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In Loco Parentis: Definition, Application, and Implication

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IN LOCO PARENTIS: DEFINITION, APPLICATION, AND IMPLICATION

In loco parentis connotes a relation with which few, if any, persons have not had some contact; yet these words are foreign to the vocabulary of many. *In loco parentis* has been defined as follows: "In the place of a parent; instead of a parent, charged factitiously with a parent's rights, duties, and responsibilities."[1]

Whether the relation, *in loco parentis*, exists depends on the facts of each individual situation.[2] If such a relation exists, the rights, duties, and liabilities of the person standing "in the place of a parent" are the same as those of a lawful parent. The assumption of the relation is a question of intention and not of chance. Once established, the relationship is presumed to to continue, and the one claiming discontinuance has the burden of so proving.[3]

In the New Mexico case of *Griego v. Hogan*[4] the court stated that the relation of *in loco parentis* exists

> [w]hen a person undertakes the care and control of another in the absence of such supervision by the latter's natural parents and in the absence of formal legal approval. It is temporary in character and not likened to an adoption, which is permanent.[5]

If the relationship is established, what are the rights of the parties enjoying the privilege of such relationship? It is generally found that one standing *in loco parentis* to a child[6] enjoys

1. BLACK'S LAW DICTIONARY 896 (4th ed. 1951).
2. *See* Wilson v. Wilson, 14 Ohio App. 2d 148, 237 N.E.2d 421 (1968) (where the court found that the clearest evidence of consent to stand *in loco parentis* occurs when a person takes a child into his custody as a member of his own family); Fuller v. Fuller, 247 A.2d 767 (D.C. 1968), *petition to appeal denied*, 418 F.2d 1189 (D.C. Cir. 1969) (where it was found that the duties of one in *loco parentis* arises only when one is willing to assume all obligations and to receive all benefits associated with one standing as natural parent to a child. *See also* Morgan v. Smith, 429 Pa. 561, 241 A.2d 531 (1968) (a case of first impression, which held that the status *in loco parentis* embodies two ideas, 1. the assumption of parental status, and 2. the discharge of parental duties).
3. 67 C.J.S. *Parent and Child* § 72 (1950).
4. 71 N.M. 280, 377 P.2d 953 (1963).
5. *Id.* at 295, 377 P.2d at 955, *citing* In re McCardle's Estate, 95 Colo. 250, 35 P.2d 850 (1934).
6. The existence of the relation, *in loco parentis*, is often thought to exist only between adults and children, and for the sake of convenience this is the situation referred to unless it is specifically designated otherwise. *See* note 64 *infra*.

the custody of the child,[7] and necessarily acquires such power of control over the person of the child as is necessary to maintain the family entity adequately.[8] In addition to the benefits received by a person *in loco parentis*, certain obligations are also assumed. These obligations include requiring that the person *in loco parentis* care for and educate the child,[9] be liable for necessaries furnished to the child,[10] and not be allowed, while such relation exists, to assert a claim for such support.[11]

Reference having been made to the basic principles underlying the relation of *in loco parentis*, the intention of this note is: (1) to present several of the areas in which the privilege is found, (2) to examine the law as it has developed in each area to date, and (3) to attempt to determine the extent to which the privilege extends. By such analysis guidelines will be presented that will aid the practitioner when confronted by a case in which the relation, *in loco parentis*, possibly exists.

I. LIABILITY FOR DISCIPLINE BY ONE IN LOCO PARENTIS GENERALLY

The first area to be discussed, and the one where problems are most likely to arise in society today, concerns the necessity of a person *in loco parentis* having the authority to discipline the persons in his charge.[12] Prosser recognizes the need for such privilege and the resulting protection afforded one in the exercise of it.[13]

The general rule concerning the authority of a person *in loco parentis* with regard to discipline is that reasonable force for the correction or punishment of a child may be used by a parent or a person standing in the place of a parent.[14] The first question to be asked is whether or not the person claiming the pro-

