The Liability of Teachers and School Authorities for Injuries Suffered by Students

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Introduction

Every year a large number of students suffer physical injuries as a result of accidents which occur either at school or in connexion with school attendance. These accidents may result from the unsafe condition of school premises or from human conduct. This article is concerned only with liability which may be imposed as a result of accidents brought about by injurious conduct.[1] Such conduct may be perpetrated by: (a) the student who is injured; (b) other students; (c) the authority which established and maintains the school; (d) teachers employed by the school; (e) other persons who students encounter in connexion with their school attendance.

A student who suffers injury may seek compensation from anyone whose conduct caused the injury.[2] The scope of this article is limited to consideration of the liability of school authorities, public and private, and the teachers whom they employ. The extent of this liability is determined by application of the law of negligence and principles of vicarious liability to the circumstances in which the injury occurred.

No liability can be imposed upon school authorities or teachers unless the circumstances indicate that responsibility for the safety of a student was assumed at the time the injury was suffered. Assumption of responsibility for student safety is concomitant with the creation of a teacher-student relationship. Whether such a relationship exists is determined with reference to factual circumstances rather than to the intention or belief of those involved.

Assumption by a school of responsibility for student safety gives rise to obligations with which both school authorities and teachers must comply in order to avoid liability for injuries suffered by students. These obligations are independent of each other. A school authority cannot fulfill its obligations through delegation to teachers whom it employs.[3]

Failure on the part of either a school authority or a teacher to comply with an obligation to protect students from injurious

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1. Where injury results from the unsafe condition of premises, liability may be imposed under the branch of the law of negligence known as "occupier's liability". For a discussion of the relationship between occupier's liability and general principles of negligence, see: *Public Transport Commission (N.S.W.) v. Perry* (1977) 14 A.L.R. 273, 292 (Gibbs J.), 298 (Stephen J.); *Introvigne v. Commonwealth of Australia* (1980) 32 A.L.R. 251, 258.
2. The case of *Bubner v. Stokes* [1952] S.A.S.R.1. provides an example of a situation in which a student who suffered injury sought compensation from another student.
3. *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.

conduct may lead to the imposition of personal liability in negligence for resultant injury to a student. In addition, school authorities may become vicariously liable for the negligence of the teachers whom they employ. This latter form of liability arises from the employment relationship, not from any failure by the school authority to comply with its own obligations to take care of students.

Important developments and refinements have occurred in the application of both principles of negligence and vicarious liability to student claims for compensation for injuries. These changes in approach have received surprisingly little attention in textbooks which discuss these areas of law. In general terms, the effect of the changes which have occurred is to enhance the prospects of a student who has suffered injury making a successful claim for compensation against school authorities and teachers.

The most significant changes in the application of principles of negligence are found in recent judicial initiatives relating to the concepts of duty of care and standard of care. These initiatives are considered in the first and second sections of this article. The final section of the article discusses the fundamental changes which have occurred in the application of principles of vicarious liability to the relationship between teachers and their employers.

Establishing the Existence of a Duty of Care—General Principles

In order to succeed in an action for negligence the injured party must establish that he/she was owed a duty of care by the party from whom compensation is sought.[4] Recognition of the existence of a duty of care is based upon an assessment of the relationship which existed between the parties in question at the time the injury was suffered. Courts have recognised that many factors are relevant to the assessment process.[5] An examination of relevant cases allows some general conclusions to be drawn about the process involved in recognition or non-recognition of the existence of a duty of care.[6]

First, consistent with the adaptation of law to changing social demands, the category of relationships in which a duty will be recognized is not regarded as being immutable.[7] Thus, in order to establish that a duty of care arose in a particular situation, it is not necessary to bring the facts of that situation within those of previous cases in which a duty of care has been held to exist. Secondly, it is accepted that no all embracing formula can be used to determine the existence of a duty of care in every case which may arise. The adoption of such a formula would be inconsistent with the function which the duty concept performs in allowing creative judicial control of the ambit of legal responsibility for negligence. There is always a large element of judicial policy and social

4. This principle has been accepted since *Heaven v. Pender* (1883) 11 Q.B.D. 503.
5. Fleming, J.G., *The Law of Torts*, Law Book Co., 5th ed., 1977, 137.
6. See *Anns v. Merton London Borough Council* [1978] A.C. 728, 751-2.
7. In the words of Lord Macmillan, the "categories of negligence are never closed", *Donoghue v. Stevenson* [1932] A.C. 562, 619.

expediency involved in the determination of the duty question. In recent cases the fact that these considerations are of overriding importance has been frankly acknowledged.[8] Thirdly, despite the non-adoption of an all-embracing formula, the criterion of reasonable foreseeability of harm formulated by Lord Atkin in *Donoghue v. Stevenson*[9] has played a central role in the categorization of relationships. Whilst there has been much debate about the meaning and usefulness of the foreseeability formula,[10] constant reference to and reliance upon it has ensured its establishment as a milestone in the development of the law of negligence. It is now accepted that a prima facie duty of care arises where the relationship in question is sufficiently proximate for there to be reasonable foreseeability of harm resulting from a failure to take care.[11]

