

LEGAL LIABILITY FOR COACHES OF INTERSCHOLASTIC ATHLETICS

by

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A MASTER'S REPORT

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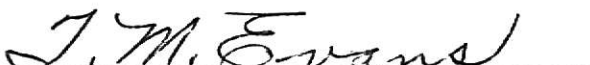
MASTER OF SCIENCE

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Approved by:

  
Major Professor

To my parents, Mr. and Mrs. R. D. Nery "From whom."

To my loving wife, Roberta Kay "For whom."

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## INTRODUCTION

This report has been written because the author has a profound conviction that the law of the school, namely those laws pertaining to coaching, should be understood by coaches and those who would aspire to be coaches.

In the leading universities today, students of medicine are taught medical jurisprudence; the student of agriculture is taught rural law; the student of engineering is taught contracts and specifications; but the student of physical education who, as a teacher and coach will encounter equally stringent legal situations, is left almost wholly uninstructed in the general law concerning his vocation. Seldom are his duties, rights, and responsibilities, according to law, spelled out to him in legal terms.

Occasionally, he may be taught the school code of a certain state. This is not adequate. In addition to the statutes of any state there is a vast body of common-law and statutory construction which enters into practically every controversy affecting schools and coaches.

Considering the number of injuries suffered in competitive athletics, it is very surprising that more cases of negligence involving coaches have not arisen. It is very fortunate that public opinion is generally against suing the coach. Also fortunate for him, is the fact that a person in this country is considered legally innocent until guilt is proven. The coach, especially a winning coach, holds a position of such prominence in his community that, unless flagrant



violation of rights is apparent, the case never even reaches district court level. It is strongly suspected that there are many more cases that do not get past district court. Most of these cases would involve out of court settlements and the details are not for public "consumption." Coaches are obviously a poor risk as only twenty percent of the insurance companies will underwrite legal liability insurance for coaches and this author knows of no companies which offer coverage in the area of corporal punishment for coaches.

#### PURPOSE

This report, therefore, is an effort to indicate what happens to a coach when he finds himself in court, why such things happen and how one can avoid them.

#### METHOD OF STUDY

The information and material for this report was gathered, mainly, from three sources. Primarily, Farrell Library was utilized for compiling pertinent facts and data from periodicals, books and a heavy reliance on the interlibrary loan service. The State Law Library, in the State Capitol Building in Topeka, was an excellent source for both statutory material (excerpts from laws) and case material (excerpts from court decisions) as well as gleanings from American Jurisprudence, The Kansas State Constitution, The Kansas State Statutes, Corpus Juris Secundum, and The American Digest System. Most of the remaining information, dealing with the law came from Shepard's Citations to Statutes, Court Decisions, and The National Reporter at the Law Library

of Washburn University in Topeka, Kansas.

Letters of inquiry were sent to physical education and athletic professional organizations as well as athletic directors, coaches, and teachers in their respective fields.

There were personal interviews with the football coaches at Kansas State University, with legal consul for the State Department of Education and with lawyers and insurance executives in Manhattan, Kansas.

Information concerning the Legal Liability of Coaches of Interscholastic Athletics was thus gathered. The material was compiled, condensed, organized, and case and statutory notes were added. Other editorial comment concerning the explanation of the legal principles on the subject was also inserted.

#### DEFINITION OF TERMS

In paying particular attention to these divergent statements:

....The internal struggle between athletics and physical education on many campuses continues unabated. . . . athletics and physical education speak the same language. . . . Athletics are a primary means for developing and maintaining the physical vigor and stamina required to defend successfully our concept of freedom and for realizing fully our potential as Americans (41:17).

....Today as never before in their history, the American people are being forcibly reminded of the central importance of participation in sports and recreation activities for the well-being of the citizens of tomorrow--the boys and girls in American schools and colleges (24:vii).

....As part of the overall educational program, athletics must be considered an integral part of the curriculum (17:1).

....The athletic program must be based on sound educational principles (17:8).

....All objectives and principles in athletics must be primarily concerned with the welfare and educational development of the student athlete (17:9).

the words "teacher" and "coach" were used interchangeably throughout the report.

## REVIEW OF LITERATURE

Approximately seven hundred American boys have been killed directly or indirectly playing football in the last quarter century. Studies show that football is by far the most dangerous part of the educational program. According to the National Safety Council, in a recent year football accounted for one out of every five accidents occurring under the school's jurisdiction to students in the sophomore year, one out of every four to junior-year students, and one out of every three to seniors. Baseball accounted for one out of twenty-six to sophomore students, one out of twenty-nine to the juniors, and one of thirty-three to the seniors (6:240).

Although the coaches position has become increasingly legalistic, amazingly little has been done to inform him of the legal rudiments of his position. Perhaps it would be best to require the coach to model his behavior after that of "The Reasonable Man" who is the basis of The Common Law of England. In judging such behavior, we must ask,

"Was this or was it not the conduct of a reasonable man?" . . . He is one who invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or a bound; who neither star-gazes nor is lost in meditation when approaching trapdoors or the margin of a dock . . . who never swears, gambles, or loses his temper; who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. Devoid, in short, of any human weakness, with not one single saving vice, sans prejudice, procrastination, ill-nature, avarice, and absence of mind, as careful for his own safety as he is for others, this excellent but odious character stands like a monument in our Courts of Justice, vainly appealing to his fellow-citizens to order their lives after his own example (1:129).

Much of today's thinking finds its roots in Blackstone's writing.

"Our lord the king cannot be summoned or receive a command from anyone!" (25:8). This judgment by the king's court in 1234 no doubt influenced Blackstone in 1765 to present his defense of sovereign immunity in this way. "The King can do no wrong, the King, moreover, is not only incapable of doing wrong, but even of thinking wrong; he can never mean to do an improper thing; in him is no folly or weakness!" (25:8).

The rule of governmental immunity from tort liability, as we know it began to take shape with the following:

Russell v. The Men of Devon, 100 Eng. Rep. 359, 2 TR. 667 (1788)

Russell sued every male inhabitant in the County of Devon for damages to his wagon incurred because the bridge was in need of repair. Apparently, the county did admit to being responsible for maintenance of such bridges. The court held that the case could not be awarded damages due to:

- A. There is no precedent for such a suit,
- B. To permit it would lead to "an infinity of actions,"
- C. Only the legislature should impose liability of this kind,
- D. Even if the county were to be considered a quasi-corporation, there is no fund out of which to pay the claim,
- E. Neither law nor reason supports the claim,
- F. There is a strong presumption that what has never been done cannot be done, and
- G. Although legal principle permits a remedy for every injury resulting from the neglect of another, a more applicable

principle is "that it is better that an individual should sustain injury than that the public should suffer an inconvenience" (11:235) (25:6).

This case is a product of English common law. Since the County of Devon was unincorporated and had no fund from which to satisfy the Russell claim, it can safely be assumed that the real reason for the immunity exception was to escape financial obligations. How the effects of this ruling on immunity came to be applied in the United States is a mystery.

Tort immunity in the United States' case law first appeared in: Mower v. The Inhabitants of Leicester, 9 Mass. Rep. 247 (1912).

Mower's horse stepped in a hole and was killed. The plaintiff argues that the "'Men of Devon ruling'" should not apply as the town of Leicester was incorporated and had a treasury out of which to satisfy the judgment. However, the Massachusetts court granted immunity, holding that the town had no notice of the defect and that quasi-corporations are not liable for such neglect under the common-law (11:235) (25:7).

Mower's case is very characteristic of many typical cases of that day. Typical of this reasoning is the following:

"Although notions of monarchy are inconsistent with our form of government, the English colonists had accepted as axiomatic the principal that the states were immune from legal action by their citizens. While the constitution was before the states for ratification, objection was made that the clause providing that the judicial power of the United States should extend to controversies 'between a state and citizens of another state' would subject the states to suit by their creditors. This was considered particularly obnoxious in view of the debts of the states to British subjects, which the states had no intention of paying."

Alexander Hamilton refuted this objection, saying, "It is inherent in the nature of sovereignty not to be amendable to the suit of an individual without its consent." In 1793, the U.S. Supreme Court did, in fact, hold that a state could be sued by a citizen of another state. There was vigorous objection from the states, and an amendment was immediately introduced in Congress which was ratified. This became the eleventh amendment which contains a provision that judicial power shall not extend to any action against one of the states by citizens of another state.

In *Hans v. Louisiana*, the U.S. Supreme Court extended the immunity to suits against the state by their own citizens. This completely abolished from federal court jurisdiction any actions against the states by their citizens when the state had not consented to the suit (25:8).

The English common-law went a step further than granting governmental immunity to the King. It extended the same protection to the agents of the King for their misdeeds. This special immunity has come to be called "sovereign immunity." In modern practice, the state assumes the position of the King, in those states still clinging to common-law, and school districts in these states compare to the agents of the King. The misdeeds of the King, his agents, or anyone are called "torts" when viewed legally. Tort liability is based on the concept of fault or, in other words, a person who is at fault in causing injury is liable for damages to the injured person.

