Liability Issue: Torts and Damages in an Education Setting

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ABSTRACT

"Negligence is the most frequently cited basis for a claim for damages in an educational setting. Three kinds of negligence may form the basis of a claim, thus: contractual negligence, civil negligence and criminal negligence. In an educational setting, the possible bases of liability by teachers, school administrators and institutions for negligence are: (a) civil liability by teachers and school administrators for damages caused by their own acts or negligence; (b) civil liability for injuries caused by persons in their custody or employment due to their negligence in supervising them or their failure to take appropriate measures to prevent injury; (c) civil and criminal liability by teachers and school administrators for material damage caused by their own reckless imprudence or gross/inexcusable lack or care in doing or failing to do something; (d) subsidiary civil liability for crimes committed by persons their custody and in the discharge of their duties; and (e) civil liability for breach of contract if they fail to take adequate steps to safeguard students' life and limb. This article discusses the foregoing bases of liability."

I. INTRODUCTION

The topic of potential liability by teachers, school administrators and educational institutions for damages caused by their own fault or negligence or the fault or negligence of the persons for whom they are responsible, namely, students and employees is both interesting and significant especially to those who are in the field of education.

School administrators and teachers are often concerned not only about the potential outcomes of court litigation but also about its real, as well as intangible, costs. Their concern is not without merit especially when what is at stake is their means of livelihood. Whether or not they are aware of it, they may be exposed to a high risk of liability for damages for injuries that may arise from their numerous and frequent daily relations and interactions with students and employees in the regular conduct of the business of education.

Four (4) common types of liability cases in education are based on defamation, search and seizure, corporal punishment, and negligence (Dougherty, 2004). Of the four, the most frequently cited basis for a claim for damages in court litigation is negligence. Thus, it is necessary for teachers and school administrators to know the degree of diligence that is required of them in the performance of their duties and responsibilities in order to avoid potential liability arising from negligence.

It must be pointed out that Philippine law on tort and damages is a combination of legal provisions that were borrowed from the Spanish Civil Code and court decisions that are influenced by American ideas and principles. Thus, some legal wrongs classified as "torts" in American common law are considered and treated under Philippine law as quasi-delicts and covered by the Civil Code while some are treated as crimes and governed by the Revised Penal Code (Gonzalez-Decano 2004).

Considering the persuasive weight of American jurisprudence on torts on Philippine law, American court case decisions have been cited as examples in this paper in addition to controlling case decisions by the Philippine Supreme Court involving the issue of torts and damages in Philippine educational institutions.

II. STATEMENT OF ISSUES

This paper aims to address the following questions:

(a) What are the possible bases of liability by teachers, school administrators and educational institutions for damages due

to their own fault or negligence or that by persons for whom they are responsible, such as students and employees?

(b) What are the legal rights, duties and obligations of teachers, school administrators and educational institutions and how may they protect themselves from liability?

These issues will be addressed by a discussion of Philippine legal principles and provisions, on torts and damages, and controlling doctrines enunciated by the Philippine Supreme Court on the same issue as applied to cases involving educational institutions. American court decisions involving tort liability by teachers, school administrators and educational institutions will also be cited by way of providing additional examples of court case decisions.

III. DISCUSSION

There are five (5) possible bases of liability by teachers, school administrators and educational institutions due to fault or negligence. The first is liability by teachers and school administrators for damages caused solely by their own acts or negligence. The second is liability by teachers, school administrators and schools for injuries caused by persons in their custody or employment due to their negligence in supervising them or their failure to take appropriate measures to prevent injury. In both instances, the basis of liability is quasi-delict *(culpa aquiliana)* which is covered under Articles 2176 and 2180 of the Philippine Civil Code.

The third possible basis of liability by teachers and school administrators is reckless imprudence or gross or inexcusable lack of precaution in doing or failing to do an act resulting in material damage to another. One's employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place are taken into consideration in determining the degree of care which is required in each particular situation. The basis of liability in this case is criminal negligence *(culpa criminal)* covered under Article 365 of the Revised Penal Code.

The fourth is *subsidiary* liability by employers, teachers and other persons for crimes committed by their pupils, workmen, apprentices, employees, or servants in the discharge of their duties *(culpa criminal)* covered under Article 103 of the Revised Penal Code, while the fifth is liability by educational institutions for breach of contract *(culpa*

contractual) in ensuring that adequate steps are taken to protect students' life and limb.

The following comparison between *culpa aquiliana*, *culpa contractual* and *culpa criminal* further illustrates their distinctions:

In *culpa aquiliana* and *culpa criminal,* negligence is the direct, substantive and independent source of the obligation, while in *culpa contractual*, negligence is merely incidental in the performance of an already existing contractual obligation. There is no pre-existing obligation in *culpa aquiliana* and *culpa criminal*, while *culpa contractual* presupposes a pre-existing obligation.

In *culpa aquiliana* and *culpa contractuall* the degree of proof needed to establish liability is merely preponderance of evidence; while in *culpa criminal,* proof beyond reasonable doubt is required to establish liability.