7. Niewidomski v. United States, 159 F.2d 683 (C.C.A. Miss. 1947), *cert. denied*, 331 U.S. 850. (1947).
8. Foley v. Foley, 61 Ill. App. 577 (1896).
9. Waldrup v. Crane, 203 Ga. 388, 46 S.E.2d 919 (1948).
10. Rudd v. Fineberg's Trustee, 277 Ky. 505, 126 S.W.2d 1102 (1939).
11. *Id.*
12. At the onset of the discussion of liability surrounding discipline of children, it is noted that both civil and criminal liability should be considered. While it is clear that in most situations involving criminal liability, civil liability may also be imposed (not withstandng inter-family tort immunities), the converse is not always the case; civil liability may be based on negligence but criminal liability often demands more. This note will utilize the term, "liability," as a general reference to tort concepts, leaving reflection on possible criminal liability for the reader's own consideration.
13. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 27 (3d ed. 1964).
14. *Id.*

tection of the rule is in fact *in loco parentis* and therefore entitled to such protection. As stated earlier, the existence of the rule depends on the facts of the individual case.[15] If the person claiming protection is found to be *in loco parentis*, it then becomes a question of whether his act was privileged by the rule.

There are two views prevalent in the United States today.[16] The majority view considers the reasonableness of the defendant's act and determines whether such act was willful, wrongful, or unlawful.[17] The minority view perhaps affords greater protection to the defendant. Under this position, the defendant is within the protection of the privilege unless the act resulted in permanent injury to the child or was inflicted with malice.[18] It should be noted at this point that punishment for an improper purpose, or punishment that is itself improper, will not fall within the protection of the rule.[19]

Courts purporting to follow the majority view find that a person *in loco parentis*, when inflicting punishment, must not exceed the bounds of moderation and reasonableness and that any act found to be cruel, merciless, unreasonable, or immoderate exceeds the privilege and will subject the actor to liability.[20] The following conditions have been stated to be pertinent:[21]

> 1. The actor's relationship to the child; 2. the age of the child; 3. the child's sex; 4. the child's physical and mental condition; 5. the nature of the offense and apparent motive; 6. whether the punishment or confinement is reasonably necessary and appropriate; 7. whether the punishment is disproportionate to the offense; 8. whether the punishment is necessarily degrading; 9. whether the punishment is likely to cause permanent injury or serious harm; 10. whether the

15. 67 C.J.S. *Parent and Child* § 72 (1950).
16. Tripp, *Acting "In Loco Parentis" as a Defense to Assault and Battery*, 16 CLEV.-MAR. L. REV. 39 (1967).
17. *Id.* at 42.
18. *Id.* at 42-43.
19. Annot., 89 A.L.R.2d 399 (1963).
20. People v. Curtis, 116 Cal. App. 771, 300 P. 801 (1931); State v. Spiegel, 39 Wyo. 309, 270 P. 1064 (1928); Steber v. Norris, 188 Wis. 366, 206 N.W. 173 (1925); Clasen v. Pruhs, 69 Neb. 278, 95 N.W. 640 (1903); Hinkle v. State, 127 Ind. 490, 26 N.E. 777 (1891); Patterson v. Nutter, 78 Me. 509, 7 A. 273 (1886); Stanfield v. State, 43 Tex. 167 (1875); Lander v. Seaver, 32 Vt. 114, 76 Am. Dec. 156 (1859).
21. Tripp, *Acting "In Loco Parentis" as a Defense to Assault and Battery*, 16 CLEV.-MAR. L. REV. 39 (1967).

> punishment was inflicted for a salutary purpose; 11. whether the actors were free from malice; 12. the childs example on other children; 13. the kind of instrument used; 14. the extent or nature of the use of the instrument; 15. the sensitivity of the child; 16. the child's responsibilities; 17. the child's tolerance to pain; 18. whether the child was old enough to understand the punishment.[22]

It appears that the majority of jurisdictions also recognizes that the reasonableness of the punishment shall be determined by the jury or by the court as finder of fact according to the requirements applicable to the particular offense with which the defendant is charged.[23]

The position taken by the minority of states with regard to liability for punishment inflicted on a child by one *in loco parentis* requires that the punishment result in permanent injury or was inflicted with malice, either express or implied.[24] This standard affords greater protection to the defendant in that he will not be liable for an error in judgment as to the necessity for punishment or because it might appear that the punishment was not proportionate to the offense.[25] In jurisdictions following this view the criminal liability of one *in loco parentis* depends, as a general rule, upon the establishment of the constituent elements of the particular crime charged.[26]