The Duty of Care owed to Students by School Authorities and Teachers

Recognition of a duty of care owed by a school authority or teacher to a student who has suffered injury is based upon identification of a teacher-student relationship. This relationship has long been categorized as one in which it is appropriate for the law to recognize the existence of a duty of care.[12] In addition, courts have acknowledged that the teacher-student relationship has "special characteristics" relevant to determination of the circumstances in which a duty of care will arise. These characteristics were identified by the court in *Richards v. State of Victoria*:[13]

> "The reason underlying the imposition of the duty would appear to be the needs of a child of immature age for protection against the conduct of others, or indeed, of himself, which may cause him injury coupled with the fact that, during school hours the child is beyond the protection and control of his parents and is placed under the control of the schoolmaster who is in a position to exercise authority over and afford him in the exercise of reasonable care, protection from injury."[14]

Two important and distinctive legal principles have arisen as a result of judicial recognition of these "special characteristics" of the teacher-student relationship. First, the principle that the duty of care owed to a student arises from the teacher-student relationship

8. See *Hedley Byrne v. Heller & Co.* [1964] A.C. 465, 536-7; *Home Office v. Dorset Yacht Co. Ltd* [1970] A.C. 1004, 1058; *Caltex Oil Ltd. v. The Dredge Willemstad* (1976) 136 C.L.R. 529, 574; *Anns v. Merton London Borough Council* [1978] A.C. 728, 751-2.
9. [1932] A.C. 562.
10. See Atiyah, P.S., *Accidents, Compensation and the Law.* Weidenfeld and Nicholson (London) 1970, 51-54.
11. *Anns v. Merton London Borough Council* [1978] A.C. 728, 751-2.
12. Examples of early cases which were based upon recognition of a duty of care are provided by: *Baxter v. Baxter*, 1903 Times Newspaper Nov. 13; *Chilvers v. L.C.C.* (1916) 32 T.L.R. 363; *Gow v. Glasgow Education Authority* [1922] S.C. 260.
13. [1969] V.R. 136 (F.C.).
14. *Ibid.*, 138-9.

itself, independently of foreseeability of harm. Secondly, in order to comply with the duty of care owed to a student, school authorities and teachers are required to control: (a) their own conduct; (b) the conduct of the student to whom the duty is owed; and (c) the conduct of other persons. Each of these principles will be discussed in turn.

(i) Duty of care arises from the teacher-student relationship

The case of *Richards v. Victoria*[15] authoritatively established the principle that the duty of care owed to a student arises from the teacher-student relationship itself, independently of foreseeability of harm. In this case compensation was sought by a sixteen year old schoolboy who sustained severe brain injury as a result of a fight with another student in a classroom in the presence of a teacher. It was alleged that the injury was brought about by the negligence of all or any of, the teacher, the principal and the Director of Education. The State of Victoria was joined as defendant on the basis that the Crown becomes vicariously liable for the negligence of those whom it employs. Counsel for the defence argued that there could be no liability in negligence because the circumstances in which the injury was suffered did not give rise to a duty of care owed to the student. In part, this argument was based upon the proposition that foreseeability of harm should be treated as a necessary condition for recognition of a duty of care. The court rejected this proposition. It was decided that the special nature of the teacher-student relationship justified its inclusion in the exceptional category of relationships where the creation of the relationship is itself sufficient to give rise to a duty of care.[16]

This principle has subsequently been approved and adopted on several occasions by the High Court of Australia.[17] The main consequence of the adoption of this principle is to restrict the scope of inquiry relevant to determination of the existence of a duty of care. In each case the inquiry will be limited to asking whether in the particular circumstances in question, the student was placed under the authority and control of the school in such a way that a teacher-student relationship could be said to exist. The practical result of restricting inquiry in this way will be to significantly reduce the extent to which the concept of duty of care can be used as a device which controls the ambit of liability in negligence for injury suffered by students.

The number of cases in which there are grounds to dispute the existence of a duty of care now depends upon the manner in which the courts define the nature and ambit of the "teacher-student relationship". Reported decisions have not yet provided a specific definition of this relationship. The case of *Geyer v. Downs*[18] gives the clearest indication of the characteristics of a teacher-student

15. [1969] V.R. 136.
16. The relationship of employer and employee provides another example.
17. *State of Victoria v. Bryar* (1970) 44 A.L.J.R. 174; *Geyer v. Downs* (1977) 138 C.L.R. 91; *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.
18. (1977) 138 C.L.R. 91.

relationship. Litigation in this case arose out of circumstances in which an eight-year-old girl was injured when struck on the head by a softball bat in the school playground before the daily routine began. On the headmaster's instructions the school gates were usually opened by 8.15 a.m. Supervision of students by the school staff began at about 9.00 a.m. The headmaster was aware that by 8.30 a.m. each morning more than one hundred girls would be in the playground. On the day she suffered injury, the girl had arrived at school at about 8.45 a.m. The injury occurred at about 8.50 a.m. The girl brought an action in negligence seeking compensation for the loss she suffered as a result of the injury. Counsel for the defence argued, inter alia, that her action should not succeed because at the time the injury occurred a teacher-student relationship did not exist and therefore she was not owed a duty of care by the headmaster. This argument was based upon the proposition that a teacher-student relationship could not be created until the time (9.30 a.m.) at which students were required by relevant statutory and school rules to be in attendance. Additionally, it was argued that even if the relationship could exist before this time, it could not be created at any time prior to when teachers were required in the course of their employment to be present and on duty (9.00 a.m.)

