is to permit an infant to affirm contracts which he considers beneficial to him, and it is difficult to imagine a case where a warrant of attorney for a confession of judgment would prove beneficial to an infant.

V. CONCLUSION

While the writer will not attempt to predict the course the Missouri courts are going to adopt in the future, the *Dyer*⁵⁵ case seems to intimate that there is some

50. In the case of *In re Farley*, 213 N.Y. 15, 106 N.E. 756 (1914), it was held that as an infant could not give a valid consent to the conducting of a liquor business, as required of persons living within a certain radius of the proposed business, he could not do so through another acting as his agent.

51. *E.g.*, *McDonald v. Spring Valley*, 285 Ill. 52, 120 N.E. 476 (1919), where the infant was five years of age.

52. 139 Mo. App. 20, 119 S.W. 499 (St. L. Ct. App. 1909).

53. *Id.* at 25, 119 S.W. at 500.

54. *Turner v. Bondalier*, 31 Mo. App. 582, 586 (K.C. Ct. App. 1888); *Glass v. Glass*, 76 Ala. 368 (1884); *Fuqua v. Sholem*, 60 Ill. App. (1895); *Knox v. Flak*, 22 Pa. 337 (1853); 1 *MECHEM, AGENCY* § 143 (2d ed. 1914).

55. 309 S.W.2d 649 (St. L. Ct. App. 1958).

dissatisfaction with present Missouri law on this subject, and, even more importantly, that some of the dilemmas caused by these decisions are now being recognized.

It is the opinion of this writer that the rule should be the subject of re-examination and change at the first opportunity, bringing our decisions not only in line with those of other jurisdictions, but also in accord with our own decisions in the fields of Torts and Partnerships. Such a change can be effected consistently with the continued holding that an infant is not liable for the negligent torts of his agent which are not brought about by his direct act,⁵⁶ should the courts consider it to be in the public interest to permit infants to escape liability in such instances. In so doing, the true reason for such a rule—public policy—will also come to the fore.

It is often said that the defense of infancy is a shield, not a sword with which to wreak injury on unsuspecting persons.⁵⁷ While this is without doubt true, it is submitted that the change advanced here would not only serve to protect infants from the wiles of the general public, but would also protect the public from the recklessness of youth. Few rules of law could accomplish their purpose more fully.

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56. See SEAVEY, *op. cit. supra* note 41, at 169.

57. *Merrick v. Stephens*, 337 S.W.2d 713 (Spr. Ct. App. 1960); *Gerkey v. Hampe*, 274 S.W. 510 (St. L. Ct. App. 1925).