II. LIABILITY FOR DISCIPLINE BY A TEACHER

The relation between a teacher and his pupil is one *in loco parentis*.[27] This relation has been said to have been delegated

22. *Id.* at 43, 44; *citing* Annot., 2 AM. JUR. *Proof of Facts,* Par. 2, and *Assault and Battery Proof,* Par. 7 Discipline (1959); RESTATEMENT (SECOND) OF TORTS § 150 (1965); State v. Hunt, 2 Ariz. App. 6, 406 P.2d 208 (1965); State v. Straight, 136 Mont. 255, 347 P.2d 482 (1959); State v. Henggeler, 312 Mo. 15, 278 S.W. 743 (1925).

23. Annot., 89 A.L.R.2d 399, 404 (1963).

24. Tripp, *Acting "In Loco Parentis" as a Defense to Assault and Battery,* 16 CLEV.-MAR. L. REV. 39, 45 (1967). Alabama Courts have allowed malice to be proven by the nature of the instrument involved. Haydon v. State, 15 Ala. App. 61, 72 S.586 (1916); Dean v. State, 89 Ala. 46, 8 S. 38 (1890). In *Nicholas v. State,* 32 Ala. App. 574, 28 S.2d 422 (1946), a verdict of guilty was rendered against a man who beat a child for an hour with a rubber belt for wetting. Such conduct was admissible as evidence of malice.

25. Cameron v. State, 24 Ala. App. 438, 136 So. 418 (1931).

26. Annot., 89 A.L.R.2d 339, 410 (1963). An early South Carolina case, *State v. Shaw,* 64 S.C. 566, 43 S.E.14 (1902) supports this position.

27. Brooks v. Jacobs, 139 Me. 371, 31 A.2d 414 (1943); Roberson v. State, 22 Ala. App. 413, 116 S. 317 (1928). *See* W. PROSSER, HANDBOOK OF THE LAW OF TORT § 134 (3d ed. 1964); Proehl, *Tort Liability of Teachers,* 12 VAND. L. REV. 723 (1959).

by the parent, by sending his child to school, to the teacher.[28] This justification is tenuous, however, because state compulsory eduction laws require children to go to school.[29] Rather, a more logical reason for allowing the teacher to stand *in loco parentis* to the students, thereby resulting in the privilege to discipline the students, stems from the necessity of maintaining order at the school.[30]

This rule ordinarily affords the teacher the right to inflict punishment which is not excessive upon a pupil without incurring liability, although there is disagreement on the question of what constitutes excessiveness.[31] The cases in this area reflect the divergence in view between the authorities which adopt the rule that a teacher may inflict punishment upon a pupil which is reasonable and moderate under the circumstances without becoming liable for an assault or injury and those which refuse to adopt the reasonableness test and state that liability arises only upon evidence that the punishment was inflicted with malice or resulted in permanent injury. As recognized from the preceding discussion, the authorities which adopt the first rule represent the majority whereas the latter position represents the minority.

Although South Carolina has no law governing corporal punishment in the schools, an opinion by the Attorney General gives recognition to the privilege generally afforded teachers to discipline unruly pupils without incurring liability.[32] The opinion states that the South Carolina Constitution, while prohibiting any law which inflicts corporal punishment, was intended to prohibit the passage of a law which would authorize the infliction of corporal punishment under sentence of the court. So far as teachers are concerned, the opinion goes on, the common law controls, and common sense is the crucial factor in determining the action necessary to maintain discipline in the schools. It is also stated that it has long been recognized that teachers may administer *reasonable* punishment, while cruel and harsh punishment would subject them to a charge of assault and battery. The degree of punishment would be the

28. State v. Pendegrass, 19 N.C. 365 (1837).
29. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 27 (3d ed. 1964).
30. Stevens v. Fossett, 27 Me. 266 (1847); McCleod v. Grant County School District, 42 Wash. 2d 316, 255 P.2d 360 (1953).
31. Annot., 89 A.L.R.2d 399 (1963).
32. 1956-1957 OPS. ATT'Y GEN. 247.

