

TEACHERS AND LAW OF NEGLIGENCE IN SCHOOL SPORT MANAGEMENT IN MALAYSIA

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ABSTRACT

This paper intends to examine the case of negligence of school teachers in dealing with students' physical safety in school sport activities. As tort liability is a staple of education law, teachers should understand the concept of law of negligence so that they can both protect the rights and ensure the safety of young people. Basically, Malaysian school children spend almost one third of their waking hours in school. Therefore, the potential scope of school liability is broad. The vast majority of injuries to children at school are accidental. However, public perception tends to distort both the extent of school liability and the nature of injuries that children sustain while at school or when engaged in school-based activities.

Keywords: Teacher, Negligence, Physical Education, Duty of Care

1.0 INTRODUCTION

Accusations of negligence in the school setting have been a problem in the educational system of Malaysia lately. Parents entrust the safety of their children with teachers and the schools they are enrolled in. Tie (2002) revealed that the increasing awareness among the society on the basic individual rights has led them to challenge teachers' acts which they think exceeding the limit. Parents today are interested in taking legal action against teachers and they seem to have already forgotten the main objective of sending their children to school that is to be taught and educated by teachers. In a school setting, the duty a teacher owes to students is a foregone conclusion that is summarized in the legal doctrine of "*In Loco Parentis*." The doctrine empowers teachers to act in the place of parents to enable the control of students' conduct. At the same time, this theory accounts for a heightened degree of responsibility for the care and well-being of students under the control of a teacher, just as if the teacher were acting in the capacity of a parent. Therefore, school administrators and teachers may be legally liable when a student is injured either because of an intentional action against the student or because of negligence.

2.0 SCOPE AND RESEARCH METHODOLOGY

This paper discusses and examines court cases on law of negligence particularly related to school sport activities to identify whether the incident happened due to negligence or accident. The

comparative aspects, especially court cases from Australia and other Commonwealth Countries served as useful guides and may be replicated by educators and authorities here. At the end of the paper, the focus will be in what ways teachers can improve their legal knowledge and what measures schools need to have in place to hopefully prevent injury or at least avoid a finding of negligence in their management of school sport activities.

3.0 THE DOCTRINE OF ‘IN LOCO PARENTIS’ AND TEACHERS’ LIABILITY.

In this matter we are discussing the doctrine of ‘in loco parentis’ which becomes the guideline by the court to talk about teacher’s role in school. Mr. Justice Cave’s words in *Williams v. Eady* are sufficient to explain the basic meaning of ‘in loco parentis’. He said, “the duty of a schoolmaster is to take such care of his boys as a careful father would take of his boys” (Barrel & Partington, 1985)

It means that school’s authority acts as parent substitutes to student during their presence in the school area. Teachers or school takes the parent’s role during school hour. They are assumed to have the right, responsibility and parent’s duty on their students. Therefore, teacher has to ensure that their students are given efficient care and observation so that they will protect themselves from any risk or danger which can harm them (La Morte, School Law, 2002). We can easily understand the doctrine of ‘in loco parentis’ in the *Williams v. Eady* (1893) case where Judge Cave inquires what the duty of the headmaster is. He explains that the duty as a headmaster is to take care or observe the students as a father does to his child. This is a primary consideration when the judge talks about negligent of the school authorities in taking care of the students.

In *Lyes v. Middlesex County Council* (1963), the court acknowledged the difficulty in observing 40 students compared to a father who took care of 10 of his children’s. The school’s responsibility as student parent or ‘*in loco parentis*’ depends on some factors such as number of and student’s age, type of activities being carried out, facilities available in that school and etc.

Generally, besides teacher’s supervision of students in the school area, the doctrine ‘in loco parentis’ also covers the following aspects:

- i. Responsibility towards sick students
- ii. Responsibility towards students’ safety outside the school area and
- iii. Responsibility to give advice and warning

The litigation case against school ‘in loco parentis’ is very closely related to the law of torts. Therefore, we will not be able to find any case being tried solely on the basis of this doctrine.

