PALISOC v. BRILLANTES ET AL. A THREAT TO EDUCATIONAL INSTITUTIONS

PRELIMINARY STATEMENT

The case of *Palisoc v. Brillantes*[1] involves the civil liability of teachers and school heads of arts and trades for damages arising from a crime committed during recess time by their pupils or students. Justice Teehankee, with the concurrence of four other Justices held that the said teachers and school heads are primarily and solidarily liable in damages under Article 2180 of the new Civil Code.

FACTS OF THE CASE

Briefly, the material facts of the *Palisoc* case were as follows:

Deceased Dominador Palisoc and defendant Daffon were classmates in the Manila Technical Institute. On March 10, 1966, during recess time, defendant Daffon, after some exchange of words, wilfully and voluntarily gave Palisoc fist blows on the stomach from which he never regained, until finally he died. Plaintiff-appellants, as parents of deceased Palisoc, filed an action against the offender Daffon (who at the time of the incident was already of age) for damages arising from the death of their son, and included as party defendants, Brillantes, who, at the time the incident happened, was a member of the Board of Directors of the Institute, Valenton as President of the Institute, and Quibulue as instructor of the class to which both the deceased and the offender belonged.

The *trial court* held pupil Daffon liable in damages but absolved from any civil liability the other three defendants, on the ground that article 2180 of the Civil Code upon which their liability is based, is not applicable, since the said article contemplates "a situation where the pupil lives and boards with the teacher", as held in the case of *Mercado v. Court of Appeals*,[2]

On appeal, the Supreme Court absolved also the defendant Board Member Brillantes from the complaint, but found all the other two defendants—the teacher and the president of the Institute—civilly liable for the death of Palisoc, thereby expressly setting aside the *dictum* of the Supreme Court in the *Mercado* case. According to the majority opinion—

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[1] G.R. No. L-29025, October 4, 1971.
[2] 108 Phil. 414 (1960).

"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." This is expressly provided for in Articles 349, 350 and 353 of the Civil Code. 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 precaution to protect the students in their custody from dangers and hazards that would reasonably be anticipated, including injuries that some students themselves may inflict willfully or through negligence on their fellow students. x x x

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 student 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 present decision."

The above decision was not a unanimous one. It was a decision of six against four dissenting, with one abstention. Nonetheless, until revoked, it now becomes part of our legal system.[3] And it is hoped that the sooner it is revoked, the better, because Article 2180 of the Civil Code as construed by the majority would indeed be "bad law", "highly unrealistic and conducive to unjust results," according to the dissenting Justice Makalintal.

OUR DISSENT

Our dissent is based not only on the ground that Article 2180 of the Civil Code as construed by the majority opinion would become *highly unrealistic and unjust,* but also because the said article has been *misapplied* to a case which is not a *quasi-delict* at all.[4]

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[3] CIVIL CODE, Art. 8.

[4] The decision seems to relay also on Arts. 249 and 350 of the CIVIL CODE making a teacher and school head directly liable in damages for their failure to exercise "reasonable supervision" over the conduct of a minor pupil. If so, then this should be a suit to enforce an obligation imposed by law, not an obligation arising from a quasi-delict. "Obligations derived from law are not presumed"; only those expressly determined in the Civil Code are demandable. (Art. 1158, CIVIL CODE).

The act committed by defendant Daffon was the crime of *homicide,* for which he had been prosecuted and acquitted on reasonable doubt. Any civil liability arising from this crime is governed, not by the Civil Code, but by the Penal Code.[5] The provisions of the Revised Penal Code which speak of *civil liability of persons for felonies committed by others* are Arts. 101, 102, 103. Of these articles, the only one which holds a teacher liable for the act of a student is Art. 103, Revised Penal Code, which provides that teachers may be held *subsidiarily* (not primarily) liable for felonies committed by their pupils "in the discharge of their (pupil's) duties." This article is hardly applicable to the case at bar because it cannot be said that killing a fellow student is "in the discharge of their (student's) duties." Besides, the liability is only *subsidiary,* not primary and solidary.

And if the Penal Code is to govern civil liability arising from a crime, then Art. 100 of the Revised Penal Code should also be applied, *i.e.,* that every person NOT criminally liable is NOT civilly liable, with but a few exceptions. The exceptions are those mentioned in Arts. 101, 102, 103, Revised Penal Code, and Arts. 29, 30, 31, 33, Civil Code, none of which may be said to apply to the case at bar.

