



Teachers' Negligence and its Implications in Public Secondary Schools in Rivers State

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Abstract

The paper examined teacher's negligence and implications in public secondary schools in Rivers State. The paper considered several reasons for which a teacher may be liable on account of negligence in schools. It also looked at teachers' duties of supervision, instruction, welfare and discipline as key in maintaining high standards of relationship between the teacher and the students. The paper further explained that for a student to successfully claim damages as a result of negligence, the student must establish that the teacher owes him or her duty of care and that such duty was breached by the absence of approved standard of care expected of the teacher. Clear evidence must also be provided as a proof that the injury sustained by the student was reasonably foreseeable. The paper concludes that all teachers and school personnel must be completely conscious of the legal implications underpinning every action they take in the school and suggests that seminars and workshops should be organized to train teachers on the implications of negligence to duty.

Keywords: Negligence, liability, law, duty of care, reasonable prudent person

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INTRODUCTION

All over the world, people at some point suffer damage arising from the careless conduct of others. A negligent or careless act may be done intentionally, unintentionally or by an act of accident. As kalagbor (2015) rightly puts it negligence is the failure to exercise the standard of care that a reasonably prudent person would have done given the same circumstance. The tort of negligence is predicated on the premise that it will redress the wrongs of one party against another which has resulted to severe damage and injury. However, it is not every act of negligence that amounts to an actionable tort. As a general rule of law, the tort of negligence can only suffice whenever there is a duty of care, and that duty of care has been breached with attendant injuries (Ogbu, 2013). In other words, whenever the law prescribes a standard of conduct to which people should conform, failure to do so usually attract liability (Nwadialo, 2000).

The reason for the emergence of the tort of negligence is to identify breach of a duty of care and offer remedy to the party who has suffered harm. In effect, the purpose of the law of negligence is to offer relieve to a person who has suffered harm or damage as a result of a breach of duty of care. Malemi (2013) added that tort is one of the most important and commonest torts in law which was formulated in the nineteenth century and expanded by industrial revolution, inventions and the growth of large-scale businesses. The importance of fault and the rise of the tort of negligence are perhaps due to global changes in lifestyle, social attitude, legal reforms and rapid social legislations aimed at improving the quality of lives of our people (Newnham, 2000). The advancement in education, science and technology made it even much easier to apportion responsibility, determine the cause of action and prove fault. Therefore, achieving qualitative education in Nigeria especially at the primary and post primary levels remains one of the major setbacks of past and present government (Ololube, 2006). The target of government to achieve the educational goals as enshrined in the national policy of education is been held back by the state of most public schools and the callous negligence of teachers. The National Policy on Education has explicit provisions to sanitize the educational system and make it the envy of all (Ololube, 2013). Regrettably, the level of awareness of the value component of the national policy of education leaves a sorry tale (Ololube, 2006).

According to Newnham (2000) the most likely reasons for a teacher to face legal action in court is the tort of negligence resulting to injuring by a student while under the direct control and supervision of a teacher. However, Ogbu (2013) contends that in certain cases, negligent conduct in the school system goes beyond mere physical injury to the failure of government or the school authority to create conducive teaching and learning environment. Negligence can also be extended to a school's failure to teach, test or counsel a student adequately with resultant emotional, psychological and intellectual effects. The purpose of this paper therefore is to critically examine the tort of negligence and its effect in the administration secondary schools in Rivers State and how the negligent conduct of teachers and school administrators can lead to liability in the event of physical injury or death of a student under the direct supervision of the school or in a school-related activity. The paper proffers suggestions to school officials on how to protect themselves or at least reduce the possibility of litigation.

CONCEPTUAL CLARIFICATIONS

Concept of Tort

Tort is simply a civil wrong, other than breach of contract, for which a remedy may be obtained usually in the form of damages; a breach of duty that the law imposes on persons

who stand in a particular relation to another person (Garner as cited in Kalagbor, 2015). From the above definition it can be deduced that tort is a civil wrong done to a person as opposed to a crime. Although, in certain circumstances, a tort may be both a civil wrong and a crime, the difference according to Malemi (2008) is that civil tort is often against the individual whose remedy is gotten through the award of damages, restitution, termination and indemnity while criminal torts like assault, battery, false imprisonment is against the state. Simply put, a crime is a wrong arising from the violation of a public duty while tort is a wrong arising from the violation of a private duty. To present these as serious cases, the plaintiff must be willing to establish before the court that the defendant had intent to cause serious harm to the plaintiff. Where the intent is missing the plaintiff will be faced with a no case submission which automatically discharges the defendant of any wrong (Malemi, 2008).

