[2026] JMSC Civ 02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2019HCV00208

BETWEEN	**AMANI DEAN MOSS (By His Next Friend and Mother, Tennisha O. Sullivan)**	**CLAIMANT**
AND	**NORMAN MANLEY HIGH SCHOOL**	**FIRST DEFENDANT**
AND	**MINISTRY OF EDUCATION, YOUTH AND INFORMATION**	**SECOND DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**THIRD DEFENDANT**

IN OPEN COURT

Ms Carlene McFarlane instructed by McNeil & McFarlane for the Claimant

Ms Rochelle Duncan instructed by the Director of State Proceedings for the Defendants

Heard: February 17,18, 2025 & January 12, 2026

NEGLIGENCE – High School student injured by another in the presence of a teacher in class – Teacher failed to intervene - Breach of Duty – Occupiers' Liability Act pleaded in the alternative

WINT-BLAIR J

The Claim

[1] The claimant was born on May 21, 2003. He claims damages in negligence by his next friend and mother, Ms Tennisha O'Sullivan, against the defendants, jointly

and/or severally. The claimant asserts that on March 27, 2017, while attending the Norman Manley High School (“NMHS'), another student struck him in the mouth and lower jawbone, leading to personal injuries, loss, damages, and expenses. This incident is not in dispute.

[2] The claimant maintains that the injuries resulted from the defendants' negligence. The particulars are:

a) Failing to provide proper supervision to ensure students' safety, particularly the claimant.

b) Failing to exercise reasonable care for the claimant's safety while he was in their care and control.

c) Failing to take any or all reasonable steps to ensure the safety of the claimant.

d) Failing to put in place any proper safeguards to guarantee and preserve the safety of the claimant.

[3] The claimant relies on the medical report of Dr Landi Peart, M.B.B.S., dated April 4, 2017, which diagnoses an “avulsed mandibular right incisor, alveolar fracture, and tooth loss."

[4] I note that, in her submissions, the claimant’s attorney appeared to raise the issue of a breach of statutory duty by the defendants. This was not pleaded, and no questions were put to the defendant's sole witness on this point. There was no evidence adduced by the claimant to establish any breaches by the defendants of the Education Act and the relevant regulations thereunder. Consequently, the issue of a breach of statutory duty is not being considered as it is not properly before the court.

The Defence

[5] The defence states that the second defendant has no legal personality and is therefore not a proper party to the proceedings. It is also not within the defendants' personal knowledge where the incident occurred. The assault on the claimant by

another student could not have been foreseen by the NMHS, as there was no previous indication that the student who committed the assault posed a risk to the safety of the claimant or any other student. It is denied that the incident was caused by the negligence of the first defendant who took all reasonable steps to ensure the safety of its students including the claimant.

Evidence

[6] The claimant gave evidence that he was a student at the NMHS from 2016. On March 27, 2017, he attended his grade 8 visual arts class on the third floor of the school building. The class was being taught by a different teacher whose name he did not recall when he gave his witness statement; however, in amplification, he gave the teacher's name as Ms Latouche.

[7] While in class, a male student, Roshawn Rattray, became upset, complaining that someone had taken his shoe polish. The claimant and Roshawn were seated together, facing the teacher, who was sitting at a desk at the front. Roshawn accused the claimant of taking the shoe polish, which he denied. Roshawn insisted, and the claimant laughed, repeating his denial.

[8] Roshawn pushed the claimant and punched him in the mouth, knocking out a tooth and causing his mouth to bleed. The claimant tried to cover his face, and rushed to the nurse’s office. Shortly afterwards, his friend Davanno Campbell arrived with the tooth and handed it to the nurse.

[9] The nurse contacted the claimant’s mother, who took him home, then to the Kingston Public Hospital (K.P.H.) shortly after, where he underwent examination, X-rays, and was referred to the Oral and Maxillofacial Clinic. His teeth were wired together due to the instability of the two adjacent teeth. The wires remained in place for approximately three months, during which he had to visit the clinic multiple times for cleaning because he was unable to clean his teeth normally.

[10] He still has a missing tooth, and the two adjacent teeth remain loose. He has been on a soft diet for several months and still cannot eat certain foods. In addition to the K.P.H., the claimant also attended the Dental Auxiliary Training School at UTECH because he was unable to afford an Orthodontist.

[11] He stated that although it was several years ago, his teeth still occasionally ache, and two still shake. He needs a graft to enable an implant and would require at least three implants. He is very self-conscious about his missing tooth and dislikes his smile. The missing tooth affects his confidence, and he wishes to have the implants done, but he knows this will be an expensive procedure.

[12] In cross-examination, the claimant stated that he was a student at NMHS from first form to fifth form and was in the 8th grade in 2017. He began school in 2016 and attended an orientation programme that familiarised him with the school, its operations, and its rules. The orientation lasted a couple of days and included a review of the school’s rulebook. The rules set out the consequences for acts of violence, and Roshawn's punching him in the mouth was a breach of those rules.

[13] On March 27, 2017, the Visual Arts class on the third floor was divided into two groups. No students who were not from that class were present. The class was in the Visual Arts room. The claimant confirmed that he knew Roshawn before the incident; they were classmates and friends, so he was surprised when Roshawn punched him. Before the incident, Roshawn had been upset and had asked about his shoe polish, which further aggravated his condition. The claimant and other class members were laughing.

[14] The claimant testified that lunchtime was at 11:00 am, and the teacher would send them out to lunch. Another visual arts class would follow afterwards. At the time of the incident, he had not been instructed to leave the class for lunch. After the incident, he went to the nurse's office alone; no student helped him. He emphasised that class was in session and that the area was supervised at the time of the incident.

[15] Security guards were present on the school grounds, and teachers supervised the classrooms. At least three guards were positioned at different locations, including the "park area," which was another term for the lunch area. For grade 8, lunch started at 11:00 a.m. and lasted around 40 minutes. The incident neither happened in the park area nor after 11:00 a.m.

[16] In his witness statement, he said Roshawn had accused him of taking the shoe polish, which he denied. He was surprised when Roshawn punched him, as Roshawn had not done anything like that to him before. The incident happened during lesson time and a teacher was supervising the class. He said that Davanno was his friend, but had not helped him after the incident. In re-examination, the claimant clarified that Davanno helped him, by bringing him the tooth after the incident.

[17] At the time of the incident, his regular teacher was absent; instead, Ms Lambert, a teacher at the school, was supervising the class. He did not see his usual visual arts teacher that day. When his regular teacher was absent, another teacher would be a substitute. He confirmed that both he and Roshawn had attended HFLE (Health and Family Life Education) classes, which included lessons on conflict resolution.

[18] Sean Anderson gave evidence that he began going to NMHS in 2016. On March 27, 2017, he was a grade 8 student in a visual arts class with several classmates, including the claimant, Roshawn Rattray, and Davanno Campbell, at about 11:00 am, before lunchtime. His class was not the only one that had visual arts in that classroom. There was a substitute teacher, whom he knew to be a visual arts teacher in the school's upper grades. Mrs Reid would usually teach this class, but a female substitute teacher was in place instead.

[19] During the class, Roshawn Rattray was quarrelling about his shoe polish having gone missing. He asked for his polish, and no one admitted to having it. The students, including the claimant, were laughing. Roshawn asked the claimant for

his polish, the claimant denied having it. Roshawn hit the claimant in the face, causing blood to flow. The claimant ran out, and Davanno picked up the claimant's tooth and chased after him with it. Mr Anderson said he remained at his desk until the class ended and did not see the teacher intervene.

[20] The school had speakers through which announcements were made, including instructions for students to perform various activities. Each form had lunch at a different time. Grades 7, 8, and 9 went first. Three of the five forms at the school had lunch together at the same time. Lunch took place in the park area, which was not a playground. At lunchtime, the teacher would send him out to the park area. He was not instructed to go to the park area, as other classes were in session in their classrooms. When the grade 8 students had lunch, all the other grades had class time.

[21] Whilst in class, he was under the supervision of a teacher. While in the park area, he was not supervised by teachers. The Dean of Discipline would sometimes be in the park area during lunch. There is a security guard at the school's entrance and at least three security guards on the school campus at all times. The security guards did not patrol the school, they were stationed in one designated area.

[22] On March 27, 2017, during class, Roshawn was quarrelling about shoe polish. "It was generally a 'burst out' of anger from Roshawn." The students, including the claimant, laughed at and mocked him. It was after the claimant started laughing that Roshawn punched him in the face. Mr Anderson had never witnessed such an incident between Roshawn and the claimant before and found the whole ordeal surprising. The incident occurred sometime after 11 o'clock, during class, and took place in the presence of a teacher. He disagreed with counsel that when the incident happened, Mr Anderson, Mr Moss, and Mr Rattray were all supposed to be in the park area.