The argument that a teacher-student relationship could not exist before "school hours" was decisively rejected by the High Court of Australia. "It is no answer to ... [a claim that a teacher-student relationship had been created] ... to say that the 'Daily Routine' required supervision only after 9.00 a.m. or that ... [the headmaster] ... had no power under the Departmental Instructions to instruct any members of his staff to be in attendance before 9.00 a.m."[19] The Full High Court held that a teacher-student relationship existed between the headmaster and the girl at the time of injury. The reasoning adopted in reaching this conclusion established the principle that the question of whether the relationship existed must be determined in each case by an examination of the factual circumstances in which the injury occurred.[20] The court considered that the facts which most strongly indicated the existence of a teacher-student relationship were the permitted presence of students in the playground, the headmaster's knowledge that a large number of girls used the grounds before 9.00 a.m. and the assertion of authority by the headmaster over the girls prior to the commencement of "school hours".

On the basis of the decision in *Geyer v. Downs*[21] it is suggested that there are only two types of case in which a student who has suffered injury will experience any difficulty in establishing the existence of a duty of care. First, there will be cases in which there is uncertainty about who actually owed the duty. The duty of care owed by a school authority arises directly from the creation of a teacher-student relationship upon acceptance of the enrolment of a student at the school. This duty is independent of any duty which

19. *Geyer v. Downs* (1977) 138 C.L.R. 91, 104.
20. *Ibid.* 94 (Stephen J.); 104 (Murphy, Aickin JJ.)
21. (1977) 138 C.L.R. 91.

may be owed by teachers employed at the school and depends in no way upon the actions of the school staff.[22] A teacher will owe a duty of care to a student only at those times when a teacher-student relationship exists between them. If a student suffers injury in circumstances where there is doubt as to the teacher or teachers with whom he/she had a teacher-student relationship, there will be uncertainty about which of the school staff owed a duty of care to the student. Although this uncertainty may have an important influence upon the choice of defendant and the manner in which a legal action is conducted, it is most unlikely that it will cause a student who has suffered injury to be denied a remedy.

Secondly, in exceptional cases, it may be argued that no duty of care was owed to a student by either the school authority or teachers employed at the school. Such an argument might arise, for example, where the injury is suffered during school hours by a truant or student officially "absent" from school who makes an unknown entry upon the school grounds, or where injury is suffered outside school hours or by mature age students. Each of these exceptional cases will be discussed in turn.

Decisions of the courts provide little indication as to whether the unknown return of a truant or presence of a student thought to be "absent" from school could create a teacher-student relationship. It is suggested that the relationship would not be created in these circumstances. If a particular student or group of students were known by the school to regularly engage in this type of conduct, it is conceivable that a teacher-student relationship would be recognized. However, even in this situation it seems most unlikely that the relationship would be created because there would be no actual or possible exercise of authority or control over the student by a teacher at the time when the injury occurred.

Where a student suffers injury outside school hours it may be argued that a duty of care based upon a teacher-student relationship existed because the injury occurred either: (i) on the school grounds; (ii) on the way to or from school; or (iii) away from school while the student was under the supervision of a teacher.

The position in relation to injuries suffered on the school grounds outside school hours has been largely resolved by the decision in *Geyer v. Downs*.[23] A teacher-student relationship will be created wherever there is permitted student presence and the exercise of authority by a teacher. Whether allowing students to come and remain on school grounds could of itself create a teacher-student relationship has not been determined. It is suggested that in the absence of voluntary assumption of responsibility for student safety by a teacher, no teacher-student relationship would be created in this situation. It is clear that a teacher-student relationship would not be created by the unknown and unpermitted presence of a student outside school hours.

