

THE LAW GOVERNING THE RELATIONSHIP BETWEEN TEACHERS AND STUDENTS

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I. THE TEACHER AND THE STUDENT

A. Legal status of teachers and students

1. The teacher

As Person in Authority

For purposes of the criminal law, a teacher, under the *Revised Penal Code*, is considered a person in authority in the application of the provisions of Articles 148 and 151 penalizing direct assaults against and resistance and disobedience to a person in authority respectively. Thus, Article 152 provides:

Art. 152. Persons in authority and agents of persons in authority—Who shall be deemed as such.—

x x x

In applying the provisions of Articles 148 and 151 of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, shall be deemed persons in authority.¹

The phrase "charged with supervision" as used in the third paragraph of Article 152 refers to persons who, although not teachers, are responsible for the supervision of "public or duly recognized private schools, colleges and universities," such as supervisors and superintendents. With the amendment of Article 152, the evident intention of the lawmakers is to extend the protection of the law to the legion of teachers in our schools who, on several occasions, had been victims of vexations and abuses of their students as well as the parents of the latter.²

Commonwealth Act No. 578 added to Article 152 a third paragraph making teachers and professors "persons in authority." The spirit and purpose of this amendatory law is to give teachers and

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¹ Art. 152, REV. PENAL CODE (as amended by Commonwealth Act No. 578 and Pres. Decree No. 299).

² *El Pueblo de Filipinas v. Manapat*, C.A. G.R. No. L-10853, August 30, 1954, 51 O.G. 849 (February, 1955).

professors protection, dignity and respect while in the performance of their official duties. The legal protection afforded extends against pupils or relatives of pupils and all persons who knowingly attack a teacher while engaged in the performance of his official duties. Respect for a teacher is required of all persons in order to uphold and enhance the dignity of the teaching profession which the law similarly enjoins upon all persons for the sake of the pupils and the profession itself.³

For purposes of enforcing the Dangerous Drugs Act of 1972,⁴ particularly Articles II and III thereof, all teachers are deemed persons in authority and, as such, are vested with the power to apprehend, arrest of any person who shall violate said provisions (Articles II and III) if they are in the school, or within its immediate vicinity, or beyond such immediate vicinity, if they are in attendance at any school or class function in their official capacity as teachers. Any teacher who discovers or finds any violator of said Act in the school or within its immediate vicinity is duty bound to report the violation to the school head or supervisor who shall, in turn, report the matter to the proper authorities.⁵ If the violator be the teacher, the maximum penalties provided by the Act shall be imposed on the latter if found guilty.⁶

As Substitute Parent

Under the *New Civil Code*, a teacher is considered a substitute parent or one who stands in *loco parentis* and as such, shall exercise substitute parental authority over his students.⁷ In view of this status, a teacher or professor is legally obliged to exercise reasonable supervision over the conduct of the student and to cultivate the best potentialities of the heart and mind of the pupil or student.⁸

The failure of the teacher to exercise reasonable supervision over the conduct of a student and which results in damage or injury to a third person or to the student himself, arising from the commission by the student of a quasi-delict, raises a rebuttable presumption of negligence on the part of the teacher who may be held vicariously liable for the acts of the tortfeasor⁹ provided that, either the injured student or the student tortfeasor remains in the teach-

³ *People v. Ceprioso*, C.A. G.R. No. L-13190, January 31, 1956, 52 O.G. 2609 (May, 1956).

⁴ Rep. Act No. 6425 (1972).

⁵ Rep. Act No. 6425, sec. 28.

⁶ Rep. Act No. 6425, sec. 24.

⁷ CIVIL CODE, art. 349, par. 2.

⁸ CIVIL CODE, art. 349, par. 2; 350 and 352.

⁹ CIVIL CODE, art. 2180, par. 7.

er's custody, and the school involved is an establishment of arts and trades.

Vicarious liability under Article 2180 of the *New Civil Code* is direct and not subsidiary, such that a teacher may be sued for damages by the injured party. The responsibility of teachers shall cease upon proof that they observed all the diligence of a good father of a family to prevent damage.

As clearly stated by Justice J.B.L. Reyes in his dissenting opinion in *Exconde v. Capuno*:¹⁰

** the basis of the presumption of negligence in Article 1903 (now Art. 2180) is some *culpa in vigilando* that parents, teachers, etc. are supposed to have incurred in the exercise of their authority... 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 their custody, for the very reason that the parent is not supposed to interfere with the authority and supervision of the teacher while the child is under instruction.

Under Article 2180 of the *New Civil Code*, the school itself, as an employer, likewise, has to respond for the fault or negligence of its school head and teachers.¹² But the school shall have the right to seek reimbursement of what it has to pay as damages from the negligent employee.¹³

However, if damage or injury is a consequence of a criminal act committed by a student on a third person, including another student, Article 103 of the *Revised Penal Code* fixes the teacher's liability for damages as merely subsidiary. Such subsidiary liability presupposes the institution of a criminal action against the student as defendant.

As Civil Service Employee

A public school teacher or a member of the faculty of a state-owned college or university is a civil service employee.¹⁴ The *1973 Constitution* provides that "The Civil Service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or controlled corporation."¹⁵ Under the scheme of classifying civil service positions brought about by *P.D. No. 807*, both public school teachers and faculty members

¹⁰ 101 Phil. 843 (1957).

¹¹ CIVIL CODE, art. 2180, par. 5.

¹² *Palisoc v. Brillantes*, G.R. No. L-29025, October 4, 1971, 41 SCRA 548 (1971).

¹³ CIVIL CODE, art. 2181.

¹⁴ Pres. Decree No. 807 as amended, art. IV, sec. 5.

¹⁵ CONST. (1973), art. XII-B, sec. 1(1).

¹⁶ Pres. Decree No. 807, art. IV, sec. 5.

of state colleges and universities occupy career service positions although they belong to different categories. A public school teacher occupies an open career position, for appointment to which prior qualification in an appropriate examination is required. A faculty member of a state college or university belongs to the group of the closed career positions.¹⁶

Presidential Decree No. 1006 has made teaching a profession.¹⁷ Entrance into the teaching profession is not a matter of right, with the exception of professors or faculty members of state colleges and universities who are not required by law to pass any competitive examination given by the Civil Service Commission. There exists no constitutional right to teach in the public school except on such terms and conditions as the State may prescribe.

2. The student

The legal status of a student cannot be circumscribed or delineated satisfactorily by specific legal designations. This is so because a host of constitutional, statutory, judicial, and administrative prescriptions combine to outline a student's legal status, and that, in modern life, a student plays a variety of roles aside from being a student. The aggregate of the various roles a student assumes in society constitute a student's legal status. As a consequence of such legal status, a student has rights, duties and responsibilities under the law vis-a-vis his parents, his teachers or professors, and society.

This paper, however, pays particular attention to the legal status of a student in the context of his relationship to a teacher or professor. In general, a student's legal status may be considered in conjunction with: 1) his rights and duties as a citizen under the Constitution and the pertinent laws; 2) his rights and duties as a student vis-a-vis the teacher or professor and the school, particularly in the aspects of admission and retention in school, school fees, attendance, instruction, health, safety, discipline and school activities; and 3) his rights and duties as a child vis-a-vis his parents or guardians.

B. Nature of the relationship

1. Substitute parental authority

As earlier stated, teachers and professors stand, in relation to their pupils and students, as substitute parents,¹⁸ and as such are called upon to "exercise reasonable supervision over the conduct of the child."¹⁹

¹⁷ Pres. Decree No. 1006 (1977).

¹⁸ CIVIL CODE, art. 349, par. 2.

¹⁹ CIVIL CODE, art. 350.

As tersely stated in *Palisoc v. Brillantes*:²⁰

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 students themselves may inflict wilfully or through negligence on their fellows.

Where the parent places the child under the teacher's effective authority, 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 status of being a substitute parent entails one important legal consequence insofar as teachers and professors are concerned and that is, the latter are legally bound to exercise reasonable supervision over the conduct of the pupil or student. If a teacher or professor fails to observe and comply with such legal duty, which failure results in damage or injury to another student or to a third person (other than a student) arising from a quasi-delict committed by a student over whose conduct reasonable supervision is required of the teacher or professor concerned, a presumption of negligence arises on the part of the latter and the same shall be held vicariously liable for the tortious act of his student. However, upon proof that the teacher observed all the diligence of a good father of a family to prevent the damage, the presumption of negligence is rebutted and the mentor is absolved from liability.

What then are the conditions which must concur in order that a teacher may be held liable for the acts of his pupils?

Under the law and the interpretative decision in *Palisoc v. Brillantes*, the following conditions must concur:

- 1) the injurious act committed by the student must be a quasi-delict as defined under Article 2176 of the *New Civil Code*;
- 2) the injurious act must have been committed by the student while under the custody of the teacher or professor concerned;
- 3) the school involved must be an institution of arts and trades; and
- 4) the teacher or professor concerned failed to observe all the diligence of a good father of a family to prevent damage.

²⁰ *Op. cit.*, *supra*, note 12.

With respect to the second requisite, Article 2180 of the *New Civil Code* clearly provides that:

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

The phrase "so long as they (the students) remain in their custody" means the protective and supervisory custody that the school and its head and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time, as interpreted by the Supreme Court in *Palisoc v. Brillantes*. Said decision sets aside the previous rulings in the cases of *Exconde v. Capuno*²¹ and *Mercado v. Court of Appeals*²² which held that "for such liability to attach, the pupil or student who commits the tortious act must live and board in the school."

The Supreme Court in the same case did state that since the student-tortfeasor was no longer a minor at the time of the commission of the quasi-delict, his parents were freed from liability on the basis of the second paragraph of Article 2180 of the New Civil Code:

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.

Despite the fact that the parents were freed from liability on the basis of the above-cited article, the Supreme Court, nevertheless, held the president of the establishment concerned and the teacher-in-charge of the class to which the deceased victim (a student) and the student-tortfeasor belonged to be "jointly and severally liable for the quasi-delict of their co-defendant (student-tortfeasor) in the latter's having caused the death of his classmate..., on the ground that "the unfortunate death resulting from the fight between the 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. Said defendants failed to prove such exemption from liability."

²¹ *Op. cit.*, *supra*, note 10.

²² 108 Phil. 414 (1960).

Justice J. B. L. Reyes, in a concurring opinion in the case of Palisoc, stated 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 is not in accord with the plain text of the law." According to him, an examination of the said 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. If the law had intended to similarly restrict the civil responsibility of the other persons enumerated in said article, it would have expressly so stated. The fact that the law has not done so indicates an intent that the liability be not restricted to the case of minors with respect to the other persons enumerated in said article. It is also significant to note that the teachers and heads of schools of arts and trades are not grouped with parents and guardians but ranged as with the owners and managers of enterprises, employers, and the State. Justice J. B. L. Reyes then proceeded to finally submit 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 supervision 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 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 is prescribed in the last paragraph of Article 2180.

Therefore, under Article 2180 of the *New Civil Code* as interpreted by the Supreme Court in the case of Palisoc, a substitute parent would be vicariously liable for the quasi-delicts committed by a pupil or student regardless of the latter's age, where, on the other hand, the real parent would be free from such liability.

