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COURT DECISIONS IN SCHOOL ATHLETIC, PHYSICAL EDUCATION, AND INTRAMURAL PROGRAMS IN WHICH THE CONDITION OF EQUIPMENT AND FACILITIES HAS BEEN ALLEGED AS THE PROXIMATE CAUSE OF INJURY TO PARTICIPANTS AND SPECTATORS

The University of North Carolina at Greensboro Ed.D. 1986

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COURT DECISIONS IN SCHOOL ATHLETIC, PHYSICAL EDUCATION, AND INTRAMURAL PROGRAMS IN WHICH THE CONDITION OF EQUIPMENT AND FACILITIES HAS BEEN ALLEGED AS THE PROXIMATE CAUSE OF INJURY TO PARTICIPANTS AND SPECTATORS

by

Lynne P. Gaskin

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Approved by

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APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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March 17, 1986
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GASKIN, LYNNE PEARSALL, Ed.D. Court Decisions in School Athletic, Physical Education, and Intramural Programs in Which the Condition of Equipment and Facilities Has Been Alleged as the Proximate Cause of Injury to Participants and Spectators. (1986).
Directed by Dr. Rosemary McGee. 167 pp.

The purpose of the study was to determine what the courts have said regarding the condition of equipment and facilities in school-sponsored sport programs, to determine specific trends emerging from the cases, and to develop practical guidelines to assist educators. Each case was analyzed to determine the school-sponsored sport program in which the injury occurred and the age, role, and sex of the injured party, and the sport or activity in which the injury occurred. The legal principle applied by the court and legal precedent established also were considered in ascertaining whether recovery to the injured party was denied or allowed.

The courts have given specific direction about equipment and facilities. Both must meet the standards considered usual and customary by the profession, must be inspected regularly, and must be in good repair. Neither participants nor spectators assume the risk of defective equipment or dangerous facilities. While teachers and coaches are not expected to insure the safety of others, both participants and spectators should be able to assume that the condition of equipment and facilities is safe in regard to the intended purpose.

Four trends emerged from the study. (1) In comparison with the 13 equipment cases, the larger number of 48 facility cases is significant. (2) The number of reported cases based on the doctrine of governmental immunity did not decrease through the years as was anticipated, but remained relatively constant within and across the decades. (3) The number of equipment and facility cases does not seem to support the observation that America is becoming an increasingly litigious society. (4) Generally, neither age, role, sex of the injured party, nor the sport or activity within which the injury occurred would appear to influence the decision of the court. Court decisions consistently have been based on the presence or absence of the four elements necessary to prove negligence and the legal principle applied. Only when the defense of contributory negligence has been used have the courts considered age as a factor. The younger the injured party, the less likely the defense of contributory negligence will be upheld.

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CHAPTER I

INTRODUCTION I

More injuries occur in the gymnasium and adjoining playing fields than in any other area of the school environment. Many school-related injuries in athletic, physical education, and intramural programs are the result of unavoidable accidents. Injuries to students are not purely accidental, however, if they are foreseeable and are caused by an educator's negligence.

Since most lawsuits involving physical educators and coaches are brought because of injuries, reduction of injuries should cause a reduction in the number of such lawsuits (Arnold, 1983). Teachers and coaches are not expected to insure the safety of students and spectators, but they are expected to anticipate and avoid unreasonable risks of injury as well as to provide safe equipment and facilities. Failure to do so may result in alleged negligence.

The American law of negligence is based primarily on precedent established by previous judicial decisions. An analysis of reported American law cases involving injuries to participants and spectators in which the use, layout, and maintenance of equipment and facilities were alleged as the proximate cause of the injury should reveal information

necessary for the conduct of athletic, physical education, and intramural programs designed to minimize the possibility of injury. The knowledge and understanding engendered by this analysis can be used to help physical educators and coaches avoid being found liable for injuries because they will be aware of the care which must be taken to avoid injuries to participants and spectators and will be more knowledgeable about the nature of unsafe conditions in the gymnasium and surrounding fields.

Statement of the Problem

The major purpose of this study is to examine and analyze published court decisions in the United States in which the condition of equipment and facilities was alleged as the proximate cause of injuries to participants and spectators in selected school programs. Such information can provide physical educators and coaches with appropriate information to make decisions regarding equipment and facilities which will minimize the possibility of injury. A practical purpose of the study is to provide information which educators can utilize to conduct safer programs and thus decrease their involvement in litigation.

More specifically, in the context of litigation involving allegations of negligence, six questions have been formulated to guide the study:

1. What have the courts said regarding the condition of equipment in athletic, physical education, and intramural programs?
2. Are there specific trends which can be determined from the examination and analysis of the court cases regarding equipment?
3. Based on established case precedent, what are practical guidelines which educators can use when making decisions about equipment?
4. What have the courts said regarding the condition of facilities in athletic, physical education, and intramural programs?
5. Are there specific trends which can be determined from the examination and analysis of the court cases regarding facilities?
6. Based on established case precedent, what are practical guidelines which educators can use when making decisions about facilities?

Definition of Terms

The following terms are defined as they were used in this study. The terms defined appear in the title of the study. Legal terms which are discussed at length in the context of negligence and governmental immunity in Chapter II are omitted deliberately in this section.

Athletic Program. An organized, school-sponsored sport program for highly skilled individuals characterized

by regularly scheduled practices, conducted by a qualified coach, and by regularly scheduled contests with other schools.

Condition. The status or state of being of equipment and facilities including their use, layout, and maintenance.

Equipment. "Furnishings, or outfit for the required purposes; the articles comprised in an outfit" (Black, 1979, p. 483).

Facilities. "Something built or installed to perform some particular function" (Black, 1979, p. 531).

Intramural Program. An organized, school-sponsored program consisting of sport, recreation, and athletic activities for all students attending that school.

Participant. One who is (a) an officially recognized member of an activity class or sport team or (b) a physically active participant in the activity or sport. The term "participant" includes players, teachers, coaches, managers, and officials (McGee v. Board of Education of City of New York, 1962).

Physical Education Program. That part of the school instructional program in which students are taught skill and knowledge competencies in sport and physical activities.

Proximate Cause. "The primary cause, or that which in a natural continuous sequence, unbroken by any efficient

intervening cause, produces injury and without which the result would not have occurred" (Black, 1979, p. 1103).

School. Public and private elementary and secondary schools and institutions of higher learning.

School-Sponsored Sport Programs. Physical activities and sports sponsored by an educational institution and limited to athletic, physical education, and intramural programs. This term is used throughout the remainder of the study to encompass athletic, physical education, and intramural programs as defined previously.

Spectator. One who attends an activity or contest as an observer.

Scope and Limitations of the Study

This is an analytical, interpretative study of selected reported legal cases in the United States. As such, this study includes all tort liability cases from 1909, the year of the first reported case, through 1984 in which the condition of equipment and facilities was alleged as the proximate cause of injuries in school-sponsored sport programs. Schools in this context encompass grades K-12 and college level. Cases sent back to a lower court for a determination on the merits of the case have been excluded. Cases involving unsponsored use of equipment and facilities to which the public has access also have been excluded.

The selection of court cases involving equipment has

been made primarily on the basis of teachers' and coaches' responsibilities for the condition of such equipment. Manufacturers share responsibilities for the condition of safe equipment with these educators. Recent cases have focused attention on the liability of manufacturers for personal injuries to users of their sport products (Arnold, 1983). This study is limited to the responsibilities of school personnel.

The selection of court cases involving facilities has been made primarily on the basis of school personnel's responsibilities for the condition of such facilities. Cases analyzed involve the decisions and procedures necessary for the sound use of existing facilities rather than the design and construction of new facilities.

Methods and Sources of Information

The basic research technique was the analysis of published cases. All reported United States court cases in which the condition of equipment and facilities in school-sponsored sport programs was alleged as the proximate cause of injury have been located and analyzed. No other study of this nature has been reported in Dissertation Abstracts International. The search in the Educational Resources Information Center (ERIC) also yielded no such study, but provided possible sources for related information.

Primary sources for the study were reported court

cases. The Century, Decennial, and General editions of the American Digest System were used to locate cases related to the topic. The National Reporter System and numerous state reports were utilized to examine and analyze appropriate cases.

Secondary sources included Shepard's United States Citations which was used to determine whether the original case has been cited in subsequent cases and whether it has been disapproved, modified, or reversed. Other secondary sources included the legal encyclopedias American Jurisprudence I, II, III (Am.Jur.) and Corpus Juris Secundum (C.J.S.), annotations in the American Law Reports I, II, III (A.L.R.), and the hornbook for tort liability Prosser and Keeton on the Law of Torts. Sources utilized for background material included the Education Index; Index to Legal Periodicals; Current Law Index; Yearbook of School Law as well as other books on school law; books and articles on the legal aspects of sport, physical education, and athletics; also dissertations and periodicals.

Significance of the Study

Numerous cases involving defective equipment and unsafe facilities in school-sponsored sport programs have been litigated since 1909. The frequency with which such cases occur may be expected to increase since America has become an increasingly litigious society (Appenzeller, 1978; Arnold, 1983; Nygaard & Boone, 1981). A compilation

and analysis of court cases involving teachers' and coaches' practices in regard to equipment and facilities should result in increased knowledge of what the legal precedents and requirements are in this area.

Presently, information in sport literature which deals with the appropriate use of equipment and facilities is limited. Although there are sport and physical education texts with chapters which focus on equipment and facilities (Appenzeller & Appenzeller, 1980; Arnold, 1983; Nygaard & Boone, 1981), often the discussion of equipment and facilities is couched among other areas of concern such as classifying by ability, establishing and following course syllabi, establishing rules for program conduct, supervising activities, and many others (Appenzeller, 1975; Dougherty & Bonanno, 1979; Van Der Smissen, 1968).

In addition to sport and physical education texts, there are legal annotations which discuss decisions of court cases involving accidents and injuries in school physical education and athletic programs. However, none of these annotations focuses specifically on accidents and injuries occurring as a result of the condition of equipment and facilities in school-sponsored programs. Rather, equipment and facilities usually are included under much broader discussions such as accidents in schools due to the condition of buildings, equipment, and outside premises (Annot. 34 A.L.R.3d 1166; Annot. 35 A.L.R.3d 975)

and injuries due to the condition of grounds, walks, and playgrounds (Annot. 37 A.L.R.3d 738).

Two annotations (Annot. 36 A.L.R.3d 361; Annot. 35 A.L.R.3d 725) discuss accidents in physical education and athletic events, respectively, but neither includes cases barred by the doctrine of sovereign immunity nor considers injuries to participants and spectators in school-sponsored sport programs by program, age, role, sex, and sport or activity. Yet, it has been estimated that half of the accidents which occur in school-sponsored sport programs are related to the safety or condition of equipment and facilities (Bronzan, 1977). A concentrated review of judicial decisions in published cases should provide information which will enable teachers and coaches to take precautions based upon information about what has been found to be unsafe.

This study is significant in that it provides educators with a comprehensive analysis of judicial decisions from which positive action regarding equipment and facilities may be taken. Guidelines derived from the analysis of these decisions may aid in the reduction of injuries and in the number of physical educators and coaches involved in litigation.

Procedures

The questions formulated to guide the study were answered following the examination and analysis of relevant

cases in which equipment and facilities in school-sponsored sport programs were alleged as the proximate cause of injury. An attempt was made to extract seven elements from each case:

1. The program in which the injury occurred.
2. The age of the injured party.
3. The role of the injured party.
4. The sex of the injured party.
5. The sport or activity.
6. The legal principle involved.
7. The legal precedent established.

These were considered the most significant elements for answering the questions. Following is a brief discussion of why these elements were selected:

Program. The number of cases reported in any one of the school-sponsored sport programs (athletics, physical education, or intramurals) was noted to determine whether cases were more prevalant in one of the three programs. Additionally, consideration was given to whether the courts specified different standards of care for each of the three programs.

Age. The age of the injured party was considered to determine whether the courts ruled differently if the individual were younger or older but other circumstances were similar. For the purposes of this study, "younger" is considered to be junior high school level or below; "older"

is anyone beyond that level. Teachers and coaches may need to meet different criteria to provide safe equipment and facilities for younger individuals.

Originally, consideration was given to designating children 13 years old and below as "younger" (junior high school level and below) and those 14 and above as "older". However, this procedure was altered for two reasons: (a) court cases often describe children as students in elementary, junior high school, high school, or college (in contrast with giving specific ages), and (b) there is a lack of consistency nationwide among school systems to adhere to a standard entry age and level designation for students.

Role. The role of the injured party was considered to determine whether the courts ruled differently if the individual were a participant or spectator. This role was considered to determine whether different standards of care are required for participants than for spectators.

Sex. The sex of the injured party was considered to determine whether the courts ruled differently if the individual were male or female but other circumstances were similar. Additionally, the sex of the injured party was considered to determine whether reported court cases involved one sex more frequently than the other.

Sport or Activity. The sport or activity in which the injury occurred was considered to identify those in which

equipment and facilities have been alleged as the proximate cause of the injury in school-sponsored sport programs. As with the age element, background information provided the basis for modification of the final definition of this element.

Originally, the intent was to identify not only the sport or activity, but the degree of risk involved in that sport or activity. However, classifying individual sports and activities as "high risk" and "low risk" proved impossible.

Risk involves a nebulous element of danger (Arnold, 1983) and the possibility of suffering harm or loss (Elkow, 1977; Damron, 1977). Although the key element appears to be the potential for danger or harm, there is little consistency in classifying activities as to their degree of risk.

Three methods of assessing risks in school-sponsored sport programs have been identified: (a) examination of accident reports to determine whether particular types of injuries occur more frequently in particular sports, (b) classification of sports by the extent to which they may produce injuries, and (c) analysis of court cases to determine the legal boundaries of risks. No one of these three nor the three in combination provides a suitable means of defining "high risk" and "low risk" sports and activities.

Although it is possible to develop a list of likely injuries in particular sports by using accident reports, this method has its disadvantages. First, such a list must by tested against a large number of cases to be valid (Ryan, 1975), and accurate information is lacking in this area (Elkow, 1977). Second, accident data are accumulated after the fact and often are outdated due to the resistance of sport leaders to complete and analyze accident reports in a consistent manner (Arnheim, 1985; Damron, 1977; Ryan, 1975).

Classifying sports by the extent to which they may be expected to produce accidents and injuries has resulted in sports being classified as "collision", "contact", and "noncontact". Collision sports in this classification are considered to be those having "more potential for causing fatalities and severe injuries than sports categorized as contact or noncontact" (Arnheim, 1985, p. 11). Although no definition of either contact or noncontact sports has been located, tentative listings of sports categorized as contact include basketball, baseball, field hockey, touch and flag football, judo, lacrosse, rodeo, soccer, softball, water polo, wrestling (Arnheim, 1985), water skiing and snow skiing (Ryan, 1977). Similarly, sports classified as noncontact include archery, badminton, bowling, cross-country running, curling, fencing, golf, gymnastics, riflery, skiing, squash, swimming and diving, tennis, track

and field, and volleyball (Arnheim, 1985). An examination of these lists highlights a major disadvantage of this method. Obtaining agreement from sport experts about how a particular sport should be classified is difficult. Skiing (both water and snow), for example, is classified as both contact and noncontact. Second, if collision sports have more potential for severe injury than contact or noncontact sports, the tendency may be to consider these two latter categories of sports as having fewer risks of severe injury. Yet, severe injuries can and do occur, for example, in gymnastics and swimming which are classified as noncontact. Furthermore, as Nygaard and Boone (1981) clearly stated, "no two activities have the same risks. Every sport has inherent risks, but these risks differ not only among sports but also within a sport if it is taught in different areas or to different grades or skill levels" (p. 50).

Analysis of decisions rendered by the judiciary in cases involving alleged negligence of teachers and coaches is another method which may be used to assess risks in school-sponsored sport programs. F. L. Allman (personal communication, April 17, 1985), Dougherty and Downs (1981), and Van Der Smissen (1975) all sugested that analysis of case law shows no activities, except boxing, to be inherently dangerous. Judges and juries tend to focus their attention on proper and safe conduct of the activity

or programs (F. L. Allman, personal communication, April 17, 1985; N. J. Dougherty, personal communication, April 18, 1985; Dougherty & Downs, 1981; Nygaard & Boone, 1981; Van Der Smissen, 1975). Analysis of court cases also reveals that teachers and coaches must be alert to the potential risks of an activity and the potential injuries which may result from participation in that activity (Arnold, 1983; Nygaard & Boone, 1981). When teachers and coaches have identified these potential risks, they then can examine the equipment and facilities involved with that particular activity to "eliminate the likelihood of injury due to a risk not present in the activity" (Nygaard & Boone, 1981, p. 45).

In the context of this study then, it appears that legally no school-sponsored sport is considered inherently dangerous. Teachers and coaches, however, do need to be aware of potential risks in an activity and potential injuries which may result from participation in that activity.

Legal Principle. The legal principle was considered to determine the rule or doctrine which furnished the basis for the decision rendered. The legal principle the court applied in adjudicating the case also was considered to assist the investigator in determining trends in the reported cases involving equipment and facilities.

Legal Precedent. The rule or legal precedent the case

established was considered also to assist the investigator in determining trends in the reported cases involving equipment and facilities. Such trends should alert school personnel to specific aspects of equipment and facilities which require attention.

In addition to the seven elements described previously, other pertinent information was extracted from the cases. A coding sheet was developed to assist in obtaining this information (Appendix A). For each case, the proximate cause of the injury, condition of the equipment or facility, and program in which the injury occured were identified. To assist the investigator in analyzing each case, the issue, facts, principal defendant, and decision of the court were determined. When appropriate, special circumstances of a specific case or personal impression relating to the decision were noted to enrich the discussion.

Design of the Study

After the introduction (Chapter I), the study is divided into five major parts. Chapter II contains background information regarding legal concepts which are essential for understanding the decisions rendered in court cases dealing with equipment and facilities. In addition, this chapter includes information which should assist the investigator in deriving guidelines from these decisions. Material in this chapter is organized in two major

sections: (a) negligence and (b) governmental immunity. Each section concludes with a summary.

The third chapter contains a review and narrative discussion of cases which have arisen from unsafe conditions of equipment. This chapter is organized in six major sections. The first three sections include (a) court cases related to athletic programs, (b) court cases related to physical education programs, and (c) court cases related to intramural programs. Age, role, sex, sport or activity, legal principle, and legal precedent are discussed in each section. The fourth section includes a summary of the analyses of cases in the three school-sponsored sport programs. The fifth section includes trends which were identified from the cases presented. In the final section, guidelines derived from reported cases are presented for school personnel. This chapter addresses Questions 1, 2, and 3 in the Problem Statement.

Chapter IV contains a review and narrative discussion of cases which have arisen from unsafe conditions of facilities. This chapter is organized in six major sections: (a) court cases related to athletic programs, (b) court cases related to physical education programs, and (c) court cases related to intramural programs. Age, role, sex, sport or activity, legal principle and legal precedent are discussed in each section. The fourth section includes a summary of the analyses of cases in the three school-sponsored sport programs. The fifth section includes

trends which were identified from the cases presented. The sixth section presents guidelines derived from the reported cases. This chapter addresses Questions 4, 5, and 6.

Chapter V, the final chapter, contains a review and summary of information obtained from an analysis of the reported court cases. The questions asked in the introduction and addressed in Chapters III and IV are summarized.

CHAPTER II

RELATIONSHIP BETWEEN NEGLIGENCE AND GOVERNMENTAL IMMUNITY

The area of law which addresses liability is known as tort law. Liability is a legal responsibility, "the state of one who is bound by law or justice to do something" (Black, 1979, p. 823). A tort is "a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of damages" (Keeton et al., 1984, p. 2). A tort is different from a crime. A crime involves an offense against the public in which the state brings proceedings in the form of criminal prosecution. Remedies for a tort, on the other hand, involve civil action initiated and maintained by an injured individual for compensation for damages suffered.

Tort law defines a particular level of conduct that the law recognizes individuals owe one another (Thurston, 1983). Negligence is the most common tort and has developed into the dominant cause of action for accidental injury in the United States (Hazard, 1978; Keeton et al., 1984; Thurston, 1983). Teachers and coaches need to understand negligence since more school-related accidents and injuries occur in the gymnasium and adjoining playing fields than in any other area of the school environment.

Historically, governmental agencies including school

districts have not been liable for negligence because of the common law concept of sovereign immunity or governmental immunity. Such immunity, however, has been modified substantially as a result of court decisions rendered over the years.

This chapter is organized in two major sections. The first section focuses on the elements which constitute negligence and the defenses which may be used in cases of alleged negligence. The rationale for the doctrine of governmental immunity, legislative and judicial provisions which have altered the doctrine, as well as the current status of the doctrine in the United States are discussed in the second section. Each of the two sections concludes with a brief summary.