The principle that a duty of care arises from the relationship between teacher and student gives rise to considerable difficulty in

22. *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.
23. (1977) 138 C.L.R. 91.

the case of injuries suffered by students on the way to and from school. It is well established that teachers have the right to impose punishment for undisciplined conduct between home and school.[24] This right is based upon an extension of the teacher-student relationship beyond the school grounds. Such an extension of the relationship suggests that a duty to take care of the safety of students exists in relation to the journey to and from school. However it is clear that where a student undertakes this journey independent of transport provided by the school no such duty of care arises.[25] To conclude otherwise would place an impossible burden upon schools. There are two possible solutions to this dilemma. One is to accept that the teacher-student relationship which encompasses the journey to and from school is of a limited nature permitting the exercise of disciplinary authority but not giving rise to a duty of care. The other solution is to overrule the cases which established the existence of a right to exercise disciplinary authority over students travelling independently between home and school. The argument that these cases should be overruled gains some support from the proposition that the authority exercised by the teacher was acquired by parental delegation. Parental delegation has since been decisively rejected as the source of a teacher's authority.[26] Nevertheless, it is more appropriate to adopt the first solution. The cases which establish the right to exercise disciplinary authority over conduct which occurs on the way to and from school are consistent with long established school practices and justifiable educational policies.

Where a student suffers injury outside normal school hours, away from school but whilst in the charge of a teacher, the question whether a teacher-student relationship existed at the time depends upon whether the injury occurred in the course of a school activity. In the case of official school activities the relationship of teacher and student and its concomitant duty of care will exist at all times. This situation will not be altered by the fact that a teacher takes charge of the activity in a voluntary capacity.[27] On the other hand, where the activity in question is not a school activity a teacher-student relationship will not exist. On such occasions any duty of care owed by the teacher will arise not from a teacher-student relationship but in accordance with the general principles governing determination of the existence of a duty of care.

In a number of cases it has been held that students beyond minimum leaving age and mature age students are owed a duty of care.[28] The court in *Weston v. London C.C.*[29] chose to base its denial of a remedy in negligence to a thirty-one year old student

24. *Cleary v. Booth* [1893] 1 Q.B. 465; *Craig v. Frost* (1936) 30 Q.J.P.R. 140; *R. v. Newport Justices, ex parte Wright* [1929] 2 K.B. 416.
25. Barrell, G.R., *Teachers and the Law*, Methuen & Co., 5th ed., 1978, 314.
26. See *Ramsey v. Larsen* (1964) 111 C.L.R. 16.
27. Barrell, G.R., *Teachers and the Law*, Methuen & Co., 5th ed., 1978, 351.
28. See *Smerkinich v. Newport Corp.* (1912) 76 J.P. 454 D.C.; *Langham v. Governors of Wellingborough School* (1932) 101 L.J.K.B. 513; *Weston v. London C.C.* [1941] 1 All E.R. 555; *Richards v. Victoria* [1969] V.R. 136; *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.
29. [1941] 1 All E.R. 555.

upon the defence of voluntary assumption of risk rather than the absence of a duty of care. The proposition that students will attain a degree of maturity inconsistent with the existence of a duty to take care for their safety was put to the court in *Richards v. Victoria.*[30] In accepting this proposition, the court cited the relationship between a University professor and a student of mature years and status as an example of a situation in which no duty would arise merely out of the relationship itself. The factors relevant to the question whether a duty of care arises from a teacher-mature age student relationship were discussed in this case.[31] In each instance the degree of maturity of judgment or experience attained by the student will be considered in conjunction with the extent of control and discipline exercised over the student by the teacher.

(ii) The scope of the duty of care owed to students

The duty of care which arises from the teacher-student relationship is one of exceptional scope. In order to comply with this duty, teachers and school authorities are required to control not only their own conduct, but that of others, including the student to whom the duty is owed.[32] Ordinarily the law does not demand that a person interfere with the activities of another for the purpose of preventing harm to him or to strangers.[33] Reluctance to impose a duty to control the conduct of others is based upon the distinction drawn by the law of negligence between misfeasance and non-feasance.[34] To require one person to control the conduct of another is to impose an obligation of affirmative action. Judicial unreadiness to impose such obligations can be attributed to the belief that they are more burdensome than negative obligations to take care. In addition, the difficulty of identifying the person who caused the injury may be greater in the case of non-feasance than it is with misfeasance.[35]

The imposition of a duty which requires teachers and school authorities to control the conduct of others is a reflection of judicial recognition of the special characteristics of the teacher-student relationship. As previously discussed, the creation of the teacher-student relationship gives to teachers and school authorities the right to exercise authority and control over students. This right places those who acquire it in a position to protect students from injury. Capacity to afford protection, taken in conjunction with the vulnerability of a student deprived of parental control and protection, justifies imposition of a duty of affirmative obligation extending to control of the conduct of others.[36]

30. [1969] V.R. 136.
31. *Ibid.*, 139.
32. *Richards v. Victoria* [1969] V.R. 136.
33. Fleming, J.G., *The Law of Torts*, Law Book Co., 5th ed., 1977, 149.
34. See Harper, F.V. & Kime, P.M., "The Duty to Control the Conduct of Another." (1934) 43 *Yale L.J.* 886.
35. See Atiyah, P.S., *Accidents, Compensation and the Law*, Weidenfeld & Nicholson (London) 1970, 76-84.
36. *Richards v. Victoria* [1969] V.R. 136, 138-9.