Categories of Torts

Nakpodia (2007) explained that two general categories of negligible torts exist which are accidents and intentional tort. Essex (2012) recognizes two broad categories of liabilities in tort involving the staff or student. They include intentional or unintentional tort of negligence.

Intentional Torts: These are harms committed by one person against another, where the corresponding act was done deliberately as opposed to injuries from negligent conduct. Dougherty (2004) argued that intentional torts are described intentionally that is when an individual deliberately and consciously commits a wrong against another. Garner (2004) in kalagbor (2015) defined intentional tort to mean an act committed by someone acting with specific intention. Mann and Roberts (2012) Separated intention torts into four harm categories. They include:

- Harm to a person who may include assault, battery, infliction of bodily or emotional pain and false imprisonment.
- Harm to dignity which include defamation, invasion of privacy, and misuse of legal procedure.
- Harm to property, which include harm to real and personal estate.
- Harm to economic interests and include interference with contractual relations, disparagement and fraudulent misrepresentation.

Judging for the above, it is imperative for a teacher to think thoroughly before he acts because intentional torts allow the injured part to recover damages for bodily harm, emotional distress, loss or impairment of earning potential medical expenses to damage that happen to the individual's business or property.

Unintentional Torts: Unintentional torts are marked separately from intentional torts because negligent acts are not intended or anticipated (Koko, 2003). Decker (2011) defines negligence as "the accidental failure to exercise reasonable care". He argued that although negligence can exist when improper acts have taken place, negligence can also occur when injuries are as a result of carelessness. Every school must take cognizance of the negligible actions of school personal because of the likelihood of liability in action. It is based on this that Nakpodia (2009) observed that Principals of schools are often confronted with liability issues daily, Negligence is the most frequent concern in student and teacher relationship (Decker 2011).

Newnham (2000) therefore argued that as chief administrator of the school, principals as well as teachers must understand the concept of negligence as they anticipate or react to circumstances that could possibly result in injuries to students and its consequences against them or the school authority. However, there are situations where injuries occur in the school system and appears clearly to a reasonable man to be unavoidable, in such cases, there is no case submission for liability on the school personnel. However, if the injury is a product of negligible conduct by school personnel who acted improperly or failed to act in a given prudent manner to save lives and avoid injuries to students, then, inability charges may be imminent (Essex, 2012). Abraham (2002) concludes that such a claim can be maintained when there is proof that an injury was a direct result of carelessness.

Negligence: Negligence according to Garner and cited in Kalagbor (2015) is the failure to exercise the standard of care which a reasonable, prudent person would have exercised in a similar situation. Any conduct that falls below the legal standard established by law is negligence. Negligence is the breach of a legal duty to take care which results to damage to another person. In the case of *Odinaka Vs Moghalu*, the supreme court of Nigeria held that negligence is the omission to do something which a responsible man under similar condition would do or the doing of something which a reasonable prudent man would not do. It is the omission to do something which a responsible man guided by the consideration which ordinarily regulates the business of human affairs would do, and doing something which a prudent reasonable man would not do (Hodges, 2001). It is the breach of a duty of care which causes damage to another person often called plaintiff or claimant.

Elements of Negligence

In a claim for damage caused as a result of negligence, a plaintiff seeking relief for damage caused to him must prove the four essential ingredients of negligence before he can succeed, except where the doctrine of *Res Ipsa Loquitur* (the facts speak for itself) is applied. However, proving that there was a breach in standard of care does not necessarily impose liability for negligence because such prove is only one element in determining the tort of liability. In addition, the injured party must be able to prove that he suffered harm as a result of another individual's breach of standard of care. In negligence cases, a plaintiff must establish before the courts at least three basic elements in order to succeed a claim for damages. These elements include: breach of duty of care, proximate causation and injury (Koko, 2003). If one element is missing, the plaintiff will not succeed in the tort liability (Decker, 2011)

However, Malami (2003) pointed out that for a plaintiff to succeed when there is a breach, he must present these four elements of negligence: that the defendant owns a duty of care to plaintiff (Duty of care); that the defendant breached the duty of care (breach of duty of care); Proximate cause and that the plaintiff suffered damages as a result of breach (injury). For Kalagbor (2015), the relevant thing is that all the elements whether three or four must be proven in a co-existing manner: that the school authority has a duty to protect the school child from unreasonable risks.