Negligence

Some injuries are the result of unavoidable accidents which cannot be foreseen or prevented by exercising reasonable care. Consequently, there is no liability for injuries resulting from such accidents. Other injuries may be caused by a person's negligence in allowing or not preventing the occurrence of an injury. Negligence is "conduct which falls below a standard established by law for the protection of others against unreasonable risk of harm" (Keeton et al., 1984, p. 169), and may involve either acts of commission or omission.

Elements of Negligence

The courts do not hold teachers, coaches, and other educators responsible for all injuries which occur. However, these individuals may be held liable for those injuries which occur as the result of their own negligence, either directly or by imputation. For negligence to be proven, the injured party must show that four elements exist. In the absence of any one of the following elements, there is no cause of action for negligence: (a) a duty of due care, (b) a breach of that duty, (c) causation, and (d) actual damages.

Duty of due care. The concept of due care is a legally imposed standard of conduct to which a person must conform to protect others from unreasonable risks. The courts have addressed this standard of conduct by creating a fictitious person--the "reasonable man of ordinary prudence". Sometimes this person is described as a reasonable person, a person of ordinary prudence, or a person of reasonable prudence. Regardless of the terminology used, an individual has a legal duty to act as an ordinary, prudent, reasonable person would in the same circumstances.

The duty of care to protect another person from injury may be imposed by statutes, administrative rules or regulations, or by judicial decisions known collectively as the common law (57 Am.Jur.2d Negligence §36, 1971).

Historically, schools have been held to a duty of reasonable care to provide a safe place for their students. Thus, boards of education have the duty to maintain the premises, playground equipment, and facilities in a reasonably safe condition (Howell v. Union Free School Dist., 1937) and provide reasonable supervision for the safety of students (Reynolds v. State, 1955).

Teachers also have a duty to protect the health, safety, and welfare of students engaged in school-related activities. A classic statement of the duty teachers owe their students is found in Hoose v. Drumm (1939):

> Teachers have watched over the play of their pupils time out of mind. At recess periods, not less than in the class room, a teacher owes it to his charges to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances (p. 234).

Due care also requires conduct of teachers and coaches which is reasonable in light of their superior knowledge, training, experience, and any special skills they may possess. As professionals, physical educators and coaches are held to a higher degree of care than that expected of ordinarily prudent but untrained persons. The behavior of physical educators and coaches will be assessed in comparison with what would be expected of a reasonable professional in their field (65 C.J.S. Negligence §11(4), 1966; Collingsworth, 1983).

The standard of reasonable care is based on what is usual and customary in the profession (Keeton et al.,

1984). For a particular sport or activity, the standard is affected by the local or national standard for that sport or activity. The standard changes over time and is affected by technology and standards set by professionals in the field.

A physical educator or coach is expected to act as a reasonable and prudent physical educator or coach would in planning and conducting activities, supervising students, instructing on the proper use of equipment and facilities, and warning students of dangers or risks in school-sponsored sport programs. Also, the degree of care expected of a teacher or coach will be measured in light of the danger involved and the age, maturity, and experience of the students. Greater care is expected in the supervision of younger children and particularly in those areas of the school which are considered to be more dangerous--shop, chemistry, physical education classes, and athletic participation (57 Am.Jur.2d Negligence §§70, 89, 1971). Consequently, the younger and less experienced the child, the greater the precautions required by the teacher or coach to avoid unreasonable risk to the child.

While a teacher or coach has a legal duty to conform to a certain standard of conduct to protect students in school-sponsored sport programs, no such relationship exists in other situations. For example, a physical

educator who teaches swimming and coaches the swimming team at a local high school and is enjoying a week end outing at a local public beach has no duty to attempt the rescue of a drowning child. While some may impute a moral obligation on the part of the educator, there is no legal obligation.

Breach of duty. A breach of duty involves failure on the person's part to conform to the standard required. A breach of duty may involve either an act of commission or omission. When a person performs an act that fails to conform to the standard of care, an act of commission has occurred. Similarly, when a person fails to take appropriate action to reach or maintain the expected standard of care, an act of omission has occurred.

Scott v. State (1956) is a case demonstrating a breach of duty. A right-fielder in an intercollegiate baseball game was seriously injured when he collided with a metal flag pole located within the playing field. Since a reasonably prudent person could have foreseen that a fielder running to catch a long fly ball would direct his attention primarily on the ball, the court held that the State of New York was negligent in its maintenance of the baseball field. The college breached its duty by failing to conform to the expected standard of care.

Teachers and coaches may breach their duty, for example, by allowing defective equipment to be used,

failing to repair equipment, altering equipment once it has been purchased, failing to follow the manufacturer's instructions for assembling equipment, and failing to warn adequately of potential risks related to the use of equipment. These examples illustrate not only several ways in which educators may breach their duty, but also include actions which may involve teachers and coaches in sport product litigation.

Causation. There must be a reasonably close causal connection between the defendant's conduct and the resulting injury. The term "proximate cause" or "legal cause" is used to connote such causal connection. For causation to exist, the injured person (plaintiff) must show that the injury was a direct and foreseeable result of the conduct of the defendant with no intervening act occurring. If the defendant could not reasonably have foreseen potentially dangerous consequences of actions (or inactions), there is no negligence and, therefore, no liability. In order to establish liability, one must first establish negligence.

A rule derived by the courts to ascertain causation is known as the "but for" rule. The defendant's conduct is not a cause of the injury if the injury would have occurred without it (Keeton et al., 1984). In other words, "but for" the defendant's conduct, the injury would not have occurred.

A person may be negligent and yet not liable if an intervening act occurs. An intervening act is an independent, unforeseeable act by a third party which constitutes the proximate cause of the injury. Generally, such an intervening act breaks the chain of causation between the prior wrong and the injury, and relieves the original wrongdoer from liability (57 Am.Jur.2d Negligence §209, 1971; 65 C.J.S. Negligence §111(1), 1966).

Although not a sport or physical education case, Frace v. Long Beach City High School Dist. (1943) provides a good example of an intervening cause in a school setting. Two high school students stole chemicals from the unlocked chemical supply room at the high school and took them home. After observing the two boys experiment with the chemicals, the plaintiff asked one of them if he could use the chemicals for an experiment. When the plaintiff mixed the chemicals in a container and shook them, the solution exploded causing his injuries. The act of the students stealing the chemicals and giving them to the plaintiff broke the chain of causation between the injury and any negligence of the school in supervision of the storeroom.

Actual damages. There must be an actual loss or real damages in order for someone to be held liable for negligence. If the concurrent negligence of two or more individuals results in an injury to a third person, the defendants may be found to be jointly and severally liable

under which circumstances the plaintiff may recover from either or all defendant(s) (65 C.J.S. Negligence §102, 1966).

In regard to negligence, the term "damages" indicates the sum of money which the law awards or imposes for an injury to a person injured by the tort of another (22 Am.Jur.2d Damages §1, 1965; Restatement (Second) of Torts §902, 1979). In personal injury cases in which the defendant was negligent, recovery for damages usually is for lost time, decrease in future earning capacity, medical services, and pain and suffering (22 Am.Jur.2d Damages §86, 1965).

The amount to be awarded is usually for the jury to determine in view of the facts and circumstances of each case. Generally, the jury considers such things as the age, health, habits, and pursuits of the plaintiff (22 Am.Jur.2d Damages §86, 1965). The reviewing courts then determine whether the damages awarded are excessive or inadequate (22 Am.Jur.2d Damages §109, 1965).

It is incumbent upon the plaintiff who alleges the negligent conduct of another to prove each of the elements of negligence. If the plaintiff fails to demonstrate, or the defendant sets forth facts which tend to show that the plaintiff cannot or has not met the burden of showing each element by the preponderance of the evidence, then negligence will not be shown.

Defenses for Negligence

Educators are not the insurers of students' safety. Some injuries will occur in school-sponsored sport programs notwithstanding the use of necessary care, regulations, and safety equipment (Reynolds v. State, 1955). In Reynolds, a 16-year-old high school student was injured in a physical education class while learning a wrestling maneuver. The student had received adequate instruction in wrestling during the seventh, eighth, ninth, and tenth grades. He had been adequately supervised by an experienced and competent instructor when the injury occurred, and the teacher had tried to match wrestlers with partners of comparable ability. The court held that there was no negligence since the state had fulfilled its duty to exercise reasonable care by employing an experienced, competent teacher who had used the judgment of a reasonable man and committed no act of negligence.

Even if it has been established that the defendant's conduct has in fact been a cause of the plaintiff's injury, the question remains as to whether the defendant legally can be held responsible for the injury. The defendant may attempt to demonstrate that the four elements discussed previously were not present and, consequently, there was no negligence. Keeton et al. (1984) cited four other defenses for negligence: (a) contributory negligence, (b) last clear chance, (c) comparative

negligence, and (d) assumption of risk.

Contributory negligence. Contributory negligence is a viable defense when both the defendant and the plaintiff fail to meet fully the required standard of care expected of each. As of 1983, only Alabama, Arizona, Delaware, Kentucky, Maryland, Missouri, North Carolina, South Carolina, Tennessee, and Virginia (Keeton et al., 1984) still retained contributory negligence as a complete defense. In these 10 states, no damages are awarded because the plaintiff's actions contributed in some way, however minor, to the injury. As is expected of the defendant, the plaintiff also is required to conform to the objective standard of conduct expected of the reasonable person of ordinary prudence in like circumstances.

Minors generally are held to a standard of conduct appropriate to children. The standard required for children is that degree of care which children of similar age, intelligence, and experience would exercise under the same circumstances. In every other respect, the elements needed to prove contributory negligence are the same as for negligence.

According to Keeton et al. (1984), courts in approximately 12 states have held that children below the age of 7 arbitrarily are considered incapable of contributory negligence since they do not understand the

degree of care which must be exercised to save themselves from injury. Likewise, according to these authors, a number of courts have held that children between the ages of 7 and 14 are presumed to be incapable, but may be shown to be capable. Above age 14 children are presumed to be capable, but may be shown to be incapable. Originally, these seven-year multiples were derived from the Bible, but such age classifications have been acknowledged as too fixed and arbitrary (Keeton et al., 1984). In fact, many courts have rejected these age limits, and some have ruled that even children under 7 can be capable of negligent conduct.

There appears to be no consistency among courts in adhering to standard age ranges. It does appear, however, that the younger the child, the more difficult it is to prove contributory negligence.

In Juntila v. Everett School Dist. No 24 (1935), the court held that 18-year-old William Juntila was contributorily negligent in the fall he sustained from the bleachers at a high school football game. He and several other spectators sat on the top railing of the bleachers causing the railing to give way under their weight. Since Juntila was "18 years of age, of mature judgment, and fully able to appreciate the risk he took in sitting upon the railing" (p. 616), he contributed to his injury when he sat on an area of the bleachers not intended as a seat.

Last clear chance. Even though one accepted modification of the strict rule of contributory negligence is the doctrine of last clear chance, Keeton et al. (1984) maintained that this doctrine has been the subject of much controversy. The doctrine had its origin in 1842 in the English case of Davies v. Mann and has been nicknamed the "jackass doctrine" for obvious reasons. The case involved the defendant driving into a donkey which the plaintiff had hobbled in the middle of the road. The court ruled that even if the plaintiff had been negligent in this situation, he still could recover damages since the defendant had the last clear chance of avoiding the accident.

The last clear chance doctrine was alleged in Chapman v. State (1972). A college freshman was injured while performing a "double-forward somersault" on the trampoline. The plaintiff had stayed after his physical education class to work on the maneuver. At the time of the injury, the instructor was working with another student at the horizontal bars. Although four spotters were required when the trampoline was used during class, there was only one when Chapman was injured. Chapman claimed that his teacher had the last clear chance to prevent the injury. On appeal, the court held that Chapman should not have used the trampoline with only one spotter and that he, not the instructor, had the

opportunity to avoid the injury.

The last clear chance doctrine apparently resulted from concern for the harshness of the contributory negligence defense. However, the fundamental fairness of the doctrine has been questioned:

> It is not easy to defend a rule which absolves the plaintiff entirely of his own negligence, and places the whole loss upon the defendant, whose fault may be the lesser of the two. The doctrine thus appears to be a dying one, particularly in many of the jurisdictions which have adopted a comparative fault [negligence] (Keeton et al., 1984, p. 468).

Comparative negligence. Comparative negligence, like contributory negligence, is a viable defense when both the defendant and the plaintiff can be said to be negligent. Unlike contributory negligence where recovery is denied if the plaintiff were negligent to any degree, the plaintiff under the comparative negligence defense may recover a portion of the damages awarded (65A C.J.S. Negligence §169, 1966). The recovery depends upon the relative fault of the two parties.

As of 1983, 40 states had enacted comparative negligence legislation (Keeton et al., 1984). In those 10 states (Alabama, Arizona, Delaware, Kentucky, Maryland, Missouri, North Carolina, South Carolina, Tennessee, and Virginia) retaining contributory negligence as a complete defense, there is no comparative negligence because the plaintiff's own negligence is a complete bar to recovery. Conversely, in the 40 comparative negligence states, there

is a qualified or partial bar to plaintiff's recovery.

Assumption of risk. The assumption of risk defense is narrowly defined. For assumption of risk to be used as a defense, the plaintiff must know, understand, and appreciate the nature of the risk and voluntarily choose to incur the risk. If the plaintiff is unable to comprehend the nature of the risk in a given situation because of inadequate information, inexperience, or youthfulness, the courts do not accept assumption of risk as a defense (Keeton et al., 1984). In Berman v. Philadelphia Board of Education (1983), for example, the court held that an 11-year-old participant in an intramural floor hockey game did not assume any risk by participating in the activity even though the school board failed to provide protective equipment. "By reason of his tender age and lack of intelligence, experience, and information, [the plaintiff] did not appreciate the dangers of floor hockey..." (p. 550).

Only the obvious, ordinary risks inherent in the sport or activity are assumed by a participant (65A C.J.S. Negligence §174(6), 1966). A student who was properly supervised and instructed about the dangers of attempting a vault over a high horse assumed the risk when he broke his arm during the maneuver (Salyers v. Ranger, 1951). Similarly, in McGee v. Board of Education of City of New York (1962), an assistant baseball coach standing behind

the pitcher's mound assumed the risk of being hit by a ball thrown from first base to third. The coach had volunteered to assist with the team and assumed the risks created by the condition of the playing area even though the baseball diamond was not regulation size.

In the assumption of risk defense, the plaintiff is barred from recovery only if his choice is voluntary. Based on such voluntary choice, it is obvious why this defense is used far more often in cases involving athletics in comparison with physical education cases in that physical education is viewed generally as a required subject in the school curriculum. An intercollegiate wrestler, however, did not assume the risk of the negligent supervision of a referee (Carabba v. Anacortes School District No. 103, 1968). The wrestler's opponent applied an illegal hold while the referee's attention was momentarily diverted. Although the injured athlete voluntarily participated in the interscholastic wrestling match and knew the possibility for injury existed, he did not assume the risk of the official's negligence or incompetence.

As with participants, spectators assume the normal risks incidental to the sport or activity. Thus, a grandmother watching her grandson play football from the sidelines of the field (Perry v. Seattle School Dist. No. 1, 1965) and a father watching his son playing during

a football scrimmage (Colclough v. Orleans Parish School Board, 1964) both assumed the risks involved in being a spectator.

In a number of states, the doctrines of contributory negligence, last clear chance, and assumption of risk have been abrogated and the comparative negligence doctrine adopted either judicially or by statute (65A C.J.S. Negligence §169, 1966).

Summary

Negligence is conduct which fails to meet a standard of law designed to protect others from unreasonable risks or harm. Negligence necessarily involves a person's failure to meet the required duty, thereby causing injury to another. However, if one cannot reasonably foresee that one's actions would result in injury or if one's actions were reasonable in relation to what could be expected, there is no negligence and no liability.

In addition to the defense of no negligence, four basic defenses--contributory negligence, last clear chance, comparative negligence, and assumption of risk--exist for negligence cases. A number of states have adopted some form of comparative negligence to replace the doctrines of contributory negligence, last clear chance, and assumption of risk. Comparative negligence, therefore, is the one remaining defense for negligence in many states. It is, however, only a partial defense because

both sides will share the responsibility for the damages which were incurred.

Governmental Immunity

American public schools and institutions of higher learning historically have been protected from suits seeking damages for school-related injuries to students under the common law concept of sovereign immunity. As extensions of the state and while performing governmental functions, the public schools and institutions of higher learning and individuals associated with their conduct (school boards, boards of trustees, and boards of regents) have enjoyed the same immunity as the sovereign state (Annot., 33 A.L.R.3d 703, 1970). Similarly, private educational institutions have enjoyed immunity under the doctrine of charitable immunity (68 Am.Jur.2d Schools §319, 1973). When governmental immunity is a bar to recovery, it acts as a shield for a governmental entity (school board or school district). Teachers and coaches, however, traditionally have been personally liable for their own negligence (Annot., 32 A.L.R. 1163, 1953).

Rationale for the Doctrine

Sovereign immunity, inherited from our English ancestors, literally connotes that the "king can do no wrong". The concept was expressed as "governmental immunity" when it was altered to fit the American governmental pattern (O'Reilly & Green, 1983). Under the

doctrine of sovereign or governmental immunity, the state cannot be sued unless it voluntarily agrees to it. This doctrine ordinarily extends to every arm or agency of the state including school boards (Garber, 1966).

There are several reasons which support tort nonliability of public schools:

> The state is immune from tort liability because of its sovereign character. School districts, school boards, or similar agencies or authorities, or other institutions of higher learning or their governing boards likewise partake of this sovereign immunity.
>
> Public schools have no funds to pay damages for tort claims and have no power to raise money for this purpose. All funds under their control are appropriated by law strictly for school purposes and cannot be diverted.
>
> Public education is for the benefit of all and the welfare of the few must be sacrificed in the public interest. Diverting school funds to pay private damages may impair public education.
>
> The doctrine of respondeat superior does not apply in rendering the school district liable for acts of it officers, agents, or employees who commit a tort since the school district could act only through such persons. (Annot., 33 A.L.R.3d 703, 1970)

No school district can waive its immunity and accept liability; only the state has the power to make itself or its subdivisions liable.

The 1798 English case Russell v. Men of Devon (cited in Martin, 1970) served as precedent for extending the state's immunity to towns, counties, cities, and eventually school districts. This case involved injury to the plaintiff's wagon as a consequence of a bridge not having

been repaired. Relying on the decision in Russell (1798), the Supreme Court of Massachusetts ruled in 1860 that the town of Randolph was not liable for injuries to a student who fell into a dangerous hole on the school grounds (Bigelow v. Inhabitants of Randolph, 1860).

Other states followed the lead of Massachusetts. By 1930, 28 states had adopted the rule of governmental immunity for school district tort liability (Martin, 1970). Generally, school districts were absolved from liability in those states which had adopted governmental immunity.

Exceptions and Modifications to the Immunity Rule

From 1930 to 1959, the courts were less likely to absolve the school districts from liability. Often such court decisions were based on legislative action. In some cases, however, courts took the position that they had the right to modify the doctrine of governmental immunity in the absence of legislative action. The rationale for judicial modification of the doctrine was that the courts had created the doctrine originally and, therefore, they had the right to change it.

Whether changes have been made by legislative action or by judicial action, the application of the doctrine of governmental immunity has been narrowed considerably. The following discussion focuses on the provisions affecting governmental immunity which have resulted from legislative

action and judicial action.

Legislative provisions. Legislative enactments include two primary exceptions to the doctrine of governmental immunity. These exceptions are safe-place statutes and save-harmless statutes.

A number of state legislatures have enacted safe-place statutes. These statutes require that public buildings and grounds be kept safe. Recovery is permitted from the school district in those instances in which a negligence suit alleging unsafe conditions of school buildings or grounds results in a favorable ruling for the injured party.

Save-harmless statutes have been enacted to require or permit school boards to financially reimburse school employees. Such reimbursement is made for losses sustained only in cases of negligence when employees were acting within the bounds of their employment. These statutes still do not permit suits to be brought against the school board directly.

Judicial provisions. The courts, as well as the legislatures, have made exceptions to the immunity rule. When such exceptions have been made by the courts, generally recovery has been allowed in four areas: (a) for a tort arising out of the school's engaging in a proprietary function as distinguished from a governmental function, (b) for personal injury or death caused by the

school's creation or maintenance of a nuisance as distinguished from ordinary negligence, (c) for injury or death caused by wilful and wanton misconduct in causing personal injury or death, and (d) for a tort arising out of the school's engaging in a ministerial function as distinguished from a discretionary function (Annot., 33 A.L.R.3d 703, 1970).

A number of courts have ruled that schools performing governmental functions are protected by immunity from tort liability but do not have such protection when engaging in proprietary functions. Governmental functions include those directly related to the school's purpose for existing as well as those imposed on the school for the general welfare of the public. Conversely, proprietary functions have no such direct relationship to the school's purpose nor are they imposed on the school for the public welfare (Arnold, 1983).

