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## *Fireworks, Explosives, Guns, and Minors*

*George Braun\**

**I**N MOST OF THE UNITED STATES the laws governing the sale and use of fireworks, explosives and flammable decorations follow the form of control regulations recommended by the National Fire Prevention Association.<sup>1</sup> These severely restrict the use of explosives and fireworks (with the exception of paper caps for toy guns) to adults. Ohio has led the trend by imposing safeguards more restrictive than most states and, by recent statutes together with decisions, imposing strict standards against manufacturers, sellers, keepers, users or other handlers of explosives and fireworks in attempts to effectively control the hazards presented by these products. In Ohio, pyrotechnic displays may be presented only by municipalities, or by authorized civic-sponsored organizations engaging the services of experts acceptable to the local fire control authorities, with sufficient bond to cover injuries to person and property which might result and for which they are held strictly liable.<sup>2</sup> Federal legislation was passed in 1953 making it unlawful to ship fireworks into states prohibiting their sale or use, thus assisting the program on a national level.<sup>3</sup>

The reason for tightening controls, and for prohibitions on sale or furnishing possession or means of possession of fireworks and explosives to minors is obvious upon examination of the results of recent studies of fireworks casualty records conducted by the National Fire Protection Association and published in 1965.<sup>4</sup> Of 241 incidents occurring in June and July of 1964 resulting in the explosion of fireworks, in nine instances fatal injuries were sustained and three hundred twenty-two casualties required hospital care or treatment by physicians. Besides the bodily injuries that occurred, ninety-five of these incidents caused damage to property totalling over \$1,000,000.00. Many of the victims were innocent bystanders, the great majority being minors. In fact, according to the statistics of the National Safety

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\* Of the Cleveland Bar.

<sup>1</sup> By 1956, 30 states had adopted these regulations.

<sup>2</sup> Ohio Rev. Code, Sec. 3743.33.

<sup>3</sup> 18 U. S. C. A. 836 (1954).

<sup>4</sup> Accident Facts, p. 84 (1965 ed., published by National Safety Council).

Council, 21% were nine years of age or less, 28% were fourteen years of age or less, and 68% were under the age of twenty-one.<sup>5</sup> The injuries ranged from cuts, bruises and contusions of varying degrees of severity, to loss of limbs, eyesight or hearing, and facial disfigurement, maiming and puncture wounds.

Ordinary fireworks caused 88% of the incidents, while 6% were involved in public displays and the remaining 6% resulted from the use of homemade types.<sup>6</sup>

### *Statutory Controls of Fireworks, Explosives and Guns*

In October 1963, Ohio increased its restrictions on the disposal or giving of explosives to minors, which prohibits the sale or giving of explosives to persons under 21.<sup>7</sup> Moreover, no person is permitted to sell fireworks of any kind to children under the age of twelve.<sup>8</sup> By Ohio statute an explosive is defined as any chemical, compound or mechanical mixture intended to produce an explosion or sudden generation of gaseous pressure capable of producing damage to property, life or limb.<sup>9</sup> *Fireworks* is defined as any combustible substance or compound prepared to produce a visible or audible effect upon ignition or detonation.<sup>10</sup> A manufactured article exempt from the Ohio regulations is defined to be a slow acting, extremely mild device, such as a paper cap for toy guns, which is so constructed that the hand cannot come in contact with the cap when it is in place for the explosion.<sup>11</sup> Thus, most pyrotechnical devices, often referred to as "fireworks," would be considered explosives under the Ohio test. No person shall sell, give or deliver an explosive to a person under twenty-one years of age in Ohio, whether the person is acting for himself or anyone else.<sup>12</sup> (Formerly the age limitation on explosives was sixteen.) No person is permitted to sell at retail, possess for retail sale, discharge,

<sup>5</sup> 1964 Report, National Fire Protection Association.

<sup>6</sup> *Ibid.*

<sup>7</sup> Ohio Rev. Code, Sec. 3743.02 (eff. Oct. 14, 1963).

