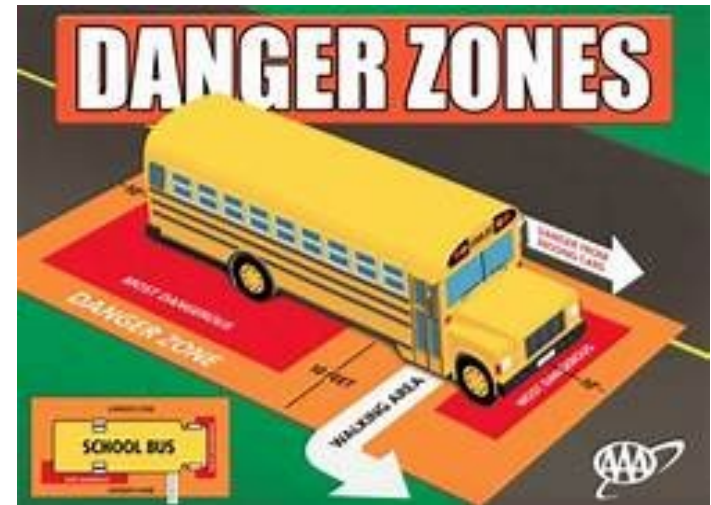


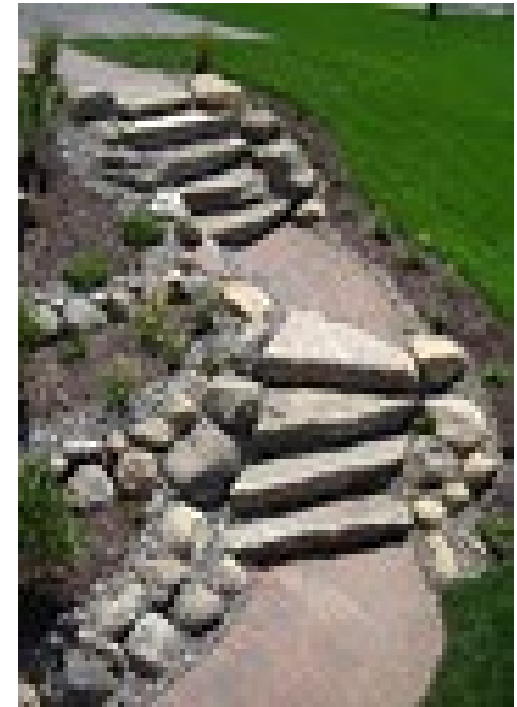
Torts & Search & Seizure Topics

- Sexual Harassment
- Playgrounds
- Sports
- Bullying
- Safe Schools



Steps in a lawsuit

- The incident
- Potential resolution
- Suit filed
- Attorneys engaged
- Discovery and preparation
- Role you play (Facts)
- Trial
- Results
- Appeals
- Decisions/Policies based on results.



Torts



- How do they happen?
- What are the Elements?
- Example cases for preparation –
**Bullying; Sexual Harassment;
Teachers hurt by students; Shooters
or strangers on campus; Athletics!**
- What can we do now to avoid lawsuits
and/or reduce judgments?

Torts

- You hurt - You pay
- School system is the deep pocket!
- Types – Bullying, sexual harassment, sport injuries, premises liability & safety



Standard of Care

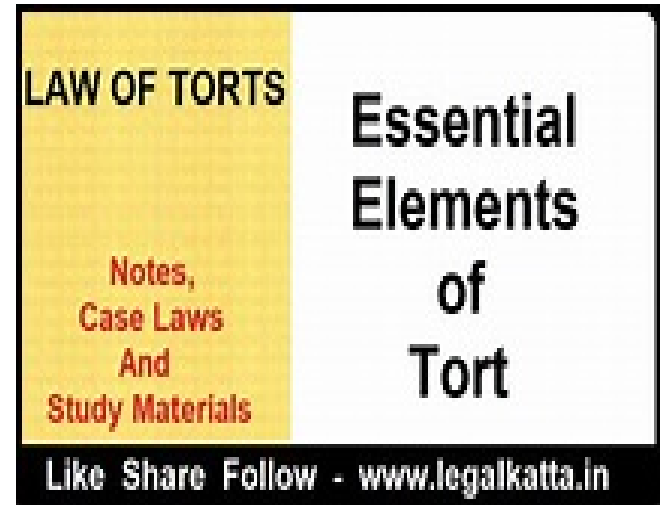
- Reasonable person standard
- *Foreseeability



- What is reasonable? How will a judge determine what is reasonable?