The Standard of Care Required of Teachers and School Authorities

If a court accepts that the injured party was owed a duty of care by the person from whom compensation is sought, only one of the prerequisites for a successful action in negligence has been satisfied. An additional element of a cause of action in negligence requires the injured party to show that the conduct of the party from whom compensation is sought has failed to comply with the standard of care required by the law.[37] In other words, there must have been a breach of the duty of care owed to the injured party. The task of determining whether such a breach has occurred is left to the jury, or to a judge in its stead. However, formulation of the test by which the standard of care is to be assessed is a matter of law for a judge. The general standard of conduct required is that of the hypothetical "reasonable man of ordinary prudence" independent of the idiosyncracies of the particular person whose conduct is under examination.[38] "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."[39] Whether the act or omission in question is one which a reasonable man would recognize as posing an unreasonable risk must be determined by balancing the magnitude of the risk, in the light of the likelihood of an accident happening and the possible seriousness of its consequences, against the difficulty, expense or any other disadvantage of desisting from the venture or taking a particular precaution.[40]

The classic formulation of the standard of care required of teachers and school authorities derives from the nineteenth century case of *Williams v. Eady*.[41] In that case the court defined the standard in the following terms: "The schoolmaster is bound to take such care of his boys, as a careful father would take of his boys."[42] In subsequent cases it was acknowledged that the standard of care required was that of a parent with a large family.[43] So modified, the careful parent formula was frequently referred to and relied upon.

However, in more recent times this test has fallen from favour.

37. The elements of a cause of action in negligence which remain to be satisfied once it has been accepted that the conduct of the party from whom compensation is sought was in breach of the duty of care which he owed to the injured party are as follows: first, it must be shown that the injury suffered has sufficient causal proximity to the conduct of the party from whom compensation is sought; secondly it must be shown that the conduct of the injured party did not justify denial of full recovery of the loss suffered. This final element of a cause of action involves consideration of the defences of contributory negligence and voluntary assumption of risk.
38. *Street on Torts*, 5th ed., Butterworths, 1972, 121-2.
39. *Blythe v. Birmingham Waterworks Co.* (1856) 11 Exch. 781, 784; 156 E.R. 1047, 1049 (Alderson, B.).
40. *Morris v. W. Hartlepool Nav. Co.* [1956] A.C. 552, 574.
41. (1893) 10 T.L.R. 41.
42. *Ibid.*, 42.
43. *Ricketts v. Erith Borough Council* [1943] 2 All E.R. 629, at p. 631.

Difficulty has been experienced in applying it to the wide variety of situations encountered in schools. In *Beaumont v. Surrey C.C.*[44] it was recognized that the test of a reasonably careful and prudent father was unrealistic if not unhelpful when applied to an incident of horseplay in a school of nine hundred pupils. A similar view has been expressed by members of the High Court of Australia. In *Geyer v. Downs*[45] it was suggested that the careful parent test is " ... somewhat unreal in the case of a schoolmaster who has charge of a school with some four hundred children, or of a master who takes a class of thirty or more children. What may be a useful guide applicable to a village or small country school cannot be of direct assistance in the case of a large city or suburban school ...".[46] Again, in *Commonwealth of Australia v. Introvigne*[47] it was suggested that "A school should not be equated to a home. Often hazards exist in a home which it would be unreasonable to allow in a school. A better analogy is with a factory or other undertaking such as a hospital."[48]

The careful parent formula was also difficult to reconcile with the tendency of courts to demand increasingly higher standards of care from teachers and school authorities. This tendency is consistent with the wider trend towards an increasing standard of care discernible in negligence actions.[49] The demand for higher standards of care in schools has gained further impetus since it was held that State educational authorities became vicariously liable for the negligence of the teachers whom they employ.[50] The tendency of courts hearing negligence actions to reach decisions consistent with pursuit of a policy which seeks to distribute the burdens of accidental loss throughout society has been extensively documented.[51] As the capacity of school authorities to bear and spread the loss resulting from school accidents is far greater than that of individual students and teachers it is consistent with the objective of loss distribution for the courts to impose liability in the absence of high standards of care.

These difficulties in applying the careful parent formula have led to its rejection and replacement by a new description of the requisite standard of care. It is now clear that the notion that teachers and school authorities are in loco parentis does not fully state the legal responsibility of a school which in many respects goes beyond that of a parent. The High Court[52] has accepted and applied the description of the required standard of conduct formulated by Winneke C.J. in *Richards v. Victoria*.[53] The test may be summarized in the following words:

44. (1968) 66 L.G.R. 580.
45. (1977) 138 C.L.R. 91.
46. *Ibid.*, 102. (Murphy, Aickin JJ.)
47. (1982) 56 A.L.J.R. 749.
48. *Ibid.*, 757 (Murphy J.).
49. See Fleming, J.G., *The Law of Torts*, Law Book Co., 5th ed., 1977, 7-13.
50. This principle was established in *Ramsey v. Larsen* (1964) 111 C.L.R. 16.
51. For example, see Fleming J.G., *The Law of Torts*, Law Book Co. 5th ed., 1977, 7-13.
52. *Victoria v. Bryar* (1970) 44 A.L.J.R. 174.
53. [1969] V.R. 136.