Although many courts continue to shelter entire school systems under a roof of civil immunity and with scarcely a glance at the facts of the litigation, their sentiments seem to lean in another direction. Consider this opinion:

75 A.L.R. 1196 and *Barker v. City of Santa Fe*, 47 N.M. 85, 88. 1368 (2d) 480, 482.

The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolution supposed to be implicit

in the maxim, "the king can do no wrong" should exempt the various branches of government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs (25:29).

Other very strong feelings were expressed in the following manner:

Muskopf v. Corning Hospital District, 359 P. (2d) 457 (1961).

The Supreme Court of California, in abrogating immunity for their state, traced sovereign immunity through "Men of Devon" and "Mower" and referred to the doctrine as "an anachronism without rational basis," declared that it "existed only by force of inertia," and concluded, "It's requiem has long been overshadowed" (86:457).

Since no one knows for sure how tort immunity rose to such prominence . . . how immunity ever came to be applied in the United States is one of the mysteries of legal evolution (25:7). It is no wonder that various courts have such divergent views as shown here:

Corbean v. Xenia City, Ohio Board of Education, 366 F. (2d) 480 (1966).

. . . the rule is well established that school districts are not liable for the negligence of their officers, agents or servants while acting in a governmental capacity in the absence of a statute expressly imposing such liability (74:480).

This rule is called the rule of governmental immunity from tort liability.

With so much conjecture on the issue of immunity, it is a natural consequence that the following clouds would appear:

Meyerhoffer v. East Hanover Twp. School District, 280 F. Supp. 81 (1968).

A Pennsylvania court has said, "Perhaps there is no issue known to law which is surrounded by more confusion than the question whether a given municipal operation is governmental or proprietary in nature (25:20).

The cloudy skies are not expected to clear:

Graham v. Worthington, 146, N.W. (2d) 626 (1966).

The Iowa Supreme Court in upholding immunity stated, "The legislature, not the courts ordinarily determines public policy. . . . we are fully aware of the trend away from governmental immunity. Consideration of the problems of legislative v. judicial abrogation of the rule . . . leave us satisfied that abrogation of the doctrine should come from the legislature, not judicial action" (76:626).

The American law of negligence is not to be found in a written code of laws. It is based on precedent or upon established modes of legal procedure (2:12).

Justice Holmes, in his lecture entitled, "The Common Law," stated, "The life of the law has not been logic. It has been experience" (25:31).

In an increasing number of instances, public school districts are being held to account for their negligence, particularly in the conduct of proprietary activities. A proprietary function, as distinguished from a governmental function, is one which the school district is not statutorily required to undertake, or which may also be carried on by private enterprise, or which is used as a means of raising revenue (30:101).

If a district is conducting a given activity which a local unit of government is not required by law to perform, or one which may just as well be carried on by private enterprise, or one which is a means of raising revenue, then it is a proprietary function. While the district is generally immune to tort liability while performing its governmental (or educational) function, by operating a proprietary activity, it sometimes places itself outside the pale of protection of the tort immunity rule. Hence, when cases come before the courts, the first determination is whether the activity which gave rise to the injury or harm was a governmental function, for which there is a measure of immunity, or whether it was a proprietary activity, for which there may be little if any protection (30:102).

There is probably no aspect of school law that arouses so much interest among coaches as does tort liability. Actions for damages in situations involving player injury are referred to as actions in "tort."



For the purpose of this report, the definition of "tort" shall be:

Every civil wrong which results in wrongful death or injury to person, including, but is not restricted to, actions based upon negligence, breach of duty, and nuisance.

A "tort" is an actionable wrong, exclusive of breach of contract, which the law will recognize and set right. A tort is a legal wrong against the person, property or reputation of another. It may be either (1) a direct invasion of some legal right of the individual (such as invasion of privacy); (2) the infraction of some public duty by which special damage accrues to the individual (such as denial of constitutional rights); or (3) the violation of some private obligation by which like damage accrues to the individual (such as negligence). In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary.

In order to be held accountable in tort, a person must have all three of the following conditions present:

1. There must be a duty owed the plaintiff by the defendant;
2. There must be a breach of the duty owed; and
3. There must be a causal link between the breach and the plaintiff's injury or damage.

It is elementary that a defendant is not held liable for the harm claimed by plaintiff unless the plaintiff can at least show that the defendant in fact caused the harm. Thus, there must be a causal link between the actions of the defendant and the misery of the plaintiff (30:100).

A plaintiff may always elect to sue the person who negligently causes his injury. However, under the doctrine of respondent superior he may also elect to sue the tortfeasor's employer. He will often choose to sue the employer because the employee is usually economically unable to pay large judgments. If the employer is a public school, it may possess governmental immunity and not be subject to suit. Thus, in states where immunity still exists, only the employee may be sued. In those states that have abolished sovereign immunity, the injured plaintiff may sue either the school employee or the school itself for injuries caused by the negligence of the employee (41:124).

Essentially, the standard for negligence is based on conduct. Such conduct, either action or inaction, when measured up to the standard of behavior of all persons of society as required by law, must conform or be liable for the consequences. That standard, briefly, may

be described as the manner in which a reasonably prudent person would act under the same or similar circumstances as those involved in the case before the court.

In the field of intentional torts, i.e., an assault or battery or trespass, negligence plays no part, since by definition, negligence implies the lack of intent to cause the injury or damage resulting to the plaintiff, and the failure to conduct oneself in conformity with the standard established by law for the protection of others against unreasonable risk of injury. Also, it is important to distinguish the field of negligence from the "unavoidable accident." If injury results from conduct which was not intended to cause the injury and if that injury could not have been foreseen or prevented by the use of reasonable precautions, then the law regards the result as an unavoidable accident, and imposes no liability for damages caused (27:8).

An accident is an unforeseen event occurring without the will or design of the person whose mere act caused it. In its proper use, the term excludes negligence. It is an event which occurs without fault, carelessness or want of proper circumspection for the person affected, or which could not have been avoided by the use of that kind and degree of care necessary to the exigency and in the circumstance in which he was placed (45:4).

The extent to which a teacher is liable for injuries sustained by a pupil depends upon the common-law principles of negligence. Public school teachers have no special immunity because they are public employees. In fact, they may be held even more accountable than the ordinary person because pupils are in their care and they have the duty to prevent pupil injuries so far as possible. Coaches must bear an even greater degree of responsibility in the area of negligence. The Supreme Court of Oregon has held that a football coach is an expert, thus raising the standard of care required of football coaches in that state. The standard of care required varies with the potential dangers

involved and the capacities of the individuals to whom a duty is owed. Coaches, since they have special knowledge and ability are required to exercise utmost care.

Historically, there have been three basic defenses for the concepts of governmental immunity. The first is the concept of "sovereign immunity" or simply, "the King can do no wrong." Second, is the argument of "stare decisis." This is a legal term referring to a policy of following rules or principles laid down in previous court decisions, more commonly known as following years of precedent. The third argument is that the law provides no funds for the purpose of payment of claims by school districts. This defense is based on the thinking that educational funds are actually trust funds which can be expended for educational purposes only. How simply the school corporations' "bacon" is pulled from the fire.

#### DISCUSSION AND RESULTS

Two factors seem to stand out in the recent cases in which immunity has been upheld. The first is the relative absence of some of the phraseology that was prevalent in tort immunity cases prior to the middle of the twentieth century such as, "school corporations have no fund out of which such damages can be paid," ". . . purely a public duty and exempt from corporate liability for faulty construction, want of repair or the torts of its servants employed therein," ". . . not the intent or policy to take the fund intended for the education of the young and apply it to payment for any malicious act of its officers . . ." and, "no legal right against the authority that makes the law on which the right depends."

The second factor is the absence of any truly ringing defense of governmental immunity. Rather, the main thrust of the argument for continuing immunity seems to be stare decisis, that is, in essence, "Good or bad, governmental immunity has been around and has been accepted by the legislatures for a long time. Governmental subdivisions and their elected boards rely on it, and if there is going to be a change, it should come from the legislature, not the court" (25:15,16).

Liability . . . has its roots in negligence. Just what constitutes negligence is not always clear. In any case the question of whether there is or is not negligence is one of fact, and therefore can be one for the jury (25:68).

A test often applied in determining whether a school district or its employees were negligent is the test of foreseeability. The California Appellate Court attempted to describe the school district obligation for foreseeability as follows:

Woodsmal v. Mount Diablo Unified School District, 10 Cal. Reprtr. 447, 188 P. (2d) 262 (1961).

It is not necessary to prove that every injury which occurred might have been foreseeable by school authorities in order to establish that their failure to provide necessary safeguards constituted negligence, and their negligence is established if a reasonably prudent person would foresee that injury of the same general type would be likely to happen in absence of such safeguards. . . (89:262).

An important fact of which schoolmen should be cognizant is that even when negligence is an admitted fact of a tort liability case, there are still at least four defenses which may render demurrable, or limit, the school district's liability.