It is true that when a defendant is acquitted on "reasonable doubt" a civil action for damages for the same act may be instituted[6] but this presupposes a civil suit against the *offender himself* and not a suit to hold liable *other persons,* unless the law expressly so provides.

It is true that a criminal act may give rise to an action in quasi-delict for damages, but this is true only if the act committed is criminal *negligence.* The act of wilfully injuring another with fist blows resulting in death cannot be considered as a *quasi-delict.* It is a *delict.* Consequently, Article 2180 of the Civil Code does not apply.

In order that a civil suit for damages against herein defendants may succeed, it must be based on Article 2180 of the Civil Code . If so, and it is apparent from the decision that it is, then said Article 2180 (which holds *other persons* primarily liable for the acts of a pupil) should be reasonably construed, taking into account the following requisites:

1. That the teacher or school head must be a teacher or head of a school *"of arts and trades,"* not of any school.

2. That the act committed must be a *quasi-delict,* or a negligent act *not punishable by law;*

3. That such liability is enforceable only if said students or pupils *"remain in the custody"* of the teacher or school head.

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[5] CIVIL CODE, Art. 1161.
[6] CIVIL CODE, Art. 29.

While we do not fully subscribe to the meaning given by the *Mercado* case[7] that 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 teachers"*, yet the phrase should not also be unreasonably extended to include any situation far from the seeing distance or presence of the teacher, so as to preclude the teacher or person to be held responsible from *preventing* the commission of the tortious act. In order that a teacher may take advantage of the "defense of a good father of a family" granted to him by the said article, the student who committed or about to commit the tortious act should be so situated as regards the teachers as to require that the student should be in the presence of the teacher or in his/her "custody" at the time the act is committed, or *similar situation* so that the defense granted to him by law may not be useless or unavailing. In other words, in order that Article 2180 of the Civil Code may not be unjust or unrealistic, it must be *construed strictly.*

> "A statute which subjects one man's property to be affected by, charged or forfeited *for the acts of another,* on grounds of public policy, should be strictly construed; it cannot be done by implication." [8]

The very liberal construction given by the majority opinion to the phrase "so long as they remain in their custody" as to make teachers civilly liable for the tortious acts of their pupils *"during the whole time that they were at attendance in the school, including recess time"* or anywhere within the school premises, is so unreasonable that it makes the teacher the "keeper of his brother's conscience." This is neither the letter nor spirit of the law. It is hoped, that in the near future, this decision be set aside, and that the *Mercado* dictum be restored, with slight modification as indicated herein.

It may be argued that this is not the first time that the Supreme Court held that parents may be held civilly liable for the *crimes* committed by their minor children *under Art. 2180 of the Civil Code.*[9] But the fact that an error had once been committed in the past is no reason for perpetuating such error in our jurisprudence. It is not absurd, as stated in the case of *Belen v. Balce,*[10] and quoted in the latest case of *Paleyan v. Bangkili* [11] to hold Art. 2180 of the Civil Code applicable only to *quasi-delict* and not to crimes. But our law is specific that vicarious liability generally arises only in *quasi-delict* and not in crimes, except in a few instances which are not present in the case at bar.

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[7] *Supra,* note 2.

[8] Steamboat Ohio v. Stunt, 10 Ohio St. 582 (1856); SUTHERLAND, STATUTORY CONSTRUCTION, Sec. 372 (1891).

[9] See Exconde v. Capuno, 101 Phil. 843 (1957); Araneta v. Arreglado, 104 Phil. 529 (1958); Mercado v. Court of Appails, 108 Phil. 414 (1960); Fuellas v. Cadano, G.R. No. 14409, October 31, 1961 3 SCRA 361 (1961); Belen v. Balce, 107 Phil. 748 (1960); Paleyan v. Bangkili, G.R. No. 22253, July 30, 1971, 40 SCRA 132 (1971).

[10] *Supra,* note 9.

[11] *Supra,* note 9.

