

**SPOUSES MOISES P. PALISOC AND BRIGIDA P. PALISOC,
PLAINTIFF-APPELLANT, VS. ANTONIO C. BRILLANTES AND
TEODOSIO V. VALENTON, OWNER AND PRESIDENT, RESPECTIVELY,
OF A SCHOOL OF ARTS...**

G.R. No. L-29025. October 04, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An appeal in forma pauperis on pure questions of law from a decision of the Court of First Instance of Manila.

Plaintiffs-appellants as parents of their sixteen-year old son, Dominador Palisoc, and a student in automotive mechanics at the Manila Technical Institute, Quezon Boulevard, Manila, had filed on May 19, 1966, the action below for damages arising from the death on March 10, 1966 of their son at the hands of a fellow student, defendant Virgilio L. Daffon, at the laboratory room of the said Institute.

Defendants, per the trial court's decision, are: "(T)he defendant Antonio C. Brillantes, at the time when the incident which gave rise to this action occurred was a member of the Board of Directors of the institute:[1] the defendant Teodosio Valenton, the president thereof; the defendant Santiago M. Quibulue, instructor of the class to which the deceased belonged; and the defendant Virgilio L. Daffon, a fellow student of the deceased. At the beginning the Manila Technical Ins-titute was a single proprietorship, but lately on August 2, 1962, it was duly incorporated."

The facts that led to the tragic death of plaintiffs' son were thus narrated by the trial court: "(T)he deceased Dominador Palisoc and the defendant Virgilio L. Daffon were classmates, and on the afternoon of March 10, 1966, between two and three o'clock, they, together with another classmate Desiderio Cruz were in the laboratory room located on the ground floor. At that time the classes were in recess. Desiderio Cruz and Vir-gilio L. Daffon were working on a machine while Dominador Palisoc was merely looking on at them. Daffon made a remark to the effect that Palisoc was acting like a foreman. Because of this remark Palisoc slapped slightly Daffon on the face. Daffon, in retaliation, gave Palisoc a strong flat blow on the face, which was followed by other fist blows on the stomach. Palisoc re-treated apparently to avoid the fist blows, but Daffon followed him and both exchanged blows until Palisoc stumbled on an engine block which caused him to fall face downward. Palisoc became pale and fainted. First aid was administered to him but he was not revived, so he was immediately taken to a hospital. He never regained consciousness; finally he died. The fore-going is the substance of the testimony of Desiderio Cruz, the lone witness to the incident."

The trial court expressly gave credence to this version of the incident, as testified to by the lone eyewitness, Desiderio Cruz, a classmate of the protagonists, as that of a disinterested witness who "has no motive or reason to testify one way or another in favor of any party" and rejected the self-exculpatory version of defendant Daffon denying that he had inflicted any fist blows on the deceased.

With the postmortem findings of Dr. Angelo Singian of the Manila Police Department who performed the autopsy re "Cause of death: shock due to traumatic fracture of the ribs (6th and 7th, left),[2] contusion of the pancreas and stomach with intra-gastric hemorrhage and slight subarachnoid hemorrhage on the brain", and his testimony that these internal injuries of the deceased were caused 'probably by strong fist blows', the trial court found defendant Daffon liable for the quasi-delict under Article 2176 of the Civil Code.[3] It held that "(T)he act, therefore, of the accused Daffon in giving the deceased strong fist blows in the stomach which ruptured his internal organs and caused his death falls within the purview of this article of the Code." [4]

The trial court, however, absolved from liability the three other defendants-officials of the Manila Technical Institute, in this wise:

"x x x Their liabilities are based on the provisions of Article 2180 of the New Civil Code which reads:

'Art. 2180. x x x x

'Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students and apprentices, so long as they remain in their custody.'

"In the opinion of the Court, this article of the Code is not applicable to the case at bar, since this contemplates the situation where the control or influence of the teachers and heads of school establishments over the conduct and actions of the pupil supersedes those of the parents.

