



## THE CONCEPT OF TORT LIABILITY IN EDUCATION: WHAT THE TEACHER SHOULD KNOW

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### Abstract:

The study discussed the concept of tort liability as regards to education with a definite focus on its implication for teachers. Torts was simply described as civil wrong which could range from negligence, intentional and strict tort. Tortious liability arises out of breach of duty primarily fixed by the law. This duty is towards persons generally and its breach is redressable by an action for unliquidated damages. School tort liabilities may arise from the following incidents school bus accidents, children injured while crossing school crosswalks, food poisoning from school meals, exposure to hazardous material or chemicals, failure to evacuate children properly, slip and falls on school premises. The study recommended that the teacher should be aware of duties of supervision, duties of instruction, duties to protect and awareness of the health condition of students in the class.

**Keywords:** tort, liability, education, teacher

### 1. Introduction

The early law of tort was concerned with the protection of landed interests through the action of trespass. It also gave protection against personal injury, i.e., injury to person as well as his reputation. This was done to keep peace in society which was an avowed purpose of criminal law. The urbanization and industrialization of a later period has shifted the emphasis from conduct endangering interests in land to conduct which causes injury, i.e., negligence which is a modern tort par excellence. The term *tort* is the French equivalent of the English word *wrong*. The word *tort* is also derived from the Latin word *tortum*, which means twisted or crooked or wrong, in contrast to the

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word *rectum*, which means straight (*rectitude* uses that Latin root). Thus, conduct that is twisted or crooked and not straight is a tort.

In the late nineteenth century, Cooke (1898) published a new definition of tort that is widely accepted today, he stated that tort is an act or omission, not a mere breach of contract, and producing injury to another, in the absence of any existing lawful relation of which such act or omission is a natural outgrowth or incident. A tort is a civil wrong that causes harm to another person by violating a protected right (Pesce & Varacallo, 2018). They further posited that a tort may arise from intentional acts, from negligent acts (frequently an omission of action when there was a duty to act), or from the violation of a statute. "Tort" is a term applied to a miscellaneous and more or less unconnected group of civil wrongs, other than breach of contract, for which a court of law will afford a remedy in the form of an action for damages (Peter, 1959). Numerous legal writers have described tort in their various perspectives, based on the views of authors above torts could be perceived to as an intentional or negligent action that is against a positional paradigm that led to harm or injury of a person or loss of property. Take for instance a motorist who causes a fatal collision by looking at his cellular phone instead of the road may have committed a tort by driving negligently.

Negligent torts occurred when the tortfeasor's actions were unreasonably unsafe. Peter (1956) posited that the elements necessary to a cause of action based on negligence include:

- 1) A legal duty to conform to a standard of conduct for the protection of others against unreasonable risks.
- 2) A failure to conform to the standard.
- 3) A reasonably close causal connection between the conduct and the resulting injury.
- 4) Actual loss or damage resulting to the interests of another.

According to Pollock (2012), the law of torts deals mainly with three types of wrongs which includes personal wrongs, wrongs to possession and property and wrongs both to person and property. Personal wrongs are essentially wrongs affecting safety and freedom and person and include assault, battery, wrongs against family relations like seduction and enticing away of servant, wrongs affecting reputation like defamation, malicious prosecution etc. The general characteristics of these wrongs is that they are either willful or wanton wrongs. The act is either intended to do harm or is done with reckless indifference. Wrong against property include trespass to land and goods, conversion, infringement of copyright or trade mark etc. It will be seen that in wrongs against property the mental element of deliberation or reckless indifference is not important. Neither the intention to violate nor the knowledge of the wrongdoer that he is violating other's right is necessary. Thus, wrongful dealings with another's goods makes one liable even though he was acting under a reasonable belief that he had lawful authority. Wrong against both property and person include nuisance, negligence and breach of absolute duties imposed on the occupiers of land etc. Here the liability arises from the ancient rules of common law or from the modern development of the tort of

negligence. In these torts willfulness or recklessness is not always necessary. In cases of absolute duties, the wrongdoer is liable even when he took absolute care.