That vicarious liability should generally arise only in *quasi-delicts* is not absurd, because the general principle is that a crime is purely a *personal act,* for which *another person* may not be held responsible, even civilly, except in the few instances already stated. To hold the contrary is to change our law on *quasi-delict* without the benefit of legislation. Under American jurisprudence, a *quasi-delict* includes willful acts of assault and battery. Our law threats a *quasi-delict* as an act of mere negligence or fault not arising from a crime or in the fulfillment of a contract, otherwise known as *"culpa aquiliana". To interpret our law on quasi-delict in the light of Anglo-American law,* notwithstanding *positive* local statutory provisions on the subject, is to create confusion in the Philippine jurisprudence.

The Code Commission, which drafted the new Civil Code, distinguished a "tort" from a *quasi-delict,* when it said:

> "The Commission also thought of the possibility of adopting the word "tort" from Anglo-American law. But "tort" under that system is much broader than the Spanish-Philippine concept of obligations arising from non-contractual obligations. "Tort" in Anglo-American jurisprudence includes not only negligence but also intentional criminal acts, such as assault and battery, false imprisonment and deceit. In the general plan of the Philippine legal system, intentional and malicious acts are governed by the Penal Code x x x" [12]

It is therefore, hoped that unless our law on *quasi-delict* is duly amended by appropriate legislation, Article 2180 of the New Civil Code should be made to cover only cases of *negligence not punishable as crimes.*

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[12] REPORT OF THE CODE COMMISSION, 161-162 (1948).

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> 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, beleagered 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 prevent 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.

Thus wrote Justice Querube C. Makalintal in his dissenting opinion in *Palisoc v. Brillantes et al.*,[1] concurred in by Justices Castro, Fernando, and Zaldivar.[2] Unfortunately, their voices belonged to the minority and were overruled by a not-so-strong majority (the vote was 6-4 with one abstention) which held, among other things, that "the phrase used in the cited article [Article 2180 of the Civil Code]—'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.*"[3]

Although the school involved was a non-academic school, there was a dictum in footnote 9 of the decision to the effect that "the writer concurs with the views expressed in the dissenting opinion of Mr. Justice J.B.L. Reyes in *Exconde*[4] x x x that

> (I) can see no sound reason for limiting Art. 1903 of the Old Civil Code to teachers of arts and trades and not to academic ones. What substantial difference is there between them in so far as concerns the pro-

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1 G.R. No. L-29025, October 4, 1971.

2 See page 1 of the dissenting opinion of Justice Querube Makalintal in Palisoc v. Brillantes, *supra*.

3 *Id.* at page 7 of the decision.

4 Exconde v. Capuno, 101 Phil. 843 (1957).

> per supervision and vigilance over their pupils? It cannot be seriously contended that an academic 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.[5]

While this footnote is a mere dictum which cannot be quoted or stated to be establishing a definite ruling on the liability of academic institutions, it is, nevertheless, an indication that the majority of our Supreme Court is not uninclined to hold, in an appropriate case, academic institutions and their officials liable for a tortious act committed during recess time. Besides, the dictum by itself would encourage and embolden suits against academic institutions and their officials and personnel (including its president, deans of various colleges, and professors) for any tort committed within their premises. If only for this threat posed upon academic institutions and their personnel the decision deserves a close examination with a view to determining its soundness and correctness.

The decision provokes a lot of questions: Would professors be liable outside the classroom? Since they are liable even during recess time, would it mean that they are liable even after class hours? Since a student is a student of several professors would they share collective responsibility for the same act and would the degree of responsibility be the same? If not, to what extent would they be liable even after class hours? Would they be liable in every case so long as the act is shown to have been committed by their student in the university premises? What about the deans? Would it mean that they would be liable for each and every tort committed by a student of their college so long as it is committed within university premises? To what extent would they be liable? What about the president of the university? Would he be liable in every single case for any tortious act committed within the university? Would mere enrollment and attendance in a university be the only criterion for the presumption of negligence to arise under Article 2180? What about during demonstrations and riots or even barricades in the campus where it is difficult to tell whether these were staged by students of a particular university or not? Would the professors, deans, and the university president, as well as other officials of the university, be made answerable for these acts and in these instances when they themselves are prevented from entering the university?