The first of these is contributory negligence--a claim by the district that the injured party contributed to his own injury by his own negligence. The state of Pennsylvania has one of the firmest rules on this topic. In the case of Rodriquez v. Brunswick Corp. (364 F. (2d) 282, 1966), the United States Court of Appeals had this to say on contributory negligence as a defense against liability.

The main contention of the defendant is that plaintiff's evidence shows that he was guilty of contributory negligence as a matter of law. The strict rule prevails in Pennsylvania that if the negligence of the plaintiff contributed in any degree, however slight, to his injury, he is guilty of contributory negligence and cannot recover even though the defendant was negligent (25:67-69).

A teacher will sometimes raise the defense of assumption of risk in order to exonerate himself of liability for negligence. . . (29:14).

. . . Pupils engaging, in certain school activities, like athletics, assume the normal risks involved (29:15).

Contributory negligence and assumed risk are very real and available defenses against negligence claims, even when the injured party is quite young. However, it should be stressed that in most cases, the claimant had complete freedom and choice over his actions. The courts have been quite firm in holding that if a pupil contributes to his injury while following instructions of teachers or school officials, he is not guilty of contributory negligence (25:70-71).

Proximate cause has been used successfully as a defense against "lack of adequate supervision" negligence cases against school districts. The courts have generally held that proof of inadequate supervision does not in itself render a school district liable unless it can be shown that the accident would not have happened if there had been adequate supervision. In other words, the lack of supervision must be the "proximate cause" of the accident.

However, there are definite limits to which the theory of "it would have happened anyway" as a defense against a claim of lack of supervision may be applied (2:14) (25:72,73).

The third defense against negligence is intervening cause. Although, somewhat related to proximate cause, it has its own individual characteristics. The main characteristic being that the injuries were proximately caused by the independent intervention of external factors rather than by any negligent conduct on the part of the teacher (25:73-74).

The fourth general category of defenses against negligence is improper procedure on the part of the plaintiff. In states that have abrogated immunity and established claims procedures, the failure of the plaintiff to reasonably follow such procedures may render a claim invalid (25:75).

Whether a particular defendant has been negligent or not is a question for a jury to decide--a jury of laymen not teachers or professional educators. It is "the public" which, in the final analysis, must be satisfied as to the reasonableness of the defendant's conduct, and the tests applied may well be unaffected by the teacher's trained conclusions as to what his duties and responsibilities are or should be. The significance of this legal position into which any teacher may find himself thrust must not be ignored. . . . The general law of negligence controls the decision of school-negligence cases, non-school cases acting frequently as determining precedents. It is also true that since laymen determine the question of negligence in a given case, their decisions may vitally affect the curriculum and its administration. . . . The teacher must examine the elements of his program carefully and decide whether each is reasonably suitable for the child engaging in it in terms of age, sex, experience, and individual physical characteristics. The burden of determining the safe condition of equipment and playing area also rests upon the teacher, as does the necessity for being able to foresee, the possibility of injury to his pupils through what the jury may call lack of due care on his part. It is of fundamental importance, then, that teachers be aware of their potential tort liability as established by the statutes and case law in the states in which they teach (27:21).

The literature to this point has dealt with the law and the defendant teacher or coach. The following cases will serve to illustrate examples of the law and the plaintiff in light of the success or failure of his litigation. The first cases to be examined in this report will involve football.

Mokovich v. Independent School Dist. 177 Minn. 446, 225 N.W. 292 (1929).

The charge is that defendant's officers and agents negligently used unslaked lime to mark the lines on the football field and thereby created a nuisance; that plaintiff, a player in the defendant's school, was thrown to the ground during the game, and his head and face forced into the lime, resulting in the lime getting into his eyes and destroying the eyesight of one eye, and seriously impairing the sight of the other eye.



The rule that a municipality is not liable for damages for negligence in performing its governmental functions, unless such liability is imposed by the state has been followed and applied since the early days. . . . The rule is especially applicable to public quasi-corporations such as school districts which are governmental agencies with limited powers. They are arms of the state and given powers solely for the exercises of public functions for educational purposes (84:293).

The plaintiff in attempting to claim that the use of the unslaked lime in the manner stated created a nuisance and that for an injury caused by a nuisance held that, the district should be liable.

. . . the rule of nonliability has been applied in cases where the facts disclosed a nuisance as clearly as in the present case; (citing) Bryant v. City of St. Paul, 33 Minn. 289, 23 N.W. 220 (1885), . . . and Bojko v. City of Minneapolis, 154 Minn. 167, 191 N.W. 399 (1923) (84:294).

From "Bojko" the court quoted:

It is immaterial in what language the failure to perform the governmental function or authority be couched in the complaint; the rule of law on the subject cannot thus be changed. And the fact that the complaint in this action alleges that the failure to light the street in question resulted in creating a public nuisance does not materially change the legal aspect of the question. The alleged failure had relation to a governmental function, a failure to perform which is not actionable whether it be termed a nuisance or mere negligence.

The football game in which Makovich was injured was held under authority given to school districts under G.S. 1923, 2817, which is permissive, not mandatory. The plaintiff contended that permissive activities of the district as opposed to mandatory governmental functions are not immune from liability and cited Harff v. City of Cincinnati, 11 Ohio F.P. 41 (1911). . . . "The distinction between liability for torts in the performance of permissive and mandatory duties or activities of the municipalities has not been recognized in this state." . . . The court then added, "The test is whether the municipality is or is not exercising only governmental functions" (84:294).

The court also considered the fact that "a small charge was made for attendance at the football game." After mentioning the fact that cities carry on business for other purposes, the court said, "The fact of such charge would not appear sufficient to take the district out of its educational functions and convert its activity into one of business or proprietary character" (84:294).

The Mokovich case illustrates depth to which governmental immunity was ingrained in Minnesota in 1929. The plaintiff attacked governmental immunity on every possible front but was thrown back primarily on the basis of stare decisis.

The following case also deals with gametime injury:

Morris v. Union High School Dist. 160 Wash. 121, 294 Pac. 998 (1931).

The Supreme Court of Washington, in hearing this case, cited the liability for negligent acts in the determination of their findings. Cases of negligence cited were:

Howard v. Tacoma School Dist. 88 Wash. 167, 152 P. 1004.  
 . . . because of improper construction and lack of the proper safety device in ladders maintained by the district for the exercise of the pupils in the playroom of the school district was liable for injuries to a child six years of age sustained while using such ladders.

It has also been held that a school district is liable for the failure of its officers or agents to exercise proper supervision over the playgrounds used in connection with the school (85:294).

In Bruenn v. North Yakima School Dist. 101 Wash. 374, 172 P. 569, 571, it was held that:

recovery could be had against the school district for injuries to a child playing on a teeter board on the school grounds, because of negligence in supervision, where there was evidence that the teeter board was moved from its original position and dangerously used in a swing, and that the teacher in supervision



of the ground either permitted such removal or failed to observe and prevent it. It was there said:

"If the teacher knew it, it was negligence to permit it; and, if she did not know it, it was negligence not to have observed it" (85:294).

Also cited was: Mokovich v. Independent School Dist. 177 Minn. 446, 225 N.W. 292. In Washington state, an exception to the Minnesota rule exists. "There, is the statutory rule of liability which has superseded the common-law rule of nonliability of the school district for the negligent act of its officers or agents (84:294).

The Washington Supreme Court made this determination:

If the facts alleged in the complaint are true, and we must accept them as such at this time, they make a case of liability on the part of the school district. It certainly cannot be that a district can maintain a football team, have one of its teachers as trainer and coach who knows, or in the exercise of reasonable care should know, that one of the players is physically unfit to enter the game, but nevertheless permits, persuades, and coerces such player to play, and in the event of injury to the player be held not liable for such negligent and careless act of its officer or agent. In our opinion the complaint states a cause of action (84:294).

In Mitchell v. Hartman 297 Pac. 77, 78 (1931), the appellant sued the City of Pomona and the members of the school board for the death of his son, who was killed by the fall of the supporting framework of a tackling dummy, on his body, during tackling practice. The court held neither the city nor the individual members of the board are liable for such injury due to installation or maintenance of the dummy. Neither the Board of Education nor the city has complete charge of the activity here and members of the Board of Education are public officers. They were not liable (82:77,78).

In a New Jersey case, Duda vs. Gaines, 79 A. 695, 696 (2d), New Jersey (1951), a boy dislocated his shoulder in football practice.

Being familiar with such an emergency, the coach was able to snap the shoulder back into place and placed the boy's arm in a sling and sent him home. Legal action indicating the coach should be considered as negligent for not having obtained immediate medical attention was instituted by the parents. The courts felt this condition would be considered an emergency and the coach had every right to perform such medical aid without the parents' consent (75:695-696).

In Georgia, in a case involving a claim against a high school football coach, Hale vs. Davis, 70. S.E. (2d) 926, 927, Georgia (1952), it appeared that the plaintiff was a normal sixteen year old boy who was injured during football practice. This boy had been previously injured in football practice. His case was dismissed on the ground that he voluntarily participated in football and naturally realized that one who engages in football may be injured (77:926,927).