## 2. Types of Torts

There are three kinds of torts according to Saylor Academy (2012), these include intentional torts, negligent torts, and strict liability torts. Intentional torts arise from intentional acts, whereas unintentional torts often result from carelessness. An intentional tort is when an individual or entity purposely engages in conduct that causes injury or damage to another (Babcock, n.d). For example, striking someone in a fight would be considered an intentional act that would fall under the tort of battery; whereas accidentally hitting another person would not qualify as “intentional” because there was no intent to strike the individual. Another typical example of an intentional acts is when a surgical team fails to remove a clamp from a patient’s abdomen when the operation is finished. Other similar cases on intentional torts include assault, trespass (land and property), defamation, false imprisonment among others.

Negligent torts occur when the tortfeasor’s actions were unreasonably unsafe. It could also be called an unintentional tort which arises from carelessness. Negligent tort happens when there is a specific code of conduct which every person is expected to follow and a legal duty of the public to act a certain way in order to reduce the risk of harm to others (Babcock, n.d). When an individual fails to adhere to the stated standard could have said to be liable of negligent torts. Negligent torts do not involve deliberate actions, but occur when an individual or entity is careless and fails to provide a duty owed to another person. The most common examples of negligence torts are cases of slip and fall, which occur when a property owner fails to act as a reasonable person would, thus resulting in harm to the visitor or customer. Other examples as stated by Babcock include accidents by either car truck, motorcycle, bicycle, or pedestrian and medical malpractice. In strict liability torts, by contrast, there may be no fault at all, but tort law will sometimes require a defendant to make up for the victim’s losses even where the defendant was not careless and did not intend to do harm. Strict, or “absolute,” liability applies to cases where responsibility for an injury can be imposed on the wrongdoer without proof of negligence or direct fault. Examples of Strict Liability Torts includes defective products (Product Liability), animal attacks (dog bite lawsuits), and abnormally dangerous activities.

## 3. Tort Law

Tort law is the body of rules concerned with remedying harms caused by a person’s wrongful or injurious actions. The law attempts to adjust for harms done by awarding damages to a successful plaintiff who demonstrates that the defendant was the cause of the plaintiff’s losses. Tort law allows individuals and businesses that have been wronged to receive compensation for that wrongdoing. Tort law is frequently used in situations involving medical negligence. For instance, if a surgeon tasked with amputating a

patient's left leg commits medical malpractice by instead amputating her right leg, that patient may be able to pursue a tort lawsuit for monetary damages against the surgeon (Congressional Research Service, 2019). In the view of congressional research service tort law serves at least three purposes. The first is to compensate plaintiffs who are injured by a defendant's conduct. The second is to deter persons from acting in ways that may cause injury to others. A third purpose— albeit one of somewhat lesser significance—is to punish people who wrongfully injure others. The law of torts is concerned with the compensation of losses suffered by private individuals in their legally protected interests, through conduct of others which is regarded as socially unreasonable (Peter, 1959).

The idea of tort law is that people are liable for the consequences of their actions. Under most tort laws, the injury suffered by the plaintiff does not have to be physical. Torts may include causing emotional distress or a violation of personal rights (e.g., the "right to privacy"). There are different types of torts based on the rights violated (Pesce & Varacallo, 2018).

The boundaries of tort law are defined by common law (case by case analysis of appealed cases on a specific point of law) and by state or federal statutory law (so called "black letter law"). Judges, in interpreting the language of statutes, have wide latitude in determining which actions qualify as legally cognizable for the purpose of measuring damages. Tort law does not purport to provide remedies proportional to the injurer's wrong: normally, compensation is the remedy, whatever the nature of the tort or wrong. This led to the reason why Simon (2017) posited that tort law functions as a means compensating the injured, defendant pays for damages, loss spreading and reinforcement of social norms. This is quite different from crime.

According to Thavi (n.d) tort differs from crime as it is redressed by compensation or damages and not by punishment or fine though the same wrong may be a tort as well as a crime concurrently. Tort differs from breach of contract as the rights and duties arise, in case of contract, from the agreement and are enforceable against the parties concerned. Breach of contract may be redressed by liquidated damages. Tort, on the other hand, arises from a duty imposed on persons in general and is redressible by a suit for unliquidated damages. Tort, as a common law wrong is different from the wrong of breach of trust which is breach of an obligation recognized in equity. In the law of torts motive and malice play a minor role. If the act does not inflict legal injury, it will not give rise to tortious liability even though it is accompanied by malice or improper motive (Simons, 2017).