3.1 LAW OF TORTS

In *Hall v. Hebert* (1993), Canada's Supreme Court stated: "It is difficult to define the nature of a *tort*. Indeed, one of the greatest writers in the field, W.L. Prosser has expressed the opinion that

it should not be defined. Law of Torts includes the matter of claim for damages, for example money, compensation or reparation for the injury inflicted upon a person by the defendant. This is the branch of law mostly used by the plaintiff in legal suits involving education cases. The claim in tort cases normally involves monetary compensation. The tort cases which generally involve teachers are related to negligent which is injury suffered by a person as a result of negligent act of the other, trespass in various forms such as trespass to school premises, trespass to the person and slander or libel. Trespass to the person takes three forms: (i) assault (ii) battery and (iii) false imprisonment.

3.2 NEGLIGENCE IN TORT

Negligence is one of the most important and common torts in the law. It may mean:

- A. A state of mind in which a particular tort may be committed, e.g. a trespass to a premise without permission; and
- B. An independent tort. The plaintiff suing in negligence must prove three points to maintain a successful claim:
 - 1. That the defendant was under the duty of care to the plaintiff;
 - 2. That there had been a breach of that duty;
 - 3. That as a result, the plaintiff has suffered damage.

The question is what is the duty of care? Lord Atkin in *Donoghue v. Stevenson* (1932) 29 laid down a broad definition of the duty of care:

- a. 'You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour'.
- b. Who then is your neighbour? Your neighbour is someone who is close to me and directly affected by my act, that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question' .

This duty of care is recognized by law and applicable to almost all parties, place and situation. For school, a duty of care is owed to the children. The question is what standard of care is the schools are required in law to use so as to absolve them from liability? In *Blyth v. Birmingham Waterworks Co.* (1856), the presiding judge said that suffice for a person to take reasonable standard of care in that particular situation. "Negligence is the omission to do something by a reasonable man guided upon those circumstances, which ordinarily can regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would do" (Stewart & Knott, 2002, p. 17).

The courts take into account some factors to determine the reasonable act:

- i. The foreseeability of the incidence
- ii. The likelihood of harm
- iii. How serious is the accident if it is expected to happen (seriousness of accident)
- iv. How far has the practical prevention measure been taken?
- v. Is the harmful activity which causes loss is the common practice or otherwise?
- vi. Is the harmful activity which causes loss is the necessary to take greater risks?

4.0 TEACHERS AND SCHOOL SPORT MANAGEMENT

It is an exaggeration to use the term Sport Management in a school setting in lieu of physical education. Sport Management is a wide area and physical education is just one aspect or component within the vast sport management realm. Sport Management is generally defined as “any combination of skills related to planning, organizing, directing, controlling budgeting, leading and evaluating within the context of an organization or department whose primary product or service is related to sport” (DeSensi, Kelley, Beitel, & Blanton, 1988). This definition had been applied extensively to the field in the United States.

The shift in emphasis from a semi-formal physical education subject as practiced in the 1970's to an instructional programme definitely places additional responsibilities on the average physical education teacher. The Malaysian Ministry of Education has now made Physical Education classes mandatory. Circular Letter (SPI) No 2/1986, KP(BS)8591/Jld. 11/(41) dated 15 January 1986 requires students' attendance to co-curricular activities to be recorded. SPI No 9/2000 lays down the Safety Guidelines to be observed by teachers in conducting co-curricular activities. Refer too to Section 18 and Section 135(1) Education Act 1996 (Act 550). Apart from organising the evening games and athletics, teachers would now teach physical education under formal instructional settings like the classroom and playgrounds. Today's administrator is held accountable for his own actions and those of his teachers. His legal responsibilities include providing for the students' safety and well-being as well as their learning. It is important for anybody involved in sport and physical recreation to be aware of the legal context in which their activity takes place. Clause 5.2 in the SPI No. 1/1985 KP(BS)8591/Jld. 11(29) dated 2 January 1985} requires the participation of all teachers to ensure effective execution of school co-curricular activities.

