95. Ricalde, The Civil Liability of Issuers, Dealers and Underwriters for Misrepresentations and Omissions in the Registration Statement under Section 30 of the Philippine Securities Act, p. 78 (unpublished LL.M. Thesis in the HLS Library, 1979).

96. Tuchman, A Distant Mirror, Foreword (1979).

97. Cooney, **supra** note 5 at 1332-1333.

98. **Id.** at 1333-34.

99. **Id.** at 1335.

100. **Id.** at 1335-36.

101. **Id.** at 1338.

102. **Id.** at 1338-39.

103. **Id.** at 1341.

104. Sommer, **supra** note 3 at 79, 631.

THE LIABILITY OF TEACHERS IN ACADEMIC INSTITUTIONS

By ERNESTO M. HIZON LI.B. '84

Are teachers in academic educational institutions liable for acts and omissions committed by their pupils during class hours, and in instances when these happen not during class time but within the perimeter of the school grounds?

Article 2180 of our Civil Code provides:

> 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
>
> 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.

The liability imposed by Article 2180 upon parents, guardians and teachers or heads of establishments of arts and trades is based on their presumed negligence in failing to exercise the necessary care, vigilance and supervision over their dependents in order to prevent injury to persons and damage to property. This is the clear implication from the provisions of the last paragraph of Art. 2180 which reads: "The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."[1] Hence, if the parents, guardians and teachers or heads of establishments of arts and trades prove that they exercised the diligence of a good father of the family to prevent damage, they are exempt from liability.[2]

From a reading of the above codal provision, only teachers of institutions of arts and trades would seem to be liable for damages caused by their students. In the case of **Esconde v. Capuno**[3] it was held that this provision only applies to an institution of arts and trades and not to any academic educational institution.[4] In the later case of **Mercado v. Court of Appeals**[5] the Supreme Court, in addition to affirming that the said provision is restricted to only establishments of arts and trades, further held that "It would seem that the clause 'so long as they remain in their custody,' contemplates a situation where the pupil lives and boards with the teacher such that the control, direction and influence on the pupil supersedes those

of the parents. In these circumstances the control or influence over the conduct and actions of the pupil would pass from the father and mother to the teacher; and so would the responsibility for the torts of the pupil."

However, in the later case of **Palisoc v. Brillantes**,[6] the Court stated: The rationale of such liability of school heads and teachers for the tortious acts of their pupils and students so long as they remain in their custody, is that they stand to a certain extent, as to their pupils and students, **in loco parentis**, and are called upon to "exercise reasonable supervision over the conduct of the child."[7] In the law on torts, the governing principle is that the protective custody of the school heads and teachers is mandatorily substituted for that of the parents, and hence, it becomes their obligation as well as that of the school itself to provide proper supervision of the students' activities during the whole time that they are at attendance in the school, including recess time, as well as to take the necessary precautions to protect the students in their custody from dangers and hazards that would reasonably be anticipated including injuries that some students themselves may inflict willfully or through negligence on their fellow students.

In the Palisoc case, the Court showed an inclination to Mr. Justice J.B. L. Reyes' dissenting opinion in **Esconde** that "the basis of the presumption of negligence of Article 1903 (now 2180) in some **culpa in vigilando** that the parents, teachers, etc., are supposed to have incurred in the exercise of their authority, it would seem clear that where the parent places the child under the effective authority of the teacher, the latter, and not the parent, should be the one answerable for the torts committed while under his custody, for the very reason that the parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction. And if there is no authority, there can be no responsibility."[8]

In **Palisoc**, although the Court did not, and could not, adjudicate on the liability of teachers of academic institutions inasmuch as that case was instituted against school officials of the Manila Technical Institute, which was admittedly a school of arts and trades, the Court nevertheless stated that " 'so long as the students remain in their custody' means the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are attendance in the school, including recess time. There is nothing in the law that requires that for such liability to attach, the pupil or student who

commits the tortious act must live and board in the school x x x and the dicta in **Mercado** (as well as **Esconde**) on which it (the lower court) relied, *must now be deemed to have been set aside by the present decision* (Italics mine). In effect, the Palisoc decision appears to be reversing the doctrine that only teachers of schools of arts and trades are liable. However, the decision could not have reversed the doctrine since the liability of teachers of other educational establishments was not in issue since the school in question was indeed a school of arts and trades. Support for this contention can be gleaned from the footnote of the same decision penned by Mr. Justice Teehankee when he commented: "However, since the school involved at bar is a non-academic school, the question as to the applicability of the cited codal provision to academic institutions will have to await another case wherein it may properly be raised."[9]

It may be observed from the Palisoc decision therefore, that the final doctrine on the liability of teachers of academic institutions has yet to be formed, despite the **Esconde** and **Mercado** cases which uphold the doctrine that teachers of academic institutions are not liable.

To arrive at a logical, the legal interpretation of the law, two aspects of the particular codal provision should be resolved. The first question which should be answered is: Does the provision truly restrict itself to teachers of establishments of arts and trades? Secondly, we must determine what the term "custody," means in the provision.