One of the most common claims in cases involving injuries suffered while participating in sports events is inadequate supervision. In the Vendrell v. School District, 226 Ore. 263, 360 P (2d) 282 (1961) case, the plaintiff, who was injured in a football game, claimed that his injury was caused by improper coaching. Recovery was denied by the court because, after a careful examination of the steps that the coach had taken in preparing his team for competition, it was revealed that proper training procedures had been followed.

The boy, in the above case, had broken his neck. This resulted in permanent injury. When he reached twenty-one, he initiated a suit against the school district, charging negligence on the part of the coach, the school board and the superintendent. In denying his claim,

the court pointed out that if liability did exist it was that of the football coach who was the expert in charge of football.

Some cases involve the negligent acts or omissions of two or more persons. Such was the case of Welch v. Dunsmuir Joint Union High School District, 326, P. (2d) 633, California (1958). During a pre-season high school football scrimmage, the plaintiff, the quarterback on one of the teams, attempted a quarterback sneak. He was tackled and after the tackle, continued to lie on his back. The coach suspected that he might have suffered an injury to his neck so had him take hold of hands to determine if he were able to grip. At this time, the player was able to do so.

Eight players carried the quarterback from the field. There was testimony to the effect that no one directed the moving. Conflicting testimonies were also given as to whether or not a doctor who was admittedly present examined the boy before he was moved to the sidelines. The undisputed and only medical testimony was that the plaintiff is a permanent quadriplegic, caused by damage to the spinal cord. Medical opinions were that the injury was caused by the removal of the player from the field without the use of a stretcher and that this failure was improper medical practice; the player's ability to grip things with his hands while on the field was proof that the damage had not been done by the tackle but had occurred afterwards.

There were two points of particular interest. First, the defendant claimed that the doctor was an agent of the district and secondly, the defendant's attempt to obtain an instruction on the pleadings to the effect that their responsibility ended when the

physician's began. The court refused to grant this instruction because it proceeded on the theory that when "the negligent acts or omissions of two or more persons, whether committed independently or in the course of jointly related conduct, contribute concurrently to the injury of another each of such persons is liable."

Under the evidence in the case the jury could have reasonably inferred that both the doctor and the coach were negligent in the removal of the plaintiff from the field to the sidelines, the court felt. "The coach in failing to wait for the doctor and allowing the plaintiff to be moved and the doctor in failing to act promptly after plaintiff's injury" stated the case write-up (88:633).

The parents of a deceased high school football player brought a wrongful death action against, among others, the head football coach and his assistant. The trial court dismissed the action and the parents appealed in: Mogabab v. Orleans Parish School Board 239 So. (2d) 456, (1970).

In appeal, the parents alleged that the death of their son resulted from the negligence of the defendants in failing to perform "their duty of providing all necessary and reasonable safeguards to prevent accidents, injury and sickness of football players and in failing to provide prompt treatment when such occurs." The student became ill at an afternoon football practice, and returned to the high school on the team bus. Attempts were made to make him comfortable upon reaching the school. His mother was called and she, in turn, called the doctor who arrived at the school some two hours after the illness began. His condition became worse and he died early the next day of heat stroke

and heat exhaustion.

"It was plain that the two coaches present were negligent in denying the boy medical assistance and in applying an ill-chosen first aid, and that the parents had proved this negligence," the appellate court said. It was not proven that the boy would have lived if brought to a doctor sooner and "for what precise period of time the condition remained reversible."

The court concluded that a claim against the two coaches had been "sustained" and awarded each of the parents \$20,000, besides funeral and medical expenses. To this extent the judgment of the court was reversed (83:456).

The second highest number of accidents occur in baseball. A New York court did not allow an assistant baseball coach to recover for injuries resulting from a wild ball in the McGee v. Board of Education N.Y.C., 16 App. Div. (2d) 99, New York (1962) case. The court reasoned that participants in such events are held as a matter of law to have assumed the risk of any injury normally associated with the activity. This reasoning would apply to player participants as well (80:99).

Basketball has also had its fair share of injuries. Negligence sometimes plays an important part. Even though it was known that a boy had a heart condition, a boy was allowed to participate in a basketball scrimmage. The boy collapsed and died as a result of the activity. The jury, in Mancini v. Board of Education, 260 App. Div. 960, 23 N.Y.S. (2d) 130 (1940), rendered a verdict for the defendant which was affirmed on appeal because plaintiff failed to prove that the school was at fault in permitting the boy to play ball. Perhaps the biggest obstacle

standing between an injured athlete and recovery is the defense of assumption of risk. An athlete is presumed to know the inherent dangers of the sport in which he participates and assumes the risks of injuries related to participation in that sport. It is quite possible, in the above case, the school was sued instead of the coach because of respondeat superior (79:130).

In another case, Kaufman vs. City of New York, 214 N.Y.S. (2d) 767, New York (1961), the matter of causation arose when a group of boys were practicing basketball in a school gymnasium. During the time the coach was called out of the gym, two boys collided and struck their heads. Legal action based on the premise that there had been no supervision at the time of the injury was the result. The court considered that the accident would have occurred even if the coach had been present and his absence was not a causative factor in the accident (78:767).

In 1969, a fifteen-year-old boy died when he was struck on the head by a shot put during a track meet. He was measuring the shot put throws during the track meet. "Witnesses to the accident reported that the participant, who was about to throw, had his back to the boy who was measuring a prior throw, and did not realize he was in the line of flight when he released the iron ball (2:126,127).

This incident shows that special care is essential whenever equipment of this nature is used in activities.

Many coaches believe that employment by a government agency exonerates them from personal liability in case of accidental injury to players. As has been shown by the above cases, this is not true. Administrators and coaches are liable for neglecting to perform properly

various duties and responsibilities normally assigned to them.

Statutes in one state often are unlike those in another state, hence the need for school employees to inform themselves regarding the laws of the state in which they are employed.

In many of the smaller schools, there is one particular person who is overworked and underpaid. This particular person is a rare breed. No other person in athletics or education must bear such weighty, awesome and personal responsibilities as does the athletic trainer-coach.

The athletic trainer-coach must be constantly alert to guard against accidents and injuries, for not only is he in the best position to avoid them, but as has been seen, the immunity from legal liability enjoyed by governmental boards and agencies is not extended to him.

The relationship of trainer-coach to athletes requires, generally, that he act as a reasonably prudent person, carrying out the duties of the profession, would act under the same or similar circumstances. If the circumstances existing at a given moment would cause the factitious reasonably prudent person to take some action or refrain from conducting himself in some manner, and the trainer-coach would have anticipated the occurrence of the event, or no reasonable precaution could have prevented the particular event, then there is no liability. It is obvious that if the whole athletic programs were abandoned, no "athletic injuries" could occur at all, and there would be no need for athletic trainers. But neither would there be any education through athletics and in the balance of interests, the courts have found it necessary to limit the extent to which liability will be permitted to go (27:84,85).

Knowing that there are many athletic trainer-coaches, this author has included as follows, a list of twelve items outlining the duties of a "reasonably prudent and careful athletic trainer-coach" (27:85).

1. Performs service only in those areas in which he is fully qualified and in those in which he is directed by medical personnel. (Several states hold the athletic trainer to be an agent of the physician and invoke the doctrine of respondeat superior.)

2. Has a clearly defined relationship with medical personnel.
3. Confers with medical personnel in the prevention of injuries.
4. Assigns only qualified personnel to perform any service under his supervision.
5. Performs proper act in case of injury.
6. Secures medical approval for any treatment prescribed.
7. Keeps an accurate record of injuries, services rendered, and authorizations by medical personnel.
8. Permits athletes to return to sports activity following illness or serious injury only after securing medical approval.
9. Has medical personnel at all contests and readily available during practice sessions. (Especially for contact sports.)
10. Knows the health status of athletes under his supervision.
11. Is concerned with the protective quality and proper fitting of sports equipment worn by athletes.
12. In all his actions or inactions, he asks himself, "What would the reasonably prudent and careful athletic trainer-coach do under these circumstances?" (27:85,86).

Several years ago there were a number of suits brought against school officials, and coaches especially, when students were injured in athletic competition. Not many of them resulted in collection of damages, but the attorney and court costs involved were expensive for school people. There have appeared on the market since, various types of liability insurance, which some coaches and physical education teachers have bought. This development is not extensive, but it does protect such school officials from unanticipated expenses when these cases do arise. The grounds on which suits or negligence on the part of the defendants. In a few states local boards of education will defend their agents in such suits. This has been made possible by state legislation (8:184).

In a few states liability insurance taken by school boards might cover teacher employees. Also in some jurisdictions, teachers have banded together to obtain group liability insurance. Of course, it is possible for an individual to be drawn to the fact, however, that insurance really does not affect the question of liability; rather, it provides for paying judgments up to an



amount specified in the policy after liability has been established (35:73).