Due to the nature of physical education classes, there is a high likelihood of sport-related injuries or even death. Who is liable when a student is injured or dies in a physical education class due to inadequate school supervision? The Education Ministry has issued some circulation letters on safety guidelines since April 6, 1995 to ensure proper safety measure. For example, SPI (BS) 8591/Jld.VIII (84). This circular lays down the measures that should be taken in and outside the classroom and the responsibility for the storage and use of sport equipment. If this circular goes unread and unheeded, the one who then will receive blame is the teachers and school and sport education system. The legal issue here is whether such incidents is merely accident or negligence?

There are only a few cases on negligence involving education laws. The cases discussed below do not refer to cases on physical education only.

5.0 CASES ON PHYSICAL EDUCATION

The studies about teachers' authority is scant and few authorities can be found in the literature review. Smylie (2010) agrees that few studies about the "distribution of authority and influence" have been completed, and the topic would be helpful to explore in relation to continuous school improvement. We can hardly find sport-related cases in the Malayan Law Journal (MLJ). The cases reported has very little or no connection to sport whatsoever. Sport-related cases reported in the MLJ mainly are linked to the venue of the incident itself, mainly the playgrounds. One of the examples is in the case of *Silvadurai v. the Government of Malaysia*, a pupil fell and stumbled on a stone after coming down from playing the see-saw. That pupil finally died due to the accident. The court decided that the teacher and school authority were not guilty because the student had always been advised and reminded about the danger of playing see-saw and the injury suffered by the pupil was as a result of his own negligence. Although the school authority was found not guilty in this case, steps should be taken to protect themselves from impending legal suits. Teacher must give frequent advice and reminders to all students so that it may be used as proof in court.

At general law, a participant in a sport or game voluntarily assumes those risks of injury which are inherent in the sport or game. The assumption of risk is evidenced by participation in the game. The leading and most useful case (Australian case) in the area is *Rootes v. Shelton* (1967) There, the then Chief Justice, Sir Garfield Barwick, said:

"By engaging in a sport or pastime the participants may be held to have accepted risks which are inherent in that sport or pastime. . . but this does not eliminate all duty of care by the one participant to the other."

Similarly, His Honour Mr Justice Kitto said:

"I cannot think that there is anything new or mysterious about the application of the law of negligence to a sport or game... the tribunal of fact [is required to] apply the same kind of questions of fact as arise in other cases of personal injury by negligence...[you must consider] whether in a situation in which the plaintiff's injuries were caused, the defendant owed him a duty to take care not to harm him, what the extent of the duty was if a duty did exist and what causal relation the plaintiff must prove between an act of omission by the defendant which was a breach of the duty and the plaintiff's injuries." (p. 387)

To summarise, if a particular participant is injured in the course of the sporting activity but not as a result of the negligence of another, there is no liability. However, if injury is caused by the negligent act or omission of another, liability will arise. Whether there has been negligence will depend on the particular circumstances of the case.

There are probably 3 main ways in which an injury can occur in school sport. The first of these is where a student is injured by the actions of another participant in the game. This would be the most common cause of injury. In the first example, it will be necessary to determine whether the defendant had been negligent in light of the *Rootes v. Shelton* test. If so, that participant would be liable.

However, whilst the primary responsibility for the injury would lie with the participant, there are ways in which the liability could arise in the teacher and/or school. Of course, if a teacher had directly caused the injury, he or she would be liable and the school would be vicariously liable. In addition, however, the special relationship between the teacher and pupil makes it incumbent on the former to take reasonable steps to prevent injuries which are reasonably foreseeable. For example, if a teacher were aware that a particular student had a propensity to aggressive behavior, it might be negligent not to protect other pupils from such a student. It might, in certain circumstances be necessary to send such a student out of the field in order to prevent him from injuring others. Again, if a teacher were found to have breached this duty of care, the school would be vicariously liable.

Malaysian courts have also imposed liability on common law principles in cases where school pupils have been injured because of the negligence of inadequately supervised fellow pupils. In *Mohamed Raihan b Ibrahim v. Government of Malaysia* (1981), the Government was held liable when a school pupil in a gardening class was accidentally hit on the head by another pupil with a hoe (Malay garden implement) on the basis that no proper supervision had been provided. Negligence occurs when one breaches the standard of care, unintentionally fails to act in a reasonable manner, or commits an improper act that results in injury or loss to another person (Tie, 2011). There are four elements of negligence: first, the defendant owed a duty of care to protect the plaintiff from harm, second, the defendant breached the duty of care when there was a failure to provide an appropriate standard of care, third, there must be a causal connection between the breach of the duty to care and the resulting injury, and fourth, there must be an actual physical or mental injury resulting from the negligence (Tie, 2011).

