PARENTS' LIABILITY FOR CHILDREN'S TORTS AT SCHOOL: AN INQUIRY

In practically all jurisdictions, certain classes of persons are held responsible for damages arising from the acts or omissions caused by another.[1] This principle is recognized in the Philippines, the obligation to answer for quasi-delicts[2] being demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. Thus, parents with respect to their children, owners and managers of establishments and employers with respect to their employees, the State in relation to their special agents, and teachers or heads of establishments of arts and trades with respect to those under their supervision are made responsible for the quasi-delicts of another.[3] Conflicting opinions have been advanced by different commentators as to the basis of this responsibility. Domat accepted inculpable responsibility, but he developed a theory of representation or agency, that is, persons were held vicariously liable because they were the representatives of the actual doers, the *preposez*.[4] Lessona, Sainctellette and Saleilles admitted

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[1] In common law countries, the term "vicarious responsibility" is generally preferred when reference is made to the responsibility of one person, without any wrongful conduct of his own, for the tort of another. In civil law systems, it is more properly termed "strict liability" because in jurisdictions such as ours we characterize the responsible person as a joint tortfeasor and he is not free from any wrongful conduct.

[2] Article 2176 of the new Civil Code contains the definition of the term "quasi-delict": "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 contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Code." The designation "quasi-delict" is used in our jurisdiction, in preference to the common law term "tort". For the reason behind the choice, see Report of the Code Commission, pp. 161-2.

[3] Article 2180 of the new Civil Code, taken from Article 1903 of the Spanish Civil Code, provides,

"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.

The owners and managers of an establishment or enterprise are likewise responsible for the 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.

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[4] LOIX CIVILEE, lib. 2 at 132, cited in 12 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL, 668 (5th ed. 1951).

the fact of inculpable liability imposed for reasons of "social order and public interest."[5] Interest or benefit has also been offered to explain this principle of strict liability.[6] While the rationale behind our law is that the negligence of the minors, employees, pupils or subordinates is presumed to be the negligence of the parents, guardians, teachers or employers[7], it would seem that it is not representation, nor interest, nor even the necessity of having somebody else answer for the damage, but it is the non-performance of certain duties of precaution and prudence imposed upon the persons who become responsible by reason of the civil bond uniting the actor to them, which forms the foundation of such responsibility.[8]

The Exconde Case

The case of *Exconde v. Capuno*,[9] decided by our Supreme Court earlier this year, is of great interest and far reaching importance in that it seemingly extends the principle of strict liability, insofar as parents are concerned. The facts of the case are simple: Dante Capuno was a member of the Boy Scouts organization and a student of an elementary school situated in a barrio in the city of San Pablo. Upon instruction of the city school's supervisor, he attended a parade in honor of our national hero, Dr. Rizal. From the school, Dante, together with his schoolmates, boarded a jeep and when the same was in motion, he took hold of the wheel and drove it while the driver sat on his left side. The jeep turned turtle and two of the passengers, Amado Ticzon and Isidro Caperina, died as a consequence of injuries suffered. It was established that Dante's father was not with his son at the time of the accident. The mother of the deceased Isidoro brought a civil action for damages against the minor and his father Delfin.[10] The issue before the Court was clear: Under the circumstances, can the defendant Delfin Capuno be held civilly liable, jointly and severally with his minor son, for damages resulting from the death of Isidoro caused by the negligent act of the minor Dante?

A divided Court[11] answered in the affirmative. Although it is

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5 DE LA RESP. ET DE LA GAR 124, cited in 12 MANRESA 667-8.

6 This is evidenced by the maxim "Cujus comoda ejus esta incomoda" or as phrased by Manresa, "Quien obra por propio interes obra a propio riesgo." Bollafio drew a distinction between interest and representation, i.e., the servant acts for the interest but not in representation of the master. For other explanations, see 12 MANRESA 666-672.

7 "The basis of civil liability is not *respondeat superior* but the relationship of *paterfamilias*. This theory bases the liability of the master ultimately on his own negligence and not on that of his servant." Cuison v. Norton and Harrison Co., 55 Phil. 18, 23 (1930); Cangco v. Manila R. R. Co., 38 Phil. 768 (1918); Bahia v. Lintonjua and Leynes, 30 Phil. 362 (1915).

8 12 MANRESA 670-1.

9 G.R. No. L-10134, June 29, 1957.

10 This is a separate civil action, expressly reserved by the plaintiff, arising from the criminal act of which the minor Dante Capuno was convicted of double homicide through reckless imprudence.

11 The majority opinion penned by Justice Felix Bautista Angelo was concurred in by four other justices. Chief Justice Paras concurred with the result. Justice Concepcion reserved his vote, while Justice A. Felix took no part. Justices Padilla and Alex Reyes concurred in Justice J. B. L. Reyes' dissent.

true that "teachers or directors of arts and trades are liable for any damage caused by their pupils or apprentices when they are under their custody"[12], this provision, the majority held, only applies to an institution of arts and trades and not to any academic institution.[13] Therefore, neither the head of the school, nor the city school supervisor, could be held liable for the minor's negligent act inasmuch as he was not then a student or apprentice in an institution of arts and trades. Applying instead paragraph 2 of Article 1903 of the old Civil Code,[14] Justice Felix Bautista Angelo held that the father was jointly and severally liable with his son, the civil liability of the parent being a necessary consequence of parental authority. The presumption of negligence remained unrebutted according to the majority, defendant father failing to prove that he exercised all the diligence of a good father of a family to prevent the damage.