Physical education activities generally have been held to be governmental functions (Bartell v. School Dist., 1943; Howard v. Tacoma School Dist., 1915; Read v. School District No. 211 of Lewis County, 1941). In Howard (1915), the court held that the physical development of children is a function of the government for the same reason that the mental development is a governmental function since the state is as interested in the physical standard of its citizens as in their mental standard.

In contrast with physical education activities, athletic events have not consistently been held to be governmental functions. In determining whether an athletic event is a governmental or proprietary function, the question often asked is whether the event is free to participants and spectators, whether a nominal or incidental fee is charged, or whether profit is made (Van Der Smissen, 1968). In Hoffman v. Scranton School District (1949), a case in which a spectator was injured due to the condition of the facility, the football game to which admission had been charged was held to constitute a proprietary function. Similarly, in Sawaya v. Tucson High School District No. 1 (1955), a school district by leasing its stadium and charging admission was exercising a proprietary function and was liable for injuries sustained by a spectator at a football game as a result of its negligence in maintenance of the stadium. However, in several other cases in which paying spectators were allegedly injured due to the condition of the facility in basketball, football, and baseball events, the school district was immune from tort liability since it was performing a governmental function (Reed v. Rhea County, 1949; Rhoades v. School District No. 9, Roosevelt County, 1943; Richards v. Birmingham School District of City of Birmingham, 1957; Smith v. Hefner, 1952).

A nuisance is a "dangerous, unsafe, or offensive

condition resulting from some act or omission" (Mokovich v. Independent School Dist. of Virginia, No. 22, 1929, p. 293) which subjects persons to injury. This condition usually exists over a longer period of time than a single incidence of negligent conduct.

In Bush v. Norwalk (1937), a balance beam purchased from a leading manufacturer of such equipment, used throughout the schools in the city, and considered standard equipment, constituted a nuisance in an injury sustained by an 8-year-old student when he fell from the beam. The slippery beam on an oily floor constituted a "continuing condition the natural tendency of which was to create danger and to inflict injury upon all children using it and that, as a matter of fact, a nuisance was created by the use of the beam upon the floor" (p. 609).

Wilful and wanton misconduct is an act which exhibits reckless disregard for the safety of others. Such conduct involves failure to use ordinary care to prevent an injury when one is knowledgeable of impending danger or failure to discover the danger through one's carelessness. Wilful and wanton misconduct is distinguished from negligence. The term "negligence" denotes the opposite of the term "wilful misconduct" in that absence of intent is a distinguishing characteristic of negligence whereas wilfulness involves actual or implied intent (65 C.J.S. Negligence §9(1), 1966). Likewise, mere inadvertence may constitute negligence

whereas "wantonness" is essentially "a state of mind which includes the elements of consciousness of one's conduct, intent to do the act, realization of the probability of injury, and reckless disregard of consequences" (65 C.J.S. Negligence §9(1), 1966, p. 547).

In Landers v. School District No. 203 (1978), a high school physical education teacher was found guilty of wilful and wanton misconduct. The misconduct involved directing a student to perform a backward somersault even though the student was obese, was afraid to try the stunt, and had told the teacher that she did not know how to perform the stunt and had been hurt trying it as a young child.

Whether the act or omission which caused an injury was related to ministerial or discretionary duties of a school system has been the primary focus of some court cases. Discretionary duties include those at the policy-making level, e.g., the act involves judgment, personal deliberation, discretion, and choices among possible courses of action or inaction (Annot., 33A.L.R.3d 703, 1970; Van Der Smissen, 1968). Discretionary acts are protected by governmental immunity. Ministerial acts, on the other hand, are those which involve the implementation of policy and are performed according to explicit directions prescribed by some higher authority or statute, e.g., acts which are absolute, certain, and involve a set

task in which the employee is left no choice of his own (Van Der Smissen, 1986). Ministerial acts are not shielded by governmental immunity. The rationale for this distinction is the fear that if one can be sued for wrong judgments, one's decision-making will be hampered.

Fustin v. Board of Education (1968) provides a good example of a school district being held not liable for the discretionary judgment of a coach. In Fustin, a basketball player was struck in the face by another player, and the injured plaintiff alleged negligence of the coach in permitting an aggressive player to participate. The reasoning of the court was that the coach, as a public decision-maker, should be shielded from liability since his choices or decisions should be made without fear of liability or the second guessing of the courts and juries.

A physical education teacher conducting a junior high school physical education class was performing a ministerial duty in Larson v. Independent School District (1980). While attempting a headspring over a rolled mat, a student broke his neck. The injured plaintiff alleged that his teacher had not used progressive activities leading up to the headspring and that the teacher had not been spotting properly at the time of the injury. In ruling for the plaintiff, the Supreme Court of Minnesota commented:

> The manner in which [the teacher] chose to spot the headspring did not involve a decision on the policy-making level. Once he decided to require [the plaintiff] and others in his class to perform the headspring, it was [the teacher's] responsibility to see that the headspring was safely taught and properly spotted. [The teacher's] decision to spot the headspring in the manner he chose was a decision made on the operational level of conduct and clearly involved a ministerial duty. Similarly, the improper teaching of the headspring essentially involved a ministerial function (p. 120).

Current Status of Governmental Immunity

The concept of governmental immunity originally established in Russell v. Men of Devon in 1798 was reversed a century later in England, but the concept continued to prevail in America until the middle of the 20th century. Prior to 1959, only three states--Washington (1907), New York (1907), and California (1928)--had abolished the immunity rule (Martin, 1970). From 1959 to present, state after state followed the lead established in Molitor v. Kaneland Community School (1959) and moved toward setting aside governmental immunity. In Molitor (1959), the Supreme Court of Illinois noted that the continued prevalence of the immunity rule in the United States resulted in no protection for American citizens when they were injured as a result of negligent acts of governmental entities. The court ruled that arguments supporting governmental immunity were out of phase with the times and reversed the decision of the lower court by ruling for Thomas Molitor, who had been injured in a school bus accident.

To date, 14 states have abrogated the doctrine of governmental immunity by judicial action, generally by the state supreme court (Appendix B). Thirty states have included constitutional provisions or have enacted statutes to change the common law of governmental immunity (Appendix C). In those states which have abrogated the doctrine of governmental immunity or modified it in regard to public schools, an injury proximately caused by the negligence of a school employee may result in liability against the school district. In those states retaining immunity, there can be no liability on the part of the school district unless the immunity has been waived to the extent of insurance coverage or if the plaintiff's case fits under one of the exceptions to the general rule of immunity discussed previously. In conforming to the abrogation of governmental immunity, many states have dealt similarly with charitable immunity.

Even though some states have provided teachers and coaches with protection by passing save-harmless laws, the prevailing condition is that these educators are qualified professionals who are responsible for the consequences of their acts. As such, they must answer for student injury resulting in situations in which they have been alleged as having been negligent. Moreover, even in those states which have set aside governmental immunity, the court may exonerate the school district and find only the teacher or

coach negligent.

An excellent example of the responsibility of teachers and principals is Larson v. Independent School District (1979). The State of Minnesota had set aside governmental immunity by enacting a statute allowing the school district to purchase liability insurance. In attempting a headspring over a rolled mat, a required activity in the junior high school physical education class, Steven Larson broke his neck. The injury resulted in quadraplegic paralysis. The class was being taught by a first-year teacher who had just taken over the class nine periods earlier. The jury determined that the new teacher and the principal were personally negligent and awarded over $1 million in damages to the plaintiff. The determination was based on the lack of close supervision by the principal of a new, inexperienced teacher who demonstrated poor performance in not using the progression outlined in the physical education syllabus and by not spotting properly. The school district was exonerated since negligence was attributed strictly to the poor performance of employees.

Summary

School districts traditionally have been exempt from liability for school-related injuries under the doctrine of governmental immunity adapted by the courts in this country in 1860. Because the doctrine left the private citizen no recourse for injuries sustained on school

property or in school-related activities, the trend has been for the doctrine to be modified or abrogated by judicial and legislative action.

The school district and the school board may be found liable in those states which have abrogated or modified the doctrine of governmental immunity. These school districts may be liable for school-related injuries resulting from (a) unsafe conditions, (b) wilful and wanton misconduct, (c) the presence of a nuisance, (d) proprietary functions, and (e) ministerial acts. In comparison, teachers and coaches may be found liable in all states. However, save-harmless laws have permitted or required school boards to reimburse these employees for losses suffered in liability suits when these educators were acting within the bounds of their employment.

CHAPTER III

COURT CASES INVOLVING INJURIES IN SCHOOL-SPONSORED SPORT PROGRAMS DUE TO ALLEGED UNSAFE CONDITION OF EQUIPMENT

The number of reported equipment cases and the decade, frequency, and state within which they were litigated are presented initially. After this background information is presented and discussed, the chapter is organized in six major sections. The first three sections include (a) court cases related to athletic programs, (b) court cases related to physical education programs, and (c) court cases related to intramural programs. Age, role, sex, and sport or activity are discussed in each section. Legal principles applied and legal precedents established are included within the legal analysis of cases in each program. Cases are categorized as those in which recovery to the injured party was either denied or allowed. The fourth section includes a summary of the analyses of cases in the three school-sponsored sport programs. Observed trends and guidelines developed after the cases were analyzed in the three school-sponsored sport programs are included in the last two sections of the chapter.

Thirteen cases were reported in which the condition of equipment was alleged as the proximate cause of injury to participants in school-sponsored sport programs. Two

cases (Bush v. City of Norwalk, 1983; Hanna v. State, 1965) are unique in that the condition of both equipment and facilities was alleged as the proximate cause of injury. Consequently, these two cases are considered in this chapter as well as in the chapter in which facilities are discussed (Chapter IV).

Table 1 depicts the frequency, decade, and state within which cases alleging the condition of equipment as the proximate cause of injury occurred.

Table 1

Occurrence and Location of Cases in Which the Condition of Equipment Was Alleged as the Proximate Cause of Injury

Decade	Frequency	Geographical Location
1920s	1	CA
1930s	2	CA, CT
1940s	1	NY
1950s	-	-
1960s	2	OR, NY
1970s	3	F*, MA, IL
1980s	4	IL, PA, IL, IL

*Denotes United States Court of Appeals (10th Cir.)

It is interesting to note that there were only one or two cases involving equipment in the 1920s, 1930s, 1940s, and

1960s. However, there were three cases in the 1970s, and four in the 1980s. Even though only four years are included in the 1980s' decade, more cases were reported for these years than for any previous full decade. More than half of the cases (61%) involved suits in California (2), Illinois (4), and New York (2). Of particular import is the case Wells v. Colorado College (1973) which reached the United States Court of Appeals, Tenth Circuit. The Wells case is the single case, of all those reported for both equipment and facilities in school-sponsored sport programs, to reach the federal courts.

Athletics

There were five cases in which the condition of equipment was alleged as the proximate cause of injury to participants in school-sponsored athletic programs. These cases are presented in two contexts: (a) through a description of the elements and (b) through a legal analysis of the cases.

Description of Elements

Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 2.

The only case in which the injured party was younger (junior high school student) was Mitchell v. Hartman (1931). The other four cases involved injury to older students. The injured students in Vendrell v. School

District No. 26C, Malheur County (1962), Thomas v. Chicago Board of Education (1979), and Montag v. Board of Education, School District No. 40, Rock Island County (1983) were high school students, and in Everett v. Bucky Warren, Inc. (1978) the injured player was a 19-year-old attending a preparatory school.

Table 2

Elements in Cases of Alleged Unsafe Equipment in Athletics

Case and Year	Elements			
	Age	Role	Sex	Sport/ Activity
Mitchell v. Hartman (1931)	Y	P	M	Football
Vendrell v. Sch. Dist. (1962)	O	P	M	Football
Everett v. Bucky Warren (1978)	O	P	M	Ice hockey
Thomas v. Chicago Brd. (1979)	O	P	M	Football
Montag v. Brd. of Ed. (1983)	O	P	M	Gymnastics

All five cases involved injuries to male participants. With the exception of gymnastics, all injured participants were engaged in practice or game play in a team sport.

Legal Analysis

In analyzing cases in which participants were injured in school-sponsored athletic programs and negligence was alleged due to unsafe conditions of equipment, cases are categorized as those in which recovery to the injured

party was either denied or allowed. The circumstances giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other equipment cases which have been reported are relied on as precedent for the instant case, such will be noted.

Recovery denied. Two athletic cases were reported in which the decisions favoring the defendants were based on governmental immunity. In Mitchell v. Hartman (1931), a junior high school athlete was killed when the supporting framework of a tackling dummy fell on him while he was using the piece of equipment. The members of the school board were held not individually liable for injuries resulting from negligent installation or maintenance of the tackling dummy on the school campus. Such immunity resulted from a California statute expressly exempting individual members of city boards of education from personal liability for accidents to children on playgrounds.

The court in Mitchell relied on a previous decision in 1929 in Dawson v. Tulare Union High School District, a physical education case. In Dawson the court interpreted Section 1623 of the California Political Code as expressly exempting members of city boards of education from "...personal liability for accidents to children...in connection with school work" (p. 426).

A high school varsity football player was seriously injured in a regularly scheduled game in Thomas v. Chicago Board of Education (1979), the second case in which governmental immunity was upheld. Players on the plaintiff's team were provided with equipment including helmets and face masks. Thomas alleged that the defendant coaches were negligent in failing to inspect the football equipment for defects. The football coaches were found to be immune under the School Code.

> Absent wilful and wanton conduct in the course of their supervisory authority, which encompasses inspecting and supplying the students with equipment, teachers and coaches are immune under...the School Code (Thomas v. Chicago Board of Education, 1979, p. 541).

Interestingly, under the Illinois School Code, teachers were found to stand in the place of parents and guardians. In the absence of wilful and wanton conduct, children in Illinois could not maintain actions for negligence against their parents (or teachers).

There were two other athletic cases in which the courts ruled for the defendants, finding no negligence on their part. In Vendrell v. School District No. 26C, Malheur County (1962), the injured high school football player had participated previously in the sport in junior high school. At the time of his neck injury, he was tackled by two players on the other team as he was carrying the ball. Although protective equipment (helmets, shoulder pads, rib pads, and hip pads together with uniforms) had

been distributed to the players in the presence of the coaches, the coaches did not actually help the players fit their equipment. The helmet selected by the plaintiff in August had been discarded several weeks later when he split it in a game when he ran head on into an opposing player. He returned to the equipment room and selected another helmet. Uncontradicted evidence indicated that the defendant had an agreement with an outside concern whereby all of the equipment was inspected regularly, and defective parts were discarded and replaced with new parts.

Vendrell alleged that the defendant had been negligent in six areas in that Vendrell (a) was an inexperienced football player, (b) weighed 140 pounds, (c) was not physically coordinated, (d) was injured when tackled hard by two members of the opposing team, (e) had not received proper or sufficient instructions, and (f) had not been furnished with the necessary or proper protective equipment. In regard to the six areas of alleged negligence, respectively, the Oregon Supreme Court ruled that they (a) could not warrant a finding that Vendrell was an inexperienced player at the time of the injury, (b) did not believe his weight could furnish the basis for a finding of negligence on the defendant's part, (c) did not believe the testimony indicated any negligence on the defendant's part, (d) did not view the fact that he was tackled hard by two players on the other team established

negligence on the defendant's part, (e) had no indication that Vendrell's equipment, if it was not proper, had any bearing on his injury, and (f) perceived the instruction and practice given by the coaches as adequate and standard.

All charges and responses are given in this explanation since the complaint originally did not allege any shortcomings in the protective equipment. A charge of this kind was not made until the third amended complaint was filed more than seven-and-one-half years after the injury occurred.

The basis for the court's ruling that the plaintiff assumed the risk of being tackled was expressed vividly by the court.

> Body contacts, bruises, and clashes are inherent in the game. There is no other way to play it. No prospective player need be told that a participant in the game of football may sustain injury. That fact is self evident. It draws to the game the manly; they accept its risks, blows, clashes and injuries without whimper (pp. 412, 413).

Vendrell (1962) was unique in another aspect. The case was the first and only one concerning equipment in which the authorized purchase of liability insurance was held to constitute an implied waiver of immunity to the extent of the insurance coverage.

The second athletic case in which there was a finding of no negligence was Montag v. Board of Education, School District No. 40, Rock Island County (1983). The issue in this case was whether the board of education negligently

failed to supply the gymnasium with adequate safety equipment. At the time of injury, the 16-year-old plaintiff was practicing for competition in the still rings event. He had prior experience in previous physical education classes on the rings, had been a member of the gymnastics team for three months prior to his injury, and had competed in all but one of the interscholastic meets held that year.

Two 1-inch thick mats and one 4-inch thick mat were underneath the rings during his performance. In executing a base uprise dismount, the athlete landed on his back, immediately suffering paralysis. The only 12-inch thick mat in the gymnasium was not under the rings because it interfered with the performance of taller members of the team. Additionally, only six inches of matting was normally allowed under the rings in competition. The coach, who at the time of the injury was nearby acting as a spotter, testified that he was trying to simulate competitive conditions. The ruling that the board of education was not negligent in failing to supply the gymnasium with adequate safety equipment was based on the opinion that there was no undeniable evidence that the mat used was in any way defective, or improperly used, or that a 12-inch thick mat, instead of a 4-inch thick mat, could have prevented the injury.

Recovery allowed. In only one of the five athletic

cases was recovery allowed. The helmet manufacturer, the retailer, and the school the plaintiff was attending were named as defendants in a product liability case (Everett v. Bucky Warren, Inc., 1978). Head injuries were sustained by a 19-year-old athlete when an ice hockey puck penetrated the gap in the three-piece helmet he was wearing.

The jury found that all three defendants were negligent, that the helmet was defective and unreasonably dangerous, that the plaintiff's injuries were caused by the condition of the helmet and the negligence of the defendants, and that the plaintiff neither assumed the risk of the injury nor was contributorily negligent. The manufacturer of the helmet testified that the helmet had been designed in three pieces, not for safety reasons, but to facilitate adjustment. Additionally, the manufacturer knew that other manufacturers were producing one-piece helmets, but failed to test the three-piece helmet to determine its safety.

The school through its agent, the coach, was negligent in supplying the helmet to the plaintiff. The coach was experienced in the game of hockey and "may be held to a higher standard of care and knowledge than would an average person " (p. 659). The coach conceded in his testimony that the one-piece helmets other teams wore were safer than the three-piece model since the gaps in the

latter would allow penetration.

Physical Education

Description of Elements

There were five cases in physical education programs in which the condition of equipment was alleged as the proximate cause of injury to participants. Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 3.

Table 3

Elements in Cases of Alleged Unsafe Equipment in Physical Education

	Elements			
Case and Year	Age	Role	Sex	Sport/ Activity
Dawson v. Tulare Union (1929)	O	P	F	Jumping game
Bush v. City of Norwalk (1937)	Y	P	M	Balance beam
Govel v. Brd. of Ed. (1944)	O	P	M	Somersault over bars
Hanna v. State (1965)	O	P	M	Baseball
Weiss v. Collinsville (1983)	O	P	M	Softball

With the exception of Bush v. City of Norwalk (1937) in which an 8-year-old was injured, injuries reported in physical education cases involved older students. High

school students were injured in Dawson v. Tulare Union High School District (1929), Govel v. Board of Education of City of New York (1944), and Weiss v. Collinsville Community Unit School District No 10 (1983); Hanna v. State (1965) involved injury to a college student.

All physical education cases involved injury to participants, and four of the five injured students were males. No two activities in which injuries occurred were the same.

Legal Analysis

In analyzing cases in which participants were injured in school-sponsored physical education programs and negligence was alleged due to unsafe conditions of equipment, cases are categorized as those in which recovery to the injured party was either denied or allowed. The circumstances giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other equipment cases which have been reported are relied on as precedent for the instant case, such will be noted.

Recovery denied. One of the two physical education cases reported in which the decision favored the defendant was based on governmental immunity. In Weiss v. Collinsville Community Unit School District No. 10 (1983), the ruling handed down was similar to that in another Illinois case previously discussed under athletics (Thomas

v. Chicago Board of Education, 1979). In Weiss, the high school student pitcher, while covering first base in a physical education class, was injured when the batter slid into first base. The softball diamond was regulation size, and first base was a rubber mat about 12 inches square and about one-half to three-fourths of an inch thick. The issue was whether the school district was negligent in its alleged failure to instruct the students in base running and sliding techniques used in softball, failure to maintain the first base line, failure to provide a secure first base, and failure to provide a safe field.

In Illinois, in the absence of proof of wilful and wanton misconduct, educators were immune from tort liability for personal injuries sustained by students during school activities. The court found that the school district was not guilty of wilful and wanton misconduct and, therefore, was immune from liability since there was no showing of substantial defect in the field or equipment and the condition of the field was not shown to have in any way been the cause of the injury. The court also included in its decision information important for consideration.

