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IMPLICATIONS OF TORT LIABILITY IN UTAH  
AND PHYSICAL EDUCATORS UNDERSTANDING  
OF THEIR LIABILITY

by

Eldon C. Louder

A thesis submitted in partial fulfillment  
of the requirements for the degree


of

MASTER OF SCIENCE

in

Physical Education

Approved:



UTAH STATE UNIVERSITY  
Logan, Utah

1969

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Eldon C. Louder

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ABSTRACT

Implications of Tort Liability in Utah  
and Physical Educators Understanding  
of Their Liability

by

Eldon C. Louder, Master of Science

Utah State University, 1969

Major Professor: Arthur Mendini  
Department: Physical Education

The Utah Tort Liability law was defined and a teacher understanding of the law and their liability was determined.

Physical Education teachers do not have a good knowledge of the state's liability law, nor are they aware of the liability they are open to.

Where opportunity was afforded, teachers were anxious to place the responsibility for their actions on someone of a higher position. This could be attributed to the fact that district and state administrators have not made an awareness of our new law.

The area of liability least understood is inadequate use of professional knowledge and skills. Sending a boy into a ball game not recognizing he has an injury, or letting a student participate with a letter of permission from home when it is obvious that he should not be allowed to participate are examples.

Teachers do seem to be aware of safety practices and the need to make students more aware of them; however, their reluctance to accept

liability for neglecting to follow those practices would tend to overshadow the response to this section.

Physical educators must become more and more aware of the safety of pupils and provide the necessary supervision to make this possible.

Much more confidence and discretion needs to be employed in making professional decisions; and if the teacher's knowledge doesn't merit a decision, then additional professional advice should be sought when a student's well-being is in danger.

(68 pages)

CHAPTER I  
INTRODUCTION

Since the passing of the new Tort law in Utah, it has been the discussion of many physical education teachers: "What are my responsibilities? What am I able to do to discipline roudy students? What if someone gets hurt in my class, when am I liable?"

In the past, the law was set up to protect teachers and make it unlawful to file suit against them without the schools' permission. Today just the opposite is true; the teacher has to be extremely cautious to avoid being caught in a legal case. The law supports the student and the parent.

It could be assumed that the Tort law has made teachers more alert to situations which may be dangerous and more conscientious about their teaching for fear of being involved in a law suit.

It appears that, although we have a new law, our teachers don't really understand the law and what their responsibility is to their school and to the pupils they teach. This study is designed to see just what the teacher's understanding is of the Utah Tort law.

Statement of the Problem

The purpose of this study was two fold:

1. To define clearly what the teacher's liability is under the Tort law.
2. To determine how well physical education teachers understand this existing law and their limits of its application pertaining to their position.

Method of Procedure

After consulting with teachers in the field of physical education, the writer developed a questionnaire which was presented to this same team of teachers who made some suggestions and revisions. A revised questionnaire was presented to the committee and approved, then sent out to high school physical education teachers in Utah. A post card asking for cooperation in filling out the questionnaire was sent, and only those teachers that checked the card and sent it back were mailed a questionnaire. Three follow-up letters were sent, at one-, two-, and three-week intervals after the questionnaires were mailed.

All of the questions for the questionnaire were taken from situations where the responsible person for the accident had already been decided.

CHAPTER II  
REVIEW OF RELATED LITERATURE

Conditions of Tort Liability

A tort is a legal wrong committed upon the person, reputation, or property of another independent of contract. It may include assault, battery, false imprisonment, invasion of property rights, and deceit. Liability simply stated is legal responsibility.

Public agencies have usually been considered liable for torts. School personnel, on the other hand, have at times hidden behind the skirts of the school district which has enjoyed immunity. It is important to know that regardless of what the state law says, you, personally-- whether you are a teacher, principal, or school janitor--can be held responsible for damages resulting from a school-related pupil injury. Why? Because one of the oldest principles of law is that every man must always act (or use what he controls) so as not to injure another (17).

It should be pointed out that there is no immunity related to a particular position or office. Each person is liable for his own negligence. But merely because an accident takes place does not mean that someone has been negligent and will pay a judgment (22).

In defining school liability, the court reviewed the history of litigation in the field of tort liability (22,p. 104), noting:

that as time passes, it becomes increasingly more difficult to differentiate between what was historically a governmental function and what was claimed to be such until the ever-increasing services assumed by the sovereignty and its political subdivisions.

The legal attitude with respect to tort liability in general has undergone considerable change in the last century. Perhaps the reason for changing the law is a result of more and more activities that are being conducted in school and away from schools which jeopardize the safety of pupils.

#### Intentional torts

The legal right of the teacher to inflict reasonable corporal punishment is made quite clear in most states. The courts have said that a teacher is within reasonable bounds the substitute for the parent, exercising authority delegated to the teacher, and under such authority may inflict corporal punishment on the pupil. However, any immunity that the teacher might enjoy does not extend to injury which is caused through willful acts or negligence.