[23] In re-examination, he described a 'burst out' as "when a person becomes ignorant, raises his voice, and starts an argument." He stated that the 'burst out' happened

suddenly and lasted for fifteen minutes. The ‘burst out’ was when Roshawn jumped and said: “Who took his polish?” Then he began arguing with everyone at the table, including the claimant, and asked the claimant about his shoe polish. The claimant said he did not have it, and Roshawn ‘burst out’ again. Most of the students were laughing.

[24] Davanno Campbell provided evidence that he knew the claimant and Roshawn, as they were both his friends while he was at NMHS in 2017. He mentioned that they took several classes together, including visual arts. These classes are typically held on the 3rd floor of the building. On or around March 27, 2017, he was at school attending a visual arts class, and both the claimant and Roshawn Rattray were present. The usual visual arts teacher was absent, and the class was being led by another female teacher whose name he does not recall.

[25] While the claimant was sitting in his class taking notes, the claimant and Roshawn were at the teacher's table. There was an argument over missing shoe polish. It lasted quite a while. The teacher did not intervene. He heard Roshawn ask the claimant for his polish, and the claimant repeatedly denied having it. The teacher was present at all times. The claimant was laughing and insisting he had not hidden the polish when Roshawn punched him in the face.

[26] Blood flowed from the claimant’s mouth. The claimant used his hands to cover his face and rushed off in the vicinity of the nurse’s station. He saw the claimant’s tooth on the ground, took it up and brought it to the nurse. At no time did he see the teacher intervene. She was present when the argument about the polish began, but did not intervene as it escalated. The teacher was still there when he returned from the nurse’s office. She left at the end of the class, and he did not recall seeing the claimant return that day. Later, he learnt the claimant’s mouth was injured and required extensive dental treatment. He still has a missing front tooth.

[27] In cross-examination, Mr Campbell gave evidence that he was a student at NMHS in 2017 and was about 13 or 14 years old at the time. He said that the claimant

and Roshawn were bigger than he was, but he was in the same class as they were. The claimant and Roshawn were friends with him, and they all hung out together as a group. He knew them well. He had never seen Roshawn and the claimant fighting before. On March 27, 2017, Roshawn punched the claimant in the face, which was surprising. The incident occurred sometime after 11 o'clock, which is before lunch. He stated that grades 7 and 8 offer visual arts at NMHS, but not simultaneously. Grades 7 and 8 have different lunchtimes, and on March 27, 2017, grade 7 went for lunch before grade 8. There is a designated lunch area, and a security guard is stationed there. Sometimes the Dean of Discipline is also there at lunchtime.

[28] He gave evidence that a teacher was present in the classroom at the time of the incident. The claimant and Roshawn were not necessarily at the table where the teacher worked; the desk was located in the teacher's area. The teacher's table was what he referred to as the desk. The table he referred to in his witness statement was not the same table on which the teacher wrote; students sat at that table. It was not a teacher's table, but it was near the teacher. The argument took place very close to the teacher. He agreed that it was not proper to behave like that in front of a teacher

[29] When Roshawn asked about the shoe polish, some students, including the claimant, laughed at him. Mr Campbell agreed that the incident involved two teenage boys and that only one female teacher was present in the classroom.

[30] Grade 8 students had lunch at 11 o'clock and would then proceed to the lunch area. At least three security guards were stationed at the school, and a nurse was also present. The nurse assisted the claimant at the time of the incident. At no time did he see a teacher intervene. He disagreed with the suggestion that no teacher intervened because no teacher was present, maintaining that a teacher was present.

[31] In re-examination, he said that he did not witness any fighting between the claimant and Roshawn; there was an argument. When asked whether he agreed that the teacher was there to monitor, and whether he saw the teacher monitoring, he responded that teaching involves monitoring.

[32] In response to questions from the court, Mr Campbell said the teacher was seated at her table when the incident occurred. This was a different table from the one on which the claimant and Roshawn were sitting. Roshawn was the one who had the outburst, arguing with Shemar, while the claimant and others laughed. Roshawn asked the claimant a question, and the claimant replied that he knew nothing about it and then proceeded to discuss what he had done. This was the argument about the polish. It lasted roughly ten minutes. The argument itself lasted about seven minutes, leading up to the punch in the face, and rushing down to the nurse took about four minutes. Throughout the ten minutes, they wrote notes while the teacher was at her table. The students copied her notes from the board. She sat at her table for the rest of the lesson, not paying attention to what was happening, even when the claimant was punched in the face. When he got up to rush to the nurse, she remained in the same position.

[33] The argument was between Shemar and Roshawn and involved the claimant. He was sitting there, and because he was laughing, Roshawn said, “you have mi tings,” about four or five minutes into it. He explained that Roshawn was the one provoking the claimant by standing up and making noise. Shemar and the claimant were sitting down. The claimant did not respond beyond laughing when Roshawn accused him. The push Mr Campbell refers to in his witness statement occurred while the claimant was sitting down. Roshawn and the claimant were not alone at the table, other students were present.

[34] Mr Campbell described the table as similar to counsel’s bench in the courtroom. Shemar was seated beside Roshawn, and the claimant was seated on the other side. He was sitting on the edge on Roshawn’s side. There was no one to his right

or left. Roshawn had to pass Shemar to reach the claimant. No one else got up from their seats.

[35] The defendants called Mr Roncell Brooks. He gave evidence that he has been the Principal at NMHS since 2022. and the Vice Principal from 2016 to 2022. At the time of the incident, he knew the claimant and Roshawn Rattray. They were both in the 8th grade at the material time and were friends to the best of his knowledge.

[36] His roles and responsibilities as Principal include providing directives concerning the teaching and learning processes; ensuring their execution; safeguarding the overall welfare of school users, including teachers, students, and visitors; and offering general leadership for the efficient management of the school.

[37] He was made aware of an incident involving the claimant and Roshawn Rattray that occurred on March 27, 2017. He was informed about the incident, that the Nurse treated the bleeding student, contacted his mother, and advised that further medical attention be sought on the same date by way of the school's records.

[38] At the time of the incident, several systems were in place to ensure student safety and that students were reasonably supervised. The purpose of these systems was to provide a safe environment for students. These measures have proven effective and, as a result, remain in place.

[39] The school day begins at 7:40 am, but students usually arrive before that time. Upon arrival at school, they are received at the students' entrance/exit gate by student leaders. On Mondays, students attend general devotion from 7:40 am, and classes start at 8:30 am. Classes commence on Tuesday to Friday at 8:00 am, when students have grade or form devotion, and the school day concludes at 2:10 pm. There are three breaks during the school day for lunch. The 8th-grade break is between 11:00 am and 11:40 am.

[40] There are three security guards on the school compound. One is stationed at the main entrance, one at the students' entrance/exit and another in the park area,

where the students take their lunch breaks. During general devotion, the students are monitored and supervised by teachers. In class, they are monitored and supervised by their respective teachers. During the lunch break, they are monitored and supervised in the park area by the Dean of Discipline, Vice Principals, Security Guards, and, at times, the Principal.

[41] The protocol for sending students to lunch is that an announcement is made via the PA system, directing students to proceed to the park area. The teachers should ensure that the students exit the classroom safely and instruct them to head to the park area. The park area is where the students have lunch and purchase items from the snack outlets, tuck shop or canteen. The park area is monitored for the entire duration of the break period to prevent students from returning to the teaching/learning space before the break ends.

[42] The NMHS has a strict policy prohibiting physical altercations, as outlined in the school handbook. When students are admitted to the school in 7th grade, they receive a handbook that covers all the rules. Before the start of 7th grade, students participate in a week-long orientation that introduces them to the handbook and explains the rules, regulations, and consequences for violating them. Having joined the school in the 7th grade, participated in the orientation, and received copies of the student handbook, both the claimant and Roshawn Rattray were aware of the school's policy as outlined above.

[43] The school also took positive steps to educate students about effective conflict resolution and violence prevention. The Guidance Counsellor teaches Health and Family Life Education (HFLE) to the 8th-grade class twice per week, for 1 hour and 10 minutes per session. A part of the HFLE curriculum focuses on conflict resolution, encouraging students to settle disputes peacefully. Additionally, during Monday morning's general devotion, students are reminded to continue practising peaceful conflict resolution and are encouraged to seek staff assistance to resolve conflicts peacefully whenever they occur. The claimant and Roshawn Rattray would have benefited from these classes.

[44] When conflicts arise between students, the first point of contact is the Dean of Discipline. If the Dean is unavailable, a Vice-Principal manages the situation; if the issue remains unresolved, parents are contacted. Fighting is rarely observed at NMHS. Whenever staff members notice a conflict between students, they intervene before it escalates into a fight. NMHS has extensive measures in place to prevent fighting; it is not expected that students would behave in this manner. It was certainly unexpected that two friends would end up fighting, especially in an area where they should not have been. The claimant and Roshawn Rattray, therefore, disobeyed the school's rules and procedures by not being in the park area after they were dismissed from class.