#### **4. Tort Liability**

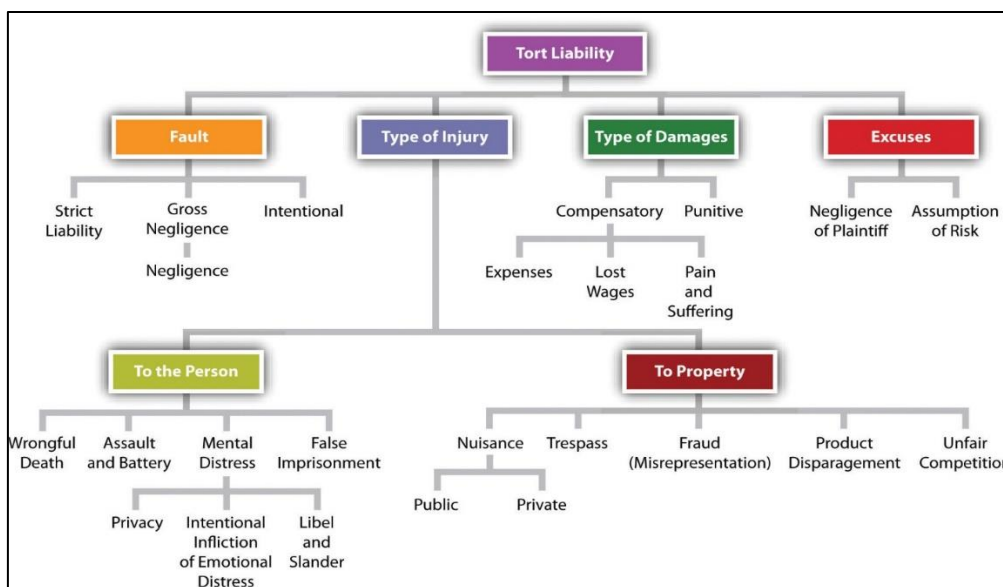
Based on the numerous views of legal writers, tort simply implies conduct which is crooked, tortious, i.e. not straight or right, it could also be termed a civil wrong or a legal term describing a violation where one person causes damage, injury, or harm to another person. The violation may result from intentional actions, a breach of duty as in negligence, or due to a violation of statutes. Therefore, as a special branch of law, it is expedient to understand the liabilities accruable to engaging in a tort. Tortious liability

arises out of breach of duty primarily fixed by the law. This duty is towards persons generally and its breach is redressible by an action for unliquidated damages. A tortfeasor incurs tort liability, meaning that they will have to reimburse the victim for the harm that they caused them. In other words, the tortfeasor who is found to be “liable” or responsible for a person’s injuries will likely be required to pay damages (Clarke, 2018)

Courts impose liability for tortfeasors to compensate an injured party for an act or an omission that causes harm. One is never “guilty” of a tort, as that is a term from the criminal law that implies a violation of some moral standard. One who commits a tort is a tortfeasor; the tortfeasor is “liable,” rather than guilty. Therefore, tort liability is meant to monetarily reimburse the tort victim for the harm caused them by the tortfeasor. The prospective of being held liable and having to pay damages provides potential tortfeasors with behavioral incentives. Obviously, these incentives are greatly determined by the amount of damages the liable injurer has to pay. The desired incentives might also be provided by compensation in other forms than money damages, such as the duty to repair damaged property or to demolish an unlawfully built structure (Zervogianni, 2004). For instance, in a case of Fadahunsi Koko and A. I. Ukhure and state board of education, Benin city, the first defendant, a teacher, injured a student, making him lose of is eyes in the process of administering corporal punishment. The teacher was charged for tort liability. The court ruled in favour of the student, and he was awarded N20,000 as damages. The teacher was therefore charged for tort liability.