In addition to the legal responsibility of exercising reasonable supervision over the conduct of a pupil or student, teachers and professors are called upon to "cultivate the best potentialities of the heart and mind of the pupils or students,"²³ to "see to it that the rights of the child are respected and his duties complied with," and to "particularly, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes,

²³ CIVIL CODE, art. 352.

fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace."²⁴

The Code Commission, while yet working on the *New Civil Code*, deemed it advisable that the duties of substitute parents be clearly and definitely formulated to the end that their authority be predicated upon a full compliance of their duty to rear the child upon the highest principle.²⁵

2. Reciprocal rights and duties of teachers and students

The *New Civil Code*²⁶ provides, in part, that "The relations between teacher and pupil, professor and student, are fixed by government regulations and those of each school or institution."

The *Service Manual of the Bureau of Public Schools of 1960* and the *Code of Ethics for Public School Teachers and Officials*²⁷ are the primary administrative regulations governing the relations between teacher and pupil in the elementary and secondary public schools. The *Manual of Regulations for Private Schools*,²⁸ on the other hand, regulates the operation of private schools in the elementary, secondary and collegiate levels.

a. The teacher

(1) Rights

(a) Academic freedom

The *1973 Constitution* provides that "All institutions of higher learning shall enjoy academic freedom."²⁹

Although the Constitution guarantees academic freedom, the same does not, however, define with specificity the scope of or the extent to which the said freedom may be exercised.

Who may exercise the right of academic freedom?

Would it be legally permissible for a teacher or professor to exercise the right of academic freedom outside the confines of the academe and even on subjects outside the teacher's professional competence?

How does the constitutional right of expression relate to a mentor's right to academic freedom?

²⁴ CIVIL CODE, art. 358.

²⁵ MALOLOS & MARTIN, REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES 50 (1951).

²⁶ CIVIL CODE, art. 352.

²⁷ Circular No. 7, s. 1950, Department of Education.

²⁸ Manual of Regulations for Private Schools (7th ed., 1970).

²⁹ CONST. (1973), art. XV, sec. 8(2).

The answers to the foregoing queries may be gleaned from a perusal and consideration of the Supreme Court's definition of "academic freedom" in the leading cases of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*³⁰ and *Montemayor v. Araneta University Foundation, Inc.*,³¹ section 12 of *Republic Act No. 4670*,³² the other educational goals set by the *1973 Constitution*,³³ and the inherent limitations on the exercise of academic freedom.

While reference is made to institutions of higher learning as recipients of the boon of guaranteed academic freedom, teachers and professors, nevertheless, likewise enjoy academic freedom, though in a different form, as held in *Garcia v. The Faculty Admission Committee*.³⁴ In this particular case, the Supreme Court drew a distinction between the kind of academic freedom enjoyed by an institution of higher learning which refers to its autonomy as a corporate body, and that form of academic freedom enjoyed by the individual teacher or professor. These two forms of academic freedom are the constitutive aspects of the broad concept of academic freedom.

The form of academic freedom enjoyed by the teacher or professor consists of "the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited upon him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments."³⁵

On the other hand, the autonomy of an institution of higher learning consists of four essential freedoms which, in the light of an educational institution's business of providing an atmosphere conducive to speculation, experiment and creation, are to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.³⁶

The ruling in the *Garcia* case to the effect that under Article XV, section 8(2) of the *1973 Constitution*, teachers and professors

³⁰ G.R. No. L-40779, Nov. 28, 1975, 68 SCRA 277 (1975).

³¹ G.R. No. L-44251, May 31, 1977, 77 SCRA 321 (1977).

³² Rep. Act No. 4670 (1966).

³³ CONST. (1973), art XV, sec. 8 (1, 3-8); art. II, secs. 5 and 7.

³⁴ *Op. cit.*, *supra*, note 30.

³⁵ *Ibid.*

³⁶ Justice Frankfurter, concurring opinion, *Sweezy v. New Hampshire*, 354 U.S. 321 (1957).

enjoy academic freedom was reiterated and finally settled as a rule in *Montemayor v. Araneta University Foundation, Inc.*³⁷

Republic Act No. 4670, which took effect upon its approval on June 18, 1966, otherwise known as "The Magna Carta For Public School Teachers" is the statutory guarantee of academic freedom to all public school teachers in all levels of instruction. It provides, thus:

Sec. 12. Academic Freedom.—Teachers shall enjoy academic freedom in the discharge of their professional duties, particularly with regard to teaching and classroom methods.³⁸

Exclusive of mentors employed in the professional staff of state colleges and universities, said law is sufficiently broad to include within the scope of the term "teacher" all persons engaged in classroom teaching in any level of instruction on full time basis, guidance counselors, school librarians, industrial art or vocational instructors, and all other persons performing supervisory and/or administrative functions in all schools, colleges and universities operated by the Government or its political subdivisions.³⁹

Legal and inherent limitations on the extent to which academic freedom can be exercised exist. Academic freedom is necessarily subject to reasonable regulations which the State may prescribe pursuant to its goals set by the Constitution. Aside from the guarantee of academic freedom, the other educational goals set by the 1973 Constitution may be summed up as follows:

- 1) State recognition of the vital role of the youth in nation-building and the promotion of the youth's physical, intellectual, and social well-being.⁴⁰
- 2) State commitment to establish, maintain, and ensure adequate social services in the field of education.⁴¹
- 3) All educational institutions shall be under the supervision of, and subject to regulation by, the State.⁴²
- 4) The state shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development.⁴³

³⁷ *Op. cit.*, *supra*, note 31.

³⁸ Rep. Act No. 4670 (1966).

³⁹ CONST. (1973), art. II, sec. 5.

⁴⁰ *Ibid.*, sec. 7.

⁴¹ *Ibid.*

⁴² CONST. (1973), art. XV, sec. 8(1).

⁴³ *Ibid.*

5) The study of the Constitution shall be part of the curricula.⁴⁴

6) All educational institutions shall aim to inculcate love of country, teach the duties of citizenship, and develop moral character, personal discipline, and scientific, technological, and vocational efficiency.⁴⁵

7) Free public education, at least in the elementary level.⁴⁶

8) Filipinization of educational institutions other than those established by religious orders, mission boards, and charitable organizations.⁴⁷

9) Optional religious instruction.⁴⁸

Aside from the constitutional limitations on the exercise of academic freedom, there are also regulatory measures of an administrative nature which impose restrictions, to a reasonable extent, on the exercise of academic freedom in view of the present national emergency with the security of the State as the primordial concern. A fine example of such regulatory measure is *Department Order No. 32* (series of 1975)⁴⁹ issued by the Department of Education and Culture under the authority of Article XV, section 8(1) of the 1973 Constitution. Said department order recognizes the right of teachers to academic freedom and the need to ordinarily encourage the usual unfettered and unrestrained exercise of the right. Nevertheless, in view of the present national emergency which necessitated the declaration of martial law, it is deemed of vital importance that the exercise of the academic freedom be reasonably tempered, and accordingly, said order directs heads of schools, especially colleges and universities, to enjoin the members of their instructional staff to refrain in the meantime from engaging in the following:

1) Discourse or discussions of subject-matter relating to political or allied issues that tend to create or lead to disorder, chaos or confusion in the students or audience;

2) Talks and/or activities that tend to inflame, incite or lead their students or audience to commit any acts which are violative of existing laws, particularly Proc. No. 1081 and the pertinent orders, decrees, and instructions issued relative thereto;

⁴⁴ *Ibid.*, sec. 8(3).

⁴⁵ *Ibid.*, sec. 8(4).

⁴⁶ *Ibid.*, sec. 8(6).

⁴⁷ *Ibid.*, sec. 8(7).

⁴⁸ *Ibid.*, sec. 8(8).

⁴⁹ Department Order No. 32, s. 1975, Department of Education and Culture.

3) Talks and/or activities that tend to undermine or destroy confidence in and respect for the New Society or to discredit its avowed goals and objectives;

4) Gratuitous criticisms against the authorities and the policies issued on programs instituted by them;

5) Irresponsible dissemination, verbally or otherwise, of findings and conclusions of studies, researches, and surveys with intent to impede, obstruct, or erode confidence in and respect for the New Society or its leaders;

6) Display of red flags, banners, streamers and the like, or display of the Philippine flag with the red side up to indicate opposition or resistance to the existing order; and

7) Extolling the virtues of persons who engage or are engaged in subversion, insurgency, and other illegal ventures, including past and present advocates or exponents of ideologies inimical and/or contrary to the democratic Filipino way of life.

Violation of any of the foregoing guidelines shall be a valid cause for the dismissal of teachers and professors, without prejudice to whatever disciplinary action that may be taken against the school or school officials concerned, if the circumstances of the case so warrant.

In fine, the following conclusions may be drawn from the foregoing considerations:

a) A teacher or professor in any level of instruction may, subject to constitutional and extra-legal limitations and reasonable administrative regulations, exercise the right of academic freedom within and beyond the confines of the academe in connection with his field of specialization.

This is because when a teacher exercises said freedom, he does so in his dual capacity as teacher and as a citizen and therefore owes it to himself and to the nation to have his ideas, acquired through study and research and at so much expense in terms of money and time, to be communicated beyond the sanctuary of the university for acceptance or rejection. The highest interest of the country demands the utmost freedom of debate, especially in times of great emergency where the nation has to make a decision one way or the other.⁵⁰

However, any advocacy by a teacher of a subject or principle outside his field of specialization would be the exercise of his right to freedom of expression.

⁵⁰ DIZON, THE LAW ON SCHOOLS AND STUDENTS 290 (1976).

Academic freedom would be unduly fettered and rendered non-existent if the exercise thereof be delimited within the walls of the classroom. The essence of academic freedom not only consists of the freedom of responsible inquiry and research but also the freedom to communicate by means of publication the product of one's research to the general public. A teacher's right to the exercise of academic freedom should be recognized and respected by the authorities, political or otherwise, when the exercise of said freedom is done in the discharge of the teacher's professional duties, particularly but not solely with regard to teaching and classroom methods. It would be improper for a faculty member to utilize his classroom for the espousal of his personal political philosophy, if this were not his field of specialization.

b) Only persons professionally qualified and accredited to inquire, discover, publish, and teach the truth as they see it within the field of their competence may exercise the right to academic freedom. How one becomes professionally qualified depends on the basic standards of intellectual maturity and high sense of responsibility. The abstract standard of intellectual maturity and high sense of responsibility has been concretized as follows:

As a seeker of truth, as conserver and surveyor of knowledge, the teacher should discuss and communicate his findings, comments, and conclusions of his science only after an objective analysis, scientific inquiry, and an unbiased study of the areas of knowledge within his professional competence. Correlative to this right is his obligation to communicate the truth or lead his students in search of truth and not to disseminate error or falsehood.⁵¹

c) Academic freedom is not the freedom of expression. The latter embraces a wider scope than the former and may be availed of by any citizen who wishes to speak or write on any topic outside one's field of specialization.

(d) The limitations on the right of academic freedom, constitutional, extra-legal, contractual, or administrative, are enforced not as previous restraints but as consequent sanctions in the event of a misuse of said right in the interest of the peace and order and the security of the State. The generally accepted principle that freedom is not a license to do anything that one wants to do and must therefore be reasonably regulated in the interest of public welfare is the justification for the imposition of restrictions on the exercise of academic freedom.

⁵¹ *Ibid.*, p. 302.

(b) Discipline of students

The authority of a teacher to discipline his students finds its source in that unique legal position a teacher occupies as a substitute parent. It is provided in Article 349 of the *New Civil Code* that teachers and professors shall exercise substitute parental authority and in consequence, they shall exercise reasonable supervision over the conduct of the child.