In a well reasoned dissent, Justice J.B.L. Reyes maintained that the father could not with any justification be considered negligent. Seeing no sound reason for limiting paragraph 5 of the aforementioned article to teachers of arts and trades, he was of the opinion that the teachers should be held responsible. Even granting that the case falls under paragraph 2, the dissenting justice would not hold the parent liable, since having proved that he had entrusted the child to the custody of the school authorities, that were competent to exercise vigilance over the minor, the father has rebutted the presumption that the law imposes and the burden of proof shifted to the claimant to show actual negligence on the parent's part.

If the majority opinion in this case be sound, it is certainly imposing on the parent of a child who attends an academic institution a considerable burden of extraordinary diligence and supervision. The question is not merely academic: thousands of parents have minor children attending school throughout the Islands. It is therefore deemed proper to re-examine the precise scope of the responsibility imposed upon the parents for damages caused by their minor children, especially for those acts or omissions committed while the child is at school.

Parental Responsibility a Consequence of Parental Authority

By virtue of Article 2180 of the new Civil Code, the father, and, in case of his death or incapacity, the mother, are liable for any damage caused by the minor children who live with them. The reason for this responsibility is that since the minors may be lacking in foresight, intelligence or discernment and do not have the necessary capacity to take care of themselves, the law imposes upon the parents the duty of exercising special vigilance and care over the acts

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[12] Art. 1903, par. 5 of the Spanish Civil Code, which appears in a somewhat modified form in Article 2180, par. 5 of the new Civil Code.

[13] The Court cited PADILLA, CIVIL LAW, IV 84 (1953 ed.) and also 12 MANRESA 557 (4th ed.).

[14] Inasmuch as the accident occurred on March 31, 1949, prior to the effectivity of the new Civil Code, the provisions of the old Code were controlling.

and omissions of those under their supervision.[15] This responsibility is not merely subsidiary but direct, imposed by the special relations of authority or supervision which exist between the person who is answerable for the damage and the one who has caused it because of his acts or omissions.

The special relation of authority or supervision which exists between the parent and child is known in our jurisdiction as parental authority, leading thereby to the frequent statement that parental responsibility is the consequence of parental authority. According to our present Civil Code, the father and mother jointly exercise parental authority over their legitimate children who are not emancipated.[16] Recognized natural and adopted children under the age of majority are also considered under the parental authority of the parent recognizing or adopting them. Children are bound to obey their parents while subject to their authority and at all time to treat them with respect and reverence.

This parental authority[17] stems from the concept known in Roman law as *patria potestas,* which may be defined as "the mass of rights and obligations which parents have in relation to the person and property of their children, until their majority, age or emancipation, and even after this under certain circumstances."[18] This exclusive authority was originally principally for the benefit of the father, the *paterfamilias.* The rule in Roman law, however, has been tempered by Christianity and enlightened civilization and the modern view, reflected in the Spanish Civil Code and in our own code, is that this authority is an institution for the benefit of the children.[19]

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[15] As explained by Manresa: "En cuanto a los padres y los tutores no puede haber duda alguna acerca del fundamento racional de la obligacion impuesta a los mismos por la ley, pues teniendo bajo su cuidado unos y otros a determinadas personas que carecen de la capacidad necesaria para regirse por si mismos, esto les impone el deber de ejercer sobre ellas una vigilancia especial exquisita, para evitar que por ignorancia por impremeditacion o por falta del necesario descernimiento causen daño a un tercero; y si a pesar de los apremios de la ley dejaren sonan sometidas a su potestad o a su abandonado y de su negligencia, viniendo obligados por ellos a reparar dicho la daño." 12 MANRESA 660.

[16] New Civil Code, Art. 311; Old Civil Code, Art. 154.

[17] Since it is exercised jointly by the father and mother, the term parental authority is preferable to the old term "patria potestas". AQUINO, LAW OF PERSONS AND FAMILY RELATIONS 494 (1955).

[18] ROSSEL Y MENTHA, MANUEL DE DROIT CIVIL SUISSE, quoted in 1 MANRESA 10 (6th ed.).

[19] TOLENTINO, CIVIL CODE ANNOTATED, I., 614 (1953 ed.). The scope and purpose of parental authority was explained by the Philippine Supreme Court thus: "The guardianship which parents exercise over their children by virtue of the parental authority granted them by law has for its purpose their physical development, the cultivation of their intelligence, and the development of their intellectual and sensitive faculties. For such purposes they are entitled to control their children and to keep them in their company in order to properly comply with their parental obligations, but it is also their duty to furnish them with a dwelling or a place where they may live together." Reyes v. Alvarez, 8 Phil. 723 (1907). See arts. 356 to 363 of the new Civil Code re care and reducation of children.

Thus, with respect to their unemancipated children, the father and the mother have "the duty to support them, to have them in their company, educate and instruct them in keeping with their means" and, in order to capably realize such ends, they are given "the power to correct them and to punish them moderately."[20]

Due Diligence as a Defense

When an injury is caused by the negligence of a minor child, there instantly arises a presumption that the father, or, in case of his incapacity or decease, the mother, has been negligent in the supervision and vigilance over the minor child. While the law is strict in this respect, the parents are absolved from liability if they prove that they observed all the diligence of a good father of a family to prevent the damage.[21] The presumption of negligence imputed to the one having control and supervision is therefore *juris tantum* and not *jure et de jure*. Yet, due to the lack of Philippine cases interpreting this provision insofar as parents are concerned, difficulty arises as to the precise proof necessary to overcome the presumption.

