

IR Matters

Legal Principles Affecting Teachers

Between 1986 and 1988, I wrote a series of articles for MENTOR, on the topic of Teachers and the Law, in which I dealt mainly with the position of teachers under Common Law. I also covered topics like Occupiers' Liability, Implied Duties of Employers and Employees, Contract, Copyright and Work Rules. Recently, I have received requests to make these articles available again for the benefit of the new and younger teachers who have joined our profession. In re-publishing these articles, I have decided to take the opportunity to update the information and rearrange the presentation.

Fortunately, the Common Law position has not been drastically changed by Statute or Case Law over the last 15 years or so. So the process of updating has not been too difficult. The contractual position of the teacher vis-à-vis his or her employer has also remained generally the same, except for the teachers in Independent Schools, and Aided Schools where there is now the provision for teachers to move between government and aided school service and vice versa. The Work Rules have been modified by Circulars and Regulations over the years to remain relevant to our fast changing times and needs. What I am not sure about is whether all these Circulars and Regulations have been compiled and codified for easy access and reference. That is something I hope to unravel with whatever assistance I can get.

When I first wrote these articles I had in hand numerous case studies and legal texts; so I have decided to keep these as references and, where necessary, add more. Such references provide a touch of realism to which any teacher can easily relate.

The purpose of re-publishing these articles is not to give a full and comprehensive coverage of the topic, as this is not possible. It is to outline certain legal principles by which, it is hoped, teachers can view and judge their own acts or omissions. I hope our members, at whatever stage of their career, will find these articles useful.

Swithun Lowe

The Doctrine of *in loco parentis*

The duties the school owes its pupils may extend beyond the school compound and beyond school hours. It extends to all activities sanctioned or promoted by the school.

Teachers are often told that whenever they are in charge of their pupils, they are parent substitutes, standing in the place of the natural parents of their pupils. The term used to describe this position is *in loco parentis*.

A court in Britain in 1893¹ first defined the duty owed by teachers to their pupils thus:

"The school master was bound to take such care of his boys as a careful father would take of his boys, and there could be no better definition of the duty of a school master."

Using the standard usually applied by the courts, we can safely assume that the teacher will be judged by the standards of the *"reasonably careful parent"*. It is also clear that children with special problems require special care. So the teacher may, under special circumstances, be required to apply a different standard of care for each child. Take the case of Jane² who was known to have a history of congenital dislocation, and the PE Mistress had been told that she was not to participate in the PE Lessons. The girl persuaded the teacher that she was all right, and the teacher allowed her to join in. Jane did a handstand, fell and broke an ankle. The court found the PE Mistress to be negligent. It was clear that Jane had a special problem that required special attention.

While the definition has been fairly widely applied it has also been qualified. In one case,³ where the playing field of a school was placed out of bounds because it was under repair. When the teacher was around no pupil entered the field, but when he left, three boys went in and played with a roller. Two of them managed to pull the roller over the foot of the third boy and he

was hurt. The action taken by the parent against the school and the teacher was lost. This case is of special interest because the question "What has a reasonably careful parent to do?" was answered thus:

"Supposing a boy of yours has some other little boys who are friends of his, coming to tea on a Saturday afternoon and you see them all playing in the garden. Suppose your garden roller happened to be there. Would you consider you had been neglectful of your duty to the parents of those other boys because, for five minutes, you had gone into the house and two of them had managed to pull the roller over the third?"

Would you think that, in those circumstances, you had failed to exercise reasonable supervision as a parent? These things have got to be treated as matters of common sense, not to put on (the teacher) any higher standard of care than that of a reasonably careful parent.

If boys were kept in cotton wool, some of them would choke themselves with it. They would manage to have accidents: we always did, ... we did not always have actions at law afterwards.

You have to consider whether or not you would expect a headmaster to exercise such a degree of care that boys could never get into mischief. Has any reasonable parent yet succeeded in exercising such care as to prevent a boy getting into mischief and - if he did - what sort of boys should we produce?"

In another case⁴ it was stated:

"School authorities, when they are considering the care of children, must strike some balance between the meticulous supervision of children every moment of the time when they are under their care, and the very desirable object of encouraging the sturdy independence of children as they grow..."

