

THE TECHNICAL TEACHER IN THE WORKSHOP AND LABORATORY: AVOIDING BLAME AND LITIGATION.

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ABSTRACT

The use of handtools and industrial equipment in secondary schools and technical colleges make the environment somewhat hazardous. With the increased awareness of individual rights, teachers ought to be aware of their legal and moral obligations to their students of the need to be exposed to the various liability issues which can arise in the public education context. This paper considers the conditions under which a technical teacher may be considered negligent. Ways of minimizing the risks of accidents in the workshops and the laboratories were highlighted. Recommendations were made based on the issues considered.

INTRODUCTION:

Certain areas in the school such as gymnasium, the workshops and the laboratories present safety problems to teachers and school administrators. A number of chemicals in the school laboratory are dangerous and may be harmful to human life by ingestion, skin absorption, or inhalation. Highly flammable substances, powerful oxidizing and reducing agents have their own special dangers. Besides, school workshops have many of the potentially dangerous features of industrial plants. In 1975, school and other educational establishments in the United Kingdom (UK) became subjected to regulations considering the health and safety of the work Act of 1974. The intention of the Act is to protect not only those at work, which includes teachers and technicians, but also the public at large, including children and students, by controlling the production, acquisition, storage and use of potentially dangerous materials and equipment (The Association for Science Education, 1981).

Students are expected to engage in a wide range of activities such as (1) conducting laboratory experiments, (2) building projects using hand tools and machines and (3) taking field trips to short or long distance locations. Florio and Stafford (1956) remarked that these opportunities have not only heightened the value of the pupils learning experiences, they have also increased their exposure to hazards and the likelihood of injury. As a result, the teacher is expected to take all reasonably practicable steps to ensure safe working conditions in a laboratory or workshop. Failure on the part of a teacher to take all precautions could result in criminal prosecution. This is why the prevention of school accident is not only the teacher's ethical responsibility, but also to a large extent, his legal obligation.

In Nigeria, there is increased awareness of individual rights which has led to many litigations in schools (Peretomode, 1992). All individuals, parents, school children and adults in the society have rights; which are provided for in the constitution. Also provisions of educational rights are embedded in the fundamental rights of the citizen. However Nwagwu (1984)

observed that most teachers are not aware of their legal and moral obligations to their employers, fellow teachers and students. He stressed that teachers should be aware of their rights, duties, obligations and responsibilities under the law and more especially on the probable consequences or implications of their actions in their day-to-day activities within the school system.

The purpose of this paper is to sensitize technical teachers to the potential liabilities inherent in the teaching of technical subjects. This is significant because technical teachers would be more safety conscious and learn to protect themselves from legal entanglements in the event that pupils are injured while under their supervision. Besides, they will be more aware of their specific responsibilities to the pupils. The following questions are to form the focus of this paper.

- (i) What are the legal aspects of working in the workshop or laboratory?
- (ii) Under what conditions can a technical teacher be considered negligent and held responsible for a workshop accident?
- (iii) How can the risks of accidents be minimized in the workshop?

Liabilities Issues in School Workshops and Laboratories

Administrators and teachers of laboratories based courses should not only be concerned about the physical well-being of pupils but also about the consequences of pupil injury. While it is understood that no phase of education is completely free accidents, the incidence of accidents is higher in laboratory and workshop courses due to the nature of activities inherent in the process of learning. Kigin (1992) observed that workshop teachers have been named as the defendant in liability suits resulting from pupil accidents in the school workshop. In most cases, the extent of teacher liability depends on the extent of pupil injury, failure of the teacher to foresee an unsafe condition in the workshop, lack of adequate supervision and non-enforcement of safety rules. It is the responsibility of the teacher to provide adequate supervision and instruction. Besides, the teacher is responsible for accident prevention since he is in a position to train pupils to observe safety rules.

Liability is a legal responsibility which binds an individual in law and justice to do something which may be enforced by action (Kigin, 1972). It is an obligation that is enforceable by court action (Dyer and Lichtig, 1989). One of the factors that must be considered in establishing what constitutes liability is whether or not the defendant provided as much supervision as might reasonably be expected of a prudent and skilled person in his situation. Florio and Stafford (1956) cited various school activities where accidents involving liability suits have occurred and the defendant found guilty:

1. A pupil was injured when using power saw without guard. This should not have been used because fence was broken. Lack of warning not to use the saw without fence established; other pupils have used the unguarded saw safely. Alleged contributory negligence. Held that although pupils know there was danger, he did not know the amount of it.
2. Pupil injured when helping automechanic teacher to move a car. Negligence of teacher established.