> While the unsecured rubber mat which was used as first base conceivably could have contributed to plaintiff's injury, and while a secured canvas bag may offer safety advantages, we cannot say that the use of the mat or the failure to employ a secured canvas bag amounted to wilful and wanton misconduct (p. 617).

The second physical education case in which recovery

was denied involved injury to a college participant in a baseball game (Hanna v. State, 1965). While acting as a substitute in the game in which the class was involved, Hanna announced that he would umpire. While umpiring behind the portable backstop, the plaintiff was struck in the face by a foul tipped ball and the glasses he was wearing were shattered. The ball did not go through the net, but the net was slack enough to give and allow the ball to strike him.

Although Hanna had received a typed outline of instructions including reference to the use of protective equipment at the beginning of the baseball unit, he was not wearing an available protective guard over his glasses. Moreover, the teacher previously had instructed the students to stand far enough behind the portable cage to avoid being hit by a foul tip. Hanna had been crouched about a foot from the net umpiring for about 15 minutes prior to his injury. During that time, three or four foul tips had struck the net.

The court held that the condition of the net was not the cause of the injury. Nor did the use of a portable backstop in a baseball game in a physical education class constitute negligence on the part of the state or its employees. The court did find that the plaintiff was aware that there purposely was slack in the netting and was charged with the knowledge that to stand with his

face too close to the net would be dangerous. His failure to maintain a safe distance from the net was the proximate cause of the accident resulting in his eye injury and precluded recovery.

Recovery allowed. A finding of negligence of a school district through the principal was handed down in Dawson v. Tulare Union High School District, a 1929 physical education case. A high school student engaged in a jumping game during a physical education class suffered injury when an upright piano fell and crushed one of her ankles. The piano used in the school gymnasium was resting on a dolly used to move it from one place to another. The piano had been kept on the dolly for more than a year at the time of the injury and had fallen backwards a year previously on the leg of another student who was trying to move it. In the instant case, vibrations from the jumping game caused the piano to slip off the dolly.

The issue in Dawson (1929) was whether an exception to governmental immunity existed under the safe-place statute. The court ruled for the plaintiff on the basis of this statute which placed liability on school districts for injuries to pupils resulting from the maintenance of a dangerous or defective condition of buildings, grounds, and property when those with the authority to remedy such defects had knowledge or notice of the condition and

failed or neglected to remedy it within a reasonable time. The statute contained no provision that actual notice was a prerequisite to recovery. The long-continued existence of a defective condition could establish constructive notice. In this case the fact that the piano had been maintained in a dangerous condition for more than a year was sufficient to establish that school personnel had knowledge of the condition (constructive notice).

Whether a balance beam as used on a slippery classroom floor constituted a nuisance was the issue in a 1937 physical education case (Bush v. City of Norwalk). As the 8-year-old plaintiff was walking along the beam, the beam slipped on the floor to one side, causing him to fall. The bottom of the beam was smooth and had nothing to prevent its slipping on the floor, and the top of the beam had been varnished and was slippery. The classroom floor had been oiled and was somewhat slippery, and there were no mats along the beam.

The court held that the beam as used on the floor was likely to slip and cause any child walking along it to fall and, as such, was a source of danger to the children using it. The decision was that a nuisance was created by the use of the beam on the classroom floor.

The decision in a 1944 physical education case Govel v. Board of Education of City of New York held a physical education teacher liable for injuries sustained

by a student in his class. The student, who was attempting a somersault over the parallel bars, fractured a leg when he fell to the floor after his foot struck the bars.

The high school student participant took off from a springboard covered with a mat. The parallel bars were draped with mats. Although the floor on the landing side was supposed to be covered with a double mat, Govel fell on the bare floor. A day or two previously, another student had broken his arm executing the same maneuver, and "quite a few" students had been injured in the past.

The court ruled that the physical education teacher was negligent, noting that he had assigned the plaintiff, who was not exceptionally well skilled, to perform an acrobatic maneuver beyond his prowess and which was not recommended in the regent's syllabus. The decision also was based on the fact that several boys had been injured previously while performing such maneuvers and that the teacher had not placed the landing mat properly.

Intramurals

Description of Elements

Three cases involved injuries to participants in intramural programs in which the condition of equipment was alleged as the proximate cause of injury. Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 4.

Table 4

Elements in Cases of Alleged Unsafe Equipment in Intramurals

Case and Year	Elements			
	Age	Role	Sex	Sport/ Activity
Wells v. Colorado College (1973)	O	P	F	Self defense
Lynch v. Brd. of Ed. (1980)	O	P	F	Powderpuff football
Berman v. Philadelphia (1983)	Y	P	M	Floor hockey

Injured students in these three cases represented three different school levels. The younger student (Berman v. Philadelphia Board of Education, 1983) was in elementary school and the two older (Lynch v. Board of Education of Collinsville Community Unit District No. 10, 1980; Wells v. Colorado College, 1973) in high school and college, respectively. All injured students were participants at the time of injury, and two of the three were females. No two activities were the same.

Legal Analysis

In analyzing cases in which participants were injured in school-sponsored intramural programs and negligence was alleged due to unsafe conditions of equipment, cases are categorized as those in which recovery to the injured party was either denied or allowed. The circumstances

giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other equipment cases which have been reported are relied on as precedent for the instant case, such will be noted.

Recovery allowed. Recovery was allowed in all three reported intramural cases in which the condition of equipment was alleged as the proximate cause of the injury to participants. In Wells v. Colorado College (1973), the only case to reach the federal courts, a college woman student was injured when she hit the floor after a hip throw executed by the police officer-instructor. Colorado College had sponsored a series of sessions in self defense for students since a number of incidents involving assaults had occurred on campus. The college had employed two Colorado Springs police officers to conduct the sessions.

The class had been working in pairs on the hip throw. When the plaintiff's partner was unable to throw her, the police officer demonstrated the throw on the plaintiff. She was thrown on her back but did not land on the mat. The two mats had come apart, and her back hit partly on the floor and partly on the mat. The injury involved the vertebral disc in her lower back and persisted despite two operations. She lost one year of school as a result of her injury. She had excelled in ice skating, swimming, diving, skiing, and horseback riding before the injury.

Afterwards, she was unable to do anything more strenuous than walking.

The court found that the case was not one involving a sport whose activity is commonly associated with the assumption of risk doctrine. Rather, the plaintiff was participating in a scheduled session and was doing so for a practical reason. The court ruled that the plaintiff could not have been expected to anticipate an extraordinary hazard such as that to which she was subjected and had a right to expect that she would be thrown on the mat and not the hardwood floor. The police officer breached his duty of care which was commensurate with the high degree of hazard in the activity.

A second intramural case involved injury to a high school student participating in a powderpuff tackle football game held prior to the homecoming game (Lynch v. Board of Education of Collinsville Community Unit District No. 10, 1980). After having been struck in the face by a member of the other team, the plaintiff hit the back of her head on the ground, suffered a broken nose, underwent psychiatric treatment, and suffered possible brain damage.

The issue was whether the defendant school district was negligent in failing to provide the plaintiff with protective equipment. The new principal testified that the game was not sponsored by the school because the procedure by which the board of education approved a

faculty sponsor was not followed. Also, he had denied permission to students to make an announcement about the game over the school's public address system. In fact, when he heard that such an announcement had been made, he instructed the assistant principal to make a countermanding announcement that the game was not an authorized school activity.

Three teachers had agreed to coach the two teams, and between four and six practices were held prior to the game. Practices consisted mostly of passing, hiking the ball, and blocking. One of the teachers suggested that the players purchase mouth guards, and most of the players, including the plaintiff, did purchase and wear mouth guards for the game.

Even though the Supreme Court of Illinois indicated that the teachers were not acting in the course of their employment, it considered the possibility that some students thought they were engaging in an activity connected with the school program. The school athletic field was used for practices and the game. The players were allowed to use the school locker rooms. Several announcements had been made concerning the game and practice sessions. According to the court, it could appear to a reasonably prudent person that the teachers possessed the authority to coach the game. Therefore, the school district was held to be negligent since the teachers

were acting with apparent authority.

The court stated that a school district has an affirmative duty to furnish equipment to prevent serious injuries when students are engaging in school activities. "At the least, a school district should furnish helmets and face guards for a game such as football, where head injuries are common and severe" (p. 459).

In finding that the school district's failure to provide such equipment was a proximate cause of the injury, the court gave good direction for responsibility of school districts in furnishing equipment.

> If we were not to hold the defendant liable for failure to furnish any equipment, a school district could easily escape liability simply by not furnishing any equipment to students, thereby forcing students to purchase equipment themselves. In that way, only students who could afford their own equipment would be able to engage in school-connected sports activities. We are unwilling to encourage such a result (p. 460).

Interestingly, three of the seven justices dissented. Their reasoning was based primarily on the premise that this football game was not a school activity for which the school district had a duty to furnish equipment. They believed that the school had done everything possible to disassociate itself from the powderpuff football game short of prohibiting the teachers from coaching the teams and prohibiting the use of the athletic fields for the game.

The issue in the third intramural case was whether the

school board breached its duty in not furnishing mouth guards to floor hockey participants (Berman v. Philadelphia Board of Education, 1983). The 11-year-old plaintiff received severe injuries to his mouth when an opposing player's stick struck him in the mouth.

Although the players were provided with hockey sticks with wooden handles and plastic blades, no helmets, face masks, mouth guards, shin guards, or gloves were provided. The teacher conducting the activity was aware that mouth injuries were recurring consequences of playing the sport, and on two or three separate occasions had requested that the board of education purchase safety equipment for the students.

The court viewed the 11-year-old plaintiff as incapable of contributory negligence. Moreover, by reason of his "tender age and lack of intelligence, experience, and information" (p.550), the court ruled that he did not appreciate the dangers of floor hockey and, consequently, that assumption of risk was not a viable defense either.

Summary of Case Analyses

There were 13 reported cases in which the condition of equipment was alleged as the proximate cause of injury in school-sponsored sport programs. The occurrence of reported cases has increased dramatically in the recent past with 8 of the 13 cases from 1929 to 1983 having been reported in the past 10 years. Moreover, throughout the

years since the first reported equipment case in the 1920s, more than half of all cases have occurred in California (2), Illinois (4), and New York (2).

The occurrence of reported equipment cases was fairly consistent across all school-sponsored sport programs with five in athletics, five in physical education, and three in intramurals (Table 5). More injured students were at the high school level or beyond (10) than at the junior high level or below (3), and all were participants at the time of their injury. There were 10 male injured students and 3 female injured students. No females were injured in the five athletic cases, one in the five physical education cases, and two in the three intramural cases. When reviewing activities in all three school-sponsored sport programs in which injured participants were engaging, 10 of the 13 activities were different.

As presented in Table 5, recovery was denied in six cases--four in athletics and two in physical education. The decisions denying recovery in two of the athletic cases and one of the physical education cases were based on governmental immunity. The decisions in the other two athletic cases and in the other physical education case were based on no negligence on the part of the defendant.

Recovery was allowed in the remaining seven cases--one in athletics, three in physical education, and three in intramurals. In Everett v. Bucky Warren, Inc. (1978), the

Table 5

Summary of Cases Involving Equipment in Athletics,

Physical Education, and Intramurals

RECOVERY DENIED

Page # of Analysis	Case/Year	School-Sponsored Sport Program	Age	Role	Sex	Legal Principle	Legal Precedent*
53	Mitchell (1931)	Athletics (Football)	Y	P	M	Gov. immunity	Dawson (1929)
54	Thomas v. Chic. (1979)	Athletics (Football)	O	P	M	Gov. immunity	None
54	Vendrell (1962)	Athletics (Football)	O	P	M	No negligence	None
56	Montag (1983)	Athletics (Gymnastics)	O	P	M	No negligence	None
60	Weiss (1983)	Physical Educ. (Softball)	O	P	M	Gov. immunity	None
62	Hanna (1965)	Physical Educ. (Baseball)	O	P	M	No negligence	None

RECOVERY ALLOWED

Page # of Analysis	Case/Year	School-Sponsored Sport Program	Age	Role	Sex	Breach of Duty	Legal Precedent*
58	Everett (1978)	Athletics (Ice hockey)	O	P	M	Defective and unreasonably dangerous	None

60	Weiss (1983)	Physical Educ. (Softball)	O	P	M	Gov. immunity	None
62	Hanna (1965)	Physical Educ. (Baseball)	O	P	M	No negligence	None

RECOVERY ALLOWED

Page # of Analysis	Case/Year	School-Sponsored Sport Program	Age	Role	Sex	Breach of Duty	Legal Precedent*
58	Everett (1978)	Athletics (Ice hockey)	O	P	M	Defective and unreasonably dangerous equipment	None
63	Dawson (1929)	Physical Educ. (Jumping game)	O	P	F	Unsafe condition of piano on dolly (Safe-place)	None
64	Bush (1937)	Physical Educ. (Balance beam)	Y	P	M	Improper condition of balance beam as used (Nuisance)	None
64	Govel (1944)	Physical Educ. (Parallel bars)	O	P	M	Improper mat placement	None
67	Wells (1973)	Intramurals (Self-defense)	O	P	F	Improper mat placement	None
68	Lynch (1980)	Intramurals (Powderpuff football)	O	P	F	Inadequate protective equipment	None
71	Berman (1983)	Intramurals (Floor hockey)	Y	P	M	Inadequate protective equipment	None

*Cases cited as precedent include only those involving equipment as the proximate cause of injury.

decision was based on the defendants' negligence in providing a dangerous and defective ice hockey helmet. In one physical education case (Bush v. City of Norwalk, 1937), a balance beam as used on a slippery floor constituted a nuisance, and in another (Dawson v. Tulare Union High School, 1929) the defendant had notice of the dangerous condition of a piano as maintained but failed to remedy the situation. Recovery was allowed in one physical education case (Govel v. Board of Education of City of New York, 1944) and in one intramural case (Wells v. Colorado College, 1973) for improper placement of mats for landings in gymnastics and self-defense, respectively. Recovery was allowed also in the other two intramural cases (Berman v. Philadelphia Board of Education, 1983; Lynch v. Board of Education of Collinsville Community Unit District No. 10, 1980) for the defendant's failure to provide protective equipment (mouth guards for floor hockey participants and helmets and face guards for powderpuff football participants, respectively).

Trends

It is difficult to state with confidence general trends on the basis of the small number of resolved cases (13) in which equipment was alleged as the proximate cause of injury in school sponsored sport programs. However, several interesting points seemed to emerge.

1. Eight of the 13 cases from 1929 to 1983 which involved equipment were reported in the past 10 years. Modifications and exceptions to governmental immunity over the years may have allowed the courts to consider more cases than in the past when governmental immunity discouraged lawsuits or curtailed any type of redress.

2. All injured persons were participants, most were older, and most were male. No sport or activity emerged as being associated with a particular defense.

3. While all of the cases in which recovery was allowed were based on breach of duty, two of the cases involved an exception to the doctrine of governmental immunity.

4. Decisions in two of the cases (Berman v. Philadelphia Board of Education, 1983; Hanna v. State, 1965) support age of the plaintiff as a determining factor in contributory negligence. The court in Hanna (1965) held that an older, experienced individual was capable of contributory negligence while the court in Berman (1983) held that a younger, immature, and inexperienced individual was incapable of being contributorily negligent.

5. The points emphasized are based on only 13 cases. Recovery was allowed in only 1 athletic case, 3 physical education cases, and all 3 intramural cases. If there is a prevailing trend, it is that care must be given in making generalities, for each case appears to have been decided on its own merits. Only 1 of the cases considered (Dawson, 1929) was used as precedent for any of the others.

Guidelines

An analysis of the 13 cases involving equipment in school-sponsored sport programs revealed points to be considered by teachers and coaches. Each case was decided on its own merits. Guidelines were extrapolated from individual cases. With these limitations in mind and with no emphasis on priority, the following guidelines are

suggested:

1. Provide adequate and safe equipment to students who are engaging in school-sponsored sport programs.

2. Inspect equipment regularly for defects, and repair or discard equipment which is not in good working order.

3. Provide safety equipment which meets the standards considered usual and customary by the profession.

4. Recognize that students participating in athletic, physical education, and intramural programs may only be expected to act as a reasonable person of the same age, intelligence, and experience would act.

5. Instigate immediate corrective action after notice of dangerous or defective conditions of equipment.

6. Utilize equipment in a manner commensurate with its intended purpose.

7. Use care in positioning landing mats properly for the activity when landing mats are necessary for the safe conduct of school-sponsored sport programs.

CHAPTER IV

COURT CASES INVOLVING INJURIES IN SCHOOL-SPONSORED SPORT PROGRAMS DUE TO ALLEGED UNSAFE CONDITION OF FACILITIES

The number of reported facility cases and the decade, frequency, and state within which they were litigated are presented initially. After this background information is presented and discussed, the chapter is organized in six major sections. The first three sections include (a) court cases related to athletic programs, (b) court cases related to physical education programs, and (c) court cases related to intramural programs. Age, role, sex, and sport or activity are discussed in each section. Legal principles applied and legal precedents established are included within the legal analysis of cases in each program. Cases are categorized as those in which recovery to the injured party was either denied or allowed. The fourth section includes a summary of the analyses of cases in the three school-sponsored sport programs. Observed trends and guidelines developed after the cases were analyzed in the three school-sponsored sport programs are included in the last two sections of the chapter.

Forty-eight cases were reported in which the condition

of facilities was alleged as the proximate cause of injury to participants and spectators in school-sponsored sport programs. Two cases (Bush v. City of Norwalk, 1983; Hanna v. State, 1965) are unique in that the condition of both facilities and equipment was alleged as the proximate cause of injury. Consequently, these two cases are considered in this chapter as well as in the chapter in which equipment was discussed (Chapter III).

Table 6 depicts the frequency, decade, and state within which cases alleging the condition of facilities as the proximate cause of injury occurred.

Table 6

Occurrence and Location of Cases in Which the Condition of Facilities Was Alleged as the Proximate Cause of Injury

Decade	Frequency	Geographical Location
1900s	1	MN
1910s	-	-
1920s	1	MN
1930s	5	MA, WA, CT, NY, CA
1940s	5	NY, WI, WA, MT, TN
1950s	5	NY, AZ, NY, MI, FL
1960s	12	OR, NY, IL, NY, LA, NY, WA, LA, GA, WI, IA, KY
1970s	10	LA, IN, LA, IA, NJ, LA, NY, MI, LA, SD
1980s	9	MI, NY, GA, NY, NY, NY, NE, LA, Al

The occurrence of only one facility case in the 1900s and 1920s and five cases in each of the decades from 1930 to 1950 is not surprising. However, the twelve cases in the 1960s are noteworthy in that there were more reported cases in that decade than in the subsequent decade (1970s). Equally noticeable is the occurrence of nine cases in just the first four years of the 1980s.

Although there were reported facility cases in 23 different states, the number of cases generally ranged from one to three with one case occurring in 15 states and three in two states (Michigan and Washington). Particularly noticeable, however, are the states of Louisiana and New York with seven and twelve reported cases, respectively.

Athletics

There were 29 cases in athletics in which the condition of facilities was alleged as the proximate cause of injury to participants and spectators in school-sponsored athletic programs. These cases are presented in two contexts: (a) through a description of the elements and (b) through a legal analysis of the cases.

Description of Elements

Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 7. The chronological listing of the cases in Table 7 corresponds to the order

Table 7

Elements in Cases of Alleged Unsafe Facilities in Athletics

Case and Year	Elements			
	Age	Role	Sex	Sport/ Activity
George v. U. of Minn. (1909)	-	S	M	Football
Mokovich v. Ind. Sch. (1929)	O	P	M	Football
Ingerson v. Shattuck (1931)	O	S	F	Football
Juntila v. Everett (1935)	O	S	M	Football
Holzworth v. State (1941)	-	S	M	Football
Rhoades v. Sch Dist. (1943)	-	S	F	Basketball
Reed v. Rhea Co. (1949)	-	S	M	Football
Sawaya v. Tucson (1955)	-	S	M	Football
Scott v. State (1956)	O	P	M	Baseball
Richards v. Sch. Dist. (1957)	O	S	M	Football
Buck v. McLean (1959)	O	S	F	Baseball
Bacon v. Harris (1960)	-	S	F	Basketball
Ludwig v. Brd. of Ed. (1962)	O	S	M	Football
McGee v. Brd. of Ed. (1962)	O	P	M	Baseball
Colclough v. Orleans (1964)	O	S	M	Football
Perry v. Seattle Sch. (1965)	O	S	F	Football
Turner v. Caddo Parish (1965)	O	S	F	Football
Brd. of Ed. v. Fredericks (1966	-	S	M	Football
Novak v. City of Delavan (1966)	O	S	F	Football
Coughlon v. Iowa H. S. (1967)	-	S	-	Basketball
Dudley v. William Penn (1974)	O	P	M	Baseball
Nunez v. Isidore Newman (1975)	O	P	M	Basketball
McGovern v. Riverdale (1976)	O	P	M	Basketball
Thomas v. St Mary's (1979)	O	P	M	Basketball
Vargo v. Svitchan (1980)	O	P	M	Wt. lifting
Akins v. Glens Falls (1981)	-	S	F	Baseball
Benjamin v. State (1982)	Y	S	M	Ice hockey
Lamphear v. State (1982)	O	P	F	Softball
Studley v. Sch. Dist. (1982)	O	P	M	Basketball

in which they will be discussed within each category of the legal analysis.

