

Legal Update

A PRIMER ON NEGLIGENCE

In our litigious society, it should come as no surprise that the number of lawsuits initiated against schools and individual teachers or administrators is increasing, with no apparent end in sight.

On a positive note, however, some causes of legal action may be averted if staff members learn more about their legal responsibilities toward others. Armed with such knowledge, educators can then implement policies that will enable them to avoid the pitfalls that give rise to litigation.

The legal area in which educators are most vulnerable is tort law. Tortious conduct, or conduct that can make a person subject to liability, is divided into two parts: intentional torts and negligence. Intentional torts include offenses such as assault, battery, false imprisonment, and infliction of emotional distress. Since readers are probably more knowledgeable about these offenses, this column will place greater emphasis on a significantly more complex subject—negligence.

Many readers will recognize the term *negligence* either from individual study or prior JOURNAL articles. However, educators and adminis-

trators need a more thorough understanding of the definition of negligence, coupled with examples of what actually constitutes negligence, in order to understand and adequately address the increase in student/parent-initiated lawsuits.

First, let us examine a very basic negligence action. Casey, a classroom teacher in a local parochial school, finds it necessary to leave the room for a few minutes during one of his class periods. Al, a student in Casey's class, is injured when another student, Rowdy, throws an eraser across the room. The eraser strikes Al in the eye, causing permanent damage.

Al, through his parents, brings suit against the teacher and the school for negligence. The lawsuit alleges inadequate supervision on the part of the teacher.

In the actual case, the jury found that failure of the teacher to provide adequate supervision constituted "negligence which proximately caused injury to the student,"¹ and awarded damages of several hundred thousand dollars.

What did the teacher do that was different from the way any other teacher would have acted in the same situation? And, more specifically, what actions did the teacher take—or fail to take—that were considered negligent, based on the evidence presented to the jury in this case? The answer gives us

some clues to how a negligence case is analyzed by the courts.

Over the years, negligence cases have produced some legal guidelines. These laws define certain elements that must be present in order for a case to establish liability. The basic definition of negligence is "conduct which falls below the standard established by law for the protection of others against the unreasonable risk of harm."² One must conform to a certain standard of conduct to avoid being negligent; that is, he or she must act as a reasonable person would under like circumstances. In assessing liability, courts also consider four necessary elements: duty, breach, causation, and injury.

The word *duty*, as used in negligence cases, denotes that the person whose conduct is in question (called the "actor" for legal purposes) is required to conduct himself or herself in a particular manner. If the actor fails to do what is required, he or she becomes liable for any injury sustained by another person, providing that it can be determined legally that the injury was caused by the actor's conduct.

In Casey's example, as teacher he stood *in loco parentis* (in place of the parent) to the pupils in his class. His students were entrusted to his care and custody. Therefore, the court held that, by implication,

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while pupils were under his supervision, he had a legal responsibility to supervise them and ensure their safety and well-being.

The court held that Casey's duty was continuous; therefore, he should have been present in the classroom in order to restrain Rowdy. If he was unable to be present, he should have designated a responsible person to be in charge while he was away.

The court's findings in this case indicate that Casey's behavior was the proximate, or legal, cause of Al's injury. In order to be considered the proximate cause of an injury, the actor's conduct must be a substantial factor in bringing about the harm. How could Casey's conduct be considered such a significant factor? Quite simply, he just wasn't there when he should have been.

The rationale for determining proximate cause in tort cases has long been the subject of debate. Two conflicting views still exist. In the most famous American tort case, *Palsgraf v. Long Island Rail Road Co.*,³ Judges Andrews and Cardozo put forth opposing views on causation, with Andrews stating that defendants have a duty to everyone to protect against harm, while Cardozo asserted that only foreseeable harms need to be guarded against.

Casey was held liable under the Cardozo view—that is, the court ruled that he should have foreseen the possibility that some student might have been injured if the class was left unsupervised.

The final element in negligence cases relates to the injury. To recover damages, a plaintiff must show that he or she suffered damage or injury. Al lost an eye, and suffered accompanying psychological trauma. Had he not been injured, the case probably would not have made it to court at all.

The elements listed above—duty, breach, causation, and injury—are important to assess because courts will invariably apply the same analysis to every negligence case to determine the outcome.

Of even greater import, though, is knowing what duty educators owe to their students. This is the
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Teacher Reaction

Top Notch

I am impressed with the JOURNAL OF ADVENTIST EDUCATION! As always our magazines are top notch and demonstrate our philosophy of striving to be the best both in layout and graphic design and in the quality of the contents.

Please send me your future issues. Enclosed is a check for a subscription.

Gregg Iverson
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The Bible and Critical Thinking Skills

How pleased I am with the Summer 1987 issue of the JOURNAL, giving special emphasis to the teaching of critical thinking. The range of topics presented in the various articles broadened my perspective while providing practical recommendations for implementation. This is *must* reading for Christian teachers from elementary school through college and graduate education.

One additional article might have made this issue a more complete symposium of thought—an essay on the role of the Bible in the development of critical thinking skills. The most widely acclaimed thinker in Judeo-Christian history declared that reverence for the Lord is the first step to obtaining wisdom—the ability to think critically (Proverbs 9:10).