guide as to whether a teacher would be found guilty of assault and battery.[33]

The proposition could be advanced that, if corporal punishment was abolished, there would be no need for the protection afforded teachers by *in loco parentis*, and if a pupil were struck by a teacher, the teacher's status would be immaterial. The undersirability of this approach was voiced in a survey taken of educators throughout the United States.[34] The conclusions from the survey revealed genuine concern over the ever-increasing unruliness and disorder within the schools. Of those surveyed, numerous responses advocated repeal of laws prohibiting corporal punishment; no response advocated further prohibitions.[35] As mentioned, a South Carolina Attorney General's opinion has recognized the need for corporal punishment in maintaining the necessary degree of control and discipline in the public schools.[36] A subsequent opinion of the Attorney General[37] recognized the powers of school superintendents as being very broad. These powers are derived from powers vested in the school board and include authority to make rules and regulations concerning discipline in the schools.

Although this latter opinion was specifically directed to the authority of the school board of trustees to regulate the length of hair on male students, it recognized the inherent power vested in the board by the Code of Laws of South Carolina of 1962, which provides that the board of trustees shall:

> (3) Promulgate rules prescribing scholastic standards of conduct and behavior that must be met by all pupils as a condition to the right of such pupils to attend the public schools of such district. The rules shall take into account the necessity of proper conduct on the part of all pupils and the necessity for scholastic progress in order that the welfare of the greatest possible number of pupils shall be promoted . . . .[38]

The delegation of authority by the school board to a principal to maintain discipline in his school was upheld in *Stanley v. Gary*.[39] In *Stanley* the court stated:

33. *Id.* at 247.
34. K. JAMES, CORPORAL PUNISHMENT IN THE PUBLIC SCHOOLS 183 (1963).
35. *Id.*
36. 1956-1957 OPS. ATT'Y GEN. 247.
37. 1965-1966 OPS. ATT'Y GEN. 134.
38. S.C. CODE ANN. § 21-230 (Supp. 1969).
39. 237 S.C. 237, 116 S.E.2d 843 (1960).

> The maintenance of discipline and the standards of behavior in a body of students in a high school is a task committed to its faculty and officers and not to the courts. In matters of discipline, a broad discretion is accorded the faculty and teachers . . . .[40]

Having noted that some corporal punishment is permissible, it becomes necessary to determine when the privilege exists. (In the following examination reference will generally be made to only the majority jurisdictions.) In the case of *Drum v. Miller*,[41] the Court, after recognizing the teacher's authority to correct his pupils by corporal punishment, held that any act done by the teacher in the exercise of this authority, and not prompted by malice, was not actionable, although it may cause permanent injury of some kind, unless a person of ordinary prudence could reasonably foresee that a permanent injury of some kind would probably result. The very nature of this concept emphasizes that, before a privilage is found, the reasonableness of the punishment must be considered.[42] Normally, the person claiming the privilege has the burden of establishing the reasonableness of his conduct.[43] Certain cases dealing with the question have, however, shifted the burden of proof by affording the teacher a presumption of reasonableness.[44]

One of the most important factors which are required to be taken into consideration in determining whether corporal punishment administered by a teacher to a pupil is privileged is the nature of the punishment itself.[45] The evaluation of the punishment encompasses both the method in which the punishment was inflicted and the extent of the resulting injury to the student. Also important in ascertaining whether a privilege exists is the nature of the pupil's conduct.[46] Consideration should be given to the teacher's apparent motive, disposition, and the