'CIVIL LAW: DAMAGES. ART. 2180. NEW CIVIL CODE CONSTRUED: - The clause 'so long as they remain in their custody' contained in Article 2180 of the new civil code contemplated a situation where the pupil lives and boards with the teacher, such that the control or influence on the pupil supersedes those of the parents. In those circumstances the control or influence over the conduct and actions of the pupil as well as the responsibilities for their sort would pass from the father and mother to the teachers. (Ciriaco L. Mercado, Petitioner, vs. the Court of Appeals, Manuel Quisumbing, Jr., et al., respondents, G. R. No. L-14862, May 30, 1960).'[5]

"There is no evidence that the accused Daffon lived and boarded with his teacher or the other defendant officials of the school. These defendants can-not therefore be made responsible for the tort of the defendant Daffon."

Judgment was therefore rendered by the trial court as follows:

"1. Sentencing the defendant Virgilio L. Daffon to pay the plaintiffs as heirs of the deceased Dominador Palisoc (a) P6,000.00 for the death of Dominador Palisoc; (b) P3,375.00 for actual and compensatory expenses; (c) P5,000.00 for moral damages; (d) P10,000.00 for loss of earning power, considering that the deceased was only between sixteen and seventeen years, and in good health when he died, and (e) P2,000.00 for attorney's fee, plus the costs of this action.

"2. Absolving the other defendants.

"3. Dismissing the defendants' counter-claim for lack of merit."

Plaintiffs' appeal raises the principal legal question that under the factual findings of the trial court, which are now beyond review, the trial court erred in absolving the defendants-school officials instead of holding them jointly and severally liable as tortfeasors, with defendant Daffon, for the damages awarded them as a result of their son's death. The Court finds the appeal, in the main, to be meritorious.

1. The lower court absolved defendants-school officials on the ground that the provisions of Article 2180, Civil Code, which expressly hold "teachers or heads of establishments of arts and trades ... liable for damages caused by their pupils and students and apprentices, so long as they remain in their custody", are not applicable to the

case at bar, since "there is no evidence that the accused Daffon [who inflicted the fatal fist blows[6] lived and boarded with his teacher or the other defendants-officials of the school. These defendants cannot therefore be made respon-sible for the tort of the defendant Daffon."

The lower court based its legal conclusion expressly on the Court's dictum in *Mercado vs. Court of Appeals*,[7] that "(I)t would seem that the clause 'so long as they remain in their cus-tody,' contemplates a situation where the pupil lives and boards with the teacher, such that the control, direction and influence on the pupil supersedes those of the parents. In these circums-tances the control or influence over the conduct and actions of the pupil would pass from the father and mother to the teacher; and so would the responsibility for the torts of the pupil. Such a sit-uation does not appear in the case at bar: the pupils appear to go to school during school hours and go back to their homes with their parents after school is over." This dictum had been made in rejecting therein petitioner-father's contention that his minor son's school, Lourdes Catholic School at Kanlaon, Quezon City [which was not a party to the case] should be held responsible, rather than him as father, for the moral damages of P2,000.00 adjudged against him for the physical injury inflicted by his son on a classmate. [A cut on the right cheek with a piece of razor which cost only P50.00 by way of medical expenses to treat and cure, since the wound left no scar.] The moral damages award was after all set aside by the Court on the ground that none of the specific cases provided in Article 2279, Civil Code, for awarding moral damages had been established, petitioner's son being only nine years old and not having been shown to have "acted with discernment" in inflicting the injuries on his classmate.