[45] In cross-examination, the Principal stated that on March 27, 2017, he was the Vice Principal. He did not serve in the dual roles of Dean and Vice Principal. On that day, he was present at NMHS from the start of school until 2:00 or 3:00 pm. As Principal, his role included implementing measures to prevent conflict, not necessarily because he anticipated fighting, but due to broader issues of dispute resolution. NMHS enforces a strict policy against physical altercations.

[46] He described the claimant as a fighter and believed the claimant had been involved in a fight. He emphasised that his policies are strict regarding fighting and that responses depend on the circumstances. Usually, conflict issues are managed by the guidance counsellor or by suspension. He did not recall whether the claimant was suspended, as he was not directly involved. The Principal admitted that he had no personal knowledge of the incident involving the claimant beyond what he had been told. Similarly, he had no personal knowledge of when or where the incident occurred, except as had been recorded.

[47] Once a student enters NMHS, they fall within the school's jurisdiction and are protected from harm, particularly with respect to the school's facilities. All teachers, as part of their training, are equipped with classroom management skills, including conflict resolution.

[48] He said the claimant's visual arts class had 25-35 students aged 13-14, on the second floor with stairs to the ground floor park. Teachers must dismiss students to leave the classroom and go to the park, no students stay inside. Lunch starts at 11 a.m., and it may take time for all students to leave.

[49] In cross-examination, Mr Brooks was asked about classroom management. He did not regard it as a dereliction of duty or a failure to monitor effectively if an argument between students lasts 10–15 minutes and the teacher neither intervenes nor takes control.

[50] In terms of monitoring during the break, the Principal responded in cross-examination that the classroom is on the top floor, accessible only by stairs, which students use to reach the park area. Security teams keep students in a designated area at the park until their next class, with two guards monitoring and the Dean patrolling.

[51] Mr Brooks described the visual arts room as roughly 16 by 16 metres, containing three large tables, two smaller ones, and about five or six seating areas, excluding the teacher's table. Each table seats about eight comfortably. The teacher's table is at the front, with student tables in front, extending to the back with larger tables arranged for ease of movement. He was not sure the teacher could hear everything from her table, but believed she could see.

[52] He could not recall whether any disciplinary action was taken against the claimant. He disagreed with the suggestions that NMHS did not have proper arrangements to provide adequately for the safety of the students; that they did not take sufficient steps to ensure the students were safe from harm or from one another; that as a result, the claimant was injured by that failure; that he was injured in the presence of the visual arts teacher; and that the visual arts teacher did not take sufficient steps to manage any conflict that might have arisen or to ensure effective class control or class management.

[53] He also disagreed with the suggestion that NMHS has numerous measures in place to prevent fighting because they anticipate it. Further, staff members intervene whenever conflict occurs, telling students to stop. He maintained that fighting is not a common occurrence at NMHS.

[54] In re-examination, he stated that students have to report conflict so that competent adults at the school can intervene. Regarding training, he clarified that he was referring to teachers generally. Specifically, NMHS, teachers would have received training at the teacher training institution that they attended

[55] In response to the Court, Mr Brooks stated that NMHS is a co-ed school. Mrs Latouche is a visual arts teacher in the lower school. In 2017, she taught grades 7 and 8. He could not recall if she was the teacher scheduled to teach on the day in question; the grade 8 students would be led only by Mrs Latouche or Ms Reid. If students are in the park when they should be in class, they are encouraged to return to class by either the Dean, Vice Principal, Principal, or Grade Supervisors. Security guards do not have a direct role in this. Still, they may sometimes direct students to class because they are responsible for the school's facilities, ensuring students' safety and preventing unauthorised persons from entering.

[56] He became aware of this incident based on information received from the nurse. He did not receive any information from any witness to the events in the park, indicating that other channels must have been used. Among all those listed—Vice Principal, Principal, Security, Dean, and Grade Supervisor—who could possibly have observed truant students in the park, he received no report from any of them on that day.

SUBMISSIONS

[57] Counsel for the claimant relied on **Blyth v Birmingham Waterworks**[1], to define negligence and submitted that it is trite law that for a claim of negligence to be successful, it must be established that the defendant owed a duty of care to the claimant and that duty was breached, which caused the claimant to suffer injuries, loss and damage and it must be shown that the damage was reasonably foreseeable. (See **Donoghue v Stevenson**[2] and **Caparo Industries plc v Dickman**[3]). The defendant owed a duty of care to the claimant. Counsel relied on the case of **Williams v Eady**[4] to submit that the law imposes a duty on schools to take reasonable care for the well-being and safety of their students. It equates the duty to that which a reasonably prudent parent would take of his/her own child. (See **Richard v The State of Victoria**.[5])

[58] The authorities make it clear that, when the claimant was enrolled as a student at NMHS, the defendants had a duty to exercise reasonable care for the safety and well-being of the claimant and all enrolled students. Having established that such a duty exists, the next question is whether this duty was breached. In addressing this issue, the key question becomes whether the defendant took all reasonable steps to ensure the claimant's safety.

[59] Counsel relied on the cases of **Geyer v Downs,**[6] **Clark v Monmouthshire County Council**[7], and **Nickeisha Powell v Grace Patricia Tomlinson and Others**[8] to submit that a reasonable, prudent parent in the circumstances would have intervened in the conflict to stop or prevent the students from injuring each other.

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[1] (1856) 156 ER 1047
[2] [1932] AC 562
[3] [1990] 2 AC 605
[4] (1863) 10 TLR 42
[5] [1969] VRl 36
[6] [1975] 2 NSWLR 835
[7] (1954) 52 LGR 246
[8] C.L. p 076 of 1999

[60] The claimant asserts that the incident occurred during his visual arts class in the presence of a substitute teacher who had taken no action to intervene, stop or interfere to prevent the injury to the claimant. His statement has been corroborated by two students who were present at the time of the incident and attested that the teacher did nothing to intervene.

[61] During the trial, witnesses for both the claimant and the defendant confirmed that the incident occurred at approximately 11:00 a.m. The claimant's attorney enquired of the Principal:

> *“Question: "You said the incident took place at about 11 am, the bell goes off at 11"*
>
> *Answer: "Yes."*
>
> *Question: "The Visual Arts class is on the 3rd floor of a particular building" (sic)*
>
> *Answer: "The Visual Arts class is in the last class of the building, it was on the 2nd floor"*
>
> *Question: Tell me where the park area is in terms of the Visual Arts class"*
>
> *Answer: immediately downstairs, just as you come to the ground floor"*

[62] The above testimony suggests that the students were still in the classroom, as it would have taken several minutes past 11:00 am for them to exit and go down the stairs into the "park area," where the first defendant wants this court to believe the incident occurred.

[63] This supports the claimant's assertion that the incident happened inside the classroom during lesson time, not in the park area, as the first defendant suggests. Since the incident occurred during class hours, it is clear that the teacher or substitute teacher was responsible for supervising the class at all times and should have intervened to prevent the disagreement from escalating into a physical altercation, as would be have been expected of any prudent adult.

[64] It is also unclear whether substitute teachers are adequately trained to ensure the safety of students under their supervision. In the present case, the teacher present failed to guarantee the safety of the students under her watch. The actions of the first defendant fell below the standard of care expected of a reasonably prudent parent. The first defendant not only failed to provide proper supervision but also failed to take the necessary precautions to prevent students from injuring one another.

[65] The first defendant's evidence established that students should not be dismissed until the bell rings. Therefore, if the bell rang at 11:00 am and the incident also occurred at 11:00 am, it follows that either the students were not yet in the park area, or they were dismissed improperly before the bell rang, or the claimant's version that the incident took place inside the classroom during lesson time is correct.

[66] Conversely, if the Court accepts the first defendant's assertion that the incident occurred in the park area, it would indicate that the students were dismissed from class before the scheduled time of 11:00 a.m. Such premature dismissal would constitute a clear breach of the duty of care, as it would mean the students were allowed outside the classroom without proper supervision, given that the first defendant only provided appropriate supervision for the claimant in the park area after 11:00 am.

[67] In **Wheat v E Lacon & Co Ltd**,[9] the term 'occupier' was defined in law. Lord Denning described the "occupier" as a person who has sufficient control over the premises to the extent that they should realise that a lack of care on his part can cause damage to their lawful visitors. Counsel relied on section 3 of the Occupiers' Liability Act ("the Act") to argue that the school is an occupier in law with respect

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[9] [1966/ 1 All ER 582

to its students. Therefore, a duty is imposed on the school as an occupier to ensure that the students, as lawful visitors, are reasonably safe, including the claimant.