The defense of having exercised the degree of diligence required of a good father of a family taking into consideration the attendant circumstances of each particular case is a proper and complete defense insofar as employees or guardians are concerned in *culpa aquiliana,* while the defense of a good father of a family in the selection and supervision of employees is, as a rule, not a complete defense in *culpa contractual* although it may serve to mitigate or lessen liability for damages (Gonzalez-Decano, 2004). Educational institutions may, however, be treated as an exception to this rule since they may still avoid liability by proving due diligence in the performance of their duties. Schools may not be considered as insurers of students against all risks (PSBA versus Court of Appeals, 1992).

The defense of a good father of a family is not a proper defense by the employer in *culpa criminal* since the employee's guilt automatically becomes the employer's civil liability if the employee is insolvent (Gonzalez-Decano, 2004).

A. Liability by Teachers and School Administrators arising from Their Own Fault or Negligence

Article 2176 of the Philippine Civil Code provides as follows:

"Art. 2176. ***Whoever, by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done.*** Such fault or negligence, if there is no pre-

existing contractual relations between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

Negligence is the failure to observe for the protection of the interest of another that degree of care, precaution, and vigilance that the circumstances justly demand. It is want of care required by the particular circumstances. Negligence is the omission to do something that a reasonable man, guided upon those considerations that ordinarily regulate the conduct of human affairs, would do, or do something that a prudent and reasonable man would not do. It is conduct that involves an unreasonably great risk of causing damage, or more fully, conduct that falls below the standard established by law for the protection of others against unreasonably great risk of harm. Negligence is conduct, not a state of mind. (Gonzalez-Decano, 2004) The following Supreme Court decisions illustrate the application of Art. 2176 of the Civil Code to situations involving teachers and other school authorities:

In the case of Jose Ledesma versus Court of Appeals (1988), the Supreme Court affirmed the decision by the Court of Appeals holding the petitioner who was then the president of the West Visayas College liable for failing to graduate student Delmo with honors. The Court ruled that the award of moral damages is proper, considering that the student and her father went through a painful ordeal, disappointment and humiliation that was brought about by the petitioner's neglect of duty and callousness in deliberately omitting to inform the student of the Director's decision to graduate her with honors, petitioner's stubborn refusal to meet with the student's father despite the latter's requests, and in refusing to give honors due to the student in the commencement exercises with the lame excuse that he would be embarrassed if he did so to the prejudice and in complete disregard of the student's rights. The Court also awarded exemplary damages to provide an example of correction for the public good. The court ruled:

"We find no reason why the findings of the trial and appellate courts should be reversed. It cannot be disputed that Violeta Delmo went through a painful ordeal which was brought about by the petitioner's neglect of duty and callousness. Thus, moral damages are but proper. As we have affirmed in the case of Prudenciado v. Alliance Transport System, Inc.

> "There is no argument that moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of defendant's wrongful act or omission." (People v. Bayton, 129 SCRA 62 (1984).

The Solicitor-General tried to cover-up the petitioner's deliberate omission to inform Miss Delmo by stating that it was not the duty of the petitioner to furnish her a copy of the Director's decision. Granting this to be true, it was nevertheless the petitioner's duty to enforce the said decision. He could have done so considering that he received the decision on April 27, 1966 and even though he sent it back with the records of the case, he undoubtedly read the whole of it which consisted of only three pages. Moreover, the petitioner should have had the decency to meet with Mr. Delmo, the girl's father, and inform the latter, at the very least of the decision. This, the petitioner likewise failed to do, and not without the attendant bad faith which the appellate court correctly pointed out in its decision, to wit:

> "Third, assuming that defendant could not furnish Miss Delmo of a copy of the decision, he could have used his discretion and plain common sense by informing her about it or he could have directed the inclusion of Miss Delmo's honor in the printed commencement program or announced it during the commencement exercises.
>
> Fourth, defendant despite receipt of the telegram of Director Benardino hours before the commencement exercises on May 3-4, 1966, disobeyed his superior by refusing to give the honors due Miss Delmo with a lame excuse that he would be embarrassed if he did so, to the prejudice of and in complete disregard of Miss Delmo's rights.
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> Fifth, defendant did not even extend the courtesy of meeting Mr. Pacifico Delmo, father of Miss Delmo, who tried several times to see defendant in his office thus Mr. Delmo suffered extreme disappointment and humiliation. x x x

> Defendant, being a public officer should have acted with circumspection and due regard to the rights of Miss Delmo. Inasmuch as he exceeded the scope of his authority by defiantly disobeying the lawful directive of his superior, Director Bernardino, defendant is liable for damages in his personal capacity. x x x"

In the case of Ylarde versus Aquino (1988), the Supreme Court held that the negligent act of private respondent teacher Aquino in ordering his young pupils to make an excavation to bury a one-ton concrete block that was lying nearby and which could easily be pushed or kicked into the hole and in leaving them in the excavation area, obviously an unsafe situation, thus exposing them to real danger, considering their instinctive playfulness and adventurous spirit and lack of knowledge of the risk that they were facing, has a direct causal connection to the death of the child Ylarde, *viz.*:

> "Left by themselves, it was but natural for the children to play around. Tired from the strenuous digging, they just had to amuse themselves with whatever they found. Driven by their playful and adventurous instincts and not knowing the risk they were facing, three of them jumped into the hole while the other one jumped on the stone. Since the stone was so heavy and the soil was loose from the digging, it was also a natural consequence that the stone would fall into the hole beside it, causing injury on the unfortunate child caught by its heavy weight. Everything that occurred was the natural and probable effect of the negligent acts of private respondent Aquino. Needless to say, the child Ylarde would not have died were it not for the unsafe situation created by private respondent Aquino which exposed the lives of all the pupils concerned to real danger."

Thus, respondent Aquino was held liable for damages for negligence resulting to the death of the child Ylarde. The court ruled that the respondent acted with fault and gross negligence when he: (a) failed to avail himself of services of adult manual laborers and instead utilized his pupils aged ten to eleven to make an excavation near the one-ton concrete stone which he knew to be a very hazardous task; (b) required the children to remain inside the pit even after they had finished digging,

knowing that the huge block was lying nearby and could be easily pushed or kicked aside by any pupil who by chance may go to the perilous area; (c) ordered them to level the soil around the excavation when it was so apparent that the huge stone was at the brink of falling; (d) went to a place where he would not be able to check on the children's safety; and (e) left the children close to the excavation.

Damages due may be mitigated if the victim's own negligence contributed to his injuries. Thus, lower court in the above-cited case of Ylarde versus Aquino mitigated the damages due to the negligence of respondent Aquino on the theory that the injuries resulting to the death of the child Ylarde were caused by his own reckless imprudence. Art. 2179 of the Civil Code provides as follows:

> "Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant" lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded."

However, the Supreme Court reversed the lower court's finding of negligence on the part of the victim Ylarde considering his age. The Court ruled that a minor should not be held to the same degree of care as an adult. His conduct should be judged according to the average conduct of persons of his age and experience. Thus:

> "It should be remembered that he was only ten years old at the time of the incident. As such, he is expected to be playful and daring. His actuations were natural to a boy his age. Going back to the facts, it was not only him but the three of them who jumped into the hole while the remaining boy jumped on the block. From this, it is clear that he only did what any other ten-year old child would do in the same situation."

The Supreme Court ruled that the lower court should have considered the age and maturity of the child Ylarde who cannot be held to the same degree of care as an adult and thus cannot be considered

as having acted with reckless imprudence nor as contributing to his own death such as will mitigate the liability of respondent Aquino.

> "In ruling that the child Ylarde was imprudent, it is evident that the lower court did not consider his age and maturity. This should not be the case. The degree of care required to be exercised must vary with the capacity of the person endangered to care for himself. A minor should not be held to the same degree of care as an adult, but his conduct should be judged according to the average conduct of persons of his age and experience. The standard of conduct to which a child must conform for his own protection is that degree of care ordinarily exercised by children of the same age, capacity, discretion, knowledge and experience under the same or similar circumstances. Bearing this in mind, We cannot charge the child Ylarde with reckless imprudence."

American jurisprudence defines negligence in a similar way, that is, the failure to observe for the protection of the interest of another that degree of care, precaution, and vigilance that the circumstances justly demand. The required diligence of a good father of a family under Philippine law is similar to the duty of care required under American law, the violation of which constitutes negligence.

Negligence is not necessarily implied whenever someone is injured. The questions that should be considered are, first, whether the injury is foreseeable and, second, whether it was preventable if the person to whom negligence is attributed was present at the time of the injury. Thus, a teacher may be held liable for an injury that may have occurred in his or her absence if his or her presence would have prevented the injury. Otherwise, a teacher may not be reasonably held liable if the injury could not have been prevented or would have happened regardless of whether he or she was present at the time of the occurrence of the injury.

The factors that will be taken into consideration in determining whether a temporary absence from duty is reasonable or negligent are the purpose and duration of the absence, the distance of the teacher from his or her charges, class behavior and its history of conduct or misconduct, and assignments given to students during the teacher's absence. The following is a summary of American cases in which

teachers were found to have breached their duty of care (Dougherty, 2004):

"A regular classroom teacher left a lit candle on her desk, and a child whose costume came in contact with the flame was badly burned (Smith v. Archbishop of St. Louis, 1982);

A teacher left a classroom of mentally challenged teenagers unattended for a half-hour, and one student threw a wooden pointer, injuring the eye of another (Gonzalez v. MacHer, 1963);

On the school playground, students engaged in slap boxing for five to ten minutes until one student fell, fatally fracturing his skull (Dailey v. Los Angeles Unified Sch. Dist., 1970);

A student was injured when permitted to wear mittens while playing on the jungle gym (Ward v. Newfield Cent. Sch. Dist., 1978);