A Brief Glance at History

The question of responsibility for the damages of another is assuredly not a new one. Even in biblical times there was a tendency to extend vicariously the incidence of liability; thus it was considered quite natural to make a man answerable for those who were kin to him.[22] To offset this tendency, we notice that the Mosaic legislation expressly established the principle of individual responsibility as a part of the Hebraic Law.[23] In the early law, liability attached directly to the person or thing, animate or inanimate, that was the immediate cause of the injury; the master or owner or father escaping liability only through the surrender of the slave or thing or child to the injured person.[24] At the dawning of Roman law, Lee[25] points out that prior to Justinian if a child under power, i.e., under control of a *paterfamilias*, committed a wrong, for which he would have been liable if *sui juris*, the appropriate action lay against the *dominus* or *paterfamilias*. The primary duty was to surrender the wrongdoer to the wronged one (*noxae deditio*) although the parent was permitted to buy off vengeance against the child by paying the damages.[25-a]

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[20] New Civil Code, Art. 316; Old Civil Code, Art. 155.

[21] The last paragraph of Article 2180, new Civil Code, provides that the liability ceases if it is proved that the persons who might be held liable under it exercised the diligence of a good father of a family, *diligentissimi patris familias*, to prevent the damage.

[22] *See* Comments, 26 PHIL. L. J. 412 (1951).

[23] "The fathers shall not be put to death for the children, nor the children for the fathers but every one shall die for his own sin." Deuteronomy XXIV. 16. (Douay version).

[24] Such was the case in Hebrew Law (Exodus XXI, 28-36) and in Greek law (PLATO, LAWS 378-9 (Bohn's trans.).

[25] LEE, ELEMENTS OF ROMAN LAW 403 (1956).

[25a] So the law is stated in Gaius and Justinian. G.4.75; Inst. 4. 8 pr. In early Germanic custom, the male child was without a standing in the community as an obligor or an obligee. Like the master for the slave, the father answered for and made claims on behalf of the child. *See* Wigmore, *Responsibility for Tortious Acts*, 7 HARV. L. REV. 441 (1894).

This liability for damage caused by others was also provided for in the Digest[26] and through the intervening media of the Partidas[27] and the Spanish Civil Code the general principle was transmitted to us in our new Civil Code.

Solutions in other Jurisdictions

The general question of parental responsibility for the child's damages presents a broad field of divergence. It is well to examine briefly, then, the various solutions reached by other jurisdictions, with a view to the adoption of principles which are worthwhile and reasonable.

A. Various Codes

A general movement towards codification marked the nineteenth century.[28] Our examination will be confined only to the two regarded as the most scientific and well organized, the Code Napoleon and the German Civil Code.

The Code Napoleon, used as a model by so many nations,[29] provides that one is responsible not only for damage caused by his own act but also for that caused by the act of a person for whom one is responsible. As an example of such responsibility, the father, and, after his decease, the mother are responsible for damage caused by their minor children residing with them.[30] It is noteworthy that the Code makes no mention of the emancipated minor and apparently if he resides with his parents the article would apply, although there is considerable disagreement as to this point.[31] Similar to the provision found in our Civil Code is the provision that the liability imposed does not follow if the father and mother can prove that they were not able to prevent the act which has given rise to responsibility.

Generally regarded as one of the most perfectly organized codes of law, the German Civil Code likewise contains a provision for parental responsibility for children's wrongs. An action for compensation may be brought against the person charged with the supervision of the minor, whether as parent, guardian or one under contract to supervise, unless such person shows either that he has fulfilled the duty of supervision or that the damage would have occurred notwithstanding the proper exercise or supervision.[32]

B. Latin American Countries

In Latin American codes, traces can be found of Swiss, German

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[26] Title XII, Bk. IX, law 6, par. 2.

[27] 7th Partida, Title 13, law 4.

[28] 1804, French Civil Code; 1811, Austria; 1838, Holland; 1864, Romania; 1865, Italy; 1889, Spain; 1900, Germany.

[29] The French Civil Code was taken as a model for Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Louisiana, Mexico, Montenegro, Peru, Portugal, Quebec, Salvador, San Domingo, Uruguay, and Venezuela. POUND, OUTLINES OF JURISPRUDENCE 1936 (1943).

[30] Art. 1344, pars. 2 and 4.

[31] *See* footnote 37, in article by Sonte, F., *Liability for Damages Caused by Minors*, 5 ALA. L. REV. 1 (1952).

[32] Art. 832.

and French influence but, in the main, they are patterned after the Spanish law, in the same manner that Philippine civil law is essentially an outgrowth of the Spanish Civil Code.

It is not surprising to find, therefore, that in practically all jurisdictions[33] in Latin America the general rule that every person is responsible for the damage caused not only by his own wrongful acts but those caused by persons under his care is followed. An illustration of this principle is seen in the responsibility for damages on the part of those who exercise the *patria potestas*, where injury is caused by those under their power. Latin American countries also provide that parents are not liable if they can prove that it was impossible for them to avoid such damage.