<sup>8</sup> *Ibid.*, Sec. 3743.37.

<sup>9</sup> *Id.*, Sec. 3743.01 (A).

<sup>10</sup> *Id.*, Sec. 3743.27 (A).

<sup>11</sup> *Id.*, Sec. 3743.01 (B).

<sup>12</sup> *Id.*, Sec. 3743.02, as amended 1963.

ignite, or explode, any fireworks except toy caps.<sup>13</sup> However, by special permit of the fire chief of a municipality, fireworks may be sold and used for public or private exhibitions, fairs, carnivals and celebrations with the stipulation that the parties sponsoring or conducting such exhibitions are held strictly liable for damage to person or property.<sup>14</sup>

The following popular types of devices would thereby seem to fall in the category of explosives rather than fireworks in Ohio:

**Rockets:** This consists of a tube packed with a powder charge, one end being open and the other connected to a tail. The powder charge burns progressively, driving the tube ahead, the tail acting as a stabilizer. However, if the tail is warped, the rocket may suddenly falter enroute and, instead of shooting upwards, travel downwards or parallel to the ground, causing severe burns to anyone caught in its path.

**Roman Candle:** These are repeating guns which shoot projectiles of colored fire, emitting showers of brilliantly glowing sparks between the shots. The components consist of a mixture of sulfur, saltpeter with projectiles containing aluminum or zinc and an oxidizing agent. As the force of the exploding powder projects the projectile forward, the reacting forces sometimes kick out the end of the candle. The stars are similar in composition to thermit bombs used in warfare.

**Torpedoes:** These consist of a sackful of coarse sand and a large cap. Upon striking a hard surface, the cap will explode with the coarse sand striking, injuring or putting out the eye.

**Flash Crackers:** These are considered a high-order explosive in that they go off very quickly, while ordinary fire-crackers do not. The flash cracker contains a composition of potassium chlorate and sugar and is extremely sensitive to shock and heat and will explode violently at 120° F.

**Sparklers:** This device is made by dipping an iron wire into a mixture of potassium nitrate, sulfur and aluminum. Its danger is that the wire, even after burning, may be hot enough to start a fire.

Thus, under the definitions of the new Ohio law, the sale, gift or delivery or other disposal of such items to any person under 21 years of age are expressly prohibited.<sup>15</sup> The Revised Code further declares it unlawful to discharge, ignite or ex-

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<sup>13</sup> *Id.*, Sec. 3743.32; *State v. DeWees*, 6 Ohio St. 2d 153, 216 N. E. 2d 624 (1966).

<sup>14</sup> *Id.*, Sec. 3743.33.

<sup>15</sup> *Id.*, Sec. 3743.02.

plode any fireworks, or to sell them at retail or even have possession of them for such purpose.<sup>16</sup> Magazines or storage facilities must be constructed so as to be able to contain their own blasts and fire without igniting or discharging neighboring facilities.<sup>17</sup> All storage facilities must be marked by conspicuous warning signs, kept guarded and securely locked to all except authorized persons.<sup>18</sup> Blasting caps can only be sold or distributed if their dangerous and explosive nature is legibly imprinted.<sup>19</sup>

In Ohio every person engaged in any occupation involving the sale, storage or use of any explosive (other than signalling devices) is required to maintain records of entire inventory, purchases, use, sale and disposal of explosives. Regular reports are required, showing the quantity used, sold or otherwise disposed of, with the name, address and intended use of the recipient. The name and address and signature of every purchaser or recipient must be secured, kept and made available to law enforcement officials for one year following date of delivery.<sup>20</sup> Each loss of explosives by theft must be reported immediately,<sup>21</sup> as well as every explosion or fire in excess of \$500.00.<sup>22</sup> Obtaining or attempting to obtain explosives by giving a false name, address, age or purpose of purchase is unlawful.<sup>23</sup> Exacting, regular inspections are imposed and violations of these laws are subject to punishment<sup>24</sup> and loss of license.<sup>25</sup> Furthermore, individual municipalities are permitted to impose their own restrictions on the use of fireworks or explosives, provided that they are not less strict than the state laws.<sup>26</sup> Further protection to minors is furnished by the Code which forbids the sale, exhibition for sale or furnishing to a minor under sixteen of a toy pistol, air gun or any form of explosive gun. Any violator is liable to any person damaged by such sale.<sup>27</sup>

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<sup>16</sup> Id., Sec. 3743.32.

