TORT LIABILITY OF PUBLIC SCHOOL TEACHERS FOR THEIR
NEGLIGENT ACTS IN SUPERVISING PHYSICAL EDUCATION,
ATHLETICS, AND PLAYGROUND ACTIVITIES
IN THE UNITED STATES

A Field Report
Presented to
The Graduate Division
Drake University

In Partial Fulfillment
of the Requirements for the Degree
Master of Science in Education

by
Roland Henry Kok
August 1963
TORT LIABILITY OF PUBLIC SCHOOL TEACHERS FOR THEIR
NEGLECT ACTS IN SUPERVISING PHYSICAL EDUCATION,
ATHLETICS, AND PLAYGROUND ACTIVITIES
IN THE UNITED STATES

by

Roland Henry Kok

Approved by Committee:

Simon Bartley
Chairman

Martin T.

John S. Hutchinson

Eule I. Canfield
Dean of the Graduate Division
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>The Problem</td>
<td>1</td>
</tr>
<tr>
<td>Definitions of Terms Used</td>
<td>2</td>
</tr>
<tr>
<td>II. NEGLIGENCE IN GENERAL</td>
<td>7</td>
</tr>
<tr>
<td>Negligence as a Tort</td>
<td>7</td>
</tr>
<tr>
<td>Defenses to a Negligence Action</td>
<td>10</td>
</tr>
<tr>
<td>III. TORT LIABILITY IN PHYSICAL EDUCATION</td>
<td>15</td>
</tr>
<tr>
<td>IV. TORT LIABILITY IN ATHLETICS</td>
<td>31</td>
</tr>
<tr>
<td>V. TORT LIABILITY IN PLAYGROUND ACTIVITIES</td>
<td>42</td>
</tr>
<tr>
<td>VI. SUMMARY</td>
<td>56</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>61</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

The problem of tort liability exists in the public school system because of the expanding program in physical education, athletics, recreation, and the many injuries that pupils participating in these programs sustain.

I. THE PROBLEM

Statement of the problem. It was the purpose of this study to discover and set forth the points of law pertaining to the tort liability of teachers in physical education, athletics, and playground activities in the public schools of the United States.

Importance of the study. Courts of last resort in various states have, with few exceptions, held steadfastly that school districts are not liable in tort for the negligent acts of their officers or employees.\(^1\)

Since the school districts are not liable, injured parties have but one recourse for damages -- the negligence of the employee, agent, or officer charged with the responsibility of supervising pupils.

\(^1\)Perkins v. Trask et al, 23 P. 2d 932 (Montana, 1933).
Limitations. No systematic attempt has been made to locate statutes covering the subject of tort liability of school teachers.

Many of the principles discovered in this study will apply to teachers generally; however, it should be kept in mind that the primary concern of the writer is with teachers and supervisors of physical education, athletics, and playground activities.

The reader should keep in mind at all times that these principles are subject to change either by the courts or the state legislatures.

Procedure. In conducting this study, an analysis was made of the decisions of the courts of last resort in all of the states of the United States. This analysis was made through the process of briefing the many cases that pertain to the various phases of the subject. From these briefings, general principles were drawn according to the weight of authority. These principles were presented in concise form as guides for teachers supervising the activities of physical education, athletics, and the playground.

II. DEFINITION OF TERMS USED

Action. The ordinary proceeding in a duly constituted court by which one person seeks the enforcement of
protection of a right, or the redress or prevention of a wrong; the lawful demand of one's right; a request to a court to exercise its powers to enforce a certain relationship which the person bringing the action asserts is the proper relationship between him and his adversary.¹

Assumption of risk. Involves the situation where the person subsequently injured may be said to have ventured into the relationship or situation out of which the injury arises, voluntarily and with full knowledge of the danger. He thus relieves the defendant of the duty to protect him against injury. The doctrine is based on the principle of volenti non fit injuria -- no wrong is done to one who consents -- and is raised as a defense to an action brought for recovery of damages caused by defendant's conduct. The consent may be expressly agreed upon by the parties, or it may be implied by the court from the circumstances and the plaintiff's conduct.²

Contributory negligence. The failure by the person injured through the negligence of another to use due care for his own protection. Such contributory fault generally

²Ibid., p. 160.
bars his recovery if his misconduct exposes him to the injury resulting from the defendant's negligence, and combines and concurs with that negligence in causing the injury.\(^1\)

**Damages.** Compensation awarded the plaintiff for the damage, injury or loss suffered by him as a result of the defendant's wrongful conduct.\(^2\)

**Defendant.** One against whom the action or suit is brought; the party called upon to make satisfaction for the injury complained of by the plaintiff.\(^3\)

**In loco parentis.** Refers to one who is held to have put himself in the situation of a legal parent by assuming the obligation incident to the parental relation; in the place of a parent.\(^4\)

**Liability.** The condition of being subject to an obligation performance of which is enforceable by a court; legal responsibility.\(^5\)

**Negligence.** Consists of the failure to act as a reasonably prudent and careful person would act under the circumstances to avoid exposing others to unreasonable

danger or risk or injury or harm. It may consist of the omission to act, as well as in acting affirmatively.\(^1\)

**Plaintiff.** One who brings or initiates the action, seeking the enforcement or protection or a right, or the redress or prevention of a wrong; one who invokes the aid of the law.\(^2\)

**Proximate cause.** The name given by the courts to the practical limitation put upon one’s responsibility for a given result or consequence of his action or failure to act. Legal responsibility is limited to those causes which are closely enough connected with the result complained of, and significant enough in their contribution to that result, as to justify holding the one creating the cause liable for its results. It is a limitation on the length to which the courts will permit the chain of events to be stretched; often designated cause in law, or legal cause.\(^3\)

**Quasi-public corporations.** Instrumentalities or agents of the state, such as, counties, townships, or school districts -- which are created by the state for the purpose of carrying into effect specifically delegated functions of government, and clothed in corporate form in

\(^1\)Tbid., p. 1229. \(^2\)Tbid., p. 1364. \(^3\)Tbid., p. 1457.
order to better perform the duties imposed upon them.¹

**Tort.** A term applied to a group of situations or relationships which the law recognizes as civil wrongs, and for which the courts will afford a remedy, usually in the form of an action for damages; a breach of a duty, other than one arising out of contract, giving rise to a damage action; an unlawful violation of another's legal rights; legal enforcement of moral standards of conduct.²

**Respondeat superior.** The doctrine under which a principal or employer is held legally responsible for the acts of his agent, servant, or employee, the basis for which is the generally recognized policy consideration of putting the burden on the person best able to bear it and distribute its cost. The relationship almost never exists between teachers and school districts.³

**Vis major.** An irresistible natural cause which cannot be guarded against by reasonable skill, care and prudence; a superior force; an act of God; a storm of unusual and extraordinary force; a sudden and violent gust of wind.⁴

¹Ibid., p. 1473. ²Ibid., p. 1733. ³Ibid., p. 1546. ⁴Ibid., p. 1823.
CHAPTER II

NEGLIGENCE IN GENERAL

Our American law of negligence is based on the great body of cases which have been laid down by our courts. Negligence is based on the theory of precedent, upon previous judicial decisions or established modes of legal procedure. The application of such rules decided in the past to a present case is known as precedent. If the case before the court can be fitted into rules and doctrines developed in earlier decisions, then those decisions and rules will control the outcome of the case. If there are no previous decisions precisely enough to the point, the court will then look to analogous situations and derive a new rule of law which will decide the case before it, and set precedent for future cases involving the same or similar circumstances.

