Some Thoughts on Aspects of Delictual Liability in Relation to Public Schools in South Africa

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1. Introduction

The purpose of this contribution is to briefly examine a number of different issues concerning delictual liability in the context of the South African public school system. This is intended to provide foreign lawyers with some insights into aspects of the application of our law of delict.

The law of delict in South Africa represents a well-developed and advanced system of rules and principles that have remained largely un-codified and can be traced back to their Roman and Roman-Dutch law foundations. English law has, of course, also had a major influence on aspects of the law of delict. Generally speaking, however, our law of delict has managed to retain its basic Continental character.

Delictual liability is said to be based on three pillars, namely the Aquilian action for patrimonial loss, the *actio injuriarum* for (usually intentional) personality infringements, as well as the action for pain and suffering (which developed in classical Roman-Dutch law). The fields of application of these actions have in the course of time extended far beyond their Roman-Dutch law limits.[1]

The question of delictual liability is governed by a *generalizing* approach – in other words, general principles or requirements determine liability to pay damages or satisfaction. This is in contrast to the casuistic approach of the Roman and English law of delict (or rather law of torts).[2] Our law of delict has shown itself to be remarkably suitable to deal with new problems in terms of the flexibility and pliancy of the following general elements or requirements for liability: conduct, wrongfulness, factual and legal causation, fault (intention or negligence) and damage (patrimonial or non-patrimonial loss). It thus does not matter if a new situation concerning liability arises in the field of, for example, pure economic loss, negligent misrepresentation inducing a contract, damage caused by a manufactured object, interference with a contractual relationship, the causing of psychological lesions, or a novel problem found in a public school context: *the law of delict can be expected to provide an appropriate answer.*

The delictual remedies are strongly supported in their inherent flexibility by, for example, the *boni mores* or objective reasonableness criterion[3] to determine whether an act was wrongful, as well as the refined test of negligence to establish whether a defendant can be blamed for not foreseeing and preventing damage wrongfully caused.[4]

Another potentially important source of principles for the further development of our law of delict, is the Constitution of 1996. The fundamental human rights entrenched in the Bill of Rights found in Chapter 2 of the Constitution – that operate 'vertically' and 'horizontally' in terms of this somewhat misleading terminology

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1 See Neethling, J., Potgieter, J.M. and Visser, P.J. (2002), *Law of Delict*, Butterworths, Durban, pp. 8-18; Van der Walt, J.C. and Midgley, J.R. (1997), *Delict: Principles and Cases* Vol I, Butterworths, Durban, paras 6-17.

2 See Neethling, Potgieter and Visser, p. 4 et seq. for a brief historical survey. See also Van der Walt and Midgley, para. 18 note 10. Reference is made in the latter work to the cynicism of English and American writers concerning the merits of generally formulated principles of liability.

3 See Neethling, Potgieter and Visser, p. 47 et seq.

4 *Ibid.*, p. 137.

– must obviously be taken into account as far as the development and application of the law of delict are concerned. It is expressly stipulated in section 39(2) of the Constitution that when developing common law, the courts must promote the spirit, purport and objects of the Bill of Rights. A number of rights, especially well-known personality rights concerning life, bodily and psychological integrity, human dignity, bodily freedom, privacy, etcetera, that have traditionally enjoyed delictual protection, now form part of the Bill of Rights.[5] However, as experience has shown, there have so far not been fundamental or significant changes to the application of the law of delict directly inspired by the Bill of Rights. This is not surprising. The current South African law of delict with its sound foundations, its lucid and flexible principles and its long and realistic tradition of developing according to new circumstances and modern needs, is already very much in line with the contemporary spirit, objects and values of our Constitution and can be expected to remain so.

Although the potential influence of the Bill of Rights should not be discounted or underestimated,[6] it is inappropriate to regard every delict or possible delict as a constitutional matter on which the Bill of Rights must first be consulted before the correct solution can be found. And although some lawyers would probably dispute the validity of this view, many of our judges, probably unwittingly, would interpret provisions in the Bill of Rights that are delictually relevant in view of the existing law of delict instead of merely evaluating or interpreting the law of delict in terms of the Bill of Rights.

