

Wednesday, February 26, 2014

Developing Legal Literacy
Duty of Care

STUDENT A: Hello! My friends and I are really excited to be with you here today. As law students we spend most of our days wrestling with judicial analysis and case-law – trying to make sense of decisions that judges make regarding important points of law! The law is important because it is all around us. This may surprise some of you, but did you know that the law effectively shapes almost every aspect of our lives – from buying candy at the shop, to how fast you can drive a car. As such it makes sense to understand a little bit more about the law, so that you can better understand your rights and responsibilities as members of your school, community and society at large.

STUDENT B: Why is it important to understand our rights and responsibilities in society?

STUDENT C: Because we all have a duty to care for ourselves and each other. Not only is this a principle and rule that we should live by, but you may also be surprised to know it is the law as well! In 1932, just under 100 years ago, an English judge developed the neighbour principle, which in many ways continues to be valid law today. In its most simplest of terms, the neighbour principle is this idea that we all live together, from all sorts of different upbringings, and we are united by a common understanding that we should take reasonable steps to take care of ourselves and each other.

STUDENT A: Wow! I didn't realize the law was so old. Has anything changed since the neighbourhood principle of 1932?

STUDENT B: As I am sure you can imagine a lot has changed since 1932, including the law! And while we still employ the neighbour principle in a broad sense, we have refined it a bit more. The most important case that built on the neighbour principle was established in 1990 – *Caparo v. Dickman*. It was this case that explained what society expects from those people who are responsible for others. We were told that a person who is responsible for someone else will fall below a duty of care if: there was damage or an injury that was predictable and if that damage or injury happened to people who are physically close to one another. In effect, we have a duty of care.

STUDENT D: What do you mean by a duty of care?

STUDENT E: A duty of care is a responsibility that we have to be respectful to one another. This duty is portrayed more clearly when people are in a position of authority. For instance when you go to visit your doctor they will make sure that they check you over in a safe manner. Your parents have a duty to look after you to make sure you are healthy and to protect from dangers. And your teacher has a duty of care to make sure you guys are learning in a safe, positive environment. These people have to ensure that they don't break this duty of care by ignoring the responsibilities they owe to someone. Therefore the law sets a standard that they

have to meet. For instance a teacher will fall below their duty of care if a student gets injured and they don't bother to help them.

STUDENT C: So the law *has changed over time to develop the duty of care??* – that's neat! In your opinion what are some of the important points to take away from this?

STUDENT D: In summation, we all should take steps to ensure the safety of ourselves and each other. Now that I think about it, it is a concept that is similar to the rule at your school "Play Safe or Don't Play At All". The court will find that someone has fallen below their duty of care if three conditions are met: that the damage caused was predictable; that the damage caused happened within a close distances of the parties; and if it is reasonable for the court to hold that person liable. We don't expect you all to understand the law in depth. But we would like to reiterate our topic of law to you – the duty of care. That is the duty to care that some people have over others.

Thank you for listening!

Neighbour Principle:

"You must take **reasonable care** to avoid acts or omissions which you can **reasonably foresee** would be likely to **injure your neighbour**. Who, then, in law is my neighbour? The answer seems to be – **persons** who are **so closely and directly affected** by my acts that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question".

Explaining the Interrogation:

Hey guys, hopefully you enjoyed our performance and was watching it closely because now in your groups that you are sat in, you will go round speaking to each character who will ask you questions about what you have just witness relates to the law of negligence. You guys will also have an opportunity to ask us any questions involving the Law. Someone in your group will have a sheet of paper to write down your question and answers. So this group you can come with me. (Other characters select groups.)

Hey guys, hopefully you enjoyed our performance and was watching it closely because now we have some questions to ask you about how what you just witness relates to the law of negligence. The

questions will be centered on each character and at the end you guys can ask us any questions about the Law. We will start with the two characters Reckless Robbie and Naughty Nancy.