> "The duty of care owed by [a teacher requires that] he should take such measures as in all the circumstances [are] reasonable to prevent physical injury to the [pupil]. This duty not being one to insure against injury, but to take reasonable care to prevent it, [requires] no more than the taking of reasonable steps to protect the [pupil] against risks of injury which ex hypothesi [the teacher] should reasonably have foreseen."[54]

In applying this test, account is taken by the courts of the fact that school life is characterized by more high spirited behaviour and skylarking than home life.[55] Similarly, account is taken of the level of risk inherent in school activities. The number[56] and age[57] of students and their maturity, propensities and abilities[58] are additional factors relevant to the determination of the requisite standard of care. It should also be noted that as the experience, training, skill and responsibility of a teacher increases, so does the standard of care required.

It is clear that the duty to exercise reasonable care is distinct and apart from the obligation of a teacher to maintain that degree of discipline which will enable effective teaching. This distinction was recognized by the High Court in *Victoria v. Bryar*.[59] A teacher is not required to foresee every act of stupidity which might take place. Not every breach of the obligation to maintain discipline will be a breach of the duty of care. However, in many instances a breach of discipline will afford evidence of a failure to take reasonable care.

In determining whether there has been compliance with the requisite standard of care, considerable weight attaches to whether or not conduct conformed to practices generally approved and adopted in schools. Failure to adopt a general practice, although not conclusive, often provides the strongest indication of want of care.[60] Similarly, conformity with general practice tends to show that adequate care was taken.[61] Nevertheless, a common practice may itself be condemned as inadequate. "Neglect of duty does not cease by repetition to be neglect of duty."[62]

Where safety standards and codes of conduct have been formulated or prescribed by school authorities, they have important implications for the standard of care required in schools. Non-compliance with a standard which is issued under legislative authority and purports to be mandatory may amount to negligence. Non-legislative safety standards and codes are usually highly

54. *Ibid.*, 141.
55. *Lyes v. Middlesex C.C.* (1962) 61 L.G.R. 443; *Jacques v. Oxfordshire C.C.* (1967) 66 L.G.R. 440.
56. *Beaumont v. Surrey C.C.* (1968) 66 L.G.R. 580; *Geyer v. Downs* (1977) 138 C.L.R. 91.
57. The standard of care decreases with age.
58. The application of this principle may be illustrated with reference to cases involving injury to deaf children. *Dziwenka v. Alberta*, (1971) 25 D.L.R. (3d) 12; *Ellis v. Sayers Confectioners* (1963) 61 L.G.R. 299.
59. (1970) 44 A.L.J.R. 174, 175.
60. See: *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.
61. *Chilvers v. London C.C.* (1916) 80 J.P. 246; *Jones v. London C.C.* (1932) 30 L.G.R. 455.
62. *Bank of Montreal v. Dominion Guarantee Co.* [1930] A.C. 659, 666 (Lord Tomlin).

persuasive evidence of expert opinion as to minimum safety requirements. As a result, failure to comply with these standards provides evidence of negligence.

The fact that the standard of care required of teachers and school authorities has been defined in terms of an abstract formula based upon taking "reasonable care in all the circumstances", makes it difficult to identify with precision the steps which should be taken to comply with the requisite standard of care in a particular school situation. The conduct demanded by the formula can only be understood with reference to cases in which it has been applied by the courts.

Two recent cases provide an indication of the standard of care required in schools. In *Commonwealth of Australia v. Introvigne*[63] a fifteen year old school boy was injured whilst skylarking in the school quadrangle a few minutes before classroom instruction was to begin. Although between five and twenty staff were normally involved in schoolyard supervision at that time of morning, only one staff member was on duty when the injury occurred. All other members of staff were at a five minute meeting called to inform them that the principal had died in the early hours of that morning, and to mention funeral arrangements. The court concluded that failure to adequately supervise the school grounds constituted one of the elements of a breach of the duty of care owed by the school to the student who was injured. The case of *Povey v. Governors of Rydal School*[64] resulted from injuries suffered by a boy whilst performing exercises in his school gymnasium. The court was satisfied that the boy had successfully performed the exercise for two years before the accident and that the school physical education master was competent to teach it. Three key facts supported the court's conclusion that the school had failed to exercise reasonable care to prevent injury to the boy. First, the landing mat provided was actually a tumbling mat which was very resilient but had only a very small cushioning effect. Secondly, the boy had not been adequately instructed about the necessity of warming up. Thirdly, no stand-in was provided to minimize the risk of injury from a fall and the importance of a stand-in was not sufficiently impressed upon the student who was injured. It is evident from these cases that a very high standard of care is required to avoid liability in the event of injury.