In another Malaysian case, *Yogeswari Nadarajah & Anor v Government of Malaysia & Ors*, a Standard two pupil injured her left eye just before the school began. She was standing at the school field when another pupil threw stalk from the school hibiscus plant. The question of duty of care to the pupil was whether the risk of injuries to the pupil reasonably foreseeable and whether defendants took reasonable steps to protect the pupil from such risk. The Court held that the risk of injuries to the first plaintiff was not reasonably foreseeable and therefore dismissed the claim. Similar to the case of *Silvadurai vs. the Government of Malaysia*, these two cases are irrelevant with sport activity except that the incident took place at a school field/playground.

In the most recent sport-related case of *Radha Subramaniam & Ors v. Aravindran a/l Sugumaran* (High Court), the plaintiff/respondent was a Form 4 of SMK Bukit Indah. In 18.7.2002, he,

together with 20 other pupils were brought by the first defendant/appellant to watch and assist his school hockey team in a hockey tournament. After the end of the game, the first defendant instructed all pupils to wait at a bus stop for the bus which would take them back to school. The plaintiff, however, asked permission from the defendant to go to the field to play hockey. Despite being denied permission, plaintiff, without the defendant's knowledge went on to play with the hockey stick at the field. Plaintiff's left eye was badly injured and subsequently blind after being hit by the hockey stick.

In upholding the session's court decision, the judge stressed that "school teacher is under a duty to exercise continuous supervision over his pupils starting from the time he takes out student of the school premises until they are brought back to school. The defendant knew that the plaintiff wanted to play hockey but she had not taken reasonable duty of care to stop plaintiff from going to the field. We must be wondering why it is that the teacher was found negligent when she had already given the student/plaintiff instructions and/or reminders that were then ignored. The answer is simply that the courts require teachers to take reasonable steps to protect students from their own immaturity. As such, the teacher was partially liable as she had breached a duty to exercise reasonable care and supervision. This is a contributory negligence case as this principle is called and the court set aside the appellants' appeal with cost. The plaintiff was considered to have contributed 30% to his injuries.

This is also not a pure sport case. However, the court might have adopted the same opinions had it been a real sport case. Lord Denning in *Moore v. Hampshire County Council* (1982) upheld the principle of highly reasonable duty of care required of a teacher on his student. He stated: "The standard required of a teacher is reasonably high, but I am afraid this teacher did not come up to the standard required. This teacher should have decided to tell the child that it would be necessary to check with her mother before she was allowed to participate in the Physical Education (PE) lesson. . . ." In this case, the teacher succumbed to the plaintiff's request to join a handstand activity in the PE lesson though the teacher knew of the girl's disability. The difficulty arose because the girl herself was desperately keen to join the PE lesson.

As to whether the teacher's supervision of the girl was adequate at the time of the incident, Lord Denning was the opinion that the teacher should have given her stricter supervision as she had no experience whatsoever in the said activity. In *Radha Subramaniam & Ors v. Aravindran a/l Sugumaran*, the judge stressed that there was an inadequate supervision of the teacher to ensure the safety of the respondent. The relationship between teachers and students imposes a duty of care on teachers. This duty is not absolute and only extends to protection from harm where the risk of injury is reasonably foreseeable. The higher the risk or potential for danger the greater the duty imposed on the teacher. The reason underlying the imposition (of a duty of care) would appear to be the need of a child of immature age for protection against the conduct of others, or indeed of himself, which may cause him injury coupled with the fact that, during school hours the child is beyond the control and protection of his parent and is placed under the control of the schoolmaster who is in a position to exercise over him reasonable care, protection from injury (*Richards v. State of Victoria*, 1969, p. 138-9).