Caparo Test:

1. The damage must be **foreseeable**
2. There must be a sufficiently **proximate** relationship between the parties
3. It must be **fair, just and reasonable** for the court to impose a duty of care in the light of policy considerations with which the court is concerned

Snowball Scenario: Outline

Roles

- **STUDENT B** - Bad Student (who throws the snowball causing harm)- Naughty Nancy
- **STUDENT A** - Victim - Clumsy Clara
- **STUDENT D** - Student - Friendly Fiona
- **STUDENT F** - Narrator - Storytelling Sophie
- **STUDENT C** - Student (friends with Naughty Nancy) - Reckless Robbie
- **STUDENT E** - Negligent Teacher - Miss Nina Negligence

Set

- Sign in classroom indicating no throwing snow balls and other rules.
- Snowballs made from scrunched up paper dossed on the floor.
- Divide between outside and inside achieved by table or divider.
- **STUDENT D** making a paper Mache snowman.
- Paper Snowflakes made and stuck on the wall.

Scene 1: Inside the Classroom

The children are waiting for Miss Lazy Laura to arrive, once again she is late whilst Naughty Nancy and Reckless Robbie are scheming away together.

(Narrator introduces Characters)

Narrator: "Reckless Robbie and Naughty Nancy are once again scheming at the back of the class room on how they can cause trouble."

Reckless Robbie: "This is boring, I WANT to do something fun."

Naughty Nancy: "Yeah, I want to have a snowball fight."

Narrator: "Meanwhile, Friendly Fiona is helping clumsy Clara with her coat."

Friendly Fiona: "I can't believe the Teacher is late AGAIN!"

Clumsy Clara: [Nods in agreement as she struggles with her coat]

Miss Negligence Storms in and throws bag and down on the desk. She is on the phone moaning about the snow and the children. (Or on her headphones?)

Miss Negligence: "QUIET CHILDREN!"

Friendly Fiona goes up to the teacher and nags her to hand out work. Puts the phone down and Miss Negligence then throws paper out to the pupils to do work.

FREEZE FRAME 1- Duty of Care

Narrator: "The teacher has a duty of care towards her pupils, for she has a 'close relationship' with them. What do you think Miss Negligence duties of care involve?"

Children Answer

Narrator: "Miss Negligence's duty of care involves looking after the children to ensure they are safe and not reckless."

<Unfreeze>

Naughty Nancy: "Let's find a way to get outside, the teacher doesn't even care"
(Said to Robbie)

Then Naughty Nancy and Reckless Robbie walk out whilst Miss Lazy Laura is on the phone. Clumsy Clara and Friendly Fiona Notice them leaving and follow.

Miss Lazy Laura notices the children leaving but shrugs her shoulders and stays inside and does nothing.

FREEZE FRAME 2- Breach of Duty

Narrator: "Miss Negligent should have foreseen (expected) that the children would have been tempted to play in the snow without her supervision. Do you think she has broken her duties as a teacher?"

Children answer

Narrator: "In law, ignoring your responsibilities to look out for other people means you have breached your duty to be careful."

<Unfreeze>

Scene 2: Outside in the Snow

Clumsy Clara and Friendly Fiona are playing nicely in the snow making snowman. Whilst Reckless Robbie and Naughty Nancy are pushing and throwing snowballs at each other.

Narrator: "The children are playing in the snow unsupervised whilst Miss Negligence checks her Facebook inside."

Fiona: *to Clara* "Be Careful! Don't run in the snow you could hurt yourself."

Naughty Nancy and Reckless Robbie start throwing snowballs at the other children.

Naughty Nancy: "Oi Clara! Catch!"

Then Naughty Nancy throws a snowball at Clumsy Clara without realizing a sharp object was inside.

Clumsy Clara is hurt in the eye and runs off crying with Friendly Fiona.

Reckless Robbie and Naughty Nancy look shocked/laughing and run off in the opposite direction.

FREEZE FRAME 3 - Students duty

Narrator: "The students also have a duty of care towards one another to be Neighborly (friendly, respectful?) And not to be reckless. What do you think Naughty Nancy and Reckless Robbie should have done?"

Children Answer

Narrator: "Teachers aren't the only people who have a duty of care. You have a responsibility to your other classmates not to be careless."

<Unfreeze>

Scene 3: Helping Clumsy Clara

Friendly Fiona takes Clumsy Clara inside they get the first aid kit to help out.

Friendly Fiona: "Don't worry Clara, I'll help you. If only I could reach/find this first aid."

Clumsy Clara: "No Fiona, go get a teacher who can help."

Friendly Fiona goes out to get a responsible teacher as Miss Lazy Laura has fallen asleep and doesn't wake up. Reckless Robbie and Naughty Nancy continue to play outside.

