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No clear concept has been established concerning the legal responsibility and liability of the individual teacher or administrator of industrial arts should accident or injury befall pupils while in attendance in his classes. This study has sought to show the need for measures which can establish specific aspects and interpretations for determining the legal liability of members of teaching staffs or administrators. The study was developed from the case records of approximately three hundred legal actions originating from accidents to pupils which occured in industrial arts classes and were adjudicated by the appellate courts; statutes of various states; school codes, and legal treatises relating to tort liability. The thesis also includes the implication of liability and its probable effect upon educational programs in general.

To answer the questions (1) what is the liability of an individual teacher or officer of the school district when a student suffers an injury while on the school premises; (2) what are the educational implications of these individual liability principles and how should they be interpreted so they may conform with desirable educational practice; (3) what may the individual teacher or officer do to protect himself against financial loss through individual liability, and (4) what actions may the state and district take to protect the educational program and to protect the individual teacher and officer, will probably require a combination of skillful argumentation and friendly legislatures. Effective statutes appear to be lacking.

The four remedial actions are legislative:

(1) financial relief for temporary or permanent injury and adequate medical attention for pupils suffering injury while attending school. These measures might be patterned after workmen's compensation laws.

(2) measures to provide adequate insurance for pupils in case of accident sustained while at school.

(3) provisions to eliminate the personal liability of teachers and administrators for student accidents and injuries, except in case of personal negligence.

(4) provision for partial or full relief of the school district where statute requires that the district assume financial responsibility for accidents and include such obligations as might result in an additional cost to school operations.

In absence of other protective measures, recommendations are in favor of liability insurance coverage for individuals of the teaching and administrative staffs.

# TORT LIABILITY AFFECTING THE INDUSTRIAL ARTS TEACHER

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# TORT LIABILITY AFFECTING THE INDUSTRIAL ARTS TEACHER

## CHAPTER I

## INTRODUCTION

It would have been impossible for our forefathers, who first laid down the foundations of American free education, to have foreseen the many complex situations that have since arisen in the operation of the public schools. Where any large group or organization, such as the American public school, deals with all of the people, it is most reasonable to assume that controversies of all sorts will arise. The problem of liability for injuries to the person caused by school-period accidents is alone of major consequence. Courts are repeatedly called upon to determine the liability for injuries to pupils and others resulting from acts of commission or omission of school districts or of persons connected with the functioning of schools. Conservative estimate has shown that one out of each 150 cases tried in the lower court reaches the appellate court in each of the states.

Because of the unusual number of legal controversies arising out of school operation in the United States and the fact that a great many of these cases originated because of accidents happening in the various industrial arts shops of the schools, a study of tort cases applied

to schools is of vital importance.

## Need for Study in the Subject

It is improbable that education can exist without law. In America, the people control the schools by use of the instrument of law. Educational law is subject to predominant public opinion. It becomes the basis for the operation of our schools.

An idea of the number and variety of current issues in educational law may be gained from observing that some three or four hundred decisions affecting school systems are handed down by the higher courts each year. An actual count as early as 1927 showed there were 231 school cases adjudicated in the appellate courts of the several states. On the basis of that ratio, there were, in 1927, approximately 35,000 school cases before the courts of the United States (32, p.177).

The need for a study of tort liability by teachers of industrial arts courses is emphasized by the situation currently extant in the State of New Jersey. For several years, the matter of liability for injuries was constantly before the New Jersey courts. Because of the implications of an untoward decision and the expense to teachers in defending suits for liability, the teachers of New Jersey were successful in having the state legislature enact two

laws compelling boards of education to provide counsel for the defense of teachers being sued for damages arising out of injuries received in connection with school work (29;18:5-50.2, 50.3)...and also providing that the boards of education pay damages if recovery be adjudicated (30;18:5-50.4).

Actions for negligence account for the major portion of all tort cases involving school districts. The State of New York has a common law rule of general tort liability, but with its judicial limitations, it amounts largely to responsibility for negligence in practice. It has been supplemented by statutes which refer specifically to negligence. The statutes of other states grant an action for this harm to the exclusion of other torts.

Confusion exists in the minds of many educators regarding the legal obligation of teacher, administrators, trustees and school districts for the injury of pupils. There also seems to be a general lack of knowledge concerning the increasing number of lawsuits involving school injuries.

For a number of years, the State of California has led in the number of damage suits brought against school districts. This is because California has one statute which makes a school district liable for injury to any pupil arising through negligence of the district, or its

officers or employees, and another which provides that any public agency shall be liable in damages arising from the dangerous or defective condition of public property (6, Acts 5160, 5619).

## Purpose of the Study

The purpose of this study is to discover and present some of the legal principles and rules involved in tort actions from the standpoint of the individual teacher, administrator, board member, or other employee of the district, who is in any way connected with the industrial arts program, in order to determine the tort liability of the individual for damage claims arising from the administration and conduct of the program.

School district employees and officers are subject to suit in every state of the Union for wrongs growing out of their work in the schools; furthermore, they are capable of committing wrongs which the school district as a corporation is unable to commit. It is important, therefore, that the legal status of such employees and officers with respect to damage claims should be clearly understood. School officers and employees should be aware of their legal powers, duties and liabilities, so that the educational program may be conducted within these legal limitations, without incurring the financial liability and

without causing the confusion and lack of confidence which is likely to be associated with lawsuits against school employees and officials. It is a further purpose to point out some of the results found, and to indicate the actions that may be taken by the state, district, or individuals to protect teachers and officers in the performance of their educational duties.

The specific aspects into which the purpose of this study resolves itself may be enumerated as follows:

1. To determine the legal liability of members of teaching staffs, governing boards or other groups as individuals, for payment of damage claims for wrongful injury to persons.

2. To call attention to some of the implications of such liability and their probable effects upon the educational program.

3. To indicate some means of protection for these teachers and officers against damage suits.

4. To point out some changes in the statutes which are necessary in order that relations between schools, governmental agencies, and citizens shall conform to modern trends and practices which regulate the relationship between governmental units and their citizens.

## Definition of Terms

Tort. The word tort means literally a wrong, but in its legal meaning, the term is used to denote any wrong arising independently of contract (8, pp.1-2), for which the law undertakes to give the injured party some appropriate remedy against the wrongdoer and is essentially the cause of a private right of action (11, p.2).

A tort has been defined briefly as the commission or omission of an act by one without right whereby another receives some injury, directly or indirectly, in person, property, or reputation (12, pp.1109-1110).

The officers and employees of the school district become subject to actions in tort as individuals, through acts of commission or omission which violate general duties imposed by constitution, by statute, or by rules made by the governing authority of the district.

An action in tort asks for the payment of monetary damages as a recompense for an alleged injury to person, property, or reputation of the plaintiff. To constitute a tort, there must be something wrongful with damage as a consequence, but the damage in many cases is implied or presumed (10, pp.1042-1055). The action in tort may exist even though the alleged injury has been the result of an unintentional wrong of the defendant. The test in

regard to recovery is whether the alleged wrongdoing was the proximate cause of the injury (10, p.21).

One may become liable in an action for tort either:

1. By actually doing, to the prejudice of another, something he has no legal right to do.

2. By doing something he may rightfully do, but wrongfully or negligently doing it by such means, or at such time, or in such manner, that another is injured.

3. By neglecting to do something which he should do, whereby another suffers injury (10, p.19).

Tort Liability. The legal obligation to make monetary restitution to a person injured by such a wrong is termed tort liability (36, x). A legally responsible wrongdoer is liable for torts committed by him which are the proximate cause of injury to another. All who instigate, promote, encourage, advise, countenance, cooperate in, or abet commission of actionable wrong by another, are liable as principals to the injured party. The degree of participation in the commission of an actionable tort does not affect the extent of liability, and all persons who have a part in the commission of the actionable wrong are liable as principals to the party injured, to the same extent and in the same manner as if

they had performed the wrongful act themselves.[1] It is, and has long been, a generally recognized rule that there is no line of separation between the liability of joint tort-feasors. The tort is a thing integral and indivisible and any claim for injuries arising therefrom, runs through and embraces every part of the tort. The liability of one cannot be carried into any portion of the joint tort that is not followed by an equal liability of the other tort-feasors. Each is liable for the whole, and the injured party may pursue one separately, or he may pursue all jointly, or any number less than the whole number.[2]

Negligence. The tort of negligence has been committed when the actor has violated a legal duty of care owed another and the latter has suffered harm to a legally protected interest as a legal result of the violation (14, p.849).

Liability is not the inevitable result of careless conduct or even careless conduct that results in harm to another. The concept of "legal duty" eliminates much liability that would exist if recovery were possible for

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[1] Dickson v. Lawson, 251 N.W. 656, 1933.
Gordon v. Lee, 178 Atl. 353, 1935.