<sup>17</sup> Id., Sec. 3743.03.

<sup>18</sup> Id., Secs. 3743.04, 3743.08, 3743.38.

<sup>19</sup> Id., Sec. 3743.091.

<sup>20</sup> Id., Sec. 3743.49 (A) & (B).

<sup>21</sup> Id., Sec. 3743.49 (C).

<sup>22</sup> Id., Sec. 3743.21.

<sup>23</sup> Id., Sec. 3743.51.

<sup>24</sup> Id., Secs. 3743.24, 3743.99.

<sup>25</sup> Id., Sec. 3743.11.

<sup>26</sup> Id., Sec. 3743.18.

<sup>27</sup> Id., Secs. 2903.06, 1533.13.

### *Civil Liability for Injuries to Minors By Explosives*

The case law development of civil tort liability covers numerous aspects which establish the legal consequences resulting from injury to minors by explosives, fireworks, blasting caps, flammable decorations, guns, pistols and ammunition. The evidence must establish that the injurious material was an explosive,<sup>28</sup> unless the substance is such that the court will take judicial notice of its nature.<sup>29</sup>

The decisions have not uniformly agreed whether contributory negligence of a child will bar recovery, or<sup>30</sup> whether liability extends to injuries to third persons, or to injuries caused by intervening or remote acts.

### *Duties to Children*

While the broad rule in Ohio defines the duty of one occupying, possessing or controlling property to refrain from wilfully, wantonly or intentionally injuring a licensee or trespasser, exceptions have been made in cases of injuries to minors by explosives. In the case of *Vaughan v. Industrial Silica Corp.*<sup>31</sup> the defendants were contractors engaged in blasting in an abandoned quarry. They finished their work and lost some blasting caps on the premises. The caps were found by the plaintiff, a lad thirteen years and nine months old, who was trespassing. He dropped a cap on a cement surface and was severely injured by the resulting explosion. The evidence disclosed that children frequented the quarry. The complaint charged that the defendants negligently left a dangerous instrumentality on premises known to be frequented by children. The defendants countered that the plaintiff was contributorily negligent, being of sufficient age and intelligence to appreciate the danger of handling a dynamite cap. The court pronounced the rule in Ohio to be that "one who keeps or uses explosives owes a duty to young children who may have access to or come in contact with them and who cannot be expected to know and

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<sup>28</sup> *Ohio Bronze Powder Co. v. Allison*, 7 Ohio L. Abs. 231 (1929).

<sup>29</sup> 22 Am. Jur., *Explosions and Explosives*, Secs. 3 & 93 (1939).

<sup>30</sup> See 20 A. L. R. 2d 119 (1951) for complete discussion.

<sup>31</sup> 140 Ohio St. 17, 42 N.E. 2d 156 (1942). The judgment of the trial court was subsequently reversed due to the fact that the court's charge had placed a duty on the defendant higher than that defined.

appreciate the danger incident thereto, to exercise care commensurate with the danger in order to avoid injury to such children." The decision was reversed and remanded because the trial court charged that, if the defendants knew that children trespassed, they owed a duty to see that they would not come in contact with any explosives upon such land. The degree of care was defined as ordinary care, which in the case of dynamite caps was held to be "the use of utmost caution." This language was found to make the defendants practically the insurers of the safety of the plaintiff and the court stated, "A correct definition of the quantum of care required would be such as is commensurate with the danger involved."<sup>32</sup>