The precept of *in loco parentis* stresses the quasi-familial nature of the relationship. Parents are said to have temporarily forfeited their parental control in favor of the teachers who may, in their discretion, make any regulation for the government of the students which a parent could make for the same purpose. A wide latitude of discretion is surrendered to the teachers in order that they can cultivate the best potentialities of the students. The only limit to its discretion is that it be reasonable and so long as an act is not palpably arbitrary and oppressive, courts are prone to confirm the act as reasonable.⁵²

Under the law as interpreted by the Supreme Court in *Palisoc v. Brillantes*, the fact of being a substitute parent entails a degree of responsibility over the student's conduct greater than that of the real parent. However, the extent of a teacher's authority to discipline is limited to the immediate necessity of maintaining order in the classroom and the observance of school or government regulations relating to conduct and discipline.

In the elementary and secondary public schools, the *Service Manual*⁵³ enjoins teachers to settle questions of discipline as much as possible without appealing to the principal. Teachers are advised to make sure that their attitude is professionally correct in the administration of minor punishments as well as in the handling of the more serious cases.⁵⁴ There are two effective means of correction less severe than suspension or expulsion which a public school teacher may resort to in cases of minor offenses, namely: 1) A teacher may deprive or recommend to the principal that the offending student be deprived, temporarily or permanently, of the privilege of holding positions of honor or trust in the school and/or 2) report the misconduct to the student's parents and ask that the latter consult with the school principal on the case.⁵⁵ With respect to the latter resort, a reasonable consideration for parents requires that they be fully informed by the teacher of any misconduct on the part

⁵² Par. 148, Manual of Regulations for Private Schools.

⁵³ Sec. 565, Service Manual.

⁵⁴ *Ibid.*, sec. 150.

⁵⁵ *Ibid.*, sec. 151.

of their children for which disciplinary action is necessary. This is often more effective than the disciplinary action itself. Personal talks with new offenders by teachers and principals are often important, in line with the Bureau of Public School's avowed recognition of the importance of intelligent personal guidance of pupils by teachers and supervisory officials. In serious cases, the teacher shall recommend the suspension or expulsion of the offending student to the principal, and at the same time, report the misconduct of the student to the parents.

The *Manual of Regulations for Private Schools* provides: "In view of the fact that the school administrators, more particularly the teachers, exercise in relation to students authority in *loco parentis*, they shall have the right, in cases of minor offenses committed in their presence, to impose appropriate disciplinary measures in the interest of good order and discipline."⁵⁶ The right to impose appropriate disciplinary measures does not extend to dropping, suspension, and expulsion of the student, which are considered disciplinary administrative sanctions for serious offenses.

Attendance is a matter of discipline which, to a certain extent, falls within the ambit of a teacher's disciplinary competence such that for repeated unexcused absences for a considerable number of days a student may be censured or reprimanded by his teacher. Attendance is not to be treated as a matter affecting scholarship ratings and therefore, no regular deductions from scholarship grades should ever be made for absences or tardiness.⁵⁷ Section 153 of the *Service Manual* explains why the rule should be so:

If a pupil, because of irregular attendance, is unable to do the required work, the deficiency will be made evident in the tests, quizzes, and classroom recitations, and will in this way produce its effect upon his class grades without the necessity of making mechanical deductions of stipulated amounts for all his unexcused absences.

Said rule avoids subjecting the student to double penalty.

When a student is absent for insufficient reasons, he should be subjected to disciplinary actions just as he would had he committed other breaches of school regulations, but care must be taken to determine whether or not his reasons for his absence are really insufficient.⁵⁸ Such should be the case because, in not a few cases, a student prefers to remain out of the class rather than in class when he does not find the work interesting or when the teacher fails to secure the affection, interest, and cooperation of his students. It is

⁵⁶ Par. 148, *Manual of Regulations for Private Schools*.

⁵⁷ Sec. 153, *Service Manual*.

⁵⁸ Administrative Instructions No. 16, s. 1926; Administrative Instructions No. 1, s. 1930.

the concern of the teacher to make the class activities so worthwhile that the students would not wish to break school attendance.⁵⁹

(2) Duties

A teacher, as substitute parent, is duty bound and legally obliged to exercise reasonable supervision over the conduct of the child,⁶⁰ and shall cultivate the best potentialities of the heart and mind of the pupil or student.⁶¹ Also, every teacher or professor shall see to it that the rights of the student are respected and his duties complied with, and shall particularly, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace.⁶²

All educational institutions shall aim to inculcate love of country, teach the duties of citizenship, and develop moral character, personal discipline, and scientific, technological, and vocational efficiency.⁶³ Accordingly, it is every teacher's responsibility to imbue in the minds of the students the duties and obligations of citizenship provided for in Article V of the 1973 Constitution.

It is the teacher's duty to exert his best efforts in the promotion of the pupils's growth and development, the management of the school, in establishing friendly relations with pupils and parents, and in making the school itself a center of wholesome influences, to all of which the pupil is entitled to benefit from. A teacher should pay heed to and be aware of his pupils' wants and necessities.⁶⁴ It should be the concern of the teachers of all subjects to utilize every opportunity for the development of the pupil's character. But first of all, each teacher must set correct models of character for the pupils all the time.⁶⁵

Every student has the right to expect his teachers to be competent and professionally qualified. Thus, under the *Code of Ethics for Public School Teachers and Officials*, every teacher should help maintain the highest possible standards of the profession by acquiring the prescribed qualifications for his position.⁶⁶ All teachers should strive to broaden their cultural outlook and deepen their professional interest and pursue such studies as will improve their efficiency and enhance the prestige of the profession.⁶⁷

⁵⁹ DIZON, *op. cit.*, *supra*, note 50 at 50.

⁶⁰ CIVIL CODE, art. 349(2).

⁶¹ CIVIL CODE, art. 350.

⁶² CIVIL CODE, art. 358.

⁶³ CONST. (1973), art. XV, sec. 8(4).

⁶⁴ Section 139, Service Manual.

⁶⁵ *Ibid.*, sec. 143.

⁶⁶ Art. IV, sec. 2, Code of Ethics for Public School Teachers and Officials.

⁶⁷ *Ibid.*, sec. 3.

Teachers must be men and women of sound character, high ideals, broad background, and profound understanding of human nature.⁶⁸

Therefore, all teachers should avoid any conduct which may cause discredit to the teaching profession⁶⁹ such as exhibitions of prejudice or discrimination because of differences in the pupils' intellectual ability, social standing or favors received from students or parents,⁷⁰ or the solicitation or acceptance of bribes from students or their parents that would tend to unduly influence the teachers' professional relations with them.⁷¹

The Dangerous Drugs Act of 1972⁷² imposes upon teachers and professors the duty to report any violation of its provisions to the school head or supervisor as a necessary expedient to check narcotics addiction among students. This duty is further reinforced by *Department Memorandum No. 28* (s. 1970) issued by the Department of Education (now Ministry of Education and Culture) by enjoining teachers to "help check drug addiction among their students."

The teacher should recognize that the interest and welfare of the students are his first and foremost concern. And since both teachers and parents are concurrently bound by law to mold the character and mind of the student along desirable lines, it is but necessary for teachers to coordinate with their students' parents with respect to the students' problems in school. Teachers should establish and maintain cordial relations with the parents of their students.⁷³ And in communicating with parents, especially on matters concerning the student's faults and shortcomings, a teacher should exercise utmost candor and tact. It is a teacher's duty to point out the pupil's deficiencies unknown or overlooked by the parents and seek their cooperation for the proper guidance and improvement of the children.⁷⁴ Violation of any of the provisions of the Code of Ethics shall be considered unprofessional and dishonorable conduct for a public school teacher for which the latter may be subject to disciplinary action administratively or under *Presidential Decree No. 807* as amended particularly articles IX and X in which case, the penalty of either removal, transfer, demotion in rank, suspension

⁶⁸ *Ibid.*, Preamble.

⁶⁹ *Ibid.*, sec. 4, art. IV.

⁷⁰ *Ibid.*, art. VIII, sec. 2.

⁷¹ *Ibid.*, art. VIII, sec. 4.

⁷² Rep. Act No. 6425 (1972).

⁷³ Art. VIII, sec. 1, Code of Ethics for Public School Teachers.

⁷⁴ *Ibid.*, sec. 3.

⁷⁵ Lopez, *Academic Freedom in a Developing Society*, 52 PHIL. L.J. 283 (1977).

without pay, fine, or reprimand is imposable, depending on the circumstances of the case.

b. The student

(1) Rights

(a) Academic freedom

Do students have academic freedom?

Under the traditional concept of academic freedom, students do not enjoy said freedom because they lack the requisite competence and professional qualification for the exercise, being mere learners in the educative process. However, as a result of the powerful student movement of the late sixties and early seventies, the scope of academic freedom is sometimes extended to include not only the teacher's right to teach but also the student's right to learn.⁷⁵

The current and prevailing view endorsed by modern educators, as well as the courts, is that, students have and do enjoy academic freedom. The supporting reasons for said view may be summed up as follows:⁷⁶

1) *The academe itself exists for the student.* The student is the center of interest in the whole educational system-the prescribed curriculum being built around him and for him.

2) *The student has the right to demand the best instruction because he supports the school* through the fee which he pays if enrolled in a private educational institution, or through the taxes his parents pay if in a state supported or government-owned educational institution. And the best instruction to which a student is entitled can only be realized where a teacher is free to teach the subject of his specialization according to his best lights, and the student is given the same freedom to inquire, discuss, analyze, and accept the ideas and principles he sincerely believes to be right in an unfettered fashion, free from fear and unreaosnable restrictions.

3) *The nation stands to benefit from the recognition of academic freedom inasmuch as the school or any institution of higher learning is the source of the nation's leaders.* These leaders come from students who have been reared and educated in an atmosphere of freedom and are thus capable of carrying on the tradition of free intellectual inquiry.

(b) Freedom of expression

Academic freedom is not the only constitutional right enjoyed by students under the Constitution. When a student writes, speaks

⁷⁵ DIZON, *op. cit.*, *supra*, note 50 at 50.

or discusses any subject or when he debates or disagrees with his mentors, he does all these in the exercise of his freedom of expression. The Constitution⁷⁷ provides in part: "No law shall be passed abridging the freedom of speech and freedom of the press."

The rationale behind the protection afforded to an individual's right of expression is his inviolable right to give expression to his beliefs through speech or through the press. Implicit in the freedom of expression is the right to dissent, to differ, to hold and express contrary views.

However, freedom of expression, like academic freedom, is not an absolute right, the exercise of which may be subject to the following limitations:

1) *Freedom of expression must be exercised within legal bounds for the promotion of social interests and the protection of other equally important individual rights.*⁷⁸

The Constitution imposes upon an individual in the enjoyment of his rights the correlative duty to exercise them responsibly and with due regard for the rights of others. Thus, the right to dissent and the exercise thereof may be limited by the State's police power with the view of promoting public safety, public morals and national security.

2) *The clear and present danger rule* poses a second limitation on the student's right to exercise the freedom of expression. Under said doctrine, a publication or speech by a student is punishable under the criminal law or by way of damages if the words employed therein are of such a nature as to create a clear and present danger that they will bring about the substantive and extremely serious evils that the State has a right to prevent.