Students were required to play a game of line soccer in the gym with little experience or technical instruction in soccer skills. A melee occurred as the students kicked for possession of the ball, and one student was hurt (Keesee v. Board of Educ., 1962);

In shop, a student was injured using a drill press while the instructor, who had not properly instructed students in use of the press or provided safety warnings, was absent from the shop (Roberts v. Robertson County Bd. of Educ., 1985);

On a school-sponsored field trip, a child unsupervised while swimming in the ocean was hurt by a rolling log (Morris v. Douglas County Sch. Dist., 1965);

Two school counselors were informed by a student's friends that the student intended to kill herself. After the student did kill herself, a court held the counselors had a duty to use reasonable means to prevent the suicide and that they breached that duty when they failed to warn the student's parents (Eisel v. Board of Educ. of Montgomery County, 1991);

A high school student attending junior college shop class slipped, fell, and was injured. The junior college was found 80% negligent. The court concluded that the floor's surface was the primary cause of the injury. Also, the floor wasn't considered appropriate for the kind of shop class offered by the college (Williams v. Junior College Dist. of Central Southwest Missouri, 1995);

A school bus struck and killed a child after she was dropped off. Evidence established that the bus driver was negligent. The court also held that the district's insurer was required to allocate policy proceeds proportionally between the bus driver and the school district (Countryman v. Seymour R-II School Dist., 1992);

A student walking between two buses fell into the street and was hit by car. The court held that a teacher and the assistant principal were not immune from suit by reason of doctrine of official immunity (Jackson v. Roberts, 1989)."

The doctrine of proximate cause, under both Philippine and American law, requires that there be a cause and effect connection between the alleged misconduct and the resulting injury. In other words, the teacher's negligence must be the main contributing factor to the child being injured or harmed.

The case of St. Francis High School versus Court of Appeals (1991) provides an example of the exercise of the diligence of a good father of a family for the protection of the interest of another. In the said case, petitioner teachers were not held liable for damages for the death by drowning of the student Ferdinand Castillo because they were able to show that they exercised the diligence of a good father of a family for the protection of students by inviting P.E. and swimming instructors who have knowledge in swimming and first aid application to the picnic. Thus, no negligence could be attributed to them. To quote the Court's ruling:

"Petitioners Connie Arquio the class adviser of I-C, the section where Ferdinand belonged, did her best and exercised diligence of a good father of a family to prevent any untoward incident or damages to all the students who joined the picnic.

In fact, Connie invited co-petitioners Tirso de Chavez and Luisito Vinas who are both P.E. instructors and scout masters who have knowledge in First Aid application and swimming. Moreover, even respondents' witness, Segundo Vinas, testified that "the defendants (petitioners herein) had life savers especially brought by the defendants in case of emergency." The records also show that both petitioners Chavez and Vinas did all what is humanly possible to save the child."

B. Liability by Educational Institutions and Administrators for Damages caused by Employees

An employer's liability for acts and omissions of those for whom it is responsible depends upon the presence of three (3) essential requisites: first, that the employee was chosen by the employer personally or through another; second, that the services rendered by the employee were in accordance with orders which the employer has the authority to give at all times; and, last, that the illicit act of the employee was on the occasion, or by reason, of the exercise of the functions entrusted to him (Gonzalez-Decano, 2004).

Article 2180 of the Civil Code makes an employer liable for acts and omissions of persons for whom it is responsible (i.e., employees), *viz.*:

> "Art. 2180. ***The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. x x x***
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. x x x
>
> The responsibility treated of in this article shall cease when the person herein mentioned proved that they observed all the diligence of a good father of a family to prevent damage."

Where injury is caused by the negligence of a servant or employee there automatically arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after selection, or both. If the employer can show to the satisfaction of the court that he had exercised the care and diligence of a good father of a family in the selection and supervision of his employee, the presumption may be

overcome and he may be relieved of liability. An employer's liability for damages caused by the negligent acts or omissions of his employees acting within the scope of their assigned tasks is primary and solidary (Gonzalez-Decano, 2004).

Thus, in the case of Filamer Christian Institute versus Intermediate Appellate Court (1992), the Supreme Court held Filamer solidarily liable with its employee for failure to set forth such rules and guidelines as would prohibit any one of its employees from taking control over its vehicle by one who is not the official driver or to prohibit the driver and son of the Filamer president from authorizing another employee to drive the school vehicle. Likewise, Filamer failed to prove that it had imposed sanctions or warned its employees against the use of its vehicles by persons other than the driver.