I. NEGLIGENCE AS A TORT

Negligence consists in the failure to act as a reasonably prudent and careful person would under the circumstances involved in the case before the court. This conduct deals with either action or inaction on the part of the defendant.

The teacher is in loco parentis in relation to the
pupil.\textsuperscript{1} As a result of this relationship, the teacher's duties and rights may be even greater than those of a parent.\textsuperscript{2} The relationship of a teacher to a pupil requires, generally, that the teacher act as a reasonably prudent person, carrying out the duties of the teaching profession, would act under the same or similar circumstances. The teacher is measured by his conduct, which is a difficult standard to apply. If the circumstances existing at a given moment would cause the reasonably prudent person to take some action or refrain from some action, and the teacher fails to act or to refrain, then he has been negligent. He has breached the legal duty he owes his students, and is liable if injury results from his negligence.

The courts have evolved a test to answer the questions determining whether a person has been reasonably prudent and careful and the standards which are to be employed. The courts state that where a reasonably prudent and careful person would anticipate danger or an accident, it is negligent to permit those circumstances to continue without remedial action.\textsuperscript{3} In the case of Rapisardi v.

\begin{flushleft}
\textsuperscript{1}Fertich v. Michener, 111 Ind. 472, 11 N.E. 605 (1337).
\textsuperscript{2}State v. Mizner, 50 Iowa 145 (1373).
\textsuperscript{3}Drum v. Miller, 135 N.C. 204, 475 E. 421 (1904).
\end{flushleft}
Board of Education, a teacher permitted pupils to play baseball with a bat that did not have a 'knobbed end. The use of the bat resulted in injury to another pupil when it slipped from the hands of the batter.¹ A prudent teacher would have anticipated possible injury. Again in the case of Buzzard v. East Lake School District, a teacher failed to take certain sufficient precautions to prevent accidents resulting from bicycle races in the play yard during recess.²

In addition to being aware of and guarding against the normal activities of all persons, the teacher must realize that young children do not have the same sense of responsibility and mature judgment their elders have. Consequently, teachers must protect children against themselves,³ their childish acts,⁴ and irresponsibilities.⁵ However, there is no liability, if no reasonably prudent person would have anticipated a particular accident, or no

³Shannon v. Central Garther Union Sch. Dist., 23 P. 2d, 769 (Calif., 1933).
⁴Angles v. Foster, 24 Col. App. 2, 541, 75 P. 2d, 650 (1933).
⁵Wynn v. Gandy, 170 Va. 590, 190 S.E. 527 (1933).
reasonable precaution could have prevented the occurrence of the accident.

The courts have found it necessary to limit the extent to which liability will be permitted because it is obvious that the entire educational system might become disrupted.\(^1\) Therefore, it is clear to see that not every accident that occurs in a school means that either the school or the teacher is liable.

II. DEFENSES TO A NEGLIGENCE ACTION

The mere fact that an accident occurs and that the teacher is negligent does not mean that the teacher is liable for damages. Before a negligent person must pay for an injury, there must be a decision as to whether the careless conduct was the proximate cause of the injury.\(^2\)

Through the operation of certain legal defenses, although there may be negligence which is the proximate cause of an injury, the teacher involved may still be exempt from liability. The defense is the defense of *vis major*. This is where an act of God, or an uncontrollable


act of the elements occurs.¹

The second defense from liability is immunity. This defense probably had its origin in the common law motion that "the King can do no wrong." This defense does not protect the teacher because the principle of respondeat superior cannot be applied.² Another defense, which exempts the school district, is placed on the grounds that the district is a quasi-municipal corporation with limited powers and there is no fund to meet such damages.³

Furthermore, they have no power to raise funds to pay such claims.⁴ Many courts state that immunity is a matter of public policy. Public education is for the benefit of all, and if it is necessary to sacrifice the welfare of a few in order to protect the public interest as a whole, then the sacrifice must be made.⁵ However,

²Perkins v. Trosk et al., 23 P. 2d 932 (Montana, 1933).
⁴Cochran v. Wilson, 237 Mo. 210, 229 S.W. 1050 (1921).
there are a few exceptions to this general immunity precedent, namely, the states of California,  1 New York,  2 Washington,  3 and Illinois. 4

Another defense is contributory negligence. Contributory negligence is the conduct on the part of the plaintiff contributing to the harm he has suffered, which conduct does not conform to the standard required for his own protection. 5 However, if both parties were at fault, the law denies either the right to recover.

Contributory negligence differs from negligence generally in that it has no element of duty owed to another. The plaintiff must, however, conduct himself as would a reasonably prudent person under existing circumstances. 6 The standard care required of a child is not


5Restatement of Torts, 463.

as great as that required of an adult. However, the child must exercise the degree of care for his own welfare that a child of similar age, intelligence, sex, physical characteristics, and training would reasonably be expected to exercise. It is necessary for a jury to decide this question in terms of whether a child of that age and experience could be expected to do as he so did. If the child fails to do what would be expected, and his negligence in his action contributes to his injury, then his recovery is barred.

The last defense to a negligent action is assumption of risk, which is based on the theory of "no harm is done to one who consents." This means that if the plaintiff consents, he relieves the defendant of his duty to protect the plaintiff from unreasonable risks or harm while he is engaged in an activity. Although both players and spectators assume the normal risks involved in playing or


4 Black, op. cit., p. 160.
watching an activity,¹ they do not necessarily accept the
risks of an unsafe field,² equipment or apparatus.³

¹Ingerson v. Shattuck Sch., 735 Minn. 16, 239 N.W.
667 (1932).

²Makovich v. Ind. Sch. Dist., 111 Minn. 446, 225
N.W. 192 (1929).

³Kelly v. Sch. Dist. No. 71, 102 Wash. 343, 173 P.
333 (1919).
CHAPTER III

TORT LIABILITY IN PHYSICAL EDUCATION

Since the physical education and training of school children of elementary and high school grades, including physical or gymnastic exercises, athletics, physical games, sports, and the like, are generally considered a governmental function, inasmuch as the physical development of children is as important for good citizenship as their mental development, it is the general rule that school districts, school boards, and other agencies or authorities in charge of public schools enjoy immunity from tort liability for personal injuries or death sustained by students in connection therewith, in the absence of a legislative enactment to the contrary, at least where only negligence is involved.1

The significance of this rule of school district immunity, as pointed out earlier herein, is that the physical education instructor is left vulnerable as being the only available resource which a student may have as redress for an injury. Yet, the instructor's conduct, if free from negligence, will deem such vulnerability of no

consequence. It should be kept in mind that, with the exception of governmental or statutory immunity, anyone can sue another at any time. However, the recovery upon the suit is quite another matter. Hence, the instructor may be vulnerable in that he can be sued; yet, absent any liability on his part, the suit is of little or no consequence. In the discussion below, the writer will demonstrate through actual cases those instances wherein the physical education instructor has been held liable for his negligent conduct in the supervision of physical education and training of his students.