The more stringent *dangerous tendency rule* restricting the exercise of the freedom of expression, as long as the words said or published tend to create the substantive evil sought to be prevented no matter how remote the tendency of the danger to come, has been applied in cases of sedition.

(c) Freedom to petition government for redress of grievances

Another constitutional right enjoyed by the studentry is the freedom to petition the government for redress of their grievances. If freedom of the mind enables the student to think freely, and the freedom of expression as the means by which his ideas may be

⁷⁷ CONST. (1973), art. IV, sec. 9.

⁷⁸ *Ibid.*, art. V, sec. 2.

expressed orally or in writing, then the right to petition stands as the way by which the student may get the results he wants. The right to petition is similarly subject to the same limitations imposed on the freedom of expression.

The *Service Manual of the Bureau of Public Schools* recognizes the right of pupils or students, in all schools under the Bureau of Public Schools, to petition. It provides that:

Subject to disciplinary measures in case of false statements, accusations, or charges, pupils may present petitions or protests to their teachers or to higher school officials. All such protests or complaints should receive careful attention and investigation, and the findings, when serious enough, should be forwarded to the Director of Public Schools.⁷⁹

The opening phrase "Subject to disciplinary measures in case of false statements, accusations, or charges," is consistent with the principle that persons petitioning must assume responsibility for the charges made. The omnipresent standard of good faith in the exercise of one's right must always be observed particularly with respect to the right to petition. Section 144 of the *Service Manual* calls for a fair consideration of all respectful petitions of pupils. The pupil's wants and necessities should receive reasonable consideration, and in the application and interpretation of school regulations, his viewpoints, opportunities, limitations, and training as an individual should be kept in mind.⁸⁰ If ever the petition turns out to be unwarranted, malicious, and the charges therein false, the petitioners are subject to disciplinary action. There is an acknowledgment of the fact that pupils are prompted to submit petitions with or without reason, and that occasionally, said petitions are rejected without proper attention by school authorities prior to a determination of and without exerting an effort to determine whether the petition is justified or not, and to make things worse, the petitioners are punished for their temerity. This attitude is not only unpedagogical and detrimental to proper school discipline but also undemocratic. A mentor is legally obliged to protect his students' rights, or to see to it that said rights are protected. It follows that mentors owe a duty of respect for the rights of their students.

In connection with the right to petition, the pupil or student loses the right to exercise the same if he, in the words of section 152 of the *Service Manual*, enters upon or encourages school strikes, and upon doing so will be regarded as having thereby effected his separation from school. The blanket prohibition of school strikes in section 152 further provides that strikers will not be readmitted

⁷⁹ Sec. 144, *Service Manual*.

⁸⁰ *Ibid.*, sec. 139.

to school nor permitted to participate in any school activities without authority from the Director of Public Schools. Be that as it may, the students right to petition as constitutionally guaranteed remains intact and preserved. Section 152, by making reference to section 144, stresses the importance of giving petitions filed by students careful attention, proper consideration and investigation in acknowledgment of the causal link between strikes or occasional threats thereof and the lack of attention given to petitions presented.

(d) Other rights

Every student has the right to enrol in any private school, college or university upon meeting specific requirements and reasonable regulation.⁸¹ A student's right to learn in school is strengthened by the prohibition against the arbitrary dropping of students. The *Manual of Regulations for Private Schools* provides that no penalty shall be imposed upon any student, except for cause and only after due investigation shall have been conducted.⁸² Thus, any erring student may be sanctioned only for a cause and such penalty must be commensurate with the nature and gravity of the violation committed.⁸³

In all levels of education in the public school system, students enjoy certain statutory rights: (1) *the right to guidance, reasonable supervision, and protection*; (2) *the right to receive the best instruction*; and (3) *the right to live in an atmosphere conducive to one's moral and intellectual development*.⁸⁴

1. *Right to Guidance, Reasonable Supervision, and Protection.*

Teachers and professors are legally bound to reasonably supervise the conduct of their students, failing at which, they may stand liable for damages either on the theory of vicarious liability or personal negligence. Mentors shall see to it that the rights of their students are respected and their duties complied with, and shall, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace. The Bureau of Public Schools recognizes the importance of intelligent guidance of pupils by teachers without which pupils would find much difficulty in solving the problems and difficulties they encounter in school and in making appropriate and intelligent

⁸¹ Par. 107, *Manual of Regulations for Private Schools*.

⁸² *Ibid.*, par. 145.

⁸³ *Ibid.*, par. 146.

⁸⁴ Sec. 140, *Service Manual*.

educational and vocational choice. The public school system provides for a comprehensive program of guidance in the aspects of health, personal, socio-civic, educational, and vocational guidance.

2. Right to Receive the Best Instruction.

Every student has the right to demand the best instruction and to expect and benefit from the best efforts of the teacher in his work in promoting the students' growth and development, in establishing friendly relations with students and parents, and in making the school a center of wholesome influences. Implied in said right is the expectation that the teacher is professionally qualified and competent in his particular field of specialization. The *Code of Ethics* enjoins every teacher to help in maintaining the highest possible standards by acquiring the prescribed qualifications for his position, to broaden their cultural outlook, to deepen their professional interest, and to pursue such studies as will improve their efficiency and enhance the prestige of the profession.

The cultivation of the best potentialities of the heart and mind of the pupil or student is the primary responsibility of the teacher or professor. As a child, the student or pupil in the elementary and secondary levels has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.

Elementary and secondary schools are institutions whose function is to enable every child to develop his capacities to the maximum possible limit. Accordingly, the teacher should attend to the pupils' individual differences, employ appropriate diagnostic and remedial measures, and adapt instruction to the needs and abilities of the children. The gifted child should be given the opportunity and the encouragement to develop his special talents. The emerging practice is the enrichment of the curriculum for the bright pupil. The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care. Hence, the Bureau of Public Schools has devised a program for *personal guidance* which is guidance in personal problems which affect the child's schoolwork and *social-civic guidance* which aims to assist the pupil in adjusting himself to his school environment.

3. *Right to Live in an Atmosphere Conducive to Moral and Intellectual Development.*

Every student or pupil has the right to be reared and educated in an atmosphere of morality and rectitude with the view of enriching and strengthening his character. Of a priori importance is that each teacher or professor set correct models of character for the students or pupils all the time. Teachers and professors must be men and women of high ideals, sound character, broad background, and profound understanding of human nature, and should, therefore, avoid any conduct which may cause discredit to the teaching profession. Nobility of character should be the guiding spirit in their behaviour. Every opportunity possible should be utilized to inculcate in pupils and students the fundamental principles and precepts of morals and ethics as well as good manners and to help mould their character along socially desirable lines. It must be stressed that the inculcation of love of country, teaching the duties of citizenship, and the development of personal discipline and moral character are the objectives which all educational institutions are mandated by the Constitution to achieve.

An atmosphere conducive to the intellectual development of the pupil or student can only be achieved if the latter's right to the exercise of the freedom of expression, academic freedom, and the freedom to petition is respected and not unduly restrained.

(2) Duties

Duty of Respect

Teachers and professors are substitute parents in their relations to students or pupils, in consequence of which, the students owe a duty of respect to their teachers and professors much in the same way as they do to their real parents. The law expressly so provides by mandating that every child should respect persons holding substitute parental authority.⁸⁵ The legal status of teachers and professors should not only be the basis of the respect their students owe them but also, the importance of that respect in the maintenance of order, stability, and the desirable equilibrium in the educative process, the authority of the mentor on the basis of his training experience, knowledge and accomplishments in matters of scholarship which establish his seniority in the academic relationship,⁸⁶ and that omnipresent restrictive doctrine of wide applicability that, in

⁸⁵ CIVIL CODE, art. 357(2).

⁸⁶ DIZON, *op. cit.*, *supra*, note 50 at 50.

the exercise of one's rights, a person should do so in a responsible manner with due regard and respect for the rights of others, and that every individual is entitled to be respected by others.⁸⁷

*The Child and Youth Welfare Code*⁸⁸ imposes upon the child the responsibility of helping in the observance of individual human rights. Implied here is the respect that a pupil or student owes to his mentor. The act of assaulting a teacher or the act of insubordination may be dealt with administratively by expulsion and suspension respectively, both measures considered as administrative penalties separate and independent from any criminal liability an offending student may incur for assault of a person in authority under Article 152 of the *Revised Penal Code*.

Duty of Observing Honesty and Good Faith

The *New Civil Code*⁸⁹ requires that every person must observe honesty and good faith in the exercise of his rights and in the performance of his duties. Thus, petitions or protests filed by students with statements, accusations or charges directed against a particular mentor should not be unwarranted and malicious.

Under the public school system, proper petitions are required to be given a careful consideration and investigation. A petition filed for the sole purpose of molesting a teacher and is confirmed to be patently unfounded will subject the petitioner to disciplinary action.⁹⁰ Cheating in class work is penalized by suspension.⁹¹

Duty of Observing Personal Discipline

Personal discipline, as required of pupils and students in the light of school work, consists of personal qualities of self-direction and self-control. Personal discipline is a manifestation of a good self concept which veers the students towards socially approved patterns of behavior.

The *Service Manual*⁹² speaks of the requirement that pupils or students should be clean, orderly, prompt, reasonably regular in attendance, and industrious.

Duty of Exerting Ones Utmost for One's Education and Training

⁸⁷ CONST. (1973), art. V, sec. 2; CIVIL CODE, art. 19.

⁸⁸ Pres. Decree No. 603 as amended, art. 4(1).

⁸⁹ CIVIL CODE, art. 19.

⁹⁰ Secs. 144 & 583, *Service Manual*.

⁹¹ *Ibid.*, sec. 149.

⁹² *Ibid.*, sec. 145.

The *New Civil Code*⁹³ makes it a duty of every child as a pupil or student to "exert his utmost for his education and training."

The reason for imposing such a duty on students is to encourage them to develop their potentialities for service by undergoing a formal education suited to their abilities in order that they may become an asset to society and to themselves as well. The policy of the State of enjoining all educational institutions to inculcate love of country, teach the duties of citizenship, and develop moral character, personal discipline, and scientific, technological, and vocational efficiency,⁹⁴ and the efforts of mentors in cultivating the best potentialities of the student,⁹⁵ and in imbuing the latter by precept and example with all virtues enumerated in Article 358 of the *New Civil Code* would, in the final analysis, be rendered nugatory if students do not exert their best for their education and training by internalizing what they have been taught. Thus, every child's responsibility under the law is to "strive to lead an upright and virtuous life in accordance with... the teachings of his... mentors."⁹⁶

C. Liabilities attendant to the relationship

An act or omission on the part of a teacher or professor resulting in damage or injury to a pupil or student may give rise to three distinct liabilities under the law, namely: civil liability, criminal liability, and administrative liability. The same would be true in the case whether pupil is the perpetrator of the injurious act or omission and the mentor, the offended party.

A joint consideration of civil and criminal liability is in order. Civil liability may exist without criminal liability or may not arise from the latter's existence. Exempting circumstances and other absolatory causes enumerated in Articles 11 and 12 of the Revised Penal Code may exonerate a person from criminal liability but not from civil liability. Conversely, a person may be convicted of a crime and yet not be civilly liable for it, as when no injury or damage was caused to another. There are crimes the commission of which are not attended with damages like contempt of court, crimes against religious worship, resistance to authorities, violations of ordinances or infractions of traffic rules when nobody gets hurt.