The decision has disturbing effects on the ordinarily safe and serene life of a professor. Were the questions raised above answerable in the affirmative, it would be difficult to find instructors and professors who would be willing to teach. In this delicate age of change, of aggressive, articulate and demonstrating students who are concerned with the varying and unsettled issues of the day, who would want to assume this gargan-

[5] Taken from the dissenting opinion of Mr. Justice J.B.L. Reyes in Exconde v. Capuno *supra*, and quoted in footnote no. 9 page 5 of the decision.

tuan, this enormous, extremely dangerous, if not impossible, task of answering for each and every tortious act committed by, for example, (in the U.P. alone) about 22,000 students in the campus? Our professors and university officials will be impoverished. In effect, they would be insurers of the safety of their students and of any damage to the university arising from any tortious act. Soon and surely, after much heart-searching, our teachers and professors, no matter how idealistic, will come to a painful decision that teaching has become a hazardous profession and that there are (there must be) other less risky ways of earning a living.

Control and supervision over students today are very different and changed concepts from the time of control and supervision required during the time of the Spanish Civil Code from which Article 2180 of the new Civil Code was lifted *verbatim*, except with the addition of one sentence. Today, the number of students in a university has multiplied to almost limitless proportions. This is especially so in private universtiies. Today, also, because of modern conveniences people are more mobile and better informed. It is to the credit of our fascinating inventions that at the flick of a button one can hear and see what is happening all over the world. Today, a new breed of youth has emerged. Students nowadays are more concerned and aware of what is going on. Established norms and concepts are not readily accepted. No amount of discipline a school or university may impose will make them forego their rallies and demonstrations for causes for which they stand. Perhaps, rightly so.

If the time-honored standards and concepts of control and supervision have to be imposed in this our present age of rallies, barricades and demonstrations, they should, at least, be interpreted and applied in such a way that they do not become an impossibility. Otherwise, no matter how wise and desirable these concepts may be, they would just become empty phrases that would cease to have meaning and proper place in our changing society.

Because of some probable unpleasant consequences which may arise from the decision, several points have to be carefully weighed and considered:

1. There is no specific provision under Article 2180 which would make teachers of academic institutions liable. The law speaks of teachers of arts and trades. The provision reads:

> Art. 2180. The obligation imposed by Art. 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
>
> 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 person herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.[6]

2. The Spanish Civil Code contained separate provisions for liabilities of the "maestros o directores de artes y oficios" and the liabilities of the "tutores."

The original provision found in *articulo 1.903 de Codigo Civil Español*[7] reads as follows:

> ARTICULO 1.903
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> La obligacion que impone el articulo anterior es exigible, no solo por los actos u omisiones propios, sino por los de aquellas personas de quienes se debe responder.
>
> El padre, y, por muerte o incapacidad de este, la madre; son responsables de los perjuicios causados por los hijos menores de edad que viven en su compania.
>
> *Los tutores* lo son de los perjuicios causados por los menores o incapacitados que estan bajo su autoridad y habitan en su compania.
>
> Lo son igualmente los duenos o directores de un establecimiento o empresa respecto de los perjuicios causados por sus dependientes en el servicio de los ramos en que los tuvieran empleados, o con ocasion de sus funciones.
>
> El estado es responsable en este concepto cuando obra por mediacion de un agente especial, pero no cuando el daño hubiese sido causado por el funcionario a quien propiamente corresponda la gestion practicada, en cuyo caso sera aplicable lo dispuesto en el articulo anterior.
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> Son, por ultimo, responsables *los maestros o directores de artes y oficios respecto* a los perjuicios causados por sus alumnos o aprendices, mientras permanezcan bajo su custodia.
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> La responsibilidad de que trata este articulo cesara cuando las personas en el mencionadas prueben que emplearon toda la diligencia de un buen padre de familia para prevenir el daño.

It is to be noted that the provision on the liabilities of the "maestros o directores de artes y oficios" (teachers or heads of establishments of arts and trades) is found in the sixth paragraph of the article whereas the provision on the liabilities of the "tutores" (educators) is found in the third paragraph immediately following the paragraph dealing with the liability of the father, or in the case of his death or incapacity, the mother.

This Spanish provision on the liability of the "tutores" was deleted or has no equivalent in the new Civil Code. Instead the following provision appeared:

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[6] Emphasis supplied.

[7] 12 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 659 (5a. ed. 1951); see also VALVERDE, TRATADO AL CODIGO CIVIL ESPAÑOL 791-2 (4a. ed. 1937). (emphasis supplied.

