

Important precedent set - a school bus company's duty of care to school children



Scrase v Jarvis, Surfside Bus Lines and Lynch
(Unreported decision of Ambrose, J,
Queensland Supreme Court, 3 April 1998).
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Introduction

The Supreme Court of Queensland, delivering Judgment on a tragic case involving the death of a schoolchild in northern New South Wales, has set a fresh and important precedent on the duty of care owed to school children and parents by school bus operators and drivers.

For the first time a school bus operator has been successfully sued for failing to exercise reasonable care for the safety of a school child under its supervision.

The Court also held that the death of a schoolgirl who ran from a schoolbus, without being given a warning by the driver, in search of her younger sister who had been refused access to the bus because she didn't have her bus pass with her, was caused by the fault of the owner and driver of the vehicle [the bus] in the use and operation of the vehicle [as a school bus] as required by Section 9 of the *Motor Accidents Act (NSW)*.

The case also appears to have set a new record for damages for nervous shock in Queensland.

Facts

On Wednesday 17th November 1993, Kerryn Scrase, aged 10 years, and her

younger sisters Laura aged 8, and Michelle aged 6, set off from home for the 5 minute walk to the school bus stop as they had done habitually for the whole of that school year.

They arrived at the at the section of Kingston Drive, Banora Point in Northern New South Wales, where their school bus would stop to collect them and take them to their school at Tweed Heads. There were children also waiting on the other side of the road to catch another school bus.

The Surfside School Bus pulled up and their regular driver, whom they knew as Henry, started checking for the girls' school bus passes as he did every day. He checked for their passes even though he was aware the girls all had one as he had been taking them to school regularly throughout that year.

As Laura hopped on the bus she realised that she had left her school bus pass at home. Henry assured her she wasn't allowed on the bus without it, so Laura asked if she could go home and get it. Henry was able to issue her with a form of courtesy pass which would have allowed Laura to travel to school but instead he chose to follow the strict letter of his

employer's bus pass policy which was "no pass no travel". He sent Laura on her way across busy Darlington Drive to get the bus pass he already knew she had.

Time passed and Laura failed to return. Naturally the older sister Kerryn became concerned for her sister and asked Henry if she could go to find Laura. Henry said she could. She would have to be quick because there was a bus load of school children waiting to be transported to school.

Unfortunately Henry failed to warn Kerryn that there was a motor vehicle approaching the bus from behind at a dangerously fast speed for any vehicle to be approaching a school bus. Henry would have seen the car in his rear vision mirror had he looked. Indeed, Henry failed to give Kerryn any warning to exercise care when crossing the road, even though he gave evidence that he appreciated the risk and had previously advised other children not to cross in front of the school bus.

Kerryn raced out in front of the bus to cross the road and was hit by a Mr. Lynch who was driving at approximately 60 to 65 kilometres per hour as he passed the bus. Kerryn suffered horrifying and ultimately fatal injuries.

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Soon afterwards Laura returned to the bus to advise the driver that her mother had decided to take her to school. As she arrived on the scene she was confronted with her sister's body lying on the roadway. Kerryn's parents, Jeffrey and Carol Scrase, also arrived at the scene within minutes. Kerryn was still alive when they arrived but unconscious. Kerryn died as she arrived at hospital.

Jeffrey and Carol Scrase brought an action for nervous shock against Surfside Bus Lines for its negligent bus pass policy, against the bus driver Henry Jarvis for failure to warn Kerryn, and against the driver of the car.

The actions were heard together before Mr Justice Ambrose in the Supreme Court of Queensland at Brisbane during the week commencing 9th March 1998. He reserved his decision handing it down on the 3rd April 1998.

Liability of car driver

His Honour had no hesitation in finding the car driver negligent. He said that to drive past the stationary school bus at an admitted speed of 60 to 65 kilometres per hour was negligent.

In fact, under cross examination from Dennis Wheelahan QC, Counsel for the plaintiffs, the driver admitted that driving past the stationary bus at the speed he was doing was a "grossly dangerous act".

His Honour said the driver should have foreseen that a child might run out in front of the bus which is precisely what happened. He found that Kerryn was distracted at the time which could be expected given the circumstances and that children often became distracted in dangerous circumstances.

His Honour apportioned liability against the car driver at 60 per cent.

Liability of bus driver

His Honour noted from the bus driver's own admissions in evidence that:-

- He told Laura that she would have to

go home and get her bus pass because he couldn't let her on without it,

- He was aware of the propensity of school children to run across the road without looking properly, and that
- He did not warn Kerryn

His Honour held that the driver was in breach of an obligation to warn Kerryn of the approach of the oncoming car and to be careful crossing the road. He must have known she was anxious to speed up the return of her younger sister.

He stated -

"In my view this is a case in which the bus driver was clearly under an obligation because of the relationship/proximity between him and the child Kerryn, to warn her to take care and in particular, to be careful of the approaching vehicle which struck her, of which he ought to have been aware." (page 9)

The bus company was held to be vicariously liable for the negligence of its driver in failure to warn.¹

Liability of the bus company

His Honour heard evidence :

- Of the bus company's policy at the time that unless students produced "either a school bus pass, proper fare, weekly ticket or school travel authority travel will be refused".
- That the bus company's policy was changed less than a month after the death of Kerryn so that "In every case, travel to or from school will be made available to all students".
- From a school teacher, a parent and a schoolchild concerning the refusal of the driver Henry to allow schoolchildren on his bus without a pass.

His Honour heard no evidence from the bus company or driver on the issue.

His Honour held (at page 18):-

"In my view the policy on its face and without any explanation from either the first or second defendant was a grossly unreasonable one which put school children of tender years at unnecessary risk".

The first and second defendants con-

tended that they were obliged to comply with Regulation 34 of the *Passenger Transport Regulations 1990* (NSW) which provides that "When any passenger in a bus indicates to the driver his or her desire to leave the bus...the driver must allow the passenger to leave...the bus".

His Honour referred to this as a "rather unmeritorious point" and said :-

"Most parents of young children I think would be appalled at the prospect of the driver of a school bus being obliged under penalty of criminal sanction to allow young children to disembark from the school bus when ever they sought to do so..." (page 21)

The Judge stated that in his view the relationship between the school children and the bus company and driver imposed a duty on the bus company and its driver to take precautions and avoid implementing their strict policy of excluding school children from the bus. He found that the bus company's duty of care to the plaintiffs was not to subject any of their children to any avoidable or unnecessary risk of death or injury.

His Honour held that not only was the bus company vicariously liable for the negligence of its driver but that the company was directly liable in negligence because of the formation and implementation of the bus pass policy. His Honour held that it was an unreasonable policy that unnecessarily put little school children at significant risk of injury. He stated that if the implementation of the policy had not occurred then the whole sorry events of the day would not have occurred. Both Laura and Kerryn would have simply stayed on the bus and presumably been delivered safe and sound to their school.

The Judge said that it was clearly foreseeable that Kerryn would be motivated to want to leave the bus to investigate any delay in her sister returning to the bus and that this must have been within the reasonable contemplation of the bus driver when he refused to permit Laura on the bus without her pass.²