It is said the mere, excessive, or severe punishment on the part of the teacher does not constitute a crime unless it is of such a nature as to produce or threaten lasting or permanent injury, or unless the state has shown that it was administered with spite, hatred, or revenge, or the teacher had inflicted punishment wantonly without just excuse or cause (10).

Since the teacher must obviously be vested with the right to give orders, he must, as a concomitant of the power, have sanctions to enforce them. But the enforcement must not be done with malice. From the purely legal point of view, even in states in which corporal punishment is permitted, a teacher who resorts to it assumes substantial legal risk.

#### Negligent acts

Children do not voluntarily subject themselves to hazards. As subjects of the state and under statutory law, they are compelled to



attend school, to abide by the rules and regulations thereof, and to engage in certain prescribed activities.

In doing so, it seems justified that they be protected by school officials and employees. In the event they do sustain injuries due to negligence of those in whose care and supervision they are entrusted, it seems equally just that they are entitled to recover damages for their injuries (1).

Negligence has been defined as failure to observe and exercise that degree of ordinary care, precaution, and vigilance which the circumstances demand. It is a fact that individuals who are guilty of negligence are afforded no protection under state immunity laws. A teacher who carelessly fails to instruct or supervise a student in the safe procedure of tumbling, for example, may be found liable if the student should suffer an injury in consequence of his improper methods used. A principal who makes no effort to have defective playground equipment repaired may be burdened with liability if a child should be injured because of the defect.

Before a school employee can be held liable for an injury sustained by a pupil, there must be sufficient evidence that the alleged negligence is the proximate cause of the injury.

Trubitt (25) classifies negligence into the following broad categories:

1. Anticipation of foreseeable risk to students.
2. Reasonable steps to prevent those risks to students.
3. Warning and care addressed toward those risks that, for what reasons, cannot be readjusted or averted.
4. A duty to aid the injured.
5. A duty not to increase the severity of injury.

The authority of the public school over its pupils is usually extended to include supervision of the pupil from the time he leaves home to attend school until he returns home.

This being the case, teachers instructing children of different age groups must realize that they do not all comprehend instructions or responsibility in the same degree. Regarding the student, there is no magic formula for determining the "age of reason." Determinant factors are chronological age, student background, mental capacity, and physical capacity to get into and out of danger. Activities require an analytical review of their factors to determine inherent dangers and probability of injury.

Arguments that students assume some risk when they engage in athletics, for example, while legally sound, are conditioned by the premise that adult supervision of the activity will minimize the risk they are being asked to assume (25).

Negligence is a question of tort. As a question of fact, it is determined by the jury, not the judge. Therefore, whether or not a teacher or a school board has been negligent is a matter which, in the final analysis, is determined by laymen, not by professional peers (22). The best protection from liability which a teacher has lies in the use of extreme care in all cases in which it is possible for pupil injury to occur (13).

Individual Liability of Officers and  
Employees of State Agencies

Individual liability

It should be understood that everyone, regardless of his position, is liable for his own torts. While teachers enjoy a measure of immunity

from liability for reasonable punishment of pupils, there are more liability suits for damages resulting from pupil injury brought personally against teachers than others of the professional school staff (1).

Hamilton and Mort indicate that school board members may be held individually liable for failure to perform ministerial duties required by statute. They state that in the commission of a tort the board of education is not representing the district. The reasoning is that there is never any authority in the board to commit a tort; and when it does so the act is ultra vires, that is, outside its legal powers, and cannot bind the district. Hence, the acts are considered those of individual members of the board and not those of the board as such (13).

Regardless of who is involved, to succeed any cause of action in tort involves proof of four essential elements:

1. That the defendant owed a duty to avoid unreasonable risks to others.
2. That the defendant failed to observe that duty.
3. That failure to observe that duty caused (in the specialized legal sense of the verb) the damages which occurred.
4. That damage in fact occurred to plaintiff together with proof of the nature and probable extent of the damage (3).

#### School district liability

School districts may be liable as a result of a court action, a statute expressly making it liable, or through their own consent to accept liability. The mere existence of a statute providing that a school district may sue and be sued does not overcome the common-law immunity. A state legislature may, of course, abrogate the common-law immunity of school districts for accidents growing out of the negligence

of their officers or employees, but it must do so in clear and express terms (20).

Garber has noted that in states where governmental immunity has been abrogated, the courts will accept a tort action against the school district based upon an injury caused by the negligence of the board of education itself, collectively, or its agents or employees. In other instances, the courts have voided application of the governmental immunity rule. One theoretical exception is that a school board is liable if the injury resulted from the active wrong-doing, as opposed to mere negligence. Active wrong-doing is akin to an intentional tort; although alleged on occasion, no case has been found where the court accepted the allegation (6)..