"x x x *Guardians* are liable for damages done by minors or incapacitated persons subject to their authority and living with them." [8]

This provision of the new Civil Code may seem to be a mere translation, but it is believed that the word "tutores" is broader than "guardians" and includes not only guardians of the person or estate of a minor but also teachers or instructors as defined in the Spanish Dictionary:[9]

1. "guardián"—el que guarda o cuida de alguna cosa.
2. "tutor" o "curador"—la persona destinada a cuidar *de la educacion y administracion* de las bienes de otra.[10]

From these definitions, it is obvious that a "tutor" has something to do with education whereas a guardian need not necessarily have anything to do with the education of the child e.g., a guardian of the estate of the child.

In the Report of the Code Commission on "Quasi-Delicts",[11] no mention is made why the word "guardians" is substituted for "tutores". The translation by American Justice F. C. Fisher of the Civil Code of Spain [12] unfortunately substituted the word "guardians" for tutors or educators. This translation was copied in the New Civil Code.[13] This apparent mistranslation seems to be responsible for the unintentional omission or absence of a categorical statement on the liability of academic teachers. If so, what has happened to the liability of academic teachers? Surely the members of the Code Commission could not have intended to exempt academic teachers from liability, otherwise they would have explained why the word "guardians" was substituted for educators or "tutors". Whatever may have been the reason for the deletion or omission by the Code Commission of the liability of academic teachers, it becomes inadvisable and unwise to stretch the paragraph dealing with the liability of teachers of arts and trades to include the liability of academic teachers or educators as these liabilities were contained in separate paragraphs before in article 1.903 of the Spanish Civil Code.[14]

No doubt academic teachers, like other persons who act as substitute parents, cannot escape responsibility and do incur liability by virtue of their special authority or supervision over their students. What would now be

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[8] Emphasis supplied.

[9] CUYAS, DICCIONARIO REVISADO INGLES-ESPANOL Y ESPANOL-INGLES DE APPLETON (4a. ed., 1953).

[10] Emphasis supplied.

[11] See MALOLOS & MARTIN, REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, 161-163 (1951).

[12] FISHER, THE CIVIL CODE OF SPAIN WITH PHILIPPINE NOTES, 653 (4th ed., 1930).

[13] Except that the fifth paragraph, referring to the liability of employers who are not engaged in business or industry, is a new provision.

[14] The liability of academic teachers (*"tutores"*) is found in paragraph 3 of article 1.903 whereas the liability of teachers or directors of arts and trades is found in paragraph 6 of article 1.903 of the Spanish Civil Code.

the legal basis for holding academic teachers liable? It is submitted that despite the deletion or omission, they would still be liable under article 2176 on quasi- delict, and articles 1170, 1171, and 1173 on obligations which provide as follows:

> ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done x x x
>
> ART. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.
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> ART. 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.
>
> ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171, and 2201, paragraph 2, shall apply. x x x

Following the majority opinion, and assuming, of course, that there is no distinction between liability of teachers of schools of arts and trades and academic teachers (as intimated by a dictum of the Court that there is no "sound reason for limiting art. 1.903 of the Old Civil Code to teachers of arts and trades and not to academic ones"), my point of disagreement is not on liability of academic teachers (because liability is present) but the extent of such liability and the manner by which it can be determined. It is submitted that there should be some strict and definite criteria on liability other than "so long as they are at attendance in school, including recess time." The liability should be delineated, for example, such that the instructor or professor would be liable for tortious acts committed in the classroom during class hours, or at the very extreme, immediately thereafter, as during recess time but while still in the classroom or in the immediate vicinity thereof where he can still exercise supervision and control. The deans, also, within the confines of the college or its immediate vicinity where they can still exercise control or supervision. The president of the university within the confines of the university or its immediate vicinity where he can still exercise control or supervision. But not when these officials themselves are prevented by the students from entering the university or from exercising the control and supervision they are supposed to exercise. Otherwise, they would have to exercise extraordinary diligence, and not the ordinary diligence required of them by law. Even with the exercise of extraordinary diligence, it would be doubtful if we can prevent the death, injuries and damages caused by barricades and riots, and more likely, it would likewise be difficult to determine whether these were caused by students of the university, or non-students, or students from other universities. But under the decision it seems that what the Court would want teachers and professors to do is to follow the behavior of students no matter where they are, and what

time, and no matter what the professor is doing. This would indeed be exacting "responsibility without commensurate authority." [15] The presumption *juris tantum* of negligence should apply only within the limits and locations stated.