The second was in which a player could sustain injury would be as a result of his own physical unsuitability to either play the sport or to play a particular position in the game. Thus, any teacher or school who permitted a boy with a bad eye sight to play hockey would be found negligent for any injuries suffered as a result. The rationale of the facts of the case is such that all teachers and schools are deemed to foresee the risks. In the case of *Hussack v. Chilliwack School District No. 33*, the court of British Columbia made a head-scratching decision where it confirmed the 2009 decision of the B. C. Supreme Court holding the Chilliwack School District to be liable for the injuries sustained by a Grade 7 student playing field hockey in Physical Education class. The court found that the physical education teacher fell below the standard of care as the student lacked both the experience and the proper instruction to play this particular sport.

In this case, the court ruled that the standard of care to be exercised by school authorities is that of a “careful or prudent teacher.” The test contains four main factors to consider:

- a. Whether the activity was suitable to the age and mental and physical condition of the student;
- b. Whether the student was progressively trained and coached to do the activity properly and to avoid the danger;
- c. Whether the equipment was adequately and suitably arranged; and
- d. Whether the performance, having regard to its inherently dangerous nature, was properly supervised.

By reviewing the decision in this case, the court had put Physical Education teachers to further responsibilities to consider choosing activities that are age appropriate and to consider whether or not it is safe for the student to participate in the activity. A third possibility of injury may arise as a result of the condition of the school ground upon which the sport was played. It is clear that a school has a duty to ensure that its fields and sporting equipment should be in good condition and do not pose any danger to its students.

All the cases discussed above can be summarized in the Table provided below. The Table compares all the cases and their significance to teachers or school authorities:

No	Case	Judgment	Significance of the case
1.	Silvadurai vs. the Government of Malaysia,	Teachers not liable. A standard two pupil alighted from the see-saw, accidentally tripped, tumbled, and fell head down on some rocks. The rocks were placed there for landscaping and	Accident case. The duty of care required (for teacher) is that which a careful father with a very large family would take of his own children. It is not a duty of insurance against harm but only a duty to take reasonable care for the safety of the pupil.

		aesthetic value. The school had exercised adequate supervise of the pupils at the playground.	
2.	Mohamed Raihan b Ibrahim vs Government of Malaysia	Teachers liable for negligence. Supervision of teacher who participated in gardening class -	Negligent case. Teachers should provide proper supervision and give proper instruction on the use of agricultural tools.
3.	Yogeswari Nadarajah & Anor v Government of Malaysia & Ors	Teachers not liable. There is no evidence to show that the teachers had created a situation or were aware of such a situation which exposed the pupil to foreseeable risks of bodily injuries.	Accident case. Teacher is not liable to pupil if the risk of injuries to the pupil is not reasonably foreseeable. Teachers are not insurers and cannot be responsible for every accident in school hours. The courts accept that some accidents will happen no matter how well supervision is carried out and, in such cases, the teacher/school cannot be held liable.
4.	Radha Subramaniam & Ors v Aravindran a/l Sugumaran	There was an inadequate supervision of the teacher to ensure the safety of the respondent. Teachers - 30% liable.	Contributory negligence case. Since that is a matter of evidence and inference, great care needs to be taken to see that breach of duty of care must be causally related to the injury received. Teacher should proof that he has taken great care to avoid any foreseeable injury or harm. One single instruction to prevent pupil from doing something is insufficient. Maturity (age) of the pupil should be taken into account.
5.	Rootes v Shelton	An Australian case. The issue of volante non-fit injuria and whether or	Negligent case. By engaging in a sport or pastime the participants may be held to have

		not a man who was injured in a waterskiing accident could succeed in an action against the driver of a boat after the skier collided with a stationery boat or whether or not the skier assumed the risks inherent in the sport of waterskiing. The boat driver was held liable for the injury suffered by the skier.	accepted risks which are inherent in that sport or pastime: But this does not eliminate all duty of care of the one participant to the other. Officials and spectators owe one another a duty to prevent foreseeable risks of injury.
6.	Moore v Hampshire County Council	A 12-year-old girl had been born with dislocated hips and had a limp. Her parents had advised the school that she was not to undertake any physical education because of her condition. The girl cheated by telling her physical education teacher that she was now able to take the class because her doctor had allowed it. As a result, the student broke an ankle doing an exercise. The teacher was found to have been negligent in not assessing the girl's ability to do the particular exercise that caused the injury and not checking to see if the parents' express wishes had been changed.	Negligent case. Having previous knowledge of the pupil health's condition, teachers still owe duty of care to ensure the truth of the false representation given by the pupils.
7.	Hussack v. Chilliwack	Devon Hussack, age 13 years, was hit in the face	Negligent case. The trial judge found that the P.E. teacher