The Court ruled that an injured party has recourse against an employee as well as his or her employer for whom, at the time of the incident, the employee was performing an act in furtherance of its interest and for its benefit, irrespective of whether the act was beyond the scope of the regular duties by the employee. An employer is expected to impose upon its employees the necessary discipline called for in the performance of any act that is indispensable to the business and beneficial to the employer. Otherwise, an employer may become liable for failure to perform its obligation to supervise its employees through the formulation of suitable rules and regulations for the guidance of its employees and the issuance of proper instructions intended for the protection of the public and of persons with whom the employer has relations through his employees. Thus:

> "It is indubitable under the circumstances that the school president had knowledge that the jeep was routinely driven home for the said purpose. Moreover, it is not improbable that the school president also had knowledge of Funtecha's possession of a student driver's license and his desire to undergo driving lessons during the time that he was not in his classrooms.
>
> In learning how to drive while taking the vehicle home in the direction of Allan's house, Funtecha definitely was not having a joy ride. Funtecha was not driving for the purpose of his enjoyment or for a "frolic of his own" but ultimately, for the service for which the jeep was intended by the petitioner school. Therefore, the Court is

constrained to conclude that the act of Funtecha in taking over the steering wheel was one done for and in behalf of his employer for which act the petitioner-school cannot deny any responsibility by arguing that it was done beyond the scope of his janitorial duties. The clause "within the scope of their assigned tasks" for purposes of raising the presumption of liability of an employer, includes any act done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage. Even if somehow, the employee driving the vehicle derived some benefit from the act, the existence of a presumptive liability of the employer is determined by answering the question of whether or not the servant was at the time of the accident performing any act in furtherance of his master's business.

x x x

Funtecha is an employee of petitioner Filamer. He need not have an official appointment for a driver's position in order that the petitioner may be held responsible for his grossly negligent act, it being sufficient that the act of driving at the time of the incident was for the benefit of the petitioner. Hence, the fact that Funtecha was not the school driver or was not acting within the scope of his janitorial duties does not relieve the petitioner of the burden of rebutting the presumption *juris tantum* that there was negligence on its part either in the selection of a servant or employee, or in the supervision over him. The petitioner has failed to show proof of its having exercised the required diligence of a good father of a family over its employees Funtecha and Allan.

The Court reiterates that supervision includes the formulation of suitable rules and regulations for the guidance of its employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his employees.

An employer is expected to impose upon its employees the necessary discipline called for in the performance of any act indispensable to the business and beneficial to their employer.

In the present case, the petitioner has not shown that it has set forth such rules and guidelines as would prohibit any one of its employees from taking control over its vehicles if one is not the official driver or prohibiting the driver and son of the Filamer president

from authorizing another employee to drive the school vehicle. Furthermore, the petitioner has failed to prove that it had imposed sanctions or warned its employees against the use of its vehicles by persons other than the driver."

Hence, schools may be held liable as employers under the general principle of *respondeat superior*. However, schools may avoid liability by showing that they exercised the diligence of a good father of a family *(bonus pater familias)* in selecting the school head and teachers and in exercising appropriate supervision over them. Supervision involves the issuance and enforcement of necessary rules and regulations for the maintenance of order and discipline and the taking of ample steps to prevent injury, for example, through the maintenance of an adequate security force. The Court explained in the case of Amadora versus Court of Appeals (1988), thus:

"In any event, it should be noted that the liability imposed by this article is supposed to fall directly on the teacher or the head of the school of arts and trades and not on the school itself. If at all, the school, whatever its nature, may be held to answer for the acts of its teachers or even of the head thereof under the general principle of *respondeat superior*, but then it may exculpate itself from liability by proof that it had exercised the diligence of a *bonus pater familias*

x x x

The Court is not unmindful of the apprehensions expressed by Justice Makalintal in his dissenting opinion in Palisoc that the school may be unduly exposed to liability under this article in view of the increasing activism among the students that is likely to cause violence and resulting injuries in the school premises. That is a valid fear, to be sure. Nevertheless, it should be repeated that, under the present ruling, it is not the school that will be held directly liable. Moreover, the defense of due diligence is available to it in case it is sought to be held answerable as principal for the acts or omission of its head or the teacher in its employ.

The school can show that it exercised proper measures in selecting the head or its teachers and the appropriate supervision over them in the custody and instruction of the pupils pursuant to its rules and regulations for the maintenance of discipline among them. In almost all cases now, in fact, these measures are effected

through the assistance of an adequate security force to help the teacher physically enforce those rules upon the students. This should bolster the claim of the school that it has taken adequate steps to prevent any injury that may be committed by its students."

Going back to the earlier cited case of St. Francis High School versus Court of Appeals (1991), the Supreme Court ruled that the school principal is not liable for damages for the death of the student Ferdinand Castillo since the accident happened while the teachers were not in the performance of their assigned tasks but while they were holding a purely private affair. The picnic had no permit from the school principal because it was not a school sanctioned activity nor was it considered as an extra-curricular activity. Mere knowledge by the school principal of the planning of the picnic by the students and their teachers does not in any way or in any manner show his acquiescence or consent to the same.

If the court were to rule otherwise, it will forever expose employers to the risk and danger of being hailed to Court to answer for every misdeed or omission by their employees even if such act or omission were committed while they were not in the performance of their duties. Thus:

"x x x it is clear that before an employer may be held liable for the negligence of his employee, the act or omission which caused damage or prejudice must have occurred while an employee was in the performance of his assigned tasks.