[68] In relying on **Marie Anatra v Ciboney Hotel Limited,**[10] it was submitted that the first defendant contends there is a system in place to ensure that students are reasonably safe, and within this system, the teacher should "ensure that students exit the classroom safely and instruct them to head to the designated lunch area".[11] While this is claimed to be the general procedure, there is no evidence of it on the day in question, as no teacher from the institution has provided a witness statement on the matter.

[69] This position was reinforced during the testimony of Mr Brooks at trial, as he could not recall a report having been made at the time of the incident. In the circumstances, it would have been prudent for the first defendant to locate any reports that may have been compiled contemporaneously. However, there is a complete absence of any such reports or evidence to suggest that the incident occurred outside the classroom. Notably, there are no reports or records made either at the time of the incident or at any point thereafter by the classroom teacher or the security guard, whom the first defendant claimed was stationed in the park area during the incident.

[70] There is no indication from the defendant as to the exact location of the incident, the Principal's evidence was not corroborated by any teacher or staff member at the institution. Notwithstanding the argument that the incident occurred outside the designated lunch area, the duty is not altered or reduced. The facts clearly indicate that the claimant was injured on the school premises and during regular school hours.

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[10] Suit no. C.L. 1997/A 196 (delivered on 31 January 2001)
[11] (see paragraph number 7 of the witness statement of Roncell Brooks).

[71] The first defendant further asserts that the students are aware of the school's policy prohibiting physical altercations, as clearly stated in the handbook and during orientation activities. Under the Act, the school must anticipate that children may be less cautious than adults. Additionally, the law states that the warning is not to be regarded as an absolute defence that absolves the occupier from liability. The first defendant contends that children of that age do not fall within this category. The claimant disagrees and argues that this provision applies to all children, regardless of age.

[72] The first defendant failed to take reasonable care for the claimant's safety whilst he was under their care and control; failed to take any or all reasonable steps to ensure the safety of the claimant, and failed to put in place any or proper safeguards to guarantee and preserve the safety of the claimant. Given the foregoing, the first defendant has breached the duty of care owed to the claimant.

[73] Counsel relied on **Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (Wagon Mound No.1)**[12], and **Bolton v Stone,**[13] submitting that it must also be shown that the defendant's negligence caused injury to the claimant. The basic test for establishing causation is the defendant will be liable only if the claimant's injury would not have occurred "but for" his negligence. The general principle is that in order for the claimant to recover, the damage must not be too remote and indeed a foreseeable consequence of the defendant's negligent act or omission.

[74] The facts are that on the day of the incident, an argument developed between the claimant and another student in the classroom in the presence of the substitute teacher. It could reasonably be foreseen that there would be a risk of injury to the claimant and other students in the classroom as the argument escalated without

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[12] [1961] 2 WLR 126
[13] [1951] 1 All ER. At page 1080

intervention. The school is highly negligent insofar as the substitute teacher was present during the incident and failed to take any action to prevent the claimant's injury. The claimant's injury would not have occurred "but for" the negligence of the first defendant.

[75] In the alternative, the claimant relies on the doctrine of res ipsa loquitur and **Katherine Docks Co.**[14] Three conditions must be satisfied for a successful claim to be raised. There were no intervening events that would have broken the chain of causation. The causal link to the injury was the inadequate supervision and omission to act by the substitute teacher who was present during the dispute. It is clear that both the students and teachers are under the control and management of the first defendant, and as such, the defendant is responsible for their acts or omissions while they are on the school's premises. Counsel cited **Shtern v Villa Mora Cottages Ltd and Another,**[15] to submit that the contention that the incident took place outside of the designated lunch area without more is insufficient to displace the doctrine.

[76] Counsel submitted that the defendants are liable for the injuries suffered by the claimant. The claimant's claim for special damages includes medical expenses for hospital consultations and treatments, which totalled $1,500.

[77] The claimant and his next of kin used public transportation to travel to and from the hospital and dental clinic over a three-month period. He claims a total of Two Thousand Seven Hundred Dollars ($2,700) for transportation expenses. (See **Owen Thomas v Constable Foster and Anor,**[16]) in which transportation claims can be granted even without strict proof.

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[14] [186] 3 H& C. 596, at 60
[15] [2012] JMCA Civ 20
[16] CL - T 095 of 1999 judgment delivered January 6, 2006

[78] Regarding general damages, the claimant was 13 years old at the time of the incident, born on May 21, 2003. As a result of the negligence of the first defendant, he has sustained injuries, pain and suffering and loss of amenities.

[79] According to the medical reports of Dr Landi Peart, M.B.B.S., dated April 4, 2017 and April 9, 2020, the claimant has suffered from an avulsed mandibular right incisor; a fracture of the alveolar process of the anterior mandible, and the loss of one tooth with the possibility of losing three others due to the nature of the injury.

[80] The incident has considerably damaged his confidence. Previously, the claimant was confident and cheerful about his appearance. He now feels self-conscious about his missing tooth and rarely smiles. The loss of the tooth has caused him to experience significant mental distress. As a young man, this incident has significantly impacted his self-identity, causing substantial harm to his self-esteem.

[81] The claimant was rushed to the Kingston Public Hospital, where he was examined, x-rayed, and referred to the Oral Clinic and the Facio-Maxillary Clinic. His treatment included splinting of his teeth, i.e. his teeth were wired together as the two teeth which adjoined the missing tooth were shaking badly. The wires remained in place for 3 months, during which he made several trips to have them cleaned because he was unable to clean them himself. He was placed on a liquid diet for 5 weeks and referred to the primary Dentist for rehabilitation. He continues to experience pain and discomfort in his teeth, as well as looseness in both adjoining teeth. Aside from K.P.H., he also attended at the Dental Auxiliary Training at the University of Technology because he could not afford an Orthodontist.

[82] On damages it was submitted that **Nelson Walters Engineers Ltd. & others v David Noel**[17], **Collie Francis v Denzil Nugent**[18], **Marian Brown et al v Gavin**

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[17] reported on page 63 of the 2nd edition (2011), of Harrisons' Assessment of Damages (Harrisons)
[18] - Harrisons', page 62

Harry et al[19] and **Odane McIntyre v. Treasure**[20] are cases involving comparable injuries given the nature of the injuries the claimant sustained. Considering the claimant's injuries and associated pain, it is respectfully submitted that the claimant is entitled to an award of approximately 1.3 million dollars.

[83] The claimant has lost the chance to enjoy certain foods he likes. He still cannot eat specific foods due to his loose teeth. His ability to enjoy his usual lifestyle is reduced because of his injuries. In 2021, Dr Peter Glaze, B.D.S., M.Sc., and Dr Otto Beck both assessed the claimant and recommended additional treatments, including a graft and at least three implants. However, he has not undergone these procedures because his mother cannot afford them. The costs of completing these treatments are set out in Proforma Invoices dated April 2021, which the claimant will rely on, with estimated costs as follows:

i. Dr. Peter Glaze, B.D.S., MSc: Connective Tissue Graft (Tooth #'s 25 & 27) - $117,000.00; Implant (1 tooth #26 area) - $1,200.00 USD

ii. Dent-care Smile Clinic: Dental Procedure Examination - $4,000.00; Implant Abutment - $53,546.50; Implant Crown - $107,093.00

iii. Kase International Ltd: 15 months of Braces - $USD 4950.00

[84] Counsel for the defendant submits that it is a well-established principle that a schoolmaster is bound to take care of his pupils as a careful father would take care of his children. This principle was adopted in **Nickeisha Powell v The Attorney General and Others**[21] in which the claimant was injured at school after a student threw a stone, which struck the claimant's left eye.

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[19] [2016] JMSC Civ 62
[20] CLHCV01471/2006, 2014 JMSC Civil 15
[21] Suit No C.L P076 of 1999

[85] It is therefore undisputed that a school owes a duty of care to its pupils, akin to that exercised by a careful parent, and is responsible for implementing safeguards to ensure the pupils' safety. However, this duty is not without limits.

[86] The issue of reasonableness must be considered, as it is required that the school and/or its agent act reasonably in all circumstances. To support this view, guidance is drawn from the case of **Ricketts v Erith Borough Council and Another**[22] and **Roxanne Peart v Shameer Thomas et al**[23] and **Rich and Another v London City Council**.[24]

Children have a tendency for mischief. Applying this principle to the case at hand, it is unreasonable to hold the defendants liable where the school has implemented measures to ensure the safety of its students. The law requires that reasonable measures be taken to prevent foreseeable harm. Schoolmasters are not obliged to keep children under constant supervision at every moment of their presence. (See **Camkin v. Bishop and Another**.)[25] The authorities state that a school is under no obligation to keep its pupils under supervision at all times while they are on the school premises.

