

1939

## NEGLIGENCE - NEGLIGENT FAILURE OF PRINCIPAL TO PROMULGATE ADEQUATE REGULATIONS FOR SAFE DISCHARGE OF PUPILS

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### Recommended Citation

John M. Ulman, *NEGLIGENCE - NEGLIGENT FAILURE OF PRINCIPAL TO PROMULGATE ADEQUATE REGULATIONS FOR SAFE DISCHARGE OF PUPILS*, 37 MICH. L. REV. 669 (1939).

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NEGLIGENCE — NEGLIGENT FAILURE OF PRINCIPAL TO PROMULGATE ADEQUATE REGULATIONS FOR SAFE DISCHARGE OF PUPILS — The infant plaintiff, during the dismissal of her class, was pushed or thrown from an ex-

terior stairway by a fellow pupil. As a consequence she sustained personal injuries. She sued the city, the board of education, the principal of the school, and the teacher. *Held*, that whether the principal was negligent in failing to promulgate more adequate regulations for the safe discharge of the pupils was a question of fact for the jury. *Thompson v. Board of Education of City of New York*, 255 App. Div. 786, 6 N. Y. S. (2d) 921 (1938).

As a general rule school districts<sup>2</sup> and school boards<sup>3</sup> are not liable for the torts of employees, but the employees are liable under the law of torts generally.<sup>4</sup> It is not a novel rule of law that imposes a duty to use reasonable care to protect against harm caused by third persons.<sup>5</sup> The duty in the principal case to provide safe regulations is really a duty to protect against injurious acts of third person pupils. It has been held that hospitals must guard against injury to patients inflicted by fellow inmates<sup>6</sup> and under certain circumstances parents must guard against injuries caused by their children.<sup>7</sup> But the facts of the principal case cannot properly be said to fall within the same group as those cases because the duty there is predicated on the normal tendency of the third party, over whom the actor has taken control, to act injuriously.<sup>8</sup> However, one who takes control of another, under such circumstances as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to use reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or creating unreasonable risk to him if the actor knows or has reason to know of his ability, the necessity, and opportunity to control the conduct of the third persons.<sup>9</sup> It is submitted that the facts of the principal case might properly be held to be within such rule and the fact that "boys will be boys," as stated by the dissent, is an added reason for placing a duty on the principal to provide such rules for safe discharge of the pupils as might reasonably be anticipated to be necessary for their protection.

*John M. Ulman*

<sup>1</sup> The charge against the teacher was dismissed because, as a matter of law, there was no proof of negligence.

<sup>2</sup> 24 R. C. L. 604 (1919).

<sup>3</sup> 24 R. C. L. 606 (1919).

<sup>4</sup> 56 C. J. 367 (1932).

<sup>5</sup> See HARPER, TORTS, § 79-106 (1933). See also 13 TEX. L. REV. 146 (1934) on such duty in connection with business.

<sup>6</sup> *Curley v. State*, 148 Misc. 336, 265 N. Y. S. 762 (1933); *Wilcove v. State*, 146 Misc. 87, 261 N. Y. S. 685 (1933); *University of Louisville v. Hammock*, 127 Ky. 564, 106 S. W. 219 (1907).

<sup>7</sup> 46 C. J. 1332 (1928).

<sup>8</sup> 2 TORTS RESTATEMENT, § 319 (1934). The comments and illustrations to that section, when taken in connection with the wording of the section, would seem to exclude the principal case.

<sup>9</sup> 2 TORTS RESTATEMENT, § 320 (1934).