Vicarious Liability of School Authorities for the Negligence of their Employees

Under the principles of vicarious liability employers become liable for the negligence of their employees acting within the scope of employment. This is an example of strict liability based not upon the breach of any duty of care owed by the employer, but upon the negligence of the employee being attributed to that employer. The duty which is breached is a duty personal to the employee, owed to the person seeking compensation.

63. (1982) 56 A.L.J.R. 749.
64. [1970] 1 All E.R. 841.

In *Hole v. Williams*[65] it was decided that the relationship between a State education authority and a teacher employed by such an authority was not one to which the principles of vicarious liability applied. The conclusion of the court in this case was based upon the fact that insufficient control was exercised by the Crown over the functions performed by its teachers. The basis of the decision was that the negligent act complained of was performed by the teacher in the exercise of an independent discretion vested in him as a school teacher or, alternatively, in the exercise of an authority delegated to him by the parents of the student who suffered injury. The first of these propositions was supported with reference, by analogy, to the cases of *Hillyer v. Governors of St. Bartholomew's Hospital*[66] and *Enever v. The King.*[67] In the former case it was held that the nature of the functions performed by a surgeon were such that, in matters of professional skill and competence, the degree of independent discretion exercised by the surgeon was inconsistent with the relationship of master and servant upon which vicarious liability is based. In the latter case it was similarly held that the duties of a constable were of such special character as to involve in their performance the exercise of independent authority inconsistent with the requisite relationship of master and servant.

The alternative proposition that the duties of the teacher were performed in the exercise of authority derived not from an employer but by delegation from parents was supported with reference to a passage in Blackstone's Commentaries[68] and to a number of cases concerned with the rights of a teacher to discipline and punish a student.[69]

The case of *Hole v. Williams*[70] was overruled by the Full High Court of Australia in *Ramsey v. Larsen*[71]. By the time of *Ramsey's Case*[72] there was ample authority in England which supported the conclusion that a school authority could become vicariously liable for the negligence of teachers.[73] The New Zealand case of *Urquart v. Ashburton High School Board of Governors*[74] in which the court refused to hold the School Board liable was clearly distinguishable on the basis of a special statutory provision, the effect of which was to vest control over teachers in the headmaster not in the Board.

In addition, the first of the propositions upon which *Hole v. Williams*[75] had been based was no longer supportable. Consistent with a general expansion in the application of vicarious liability,

65. (1910) 10 S.R. (N.S.W.) 638.
66. [1909] 2 K.B. 820.
67. (1906) 3 C.L.R. 969.
68. Volume 1, 453.
69. See *Fitzgerald v. Northcote* (1865) 4 F. & F. 656; 176 ER 734; *Cleary v. Booth* [1893] 1 Q.B. 465; *Hutt v. Governors of Haileybury College* (1888) 4 T.L.R. 623.
70. (1910) 10 S.R. (N.S.W.) 638.
71. (1964) 111 C.L.R. 16.
72. *Ibid.*
73. *Smith v. Martin* [1911] 2 K.B. 775; *Ryan v. Fildes* [1938] 3 All E.R. 517; *Ricketts v. Erith Borough Council* [1943] 2 All E.R. 269.
74. [1921] N.Z.L.R. 164.
75. (1910) 10 S.R. (N.S.W.) 638.

the test for determining the existence of an employment relationship had been expanded. Courts had become less concerned with identifying the extent of control exercised by an employer over the performance of duties than with asking whether the conduct in question was an integral part of the employer's enterprise and was performed by someone who could be said to be part of the employer's organization. This change in approach had produced a series of decisions[76] in hospital cases which were inconsistent with *Hillyer v. Governors of St. Bartholomew's Hospital.*[77] Furthermore, it was no longer appropriate to rely upon *Enever v. The King*[78] to exclude school authorities from vicarious liability since exercise of independent authority by a constable could no longer be regarded as analogous to that exercised by a teacher.[79]

The second proposition upon which the decision in *Hole v. Williams*[80] had been based was rejected on two grounds by the High Court in *Ramsey v. Larsen.*[81] First, it was concluded that the complex system of State education under which many thousands of students attend schools each year is inconsistent with the notion of an express or implied delegation of authority by the parents of each student.[82] It was decided that the authority exercised over students in State Government schools is derived not from parental delegation but from the exercise of governmental power which established a system of compulsory education. The authority exercised by teachers derives from delegation of authority from the Crown and is exercised in the course of employment. Secondly, it was concluded that even if there was evidence of parental delegation of authority, the delegation would be to the Crown and not to each of a student's teachers. As a result the authority of a teacher must be regarded as having been acquired from the Crown and exercised in the course of employment.[83] Since according to either view the authority exercised by State school teachers derives from the Crown, the relationship between State school authorities and teachers performing their duties is one of employment to which the principles of vicarious liability apply.

Whether the bodies which govern and employ staff in non-Government schools in Australia become vicariously liable for the negligent acts or omissions of a teacher in the course of employment is an issue which has not been authoritatively determined. In the case of these schools, denial of vicarious liability cannot be based upon the ground that there is no parental delegation of authority. When a student is voluntarily entrusted to a non-government school, authority exercised by the school derives from the contract between the parents and the school authority.