[87] The evidence of the three witnesses in support of the claimant's case is that the NMHS had at least three security guards on its campus, stationed at different locations. Additionally, while students are in class, they are supervised by a teacher. Their evidence also shows that students are dismissed to the park area for lunch, where the Dean of Discipline, the Vice Principal, and a Security Guard supervise them.

[88] The test for whether effective safety measures were implemented is one of reasonableness. The school had safeguards in place to ensure student safety and

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[22] [1943] 2 All ER 629
[23] [2017] JMSC Civ.60
[24] [1953] 2 AU ER 376
[25] [1941] 2 All ER

maintain order; a week-long orientation for grade 7 students, informing them of the school rules, ensuring that students are supervised both in class and during lunch breaks, and developing conflict-resolution systems. The measures in place demonstrate that the school took all reasonable steps to ensure the students' safety and prevent harm.

[89] Notably, Amani Moss's evidence is that he and Roshawn were friends, and he was surprised when Roshawn punched him. Similarly, Sean Anderson's evidence is that he had never seen an incident like this between Amani and Roshawn, and he, too, was surprised by the ordeal. Davanno Campbell also said that he had never seen the two boys fight before and that the incident surprised him. The students were friends at the time, and in cross-examination, Davanno gave evidence that he, Roshawn, and Amani would hang out as a group. Their seemingly close relationship is thus relevant to the court's consideration of foreseeability.

[90] Consequently, if this incident could not have been foreseen by Amani's and Roshawn's friends, it certainly could not have been foreseen by the school and/or its agents. Mr Roncell Brooks's evidence is that it was not foreseeable that students of the NMHS would engage in such behaviour. In cross-examination, he said that the school does not foresee fighting taking place, but foresees conflicts and therefore measures are instituted to mitigate against the same.

[91] The defendants submit that the incident occurred sometime after 11:00 a.m. during the lunch break. Davanno Campbell's evidence in cross-examination was that the incident occurred sometime after 11:00 a.m., but before lunch. His evidence was also, paradoxically, that the 8th grade had lunch at 11:00 a.m. It is submitted that the more plausible view is that the incident occurred during the designated lunch period, which was sometime after 11:00 am. Another important piece of evidence to consider is that the claimant stated that the incident did not take place in the park area.

[92] In reconciling these pieces of evidence, the logical conclusion is that the incident occurred during the lunch period, but the students were not in the designated lunch area. The incident occurred during the lunch period, during which students were required to remain within a designated lunch area, the students were outside this area, in violation of school rules. Consequently, they were not being supervised at the material time. The authorities make it clear that it is not reasonable for teachers or other school staff members to provide continuous supervision for students. This explains why the students were not under direct supervision at the material time, as no class was in session, nor were they within the designated park area.

[93] This suggests that the students were neither in a classroom supervised by a teacher nor had they gone down to the park area, as was expected of them.

[94] To establish the tort of negligence, the claimant must show that the first defendant breached their duty of care by failing to take reasonable measures to ensure his safety. In this regard, the defendants have demonstrated that measures were implemented to meet the legal standard of reasonableness in the circumstances. Moreover, the claimant failed to prove that the harm suffered was foreseeable, as the first defendant is only required to prevent foreseeable harm.

The defendants contend that all reasonable steps were taken to ensure the safety of all the students, including the claimant, and the claimant has not disproved this. It is accepted that the first defendant and/or its agents had a duty to act reasonably as a careful parent. However, that reasonableness must be considered in context, as , notwithstanding Mr Brooks' evidence that fighting was not foreseeable, children may still act outside of expected behaviour and engage in mischievous or rowdy conduct. The authorities in this respect suggest that, in such circumstances, a teacher (and by extension, a school) ought not to be found liable for any failure to exercise the degree of care that may be expected from a reasonably careful parent, taking into account this propensity.

[95] Furthermore, the duty that ought to be exercised does not guarantee that students will not be harmed on school grounds; conversely, it is a duty to take reasonable care to avoid harm. This includes implementing specific systems to ensure the safety of students. What is considered reasonable in the circumstances is an objective test. The evidence has indisputably shown that the first defendant took all reasonable steps to ensure the students' safety and avoid harm.

[96] The law dictates that adequate supervision of average teenage students does not necessarily require constant supervision. In the usual scheme of life, fourteen-year-old students are not constantly supervised by a careful parent. They often go out alone with friends, travel to school alone, spend periods at home alone, take public transportation alone, and many babysit younger children or have other part-time jobs. In short, they are young adults who are aware of what is expected of them in terms of behaviour in a civilised society, without constant supervision.

[97] From the evidence, neither the claimant nor the student had any predisposition to violence or animosity with the other. Neither party had any disciplinary issues. Given that they were in grade 8, they should have been aware of the school's zero-tolerance policy regarding fighting or violence and that serious repercussions would be enacted for any breach of that policy. Therefore, in the circumstances, it should be noted that the actions of the first defendant and its teachers did not fall below the accepted standard of care, and that there was nothing the school could have done to prevent this incident from occurring.

[98] If however, the court is of the view that the defendants ought to be found liable for the injuries suffered by the claimant, counsel relied on **Nelson Walters Engineers Ltd and Others v David Noel**,[26] **Collie Francis v Denzil Nugent**[27] and **Ainsworth Edmonson v Assistant Commander Ian Thompson and another**,[28]

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[26] On page 63 of the 2nd edition (2011), of Harrisons' Assessment of Damages (Harrisons)
[27] Harrisons', page 62
[28] [2014] JMSC Civ 130

to submit that the claimant is said to have lost one tooth, with the two surrounding teeth being loose. In the circumstances, the amount awarded in the cases of **Nelson** and **Francis** ought to be significantly reduced owing to the severity of those plaintiffs' injuries when compared to the claimant's injuries.

[99] The loss suffered by the claimant most closely aligns with the decision in **Ainsworth Edmonson**. However, in this regard, the updated figure should be reduced, as the claimant in that case sustained greater injuries than the claimant in this case. It is noted that the claimant here was struck by a classmate with his hand, whereas in **Ainsworth Edmonson**, the claimant was hit when his head was shoved into the service vehicle, resulting in the loss of his tooth and a period of unconsciousness.

[100] It should also be noted that the claimant in that case lost his upper right incisor. This tooth is highly visible in the mouth, whereas the claimant in the present case lost his lower right incisor, which is less conspicuous. The claimant in the present case should be awarded a sum of $650,000 for pain and suffering as well as loss of amenities due to the loss of his tooth.

[101] It was also submitted that no award should be made under the head of future medical expenses, as this was not specifically pleaded. It is noted that the documents the claimant purports to rely on under this head are dated April 2021; the statement of case ought to be amended to reflect the claim the claimant now seeks to make. (See **Robert Minott v South East Regional Health Authority and Another**[29]).

[102] Issues

1. Whether there was a duty of care owed by the defendants to the claimant.

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[29] [2017] JMSC Civ 218 at paragraph 84 per Anderson J

2. If yes, whether the defendants failed to take reasonable care for the claimant's safety whilst he was under their care and control.

3. Whether the defendants are liable to the claimant for negligence.

4. Whether the doctrine of Res Ipsa Loquitor applies.

5. Whether the claimant is entitled to compensation from the defendants.

6. The jurisdiction of the Court in relation to the First and Second Defendant

DISCUSSION

[103] In this claim, both sides agree that there was an incident between the claimant and Roshawn Rattray in which he punched the claimant in the mouth, knocking out his tooth. They disagree on where this incident took place or on exactly how it began.

[104] The claimant gave evidence in his witness statement that they were in a classroom at the time of the incident; however, the location of the incident was not pleaded in his particulars of claim. The defendant had the opportunity to indicate in the pre-trial review on September 25, 2024, that this assertion, which was not pleaded, was in the claimant's witness statement filed on April 5, 2024 and served on them on April 11, 2024. Neither side set out the location of the incident in its respective pre-trial memoranda or statements of facts and issues. The defendants said nothing about this at the pre-trial stage nor made any complaint at trial.

[105] There was no application to amend the particulars of claim nor for an amended defence by either side at any point in time. In **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack**[30], an appeal to the Privy Council from the Court of Appeal of Trinidad and Tobago, regarding the interpretation to be placed on provisions in the Civil

[30] [2010] UKPC 15

Proceedings Rules of Trinidad and Tobago. That case held that the claimant's duty in setting out his or her case includes a short statement of all facts relied on. This meant that each head of loss the claimant was seeking to recover should be identified in the statement of case. The Board also held that a detailed witness statement or a list of documents could not be used as a substitute for a short statement of all the facts relied on by the claimant.