The dictum in *Mercado* was based in turn on another dictum in the earlier case of *Exconde vs. Capuno*,[8] where the only issue involved as expressly stated in the decision, was whether the therein defendant father could be held civilly liable for damages resulting from a death caused in a motor vehicle accident driven unauthorizedly and negligently by his minor son, (which issue was resolved adversely against the father). 'Nevertheless, the dictum in such earlier case that "(I)t is true that under the law above-quoted, 'teachers or directors of arts and trades are liable for any damage caused by their pupils or apprentices while they are under their custody', but this provision only applies to an insti-tution of arts and trades and not to any academic educational institution. " was expressly cited and quoted in *Mercado*.

2. The case at bar was instituted directly against the school officials and squarely raises the issue of liability of teachers and heads of schools under Article 2180, Civil Code, for damages caused by their pupils and students against fellow students on the school premises. Here, the parents of the stu-dent at fault, defendant Daffon, are not involved, since Daffon was already of age at the time of the tragic incident. There is no question, either, that the school involved is a non-academic school,[9] the Manila Technical Institute being admittedly a technical vocational and industrial school.

The Court holds that under the cited codal article, defendants head and teacher of the Manila Technical Institute (defendants Valenton and Quibulue, respectively) are liable jointly and sever-ally for damages to plaintiffs-parents for the death of the latter's minor son at the hands of defendant Daffon at the school's labor-atory room. No liability attaches to defendant Brillantes as a mere member of the school's board of directors. The school itself can-not be held similarly liable, since it has not been properly im-pleaded as party defendant. While plaintiffs sought to so implead it, by impleading improperly defendant Brillantes, its former single proprietor, the lower court found that it had been incorpor-ated since August 2, 1962, and therefore the school itself, as thus incorporated, should have been brought in as party defendant. Plaintiffs failed to do so, notwithstanding that Brillantes and his co-defendants in their reply to plaintiffs' request for admission had expressly manifested and made of record that "defendant Antonio C. Brillantes is not the registered owner/head of the 'Manila Technical Institute' which is now a corporation and is not owned by any individual person." [10]

3. The rationale of such liability of school heads and teachers for the tortious acts of their pupils and students, so long as they remain in their custody, is that they stand, to a certain extent, as to their pupils and students, in loco parentis and are called upon to "exercise reasonable supervision over the conduct of the child." [11] This is expressly provided for in Articles 349, 350 and 352 of the Civil Code. [12] In the law of torts, the governing principle is that the protective custody of the school heads and teachers is mandatorily substituted for that of the parents, and hence, it becomes their obligation as well as that of the school itself to provide proper supervision of the students' activities during the whole time that they are at attendance in the school, including recess time, as well as to take the necessary precautions to protect the students in their custody from dangers and hazards that would reasonably be anticipated, including injuries that some student themselves may inflict will-fully or through negligence on their fellow students.

4. As tersely summarized by Mr. Justice J. B. L. Reyes in his dissenting opinion in Exconde, "the basis of the presumption of negligence of Art. 1903 [now 2180] is some culpa in vigilando that the parents, teachers, etc. are supposed to have incurred in the exercise of their authority" [13] and 'where the parent places the child under the effective authority of the teacher, the latter, and not the parent, should be the one answerable for the torts committed while under his custody, for the very reason that the parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction.' The school itself, likewise, has to respond for the fault or negligence of its school head and teachers under the same cited article. [14]

5. The lower court therefore erred in law in absolving defendants-school officials on the ground that they could be held liable under Article 2180, Civil Code, only if the student who inflicted the fatal fist blows on his classmate and victim "lived and boarded with his teacher or the other defendants officials of the school." As stated above, the phrase used in the cited article -- "so long as (the students) remain in their custody" means the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time. There is nothing in the law that requires that for such liability to attach, the pupil or student who commits the tortious act must live and board in the school, as erroneously held by the lower court, and the dicta in Mercado (as well as in Exconde) on which it relied, must now be deemed to have been set aside by the pre-sent decision.