The Role of the Principal

It is the duty of the Principal to ensure that there is a system of supervision which is adequate and

which provides a reasonable standard of care for the pupils. The Principal must allocate duties to teachers to supervise the pupils, in the classroom as well as outside the classroom. This will be discussed in greater detail later. For now we will confine our discussion to the Principal's role in laying down rules to ensure order and discipline among the pupils, and in enforcing these rules. As was said earlier, the Principal must get the teachers to assist in this task.

School Rules

In his book, *Law and Teachers Today* (1984), Neil Adams states⁵:

"Any community or organization needs rules for order, safety and the convenience of all. Such rules do not necessarily have to be spelt out in black and white; they may be of customary nature where everyone follows them because there is a long tradition of doing so. Some rules do have to be set out clearly so that newcomers may adjust quickly to routines and standards of behaviour, and it is necessary to state some rules precisely and publicly so that offenders are unable to deny knowledge of them".

It is the duty of the Principal to draw up the school rules. Of course, the best way to do this is in consultation with the teachers who have to ensure that the rules are obeyed. A wise Principal may even want to ensure that the parents understand the aims of the school rules and support them.

The school rules should cover things like safety, school routines, behaviour and conduct and possibly the special problems of the particular school. Two important points that must be made here are that the school rules must be reasonable; and that school rules must be enforced. If a rule is made and not enforced, it is no use having it in the first place. There must be sanctions against pupils who break school rules. Let us take an example. Let us say there is a rule, that forbids pupils from entering a science laboratory, unless they do so for a science lesson and are accompanied by a science teacher. But the science laboratory is always left open and the pupils are allowed to move in and out as they please without being checked. Then it may be argued that though there is a rule to ensure the safety of pupils, it is not observed or enforced and has lost its legal force. So if you make a rule you

must ensure it is obeyed by those for whom it is meant. If they disobey, they must be punished in one way or another.

Dealing with pupils individually and in groups

Clearly, there is a difference between dealing with one or two pupils and with a group of forty pupils. So quite naturally the standard of care is different when there are only one or two pupils and where there are forty pupils. The following statement makes the point⁶:

"The duty of a headmaster towards his pupils is said to be to take such care of them as a reasonably careful and prudent father would take of his own children. That standard is a helpful one when considering, for example, individual instructions to individual children in a school. It would be very unwise to allow a six year old child to carry a kettle of boiling water - that type of instruction; but that standard when applied to an accident or horseplay in a school of 900 pupils is somewhat unrealistic, if not unhelpful.

"... it appears ... to be easier and preferable to use the ordinary language of the law of negligence, that is, it is a headmaster's duty, bearing in mind the known propensities of boys and indeed girls between the ages of eleven and seventeen or eighteen, to take all reasonable and proper steps to prevent any of the pupils under his care from suffering injury from inanimate objects, from the actions of their fellow pupils, or from a combination of the two. That is a high standard."

With the individual child the teacher is in the position of the parent. The school is a community, and the child is there not only to do academic work but also participate in the life of the school community.

It has been said:⁷

... education includes the inculcation of habits of order and obedience and courtesy; such habits are taught by giving orders, and if such orders are reasonable and proper, under the circumstances of the case, they are within the scope of the teacher's authority, even although they are not confined to bidding the child to read or write, to sit down or to stand up in school, or the like. It would be extravagant to say that a teacher has no

business to ask a child to perform small acts of courtesy to herself or others such as to fetch her pocket handkerchief from upstairs,.... to open the door for a visitor, or the like: it is said that these are for the teacher's own benefit and to save herself trouble, and not for the child's benefit, but I do not agree: not only is it good for the child to be taught to be unselfish and obliging but the opportunity of running upstairs may often avoid punishment: the wise teacher, who sees the volatile child become fidgety, may well make the excuse of an errand for herself an outlet for the child's exuberance of spirits very much to the benefit of the child. Teachers must use their common sense, and it would be disastrous to hold that they can do nothing but teach."

However, more often than not the teacher has to deal with a large group. Parents have the right to expect the teacher, as a trained professional, to exercise a high standard of supervision, care and control.

The question the teacher must always ask himself or herself is: If these pupils were my own children what steps would I, as a reasonable, careful and prudent parent, take to ensure their safety and general well-being?