Planiol contends that in order to be within this provision, a teacher must not only be charged with teaching but also vigilance over their students or pupils. They include teachers in educational institutions of all kinds, whether for the intellect, the spirit, or the body; teachers who give instruction in classes or by individuals, even in their own homes; teachers in institutions for deficient or abandoned children and those in correctional institutions. It is also necessary that the pupils or apprentices under them be minors. Hence students of universities would not fall under this article.[10]

Mr. Justice J.B.L. Reyes, a noted civilist, agrees with this view. He argues that (he) "sees no sound reason for limiting Article 1903 (2180) to teachers of arts and trades and not to academic ones. What substantial difference is there between then in so far as concerns the proper supervision and vigilance over their pupils? It cannot be seriously contended that an academic teacher is exempt from the duty of watching that his pupils do not commit a tort to the detriment of third persons, so long as they are in a position to exercise authority and supervision over the pupil. In my opinion, in the phrase, the words 'arts and trades' does not qualify 'teachers' but only 'heads of establishments'."[11]

Apparently, the above comments are given weight by Article 349 of our Civil Code which grants to teachers and professors the power to exercise substitute parental authority, as well as reasonable supervision over the conduct of the child.[12] This provision is obviously intended to give the teacher, the professor and the head of the school sufficient authority to maintain order and discipline during classes so that they can discharge their duties and responsibilities as teachers and educators.[13] However, a teacher's authority is not coextensive with that of the parent.[14] The teacher's authority is generally limited to situations under the teacher's control which are related to the purposes of education and training.[15] These relate chiefly to matters of work performance, conduct and discipline.[16] Thus, in school, class, and pupil-related matters, the teacher can stand **in loco parentis** only with respect to the enforcement of authority, an area where parent and teacher are subject to the same limitations.[17] The fact that the standard of care which the teacher must observe toward his pupil is that of a good father of the family does not place the teacher on the same level as the parent with respect to the negligent act. The analogy used to define the standard of care should not be confused with the status of **in loco parentis** granted by law to maintain discipline.

To apply the law to teachers and heads of academic educational institutions will result in imposing upon teachers a greater and wider area of responsibility than that imposed upon parents because parents are liable for the damage caused by their children only when they are minors and live with them.[18] Parents have the power to correct their children and punish them moderately.[19] Teachers may not impose corporal punishment upon their students.[20]

Moreover, from a practical point of view, it is highly unrealistic and conducive to unjust results, considering the size of the enrollment in many of our educational institutions, academic and non-academic, as well as the temper, attitudes

and often destructive activism of the students, to hold their teachers liable for torts committed by them. When even the school authorities find themselves besieged, beleaguered and attacked, and unable to impose the traditional disciplinary measures formerly recognized as available to them it flies in the face of logic and reality to consider such students, merely from the fact of enrollment and class attendance, as "in the custody" of the teachers or school heads within the meaning of the statute, and to hold the latter liable unless they can prove that they have exercised "all the diligence of a good father of the family to prevent damage." Article 2180, if applied as such would be bad law. It would demand responsibility without commensurate authority, rendering teachers and school heads open to damage suits for causes beyond their power to control.[21]

In short, while it may be true that there may be no substantial difference between teachers of arts and trades and those of academic institutions with respect to their obligation to properly supervise the conduct of their pupils there nevertheless exists a qualitative difference in the type of supervision teachers of these schools have over their students. In establishments of arts and trades and students and apprentices usually handle machineries, instruments or substances which in the hands of untrained or ignorant persons may cause damage to their fellow students or third persons if they are not properly supervised. Hence the law properly imposes upon the teacher the duty to exercise supervision over them in order to prevent damage. This reason does not exist in academic educational institutions where the primary responsibility of the teacher is to teach his students.[22]

Secondly, it must be remembered that there is a distinction between the duty and responsibility of the teacher of an educational institution who stands **in loco parentis** and the actual parent. The former has the duty and responsibility of exerting prudent control and direction over the pupil in **all** phases of his conduct, **while in school,** which directly affect his education and **immediate** welfare. The control of the parent is broader and includes responsibility not only for the child's immediate welfare but also for his long-range welfare.[23] This was impliedly recognized in the case of **Cuadra v. Monfort.**[24] In this case, the issue was the liability of a parent for an act of his minor child which happened in a grade school academic institution. Although in the said case, the cause for the damages occurred during class time, in the school premises, and upon assignment of the teacher to weed the grass in the school grounds, the decision did not at all take up the liability of the teacher. It merely mentioned that, "On the contrary, his child was at school, where it was his duty to send her and where she was, as he had the right to expect her to be, under the care and supervision of the teacher." It would seem from this

decision that in cases of damages caused by innocent pranks among children at play, if it be not unusual, and not revealing of any mischievous propensity reflective of misguided upbringing, neither parent nor teacher is liable. If the parent, who exercises much broader responsibility and influence over his child is not liable in these cases, then more reason there is to exempt a teacher of an academic institution from liability.