The burden of compensation for an injury is determined by the type of liability. Liability could be “joint and several, vicarious, proportional, or strict.” Joint and several liabilities are usually apportioned by the degree of fault. Liability is classified as joint and several when more than one tortfeasor is involved, with each potentially liable for the whole amount of the damages if one cannot pay.

### 5. Dimension of Tort Liability



**Figure 1:** Disgrammatic representation of dimensions of torts liability  
 (Adopted from Saylor Academy, 2012)

### 5.1 Tort liability could be viewed in four dimensions which involve

- a) **Fault:** Fault is a type of liability in which the plaintiff must prove that the defendant's conduct was either negligent or intentional; fault-based liability is the opposite of strict liability (Jadhav, 2018). He further stated that fault is a negligent or an intentional failure to act reasonably or according to law or duty; an act or omission giving rise to a criminal indictment or a civil tort lawsuit. Defendant's tort must be proven to have caused the loss suffered. Fault is an essential ingredient of tort law. Similarly, Saylor Academy (2018) noted that just like criminal law, tort law requires a wrongful act by a defendant for the plaintiff to recover. Unlike criminal law, however, there need not be a specific intent. Since tort law focuses on injury to the plaintiff, it is less concerned than criminal law about the reasons for the defendant's actions. An innocent act or a relatively innocent one may still provide the basis for liability. Fault liability is really the rule that victims are strictly liable for their losses unless the injurer is at fault (Jadhav, 2018).
- b) **Type of injury:** Tort liability is highly dependent on the type of injury that occurred. Lumen (N.D) has it that in order to prevail, the plaintiff in the lawsuit, commonly referred to as the injured party, must prove that a breach of duty (i.e., either an action or lack of action) was the legally recognizable cause of the harm. Legal injuries are not limited to physical injuries and may include emotional, economic, or reputational injuries, as well as violations of privacy, property, or constitutional rights. Torts include such varied topics as auto accidents, false imprisonment, defamation, product liability, copyright infringement, and environmental pollution (toxic torts).
- c) **Type of damages:**
- Compensatory damages are actual damages that are attributable to a breach of contract. They compensate the non-breaching party for losses that result from the breach of contract. Since the purpose of tort law is to compensate the victim for harm actually done, damages are usually measured by the extent of the injury. Expressed in money terms, these include replacement of property destroyed, compensation for lost wages, reimbursement for medical expenses, and dollars that are supposed to approximate the pain that is suffered. Damages for these injuries are called compensatory damages. Compensatory damages are further categorized into special damages, which are economic losses such as loss of earnings, property damage, and medical expenses, and general damages, which are noneconomic damages such as pain and suffering and emotional distress (Saylor Academy, 2012)
  - Punitive damages are awarded are those awarded above and beyond compensatory damages. They are intended to punish a party for egregious conduct. Punitive damages seek to deter the party from engaging in egregious conduct in the future. Barrel and Partngton (1985) in Peretomode reported a case of a boy who died after being beaten by a school master secretly with a thick stick and a skipping rope for two and half hours. The Lord Justice said "*If it (Corporal Punishment) be administered for the gratification of passion or rage, or if it be immoderate or excessive in its nature or degree or if it is protracted beyond the child's power of*

*endurance, or with an instrument unsuited to the purpose and calculated to produce danger of life or limb; in such cases, and if evil consequences ensue, the person inflicting it is answerable to the law and if death ensue-it will be manslaughter"*

Excuses is the fourth dimension of tort liability. It referred to reason for committing an apparent wrong. One common rule of exculpation is assumption of risk. A baseball fan who sits along the third base line close to the infield assumes the risk that a line drive foul ball may fly toward him and strike him. He will not be permitted to complain in court that the batter should have been more careful or that management should have either warned him or put up a protective barrier. Another excuse is negligence of the plaintiff. If two drivers are careless and hit each other on the highway, some states will refuse to permit either to recover from the other. Still another excuse is consent: two boxers in the ring consent to being struck with fists (but not to being bitten on the ear).