[2] McBeath v. Campbell et al, Texas 12 S.W. 2d, 118, 1929.

all damage resulting from acts of carelessness.[3] Negligence, in the legal sense, is the failure of an individual, a group of individuals, or of a corporate body to exercise that degree of care, precaution, and vigilance that may be reasonably demanded of them in their relations with other persons, whereby such other person or persons suffer injury. If the care that circumstances justly demanded was not exercised, the case is one of negligence and a legal liability is established when the failure is shown (10, p.263).

Negligence is a relative term, since conduct that might be held as proper care under some conditions might be considered negligence under different conditions. Each alleged case of negligence requires an examination of the circumstances involved, to determine whether ordinary prudence has been observed. The standard is such care and precaution as prudent men would take under like circumstances (8, 104-105). The legal duty is to refrain from "... conduct which creates a general type of risk or harm to the interests of a general class of persons because it ... is negligent." (20, p.78). It does not refer to the particular harm inflicted or to the particular individual

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[3] Palsgraf v. Long Island Ry. Co., 222 Ap. Div. 166, 225 N.Y.S. 412 (1927), reversed, 248 N.Y. 339, 162 N.E. 99, 59 A.L.R. 1255 (1928).

who suffers that harm, although of course these circumstances are highly suggestive in the practical task of meeting the legal prerequisites for recovery of damages.

Negligence is a mixed question of law and fact. It is a problem for the jury as long as reasonable men may differ on conclusions to be reached from the evidence. Recognition that some groups of persons must exercise more care in an absolute sense than others in order to meet the objective standard has led to implicit recognition of further factors. Negligence implies fault. Yet, if the standard of the "reasonable man" were enforced on an objective basis, innocent men who had exercised the highest degree of care of which they were capable might still be held liable for harms. They seldom, if ever, are.

Contributory Negligence. This is a defense to an action for negligence. A plaintiff who by his own failure to exercise reasonable care for his own protection has contributed a concurring legal cause to the harm is guilty of contributory negligence. Again, the standard of care is that of the "reasonable man under like circumstances", and that for children is the same as in the case of negligence (3, Secs. 463-464). The rule of the common law has long been that where both parties were negligent, neither could recover.

Many cases are complicated by counter-claims of

contributory negligence on the part of the plaintiff being offered as a defense. The general rule has been that even though the defendant was negligent and his negligence was a part of the legal cause of the plaintiff's damage, yet if the plaintiff did not use ordinary care to prevent injury to himself or to his property and if such negligence was also a part of the alleged legal cause of the alleged damage, then recovery is barred on the principle that no person shall have a right of recovery upon his own fault (10, 284).[4,*] However, the doctrine of contributory negligence on the part of children as defense against damage claims is subject to modification that the conduct of children should not be judged by the same rules which govern that of adults, and while it is the duty of children to exercise ordinary care to avoid injuries, ordinary care for them is that degree of care which children of the same age are accustomed to exercise under similar circumstances (8, pp.134-135). When the slight negligence of the plaintiff bars any recovery from the much more serious negligence of the defendant, injustice commonly results, and statutes have sometimes altered the rule.

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[4] Basmajian v. Board of Education, 207 N.Y. 298, 1925.

* Throughout this thesis, numbered footnotes refer to the legal cases exemplifying the actions cited in the text.

The purpose is to give the jury an opportunity to make each party bear the burden of his own fault. The Wisconsin statute provides:

> Contributory negligence shall not bar recovery in an action by any person or his legal representative, to recovery damages for negligence resulting in death or injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished by the jury in the proportion to the amount of negligence attributable to the person recovering. (37, C.242).

## Statement of the Problem

Every individual has a right to the security of his person. A violation of this right is called a tort. Courts, under the proper circumstances, will find for the plaintiff and award damages to compensate him for his loss of personal security. Although other wrongs are also called torts, this study is concerned primarily with the personal injury of students which occurs while in attendance at regular assigned shop classes.

The problem of this study is to determine the tort liability of individual teachers and officers of school districts when actions arise in regard to invasions of such legal right as have been indicated, and to point out some remedies that may be applied by states, districts, or individuals.

The solution of this problem involves finding the answers to the following questions:

1. What is the liability of an individual teacher or officer of the school district when a student suffers an injury while on the school premises?

2. What are the educational implications of these individual liability principles and how should they be interpreted so that they may conform with desirable educational practice?

3. What may the individual teacher or officer do to protect himself against financial loss through individual liability?

4. What actions may the state and district take to protect the educational program and to protect individual teachers and officers?

## Development of the Study

After selecting the topic for study, the writer found from his preliminary investigations that legal responsibility for injury to pupils had been described adequately. There are, however, phases to liability in tort other than legal responsibilities for injuries to pupils. Some of these are: What damage constitutes a cause for legal action? Who may bring suit to recover

damages? What care is required in personal conduct? What is contributory negligence? These and other phases seem to be questions that need further study.

The phrase, "accidents will happen" has often been the excuse given when a child is injured in school. The legal definition of an accident states that:

> An accident is an unforeseen event occurring without the will or design of the person whose mere act causes it. In its proper use the term excludes negligence. It is an event which occurs without fault, carelessness, or want of proper circumspection of the person affected, or which would not have been avoided by use of that kind and degree of care necessary to the exigency and in the circumstances in which he was placed. (2, p.23).

This definition indicates that the phrase is fallacious in ordinary usage. Therefore, an injury is not accidental if it can be foreseen or if carelessness causes it. The definition also points out that a person must use some degree of care in his conduct, depending upon the circumstances surrounding the situation, in order to avoid the negligent injury of others.

To reveal and interpret legal liability for the injury of pupils, one must include discussions of the care that teachers, administrators, and other employees of school districts are expected to take to prevent injury to pupils; the care that pupils are expected to use in avoiding injury to themselves; and the conduct of all

concerned, which equals the care demanded by law. The discussion of these phases is an integral part of this study. One author writes of his perplexity in matters of legal liability:

> There exists two opposing views concerning the school's responsibility for accidents which occur in manual training classes conducted under the auspices of the school. The one maintains that the school is a governmental function and government is not liable at law. There are, on the other hand, cases on record where the school has been held responsible for accidents which, in the opinion of the court, were due to negligence....After a study of the literature and material when presented, there still exists in the mind, at least of this writer, confusion as to the school's legal responsibility for accidents in manual training and shop activities. (23, p.117).

This dilemma is typical of that of school teachers and administrators with whom the writer has discussed the problem, especially those who have never been required to defend themselves against damage suit in tort actions.

## Delimitations of the Study

This study is limited to the liability of individual teachers and officers of school districts for damages, growing out of or closely related to torts.

The legal liability of the school district as a corporation, for damages arising from actions in tort, will not be presented except as a background, showing the part that the school district plays in accepting

responsibility for damage actions in the various states, and how these policies influence the actions brought against individual teachers and officers of the school district.

It is not the purpose of this study to present a complete legal treatise on the laws of tort liability of individual teachers and officers of the school district; instead, the purpose is to determine some of the most important principles governing such liability, and to show how educational programs and policies are influenced and modified by the application of these principles.

## Method of Procedure and Sources of Data

The nature of the subject treated indicates that the best procedure is through a library study of the sources available, to determine the general principles that have governed tort liability from its beginning in common law and finally how these principles have been interpreted and modified by the courts and by legislative action as new conditions have arisen through changing social, economic and governmental concepts.

The principles of school law have been developed to a large extent through judicial interpretation of statutory enactments and of common law, and they conform to the judicial idea of what should be the fundamental

principles of public policy. School law has come to be a growing social philosophy which is influencing the development of the educational program.

The primary sources of data are found in the decisions of the supreme and appellate courts of the various states. These cases are taken from the several publications labelled as various Reporters, which carry a report of every case in litigation that is appealed to the supreme courts and appellate courts of the states, together with a statement of the points at issue in the trial, and written decisions of the courts. The secondary sources of data: Legal theses, School Law Review articles, magazine articles bearing on school law, legal digests, and textbooks in the educational field, furnish the basis for general principles and indicate the phases of the problem that should be treated.

## Organization of the Study for Presentation

In Chapter II is presented the background for the study which will include statements of the present status of the liability of the districts as it has been determined by students of the subject. The purpose is to show how the prevailing status of tort liability regards or affects the personnel of the public school organization as applied to principles of safety in education.

Chapter III is devoted to the development of that phase of implication of the tort liability of teachers and officers which is related to the educational program and the common law doctrine of non-liability of governmental units measured by modern standards. It also includes policy and practices adopted by some states and districts in the exercise of authority granted by legislative action.