6. Defendants Valenton and Quibulue as president and teacher-in-charge of the school must therefore be held jointly and severally liable for the quasi-delict of their co-defendant Daffon in the latter's having caused the death of his classmate, the deceased Dominador Palisoc. The unfortunate death resulting from the fight between the protagonists-students could have been avoided, had said defendants but complied with their duty of providing adequate supervision over the activities of the students in the school premises to protect their students from harm, whether at the hands of fellow students or other parties. At any rate, the law holds them liable unless they relieve themselves of such liability, in compliance with the last paragraph of Article 2180, Civil Code, by "(proving) that they observed all the diligence of a good father of a family to prevent damage." In the light of the factual findings of the lower court's decision, said defendants failed to prove such exemption from liability.

7. Plaintiffs-appellees' contention that the award of P6,000.00 as indemnity for the death of their son should be increased to P12,000.00 as set by the Court in People vs. Pantoja, [15] and observed in all death indemnity cases there-after is well taken. The Court, in Pantoja, after noting the decline in the purchasing power of the Philippine peso, had expressed its "considered opinion that the amount of award of compensatory damages for death caused by a crime or quasi-delict should now be P12,000.00." The Court thereby adjusted the minimum amount of "compensatory damages for death caused by a crime or quasi-delict" as per Article 2206, Civil Code, from the old stated minimum of P3,000.00 to P12,000.00, which amount is to be awarded "even though there may have been

mitigating cir-cumstances" pursuant to the express provisions of said codal article.

8. Plaintiffs-appellees' other claims on appeal that the lower court should have awarded exemplary damages and imposed legal interest on the total damages awarded, besides increasing the award of attorney's fees all concern matters that are left by law to the discretion of the trial court and the Court has not been shown any error or abuse in the exercise of such discre-tion on the part of the trial court.[16] Decisive here is the touchstone provision of Article 2231, Civil Code, that 'In quasi--delicts, exemplary damages may be granted if the defendant acted with gross negligence.' No gross negligence on the part of defendants was found by the trial court to warrant the imposi-tion of exemplary damages, as well as of interest and increased attorney's fees, and the Court has not been shown in this appeal any compelling reason to disturb such finding.

ACCORDINGLY, the judgment appealed from is modified so as to provide as follows:

1. Sentencing the defendants Virgilio L. Daffon, Teodosio V. Valenton and Santiago M. Quibulue jointly and severally to pay plaintiffs as heirs of the deceased Dominador Palisoc (a) P12,000.00 for the death of Dominador Palisoc; (b) P3,375.00 for actual and compensatory expenses; (c) P5,000.00 for moral damages; (d) P10,000.00 for loss of earning power and (e) P 2,000.00 for attorney's fee, plus the costs of this action in both instances; 2. absolving def-endant Antonio C. Brillantes from the complaint; and 3. dismissing defendants' counterclaims.

Concepcion, C.J., Villamor ,and Makasiar, J., concur.

Dizon, J., took no part.

Zaldivar, Castro, and Fernando, JJ., concur with J. Makalintal's dissent.

Barredo, J., concurs in this opinion and judgment and the concurring opinion of J. Reyes.

[1] Per allegations of the complaint and as indicated in the title of the case. Brillantes was made def-endant as "registered owner/head under Act No. 3883" of the Manila Technical Institute.

[2] Notes in parentheses supplied from other portions of autopsy report.

[3] 'ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contract-ual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)."

[4] Per the decision also, defendant Daffon had been charged for homicide for the death in Criminal Case No. 82419 and was "acquitted on reasonable doubt."

[5] Reported in 108 Phil. 414.

[6] Note in brackets supplied.

[7] 108 Phil. 414 (May 30, 1960).

[8] 101 Phil. 843 (June 29, 1957), a six-to-three decision.

