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Negligence Liability of School Teachers in California

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NOTES

NEGLIGENCE LIABILITY OF SCHOOLTEACHERS IN CALIFORNIA

Injuries to school children resulting from a teacher's negligence have precipitated numerous law suits against teachers and, under California legislation providing for vicarious liability,[1] school districts as their employers. It is the purpose here to examine and discuss the duty owed by teachers and the standard of care by which a teacher's conduct is measured by the courts in determining whether he has acted negligently. This note also discusses the recent legislative enactment which indemnifies the teacher against financial loss suffered as a result of a judgment against him[2] with respect to its effect on the teacher's duty to the children in his care. The school district's new role as insurer of the school teacher is noted along with some of the problems and changes which may follow from it.

Duty to Supervise

The standard of care required of a teacher in the performance of his duties is that of an ordinary prudent man acting under like circumstances.[3] These circumstances relating to the teacher include supervision of groups of immature children. As phrased frequently by the courts, these circumstances are an incident of and are encompassed by the duty of carrying on the public school system.[4]

The general areas in which a teacher may be said to have acted negligently by failing to conform to the standard of care imposed on him have been classified arbitrarily as activities involving physical education, hazardous activities, playground supervision, and classroom and school supervision.[5] This classification merely recognizes the diverse factual situations in which teacher negligence often occurs. However, the determinative factor is the teacher's duty to supervise reasonably, a breach of which is negligence, for it is on this point that the cases are decided regardless of the particulars of the factual situation.

Because children are likely to do many things that would not be expected of an adult, the teacher has a duty to foresee rash conduct by his pupils.[6]

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[1] CAL. GOV. CODE § 815.2, Cal. Stat. 1963, ch. 1681 § 1, p. 3268. This section repeals CAL. EDUC. CODE § 903 (formerly CAL. EDUC. CODE § 1007 and CAL. SCHOOL CODE §§ 2.801-07).

[2] CAL. GOV. CODE § 825, Cal. Stat. 1963, ch. 1681 § 1, p. 3270.

[3] Pirkle v. Oakdale Union Grammar School Dist., 40 Cal. 2d 207, 210, 253 P.2d 1, 2 (1953); Lileanthal v. San Leandro Unified School Dist., 139 Cal. App. 2d 453, 456, 293 P.2d 889, 891 (1956).

[4] See Bellman v. San Francisco Unified School Dist., 11 Cal. 2d 576, 81 P.2d 894 (1938).

[5] Proehl, *Tort Liability of Teachers*, 12 VAND. L. REV. 723, 742-51 (1959).

[6] See Shannon v. Central-Gaither Union School Dist., 133 Cal. App. 124, 23 P.2d 932 (1940); Satriano v. Sleight, 54 Cal. App. 2d 278, 129 P.2d 34 (1942); see also Prosser, *Proximate Cause in California*, 38 CALIF. L. REV. 369, 400-01 (1950), which

In this regard, it has been said that the teacher is duty bound to exercise care "commensurate with the immaturity of [his] charges and the importance of [his] trust."[7] Since the importance of the teacher's duty is clear, an examination to delineate what constitutes "reasonable supervision" is critical to a determination of the standard of care. What a teacher may and may not do while supervising children, without incurring liability for negligence, depends primarily upon the general nature of his teaching duties.

The duty to maintain discipline is included within the duty to supervise. A teacher is negligent for a failure to prevent injuries to his pupils from fighting,[8] playing unusually dangerous games,[9] and other breaches of discipline such as riding bicycles on the playground.[10] The duty of reasonable supervision also requires the teacher's presence at his supervisory post all or nearly all of the time, for whether a teacher's absence from his post is negligence will be a question for the jury in most cases regardless of the duration of the absence.[11] Although the fact that the injury occurred during the teacher's absence is not alone sufficient to support a finding of negligence,[12] taking leave of a supervisory post even for a few moments is to undertake a risk that an accident might occur of a general type that the teacher reasonably might have expected to occur.[13] If the accident was not one which the teacher reasonably could have expected, but clearly would have been prevented had he been present, the teacher may be negligent if his absence was for an unreasonably long time.[14]

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does not concern teachers as such but points out applicable principles; PROSSER, TORTS § 141 (2d ed. 1955).