There are two basic types of insurance that must be considered and discussed as related to athletics. The two being liability and accident. They both have a relationship to athletics but there are distinct variations in regulations from state to state due to the existing statutes.

In the states of Kansas, Ohio and Georgia the only liability insurance coverage allowable is that which covers transportation. This may indicate another trend whereby states recognize that certain activities tend to create more hazardous situations than do others and might well consider it reasonable to allow school districts to purchase liability insurance and permit claims for negligent actions in such activities. These might include transportation, athletics, physical education, manual training and the like (18:111).

It is very important that coaches carry individual liability insurance.

In all states it is legal for coaches to purchase such insurance. Due to the increase in legal actions involving individuals associated with athletics, a number of insurance companies have made individual liability coverage available to such groups. It would be advisable to verify the legality and the coverage of such policies. In those states which are immune from litigation and have no "save harmless" provisions to protect the individual teacher, the purchase of such a policy might be a wise move. Many professional groups such as the American Association of Health, Physical Education and Recreation, and a number of state teachers' associations provide their members with the opportunity of purchasing such protection at a low group rate. Several state education associations provide such protection as one of the benefits of membership (18:115).

There are numerous factors which must be considered in transportation including the safety of the vehicles, legality of using public funds, immunity from tort liability for transportation accidents, competence of the drivers, overloading of vehicles and the use of privately owned vehicles and the "guest statutes" which are applicable

in the various states.

Athletic directors and coaches must realize the courts have some unusual views on the matter of transportation injuries. Incidents can probably be recalled, by most individuals in such positions, in which they have exposed themselves to possible expensive legal action if even a minor accident had occurred (18:110).

In transporting students to school sponsored athletic contests it is highly recommended that school district-owned motor vehicles or public service commission licensed carriers be employed. Private transportation is undesirable and should be discouraged. If private transportation must be used the following recommendations should be given priority.

1. Drivers should be carefully selected with a record of outstanding driving ability.
2. There should be complete and adequate insurance coverage on the vehicle.
3. It should be known whether the passengers in each vehicle are "guests" or not (41:110).

Some states have so-called "guest statutes." These laws provide that persons riding as guests, that is, without pay, may not recover from the driver for injuries caused through his negligence, except in certain extreme cases.

4. If a student is assigned to drive, a responsible adult should be in the vehicle.
5. Complete instructions should be provided for the trip such as driving speed, time schedules, routes, and meeting places.
6. The vehicle should be checked for mechanical efficiency and compliance with safety measure (41:110).

About one-half of all insurance companies represented in Kansas will write legal liability insurance for a teacher. Roughly, twenty percent of those companies will write legal liability insurance for

coaches. The insurance companies feel that this insurance is too closely underwritten and the exposure is too great. Under no circumstances will any insurance company cover a teacher or a coach where corporal punishment is involved.

This insurance is only written as an extension of an existing policy. If you own your own home the increase on your homeowners policy premium runs from five to ten dollars per one hundred dollars of premium. These same rates apply in cases of tenants' policies.

Legal liability insurance is an extension of the homeowner's or tenants' liability coverage package.

There are too many coaches in the state of Kansas who answer most questions concerning their legal liability with "I don't know," "I guess," or "I think." This is a very sad situation that screams for remedy. It is time to educate the educators to the fact that if there were no children, there would be no teachers or coaches.

#### SUMMARY AND RECOMMENDATIONS

Courts normally rule that the interscholastic program is an integral and valuable part of the public school curriculum. Public schools are not considered insurers of the safety of participants. Incidental admission fees to the games are seldom deemed sufficient to convert the educational function of the school from governmental to proprietary in character.

Common-law rule dictates that in the absence of statutes expressly imposing liability, school districts or school boards are not liable for injuries resulting from the negligence of coaches in the

athletic programs. The absolute defense of immunity from liability will be applied whether the injuries are incurred during athletic practice, games, or related activities. In spite of obvious flaws in the non-liability rule, the courts try not to weaken it, although a few courts have recognized certain exceptions as nuisance, governmental-proprietary function, and liability insurance coverage in the absence of statutory authority. California, Washington, and New York have enacted legislation which has successfully abrogated the common-law rule. New Jersey, Connecticut, Massachusetts and several other states have made modifications in it through "safe place" and "save harmless" laws.

School board members in the normal performance of their duties are not generally subject to liability as individuals. They can be held liable for negligent execution of ministerial acts and for failure to discharge specific legislative mandates.

Immunity from tort liability enjoyed by school districts and school officers does not extend to school employees or coaches. Employees and coaches must answer personally for tortious conduct and are subject to the usual rules of law pertaining to negligence. Because of the relatively hazardous nature of athletics as compared to other areas of the school curriculum, a higher standard of conduct is required of personnel responsible for interscholastic athletic activities.

Those states which have modified and modernized their school district immunity laws to meet the new demands of consolidation and modern trends have done much to eliminate injustice. Public schools have depended too long on leniency by the courts to protect them from

liability. Up to date, positive, statutory enactments are necessary to more realistically distribute the responsibility and risk of legal liability. More improved athletic rules and practices are called for as is better first-aid education in the area of athletic injury for both coaches and trainers. Lists of suggested practices to be followed and possible rule changes were included.

Better, more comprehensive insurance plans should be made available to states, school districts, teachers and, above all, coaches. Improved auto insurance coverage, more comprehensive liability and more realistic deductible clauses are necessary for coaches who transport students.

On the basis of this study, it is hereby recommended that supervisors, administrators and school board members should take it upon themselves to advise all teaching and coaching personnel on all facets of legal liability and its ramifications as it relates to their specific responsibility. Sound judgment and common sense in working with students under their care should be shown by all coaches. The welfare of the individual must be the guiding principle in all that is done and coaches should coach those under their care as they would have someone coach their own children.

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## GLOSSARY OF TERMS

ACTION: An ordinary proceeding in a court by which one party prosecutes another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense. In common language, a "suit," or "lawsuit" (36:53).

ACTIONABLE: That which furnishes legal grounds for an action. Sometimes a court will say "The action will lie," meaning that the circumstances are such that there is a ground for court action (36:53).

ACT OF GOD: An accident which is inevitable due to forces of nature and a supervisor could not have eliminated the cause in any way (18:21).

ADJUDICATE: To hear or try to determine judicially (45:12).

AD LITUM: Latin, meaning for the purpose of the suit, usually used when minors are, in fact, the plaintiffs. Because they are minors they must sue "by next friend," referring to parent or guardian who is plaintiff for the purpose of the suit (36:53).

ALLEGE: To state, assert, or charge; to make an allegation (36:53).

AMICUS CURIAE: "Friend at court"--one who volunteers or is requested to give information to the court regarding some matter of law in regard to which the judge is doubtful or mistaken; one who has no right to appear in a case but is allowed to file a brief or enter into the argument because of an indirect interest (36:53).

ANNOTATION: Notes or commentaries in addition to the principal text. A book is said to be annotated when it contains such notes (36:53).

ARBITRARY: Not supported by fair cause and without reason given (36:53).

ASSAULT: An attempt to beat another, without touching him (36:53).

ASSUMPTION OF RISK: Certain dangers are inherent due to the nature of the activity; a supervisor cannot protect an individual from such dangers and therefore cannot be held responsible; the individual assumes a degree of risk will be involved in the activity before he participates (18:21).

ATTRACTIVE NUISANCE: A condition, instrumentality, machine, or other agency, is dangerous to young children because of their inability to appreciate its danger because they may be expected to be attracted to it (36:53).

BATTERY: An unlawful beating or other wrongful physical violence inflicted on another without his consent. The offer or attempt to commit a battery is an assault. There can be an assault without battery; battery always includes assault. The two words are usually used together (36:54).

BILL: A written complaint filed in a court (36:54).

BREACH OF DUTY: Breach of duty is the element by which the defendant's actual conduct is measured against the legal standard of the reasonably prudent and careful person under these circumstances in an effort to determine whether the defendant by his conduct, exposed the plaintiff to an unreasonable risk of harm (22:117).

CAUSATIVE FACTOR: An existing situation which is obviously the main cause of an injury (18:22).

CERTIFICATE: A document designed as notice that some act has been done, or some event occurred, or some legal formality complied with; evidence of qualification (36:54).

CITATIONS, JUDICIAL: References to court decisions. Citations in the case materials in this report refer to official state reports and to the National Reporter System. The volume number precedes the abbreviation of the reporter, and the page number follows it. In parentheses is the name of the state where the decision was rendered, and its date. A complete judicial citation includes everywhere that the case may be found, but for school-law work complete parallel citations are unnecessary (36:54).

CIVIL ACTION: One brought to recover some civil right, or to obtain redress for some wrong (36:54).

COMMON LAW: As used in this report, legal principles derived from usage and custom, or from court decisions affirming such usages and customs, or the acts of Parliament in force at the time of the American Revolution, as distinguished from law created by enactment of American legislatures (36:54).

COMPARATIVE NEGLIGENCE: When both the individual who is responsible for the activity or facility and the injured party have contributed to the negligent act (18:22).