[9] The writer concurs with the views expressed in the dissenting opinion of Mr. Justice J. B. L. Reyes in Exconde [concurred in by Justices Padilla and A. Reyes] that "(I) can see no sound reason for limit-ing Art. 1903 of the old Civil Code to teachers of arts and trades and not to academic ones. What substan-tial difference is there between them in so far as con-cerns the proper supervision and vigilance over their pupils? It cannot be seriously contended that an aca-demic teacher is exempt from the duty of watching that his pupils do not commit a tort to the detriment of third persons, so long as they are in a position to exercise authority and supervision over the pupil." However, since the school involved at bar is a non-academic school, the question as to the applicability of

the cited codal provision to academic institutions will have to await another case wherein it may properly be raised.

[10] Rollo, page, 47.

[11] Art. 350, Civil Code.

[12] Art. 349, Civil Code enumerates: "(2) Teachers and professors" and "(4) directors of trade establishments, with regard to apprentices" among those who "shall exercise substitute parental authority." Art. 352, Civil Code provides that "The relation between teacher and pupil, professor and student, are fixed by government regulations and those of each school or institution. x x x"

[13] Tolentino expresses a similar opinion: "Teachers: - In order to be within this provision, a teacher must not only be charged with teaching but also vigilance over their students or pupils. They include teachers in educational institutions of all kinds, whether for the intellect, the spirit, or the body; teachers who give instruction in classes or by individuals, even in their own homes; teachers in institutions for deficient or abandoned children, and those in correctional institutions."

[14] "ART. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. x x x

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

"x x x x."

[15] 25 SCRA, 468, (Oct. 11, 1968).

[16] See Arts. 2231, 2211 and 2208, Civil Code.

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DISSENTING OPINION

MAKALINTAL, J.:

I vote to affirm the decision appealed from. I see no reason to depart from the doctrine laid down by this Court in *Mercado v. Court of Appeals*, 108 Phil. 414, where the clause "so long as they remain in their custody" used in Article 2180 of the Civil Code was construed as referring to a "situation where the pupil lives and boards with the teacher, such that the (latter's) control, direction and influence on the pupil supersedes those of the parents." I think it is highly unrealistic and conducive to unjust results, considering the size of the enrollment in many of our educational institutions, academic and non-academic, as well as the temper, attitudes and often destructive activism of the students, to hold their teachers and/or the administrative heads of the schools directly liable for torts committed by them. When even the school authorities find themselves besieged, beleaguered and attacked, and unable to impose the traditional disciplinary measures formerly recognized as available to them, such as suspension or outright expulsion of the offending students, it flies in the face of logic and reality to consider such students, merely from the fact of enrollment and class attendance, as "in the custody" of the teachers or school

heads within the meaning of the statute, and to hold the latter liable unless they can prove that they have exercised "all the diligence of a good father of the family to pre-vent damage." Article 2180, if applied as appellants construe it, would be bad law. It would demand responsibility without commensurate authority, rendering teachers and school heads open to damage suits for causes beyond their power to control. Present conditions being what they are, I believe the restrictive interpretation of the aforesaid provision enunciated in Mercado should be maintained.

With particular reference to the case at bar, one other factor constrains me to dissent. The opinion of the majority states: "Here, the parents of the student at fault, defendant Daffon, are not involved, since Daffon was already of age at the time of the tragic incident." This statement is of course in accordance with Article 2180, which says that "the father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company." Note that for parental responsibility to arise the children must be minors who live in their company. If, as stated also in the opinion of the majority, "the rationale of (the) liability of school heads and teachers for the tortious acts of their pupils and students, so long as they remain in their custody, is that they stand, to a certain extent, as to their pupils and students, in loco parentis and are called upon to exercise reasonable supervision over the conduct of the child," then it stands to reason that (1) the clause "so long as they remain in their custody" as used in reference to teachers and school heads should be equated with the phrase "who live in their company" as used in reference to parents; and (2) that just as parents are not responsible for damages caused by their children who are no longer minors, so should teachers and school heads be exempt from liability for the tortious acts of their students in the same age category. I find no justification, either in the law itself or in justice and equity, to make a substitute parent liable where the real parent would be free from liability.