As noted earlier, negligence may consist of the omission to act, as well as in acting affirmatively.\(^1\) Demonstrative of both commission and omission as the bases of an instructor's negligence is the case of Govel \textit{v. Dowling}.\(^2\) In that case, the plaintiff, a student, was injured upon alighting after a somersault. The apparatus used was a spring board covered with a mat adjacent to one side of parallel bars five feet tall and about twenty inches wide, over which pads had been draped. This was called the "elephant." The floor on the far side was supposed to be covered with a double mat. Dowling, the

\(^1\)Black, \textit{op. cit.}, p. 41.

instructor, was on the landing side. The plaintiff, whose
weight ranged from 198-204 pounds, ran about thirty feet,
gained impetus from the spring board, and while turning in
the air his foot struck the bars and he fell to the bare
floor. Evidence was adduced from a witness for the defend-
ant that the somersault over the elevated bars was not
generally taught and should be attempted only by excep-
tional and highly skilled pupils. The witness was asked:

Q. Is that generally taught?
A. That is not generally taught, no sir, only to the
highly skilled boys . . .

Q. Is a boy that is highly skilled in this work
exceptional?
A. I think I would have to agree unfortunately.

In the above case, the court announced the general
rule that it is the duty of a teacher to exercise reasona-
ble care to prevent injuries; and to assign pupils to such
exercises as are within their abilities and to properly
and adequately supervise the activities. Failure to do so
constitutes actionable negligence on the part of the
instructor. Dowling's negligence may be predicated upon
his failure to have mats in place on the far side of the
bars, which would have reduced the hazard of plaintiff's
fall following the somersault; and illustrative of an
affirmative act as a basis for negligence, for assigning
plaintiff who was not exceptionally skilled, to an exercise
beyond his prowess with knowledge of the danger. On appeal, the judgment for plaintiff and against Dowling was affirmed.

As seen in the Govel case, one of the bases upon which the instructor's liability was predicated was the commission of an act which a reasonably prudent person would have refrained from committing under the circumstances attending the tort. And while the affirmative act was the proximate cause of the injury, a subtle failure forms the actual basis for the act; i.e., the instructor failed to ascertain the student's prowess for the exercise to which he had been assigned. Had Dowling known that the student was unable to execute the exercise, it is doubtful that the assignment would have been given. At least, it can safely be assumed that a reasonably prudent person would not have made the assignment with cognizance of the student's inability to perform same without the probability of resultant injury.

It becomes readily apparent from the above discussion that the general rule, as amplified in the case of Bellman v. San Francisco High School Dist., i.e., a coach or physical education instructor is required to exercise reasonable care in the protection of the students under his supervision, contemplates that the instructor is chargeable with knowledge of any factors or conditions which could
presently or foreseeably cause or result in injury to a student.\footnote{Bellman v. San Francisco High School District, 11 Cal. 2d, 376, 31 P. 2d, 394 (1938).} In this case, Belva Bellman, a seventeen-year-old girl, sustained personal injuries when endeavoring to do an exercise taught in the tumbling class which was conducted by the school as one of the courses in physical education. The exercise is known as "roll over two." To do it the performer takes a short run and dives over two persons who are on the floor on their hands and knees, alights on outstretched arms, and with the head curled under in order to complete a forward roll, comes to a standing position. While trying to accomplish this feat, Belva struck her head. In the trial of the case, the jury had before it the testimony of the instructor of the tumbling class that proper performance depends not only upon a girl's agility and muscular strength but also upon her mental attitude. Muscular strength is not all that is required, she said, "you might have muscular strength and not be able to do it." There was also evidence through the plaintiff's testimony that she took the tumbling class work under protest; that in doing the "roll over two" she had many times fallen on top of the girls on the floor; that she had a bad knee that "went out" at times; that two
weeks before the accident she had fallen in the locker room and that the instructor had dressed her knee with hot compresses; and that she then told the instructor that her knee was bad and that she did not want to take the tumbling but the instructor said, "I would have to in order to get my credits." The court found that this evidence, if credible, was sufficient to support the theory that the "roll over two" was not an exercise suitable for the plaintiff, and/or that the instructor knew or should have known that because of the plaintiff's mental and physical condition she was not a proper subject for such instruction. Hence, the instructor was chargeable not only with knowledge of the plaintiff's pre-existing physical condition, but, in addition, should have known from a consideration of all the attending circumstances that plaintiff's mental attitude deemed the exercise unsuitable.

The far-reaching duty was recognized also in Luce v. Board of Education of Village of Johnson City, wherein the general theory of negligence urged by the plaintiff was that, having or being chargeable with knowledge of her physical condition due to previous accidents, the instructor should not have directed or permitted the plaintiff to participate in the game resulting in her fall because the
consequences were reasonably foreseeable.\textsuperscript{1} The plaintiff in this case had suffered two previous fractures of her right forearm. There was evidence that the plaintiff's mother had advised the defendant instructor that because of her previous injuries the plaintiff should not participate in "rough games," in which she might be caused to fall. While playing the game of "jump the stick relay" under the direction of the instructor, the plaintiff fell and again fractured her right forearm. Reiterating the duty that the instructor was under a duty to exercise reasonable care to prevent injuries and to assign pupils to such activities as are within their abilities, and to properly and adequately supervise the activities, the court ruled that questions of the instructor's knowledge of the pre-existing physical condition of the plaintiff, the foreseeability of the consequences, and the risks involved in the game being played, were questions of fact for determination by jury. Hence, assuming that the jury could view the evidence in behalf of the plaintiff as credible, the theory of negligence urged herein was valid.

The rule adhered to in the foregoing cases also

requires that a physical education instructor warn his students before permitting them to engage in a dangerous and hazardous exercise.\footnote{La Valley v. Stanford, 269 A.D. 493, 56 N.Y.S. 2d 359 (1947).} In the case of La Valley v. Stanford, the plaintiff and another student who were both untrained were permitted to fight vigorously through one round and part of another in a boxing match, as required physical activity, before plaintiff's injury, without warning from the instructor. The plaintiff who had received no training, engaged with one La Mere, a vigorous young man also untrained, in the presence of the instructor who sat in the bleachers. The plaintiff described the contest:

We started to box in the first round and we wanted to see which one would get the best of it, and we went right at it as hard as we could, and that was the first round. In the second round we started just as bad as ever and I got hit in the temple . . . I became dizzy and staggered.

The court stated that it is the duty of an instructor to exercise reasonable care in the prevention of injuries to his students; and that students should be warned before being permitted to engage in a dangerous and hazardous exercise. Skilled boxers at times are injured, and the plaintiff and his sparring partner should have been warned of the danger. The instructor failed in his duty.
in this regard, and hence, he was negligent; thus, plaintiff was entitled to recover.