Chapter IV presents a summary of the principles determined, together with brief suggestions as to plans for protecting the educational program from unwarranted curtailment of the activity programs and for protecting the individual from financial liability.

## Summary of Chapter I

The people of the several American States have, from the very beginning of their national existence, recognized the necessity of a public school system as a function of the state. From the standpoint of legal theory, the function of the public school is not to confer benefits or rights upon individuals, but rather to provide an education as a duty imposed upon the pupils for the public welfare. The education of the children in a democratic state is accepted as one of the most important duties of the state. The very existence of civil society in a

democracy demands it.

As political, social, and economic changes occur, the public school system evolves into a most complex institution. The school district and its organization have been forced to assume new duties and activities, to render new services, and to extend the scope of the duties and activities carried on before. This situation calls for public relation contacts far in excess of those formerly necessary in the conduct of the public schools, and at the same time adds new legal responsibilities. It is inevitable that controversies will continually arise in regard to duties omitted, negligently performed, or actions unauthorized, by the individual while acting within the scope of their office or employment or while acting outside the bounds of their legal authority but are alleged to have resulted in injury to some person. Such controversies have brought about an enormous increase in the amount of litigation involving school teachers, school officials, school boards, and school districts.

# CHAPTER II

## BACKGROUND FOR THE STUDY

The law of torts is based upon the premise that each individual has been invested with certain legal rights which the government is expected to recognize and protect against all the world (10, p.477)[5]; therefore, the different types of actions for torts may be classified according to the nature of the wrong done to the legal right of an individual as, wrongs arising from the neglect or non-performance of official duties prescribed by constitutional provisions, statutory enactment, or local rules, giving rise to action for damages due to negligence (10, pp.144, 262).

Whatever may be true about other parts of tort law, that concerned with negligence and contributory negligence is obviously flexible and extremely adjustable to the demands of particular situations (19, pp.184-185). Here are both its strengths and its weaknesses. It carries within it all the shortcomings of the Anglo-American

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[5] Hatchett v. Blacketer, 162 Ky. 266, 172 S.W. 533, 1915.

Beach v. Hancock, 27 N.H. 223, 1853.
Holmes v. Blyler, 80 Iowa 365, 45 N.W. 756, 1890.

jury system. It is a natural battleground for those who believe in and trust popular government and those who do not.

## Tort Liability for Damages Caused Through Negligence

The essential elements of liability for damages caused through negligence are: The legal duty on the part of one person to exercise care toward another; failure to do so; and injury (tort) as the proximate result of the failure. The failure to use care may be evidenced by an act of the tortfeasor or by his failure to act for the safety of another when he was under the legal duty to do do.

Liability for negligence in its limited sense considers only the responsibility of the defendant. In its inclusive meaning the damage, the damages, and the plaintiff are important factors because the law recognizes certain rights appertaining to them, and these in general must be considered in the study of the liability for the injury or death of school children. The type of damage and the person of the plaintiff go together. For example, as a result of the injury of one child, distinct types of damage accrue to different plaintiffs. Each loss is personal to that plaintiff, and no other has the right to bring action for legal relief. For these reasons, each

cause for damage is discussed here in relation to the individual who suffered it.

At common law, no right of action is given for the wrongful death of a human being. The right to recover damages for death resulting from negligence is wholly statutory and must be controlled and limited by the statute.[6] In cases where the negligent action causes death, it is obviously impossible for the deceased to bring action in his own name, but action can be brought by the certain individuals who have suffered damage as a result of his death. For example: The administrator of the deceased minor may recover damages for his estate; a right of action accrues to the father of an unemancipated minor for negligent acts which cause the child's death. This right of action proceeds to the mother in cases of the father's previous desertion of the family, his death, or when the deceased minor is illegitimate. In certain states, the right of action for death lies with both parents; in others, the action lies with the mother if she is dependent upon the earning of the child. The right of legal action of a next of kin, meaning blood relationship other than parental, for damages for the death of a

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[6] Casper v. Longview School District No. 122, Wash. 105 Pac. 2d 503, 1940.

minor rests upon their dependence upon the deceased and upon a reasonable expectance of the continuation of this support.

In addition to statutory actions for wrongful death, certain other damage is suffered by parents as a result of the death of their child. At common law the services of the child, up to his emancipation or until reaching his majority belong to his father. This common law right expires with the death of the child. It follows that in the case of instant death, the father has no cause of action. Under the statutes, the father must show that the child was able to render valuable services at the time of his death, even if he had not done so. The loss of society or companionship of a minor child does not constitute a cause for legal action at common law.

Causes for legal action arise from the negligent injury of children as well as from their wrongful death. For these causes, the law gives the right of action only to the parent and the child, and the parent's right of action ends with the emancipation of the child or when he becomes of age.

A cause arises for the child from the physical suffering he endures on account of a negligent injury by another, provided the wrongful act occurred after his birth. An action also accrues to the child for mental

suffering. On the other hand, a cause does not arise from the mental suffering of a parent for the injury of a child.

A minor does not have the right to recover damages for expenses incurred as a result of an injury. This right belongs to the father, if alive at that time, or to the mother. If the expense occurs after the child reaches his majority, he may recover damages for himself. Similarly, damages for the loss of time from work, loss of earning capacity during minority, and impairment of earning capacity during minority are not recoverable by the child, but are by his father unless he has been emancipated. The child may recover compensation for the loss of his earnings or for impairment of his earning capacity which will occur after he becomes of age.

A minor cannot sue or be sued in the courts. It is the custom for the court to appoint a guardian ad litem, or next friend to represent him when he seeks legal action. The suit is then brought in the name of the infant by the guardian ad litem or next friend. The personal representative must protect the interests of the infant. He can neither waive rights of the minor, nor consent to anything that would be to his ward's disadvantage.

There are four classifications of damages which are awarded for the negligent injury or death of children. These are: NOMINAL DAMAGES, COMPENSATORY DAMAGES, and

EXEMPLARY or PUNITIVE DAMAGES awarded for existing injury; and PROSPECTIVE DAMAGES, awarded for future loss.

In certain jurisdictions, nominal damages must be awarded to the infant, irrespective of actual damage, on a finding of negligent injury by defendant. When the amount of damage is negligible or when it is not shown, the plaintiff is at least entitled to nominal damages for negligent injury by the defendant. Upon proof of actual damage, a minor plaintiff is entitled to damages which fully compensate him for his loss. If the act causing his loss was wilfully or maliciously perpetrated by the defendant with the purpose of injuring the minor, he is entitled to exemplary or punitive damages. The objective of punitive damages is to prevent the future commission of similar offenses. A corporation is responsible for punitive damages only for the wrongful act of one representing it, not for the unauthorized wilful or malicious negligence of its agent or servant, unless such employee was acting under its direction or his acts have been ratified by it. An infant may recover prospective damages for damage that is reasonably certain to result in the future as a consequence of the negligent conduct of the defendant. (2, p.314).

## The Public School Corporation

The public school has its origin in the law. It is from that source that powers are granted, duties are defined, privileges provided and liabilities imposed (36, p.VII). The constitutions of the respective states generally turn the whole subject of education over to the legislature with absolute power to control the public schools unless limited by constitutional provisions. It follows, therefore, that the control of education is in no way inherent in the local government except as the legislatures have chosen to make it so, and that public education is in a field distinct from the duties and functions of local government (22, p.17)[7]. The respective legislatures in making provisions for the administration of education have created the school corporations. The courts of record in the various states have been almost unanimous in their decisions that the school corporation is an agency of the state government in the execution of its educational policy as provided in the state constitutions (36, p.25). Although school districts are usually referred to as corporate bodies, they are not complete corporations. A more legal description

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[7] Macqueen v. Port Huron, 160 N.W. 127, 1916.
Kansas City v. Fee, 160 S.W. 537, 1913.

designates them as quasi-corporations. This designation has arisen because first, school districts are restricted to educational functions; second, legislatures retain practically unlimited control over them.

School districts are state agencies created by legislative prerogative. They are under the power that created them and are engaged in a function in which the state is the paramount authority.[8] The attitude of the courts has been expressed by one state supreme court justice who said:

> "A school district is a subdivision of the state for educational purposes. The several officers charged with the supervision of the schools, from the state board of education down to the directors of the school districts, are merely chosen for the purpose of effecting its policy in relation to schools....The school district is created as a means for the more convenient and effective carrying out of the educational policy of the state....and school officers are merely the agencies through which it acts in the performance of duties with which it is charged by the constitution."

It is generally held that school trustees and school districts constitute quasi-corporations public in their nature, and that authorities in control of the public or common schools, under whatever name, are public officers and are mere auxiliaries or agents of the state for

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[8] Florman v. School District 6, Colo. App. 318, 40 Pac. 469, 1895.

educational purposes only, created by the states as a means of exercising its political powers in an orderly manner, and as such are subject to the unrestricted control and direction of the legislature in matters of internal government. It follows that the work of the public schools is interpreted as a governmental function (25, pp.416-417).