There were 9 cases in which the age of the injured parties could not be discerned. It is noteworthy that in all 9 of these cases, the individuals injured were spectators at the time of their injury.

Where the age could be discerned, the only case involving a younger injured party was Benjamin v. State (1982), a case in which an 11-year-old was injured while spectating at a college ice hockey game. The other 19 cases involved injuries to older individuals, 9 who were spectators at the time of injury and 10 who were participants.

Of the 29 cases, 10 involved injuries to participants. Almost twice as many cases (19) involved injuries to spectators.

Nineteen cases involved injuries to males, 10 who were spectators and 9 who were participants. Similarly, nine cases involved injuries to females, 8 who were spectators at the time of injury and only 1 who was a participant.

In only one case (Coughlon v. Iowa High School Athletic Association, 1967) was the sex of the injured party not discernible. Coughlon involved injury to a spectator (age also not discernible) when the bleachers collapsed at a high school basketball tournament.

All other spectator injuries occurred while the plaintiffs were attending team sport games. There were nine males and four females injured at football games. However, with the exception of one male injured at an ice hockey game, all other injuries to spectators occurred to females, two at basketball games and two at baseball games.

Legal Analysis

In analyzing cases in which participants and spectators were injured in school-sponsored athletic programs and negligence was alleged due to unsafe conditions of facilities, cases are categorized as those in which recovery to the injured party was either denied or allowed. The circumstances giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other facility cases which have been reported are relied on as precedent for the instant case, such will be noted. Moreover, participant and spectator cases will be considered separately to facilitate consideration of cases in regard to the role assumed by injured parties.

Recovery denied. Recovery was denied the plaintiff in 23 of the 29 athletic cases. Seven of the cases involved participants and 16 involved spectators.

Two of the decisions favoring the defendants in athletic cases in which participants were injured were based on governmental immunity. One issue in Mokovich v.

Independent School District of Virginia, No. 22 (1929) was whether the officers and agents of the school district negligently used unslaked lime to mark the football field, thereby causing a nuisance. Mokovich was a participant in a high school football game when he was thrown to the ground and his head and face forced into the lime. As a result of the lime getting into his eyes, he lost the sight in one eye and the sight in the other was seriously impaired.

The plaintiff also sought recovery on the basis that the school district could not claim governmental immunity since, by charging admission to the game, it had been engaged in a proprietary function. However, the Supreme Court of Minnesota rejected this contention by ruling that the small incidental charge did not "...take the district out of its educational functions and convert the activity into one of a business or proprietary character" (p. 294). In ruling for the defendant, the court held that the school district was exercising a governmental function for educational purposes and that the school district was not made liable by the fact that Mokovich's injury "...was from a nuisance negligently created by acts of its officers or agents, nor by the fact that an incidental charge was made for admission to the game" (p. 295).

The second case based on governmental immunity was

Vargo v. Svitchan (1980). In preparation for high school football team tryouts, the 15-year-old student pushed himself to lift a 250-300 pound weight, fell, and received injuries resulting in paraplegia. The issue in this case was whether the gymnasium facilities were inadequate and defective because of lack of sufficient ventilation causing the plaintiff to perspire excessively and contributing to his injuries. The plaintiff alleged also that the weight lifting room did not have a sufficient number of weight lifting safety machines or power racks for the number of students and that the available floor mats were not being used on the concrete floor to prevent possible slippage and lessen the likelihood of serious injury.

The court noted that the facts indicated that a lack of supervision, not a defect in the building, was the cause of the plaintiff's injuries. Therefore, the allegations did not fall within the statutory public building exception (safe-place) to governmental immunity.

There were four other participant cases in which the courts ruled for the defense, finding no negligence on their part. The issue in McGee v. Board of Education of City of New York (1962) was whether the head coach was negligent in conducting baseball practice on a nonregulation diamond on which the pitcher's mound was located directly between first and third bases and if a

sudden departure from the practice routine resulted in the assistant coach's injury.

The plaintiff was a high school teacher who had volunteered to assist with the baseball team. While working with the pitcher and standing about four to five feet behind him, the assistant coach was hit with a thrown ball and injured.

At the time of the injury, practice was being conducted on a baseball diamond on which the bases were about 80 feet apart instead of the regulation 90 feet. The drill consisted of the head coach bunting the ball either down one of the baselines or toward the pitcher. A player near home plate would then run toward first, and the infielders would try to put the runner out. On the play in which the injury occurred, a player left second base and ran toward third. The first baseman testified that the head coach shouted for him to "get the man at third". The first baseman threw the ball toward third base and hit the assistant coach.

The head coach was not negligent in instructing the first baseman to throw to third, nor were his actions improper in using a modified field for practice. Additionally, as an experienced baseball player, the plaintiff could have been expected to be alert to the dangers of being hit by a thrown or batted ball and assumed the risk of his injury.

In ruling for the defendant the Supreme Court of New York said:

> Generally, the participants in an athletic event are held to have assumed the risks of injury normally associated with the sport. Players, coaches, managers, referees and others who, in one way or another, voluntarily participate must accept the risks to which their roles expose them. Of course, this is not to say that actionable negligence can never be committed on a playing field. Considering the skill of the players, the rules and nature of the particular game, and risks which normally attend it, a participant's conduct may amount to such careless disregard for the safety of others as to create risks not fairly assumed. But it is nevertheless true that what the scorekeeper may record as an 'error' is not the equivalent, in law, of negligence (pp. 331, 332).

In Dudley v. William Penn College (1974), the plaintiff was sitting on the bench located 36 feet from the third base line and 60 feet from home plate. There was no protective screen between the players' bench and the playing field. Dudley, a scholarship athlete on Penn's team, suffered an eye injury as a result of being struck by a foul ball.

The two issues were whether the college and coach had been negligent in not providing a protective screen and whether Dudley had been contributorily negligent. The plaintiff failed to show that screening or some other means of protecting the bench was customary in the Central Iowa Conference. Some fields in the conference had screens while others did not. In fact, more schools Penn played did not have screens than did. Since the court held that there was insufficient evidence to justify negligence on

the part of the defendants, the issue of contributory negligence by Dudley was not considered by the court.

The issue in Nunez v. Isidore Newman High School (1975) was whether the host school had met its duty in protecting the plaintiff from dangerous conditions. Martin Nunez, a member of one of the basketball teams participating in the invitational tournament hosted by Isidore Newman High School, slipped, fell, and seriously injured his back when he came down after attempting a lay-up shot in the third quarter of the game.

It was hot, very humid, and had rained earlier in the day. Due to the high humidity, water condensation had formed on the gymnasium floor. Prior to the game that night, the floor had been mopped and heaters and fans turned on in an attempt to dry the floor. Several times during the game, in fact, certain areas on and off the playing surface had been mopped.

In favoring the defendant, the court held that the host school owed the plaintiff (a business invitee) the duty to take reasonable care to protect him from any dangerous condition. Since none of the coaches and officials who were responsible for inspecting and approving the playing conditions considered the floor's condition serious enough to discuss cancelling the game, the host school had not acted unreasonably in preparing and maintaining the premises.

Nunez was considered a business invitee since Newman was deriving revenue from his participation in the gymnasium. The duty owed Nunez was defined by the court:

> A fair statement of that duty is: An owner or occupier of lands or buildings must take reasonable and ordinary care to protect invitees from any dangerous conditions on the premises. He must also warn them of any latent dangerous defects in the premises and inspect the premises for any possible dangerous conditions of which he does not know (p. 458).

In finding that the condensation on the floor was not actually dangerous, the court gave additional guidance regarding duty toward invitees: "Unless a condition of the building can be termed dangerous then this duty owed to invitees will never arise; to hold otherwise would mean that the building owner was the insurer of his patron's safety" (p. 459).

In McGovern v. Riverdale Country School Realty Company, Inc. (1976), a high school participant in a basketball game was injured when he ran into a door at the end of the gymnasium while trying to retrieve the ball. The door, located 15 feet from the nearest portion of the basketball court, had a wire mesh glass insert. The glass portion of the door was the portion the plaintiff struck. The Supreme Court of New York ruled that the trial court properly dismissed the complaint since there was insufficient evidence in the record of either unsafe physical conditions in the gymnasium or lack of adequate supervision.

The seventh and last participant case in which recovery was denied involved injury to a referee at a basketball game (Studley v. School District No. 38 of Hall County, 1982). The issue in this case was whether the school district had been negligent in maintaining a dangerous condition of the gymnasium floor.

While refereeing a basketball game, Studley slipped and fell. He alleged that moisture had accumulated on the gymnasium floor as a result of a leak in the ceiling and that the condition of the floor was the proximate cause of his injury. The plaintiff also alleged that the defendant had knowledge of the wet floor's condition but failed to notify or appraise him of such. The Supreme Court of Nebraska supported the trial court's decision in favor of the school district.

In summary, there were seven cases involving injury to participants in school-sponsored athletic programs in which recovery was denied. The decisions in two cases were based on governmental immunity, and there was no negligence on the defendants' part in the other five cases. These decisions are further summarized in Table 10 presented on page 136.

Of the 19 athletic cases in which injured spectators were denied recovery, 9 of the decisions favoring the defendants were based on governmental immunity. The plaintiff attending an intercollegiate football game in

George v. University of Minnesota Athletic Ass'n (1909) was injured when the platform on which he was standing collapsed. The issue was whether the action was properly brought against the University of Minnesota Athletic Association. The Supreme Court of Minnesota held that the defendant was a branch or department of the University of Minnesota and, therefore, was exempt under the doctrine of governmental immunity.

In Holzworth v. State (1941), the plaintiff was a spectator at a football game. While standing on the top of his seat, Holzworth was pressured by the crowd and was pushed over the edge of an exit. He fell a distance of 12 feet, sustaining serious injuries.

The issue was whether action could be maintained against the State of Wisconsin. The court denied liability principally on the ground that "...a sovereign is not liable under the doctrine of respondeat superior for the negligent acts of its officers" (p. 165). Since Wisconsin was recognized as a sovereign state, no suit could be maintained against it.

The issue in Rhoades v. School Dist. No. 9, Roosevelt County (1943) was whether a school district was exercising a governmental function (as distinguished from a proprietary function) and, therefore, not liable for injuries sustained by a spectator injured when a stairway collapsed. Having paid admission to a basketball game,

Pearl Rhoades was injured when one of the stairs in the gymnasium gave way. The plaintiff alleged that the construction was faulty and that the stairway was not properly maintained.

The court held that the defendant school district was acting solely in a governmental capacity. Moreover, the court gave explicit direction of the place of activity programs in education:

> We have come to regard education--not as a development of a part of the faculties, but of all of them--the intellectual, the moral, as well as the physical. In order to make effective our conclusions...we have authorized the proper officers of a school district to expend our money in the construction of a gymnasium. A part of that physical training consists in the playing of games--basket ball [sic] among others .
>
> ...Undoubtedly, one of the elements which stimulate [sic] the contestants is that they will be afforded an opportunity of exhibiting their skill in games against their fellows of the same school or against teams of a different school. This, we think, is true, not alone as it pertains to physical sports, but the same may be said of debating teams, or of band concerts, or of exhibitions of the art department of a school. The fact that a band concert is held, or an exhibition of the work of those in the art department of the school had, brings better results in each of these departments. Therefore, we conclude that the basket ball [sic] game in question was merely a part of the program of physical education of the school; and, consequently, the defendants were exercising governmental functions in connection therewith (pp. 891, 892).

In regard to the effect of charging admission and the fee going into the school fund, the court added, "It [money] advances the purpose of physical education. That is a part of the governmental functions of the school district and of its trustees" (p. 892).

The ruling that an athletic event to which admission was charged was a governmental function also was handed down in Reed v. Rhea County (1949). A spectator who had paid admission to a high school football game was injured when the bleachers on which he was sitting collapsed. Reed alleged that the bleachers had collapsed because they had been negligently constructed by the high school. Reed also alleged that the board of education was liable in that it had been acting in a proprietary capacity through its maintenance of a private enterprise for profit.

The court, however, ruled that the board had been engaged in a governmental function in holding the football game and, therefore, the plaintiff could not recover from the board for his injuries. The board was protected by the doctrine of governmental immunity.

The Supreme Court of Michigan also held that the defendant school district was engaging in a governmental function in Richards v. School District of City of Birmingham (1957). A spectator, having paid admission, attended a high school football game and was sitting on portable bleachers leased by the school district. Before the game started, the bleachers on which he was sitting collapsed, and the plaintiff sustained serious injuries.

The court held that the athletic program was a part of the educational program of the school and, therefore, the school district could not be liable.

> It may not be said that defendant district, in allowing athletic competition with other schools, is thereby engaging in a funtion proprietary in nature. On the contrary, it is performing a governmental function vested in it by law (p. 653).

In Buck v. McLean (1959), the issue was whether the school board had negligently permitted the wire screen between the grandstand and the baseball field to deteriorate. The field was owned and operated by the public school system. The plaintiff, a paying spectator at the high school baseball game, was seriously injured when a foul ball came through the protective screening and struck her in the eye.

The plaintiff cited Sawaya v. Tucson High School District No. 1 (1955) as one of the cases to support her claim. Even though the court ruled for the defendant school board in its conduct of a governmental function, it did make a significant comment after having studied Sawaya and related cases:

> We...in all frankness must agree that they [Sawaya and other cases] are solid support for the position which appellants here take. They completely discredit and repudiate the ancient doctrine of sovereign immunity and reject as unsound the several reasons relied upon by our Supreme Court for the settled rule which immunizes county school boards against liability for torts committed by their agents or employees. We are compelled to the view, however, that such conflict in judicial opinion does not in any manner alter the established law of this jurisdiction (pp. 767-768).

The court also added that if a change in the long established rule of immunity which prevailed in the State of Florida was to be made, it would have to come as the

result of either constitutional amendment, by enactment of appropriate legislation, or both.

Whether the state board of higher education had been negligent in failing to provide and maintain handrails on the stairway and to provide ushers to supervise and control the crowd was the issue in Bacon v. Harris (1960). The plaintiff had paid admission to a basketball game at the University of Oregon. During half-time, she started down the stairs to go to the refreshment stand. She was jostled by another person and fell near the top of the stairs to the bottom, sustaining severe injuries.

The court held that the state board of higher education was an agency of the state "vested with corporate powers and was a quasi-corporation public in nature..." (p. 474) to which the state had not waived its immunity. Therefore, the court held that a case could not be maintained against the state board of education.

The issue in Ludwig v. Board of Education (1962) was whether the school board was liable in damages for the injuries sustained by the plaintiff. Henry Ludwig had purchased a ticket to a high school football game between two Chicago teams. He was injured when he fell on the stairs of the football stadium. The plaintiff, a paying spectator, alleged that the football game conducted by the defendant for profit was a private, proprietary undertaking and not related to any educational or

governmental function of the defendant school board.

The court noted that the long-established rule in Illinois exempting school districts from responding in damages for all torts and negligence had been swept away in 1959 by Molitor v. Kaneland Community Unit District No. 302. However, Ludwig could not benefit from the decision in Molitor since its application was restricted to prospective cases and his injury had occurred in 1956. Although the Molitor decision "...dismissed as immaterial any distinction between governmental or proprietary functions, ...the law prior [to that decision] established the board of education's immunity from liability for torts arising out of proprietary as well as purely governmental fuctions" (p. 34). Therefore, the defendant board of education prevailed under the doctrine of governmental immunity.

In Coughlon v. Iowa High School Athletic Association (1967), a spectator was injured when the bleachers collapsed at a high school basketball tournament. Action was brought against the athletic association and several public school districts. The court ruled that the individual school districts were quasi-corporations and, therefore, entitled to all the benefits of governmental immunity. As to the defendant Iowa High School Athletic Association, however, the court ruled that "...where...an unincorporated association exercises the rights and powers

of a legal entity, to the extent reasonably and legally possible, [it should] be held to assume corresponding duties and obligations. Anything else would be unjust and unreasonable" (p. 663).

In addition to the 9 athletic cases just presented in which the defendants prevailed on the basis of governmental immunity, there were seven other spectator cases in which the courts ruled for the defendants, finding no negligence on their part. The issue in Ingerson v. Shattuck School (1931) was whether the defendant school was negligent in not fencing or otherwise protecting the football field and in not warning spectators to stand farther back from the boundary lines of the field. The plaintiff was a paying spectator at a football game in which her son was playing. The game was "not an important one, attracting much public interest" (p. 668). There was no rope or fence around the field although it was marked by plainly visible white chalk lines. Although bleachers were available, spectators were not required to sit there but had been warned to stay outside the playing field area. Mrs. Ingerson was standing from two to five feet outside the chalk line on the side of the field when two players rolled across the sideline and struck her, resulting in one of her legs being fractured.

The court held that Shattuck School, a private institution, was not negligent. It was not customary at

this school or at smaller schools or colleges in that part of the state to fence or rope off the playing field.

> It was sometimes done when important games, drawing crowds, were held. Inferentially such barriers were used more to keep the spectators off the playing field than for the purpose of protecting spectators. A rope around the field would not prevent players from rolling under it, and a fence in front of a spectator, if the players crashed into it, might result in greater injury than if there were no fence (p. 669).

The defendant owed the plaintiff the duty of exercising ordinary or reasonable care under the circumstances shown. "There was no such dangerous situation or apparent danger as to require a high degree of care" (p. 668). The injury to the plaintiff "...was not one which the defendant could or did anticipate or foresee" (p. 668). Notwithstanding the fact that the plaintiff had attended three football games prior to the one in which she was injured and that it was more or less a common occurrence for football players to go out of bounds during play, the court did not hold as a matter of law that the plaintiff had assumed the risk of any injury resulting.

A similar ruling was handed down in Juntila v. Everett School Dist. No. 24 (1935) in that the school district was not found to be negligent. Unlike Ingerson (1931), however, the plaintiff in the instant case was contributorily negligent.

Juntila, a season ticket holder, had attended a high school football game. Since all the seats were filled, he

and several others stood on the top seat of the bleachers. After standing there for a short time, he and five other spectators sat on the rail which gave way under their weight. Juntila, along with several of the others, fell to the ground behind the bleachers, and he sustained serious injuries. The railing did not break, but the six-penny nails pulled loose from the weight of the spectators.

The court held that the school district was not negligent and that Juntila was contributorily negligent. Juntila was 18 years old, of mature judgment, and fully able to appreciate the risk he took in sitting on the railing. The railing clearly was not intended as a seat. "The nails were sufficient to hold the railing in place as a guard, but not as a seat" (p. 615).

> The respondent owed him the duty to exercise all proper precaution to maintain the field and bleachers in a reasonably safe condition for the use to which they might rightly be put. But respondent was not an insurer of his safety. It owed him only the degree of care that would be expected of an ordinarily prudent person in its position (p. 615).

In Colclough v. Orleans Parish School Board (1964), the plaintiff, a former college football player, went to a city park to watch his high school son participate in a football scrimmage. The field on which the scrimmage was held had no markings of the boundary lines, no seats for spectators, and no barriers around the playing field. Along with about 25 to 30 other spectators, Colclough

stood approximately 10 to 12 feet from what would have been one of the boundary lines of the field. During an end run, five of the athletes ran beyond the unmarked boundary line of the field and knocked the plaintiff to the ground resulting in the injuries of which he complained.

The court ruled that Colclough had no right of recovery since he had asssumed the risk of being struck by players going out of bounds.

> It is knowledge common to all who have watched football games, or viewed such games on television, that ofttimes as a result of momentum generated in executing plays, players cannot avoid running beyond the limits of the playing field and as a result accidents may occur (p. 649).

A 67-year-old grandmother was seriously and permanently injured while a spectator at a high school football game to which she had been invited by her grandson, a player on one of the teams (Perry v. Seattle School District No. 1, 1965). She had paid no admissison to the game which was between the third teams of the two schools. She had attended only one other football game at which she sat in the grandstand.

The only bleachers available were on the other team's side of the field. The plaintiff stood on her grandson's side of the field with other spectators. Officials from the defendant school did request that the spectators stay on the outside of the sideline of the playing field. The crowd was about four persons deep. A player carrying the

ball was hit by two opposing players, was knocked out of bounds, and hit the plaintiff who was thrown to the ground. She was talking to her daughter at the time and did not see the player until just before she was struck.