C. The Common Law

The approach to the problem of parental responsibility in civil law jurisdictions begins by looking at the minor, not as a separate individual who is capable of committing a tort, but as a member of the family group and as such, during his minority, subject to parental authority.[34] Considerable emphasis is placed on parental authority, and when responsibility is imposed, it may be presumed that the parent has failed in his control and is therefore under a duty to make compensation or repairs. On the other hand, the common law has viewed the problem from the viewpoint of the minor's capacity to commit a tort,[34-a] and if the parent has been held liable it is because it has considered the liability of parents as falling within the fields of agency, employment and joint liability.

At common law it is generally agreed that the mere relation of parent and child imposes upon the parent no liability for the torts of the child[35] and this has been the rule in England since 1302.[36] Whether or not the children are living in the house with the parents is generally regarded as immaterial. Nevertheless, there are instances when a plaintiff may have no cause of action against the infant but yet may recover from its parent. But the parent in these cases thereby becomes liable only where he is accountable according to some general principle of tort. Accordingly, a father is not liable merely because his son has thrown a stone through his neighbor's window; but if the father has ordered him to do so, or his negligent supervision of the child is proved to have caused the act complained

[33] Art. 1903 of the Spanish Civil Code is substantially reproduced in Argentina, art. 1147; Brazil, art. 1521; Chile, art. 2320, Colombia, art. 2347; Costa Rica, art. 1047; Dominican Republic, art. 1384; Ecuador, art. 2302; Guatemala, art. 2277; Porto Rico, art. 1803; Venezuela, art. 1219. For a further discussion of Latin American countries and their approach to the problem of parental liability, *See* Stone, *supra*, note 26.

[34] This is the conclusion reached by Stone, *supra*, after making a comparative study of various jurisdictions on liability for damages occasioned by acts of minors.

[34a] For a comprehensive study and evaluation of the law in this respect, see Bohlen, *Liability in Tort of Infants and Insane Persons*, 23 MICH L. REV. 9 (1924), reprinted in BOHLEN, STUDIES IN THE LAW OF TORTS 543-577 (1926).

[35] See Note, 10 L.R.A. (n.s.) 933 and also 7 HARV. L. REV. 384 (1894).

[36] Y.B. 30, Edw. I, 203, Rolls ed.

of, the parent will respond for the damages.[37] Further, if the parent employs the child and the child commits a tort in the course of his employment, the parent may be held responsible just as he would for the tort of any servant.[38]

As in England, most jurisdictions in the United States, apart from statute, cling to the principle that the parent is not generally liable for the torts of his minor child.[39] There are cases where the parents have been held liable on a master-servant theory, where the minor is in position of an agent or a servant,[40] but this fact does not conflict with the prevailing rule. Of course, a parent may be held liable for his own negligence,[41] but considerable difficulty is encountered in determining the nature of this negligence. The cases may, with some justification, be divided into two types: first, where the parent has instructed the child with an instrument, which is either dangerous per se, or which the parent should have reason to know will be used dangerously by the child;[42] secondly, when the parent has failed to exercise reasonable diligence to restrain the child, despite knowledge of the child's vicious or violent conduct.[43] By means of an implied agency concept known as the "family purpose doctrine," parents in some jurisdictions have been held to respond in damages for torts committed by their minor children through use of the family automobile.[44] Encouraged by the practice of insurance, there has been a tendency to emphasize compensation, instead of fault.

Common law authorities would no doubt agree with Prosser's statement that "since the relation of parent and child involved no

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[37] North v. Wood (1914) 1 K.B. 629.

[38] *See* Moon v. Towers (1860) 8 C.B. (n.s.) 611, which illustrates how reluctant are the English courts in holding a parent liable for the torts committed by his minor children.

[39] Cordel v. Savo, 350 Pa. 350, 39 A. 2d 51 (1945); Smith v. Jordan, 211 Mass. 269, 97 NE 761 (1912). *See* 67 C.J.S., Parent and Child, s. 66, 795 (1950); PROSSER, HANDBOOK OF THE LAW OF TORTS 680 (1955); COOLEY, A TREATISE ON THE LAW OF TORTS 62 (1907).

[40] In 39 AM. JUR. 693, Parent and Child., s. 57, it is stated as a general proposition of law that the child may occupy a position of a servant or agent of its parents, and for its acts as such the parent may be liable under the general principles governing the relation of master and servant or principal and agent. This proposition of law has been held applicable so as to impose liability in a few cases in which the injury by the minor child was intentionally inflicted. For a fuller discussion of parental liability for children's torts on the basis of the master-servant doctrine, *See* Note, 155 A.L.R. 81 at 94 (1945).

[41] PROSSER, op. cit., 681. Thus, a four year old child may be liable for battery and the parents may be liable in negligence for failing to warn of their child's dangerous propensities of which they have knowledge. Ellis v. D'Angelo, 116 Cal. App. 2d 310, 253 P. 2d 675 (1953).

[42] *See* Note, 12 A.L.R. 812 (1921); Note, 44 A.L.R. 1509 (1926).

[43] *See* Note, 155 A.L.R. 81 at 97 (1945); 2 TORTS RESTATEMENT, s. 316316 (1934).