## Governmental and Proprietary Functions

The common law distinguishes between the public and private functions of a corporation created by the state. The duties created and imposed by the state for purposes of public policy and public good, which are ordinarily performed by the governing body while acting as the agent of the state, for which the agent receives no private or corporate benefit are termed governmental or public functions (34, pp.56-57). These are the functions that are referred to under such terms as "sovereign", "governmental", "political", "state", and the like (1, p.135). Those duties voluntarily assumed under general powers and exercised for a pecuniary benefit to the governing body in a private or corporate capacity are termed proprietary functions and are often spoken of as "private", "corporate", "commercial", "municipal", and "local"(1, p.136).

The distinction between public and private function is very shadowy and much difficulty has been experienced by the courts in determining to which class a particular case may belong.[9] No general rule has been formulated on the subject, and it is said by some of the authorities that all the courts can safely do is to determine each case as it arises.[10] The attempted distinction is very unconvincing in view of the fact that all functions performed by a corporation created by the state are for public benefit, otherwise they could hardly be undertaken with public funds or by public officers (4, p.136).

## Previous Studies Related to the Problem

It was not until a very recent period that the subject of liability for damages by school districts and by individuals connected with such districts was deemed of sufficient importance to warrant extensive study. As a result of this attitude, there are various studies that are concerned with the legal status of different educational groups with emphasis on contractural relationships,

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[9] Esberg Cigar Company v. Portland, 34 Oregon, 282, 55 Pac. 961, 1899.

[10] Caspary v. Portland, 19 Oregon, 496, 24 Pac. 1036, 1890.

origin of legal powers, development and growth of authority and the like, but with very little attention being given to tort liability either of the corporation or of the individual, except as it is treated as being incidental to the development of the statement of legal status.

Harry R. Trusler has dealt with the entire field of school law in Essentials of School Law. (33) This is a textbook of exceptional merit, but the consideration of individual liability is a relatively minor part of the work. In an unpublished Master's thesis at the University of Chicago, by H. V. Carmichael, Judicial Decisions Relating to the Legal Liability of School Boards in the United States (7), the general problem of school district and school board liability in all of its phases is treated. Newton Edwards has covered the work of the courts in relation to education in The Courts and the Public Schools (15) in order to provide a systematic organization of principles as set forth by the courts, to be used in solving problems of school organization and administration. The treatment of tort liability of school boards and school officers has been done rather briefly. In a study, The Legal Authority of the American Public School as Developed by a Study of Liability to Damages (36), by J. Frederick Weltzin, the basis for the legal authority

of the school as revealed by the attitude of the courts in their decisions on questions of damage is developed. The liability of officers and teachers is treated as a means of developing legal precedent for authority exercised. The status of the school district with respect to damage arising from actions in tort has been stated by James Clove, Jr., in his study The Legal Liability of the School District for Damages (9).

Arthur Clayton Poe in his School Liability of Injuries to Pupils (30), covers in extent the actions of courts in cases involving damage suits resulting from school district or public operation of transportation facilities for pupils. In his unpublished thesis, An Analysis of Statutes and Judicial Decisions in the United States and Their Relations to the Tort Liability of School Districts (17), Thomas Hoppin Foley compares the statutes and laws of one state with another. A more recent study is Clifford Orville Dice's unpublished dissertation entitled, The Tort Liability of Individual Employees and Officers of School Districts(13), which principally emphasises the tort cases originating from injuries incurred by pupils and others on the school playground and while engaged in physical education activities.

## Application of the Study to Education

Educators have a moral responsibility to make learning processes safe for pupils. In most states, this moral responsibility is accompanied by a legal responsibility to do so. The difference between the two is that in the former the educator must answer to his conscience and to public opinion; in the latter, a court may force him to pay damages.

This study emphasizes the cause of injury to children. It points out the care that the law requires when an adult is in charge of children. Public school teachers, officers and administrators should conduct their schools and classes in such a way that they will be safe for pupils. The writer hopes that the study will leave with the teacher and others a consciousness of the fact that forethought in regard to the safety of pupils will reduce the number of preventable injuries. They need not happen!

Injuries sustained in industrial arts activities are numerous. Many of these injuries are the result of using unguarded power machines. In a few instances, the guards were not provided when the machines were purchased. In certain cases, the guards were taken off for some operation and the operator was injured. More often, guards taken off by one operator were not reinstalled and a

student following was injured. These questions arise: Is it necessary to include in the shop curriculum operations which must be performed on an unguarded machine? If such operations are necessary in a particular project, why cannot they be performed by the teacher in a class demonstration? The liability of school teachers and school districts for injuries which are suffered during shop periods is the same as it is in any other school situation.

# CHAPTER III

## THE PROBLEM OF THIS STUDY

### Defenses Against Recovery From the District

The immunity of the state and its agents under the common law is the chief defense set up against the recovery of damages in actions in tort against the district, but there are various other reasons assigned why a district should not be liable in tort.

Some authorities invoke the principle of non-liability on the ground that the rule of respondeat superior does not apply through lack of the relation of master and servant; others take the position that non-liability must result because the law provided no fund to meet such claims, since funds placed in the hands of the school district for educational purposes may not be used for anything else, to allow such money to be used to pay damages would be injurious to public welfare (36, pp.89-90). A public corporation is not liable to respond in damages in any instance for the negligence of its officers or agents unless it has the authority to raise money from the tax-payers to pay the same (24, p.60).[11] The courts

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[11] Freel v. City of Crawfordsville, 137 Ind. 404, 41 N. E. 272, 1895.

often rely on one or more of these grounds in ruling that a school district or corporation shall not be liable in tort (24, p.60). In some jurisdictions, it is held that a school district cannot be held liable for any kind of tort committed by its officers on the ground that a governing board is never authorized to commit a tort, and when it does so, it does not represent the district; that is, it acts ultra vires, or outside its powers, and the district is not bound by such action (15, p.373).[12]

The duty of a board of education to instruct and control work in the training departments of the schools may also be delegated, and the board is not liable for the negligence of teachers and employees. The rule of respondeat superior does not apply to the board of education.[13]

The Common-Law Rule of Non-Liability of School Districts

The common-law rule on the matter of tort liability of the school district has been that such districts or other local school organizations are agencies or

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[12] Board of Education v. Volk, 72 Ohio State, 469, 74 N.E. 646, 1905.
School District No. 28 v. Denver Pressed Brick Co., 14 Pac. 2d, 487, 1932.

[13] Johnson v. Board of Education of the City of Hudson, 206 N.Y.S. 610, 210 N.Y. App. Div. 723.

instrumentalities of the state to operate solely for the public benefit, performing duties that are ordinarily wholly governmental in character and, although capable of suing or being sued, they are not liable for the torts committed by its officers or employees unless made so by statute (25, pp.744-746).

It is the generally accepted rule that such a district or its directing board as such, like the state itself, is not liable for injuries or loss resulting from its negligence[14] as for failure to maintain school equipment properly[15] in a proper and safe condition except where liability has been accepted by statute.[16]

The principle of governmental non-liability in tort was introduced into this country from England where it was developed from the theory that "the King can do no wrong" (4, p.1). The law ascribes to the king the attribute of sovereignty, hence, no suit or action can be

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[14] Bank v. Brainerd School District 49, Minn., 106, 51 N.W. 814, 1892.
Plumbing Supply Company v. Canton Ind. School District Board of Education, 32 S.D. 270, 142 N.W. 1131, 1913.

[15] Spencer v. School District No. 1, 121 Oregon, 511, 254 Pac. 357, 1927.
Woodcock v. Salt Lake City Board of Education, 55 Utah, 458, 187 Pac. 18, 1920.

[16] Krutili v. Butler District Board of Education, 99 W. Va. 466, 129 S. E. 486, 1925.

brought against the king, because no court can have jurisdiction over him (4, p.2). In the United States, this conception of the privilege of a sovereign has been made to say the state as a sovereign can do no wrong, and this same immunity is extended to all subdivisions and agencies of the state, and thus the school corporation, in the absence of a statute to the contrary, is protected from responsibility for its own torts or those of its servants, resulting either from mis-feasance or non-feasance in the execution of its public duty (36, p.88). This immunity in the United States seems to have been worked out first by a court of Massachusetts[17], using an English case[18] as authority. The case in question had very little in common with the case which was used as authority (4, p.41), except that a social need existed where revenues were small and no money was available to pay judgments. The social need for the rule of non-liability no longer exists (16, pp.818-819), but the doctrine has become so firmly intrenched in precedent that legislative consent to suit, though granted in the broadest language, has been interpreted by most of the

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[17] Mower v. Leicester, 9 Mass. 247, 1812.