40. *Id.* at 243, 116 S.E.2d at 846.
41. 135 N.C. 204, 47 S.E. 421 (1904).
42. Annot., 43 A.L.R.2d 469 § 111(5) (1955).
43. Harris v. Galilley, 125 Pa. Super. 505, 189 A. 779 (1937).
44. Drake v. Thomas, 310 Ill. App. 57, 33 N.E.2d 889 (1941). Here the court stated that in the absence of testimony, the presumption would be that the punishment was reasonable, but after evidence was introduced in regard to the matter, presumptions concerning it ceased to exist, and the issue of whether it was excessive or proper was then to be determined from the weight of the evidence. Other cases which apparently allow a presumption of reasonableness to exist, although proscribing different terminology, *i.e.*, benefit of any doubt, are Calway v. Williamson, 130 Conn. 575, 36 A.2d 377 (1944); Melen v. McLaughlin, 107 Vt. 111, 176 A. 297 (1935); Patterson v. Nutter, 78 Me. 509, 7 A. 273 (1886).
45. Suits v. Glover, 260 Ala. 449, 71 So. 2d 49 (1954).
46. *Id.*

effect or influence which the punishment has on other students.[47]

The physical condition of the child should also weigh heavily in determining whether the teacher exceeded the privilege established by the teacher-child relationship.[48] While certain punishment may be inflicted upon a strong, healthy child, the same punishment may result in serious injury to a child whose health is poor. Problems also arise when the child possesses unusual susceptibility to harm from the type of punishment inflicted by the teacher. In the English case of *Mansell v. Griffin*,[49] the court stated that a teacher is not liable for reasonable corporal punishment administered to a child, notwithstanding that because of the child's unusual susceptibility to harm from the type of punishment rendered, which susceptibility was unknown to the teacher, the results of such punishment were more serious than could have been anticipated.[50]

Possibly one of the foremost criteria to be used in assessing liability is the teacher's motive. Several courts allow a presumption to exist that, if the punishment was not excessive, the teacher had good cause to discipline the child.[51] In *Van Vactor v. State*,[52] the Indiana Supreme Court said that it was within the rights of a teacher to enforce discipline, that compliance with all reasonable commands could be exacted, and that a teacher, when acting reasonably, could inflict corporal punishment for disobedience. This right to discipline, however, extended only to punishment that was proportionate to the gravity of the offense and was within the bounds of moderation. The court further stated that, where no improper weapon had been used, the presumption existed that such punishment was rightly exercised, and that, subject to the general rules, a teacher's right and duty to inflict corporal punishment upon a pupil, and its reasonableness, must be judged by the varying circumstances of each particular case.[53]

Perhaps at this point, better service can be rendered by illustrating situations in which teachers have been held liable for punishment inflicted upon their students, and alternatively,

47. Calway v. Williamson, 130 Conn. 575, 36 A.2d 377 (1944).
48. Suits v. Glover, 260 Ala. 449, 71 So. 2d 48 (1954).
49. [1908] 1 K.B. 160.
50. *Id.*
51. Van Vactor v. State, 113 Ind. 276, 15 N.E. 341 (1888); Harris v. State, 83 Tex. Crim. 468, 203 S.W. 1089 (1918).
52. 113 Ind. 276, 15 N.E. 341 (1888).
53. *Id.* at 277, 15 N.E. at 342.

situations in which the teachers were not liable. Since the basic question is one of fact, only the roughest sort of guide can be determined. Attention will first be devoted to those instances in which the teacher was found to be liable.

In the Connecticut case of *Calway v. Williamson*,[54] a school principal was held liable after he pushed the student to the floor and knelt on the student's abdomen; this course of action resulting in the student struggling to free himself and suffering burns and breaks in the skin which developed into osteomyelitis. In *Harris v. Galilley*[55] the court imposed liability on a Pennsylvania school principal, who was empowered by statute to inflict corporal punishment, when necessary, upon pupils. The principal in *Harris* slapped the pupil on the back of the neck, which resulted in permanent injury. *Rupp v. Zintner*[56] was another Pennsylvania case which this time dealt with a child being permanently injured by punishment inflicted by a teacher. In *Rupp*, the punishment took the form of a blow over the pupil's right ear. The blow injured the pupil's eardrum and permanently damaged his hearing in that ear.

Melen v. McLaughlin,[57] a Vermont decision, was another situation where a teacher was found liable. The punishment was administered because of the pupil's inability to solve an arithmetic problem and consisted of a blow with a book over the pupil's kidney. The blow was inflicted at a time when the child was bent over to pick up an eraser that had been shaken from her hand by the teacher. As a result of this punishment, the pupil, a girl eleven years of age, was required to remain for almost two months in a cast extending from under her arms to half way down her legs.