FREEZE FRAME 4- Causation

Narrator: "If it wasn't for Miss Negligence breaking her duty of care towards the students then Clumsy Clara wouldn't have gotten hurt. Therefore she is being Negligent. Teachers have a duty to look after their pupils as do you between your classmates. You have to ensure to be safe and not reckless to one another under the law of negligence.

STUDENT F explains the next activity of the interrogation?

Bingo Words

- Reckless- this is where someone is acting dangerously and may cause an injury
- Negligent- this is a term in law where someone fails to take proper care over someone causing harm to someone
- Duty of Care- having a responsibility to look after someone to make sure they don't get hurt, this is also a term used in the law
- Cappro- this is the legal test in which you can identify if someone has been negligent
- Responsible- this is where you have to look after someone or something for example miss negligent nina has this for her students
- Respect- we should show this to our peers and teachers
- Code of Conduct- your school has this code which regulates what is acceptable behaviour
- Play safe or don't play at all- this is one of your codes of conduct
- Good Behaviour- this is where you behaviour well
- Careless- this is where you are not careful and therefore are being negligent
- Safely- this is how you should act all the time
- Bad Behaviour- this is where your behaviour is not acceptable
- Teacher- whenever you or someone else in school needs help you will need to find this person to help you out for example friendly fiona needs to find this person to help clumsy clara
- Witness- a person who sees the event that happens for example friendly fiona was acting as a (.....) to the snowball fight

- Injury- bad behaviour causes this to someone, for example as you have seen in the play naughty Nancy caused this to Clumsy Clara

<p>Play safe or don't play at all</p>	<p>Code of Conduct</p>
<p>Safely</p>	<p>Witness</p>
<p>Bad Behaviour</p>	<p>Reckless</p>

BINGO



Play Safe!

Law of Negligence

Wednesday 5th March 2014



Interrogation Worksheet

Task 1



This task requires you to understand the concept of the “Duty of Care”.



You will be asked to go around in groups to each station where the characters from the play e.g. the teacher will ask you questions. After having answered these questions, you as investigators will have the opportunity to interrogate the characters further and ask questions about the law and their behaviour.

Teacher

Q1) What is the role of the teacher?

Q2) Can you name 3 situations where the teacher was negligent in the performance?

Q3) Why do you think “Duty of Care” is important?

Friendly Fiona and Clumsy Clara

Q1) How do you think Clara felt when the snowball hit her face?

Q2) Do you think Clara is partly to blame for the incident?

Q3) Do friends have a duty of care towards one another?

Reckless Robbie and Naughty Nancy

Q1) Would our behaviour be acceptable under your school rules?

Q2) What does it mean to be reckless? Can you give us some examples of recklessness?

Q3) At what point were Reckless Robbie and Naughty Nancy reckless?



Group Materials

Outline of the aims and objectives of the Duty of Care Workshop

The workshop was aimed at educating children on the topic of duty of care in negligence in a way that they would understand easily. In order to achieve this we decided to act out a play, carry out an interrogation and finally to play a fun game of bingo.

A brief explanation of Duty of Care and Sources used

The area of Law we choose to do for the workshop was the concept of Duty of Care. This element of law comes from the broader topic of Negligence. In explaining this principle to the children we demonstrated how this area of law relates to people who are in a position of authority. For people who are in position of power have a responsibility to be respectful and considerate to the people they are exercising their power over. We further went on to explain how the children have a Duty of Care to one another. The law ensures that people don't breach their Duty of Care by setting a standard which they can't fall below. This ensures that people don't ignore their responsibilities. As we are law students who are in their 2nd and 3rd year of study, we had already studied this topic in detail during our 1st year. This meant that we used our notes and textbooks as guidance and a reminder as to what this area of law entailed. Revision books were of particular use for it gave a simple overview of the topic which helped us to understand what key concept we needed to explain during the workshops. Therefore the sources we mainly used were materials we had from studying this topic in our 1st year.

Outline of the Duty of Care Workshop

General points:

- The workshop takes place in a medium-sized classroom. More than half of the class is taken up by children sitting on the carpet. Therefore, this leaves very little space to perform some of the activities that are prepared, such as the play and initial presentations on the law (see parts b and a respectively). Those who are planning to do this workshop have to keep in mind that they will be working in a very small space.
- The workshop is approximately going to take an hour.
- The group should preferably consist of 5 law students.

a) Presentation (10 mins approx.):

- This is the introductory part of the duty of care workshop.
- The narrator of the play (see part b) gives a brief explanation of how the workshop is going to flow.
- Then, the other students go on to present the legal principles surrounding the duty of care.