[18] Russel v. Men of Devon, 100 Eng. Rep. 359, 1789.

courts so as to exclude practically all cases of liability for tort (4, p.21), in spite of the fact that the corporations are engaged in many activities which constitute a menace to the rights of the individual (16, pp.818-819).

Applications of the Common-Law Rule of Non-Liability

The attitudes of the courts of the several jurisdictions on the question of school districts, together with the lines of reasoning which influenced their decisions, are clearly revealed by a consideration of some cases in point:

The plaintiff, a pupil, was injured while operating a machine in a manual training class.* In an action for damages, he alleged that the defendant failed to perform its statutory duty to equip certain saws with the proper safety devices and safety guards.[18] In ruling in favor of the defendant school district and in speaking for the

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* The expression "manual training" is used when the term is contained in digests or records of court proceedings. Industrial arts is the terminology generally used in present day education to denote the varying but representative group of handcraft and industrial-machine experiences offered as part of general education. It refers principally to school shop work.

[18] Sullivan v. School District No. 1, Wisconsin 502, 191 N.W. 1020, 1923.

Supreme Court of Wisconsin, Justice Doefler went on to say:

> It must be conceded that under common law the defendant in establishing and maintaining this department is performing a purely governmental function, for which it cannot be held liable for damages sustained by a pupil resulting from the negligence of the officers, agents, and employees of the district.
>
> This has been held in an unbroken line of authorities in this state....and the doctrine is fortified further by decisions generally in nearly all the states of the Union.
>
> The doctrine of non-liability of a municipality for performance of governmental functions is so deeply rooted in our jurisprudence and has been recognized and accepted for so long a period of time that in effect it has virtually attained the force of a statute, and while such doctrine has been recognized for over half a century no legislature has attempted to nullify it.

A student working with a planer in a manual training class in a West Virginia school was injured because of the imperfect condition of the machine, and because the blades were unguarded. Alleging negligence, action was brought against the school board.[19] The general rule was followed, and the school corporation declared not liable for the injury even though the board was negligent. The

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[19] Krutili v. Board of Education of Butler District, 99 West Virginia 466, 129 S. E. 486, 1925.

court went on to state in its opinion:

> The general rule in this county is that a school district, municipal corporation, or school board is not, in the absence of statute imposing it, subject to liability for injuries to pupils of public schools suffered in connection with their attendance thereat, since such district, corporation, or board, in maintaining schools, acts as an agent for the state and performs a purely governmental duty imposed upon it by law for, the benefit of the public, for the performance of which it receives no profit or advantage.

An action was brought against the city of Atlanta for injury sustained by a fourteen year old student who was permitted to use a rip saw without the safety appliance, the instructor knowing that the said safety appliance had not been on the machine for some time.[20] The court held that the operation of the technological high school by the city of Atlanta, being for the use and education of the public at large, was in virtue of the city's governmental powers, and no municipal liability attaches to the non-performance or improper performance of duties of the city's officers or servants in respect to such operation, nor did it matter that incidental profit might result to the city from its operation. The court stated:

> The first question which presents itself for consideration is whether or not the city in operating this school was performing a

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[20] Nabell v. City of Atlanta, 33 Ga. 545, 126 S. E. 905.

> governmental or ministerial function; it being well settled that the city would not be liable in the performance of a governmental function. While the line of demarcation between these two functions is, in some cases, rather closely drawn, we think that the city is, in the instant case, engaged in the performance of a governmental function.....its operation is in virtue of the governmental powers of the municipality, and no municipal liability would attach to the non-performance or improper performance of the duties of the officers, agents, or servants of the city in respect to operating the school for use by members of the general public; ....

## Exceptions to the Rule of Non-Liability

### School District Tort Liability in California

School districts and other quasi corporations are not liable generally for torts in California under the common law. It follows that liability is based almost entirely on statutes which abrogate the common law and, except within recognized exceptions to the immunity doctrine, no recovery can be had against a school district for any tort unless authorized by legislative enactment. California statutes provide for more general tort recovery against public corporations than those of any other state. The basic statutes and the cases decided by the higher appellate courts that have dealt with the tort liability of school districts and the development of the statutory provisions through judicial construction and legislative amendments are further augmented by cases

discussed.

In 1923, the state legislature passed a statute which made school districts liable for negligent injuries to pupils caused by the district or its officers or employees (5, p.298). A second act was also passed by the same legislature which made school districts, counties and municipalities liable for injuries to persons or damages to property caused by dangerous or defective conditions of public property. The act provided there should be no recovery unless notice of the dangerous conditions had been had by the person or public board with authority to remedy them and unless the authorities had failed to remove these conditions within a reasonable time after notice. Liability under Section 1623 has been subsequently broadened to permit recovery by persons other than pupils and to include damages to property. Both statutes have been restricted to bar all actions unless the plaintiff files a verified claim in writing within 90 days after the cause of action arises.

There were no cases involving liability of school districts for several years after the statutes were passed. Then the more general of the original acts was applied to hold a school district liable for the injury of a pupil by an open garbage can incinerator allowed to

burn in the school yard during school hours.[21]

The more serious difficulties of statutory interpretation began with a case involving a student in a high school manual training department who lost two fingers of his right hand while operating a power saw.[22] Suit was brought against the school district upon the claim that the boy had not been given sufficient instruction in the operation of the machine, therefore, the injury was attributable to the negligence of the district. This allegation was upheld by the jury in the trial court and was not disturbed in the supreme court. The boy was likewise not found guilty of contributory negligence. The case, therefore, came to rest squarely upon the question as to whether the statute granted the right of action in a case such as this.

It was the contention of the school district that Act 5619 (which required knowledge of and neglect to remedy on the part of the district) controlled the situation, and since the school board itself had no knowledge of the fact that a boy not properly instructed was being

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21 Huff v. Compton School District, 92 Cal. App. 44, 267 p. 918 (1918), applying Act 5619.

22 Ahern v. Livermore Union High School District, 208 Cal. 770, 284 Pac. 1105 (1930).

allowed to operate a dangerous machine, no suit could be brought against it. The injured pupil, however, maintained that section 1623 governed the matter, and since that section allowed suits for the negligence of the employees of the district, he was within his right in bringing the suit. The majority of the court supported the contention of the plaintiff and allowed the boy to recover. These two acts should not be read together, said the court. The one, Act 5619, is a general law dealing only partly with school districts, and the other one is an enactment expressly passed to allow actions for negligence against school districts. "In such a case", said the majority opinion, "the provisions of the special act must prevail over the terms of the general statute."[23] It is worthy of note, however, that in the supreme court a majority of four judges was content to adopt the theory of the lower court by holding that Section 1623, which was a special act applying only to school districts and which had no notice requirements, applied to the case. The three dissenting judges sought to apply Act 5619, which applied to counties and municipalities as well as school districts and which required notice. The decision

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[23] Ahern v. Livermore Union High School District, 208 Cal. 770, 284 Pac. 1105 (1930).

seems sound on the general principle of statutory construction that gives a special act precedence over a general act not covering the same subject.

In further showing that the decision in the Ahern case was not disturbed, another plaintiff, a student 15 years old, sustained injuries on the chest and face, and the loss of an eye, while being instructed in oxy-acetylene welding. The injuries were caused by the bursting of a faulty pressure gauge which had a maximum reading of only 400 pounds when it actually should have read 3,000 pounds.[24] An action was brought against the school district and again the suit was based upon the general statute (Act 5619) and not upon the one specifically giving the right of suit for any negligence (Section 1623). Again the defense of the district was that it had no notice of the defective condition such as is necessary by the general statute in order to allow suit against school districts. And again this defense was declared of no avail for the reason that the specific law (Section 1623) calls for no such notice to the board, but grants the right of action for an injury caused by the negligence of

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[24] Meade v. Oakland High School District, 191 Pac. 874, (1930) and 2nd consideration 298 Pac. 987, (1931).

employees of the district or the district board itself. In the first appearance of this suit, $35,000 was awarded to the pupil, but upon a later rehearing, this was reduced to $16,000.

A fourteen year old boy recovered $7,550 for the loss of two fingers in a jointer on which the guard was not being used at the time of the accident.[25] Section 1623 was applied as it had been construed in the Ahern case.

Several cases were decided in favor of defendant school districts in 1935. There was no liability for a pupil who was injured by a flying piece of metal in a school machine shop when he brought suit against the district and officers of the district, as co-defendants, alleging negligence.[26] The evidence showed that the boy had finished his own assignment, then was struck while watching other students pound their metal. The defense alleged that no agent of the district was negligent and that the boy was negligent. The courts denied recovery against any of the defendants on the ground that no danger existed which was known, or should have been known to the

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[25] Henry v. Garden Grove High School District, 119 Cal. App. 638, p. 7 2d 192 (1932).