A recent Louisiana case, *Frank v. Orleans Parish School Board*,[58] allowed a student to recover for a fractured arm. In holding the teacher liable, the court held that the degree of force that may be used by a school teacher in disciplining a student in a public school depends on the individual facts and environmental characteristics emanating from each case. Although the court specifically refrained from doing so, they inferred that a teacher's touching a student could possibly be actionable per se.

54. 130 Conn. 575, 36 A.2d 377 (1944).
55. 125 Pa. Super 505, 189 A. 779 (1937) (holding evidence sufficient to support a jury verdict in favor of the pupil).
56. 29 Pa. C.&D. 625 (1937).
57. 107 Vt. 111, 176 A. 297 (1935).
58. 195 So. 2d 451 (La. 1967).

The Alabama case of *Suits v. Glover*[59] is illustrative of a situation where the teacher was found not to be liable. In *Suits* it was shown that the teacher was authorized to administer corporal punishment in order to maintain order and discipline in the school and that, when confronted by a healthy eight and one-half year old student scuffling in the hall and being insubordinate, the teacher was justified in disciplining the student and such discipline would not subject the teacher to liability. (Note, however that Alabama is a minority jurisdiction.)

In *Marler v. Bill*,[60] a Tennessee case, a teacher struck a student several times with a ruler. The court determined that the teacher acted without malice, that the student violated a school regulation, and that, as a result of his denial, the teacher was justified in administering the punishment.

Deskins v. Gose,[61] a Missouri Supreme Court decision afforded the teacher freedom from liability for whipping a student with a switch. The punishment was inflicted because of an infraction of the school's rule against using profane language and fighting on his way home from school.

Looking at the question of the reasonableness of the punishment, the Arizona Supreme Court in *LaFrentz v. Gallagher*[62] held that punishment administered to a pupil as a disciplinary measure is "privileged" and does not give rise to a cause of action for damages against the teacher. In *LaFrentz* a teacher shoved a small boy while the latter was playing softball. The court recognized the need for reasonable punishment and denied recovery to the plaintiff.

What punishment will fall within the protection of the special privilege of *in loco parentis* must be determined from the facts of a particular case; the above cases are only illustrative of different applications of the *in loco parentis* doctrine. However, it is hoped that certain insights have been created and that the necessity of the existence of such a privilege has been justified. It is a very serious matter any time punishment must be inflicted on a child, and the use of punishment as a means of correction must be distinguished from punishment as an abuse. The minority rule, which requires permanent injury

59. 260 Ala. 449, 41 So. 2d 49 (1954).
60. 181 Tenn. 100, 178 S.W.2d 634 (1944).
61. 85 Mo. 485, 55 Am. Rep. 387 (1885).
62. 105 Ariz. 255, 462 P.2d 804 (1969).

or malice before liability arises affords too little protection to the child. The majority view appears to afford the child ample protection and yet does not deny the person standing *in loco parentis* the authority to maintain the proper amount of control. Under this view the person standing *in loco parentis* is not the final arbiter of what punishment is reasonable. The public, through the realm of the jury, is and should be the ultimate body to render such determination. While South Carolina has taken no formal position in this matter, adoption of the reasonableness standard would seem to be compatable with present practices concerning discipline in the schools and in harmony with existing Attorney General Opinions.[63]

III. Other Situations in Which In Loco Parentis Exists

The prior discussion involves the areas of the *in loco parentis* relation that are most frequently encountered. One area in which few people realize that the relation of *in loco parentis* can exist is between adults. Although thoughts generally run to an adult-child relationship when the term *in loco parentis* arises, such relationship is not so confined. In *Banks v. United States*[64] the court held that an adult could stand *in loco parentis* to another adult. In determining whether the relationship did, in fact, exist, the same considerations are involved as in an adult-child relationship. *Banks* elaborated the rule that financial support is only one objective manifestation of the existence of such relationship. *Banks* also stood for the proposition that a person occupying the position *in loco parentis* could recover as the beneficiary of an insurance policy. This view lends support to the theory that, once such relation is established, the persons enjoying the privilege possess an "insurable interest" and are thus entitled to recover.[65]