The law as it pertains to school districts of Utah is as follows:

The board of education of every school district shall be a body corporate under the name of the "Board of Education of . . . School District" or ". . . city" as the case may be, and shall have an official seal conformable to such name, which shall be used by its clerk in authentication of all matters requiring it. Said boards in the name aforesaid may sue and be sued, and may take, hold, lease, sell and convey real and personal property as the interests of the school may require. (10, p. 578)

It is of interest to note that school districts may pose special problems because they act under the jurisdiction of both common law and statutory law. Statutory law consists of the statutes enacted by the legislatures of any sovereign state. It is probable that in a state which by statute allows the school district to be sued, injured pupils and their parents would be less likely to bring suit against individual teachers. This is not in any way to be construed that teachers are relieved of their responsibilities by statute (4).

Protection of School EmployeesWhere state is not liable

If the laws of a state allow a school district and its employees to be sued for torts, both should make provisions to protect themselves from liability. The best method of accomplishing this is by taking out liability insurance. It would be well to make sure that such insurance not only protects one from any judgments that may be rendered against him, but that it also covers cost involved in litigation.

Utah law requires school districts to be covered by insurance and also makes it possible for school districts to insure any or all of its employees against individual liability for injury or damage committed in the scope of employment regardless of whether or not said entity is immune from suit (Utah Code 63-30-34).

Hatch recommends that school districts insure officers and employees against their own negligent acts and intentional torts in a comprehensive general liability policy (14).

Teachers and other school employees are not cloaked with the districts' immunity from liability. As a result, they are liable to pupils who are injured as a result of teacher negligence.

Save harmless laws

While some states have been doing away with the governmental immunity law, others have adopted statutes in keeping with the modern trend toward eliminating the harsh effects of the doctrine that school districts are not liable for their torts or for the torts of their agents.

At least four states--Connecticut, New Jersey, New York, and Wyoming--have enacted so called "save harmless" statutes for the protection of teachers. These laws require or permit districts to pay judgments

recovered against teachers. They also require or permit districts to defend teachers in suits against them for damages caused by their negligent acts while in the course of their teaching duties (13).

Hamilton states:

Laws imposing tort liability on individuals responsible for the school program are absolute and cannot be defended in a modern society. Districts should be required to protect their teachers and cover them with appropriate insurance. "Save harmless" statutes should be mandatory in nature; not merely permissive. (12, p. 23)

It could be deduced that where the purpose of the "save harmless" statute is to transfer the burden of paying possible damages from the school board employee to the taxpayers, no direct liability is thereby imposed on the board to the third-party injured person (21).

The "save harmless" laws provide that the employees will be "saved" by the district from "financial harm" resulting from a judgment for damages against him arising from his negligence while discharging his duties. However, the liability of a board employee must first be established before a "save harmless" statute can impose any liability on the board for reimbursement.

#### Insurance of employees when district is immune

Lee O. Garber, professor of Education, Pennsylvania University, discussed the problem of "protection against liability." He recognized two main types of protection: laws and insurance. He differentiated between protection for the school district and protection for the individual (5).

A personal liability insurance policy is the most common means of safeguarding life earnings and protecting against the disaster of a large verdict.

School districts that enjoy immunity under the law may wish to protect their employees by purchasing group liability insurance policies. The amount and extent of coverage would be left to the discretion of the district unless otherwise specified in state law.

Protection of school district  
where district is liable

Unless the district is made liable by statute, there is little need for the board to insure, and in some states there is not authorization to do so. Some boards may wish to carry insurance on the chance the courts may someday change their thinking, which is a long chance at best. Others may consider insurance as a way of meeting what appears to them to be moral obligation. Still others may think of insurance as a means of promoting good public relations in the community (5).

Some 22 states require that liability insurance be carried for all publicly-owned school busses, and another 21 permit their school boards to buy such insurance (23).

Commercial insurance

California school business officials generally believe they should purchase comprehensive policies covering all of the district's potential losses. They also feel that such a policy should pay damages up to at least \$1,000,000 for each occurrence. Moreover, coverage purchased should be revised periodically to keep it in line with current damage awards made in school district liability cases. The increasing costs of liability insurance have become a matter of concern for school districts. It would seem that the most important action districts might take to reduce the cost of insuring risks would be to establish an

adequate safety program which aims at reducing the number and severity of accidents that result in claims against them (15).

Under provisions of the new Utah law, any political subdivision of the state may create and maintain a reserve fund for the purpose of making payments of claims or for the purpose of purchasing liability insurance to protect the subdivision from any or all risks created by the law. A subdivision may also cooperate with other subdivisions making contributions to a reserve fund or for purchasing insurance (Utah Code 63-30-26).

Utah law provides that insurance shall be purchased in minimum coverage of \$100,000 for injury to one person, and \$300,000 for injury to two or more persons for each occurrence. Property damage insurance shall be in the amount of not less than \$50,000 (Utah Code 63-30-29) (14).

Hatch recommends that school districts insure for the minimum amounts required by law because the law provides that no judgment shall be rendered against a governmental entity for exemplary or punitive damages. Purchasing additional insurance only costs more and perhaps encourages claimants to ask for larger sums and courts to award larger payments (14).