[26] Goodman v. Pasadena High School District, 4 Cal. App. 2d 65, 40 Pac. 2d 854 (1935).

authorities. Therefore, there was no evidence of negligence in not guarding against such injuries as were alleged in the complaint.

Another high school pupil was injured while using a jointer in the wood shop, and in bringing suit, chose to rely on the doctrine of res ipsa loquitor; that is to say, that the plaintiff did not allege any specific acts of negligence, but instead set up the claim that he did not know just what caused the accident and that since instrumentality was entirely within the control of the defendants, negligence should be inferred on the proof of a prima facie case in the absence of adequate explanation by the defendants. The defense answered that the defendants could not have exclusive control of equipment that was used by members of a class; furthermore, evidence was introduced to show that the boy had been contributorily negligent in the shop, in that he did not follow the directions given and thus his own action was a proximate cause of the accident. The courts refused to hold the district, instructor, or the individual members of the board liable for damages.[27]

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[27] Klenzendorf et al. v. Shasta Union High School District et al., 40 Pac. 2d, 878, 1935.

School District Tort Liability in Washington

The legislature of Washington has authorized tort suit against school districts under a statute providing that an action may be maintained against a school district for an injury arising from an act or omission of the district, or growing out of the negligence or official acts of school officers and employees. (35, secs. 5673-5674) The express provisions of the 1917 statute were refused application in a case where a pupil recovered for an injury received from a dangerously defective planer in a high school manual training shop.[28] The decision went on the ground that to rule otherwise would overrule the case of Stovall v. Toppenish School district, in which suit for recovery was not prohibited by Sections 5673 or 5674[29] though Section 4706 includes:

> ....No action shall be brought or maintained against any school district or its officers for any non-contractual acts or omissions of such district, its agents, officers or employees, relating to any park, playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any school house or elsewhere, owned, operated or maintained by such school district (35, sec.4706).

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[28] Bowman v. Union High School District, Wash. 299, 22 Pac. 2d, 991, 1933.

[29] Stovall v. Toppenish School District, 110 Wash. 97, Pac. 188, 1920.

It had been held that a steel tank left on the school grounds was not "....athletic apparatus or appliance, or manual training equipment." The writer submits that the principle of the Stovall case would have been entirely unaffected by holding a planer to have been within the statute. The Bowman case illustrates the liberties a reputable court may take with a statute when justice seems to demand there should be recovery contrary to its plain provisions.

In two later cases, Section 4706 was ruled to apply that the school district cannot he held liable for acts or omissions of that character.[30]

Exception to the Rule of Non-Liability by New York

The liability of school districts in New York is not provided by direct statutory enactment, but has grown out of court interpretation of a statute which gave the court of claims jurisdiction in hearing and determining private claims against the state (29, sec. 264), and has been interpreted as waiving immunity by the state, but that it did not thereby accept liability for the torts

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[30] Bruenn v. North Yakima School District, 101 Wash. 374, 172 Pac. 569, 1918.
Bailey v. King County School District No. 49, 107 Wash. 612, 185 Pac. 810, 1919.

of its officers or employees.[31]

On the other hand, it is held that teaching or giving instruction is not a function imposed directly on the board of education; therefore, the board appoints teachers for that purpose and the board of education will not be held liable for the negligence of such teachers in the performance of their duties, on the ground that teachers are not agents of the board since teaching is not a duty imposed directly upon the board.[32]

A board of education cannot be held liable in its corporate capacity for injuries caused by negligence or omission of other employees of which the board has not had notice[33], nor for injuries to persons to whom the board did not owe a duty of care[34].

The sleeve of a manual training student's sweater became entangled in the lead screw of a lathe in the school shop. In an effort to free the sweater, his thumb was

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[31] Smith v. State of New York, 227 N.Y. 405, 125 N. E. 841, 1920

[32] Katterschinsky v. Board of Education, 212 N.Y.S. 424, 1925.

[33] Whitcher v. Board of Education, 251 N.Y.S. 611, 1932.

[34] Longo v. Board of Education, 255 N.Y.S. 719, 1932.

crushed, necessitating its amputation. The student and his father sued the district solely on the ground that it was negligent because it had not supplied the student with some kind of a jacket safer than the sweater. They argued that this duty was imposed by a statute which provided that the board of education has the power and duty to "purchase and furnish such apparatus, maps, globes, books, furniture and other equipment and supplies as may be necessary for the proper and efficient management of the schools and other educational activities and interests under its management and control".[35] The appellate division held that the word "equipment" used in the statute included only such articles as machines, tools and appliances, and not the clothing worn by students and, consequently, denied recovery; but the Court of Appeals reversed this holding and declared: "We think that the word 'equipment' in the statute includes not only books and pencils but protective clothing for child students similar to that necessarily furnished by employers to men performing the same machine shop operations in industry." Chief Justice Lehman alone dissented.

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[35] Edkins v. Board of Education of the City of New York et al., 261 App. Div. 1096, 26 N. Y. S. 2d 996, 1941, reversed by the Court of Appeals March 5, 1942.

A pupil in the manual training department of Arcadia High School received injuries while operating an unguarded circular saw as a part of his school work. The defendant board contended that it was not liable on the ground that it was a governmental agency.[36] The appellate division unanimously affirmed a finding of the jury that the board as a corporate body was guilty of negligence in purchasing, installing, operating and permitting the pupils to use a dangerous machine. The court, in affirming the judgment of the lower court and holding that the board was liable for such negligence even though it was a governmental agency, went on to say:

> The board of education is a governmental agency of the state. It is not liable for the torts of its agents. Such agents, like policemen of a city, are personally liable for their torts done in the course of their employment, but the corporation is not chargeable with their defaults. It, however, remains liable for its own negligence.
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> When the state surrendered to the board a portion of its sovereign power and delegated to it a duty imposed upon the state by the Constitution (Art. IX, Sec. 1) and it accepted the trust, it undertook to perform with fidelity the duties which the law imposed upon it. It is not immune from suit. The state has not created an irresponsible instrumentality of government, invested it with power to put children at work at dangerous machinery which

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[36] Herman v. Board of Education of District No. 8, 234 N. Y. 196, 137 N. E. 24, affirming judgment of 191 N.Y.S. 1930.

> it would be a statutory offense against its laws to use in private industries. (Labor Law, Sec. 256; L. 1921, Ch. 50). The corporate cloak covers the individual trustee, but where the corporate body acts for itself and not through the agency of its officers and employees, it is bound to act with due regard for the safety of the children and others in its care in the discharge of those duties imposed on it by law, which are not delegated or delegatable to others.

It is obvious from the above quotation that the state of New York has definitely taken its stand in cases of this kind. Out of these has evolved what is known as the New York Rule. It may be stated as follows: School corporations in New York State will be held liable for injuries resulting from wrongful or negligent acts of the school corporation itself through its board, though not by the acts or omissions of employees of the school corporation.

## Defenses Against Recovery from the Individual

The liability of individual officers, teachers and employees for student injuries due to negligence is that in addition to the states wherein individual officers and employees may be made joint tort-feasors with the district, individual officers and employees may be personally liable in all states when performing acts beyond their statutory authority. Officers, teachers and employees who

do not have their powers and duties delegated to them directly from the state legislative bodies are responsible for all torts having their origin in acts performed beyond the scope of their authority,[37] thus a teacher who is negligent in the performance of his duties is liable for injuries and damages caused thereby.[38]

Everyone is liable for his own torts, and school employees are no exception. Wherever school employees are sued and negligence is proved, they are liable (except in Iowa where ability to respond in damages must be proved prior to entry of suit) unless there was contributory negligence on the part of the injured party or their negligence was not the proximate cause of the wrong.[39]

The individual officer or teacher of the school district, in the states that provide district liability for negligence in performance of governmental functions, is

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[37] Adams v. State, 82 Ill. 132, 1876.
Parish Board of School Directors v. Alexander, 125 La. 803, 51 So. 906, 1910.
Burroughs v. Mortensen, 312 Ill. 163, 143 N. E. 457, 1924.
Woodman et al. v. Hemet Union High School District, 136 Cal. App. 544, 29 Pac. 2d, 357, 1934.

[38] Crosby v. Readsboro School District, 35 Vt. 623, 1863.
Kelderhouse v. Brown, 17 abb. N. Cas. N. Y. 401, 1886.