Under the *Revised Penal Code*,⁹⁷ every person criminally liable for a felony is also civilly liable if the felony damages or injures the offended party. The felonious act or omission gives rise to civil liabil-

⁹³ CIVIL CODE, art. 357(3).

⁹⁴ CONST. (1973), art. XV, sec. 8(4).

⁹⁵ CIVIL CODE, art. 352.

⁹⁶ Pres. Decree No. 603 as amended, art. 4(1).

⁹⁷ REV. PENAL CODE, art. 100.

ity not because it is a crime but because it caused damage to another. Evidently, damage or injury to the offended party and to his heirs is the basis of the civil action for damages arising from the criminal act.

In the final analysis, what gives rise to the civil liability is actually the obligation of everyone to repair or make whole the damage caused to another by reason of his own act or omission, whether done intentionally or negligently and whether or not punishable by law. And it is for this reason why civil liability for damages arising from the same felonious act or omission may be separately considered from the crime itself and may be proved by a mere preponderance of evidence, subject to the exception that where the civil and criminal actions are instituted or deemed instituted together in the main criminal case and are tried jointly, the offended party having expressly waived the civil action or failed to make a reservation to institute a separate civil action for damages, in which case proof beyond reasonable doubt is necessarily required for both actions. To quote Judge Sangco:⁹⁸

Underlying the legal principle that a person who is criminally liable is also civilly liable is the traditional theory that when a person commits a crime he offends two entities, namely: 1) the society in which he lives or the political entity called the State whose law he had violated and whose sovereignty must be upheld and vindicated if it must survive, or if its tranquility is to be maintained; and 2) the individual member of that same society whose person, rights, honor, chastity, or property were actually or directly injured or damaged by the same punishable act or omission.

It must be noted that a civil action for damages is maintainable, regardless of the nature of the injurious act or omission (negligent, wilful, or intentional but non-delictual) or where no criminal liability is incurred or no positive law has been violated, under Articles 19, 20 and 21 of the *New Civil Code*.

1. The teacher

- a. Civil liabilities

A teacher is individually liable for his tortious acts. He is liable for injuries and damages caused by his negligent acts while performing his teaching duties to the same extent as he would be liable if he caused injuries in non-teaching activities. It is only for damages or injuries caused by the negligence of a teacher that subject him to civil liability for damages. The responsibility assumed is to act only as a reasonably prudent person would under the same or similar circumstances.⁹⁹

⁹⁸ SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES 223 (1976).

⁹⁹ HAMILTON, LEGAL RIGHTS AND LIABILITIES OF TEACHERS 28, 30 (1956).

It is the duty of a teacher to exercise reasonable supervision and care to prevent injuries to pupils. Hazardous activities should be forbidden. If students are made to perform tasks connected with school work from which dangers may arise, with more reasons should reasonable supervision be exercised over them. In playground activities, the teacher as playground supervisor has the legal responsibility of seeing that pupils under their supervision do not engage in dangerous and hazardous exercises. It is from injury which might result from unusually dangerous activities that the supervising teacher is legally obliged to exercise reasonable care to protect his students under his charge.¹⁰⁰

The greatest danger of liability of teachers arise in laboratories, work shops, and in athletic and physical education activities.

Teachers, in relation to their students, are civilly liable for their acts or omissions, wilful or negligent, resulting in damage or injury to the latter. An action for damages is maintainable either under Articles 19, 20 and 21 or under the theory of quasi-delict embodied in Articles 2176, 2177 and 2180 of the *New Civil Code*.

Articles 19, 20 and 21 have the combined effect of making any conceivable misconduct or wrong-doing not violative of any positive law actionable.¹⁰¹ It must be noted that while Article 2176 on quasi-delicts is limited to negligent acts or omissions, Article 20 covers both negligent and intentional ones. Intentional acts or omissions not constituting crimes which would not be redressible under articles 2176 or 2180 may be compensated under Article 20 or 21.¹⁰² For instance, a mentor who inflicts corporal punishment on a student causing bodily injury on the latter may not be liable for the crime of slight physical injuries under Article 266 of the *Revised Penal Code* on the pretext that there was no criminal intent and that the mentor so acted only for the purpose of correcting the offending student. Nevertheless, under Article 20, the injured pupil may sue the mentor for damages. The act of inflicting corporal punishment on an offending student is an act contrary to law, the same not being countenanced by Article 352 of the *New Civil Code*.¹⁰³ If a teacher

¹⁰⁰ *Ibid.*, pp. 30-31.

¹⁰¹ "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

"Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

"Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

¹⁰² SANGCO, *op. cit.*, *supra*, note 98 at 310-314.

¹⁰³ Aguila, EDUCATIONAL LEGISLATION 361 (1956).

fails a student for no other cause except that the latter happens to be a friend of the teacher's enemy and it can be shown by evidence that the teacher had made unwarranted mechanical deductions from the student's grades for reasons other than scholastic delinquency, said teacher may be sued for damages under Article 21.

On the other hand, a teacher may be liable for injuries caused to students through his quasi-delict whether or not the latter were then under his or the school's supervisory custody,¹⁰⁴ or for the quasi-delicts committed by students under his protective and supervisory custody for as long as the latter are at attendance in school inclusive of recess time.¹⁰⁵ To hold a mentor liable under Article 2176, it would be sufficient to prove that the injury caused was brought by the failure of the mentor to exercise reasonable care and that the injury was the proximate cause of such failure,¹⁰⁶ that is, the injury was the natural and probable consequence of the act or omission complained of.¹⁰⁷ The basis of the liability of teachers and professors for the quasi-delicts of their pupils or students is some *culpa in vigilando* or their failure to exercise that degree of care, custody and supervision over their students in order to prevent damage to third persons. The commission or omission constitutive of a quasi-delict by a student raises a presumption of negligence on the part of a teacher. Liability treated either under Article 2176 or 2180 is direct and not subsidiary.

A teacher may be civilly liable not only for acts falling under Articles 19, 20, 21, 2176 and 2180, but also for non-delictual acts in Articles 26, 32, and 33, the commission of which will give rise to damage suits.

As earlier stated, a teacher is a public employee who may stand liable for damages for direct or indirect obstruction, defeat, violation or impairment of his students' constitutional freedom of speech and of the press in a separate and distinct civil action by express provision of Article 32, and this is so whether or not the act or omission complained of is criminal. Under Article 32, it is not necessary that the defendant should have acted with malice or bad faith. The main purpose of the article is the effective protection of individual rights.¹⁰⁸

Teachers, particularly in the elementary and secondary levels of education, have always entertained the mistaken notion that they could send pupils on errands. There is no legal authority for the teacher to use pupils as messengers. Circular No. 30, series of 1962 of

¹⁰⁴ CIVIL CODE, art. 2176.

¹⁰⁵ Palisoc v. Brillantes, *op. cit.*, *supra*, note 12.

¹⁰⁶ CIVIL CODE, art. 2179.

¹⁰⁷ *Ibid.*, art. 2202.

the Bureau of Public Schools directs that no student should be sent outside of the schools premises to run errands for a teacher or for any school official. If a student is sent on a personal errand for a teacher or even on an official errand, the teacher may be held individually liable for injury or damage caused on the student, or vicariously liable for injury or damage caused by the latter to third persons. Inasmuch as the act of sending a student is illegal, the same being in violation of the above-cited administrative prohibition, not only is a presumption of negligence *in vigilando* raised against the teacher but more so, there would be no need to determine whether in the act of sending a student on errand the teacher did act reasonably so as to render the latter civilly and administratively liable.

b. Criminal liabilities

Teachers and professors stand liable to criminal prosecution for their acts or omissions constitutive of a felony. A teacher's criminal liability attendant to his relationship to students may arise from the commission of acts in the capacity of a public officer, or in abuse of ones moral ascendancy and influence over the student, or incident to teaching.

(1) As a public officer or employee

As a public officer, a teacher may be held liable for the crime of direct bribery under Article 210 of the *Revised Penal Code* by performing or agreeing to perform "an act constituting a crime, in connection with the performance of his official duties in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another or by agreeing to execute or by executing an act not constituting a crime but nevertheless unjust, or by agreeing to refrain or by refraining from doing something which it is his official duty to do, both in consideration of an offer, promise, gift or present received personally or through another. The act, whether criminal in nature or not, agreed to be performed, or the omission to do an act must be connected with or related to the exercise of the teacher's official duty. An example of a possible act of a teacher punishable as direct bribery is the promotion of a flunking pupil caught cheating without reporting the pupil's misconduct to the school authorities in consideration of a reward either from the pupil or from the latter's parents, received personally or through an intermediary. If the act committed by the teacher in consideration of the bribe received be a crime other than bribery, then the teacher becomes criminally liable not only for direct bribery but also for the latter act.

Where the teacher accepts and receives gifts offered to him by a student or the latter's parents by reason of the former's office on any occasion including the throwing of parties or entertainments in honor of the teacher or the latter's immediate relatives, the crime of indirect bribery is committed by the teacher and the briber, regardless of whether the same is for past favors or the giver hopes to receive a better treatment from the mentor concerned in the latter's discharge of his official functions.¹⁰⁹ The language of the law on indirect bribery is so sweeping and uncompromising that gift-giving by students on the occasion of their teacher's birthday is strictly prohibited because of the possibility that the act of gift-giving was, in part, by reason of the mentor's office. For bribery, direct or indirect, the mentor may, in addition to his criminal liability, be administratively liable under the *Civil Service Decree*.¹¹⁰

(2) In abuse of one's moral ascendancy and influence over the student

Teachers who are entrusted with the education and guidance of youth will be punished as principals, though they be accomplices only, in the commission of the crimes of rape, acts of lasciviousness with consent of the offended party, corruption of minors, white slave trade, forcible abduction, and consented abduction. In these cases, the cooperation of the mentor as accomplice is done by abuse of authority or of the confidential relationship he has with the offended party as his student.

The teacher need not be the teacher of the offended party. It is sufficient if the accused is a teacher in the same school as the offended student because of his moral influence as member of the faculty over the latter. This doctrine was enunciated in *De Los Santos v. People*¹¹¹ where the accused courted a girl whom he was teaching as a fourth grade student. The girl was eventually promoted to the next grade but the accused persisted in courting the girl and was ultimately able to have sexual intercourse with her. The Supreme Court convicted the erring teacher of qualified seduction.

"Teacher", in the context of Article 337 penalizing qualified seduction, has been interpreted to cover teachers giving academic instruction or those who teach in trade schools. As ruled in *People v. Cariaso*¹¹² a teacher in charge of field work of the school who has carnal knowledge with a pupil working in said field may be guilty

¹⁰⁹ Art. 211, REV. PENAL CODE, as supplemented by Pres. Decree No. 46 (1972).

¹¹⁰ Secs. 36-37, Pres. Decree No. 807, as amended.

¹¹¹ 69 Phil. 321 (1940).

¹¹² 50 Phil. 884 (1924).

of qualified seduction by reason of his being her teacher in such field work.

