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'Guilty of a Moment's Inattention, Your Honour': A Review of the 2010 Bond Law High School Mooting Competition

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'You cannot be serious, man!'

It is well known that things can get seriously ugly on a school campus, and that school authorities can be held liable in damages to school students who are injured as a result of a failure on the part of the school, and/or its staff, to take reasonable care for their safety. But did you know that, in Queensland at least, individual staff members could be guilty of a criminal offence if they failed to take good care of students under their supervision? No, well neither did many of the High School students who took up their pens and laptops, and briefly put down their ipods, to research and then moot on two specific hypothetical scenarios, dredged up from the bowels of my diseased imagination, designed to bring out this very point. In each scenario a school teacher was facing the very real prospect of a jail term as a result of what could be most charitably described as a momentary lapse of attention to an assigned supervision task.

Blame it on Sir Samuel

The so-called 'Griffiths Code', which governs Queensland criminal law and is more formally referred to as the *Criminal Code Act 1899* (Qld) ('the Code'), contains several sections which make it a criminal offence for a person to fail to carry out, or to carry out with reckless disregard for someone's safety, a task which they have undertaken to perform competently. It was one of these provisions (s 288) under which the Bundaberg surgeon, Dr Jayant Patel, was recently found guilty of the manslaughter of three of his patients and inflicting grievous bodily harm on another. Although at the time of writing an appeal has been lodged against the application of that section to the facts of his case.

But our concern is with s 286 of the Code, which is headed 'Duty of person who has care of child'. This section states, in effect, that a person (which could include a teacher and is not restricted, for example, to parents or babysitters) who 'has care of' a person aged under 16, and who fails to either 'take the precautions that are reasonable in all the circumstances to avoid danger to [that person's] life, health or safety', or 'take the action that is reasonable in all the circumstances to remove [that person] from any such danger', could be liable under the criminal law of Queensland for whatever harm befalls the person under their care. This means, for example, that if a student suffers bodily harm as a result of a school-ground assault, which a teacher on ground supervision duties could have prevented but did not, then that teacher is looking down the barrel of a seven year sentence, or 14 years if the injury is such as to constitute grievous bodily harm.

'You're seriously sick, you know that, don't you?'

This startling, but little-known, principle of law was well illustrated in the two problem scenarios which I devised for the two rounds of this year's High School Mooting Competition. The regional round sent many of my colleagues jetting, driving and walking across Australia and parts of Malaysia to judge students battling it out over whether or not a senior member of school staff could be held liable under criminal law (in addition to the person who actually inflicted the injuries) for injuries suffered by a 14 year old student ('Daryl') attending an end of year bash at the school, which had been organised by Year 8 students under supervision by an Assistant Principal of the school, who became the 'accused'.

Earlier in the year Daryl had made himself as unpopular with his fellow students as a burger in a weight-loss clinic and steps had been taken to prevent him from obtaining a ticket for the bash. However he easily circumvented these precautions, and turned up at the event on the night. During the actual event, the accused had hidden himself away in his office in the main school building while the bash was taking place in the school auditorium, but had been kept up to date with events via mobile phone calls from another member of staff.

It was by this means that he learned (a) that alcohol was circulating among the senior boys who were acting as bouncers for the event, and (b) that Daryl had turned up at the bash and was being threatened with violence by other members of his year. The accused's only response was to order that the boy be removed by the bouncers for his own safety. It was one of the bouncers who in fact rammed an empty whisky half-bottle into the boy's face, and not only was the boy responsible for this subsequently found guilty of unlawful wounding, but in a later trial, the Assistant Principal was found guilty of the same offence by virtue of s 286 of the Code.

It was an appeal against this conviction which formed the main focus of the preliminary round problem, and well over one hundred schools put their teams into battle during April and May of this year, in search of a finalist team from each region to travel to Bond University (at the University's expense) for the finals on 24 July.