- The narrator of the play is not involved in this part of the workshop as he/she will put the law into context during the performance of the play.
- It is important to talk clearly and slowly while giving the speeches. Otherwise, this part will finish earlier than expected. This is also crucial for the children to understand the legal principles the group will be talking about.

b) Play (10 mins approx.):

- The play consists of two scenes. It begins in 'a classroom' and the remainder takes place 'outside'. It would be sufficient to divide the two with a chair.
- The narrator of the play does most of the talking in this part. Preferably, he/she should stand in front of the children without blocking their view of the play. Other students perform the play.
- The narrator will need to 'freeze' the performance in order to describe the law and how the play demonstrates the law. He/she could do this by clicking fingers or saying 'freeze' or clapping.

c) Interrogation (20 mins approx.):

- This takes place right after the performance.
- Either the narrator or the person acting as 'Miss Negligent' divides the children into three groups. Then, interrogation sheets are given to the children.
- Four law students pair up in twos. These two pairs consist of 'Naughty Nancy'-'Reckless Robbie' and 'Clumsy Clara'-'Friendly Fiona'. The remaining law student would be 'Miss Negligent' and she will individually do her part of the interrogation.
- The two pairs take charge of two different groups and Miss Negligent takes charge of the final group.
- In each group, the law students ask the children what their characters have done wrong and they should have done instead.
- The narrator is responsible for keeping time and telling when groups should rotate.
- The law students should spend approximately 7 minutes in each group of children.

d) Bingo (15 mins approx.):

- Following the interrogation, children are handed out bingo sheets.
- The narrator stands in front of the children in order to give the definitions of the bingo words to be found on the bingo sheets of each child.
- Rest of the duty of care group sits on the carpet with the children to assist them if they need help finding the word which has been defined by the narrator.
- The narrator gives children a minute or two to let them figure out the word which has been defined.

- The narrator then announces the correct word which matches the definition.
- There are 6 different words on each bingo sheet. Therefore, this process is repeated 6 times and a child says that he/she got all the words. A prize is then given to the winner.

e) Fact sheets to be given out/thanking the children:

- Fact sheets are handed out to children. The group thanks the children and they leave the class with their teacher.

Group materials: An explanation of anything that we would have changed

As with any workshop there have been some changes that we made as a group throughout the process to ensure that we present the law of negligence and the concept of “duty of care” in the best possible way. Our initial group meetings consisted of drawing together plans and ideas mainly for our role play performance which, we all agreed would be the best way to illustrate the law. Throughout these meetings it was crucial for us to bear in mind our target audience, (year 4 and year 5 children) and this drove us to put together a snowball scenario for the play. Our initial idea was to draft a script with a story line that revolved around this idea of a good teacher versus bad teacher. However expert feedback from Tony Thorpe influenced our thinking and we thought it would be wise to incorporate his advice into our play. The next hurdle that we had to overcome was one we did not foresee happening. From being a group of 7 we became a group of 6 as one member decided to drop out. This meant that we had to edit and change our script so that the key characters such as the naughty child was assigned to and played by someone. We believe that it is for this reason crucial that there is a backup plan in case someone is absent or leaves the group. As a group we also decided to research the law then simplify it so that it is easy for the children to understand. For example we acknowledged that explaining case law and judgements would cause too much confusion so our role was to extract the main principles and change it appropriately for the children. However having little knowledge about the children’s ability in reading, writing, problem solving and understanding made it difficult for us to make a judgement on what level of teaching would be appropriate for them. For example after the school visit we found that the “interrogation worksheets” and “word bingo” were too complex for the year 4 group as they did not engage with it too well and required more help. For future workshops it would be best to find out more about the children’s ability to ensure that the work load and legal terms are something they understand well. A further recommendation would be to be aware of space that may be needed for the role play as it can take place in a small classroom or a big hall. Having the children do mini role plays or presentations to reflect on what has been taught and what they have learnt may keep it fun and engaging for them. An hour however would be too little time for this so it may be worth spending longer with each year group.