The above doctrines will apply only if the offended party is one who has had no sexual intercourse with any man up to the time of the alleged seduction. Otherwise, an essential element of the crime of qualified seduction would be missing and if proved by the accused teacher, will result in his acquittal.¹¹³

Aside from the penalty of imprisonment for the commission of any of the above crimes, the teacher shall suffer the penalty of temporary special disqualification in its maximum period to perpetual special disqualification,¹¹⁴ in consequence of which the offending mentor shall be deprived of his office, profession, or calling, and disqualified for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of the disqualification.¹¹⁵ Special disqualification, not imprisonment, is the principal penalty.¹¹⁶

(3) Incident to teaching

The teacher may also commit certain crimes while he is teaching such as slight physical injuries and maltreatment,¹¹⁷ slander,¹¹⁸ slander by deed,¹¹⁹ and the unauthorized sale of tickets and/or collection of contributions from students.¹²⁰

The *New Civil Code* and the implementing administrative regulations for both public and private schools¹²¹ forbid the use of corporal punishment by teachers on erring students. There is no doubt that teachers who resort to this forbidden disciplinary measure may simultaneously, be civilly and administratively charged.

May said mentor be criminally liable for slight physical injuries and maltreatment under Article 266 of the *Revised Penal Code*?

The query calls for a qualified answer which may be deduced from the Supreme Court's ruling in *Bagajo v. Marave and People*,¹²² as follows:

¹¹³ U.S. v. Suan, 27 Phil. 12 (1914).

¹¹⁴ REV. PENAL CODE, art. 346.

¹¹⁵ *Ibid.*, art. 31.

¹¹⁶ 3 AQUINO, THE REV. PENAL CODE 1782 (1976).

¹¹⁷ REV. PENAL CODE, art. 266.

¹¹⁸ *Ibid.*, art. 358.

¹¹⁹ *Ibid.*, art. 359.

¹²⁰ Republic Act 5546 (amending Rep. Act No. 4206).

¹²¹ Art. 352, CIVIL CODE; sec. IX, par. 145, Manual of Regulations for Private Schools; secs. 150 & 996, Service Manual.

¹²² G.R. No. L-33345, promulgated Nov. 20, 1978, 86 SCRA 389 (1978).

1) in determining whether or not the teacher has, by her act of inflicting corporal punishment on a pupil, incurred any criminal liability under Article 266 of the Revised Penal Code, the peculiar circumstances of each and every case must be carefully considered. No rule of thumb exists applicable to all cases involving corporal punishment.

2) A teacher incurs no criminal liability under Article 266 by corporally punishing the erring pupil if he did so without criminal intent. Criminal intent is negated where, in the light of the facts of the above cited case, the means of physical punishment used was moderate and that the teacher was not motivated by ill-will, hatred, or any malevolent intent, but rather with the intent of merely disciplining the erring pupil in the honest (though mistaken) belief that as a teacher exercising authority over her pupil in *loco parentis*, she was within her rights to punish the pupil moderately for purposes of discipline. On the other hand, if criminal intent be proven by the facts of the case, criminal liability under the cited article is incurred as a matter of law. In short, criminal intent must be shown to qualify a finding of guilt.

The slapping of a student by a teacher in the presence of other persons is slander by deed, the act itself having the effect of casting dishonor, discredit, or contempt upon the student. If the teacher slaps the student without anybody else being present, the act may constitute criminal maltreatment punishable under the *Revised Penal Code*.¹²³

Where a teacher, in a fit of anger, calls his pupils names and heaps on them insulting and discrediting remarks and epithets, he may be liable for slander, grave or simple, depending on: 1) the expressions used — their sense and grammatical meaning; 2) the personal relations of the accused mentor and the offended student which might tend to prove the intention of the offender at the time of the utterance of the alleged defamatory words; and 3) the surrounding circumstances of the case.¹²⁴

c. Administrative liabilities

Any misconduct committed by a teacher where the offended party is a student, whether criminal in nature or not, is administratively punishable under Article IX of *Pres. Decree No. 807* (Civil Service Decree). Section 36 of said Decree enumerates 30 grounds for disciplinary action, into which any of said grounds, the particular misconduct complained of may be categorized or fall under. To illustrate:

¹²³ REV. PENAL CODE, art. 226, par. 3.

¹²⁴ AQUINO, *op. cit.*, *supra*, note 116 at 1859.

1) An administrative charge of resort to unauthorized disciplinary measures may fall under the category of a "misconduct" or "conduct prejudicial to the best interest of the service;"

2) Violation of a criminal statute, general or special, may also be accordingly categorized under any of the grounds enumerated. A teacher who has carnal knowledge with a student under circumstances which qualify the act as criminal seduction (qualified seduction) or even when not so, may be dismissed on the ground of "conviction of a crime involving moral turpitude" after the judgment of conviction for qualified seduction has become final and executory, or on the ground of "disgraceful and immoral conduct."

3) A teacher's failure to report any violation of Articles II and III of the "Dangerous Drugs Act of 1972" to the school head or supervisor shall be subject to disciplinary action on the ground of "neglect of duty."

4) A violation of Articles VII and VIII of the Bureau of Public Schools Circular No. 7, s. 1950 (*Code of Ethics for Public School Teachers and Officials*) shall constitute unprofessional and dishonorable conduct for a public school teacher which may subject the latter to disciplinary action under Sec. 36.

A violation of Department Order No. 32, s. 1975, restricting the exercise of academic freedom during the period of martial law by teachers and professors shall be sufficient cause for dismissal.

Depending upon the gravity of the misconduct, the disciplining authority may impose the penalty of removal from the service, transfer, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand.

2. The student

A positive act committed by a student causing damage or injury to a teacher may likewise give rise to three distinct liabilities—civil, criminal, and administrative—much in same manner a teacher incurs if he be the offender. The student's injurious act is always a misconduct under pertinent administrative and school rules and regulations, whether the same be criminal in nature or not. If the misconduct be delictual, the erring student may, in addition to being administratively charged, be criminally charged, and if in the criminal action a separate civil action for damages be reserved, said action may, separately and independently, be prosecuted. Thus, three separate and distinct actions may be prosecuted against the erring student.

Where a student assaults a teacher with a weapon while the latter was either in the performance of an official duty, or by reason of having performed an official duty, the former knowing that his victim was a teacher, in the spirit of aggression and defiance against the latter's authority, the student may be liable under Article 14 of the *Revised Penal Code* punishing direct assaults against persons in authority. If, as a result of the assault, bodily injuries are inflicted on the teacher, a separate and distinct civil action for damages may be instituted against the offending student under Article 33 of the *New Civil Code*. In addition, the erring student may face administrative charges and be recommended for expulsion on the basis of sections 145 and 148 of the Service Manual.

The foregoing discussion deals solely with acts which a student may commit or commits against the person of the teachers a distinguished from acts committed by the student in violation of pertinent administrative and school regulations relating to administrative discipline where the offended party is other than the teacher.

II. Student Discipline

The proper functioning of a school system requires some regulation to govern the behavior of the students. The conduct of students must conform to conditions that are conducive to learning. For this purpose, school administrators are given the authority and prerogative to promulgate rules and regulations as they may deem necessary from time to time.

The authority to discipline is but a portion or an aspect of the greater power to govern. The latter power is granted by the respective charters of state colleges and universities. The power of state colleges and universities to discipline may be exercised by their governing boards directly or the latter may delegate this power to a subordinate officer, board, or committee. In such case, the governing boards, be they a Board of Regents, a Board of Trustees, or a Board of Directors, define the broad policies on discipline and leave their detailed implementation to a committee, the Dean of Student Affairs, a College Dean, or other college official, with a machinery to handle disciplinary actions on the basis of a set of guidelines and procedures. However the power to discipline may be delegated only to administrative officials or agencies of the college or university.

The development of personal discipline is a constitutional mandate that is required of schools to perform as one of their responsibilities in shaping the behavior of young people under their care. The Constitution¹²⁵ provides that all educational institutions shall develop moral character and personal discipline.

¹²⁵ CONST. (1973), art. XV, sec. 8(4).

Discipline is broadly understood to refer to action resulting both from failure to meet scholastic standards and from infractions of rules or violations of social code.

As the term "discipline" is commonly understood in the latter signification, there is a need to distinguish administrative discipline from academic discipline.

Administrative discipline is the power of the school to deal with transgressions of its rules and regulations as well as the provisions of positive law. On the other hand, academic discipline is the power of the school to impose standards of scholastic achievement for its students and to eliminate anyone who fails to meet the desired norm.¹²⁶

Under the *Rules and Regulations for the Implementation of the Manual of Student Rights and Responsibilities* issued by the Department of Education (now Ministry of Education and Culture), administrative discipline is referred to as "Student Discipline" while academic discipline as "School Duties."¹²⁷ However, the term "student discipline" should be taken to mean and to cover both academic and administrative discipline inasmuch as both types connote pressure on students to conform to expected norms of behavior and conduct as set by reasonable administrative and school rules and regulations. The implied requirement of academic discipline—that students devote ample time for study in order to maintain a status of good standing in the academe—is as much an expected norm of conduct as the requirement of honesty when taking a written examination which, when transgressed, would call for the school's exercise of administrative discipline.

A. The authority to discipline

The authority to discipline is expressly granted to private school administrators in the interest of good order and discipline. Thus, the law provides that: "Every private school is required to maintain good school discipline. No cruel or physically harmful punishment shall be imposed nor shall corporal punishment be countenanced. The school rules governing discipline and the corresponding sanctions must be clearly specified and defined in writing and made known to the student and/or their parents or guardians. Schools shall have the authority and prerogative to promulgate such rules and regulations as they may deem necessary from time to time effective as of the date of their promulgation unless otherwise specified."¹²⁸

¹²⁶ DIZON, *op. cit.*, *supra*, note 86 at 50.

¹²⁷ Rules and Regulations for the Implementation of the Manual of Student Rights and Responsibilities.

¹²⁸ Par. 145, Manual of Regulations.

In institutions of learning under the Bureau of Public Schools, teachers to a limited extent, school heads or principals, division superintendents, and the Director of Public Schools, depending on the severity of the disciplinary measure recommended, have the authority to discipline erring pupils or students. The extent of a teacher's authority to discipline is limited to the immediate necessity of maintaining order in the classroom and the observance of school or government regulations relating to conduct and discipline.¹²⁹

B. The role of a teacher in academic discipline

Under the Philippine educational system, school bureaus, colleges and universities, whether private, government, or state-owned, have the inherent power to impose the standards of scholastic achievement for its students and to eliminate anyone who fails to meet the desired norm. Standards of scholastic achievement, as set by bureau or school rules, policies and regulations, make it incumbent upon every student to exert his utmost in his education in every way possible, or to avail himself of the opportunities in his curriculum and co-curricular programs to prepare himself better towards the fulfillment of his duties and responsibilities to himself and to society.¹³⁰ The law imposes upon the child, in his capacity as a pupil or student, the responsibility to exert his utmost for his education and training.¹³¹

The teacher or professor is the most important figure in maintaining academic discipline. The law enjoins teachers and professors to see to it that their students' duties are complied with.¹³² Standards of scholastic set by schools require students to be "in good standing" in school, and the status of "good standing" is measured in terms of grades. Teachers and professors enjoy considerable discretion in rating students on the basis of the latter's overall performance in class work and the standards of performance for classroom achievement they set by which all students are to be judged.¹³³ Nevertheless, the academic grade should be based upon actual proficiency demonstrated, and not upon conduct or attendance.¹³⁴

While bureau or school policies, rules and regulations set scholarships requirements and the standards of scholastic achievement, their implementation is left to school authorities and to the teachers. The mentor is the extension of the personality of the school adminis-

¹²⁹ Sec. 145, Service Manual.

¹³⁰ DIZON, *op. cit.*, *supra*, note 86 at 81.

¹³¹ CIVIL CODE, art. 357.

¹³² *Ibid.*, art. 358.