## **6. Tort Liability in Education**

The concept of tort liability is one that permeates the everyday activities of all school teachers and educational administrators, it doesn't matter whether they are aware of its presence or not. This results to the reason most school owners have taken necessary actions to provide liability insurance for their teachers and other employees. However, Kastle (1975) posited that the *"best insurance against the financially threatening, time-consuming, and reputation damaging aspects of a tort liability suit is a basic knowledge of the principle of tort law as they pertain to educational personnel and common sense application of those principles to daily practice"*. Tort liability in education could take the form of negligence, intentional or based on strict liability as indicated above.

School-related injuries can take many shapes and forms and involve a variety of tort laws.

According to Panish and Boyle (2017) some accidents may stem from negligence, while others from intent to harm or the laws of strict liability. Negligence-related school liabilities may include inadequate supervision, school bus accidents, children injured while crossing school crosswalks, food poisoning from school meals, exposure to hazardous material or chemicals, failure to evacuate children properly, slip and falls on school premises, playground injuries, sport-related injuries, inadequate emergency preparedness, injuries caused by sport equipment, broken bottles, nails on sport field, slippery floors causing head injuries among others. Also, Koko and Osasuwa (2019) cited examples of torts of negligence related to school setting which include broken toilet not well mended leading to the injury or death of a child or a dangerous gas in the laboratory without warning from the teacher causing blindness to a child in the school or not administering first aid or calling for help when a child is injured, flogging a student and causing a permanent injury on the student. Oppositely, intentional torts cases such as assault, battery, slander, libel are often common in the school environment. Although government immunity generally protects schools from most issues of liability. There are, however, exceptions which vary from state to state — that can leave schools vulnerable to liability (Dragan, n.d).

The immediate concern of classroom teachers when the subject of tort liability is mentioned is that of negligence. Most teachers may be of the erroneous opinion that as employees of local school districts or institutions of higher learning, they are not subject to tort liabilities for injuries suffered by their students. Teachers are legally responsible for the safety and welfare of students assigned to their classroom, shop, laboratory, playground or gym class. The teacher's liability for damages resulting from his negligence in or about the school rests upon the same principles and defenses as does the liability of a private person, away from the school (Ripps, n.d). An individual teacher must take precautions to avoid acts or omissions which he can reasonably foresee would be likely to injure his students. Thus, the accepted standard of care imposes a duty on the teacher owed to the student or students. If the breach of the duty causes damage or injury, liability will rest with the teacher. The duties of a teacher are the duty of supervision and the duty of instruction. In the view of Koko and Osasuwa (2019) noted that in general, education personnel owe a duty to all others not to injure them. We breach that duty when we create an unreasonable risk to the safety of another. The law imposes liability upon us when a risk we create causes injury to another. Therefore, teachers need to understand their roles, rights and limitations as well as the legal implications of their actions when dealing with students. School teachers, and in some cases principals, are particularly vulnerable to being sued because of their close contact with students or actions taken by others with students.

However, when a student gets injured either by accidents or by an intentional acts, school administrators and teachers may be legally liable under tort law. If the injury is as a result of negligence courts will consider each of the elements of negligence in the context of education law when determining a school's liability. Such considerations include:

- 1) Did the school have a duty to protect the student?
- 2) What was the —reasonable standard of care to apply under the circumstances, and did the school apply that reasonable standard of care?
- 3) If there was a breach of that reasonable standard, was it a significant factor in causing a students' injury?
- 4) Did the victim contribute to the injury through his or her own negligence? Was there an actual injury that can be substantiated?

To avoid unnecessary liabilities on the school, teachers and education personnel should be aware of the various duties to prevent tort liability within the school.

### **6.1 Duty to protect**

The first element that must be determined in a negligence case is duty to protect, which is part of a teacher's responsibilities. Teachers and administrators have a responsibility to anticipate potential dangers and to take precautions to protect their students from those dangers. School people who deal with younger children are generally expected to have a stricter standard of care than those who teach older youth. Teacher could stand the risk tort liability when giving corporal punishment to students whenever disciplinary action is to be carried out. Teachers should therefore ensure that students are kept far from injury as much as possible. Teachers and educational personnel even outside the



classroom settings have the responsibility to protect every student from harmful activities and injuries of all kinds. Teachers should be aware that specified rules are essentially lay down for students to abide to guarantee their maximum protection. Also, in the case of Ekeogu and Aliri where a teacher indiscriminately flogged pupils all over their bodies and one of the whips landed in the eye of the respondents. The conclusion of the case was that since the plaintiff's action was in tort there was no need to refer to criminal intention. Secondly, while it is conceded that the teacher did not intend to damage the girls' eye, the view that the event was accidental is unacceptable (Emeka, 2007).