Corollarily then, it would be both logical and equitable to hold teachers liable only when their supervision over their pupils is of such quality that goes beyond the immediate welfare of their pupils in the classrooms. Thus, the **Mercado** doctrine which contemplates a situation where "the pupil lives and boards with the teacher, such that the control, direction and influence on the pupil **supersedes** those of the parents," is the more rational interpretation of the law. The term "custody" in the codal provision could not have meant merely supervision of a teacher during class hours when seen in the light of the paragraphs concerning the vicarious liability of parents and guardians which provide that the minor children should be living "in their company." To make teachers liable for their supervision during class hours would lay greater responsibility to the academic instructor who is with his students a portion of the day only, as compared to the parent who actually lives with the minor child.

In fact, in one sense, the liability of teachers of vocational establishments **per se** is broader than the interpretation that the teacher of an institution of arts and trades wherein the pupil lives and boards with the teacher is the only one liable. It is not true in all cases that the students of a school of arts and trades lives with his teachers. However, in the interpretation of this article, it is clear that what is essential is the difference in the relationship, and authority and responsibility of the teacher in an establishment of arts and trades to his pupils as distinguished from the teacher-pupil relationship in an academic institution. This all-important-distinction recognizes that the influence of a teacher in a school of arts and trades is more pervasive, and becomes a source of values to the young apprentice. Furthermore, it is reasonable to assume that if the law intended to hold a teacher in an academic educational institution liable for the damage which may be caused by his students the law would have so provided.

In our modern age, the existence of a provision in our Civil Code which mentions the liability of teachers of establishments of "arts and trades" seems anachronistic, a throwback to the age of mercantilism, when the concept of the economy

had only begun to sprout. Ironcially, this old provision still proves its point. In our contemporary era, when traditional discipline has been rejected, and the lines of authority between teacher and student in the classroom have become unclear, it is definitely fair and equitable to hold only teachers of vocational institutions liable for the reasons expounded herein. The state of our jurisprudence has yet to make clear once and for all the liability of teachers of academic institutions lest it prove detrimental to our educational interests, as well as our individual rights.

FOOTNOTES

[1]Jarencio, Torts and Damages in Philippine Law, p. 84; 12 Manresa 647-648.

[2]12 Manresa 657; Bahia v. Litonjua 30 Phil. 624; Smith v. Gibson 35 Phil. 517; Ong v. Metropolitan Water District 104 Phil. 397.

[3]101 Phil. 844, 846

[4]Citing 4 Padilla 841 (1953 ed.); 12 Manresa 557

[5]108 Phil. 414, 417

[6]41 SCRA 548, 556

[7]Article 350, Civil Code

[8]101 Phil. 847

[9]Footnote in Palisoc, supra, p. 555.

[10]6 Planiol & Ripert 866-868

[11]Dissenting Opinion of Mr. Justice J.B.L. Reyes in Exconde v. Capuno

[12]also Article 350, Civil Code

[13]Jarencio, p. 87

[14]Gaincott v. Davis 281 Mich. 515, 275 N.W. 229, 231 (1937)

[15]Vanvactor v. State, 113 Ind. 276, 15 N.E. 341 (1888)

[16]Sumption, The Control of Pupil Conduct by the School, 20 Law and Contemporary Problems, 80 (1955)

[17]I Harper and James, Torts, 291 (1956)

[18]Jarencio, p. 87.

[19]Article 316, Civil Code

[20]Article 352, Civil Code

[21]Dissenting opinion of Mr. Justice Makalintal in the Palisoc case, supra.

[22]Jarencio, p. 87.

[23]Sumption, p. 81.

[24]35 SCRA 160

THE FREE LEGAL ASSISTANCE OFFICE AS A MEANS OF SOCIAL JUSTICE

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I. INTRODUCTION

One of the rights zealously safeguarded by our constitution is the **right to counsel**. This constitutional right has been interpreted by jurisprudence to apply only to criminal cases.[1] It seems that the law gives the accused in a criminal case a sort of special treatment considering the fact that he may be deprived not only of liberty but even of his precious life if proven guilty beyond reasonable doubt of the crime charged.

It is submitted however, that the aid of a counsel is essential not only in a criminal proceeding but in all litigations, civil or criminal. What has been said is also true when it comes to labor cases. An employee might have a meritorious claim against his employer but his legal aspirations would be in vain if he would not be represented by a counsel.

But the question comes up – "How could an employee avail the services of a prestigious law firm or even that of a private practitioner when the truth of the matter is that he has no sufficient funds to support his family with the basic necessities of life?" In such a situation, it would only be normal and logical on the part of the employee to set aside his labor case against his employer and for him to work first for the food, clothing, and shelter of his family.

To remedy such an unjust situation, the President/Prime Minister of the Republic deemed it necessary to create by virtue of a presidential decree the FREE LEGAL ASSISTANCE OFFICE (FLAO) in the Ministry of Labor and Employment the main purpose of which is to provide free legal assistance to **indigent workers and employers.**

*At present, works with the FLAO