3. Carpentry pupil who fell from scaffolding on building under construction by class under supervision of teacher; no handrail on scaffolding. Question was applicability of labour law requiring handrails on scaffolding. Held relationship of employer-employee not necessary; anyone rightfully on the scaffolding was to protection (p.114).

In summary, if negligence of an individual is the cause of an injury, the defendant can be cleared liable.

The Law Regarding Teacher Liability in Workshop and Laboratory in Nigeria

The school is a corporate body which can sue or be sued. The aspect of the law of liability that is relevant to the child and the school is that of negligence. The law of negligence states that the school can legally (whether jointly or individual) held responsible or liable for any injuries or otherwise or inflicted on a child during the statutory hours of schooling (Ukeje, 1993).

In common law, the teacher or the employer has a duty to provide his students with a safe system of learning condition or environment both in the school and at workshop/technical training area. There has to be competent staff and a safe and suitable place and tools of operation. A breach of this duty renders the teacher liable for the payment of damages for any injury which a student may thereby sustain. However, there is the need for an injured student or trainee to prove fault on the teacher or trainer before he could obtain damages (Sagay, 1985; Kodilinye, 1992).

The workmen's compensation Decree of 1987 states that an employer is obliged to pay compensation to his workmen or trainees in respect of any personal injury sustained by them, caused by accident which arises out of and in the course of the employment (Workmen's compensation Decree, 1987). An employer in the decree is defined to include any individuals corporate bodies, federal government, state government or any parastatals. Since a school is a corporate body established by statute, it is included in the decree. Accident is defined in the decree as "an unexpected occurrence which produces hurt or loss". Thus, an invasion of the personality, life or limb of an employee or trainee as long as same is not desired by the person against whom it is done constitutes an "accident". Ranging percentages of disabilities are ascribed to various kinds of injuries. For instance, loss of one middle finger (one phalange) is 10% disability and the total loss of sight is 100% (total) disability. In a situation where compensation is obvious, both parties must agree on the quantum of compensation before the compensation is paid for such injuries. Where the parties failed to agree on the quantum of compensation, the court will have to be involved for a ruling.

The common law duty of care is own by an employer to his employee. In the same vein, a teacher owes a common law duty of care between himself and his students. The same is applicable between a teacher and his employer. In case of any injury caused to such a teacher in the normal course his duty which may have the effect of preventing him from effective performance of his duty, his wages must be paid in full and no deductions may be made from such a teacher's wage for any injury attributed to his employer's negligence of duty of care. In case the above proves to be the contrary for any deduction whatsoever, same must be authorized by a labour officer (Section 5(1) of the labour Act, 1974).

Similarly, the Worker's Compensation Act of 1987 says that an employer which necessarily include a teacher or, school proprietor or management is obliged to pay compensation to his workmen or trainee in respect of any persona injury sustained by them caused by accident which arises out of and in the course of the employment (The Workmen's Compensation Decree, 1987 Section 3).

Application of the Law

The purpose of the is for proper regulation of happenings in the society. However, cases on infringement of the right of students or wards hardly go to court in Nigeria. This state of affairs is traceable to low literacy rate, relatively young educational system and the time and money involved in pursuing a legal action (Wagwu, 1987). Taiwo (1993) opined that there is the tradition of great respect of the teacher in Nigeria. Besides, teacher-pupil and the parent-teacher relationships are not a source of litigation in a Nigeria society.