CHAPTER III  
ANALYSIS OF SCHOOL ACCIDENTS

A special study of accidents in the Los Angeles City School System revealed that football and baseball are the most frequent accidents at the junior and senior high school levels. Football alone showed a frequency rate of 22.95 for the senior high boys and a 4.98 rate for junior high boys per 100,000 pupil days of attendance, the highest for any single activity (19). An analysis of accidents involving senior high school students is included in Table 1.

Table 1. Frequency rate and percentage of pupil accidents classified by location and grade level, Los Angeles City Schools, 1959-60. (19, p. 15)

| Location           | Grade level<br>Senior High |             |
|--------------------|----------------------------|-------------|
|                    | F.R. <sup>a</sup>          | Percent     |
| Building           | 2.44                       | 7.39        |
| Shops              | 1.44                       | 4.36        |
| Grounds            | 2.30                       | 6.97        |
| Physical education | 26.15                      | 79.42       |
| Special activities | 0.12                       | 0.04        |
| To or from school  | <u>0.61</u>                | <u>1.82</u> |
| Total              | 33.06                      | 100.00      |

<sup>a</sup>Frequency rate is in terms of number of accidents per 100,000 pupil days.

At the junior high level, 55 percent of the accidents happened during the physical education periods. Intramurals and noon recess activities accounted for 36 percent, 7 percent occurred on playgrounds after school, and 2 percent occurred in varsity sports. In contrast, while inter-scholastic practice and inter-scholastic games accounted for 66 percent of the accidents, 3 percent occurred at lunch time or on the playgrounds after school (19).

Jacobs (15) points out that junior high school is the greatest source of liability claims, and that boys outnumber girls two to one in the number of times they were involved in accidents which later resulted in claims being filed against the district. This would indicate that those who supervise school activities should give more attention to boys' activities than to like activities of girls.

The fact that junior high students are involved so often is not too surprising in view of certain facts. First and foremost, both boys and girls usually reach their fastest rate of growth during junior high school and early high school years. With this fast rate of growth comes an awkwardness in movement due to the lack of practice which the young adolescent has had with his new-found muscular potential. Such awkwardness would naturally tend to make junior high pupils more accident prone than pupils of other age levels and, in turn, would result in a greater number of claims being filed (23).

#### Providing Adequate Supervision

Because a high percentage of accident claims list the cause as "inadequate supervision," school districts should make sure that all play areas and all school activities are adequately supervised. When parents surrender the custody of their children to school authorities,

they are entitled to expect the school people to exercise judgment and common sense to prevent avoidable injury.

Studies reveal that the following areas should receive the most careful supervision:

Junior high school--failure to heed safety rules in competitive games, especially football; mismatching of teams in terms of height and weight; aggressive acts of one to another; and running in halls and up and down stairs.

High school--failure to heed safety rules in competitive games, performing gymnastic feats without using proper safety precautions, and aggressive acts towards one another. (15, p. 234)

It is a fact that there are more liability suits for damage resulting from pupil injury brought personally against teachers than others of the professional school staff. Therefore, teachers should be aware that football, basketball, and baseball continue to be the activities resulting in the most accidents to boys, whereas volleyball, basketball, and softball are the activities that involved the girls in the major number of accidents (15).

Attention to the following areas would definitely aid in reducing the number of accidents, and possibly cases of teacher liability for negligence:

1. Assigning supervisors to required areas.
2. Assigning an adequate number of supervisors to the activity.
3. Assuring that supervisors are on duty at the prescribed time.
4. Assuring that supervisors enforce safety regulations.
5. Assuring that supervisors stop games and other activities known to be dangerous (14).

Physical education classes

Physical education has been tagged as a potential problem area because there is so much activity and apparatus involved.

It is much easier to charge a physical education teacher with negligence in providing inadequate instruction than it is to prove it to the satisfaction of the court.

Fahr indicates that negligence in physical education may arise from four sources. Perhaps foremost is failure to instruct students in the physical activity in which they are engaged. Often a novice is pitted against an experienced person that has never been shown how to execute the test safely, nor warned of its dangers; second, failure to supervise sports and the circumstances under which they are played; third, many cases show failure to use proper safety equipment such as mats in tumbling, or use of defective equipment which should have been discovered and repaired; fourth, many cases show liability where failure to take proper first aid steps aggravated an injury and led to unnecessary liability for the instructor ( 3).

The data in Table 2 show the frequency of accidents that occurred in high school physical education in the Los Angeles City Schools from the years 1958-1960.

There has been a misconception on the part of many physical education teachers and administrators concerning "permission slips" to participate in athletics and relieve the school of any financial responsibility or obligation. Courts have ruled that a parent cannot legally waive the teacher's responsibility for his child. However, permission slips are a good means of advising the parents of activities that are a normal part of the class (16).

