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Astute lawyers with business acumen

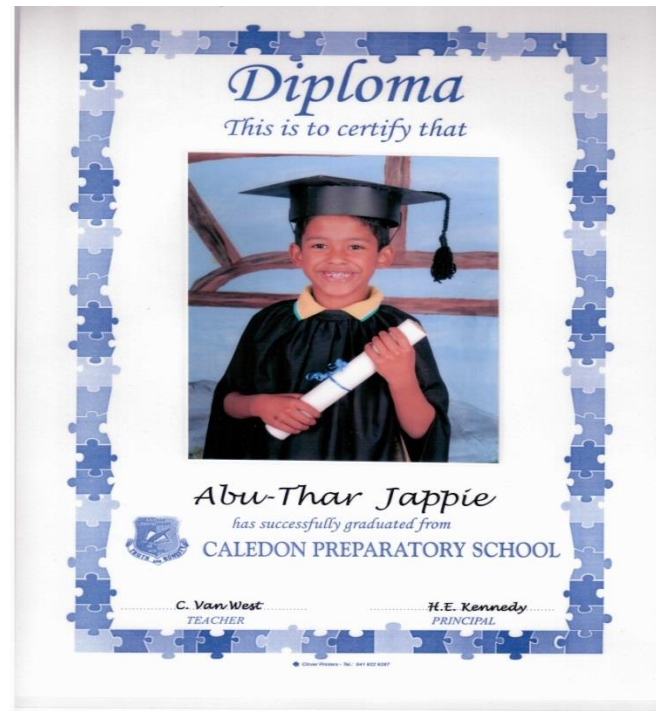
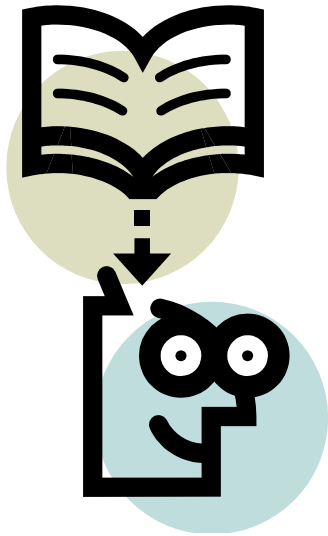
SCHOOL'S LIABILITY

An “examination” of injuries to learners

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News Headlines

1. **SOWETAN** 2013

"16 yr old boy forced to leave Transvalia High, Vanderbijlpark, because of bullying"

2. **BEELD** 2007

"Grade 4 learner crushed by a movable stand on playground of Primary school in Krugersdorp"

3. **BEELD** 2006

"13 yr old boy at top High school for boys in Pretoria suffers serious head injuries after fall onto head when older boys flick him into the air in a cricket net"

4. **EP HERALD** 2013

"7 yr old girl electrocuted at Primary school in Uitenhage"



Introduction

1. This talk is restricted to claims for injuries
Playground Accidents, vehicle accidents, bullying
2. Focus on Public Schools i.e. Traditional & Model C
3. Claims: The Schools Act & Regulations
4. Claims: Indemnities
5. Claims: Cases



Schools Act 84 of 1996. Public Schools

1. Sec 60. State is liable for damages arising from any Public School activity
Not the School, the teacher or the Governing Body
2. If a School has insurance, the State is only liable for damages not covered by the insurance policy
3. Exception: State is not liable for damages arising from activities supplementing the resources of the School



Regulations. Safety Measures at Schools

1. Regulations Safety Measures at Public Schools,
*Govt Notice 4/1040 12/10/01 Amended by Govt Notice
R1128 10/11/2006*

Measures to ensure safety of learners include

2. Dept must approve school activity involving transporting of learners
3. Schools must insure against damages claims
--- depending on availability of funds
4. School activities must be supervised.

Supervisor/Pupil ratio: 1/20 Primary 1/30 High Schools



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Regulations. Safety Measures Cont

5. An insurer may not rely on the liability of the State to avoid cover i.t.o. any insurance policy
6. The School must assist to claim damages o.b.o. the learner if an injury is
 - covered by the School's insurance
 - covered by the RAF
 - recoverable i.t.o. the S A Schools Act against the State
7. The School must obtain written consent from parents before undertaking a school activity
8. The School cannot ask a parent to sign an indemnity



Regulations. Safety Measures Cont

9. School vehicles must have insurance, roadworthy certificates & drivers have valid licences & PDP's
10. Any transport company used School must ensure they have passenger liability insurance, all the above
11. The principal must inform pupils about the dangers & safety measures regarding water



Indemnities

1. Regulations now prohibit signing of indemnities
2. Most Schools still ask for indemnities
Parents can hardly refuse. Sign to keep the peace
3. Question: Parents sign voluntarily. Regulations prohibit it. Is the indemnity valid?
4. MINISTER OF EDUCATION V AZEL 1994 AD
 - Case decided **before** Regulations prohibited signing of indemnities were promulgated
 - If indemnities are still valid on basis signature was voluntary, this case is relevant



Indemnities Cont

MINISTER OF EDUCATION V AZEL Cont

- Learners on excursion. Mother signed indemnity
- School bus full. Learner, Azel in teacher's private car
- Teacher in accident. Azel seriously injured
- Was the indemnity valid ?
- Court: Yes, in general terms indemnities are valid
- Court: But, the wording was of this indemnity was ambiguous. It did not exclude negligence of teacher
- Held: Indemnity invalid. Department is liable

5. Our view: The courts will declare the indemnity invalid, even if signed voluntarily. Against public policy



Cases

1. HIGHLANDS PRIMARY SCHOOL v WYNKWART 2004 W

- 9 yr old injured when he fell off School gate which was permanently locked
- Sued the Dept for his injuries
- 3 other gates were used and were supervised by staff. Pupils were warned not to climb over gate
- Held: Dept not liable
- Court: Constant supervision of all pupils at all times not reasonable especially one 9 yr old at permanently locked gate



Cases Cont

2. KNOUWDS v ADMINISTRATOR CAPE 1981 C

- 8 yr old running with friend fell on lawnmower of Independent Garden Services on School grounds
- Sued the Dept & Independent Garden Services for injuries
- No supervision present. Lawnmower at a dangerous place
- Held: Dept **and** Independent Gardening Services jointly liable
- Court: Harm foreseeable. Supervisor should have been present. Lawnmower should have been moved



Cases Cont

3. FICKSBURG PRIMARY SCHOOL 2004 O

- Pupil nearly drowned and suffered severe brain damage
- Was under supervision of teacher in Governing Body post
- Defence: State not liable. Teacher in employ of Governing Body
- Held: State liable
- Court: Teacher, School or Governing Body not liable. Interpretation of the Schools Act & liabilities of Governing Bodies etc. clarified.



Cases Cont

4. DOWLING v DIOCESAN COLLEGE 1999 [Private School]

- Boy humiliated, badly beaten and bullied by two prefects
- Sued the School for damages. Private School
- Held: School liable
- Court: Constitution guarantees right to human dignity. Schools have obligation to protect human dignity of pupils
- Court: Assaults by appointed prefects in scope of their duties. School liable for conduct of their prefects



Conclusion

1. The RAF covers injuries i.r.o. vehicle accidents related to School activities
2. The State is liable for all other injuries at Schools, except activities supplementing the resources of the School, e.g. fundraising
3. Negligence by the School must be proved



Disclaimer

- These slides set out general legal principles and are for information purposes only. The contents should not be considered as legal advice. Prior to using any of the information in the presentation, we recommend that you should obtain legal advice.
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