Relying on both Ingerson (1931) and Colclough (1964), the court ruled that the school district was not negligent for the injury occurring to the plaintiff and that she voluntarily assumed the risk of being injured by standing close to the sidelines. Similar to the direction of the court in Ingerson (1931), the court ruling on the instant case commented:

> The applicable rule as to the duty of the school district is that it must observe...that degree of care, precaution and vigilance which the circumstances demand. The 'circumstances' would seem to require, where large crowds attend because of interest in the outcome of the game, a higher degree of care than in more informal second and third-team and intramural contests where no admission is charged and those who attend are largely relatives or personal friends of the participants. Here there is no profit and the purpose is to make possible a wider participation in the sport (p. 593).

In Turner v. Caddo Parish School Board (1968), a case noticeably similar to Perry (1965), school authorities were not negligent for failing to provide barriers to keep spectators a safe distance from the playing field or for failing to give special warning to those attending a junior high school football game.

A 71-year-old grandmother went to the game in which one of her grandsons was playing and for which no admission was charged. She attended the game with another grandson

at his invitation. There were no bleachers on which to sit. Although there were no physical barriers to separate the field from spectator areas, there were white chalk lines to serve as restraining lines behind which spectators were supposed to stand. In addition to marking the restraining lines for spectators, school officials had assigned two teachers to effect spectator control. Prior to the plaintiff's injury, the teachers had moved along the sidelines asking the spectators to move behind the restraining line.

During the early part of the fourth quarter when a player carrying the ball and two tacklers went out of bounds, the spectators standing in front of the plaintiff moved back to get out of the way, ran into her, and knocked her down. She claimed that she had never seen a football game and that the school board was negligent for her injury.

Relying on Colclough (1964) and Perry (1965), the court held that the defendant school board had not been negligent. Moreover, the court agreed with the observations of the Supreme Court of Washington in Perry:

> Whether or not the plaintiff was as completely ignorant of the game of football as her testimony indicates, is not controlling on the issue of negligence. The question of the ordinary care required of the defendant must, to some extent, be predicated upon the knowledge of the ordinary person of the risk involved. As Prosser suggests, the owner of a hockey rink is not required to ask each entering patron whether he has ever witnessed

> a hockey game before, but can reasonably assume that the danger of being hit by the puck is understood and accepted (Perry v. Seattle School District No. 1, 1965, p. 593).

In Novak v. City of Delavan (1966), the issue was whether the school district had a duty within the Wisconsin safe-place statute to construct, repair, or maintain the bleachers so as to render them safe. Having paid admission to a high school football game, Mrs. Novak sat on the top row of the bleachers. When she and her husband stood up during the game on the footboard of the bleachers in order to see better, the footboard gave way and the two fell to the ground. Mrs. Novak sustained injuries.

Although the field and bleachers were owned by the city of Delavan, the school district used the field for its seven football games. The city was responsible for preparing the field for the games and cleaning up after each game. The school district provided ticket sellers and takers for each game, employed people to handle the parking lot, assigned teachers to keep students off the field, and lined the field. Employees of the school district did not inspect the bleachers nor perform repairs on them. City employees performed all maintenance and repairs on the bleachers. According to the park foreman, city employees conducted regular inspections before and after every game to determine the safety of the bleachers.

The court ruled that the school district was not negligent. Even though the school district rented the

field for its seven games, it did not have control or custody of the bleachers nor an obligation to repair them. The school district was not liable under the safe-place statute for Mrs. Novak's injuries.

The issue in Akins v. Glens Falls City School District (1981) was whether the school district, having provided protective screening behind the home plate area, was liable for negligence for injuries sustained by a spectator as a result of her having been struck by a foul ball while she was standing in an unscreened section of the field. The backstop behind home plate was 24 feet high and 50 feet long, located 60 feet behind home plate, and positioned in front of the bleachers which could seat approximately 120 adults. Two 3-foot high chain link fences ran from each end of the backstop along the baselines to a distance approximately 60 feet behind first and third bases.

The plaintiff arrived after the game had started and chose to watch the game from a position behind the 3-foot high fence along the third baseline. There were no seating facilities for spectators along the baselines. There was no proof that the bleachers behind home plate were filled. As the plaintiff was standing behind the 3-foot fence along the third baseline, a foul ball hit her in the eye causing serious and permanent injury.

The court ruled that there was no negligence on the

part of the school district. Having adequately screened the area behind home plate, the defendant had fulfilled its duty to the plaintiff and could not be held negligent since she had elected to stand outside the screened area.

The court also defined the duty of care an owner of a baseball facility owes spectators.

> The proprietor of a ball park need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest. Moreover, such screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game. In so holding, we merely recognize the practical realities of this sporting event (p. 533).

In summary, recovery was denied in 23 of the school-sponsored athletic cases on the basis of governmental immunity or no negligence on the part of the defendants. Recovery was allowed, however, in 6 cases.

Recovery allowed. The plaintiff was allowed recovery in three participant cases and three spectator cases. The issue in Scott v. State (1956), the first participant case, was whether New York Teachers College was negligent in maintaining a flag pole in right field of its baseball field. Seventeen-year-old James Scott, a student at the college, was playing right field when the injury occurred. In running far out in right field while attempting to catch a fly ball hit by a member of the opposing team, the plaintiff collided with a metal flag pole and sustained serious injury.

Prior to the spring of 1950 (when the injury occurred), the baseball field had been laid out so that the flag pole was located directly on the left field foul line. In 1950, the baseball field was relocated in such a way that the flag pole came within the boundaries of the playing field, 12 to 15 feet inside the foul line.

The court ruled that the baseball field at the college was negligently maintained by the State of New York, its officers, and employees, and that the flag pole, as situated, did not constitute an ordinary and inherent risk in the game of baseball. Even though Scott knew the location of the flag pole, the court held that

> ...it could reasonably have been foreseen by a reasonably prudent person that a baseball player, especially an outfielder, running to catch a long fly would direct his primary attention to the ball in the air and would be unaware of obstructions in his path, although the location of such obstructions was actually known to him (p. 618).

Consequently, Scott was not contributorily negligent; nor did he assume the risk of running into the flag pole notwithstanding his knowledge of its existence and location.

In Thomas v. St. Mary's Roman Catholic Church (1979), the plaintiff was a participant in an interschool varsity basketball game. Howard Thomas was lunging for a ball going out of bounds in the parochial high school gymnasium when he struck a glass panel located within six feet of the boundary line of the basketball court. The glass shattered

and Thomas fell severing an artery and sustaining extensive lacerations on both arms. Two other of the glass panels had been broken previously and had been replaced with plywood.

As a business invitee of St. Mary's, Thomas was entitled to rely on the assumption that St. Mary's would exercise reasonable care for his safety. The court ruled that the parochial school had breached its duty to maintain its premises in a reasonably safe condition for use consistent with the purpose.

Patricia Lamphear, a member of the women's intercollegiate softball team at Delhi Agricultural and Technical College, was injured while sliding into third base on a makeshift softball diamond (Lamphear v. State, 1982). The regular playing field had been rendered unplayable because of heavy rain. The plaintiff caught her left shoe in a depression close to third base. The hole was approximately one foot wide and three to four inches deep and was concealed by grass.

The plaintiff established a prima facie case of negligence. Since Lamphear had no prior knowledge of the depression and at the moment of the injury was engaged in a normal activity associated with playing softball, the court concluded that her actions did not rise to the level of culpable conduct.

> When the legislature enacted the comparative negligence statute in 1975, it abolished the doctrines of asssumption of risk and contributory negligence as absolute bars to a plaintiff's recovery. Currently, and at the time of the accident at issue here, assumption of risk and contributory negligence are termed 'culpable conduct' and, if proven, operate only to proportionately reduce a plaintiff's recovery. As an affirmative defense, assumption of risk is considered only after the plaintiff establishes a prima facie case of negligence, as was done here (p. 72).

Since Lamphear did not know that the hole was there and sliding into a base was a normal part of the game of softball, the court concluded that her actions did not rise to the level of culpable conduct so as to invoke the provisions of the comparative negligence statute and ruled in her favor.

The issue in the first spectator case in athletics in which recovery was allowed was whether the school district which had leased its football stadium was immune from liability for injuries sustained as the result of the condition of the stadium (Sawaya v. Tucson High School District No. 1, 1955). A spectator who had paid admission to a high school football game, Sawaya fell to the ground from the grandstand sustaining a fractured spine. He alleged negligence of the school district in allowing the railing through which he fell to become and remain in a condition of disrepair.

The court ruled that where the school district had leased its stadium and received compensation, it had been exercising a proprietary function and was liable for

injuries to spectators as a result of its negligence in maintenance of the stadium. The court also commented on the affect of insurance on governmental immunity.

> We believe that the majority of text book [sic] writers are of the view that such a doctrine has no application in this country especially in view of the fact that the reasons assigned by the courts for its perpetuation no longer exist. This seems to be especially true since liability insurance is available to state government and to its subdivisions for the protection of persons who may become injured as a result of a tort committed by an officer, agent or employee of government (p. 107).

The issue in Board of Education of Richmond County v. Fredericks (1966) was whether the school board had been negligent in maintaining the stadium in which Fredericks fell and whether the athletic director of the defendant board of education had notice of the defect. While a spectator at a high school football game, the plaintiff fell from the bleachers in Richmond Academy's football stadium after he stumbled over a loose bolt and loose board.

Evidence indicated that the athletic director was familiar with the stadium, that he had inspected the stadium two or three times each year, and that the board deteriorated slowly over a period of time rather than overnight. Ruling that the athletic director knew the condition of the seats at the time of the accident and thus had notice of the defect, the court held that the plaintiff was entitled to recover.

In Benjamin v. State (1982), the 11-year-old plaintiff

was a paying spectator at an ice hockey game at a facility located on the State University of New York at Oswego campus. While seated on the sidelines behind a protective fence and 10 to 15 feet away from the nearest players' bench, the plaintiff was struck by a puck. The errant puck went through an open area in front of the players' bench, passed behind the protective fence, and struck Benjamin in the head causing serious injury.

The court held that Benjamin had a right to assume that reasonable care had been taken to protect spectators in the seating area and that the state's failure to do so constituted negligence. Such negligence was a substantial factor in bringing about Benjamin's injuries. The court also was of the opinion that the lack of fencing in front of the players' bench constituted a dangerous condition and that the risk of injury to spectators was foreseeable. Moreover, the court held that "...a reasonably prudent person of the plaintiff's years, intelligence and degree of development would not fully have appreciated the danger..." (p. 332). Therefore, the plaintiff could not have been said to assume the risk nor have been aware of the risk so as to be contributorily negligent.

An analysis of the 29 cases in school-sponsored athletic programs in which the condition of facilities was alleged as the proximate cause of injury revealed that recovery was allowed in only 6 cases. In those 6, the

defendants were liable in 4 cases through breach of duty in negligent maintenance of facilities and in 1 case for failure to remedy a defective condition after constructive notice. In the other case in which the plaintiff was allowed recovery, the school was conducting a proprietary function and, therefore, was not protected by governmental immunity.

Physical Education

Description of Elements

There were 17 cases in physical education programs in which the condition of facilities was alleged as the proximate cause of injury to participants in school-sponsored physical education programs. Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 8.

With the exception of three cases (Bush v. City of Norwalk, 1937; Freund v. Oakland Board of Education, 1938; Truelove v. Wilson, 1981), injuries reported in physical education cases involved older individuals. These three cases involved injury to an 8-year-old student, a junior high school student, and an elementary school student, respectively.

With the exception of the three cases previously cited and where age could be discerned, injuries reported in physical education cases involved a teacher and older

Table 8

Elements in Cases of Alleged Unsafe Facilities in Physical Education

Case and Year	Elements			
	Age	Role	Sex	Sport/ Activity
Bradley v. Brd. of Ed. (1937)	O	P	M	Field dodge-ball
Bush v. City of Norwalk (1937)	Y	P	M	Balance beam
Freund v. Oakland Brd. (1938)	Y	P	F	-- Locker fell
Cambareri v. Brd. of Ed. (1940)	O	P	M	Relay race
Read v. Sch. Dist. (1941)	O	P	M	Touch foot-ball
Bauer v. Brd. of Ed. (1955)	O	P	M	Three-man basketball
Hanna v. State (1965)	O	P	M	Baseball
Cumberland Coll. v. Gaines (1968)	O	P	F	Game
Siau v. Rapides Parish (1972)	O	P	M	Running-- 880 event
Driscol v. Delphi (1973)	O	P	F	Run to dress-ing room
Shelton v. Planet (1973)	O	P	F	Run and turn maneuver
Dobbins v. Brd of Ed. (1975)	O	P	F	Running
Zawadzki v. Taylor (1976)	-	P	M	Indoor tennis
Ardoin v. Evangeline (1979)	O	P	M	Softball
Truelove v. Wilson (1981)	Y	P	F	Soccer
Wilkinson v. Hartford (1982)	O	P	M	Relay race
Hutt v. Etowah Brd. of Ed. (1984)	O	P	F	Basketball

students. A physical education teacher sustained injury in Shelton v. Planet Insurance Company (1973), and college students were injured in Cumberland College v. Gaines (1968) and Hanna v. State (1965). Other than the one case in which age was not identified (Zawadzki v. Taylor, 1976), all other cases (10) involved high school students.

All physical education cases involved injuries to participants, and 10 of the 17 were males. Of the 6 females injured during actual "activity", 4 were running at the time of injury.

Legal Analysis

In analyzing cases in which participants were injured in school-sponsored physical education programs and negligence was alleged due to unsafe conditions of facilities, cases are categorized as those in which recovery to the injured party was either denied or allowed. The circumstances giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other facility cases which have been reported are relied on as precedent for the instant case, such will be noted.

Recovery denied. There were four physical education cases in which the courts ruled in favor of the defendant school districts on the basis of governmental immunity. The issues in each of these four cases was whether the defendant was exempt from liability on the basis of

governmental immunity.

In Dobbins v. Board of Education of Henry Hudson Regional High School (1974), a 16-year-old high school student was participating in physical fitness tests as a member of her physical education class. The specific issue in this case was whether the safe-place exemption to immunity should be applied.

The teacher instructed the class to run in groups of five to eight on a macadam driveway around a grass island located in a parking lot. In running the designated course, the plaintiff slipped on loose gravel, fell to the pavement, and seriously injured her knee.

The decision favoring the defendant school district was based on a New Jersey statute.

> No school district shall be liable for injury to the person from the use of any public grounds, buildings or structures, any law to the contrary notwithstanding (p. 60).

Since the Supreme Court of New Jersey viewed the accident as one which occurred from the use of the property and not as the result of a defect in the maintenance of the parking lot, it barred recovery on the basis of this immunity statute.

As with Dobbins (1974), the issue in Zawadski v. Taylor (1976) was whether the public building exception was applicable. During an indoor tennis class, a ball struck by another student (Taylor) hit the plaintiff in the eye. The plaintiff was playing on one of the courts

laid out on the gymnasium floor, and Taylor was playing on the other court immediately adjacent to the plaintiff's court. No nets separated the two courts. The plaintiff alleged that a dangerous or defective condition existed in the school gymnasium because of the absence of safety nets separating the two tennis courts.

The court held that the statutory public building exception to governmental immunity was not applicable since the missing equipment (nets) was not and never would be a permanent part of the building. In rendering its decision, the court also gave examples of "failure to provide" which would fall within the statutory exception.

> ...the failure to provide a handrail on a stairway, a door on an elevator, a locking device on a window. Further, the failure to provide must refer to something inanimate. For example, an allegation that the plaintiff's teacher should have stationed himself between the tennis courts in order to deflect inaccurate shots would not survive a proper motion for accelerated judgment by defendant school district (p. 164).

Taylor, the other defendant, was not a party to the appeal since he would not be affected by the governmental immunity question.

A third case in which the statutory public building exception to governmental immunity was not applicable was Hutt v. Etowah County Board of Education, 1984. A high school student was participating in a basketball activity in the gymnasium when her hand struck and shattered the glass window in a door located close to the edge of the

basketball court.

The issue in this case was whether the defendant school board had failed to provide safe gymnasium facilities. The Supreme Court of Alabama ruled that due to sovereign immunity the school board, as a function of the State of Alabama, was not subject to tort action.

In Truelove v. Wilson (1981), an elementary school student was fatally injured when a metal soccer goal fell and struck her as she was kneeling to tie her shoe during a physical education class. The issues were whether the school district was maintaining a nuisance and whether the 15 defendants named by her parents were entitled to the governmental immunity defense.

The Georgia Court of Appeals ruled that the soccer goal did not constitute a nuisance. Additionally, the county board of education, county school district, and individual defendants who were school employees and members of the county board of education were entitled to governmental immunity. They were entitled to such immunity since they were acting in "...their public capacities in discretionary roles and their acts were within the scope of their authority and they acted without wilfulness, malice or corruption" (p. 558).

There were seven physical education cases in which the courts ruled for the defendants, finding no negligence on their part. In two of these cases, the plaintiffs'

negligence was the proximate cause of injuries sustained. In Hanna v. State (1965), a college participant in a baseball game announced that he would umpire while he was acting as a substitute. While umpiring behind the portable backstop, the plaintiff was struck in the face by a foul tipped ball and the glasses he was wearing were shattered. The ball did not go through the net, but the net was slack enough to give and allow the ball to strike him.

Although Hanna had received a typed outline of instructions including reference to the use of protective equipment at the beginning of the baseball unit, he was not wearing an available guard over his glasses. Moreover, the teacher previously had instructed the students to stand far enough behind the portable backstop to avoid being hit by a foul tip. Hanna had been crouched about a foot from the net umpiring for about 15 minutes prior to his injury. During that time, three or four foul tips had struck the net.

The court held that the condition of the net was not the cause of the injury. Nor did the use of a portable backstop in a baseball game in a physical education class constitute negligence on the part of the state or its employees. The court did find that the plaintiff was aware that there purposely was slack in the netting and was charged with the knowledge that to stand with his face

too close to the net would be dangerous. His failure to maintain a safe distance from the net was the proximate cause of the accident resulting in his eye injury and precluded recovery.

Siau v. Rapides Parish School Board (1972) was the second physical education case in which the plaintiff's actions were the proximate cause of the injury he sustained. Therefore, he was denied recovery. William Siau's high school physical education class was engaged in running an 880-yard track event. Since Siau had not dressed properly for class, he was not allowed to run in the event and had been instructed to sit in the bleachers. When he learned that he could not participate in softball unless he also ran, Siau came down out of the bleachers, crossed the starting point on the track, went through the gate onto the grassy area inside the track proper, and started to run. Another student, who was working with the javelin, had finished with the javelin and placed it in or on the ground in such a way that the tip was approximately three feet above the ground.

One of the coaches saw Siau as he started to run along the inside of the four-foot fence (between the track and the field) ahead of the students on the track. Although the coach called out to Siau to stop, the plaintiff called back that he would run anyway. While looking to the side to watch the students on the cinder

track, Siau impaled himself on the javelin. He was not wearing his glasses without which he was unable to distinguish faces at a distance of 20 to 25 feet.

The court ruled in favor of the school board. Since Siau was running in an area not utilized for that purpose, should not have been participating because he was inappropriately dressed, had been told to stop, had failed to look straight ahead in the direction in which he was running, and had been running too fast in regard to his limited vision without his glasses, he was contributorily negligent in failing to exercise the care required for his own safety.

In Cambareri v. Board of Education of Albany (1940), the issue was whether the defendant school board was negligent in maintaining a slippery gymnasium floor which was unsafe for the physical education activity conducted on it. Anthony Cambareri was a 15-year-old high school student who was "...clumsy, awkward and ungainly and weighed upwards of 225 pounds" (Cambareri v. Board of Education of City of Albany, 1936, p. 893). As a member of his physical education class engaged in a tumbling relay race, the plaintiff was to run across the gymnasium floor, execute a forward roll on a mat, regain his footing and run toward a pole, touch the pole, and return to another member of his team who would continue the race. Cambareri claimied that after he had executed the forward

roll and regained his footing that the mat slipped, causing him to sustain floor burns on his right knee and injury to his left leg.

The court ruled for the defendant since there was no showing that the school board failed to exercise reasonable care in furnishing a reasonably safe place.

> The defendant was not the insurer of plaintiff's safety. Common experience teaches us that innumerable hazards surround the individual and injuries thereby are suffered despite the exercise of proper care and for which no real liability attaches to any one [sic]. Slipping and falls frequently occur on floors when no implication of carelessness arises....This was an ordinary floor with an ordinary mat placed thereon. The hazard was the usual and ordinary hazard of children encountered in running, exercise, and play (p. 894).