Table 2. Location and grade level pupil accident summaries 1958-59 compared with 1959-60. (19, p. 15)

| Location                  | Senior high |            | +/-             |
|---------------------------|-------------|------------|-----------------|
|                           | 1958-59     | 1959-60    |                 |
| Apparatus                 | 177         | 124        | 53-             |
| Baseball                  | 282         | 343        | 61+             |
| Basketball                | 658         | 572        | 86-             |
| Circle games              | 2           | 3          | 1+              |
| Football                  | 1,799       | 1,989      | 190+            |
| Soccer                    | 90          | 63         | 27-             |
| Swimming                  | 32          | 18         | 14-             |
| Track and field events    | 357         | 327        | 30-             |
| Volleyball                | 318         | 327        | 44-             |
| Other organized games     | <u>171</u>  | <u>280</u> | <u>109+</u>     |
| Total physical education  | 3,886       | 3,993      | 107+            |
| Frequency rate            | 26.76       | 26.15      |                 |
| Average yearly enrollment | 80,679      | 85,315     | 4,634<br>5.7% + |

### Competitive athletics

Of all areas discussed in this paper, the area of competitive athletics is the most costly in terms of claims and money spent. The very nature of competitive athletics lends itself to law suits for tort liability. Conway feels that juries tend to place inflationary values on injuries and lost hours. He further states that freshmen in an unfamiliar environment are apt to overlook the dangers in their new responsibilities and risks involved in their new privileges. Last, but

not least, people are more claim conscious at all levels. An injury now becomes a chance to acquire a bundle of money--large or small (2).

Evidence of the foregoing is prevalent in the case of Pirkle v. Oakdale, Union Grammar School District, City of Oakdale, 253 p (2d) 1 (Cal) 1953. In this instance a school district was ordered to pay damages in the amount of \$325,000 for alleged negligence on the part of the athletic coach when a student was injured playing football and the injury left the boy a paraplegic. The amount was later reduced to \$108,196 in order to keep the school in operation.

In another football injury, a young man brought suit against the school board to recover damages in the amount of \$25,000 for personal injuries suffered in a high school football game between Nyssa Oregon High School and the Vale High School. Louis Vendrell charged the district with negligence when he was tackled by two members of the Vale team. Among other injuries, he suffered a broken neck which resulted in a paraplegia. The decision of the lower court was appealed, and under the particular circumstances existing in this case the school district was not negligent (16).

Tener, referring to the coaches legal liabilities, says:

Negligence won't be found if the conduct causing the harm wasn't able to be anticipated or controlled by the coach. Conversely, if negative conduct was fostered by his imprudence and failure to regulate conduct, a case can be successfully made against the coach. (24, p. 51)

Athletic programs pose problems; factors to be considered include:

1. The physical capacity of the children.
2. Their state of training, both as to condition and skill.
3. The safety features of equipment.
4. The concern for the removal of injured or apparently distressed

children (9).

It would be well for all physical educators and every coach to remember that parents do not send their children to school to be returned maimed because of the absence of proper supervision or the abandonment of supervision.

Many administrators and physical education teachers are aware that a trampoline is involved in the first sizeable (approx. \$750,000) tort liability suit against a Utah school district. As a result, there has been considerable apprehension about the use of trampolines in some districts by both administrators and teachers.

The office of Robert Leake has attempted to collect accident data on trampoline and also instructional programs of skill development from both within and without the state.

Rebound tumbling (trampolining) is included in many states' physical education guides which have been printed in the last three or four years. In several states the outlined skills to be taught stop with a front somersault. In these states additional, more highly skilled stunts may be pursued by students in the school's gymnastic program, which is operated in the same manner as other after-school sports with parental permission, complete physical examination, adequate coaching, etc.

Willie Wynn, Director of Health, Physical Education, Recreation, and Athletics in the Granite School District of Utah, reports that of the 81 gymnastic and tumbling accidents reported during the 1966-67 school year in his district, nine of them occurred on the trampoline. His report, as indicated by Leake (18, p. 1), includes:

|                   |   |
|-------------------|---|
| Balance Beam      | 3 |
| Climbing Rope     | 3 |
| Horizontal Bar    | 4 |
| Horizontal Ladder | 3 |

|                |                                 |
|----------------|---------------------------------|
| Parallel Bar   | 8                               |
| Side Horse     | 16                              |
| Trampoline     | 9                               |
| Tumbling Tubes | 6                               |
| Tumbling Mats  | 25 (plus 6 at elementary level) |
| Peg Board      | 2                               |
| Miscellaneous  | <u>2</u>                        |
| Total          | 81 (87 including elementary)    |

Information from the San Juan Unified School District in Suburban Sacramento, California, lists 38 trampoline accidents in a district using 80 trampolines daily. The district has 53,000 students and uses trampolines in grades kindergarten through the twelfth grade. The report of accidents from this district (18) includes:

Accident Survey School Year 1966-67

|                          |     |
|--------------------------|-----|
| Playground               | 338 |
| Football (tackle)        | 273 |
| Basketball               | 182 |
| Football (touch)         | 112 |
| Physical Education Class | 103 |
| Bars                     | 97  |
| Wrestling                | 80  |
| Soccer                   | 61  |
| Volleyball               | 50  |
| Baseball                 | 48  |
| Softball                 | 45  |
| *Trampoline              | 38  |
| Running                  | 35  |



|                         |          |
|-------------------------|----------|
| Swimming                | 33       |
| Track                   | 31       |
| Dodgeball               | 30       |
| Hit by object           | 30       |
| Judo                    | 17       |
| Kickball                | 13       |
| High and Broad Jump     | 11       |
| Tetherball              | 11       |
| Pole Vaulting           | 9        |
| Dancing                 | 9        |
| Jump Rope               | 8        |
| Slide                   | 7        |
| Tennis                  | 7        |
| Jungle Gym              | 6        |
| Eadminton               | 5        |
| Swings                  | 4        |
| Horizontal and Vertical |          |
| Ladders                 | 4        |
| Rope Climbing           | 4        |
| Rings                   | 3        |
| Weight Lifting          | 3        |
| Pegboard                | <u>1</u> |
| Total                   | 1,792    |

California insists on line-of-sight supervision by the teacher at all times, instruction in the proper sequence of skill progression, and the allowing of only physically fit students to participate in all activities.

CHAPTER IV  
ANALYSIS OF DATA

The purpose of this study was two fold: one, to define clearly what the teacher's liability is under the Tort law and, two, to determine how well physical education teachers understand this existing law and their limits of its application pertaining to their position.

After consulting with teachers in the field of physical education, the writer developed a questionnaire which was presented to this same team of teachers who made some suggestions and revisions. A revised questionnaire was presented to the committee and approved, then sent out to high school physical education teachers in Utah. A post card asking for cooperation in filling out the questionnaire was sent, and only those teachers that checked the card and sent it back in were mailed a questionnaire. Three follow-up letters were sent, at one-, two-, and three-week intervals after the questionnaires were mailed.

All of the questions for the questionnaire were taken from situations where the responsible person for the accident had already been decided.

Results of the Questionnaire

Tabulation of answers are in terms of total numbers of teachers responding and percentage answering YES, NO, or UNCERTAIN. Correct answers are determined by precedence and are underlined. Comments are presented for each question.

A total of 72 questionnaires were sent out, and 52 were returned for a total of 72 percent.

General questions

1. In your opinion, would you be held liable for injuries due to overwork and fatigue of a student who had not had a physical examination required by the school?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 23                       | 44                        |
| <u>NO</u> | 21                       | 41                        |
| UNCERTAIN | 8                        | 15                        |

Comments: Twenty-three teachers, 44 percent, answered "yes" to this question, while 21, 41 percent, answered "no," which is the correct answer. It is the feeling of the courts that if the school requires every student to submit a physical, then it is the responsibility of the school to note at registration any student who has failed to do so. The school would then assume the responsibility for any student not having had a physical.

2. If you felt a student was unfit for participation, but he had a slip from his parents, do you feel that you would be held liable for an injury to this student?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 18                       | 35                        |
| NO         | 32                       | 61                        |
| UNCERTAIN  | 2                        | 4                         |

Comments: Thirty-five percent answered this question correctly. It has been the feeling of the court in similar situations in the past that the teacher as a professional should not allow a student to participate if he feels the student is unfit, even though the parents give their consent. It would indicate that all physical education teachers should be more aware of the health of the students as they enter the class each day, rather than only at the beginning of each school year.

3. If you were called to the office and a serious accident occurred while you were gone, would you be held liable?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 32                       | 61                        |
| NO         | 12                       | 24                        |
| UNCERTAIN  | 8                        | 15                        |

Comments: Over half (61 percent) felt that they could be held liable for an injury if they were to leave the class even though they were called to the office. You could escape liability if you arranged for a responsible person to take your class while you were gone.

4. In your opinion, does the law do anything to discourage nuisance lawsuits?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 10                       | 19                        |
| NO         | 28                       | 54                        |
| UNCERTAIN  | 14                       | 27                        |

Comments: Only 19 percent answered this question correctly. Fifty-four percent were in complete disagreement of the precedence already set. The law definitely does try to discourage nuisance lawsuits. From the manner in which this question was answered (19 percent "yes," 54 percent "no," and 27 percent "uncertain"), one might assume that those responding did not really understand the term "nuisance lawsuits."

5. If you were to use parents as chaperones for a class and these parents are negligent, would you be held liable?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 36                       | 50                        |
| <u>NO</u>  | 20                       | 39                        |
| UNCERTAIN  | 6                        | 11                        |

Comments: It is the feeling of the courts that you would not be considered liable in a situation of this kind. You did well by providing chaperones, and one would assume that adults would use prudence in judgment. Thirty-nine percent answered this question correctly, while 50 percent were in disagreement and 11 percent were uncertain.

6. Do you feel that the school district should set up a standard that would define sensible actions on the part of the employees?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 45                       | 87                        |
| <u>NO</u> | 7                        | 13                        |
| UNCERTAIN | 0                        | 0                         |

Comments: Eighty-seven percent felt that the school district should set up a standard that would define sensible actions for teachers to follow. This would be ideal, however, highly improbable. One individual cannot predict how another individual would react or should react to any given situation.