Another area that is becoming increasingly important is the right of a child to bring an action against a person standing

63. *See* opinions cited notes 32 and 37 *supra*.
64. 267 F.2d 535 (2d Cir. 1959).
65. A similar result was reached in *Thomas v. United States*, 189 F.2d 494 6th (Cir. 1961), where an aunt, who occupied an *in loco parentis* relation to her nephew, was entitled to the proceeds of his life insurance policy. The court held that financial support was not required to establish such relationship but that it could be proven in other ways. *See also Zazove v. United States*, 156 F.2d 24 (7th Cir. 1946), where an adult aunt was allowed to receive insurance benefits as a result of standing *in loco parentis* to an adult nephew. The aunt qualified as a beneficiary under the National Service Life Insurance Act, where such persons were allowed to recover as beneficiaries.

in loco parentis for personal injuries suffered by the child. The general rule[66] states that an unemancipated child cannot bring an action for damages for personal injuries against a step-parent who stands *in loco parentis* unless such right is granted by statute.[67] Suits of this nature have been sustained, but in all of them the cause of action appears to have been based upon some type of deliberate or malicious wrong or cruel or inhuman treatment.[68] The South Carolina case of *Gunn v. Rollings*[69] illustrates the difficulties which a child may have in maintaining a tort action. In *Gunn*, two minor children brought an action against the administrator of their stepfather's estate for injuries sustained while riding as passengers in their stepfather's automobile. Their stepfather died as a result of injuries sustained in the accident.

In explaining their decision, the court gave the following reason for not allowing children to recover for injuries suffered as a result of a parent's negligence:

> The rule prohibiting suit by a minor against the parent for a personal tort is based upon considerations of public policy, which discourage causes of action that tend to undermine and destroy family unity and parental discipline.[70]

Although this policy consideration generally is directed specifically to the parent-child relationship, the same rules apply to persons acting *in loco parentis* and recovery was rightfully denied.

IV. Termination

To determine when the *in loco parentis* relationship terminates, it is necessary to look again at the nature of the relationship. As seen earlier, *in loco parentis* exists

> when a person undertakes the care and control of another in the absence of such supervision by the latter's natural parents and in the absence of formal legal ap-

66. 67 C.J.S. *Parent and Child* § 61(b)(2) (1950).
67. *Id.*
68. 39 Am. Jur. *Parent and Child* § 90. (1941).
69. 250 S.C. 302, 157 S.E.2d 590 (1957). The court stated that South Carolina law prohibits an unemancipated child from recovering against his parent for personal injuries caused by his parents' negligence. The court further proclaimed that these rules also applied to a relation *in loco parentis* so long as this relationship exists.
70. *Id.* at 305, 157 S.E.2d at 591, *citing* Fowler v. Fowler, 242 S.C. 252, 130 S.E.2d 568 (1963).

> proval. *It is temporary in character* and not likened to an adoption, which is permanent.[71]

Since the relationship is temporary, it necessarily follows that it can be terminated. This point was discussed in the South Carolina case of *Chestnut v. Chestnut*,[72] where the court held that the *in loco parentis* relationship could be terminated at will by either party. However, once established, the relation is presumed to continue, and the party claiming discontinuance has the burden of so proving.

V. CONCLUSION

A person need only keep abreast of daily news to be keenly aware of the strife and turmoil existent in society. These conditions dictate a pressing need for clarification of the standards by which a teacher is to be judged for discipline inflicted upon students under his control. In order to maintain the required degree of control over the classrooms, a teacher should be able to utilize corporal punishment that is reasonable under the circumstances in which it is administered. So long as the punishment does not exceed these bounds, the teacher should be afforded the protection of the relation, *in loco parentis*, and not be subject to liability. In other situations where *in loco parentis* exists, the rights, duties, and liabilities should be the same as for a natural parent or guardian.

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71. Griego v. Hogan, 71 N.M. 280, 295, 377 P.2d 953, 955 (1963) (emphasis added).
72. 247 S.C. 332, 147 S.E.2d 269 (1966).