[106] In **Rasheed Wilks v Donovan Williams**, Edwards, JA, writing for the Court of Appeal, said:

> *[39] It is clear, therefore, that although only a short statement of facts is required, a witness statement cannot be issued as a substitute for it. Although the authorities mostly deal with the inadequacies in a claimant's statement of case, the principles would obviously hold true for a defendant's statement of case.*

[107] Where there is no short statement of the facts relied on, an amendment is required. The Court of Appeal ultimately held that a witness statement cannot cure a defect in the pleadings. There was no application by the defendant to strike out or to exclude the purported evidence of the location of the incident in the pre-trial stage, and none at trial under rule 29.1, under the exercise by the court of the power to control the evidence given at the trial. This rule applies equally to both sides, as each is now in the same position in terms of having no amendment to their statement of case in order to rely on their respective assertions of where the incident took place.

[108] I need hardly refer to the well-trodden **McPhilemy v Times Newspapers Ltd and others**[31], and Lord Woolf's pronouncement in that case on the continued requirement for pleadings to "mark out the parameters of the case" and to "make clear the general nature of the case of the pleader".

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[31] [1999] 3 All ER 775

[109] Neither side can in seeking to rely on the factual assertions and allegations in the witness statements applied for permission to amend their statement of case, and proposed amendment at trial, since none was sought beforehand, will now be outside the limitation period.

[110] Although the claimant did not put the defendant on notice, the defendant relies on its denial of negligence, which is the main point of its defence. The defendants' position, as presented by their sole witness, Mr Brooks, was that there was no eyewitness to the incident; however, he disagreed when taxed that the incident took place in a classroom in the presence of the visual arts teacher. His witness statement said that the claimant and Roshawn disobeyed the school rule by not being in the park area after they were dismissed from class.

[111] The Principal could not have known where these students were, other than by being told; therefore, this assertion is hearsay and inadmissible. This means that the submission by Ms Duncan that the incident occurred during the lunch period, during which students were required to remain within a designated lunch area and that at the time of the incident, the students were outside this designated area, in violation of school rules and not being supervised, is not supported by any evidence.

[112] However, it was Ms Duncan who put to the claimant, in cross-examination, that the incident had occurred in an area not supervised by school staff, in other words, a place where students should not have been. The claimant denied this. The defendant has no evidence of their own to counter the claimant’s testimony in cross-examination that he was in a visual arts class with a teacher when the incident occurred.

[113] The time of the incident is key, as it governs where the students should have been. Mr Brooks could only speculate as to where the claimant, his witnesses and Roshawn Rattray should have been based on the system in place for the movement of students. He said that he was informed by school records that the

incident took place, that the Nurse treated the claimant, contacted his mother, and advised that further medical attention be sought on the same date. Mr Brooks could give no evidence of where the students were at the material time. I therefore accept the claimant's testimony that he sustained his injury at the hands of Roshawn Rattray in a visual arts class, which was being taught by a teacher.

[114] In negligence claims, it is well established that the claimant must demonstrate that the defendant owed a duty of care, the defendant breached that duty, and that this breach caused the injury. When the injury involves an object or person under the defendant's care or control, it's up to the claimant to prove his case on a balance of probabilities.

[115] In **Glenford Anderson v George Welch**, the Court of Appeal said at paragraph 26 that:

> "[*26] It is well established by the authorities that in a claim grounded in the tort of negligence, there must be evidence to show that a duty of care is owed to a claimant by a defendant, that the defendant acted in breach of that duty and that the damage sustained by the claimant was caused by the breach of that duty. It is also well settled that where a claimant alleges that he or she has suffered damage resulting from an object or thing under the defendant's care or control, a burden of proof is cast on him or her to prove his case on the balance of probabilities.*
>
> *[27] The general state of the law as to the proof of negligence was eminently enunciated by Lord Griffiths in Ng Chun Pui and Ng Wang King v Lee Chuen Tat and Another Privy Council Appeal No 1/1988 delivered on 24 May 1988, when he said at pages 3 and 4:*
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> > *"The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred… … it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he finds to have been proved and on the*

> *inferences he is prepared to draw he is satisfied that negligence has been established."*
>
> *[28] In establishing a duty of care there must be foreseeable damage consequent upon the defendant's negligent act. There must also be in existence, sufficient proximate relationship between the parties making it fair and reasonable to assign liability to the defendant. Lord Bridge, in Caparo Industries plc v Dickman [1990] 1 All ER 568 at 572 spoke to the test in the duty of care, sufficient to ascribe negligence, in this way:*
>
> > *"In determining the existence and scope of the duty of care which one person may owe to another in the infinitely varied circumstances of human relationships there has for long been a tension between two different approaches. Traditionally the law finds the existence of the duty in different specific situations each exhibiting its own particular characteristics. In this way the law has identified a wide variety of duty situations, all falling within the ambit of the tort of negligence." At pages 573 and 574 he went on to say: "What emerges, is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other."*
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> *[29] Liability will be affixed to negligence where the defendant's act is the sole effective cause of the claimant's injury or it is so connected to it to be a cause materially contributing to it. The negligent act as a cause of a claimant's injury may arise out of a chain of events leading to liability on the part of a defendant but the claimant must so prove. Proof that a claimant's injury was caused by the defendant's negligence raises a presumption of the defendant's liability. However, the claimant must satisfy the court that his or her injury was caused by the defendant's negligence, or that for want of care, the defendant's negligence substantially accounted for the injury."* [32]

[116] The question now arising is whether, on the evidence, negligence can be ascribed to the defendants. The teacher was an employee of the Crown acting within the scope of her employment at the material time. There has been no suggestion by

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[32] [2012] JMCA Civ.43 at paragraph 26

either side that this was not the case. The liability of the Crown is vicarious only if it can be shown that the Crown servant breached a duty owed to the claimant.

[117] The standard of care is expressed in terms of what a reasonable man would do in the circumstances. The standard of care for a teacher requires a teacher to take such steps as are reasonable in the circumstances to prevent physical injury to the plaintiff.

[118] In **Richards v The State of Victoria,**[33] a claim was made for damages arising from injuries sustained by the sixteen-year-old plaintiff, who suffered serious injuries during a fight with another student. The fight occurred in a classroom with a teacher present, who took no steps to prevent the argument beforehand and did not intervene to halt the fight. The plaintiff filed a suit against the State of Victoria, alleging employer's liability.

[119] The Court explained that to establish a duty of care, a plaintiff must demonstrate that the defendant breached a specific legal duty of care and that this duty was owed directly to the claimant. A duty of care often naturally exists because of the special relationship between the parties. In that case, it was agreed that the teacher was a Crown servant working within the scope of employment at the relevant time. It was also agreed that the relationship between a schoolmaster and a pupil inherently creates a duty to exercise reasonable care. In such relationships, this duty isn't primarily based on whether harm from specific actions was foreseeable; rather, it exists beforehand and was independent of any conduct alleged to constitute negligence. In **Richards**, the teacher owed a duty to take reasonable care towards the plaintiff in that situation.

[120] Based on the authorities, it is clear that NMHS had a duty of care to ensure the safety and well-being of the claimant, who was a student entitled to such care.

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[33] [1969] VR 136 Melbourne University Law Review [Volume 7]

Having established that the duty of care exists, the next step is to determine whether this duty of care was breached.

[121] In **Richards,** the court explained that, in determining whether a duty was breached, the central question was the standard of care expected of the person in question. This involves considering what reasonable steps could have been taken in the circumstances to prevent physical harm to the claimant, including any actions that might have ended the incident. If an act could constitute a breach of duty, it might also be a cause of the injury. However, the reasonable person is not required to anticipate every possible outcome. The standard of negligence is objective, based on conduct judged by the standards of what a reasonable person would have done in the circumstances. Ultimately, it was found that there was sufficient evidence to establish a causal link between the breach of duty and the plaintiff's injuries.

[122] In **Roxanne Peart v Shameer Thomas et al**,[34] the claimant, a student and minor, was stabbed in the eye with a pencil by another student. The claimant claimed negligence against her schoolmate as well as the school and other relevant parties. In applying **Richards**, the court noted that *"although a teacher bears a duty to provide adequate supervision, that duty "is not a duty of insurance against harm but a duty to take reasonable care to avoid harm."* The court found that the school had not breached its duty of care to the claimant.

[123] The evidence in **Peart** was that the incident occurred while the teacher was writing on the chalkboard. When she became aware of the dispute, she immediately intervened, enquired into what had happened, examined the claimant's eye, and then took her to the principal, who was also the mother of the other student, and continued to monitor her. She could not have prevented the injury unless she had seen it happening. Her supervision was therefore reasonable.

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[34] [2017] JMSC Civ.60

[124] The Principal was also not negligent, as based on the reports from the teacher and the claimant, as well as her own inspection, she reasonably concluded that the claimant had not suffered a serious injury. However, she later arranged for medical attention when the claimant reported being hit in her "bad eye." Further, the school's policy for handling injuries was properly followed. Accordingly, the court held that neither the teacher, the principal, nor the other defendants representing the school were negligent. Judgment was ultimately awarded against the student who caused the injury on the grounds of assault. It was noted that although assault was not the cause of action identified by the claimant, she had specifically pleaded facts to establish assault, and the court had the power to award the necessary remedy based on the evidence.