In the case at bar, the teachers/petitioners were not in the actual performance of their assigned tasks. The incident happened not within the school premises, not on a school day and most importantly while the teachers and students were holding a purely private affair, a picnic. It is clear from the beginning that the incident happened while some members of the I-C class of St. Francis High School were having a picnic at Talaan Beach. This picnic had no permit from the school head or its principal, Benjamin Illumin because this picnic is not a school sanctioned activity neither is it considered as an extra-curricular activity."

In another case, Soliman versus Tuazon (1992), the Court held the Republic Central Colleges not liable for the wrongful acts by security

guard Solomon inflicted upon the student Soliman Jr. considering that Solomon was not an employee of the school but of R.L. Security Agency Inc. an agency which provided security services to the school. Liability for the wrongful acts of a security guard will attach to its employer agency not to its clients or customers who have no hand in selecting the security guards who will be assigned to them. Hence, the diligence of a good father of a family in the supervision of security guards cannot be demanded from the school since there was no employer-employee relationship between them. Directions or instructions that the school may have given to the security guards assigned to it may be construed as no more than requests envisaged in such a contractual relation. To quote the Court's ruling:

> "It is settled that where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards or watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it; the duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards. The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency. There being no employer-employee relationship between the Colleges and Jimmy Solomon, petitioner student cannot impose vicarious liability upon the Colleges for the acts of security guard Solomon."

C. Liability by Teachers for Damages Caused by Students

Article 2180 makes teachers and heads of establishments of arts and trades liable for damages caused by their pupils and students or apprentices so long as they remain in their custody, *viz.*:

> "Art. 2180. x x x Lastly, ***teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.*** x x x"

The phrase "so long as the students remain in their custody" means for as long as students and pupils are in attendance at school, including recess time, the school, heads of establishments of arts and trades and teachers of academic institutions exercise protective and supervisory custody over them. A student is not required to live and board in the school for liability to attach to schools, heads or teachers for his tortuous act. The law only requires that the student must be under the control and influence of school authorities at the time of the occurrence of the injury. (Gonzalez-Decano, 2004)

Custody is not necessarily co-terminus with the semester, beginning with the start of classes and ending upon the close thereof, and excluding the time before or after such period, such as the period of registration, and in the case of graduating students, the period before the commencement exercises, as long as it can be shown that the student is in the school premises in pursuance of a legitimate student right or privilege, or is doing nothing more than relaxing in the campus in the company of his classmates and friends and enjoying the ambience and atmosphere of the school..

In the case of Jose Amadora, et al versus Court of Appeals (1988) where a student fired a gun within school premises that mortally hit his classmate after the semester had already ended, the Supreme Court ruled that teachers may be held liable for tort committed by students within the premises of the school at any time when its authority could be validly exercised over him, as long as the student was in school premises for a legitimate purpose. To quote the court, thus:

> "From a reading of the provision under examination, it is clear that while the custody requirement, to repeat *Palisoc v. Brillantes*, does not mean that the student must be boarding with the school authorities, it does signify that the student should be within the control and under the influence of the school authorities at the time of the occurrence of the injury. This does not necessarily mean that such custody be co-terminus with the semester, beginning

with the start of classes and ending upon the close thereof, and excluding the time before or after such period, such as the period of registration, and in the case of graduating students, the period before the commencement exercises. In the view of the Court, the student is in the custody of the school authorities as long as he is under the control and influence of the school and within its premises, whether the semester has not yet begun or has already ended.

It is too tenuous to argue that the student comes under the discipline of the school only upon the start of classes notwithstanding that before that day he has already registered and thus placed himself under its rules. Neither should such discipline be deemed ended upon the last day of classes notwithstanding that there may still be certain requisites to be satisfied for completion of the course, such as submission of reports, term papers, clearances and the like. During such periods, the student is still subject to the disciplinary authority of the school and cannot consider himself released altogether from observance of its rules.

As long as it can be shown that the student is in the school premises in pursuance of a legitimate student objective, in the exercise of a legitimate student right, and even in the enjoyment of a legitimate student privilege, the responsibility of the school authorities over the student continues. Indeed, even if the student should be doing nothing more than relaxing in the campus in the company of his classmates and friends and enjoying the ambience and atmosphere of the school, he is still within the custody and subject to the discipline of the school authorities under the provisions of Article 2180.

xxx Custody does not connote immediate and actual physical control but refers more to the influence exerted on the child and the discipline instilled in him as a result of such influence. Thus, for the injuries caused by the student, the teacher and not the parent shall be held responsible if the tort was committed within the premises of the school at any time when its authority could be validly exercised over him."