¹³³ EDWARDS, *THE COURTS AND THE PUBLIC SCHOOLS*, p. 602 (1971).

¹³⁴ Administrative Instructions No. 16, s. 1926.

tration. And being the person whom the students know and directly deal with, the mentor stands as the immediate enforcer of the rules and policies on academic discipline. This being the case, students cannot refuse to comply with the measure of academic work required by their mentors. In the public school system, academic discipline is maintained by means of a system of promotion, retention and demotion in the elementary level or by means of a system of promotion and classification in the secondary level. Expulsion is never meted out as a penalty for scholastic delinquency. These systems are embodied in sections 119 to 127 of the *Service Manual*. In the implementation and maintenance of the rules on academic discipline, certain guiding principles relating to promotion and rating have to be considered and observed. These principles are quoted as follows:¹³⁵

"117. Much change has taken place in the concepts and practices relating to rating and promotion. In the first place, *the more comprehensive concept of evaluation of the various educational outcomes — habits and skills, attitudes and appreciations, knowledges and information — has replaced the old and narrow concept of testing and measurement of knowledge alone*. There is also the educational principle, which is now generally accepted, that *the curriculum should be adapted to the child and not the child to the curriculum*. There is the philosophy that *our elementary and secondary schools are not selective institutions, but rather institutions whose function is to enable every child to develop his capacities to the maximum possible limit*. Finally, *the fact of individual differences implies that no two individuals have the same capabilities for learning and therefore should not be measured by the same standards of achievement*. It is well for every school official and teacher to devote serious thought and study to the present system of measurement, grading, and promotions in order to arrive at desirable and sound practices. If the teacher attends to the pupils' individual differences, employs appropriate diagnostic and remedial measures, and adapts instruction to the needs and abilities of the children, it is expected that failures would be reduced to the minimum.

118. The question of whether a child should be accelerated if he is intellectually advanced of the grade is also a matter which demands serious study and consideration. When a pupil is of normal age and he is accelerated, he frequently becomes too young for the new group, and when this happens certain social and emotional maladjustments in the pupil may occur. The emerging practice, instead of acceleration, is *the enrichment of the curriculum for the bright pupil*. It is for like reason that *a child who is too old for his grade should be assisted in every way so that he may advance through the grades faster than he would otherwise, until he reaches the grade in which he would be of similar age and social maturity as the rest of the class*."

Pupils in Grades I to III are promoted when, in the estimation of the teacher and his superiors, they have met the minimum require-

¹³⁵ Secs. 117-118, *Service Manual*.

ments for promotion prescribed in the primary course of study and are capable of doing the required work of the next higher grade. Pupils in Grades IV to VI are promoted or qualify for graduation in the case of Grade VI pupils on the basis of their general average. A general average of 75 percent is required for promotion. If a pupil obtains a general average lower than 75 percent, he is retained and does not get promoted to the next higher grade nor does he qualify for graduation. In the secondary level, promotion is by subject only. No general average is being used as basis for promotion. A student is considered passed in any subject if his final rating in such subject is 75 percent, or C, or better. As a general rule, a student who passes all the required subjects in the preceding year or years may be classified as belonging to the class of the next higher year. However, a student who failed in one full year required subject or two semestral required subjects in the preceding year or years may still be classified in the next higher year provided that he or she completes all the required subjects in the high school curriculum in order to be eligible for graduation and prior thereto. Irregular students (those who are not taking the complete prescribed work of one curriculum year or, if they are taking such work, have not satisfactorily passed all the prescribed work of previous curricular year) cannot and should not be permitted to attempt more work than they can adequately handle. Demotion of pupils or students is seldom practiced, but if resorted to, it should not be more than one grade a year.¹³⁶

C. Student misconduct

Neither the law nor administrative and school regulations have specified in detail and exhaustively the various acts of commission or omission for which a student may be subject to discipline. School relationships are inherently such that no set of rules can cover every offense against good order and deportment.¹³⁷ In determining whether the act complained of constitutes a misconduct punishable by school authorities, reference is necessary to the administrative or school regulation in point. Reasonable administrative and school regulations have a listing of punishable student misconducts. The list usually has a catch-all phrase intended to cover misconducts similar or analogous to those expressly listed.

The ruling in *Tinker v. Des Moines Independent Community School District*,¹³⁸ is instructive with respect to the test to be applied in determining whether the act complained of is an exercise of a legal right or a misconduct. It was therein ruled that student conduct

¹³⁶ *Ibid.*, secs. 119-124.

¹³⁷ EDWARDS, *op. cit.*, *supra*, note 133 at 602.

¹³⁸ 393 U.S. 503 (1969).

which would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school is a misconduct which school administrators may prohibit, and when committed by students would subject them to disciplinary action. Thus:

But the conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts class-work or involves substantial disorder or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.

In 1970, the Philippine Association of Colleges and Universities (PACU) listed various acts that may be classified as improper student conduct, to wit:

1. Dishonesty, such as cheating during examinations, or plagiarism in connection with any academic work.
2. Forgery, alteration or misuse of university documents, records or credentials; knowingly furnishing false information to the university in connection with official documents filed by him and making, publishing or circularizing false information about the university, its officials, faculty members, and/or students.
3. Obstruction or disruption of teaching, administrative work, disciplinary proceedings or other university activities.
4. Physical assault on any person within the premises of the university.
5. Defamation committed against any student, teacher, professor, or university authority or his agents.
6. Theft of, or damage to, property of the university or of property in the possession of, or owned by a member of the university community.
7. Unauthorized entry to or use of university facilities.
8. Vandalism, which is the willful destruction of any university property and which includes, but is not limited to, such acts as tearing off or defacing any library book, magazine or periodical; writing or drawing on the walls and pieces of furniture; breakage of glass windows, showcases, cabinet doors, electrical, mechanical or electronic device or contrivances; unauthorized removal of official notices and posters from the bulletin boards, and other similar offenses.
9. Hazing, which is any act that injures, degrades or tends to injure, degrade, or disgrace any fellow student or person attending the university, whether it is a mere conspiracy or actually engaging

in this activity, and it includes, but is not limited to, initiations; admissions to fraternities, sororities and other student organization.

10. Illegal use, possession or distribution of narcotic or dangerous drugs.

1. Unlawful possession or use of explosives or deadly weapons.

12. Engaging in lewd, indecent, obscene or immoral conduct while within the university premises or during a university function.

13. Abusive behaviour or discourtesy towards university officials or faculty members.

14. Entering the school premises in a state of intoxication.

15. Engaging in any form of gambling within the premises of the university.

16. Smoking inside the classroom during class hours, or in laboratories, libraries, or auditorium at any time.

17. Violation of any penal statute or of rules and regulations or of any valid order of a competent university authority.

18. Any other conduct which threatens or endangers the health and/or safety of any person inside the university premises, or which adversely affects the student's suitability as a member of the academic community.

This listing essentially includes various offenses that are found in the duly promulgated codes of private and state-owned colleges and universities. It is, by no means, exclusive since a school may add coverage of other offenses from time to time to its rules. And since proceedings against students for acts or omissions constituting student misconduct are administrative in nature, it is submitted that *substantial evidence* is the quantum of evidence required for conviction. Substantial evidence is more than a mere scintilla—it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

1. Types of misconduct

Student misconduct may result from failure to meet scholastic standards, from infraction of a rule, or from violations of social codes. Minor offenses committed in the presence of teachers may be dealt with summarily with reasonable disciplinary measures by the teacher concerned. As regards serious misconduct, there are prescribed administrative sanctions commensurate with the nature and gravity of the offense.

2. Disciplinary measures

a. Prescribed disciplinary measures

Under the private school system, there are three types of disciplinary administrative sanctions which may be imposed upon erring students, namely: 1) dropping; 2) suspension; and 3) expulsion. In addition, a student who has incurred absences of more than 20% of the required total number of class and laboratory periods in a given time will not be given credit.¹³⁹

A private school may drop from its rolls during the school year or term a student who is considered undesirable.¹⁴⁰ The offense of cheating makes the offender an undesirable student and may be dropped after being duly investigated, with formal release and issuance of his transfer credentials, unless he is formally suspended.¹⁴¹ Moreover, any student facing charges on account of violations of existing laws or rules and regulations issued by the Department of Education (now Ministry of Education and Culture) or by schools themselves, shall be dropped from the rolls immediately.¹⁴² Private schools may, if they so desire, drop students who do not maintain proper scholarship standards, but they may not refuse such students an honorable dismissal on this account.¹⁴³

A private school may suspend an erring student during the school year or term for a maximum period not exceeding 20% of the prescribed school days. Suspensions which will involve the loss of the entire term or year shall not be effective unless approved by the Director of Private Schools.¹⁴⁴ Students under term of suspension may not be granted transfer credentials, nor may they therefore be admitted into any public or recognized private school.¹⁴⁵ Students found to be addicted to drugs or narcotics shall be suspended pending final action by the Department (now Ministry) on the basis of a subsequent report and recommendation of the Director of Private Schools.¹⁴⁶ But suspension is not allowed for reasons of poor scholarship alone.¹⁴⁷

The penalty of expulsion is an extreme form of administrative sanction which debars the student from all public and private schools. To be valid and effective, this penalty requires the approval of the

¹³⁹ Par. 151, Manual of Regulations.

¹⁴⁰ *Ibid.*, par. 146.

¹⁴¹ Memorandum No. 5, s. 1962 (December 18, 1962).

¹⁴² Department Order No. 30, s. 1972.

¹⁴³ Administrative Instructions No. 1, s. 1926 (3).

¹⁴⁴ Par. 146(b), Manual of Regulations.

¹⁴⁵ Administrative Instructions No. 1, s. 1926 (3).

¹⁴⁶ Memorandum No. 30, s. 1961.

¹⁴⁷ Administrative Instruction No. 1, s. 1926.

Secretary of Education (now Minister of Education). Expulsion is usually considered a proper punishment for (1) gross misconduct or dishonesty and such offenses as (2) hazing, (3) carrying deadly weapons, (4) immorality, (5) drunkenness, (6) vandalism, (7) hooliganism, (8) assaulting a teacher or any other school authority, or his agent or student, (9) preventing or threatening students or faculty members or school authorities from discharging their duties, or from attending classes or entering the school premises, or (10) tampering school records or transfer forms, or (11) securing or using such forged transfer credentials under false pretences.¹⁴⁸

Under the public school system, the following offenses are punishable by expulsion: 1) assaulting a teacher; 2) participating in a school strike; 3) gross immorality; 4) injuring another pupil with a knife or other dangerous weapon.¹⁴⁹ Suspension for a year or for the remainder of the school year is imposed for: 1) theft; 2) persistent cheating in class work; 3) insubordination; 4) forging of school records; 5) assaulting other pupils; 6) gross indecency of language or conduct; and 7) incorrigible misbehavior. Less serious offenses may be punished by suspension for a shorter period.¹⁵⁰

The public school teacher may reprimand or censure an offending student but cannot suspend or expel the latter. The power to suspend is vested in the school principal or the division superintendent, and in cases where the recommended disciplinary measure is suspension for more than one school year or of an indefinite period of time, or expulsion, these may be ordered by the Director of Public Schools.