2. Delictual liability in the context of a public school: some general observations

It is trite that there is a reasonable risk of delicts being committed in the context of a public school (of which there are, roughly speaking, 28 000 in South Africa). While the consequent application of the general principles of delict to such situations should normally not present any particular problem or should not be different from applying the law of delict to other typical situations, there are a number of factors that could perhaps be seen as noteworthy or even unique.

The presence of large numbers of children from different age groups at premises that they are compelled to attend and have to participate in certain activities while under the control of education professionals, could obviously be described as a prominent factor. The law of delict has a specific approach in assessing the standard of conduct expected from persons when they are dealing with or interacting with children,[7] as well as in assessing the standard of conduct expected of children of 7 years or older for the purposes of holding them liable in delict or to assess their possible contributory negligence.[8]

It is further clear that school children (learners) are potentially exposed not merely to negligent or abusive conduct from educators but also from such conduct by other children. In addition, educators may fall victim to delicts that children may commit against them. For example, according to a recent newspaper report[9], two disgruntled school children allegedly inserted poison tablets into the coffee of an educator with whom they were displeased. They then assaulted another learner who disclosed information on their nefarious activities. The delictual implications of all this should be self-evident. Moreover, the educator could probably sue the State if any omission to exercise reasonable control by the school authorities over problematic learners could be said to have facilitated the learners' criminal conduct.[10]

In addition to the possible infringement of the physical-mental integrity of persons present on school premises, there are risks to their personality rights involving privacy, good name, dignity and religious feelings that may be relevant for the purposes of delictual remedies. Moreover, there could possibly be delictual claims on the basis of poor or inappropriate education presented to a learner that falls below the standard to be expected in terms of the Constitution and other applicable law. This may sustain delictual claims in respect of patrimonial loss (e.g., wasted expenditure, loss of earning capacity, other losses caused by misrepresentation, etc.) as well as non-patrimonial loss associated with poor educational practices.

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5 See generally Neethling, Potgieter and Visser, pp. 18-23; Van der Walt and Midgley, para. 5; Visser (1998), 'Some remarks on the relevance of the Bill of Rights in the field of delict', *TSAR*, pp. 529-536.

6 See, e.g., for a list of areas of possible constitutional impact on delict, Visser (1998), *TSAR*, pp. 533-535.

7 See, e.g., *Keown v. Ned-Equity Versekeringsmaatskappy Bpk* 1984 1 SA 656 (A) 661-662; Boberg, P.Q.R., *Delict*, pp. 355-356.

8 *Weber v. Santam Versekeringsmaatskappy Bpk* 1983 1 SA 381 (A).

9 See *Beeld*, 5 August 2004.

10 See Neethling, Potgieter and Visser, p. 57 et seq. regarding liability for omissions.

3. Relevance of official policies and codes applicable to public schools

The detailed official policies applicable to many facets of the management of public schools could obviously be significant in regard to possible delictual liability. Such policies could be said to assist in determining whether there was a wrongful act or omission (sometimes described as a 'duty to take care' in terms of English legal terminology), or in finding the appropriate standard of care in regard to possible negligence as measured in terms of the reasonable person test.[11]

The generally correct approach in this regard appears to be[12] that such rules and principles (for example, in regard to dealing with or preventing AIDS or HIV-infection at a public school, or in maintaining school premises by removing dangers or keeping dangerous objects or material under proper control)[13] would only provide *evidential material* of possibly relevant factors in determining wrongfulness or evidence of negligence. The transgression of legal rule or policy principle is not in itself delictually negligent. The criteria for delictual wrongfulness[14] and the test for negligence[15] are based on and applied in terms of their own principles and flawed, mistaken or incomplete official policies that conflict with these principles should obviously be regarded as irrelevant.

Another matter that should be considered in this context, is the code of conduct for learners at a school. In view of the potential disruption to the education process at a public school caused by misconduct of learners, every school must have (and obviously enforce) a code of conduct for learners. In terms of section 10(2) of the South African Schools Act 84 of 1996 the purpose of the code of conduct is to establish a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the education process.[16] Although the code must primarily deal with the preservation and furtherance of the 'education process', the types of conduct usually prohibited are often related to the prevention of delicts by learners. If it could thus be proved on a preponderance of probability that the enforcement of certain rules would have prevented a delict, a failure to enforce the code should assist in founding a delictual action. Where the education authorities tolerate a culture of lawless behaviour by learners, they would hardly escape liability for damage that could have been prevented through reasonable enforcement measures.