#### *Proximate Causation*

It was held negligent for a railroad to leave unguarded signal torpedoes, attractive to and easily picked up and handled by children at places where children were permitted to travel. In the case of *Harriman v. Pittsburgh, C. & St. L. R. Co.*<sup>33</sup> a nine year old boy picked up a torpedo which had been left on the tracks in plain view at a point along the line where inhabitants were daily accustomed to travel and pass over, with the knowledge and acquiescence of defendant. The boy who picked up the torpedo exhibited it to his companions including the plaintiff, aged ten, and several other lads. It looked like a harmless box, and neither the plaintiff nor the other boys knew or believed it to be dangerous. The finder attempted to open it and examine the contents. A violent explosion occurred, killing one lad, blinding two others and severely wounding the plaintiff. The defendant demurred to the plaintiff's petition on several grounds, among which were:

1. That the defendant owed no duty or obligation to keep its road safe to the plaintiff or his companions.
2. That the proximate cause of plaintiff's injury was the lad who opened the box, not the defendant's servants.

The Supreme Court, in holding that the demurrer to the petition should have been overruled, held that while the boy who picked up the torpedo and opened it may have been a wrongdoer, the defendant was negligent in leaving it exposed where

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<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Harriman v. Pittsburgh C. & St. L. R. Co.*, 45 Ohio St. 11, 12 N.E. 451, 4 Am. St. Rep. 507 (1887).

it might reasonably have been expected to be found and handled. The fault of the finder and handler was not imputed to the plaintiff whose curiosity attracted him to his position of peril. Nor was the claim that the causal connection between the injury and the negligent act, and the fact that it was broken by the intervention of the boy who opened it, held to affect the liability of the defendant.<sup>34</sup> The act of finding and handling this dangerous object was held to be the natural, anticipated and probable consequence of the defendant's negligence.<sup>35</sup> This decision (and the companion *Shields* case<sup>36</sup> which was brought on behalf of another lad who lost his eye in the same accident) left unanswered the defendant's liability to the trespassing child who picked up and opened the explosive.

The view of Ohio courts on this question was answered in the case of *Byrnes v. Hewston*<sup>37</sup> where the ten year old plaintiff was injured by the explosion of blasting caps which he found in a field next to a highway where the defendant contractor had maintained a camp, and had done some blasting. The boy took home the caps he found and, not knowing their dangerous character, put them on burning coals in a stove and was severely burned in the resultant explosion. The contractor was found liable even though it was not established that the abandoned camp site was frequented by children. The decision appears to hinge on the second paragraph of the syllabus of the case which stated:

Ordinary care requires that dangerous instrumentalities such as blasting caps should be cared for with the utmost caution.

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.* This decision was subsequently distinguished based on the fact that there was a regular flow of licensees passing over the railroad's premises and the placing of a torpedo at a place which young children were known to frequent, without any warning of its dangerous propensities, was wanton negligence. Little or no reliance on this concept was imposed in *Hannan, Adm'r v. Ehrlich*, 102 Ohio St. 176 (1921), where injury occurred in a relatively inaccessible quarry rather than a regular public way across private property.

<sup>36</sup> *Railway v. Shields*, 47 Ohio St. 387, 24 N.E. 658 (1890). The court in *Haslem v. Jackson*, 35 Ohio L. Abs. 348 (1941) applied the dangerous instrumentality concept in this case to a master's liability to a servant who is injured by a dangerous instrumentality, and permitted a maid to recover for injuries sustained when a fountain pen gas gun exploded as she was about her normal duties.

<sup>37</sup> 13 Ohio App. 13, (motion to certify overruled) 31 Ohio App. (1920). Which case relied on the reasoning in the *Shield's* decision (*supra* note 36) regarding dangerous instrumentalities.



No mention was made of the plaintiff's being a trespasser, or his own act being a bar to recovery.