[39] Hibbs v. Independent School District of Green Mountain et al., 251 N. W. (1933).

seldom joined as a defendant in actions for damages. This state of affairs is probably due to the fact that pupils who have suffered injury or damage through the negligence of such officers or teachers have a more satisfactory remedy by action against the district than to rely upon acting against individuals who will be found to be unable to respond in damages even when judgment is rendered against them. Individual members of corporate boards and individual administrative officers, not of corporate boards, may be personally liable for abuse of discretion or for failure to perform ministerial duties; and teachers and other employees may be held personally liable for negligence in the performance of the duties of their authorized office or employment.

Elements of Negligence

A defense against a complaint of alleged negligence should ascertain whether the normally essential elements of negligence are contained, i.e.: (1) the existence of a legal duty to use care on the part of the defendant toward the plaintiff to the degree which would be exercised by a man of ordinary prudence under the circumstances; (2) failure of the defendant to perform his duty; (3) the existence of damage to the plaintiff as a natural and proximate consequence of such default (8, p.100).

An actor is not liable for all the harm that can be traced to his acts through a tortuous series of causes and effects, but a problem of logic is an inquiry about how far down the train of causes and effects the courts will go before the loss from the harm is left on the person who suffers it rather than shifted to another whose careless actions have more or less directly caused it. The concept of the "reasonable man" has been important in the doctrine of legal cause. Judges have often held that liability extends to all the damage which such a man would have foreseen under the circumstances (3, p.1225). Jeremiah Smith has said:

> The courts have established an arbitrary standard of care, an external standard, viz., the care which would be exercised under similar circumstances by an average reasonable man, a man of average prudence. If a man, without being non-compos or without being subject to certain kinds of distinct incapacity, is yet below the average so that he cannot exercise the foresight and care of an average reasonable man, he is held liable for damage due to his failure to exercise such foresight and care, although he has, in fact, done the best he knew how....
>
> The decisions in an infinite majority of the cases where men are held liable for negligence are undoubtedly based on personal shortcomings, i.e., actual fault on the part of the defendant. The instances are believed to be very rare where a man who had exercised all the care of which he was capable has been found negligent on the ground that he did not exercise an amount of care which he was incapable of exercising; in other words, that he

was unable to attain the external standard established by law (31, pp.261-262).

In amplifying the statement of Smith, an appropriate example is the case in Massachusetts when a manual-training instructor was sued by one of his pupils who was injured by a band-saw running off one of its wheels. At the time of injury, the pupil was working on a part of an automobile which was being made with permission of the instructor. The court upheld the trial court in its refusal to admit evidence that several hours prior to the accident the edge of the saw-blade was running over the wheel, for the reason that it was not shown that the instructor knew of such condition. Even if he had known, there was no proof that the saw was defective or that an adjustment had not been made before the accident. Furthermore, the instructor was not negligent in permitting the saw to be used without a guard on the wheel in question. Consequently, there could be no recovery because there was no negligence.[40]

Statements of legal cause in negligence cases necessarily leave much to the imaginations of judges and juries. Exceptional cases violate all generalizations unless the latter are so broad they are practically

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[40] Fulgoni v. Johnston, (Mass.), 19 N. E. 2d, 542, 1939.

meaningless for specific cases. If liability is to follow, however, the defendant's act must be reasonably closely connected with the harm in time, place, circumstance, or some combination of these. It must be proximate rather than remote; apart from exceptional cases, foreseeability is an important test.

The American Law Institute defines legal cause as:

> The actor's negligent conduct is the legal cause of harm to another if
> (a) his conduct is a substantion factor in bringing about the harm, and
> (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm (3, sec.431).

Once liability has been found, the actor is responsible for all the harm of which his tortious act has been the legal cause. The rules to determine the extent of the consequences for which damages may be collected are the same as those used to determine the causal relationship between the defendant's act and the harm (3, secs. 455-461). The damages are fixed by the jury. The judge has much power over the proceedings, however, and may direct a verdict in a clear case. He has authority to decrease the amount of damages allowed by the jury verdict if he regards it excessive. In some states, he may also give the defendant an alternative to pay more damages than

were assessed by the jury or stand a new trial.[41]

Cause for Action Must Indicate Recovery

In an Ohio action, a plaintiff attempted to recover for damages sustained while operating a circular saw in the manual training shop. No attempt was made to recover under the common law. The action was brought under Section 1027 of the General Code which provided a penalty for failure to provide guards for dangerous machinery. The court stated: "....its failure to do so made the board member thereof guilty of a misdemeanor for which he could be punished in an action at law; but these sections do not impose a civil liability upon said board member or board for failure to do so."[42]

No Defense for Personal Factors

It is a matter of fact that juries cannot except consideration of the age, sex, intelligence, education and physical abilities of the defendants as parts of the circumstances accounting for the harm. The defendants

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[41] Bellman v. San Francisco High School District, 73 Pac. 2d 596 (1937), affirmed 11 Cal. 2d 576 (1938).

[42] Conrad v. Board of Education of Ridgeville Township, 29 Ohio App. 317, 163 N. E. 567.

ordinarily appear before them in person. The law anticipates that the laymen on juries will make allowance for the aged, near-blind, crippled or obviously unintelligent individuals, although what the judge tells them is not that at all. The difference lies between law in statement and law in operation; between jural postulates and jury judgment (18, p.178). The "reasonable man" becomes in practice the personification of the social conscience of the court or jury, whichever it is, which passes authoritatively upon his acts and omissions (3, sec.1225).

In many instances, it might seem desirable to arrange for the school district to compensate the individual after a judgment has been recovered against the teacher for his own tort, and, in particular, in such cases as occur in California which could not be prosecuted because of the plaintiff failing in his qualifications of the statutory limits of time. This rarely meets with sanction because of the circuity of action and increased possibilities for fraud which present themselves when the teacher is the sole original defendant, while the school board will eventually pay the judgment.

Teachers Covered by Workmen's Compensation

A majority of the states have included individuals who are teachers in their coverage by workmen's

compensation for accidents which they themselves may incur while in the class room. In some states, it is necessary to have each case decided on its merits in the courts. An example case is that of William A. Hemmer, a manual training teacher in the high school of District No. 502 of Bureau County, Illinois, who was injured by a power saw in the manual training shop of his school. Hemmer's claim for compensation was denied by the Industrial Commission on the ground that the manual training shop is not a workshop within the meaning of the law, although the law in Illinois includes school districts as employers subject to the provisions as to workmen's compensation. The plaintiff brought the case before the District Court under a writ of certiorari, which was quashed. In appeal to the Supreme Court, it was ruled that the Commission had erred and that a manual training shop is a workshop. The case was remanded for trial on its merits.[43]

## Other Defenses for the Individual

### Insurance and Self-insurance

While there are many accidental injuries in connection with the operation of the public schools, records

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[43] Board of Education v. Industrial Commission, 134 N.E. 70, Illinois.

about them are often non-existent or poorly kept. Even in states where school districts are legally liable for torts the school authorities often carry liability insurance for the district and merely refer all claims to the insurance companies, but legal liability has stimulated an excellent system of records in some school districts, and possibly none is more complete than that of Los Angeles. Operating under the comprehensive liability of the California statutes, the school districts of Los Angeles have been self-insurers since the statutes became effective in 1923. The result is a complete record compiled after careful investigation of each accident for which a school teacher or school district might become liable.

The School District of Los Angeles classifies injuries as "major" and "minor" but does not determine their real seriousness because some types of comparatively trivial ones are listed as "major" largely in order to draw attention to preventive measures. A report of the period September 1, 1948, to June 30, 1949, shows that there were 136 "major" and 401 "minor" accidents reported in the school shops alone during that period, and of that number, 11 were of such a nature that claims or investigations were required by claims agents.

In their activities as self-insurers the school districts of Los Angeles have also kept records of the

liability that has resulted from these accidents. From a several year total of investigations where claims were filed, of 127 involving 116 pupils and 11 other persons, approximately half of those injured in accidents filed claims for the cost of medical care or for damages. The number of claims seems a modest number to arise from more than 9,406 reported injuries.

An excellent comparable figure, though not of recent date, is indicative of the cases and cost involved in some California cities. In the period 1923 to 1939, the city of Los Angeles made 39 payments for damages for negligence of employees and officers. The total amount of claims paid were $43,531.52. The 23 claims paid before action amounted to $2,079.85; the 16 claims paid after court action totalled $41.351.67. The total of $43,531.52 in tort settlements and judgments paid during the period reported above represents less than .0001 of the total of the school budget spent in the city during that period (21, p.24).

The San Francisco Unified School District records do not include dates earlier than 1934, but with an average daily attendance of about 75,000 regular day pupils reported by the district for the period 1934-39, $17,259.41 was paid for accident claims, including court judgments. More than half of the amount was paid in 1938-39,

principally because of a large judgment resulting from adjudication of a claim filed in 1934.[44]

The school districts of Stockton had an average daily attendance of regular day pupils in public schools of all types of 10,540 during the five-year period 1934-39. During that time, it paid $1,208.50 for tort liability, the total being distributed among three out of court settlements made in as many different years.