A similar ruling of no negligence was handed down in Read v. School Dist. No. 211 of Lewis County (1941). The issue in this case was whether the condition of the gymnasium floor was the proximate cause of injury. The gymnasium was old with concrete walls and a wooden floor built over a concrete base. The floor had a tendency to vibrate when students ran across it. In two places in one area of the gymnasium, the boards of the floor connected in such a manner that the edges of the boards were slightly raised.

Ray Read was a high school student participating in a variation of touch football in his physical education class. The object of the game, played with a soccer ball, was to score a goal by reaching and touching the end of

the gymnasium wall at the far end of the floor. As the plaintiff bent over to pick up the ball, a number of other students ran into him and one of them struck him in the back. The plaintiff stated that he did not know whether any of those who hit him tripped over the boards. He also stated that the other boys might have run into him to keep from running into the rough concrete walls.

The court held that the plaintiff failed to prove that the defendant school district, through its agent the physical education teacher, was guilty of any negligence which caused the injuries sustained by the plaintiff. In the court's opinion, the injury resulted from a pure accident and could not be attributed to any act or omission on the part of the school district or its agent.

Actionable negligence was also lacking in Cumberland College v. Gaines (1968). Inez Gaines was a college student in a physical education class when she fell while participating in a game which required her to run across the gymnasium floor. She alleged that her fall occurred as the result of a sticky liquid substance on the floor.

The court ruled that the plaintiff failed to show that the college had created the condition or had notice of its condition. Therefore, there was insufficient evidence to demonstrate negligence on the part of the college.

The issues in Driscol v. Delphi Community School Corp. (1973) were whether the defendants were negligent in

(a) permitting too many girls (45) in the gymnasium class, (b) failing to provide adequate showers (6) for the class, and (c) failing to provide sufficient time for the girls to shower. Denise Driscol was a member of the girls' physical education class which had one end of the gymnasium while a boys' class was conducted on the other end of the gymnasium floor. The two classes were separated by a canvas curtain. Approximately five minutes before the time the class was scheduled to end, the girls were dismissed by their teacher. In running toward the curtain to get to the dressing room, the plaintiff fell when her feet got tangled with a girl behind her. Several other girls fell on top of her, and she sustained the injuries of which she complained.

In ruling for the defendants (physical education teacher and school district), the court addressed each of the three complaints: (a) the teacher had no part in determining the class size and, therefore, was not negligent for allowing too many girls to be in the class; (b) there was no proof that the class size, crowded condition of the dressing room, or time allowed for showering were conditions created by discretionary acts or omissions; and (c) the teacher's practice of not letting her class go until after the boys' class had been dismissed was reasonable in that this procedure prevented injurious collisions if the girls had gone through the boys'

territory.

The last case in which the court found no negligence on the part of the defendants involved injury to a physical education teacher (Shelton v. Planet Insurance Company, 1973). The issue in this case was whether the superintendent and other unnamed executive officers of the school board failed to provide the plaintiff with safe working conditions. Action was brought against the insurer of the defendants.

Carol Shelton taught her physical education classes on the school's parking area due to the lack of space elsewhere at the school. The parking area, which was asphalt surfaced, was partially covered with loose gravel and contained many potholes. As the plaintiff teacher was demonstrating a maneuver to her students about how to run and execute a turn at the same time, she slipped on the loose gravel and fell into one of the holes sustaining the injury of which she complained.

The Supreme Court of Louisiana held that action could not be maintained against the defendants. The school board, as the decision-making body, had the sole authority to approve spending public funds for the improvement, repair, and renovation of school property. Since the superintendent or individual members of the board could not take such action as individuals, there was no cause of action.

There were 11 cases in school-sponsored physical education programs in which recovery was denied. In 4 cases, the courts ruled in favor of the defendants on the basis of governmental immunity. The defendants prevailed in the other 7 cases since there was no negligence on their part. In 2 of the 7 cases in which no negligence was found on the part of the defendants, the participants' negligence was the proximate cause of their injury.

Recovery allowed. The plaintiff was allowed recovery in 6 of the 17 physical education cases. In Bradley v. Board of Education of City of Oneonta (1937), the issue was whether the board of education was negligent in failing to properly pad the walls of the gymansium.

Franklin Bradley, a high school student, was participating in a game of field dodge ball in the school gymnasium when he slipped on the floor, fell, and struck a corner of a brick pilaster which projected from the wall. Corner boards had been installed originally to guard the pilaster, but they had come loose and pulled away, leaving the brick corner exposed and unguarded.

The Court of Appeals of New York ruled for the plaintiff. It was a general custom in the area to protect dangerous projections in gymnasiums with mats or padding. The defendant board of education breached its duty of ordinary care by not providing mats or other protective measures to cover the brick column.

Whether the use of a balance beam on a slippery classroom floor constituted a nuisance was the issue in a 1937 physical education case (Bush v. City of Norwalk). While walking along the balance beam under the supervision of his teacher, 8-year-old Richard Bush fell and was injured. The classroom floor had been oiled and was somewhat slippery.

The court ruled in favor of the plaintiff since the balance beam as used on the floor of the classroom was likely to slip and cause any child walking along it to fall. As a source of danger to the children using it, the beam constituted a nuisance and, therefore, the rule of governmental immunity was inapplicable.

The plaintiff was allowed recovery also in Freund v. Oakland Board of Education (1938). The issue in this case was whether the steel lockers in the dressing room were negligently maintained.

Phyllis Freund, a junior high school student, had gone into the dressing room after her physical education class. After they had dressed, the girls usually sat on benches which were about two feet in front of the lockers. After all of the students were seated, the usual procedure was for the teacher to excuse them for their next class. While waiting to be dismissed on the day of her injury, the plaintiff, who was sitting with her back to the lockers, was injured when several lockers fell on her.

The lockers were located on three sides of the dressing room. They stood upright against the walls and were nailed to the studding in the wall, although they would stand without being attached to the wall. The floor was level and in good condition, and the janitor had inspected the lockers twice that year (during the summer and during Christmas vacation). There was no evidence, however, that any test had been conducted to ascertain the results of six years of use or that the lockers had been installed properly or by a competent contractor. Although the janitor had inspected them twice that year, there was no evidence as to how they had been inspected.

In ruling for the plaintiff, the court held that such a situation created a condition of danger which the board of education should have reasonably anticipated. The court cited Judson v. Grant Powder Company (1885) to support the view of a prima facie case, or one in which "the thing speaks for itself".

> When a thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from the want of care (Judson v. Grant Powder Company, 1885, p. 1021).

The issue in Bauer v. Board of Education of City of New York (1955) was whether the overcrowded condition of a gymnasium created a condition of danger. Students in the high school physical education class were required to

participate in some kind of activity, and the plaintiff Frank Bauer chose to play three-man basketball. As the plaintiff was shooting during the game, an opposing player who was trying to block Bauer's shot ran into Bauer. Testimony indicated that the opposing player struck the plaintiff as a result of a player on an adjacent court running onto the plaintiff's court.

There were eight basketball playing areas in the gymnasium, and they were either adjacent to each other or the areas overlapped. All eight playing areas were in use at the time of Bauer's injury. Forty-eight boys were playing basketball in an area 80 feet long and 43 feet wide.

The court held that such a situation created a condition of danger which the board of education should have reasonably anticipated. In ruling for the plaintiff, the court relied on Bradley v. Board of Education of City of Oneonta (1937), among other cases, in holding that the dangerous condition should have been foreseeable.

The fifth physical education case in which recovery was allowed was Ardoin v. Evangeline Parish School Board (1979). The issue in this case was whether a piece of concrete on a playing field constituted such a hazardous condition that it was a breach of the school board's required standard of care to allow it to exist.

David Ardoin was a high school student participating

in a softball game when he was injured. While running from second to third base, the plaintiff tripped over a slab of concrete and hurt his right knee. The piece of concrete, which was at least 12 inches long by 12 inches wide and about 8 inches thick, was embedded in the ground between the two bases. A piece of the concrete stuck up about an inch above the ground.

In ruling for the plaintiff, the court held that the school board had breached its required standard of care by allowing the piece of concrete to exist on the playing field. Although there was no evidence presented to the effect that the defendant school board had actual knowledge of the existence of the concrete, the court gave guidance on constructive knowledge.

> Constructive knowledge of a defect exists if it is so inherently dangerous that the school authorities should have known of it....This softball field had been used throughout the year for physical education classes....We believe that a reasonable examination of the area assigned for use as a softball diamond would have revealed this hazard....Accordingly, we hold that the school authorities had constructive knowledge of this dangerous condition. They should have anticipated and discovered the potential danger and eliminated the harm (p. 374).

The last case in which recovery was allowed was Wilkinson v. Hartford Accident and Indemnity Company (1982). The issues in this case were whether the teacher was negligent in failing to supervise the physical education class properly, the school board was negligent in maintaining a plate glass panel in the lobby of the

gymnasium, and the plaintiff's action was barred by his contributory negligence.

As a member of his physical education class, David Wilkinson had been warned not to engage in horseplay in the gymnasium lobby while waiting his turn to run in a relay race. While engaging in an unsupervised race in the lobby to determine his position in the next race, he fell through a plate glass panel sustaining multiple cuts on his arms and legs. The panel through which the plaintiff fell was the original plate glass. The panel at the other end of the lobby was safety glass, the original glass having been replaced several years earlier after an incident in which a visiting coach walked through that glass panel.

The Supreme Court of Louisiana held that the teacher was not negligent, that the school board was negligent, and that the plaintiff was not contributorily negligent. Relying on Ardoin v. Evangeline Parish School Board (1979), the court in the instant case elaborated on actual and constructive notice.

> A school board is liable if it has actual or constructive knowledge of a condition unreasonably hazardous to children under its supervision. The evidence in the record amply supports the conclusion that the school board had actual and constructive knowledge that the existence and maintenance of plate glass in the foyer of the gymnasium was dangerous (Wilkinson v. Hartford Accident and Indemnity Company, 1982, p. 24).

Having found that the school board was negligent, the

court considered whether the 12-year-old plaintiff was contributorily negligent.

> While a child of 12 can be guilty of contributory negligence, such a child's caution must be judged by his maturity and capacity to evaluate circumstances in each particular case, and he must exercise only the care expected of his age, intelligence and experience....We consider it was normal behavior for 12-year-old boys to do what [the plaintiff] and his teammates did under the circumstances despite a previous warning to refrain from engaging in horseplay in the lobby (p. 24).

Analysis of the six preceding cases in which the injured participant was allowed to recover completes the second section of this chapter. The decision favoring the participant in five of the cases was based on negligent maintenance of facilities and on the defendant's maintenance of a nuisance in the sixth case.

Intramurals

Description of Elements

There were two cases in intramural programs in which the condition of facilities was alleged as the proximate cause of injury to participants in school-sponsored intramural programs. Each case was analyzed to determine the age, role, sex, and sport or activity involved. The occurrence of these elements is depicted in Table 9.

Table 9

Elements in Cases of Alleged Unsafe Facilities in Intramurals

Case and Year	Elements			
	Age	Role	Sex	Sport/ Activity
Domino v. Mercurio (1962)	-	P	M	Softball
Scaduto v. State (1982)	O	P	M	Softball

The older student in Scaduto v. State (1982) was a college student. The injured students in both cases were male participants engaged in softball games.

Legal Analysis

In analyzing the two cases in which participants were injured in school-sponsored intramural programs and negligence was alleged due to unsafe conditions of facilities, the cases are categorized as those in which recovery to the injured party was either denied or allowed. The circumstances giving rise to each case, issues involved, decision rendered, and legal principles applied are included for each case. When any of the other facility cases which have been reported are relied on as precedent for the instant case, such will be noted.

Recovery denied. Recovery was denied in one of the

intramural cases. The issue in Scaduto v. State (1982) was whether the State of New York exercised reasonable care in maintaining a softball field with an unfenced drainage ditch alongside the field.

Joseph Scaduto was a college student engaged in an intramural softball game at the time of his injury. The field on which such a game usually was played was reserved for soccer. During the game, a batter hit the ball in foul territory outside the third baseline. While playing third base and attempting to catch the foul ball, Scaduto took four or five steps and fell into the drainage ditch located 15 to 20 feet from the baseline and parallel to it. The plaintiff was familiar with the field, and the ditch was visible to him.

The court held that the State of New York did not breach its duty to Scaduto and that the drainage ditch was not an inherently dangerous condition of which he should have been aware. The court ruled that the duty owed to the plaintiff required only that the defendant exercise reasonable care under the circumstances to prevent injury to those participating in the softball game.

Relying on Akins v. Glen Falls City School District, a 1981 New York athletic case in which a spectator at a high school baseball game was injured, the court in the instant case gave direction regarding the duty owed by holding that the duty did not encompass insurance of the safety of those

who played on the field. Additionally, the court elaborated on the assumption of risk doctrine.

> Intramural sporting activities involve inherent dangers to participants. This claimant, in electing to play, assumed the dangers of the game. This included the possibility of falling while in pursuit of the ball....[The State of New York] was not required to provide a terrain that was perfectly level. In the instant case, the record discloses that the drainage ditch was clearly visible to the players; that claimant was aware of its location; that its slope was gradual and not precipitous, and that it fulfilled a necessary function of drainage of the playing fields. We, therefore, conclude that the ditch did not constitute an inherently dangerous condition. The field of play was adequate for its intended purposes (p. 530).

Recovery allowed. Recovery was allowed in the other intramural case. In Domino v. Mercurio (1962), the issue was whether the defendant supervisors of the game and the board of education were negligent in allowing a bench to be located so near the softball field that it constituted a hazard to the players.

A crowd of approximately 125 spectators gathered to watch the intramural championship softball game. The softball field was screened by a fence, and the third baseline was located 27 feet from the nearest fence. Three benches were located in the softball area--one on the first base side of the field and the other two behind third base, positioned against the fence. About 100 of the spectators were on the third base side of the field. Although the benches supposedly were to be used by players waiting their turn at bat, the benches were filled by some

spectators and others stood around them.

James Domino, the catcher on his team, ran to catch a foul ball hit into the crowd between home plate and third base. As he was looking up at the ball, he tripped over a spectator sitting on the bench, and broke his leg. The crowd had pushed the bench halfway between the fence and the third baseline.

Named as defendants were the two teachers assigned to supervise the event (Mercurio and Walter) and the board of education. Walter served as the umpire and was charged with the duty of controlling the third base side of the field, and Mercurio supervised the crowd on the first base side. Although ropes were available which could have been used to restrain the crowd, the supervisors did not think it necessary to use them to control the crowd. Rather, it was Walter's practice to stop the game and make spectators move back to the fence when they moved out close enough to the foul line to endanger the players. Walter had stopped the game twice previously, in fact, to move the spectators back. The spectators had moved forward again toward the third baseline when Domino was injured.

The court held that the two defendant supervisors were negligent in allowing the spectators to congregate close to the third baseline, to push the bench into a dangerous position, and to surround the bench so that players might not see it when running after a foul ball.

The plaintiff Domino, however, was not contributorily negligent; nor did he assume the risk of his injury.

According to the court, the difficult problem in this case was whether the defendant board of education was negligent. In deliberating whether the board of education was liable under the principle of respondeat superior for the negligence of its supervisors, the court reviewed the historical abolition of governmental and charitable immunity in the State of New York. After extensive deliberation, the court held that in regard to employees of boards of education and professional employees of charitable institutions, the doctrine of respondeat superior applied to such employees.

> When...in 1929,...the Court of Claims Act was adopted and the State's immunity was abolished, the State became liable for the torts of its agents and employees to the same extent that a private person engaged in the same enterprise would be liable. Under this statute, the State became liable for the negligence of teachers in schools operated by the State (p. 1015).

Consequently, the board of education in its relationship to the teachers employed by it in the instant case, was liable for the negligence of its teachers.

Summary of Case Analyses

After recapitulation of the number of reported facility cases and the decade, frequency, state, and school-sponsored sport program within which they were litigated has been presented, the summary will be organized in two major sections: (a) cases in which

participants were injured in school-sponsored sport programs and (b) cases in which spectators were injured in school-sponsored sport programs. Observations regarding age, sex, and sport or activity will be summarized for each role. Subsequently, whether recovery was denied or allowed will be summarized according to the school-sponsored sport program in which the participants or spectators were injured.

There were 48 reported cases in which the condition of facilities was alleged as the proximate cause of injury in school-sponsored sport programs. As with equipment cases, the occurrence of reported facility cases has increased dramatically in the recent past with 31 of the 48 cases from 1909 to 1984 having been reported in the past 24 years. Throughout the years since the first reported facility case in the 1900s, 19 of the cases were reported in Louisiana (7) and New York (12). In the other 21 states in which facility cases were reported, the number of cases ranged from 1 to 3 cases. In comparison to the 29 reported facility cases in athletic programs and 17 in physical education programs, only 2 cases were reported in intramural programs (Table 10).

In considering the 29 (of 48) cases in which participants were injured in school-sponsored sport programs, 24 of those individuals injured were at the high school level or beyond, and 3 were at the junior high

Table 10

Summary of Cases Involving Facilities in Athletics,

Physical Education, and Intramurals

RECOVERY DENIED							
Page # of Analysis	Case/Year	School-Sponsored Sport Program	Age	Role	Sex	Legal Principle	Legal Precedent*
82	Mokovich (1929)	Athletics (Football)	O	P	M	Gov. immunity	None
84	Vargo (1980)	Athletics (Wt. lifting)	O	P	M	Gov. immunity	None
84	McGee (1962)	Athletics (Baseball	O	P	M	No negligence	None
86	Dudley (1974)	Athletics (Baseball)	O	P	M	No negligence	None
87	Nunez (1975)	Athletics (Basketball)	O	P	M	No negligence	None
88	McGovern (1976)	Athletics (Basketball)	O	P	M	No negligence	None
89	Studley (1982)	Athletics (Basketball)	O	P	M	No negligence	None
89	George (1909)	Athletics (Football)	-	S	M	Gov. immunity	None
90	Holzworth (1941)	Athletics (Football)	-	S	M	Gov. immunity	None
90	Rhoades	Athletics	-	S	F	Gov. immunity	None

89	George (1909)	Athletics (Football)	-	S	M	Gov. immunity	None
90	Holzworth (1941)	Athletics (Football)	-	S	M	Gov. immunity	None
90	Rhoades (1943)	Athletics (Basketball)	-	S	F	Gov. immunity	None
92	Reed (1949)	Athletics (Football)	-	S	M	Gov. immunity	None
92	Richards (1957)	Athletics (Football)	0	S	M	Gov. immunity	None
93	Buck (1959)	Athletics (Baseball)	0	S	F	Gov. immunity	None
94	Bacon (1960)	Athletics (Basketball)	-	S	F	Gov. immunity	None
94	Ludwig (1962)	Athletics (Football)	0	S	M	Gov. immunity	None
95	Coughlon (1967)	Athletics (Basketball)	-	S	-	Gov. immunity	None
96	Ingerson (1931)	Athletics (Football)	0	S	F	No negligence	None
97	Juntila (1935)	Athletics (Football)	0	S	M	No negligence	None
98	Colclough (1964)	Athletics (Football)	0	S	M	No negligence	None
99	Perry (1965)	Athletics (Football)	0	S	F	No negligence	Ingerson (1931) and Colclough (1964)
100	Turner (1965)	Athletics (Football)	0	S	F	No negligence	Colclough (1964) and Perry (1965)
102	Novak (1966)	Athletics (Football)	0	S	F	No negligence	None
103	Akins (1981)	Athletics (Baseball)	-	S	F	No negligence	None

	(1965)	(Football)					(1964)
100	Turner (1965)	Athletics (Football)	O	S	F	No negligence	Colclough (1964) and Perry (1965)
102	Novak (1966)	Athletics (Football)	O	S	F	No negligence	None
103	Akins (1981)	Athletics (Baseball)	-	S	F	No negligence	None
113	Dobbins (1974)	Physical Educ. (Running)	O	P	F	Gov. immunity	None
113	Zawadski (1976)	Physical Educ. (Indoor tennis)	-	P	M	Gov. immunity	None
114	Hutt (1984)	Physical Educ. (Basketball)	O	P	F	Gov. immunity	None
115	Truelove (1981)	Physical Educ. (Soccer)	Y	P	F	Gov. immunity	None
116	Hanna (1965)	Physical Educ. (Baseball)	O	P	M	No negligence	None
117	Siau (1972)	Physical Educ. (880-yd. run)	O	P	M	No negligence	None
118	Cambareri (1940)	Physical Educ. (Relay race)	O	P	M	No negligence	None
119	Read (1941)	Physical Educ. (Touch football)	O	P	M	No negligence	None
120	Cumberland (1968)	Physical Educ. (Game)	O	P	F	No negligence	None
120	Driscol (1973)	Physical Educ. (Run to dressing room)	O	P	F	No negligence	None
122	Shelton (1973)	Physical Educ. (Run and turn)	O	P	F	No negligence	None
131	Scaduto (1982)	Intramurals (Softball)	O	P	M	No negligence	Akins (1981)

119	Read (1941)	Physical Educ. (Touch football)	O	P	M	No negligence	None
120	Cumberland (1968)	Physical Educ. (Game)	O	P	F	No negligence	None
120	Driscol (1973)	Physical Educ. (Run to dressing room)	O	P	F	No negligence	None
122	Shelton (1973)	Physical Educ. (Run and turn)	O	P	F	No negligence	None
131	Scaduto (1982)	Intramurals (Softball)	O	P	M	No negligence	Akins (1981)

RECOVERY ALLOWED

Page # of Analysis	Case/Year	School-Sponsored Sport Program	Age	Role	Sex	Breach of Duty	Legal Precedent*
104	Scott (1956)	Athletics (Baseball)	O	P	M	Improper placement of flag pole on field	None
105	Thomas v.St. Mary's (1979)	Athletics (Basketball)	O	P	M	Improper maintenance of glass panels in gymnasium	None
106	Lamphear (1982)	Athletics (Softball)	O	P	F	Unsafe condition of hole in baseline	None
107	Sawaya (1955)	Athletics (Football)	-	S	M	Unsafe condition of stadium railing (proprietary function)	None
108	Board v. Fredericks (1966)	Athletics (Football)	-	S	M	Dangerous con- of loose bolt and board in stadium	None
108	Benjamin (1982)	Athletics (Ice hockey)	Y	S	M	Improper protective screening for	None

	Fredericks (1966)	(Football)				of loose bolt and board in stadium	
108	Benjamin (1982)	Athletics (Ice hockey)	Y	S	M	Improper protective screening for spectators	None
123	Bradley (1937)	Physical Educ. (Field dodge ball)	O	P	M	Failure to pad gymnasium walls	None
124	Bush (1937)	Physical Educ. (Balance beam)	Y	P	M	Improper condition of balance beam as used (nuisance)	None
124	Freund (1938)	Physical Educ. (Locker fell)	Y	P	F	Defective condition of lockers	None
125	Bauer (1955)	Physical Educ. (3-man basketball)	O	P	M	Improper use of gymnasium space	Bradley (1937)
126	Ardoin (1979)	Physical Educ. (Softball)	O	P	M	Hazardous condition of concrete slab embedded in baseline	None
127	Wilkinson (1982)	Physical Educ. (Relay race)	O	P	M	Improper maintenance of glass panel in gymnasium lobby	Ardoin (1979)
132	Domino (1962)	Intramurals (Softball)	-	P	M	Dangerous position of bench near third baseline	None

*Cases cited as precedent include only those involving facilities as the proximate cause of injury.

school level or below. Age was not discernible in two participant cases.