[7] Satriano v. Sleight, *supra* note 6, at 284, 129 P.2d at 39.

[8] Charonnat v. San Francisco Unified School Dist., 56 Cal. App. 2d 840, 133 P.2d 643 (1943).

[9] Tymkowicz v. San Jose Unified School Dist., 151 Cal. App. 2d 803, 312 P.2d 388 (1951) (playing "blackout" where a boy holds his breath while a companion squeezes the boy's chest until he "blacks out").

[10] Buzzard v. East Lake School Dist., 34 Cal. App. 2d 316, 93 P.2d 233 (1939); see Lileanthal v. San Leandro Unified School Dist., 139 Cal. App. 2d 453, 293 P.2d 889 (1956); *but see* Ford v. Riverside City School Dist., 121 Cal. App. 2d 554, 263 P.2d 626 (1953).

[11] See Ziegler v. Santa Cruz City High School Dist., 168 Cal. App. 2d 277, 355 P.2d 709 (1959), *subsequent opinion after retrial with jury*, 193 Cal. App. 2d 200, 13 Cal. Rptr. 912 (1961). In the teacher's absence, a pupil died from injuries sustained when he was pushed, or fell when another student attempted to push him, from a stairway railing upon which he was sitting. In holding that the teacher's negligence was a jury question the court reasoned that since the boy had been sitting there an appreciable length of time before the accident occurred and the school authorities had knowledge that students occasionally sat there, the teacher's absence could be found to constitute negligence. A judgment of nonsuit was reversed. Forgnone v. Salvadore Union Elementary School Dist., 41 Cal. App. 2d 423, 106 P.2d 932 (1940).

[12] See Ziegler v. Santa Cruz City High School Dist., *supra*, note 11; Luna v. Needles Elementary School Dist., 154 Cal. App. 2d 803, 316 P.2d 773 (1957).

[13] See Forgnone v. Salvadore Union Elementary School Dist., 41 Cal. App. 2d 423, 106 P.2d 932 (1940); *cf.* Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 110 P.2d 1044 (1941).

[14] See Ogando v. Carquinez Grammar School Dist., 34 Cal. App. 2d 316, 93 P.2d 233 (1939).

Where the supervised activity involves a dangerous instrumentality, the teacher is under a duty to instruct the student in the correct manner of using it and warn him of the danger involved.[15] Mistakes by inexperienced students working with dangerous instrumentalities must be anticipated; consequently, careful control and supervision by the teacher are necessary to the proper discharge of his duty.[16] In this connection, the duty of supervision requires the teacher's insistence upon strict adherence to regulatory safety measures pertaining to both the operation of the instrumentality and the requisite safety features.[17] The danger may stem from the inadequacy of the equipment[18] or careless use of the instrumentality by the pupil,[19] though both are often involved; in either case, the teacher must reasonably anticipate errors and supervise carefully to prevent them. One California case emphasized this point by applying the *res ipsa loquitur* doctrine to the teacher's conduct where an explosion occurred in a chemistry class.[20] A finding of negligence was sustained where there was evidence that the accident was of a type that would not ordinarily occur unless the teacher had failed to exercise reasonable care. The court said it was the teacher's duty to know and be able to explain the causes of the explosion and whether negligence contributed to it.[21] Though the application of this holding has been confined to the particular facts of the case,[22] it is indicative of the stringent duty imposed on a teacher in these situations.[23]

Proper instruction and control of students engaged in physical exercise are encompassed by the teacher's duty. Moreover, it appears that the teacher's duty includes making a reasonable determination as to the suitability

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[15] Ahern v. Livermore Union High School Dist., 208 Cal. 770, 284 Pac. 1105 (1930); Ridge v. Boulder Creek Union High School Dist., 60 Cal. App. 2d 453, 140 P.2d 990 (1943); *but cf.* Goodman v. Pasadena City High School Dist., 4 Cal. App. 2d 65, 40 P.2d 854 (1935).