In California, as in other states where school districts are liable for torts, insurance may be purchased to cover the financial risk involved. The cost of this protection is considerable and, consequently, many boards of education throughout the state have been actively engaged in pressing for the repeal of the laws on the ground of heavy cost, but since many insurance companies provide coverage at nominal cost per teacher per annum, the legislature has refused to consider their repeal.

Under such statutes as in California where a large judgment may be budgeted over a period of three years, the experience of being self-insurers, by school districts, has proved that comparatively small as well as all large school systems should thus care for their liability. The City of Los Angeles, which during the five-year period of

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[44] Bellman v. San Francisco High School District, 73 Pac. 2d 596 (1937), affirmed 11 Cal 2d 576 (1938).

1934-39 paid $22,066.01 as self-insurers would have had to pay for liability insurance for the same period more than $300,000. During the same period, San Francisco paid $17,259.41 on claims and would have paid approximately $85,000 for insurance, while Stockton paid $1,208.50 on claims and would have paid about $12,000 for insurance.

The statutes of California have been unnecessarily complex and difficult to construe. The governing boards of school districts, without adequate insurance coverage, are required to pay judgments for liabilities or damages out of the school funds of the district, subject only to the limitations on the use of such funds as are fixed in the state Constitution (6, sec. 2,804). School districts may, under statute, insure their officers and employees against any liability for injuries or damages resulting from dangerous or defective conditions of buildings, grounds, or property, due to their alleged negligence, either by self-insurance or in authorized insurance companies, the cost of such insurance to be a proper charge against the funds of the school district. The statutes further include that in case suit is brought against the members of the board of school trustees or board of education, as individuals, for any act or omission in the line of official duty as trustee or board member, or in case suit is brought against any teacher or employee of

any school district, for any act performed in the course of his employment, that it shall be the duty of the district attorney of the county to defend such officers, teachers or employees upon request of the governing board of the school district, such expense to be a lawful charge against the school district.

It is to be remembered that the adoption of liability protection through insurance of the school district or employees does not eliminate the degree of responsibility which is required in the operation of the schools, and invariably the courts are called upon to rule on points of law which have arisen through that function alone. In Tennessee, a county carried liability insurance for $100,000 to cover possible liability for injuries that might occur during operation of school buses by the county. A boy of 12 was killed when he jumped or fell from a bus which had a rear emergency door habitually left open. The suit was brought against the county but was defended by the insurance company. The plaintiff and the insurance company agreed in writing that in return for limiting the judgment to $10,000, the maximum for one person under the policy, the defense of governmental immunity

would not be interposed.[45] The jury verdict for $12,000 was reduced to $10,000 by the court in accord with the agreement and the defense of governmental immunity was first raised in the final appellate court.

Although the case was reversed for a new trial on other grounds, the court gave effect to the agreement between the plaintiff and the insurance company as effectively waiving the defense of governmental immunity of the county. Any other result would have meant that the county had paid for insurance from which no benefit could be obtained in any case by the county, since it could never incur the liability insured against.

Releases From Liability

A feature which is becoming the general custom and practice in many states is that of requiring the parents of students engaged in use of power machinery used in the school shops to sign statements releasing the instructor and schools from liability for damages in the event a pupil be injured. Whether the signing of these releases is of any legal importance is doubted, first for the reason that it is questioned whether a parent has the right,

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[45] Marion County v. Cantrill, 166 Tenn. 358, 61 S. W. 2d 477, 1933.

without the permission of the proper court, to relieve the responsible agency from the payment of damages to the child, should he be injured, and second, because there is no liability until the court so determines. No recorded case has been found which has yet been adjudicated in which these releases were involved, but it is felt by many that they serve no purpose other than to indicate that the parent has knowledge of the child's participation in work where there is a possibility of injury arising.

# CHAPTER IV

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

The modern educational philosophy of learning by doing is accompanied by educative processes which are much more hazardous than the comparatively safe regime of the three R's. The complex and ever-changing society of our modern world has introduced into the school curriculum shop instruction centering around equipment which was unknown in the traditional school. School shops have been equipped for instruction in metallic arts; laboratories for mechanical sciences have been enlarged and modernized; welding both by gas and electricity has been introduced; printing is established. All of these have brought attendant hazards. It is not desirable to shield children so completely that these activity programs are curtailed, yet most of the injuries to school children occur in the industrial arts classes or in physical education activities.

Educators must be interested in safety education. Those accepting education as practice in living are bound to accept the precepts of safety education in school administration as well as in instruction. They should, in so far as possible, make school life free from unnecessary

harm to children. Furthermore, it is economically desirable to society as well as to pupils that school life be as free as possible from preventable injury. Practice in living should not deprive children of the opportunity to live fully because of the carelessness or heedlessness of teacher, administrator, or other employee of school districts.

The application of the principle of non-liability for actions in tort by school districts, such as that in the practice of all but three states, leaves the injured pupil without any remedy except by action in tort against individual teachers or officers of the school district.

California and Washington recognize the agency of school district employees and the school district is held responsible for the acts and omissions of teachers and officers while engaged within the scope of their authority; however, such teachers and officers may be defendants in tort actions as joint feasor. Teachers and officers of the school district are personally liable while acting beyond the scope of their authority.

New York school districts do not accept responsibility for the acts or omissions of teachers or other employees, except while they are engaged in performing duties that have been imposed directly upon the board; therefore, teachers and other employees may be subject to

actions in tort for negligence in the performance of their duties.

In the 45 other states, public school pupils do not possess any of the legal rights for injuries occurring in school that the law allows them when they are engaged in non-governmental activities. New York and Washington allow recovery of damages from districts to a limited degree. In all states, the individual may be held liable if negligence can be proved. California allows pupils a recourse to law that is almost identical with that permitted in non-governmental functions.

The permission of legal action against school districts is not a satisfactory solution to the problem. Washington, at the end of a 10-year period, amended its liability statute so that the recovery of damages by pupils in physical education and industrial arts classes is almost impossible. California, inside of four years, made its specifications surrounding legal recovery more strict.

The principle of governmental immunity from tort action has become so firmly established in our states that any statutory action designed to provide for the assumption of liability by governmental units, must do so in language that is specific and unequivocal in meaning, if the support of the courts is to be secured.

Allowing suits in tort is not a satisfactory solution to combat the injuries to children in public schools. Wisconsin has proved itself progressive by granting relief for athletic injuries, regardless of negligence or fault. If relief is granted in one phase of education, it certainly should not be denied in others.

Recommendations

It is recommended that studies be made of the true facts surrounding injury to pupils which are sustained in school shop accidents in order to establish sets of principles and practices for the guidance of administrators and special teachers in safeguarding the children in their care. Administrators should require complete reports on injuries to pupils. They need to know of what conditions caused the fault and correct the factors causing the injury. Each report should be examined with one thought in mind. How can these events be prevented from happening again.

Warning children of dangerous places and hazardous activity is a common practice in schools, but in states where liability exists, this warning is not considered sufficient care to relieve individuals or school districts of legal liability for damages in the event that the warning is disobeyed. Dangerous places should be repaired

and the temptation to engage in hazardous activities removed. If school districts are disinclined to make the necessary repairs, or provide the necessary guards and safety appliances, appeal to the various legislatures may be effective in promoting regulations to require adequate action.

It is also recommended that a study be made of the advantage of a system similar to that provided in the Workmen's Compensation Acts, whereby a pupil injured in school, regardless of negligence or fault, would be assured of proper medical attention and sufficient funds for rehabilitation. It is further recommended that school surveys include a section on the condition of buildings and grounds, administrative practices and teaching practices in regard to safety of children. Calling the attention of educators to particular items in this phase of school administration will do much to alleviate conditions which endanger pupils.

Written instructions for the operation of all machines should be placed in the hands of all pupils operating such machines, as well as oral instructions given by the instructor before pupils are allowed to start work in the shops. Safety rules and suggestions should be posted in all shops and in any other location where accidents may be likely to happen. Safety instruction should

be required as a definite part of the curriculum.

Finally, where there is absence of protective measures in school for the teacher and pupil, either by lack of or provision of statute, the three solutions which may be satisfactorily used, either singly or in combination are:

1. Self-insurance on the part of the school district.

2. Insurance coverage for all employees, maintained as part of the expense of school operation.

3. Liability insurance coverage maintained by individuals.

This last is the least desirable from the standpoint of moral and economic responsibility but until safe remedial action has otherwise been provided, it seems the most positive measure guaranteeing relief which the individual teacher or officer can establish for himself.

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