

# Student violence: teacher Intervention

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# Duty of Care

- duty to take reasonable steps to protect students from reasonably foreseeable injuries.
- not a duty to *ensure* that students do not suffer any harm at all - a duty not to be careless

- Cases have established that the duty applies where a teacher becomes aware of the fight
- ALSO the duty is proactive; teachers are obliged to try and prevent fights or situations where violence or bullying is reasonably foreseeable.

# Reasonable Teacher

- - age, experience and capacity of the students,
- - the known behaviour of a class or group,
- - the gravity of the risk faced by students and
- - the probability of injury occurring weighed against the expense or burden of preventing risk of injury,
- - and the educational worth of the activity

# Common law decisions suggest :

- That there could be occasions when it is appropriate for a teacher to intervene physically to stop a fight.
- The size of the teacher in relation to the sizes of the fighting students is a factor to be considered when determining whether this is a suitable course of action.
- The fact that the teacher might be assaulted, or students injured, or the fight exacerbated is a factor for the teacher to take into account when determining what are reasonable steps to take to stop the fight.

- However, it cannot be said that the common law, through the decisions of the courts, has provided teachers with clear instructions on how they should respond to student fights.

– section 25 of the *Occupational Health and Safety Act 2004* (Vic) to take reasonable care for their own safety.

# Touching Students

*Horan v Ferguson* - friendly supportive touching is acceptable unless the student has withdrawn consent either expressly or impliedly.

# Restraint - an assault?

- Where teachers do intervene in fights, they will not generally become criminally liable for assault where their actions are reasonable.



- teacher's actions will rarely be characterised as possessing *intent*, to harm the student, given their aim is to prevent harm
- Specific authorisation for Government school teachers Reg 15
- Self defence/defence of others defence for non-government teachers

# Regulation 15: restraint from Danger

- A member of the staff of a Government school may take any *reasonable* action that is *immediately* required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student or any other person.

- Non-government school teacher could plead self defence, or defence of others, or necessity where the restraint was to protect students
- force used to quell the fight or restrain the perpetrator be **reasonable and proportionate**, which again hinges on the surrounding circumstances. **Excessive force** will prevent a teacher from being able to invoke these defences

- The carrying of emergency cards or using a mobile phone to gain help while on playground duty, stating clearly and loudly in front of witnesses the action you are about to take and the use of minimal force can lessen the opportunity for your appropriate action being misconstrued. (NSW Teacher's Fed guideline)

# Sexual Touching when restraining

- Touchings of a sexual nature in the course of quelling a fight will only attract liability if proved to be **intentionally** sexual.

# Mischievous allegations by students

- Any claim of assault against the teacher is subject to the rules of evidence.
- Teachers the subject of a malicious allegation and/or teachers who made the intervention or contact in the presence of few witnesses may be in a more difficult position vindicating their actions before the court.

# UK Legislation

- (1) A member of the staff of a school may use, in relation to any pupil at the school, such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing (or continuing to do) any of the following, namely—
  - (a) committing any offence,
    - (b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or
    - (c) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise.

- (2) Subsection (1) applies where a member of the staff of a school is—
  - (a) on the premises of the school, or
    - (b) elsewhere at a time when, as a member of its staff, he has lawful control or charge of the pupil concerned;
- but it does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548.
  - "member of the staff", in relation to a school, means any teacher who works at the school and any other person who, with the authority of the head teacher, has lawful control or charge of pupils at the school;



# Damage to property

- The teacher's duty of care does not extend to preventing property damage at the hands of students
- the teacher's obligations to their employer probably compels at least some level of action

- Since the student's actions are likely to constitute criminal damage, a teacher could probably invoke their powers of arrest to prevent the offence or stop its continuation.
- Any force used to intervene must be, as always, reasonable and proportionate -
- danger of being sued for assault/wrongful imprisonment

