

DUTY OF CARE - Teachers

Duty of Care (From "Matters of Legal Liability")

Every teacher has a 'duty of care' towards every student under his or her supervision, by virtue of the conditions of the teacher's employment and by virtue of the common law principles of negligence.

Generally speaking a teacher owes a student a duty to take reasonable care to protect him or her from foreseeable risk of injury.

This duty may be manifested in many ways including:

- * the duty to supervise the students so that they comply with rules and practices designed for their own safety and that of others,
- * the duty to design and implement appropriate programmes and procedures to ensure the safety of students,
- * the duty to ensure that school buildings, equipment etc are safe, or
- * the duty to warn students about dangerous situations or practices.

This list is not exhaustive. Basically the duty is to do what is reasonable in a given situation. The question of what is reasonable in a given instance will be decided by the court in the event of litigation, but it is for the individual teacher, the principal and the school to comply with objectively reasonable practice.

Note especially that as all students attending non-government schools are invitees, because they are there for a school's material benefit, a higher duty of care is required in respect to negligence. This includes not only supervision, but also maintenance.

Duty of Care (From Minter Ellison – "Duty of Care" – NCISA Conference paper 2000)

Introduction

There is no doubt that a duty of care to take positive action towards students in their charge exists for school authorities and teachers. The legal debate however, arises when focus is placed on the extent of this liability.

Does this liability extend to activities that occur outside the school realm?

'Within the School'

General Principles

All people owe a duty of care to other people not to injure another as a result of his or her negligent acts or omissions. This duty does not usually extend to preventing injury (a positive duty to take certain preventative steps) from occurring to another person, where one has not caused or contributed to the risk of injury.

For some, however, a special duty exists giving rise to more onerous duties. The relationship between school authority and pupils gives rise to one of these special duties.

"While pupils are on school premises, school authorities and teachers owe pupils a duty of care of general supervision concerning their physical safety": *Richards v Victoria* [1969] VR 136 (FC); *Geyer v Downs* (1977) 138 CLR 911; *Commonwealth v Introvigne* (1982) 150 CLR 258; *Warren v Haines* [1986] Aust Torts Reports 80-014 (SC NSW).

The reason for this duty was discussed by Winneke J in Richards v Victoria:

“A child is in need of protection against the conduct of others, or indeed of himself, which may cause him injury when he is beyond the control and protection of his parent and the schoolmaster is in the position to exercise the authority over him and afford him, in the exercise of reasonable care, protection from injury”.

The duty of care of the school authority is non-delegable. In Commonwealth v Introvigne, Mason J stated that:

“The duty is not discharged by merely appointment competent teaching staff and leaving it to the staff to take appropriate steps for the care of the children. It is a duty to ensure that reasonable steps are taken for the safety of the children, a duty the performance of which cannot be delegated”.

Foreseeability of Risk

In order to establish a duty of care, the plaintiff must prove that the defendant ought to have foreseen that the negligent action of the defendant might endanger the plaintiff.

It is not enough to establish that the defendant knew or ought to have known of the potential hazard.

It must be shown that a reasonable person in the position of the defendant would have foreseen that the situation constituted a real risk to the plaintiff or to a limited class of persons of which the plaintiff was a member: Wyong Shire Council v Shirt (1980) 146 CLR 40 at 47.

Below are some case examples that discuss the degree of supervision a school owes to a pupil due to the foreseeability of risk. The extent of the general duty to supervise pupils does not extend to constant supervision: Baker v South Australia (1978) 19 SASR 83; Johns v Minister of Education (1981) 28 SASR 206; Harvey v Pennell [1986] Aust Torts Reports 80-052 (SC SA).

To a large extent, however, the question of degree of supervision will depend on the individual facts and circumstances of a case. Most of these situations involve either actual or constructive knowledge of a potentially dangerous situation:

1. In Johns v Minister of Education, a teacher discovered the pupils had catapults and so was thus alerted to a potentially dangerous situation. It was held that the degree of supervision which she exercised was adequate to discharge the duty of care, and so was found not be negligent.
2. Johns case was distinguished from Victoria v Bryar (1970) 44 ALJR 1745. In this case, the teacher actually knew that a fight was in progress and this knowledge made the duty more onerous. The fight involved the discharge of pipe pellets fired by elastic bands. The danger was clear and the teacher failed to stop the fight. The teacher was found to have breached her duty of care.
3. In Vandescheur v State of NSW [1999] NSWCA 212 (1 July 1999), a 13 year old boy was injured whilst playing schoolyard cricket during recess. The pitch was a concrete path, the wickets were garbage bins, and the crease was a drain with a metal grille over it across the path. The plaintiff was seriously injured by the jagged handle at the end of the grille when the bottom of his bat was caught in the gap of the grille. The court found that:
 - a. the bottom of the bat being caught in the grille was an ‘obvious risk’;
 - b. the activity was known to and approved by teachers;
 - c. a teacher was watching the game when the plaintiff was injured;

- d. 'the teachers had a duty to take reasonable care for the safety of the appellant, which required them to take precautions against the foreseeable risk of injury commensurate with the degree of risk';
 - e. 'there was a substantial risk associated with the activity, and [the teachers breached their duty of care to the appellant](#) when they permitted him to continue.'
4. An additional element of danger also increases the onus of supervisory duty. In *Bills v South Australia* (1982) 32 SASR 312, [a teacher was found to have breached her supervisory duty](#) by failing to ensure that trampolining equipment was put away after instructions to put the equipment away were given and for failure to supervise any trampolining after that point.
 5. The Long Thin Neck case – in *Watson v Haines* [1987] Aust Torts Reports 68, 553 (SC NSW), a state school authority received medical advice concerning the hazards of playing rugby when players have long thin necks. The expert medical authority had offered to make 300 kits available to schools to educate teachers and students of the risks of a boy with a long thin neck playing hooker. The school authority placed only a third of kits in resource centres and did not advertise their availability. In this case, the plaintiff had a long thin neck and was rendered quadriplegic while playing hooker. Not one kit was borrowed at the date of this accident. The school authority was held liable for failing to take appropriate steps to implement an adequate system of reducing the risk of injury in rugby, thus allowing the pupil with a long thin neck to play in the front row of a rugby scrum.