### **6.2 Duties of supervision**

The duty of supervision is an affirmative one and the standard of care is "ordinary care" or "ordinary prudence". While schools cannot offer constant supervision there must be evidence that a thought-out plan of supervision existed at the time of the accident (Ripps, N.D). It is not only the instructor who leaves the classroom unattended, or in the hands of a young pupil who risks suit, but also the instructor who is present and improperly oversees or supervises the students. A case study in point is one in which two students were implementing a potentially dangerous experiment in the chemistry laboratory when the instructor was called away. An explosion occurred and in attempting to quash a fire that ensued, one student was injured. The Washington court held there was sufficient evidence to find inadequate supervision therefore the instructor was held liable.

Therefore, it is the duty of the teacher to prevent injury and supervise properly. This may amount to the reason why court usually hold that had the teachers been present they could have foreseen the consequences of the acts that injured the students and their absences were found to be the proximate cause of the accidents.

### **6.3 Duties of instruction**

There are two basic duties related to instruction. The first is that instruction result in the student's mastery of certain processes and basic skills. The second duty is that students should not participate in any activity without adequate and proper instruction from the teacher regarding the performance of the specific function (Ripps, n.d). Thomas (1978) reviewed a case of a physical education teacher was found negligent for her failure to warn students of a possible danger in using a springboard in a tow-ceiling room in Grant u. Lake Oswego School District No. 7, Clackamas County, Oregon, and Toni Berke. Although the defense of contributory negligence was used, the court felt a 12-year old student who had her first experience with the use of the springboard lacked the experience or in-depth instruction to appreciate the dangers.it is of importance that teachers lay down specific instructions to students who will be handling chemical materials and other laboratory substances, sport materials apparatus among others.

#### **6.4 Awareness of the health condition of students in the class**

Emeka (2007) cited a case of Ryan V. the plaintiff, a pupil of 10 years was by the reason of his lack of discipline boxed on the ear by the schoolmistress, as a result of the blow which was found not to be violent the boy became deaf in one ear. In action for damages, it was held that the blow, though moderate, exceeded reasonable and lawful correction. The point in the above is that punishment should be moderate both in degree and nature. If a teacher administers unconventional punishment, he would be liable in damages especially when injury is occasioned. Perhaps, too, the court would take his departure from acceptable mode of administering punishment into account in assessing damages. However, the court considered the child has any exceptional constitution such as illness, handicap or infirmity. The court added that a teacher is expected to know the general health condition of the pupils in his class, he/she is obliged to take into consideration before administering discipline. The case of Ryan V. was therefore discharged since it was discovered that the pupil had a tumor in the ear beforehand and this state of health was not communicated to the teacher.

### **7. Conclusion**

This review concluded that Tortious liability in the school arises out of breach of duty primarily fixed by the law. This duty is towards persons generally and its breach is redressible by an action for unliquidated damages. In order to prevent tort cases in the school, the teachers and educational managers are expected to carefully observe their duty to protect, supervise, instruct and ware of the health status of every child in the classroom.

#### **7.1 Recommendations**

The study recommended from the discussions that:

- 1) A teacher should administer discipline to students based on school rules and law, moderate and not exceeding the bearing of the child so as to avoid intentional tort liability on the teacher.
- 2) School should have a definite standard or set of disciplinary modes to punish a child so as to guide the teachers' administration of discipline to students.
- 3) Teachers and educational mangers are advised to carefully observed laboratory equipment, playgrounds equipment amongst others to ensure they are in good condition for use.
- 4) Educational managers should enforce the definite discharge of protection, instruction and supervision duties in the classroom, laboratory and playgrounds

#### **Conflict of Interest Statement**

The authors declare no conflicts of interests.

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