[16] See Mastrangelo v. West Side Union High School Dist., 2 Cal. 2d 540, 42 P.2d 634 (1935); Woodman v. Hemet Union High School Dist., 136 Cal. App. 544, 29 P.2d 257 (1934); Henry v. Garden Grove Union High School Dist., 60 Cal. App. 638, 7 P.2d 192 (1932).

[17] Lehmuth v. Long Beach Unified School Dist., 53 Cal. 2d 544, 2 Cal. Rptr. 279, 348 P.2d 887 (1960) (safety chain on automobile trailer); Lehman v. Los Angeles City Bd. of Educ., 154 Cal. App. 2d 256, 316 P.2d 55 (1957) (safety guard on printing press); see WEST'S ANN. CAL. GOV. CODE § 815.6 (Supp. 1963), with Law Revision Commission Comment.

[18] Maede v. Oakland High School Dist., 212 Cal. 419, 298 Pac. 987 (1931), where a student was injured when a four-hundred pound pressure gauge being used on a three-thousand pound oxygen tank exploded.

[19] Dutcher v. City of Santa Rosa High School Dist., 137 Cal. App. 2d 481, 290 P.2d 316 (1955), where explosion occurred as a student operated an acetylene torch within a few feet of a gasoline tank; see Mastrangelo v. West Side Union High School Dist., 2 Cal. 2d 540, 42 P.2d 634 (1935).

[20] Damgaard v. Oakland High School Dist., 212 Cal. 316, 298 Pac. 983 (1931).

[21] *Id.* at 324, 298 Pac. at 987.

[22] See Novack v. Los Angeles School Dist., 92 Cal. App. 2d 169, 206 P.2d 403 (1949).

[23] See Proehl, *Tort Liability of Teachers,* 12 VAND. L. REV. 723, 748 (1959), where it is stated that California leads the nation in number of cases going to the jury and judgments recovered for injuries resulting from a class involving hazardous activities.

of the exercise for the class and the particular student.[24] It also includes reasonable care in directing to a position of safety, players and observers who might be harmed by the conduct of the game or exercise.[25] When a student is injured in the course of physical activity, the supervising teacher is under a duty to handle him with reasonable care to prevent aggravation of the injury.[26]

In determining what is reasonable care in a particular set of circumstances and whether the teacher has met the standard required, custom is important to show what ordinary men would have done.[27] Accordingly, evidence of the customary method of supervision is relevant to the determination of the teacher's duty of ordinary care.[28] It is not, however, conclusive on the factual question of whether the teacher breached his duty,[29] for unless the customary method is consistent with the standard of care required by the law, the mere adherence thereto will not excuse the teacher.[30]

Once a breach of duty (failure to meet the standard of care) is found, ordinary tort principles are applied to determine whether liability attaches. The injury must have been proximately caused by the teacher's breach of duty, and an unforeseeable intervening cause is superseding unless the teacher is under a duty to protect the child against it.[31] Professor Prosser states that once a duty on the teacher to protect the child from harm is

[24] See Bellman v. San Francisco Unified School Dist., 11 Cal. 2d 576, 81 P.2d 894 (1938).

[25] See Kenney v. Antioch Live Oak School Dist., 18 Cal. App. 2d 226, 63 P.2d 1143 (1936), where a teacher was negligent in directing a pupil to stand three feet from the batter in a baseball game; Ogando v. Carquinez Grammar School Dist., 24 Cal. App. 2d 567, 75 P.2d 641 (1938), where in a teacher's absence children used a glass door as the goal in a game of tag; *cf.* Smith v. Harger, 84 Cal. App. 2d 361, 191 P.2d 24 (1948).