Negligence

"What is negligence is a question of degree - e.g. to leave a knife about where a child of four could get at it would amount to negligence, but it would not if boys of eighteen had access to it. Again, there are things that are necessary to leave about though they are dangerous to a certain extent, but it is different if articles are kept which are not necessary".

Justice Cave in *Williams v Gady* (1893)

Now let us move on to look at the issue of professional negligence. What does negligence mean? In 1856 it was defined thus:⁸

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. "

Legally, negligence "properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing"⁹

It is necessary therefore to look

at the various elements that must be present before negligence can be established. Basically there are three things involved:

1. A Duty of Care,
2. A Breach of that Duty and
3. Damage suffered as a consequence of the Breach.

Duty of Care

A man took his girlfriend out for a drink. She ordered a ginger beer and when she took a sip she found a decomposed snail in the glass. She claimed she suffered shock and later contracted gastro-enteritis. The question was: Did the manufacturer of the soft drink owe a duty to this customer to take care that the drink was safe for consumption? He argued that the bottled drink had passed through so many hands after leaving him that he could not possibly be held responsible. But the court thought otherwise. The judge first talked about the Christian definition of one's neighbour and caring for one's neighbour. Then he asked "Who is your neighbour in law?" And he gave the following definition:¹⁰

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question ..."

There can be no doubt that teachers owe a duty of care to the pupils under their charge. The doctrine of *in loco parentis* applies.

Breach of Duty

The problem arises when it has to be decided as to whether or not the duty has been breached. The standard of the "reasonable man" has to be applied and each case has to be decided on its own circumstances.

Take, for example, the case of a PE teacher who threw a long strip of plastic into a dust-bin, which was accessible to pupils.¹¹ Two boys picked it up and played with it. They stretched and released it; and it hit the eye of a third boy sitting nearby eating biscuits.

The judge found the teacher negligent. The plastic strip was heavy and potentially dangerous and a reasonably sensible man would not throw it where the pupils could get hold of it. In two cases,¹² involving the use of pointed scissors, the court found that a reasonable person would allow ten-year olds to use such scissors but not seven-year olds.

Damage

The damage must be a result of the breach of duty on the part of the teacher. Here the question usually is whether the teacher could have reasonably foreseen that damage would result from his or her act or omission.

Take, for example, the case¹³ of the railway employee who was helping a passenger on to a train. He negligently pushed a parcel, which the passenger was carrying, and it fell. Unknown to him it contained fireworks. These exploded and the shock upset some scales stacked on a cupboard at the other end of the platform. The scales fell on a person standing under them and he was injured. Could the employee foresee that his act would cause a person so far away to be hurt? The court decided that was not reasonably foreseeable.

Sometimes it is difficult to decide whether or not the damage was reasonably foreseeable. It is clear, however, that when dealing with children a high degree of care is demanded. The following case¹⁴ illustrates this point.

A petrol station supplied petrol to a nine-year-old boy who told the attendant that he wanted it for his mother's car, which was "stuck down the road." He actually wanted it for a game of Red Indians. In the course of the game he ignited the petrol and was injured. It was held that the owners of the station were liable. To put petrol in the hands of a small boy is to subject him to temptation and risk of injury and this is no less the case "if the boy had resorted to deceit to overcome the supplier's scruples."

It is important to distinguish between what is reasonable and what is reasonably foreseeable. Reasonableness usually relates to judging the actions or omissions of an individual and reasonable foreseeability to judging whether the

damage was caused by these actions or omissions. The following example¹⁵ is a useful illustration of how the distinction may be made.

There was a teacher of a nursery class who decided to take two of her pupils, who were four years old, for a walk. She got them ready and made them wait for her in the classroom while she went to the toilet. On the way back, she met another child who had fallen down and cut himself. The teacher washed and bandaged him. She was thus delayed for about ten minutes.