Elements of Negligence

- I. Duty (List)
 - A. Supervision
 - B. Safe premises
 - C. Training
 - D. Adequate procedures
 - E. Adequate equipment



- 2. *Breach of duty (what does this mean?)
- 3. Cause in Fact
- 4. Injury (physical and/or mental)

2 Ps

- **1. Presence** – who was around, where were they exactly and when, how many folks were around, what was going on, how often does this event happen?
- **2. Preparation** – training, maintenance, reporting, schedule, inspection, review, planning, expertise of those involved?

Examples

- Bullying
- Teacher/student safety in the classroom
- Athletics
- Sexual harassment

NEGLIGENCE TORTS

Defendant owed a duty of reasonable care

Defendant did not behave in a reasonable manner to demonstrate care

Plaintiff suffered an injury as a result of the defendant's actions or inactions



Sexual Harassment

- Quid Pro Quo



- Hostile Work Environment



Issues

- Do the facts establish the District was reckless or callously indifferent?
- Was the conduct of a sexual nature that was **severe** or **pervasive** *and* **affected the working conditions or created a hostile work environment.**

Procedures & Steps

- Need a Sexual Harassment Policy forbidding sexual harassment and listing penalties.
- Require all to sign acknowledgement of receipt and understanding
- Provide training of some sort for all employees and supervisors (crucial they know and understand what it is)(includes ways to prevent and handle claims).

Complaints

- Need to have someone designated for complaints
- Need to investigate
- Talk to victim and get story with open ended questions (find out time, place, witnesses, actual words etc..)
- Talk to accused and get story with open ended questions (anyone out to get you, witnesses, words, etc....)

Investigative Procedures

- Talk to both sides
- Talk to witnesses
- Review policy and make a decision
- Review decision separately with each side
- If harassment found must take some action (examples)
- Follow-up is crucial to be sure no harassment continues.

What does sexual harassment look in an educational setting?

- 1. Teacher to Student
- 2. Teacher to Teacher
- 3. Student to Student



Educator Sexual Misconduct remains prevalent in schools

- 11.7% of students will experience educator sexual misconduct before graduating
- Verbal comments are most common
- Most misconduct is by males 89.1%; and teachers 63.4% or coaches 19.7%
- Psychology Today – May 17, 2023
- Why? How? Mandatory reporter of Child Abuse!

Million dollar judgement?

- I. Teacher to Student Harassment

- 2. Consequences

- A. License
- B. Jail
- C. Judgement \$\$



- 3. News Headlines

- 4. Revised Statute 14:81.4



Teacher to teacher

- Words, pictures, rumors or jokes
- Does it affect teaching ability or performance
- Example – “Not cool. Jokes about forking repo's in a sexual way and "big" dongles. Right behind me #pycon”



4th Amendment

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."



Search & Seizure

4th Amendment

- 1. Secure in persons, papers & effects
- 2. No unreasonable search & seizures
- 3. Probable Cause
- 4. Specific Search
- 5. Judge between police & person



School worry about 3 things

- 1. Secure in Persons, Papers & effects
- 2. No unreasonable search & seizures
- 3. Specific Search
- 4. School standard is “Reasonable Suspicion”

TLO Standard

- 1. Was the search justified at its inception?
- 2. Was the search, as conducted, reasonable based on item sought?

- Factors: Age, gender, item sought, evidence against



Slack ex rel. C.S. v. Copeland, 343 So.3d 346, (La. Ct.App. 2023)

- Grabbed face masks
- MC punched C.S. and broke jaw - surgery
- Evangel had duty to reasonably supervise
- Defense can't be constant in a game
- *Taught not to react by coaches
- No reason to think he would



- Effort to instill discipline and core values
- Spontaneous and not foreseeable

Dennehy v. E. Windsor Reg'l Bd. of Educ., 284 A.3d 102

- Simple negligence standard applied to alleged acts and omissions of field hockey coach as they concerned student's injury during practice.
- 2 practices side by side – hit by soccer ball hit over the net.
- Duties? Potential breach? Prevention?



Menzia v. Austin Indep. Sch. Dist., 47 F.4th 354

- M.-D. immigrated from Cameroon at 8. Attended sixth grade at Martin Middle School in the Austin Independent School District (Austin ISD or District) from August 2017 to December 2017. During that time, eight students (Harassers) bullied her "on a daily basis" because of her race and national origin. The Harassers called her racial slurs and told her to "go back where [she] came from." The harassment included physical contact, like shoving. It got so bad that Z.M.-D. "did not want to go to school anymore."
- District was not deliberately indifferent as a matter of law because it "took **some action in response** to all of the incidents including meeting with Plaintiffs, attempting to contact the parents of the other students reported by Plaintiffs, conducting an investigation and filing a report, offering Plaintiffs counseling services, and ultimately replacing the administrator in charge of Plaintiffs' claims on October 17, 2017, following a physical altercation between the victim and another student.; an informal reprimand of one of the Harassers, an investigation into the October 17 assault, an investigation into the November incidents of harassment, and a Stay Away Order executed between the Harassers and Z.M.-D