[44] Griffin v. Russell, 144 Ga. 275, 87 SE 10 (1915). For further comment, *See* Notes, 28 TULANE L. REV. 503-6 (1954).

fusion of legal identity as in the case of husband and wife,[45] the common law, unlike that of the civil law countries, never has made the parent vicariously liable as such for the conduct of the child."[46] Most jurisdictions in the United States are beginning to realize, however, that an affirmative duty to prevent another from doing harm may arise when certain socially recognized relations exist, concurrent with the recognition that the parent-child situation is one such relationship.[47]

D. Mixed Systems

From the foregoing discussion, it is clear that there is a sharp divergence between the civil law and the common law insofar as the responsibility of parents for the torts of their children is concerned. Certain jurisdictions, falling under the influence of both streams of thought, have adopted statutes making parents liable for the torts of the minor children. Notable among these are Quebec[48] and Louisiana. The latter jurisdiction has followed the French pattern, but inasmuch as there is great similarity between the Louisiana rule and the Philippine rule, it is deemed practicable to treat of the law in that State with greater detail.

The Louisiana Civil Code makes no specific mention in the section on delicts of the liability of the minor for his wrongful acts. Article 2318, however, states that "the father or, after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children residing with them, or placed by them under the care of other persons, reserving to them recourse against these persons. The same responsibility attaches to the tutors of

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[45] At common law the husband was liable for the torts of his wife because he got title to his wife's chattels, but a changing law of property has led to his exemption. PATON, A TEXTBOOK OF JURISPRUDENCE 378 (2nd ed., 1951).

[46] PROSSER, *op. cit.* 681.

[47] Courts were once reluctant to impose such a duty on parents, but now most feel free to do so. See Notes, 2 MICH L. REV. 465-7 (1954). That there had previously been some recognition of the fact that parents exercise a measure of control over the minor, albeit insufficient to make the parent vicariously liable, is evident from this statement of Cooley, "Even the parent is not made chargeable generally for the torts of his child; and if he cannot justly be held responsible for the conduct of one *whom the law submits to his general direction and discipline*, much less could another be held liable, generally, for the acts of a servant over whom his control is comparatively slight, and who is not submitted to his disciplinary authority (italics supplied)." COOLEY, *op. cit.*, 485.

[48] Art. 1504 of the Quebec Civil Code provides: "The father or after his decease, the mother, is responsible for the damage caused by their minor children, but only where they failed to establish that they were unable to prevent the act which had caused the damage." This provision was interpreted in Bergeron v. Dagenais (1913) Rap Jud Quebec, 46 C.S. 302 cited in 155 A.L.R. 81 at 98, where the court stated that the responsibility of a father for damage caused by his infant children exists only in so far as the the children are at the time of the commission of the culpable act under the control and surveillance of the father; and accordingly, where a 14 year old boy undertook for a weekly sum to drive a cow to and from her pasture, the father was not responsible if the boy mistreated the cow, he then being under the control and surveillance of his employer.

minors." It is at once noticeable that the Louisiana Code has prevented the difficulty that is apparent in its French predecessor, namely, the question whether the rule applies to emancipated minors. Under the Louisiana statute, the parent is relieved from liability for damage caused by emancipated minors, unless the minor can be shown to be the agent or servant of the parent, in which case liability might be had under the the law of agency or master servant.

As in the Philippines, the responsibility does not arise as a mere consequence of the parent and child relationship. As stated in one case, "we must bear in mind that the liability of the father for injuries committed by his minor child is not an attribute of paternity, or a necessary consequence of the relation of father and child, but is the consequence of the paternal authority."[49] At any rate, there is no denial of the fact that birth gives rise to paternal control and authority over the child, as pithily expressed in *Coats v. Roberts*[50], "paternal responsibility is the consequence and offspring of the paternal authority."

Like most civil law jurisdictions, the law imputes a fault to the parent, which is presumed to have resulted from lack of sufficient care, watchfulness and discipline on his part, in the exercise of his parental authority. This is the very reason and foundation of the rule.[51] The Supreme Courts of Louisiana, in interpreting Article 2318 of its Civil Code, holds that it is not necessary to show the parent's knowledge or consent to his minor child's course of conduct, in order to hold him liable for the negligence of the minor.[52] Furthermore, while in the French Code, as in the Philippine code, there is a proviso that the liability ceases when the father or mother can prove that they could not have prevented the act which gave rise to the liability, there is no such restriction on the liability of the parents in Louisiana. This is the difference, and quite a substantial one at that, between the codal article in Louisiana and its counterparts in other civil law jurisdictions. The liability imposed upon the parent is certainly much stricter than in other jurisdictions and, necessarily, the law is thus strictly construed.[53]

Having examined the bases of the responsibility in history, reasoning and policy, and in the light of the various solutions attempted in different jurisdictions, it must be recognized that the question of parental responsibility for their child's torts is of considerable importance. Because of the increasing interest of the State in the education of minors, a development that was perhaps unforeseen when our basic principles of tort law were laid down, it is imperative that the problem of parental responsibility be viewed in the light of the

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49 Johnson v. Butterworth, 157 So. 121 at 128 (1937).

50 35 La. Ann. 891.