When she returned to the classroom, the two girls were not around. They had gone out through the school gates, which were left open. One of them attempted to cross the road and a lorry driver, in trying to avoid her, swerved, hit a telephone post and was killed. The court found the school authority negligent for leaving the gates open as this made it easy for the four-year olds to escape and go on to the busy road. However, the teacher was found not to be negligent because, faced with two choices, she had taken the reasonable course that any parent would have taken. The judge said:

"Her duty was that of a careful parent. I cannot think that it could be considered negligent in a mother to leave a child dressed ready to go out with her for a few moments and then, if she found another of her children hurt and in need of immediate attention, she could be blamed for giving it, without thinking that the child who was waiting to go out with her might wander off into the street. It is very easy to be wise after the event and argue that she might have done this or that: but it seems to me that she acted just as one would expect her to do, that is to attend to the injured child first, never thinking that the one waiting for her would go off on his own".

So it seems that a person faced with two choices must take the one that commonsense dictates at the time, even if later the choice should prove to have been the wrong one.

The careful, prudent parent

It is useful to remember always that the standard by which you as a teacher will be judged is that of the careful, prudent parent. But it may be argued that, while a parent has only to look after one, two or maybe even three

children at any one time, the teacher has to look after forty. It would therefore be fairer to judge a teacher on the standard of a careful, prudent parent of forty children.

However, a qualification must be made: teachers, by virtue of their training, are expected to have greater knowledge and skill in dealing with groups of children than the ordinary man in the street.

References:

1. Williams v Gady (1893)
2. Shepherd v Essex County Council and Linch (1913)
3. Hudson v the Governors of Rotherham Grammar School and Selby Johnson (1937).
4. Jeffrey v London County Council (1954)
5. Nell Adams: Law and Teachers Today (Second Edition, 1984) p 152
6. Beaumont v Surrey County Council (1968)
7. Smith v Martin and Kingston upon Hull Corporation (1911)
8. Blythe v Birmingham Waterworks (1856)
9. Lochgelly Iron & Coal v M'Mullan (1934)
10. Donoghue v Stevenson (1932)
11. Beaumont v Surrey County Council (supra)
12. Butt v Cambridgeshire & Isle of Ely County Council (1969) and Black v Kent County Council (1981)
13. Palsgrav v Long Island Railway (1928)
14. Yachuk v Oliver Blais Co Ltd (1949)
15. Carmarthenshire County Council v Lewis (1955)

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Case Studies

Case One

A class of thirty-seven girls between nine and ten years were given pointed scissors to cut out illustrations. The use of such scissors was normal practice and the teacher was conducting her lesson in an efficient manner. She turned to comment on the work of one pupil and as she did so another pupil waved her scissors in the air and the point went into her friend's eye. She lost the sight of that eye.

Was the teacher negligent?

The Judgement: *The teacher was not negligent. This was a large class and the lesson was conducted properly. The teacher could not have reasonably foreseen the risk of such an accident. It was an unfortunate accident and the teacher was not at fault.*

Case Two

A seven-year old boy injured his eye with pointed scissors when another boy jogged his chair. Three members of the staff examined the boy and allowed him to walk home without taking proper medical advice.

Were the teachers negligent?

The Judgement: *The judge criticised the use of pointed scissors. An important factor in this case was that the teachers had examined him and allowed him to walk home without taking proper medical advice. The teachers were negligent, and the boy was awarded damages.*

Case Three

A class of thirty-one pupils was having a PE lesson in a hall in which there was a glass partition. The teacher allowed them to play a game

of "touch" and one of the boys, to avoid being caught, ran into the partition and sustained serious injuries.

Was the teacher negligent?

The Judgement: *The court found the teacher, and thus the School Authority, negligent. No sensible parent would have allowed such a game to be played by such a large number of pupils in such a space. The teacher should have foreseen the danger.*

Case Four

A group of forty boys was having a PE lesson. They were working in groups at various activities. The teacher was moving carefully about the gym from group to group, supervising.

One group was vaulting over a buck. The method used to assist with safe-vaulting was for each boy after he had vaulted the buck to stop and provide support landing for the next boy who vaulted. This method was a commonly approved one and the teacher had trained the boys so that they were experienced and proficient at doing this.

Just as one boy was vaulting the bell went for the end of the lesson and the boy who should have provided support turned and ran for the changing room. The boy who was vaulting fell awkwardly and was injured.

Was the teacher negligent?

The Judgement: *The method of support was commonly used and approved. The teacher had trained the boys in its use and was moving about supervising each group. He had acted reasonably and was not negligent.*