This seems to have been the intent of the law as can be gleaned from Justice Manresa in his *Comentarios al Codigo Civil Español*:[16]

> "xxx es doctrina corriente que si bien el dueño o principal no esta obligado a pagar el daño que sus dependientes causaren *en los casos en que no le sea imputable dicha responsibilidad, es decir, cuando no haya sido producido con ocasion de sus funciones,* x x x" [17]

This is contrary to what seems to be the impression one gets from a reading of the majority opinion in *Palisoc v. Brillantes* "so long as they [referring to the students] are at attendance in school, including recess time," and the dissenting opinion of retired Justice J.B.L. Reyes partly quoted by the *ponente* and with whose opinion he has expressly agreed on several points as regards Art. 2180 in *Exconde v. Capuno* [18] wherein the justice stated:

> "x x x es doctrina corriente que si bien el dueño ò principal no esta to the custody of school authorities that were competent to exercise vigilance over him, the father has rebutted the presumption of Art. 1903 x x x"

The doctrine would seem to be bitterly harsh and unjust as applied to educational officials including teachers and professors especially if we consider this test in the light and background of demonstrations, protest marches, barricades and riots which seem to form an inevitable part of the spirit and atmosphere of our times. It would impose an unreasonable duty of overseeing each and every student wherever they may be, whether during class hours or during non-class hours, "including recess time." It would seem that under the decision the "recess" period is intended only for the students because the hapless teacher is expected to be around to do his duty to provide proper supervision of the activities of the students even during recess time and to guard them against any possible danger or harm or hazard or injury that may be inflicted by other students, otherwise he shall be presumed negligent. This is an over-demanding and impossible obligation. Certainly this could not have been the intent of the law. No teacher or professor would be at ease under this unreasonable obligation. He does not even have a recess period within which to use his free time in any way he wants.

The decision attached liability to the school officials concerned despite the fact that the student art fault was already of age at the time of

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[15] The phrase is quoted from the dissenting opinion of Justice Makalintal, partly quoted, *supra.*

[16] 12 MANRESA, *Op. cit., supra,* note 7 at 665 (5a. ed., 1951). For other authorities on the same subject, see note 7.

[17] *Ibid.,* emphasis supplied.

[18] *Supra,* note 4.

the incident. With due respect, it is believed that the pupils or apprentices must be minors. Manresa in his *Comentarios* speaks of minors:

> 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 sí 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 discernimiento causen daño a un tercero; y si a pesar de los apremios de la ley dejaren de cumplir ese deber ineludible, dando con ello ocasion a que las personas cometidas a su potestad o a su guarda causaran un daño a otro, deben sufrir las consecuencias de su abandono y de su negligencia, viniendo obligador por ello a reparar dicho daño.[19]

It is believed that the dissenting opinion is the better view as regards the liability of the school or university officials which should not be more than the liability of the parents for whom they substitute. It seems that all that parents have to do in order to avoid their parental responsibility over their children, whether minor or of age, would be to enroll them. Is this really the intent of the law to give parents a convenient excuse to be freed of their parental responsibility?

Another reason why the school authorities should not be more liable than the parents is because the liability under Art. 2180 is "jointly and severally" unlike the liability in Art. 102 of the Revised Penal Code which is subsidiary. Since parental authority terminates by emancipation under Art. 327 of the Civil Code, the school authorities who are mere substitute parents should likewise be relieved of responsibility if the student has reached the age of majority. This is as it should be considering that the basis for their liability is that they stand in place of the parents (in *loco parentis*) for whom they substitute.[20]

Control and supervision over their innumerable students are more difficult for college and university officials to exercise than control and supervision of parents over their limited number of children. And yet the Court would put more burden on college and university officials than parents over their own children.

It is hoped, just as the dissenting opinions of Justice Holmes later gained acceptance and found its way in subsequent decisions as the majority view, that the dissenting opinion in *Palisoc v. Brillantes* will someday prevail and emerge to be the majority view on the matter.

ROSA MARIA J. BAUTISTA *

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[19] 12 MANRESA, *Op. cit., supra,* see note 7; emphasis supplied.

[20] For basis of liability and other discussions of articles 2180, see 5 TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 520, 524 (1959).

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