7. In your opinion, should you buy liability insurance that is offered during school hours, aside from the coverage your school offers under tort law?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 7                        | 13                        |
| NO         | 40                       | 77                        |
| UNCERTAIN  | 5                        | 10                        |

Comments: Only 13 percent felt that they should buy additional protective insurance against liability above and beyond what the district has on each of its employees. Research done in this and the suits filed in the courts would indicate that a person dealing in physical education, and especially athletics, would be wise to insure himself against possible

liability as well as nuisance lawsuits. The cost is quite minimal. Ernest Baldwin, a Salt Lake City attorney actively acquainted with athletics, recommends that coaches have additional liability insurance and that they keep this fact from creeping out. People are not going to file against a teacher; they will file against the district, in most cases, because of the amounts of money involved.

8. In your opinion, would you be considered negligent if an accident happened while working under the principal's instructions?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 8                        | 15                        |
| NO         | 40                       | 77                        |
| UNCERTAIN  | 4                        | 8                         |

Comments: Fifteen percent felt they would be considered liable if the accident happened while working under the principal's instructions. The fact that the principal asks you to do something certainly does not remove responsibility. The courts feel that, as teachers, we are constantly working under the principal's instruction.

9. In your opinion, would you be held liable for an accident happening to a small elementary child who had strayed from the playground of the elementary school across the street on your playing field and was struck by a hard-hit ball?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 16                       | 31                        |
| <u>NO</u> | 28                       | 54                        |
| UNCERTAIN | 8                        | 15                        |

Comments: The precedence established by the court would hold the elementary teacher subject to claim rather than the physical education teacher. Fifty-four percent were correct in answering this question, while 31 were wrong.

10. In your opinion, if you post signs or warnings about hazardous conditions, will this remove you from responsibility?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 7                        | 13                        |
| <u>NO</u> | 42                       | 81                        |
| UNCERTAIN | 3                        | 6                         |

Comments: Eighty-one percent answered "no" to this question. The court feels that it is your responsibility to either remove the hazardous conditions or design your unit so that you are not endangering anyone because of the conditions. The sign alone will not remove you from a possible liable suit.

Throughout this study, it has been the feeling of many teachers (too many) that to tell students about hazards or do things under someone else's request that they are removed from possible liability. They fail to realize that they should remove the hazard or eliminate that particular area from their program.

11. In your opinion, would you be held for injury resulting to a boy who was cut on a sharp edge of the fence around your playing area?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 15                       | 29                        |
| <u>NO</u> | 33                       | 63                        |
| UNCERTAIN | 4                        | 8                         |

Comments: It was the feeling of 63 percent of the respondents that teachers are not responsible for faulty work done by a responsible person of the school system. Twenty-nine percent were incorrect in their thinking. The courts do not feel that a teacher is liable for injury resulting from a permanent physical structure which he had no control over.

12. Do you feel that you would be held liable for a burn resulting from a boy falling into an incinerator which was located next to the playing field?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 14                       | 27                        |
| <u>NO</u> | 33                       | 63                        |
| UNCERTAIN | 5                        | 10                        |

Comments: Sixty-three percent of the respondents answered "no."

You had nothing to do with the placement of the incinerator on the playing field. The school district might be held liable if taken to court. The courts may feel that they, the school district, should have placed the incinerator in a more out-of-the-way place or should have fenced it in.

13. Do you feel that you limit most of your activities to only the more physically fit students?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 9                        | 17                        |
| NO        | 42                       | 81                        |
| UNCERTAIN | 1                        | 2                         |

Comments: The majority of teachers (81 percent) did not feel that they limit the activities to only the more physically fit students. There is not a right or wrong answer to this question, but it does indicate that teachers are not worried about liability to the extent that they are eliminating students from some or most of the physical education activities.

14. Do most of your accidents happen indoors or outdoors?



|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| INDOORS   | 29                       | 56                        |
| OUTDOORS  | 16                       | 31                        |
| UNCERTAIN | 7                        | 13                        |

Comments: Over half (56 percent) indicated that most accidents happen indoors. Accident surveys in the review of literature would indicate this also. Many things can be contributed to this: (a) closed space which usually consists of crowded areas, (b) the type of activities conducted indoors, and (c) the length of time indoors is much longer than that outdoors in most states.

15. When resentment or defiance enter into discipline, do you think the teacher should handle the problem or turn it over to the principal?

|                  | <u>Number responding</u> | <u>Percent responding</u> |
|------------------|--------------------------|---------------------------|
| TEACHER          | 36                       | 69                        |
| <u>PRINCIPAL</u> | 14                       | 27                        |
| UNCERTAIN        | 2                        | 4                         |

Comments: Only 27 percent answered "principal," while 69 percent answered "teacher." This is good; wherever possible, teachers should handle their own discipline.

The courts have indicated, however, when resentment or defiance towards a student enters in, someone who can remain neutral should handle the discipline. The principal should be that type of an individual.