4. Unlawful initiation practices

A topical matter that is of some interest and importance in regard to delictual liability in relation to a public school, is the recently promulgated section 10A of the South African Schools Act.[17] This section provides as follows:

> '(1) A person may not conduct or participate in any initiation practices against a learner at a school or in a hostel accommodating learners of a school.
> (2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person ...
> (b) In addition to paragraph (a), a learner may institute civil action against a person or a group who manipulated and forced that learner to conduct or participate in any initiation practices.
> (3) For the purposes of this Act, "initiation practices" means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a school, a group, intramural or extramural activities, interschools sports team, or organization
> (a) endangers the mental or physical health or safety of a person;
> (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
> (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
> (d) undermines the fundamental rights and values that underpin the Constitution;
> (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or

[11] See Neethling, Potgieter and Visser, p. 148 on the relevance of specific statutory provisions in applying the reasonable person test for negligence.
[12] *Ibid.*
[13] See, e.g., *Knouwds v. Administrateur, Kaap* 1981 1 SA 544(C) – lawnmower on playground.
[14] Neethling, Potgieter and Visser, p. 37 et seq.
[15] Neethling, Potgieter and Visser, p. 128 et seq.
[16] See generally Visser (1999), 'Some ideas on the legal aspects of a code of conduct for learners in public schools', *De Jure*, pp. 146-152.
[17] See also Visser (2004), 'Delictual liability in respect of unlawful initiation practices at a public school: when is the State liable?', *THRHR*, pp. 98-102.

(f) destroys public or private property.
(4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (3), the relevant disciplinary authority referred to in subsection (2)(a) must take into account the right of the learner not to be subjected to such practices.'

The object in including section 10A(2)(b) in the Schools Act is somewhat obscure. The law of delict obviously does not have to be re-enacted to make a remedy available in instances of the wrongful and culpable causing of damage in particular circumstances – including 'initiation practices'.[18] The idea behind section 10A(2)(b) is probably twofold:

(a) To ensure that the reference to disciplinary steps in section 10A(2)(a) could not be seen as depriving anyone from a delictual claim. However, this would be self-evident.
(b) To cast the net of common law delictual liability somewhat wider since the definition of 'initiation practices' possibly goes a little further than infringements of personality rights protected in terms of the *actio iniuriarum.*

The term 'civil action' referred to in section 10A(2)(b) includes the basic common law actions for the recovery of damages or satisfaction.[19] In addition, there is no reason to assume that section 10A(2)(b) changes common law delictual liability anymore than would be strictly necessary. For example, all the usual delictual requirements or elements, including wrongfulness, fault, causation (factual and legal) and damage, should be present before an action will succeed. The usual grounds of justification excluding delictual liability should also apply – as should the general maxim *de minimis non curat lex.*

The plaintiff in terms of section 10A(2)(b) may either be someone who has suffered direct harm as the victim of unlawful initiation or someone forced to participate as an actor and who has had to pay damages to the victim or has suffered injury to personality. Although there is no reference to the parent of a learner, the normal principles of delictual liability will be applicable where the unlawful and culpable use of an initiation practice causes loss to the parent by adding to his or her duty of support.[20]

A further question is whether the legislature intended section 10A(2)(b) of the South African Schools Act to be read with section 60(1), (2) and (3) of the same legislation. The latter provisions are as follows:

'(1) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.
(2) The provisions of the State Liability Act, 1957 (Act 20 of 1957), apply to any claim under subsection (1).
(3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned.'

The following are some of the important practical questions regarding the effect of these provisions: when will a public school (which is a juristic person in terms of section 15 of the South African Schools Act) be liable as contemplated in section 60(1)? May the wrongful conduct of all persons, officials and bodies associated with the functioning of a public school (such as the head of the provincial education department, the school principal, the school governing body, educators and other staff in the employ of the provincial government, educators and other staff in the employ of the school itself, persons contracted by the school for certain purposes and learners assisting in relation to educational activities), be imputed to the *school* for the purposes of the eventual liability of the State as represented by the provincial government? And may the State be held vicariously liable if an educator negligently harms a learner in a manner unconnected with educational activities but still within the scope of his or her employment? Finally, does section 60(1) of the South African Schools Act mean that a public school is *not* liable in delict when the State is held liable?