A physical education instructor is required to see that his students have a safe place in which to conduct their physical training period and his failure to do so is negligence for which he may be held liable in action for damages for injuries sustained as a result of the breach of that duty.¹ In *Lee v. Board of Education of the City of New York*, the plaintiff, a fourteen-year-old student, brought an action against the physical education instructor to recover for injuries sustained by the plaintiff when struck by an automobile while playing association football in the street with his classmates as part of his required physical training curriculum. The street was not marked a play street but police stanchions were at both ends marked "School street, ten miles an hour." During the game, the instructor walked up and down on the adjacent sidewalk supervising the play. He had a whistle which could be used to designate the end of a playing period or to give warning of approaching vehicles. As the street was marked a school street, it was known to the instructor that traffic was not eliminated from the highway. The

court found that under all the facts and circumstances, there was sufficient evidence, if found credible by the jury, to find the instructor negligent in compelling the plaintiff to participate in the physical training period in a public highway through which automobiles and other vehicles were in the normal course of events expected to pass.

As seen above in those cases in which the instructor has been held liable for his negligent conduct, the court has demonstrated, through an application of the rule of law to the facts, the manner in which the instructor has failed to comply with or to meet the duty with which he is charged. For the purpose of illustrating the outcome of a case wherein the instructor has been sued, notwithstanding a compliance with the duty with which he is charged, the writer will briefly discuss several cases of nonliability.

Where a strong, healthy, eighteen-year-old high school student, without a known physical weakness or disability, who was one of the largest students in the physical education class, which he was required to attend as part of his school work, was injured during the class period while playing "touch football" with a rubber soccer ball in the school gymnasium, it was held in Read v. School Dist. of Lewis County, that there was not sufficient
evidence to justify a jury in finding any negligence which was the proximate cause of the injury so as to impose liability therefor upon the instructor or the school district... where there was no showing that any failure on the part of the instructor properly to conduct the game was in any way the cause of the accident.1

In Sayers v. Ranger, liability of the physical education instructor was denied on the basis that the plaintiff had assumed the risk.2 In that case, the plaintiff, a fourteen-year-old boy, by election, was jumping over a gymnasium horse used as one of the instrumentalities of physical exercise in the school. While in the course of said jump he fell and broke his arm. The complaint was predicated upon the alleged negligence of the physical education instructor for his failure to supervise the final jump of the plaintiff. It appeared that, in addition to taking such precautions as setting out proper mats to protect the students and supervising the jumps, the instructor demonstrated how the jump should be done. The testimony, according to the court, indicated that the plaintiff could choose the character of gymnasium exercise he

1Read v. School Dist. of Lewis County, 7 Wash. 2d 502, 110 P. 2d 179 (1941).
wanted; that on the day of the accident he had successfully jumped several times; that he jumped in leap frog fashion; that he went to put his hands down and his foot hit the top boy throwing him off balance before his hands could get on the boy's back; that before the boy started, the instructor cautioned him: (as testified by the plaintiff)

This is dangerous and to do it the way he showed us and if we didn't think we could do it, not to, and seeing I had done it successfully before, I did it that time.

It is obvious from the plaintiff's own testimony that he was fully aware of the dangers implicit in this form of exercise. He was of sufficient intelligence and experience to realize the harmful potentialities of the situation. He elected to assume it and was therefore held to the consequences which ensued in the process thereof. Knowledge of the danger compels assumption of the risk in such a case.\(^1\) The liability of the instructor was accordingly denied.

In Fein v. Bd. of Education,\(^2\) an action based on the negligence of the instructor consisting of lack of supervision and the failure to place a mat under a chinning

\(^1\) Vorrath v. Burke, 63 N.J.L. 183, p. 190, 42 A. 333 (Sup. Ct. 1909).

bar, liability was denied on the basis of assumption of risk. In that case, the plaintiff, a fifteen-year-old student, during the optional exercise period preceding his regular physical education class used the chinning bar. He chinned himself about twelve times and then lowered himself the full length of his arms and let go, dropping a distance of about six inches. He landed on the floor on both feet, slipped, and twisted his back in attempting to regain his balance. The court rejected the contention of lack of supervision and as to the issue of mats, it was found that if there was no mat under the chinning bar, the plaintiff must be held to have assumed the risk... The accident could not have been prevented even if the instructor had been standing near the chinning bar and even if there had been a mat under it... The accident was due solely to the plaintiff's own negligence.

It should be pointed out in connection with the above case that the theory of "assumption of risk" is rarely an adequate defense in actions for damages on account of injuries sustained by young people. As seen above, knowledge of the risk is the watchword of assumption of risk.\(^1\) Ordinarily, the plaintiff will not be taken to

\(^1\)Cincinnati, N. O. & T. P. R. Co. v. Thompson, 6 Cir. 236 F. 19 (1916).
assume any risk of conditions or activities of which he is ignorant. Furthermore, he must not only know of the facts which create the danger, but he must comprehend and appreciate the danger itself. If because of age, or lack of information or experience, he does not comprehend the risk involved in a known situation, he will not be taken to consent to assume it. Thus, many courts say that even when pupils know that a condition is dangerous they do not always know the extent of the danger and therefore the theory of assumption of risk is inapplicable. Hence, the physical education instructor should organize his programs with cognizance of his students' ages, experience and capacity in order to be certain that the student is fitted for the exercise to which he is assigned. This, of course, is applicable to all areas covered by this study.

Another case of nonliability, Kerby v. Elk Grove Union High School Dist., held that a physical training

---


2Choctaw, O. & G. R. Co. v. Jones, 77 Ark. 367, 92 S.W. 244 (1906).


instructor was not negligent in permitting a vigorous, robust sixteen-year-old boy, whom no one knew to be suffering from chronic aneurism of cerebral artery, ruptured as a result of a blow from a basketball, causing his death, to participate in a basketball game after instructing him as to the rules. The court in its opinion stated:

... This leaves the vital question as to what omission or act on the part of the instructor, contrary to his duty as supervisor of physical training, rendered him guilty of negligence ... The deceased was a vigorous, robust boy sixteen-years-old and weighing 140 pounds. No one knew that he possessed an aneurism or any other physical defect. He had been instructed with relation to the rules of basketball and was considered a proficient player thereof. The instructor was therefore, not negligent in permitting him to participate in the game ... at the time the accident occurred, the instructor was not neglecting his customary duties.