Teachers may avail of the defense of due diligence by taking appropriate precautions to prevent injury through care in enforcing discipline and observance of school rules and regulations upon

students. To quote the Court in Amadora versus Court of Appeals (1988), thus:

> "Such defense is, of course, also available to the teacher or the head of the school of arts and trades directly held to answer for the tort committed by the student. As long as the defendant can show that he had taken the necessary precautions to prevent the injury complained of, he can exonerate himself from the liability imposed by Article 2180 x x x
>
> A *fortiori*, the teacher himself may invoke this defense as it would otherwise be unfair to hold him directly answerable for the damage caused by his students as long as they are in the school premises and presumably under his influence. x x x"

Responsibility by schools, teachers, heads of establishments of arts and trades is not limited to tortious acts of students who are still minors. They may also become liable even if the students are already of legal age as long as the students are still in the custody of the school and the teacher and are subject to their discipline. Thus, the Supreme Court ruled in the case of Amadora versus Court of Appeals (1988) as follows:

> "In this connection, it should be observed that the teacher will be held liable not only when he is acting in *loco parentis* for the law does not require that the offending student be of minority age. Unlike the parent, who will be liable only if his child is still a minor, the teacher is held answerable by the law for the act of the student under him regardless of the student's age. Thus, in the Palisoc Case, liability attached to the teacher and the head of the technical school although the wrongdoer was already of age. In this sense, Article 2180 treats the parent more favorably than the teacher."

However, the Court also shows leniency towards schools, teachers and heads of establishments of arts and trades in the sense that it allows them to exonerate themselves from liability provided that they can show that they have exercised the necessary preventive measures to avoid the injury complained of. The reason is that their students may already be of majority age and, thus, less tractable

than minors. The Court elucidated in the case of Amadora versus Court of Appeals (1988) as follows:

> "x x x In this respect, the Court is disposed not to expect from the teacher the same measure of responsibility imposed on the parent for their influence over the child is not equal in degree. Obviously, the parent can expect more obedience from the child because the latter's dependence on him is greater than on the teacher. It need not be stressed that such dependence includes the child's support and sustenance whereas submission to the teacher's influence, besides being coterminous with the period of custody is usually enforced only because of the students' desire to pass the course. The parent can instill more discipline on the child than the teacher and so should be held to a greater accountability than the teacher for the tort committed by the child.
>
> And if it is also considered that under the article in question, the teacher or the head of the school of arts and trades is responsible for the damage caused by the student or apprentice even if he is already of age — and therefore less tractable than the minor — then there should all the more be justification to require from the school authorities less accountability as long as they can prove reasonable diligence in preventing the injury. After all, if the parent himself is no longer liable for the student's acts because he has reached majority age and so is no longer under the former's control, there is then all the more reason for leniency in assessing the teacher's responsibility for the acts of the student."

In the earlier cited case of Ylarde vs. Aquino (G.R. No. L-33722, 1988) the school principal was not held liable for the death of the child Ylarde since respondent Aquino himself admitted that there were no instructions from the former requiring what the students were told to do and nor was it included in their lesson plan for Work Education under respondent Aquino. Respondent Aquino simply decided on his own to help his co-teacher Banez in burying the remnants of the old school shop.

Therefore, conceptually, an alternative way of claiming damages from respondent Aquino, apart from basing the same on his own negligent acts would be to base the same on Article 2180 of the Civil Code as for his negligence, as teacher-in-charge, in supervising the students under his custody.

D. Liability by Educational Institutions Arising from Breach of Contract

In case the party causing the damage or injury to students are not members of the educational community, educational institutions may still become liable for breach of contractual obligation of providing students with an atmosphere that promotes or assists in attaining its primary undertaking of imparting knowledge. Hence, the school must ensure that adequate steps are taken to maintain peace and order within its campus premises and prevent its breakdown. The Court in the case of Philippine School of Business Administration versus Court of Appeals (1992) explained, thus:

> "When an academic institution accepts students for enrollment, there is established a *contract* between them, resulting in bilateral obligations which both parties are bound to comply with. For its part, the school undertakes to provide the student with an education that would presumably suffice to equip him with the necessary tools and skills to pursue higher education or a profession. On the other hand, the student covenants to abide by the school's academic requirements and observe its rules and regulations.
>
> Institutions of learning must also meet the implicit or "built-in" obligation of providing their students with an atmosphere that promotes or assists in attaining its primary undertaking of imparting knowledge. Certainly, no student can absorb the intricacies of physics or higher mathematics or explore the realm of the arts and other sciences when bullets are flying or grenades exploding in the air or where there looms around the school premises a constant threat to life and limb. Necessarily, the school must ensure that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof."

Considering, however, that a school, like a common carrier, cannot act as insurer of its students against all risks, a school may avoid liability by proving that its breach of contractual obligation was not due to its negligence, which is statutorily defined to be the omission of that degree of diligence which is required by the nature of the obligation and corresponding to the circumstances of persons, time and place.