51 Mullins v. Blaise 37 La. Ann. 92 at 93 (1885).

52 Sutton v. Champagne, 141 La. 469, 75 So. 209 (1917).

53 "By common right no one is responsible in damages for the act of some other person. The rule making parents liable for the acts of their minor children is in derogation of common right. Laws in derogation of common right are strictly construed. The said article 2317 is in derogation of common right." per Chief Justice Provosty, dissenting in Toca v. Rojas, 152 La. 317, 93 So. 108 (1922).

fact that for a considerable portion of the day the child is under other than parental authority. And it could not be otherwise, for the value of education is generally recognized. The school, it must be admitted, is now in considerable measure taking over that which was formerly done by the parent.[54]

Parental Authority and the Education of Minors

No one today will question the obligation of the state to provide and assure education for all citizens. In the Philippines, it is an obligation made more pronounced by its manifestation in the Constitutional provision.[55] The duty of parents to send their children to school and see to it that they are given a proper education has long been recognized and one which Filipino parents are not likely to shirk. Parents are made responsible under the law[56] to educate and instruct their unemancipated children in keeping with their means. Moreover, every child is entitled to at least elementary education.[57] Both the state and the parents therefore have an interest in the education of the young. It is, indeed, one of the declared principles in our Constitution that "the natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government."[58] In order that the State may properly discharge its function, it becomes patently necessary for such an agency as the school, which is the formal institution set up for accomplishing this purpose, to have control over pupils.[59]

Children, while at school, are prone to mischief, and although much of it is done goodnaturedly, there are occasions when serious damage ensues. Who can call back to mind the schoolyard during recess, the boisterousness and sudden darts of boys here and there, the utter confusion when the bell rings, and not imagine situations where harmful injury may arise? The question of the supervision and control over the child while at school thereby gains significance.

It is well recognized in American jurisprudence that the school authorities, especially teachers, stand towards their pupils in *loco parentis*. The concept is well stated in the *Corpus Juris Secundum*:[60]

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54 "Much that was once done by the parents is not taken over by the State. From infancy to the day on which the boy or girl leaves school, the parents are relieved of much of the responsibility which used to rest upon them for the physical welfare and education of their children." CYRIL GABBETT, ARCHBISHOP OF YORK, IN AN AGE OF REVOLUTION 152 (1952).

55 "The government shall establish and maintain complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens." PHIL. CONST., Art. XIV, sec. 5.

56 New Civil Code, Art. 316.

57 New Civil Code, Art. 356. par. 2. With respect to this provision, the Code Commission stated: "the granting of at least an elementary education to every child is an unquestioned need in every democracy." Report of the Code Commission, p. 50.

58 PHIL. CONST., Art. XIV, sec. 3.

59 For a comprehensive discussion of the basis and extent of the power of the school over the conduct of schoolchildren, see Sumpton, M. R., *Control of Pupil Conduct by the School*, 20 LAW AND CONTEMPORARY PROBLEMS 80-90 (Winter, 1955).

60 79 C.J.S. s. 443, 442 (1932).

> "A a general rule a school teacher, to a limited extent at least, stands in *loco parentis* to pupils under his charge and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education subject to such limitations and prohibitions as may be defined by legislative enactment.... If nothing unreasonable is demanded, he has the right to direct how and when each pupil shall attend to his appropriate duties and the manner in which each pupil shall demean himself."

As a necessary consequence of this control of the pupil's conduct by school authorities, it is sometimes said that the parent, by sending the child to school, has delegated his discipline to the teachers, the latter having the same power, duties and authority over pupils that parents ordinarily have over their children.[61] The teacher's authority extends to all offenses which directly and immediately affect the decorum and morale of the school[62] and there is authority for the view that the pupil is under the power of the teacher from the time he leaves the parental roof for school until he reaches it again on his return from school.[63]

Suspended Parental Authority

During school hours, when general education and control of pupils are in the hands of the school board, superintendent, principals and teachers, which control extends to health, proper surrounding, necessary discipline, promotion of morality, and other wholesome influence, parental authority is said to be temporarily suspended.[64] Other jurisdictions have had occasion to consider the effect of a temporary suspension of parental authority on parental liability for damages caused by their minors. The Supreme Court of Louisiana has recognized the fact that "when the law, *ex proprio vigore*, destroys or suspends the paternal authority over the minor, it, at the same time, destroys or suspends the paternal responsibility."[65] Thus, in one case,[66] it was held that the defendant was not liable in damages for an act of negligence on the part of his minor son while serving as a member of *posse comitatus*, under orders of the sheriff, because the son was not then under parental authority. But if for any reason the father's paternal authority and control have been suspended, interrupted, or destroyed, these are matters that must be urged in the defense of the action.[67] In Georgia, the common law rule has been modified by statute providing that "every person shall be liable for the torts committed by his wife, and for torts committed by his child, or servant by his command, or in the prosecution and within the scope of his business, whether the same be by negligence or volun-

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[61] State v. Pendergrass, 19 N.C. 365 (1837); *see* Note, 31 Am. Dec. 416.

[62] Fertich v. Michener, 111 Ind. 472 (1887).

[63] *See* notes, 76 Am. Dec. 156 at 165. *See* also Jones v. Cody, 132 Mich 13, 92 N.W. 495 (1902) failure to go home from school)'; Hutton v. State, 23 Tex. App. 386, 5 S.W. 122, 59 Am. Rep. 776 (1887) fighting); O'Rourke v. Walter, 102 Conn. 130, 128 A. 25, 41 A.L.R. 1308 (1925)' (abusing other pupils).

[64] *See* Richardson v. Braham 249 N.W. 557, 559 (1933).