Duty of Care: This element deals with the relationship between two persons (Yell, 2000). Simply put, duty of care means a situation where a person's action affects another. The actor must exercise sufficient and reasonable care in discharging the act, so that the next person does not suffer adverse effect. Accordingly, it is not in dispute that the teacher owes his student a duty of care since the student is directly under the control and supervision of the school.

Breach of the Duty of Care

When it is established that there is a duty of care owed the students by a teacher, the court will have no other option than to proceed to determine if the teacher (defendant) breached the duty of care which has been entrusted on him by the law. Whether there is a breach of duty of care is a matter of preponderance of facts left at the discretion of the courts. However, Malemi (2013) pointed out that the standard of care required of a person is that which is expected of a prudent reasonable man in the shoe of a teacher. To make a valid judgment, the court usually takes into account whether a reasonable man who finds himself in company of minors' (school children) would have done what he did in the circumstance (Akukeide, 2004). The test here is to determine what ingredients make a reasonable man and what will a reasonable man do in the circumstance? The meaning when compared is that if a reasonable man would have done what the teacher (defendant) did in the circumstance, then the teacher (defendant) will not be liable. If on the other hand, defendant teacher exhibits substandard care than a reasonable man would have done, then he will be liable for negligence. This justifies Decker (2011) definition of negligence to mean, the omission to do something which a reasonable man guided upon those consideration which ordinarily regulate the consideration of human affairs would do or doing something which a prudent reasonable person would do.

Proximate Causation: The causation element here is based on whether the action of the defendant was actually responsible for the injury suffered by the plaintiff. By this element, the argument is not that the plaintiff sustained injury but the question is whether his personal action caused the injury. Under this element the plaintiff is duty bound to prove that the defendants' action was responsible for the injury he suffered. In legal parlance, this is often referred to as "but for" causation, meaning thus that but for defendants' action, the injury to the plaintiff would not have occurred Kalagbor (2015). The defendant is only responsible for those harms that he could have foreseen through his own actions. If the defendant has caused damages that are outside the scope of his engagement which are foreseeable, then the plaintiff cannot prove that the defendants' action is the proximate cause of the plaintiff's injury.

Injury or Damages: The element of injury concerns the amount of loss suffered by the plaintiff. The plaintiff has a duty to prove a legally recognized injury or damage, usually in the form of physical injury to a person or property. It is not enough to say that the defendant failed to exercise reasonable care. This failure to exercise reasonable care must have resulted in actual injury or damage to the person to whom the defendant actually owes a duty of care (Wali, 2010). Actual injury according to Kalagbor (2015) can be physical, psychological or financial but it cannot be imaginary. Thus, students who establish that he has suffered tremendous harm shall be entitled to his claim. In the case of George Vs Okoro & Ors (2004), the trial court held that the teacher was negligent in his attitude to the student- plaintiff by rejecting the defense of the 1st defendant that the damage of the plaintiff's eye was as a result of his flogging of the other students. The student- plaintiff brought the action through her mother. The position of the court in the above showed clearly that the plaintiff claimant succeeded in establishing the link between the breach of duty of care and the actual injury.

Reasonable Teacher

In law of tort, the reasonable man's standard is a composite behavioral pattern in the eye of the court. It is the characteristics of a reasonable person that is considered. It does not refer to the ability to reason but the quality of attention and judgment (Malemi, 2013). In the Nigeria case, the reasonable teacher is one with normal intelligence and average knowledge of

everyday matters of life. To determine whether the defendant was prudent in his actions, the court according to Malemi (2013) will consider the level of intelligence, knowledge, skill, and intelligence. He further stated that the court will measure the action of the defendant teacher against what is expected of a normal intelligent person in his shoes. In such a case he may still be liable if he acted to the best of his ability or judgment and it falls below what was expected of a man of ordinary intelligence or common sense of judgment.

Knowledge: This is a general principle of what a person ought to have and also show as a level of common sense of everyday things of life which a normal mature adult should have. Example include the fact that children are generally less careful than grown up adults; that acid is deadly and highly poisonous and the idea that solid objects sink in water.

In the case of Glasgow Corporation Vs Taylor (1922) a child of seven year picked some attractive but poisonous berries growing on a shrub in a public park managed by the defendant city corporation. The child died after eating the fruit. The defendant knew that the fruits were poisonous and that the plaintiff saw berries as allurements which brings children closer yet the defendant did nothing to give warning of the danger to the children or the general public. In an action brought by the parents of the child, the court held that the corporation was liable of negligence (p. 23).