Nigerian Cases

1. U.A.C. Nig. Ltd. V. Joseph Orekyen (1961). All Nigeria Law Report 79 one Mr 'O' was supervisor of a petroleum training station. His subordinate 'A' while on duty was approached by 'X' who asked for one pound note of his to be changed by 'A' into coins. 'A' retorted that there was no change and X did not like the answer. A scuffle ensued and 'O' intervened in order to prevent a fight. X stroked O in the eye and consequently, the eye was lost. High court ruled that the injury arose out of and in the cause of employment or working since a supervisor has a duty to maintain law and order and protect his subordinates at his place of training/work.
2. M. Ade Smith V. E.D Lines Ltd. (1944) 17 NLR 145; Generally a day's work is ended when the workman closes for the day. However where the worker/trainee travels out his place work/training after closing by some form of transport provided by the employer/trainer which is contractually bound to use or where he is using the means of ingress and egress provided by his employer/trainer and an accident occurred, compensation is recoverable from such employer/trainer and such a situation is covered by the workman's Act.
3. On the 16th May 1994, a wood machinist was injured when using a universal woodworking machine without a guard. The machanist has been working in a science Equipment Centre for over ten years and has been using the machine for different operations. In this case, he was using the machine to shape a wood surface of 2 inches thick. He used his left hand to guard the work to the fence and his right hand to feed the work into the machine. The centre has the policy of closing by 3.30 p.m. every working day. He started on the machine at 2.00 p.m. and continued until 3.30.p.m. when he was called to stop work for the attendant to lock the workshop for the day. While he was in hurry to finish up, his right fingers got to the moulding cutters that were rotating at very high speed. In this process, the machine cutters cut his four fingers.

Under contributory negligence, the employer cannot be held be liable if it can be proved that the employee contributed to his own injuries by some actions or lack of action.

Aspects of Negligence

Negligence is the omission to do something which a reasonable and prudent man would perform. It is the carelessness which is characterized by inadvertence, thoughtlessness and intention (Punke, 1971). Negligence is basically unintentional. It includes acts of omission or which fall below the standard of care required for the protection of pupils against unreasonable risk of harm. A person may be designated to perform a duty such as acting to protect others from unnecessary risk. If an accident occurs, it means the person could not perform his designated duty. This is tantamount to negligence. Generally, a case of negligence may be established under the following:

- (1) The defendant owed a legal duty to protect the plaintiff against harm (that is, the duty of care);
- (2) The defendant failed to exercise an appropriate duty of care (that is, a breach of that duty);
- (3) The plaintiff suffered actual loss or injury - physical or mental or both (consequential damage); and
- (4) The defendant's negligence (act of omission or commission) was the proximate or legal cause of the plaintiff's injury (Peretomode, 1992).

A teacher assumes some rights and duties of the parent while the pupil is in school. The legal authority for such a position is implicit in the legal phrase. "In loco parentis" which describes one who acts in place of a parent and assumes a guardian's responsibility for a child. In consequence, the teacher has the legal authority to control and exercise a degree of care on pupils for the purpose of education. Such control includes enforcing discipline, providing adequate supervision for classroom and workshop/laboratory activities and other needed care. The teacher should enforce the foregoing with as much devotion as a reasonable and prudent parent would do in such a situation.

Nevertheless, the doctrine of "In loco parentis" has been challenged by some parents who oppose teachers' assumption of full duties, responsibilities and obligations of a natural parent to pupil. Crayan (1981), cited in Peretomode (1992), opined that students' relationships to school and to parents are entirely different:

The school/child relationship is intermittent with different adults involved at different times of the day and year; they often at superficial levels and for short periods of time stayed with the child. Parents' relationship on the other hand ordinarily incorporates deep feelings of mutual love and affection. For this reason, corporal punishments inflicted by parents would have an entirely different effect than the same punishment meted out by school authority (p. 219).

One can safely conclude that the teacher should exercise restraint with regard to disciplinary control of students while in school. The teacher should therefore, stand "In loco parentis" to a limited extent that will enable him or her to properly perform his/her duties and accomplish the purpose of education.

The ability to foresee a dangerous situation is essential in determining what constitutes a reasonably prudent action. The teacher should be able to foresee a dangerous situation or unsafe condition in the school workshop and remove it before it causes injury. To this end, pupils should be mature and aware of potential hazards before they are allowed to operate machines. Also, the teacher should be able to anticipate dangerous conditions and regulate the conduct of students.