[18] See generally on conduct in connection with an unlawful and negligent 'orientation' session causing serious physical harm to a university student, *Gibbins v. Williams, Muller, Wright & Mostert Ingelyf* 1987 2 SA 82 (T).
[19] See generally Neethling, Potgieter and Visser, p. 8 et seq.
[20] *Ibid.*, p. 281 footnote 11 for references to case law.

It is, however, unnecessary to attempt to deal with all the questions referred to above in this contribution.[21]

Section 10A(2)(b) of the Schools Act specifically refers to an action against a 'person or a group who manipulated and forced' the plaintiff to conduct or participate in unlawful initiation practices. The basic question that should be considered is whether section 10A(2)(b) foresees *State liability*. This is obviously important from the practical perspective of security for payment of damages and legal costs.

Liability of the public school, and of the State, will only be possible when the unlawful actions of the perpetrating person or group can be imputed to the public school because the initiation occurs 'in connection with any educational activity conducted by a public school.' It appears improbable that the legislature could have intended that in such instances a delictual action may only lie against the natural persons directly involved in the 'manipulation' or 'forcing' of the plaintiff in relation to the unlawful initiation. It is, for example, still common practice for grade 8 learners entering a high school to be subjected to 'orientation', 'introduction' and 'induction' for a few days before the formal start of the school programme. This process often contains some elements of unlawful initiation as defined in section 10A(3) of the Schools Act. As the 'orientation' is organized by the school itself (with the express or tacit approval of the principal and the governing body[22]), and is usually seen and declared to be necessary for the learners to function properly at the school, it can hardly be maintained that it is unrelated to educational activities conducted by the school. The acts of the school's organs should be imputed to the public school in such an instance.

It is accordingly submitted that if all the requirements of section 60(1) of the South African Schools Act are present, the public school and thus the State should clearly be liable in damages in regard to unlawful initiation constituting a delictual wrong. From the wording of section 60(1) and (2) it is not clear whether *only* the State is liable or whether the public school itself may also be sued.

Where educators of a school are involved (actively or through an omission that attracts liability) in any unlawful initiation practices without the requirements of section 60(1) being satisfied, but such educators act within the scope of their employment as employees of the State, the State should equally be held vicariously liable for wrongs committed by them.[23]

Educators employed by a public school itself (and not by the relevant provincial Department of Education)[24] may also cause the school to be liable for delicts in connection with unlawful initiation committed by them within the scope of their employment. If the delicts do not relate to an educational activity, the State will not be liable in terms of section 60(1). Where, on the other hand, the requirements of section 60(1) are present, the State should be liable.

The mere fact that certain educators in the service of the school are not formally employed and remunerated by the State (but by the school's governing body), probably does not mean that the State cannot be held vicariously liable for their delicts in the course of their activities as educators since the school principal, acting on behalf of the provincial education department, exercises control over them.[25]

A public school may be liable for the acts or omissions of anyone that can be imputed to the school itself, in other words, any organ used by the school to further its activities.[26] This may obviously include learners used by a school.[27]

In view of the above, the public school, and thus the State, will not be liable where the unlawful initiation at a public school or hostel is unconnected or insufficiently connected with any educational activity or where no educator

[21] See also Visser (2004), *THRHR*, p. 100.
[22] Every public school in SA must have a governing body on which parents form the majority while the professional management of the school is entrusted to the principal acting under the authority of the relevant provincial Department of Education – s. 16 of the SA Schools Act.
[23] See generally on the requirements for vicarious liability Neethling, Visser and Potgieter, pp. 377-379.
[24] See s. 20(5), (6) and (7) of the SA Schools Act.
[25] It must be pointed out that s. 20(10) of the South African Schools Act that expressly excludes State liability in respect of educators employed by a public school, applies only in regard to a public school's *contractual liability* and not its liability for the delicts committed by its employees that are connected with educational activities.
[26] See generally Neethling, Potgieter and Visser, p. 28 footnote 6 for criteria before unlawful conduct may be imputed or attributed to a juristic person.
[27] See generally *Dowling v. Diocesan College* 1999 3 SA 847 (C) 851-852 – school prefects; see also *Hiltonian Society v. Crofton* 1952 3 SA 130 (A).

or other organ is involved within the scope of his or her employment, authority, mandate or educational activities. In such instances only the actual perpetrators may be sued delictually.[28]

The statutory provisions referred to above are obviously not clear enough. Section 10A is not properly formulated (see, e.g., the unclear phrase 'manipulated and forced' in section 10A(2)(b)) and this complicates an already difficult matter. Clearly and properly formulated provisions on delictual liability in a school context are required.