This duty prescribed in the *Byrnes* case was applied and amplified in the case of *Vaughan v. Wilkoff*<sup>38</sup> which held that one handling and disposing of explosives where children congregate has a duty to use care to avoid injuring them by not leaving the explosives in a conspicuous spot. In upholding this duty to a fourteen year old boy, the court went further by imposing this duty upon the defendant irrespective of whether he had possession or occupancy of the premises.<sup>39</sup> The court again did not bar recovery because the plaintiff was a trespasser or licensee. In arriving at its decision the court quoted and approved American Jurisprudence<sup>40</sup> and its statement that:

One who keeps or uses explosives owes a duty, especially to young children who cannot be expected to know and appreciate the danger, to exercise care commensurate with the danger to prevent injury to children who may have access to or come in contact with the explosives.

The Supreme Court in Ohio proceeded further along the path of safeguarding children from dangerous instrumentalities by declaring in the case of *Coy v. Columbus, Delaware and Marion Electric Co.*,<sup>41</sup> that not only does the user of a dangerous instrumentality have the duty to safeguard a dangerous force such as an electrical transformer from pedestrians, especially children, when they are known to frequent the premises, but, further, that the duty commensurate with the danger requires

<sup>38</sup> 64 Ohio App. 446, 28 N.E. 2d 942 (1940).

<sup>39</sup> *Ibid.*

<sup>40</sup> Vol. 22, pages 139 to 145 inclusive.

<sup>41</sup> 125 Ohio St. 283, 181 N.E. 31 (1932). In this case the defendant maintained a dangerous electrical transformer in close proximity to the street and permitted the fence to fall into a state of disrepair so that persons could enter. The court held: "When the static condition of premises is made perilous by the active and negligent operation of apparatus thereon, by the person owning or controlling the same, a liability arises for injury resulting therefrom." Further, the court brought into sharp focus the question of proximity and availability of such dangerous instrumentality wherein it quoted from the case of *Haywood v. Manufacturing Co.*, 142 Va. 761, 128 S.E. 362 (1925) as follows:

"We think the use of dangerous agencies and instrumentalities either in the streets or so near thereto as to be easily reached by pedestrians passing that way, places upon those responsible for the presence there of the dangerous instrumentalities the duty of giving warnings to and of safeguarding the public by using such mechanical contrivances as will effectually prevent injury to persons or property."

the defendant to post danger signs and otherwise give sufficient warning of peril.<sup>42</sup>

*Injuries to Third Persons by Sale to a Minor  
in Violation of Statute*

Generally, in Ohio it is held that whoever does a wrongful act is answerable for the ordinary consequences. In the case of *Poe v. Canton Mansfield Dry Goods Co.*,<sup>43</sup> the defendant unlawfully sold an air and shot gun to a thirteen year old boy in violation of General Code 12966 (now Revised Code Sec. 2903.06) which set the minimum permissible age for such sales at sixteen. The purchaser loaded the gun and permitted his five year old brother to have it. He pointed it at the plaintiff, discharged it, and caused him to lose an eye. The victim recovered from the seller even though there were several intervening acts between the wrongful sale and the injury. The court followed the ruling in the case of *Schell v. Du Bois, Admr.*<sup>44</sup> which held that the violation of a statute passed for the protection of the public is negligence per se, and where such act of negligence is the proximate cause of the plaintiff's injury to which he did not directly contribute, the defendant is liable to him for his injuries. The court stated that even if other acts and circumstances intervened between the wrongful cause and the injurious consequences, they do not bar recovery, especially where they are acts of children of tender years, inexperienced and imprudent.<sup>45</sup> It was held that these intervening acts should have been foreseen and that each act and result was to be considered a proximate result of the first wrongful act. The test was determined to be the probable injurious consequences to be anticipated from the first wrongful act, not in the number of subsequent events and agencies which might arise. The court concluded that upon such mixed questions of law and fact as to probable cause, it was the function of the jury to determine

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<sup>42</sup> Id. at 290.

<sup>43</sup> 36 Ohio App. 395, 173 N.E. 318 (1929).

<sup>44</sup> 94 Ohio St. 93, 113 N.E. 664, A. L. R. 1917A, 710 (1916). Which concept, that where a legislative enactment imposes upon any person a specific duty for the protection of others, and his failure to perform that duty proximately causes injury to another, makes him liable as a matter of law for such injury, has been followed in many subsequent cases in this jurisdiction.