Thus, it can be seen that, while an instructor may be held chargeable with knowledge of a student's pre-existing physical condition in that he knew or, by the exercise of reasonable diligence, should have known from facts available to him, the instructor cannot be charged with knowledge of a pre-existing physical condition which is not known to exist. In the Kerby case, the pre-existing condition was not discovered until an autopsy was performed. The key word is "reasonable." As seen in an earlier case, 1 it was not unreasonable to charge the

instructor with knowledge of a student's pre-existing physical condition where the instructor had in fact dressed the student's knee after a fall in the locker room and where the instructor was thereby apprised that the student had a bad knee which "went out" at times. Under such circumstances, a reasonably prudent person would not have acted without due regard for the pre-existing condition with which the instructor was justifiably charged.
CHAPTER IV

TORT LIABILITY IN ATHLETICS

The organization of school athletic teams in public schools is generally considered to be an integral part of the physical education, and it is therefore a general rule that school districts, school boards, or other agencies in charge of public schools, are immune from liability for injuries to players sustained in practice or games, even though admission to the latter is charged.¹

In Martini v. School Dist. of Olyphant, a football player was injured in a game between two public high schools which were part of the public school system. The game was played as a public exhibition and was viewed by many spectators who paid admission fees. Despite the fact that the student had notified the head coach of his high school before he entered the game that the helmet issued to him had been broken and was defective, he was directed by the coach to go into the game without any new headgear. During the game he was kicked or hit on the head and nose, his nose was broken, and he was rendered unconscious. In an action by his parents against the school district, the

court held that the defendant was not liable for the negligent failure of its employee (the coach) to provide the player with adequate and customary equipment, and that this rule applied even though the game was presented as a public spectacle for which an admission was charged. The court based its decision on the ground that a football game, so far as the players themselves are concerned, is an educational activity, and therefore is also governmental, because the game offers, as the court put it, "a controlled outlet to the unbounded energy and activity of youth as developed and encouraged in a program of physical education."

As noted above, the Martini case is illustrative of both the principle of governmental immunity afforded to the school district with respect to tort liability for the negligence of its employees, and the rule that an athletic coach is required to exercise ordinary care in the prevention of injuries to his players. It can be seen that the duty with which the coach is charged requires that the player be provided adequate equipment. In the instant case, it could hardly be said that the coach met his duty in permitting the player to enter the game with a defective helmet. And although the court does not expressly hold the coach liable, since the action was brought against the school district, it is intimated that the liability for the
player's injury should be borne by the coach as a result of his negligent failure to provide the player with adequate and customary equipment.

As seen earlier in this study, the teacher and supervisor may be held chargeable with knowledge of a student's pre-existing physical condition under certain circumstances. This principle was the theory of negligence urged by the father of a student who was injured while participating in a football practice in [Morris v. Union High School Dist. A, King County]. In that case, the plaintiff alleged that his son was induced, persuaded, and coerced by the coach to train and practice as a member of the football squad, and he, on or about September 7, 1923, while so practicing, sustained injuries to his back and spine. On or about September 21, 1923, the plaintiff's son, while still suffering from the injuries which he had previously received, of which the coach well knew, or in the exercise of ordinary care should have known, was permitted, persuaded, and coerced by the coach to play on the football team on that day. That as a result of participating in the game and through the negligence of the coach in

---


permitting, persuading, and coercing him to play, the son received serious injuries. The issue in this case was whether the allegations stated a cause of action. The court found that if the allegations were true, a case of liability would be made out. Hence, the coach was charged with knowledge of the previous injury and his act of permitting, persuading, and coercing the player to engage in practice notwithstanding the physical condition of the player was negligence.

Similarly, in Mancini v. Bd. of Education, the above theory was applicable.\(^1\) In that case, a high school boy who had had heart disease from the time of his birth and who had been examined by the school authorities, who knew his condition and who prescribed no exercise, was allowed to engage in a basketball scrimmage. The boy collapsed shortly afterwards and died in the gymnasium. He had been a pupil in the school for some years and his condition was well known to the school authorities. Although the opinion was silent on the matter, it would appear that the basketball coach, chargeable with knowledge of the boy's heart disease, was negligent in permitting the boy to engage in the scrimmage. And, assuming this negligence hastened the

boy's death, liability therefore should be borne by the coach.

In the area of track and field, a coach may be liable for his failure to advise the students of the danger which accompanies a certain act. In Bartell v. School Dist. No. 23, Lake County, an action was brought against the district on the basis of the negligent conduct of its principal-coach. The complaint was for damages for negligence. The facts were that the principal-coach, while coaching and instructing several older boys of the school in the field event of shot putting, directed the plaintiff to stand near where the heavy iron shot would fall and to mark the place. The coach, without warning to the plaintiff, cast the shot, striking the plaintiff on the head and inflicting serious injuries of a permanent nature. The negligence was founded upon the positive action of the coach of placing a child in a dangerous place while he was not a part of the athletic team, when by force of rule and authority he had to obey; and upon failing to advise the plaintiff of the accompanying danger and a failure to warn him when the ball was thrown.

It was learned through a rather exhaustive research

---

of the law that, in the specific area of athletics, there are very few reported decisions involving the tort liability of the coach. The pronounced void of such cases is no doubt due to a large degree to the fact that those activities which are categorized as athletics are usually not compulsory. Rather, the participants who engage in the various forms of athletics do so voluntarily. In this sense, the participation therein is regarded as permissive. This being so, the athletic coach may avail himself of the defense of "assumption of risk" in those cases wherein a student athlete brings an action for injuries sustained while engaged in an athletic event. The principle of assumption of risk was announced in the case of Hale v. Davies, wherein the plaintiff, who was injured in a football practice, brought an action against the coach. In that case, the court found, after viewing the evidence, that the plaintiff assumed the risk of being injured:

The plaintiff voluntarily became a member of the football team, as he was not paid for playing, and there was no requirement by the school that he should engage in such games. He was sixteen years of age and, in the absence of an allegation to the contrary, was a normal boy and of average intelligence for that age, and no doubt knew and realized that football is a rough and hazardous game and that anyone playing or practicing such game may be injured. A person of his

\[1\text{Hale v. Davies, 36 Ga. App. 126, 76 S.E. 2d 923 (1952).}\]
age is presumed to be capable of realizing danger and
of exercising caution to avoid it. Presumptively, he
would be chargeable with the same degree of care in
this respect as an adult.1

The court found it reasonable to hold that a student, a
normal boy of the age of the plaintiff in this case, who
engages in practicing or playing football assumes or takes
the risk of being injured while so engaged; and that the
coach would not be liable in such case. The evidence
showed that the plaintiff was previously injured while
practicing and hence, he should have realized more than
ever the danger and perils of the game.

The doctrine of assumption of risk was silently
applied to a far-reaching extent in the case of Vendrell v.
School Dist.2 In that case, the complaint contained
allegations that the plaintiff, an uncoordinated and
inexperienced 140-pound high school freshman was negli-
gently permitted to participate in a football game against
a highly experienced and far superior team containing
large, rough boys in which game the plaintiff sustained a
broken neck. While, as pointed out earlier,3 the defense


of assumption of risk is not tenable where, because of lack of experience, the student does not comprehend the risk involved and is not taken to consent to assume it, the court in Vendrell found that the above allegations showed no breach of a duty to exercise reasonable care for the protection of the players. The court pointed out that ordinarily, high school freshmen who go out for football are inexperienced in the sense that they have considerable to learn about the intricacies of team play and not a little to learn about protecting themselves from injury to the extent that such is possible in playing the game. The term "inexperienced" as applied to any individual player or to a team as a whole is relative, as reasoned by the court. The court further added that it is common knowledge that the ability of high school teams varies and that, when teams of disparate size, experience, and ability play each other, ordinarily one team will demonstrate its superiority over the other. Most boys who play high school football begin as the plaintiff did, i.e., by going out for the team as a freshman. Most of them are "uncoordinated" as the plaintiff was alleged to have been at the time he played. The court in driving its point home reasoned, "To say that it is improper for the officials of the school board to permit such 'inexperienced' and 'uncoordinated' boys to play would be the equivalent of saying that football could
not properly be a part of the athletic program of any high school because the program could never lawfully be started."