A general matter that should also be addressed is whether the *school fund* can be used for satisfying claims *ex delicto* against a public school. It is not clear enough whether section 37(6) of the South African Schools Act permits such claims to be settled from the school fund since delictual liability hardly involves an 'educational purpose' as envisaged in this section.

5. Contractual exclusion of delictual liability

It is common to find parents of learners at a public school being requested to sign documents of consent or waiver of claims in regard to possible delictual actions.[29]

The first point that should be made is that in terms of section 5(3)(c) of the South African Schools Act no learner may be refused admission to a public school because his or her parent has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner. There are, however, quite a number of unanswered questions regarding this provision.[30] In addition, the school may possibly exclude a learner attending a school from *certain activities at school* in the absence of such a waiver (or *pactum de non petendo*) when it is reasonable to do so. The relevant statutory provision should in any event not affect the operation of common law principles concerning *volenti non fit injuria.*

A further point that should be mentioned is that where indemnity agreements are entered into, our courts construe them rather strictly and apparently in favour of the learners and their parents.[31]

6. The test for negligence

The standard of conduct expected in the context of public education is in principle no different from the general standard used for the purposes of establishing negligence. The most authoritative formulation of this standard is as follows (although the language used may now be somewhat old fashioned):[32]

> 'For the purposes of liability *culpa* arises if
> (a) a *diligens paterfamilias* in the position of the defendant
> (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
> (ii) would take reasonable steps to guard against such occurrence; and
> (b) the defendant failed to take such steps.'

The nature of the steps that would be required in a particular situation to avert reasonably foreseeable damage would depend on what could reasonably be expected in the factual circumstances of a particular case. Of general relevance in the school situation is that undue demands should not be placed on public authorities and

[28] General reference should be made to *Wynkwart NO v. Minister of Education and Another* 2002 6 SA 564 (C)) where the State *and the (public) school* in question were sued in respect of injuries sustained by a young learner as the result of a fall on the premises of the school while attempting to climb over an unused gate. The court held both defendants liable for the negligent failure of an educator to take reasonable steps to prevent the learner from injuring himself (572F). This judgment has been reversed on appeal in regarding to negligence – see 2004 3 SA 577 (C) and below). However, it is not clear from the report of the earlier judgment whether the educator was in the employ of the school and why the school was also sued as a defendant since the (theoretical) liability of the school appears to be merely a requirement for State liability – see s. 60(1) of the Schools Act which uses the words 'for which such public school would have been liable but for the provisions of this section'.

[29] See generally Neethling, Potgieter and Visser, p. 276 concerning these matters in a general context.

[30] See for a more detailed analysis, Visser (1997), 'Some principles regarding the rights, duties and functions of parents in terms of the provisions of the South African Schools Act 84 of 1996', *TSAR*, p. 630.

[31] See, e.g., *Minister of Education and Culture (House of Delegates) v. Azel* 1995 1 SA 30 (A) for a good example.

[32] See *Kruger v. Coetzee* 1966 2 SA 428 (A) 430.

functionaries as their resources and the manner in which they have ordered their priorities must obviously be taken into account.[33]

As far as educators are concerned, the basic test for negligence should be the hypothetical conduct of the fictitious reasonable person in the position and circumstances of the educator. The out-dated maxim that an educator is *in loco parentis* in respect of a learner[34] and should thus act like a reasonable parent, only confuses the issue. It is a roundabout way of testing for possible negligence. In addition, a parent is supposed to act like a reasonable person in the circumstances and it thus does not contribute to clarity of thinking to view an educator as a type of surrogate parent.[35] If an educator has, or is supposed to have, more than the average knowledge or expertise of dangers and risks to learners in the school situation, such knowledge is obviously imputed to the educator whose conduct is assessed.