<sup>45</sup> Ibid.

whether or not the alleged first wrongful act was a proximate cause of the plaintiff's injuries. This theory is followed in the case of *Hawkins Downie Co. v. Holland*,<sup>46</sup> where a little six year old boy found a cylindrical tin box under a rock near a school where the defendant, a construction contractor, had used blasting caps. The plaintiff and his companions curiously shook the box and found it contained a metal substance which caused it to rattle. They pounded the lid with a stone and finally removed it. The box contained dynamite caps which they divided, the plaintiff placing his treasure in his shirt pocket. That evening, playing in front of his house, he jumped on the sidewalk, causing the dynamite cap to fly out of his pocket to the sidewalk. The explosion caused him severe injuries for which he sued and recovered. The same decision had been reached earlier in the case of *Baker v. Babitt*<sup>47</sup> where the defendant's son sold cartridges to a fourteen year old, who gave them to a teenager who hid them at home. The teenager's mother found them and ordered him to return them to the donor but, instead, he gave them to a twelve year old boy who in turn gave them to two other boys who threw them in a bonfire around which some boys were assembled. The explosion destroyed the minor plaintiff's eye. In upholding the recovery the court ruled that the original wrong was selling to a fourteen year old boy, thus putting in his hands an instrumentality which could injure him and others, the original wrong continuing until the plaintiff was injured.

#### *Intentional Acts and Contributory Negligence*

The issue of intentional acts being a bar to recovery of an injury claim by a minor is raised in the case of *Berchtold v. Martin*,<sup>48</sup> involving a twelve year old who suffered an eye injury from exploding blasting caps which the defendants claimed were stolen from the office on their property and which the plaintiff claimed were not secured as required by statute. A unanimous verdict for the defendant was upheld by the Court of Appeals, including instructions to the jury<sup>49</sup> that:

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<sup>46</sup> 16 Ohio L. Abs. 24 (1933).

<sup>47</sup> 2 Ohio L. Abs. 220 (1923).

<sup>48</sup> 38 Ohio App. 556, 177 N.E. 57 (1929).

<sup>49</sup> *Id.* at 559, 560.

1. The mere fact that the blasting caps were the property of the defendant would not justify a verdict for plaintiff unless it was also found that defendant failed to use ordinary care in keeping and storing them.
2. The thirteen year old plaintiff was bound to use such care and prudence as a boy of his age of ordinary care and prudence would use under the same or similar circumstances and if he failed to follow this standard and this was the proximate cause of his alleged injuries, then a verdict for the defendant was required.
3. If the plaintiff purposely and voluntarily exploded the blasting cap when he had sufficient maturity to know that a dangerous explosion would probably result, then he could not recover.

This ruling injected the issue of contributory negligence or purposeful acts of the plaintiff minor in setting off explosives as a bar to his recovery. The decision followed the second syllabus of the *Schell v. DuBois, Admr.* case<sup>50</sup> with further amplification of the law in cases of wilful acts by minors.

#### *Negligence Per Se*

The year following the decision in the *Berchtold* case statutes (Ohio Rev. Code Secs. 2903.05 and 2903.06) provided that whoever sells a toy pistol, airgun or any form of explosive gun to a minor shall be liable in damages to any person injured by such sale.

The case of *Neff Lumber Co. v. Chervenko*<sup>51</sup> involved a 16 year old minor who purchased a shotgun, which the defendants unlawfully and negligently sold to him and which the minor used to purposely kill one plaintiff and wound two others. In holding that demurrers to the petition were properly overruled, the court held that the natural and probable consequence of a sale of a gun to a minor in violation of a penal statute would be that the minor would shoot it, and that it was immaterial whether the minor who bought the gun from the defendants intentionally or negligently discharged it. The court stated:

unlimited in its scope, the statute evidently contemplates any harmful use of the gun by a minor to whom the weapon is unlawfully sold, whether accidental, negligent or intentional, as being a natural and probable result of the illegal

<sup>50</sup> *Supra* note 49.