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Teachers' Liability in Negligence to Students

by John Battams, General Secretary, Queensland Teachers' Union

Teachers' Duty of Care

Teachers and their employers undertake the care and control and supervision of young people in a wide variety of circumstances ranging from the normal classroom situation to activities such as sports, swimming, travelling to various places outside the school grounds and the handling of potentially dangerous chemicals.

[As trained professionals, teachers hold themselves out as capable of caring for and controlling large numbers of young people, and are expected to exercise the level of care and skill of a professionally trained teacher in carrying out his/her duties.](#)

[To discharge the duty of care it is necessary for a teacher to exercise that degree of skill and care which a reasonable teacher in the situation of that teacher would exercise.](#)

[A duty of care arises in relation to the use of equipment and premises but in most cases the duty is to take reasonable steps to minimise the risk of students being injured by their own conduct or by the conduct of other students. There is certainly an element of protecting students from the consequences of their own immaturity.](#)

In the laboratory, at the swimming pool, on the sporting field, travelling to museums, libraries, concerts and other activities held outside the school grounds the duty of care will exist and must be discharged, taking into account all of the circumstances involved.

Principles of Negligence

The basic principle in negligence cases is that liability to pay damages will arise where three elements are established by the person seeking damages, namely:

- that there is a duty of care in the situation under consideration;
- that there has been a breach of duty, that is, a failure to take care regarded by the law as reasonable in the circumstances; and
- that damage or injury has been caused by or contributed to by that breach.

These three basic principles of negligence must apply before a claim for damages can be sustained.

The duty of teachers is a duty to take reasonable steps to minimise the risk of injury, but is not a duty to guarantee that no injury will be suffered. It would clearly be impossible to discharge a duty to guarantee that no student would ever be injured and most unjust to seek to impose such a duty on teachers.

A teacher will not be liable for damages for an injury to a student merely because an injury occurred while the student was in the teacher's care. In any situation, teachers must use their common sense.

First of all, statutory provisions, gazetted regulations and lawful instructions must be obeyed, but thereafter the teacher must use common sense.

In looking at the question of the duty of care owed by the teacher to the child, the Court will ask these questions:

- Should the teacher as a reasonable person have foreseen that such an accident was likely to happen?
- Did he/she take sufficient precautions to prevent it occurring?

Under the doctrine of vicarious liability, the employer is also liable for any civil wrong committed by its employees while acting in the course of their employment.

An injured student has the choice of suing the employer body alone, or the teacher(s) alone, or both. In general, the injured student will sue both the employer body and the teacher(s) concerned.

Employer's Liability

An important practical factor to be taken into account is that if a teacher having a duty of care has failed to discharge that duty of care and a student has been injured as a result, then the employer of that teacher will also be liable in damages, if the teacher has been acting within the scope of the teacher's employment.

To take the simplest example, the employer will be liable to the student for the negligence of a teacher if the negligence and the accident have occurred during a normal classroom situation.

Employers will of course be liable in many other circumstances as well. As teachers have a contractual duty to their employer to exercise reasonable care and skill, the legal position is that

the employer, though liable to the student, may seek reimbursement from the teacher of payments made as a result of the teacher's negligent conduct in relation to the student.

The employer's liability does not in any way remove the teacher's liability to the student, as this is a personal liability. The injured student has the choice of suing either the employer alone, or the employer and the teacher (the most common course).

The Crown, however, recognises that employees (particularly teachers) have difficult and delicate duties and functions and that, in the diligent carrying out of these duties and functions, they are exposed to claims for damages.

Provided that a teacher is conscientious and diligent in his/her endeavours to carry out his/her duties, a government Education Department will normally take responsibility for defending and settling claims, and not seek a contribution towards its costs from the teacher.

Non-school Activities

The final point to be discussed is the possibility of teachers placing themselves in a situation where they are found to have failed to have discharged the duty of care in relation to the supervision of students but where the court also holds that the employer is not itself liable.

It is a matter of considering whether the teachers are acting within the scope of their employment or are involved in an activity with students which is not part of their employment.

There are of course many activities outside the normal school day routine which are part of the school's activities and there will be no doubt that teachers are acting within the scope of their employment in many of these situations.

Teachers should be careful however not to place themselves in situations where there is a possibility that the school might assert, if proceedings later arose as a result of accident, that this was in fact a private arrangement between the teacher and a number of students rather than a school activity.

Teachers can obtain some protection in relation to this situation by ensuring they complete risk assessment forms as required by their school's policy and ensuring that parental permission forms are sent home, signed and returned before the commencement of any out of school activity. It is essential that teachers comply with the school's policy in relation to excursions and extra curricula activities. Teachers can also arrange insurance, either generally, or in relation to each particular occasion.

Insurance

Teachers who are concerned about protecting their financial position are, of course, able to seek legal advice in relation to the insurance possibilities which are open to them.

Effect on Employment

In conclusion, it should be mentioned that a failure by a teacher to exercise reasonable care and skill in discharging his or her duties is a breach of the contract of employment and may result in disciplinary action by the employer.

Disciplinary action will not be an issue when a teacher has exercised wisely his/her professional judgement and has complied with relevant departmental policies, guidelines and directions.

Reprinted courtesy John Battams, General Secretary, Qld Teachers' Union.

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