Responsibility for Workshop and Laboratory Accidents

When an accident occurs, the teacher and the school administration are usually criticized. Researchers (Leighbody & Kidd, 1968; Hosey & Bricker 1972; and De Reamer, 1980) have examined the conditions under which the teacher may be considered negligent and held liable if an accident happens. From these studies, the following condition were identified:

1. Teacher leaves the students in the laboratory unsupervised;
2. Teacher leaves the laboratory with an unqualified person in charge of the class;
3. Teacher sent student outside the workshop to perform hazardous activity without acceptable supervision;
4. Teacher permits student with limited physical or mental ability to use hazardous equipment;
5. Teacher fails to keep written reports of accidents;
6. Teacher fails to obtain written statements from witnesses of accidents;
7. Teacher fails to provide proper safety instruction;
8. Teacher fails to inspect equipment before permitting operation;
9. Teacher fails to enforce laboratory safety rules;
10. Teacher removes or modifies factory installed safety devices on instructional equipment;
11. Laboratory lacks adequate safety devices and safeguard;
12. Students use unapproved equipment (students' own or teacher's) in the laboratory;
13. Students work in the laboratory after or regular class periods without acceptable supervision.

Minimizing the Risks of Accidents in the Workshops and Laboratories.

School accidents are usually attributed to environmental hazards and unsafe students

behaviour. Specific environmental hazards are crowded working areas, poorly arranged equipment, poor lighting and ventilation, undersignated and inadequately guarded danger zones, defective equipment and unguarded machinery. It is the responsibility of the teacher and the Ministry of Education to provide a safe environment in which pupils may work and learn. The Ministry Education is expected to supply or provide adequate facilities while the teacher sees that the facilities are utilized and properly maintained. In the interest of safety, it is of paramount importance that practical subjects should be taught to small-size classes which should not exceed 20. However, inadequate facilities coupled with large classes in technical subjects may make the workshops crowded and students share tools and equipment in order to perform specific tasks in the workshop. A crowded work area constitutes a serious hazard in many schools. If a class is too large to attempt a particular piece of practical work safely, the teacher might divide the class into small groups and having only one group doing practical work at any one time.

Every technical teacher must maintain discipline in the laboratory or workshop. It is regrettable that in some schools, pupils who lack motivation and self-control create danger for themselves and others. They fight and distract the attention of other students, operate equipment without permission, and disregard safe working procedures. The teacher must have a clear policy on how to cope with such pupils. The teacher should encourage clean and tidy habits, good discipline, and strictly prohibit unauthorized projects or experiments. Above all, the teacher should teach by example. The safe practices of the teacher are students' practices. As a result, the teacher is expected to:

- (1) wear appropriate goggle whenever there is any danger of flying chips or hazardous substances in the work or environment;
- (2) wear overall or lab-coat that is appropriate for the instructional activities to be performed;
- (3) make sure that all guards are in place and adjusted properly before starting a machine; and
- (4) give undivided attention to the task being performed.

Besides, pupils should be taught the necessity for good house keeping and maintenance. The teacher should ensure that floors are free oil, water and foreign materials, give pupils adequate instruction before allowing them to operate a machine and supervise closely to make sure that these instructions are obeyed. The teacher should never allow students to operate machines when he is not around.

Summary and Conclusion

The use of hand tools and industrial equipment in secondary schools and technical colleges call for careful supervision of instructional activities to forestall hazards in workshops, laboratories and school premises. Those activities that involve the use of power machines require greater attention and closer supervision if the teacher is to avoid the charge of negligence. When an accident in the school workshop results in an injury to a pupil, the teacher is often criticized and blamed. It remains the responsibility of the teacher as an individual to take steps to protect himself and be free from liability. Chamberlain and Kindred (1966) opined that teachers should be aware of their legal and moral obligations:

Teachers run a risk everyday in their relations with pupils of getting into legal difficulties for which they may held personally liable. To protect themselves against criminal prosecution and civil suits for damages, they should have a practical understanding of the law and the situations to which it applies (p. 241).

It is necessary that all technical teachers should have knowledge of Education law and be familiar with their legal responsibilities so as to protect themselves from litigation.

Pupils must be properly instructed in the principle of safety. Besides, they must be carefully supervised while in a workshop or laboratory. They must be taught to use tools, equipment and supplies in a safe way before being allowed to handle or operate them. Generally, risks in teaching practical courses in the workshop may be minimized by providing a safe environment, teaching operational procedures and strictly enforcing the safety rules. It is expected that technical teachers should make training in safety an integral part of every practical work in the laboratory or workshop. In view of the various liability issues which can arise in the public education context, it is recommended that:

1. instruction in "liability for school accident" be included in safety courses for technical teachers;
2. there should be mandatory yearly inspection of all school workshops and laboratories by Factory Inspections of health and safety. This may be routine inspection or prohibition notice.

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