<sup>51</sup> 122 Ohio St. 302, 171 N.E. 327 (1930).

act and establishes liability for the doing of that unlawful act.<sup>52</sup>

This decision leaves the law in Ohio uncertain in situations where the minor intentionally or negligently shoots *himself*, or causes an explosion injuring *himself*, when the defendant sold the gun, ammunition, explosive or fireworks to the minor.

#### *Injuries to Third Persons by Stolen Explosives*

In *Graff v. Owens*<sup>53</sup> the petition stated that the plaintiff, a minor age 19, was injured by the explosion of blasting caps stolen from the defendant's premises and given to him a month later by a fourteen year old boy. Plaintiff put them in his pocket where they exploded. Plaintiff claimed that he did not know or have the means of knowing that they were highly explosive and dangerous, whereas the defendant knew of their dangerous character and failed to keep them securely locked. They were kept in a storage building for explosives next to a quarry frequented by many children. The rule of liability was not applied to this case because the plaintiff did not prove any statutory violation by the defendant, and did not show where plaintiff was when he received the stolen caps, nor where he was when they exploded or how they exploded. Thus, the demurrer to the petition was ruled proper.

#### *Conclusion*

As is evident, the general rule in Ohio is that the injurious consequences of a defendant's negligent use, sale or delivery of explosives and guns may be found to be the direct and proximate cause of injuries, if according to human experience and the natural course of events the defendant should have known that the intervening act was likely to happen. The same rule is applied in cases involving wrongful sales to minors where the injured party is a third person, even where the in-

<sup>52</sup> *Id.* at 310. This concept was later amplified in *Mudrich v. Standard Oil Co.*, 153 Ohio St. 31, 90 N.E. 2d 859 (1950), which involved injury to minors by allowing spilled gasoline to lie unattended and subsequent burns to the minors, wherein it states: "If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that this act is likely to result in injury to someone."

<sup>53</sup> 16 Ohio L. Abs. 60 (1933).

jury is wilfully inflicted. The question of whether a minor's contributory negligence is a bar to his own recovery depends on his age and experience and the circumstances of each case. The cases where the defense of contributory negligence as a bar to recovery is permitted seem to be in situations where possession was not knowingly given by sale or gift. Decisions hold that one who, contrary to the prohibition of the statutes, sells guns or explosives to a minor is absolutely liable for the injuries caused to the purchaser or a third person. The prohibition on placing the condemned article on the market is for the very purpose of preventing the opportunity for its purchase and use, especially by minors, regardless of the knowledge of the danger by the user. The sale of explosives, and fireworks in contravention of the statutes is an avaricious, criminal act done in disregard of human safety and life. The original unlawful sale is the initiating cause from which all other causes flow, tied in natural proximate relation to each other. Contributory negligence or wilful acts on the part of the purchaser or last purchaser is immaterial to the civil liability of the seller. The creation of the opportunity to cause the injury is the source of the evil. Only when this strict rule is inflexibly administered will the likelihood of eliminating the menace be realized. It is the very act of placing into the hands of young boys such dangerous substances or devices which triggers the tragic chain of events. A boy is often subject to temptation which overcomes his fear of the risk of injury. This is no less true if the boy has used deceitful means to secure the product from the supplier. The statutes contemplate that anyone younger than the minimum statutory age, does not as a matter of law have the knowledge, education, skill, mental capacity, judgment, maturity and experience to properly understand the dangers of using the prohibited item. That is the very reason the statute is passed. It proclaims the public policy of the state to protect minors from injury to themselves and others, by use of the prohibited objects. This appears to be implied from the language of the Ohio Revised Code Secs. 3743.02, 3743.32 and 3743.37. The statutes do not contemplate the right to interpose defenses to the civil liability of violators. It is only in the case of articles stolen from properly guarded facilities that the rule can or should be relaxed.