There were 21 injured male participants and 8 injured female participants. One female participant was injured in the 10 athletic cases, 7 in the 17 physical education cases, and none in the 2 intramural cases.

When reviewing activities in all three school-sponsored sport programs in which participants were engaging, 18 of the activities involved traditional team sports or activities--football (2), baseball (4), soccer (1), basketball (6), softball (4), and field dodge ball (1). Other activities in which participants were involved included weight lifting (1), running (4), indoor tennis (1), relay races (2), playing a game (1), and walking a balance beam (1).

In considering the 19 cases in school-sponsored athletic programs in which spectators were injured, age could not be discerned in 9 of the cases. Of the other spectator cases, nine of those injured were at the high school level or beyond and only one was at the junior high school level or below.

There were 10 injured male spectators and 8 injured female spectators. Sex of the injured party could not be discerned in one of the spectator cases.

When considering the athletic events at which these 19 spectators were injured, 13 of the spectators were

observing football games; 3, basketball games; 2, baseball games; and 1, ice hockey.

As presented in Table 10, recovery was denied in 35 of the 48 cases. When considering cases in which participants were injured, decisions denying recovery in 2 athletic cases and 4 physical education cases were based on governmental immunity. Decisions based on no negligence on the part of the defendant were handed down in 5 athletic cases, 7 physical education cases, and 1 intramural case.

Recovery was denied on the basis of governmental immunity in nine athletic cases in which spectators were injured. Recovery was denied in the other seven athletic cases on the basis of no negligence on the part of the defendant.

Recovery was allowed in 13 of the 48 cases. In the 10 cases in which recovery was allowed to injured participants, recovery was allowed in 3 athletic cases, 6 physical education cases, and 1 intramural case. Recovery was allowed in the 3 athletic cases, 4 physical education cases, and the 1 intramural case for the defendants' negligent maintenance of fields (Scott v.State, 1966; Lamphear v. State, 1982; Ardoin v. Evangeline Parish School Board, 1979; Domino v. Mercurio, 1962) and negligent maintenance of gymnasiums (Thomas v. St. Mary's Catholic Church, 1979; Bradley v. Board of Education of City of Oneonta, 1937; Freund v. Oakland Board of Education, 1938;

Wilkinson v. Hartford Accident and Indemnity Company, 1982). In one of the other physical education cases (Bush v. City of Norwalk, 1937), a balance beam as used on a slippery floor constituted a nuisance; in the other (Bauer v. Board of Education of City of New York, 1955), negligent use of gymnasium space created a dangerous condition.

In the other three cases in which recovery was allowed to injured spectators in athletic cases, recovery was allowed because of a breach of duty in maintaining unsafe facilities. Recovery was allowed in one of these cases because of negligence and an exception was found to governmental immunity. Recovery was allowed in Sawaya v. Tucson High School District No. 1 (1955) since the defendant school district was exercising a proprietary function in its negligent maintenance of a football stadium. Recovery was allowed also in Board of Education of Richmond County v. Fredericks (1966) because the school board had constructive notice of the defective condition of its stadium but failed to remedy it. In the third case, the defendant negligently maintained an ice hockey facility by not providing adequate screening to protect spectators (Benjamin v. State, 1982).

Six cases were relied on as precedent for decisions in subsequent cases (Ingerson v. Shattuck School, 1931; Colclough v. Orleans Parish School Board, 1964; Perry v. Seattle School District No. 1, 1965; Akins v. Glen Falls

City School District, 1981; Bradley v. Board of Education of City of Oneonta, 1937; Ardoin v. Evangeline Parish School Board, 1979). Akins (1981), Bradley (1937), and Ardoin (1979) were used as precedent in Scaduto v. State (1982), Bauer v. Board of Education of City of New York (1955), and Wilkinson v. Hartford Accident and Indemnity Company (1982) and litigated in the same state--New York, New York, and Louisiana, respectively. While the court in Turner v. Caddo Parish School Board (1968) relied on another Louisiana case as precedent (Colclough, 1964), it also relied on Perry (1965), a Washington case. Similarly, Perry (1965) relied on a Minnesota case (Ingerson, 1931) and a Louisiana case (Colclough, 1964). Of interest is the fact that of the case relied on in Turner (1968) and the two relied on in Perry (1965) which were not litigated in the same state, the precedent-setting cases were not even decided in the same region of the country.

Just as there were no facility cases cited as precedent in any of the equipment cases, no equipment cases were cited as precedent for any of the facility cases.

Trends

Points delineated were derived from the 48 reported cases in which the condition of facilities was alleged as the proximate cause of injury to participants and spectators in school-sponsored sport programs.

1. Thirty-one of the 48 cases from 1909 to 1984 were reported in the past 24 years. Modifications and exceptions to the doctrine of governmental immunity through the years may have allowed the courts to consider more cases than previously when governmental immunity foreclosed litigation.

2. More cases were reported in school-sponsored athletic programs (29) than in physical education (17) or intramural (2) programs.

3. In the reported cases, participants were injured more often in physical education programs (17) than in athletic (10) or intramural (2) programs.

4. Most of the injured participants were older, and most were male. No sport or activity emerged as being associated with a particular defense.

5. Decisions in most of the participant cases in which recovery was denied were based on governmental immunity or no negligence on the part of the defendant.

6. While all of the participant cases in which recovery was allowed were based on breach of duty, two of the cases involved an exception to the doctrine of governmental immunity in states which had not waived governmental immunity.

7. All injured spectators were observing athletic events at the time of their injury.

8. Only one spectator was identified as younger. While nine were identified as older, there were another nine spectator cases in which age could not be discerned.

9. There was no noticeable difference in the number of injured spectators who were male (10) than who were female (8).

10. All injured spectators were observing team sport events at the time of injury, and four times as many (13) were spectators at football games than at any other sporting event.

11. All of the spectator cases in which recovery was denied were based on either governmental immunity or no negligence.

12. Regardless of whether admission was charged for athletic events, four of the five courts considering this issue viewed such events as governmental functions rather than proprietary functions, and thus protected by governmental immunity, whether participants were injured (Mokovich v. Independent School District of Virginia, No. 22, 1929) or spectators were injured (Reed v. Rhea County, 1949; Rhoades v. School Dist. No. 9, Roosevelt County, 1943; Richards v. School District of City of Birmingham,. 1957).

Care must be taken in viewing the points delineated as specific trends, for such information has been gleaned only from the 48 facility cases reported. Information derived from these cases can be valuable in helping teachers and coaches integrate such findings in their planning, conduct of activities, and assessment. It should be recognized, however, that the number of cases settled out of court or decided at the trial court level and not appealed is unknown; these cases could have a significant impact in determining trends.

A surprising result of this study was the few number of equipment and facility cases reported in school-sponsored sport programs at the college and univerity level. The sparsity of cases at this level could well be reflective of such suits having been brought strictly against manufacturers. When ignoring the school district completely and suing a manufacturer, the plaintiff has more jurisdictional flexibility. For example, if an injury occurs in a strict contributory negligence state and there is any question about the injured person's

having been contributorily negligent, the plaintiff may decide to bring suit against a manufacturer located in a state which has no contributory negligence and a high level of pay-off possibilities. Although such cases are beyond the scope of this study, the possibility of suits having been brought directly against manufacturers may account for additional cases.

Guidelines

Guidelines regarding the condition of facilities in school-sponsored sport programs were extrapolated from individual cases. With no emphasis on priority, the following guidelines are suggested for teachers and coaches. These guidelines have been developed from the cases considered to recommend positive action for teachers and coaches and, as such, are not intended to be inclusive of all guidelines to be considered in maintaining safe facilities.

1. Recognize that although school districts are not expected to insure the safety of participants or spectators, schools do have a duty to exercise reasonable care to protect both participants and spectators from dangerous conditions on the school premises. Similarly, participants and spectators are expected to exercise reasonable care for their own safety.

2. Inspect facilities regularly, periodically, and thoroughly for dangerous conditions and complete necessary repairs before the facility is used again. Outline specific criteria for inspection and precise procedures to be followed.

3. Maintain school facilities which meet the standard considered usual and customary for such facilities according to national standards and in relation to other schools of similar size and focus.

4. Maintain facilities in good condition. Such a commitment requires facilities which are properly and safely maintained and utliized for their intended purpose.

5. Recognize that participants and spectators utilizing school facilities should be expected to act as reasonable persons of the same age, intelligence, and experience would act.

6. Integrate in using and maintaining facilities, knowledge that while both participants and spectators assume the risks normally associated with participating in or observing a sport or activity, they do not assume the risk of dangerous or defective conditions of facilities.

7. Apply the knowledge, when considering providing permanent barriers to keep spectators a safe distance from the playing field, that a higher degree of care is expected for events attracting large crowds than for more informal second and third-team and intramural contests where no admission is charged and spectators are mostly relatives or friends of the participants.

8. Provide protective screening behind home plate at baseball facilities since this area is the one in which the danger of being struck by a baseball is the greatest. Additionally, provide a sufficient number of seats in the area for as many spectators as reasonably may be expected to sit there.

9. Recognize that although actual notice demands repair of a dangerous condition of a facility, constructive notice is equally binding in the eyes of the courts. In other words, even though a dangerous condition may not actuallly have been called to one's attention, inspection of the area should reveal the hazard and result in the elimination of the dangerous condition.

10. Maintain playing fields which are free of any obstacles or other conditions which could endanger the safety of those utilizing the facilities.

11. Replace all glass-paneled or wire-meshed glass doors or windows with safety glass or some other such type of material which will not shatter on impact.

12. Pad gymnasium walls and abutments located where players might run into them sufficiently to protect the participants.

Chapter V

SUMMARY, REVIEW, AND CONCLUSIONS

While teachers and coaches are not expected to insure the safety of participants or spectators, they must use due care to provide and maintain adequate and safe equipment and facilities for persons engaging in or observing school-sponsored sport programs. Court decisions have provided sound direction to help educators plan and conduct safe athletic, physical education, and intramural programs.

Summary

A total of 59 cases was analyzed for the study. Two cases involved both equipment and facilities and were analyzed under each area (Chapters III and IV).

There were 13 reported cases in which the condition of equipment was alleged as the proximate cause of injury in school-sponsored sport programs. Five cases were reported in athletics, five in physical education, and three in intramurals. All injured students were participants at the time of their injury. More of the injured students were older, more were males, and 10 of the 13 activities in which they were participating were different.

Recovery was denied in six of the equipment cases.

The courts based decisions denying recovery on governmental immunity in three cases and on no negligence in three.

Recovery was allowed in seven equipment cases. Decisions favoring injured participants were based on the defendants' negligence in providing dangerous and defective equipment, failing to remedy a dangerous condition after notice, maintaining a nuisance, failing to properly position mats for landings, and failing to provide proper protective equipment.

There were 48 reported cases in which the condition of facilities was alleged as the proximate cause of injury in school-sponsored sport programs. Twenty-nine of the cases involved injury to participants and 19 to spectators.

Of the 29 cases in which participants were injured, 10 were reported in athletics, 17 in physical education, and 2 in intramurals. Most of the injured participants were older and most were males. The activities in which these participants were injured involved both individual and team sports or activities.

Recovery was denied in 19 participant cases. The courts based decisions denying recovery on governmental immunity in 6 cases and on no negligence in 13 cases.

Recovery was allowed in 10 participant cases. Decisions favoring injured participants were based on the defendants' negligent maintenance of fields and gymnasiums, maintenance of a nuisance, and negligent use of gymnasium

space.

Of the 19 cases in which spectators were injured, all injuries were reported in athletics. Age could not be discerned in almost half of the cases. Of the other 10 spectators, 9 were older. There was no meaningful difference in the number of injured males (10) in comparison with females (8). All injured spectators were observing team sports at the time of injury, and most were attending football games.

Recovery was denied in 16 spectator cases. The courts based decisions denying recovery on governmental immunity in 9 cases and on no negligence in 7 cases.

Recovery was allowed in three spectator cases. Decisions favoring injured spectators were based on the defendants' failure to maintain safe conditions at football stadiums and failure to provide adequate protective screening at an ice hockey arena.

While there was only one equipment case relied on by another court as precedent, there were six facility cases used as precedent by subsequent courts. No facility cases were cited as precedent for equipment cases, and no equipment cases cited as precedent for facility cases.

Review

Six questions were formulated to guide the study:

1. What have the courts said regarding the condition of equipment in athletic, physical education, and

intramural programs?

2. Are there specific trends which can be determined from the examination and analysis of the court cases regarding equipment?
3. Based on established case precedent, what are practical guidelines which educators can use when making decision about equipment?
4. What have the courts said regarding the condition of facilities in athletic, physical education, and intramural programs?
5. Are there specific trends which can be determined from the examination and analysis of the court cases regarding facilities?
6. Based on established case precedent, what are practical guidelines which educators can use when making decisions about facilities?

The courts have given specific direction about equipment utilized in school-sponsored sport programs. Equipment must meet the standards considered usual and customary by the profession and must be provided to participants engaged in these programs. Equipment must be inspected regularly and replaced or discarded when unsafe for the intended purpose. Teachers and coaches must recognize that participants may only be expected to act as reasonable persons of the same age, intelligence, and experience would act. A greater duty of care is expected

of teachers and coaches working with younger children.

The courts also have given specific direction about facilities utilized in school-sponsored sport programs. Facilities must meet the standards considered usual and customary and must be inspected according to specific predetermined criteria on a regular and periodic basis. If inspection reveals dangerous or defective conditions, repairs must be made before the facility is used again. While participants and spectators are expected to use due care for their own safety when utilizing facilities, these individuals have the right to expect that facilities will be safe and do not assume the risk of dangerous or defective conditions.

Teachers and coaches involved with the conduct of athletic programs should recognize that careful attention must be given to providing safe facilities for spectators, for all cases involving litigation resulting from injury to spectators occurred during school-sponsored athletic events. A higher degree of care is expected for athletic events attracting large crowds.

Neither participants nor spectators assume the risk of defective equipment or dangerous facilities. While teachers and coaches are not expected to insure the safety of either participants or spectators, persons in either of these roles should be able to assume that the condition of equipment and facilities is safe in regard to the intended

purpose.

Conclusions

There are four salient features which have emerged from the analysis of reported court decisions in school-sponsored sport programs in which the condition of equipment and facilities has been alleged as the proximate cause of injury to participants and spectators. These four features are viewed as trends in that, as a general tendency, they have persisted over time from the first reported case in 1909 through the last in 1984.

In comparison with the small number of reported equipment cases, the significantly larger number of cases brought by participants and spectators alleging injury due to the unsafe or dangerous condition of facilities appears to be a trend in itself. This occurrence may be related, to some extent, to the frequency with which equipment is used in or on a facility.

While it was anticipated that the number of decisions based on governmental immunity would decrease through the years, this premise was not supported by the cases analyzed. For equipment and facility cases, the number of cases based on governmental immunity remained relatively constant within and across the decades from the 1920s through the first four years of the 1980s. When viewed historically, however, this occurrence is not surprising. When governmental immunity provided absolute immunity to

school districts, litigation was foreclosed. It is likely that as long as educational institutions were cloaked with governmental immunity, many cases based on such immunity never reached the appellate courts. Over the years, however, modifications and exceptions to the doctrine of governmental immunity likely allowed the appellate courts to consider more of these cases. Lowering the previous barrier actually allowed for more lawsuits rather than fewer.

Although several authors (Appenzeller, 1978; Arnold, 1983; Nygaard & Boone, 1981) have observed that America is becoming an increasingly litigious society, the data from this study do not seem to support their premise. The number of cases in this study, in fact, may suggest the opposite. Over the years, the increase in the number of participants in school-sponsored sport programs and the effect of previous barriers to litigation based on governmental immunity having been lowered would lead one to expect a much larger number of reported cases.

It seems clear that when an educational institution or its employees have been protected from liability by governmental immunity, neither age, role, sex of the injured party, nor the sport or activity within which the injury occurred in any of the school-sponsored sport programs would appear to influence the decision of the court. Generally, even when the doctrine of governmental

immunity has not been the legal principle applied by the courts, neither age, role, sex, nor the sport or activity (individually or in combination) has been an influential factor in the decision. Court decisions consistently have been based on the presence or absence of the four elements necessary to prove negligence and the legal principle applied by the court in adjudicating the case. Only when the defense of contributory negligence has been used have the courts seemed to have considered any of the elements as guiding the decision. In regard to age, the younger the injured party, the less likely the defense of contributory negligence will be upheld.

Participants and spectators have the right to expect that equipment and facilities utilized in school-sponsored sport programs will be of standard quality and in good repair. The courts have provided sound guidance about the expected condition of safe equipment in a safe environment.

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APPENDIX A

CODING SHEET FOR CASE ANALYSIS

CODING SHEET

Proximate Cause: Equipment and/or Facilities

Program: Athletics, Physical Education, or Intramurals

Condition:

Case: _____,

Date: _____

Age	Role	Sex	Sport/Activity
Y/O	P/S	M/F	

Issue:

Facts:

Principle Defendant:

Decision:

Legal Principle Applied:

Rule or Legal Precedent Established:

Special Circumstances:

Discussion:

Personal Impressions:

APPENDIX B

STATES ABROGATING THE DOCTRINE OF GOVERNMENTAL IMMUNITY BY JUDICIAL ACTION

STATES ABROGATING THE DOCTRINE OF GOVERNMENTAL IMMUNITY BY JUDICIAL ACTION

Arizona

Colorado

Illinois

Indiana

Kansas

Massachusetts

Michigan

Minnesota

Missouri

Nebraska

Nevada

New Jersey

Pennsylvania

Texas

(33 A.L.R.3d 703, 1970)

APPENDIX C

STATES INCLUDING CONSTITUTIONAL PROVISIONS OR ENACTING STATUTES TO CHANGE THE COMMON LAW RULE OF GOVERNMENTAL IMMUNITY

STATES INCLUDING CONSTITUTIONAL PROVISIONS OR ENACTING STATUTES TO CHANGE THE COMMON LAW RULE OF GOVERNMENTAL IMMUNITY

Alabama
Alaska
California
Connecticut
Florida
Georgia
Illinois
Iowa
Kentucky
Louisiana
Maryland
Michigan
Minnesota
Mississippi
Missouri
Nevada
New Jersey
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Texas
Washington
West Virginia
Wisconsin

(33 A.L.R.3d 703, 1970)