CONSTITUTION: The supreme organic and fundamental law of a nation or state, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers (36:55).

CONTRACT: An agreement upon sufficient consideration, to do or not to do a particular thing; the writing which contains the agreement of the parties, with the terms and conditions, and which serves as proof of the obligation (36:55).

CONTRACT ACTION: An action brought to enforce rights under a contract (36:55).

CONTRIBUTORY NEGLIGENCE: Although direct action did not cause negligence, a certain action of an individual contributed to the negligent act (18:22).

COURT JUDGMENT: A judgment: an interpretation of the laws or parts of laws which can set a precedent in similar judgments; judges will often interpret through their own opinions due to a lack of legislation or slow legislative action on pressing problems (18:22).

CREDIBILITY OF WITNESSES: Worthiness of belief of testimony of witnesses (36:55).

CRIMINAL ACTION: Proceeding by which a party charged with a crime is brought to trial and punishment (36:55).

DAMAGES: Pecuniary compensation or indemnity which may be recovered in court by the person who has suffered loss or injury to his person, property, or rights through the unlawful act, or omission, or negligence of another (36:55).

DEFENDANT: The party against whom relief or recovery is sought in a court action (36:55).

DEFENSE: That which is offered and alleged by the defendant as a reason in law or fact why the plaintiff should not recover (36:55).

DISMISSED FOR WANT OF EQUITY: Case dismissed because the allegations in the complaint have been found untrue, or because they are insufficient to entitle complainant to the relief sought (36:55).

DUE PROCESS: The exercise of the powers of government in such a way as to protect individual rights (36:56).

DUTY: An obligation which the courts will recognize and enforce arising out of the relationship between the parties involved in the lawsuit in question (41:148).

ENJOIN: To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act (36:56).

ESTOP: To prevent (36:56).



ESTOPPEL: A bar raised by the law which prevents a man from alleging or denying a certain fact because of his previous statements or conduct (36:56).

FORESEEABILITY: The individual responsible for the negligent act could have foreseen the danger which existed (18:22).

GOVERNMENTAL IMMUNITY: Immunity from tort actions enjoyed by governmental units in common-law states (36:56).

GOVERNMENTAL OR PUBLIC FUNCTION: A school performing a function directly related to educational pursuit (18:22).

GROSS NEGLIGENCE OR "WANTON NEGLIGENCE": This is very great negligence or the total lack of care. In such cases, contributory negligence of the plaintiff may not be a defense (41:148).

HEARING ON THE MERITS: Trial on the substance of a case as opposed to consideration of procedure only (36:56).

IMMUNITY: Freedom or protection from legal action; in this area as applicable to governmental units and may include school districts (18:22).

INFORMATION: An accusation against a person (36:57).

INJUNCTION: A formal order issued by a court of law ordering a person or group to perform, or refrain from performing, a specific act (18:22).

IN LOCO PARENTIS: In the place of the parent (18:22).

IPSO FACTO: By the fact itself (36:57).

JUDGMENT: Decision of the court, usually that part involving the payment of damages (36:57).

JUDGMENT-PROOF: Said of those against whom a judgment has been rendered even though they are not in financial condition to pay it (36:57).

LAW: (1) System of principles or rules of human conduct. In this sense it includes decisions of courts as well as acts of legislature. (2) An enactment of a legislature, a statute (36:57).

LEGAL DISABILITY: Lack of legal capacity to perform an act (36:57).

LEGAL POWER: The right or ability to do some act (36:57).

LIABILITY: Legal responsibility (36:57).



MAJORITY OPINION: The statement of reasons for the views of the majority of the members of the bench in a decision in which some of them disagree (36:57).

MAJORITY RULE: A legal principle upheld by the majority of decisions on the question, when there is a lesser number of decisions to the contrary on the same issue (36:57).

MALFEASANCE: Commission of an unlawful act, applied to public officers and employees (36:57).

MANDATORY: Compulsory, referring to a command for which disregard or disobedience is unlawful (36:57).

MANDATORY LEGISLATION: Laws which require adherence (18:23).

MINORITY RULE: The principle upheld by some courts on an issue which has been decided to the contrary by the majority of courts (36:58).

MISDEMEANOR: An offense lower than a felony and usually punishable by fine, or imprisonment otherwise than in a penitentiary (36:58).

MISFEASANCE: Improper performance of a lawful act (36:58).

NEGLIGENCE: Not exercising the care which a person of ordinary prudence would exercise under similar circumstances; a lack of positive as well as negative action (18:23).

NONFEASANCE: Omission to perform a required duty (36:58).

NOLENS VOLENS: With or without consent (36:58).

NUISANCE: A continuous condition or use of property in such a manner as to obstruct proper use of it by others lawfully having right to use it, or the public (36:58).

PERMISSIVE LEGISLATION: Laws which are passed to allow certain actions by groups involved; such legislation does not mandate such action but allows the action to be taken if so desired (18:23).

PLAINTIFF: Person who brings an action; he who sues by filing a complaint (36:58).

PLEA: A legal suit or action. An allegation made by a party in support of his cause. A defendant's answer to a plaintiff's declaration in common law practice. A plea of guilty to an indictment. An accused person's answer to a charge or indictment in criminal practice (45:650).

PLEADINGS: Formal papers filed in court action including complaint by plaintiff and defendant's answer, showing what is alleged on one side and admitted or denied on the other side (36:58).

POWER: The authority to do something expressly or impliedly granted (36:58).

PRECEDENT: A decision considered as furnishing an example or authority for an identical or similar case afterward arising on a similar question (36:58).

PRIMA FACIE: At first view--on the first appearance, true, valid, or sufficient at first impression. Self-evident. Legally sufficient to establish a fact or a case unless disproved (45:675).

PROPRIETARY FUNCTION: A school performing a function which is not directly related to educational pursuit but more of a profit-making nature (18:23).

PROXIMATE CAUSE: That which, in natural and continuous sequence, unbroken by any intervening cause, produces the injury, and without which the result would not have occurred (41:149).

QUASI-: As if, or almost as if it were, e.g., quasi-judicial act of a school board in holding a hearing before dismissal of a teacher (36:59).

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 order to better perform the duties imposed upon them (41:149).

REGULATIONS: Rules for management or government (36:59).

RELATOR: One on whose complaint certain writs are issued; for all practical purposes, the plaintiff (36:59).

RES ADJUDICATA: A matter judicially decided (36:59).

RES IPSA LOQUITUR: Literally, "The thing speaks for itself." A legal rebuttable presumption that the defendant was negligent which arises upon proof that the instrumentality causing injury was in the defendant's exclusive control and that the accident was one that ordinarily does not happen in the absence of negligence (41:149).

RESPONDEA SUPERIOR: The responsibility of an employer for the negligent acts of his employees (18:23).

RESPONDEAT SUPERIOR: Literally, "Let the master answer." The name given to the doctrine which holds an employer liable for the torts of his employee committed during the course of the employee's employment. This doctrine subjects schools to liability caused by the negligence of school employees unless the school enjoys governmental or charitable immunity from suit (41:149).

RESTRAIN: To prohibit from action; to enjoin (36:59).

RIGHT: A power or privilege in one person against another (36:59).

SAFE PLACE LEGISLATION: Laws which require public buildings, including those owned by school districts, to be free from injury-producing conditions (18:23).

SAVE-HARMLESS: Requiring that a body exempts or reserves from harm; specifically, it may require that a school district defend and pay judgments against employees who had been held personally liable for torts committed in connection with their employment (25:142).

SCOPE OF WORK OR RESPONSIBILITY: Those responsibilities which are assigned to an individual by his superiors (18:23).

STATUTE: Act of the legislature (36:59).

SUBPOENA: Process commanding a witness to appear and testify (36:59).

SUFFICIENCY OF EVIDENCE: Evidence adequate in character, weight, or amount to justify legal action sought (36:59).

TENURE: In its general sense, mode of holding an office or position, especially with respect to time (36:59).

TORT: Legal wrong committed upon the person, reputation, or property of another, independent of contract (36:59).

ULTRA VIRES: Acts beyond the scope of authority (36:59).

UNAVOIDABLE ACCIDENT: Nothing a supervisor could have done would have prevented the accident (18:23).

VOLENTI NON FIT INJURIA: No harm is done to one who consents (25:19).

WRIT OF ERROR: Appellate court orders lower court to submit record of an action on which the lower court has reached a final judgment, so that the appellate court may examine the alleged errors of the lower court (36:60).

## APPENDIX

THE CURRENT STATUS OF THE DOCTRINE OF GOVERNMENTAL IMMUNITY  
AS APPLIED TO PUBLIC SCHOOLS IN THE FIFTY STATES

ALABAMA--Schools have governmental immunity. The State Board of Adjustments decides claims and awards compensation to any person injured through the negligence of a school employee. Suit may be brought against the negligent employee in court or a claim may be filed against the school before the Board.

ARIZONA--Governmental immunity was abolished by judicial decision in 1963. Schools may purchase insurance for students participating in school athletics but may not use tax moneys for this purpose (Statute 15.441.01).