[26] See Pirkle v. Oakdale Union Grammar School Dist., 40 Cal. 2d 207, 253 P.2d 1 (1953), where the court held that the teacher's delay in getting medical aid was not negligence if he could not have been expected reasonably to discover a serious injury much sooner than he did, and no aggravation resulted from it; Welch v. Dunsmuir Joint Union High School Dist., 326 P.2d 633 (Cal. Ct. App. 1958), where a high school coach was negligent in failing to supervise properly the removal of an injured player from a football field. The removal resulted in further damage to his spinal cord. The trial court's instruction that ordinary care in moving an injured person requires extreme caution was sustained.

[27] 2 WIGMORE, EVIDENCE § 461 (3d ed. 1940).

[28] See Perumean v. Wills, 8 Cal. 2d 578, 67 P.2d 96 (1937) (customary practice in auto shop supervision); Rodrigues v. San Jose Unified School Dist., 157 Cal. App. 2d 842, 322 P.2d 70 (1958) (playground supervision); Charonnat v. San Francisco Unified School Dist., 56 Cal. App. 2d 840, 133 P.2d 643 (1943) (number of students normally supervised by one person on a playground); Reagh v. San Francisco Unified School Dist., 119 Cal. App. 2d 65, 259 P.2d 43 (1953) (storing dangerous chemicals).

[29] Reagh v. San Francisco Unified School Dist., *supra,* note 28, at 70, 259 P.2d at 46.

[30] *Ibid. Reagh* held that this question was for the jury, but in Pirkle v. Oakdale Union Grammar School Dist., 40 Cal. 2d 207, 253 P.2d 1 (1953), the court held that the customary method of choosing touch football teams by matching the seventh grade against the eighth was reasonable, and evidence that no injuries had occurred from such games though the method was used throughout the state was conclusive of its reasonableness.

[31] Prosser, *Proximate Cause in California,* 38 CALIF. L. REV. 369, 398-402 (1950).

found, the courts go far in holding him liable.[32] He says, "the line is drawn only when the intervening act becomes so unpredictable or it is so clear that any normal child should be able to look out for himself, that the defendant's responsibility does not include looking out for him."[33] Accordingly, the courts have refused to find the teacher negligent when the injury was caused by an unforeseeable independent act of the injured student[34] or another student,[35] and where the intervening cause was unrelated to the conduct of the teacher.[36] However, where the general type of accident that occurred should have been foreseen by the teacher and proper supervision would have prevented it, a breach of duty by the teacher will render him liable.[37] Where no amount of supervision would have prevented the accident, recovery will be denied even though some danger may reasonably have been foreseen by the teacher.[38] Into this class fall most accidents that occur in physical education classes[39] and many playground mishaps.[40] Because physical education is a lawful and desirable part of the curriculum unless the game is inherently dangerous or played in a dangerous manner[41] no liability should attach.

Although the teacher is under a duty to use reasonable care when he undertakes to provide transportation for a student whether such an undertaking was authorized or not,[42] the duty of supervision generally does not extend to students on their way to and from school.[43] It is not imposed, as

[32] *Id.* at 401.

[33] *Id.* at 402 & n.147.

[34] See 2 WITKIN, SUMMARY OF CALIFORNIA LAW *Torts* § 42 (7th ed. 1960). Ford v. Riverside City School Dist., 121 Cal. App. 2d 554, 263 P.2d 626 (1953); *cf.* Weldy v. Oakland High School Dist., 19 Cal. App. 2d 429, 65 P.2d 626 (1937).

[35] See Perumean v. Wills, 8 Cal. 2d 578, 67 P.2d 96 (1937); Frace v. Long Beach City High School Dist., 58 Cal. App. 2d 566, 137 P.2d 60 (1943); Reithardt v. Board of Educ. of Yuba County, 43 Cal. App. 2d 278, 111 P.2d 440 (1941); Hack v. Sacramento City Junior College Dist., 131 Cal. App. 444, 21 P.2d 769 (1933); *cf.* Hendriksen v. Y.M.C.A., 152 Cal. App. 2d 219, 313 P.2d 54 (1957).