[125] Alternatively, the claimant claims under section 3 of the Occupiers' Liability Act. In **Wheat v E. Lacon & Co Ltd**,[35] Lord Denning defined an occupier to be: *"a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises…The duty of the occupier had become simply a duty to take a reasonable care to see that the premises were reasonably safe for people coming lawfully on to them…".*

[126] The question of whether the first defendant was liable in the case at bar is a question of fact that must be decided based on the credibility and reliability of the evidence presented by the parties.

Facts Found

[127] In the present case, it is undisputed that the claimant, a student of NMHS, was injured on school premises by another student from the same institution. It is undisputed that NMHS has a strict policy against physical altercations and that teachers are trained in conflict resolution. The dispute in this case concerns the

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[35] [1966/ 1 All ER 582

precise time and location of the incident, as the defendant has not disputed the nature of the claimant's injuries nor the identity of the assailant.

[128] The principal was informed of the incident through a report from the school nurse. He was the defendant's sole witness; however, he could not personally testify to the incident. He asserted that he had obtained his information from school records; however, he was unable to fill the evidential gaps regarding time and place, and these school records were neither named nor produced in evidence before the court, nor was it given in evidence as to how they came into being.

[129] The claimant testified that lunchtime was at 11:00 am, and the teacher would send them out to lunch. Another visual arts class would follow afterwards. At the time of the incident, he had not been instructed to leave the class for lunch. Sean Anderson gave evidence that the incident occurred sometime after 11 o'clock, during class, and in the presence of a teacher. Davanno Campbell said that the incident occurred sometime after 11 o'clock, before lunch and in the presence of the teacher.

[130] The first defendant's evidence established that students should not be dismissed until the bell rings. The defendant has no evidence to contradict the time of the incident. If the bell rang at 11:00 am and the evidence that the incident occurred before lunch is to be accepted, then the students could not have been in the park area, as they would have had to leave the class after the bell and use the stairs. There is no evidence that the incident occurred on the stairs or in a corridor.

[131] The claimant's witnesses agreed that, at the time of the incident, the class had not been dismissed, that a female teacher remained in the classroom, and that it was approaching lunchtime. Another consideration was whether they had been improperly dismissed before the 11:00 am bell, so that the incident could have occurred outside the classroom.

[132] It is the defendant's evidence that the claimant and Roshawn Rattray disobeyed the rules and procedures by not being in the park area after they were dismissed

from class. It is also their evidence that various staff members, including the Principal, properly monitor the park area. However, there is no evidence from anyone monitoring the park area to indicate where this incident occurred. The defendant's position is that the claimant and his witnesses were outside the designated park area during a period of no classes in breach of the rules. This submission contradicts the evidence of Mr Brooks, who described the monitoring of the park area, the time it takes to reach it from the visual arts class, and the supervision system during lunch. At a minimum, the defendants should have produced an attendance register for the visual arts class to establish who was present and whether the claimant and Roshawn had attended.

[133] There were no corroborating reports from any of the individuals who are said to monitor the park area, i.e. the Dean of Discipline, Vice Principal, Principal or Grade Supervisors. The only report was said to be from the school nurse, who, based on the claimant's undisputed evidence, saw him for treatment after the incident. However, what she said is inadmissible.

[134] Given that the school cannot account for the students' whereabouts, it follows that the school did not know where the students were to assert that they were outside a class. This failure to give an accounting is greater than the mere the propensity of children to be mischievous, or the requirement that a school does not have to supervise its students at all times; rather, it addresses the duration of students' absence from the notice of any staff member and the nature and quality of the incident that took place and the reasonable foreseeable nature of the type of incidents that may take place in the absence of supervision. This makes it more probable that the claimant's version of the incident, which took place inside the classroom during lesson time, is what transpired and that it was foreseeable that conflicts could escalate.

[135] The evidence of Mr Brooks, Principal, is hearsay. I reject his evidence that the claimant and Roshawn were not in the park at lunchtime and were in a place they were not supposed to be.

[136] He also described the claimant as a fighter and believed the claimant had been involved in a fight. He could not recall whether any disciplinary action had been taken against the claimant. Against that evidence is the response that fighting is not a common occurrence at NMHS. This begs the question of where and when the claimant was fighting, such that he could be described as a fighter, particularly if fighting is not common at the school. There is no such evidence.

[137] Despite the school's comprehensive violence prevention policy, the witness could not recall someone he described as a fighter ever being made subject to any disciplinary action. There was no explanation regarding the absence of school records at trial. Therefore, there was no evidence before the court indicating which teacher was present to teach the visual arts class, or who served as the substitute if the teacher was absent. This provides no answer to the claimant's evidence of the teacher who was actually present in the visual arts classroom on March 27, 2017. I find that the incident took place in a classroom in the presence of a teacher.

[138] The incident began with Roshawn's outburst, described as a "burst out". There is no evidence that the teacher addressed this misbehaviour. There was an argument about the shoe polish, during which Roshawn made an accusation. The unchallenged evidence was that the argument lasted about ten minutes. The teacher did not act to quell this disruption.

[139] Next, Roshawn rose from his seat and moved from his table. There was no action by the teacher. Roshawn moved toward the claimant—still no action by the teacher. Roshawn inflicted the blow. There is no evidence that the teacher took any action. This failure by the teacher is a glaring omission: the teacher's failure to take action to resolve what began as an outburst allowed it to escalate unchecked into an act of violence. The omission and inaction amounted to a failure to do what a reasonable schoolmaster would do in the circumstances of a teacher supervising a class in which there is disruptive behaviour. There was no effort to enforce the rules or to initiate disciplinary action. The teacher's failure to intervene is a clear breach of the duty and the standard of care owed to the claimant.

[140] The reasonable man is not expected to foresee everything that could possibly happen. However, conflicts between students are not unforeseeable; accordingly, the school has a strict policy prohibiting violence and employs teachers trained in conflict resolution. The teacher in this case failed to apply the conflict resolution training received and expected by the school in line with their violence prevention policies. This failure allowed Roshawn he to act unchecked and unabated until he delivered the blow that caused the injury.

[141] It was Mr Brooks' evidence that fighting was not foreseeable, whereas conflict was, and the school would act to prevent the escalation of disputes. However, the defendants' counsel submits that children may still act outside of expected behaviour and engage in mischievous or rowdy conduct. It is not unforeseeable that conflicts or disputes among children will escalate quickly. This means that fighting among children cannot be said to be too remote. But for the teacher's inaction, the claimant would not likely have been harmed. The claimant has provided sufficient evidence to establish a causal link between the breach of duty and the injuries he suffered.

[142] The teacher's negligent inaction is a cause of the claimant's injury, which may arise from a chain of events giving rise to liability on the part of a defendant. The claimant has established the events leading up to his injury, and there was no intervening event to break the chain of causation. The claimant has satisfied the court that, for want of care, the defendant's negligence substantially accounted for his injury. The defendant has not rebutted the presumption of liability and is found liable in negligence.

Res Ipsa Loquitur

[143] In the particulars of negligence, the claimant pleaded the doctrine of res ipsa loquitur, which applies where (a) the occurrence was such that it would not have happened without negligence, and (b) the thing that inflicted the damage was under the sole management and control of the defendant and (iii) there must be

no evidence as to why or how the accident took place.[36] The rule applies in situations where there is no evidence explaining the reason or manner in which the incident occurred. The case at bar is not one in which there is no evidence as to how the claimant came to be injured. All claimant witnesses clearly testified as to how the incident occurred. The doctrine of res ipsa loquitur, therefore, does not apply.

Assessment

Special Damages

[144] It is an established principle that special damages must be specially pleaded and proved, and therefore, in any action in which a claimant seeks to recover special damages, he has a duty to prove his loss strictly.

[145] The claimant has exhibited the following receipts to support his pleadings:

1. Copy Receipt No. 019594- dated 9/6/17 in the amount of $500[37] for registration at the College of Oral Sciences for treatment.
2. Copy Receipt No. 019598- dated 9/6/17 in the amount of $1000[38] for examination at the College of Oral Sciences.

[146] Additionally, the claimant and his next friend used public transportation to travel to and from the hospital and dental clinic over a three-month period. He claims a total of Two Thousand Seven Hundred Dollars ($2,700) for transportation expenses. The defendant has not contested this.

[147] In **Attorney General of Jamaica v Tanya Clarke (nee Tyrell)**,[39] the Court held that a Tribunal may rely on the exercise of its discretion and knowledge of the local transportation system to determine a fair award. The strict requirement for

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[36] **Shtern v Villa Mora, Cottages Limited and Another** [2012] JMCA Civ 20
[37] Exhibit 2
[38] Exhibit 3
[39] Supreme Court Civil Appeal No. 109 of 2002

documentary evidence of special damages has been relaxed, particularly for transportation expenses.