ARKANSAS--Schools have governmental immunity. Schools may purchase insurance to protect themselves but do not waive immunity by doing so. Schools may also purchase insurance to protect school personnel in which case the claimant may bring suit directly against the insurance carrier who is liable to the extent of the policy.

CALIFORNIA--Governmental immunity abolished by statute. Under the current statute (Government Code 810 (1963)). School is liable for injury where employee would be liable and is not liable when employee is immune. Statutes also provide the public entity must pay judgments against its employees or must "save harmless" an employee who pays a judgment. Further statutes provide that all public entities may purchase insurance to cover their tort liabilities.

Statutes (sections 31751 and 31752) place a duty on governing boards of state educational institutions to provide accident insurance and life insurance for each member of an athletic team or student organization to indemnify such persons for death or injury resulting from participation in athletic activities (broadly defined in the statute) sponsored by such state educational institution (1965).

COLORADO--Schools have governmental immunity by judicial decision. Statutes permit school districts to purchase insurance to provide compensation for tort injuries (Statute 123-33-10). The insurer may not assert the defense of governmental immunity, but liability is limited to the extent of the policy.

CONNECTICUT--Schools are immune from suit. Statutes provide that boards of education must "save harmless" any employee who is required to pay a judgment resulting from negligence within the scope of employment. Schools are authorized by statute to purchase insurance for this purpose.

DELAWARE--No cases dealing with school liability. School personnel are liable for their negligence.

FLORIDA--Schools are immune from suit. A 1953 AGO states that state funds may be used to purchase liability insurance to protect personnel.

GEORGIA--Schools are immune from suit. School personnel are liable for their negligence.

HAWAII--Sovereign immunity abolished by statute (245 A).

IDAHO--Schools are immune from suit (exception: school transportation system). School personnel are liable for their negligence.

ILLINOIS--Governmental immunity abolished by judicial decision in 1959 (18 111, 2d 11). Schools are liable for the negligence of their officers, agents, and employees.

INDIANA--Schools have governmental immunity. School personnel are liable for their negligence.

IOWA--Governmental immunity was abolished by statute effective 1968, but a recent Supreme Court decision interpreted this statute as not applying to subordinate units of government. Thus, common law governmental immunity remains in effect as applied to schools.

KANSAS--Schools have governmental immunity. School personnel are liable for their negligence.

LOUISIANA--Schools have governmental immunity. Statute 17.159 permits school boards to purchase insurance for injuries sustained in athletics. The insurer may not use the defense of immunity.

MAINE--Schools are immune from suit in the performance of their governmental functions, but are liable for negligence arising out of the performance of proprietary functions.

MARYLAND--Schools are immune from suit in the performance of their governmental functions, but are liable for negligence arising out of the performance of proprietary functions.

MASSACHUSETTS--Schools have governmental immunity. A 1964 Act--C.41 100 C requires that the school committee "save harmless" any employee who is required to pay a tort judgment.

MICHIGAN--Act 170 of Public Acts of 1964 reaffirms governmental immunity in the performance of governmental functions and denies immunity in the performance of proprietary functions. Immunity also denied in the negligent operation of school-owned motor vehicle. Governmental units, including school districts, may be held liable for injuries to persons and property caused by negligent maintenance of "highways" and public building. Governmental agencies are authorized to purchase liability insurance from current funds to protect officers, agents, and employees. The purchase of such insurance does NOT constitute a waiver of governmental immunity.

MINNESOTA--Governmental immunity as applied to schools abolished by judicial decision in 1962, but reinstated by legislation effective 1964 (M.S.A. 466.12). Schools may purchase insurance and waive immunity to the extent of their insurance coverage.

MISSISSIPPI--Schools are immune from suit. School personnel are liable for their negligence.

MISSOURI--Schools are immune from suit. School personnel are liable for their negligence.

MONTANA--Schools are immune from suit. School personnel are liable for their negligence.

NEBRASKA--Schools are immune from suit. School personnel are liable for their negligence.

NEVADA--Governmental immunity abolished by statute. School liability for the negligence of its employees is limited to \$25,000.

NEW HAMPSHIRE--Schools are immune from suit, but may purchase insurance to protect their employees from tort judgments. The purchase of insurance does not constitute a waiver of immunity.

NEW JERSEY--Schools are immune from suit when their employees are negligent in carrying out a governmental function. Statute 18:5-50 requires boards of education to "save harmless" any employee or officer from damage claims.

NEW MEXICO--Schools are immune from suit. Legislation permits schools to purchase insurance for the protection of their employees. Any damages above the limit of the policy must be paid by the employee. If the school fails to purchase insurance, the employee alone is liable for his negligence.

NEW YORK--Governmental immunity has been abolished subject to statute. In cities with over one million people, the board of education is liable for the negligence of school employees and must "save harmless" any employee against whom a judgment is recovered. In cities with less than one million people, boards of education are required to "save harmless" any employee who incurs negligence.

NORTH CAROLINA--Schools are immune from suit. However, statute 115-53 permits a school board to purchase insurance covering tort liability, and immunity is waived to the extent of policy coverage. Additional legislation provides state liability in cases involving school bus accidents.

NORTH DAKOTA--Schools are immune from suit. A statute provides that schools may purchase insurance to protect their employees from tort liability and the insurance company may not assert the defense of sovereign immunity.



OHIO--Schools are immune from suit. School personnel are liable for their negligence.

OKLAHOMA--Schools are immune from suit. School personnel are liable for their negligence.

OREGON--Governmental immunity has been abolished by statute--Chapter 627. Oregon Laws of 1967, effective July 1, 1968. Schools are authorized to purchase liability insurance.

PENNSYLVANIA--Schools are immune from suit. A statute permits the purchase of insurance to protect employees, but the purchase of such insurance does not constitute a waiver of sovereign immunity.

RHODE ISLAND--Schools are immune from suit. School personnel are liable for their negligence.

SOUTH CAROLINA--Schools are immune from suit. School personnel are liable for their negligence.

SOUTH DAKOTA--Schools are immune from suit. Statute 15.3815 permits schools to purchase insurance protecting their employees, i.e., to save their employees harmless.

TENNESSEE--Schools are immune from suit. School personnel are liable for their negligence.

TEXAS--Schools are immune from suit. School personnel are liable for their negligence.

UTAH--Governmental immunity abolished by statute effective July, 1965. Schools are therefore liable for the negligence of their employees.

VERMONT--Schools are immune from suit. However, Statute Title 24-1092 permits schools to purchase liability insurance and title 29-1403 provides that sovereign immunity is waived to the extent of the insurance coverage.

VIRGINIA--Schools are immune from suit. School personnel are liable for their negligence.

WASHINGTON--Governmental immunity has been abolished. Schools are required by Statute 28.76.410 to purchase insurance to cover tort liability. However, Statute 28.58.030 provides that no action may be brought against a school or a school employee for torts relating to equipment used on playgrounds or in schools.

WEST VIRGINIA--Schools are immune from suit. School personnel are liable for their torts.



WISCONSIN--Governmental immunity abolished by judicial decision.

Statute 66.18 provides that schools may purchase insurance, but the purchase or failure to purchase of insurance does not affect their liability.

WYOMING--Schools are immune from suit. School personnel are liable for their negligence. Statute 21-158 permits schools to "save harmless" any employee who is ordered to pay a tort judgment (41:121).

A SCHOOL EMPLOYEE MAY BE NEGLIGENT BECAUSE OF  
THE FOLLOWING REASONS:

1. He did not take appropriate care.
2. Although he used due care, he acted in circumstances which created risks.
3. His acts created an unreasonable risk of direct and immediate injury to others.
4. He set in motion a force which was unreasonably hazardous to others.
5. He created a situation in which third persons, such as pupils or inanimate forces, such as shop machinery, may reasonably have been expected to injure others.
6. He allowed pupils to use dangerous devices although they were incompetent to use them.
7. He did not control a third person, such as an abnormal pupil, whom he knew to be likely to inflict intended injury on others because of some incapacity or abnormality.
8. He did not give adequate warning.
9. He did not look out for persons, such as pupils, who were in danger.
10. He acted without sufficient skill.
11. He did not make sufficient preparation to avoid an injury to pupils before beginning an activity where such preparation is reasonably necessary.
12. He failed to inspect and repair mechanical devices to be used by pupils.
13. He prevented someone, such as another teacher, from assisting a pupil who was endangered, although the pupil's peril was not caused by his negligence. (10:205)

## HOW TO AVOID LIABILITY SUITS

A reasonably prudent and careful coach:

1. Knows the health status of his players.
2. Requires medical approval for participation following serious injury or illness.
3. Performs services only in those areas in which he is fully qualified.
4. Performs the proper act in cases of injury.
5. Has medical personnel available at all contests and readily available during practice sessions.
6. Conducts activities in safe areas.
7. Does not diagnose injuries.
8. Makes certain that the protective equipment worn by his players is adequate in quality and fits properly.
9. Analyzes his coaching methods and procedures for the safety of his players.
10. Assigns only qualified personnel to conduct and/or supervise activities.
11. Instructs adequately before permitting performance.
12. Keeps an accurate record of serious injuries and his ensuing acts.
13. In all his actions or inactions, he asks himself, "What would the reasonably prudent and careful coach do under these circumstances?"  
(1:58)