[36] Prosser, *supra* note 31 at 401.

[37] See Forgnone v. Salvadore Union Elementary School Dist., 41 Cal. App. 2d 423, 106 P.2d 932 (1940); Ziegler v. Santa Cruz City High School Dist., 168 Cal. App. 2d 277, 335 P.2d 709 (1959), *subsequent opinion after retrial with jury,* 193 Cal. App. 2d 200, 13 Cal. Rptr. 912 (1961).

[38] See Woodsmall v. Mt. Diablo Unified School Dist., 188 Cal. App. 2d 262, 10 Cal. Rptr. 447 (1961); Rodrigues v. San Jose Unified School Dist., 157 Cal. App. 2d 842, 322 P.2d 70 (1958); Wright v. City of San Bernardino School Dist., 121 Cal. App. 2d 342, 263 P.2d 25 (1953); Underhill v. Alameda Elementary School District, 133 Cal. App. 733, 24 P.2d 849 (1933).

[39] See Kerby v. Elk Grove Union High School Dist., 1 Cal. App. 2d 246, 36 P.2d 431 (1934); Underhill v. Alameda Elementary School Dist., *supra* note 38; *cf.* Martin v. Roman Catholic Archbishop, 158 Cal. App. 2d 64, 322 P.2d 31 (1958).

[40] See Pirkle v. Oakdale Union Grammar School Dist., 40 Cal. 2d 207, 253 P.2d 1 (1953); Ellis v. Burns Valley School Dist., 138 Cal. App. 550, 18 P.2d 79 (1933).

[41] 43 CAL. JUR. 2d *Schools* § 105 (1958).

[42] Hanson v. Reedley Joint Union High School Dist., 43 Cal. App. 2d 643, 111 P.2d 415 (1941).

[43] Kerwin v. County of San Mateo, 176 Cal. App. 2d 304, 1 Cal. Rptr. 439 (1959); *cf.* Hathaway v. Siskiyou Union High School Dist., 66 Cal. App. 2d 113, 151 P.2d 866 (1944).

has been pleaded,[44] by Education Code section 13557, which states that "Every teacher . . . shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess." This section does not impose on the teacher the duty to supervise students on the way to and from school to protect them from the risks of travel, but imposes a duty on the teacher to discipline students for their improper behavior.[45] The courts have not construed this section carefully and its applicability to the teacher's duty and standard of care has been vaguely expressed.[46] It would seem, however, that a breach of the duty to hold pupils to a strict account for their conduct would render the teacher liable if it proximately caused an injury. For example, if a teacher is aware of a pupil's habitually reckless conduct on the way to and from school and fails to hold him to strict account, presumably by failing to reprimand or punish him, an injury directly resulting from that failure should render the teacher liable. Yet, it was held improper, though not prejudicial error, to give this section as a jury instruction in a case involving a similar factual situation.[47]

It is clear that the teacher's obligation to look out for his charges is strict because children are often thoughtless and impulsive.[48] Because heedlessness is to be expected, the teacher is under a duty to supervise so as to protect his pupils from their own immaturity.[49] The standard of care therefore requires that he foresee a wide range of dangerous acts and conditions exposing the child to an unreasonable risk of harm. As a result, ordinary care for the teacher when supervising children is "very careful."

Statutory Provisions

The school district, as a public entity, has been made vicariously liable for the tortious acts of a teacher acting within the scope of his employment by section 815.2 of the Government Code. Under the terms of that section,[50] which supersedes former sections similar to it, the school district is liable if the teacher would be liable under the usual rules of negligence. By the provisions of sections 825 to 825.6 of the Government Code,[51] enacted last year, the school teacher may recover from the school district any sum he pays to a plaintiff pursuant to a judgment against him by establishing that his tortious act or omission giving rise to liability occurred within the scope

[44] Kerwin v. County of San Mateo, *supra* note 43.

[45] *Id.* at 309, 1 Cal. Rptr. at 440.