Defending the import of knowledge, in Whyte Vs Bassey (1966), a five-year-old girl suddenly ran into the road and collided with the defendants' car which was in motion. There was no sign or notice of warning of children within the vicinity. The court held that the defendant woman was not liable or negligence. The fact remains that where a defendant actually had knowledge of a given condition, the law may increase the standard of care expected of him (Malemi, 2013). It has been held by different courts and authorities that members of the public are expected to exercise a greater care with the vulnerable class of children, pregnant women, physically challenged and the elderly for the reason that this class of people is prone to injuries by virtue of their conditions a case which is also applicable to teachers and students.

Skill: According to Decker (2011), the standard of care expected of a reasonable teacher is that of a person of normal intelligence who does not present himself as not having any special skill. He should be able to exercise average skills except in high-risk endeavours such as driving and construction. Hence, where a man professes to having a particular skill, he is expected to exhibit same degree of care expected of a reasonable person in that profession, vocation or activity (Newnham 2000).

Defenses of Teachers' Negligence in Schools

Where a plaintiff student in a case of negligence proves duty of care, breach of that duty of care, injury and causation, the defendant teacher will be given a chance to provide a defense for himself (Kalagbor, 2015). The defendant teacher will be given an ample opportunity to provide a defense that the act was simply accidental and not the proximate or legal reason for the injury (Obi, 2004). Defendants in the tort of negligence have a variety of defenses available to them. They include:

Contributory Negligence: This is the most common form of defense used by school heads when faced with the tort of negligence. Contributory negligence is used on the grounds that the injured party is partly responsible for his or her injury because he/she have failed to

exercise the same caution for his / her own safety (Kalagbor, 2015; Ogbu, 2013). In *Rixman v Somerset Public Schools* (1978), a high school student and his father brought an action for an injury which the student sustained in a science practical class. Although, the student knew abinitio that the chemicals were highly inflammable and should not come in contact with naked flame. The student and two others collaborated among themselves to start a fire which result caused one of them severe bodily injuries. The court held that the students were contributory in negligence for the reason that they were aware of the consequences and risks of their action.

Comparative Negligence: This is another known form of defense available to the teacher in the tort of negligence. Although, a completely new concept in law. It is considered as a fair means of determining liability as it distributes responsibility on all parties based on the degree of liability (Essex, 2012). Oloko (2014) opined that comparative negligence is not an all or nothing defense like that of contributory negligence. It differs from contributory negligence in that both the plaintiff and the defendant assume a portion of the responsibility for the injury (Alexander & Alexander, 2003). Under this defense, if the court finds the plaintiff to be partly negligent for his /her own injury, it does not in any way absolve the defendant from their contribution to the injury. Rather, it reduces the benefit owed to the plaintiff as a result of their negligent contribution to the injury.

In the case of Bell v Ayio (1998), two female students were allowed to exit the school bus even though one of them had reported to the bus driver that she had been threatened by another student on the bus. Before now, the bus driver had exited the bus and asked a staff to get the principal. However, instead of waiting with the students, he re-entered the bus and moved it to avoid causing traffic. Later one of the girls sustained severe bodily injuries that required surgery in her ankle. Although the bus driver should not have left to ensure proper supervision, the court found the bus driver only 15% at fault for the injury.

Assumption of risk

This form of defense is invoked where individuals are involved in contact related activity that may include sports, extra and intra mural activities (Nakpodia, 2004). In this circumstance, the student is aware of the risks involved in the activity but choose to either expressly or impliedly agree by indicating his readiness to take the risk (Malemi, 2013). A defense is said to be express assumption of risk when the plaintiff accepts the risk hazard in advance in writing. It becomes implied assumption where it does not involve a written or oral agreement but rather assumption through the students' approach to the activity (Nakpodia, 2004).

Stature barred

As a general rule, there is a time limit to litigation. Once the approved time lapse expires, a claim can no longer be made in court. The time lapse provided for such a situation can form a defense for the defendant who will now plead stature barred. That is stature law has barred or stopped any action or prosecution of the claim (Malemi, 2013). According, to Kalagbor (2015), section 16 and 17 of the limitation law Cap 80, laws of Rivers state (1999) is a cheap example of stature barred where the stipulated time within which an action can be brought on personal injury based on the tort of negligence is five years from the period of occurrence or omission. Depending on the circumstances, the date of reckoning also commences from the date knowledge. However, where the injured party dies, the reckoning will be at the date of death or the date of the personal representative's knowledge, whichever is the later.