## DEFENSES AGAINST CHARGES OF NEGLIGENCE

The teacher is not without defenses when charges of negligence are leveled at him. He may use one or a combination of the following defenses:

1. The teacher acted without negligence and as the reasonably prudent person would have acted under the circumstances. Although it is not always easy to determine what this means, the defense of denial of any negligence may be sufficient. A more positive approach is to assert that instruction in the hazards involved had been given the students, or that proper precautions had been taken to protect the students' health and safety.
2. The student assumed the risk. In certain school activities, such as athletic events, there are inherent and obvious risks. The student is assumed to know the risks involved, and thus assumption of risk falls upon the student when he enters the activity. This is the same as saying that some school activities are much more dangerous than others, and that the teacher should not assume all the risk in activities of more than ordinary danger.
3. The student contributed to the injury. The defense of contributory negligence is based on the contention that even though the teacher was negligent, there was a lack of ordinary care on the part of the person injured, which contributed to the injury, and constituted an element of negligence without which the injury would not have occurred. However, the contributory negligence in such cases must be shown to be a proximate cause of the injury.
4. There was comparative negligence. A few states have adopted the doctrine of comparative negligence, in which the teacher's and student's negligence are ruled to be mutually contributory to the injury. The damages in such cases are pro-rated on the basis of whether the negligence of each party was slight, ordinary, or gross. Thus, a teacher might be held to be only slightly liable or in a case of greater negligence be required to carry the major portion of the burden of the injury. While this principle has general acceptance in foreign countries, it has not been widely accepted in the United States.
5. The injury was the result of an unavoidable accident, and nothing that the defendant could have done would have prevented it. Since an accident is an event which occurred without fault, carelessness, or want of proper circumspection on the part of the defendant, a charge of negligence will ordinarily fall before it.

6. It was an act of God, and was the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man, and without human intervention. No amount of foresight would have prevented the occurrence, and defendant is innocent of causality.

In defense of teachers, it should be emphasized that school employees cannot guarantee that no student or spectator will be injured as a result of their acts. Sometimes accidents happen even though the most elaborate precautions are taken. But the law does not require superhuman foresight or vigilance; it requires only reasonable and ordinary precautions on the part of teachers and other employees of the school. In other words, it requires only those precautions which the reasonably prudent person would observe under the circumstances. When these have been observed, the teacher has done all that the law requires. For courts to hold otherwise would constitute a premise that teachers are insurers of their students, a position wholly inconsistent with the basic laws of equity and justice (31:252,253).

## SUGGESTIONS TO HELP MAKE FOOTBALL A SAFER GAME

1. Hire a qualified coaching staff and a qualified trainer.
2. Buy the best equipment that money can buy.
3. Have qualified officials for all games and scrimmages.
4. Insist on safe facilities, such as good turf, adequate space, and elimination of all hazards.
5. A doctor should be present at all games and at all scrimmages.
6. A thorough physical examination before the season starts and again at mid-season is a must. It should include a detailed study of the health history of each player. If health history shows heart abnormalities or other defects that might be aggravated, the boy should not be permitted to play.
7. Provisions should be available for such essentials as an x-ray study, encephalogram, physical therapy, and bandaging.
8. Get accident insurance to cover full cost of diagnosis and treatment of all injuries.
9. No boy should be allowed to return to a game after a head injury until an x-ray film has been taken and a doctor has approved return to action. If injury is diagnosed as severe concussion, he should never be allowed to participate in gridiron activities again.
10. The temptation to send in the star who insists that he is not hurt and wants to return to play should be resisted. Decision to return to play should not be permitted unless approved by the doctor in writing.
11. Each school should play only schools of its own size and teams of its own stature.
12. More stress should be placed on training and conditioning: at least twenty practices spaced over a three-week period before the first game for each player, longer warm-ups for reserves sitting on the bench and for all players at half-time of the game, and greater emphasis on fundamentals, such as blocking, tackling and techniques of play.
13. If the rules could be changed as follows, injuries could be reduced:
  - a. Eliminate second-half kickoff.
  - b. Increase the penalty for piling on. Ban from the game the player who persists in ignoring this rule.

- c. Allow for substitutions to the extent that exhausted players will not be in the game.
- d. Provide five minutes longer between halves of the game, with specific stipulation that this time is to be used for warm-up. (6:242)

## SAFETY CODE FOR THE PHYSICAL EDUCATION TEACHER

1. Have a proper teacher's certificate in full force and effect.
2. Operate and teach at all times, within the scope of his employment as delimited and defined by the rules and regulations of the employing board of education and within the statutory limitations imposed by the state.
3. Provide the safeguards designed to minimize the dangers inherent in a particular activity.
4. Provide the amount of supervision for each activity required to ensure the maximum safety of all the pupils.
5. Inspect equipment and facilities periodically to determine whether or not they are safe for use.
6. Notify the proper authorities forthwith concerning the existence of any dangerous condition as it continues to exist.
7. Provide sufficient instruction to the performance of any activity before exposing pupils to its hazards.
8. Be certain that the task is one approved by the employing board of education for the age and attainments of the pupils involved.
9. Not force a pupil to perform a physical feat which the pupil obviously feels he is incapable of performing.
10. Act promptly and use discretion in giving first aid to an injured pupil but nothing more.
11. Exercise due care in practicing his profession.
12. Act as a reasonably prudent person would under the given circumstances.
13. Anticipate the dangers which should be apparent to a trained, intelligent person (a legal principle known as "foreseeability").  
(6:242,243)



LEGAL LIABILITY FOR COACHES OF INTERSCHOLASTIC ATHLETICS

by

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B. S., Kansas State University, 1970

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AN ABSTRACT OF A MASTER'S REPORT

submitted in partial fulfillment of the

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MASTER OF SCIENCE

Department of Physical Education

KANSAS STATE UNIVERSITY  
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The purpose of this report was to locate and interpret the legal liability of coaches for injuries sustained by participants in public school interscholastic athletic programs.

The history of common law practices and tort liability was given and compared with the general principles of case law. The case study method was used in analyzing pertinent court cases and reinforcing the "stare decisis" doctrine which has been such a profound influence on modern liability cases.

Cases in point were identified by the use of the American Digest System. Court records were found through the National Reporter System. Other applicable information was gleaned from American Jurisprudence.

Courts normally allow that the interscholastic program is an integral and valuable part of the public school curriculum. Public schools are not considered insurers of the safety of participants. Incidental admission fees to the games are seldom deemed sufficient to convert the educational function of the school from governmental to proprietary in character.

Common-law rule dictates that in the absence of statutes expressly imposing liability, school districts or school boards are not liable for injuries resulting from the negligence of coaches in the athletic programs. The absolute defense of immunity from liability will be applied whether the injuries are incurred during athletic practice, games, or related activities. In spite of obvious flaws in the non-liability rule, the courts try not to weaken it, although a few courts

have recognized certain exceptions as nuisance, governmental-proprietary function, and liability insurance coverage in the absence of statutory authority. California, Washington, and New York have enacted legislation which has successfully abrogated the common-law rule. New Jersey, Connecticut, Massachusetts and several other states have made modifications in it through "safe place" and "save harmless" laws.

School board members in the normal performance of their duties, are not generally subject to liability as individuals. They can be held liable for negligent execution of ministerial acts and for failure to discharge specific legislative mandates.

Immunity from tort liability enjoyed by school districts and school officers does not extend to school employees or coaches. Employees and coaches must answer personally for tortious conduct and are subject to the usual rules of law pertaining to negligence. Because of the relatively hazardous nature of athletics as compared to other areas of the school curriculum, a higher standard of conduct is required of personnel responsible for interscholastic athletic activities.

Those states which have modified and modernized their school district immunity laws to meet the new demands of consolidation and modern trends have done much to eliminate injustice. Public schools have depended too long on leniency by the courts to protect them from liability. Up to date, positive, statutory enactments are necessary to more realistically distribute the responsibility and risk of legal liability. More improved athletic rules and practices are called for as is better first-aid education in the area of athletic injury for both

coaches and trainers. Lists of suggested practices to be followed and possible rule changes were included.

Better, more comprehensive insurance plans should be made available to states, school districts, teachers and, above all, coaches. Improved auto insurance coverage, more comprehensive liability and more realistic deductible clauses are necessary for coaches who transport students.

On the basis of this study, it is hereby recommended that supervisors, administrators and school board members should take it upon themselves to advise all teaching and coaching personnel of legal liability and its ramifications as it relates to their specific responsibility. Sound judgment and common sense in working with students under their care should be shown by all coaches. The welfare of the individual must be the guiding principle in all that is done and coaches should coach those under their care as they would have someone coach their own children.