The eventual regional finalist schools were as follows, in order of appearance at the bar table:

Lindisfarne Anglican Grammar, Banora, NSW
St. Clare's College, Canberra, ACT
Glenmore State High School, Rockhampton, QLD

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SMK St. Francis Convent, Malaysia
Cranbourne Secondary College, Melbourne, VIC
Somerset College, Gold Coast, QLD
Ipswich Grammar School, QLD
SMK St. Teresa, Malaysia
Canterbury College, Brisbane, QLD
Newington College, Sydney, NSW
Seymour College, Adelaide, SA
Brisbane Grammar School, QLD
Sydney Grammar School, NSW
Mac.Robertson Girls High School, Melbourne, VIC

As simple as falling off a roof

The preliminary finals ran from 8 a.m. to 3 p.m., again with staff of Bond Law Faculty acting as judges. The finals scenario was on a similar theme, but with different facts. This time, a 13 year old school student called Amanda had succeeded in falling off the roof of a cycle shed in the school oval. She was not injured in the fall – only in the landing, when she fractured her pelvis, and the question was whether or not the teacher, who had agreed to take over supervision duties temporarily while her colleague went to the toilet, was liable under s 286 for the grievous bodily harm which Amanda suffered.

After some seven hours of truly inventive mooting, a suitably exhausted panel of judges chose, as contestants in the Grand Final, Seymour College and Newington College. The judges for the Grand Final were as varied as it is possible, with His Honour Judge Newton of the Southport District Court as chairman, yours truly as the second judge, and a guest appearance as third judge by one of our former students ('alumni', as we like to call them), Kate Allan. Kate, having graduated only recently, has since been gainfully employed as Associate to the President of the Queensland Court of Appeal, Justice Margaret McMurdo, and was therefore well qualified to judge an appeal.

And the winner is . . .

From 5p.m. to 6p.m., the grand final judges listened to some of the best advocacy ever heard at a High School Mooting Final, and retired to make a very difficult borderline decision about which team should be declared the winner. The girls of Seymour College eventually emerged triumphant and, at the announcement ceremony which followed, both teams were amply supplied with trophies, medallions and miniature gavels. The winning advocates from the Seymour team (Bree Nicolo and Charlotte Thomas) each received a 40% scholarship to study Law at Bond (subject to academic suitability), and further 40% scholarships were presented to two other outstanding advocates on the day, Bradley Smith of Newington College and Alicia Eng Hui Ching, of SMK St. Theresa, Malaysia.

It was then all over bar the eating and all concerned adjourned, grateful but somewhat 'mooted out', to the University Club, and the now traditional celebration dinner, where excellent food was interspersed with speeches and further presentations to all the teams which had taken part. Last but not least Amanda Elms and her team (most notably Rachel Hannah, who was the person on the ground for the entire day) are to be congratulated for their excellent attention to detail, which enabled the entire day to proceed without a glitch, and made it so enjoyable and successful.

DID YOU KNOW?

Legal Terminology

Admissibility: In relation to evidence, the quality of being capable of being received by a court or tribunal. As a general rule, all evidence which is relevant to the proceedings in which it is tendered or adduced is admissible, although a trial judge has a discretion to reject evidence even though it is admissible.

Discovery: A pre-trial procedure where a party to proceedings makes available for inspection all relevant documents to the other parties.

Duty of Care: The obligation owed to anyone whom it is reasonably foreseeable would be injured by the lack of care of that person. For a duty of care to arise, there must exist a relationship of proximity between plaintiff and defendant. The duty may be owed to persons in specific categories, such as by a doctor to a patient. The duty is breached if the defendant fails to act in accordance with the required standard of care.

Summary Judgment: Discretionary judgment or verdict given in favour of the plaintiff, where there is evidence of the fact upon which the claim is based and the defendant has no real defence to the plaintiff's claim; or in favour of the defendant where the plaintiff has no reasonable cause of action, the proceedings are frivolous or vexatious, or are an abuse of the process of the court.

Strict Liability: Liability for damage without the need to prove negligence or fault. The defendant is liable irrespective of an absence of negligence or intention on his or her part and even if he or she took reasonable care to prevent the damage.

Unconscionable: Unfair, unjust, unscrupulous, unreasonable, or excessive; against the dictates of conscience as recognised by a court of equity. Conduct is deemed unconscionable where it can be seen in accordance with the ordinary concepts of humanity to be so unfair and against conscience that a court would intervene or so unreasonable and oppressive so as to affront minimum standards of fair dealing.

(Source: Butterworths Concise Australian Legal Dictionary, 1997)

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