As may be expected, different courts have to come different conclusions regarding negligence on the same set of facts. In a prominent recent case, namely Wynkwart NO v. Minister of Education and Another[36] the Court had to decide whether the injuries sustained by a young learner (9 years of age and referred to as 'R' in the reported judgment) when he fell off an unused but locked gate[37] at the school were caused negligently by educators at the school. After referring to certain previous cases[38] the court agonized about the correct test to be applied to establish negligence:

> '[12] The test of a reasonable prudent person or reasonably careful parent in relation to his children is not a clear one. Does it mean the well-known legal fiction of bonus paterfamilias? If not, is it a lesser test? ...
> [13] I am not sure in my own mind why the test should be somewhat lesser when it is applied against the teacher within a learning environment. This is not a situation where one is asked to decide on the alleged negligence of a child. Teachers act *in loco parentis* most of their professional lives. They are even better trained than parents about child development. School-going children spent the best part of their active life with teachers rather than their parents. So in my view it is not asking too much of a person acting *in loco parentis* to be judged on the normal test in the discharge of his/her duties towards his/her ward.'

The court then concluded:

> '[23] In my view it is not sufficient that children are told during orientation and assembly and in class that they should not climb over the gates or fences. Children of a tender age, by their very nature, which Friedman J referred to as being among other things impulsive, unpredictable and irresponsible, may notwithstanding such advices go against them. It is for that reason that teachers are trained in child development and psychology so that they understand the behaviour of children. They cannot therefore abdicate their responsibility by saying that the young children were told not to do that which they have done.'

However, it came as no surprise that this decision was overturned on appeal. Whatever the correct test of negligence may be, it was startling to learn that educators were responsible on an almost strict basis for the injuries to the young learner *in casu.*

In Minister of Education v. Wynkwart[39] a court of three judges, after referring to the test for negligence[40] and the proven facts, concluded:

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33 See *Minister of Safety and Security v. Van Duivenboden* 2002 6 SA 431 (SCA).
34 See, e.g., *Broom v. Administrator, Natal* 1966 3 SA 505 (D) 518.
35 See, e.g., *Rusere v. The Jesuit Fathers* 1970 (4) SA 537 (R). Beck J held as follows (at 539C-D): 'The duty of care owed to children by school authorities has been said to be to take such care of them as a careful father would take of C his children. . . . This means no more than that schoolmasters, like parents must observe towards their charges the standard of care that a reasonable prudent man would observe in the particular circumstances...'
36 2002 6 SA 564 (C) – see also footnote 28 above.
37 See the English case of *Carmarthenshire County Council v. Lewis* [1955] 1 All ER 565 (HL) where there was a failure to keep a gate which led to a busy street locked. The failure to do so was clearly negligent.
38 See, e.g., *Broom v. Administrator, Natal*, footnote 34 above; *Levy NO v. Rondalia Assurance Corporation of SA Ltd* 1971 (2) SA 598 (A).
39 2004 3 SA 577 (C).
40 See above.

> 'The appellants had not introduced hazards. In addition thereto, as previously indicated the pupils were regularly warned of the dangers of climbing over the school's gates and fences. Furthermore, there was a properly considered system of teacher, and even scholar patrol, supervision to manage the daily egress of approximately 900 pupils simultaneously from the three gates in use.
> The degree of supervision to be exercised in a particular case would depend upon a great variety of circumstances. It appears from the authorities ... that a pupil of R's age need not be kept under continuous supervision on the school grounds unless there is some hazardous feature present. To guard against the possibility of a single pupil slipping away, climbing over a gate or fence and suffering injuries would require that each pupil should be kept under continuous supervision. It would not be reasonable to expect the appellants to have taken such steps in this instance.
> In my view, the respondent did not establish on the evidence a failure by the appellants to take reasonable steps which, if taken, would have prevented R from slipping away from his class and climbing over the locked gate which he had been repeatedly warned not to use. Nor did respondent show that other steps not taken by the appellants constituted reasonable measures which, if applied, would have prevented R doing what he did.
> In the result, the appeal succeeds with costs...'

It is submitted that this judgment is basically correct in the application of the appropriate criterion for negligence.

7. Final remark

The above is intended to provide glimpse of certain current issues regarding the law of delict in the context of the public school system in South Africa. The correct application of the well-known principles of delictual liability should provide an acceptable and fair answer in all instances of alleged delictual liability in the public school context.