76. See especially *Cassidy v. Ministry of Health* [1951] 2 K.B. 343.
77. [1909] 2 K.B. 820.
78. (1906) 3 C.L.R. 969.
79. See *Attorney General for N.S.W. v. Perpetual Trustee Co. Ltd.* [1955] A.C. 457.
80. (1910) 10 S.R. (N.S.W.) 638.
81. (1964) 111 C.L.R. 16.
82. *Ibid.*, 25 (McTiernan J.), 37 (Taylor J. with whom Windeyer and Owen JJ. agreed).
83. *Ibid.*, 29 (Kitto J.), 37-8 (Taylor J. with whom Windeyer and Owen JJ. agreed).

Delegation of authority, if not express, would be implied from the contractual relationship.[84]

Nevertheless the reasoning of the High Court in *Ramsey v. Larsen*[85] can be applied to extend vicarious liability to the bodies which govern non-government schools. As noted previously a majority of that court concluded that even if parental delegation was the source of the authority exercised over students enrolled in Government schools, the delegation would be to the Crown and not to each of the teachers who may have charge of a student at school.[86] On this basis it may be concluded that parents whose children are enrolled in non-government schools delegate authority not to individual teachers but to the body which governs the school. As the authority exercised by teachers in these schools derives from their employers the principles of vicarious liability apply. A suggestion to the contrary which appears in the joint judgment of the Federal Court in *Introvigne v. Commonwealth of Australia*[87] may be regarded as ill-founded.

One final point is made concerning the vicarious liability of authorities, public and private, which establish and govern schools. In *Commonwealth of Australia v. Introvigne*[88] Murphy J. made the following comment:

> "Where a student is injured by the negligence of another student (and perhaps by act or omission which if it were that of a person of full capacity would be negligent) without breach of personal duty by those conducting the school, and without act or omission by those for whom otherwise it is vicariously liable, it may be that the loss is best spread by treating the body conducting the school as vicariously liable just as an employer would be for its employee's acts or omissions but it is unnecessary to decide this."[89]

This suggested extension of the sphere of strict liability is clearly based upon recognition of the fact that a student found liable in negligence will usually provide an inadequate source of compensation. Imposition of vicarious liability in the manner suggested would place a greater burden upon schools than has been placed upon parents to protect others from the conduct of children under their control. The liability of parents for the conduct of their children is not strict, but is based upon breach of personal duty to take reasonable care.[90] Imposition of a greater burden upon schools might be justified on the grounds of greater capacity to bear and distribute the cost of compensation. The suggestion that school authorities might be made vicariously liable for the conduct of students which is not negligent, but which would be if it were the conduct of persons of full capacity also contemplates significant alteration of the current legal position. If the principle that

84. *Ibid.*, 37 (Taylor J.).
85. (1964) 111 C.L.R. 16.
86. *Ibid.*, 25 (McTiernan J.), 37 (Taylor J.).
87. (1980) 32 A.L.R. 251, 262.
88. (1982) 56 A.L.J.R. 749.
89. *Ibid.*, 757.
90. See Alexander, E.R., "Tort Responsibility of Parents and Teachers". 16 *V.Tor.L.J.* 165 (1965).

vicarious liability for negligence is based upon breach of duty owed by another is to be adhered to, this would require students to comply with a higher standard of care whilst engaged in school activities than that required in other circumstances. These novel suggestions were not considered by other members of the Court in *Introvigne's Case.*[91] Although it is unlikely that these initiatives will be implemented in the immediate future, they are clearly consistent with the identifiable desire of courts to compensate students who suffer injury and to distribute the burdens of compensation as widely as possible.

Conclusion

This review of developments in the application of principles of negligence and vicarious liability to injuries suffered by students reveals a clear and continuing judicial trend in favour of imposition of liability upon teachers and school authorities. Whilst it is true that deliberations of the courts may provide information and guidance useful in preventing injury to students, this trend should not be interpreted as a general condemnation of school organisational behaviour or of the conduct of teachers. It is suggested that the dominant motive which encourages the imposition of liability is a desire to have those most able to bear and spread the burden of accidental loss provide compensation to those students who are unfortunate enough to suffer injury.

Courts can best achieve the objective of loss re-allocation and distribution by ensuring that the burden of loss is placed upon school authorities and their insurers. Developments considered in this article are all consistent with pursuit of a policy designed to achieve this objective. In those cases where the negligence alleged is that of a school authority direct re-allocation and distribution of loss is achieved by making it easier to establish the existence of a duty of care and by requiring a higher standard of care. Where the negligence alleged is that of a teacher, initiatives related to duty of care and standard of care form only part of the scheme required to implement the policy of the courts. In these cases, the crucial element of this policy has been the expansion of principles of vicarious liability to make the bodies which establish and maintain schools liable for the negligence of their employees.

91. *Commonwealth of Australia v. Introvigne* (1982) 56 A.L.J.R. 749.