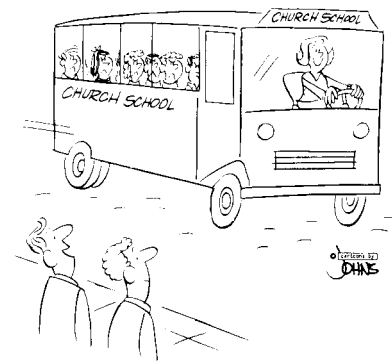
The one who, more than any other, influenced the development of Adventist educational thought wrote, "There is nothing more calculated to strengthen the intellect than the study of the Scriptures" (*Steps to Christ*, p. 90).

For nearly two decades I have taught in Adventist colleges, noting that the vast majority of teachers struggle to make the Bible relevant to the subjects they teach. Even those who use the Bible in their teaching often lack the understanding of how the Scriptures can be used to cultivate the intellect and develop critical thinking skills. We catch glimpses of how the Bible can establish beliefs and values, but we seldom see the potential the Scripture has to truly expand the intellect.

Surely eternal benefits would come to both teacher and student if we learned better how to use the Scriptures as an integral part of Christian education—not only for its content, but also for its contribution to the highest development of the human intellect.

Paul N. Hawks
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• We share the writer's interest in discovering ways that the study of the Bible can help develop critical-thinking skills. We hope that he will expand on this topic in a full-length article.—Eds.



"HAVE YOU NOTICED HOW CHEERFUL THE BUS DRIVER HAS BECOME SINCE THE NEW SEATBELT LAW WENT INTO EFFECT?"

present and eternal interests of each student.

Complaints have reached church headquarters of swearing, drinking, and intimate fraternizing between married supervisors and students of the opposite sex. Carelessness in church attendance and Sabbath observance, and crude and tasteless behavior and conversation by employees and supervisors at school industries and departments have also been alleged. If teachers, administrators, or pastors were guilty of these indiscretions, such behavior would not be considered acceptable. How can we allow lower standards for other employees who share the responsibility for shaping young lives?

In hiring what we sometimes call support personnel, should we not consider more than good management skills, craftsmanship, and the ability to get the work done? Should we not carefully check their character references, including calling their pastor to verify a faithful relationship to the church?

When we interview maintenance and industry workers, we should require as clear a statement of Christian commitment and mission as we do from teachers. Since these workers have a special opportunity and responsibility to show students how Christianity translates into practical life, we must expect such employees to uphold the highest Christian standards.

Recently Christian institutions have been accused of unnecessary discrimination when they require religious qualifications of those whose jobs are not strictly religious in nature. Adventist schools have traditionally asserted that religion is incorporated into every class and activity.

A 1984 decision of the Supreme Court of Canada ruled that good standing with the church is a *bona fide* occupational qualification for employment in a religious school. Likewise, the U.S. Supreme Court recently ruled that church institutions may use religion as a criterion when hiring employees.

Such decisions must, however, not be regarded as simply legal permission to discriminate. They

should be viewed rather as a recognition by intelligent judges that a school cannot be religious or Christian unless it is so *throughout*. These rulings affirm the absolute necessity of a school's choosing *only* workers who share the goals of that institution. In no other way can our schools expect to achieve their mission.

Let us as Adventist educators and administrators determine to keep our schools what they profess to be—Christian. This will require the application of high standards for selecting and supervising every person in every department of our schools. □

NEW SDA READERS

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the selection but also meet the criteria established by the steering committee. And the art has to match the stories. If the story says that the man was sitting in his car at the gas station, the illustration mustn't show him standing inside the office!

Production includes constant vigilance to be certain that every individual from the editorial assistant who types manuscripts to the clerk who ships the finished books to SDA schools stays on schedule. Conversations with publishing personnel, designers, and artists were documented and records kept for future reference.

Checking—Again and Again

Time-consuming details included the sheer number of times a story had to be read by every member of the editorial team as well as by the steering committee and consultants. The editors practically wore out a Xerox machine producing the thousands of pages necessary to supply copies to all the people who needed to read each story.

Each story was read initially to determine whether it should be included in the textbooks, reread and edited to be certain that it met the criteria, checked for readability and read again, checked for vocab-

ulary and read again, read by both the editorial staff and designer to determine appropriate illustration, typeset by the printer and read for errors that might have been introduced in the typesetting, placed on the appropriate page with illustrations and proofread again before the final printing.

Workbooks and Teacher's Editions had to be checked carefully for accuracy. Changing a single word in the Pupil Text (particularly if it was a vocabulary word) produced a domino effect, requiring revisions in every component, including testing materials.

An editor checked each component again after printing to be sure the art had been reproduced properly and to see if any errors had crept in.

This description shares a few of the "hidden ingredients" in the Life Series reading textbooks and enables the teacher to recognize the solid base of research and technology on which the series is based. Each task from the most sophisticated to the most mundane is an essential ingredient in the making of a reading series. □

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crucial point in recognizing when that duty is being breached. If teachers become knowledgeable about tort law and legal responsibility they will be better able to prevent lawsuits. But more important, they will become more conscious of their responsibility to ensure that classrooms are safe places for children.

A future column will offer some suggestions about preventing lawsuits based on negligence and intentional torts.—Mark K. Brooks. □

REFERENCES

¹ *Alferoff vs. Casagrande*, 504 N.Y.S. 2d 719, 122 A.D. 2d 183.

² Restatement, Second, Torts, Section 282.

³ 162 N.E. 99 (N.Y. 1928).