For minor offenses, less severe correctional measures outside of suspension or expulsion are meted. These measures are: 1) depriving a pupil, temporarily or permanently, of the privilege of holding positions of honor or trust in the school (other than reducing scholarship ratings for bad conduct);¹⁵¹ and 2) reporting the misconduct to parents and to ask the latter to consult with the principal on the case.¹⁵² Absence from class without sufficient reasons therefor is a misconduct.¹⁵³

The foregoing discussion does not imply nor is it intended to convey the idea that public educational institutions have a uniform system of penalties in disciplinary actions against students. A distinction must be drawn between public educational institutions under

¹⁴⁸ Par. 146(c), Manual of Regulations.

¹⁴⁹ Sec. 148, Service Manual.

¹⁵⁰ *Ibid.*, sec. 149.

¹⁵¹ *Ibid.*, sec. 150.

¹⁵² *Ibid.*, sec. 150-151.

¹⁵³ *Ibid.*, sec. 153.

the administrative supervision of the Bureau of Public Schools and state-owned colleges and universities.

Public educational institutions administratively supervised by the Bureau of Public Schools are governed by the rules on student discipline of the Service Manual, and therefore, may not impose penalties other than those specifically prescribed by said administrative regulation. These educational institutions are as follows:

1. Elementary Schools
2. Secondary Schools
 - (a) General secondary schools
 - (b) Vocational secondary schools
3. Vocational Schools
 - (a) Trade-technical schools
 - (b) Agricultural schools
 - (c) Vocational normal schools
 - (d) The Philippine Nautical School
 - (e) The School for the Deaf and Blind
4. Selected Schools of Fisheries
5. Selected Chartered Educational Institutions

On the other hand, state-owned colleges and universities are governed by their respective charters and pertinent administrative regulations issued and promulgated by their respective governing administrative board, school officials, and the Ministry of Education and Culture. The rules on student discipline of these institutions are substantially similar with respect to the definition and specification of acts or omissions constituting student misconduct and the impossible penalties. Unlike the fixed penalties imposed in the Service Manual for specific acts constituting student misconduct, the penalties imposed by the administrative regulations governing state-owned educational institutions are applied in a manner so as to be commensurate to the gravity of the offense committed taking into account the circumstances attending its commission. For example, the *Rules and Regulations on Student Conduct and Discipline* of the University of the Philippines (Approved by the Board of Regents at its 842nd meeting, 28 February 1974), after enumerating specific acts of student misconduct (section 2), provides that: "(a) Disciplinary action may take the form of expulsion, suspension from the University, withholding of graduation and other privileges, exclusion from any class, reprimand, warning, or expression of apology. The gravity of the offense committed and the circumstances attending its commission shall determine the nature of the disciplinary action or penalty to be imposed."

b. Unauthorized disciplinary measures

(1) Corporal punishment

Although the Philippine educational system has been much influenced by and is, to a certain degree, patterned from the American educational system, the former system does not countenance the practice of corporal punishment insofar as instilling discipline in the student is necessary, while the latter system does. A teacher, under the American educational system, may generally inflict reasonable corporal punishment on a pupil for insubordination, disobedience, or other misconduct, insofar as it may be reasonably necessary to the maintenance of discipline and efficiency of the school and to compel compliance with reasonable rules and regulations.

Under Philippine civil law, the power to corporally punish the student is exclusively conferred upon the father and the mother who have, with respect to their unemancipated children, the power to correct them and to punish them moderately. Moderation is the limitation fixed by law¹⁵⁴ on the extent to which a parent may exercise the power of corporal punishment. Criminal liability attaches to a parent who inflicts cruel and unusual punishment upon his child, or deliberately subjects the latter to indignations and other excessive chastisement that are embarrassing or humiliating.¹⁵⁵ The *Child and Youth Welfare Code*¹⁵⁶ penalizes with imprisonment from two to six months or a fine not exceeding five hundred pesos, or both at the discretion of the court, the commission of any of the foregoing prohibited act by any parent.

Although teachers and professors are substitute parents with respect to their students, the law forbids the former from resorting to corporal punishment in the matter of disciplining the latter. The statutory proscription cannot be any clearer: "In no case shall corporal punishment be countenanced."

The *Manual of Regulations for Private Schools* prohibits cruel or physically harmful punishment or corporal punishment,¹⁵⁷ while the *Service Manual* categorically forbids "the use of corporal punishment by teachers" like slapping, jerking or pushing pupils about.¹⁵⁸

The Supreme Court in the case of *Bagajo v. Marave and People*,¹⁵⁹ ruled that "no teacher may impose corporal punishment upon

¹⁵⁴ CIVIL CODE, Art. 316(2).

¹⁵⁵ Art. 59(8), Pres. Decree No. 603.

¹⁵⁶ *Ibid.*, art. 60.

¹⁵⁷ Par. 145, *Manual of Regulations*.

¹⁵⁸ Sec. 150, *Service Manual*.

¹⁵⁹ *Op. cit.*, *supra*, note 122.

any student in any case." Notwithstanding the teacher's acquittal from the charge of slight physical injuries punishable under Article 266 of the *Revised Penal Code*, the Supreme Court's judgment of acquittal being grounded on the absence of criminal intent on the part of the teacher to inflict the injuries on the student, said judgment declared to be "without prejudice to the teacher's being dealt with administratively or in a civil case for damages not resulting in ex-delicto."

Acting in *loco parentis*, is not admissible as a defense in administrative complaints. The fact that a teacher was not actuated by any criminal design does not necessarily mean that she is fully qualified to continue in the teaching service. The use of corporal punishment raises serious doubts as to the teacher's competence, when modern pedagogy offers other ways of properly training a child in desirable traits of character.¹⁶⁰

(2) Others

Publicity given of the expulsion of a student is not necessary. The expulsion itself is sufficient punishment and the expelled student should be spared from further embarrassment and humiliation.

*The Service Manual*¹⁶¹ forbids: a) imposing manual work or degrading tasks as penalty; b) meting out cruel and unusual punishments of any nature; c) reducing scholarship ratings for bad conduct; d) holding up a pupil to unnecessary ridicule; e) the use of epithets and expressions tending to destroy the pupil's self-respect; and f) the permanent confiscation of personal effects of pupils. Civil liability for damages may also arise from the commission of any of the above acts. Students may not, under administrative regulations, be sent home or out from their classes or be refused admission for the day for minor offenses such as negligence to do the homework, inability to answer questions in class, forgetting to bring the textbook to the school, non-wearing of a prescribed uniform, or failure to present a letter from the parent after an absence from school.¹⁶²

D. The grading system

The teacher, as a rule, shall be the final judge of the grades of his students, and this judgment shall not be changed by his superiors except where there is clear evidence that judgment is unreliable.

¹⁶⁰ Sec. 996, *Service Manual*.

¹⁶¹ *Ibid.*, sec. 150.

¹⁶² Bureau of Public Schools Circular No. 30, s. 1962.

The academic grade is one which should be based upon actual proficiency demonstrated, and not upon conduct or attendance. When students are absent for so long a period of time that they cannot make up the work covered in their absence, they may be dropped from school; when they have been absent for short periods of time for reasons which are approved by school authorities, they should be given an opportunity to make up for the work. When students are disorderly, disciplinary action should be taken to the extent, if necessary, of suspending them from school, but such action should not be permitted to affect the academic marks actually earned while in attendance.

The class grades and final grades given to a student in an approved course should in all cases be those which he deserves for the work he has done and the ability he has shown in a particular subject or course. No additions should be made to the regular class or final grades of credits for work done in connection with other activities for attendance or for conduct. Although the Ministry of Education and Culture does not favor the practice of making automatic deduction from class grades for absences or tardiness, it will interpose no objection to the lowering of academic grades for work activity missed and not made up.

III. Conclusion

In the web of human relationships, the State pays a special interest in the relationship existing between teachers and students. This special interest is manifested in the enactment of laws and implementing regulations by the State through its duly constituted agencies for the maintenance of stability and equilibrium in the relationship and ultimately that of society as the primordial consideration. In the maintenance of the desired stability in the relationship, the State, through the instrumentality of law, defines, delineates and fixes the status of teachers and students, from which status emanate reciprocal rights and obligations. The conferment of rights and obligations on teachers and students by the State is primarily aimed at realizing an important objective or for the purpose of upholding an overriding principle, ideal or policy. Thus, in the exercise of one's rights, the following principles have to be observed:

1. "The rights of the individual impose upon him the correlative duty to exercise them responsibly and with due regard for the rights of others." (Article V, section 2, 1973 Constitution).
2. "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." (Article 19, *New Civil Code*.)

The State upholds the abovementioned principles by mandating teachers and students to respect each other's rights. The duty of

respect which students as well as other persons owe to teachers is stressed when the latter are, for purposes of the criminal law, constituted as persons in authority. Under the *Revised Penal Code*, assault, disobedience or resistance to persons in authority is a felony. The objectives of the State in fixing the legal status of teachers as persons in authority are three-fold:

1. *To enhance the dignity of and stress the duty of respect for the teaching profession* inasmuch as teachers have often, in the past, been the objects of abuse and vexations on the part of students and other persons; and

2. *To confer responsibilities on the teacher for the protection of students peculiar to the status of being a person in authority*, as when, for example, teachers are legally obliged to report to the school heads any violation of the Dangerous Drugs Act of 1972.

Under the law, teachers and professors are in relation to their students, substitute parents. An apparently anomalous situation may, however, arise where the mentor as a substitute parent is held liable to an extent greater than that of the real parent for a quasi-delict committed by a student under his protective and supervisory custody during school hours. Parents cease to be answerable for the quasi-delicts of their children beyond majority age. This is not the case with respect to teachers and professors of schools of arts and trades who stand directly and primarily liable for their students' quasi-delicts regardless of age. Opinions from the academic community of various colleges and universities vigorously contend and argue that to uphold the doctrine enunciated in the case of *Palisoc v. Brillantes* (supra) would make article 2180 of the *New Civil Code* bad law, when, as stated in the dissenting opinion of the same case, professors stand helpless and bewildered amidst the rebelliousness and destructive activism of modern-day students, considering the size of the enrollment in present-day institutions of higher learning. But to deny the existence of vicarious liability on the part of the mentor for the quasi-delicts of students under his protective and supervisory custody overlooks the purpose behind the concept of imputable negligence which stands as the foundation of vicarious liability. This underlying purpose is to provide third persons injured by the tortious acts of students a means of redress or a course of action where the real parents of the tortfeasor cease to be answerable for the latter's acts, the same having reached the age of majority, and where there are reasons to impute the fault on the mentor who, by reason of the commission of a quasi-delict, is presumed to have been negligent or remiss in the performance of the legal obligation of exercising reasonable supervision over the conduct of

his students. As aptly stated by Justice J.B.L. Reyes in his concurring opinion in the case of *Palisoc v. Brillantes*:

x x x the authority and custodial supervision 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 is prescribed in the last paragraph of Article 2180.*

To conclude, it is suggested that all laws governing or pertinent to the relationship between teachers and students be codified into a unified body applicable to both private, government, or state-owned educational institutions.

It is not the intention of this paper to cover in minute detail the legal relations between and among mentors, students and institutions of formal learning. Nor are the cases, herein presented, chosen to show the hairsplitting stands of courts. If certain ramifications of the laws and of court decisions find their way into the annotative efforts of the writers, they were intended to bring the simplicity and the obviousness of the law into sharper focus out of the obfuscating mass of seemingly equivocal, if not apparently contradicting court decisions, and rules promulgated by the administrative bodies.

It is hoped that the result of the efforts invested in the paper will, at the very least, justify its being put to print.