J.D. ex rel. Mingo v. McComb Sch. Dist., 347 So.3d 199

- A.B. "confronted" her during an awards ceremony in their middle-school gym. After the ceremony, they were both in Miller's sixth-grade class when A.B. began yelling at Miller and J.D. about some unspecified events during the ceremony. When A.B. cursed at Miller, Miller told A.B. to leave her classroom. A.B. complied. However, he was allowed to re-enter the classroom "a few minutes later, where he attacked J.D. and caused severe neck, head, and jaw injuries."
- The complaint went on to allege that there was good reason to believe that A.B. had engaged in similar conduct, not only against fellow students but also against teachers, at the middle school prior to and "after A.B. attacked J.D. The complaint reasoned that the District was liable for J.D.'s damages because Miller negligently failed to (1) provide a safe environment for J.D., (2) supervise or discipline A.B., (3) prevent A.B. from "bullying or harassing" J.D., or (4) "hold A.B. to strict account for his disorderly conduct"
- Court said it states a Cause of Action – has not gone to trial yet!

Jones v. Logan Cnty. Bd. of Educ., 881 S.E.2d 374

- Negligence is the violation of the duty of taking care under the given circumstances. It is not absolute, but is always relative to some circumstance of time, place, manner, or person.' He claims that over those three years, other students cut him, choked him with a rope, punched him to the point of unconsciousness, and stabbed him with a pencil. According to Mr. Jones, school officials knew of the bullying but did nothing to stop it and, in fact, maintained that nothing could be done.
- At trial the facts will determine if duty violated!

Doe v. Beaumont Independent School District

PASS THE TRASH POLICY SEXUAL ABUSE

- Bisd purportedly has a "pass the trash" policy - teachers are hired without being adequately screened for sexual and criminal misconduct involving minors, and when they are credibly accused of sexual abuse or harassment, Bisd transfers the perpetrators from one campus to another, where they are free to continue grooming and abusing other vulnerable minor female students within the school district.
- A former Bisd teacher, Tommy Granger, created a perverse club called the "Koochie Kissing Klan" ("3K"), for which he recruited young girls "to provide male club members with sexual services
- 3K's membership was largely made up of "current and former student athletes

J. H. V. v. Locust Valley Cent. Sch. Dist.

- The plaintiff, an infant, allegedly was injured when he fell while using the monkey bars during recess on a playground at a school located within the defendant, Locust Valley Central School District due to the dangerous and defective condition of the playground surface.
- The defendant made a showing of its entitlement to judgment as a matter of law dismissing the first cause of action by submitting, an affidavit from an expert demonstrating that the surface of the playground, comprised of engineered wood chips, conformed to good and accepted safety standards, and was maintained in a reasonably safe condition
- In opposition, the plaintiff raised a triable issue of fact through the affidavit of an expert who opined, with sufficient specificity, that the playground surface was in a dangerous condition due to the insufficient depth of the wood chips and the absence of rubber mats below that surface.
- Summary Judgement Denied



C.I. v. San Bernardino City Unified Sch. Dist., 298 Cal. Rptr. 3d 651

- **Husband of teacher came to school**
- **No past threats or concerns**
- **Allegations – entered classroom killed the teacher, a student and himself.**
- **Door locks – policy on visitors (leave for teacher at desk) – building design – plans for threats – Ct. said actions were unforeseeable, the school property was not a dangerous condition because there was no defect, and husband was not using property.**

The Perfect Storm

- 2nd grade student takes gun from home and brings to school.
- Child choked another teacher earlier in year
- School warned 4 times: (a) child threatened other children; (b) teacher searched back-pack; (c) student threatened on play-ground; (d) administration said near end of school day so wait it out!

Additional facts

- Child had behavior plan that stated parent was to be at school with child but no parent.
- Child pointed gun at teacher and fired. Teacher still got kids to safety and another teacher restrained child
- Superintendent fired shortly afterwards.

What are the Issues?

- Search issues?
- Tort issues: Potential duties? Were the duties breached (Facts)
- Was the breach of duty the cause of shooting?
- Damages?
- Steps – training, follow up, procedures
- Leads to next presentation!

Your role

- What to do in advance?
- Breach of duty in torts can be subjective to a degree
- Judges often give more credibility to those with advanced degrees (Masters & Doctoral)
- Impact on you as a leader?
- Next session is excellent example of Preparation and Reflection on Students

Ed. D. Executive Program

4 Friday afternoon/Saturday sessions each semester