Although not peculiar to the area of athletics, there are certain situations to which the coach is exposed and from which a legal duty may arise. In Duda v. Gaines, a student brought an action against the coaches of a high school football team for the alleged negligence in failing to obtain medical assistance for the plaintiff during an emergency which allegedly existed when he sustained accidental bodily injuries during football practice.\(^1\) In that case, the alleged emergency was to have existed on a day in October, 1947. On September 20, 1947, the plaintiff, while practicing picking up fumbles dove at a football, hit his shoulder against the ground and knocked it out of place. On that occasion, one of the coaches snapped it back in place and put the boy's arm in a sling. The school physician told the plaintiff that he could return to practice in two weeks, which he did. He reported to the coach supervising tackling practice and on the first tackle, he knocked his shoulder out and told the coach, "My shoulder came out of place again." When the coach picked the

plaintiff up, the shoulder snapped in by itself. The coach advised the plaintiff to go home. The plaintiff asked the coach if he should go and see the doctor again and the coach said, "No, you don't have to go this time." The court in dismissing the claim announced the general rule that the emergency from which a legal duty would arise can be said to exist when a reasonable man, having the knowledge of facts known to the coaches or which they might reasonably be expected to know, would recognize a pressing necessity for medical aid, and the dictates of humanity, duty and fair dealing would require that there be put in the boy's reach such medical care and other assistance as the situation might in reason demand so that the player might be relieved of his hurt and more serious consequences be avoided.\footnote{Szabo v. Pennsylvania Railroad Co., 132 N.J.L. 331, 40 A. 2d 562 (1945).} And further, that there is no emergency in the absence of proofs from which it is reasonably inferable that the decision whether to secure medical aid and the choice of the physician cannot safely await parental determination.\footnote{Guerrieri v. Tyson, 147 Pa. Super. 239, 24 A. 2d 463 (1942).} Here, the court held that the evidence did not support a finding of an immediate pressing necessity for medical aid for the boy before he went home and that
decision whether to obtain such aid could not await his parents' consideration.

Hence, while the evidence was not sufficient in the Duda case to support a finding that an emergency situation existed and hence, no negligent failure to respond thereto, the case does apprise the interested reader that a duty may arise which was in no way anticipated; and that one should be alert to recognize in a given situation any duty which would logically arise therefrom.
CHAPTER V

TORT LIABILITY IN PLAYGROUND ACTIVITIES

In pointing out that ordinarily a school district is not liable for injuries sustained by pupils while playing games in school yards, a California court has stated: "It has long been recognized that the physical development of the child must go hand in hand with his mental development. The importance of physical exercise is therefore stressed in our School Code, which expressly requires that 'attention must be given to such physical exercises for the pupils as may be conducive to health and to vigor of body.'"¹ And further with respect to the rule of governmental immunity afforded the school district, in Howard v. Tacoma School Dist., the court said: "We are asked, 'How can it be said that the physical development of children is a function of government?' The answer seems obvious -- just for the same reason that it can be said that the mental development of children is a function of government. Both are intended to raise the standard of citizenship. The state is certainly as much interested in the physical standard of its citizens as their mental

Here again, the nonliability of the school district by virtue of governmental immunity is of much significance for the playground supervisor; i.e., the teacher who has supervision over the playground activities at the time injury occurs will be the target in a negligence action for damages sustained by the injured student. The cases below will demonstrate the application of the rules of law to factual situations wherein a playground supervisor has come under attack either for his actual or alleged negligent conduct.

At the outset, it would seem that of the three specific areas of study herein, the activities which are characteristic of and are categorized as playground activities provide the most valid justification for the application of the doctrine of *in loco parentis*. For the most part, different from the areas of physical education and athletics, playground activities are characterized by "free play" with no program being undertaken for the organization and/or regimentation of those activities. It is usually not the practice in the supervision of "free play" activities to scrutinize every move of each pupil under the

\[1\] Howard v. Tacoma School Dist., 38 Wash. 167, 152 P. 1004 (1915).
supervision of the teacher. In fact, the number of children over whom a playground supervisor normally has supervision, of necessity, deems such scrutinization impossible. This situation appears to be most comparable to the activities and the supervision thereof which exist at home when the parent is charged with the responsibility of supervision. Another factor which justifies the application of the doctrine of in loco parentis is that of the tender age of the pupil who in most cases will be the subject of playground supervision.

Due to the tender age of the pupil, the playground supervisor's duty of exercising reasonable care in the protection of his charges imposes the duty to protect school boys against themselves.¹ In the case of Hoose v. Drumm, the plaintiff, a ten-year-old school boy was injured on school property during recess when one of his eyes was destroyed by a goldenrod stalk thrown by another pupil. The casualty happened on a part of the school property which was separated from the playground by a roadway. There was evidence that theretofore the pupils had torn off goldenrod stalks and thrown them at each other and that other boys had been thereby injured. There was evidence that the stalks grew in a ravine and that pupils playing

there could not be seen from the schoolhouse or the playground. There was evidence that no teacher was with the plaintiff and his companions on the occasion in question. In discussing the teacher's duty to his pupils, the court said, "Teachers have watched over the play of their pupils time out of mind. At recess periods, not less than in the classroom, a teacher owes it to his charges to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances." The court found that the goldenrods were not pernicious in themselves, but that the danger lay in the probability that the pupils would play as they did. "The effective cause of the plaintiff's injuries was a failure to protect the boys against themselves. Any dereliction in this aspect was the fault of the teacher for which the trustees cannot be held to answer."

Similarly, in the case of Miller v. Board of Education, Union Free School, there was no supervision of the children at all when they were at the place where the accident occurred.¹ In that case, the teacher told the plaintiff and other pupils, who numbered about twenty-five, to go outside to play. On the playground there was a fire

escape, enclosed in wire mesh, the door of which was open by reason of its defective condition. The plaintiff entered upon the fire escape and sustained injuries by reason of a fall therefrom. The teacher had been instructed to supervise the noon play of the children and that she did by watching from windows, in a hall, which gave a view of a portion of the playground. There were windows through which one could see that portion of the playground where the defective fire escape door was located. Those windows, however, were in a graderoom which was locked. Hence, there was no supervision at the place where the injury occurred. And as the teacher was intrusted with the supervision of the children's play, the court found, as a matter of law that the teacher failed in her duty of supervision which was negligence.