[148] Although no documentary evidence was submitted to support the claim, the sum of Two Thousand Seven Hundred Dollars ($2,700.00) is reasonable, as the trips to the Kingston Public Hospital were necessary and undertaken solely to obtain medical treatment for the injuries sustained; as such, the special damages proven amount to $4,200.00.

General Damages

[149] The claimant produced a copy of the attending Physician Statements from Dr Landi Peart. Notably, the document is not certified as an expert report, and the doctor was not appointed as an expert witness. The report states that the claimant was diagnosed with an "avulsed mandibular right incisor, fracture of the alveolar process of the anterior mandible." He was treated with segmental wiring using an arch bar. According to the statement, the patient lost one tooth and may lose three others as a result of the injury. It was also noted that he made weekly visits to the hospital. The claimant was diagnosed with one missing tooth and three mobile teeth, one of which was out of the socket but still present. He was treated by splinting the teeth and advised to follow a liquid diet for 5 weeks.

[150] In the case of **Nelson Walters Engineers Ltd. & others v David Noel**,[40] the claimant suffered a fractured right maxillary central incisor, right upper incisor tooth, an acutely split and avulsed left maxillary central incisor, an acutely mussed left upper incisor tooth; multiple facial lacerations and abrasions; abrasion of the cornea and right eye. General damages were awarded in February 1992 in the

[40] Suit No. C.L 1990/N 001 reported on page 63 of the 2nd edition (2011), of Harrisons' Assessment of Damages (Harrisons)

sum of $40,000, which, when adjusted for inflation, amounts to $1,062,962.00 (CPI for September 2025 is 143.50).

[151] In **Collie Francis v Denzil Nugent**,[41] the claimant suffered a fracture of the right mandible in the chin area, an abrasion and laceration to the right temporal region, with pain and tenderness in the back. General damages were awarded in September 1991 in the sum of $40,000, which updates to $1,510,526.32.

[152] In **Ainsworth Edmonson v Assistant Commander Ian Thompson and another**, the claimant suffered a swelling and tenderness overlying the right maxillary area and the right upper incisor. A shaking postural healing laceration at the gum superiorly noted and tender right posterior elbow laterally with decreased range of motion. General damages were awarded in April 2014 in the sum of $500,000.00, which updates to $877,139.36.

[153] In **Odane McIntyre v Treasure**,[42] the claimant sustained loss of three permanent upper incisors and one milk tooth; fractures of teeth 24 and 25 of the mandible; and permanent tooth loss, which has led to a lack of extraoral bone growth in the anterior maxilla. Surgery was advised. General damages were awarded in February 2014 in the sum of $1,550,000.00, which updates to $2,739,224.14 (CPI for September 2025 is 143.50).

[154] In **Marian Brown et al v Gavin Harry et al**,[43] the first claimant suffered a fractured alveolar process of the maxillary bone. Lacerations to the gingiva. Looseness of the upper incisors and canine teeth, and a fracture of the incisors 1/3 crown of the maxillary right first incisors. The fourth claimant suffered from loss of consciousness; Left knee swollen and tender anteriorly; nose bleeding; ½ inch laceration of lower lip; loss of the first right upper incisor tooth; loosening of teeth

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[41] [Suit No. C.L 1990/ F10, reported on page 63 of the 2nd edition (2011), of Harrisons' Assessment of Damages (Harrisons)
[42] CLHCV01471/2006, 2014 JMSC Civ 15
[43] [2016] JMSC Civ 62

(He was advised to see a dentist); 1 inch diameter bruise with collection of blood on left knee. General damages were awarded in March 2016 in the sum of $800,000 to the first claimant and $950,000.00 to the fourth claimant, which updates to $1,302,961.28 and $1,552,676.53, respectively.

[155] Regarding the authorities and the injuries suffered by the claimant, he lost one tooth; three others are mobile. **Odane McIntyre** is the most similar of the cases cited, with the necessary reduction, as it is more serious. General damages in February 2014 of $1,550,000.00, updates to $2,739,224.14 using the CPI for September 2025 of 143.50.

[156] Accordingly, a reduced award of $2,300,000 is reasonable in the circumstances.

Future Medical Expenses

[157] The claimant gave evidence in a witness statement that he needs a graft to enable an implant and would require at least three implants. However, the medical report of Dr Landi Peart, M.B.B.S., dated April 9, 2020, which has not been certified as an export report, makes no mention of this, nor is there any expert evidence that he would require at least three implants.

[158] In respect of the medical report on future medical care, the claimant exhibited two Proforma invoices dated April 15, 2021, and April 20, 2021, respectively. Exhibit 6 refers to an examination, an implant abutment, and an implant crown, amounting to $164,639.50. Exhibit 7 also refers to implantation (US$1,200.00) and connective tissue grafting (J$117,000.00). It is unclear to the Court, from the documents exhibited, whether the quotations constitute separate offers for the same service. Notably, Exhibit 7 bears no name, indicating to whom the quote was made. Nevertheless, neither invoice is consistent with any medical recommendation presented to the Court.

[159] The claimant also exhibited a receipt from Kase International Ltd from Dr Deck dated April 26 2021, amounting to US$4950.00[44] at an exchange rate of $143, which equals J$707,850.00 for diagnostic records, fit ceramic braces and 15 monthly payments. Although this exhibit was titled a receipt, the claimant presented evidence that he had not yet received the braces due to a lack of funds and that it was, in fact, a quotation.

[160] As stated in **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack**,[45] when claiming for damages, *"the statement of case should identify all the heads of loss that are being claimed."* There are no pleadings in the particulars of claim relating to future medical care or expenses. The quotations were received approximately two years after the pleadings were filed, and there are no amended particulars of claim before the Court. Further, these documents are dated five years after the claimant first attended the hospital and one year after the medical report was prepared. However, there is no indication in that report or physician statement of any recommendation for such treatment. Accordingly, there is no evidential basis for including the aforementioned quotations, and they unfortunately must be disregarded.

Jurisdiction of the Court in relation to the First and Second Defendants

[161] The defendants clearly stated in their defence that the second defendant lacked legal personality, as it was not a body corporate and therefore not a proper party. The claimant did not advert the attention of the court to any enactment which specifically conferred legal personality on the second defendant. The second defendant is a public body which is governed by the Education Act. This is acknowledged by the claimant in its particulars of claim.

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[44] Exhibit 5
[45] [2010] UKPC 15

[162] The Attorney General is sued in a representative capacity pursuant to the Crown Proceedings Act and is the proper party to be sued under the Education Act.

[163] The first defendant is a public educational institution owned by the Government of Jamaica.[46] It is classified as a secondary educational institution under section 7 of the Education Act. Section 9 prescribes that every public educational institution shall be administered by a Board of Management or in accordance with a scheme approved by the Minister. Regulation 71(1) of the Education Regulations, 1980 provides that every secondary educational institution owned by the Government shall be administered by a Board of not more than fifteen persons appointed by the Minister.

[164] In **The Junior Doctors Association and The Central Executive of the Junior Doctors Association v The Attorney General**,[47] the Court of Appeal considered whether contempt proceedings arising from alleged disobedience of an injunction could be maintained against an unincorporated body that was not a legal entity and therefore incapable of suing or being sued. The proceedings against the association were held to be a nullity as it was an unincorporated body and therefore not a juristic person. The proceedings had not been properly commenced as representative proceedings, with members of the Junior Doctors Association being named and sued in that capacity.

[165] Likewise, in this claim, it is the Board, as a statutory body, that ought to have been named as a defendant. Both the first and second defendants are non-juristic persons and are incapable of being sued. Notably, no application was made to the court during the pre-trial stages for the removal of these defendants. Therefore, the entire proceedings against the first and second defendants are a

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[46]Directory of Educational Institutions, 2018/19, published by the Ministry of Education, Youth & Information, Statistics Section, Planning & Development Division

[47] Motion 21/2000; July 12, 2000 and SCCA No 60/2000; February 19, 2001

nullity. There is no legal basis to make any orders against the first or second defendants.

[166] ORDERS

1. The Court declares that the First and Second Defendants are non-juristic persons and are incapable of being sued. The claim and all proceedings against the First and Second Defendants are a nullity.

2. Judgment for the Claimant with costs to be taxed if not agreed.

3. The Claimant is awarded general damages in the sum of $2,300,000.00 with interest at 3% from January 30, 2019, to January 12, 2026.

4. The Claimant is awarded special damages in the sum of $4,200.00 with interest at 3% from March 27, 2017, to January 12, 2026.

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Wint- Blair, J