Thus, in the case of Philippine School of Business Administration (PSBA) versus Court of Appeals (1992), the Court held PSBA not liable

for the death of its student inside school premises caused by outside assailants. The Court's decision was based on the absence of any finding by the lower court that the contract between the school and the student was breached through the school's negligence in providing adequate security measures. Thus:

> "This Court is not unmindful of the attendant difficulties posed by the obligation of schools, above-mentioned, for conceptually a school, like a common carrier, cannot be an insurer of its students against all risks. This is specially true in the populous student communities of the so-called "university belt" in Manila where there have been reported several incidents ranging from gang wars to other forms of hooliganism. It would not be equitable to expect of schools to anticipate all types of violent trespass upon their premises, for notwithstanding the security measures installed, the same may still fail against an individual or group determined to carry out a nefarious deed inside school premises and environs. Should this be the case, the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence, here statutorily defined to be the omission of that degree of diligence which is required by the nature of the obligation and corresponding to the circumstances of persons, time and place."

Thus, the foregoing ruling, that a school may avoid liability by proving that a breach of contractual obligation to students was not due to its negligence, constitutes an exception to the general rule that the defense of a good father of a family is not a complete defense in liability for breach of contract *(culpa contractual)*.

E. Criminal Negligence

As earlier mentioned, teachers and school administrators may also be held criminally liable for imprudence (negligence) should they be found guilty of *inexcusable lack of precaution* in doing or failing to do an act which results in material damage to another, taking into consideration their employment and occupation, intelligence, physical condition and other circumstances regarding persons, time and place in determining the degree of care which is required in each particular

situation. Liability will be based on criminal negligence *(culpa criminal)* under Article 365 of the Revised Penal Code, which provides as follows:

> "Art. 365. *Imprudence and negligence.* – Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.
>
> Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed. xxx
>
> Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place."

Art. 100 of the Revised Penal Code provides that every person who is criminally liable is also civilly liable, *viz.*:

> "Art. 100. *Civil liability of a person guilty of felony.* – Every person criminally liable for a felony is also civilly liable."

A criminal action for negligence *(culpa criminal)* is entirely separate and distinct from a claim for damages arising from fault or negligence *(culpa aquiliana)*. As likewise earlier mentioned, the degree of proof needed to establish liability in *culpa aquiliana* is merely preponderance of evidence; while proof beyond reasonable doubt is needed in *culpa criminal*. However, an award of damages in *culpa criminal* will bar the

party from claiming damages twice for the same act or omission in an action for *culpa aquiliana*.

Finally, teachers, school administrators and schools may become *subsidiarily* liable for crimes committed by their pupils, employees, workmen, apprentices, and servants in the discharge of their duties *(culpa criminal)*. Art. 103 of the Revised Penal Code provides, *viz.*:

> "Art. 103. *Subsidiary civil liability of other persons.* – The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties."

As likewise earlier mentioned, the defense of a good father of a family is not a proper defense in case of subsidiary liability by the employer in *culpa criminal* since the employee's guilt automatically becomes the employer's civil liability if the employee is insolvent.

IV. Conclusion and Recommendation

The duties and responsibilities of teachers, administrators and schools should never be taken lightly. There are numerous instances of possible litigation that are particular to the educational setting. These include physical, or even psychological, injury or damage that may be inflicted by teachers, administrators, students, or other persons, on another, directly, or indirectly, through lack of the degree of care that is necessary in each situation, taking into consideration the circumstances of persons, time and place.

Teachers and school administrators may become liable for their own negligent or wrongful acts or omissions that cause damage to students. Teachers and heads of establishments of arts and trades may also become liable for the damages caused by their pupils and those under their custody, should they be negligent in taking appropriate precautions to prevent injury through the exercise of care in enforcing discipline and the observance of school rules and regulations upon students.

In a similar way, schools and school administrators may become liable for the acts and omissions of employees that cause damage to another under the principle of *respondeat superior.* They may avoid

liability by exercising the diligence of a good father of a family *(bonus pater familias)* in selecting the school head and teachers and in exercising appropriate supervision over them. Supervision involves the issuance and enforcement of necessary rules and regulations for the maintenance of order and discipline and the taking of ample steps to prevent injury, for example, through the maintenance of an adequate security force.

Schools may also become liable for breach of contractual obligation in case damage or injury is sustained by persons under their custody if they fail to adopt appropriate measures to maintain peace and order within their campus premises or prevent its breakdown.

In addition to civil liability for damages, criminal liability may attach to teachers and school administrators should they be found guilty of *inexcusable lack of precaution* in doing or failing to do an act which results in material damage to another, taking into consideration their employment and occupation, intelligence, physical condition and other circumstances regarding persons, time and place in determining the degree of care which is required in each situation. Finally, teachers, school administrators and schools may become *subsidiarily* liable for crimes committed by their pupils, employees, workmen, apprentices, and servants in the discharge of their duties.

All of the foregoing sources of liability by teachers, school administrators and schools, except for breach of contractual obligations by schools, are premised on negligence. In case of breach of contractual obligation, liability may likewise be avoided through the exercise of the diligence of a good father of a family to prevent damage or injury to another taking into consideration the circumstances of persons, time and place. It is, therefore, necessary for teachers, school administrators to conduct themselves with due care and propriety in dealing with students and employees and give due emphasis to the issuance and implementation of appropriate rules and regulations to maintain discipline and peace and order within their school premises in order to avoid injury to any person in their academic community.

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