[65] Coats v. Roberts, *supra*, note 50.

[66] *Ibid*

[67] Toca v. Rojas, *supra*, not 53.

tary." In a case[68] the injury inflicted was apparently unintentional and resulted when defendant's minor son, who was working with plaintiff's minor son in a high school chemical laboratory, threw sulphuric acid out of a vessel which he was cleaning out, which acid struck plaintiff's minor son in the face, seriously injuring the latter. The Georgia court, after holding that the defendant was not liable for such injury under the statute inasmuch as the tortious act was not committed with the consent of the father, or ratified by him, and he derived no benefit therefrom, stated in a dictum that it did not think that if a child who was attending school should commit a far more serious tort, by shooting down one of his comrades and causing his death, the father could be held liable in damages for the life thus wrongfully and feloniously taken.

Clearly, the civil liability of the parents for damages caused by their children who live with them, in those jurisdictions where they are made so liable, stems from their parental authority, the liability being imposed upon the presumption that they have failed in the duty of vigilance and guidance over their children. But when such authority is superseded, as in the case of a minor child attending school, it is anomalous to hold the parent liable. Although it is not easy to state with precision the power which the law grants to teachers and instructors with respect to the correction of their pupils, it is usually considered, as we have seen, as analogous to that which belongs to the parent.[69] Moreover, it is accepted that both the parent and child must submit to the reasonable rules and regulations of the school, and "the parent must so conduct himself as not to destroy the influence and authority of the school management over the children."[70]

According to our Civil Code, parental authority is suspended by the incapacity or absence of the father, or in a proper case of the mother, judicially declared, and also by civil interdiction.[71] The word "absence" is here used in its legal meaning, which is the legal status of a person, who has absented himself from his domicile, his whereabouts and fate being unknown and there being no certainty as to whether he exists or not.[72] Since the underlying reason for the suspension of parental authority in these cases is the inability of the parent to properly guide and supervise the minor child, there are good grounds for the proposition that when the child is at school and under the control and vigilance of the teacher or school authorities, parental authority should be regarded as suspended.[72]

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[68] Stanford v. Smith 173 Ga. 165, 159 S.E. 666 (1931).

[69] Sumpton, *supra*, note 59, attempted a distinction; in brief, the teacher has the duty and responsibility of exercising prudent control and direction over his pupil in all phases of his conduct, while in school, which directly affect his education and his immediate welfare. The control of the parent over the child is broader and includes responsibility not only for the child's immediate welfare but also for his long-range welfare.

[70] Board of Education of Cartersville v. Purse, 101 Ga. 422 (1897); *See* Note, 41 A.L.R. 493.

[71] New Civil Code, Article 331.

[72] 2 MANRESA 127 (6th ed.).

Towards a New Responsibility For Teachers

It is worthy of note that in Germany, the law imposes great responsibility upon the school principal and classroom teacher.[73] Both definitely stand in *loco parentis*. This is emphasized in the following law of the Federal Republic: "Whoever has the responsibility of exercising supervision over a person under the age of eighteen and neglects to exercise it properly makes himself liable for six months imprisonment or a monetary fine if his charge commits an unlawful act which he could have prevented through appropriate supervision."[74]

In the *Exconde* case, reference was made to a provision in the Spanish Code which recognized the responsibility of teachers or directors of arts and trades for damages caused by their pupils and apprentices who remain in their custody.[75] It has already been noted that Justice Bautista Angelo, in his majority opinion, adopted the view by Manresa and other commentators that this provision applies only to an institution of arts and trades and not to any academic institution. It should be pointed out that the precise language in the old Civil Code was not reproduced verbatim in our new Code. So that the article now reads: "... 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 use of the words "heads of establishments" of arts and trades instead of "directors" and the appearance of the word "students" being coupled with "pupils" has led some to believe that the term "teachers" includes not only teachers of vocational courses but also academic courses since the phrase "establishments of arts cannot refer to "teachers."[76] Justice J.B.L. Reyes, a recognized authority in the civil law, in fact maintained such an interpretation in his dissent in the *Exconde* case. In the light of present circumstances, where most of the students are attending academic institutions and few are found in establishments of arts and trades, the Court could very well have interpreted the provision to include teachers of academic institutions. It is better frankly to recognize the changing times. Furthermore, there is no sound reason for the limit-

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[72a] It should be noted that in the Exconde v. Capuno case, *supra*, note 9, the lower court sustained the father's defense and ruled that the only one liable for the damage caused was the minor Dante and not the father because at the time of the accident the former was not under the control, supervision and custody of the latter.

[73] Owen, R. B., *Tort Liability in German School Law*, 20 LAW AND CONTEMPORARY PROBLEMS (Winter, 1955).

[74] I REICHS GESETZ BLATTER 1336, cited in Owen, *supra*.

[75] "Son, por ultimo, responsables los maestros o directores de artes y ofi- respecto a los perjuicios causados por sus alumnos o aprendices, mientras permanezcan bajo su custodia." Article 1903, par. 5, Spanish Civil Code.

[76] *See* JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 60 (1954 mimeo. ed.). However, Jarencio is of the opinion that the provision found in the New Civil Code, i.e., Art. 2180, par. 5, was intended to have the same scope as its model the Spanish Civil Code and therefore applies only to teachers of arts and trades and not to teachers of academic courses.

ed interpretation that the majority adopted, for, as we have seen, there is little difference between the control exercised by teachers and that exercised by parents over those under their surveillance.