Another duty which may be imposed upon the playground supervisor, for the purpose of preventing injury to his charges, is that of segregating the members of a class according to size, weight, etc.\(^1\) In *Pinkle v. Oakdale Union Grammar School District*, there is a strong dissenting opinion by Justice Carter which, for our purposes, defines the above duty. In that case, a student sought recovery

---

\(^1\) *Pinkle v. Oakdale Union Grammar School Dist.*, 40 Cal. 2d 207, 253 P. 2d 1 (1953).
for injuries sustained while playing touch football during
noon recess on the theory that the supervisor failed prop-

erly to supervise the game. Although there was judgment
for the defendant supervisor, Justice Carter pointed out
that a reasonably prudent person would not have permitted
boys ranging from 85-190 pounds in weight to engage in a
game of touch football under circumstances in which the
plaintiff, weighting 97 pounds was injured when blocked by
a boy weighing 145 pounds and who was six inches taller.
The argument advanced by the defense was that the selection
of teams by matching 7th grade and 3th grade was a reasona-
ble method. However, common knowledge tells us that within
one class of students there may be and usually is much
disparity in size and weight. And a reasonably prudent
person could assume that injuries would result from play in
which the participants are grossly mismatched in size and
weight, as in the instant case. The better rule, as
espoused by Justice Carter, would seem to be that an
instructor who selects teams, without regard to disparity
in size and weight of the players, has breached the duty
to exercise reasonable care in the prevention of injury to
his students. The dissent finds support in the case of
Vondrell v. School Dist. wherein the court stated that it
is possible that two football teams may be so disparate in
size and ability that those responsible for supervising the
athletic program would violate their duty in permitting the teams to play. ¹

In Ogando v. Carquinez Grammar School Dist., ² on appeal, the court held that the trial court was warranted in finding that the failure of the principal and the twenty-five teachers of the school to supervise the conduct and play of the children constituted negligence, which was the proximate cause of a pupil's injury and death. In that case, a wrongful death action, a ten-year-old girl, while playing a game of hide-and-seek in the schoolyard during a noon hour, and using a door of the school building as a base, ran her outstretched arm through the glass of the door, thereby severing an artery. And although the girl ran screaming about the schoolyard, it was not until some time later that the school nurse arrived and stopped the flow of blood. The child died from loss of blood. The evidence clearly showed that no teacher was in the vicinity when the accident occurred, two teachers having been assigned to supervise the activities in this particular part of the schoolyard, but having been compelled to re-enter the school building to quiet disturbances therein.


The playground supervisor has the duty to stop students from engaging in practices which are dangerous to others.¹ In Buzzard v. East Lake School Dist., the plaintiff, who was seven years of age, was engaged, with other pupils during the recess period, in playing a game called "kick-the-can." They were playing on the school grounds under the supervision of a teacher who was present within sight of the pupils. Without objection on the part of the teacher, two boys were permitted to ride their bicycles about the playground where the game was being conducted. With the knowledge of the teacher, the boys had been permitted to ride their bicycles on and about the playgrounds while physical training and games were being conducted for several months prior to the time of the accident. Without warning, a boy suddenly ran his bicycle against and over the plaintiff breaking her leg and seriously injuring her. In that case, the court found that it was the duty of the teacher to regulate the conduct of pupils in their sports on the playground during the periods of recess. The court stated, "We are of the opinion it constituted negligence to permit pupils to ride bicycles about the playground among the children while they were

¹Buzzard v. East Lake School Dist., 34 Col. App. 2d 316, 93 F. 2d 233 (1939).
engaged in playing games under the circumstances of this case."

Similarly, in Bruenn v. North Yakima School Dist. No. 7, during a forenoon recess, some small boys had taken a teeter board from its own upright and placed it across a swing, upon which the plaintiff and a number of other small boys seated themselves and began to teeter. Shortly after engaging in this form of play the school bell rang, when the boys on the opposite side of the teeter suddenly sprang from it, permitting the side on which the plaintiff sat to rapidly descend, striking him upon the ankle causing serious injury necessitating a number of operations. The court found that if, as accepted by the jury, the accident occurred in the manner and at the same time, as contended by the defendant playground supervisor, a supervisor was present, then the jury could find that the supervision was inadequate or negligent in permitting the boys to take the teeter board from its own upright and use it in connection with the swing. "If the supervisor knew it, it was negligence to permit it; and if she did not know it, it was negligence not to have observed it . . ." On appeal, judgment for plaintiff was affirmed.

---

The language in the above case, i.e., "If the teacher knew it . . . not to have observed it," was applied by the court in Rice v. School Dist. No. 302, in finding that the teacher in the supervision of the playground was negligent in failing to look after the safety of young children on the school grounds against unusual dangers.\(^1\) In the Rice case, the unusual danger which caused injury to a pupil on the school grounds was a live wire which was permitted to hang near the ground within reach of the students. The plaintiff pulled on the wire which shocked and severely burned him. There was evidence that the teacher noticed plaintiff playing with the wire and told him to leave it alone. However, the wire remained accessible and the plaintiff was subsequently injured while playing with it. Although the school district was ultimately held liable, the liability was predicated upon the teacher's knowledge of the dangerous condition and her failure either to remove it or to cause it to be removed. In other words, if the teacher knew it, etc.

Thus, in viewing the above cases, it appears from the conditions which may exist on a playground and from the circumstances which attend those conditions which are made

unpredictable by the actions of pupils of tender age, a valid basis can be seen for the application of the doctrine of in loco parentis. And for emphasis and clarity, while there is no common-law rule that a child cannot sue its parent, there is substantial decisional authority that such a suit is not permitted. However, a school teacher cannot take advantage of such decisional authority and apply the theory of in loco parentis to his or her tortious conduct towards a pupil of the school district in which the teacher teaches.\footnote{Guerrieri v. Tyson, 147 Pa. Super. 239, 24 A. 2d 468 (1942).} Thus it can be seen that the supervisor of playground activities may be charged with a duty which surpasses that of the parent in the prevention of injury to the latter's children while they are at play on the playground.

On the other hand, with reference to nonliability, it is a matter of common knowledge that the school authorities have quite generally provided play areas adjacent to the school buildings and have encouraged and sponsored the playing of such games as baseball, basketball, volleyball, handball, and have provided equipment therefor. Baseball as commonly played in school yards differs from baseball as played upon the baseball field, in that an appropriate type
of softer ball is ordinarily used which renders negligible the chance of injury in the event that anyone is struck thereby. All of the above-mentioned games contribute to the physical development of the pupils participating, and there is nothing inherently dangerous about any of them. They seldom result in injury to the participants and are ordinarily played by school children of all ages. Nevertheless, as will be seen below, it is also common knowledge that children participating in such games and in fact in any form of play may injure themselves and each other notwithstanding supervision on the part of teachers. The injuries which may result from the playing of said games are ordinarily of an inconsequential nature and are incurred without fault on the part of anyone. In such cases there is no liability and, of course, the fundamental rules governing liability remain the same, even though the particular injury may prove to be of a more serious nature.  