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CONCURRING OPINION

REYES, J.B.L., J.:

I concur with the opinion of Justice Mr. Teehankee but would like to clarify that the argument of the dissenting opinion to the effect that the responsibility of teachers and school officers under Article 2180 should be limited to pupils who are minors (below the age of majority) is not in accord with the plain text of the law. Article 2180 of the Civil Code of the Philippines is to the following effect:

"The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

"The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

"Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

"The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

"The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable.

"Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

"The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observe all the diligence of a good father of a family to prevent damage."

Examination of the article shows that where the responsibility prescribed therein is limited to illegal acts during minority, the article expressly so provides, as in the case of the parents and of the guardians. It is natural to expect that if the law had intended to similarly restrict the civil responsibility of the other categories of persons enumerated in the article, it would have expressly so stated. The fact that it has not done so indicates an intent that the liability be not restricted to the case of persons under age. Further, it is not without significance that the teachers and heads of scholarly establishments are not grouped with parents and guardians but ranged with owners and managers of enterprises, employers and the state, as to whom no reason is discernible to imply that they should answer only for minors.

Giorgi, in his well-known "Teoria de las Obligaciones en el Derecho Moderno", Volume 5, page 404, No. 272 (Sp. Ed.), after noting the split among commentators on the point at issue, observes with considerable cogency that -

"272. Ante esta variedad de opiniones, ninguna de las cuales se funda en argumentos merecedores de seria ponderacion, no es facil tomar un partido. Esto no obstante, debiendo manifestar nuestra opinion, nos acer-camos a la de los que no estiman necesaria la menor edad del discipulo o del aprendiz; porque si el aforismo ubi voluit dixit, ubi noluit tacuit, no es siempre argumento seguro para interpretar la ley, es infalible cuanto se refiere a una misma disposicion relativa a varios casos. Y tal es el art. 1.153. Lo que haya establecido importa poco si, elevandonos a los principios de razon, puede dudarse de la oportunidad de semejante diferencia; porque la voluntad cierta del legislador prevalece in iure condito a cualquier otra consideracion. Por otra parte, si bien se considera, no puede parecer extraño 6 absurdo el suponer que un discipulo y un aprendiz, aunque mayores de edad, acepten voluntariamente la entera vigi-lancia de su preceptor mientras dura la educacion. Ni parece dudoso desde el momento que los artesanos y los preceptores deben, al par de los padres, responder civilmente de los daños cometidos por sus discipulos, aun cuando estos esten faltos de discernimiento."

Similarly, Planiol-Ripert, in their "Droit Civil Pratique," Volume VI, No. 635 (Spanish version), say that -

"635. Personas de quien responde. -? Si bien la responsabilidad del maestro es ori-ginalmente una extension de la de los padres (1), el art. 1384 no especifica que los alumnos y aprendices han de ser menores de edad, por lo que la presuncion de culpa funcionara aun cuando sean mayores (2); pero, la vigilancia no tendra que ser ejercida en iguales terminos. Aun respecto a los menores variara segun la edad, extremo que tendra que tenerse en cuenta a los fines de apreciar si el maestro ha podido impedir el acto nocivo o no.

I submit, finally, that while in the case of parents and guardians, their authority and supervision over the children and wards end by law upon the latter reaching majority age, the authority and custodial super-vision over pupils exist regardless of the age of the latter. A student over twenty-one, by enrolling and attending a school, places himself under the custodial supervision and disciplinary authority of the school authorities, which is the basis of the latter's correlative responsibility for his torts, committed while under such authority. Of course, the teachers'

control is not as plenary as when the student is a minor; but that circumstance can only affect the degree of the responsibility but cannot negate the existence thereof. It is only a factor to be appreciated in determining whether or not the defendant has exercised due diligence in endeavoring to prevent the injury, as prescribed in the last paragraph of Article 2180.

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