	<p>School District No. 33</p>	<p>with a field hockey stick while playing the game in his physical education class. He suffered a concussion which developed over time into a serious somatoform disorder. The teacher had breached his duty of care.</p>	<p>breached his duty of care by permitting Devon to play field hockey without having progressively attained the necessary skills. She found that the somatoform disorder was caused by the accident. The Court held that permitting a student to participate in a physical activity is not negligent: (a) if it is suitable to his age and condition (mental and physical); (b) if he is progressively trained and coached to do it properly and avoid the danger; (c) if the equipment is adequate and suitably arranged; and (d) if the performance, having regard to its inherently dangerous nature, is properly supervised.</p>
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8.	Richards v. State of Victoria,	The plaintiff, Richards. who was sixteen years of age at the time, was severely injured in a fight with another student. The fight occurred in a classroom in the presence of the teacher. the teacher took no steps to quell the argument which preceded the fight and did not intervene to stop the fighting. Teacher liable. ‘A teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen’.	Negligent case. It has been described as the responsibility that a reasonable teacher exercises for the safety and well-being of the student. If a fight between students takes place before a teacher, the teacher owes a duty to quell it.
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From the cases discussed above, it is obvious that most of the accidents happened were due to negligence. Teachers have legal responsibility for the safety of their students. That does not mean that the impossible is expected of teachers. The best way for teachers to avoid liability is to ensure that their students are properly instructed in whatever activity they are engaging in, and that the supervision they are providing to the students is attentive. The consequences for failing to meet the standard of a reasonable practitioner and in the event a student suffers damage, the teacher and/or school could face an action in negligence

8.0 CONCLUSION AND RECOMMENDATIONS

Evidently, all the cases discussed above are not about Educational Law per se. It is important to recognize at the outset that there is no separate law called “Education Law”. The term ‘education’ seems only to represent the school institution, its playfield, teacher and/or student. Therefore, school personnel are supposed to acquire legal education as a prerequisite. For (physical education) teachers to avoid the unpleasant consequences of liability particularly in sport activity

there is the need for them to be equipped with legal knowledge to minimize the possibilities of legal suits and ensure student's safety while in the playfield.

The courts have never discussed any provision in Educational Statutes. The cases were basically within the ambit of the law of torts. The origin of education law as a matter of fact lie in contract (agreement) between the parents and the school (Stewart & Knott, 2002). Of course, there is neither written nor verbal contract between the two parties. The nature of the contract is rather implied, customary and self-explanatory.

To avoid the unpleasant consequences of liability, the following recommendations are made:

1. Since "ignorance of the law is no excuse", our federal and state education authorities can organise a legal awareness course for our teachers in form of pre or in-service training or professional development.
2. Granting teachers with power to the police to arrest students breaking rules the school compound will only increase teachers' workload. Students' disciplinary problems out the school were out of the teachers' jurisdiction and should be attended to by the police.
3. The physical education teacher must be present and punctual for all practical classes where all faulty items or equipment to be used by students must be removed from the playground and properly stored under lock and key.
4. Facilities such as play-grounds should be inspected before they are put to use by the student so as to avoid any foreseeable harm likely to cause injuries to students.
5. Provide appropriate levels of supervision.
6. Know the students' health conditions and their maturity before carrying out sport activities.
7. Ensure your practices comply with School District policies and any applicable guidelines (use the Manual Book for Co-Curriculum Activities and the Circular Letters issued by the Ministry such as SPI Bil 9/2000 and SPI 5/2016).
8. Know the procedures for attending to an injury and ensure injuries are reported to your administrator.

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