Thus, in Graff v. Board of Education of City of New York, wherein the plaintiff was struck in the eye by a rubber ball while within a schoolyard, the court found that there was adequate supervision of the yard by the instructor

---

and that there was no negligence on the part of the instructor in said supervision. In that case the court found that no negligence on the part of the instructor was in the light of the fact that the object which struck the plaintiff was a rubber ball, which was not shown to have been of an inherently dangerous nature.

The Graff case, among others, was cited as authority for the dismissal of a complaint in Ohman v. Board of Education. In that case, which involved an injury to a student caused by a fellow student while the teacher was not present, the court found that "This is one of those events which could occur equally as well in the presence of the teacher as during her absence. It is not unlike the situation in Maurer v. Board of Education of City of New York in which we affirmed the dismissal of the complaint on the grounds of no causal relation where the plaintiff had been injured by having a finger stuck into his eye by another boy swimming in the same pool but in a direction opposite to the instructions of the coach."

---

There is a pronounced absence of reported decisions covering the factual situation wherein the playground supervisor has been sued notwithstanding a compliance with the duty with which he is charged. Most accidents which occur on the playground, as indicated above, are obviously unavoidable and for that reason no action is brought for redress. And yet, as illustrated by the cases of liability, there are numerous exposures which, if not recognized and met with prudent conduct, will subject the supervisor to litigation. There seem to be very few, if any, questionable cases of liability which have been resolved in favor of the supervisor. Either liability is clear, as evidenced by the cases of liability discussed above, or it is nil by virtue of the unavoidable accident.
CHAPTER VI

SUMMARY

The importance of this study is predicated upon the fact that the courts have, with few exceptions, held that school districts are not liable in tort for the negligence of their employees. And it has been pointed out that the doctrine of governmental immunity renders the teachers and supervisors of physical education, athletics and playground activities initially and ultimately responsible for the consequences of their negligent acts, notwithstanding the fact that the performance thereof lies within the scope of and in the furtherance of the business of the school district. Thus, the function of the teacher, supervisor, and coach is made unreasonably all-embracing to the extent that, in addition to guiding the learning processes and physical development of their students, the teacher must weigh each act of guidance in light of the legal responsibility attending such act. It is conceivable that the vice of imposing such a duty upon the teacher will be realized in a shift of emphasis from the former to the latter. The panacea for the alleviation of this inequitable burden which has been thrust upon the teacher could be administered through the abolition of school district immunity.

While the above statement is a conclusion, the
rationale of which is not supported by the great weight of judicial authority, it has been recognized in a few states as being meritorious. In the state of Illinois, the Supreme Court, in Molitor v. Kaneland Community Unit District No. 302, struck down school district immunity and held the district liable for the negligence of its employee. While the facts of that case are not within the scope of this study, the reasoning of the court with respect to immunity is of much pertinence. Briefly, the plaintiff, Thomas Molitor, a minor by Peter, his father and next friend, brought the action against the school district for personal injuries sustained by Thomas when the school bus in which he was riding left the road, allegedly as a result of the driver's negligence, hit a culvert, exploded, and burned:

It is a basic concept underlying the whole law of torts today that liability follows negligence, and that individuals and corporations are responsible for the negligence of their agents and employees acting in the course of their employment. The doctrine of governmental immunity runs directly counter to that basic concept . . . What reasons then, are so compelling as to allow a school district, as a quasi-municipal corporation, to commit wrongdoing without any responsibility to its victims, while any individual or private corporation would be called to task in court for such tortious conduct . . . ? The original basis of the immunity rule has been called a 'survival of the
medieval idea that the sovereign can do no wrong' . . . We are of the opinion that school district immunity cannot be justified on this theory . . . The other chief reason advanced in support of the immunity rule in the more recent cases is the protection of public funds and public property . . . We do not believe that in this present day and age, where public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection-of-public-funds theory . . . We conclude that the rule of school district tort immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society.

It is interesting to note that judges almost unanimously express dissatisfaction with the governmental immunity rule. However, though expressing disapproval, judges usually follow the rule and declare that any abrogation of a common-law rule must be done by the legislature. Yet, the Supreme Court of Illinois demonstrated that a judge-made rule can be changed by a judge without legislative action. Courts frequently overrule precedents; it is difficult to understand why they have been reluctant to do so in this particular area of governmental immunity.

In view of the reluctance of the courts to overrule precedents in the area of governmental immunity, the teacher and supervisor will do well to familiarize himself or herself with the principles governing the law of negligence. It is hoped that this study, through the illustration of factual situations to which the principles are applicable, has introduced the interested reader to a course of conduct which, if followed with the prudence of
the reasonable man, will help to lighten that portion of the load borne by the teacher which is unwarranted in modern day society.

In addition to the above suggested necessary legal training, the interested teacher should seek out the answers to the following queries:

1. Has your state enacted legislation to protect teachers who may be sued in tort actions by injured pupils?

2. Has your state by statute modified the traditional common-law rule of governmental immunity?

3. If so, have your state courts interpreted it strictly or liberally?

4. If there is no legislation, has there been any tendency on the part of your state courts to relax the common-law rule?

5. Has any pupil been injured recently in your school? If so, collect the facts and analyze the case to determine whether there might have been a charge of negligence against the teacher connected with the injury, if any, even though no suit was brought by the injured pupil. Could the injured pupil have had redress against the school district under any theory at all?

It is the writer's belief and hope that the teacher,
if armed with the principles governing the law of negligence and if cognizant of the answers to the above queries, will be better able to execute the task which he or she originally set out to do -- tort free.
BIBLIOGRAPHY
BIBLIOGRAPHY

BOOKS


American Digest System.  
First Decennial Digest. (1897-1906) Vol. 17.  


Fourth Decennial Digest. (1926-1936) Vol. 27.  


American Jurisprudence. Vol. 47. San Francisco:  

American Law Reports. Vol. 160. San Francisco:  

American Law Reports, Second Series. Vol. 36. San Francisco:  

Black, Henry Campbell (comp.). Black's Law Dictionary.  


CASES CITED

Ayres v. Foster, 24 Col. App., (2) 541, 75 P. 2d 653 (1938).


Cincinnati, N. O. & T. P. R. Co. v. Thompson, 6 Cir. 236 F. 1st (1916).


Cochrane v. Wilson, 277 Mo. 210, 229 S.W. 1058 (1921).


Drum v. Miller, 135 N.C. 204, 475 E. 421 (1934).


Feurtich v. Michener, 111 Ind. 472, 11 N.E. 605 (1937).


Imperson v. Shattuck Sch., 735 Minn. 16, 239 N.W. 667 (1932).


Makovitch v. Ind. Sch. Dist., 111 Minn. 446, 225 N.W. 192 (1929).


Perkins v. Trask et al., 23 P. 2d 932, Montana (1933).
Read v. Sch. Dist. of Lewis County, 7 Wash. 2d 502, 110 P. 2d 172 (1941).
Shannon v. Central Garther Union Sch. Dist., 23 P. 2d, 769 California (1933).
State v. Hizner, 50 Iowa 145 (1872).
Wynn v. Gandy, 170 Va. 590, 190 S.E. 527 (1934).