In the school system, it is common to find students with legal disability of age, the period of suing will begin to run when that disability ceases and same is applicable where the student is of unsound mind. The period of instituting legal action which is five years will be reckoned from the date the legal disability ceases. When the student is a major and he is under conferment that made it difficult for him to institute an action, the period of five years shall commence when the student ceases to be under conferment (Kalagbor, 2015). To avoid litigation arising from the tort of negligence, teachers should be proactive to be able to anticipate potential risk situations in their respective schools. Although, there are several windows available to the teacher as defenses in a tort action brought against him this paper will consider in details the issue of negligence and the various forms of torts of liability in the secondary school system.

Negligent Conducts and Liability of Teachers in secondary schools

It is generally known that school liability has increased tremendously in Nigeria especially in the area of negligent tort. Nearly no day passes without parents bringing to the public domain cases of serious injuries, negligent deaths, sexual assaults, bullying, corporal punishment etc.

Liability

Liability is a legal obligation arising from the violation or injury or harm caused by a person to another. The person who commits the injury is under legal obligation to reimburse the victim for the harm caused (Nakpodia, 2004). Liability is simply law of tort which may occur as a result of an intentional act, a negligent act or failure to act by a person whom the law legally empowers to act (Koko, 2003). The school principal or the teacher may be held liable for all damages which should have been foreseen as a result of his tort by the exercise of ordinary or reasonable foresight. This can be effectively applied under the principle of vicarious liability.

Principle of Vicarious Liability

The principle of vicarious liability is well domesticated in the secondary school system. It is often referred to as imputed liability (Oloko, 2014). Vicarious liability is a liability of one person for the act and omission of another because of the legal relationship that exists between them (Malemi, 2013). This form of relationship is usually between master-servant, principal-agent, employer-employee, superior-subordinate, teacher to student and so forth. Vicarious liability is a situation where one person is liable for the negligent conduct of another person because of the legally defined relationship existing between them.

Factors the Court Considers in Determining Vicarious Liability in Schools

As a general principle, the person who suffered the injury or breach may seek compensation in the law court, making the school principal or employer of labour liable for the infraction caused by the employee (Kalagbor, 2015). For the courts to make valid pronouncements on the subject matter, its position will be guided by the following legal principles:

That there was a teacher and student relationship: The teacher and student by virtue of their appointment and admission enjoy certain elements of relationship. This legal principle enjoyed here is as a result of existence of a teacher-student relationship.

That the student is liable for the tort: The plaintiff has a duty to establish that the student was liable for the tort by proving that existence of all the known elements of negligence against the student who is alleged to have committed the wrong leading to the injury. Where the student is not liable in the course of student- teacher relationship, the principal and school authority will not also be liable because the liability of an employer only arises if the servant is shown to have committed the tort (Koko, 2003).

According to Daminabo (2004), the student must first be held liable for the tort before the question of vicarious liability can be considered. The manner of doing the work the student is asked to do the work. The school authority is vicariously liable for wrongful way of doing something he was authorized to do even if the tort that was committed was expressly forbidden by the school authority.

Remedies for Vicarious Liability

The remedy for a parent or plaintiff student who succeeds the tort of liability is mainly a claim for award of damages. Thus, where a plaintiff alleges that the principal or teacher or employer is vicariously liable for the negligent conduct of a student, he may bring an action against such a teacher.

The Defenses for Vicarious Liability

Some defenses which a teacher may use to escape vicarious liability in the schools include the following:

- That the student was on a frolic of his own and that the tort was committed outside the school premises.
- That the student in question had long left the school and was dismissed before the commission of the tort and that a disclaimer has long been published.
- That the act is an independent act of a third party outside the control of the school.

CONCLUSION

The fear of litigation has forced both school administrators and teachers to make changes in the way they operate. Although school personnel do not necessarily have to be knowledgeable in law, it is advisable however, for their safety and protection that they have a full understanding of the fundamental rudiments of law in the school system. School administrators need to exercise caution when making legal defenses relating to students and carry out their professional duties in line with legal provisions. It is argued that the best way to stay out of legal issues from manifesting in the school environment is to ensure that all teachers and school personnel are completely conscious of the legal implications underpinning every action they take in the school.

Recommendations

To enhance knowledge, the paper makes the following recommendations

- The law governing schools' operations generally should be reviewed to accommodate the present-day realities of education law.

- Teacher education and workshops should be organized to train teachers on negligence and the liability arising from it.
- The school curriculum should be expanded to accommodate education law in schools.
- Teachers and school administrators should be aware of their duties and take responsibilities as well know their rights, limitations and the urgent need to respect the right and dignity of students.

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