[46] See Tymkowicz v. San Jose Unified School Dist., 151 Cal. App. 2d 517, 312 P.2d 388 (1951); Charonnat v. San Francisco Unified School Dist., 56 Cal. App. 2d 840, 133 P.2d 643 (1943); Forgnone v. Salvadore Union Elementary School Dist., 41 Cal. App. 2d 423, 106 P.2d 932 (1940); Buzzard v. East Lake School Dist., 34 Cal. App. 2d 316, 93 P.2d 233 (1939).

[47] Hanson v. Reedley Joint Union High School Dist., 43 Cal. App. 2d 643, 111 P.2d 415 (1941), where § 5.543 of CAL. SCHOOL CODE (now § 13557 of CAL. EDUC. CODE) was given as a jury instruction.

[48] See Shannon v. Central-Gaither Union School Dist., 133 Cal. App. 124, 23 P.2d 769 (1933); Satriano v. Sleight, 54 Cal. App. 2d 278, 129 P.2d 34 (1942).

[49] See *ibid.*

[50] Cal. Stat. 1963, ch. 1681 § 1, p. 3268 (formerly § 903 CAL. EDUC. CODE).

[51] Cal. Stat. 1963, ch. 1681 § 1, pp. 3270-71.

of his employment, unless the district shows that he acted or failed to act because of fraud, corruption or malice.

The legislature has provided the teacher, as a public employee, with a statutory defense under section 820.2,[52] which provides that "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of discretion vested in him whether or not such discretion is abused."[53] This immunity is extended to the school district by section 815.2 which provides that the public entity cannot be held liable where the employee is immune from liability.[54] According to the Law Revision Commission Comment to section 820.2,[55] the section is designed to codify pre-existing California law.[56] For other than discretionary acts or omissions, a public employee is liable for an injury caused to the same extent as a private person,[57] but he is indemnified by the provisions of section 825 mentioned above.

To avail himself of the indemnification provision, a teacher must call upon the school district in writing not less than ten days before the day of the trial to defend him in the suit.[58] Apparently, if the teacher fails to submit a timely request for protection under this section, he loses his right to indemnification for any sum that he is forced to pay. Since the school district may be sued whether the teacher is sued or not and regardless of the teacher's failure to seek the district's protection, the unwary school teacher who fails to comply with the code by making such a request may find that persuading the plaintiff to join the school district as a defendant is necessary to obtain protection. Should the courts construe this section strictly, a teacher personally sued who fails to notify the district in time may pay a judgment without hope of recovering the sum paid from the school district. Of course, it would appear unlikely that a plaintiff would

[52] Cal. Stat. 1963, ch. 1681 § 1, p. 3269.

[53] *Ibid;* see Lipman v. Brisbane Elementary School Dist., 55 Cal. 2d 224, 11 Cal. Rptr. 97, 359 P.2d 465 (1961) (school trustees not liable in libel and slander action for statements made within the scope of their authority in conducting an investigation of cause for dismissal of school superintendent); Hardy v. Vial, 48 Cal. 2d 577, 311 P.2d 494 (1957) (college officials not liable for aiding non-school parties in making and filing affidavits against a professor within the scope of their employment in action for malicious prosecution); White v. Towers, 37 Cal. 2d 727, 235 P.2d 209 (1951) (investigator for Fish and Game Commission not liable for malicious prosecution).

[54] See WEST'S ANN. CAL. GOV. CODE § 815.2 (Supp. 1963), Law Revision Commission Comment.

[55] WEST'S CAL. GOV. CODE § 820.2 (Supp. 1963).

[56] See cases cited *supra* note 53 for the case law rule that government officials are not personally liable for their discretionary acts within the scope of their authority.

[57] CAL. GOV. CODE § 820(a).

[58] CAL. GOV. CODE § 825 provides:

> If an employee or former employee of a public entity requests the public entity to defend him against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment as an employee of the public entity and such request is made in writing not less than 10 days before the day of trial, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. . . .

Cal. Stat. 1963, ch. 1681 § 1, p. 3270.