Conclusions

Common law doctrines have been considered in this article and reference was made to American jurisprudence dealing with the control and supervision exercised by teachers. True, there are considerable differences between the common law and the civil law in the field of tort. And yet while our laws are mainly derived from the Spanish law, our courts have drawn freely upon American precedents and authorities in the interpretation and application of our law on quasi-delicts. In the well known case of *Gutierrez v. Gutierrez,* where our Supreme Court first touched upon the problem of parental liability for the negligent acts of their minor children, the Court stated: "We are here dealing with the civil law liability of parties for obligations which arise from fault or negligence. At the same time, we believe that, as has been done in other cases, we can take cognizance of the common law rule on the same subject."[77] Principles adopted in other jurisdictions, if applicable in the Philippines, should be engrafted upon our jurisprudence.[78]

With respect to the underlying principle behind the law, commentators have viewed the responsibility as arising from the want of capacity and lack of intelligence of minors so that those who have them under their supervision and control should be held liable.[79] The increase in educational facilities in our country, the progress in communications and other factors have done much to increase the knowledge of minors. Certainly minors do not have the same intelligence or discernment we find in adults, but it cannot be denied that minors today are better educated, more travelled, and have a considerable amount of judgment and acumen.[80] In Costa Rica, with respect to the liability of parents and heads of colleges, it has been limited to damage caused by minors of less than fifteen years of age,[81] a limitation not as yet found in other codes. In the Philippines today there are many instances where the minor child who is at school may even be said to have more education and intelligence

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[77] 56 Phil. 177 at 179 (1931). In this case the Supreme Court by referring to American jurisprudence, held that the head of a family, the owner of an automobile, who maintains it for the general use of his family, is liable for its negligent operation by one of his children, who is a minor, whom he permits to drive it.

[78] Thus, we notice that in Chile and Ecuador, both civil law jurisdictions, the effect of American common law is visible in their provisions to the effect that "parents will always be responsible for the delicts or quasi-delicts committed by their minor children if they knowingly provided them with a bad education or have allowed them to acquire vicious habits." Article 2331, Chilean Civil Code; Art. 2303, Civil Code of Ecuador.

[79] *Supra,* note 16.

[80] For a brief discussion on the point, see Stone, *supra,* note 31, at 32.

[81] Articles 1047-8, Civil Code of Costa Rica.

than their adult parents who are held responsible by the law for their damages caused to others.[82]

It is submitted that the ruling in the *Exconde* case, if construed to mean that parents are responsible for the torts committed by the child while attending an academic institution, would make the liability of the parents uncommonly strict. Time and again it is a common occurrence to find that a schoolchild is instructed by the school authorities to participate in some affair, and the parent feels compelled to acquiesce. It may be that some parents have the belief that school authorities probably know what is best for the child or else they are affected by the notion that the standing of the child at school will be affected by his non-attendance at school functions. Surely, it would be more just and reasonable in such cases, at any rate where the parent has reason to believe that the school authorities are competent, that the responsibility for any damages caused by the child should be borne by the teacher or school authorities. As cogently expressed by Justice J.B.L. Reyes in his dissent:

> "If, as conceded by all commentators, the basis of the presumption of negligence of Article 1903 (now Article 2180) is some *culpa in vigilando* that the parents, teachers, etc., are supposed to have incurred in the exercise of their authority, it would seem clear that 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. And if there is no authority, there can be no responsibility."

As the law of torts is concerned primarily with the adjustment of conflicting interests and, as Prosser[83] states, is perhaps more than any other branch of the law a battleground of social theory, wise judges can do much to equate the responsibility between parents and teachers with respect to those torts committed by the child while at school.[84]

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[82] Minors are liable for their tortious acts in this jurisdiction. Minority is only regarded as a restriction upon juridical personality and does not exempt one from certain obligations. Article 38 new Civil Code; Article 32, old Civil Code. In Magtibay v. Tiangco, 74 Phil. 576 (1944), our Supreme Court, again referring to American jurisprudence, ruled that the liability of an infant in a civil action for his torts is imposed as a mode, not of punishment, but of compensation. If property has been destroyed or other loss occasioned by a wrongful act, it is just that the loss should fall upon the estate of the wrongdoer, rather than on that of a guiltless person, and that without reference to question of moral guilt. Consequently, for every tortious act of violence or other pure tort, the infant tortfeasor is liable in a civil action to the injured person in the same manner and to the same extent as an adult."

[83] PROSSER, *op cit.*, 12.

[84] Pound in *The End of Law as Developed in Legal Rules and Doctrines*, 27 HARV. L. REV. 195 at 233 (1914) notes that "there is a strong and growing tendency where there is no blame on either side to ask in view of the exigencies of social justice who can best bear the loss and hence to shift the loss by creating liability where there has been no fault."

Reasonable and sound grounds exist for imposing greater responsibility upon the school authorities and classroom teacher. The Supreme Court, in the *Exconde* case, need not even have gone so far as to hold the teachers liable. It could have held, in all fairness and equity, that the parent at least had rebutted the presumption of negligence that arose when the child committed the wrongful act. Court decisions have far-reaching effects and it becomes necessary and imperative at all times that the courts consider the effect, in this case a not too salutary one, of a principle adopted when generally applied.

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