#### Physical education class

1. In your opinion, would you be held liable if a student fell on a piece of glass in the playing field and was badly hurt? ✓

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 21                       | 41                        |
| NO         | 24                       | 46                        |
| UNCERTAIN  | 7                        | 13                        |

Comments: Forty-one percent of the teachers felt that they were responsible for maintaining a safe playing field for the activities they engage in. The courts feel that it is just as important to rid the playing field of hazards as it is to check mats, etc. It is rather unlikely that you would be taken to court on a matter of this nature. The fact still remains that a precedence has been made and it is possible.

The majority (46 percent) do not associate this type of accident with that of broken bats, slippery mats, etc. The courts have and could again.

2. Do you feel that you would be held liable for an injury resultant from two boys settling a dispute with boxing gloves under your supervision?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 43                       | 83                        |
| NO         | 6                        | 11                        |
| UNCERTAIN  | 3                        | 6                         |

Comments: Teachers felt strongly about this and justly so. Eighty-three percent felt that they would be held liable. Teachers have no right to pair two individuals to settle a dispute. If you were teaching a unit in boxing so the students were acting under prior learning and supervision, and were of equal size, you might escape liability. Even then, you are taking a risk.

3. While you were calling roll, the class was flipping rocks and a boy's eye was put out. Do you feel that you would be held liable?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 29                       | 56                        |
| NO         | 11                       | 33                        |
| UNCERTAIN  | 6                        | 11                        |

Comments: Fifty-six percent answered this question correctly.

Students may be unpredictable, but it is the responsibility of the teacher to be aware of what is happening in class. Flipping of rocks is inappropriate conduct and should not be permitted. You would be subject to a law suit for failure to recognize a potentially dangerous situation. With proper organization of the class and teacher control of students, this kind of practice should be avoided.

4. A boy came to your class with an infected finger. You put it in boiling water to draw out the infection. In your opinion, would you be held liable?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 41                       | 79                        |
| NO         | 10                       | 19                        |
| UNCERTAIN  | 1                        | 2                         |

Comments: Yes, you would. Seventy-nine percent responded "yes."

Although ten persons responding answered "no" to the question, it would be hoped that they put the student's finger in boiling water, assuming it was just warm or hot, neglecting to check the water. Hopefully they would not knowingly do this.

As indicated, the majority of those responding are in agreement with the courts' precedence.

5. In your opinion, would you be held liable if a student bled to death as a result of an accident in your class?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 32                       | 62                        |
| NO         | 10                       | 19                        |
| UNCERTAIN  | 10                       | 19                        |

Comments: Sixty-two percent is an unexpected answer. It would be assumed that all those responding would feel responsible enough for a student's life to loss of blood to feel liable for such a death. The control of bleeding is essential first aid and should in all cases be controlled. Like breathing, it is a life-sustaining factor and should be administered to.

6. If a boy broke his arm and you walked him to the supervisor's office for treatment, do you feel you would be held liable for making the student walk?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 18                       | 35                        |
| <u>NO</u> | 30                       | 57                        |
| UNCERTAIN | 4                        | 8                         |

Comments: Fifty-seven percent answered in agreement with the court. Walking the boy to the office is not going to cause any further damage to the arm. You should walk with him in case of shock due to pain from the break. Here again, supervision is extremely important.

7. In your opinion, would you be held liable for a student leaving your class to go to town during school hours at the request of his parents?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 5                        | 10                        |
| <u>NO</u> | 48                       | 90                        |
| UNCERTAIN | 0                        | 0                         |

Comments: Ninety percent were in agreement with this situation.

To leave the school property at parent request, the student would probably be cleared with the main office and his responsibility placed into the hands of the parents. You can hardly be held responsible for something outside of your class unless you send the student on a particular errand on school time.

8. Do you feel that you would be held liable for injury to a girl who was playing a basketball game with a group of boys during a physical education class?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 29                       | 56                        |
| NO         | 18                       | 34                        |
| UNCERTAIN  | 5                        | 10                        |

Comments: This is a questionable matter. Fifty-six percent said "yes." The question is not if someone is liable, but who. Would it be you or would it be the girl's physical education teacher? The literature read by the writer indicates that someone would be liable and that it would most likely be the girl's physical education teacher rather than you. Thirty-four percent indicated that they themselves would be liable, and 10 percent were uncertain.

9. In your opinion, would you be held liable for injury resulting to a boy running into a low hanging limb sticking out over the playing area?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 21                       | 56                        |
| <u>NO</u> | 17                       | 33                        |
| UNCERTAIN | 6                        | 11                        |

Comments: The physical education teacher has nothing to do with the landscaping of the school grounds and would not be considered responsible for a student running into the limb of a tree. The student should be navigable enough to avoid running into a limb. Only 33 percent felt this way, while 56 percent felt they could be held liable. This type of concern is good; it could result in removal of the limb.

10. During your physical education class, a 140-lb. boy and a 190-lb. boy slipped away from the mat where you are instructing your class in techniques of wrestling and safety precautions; and the larger boy falls on the smaller boy, resulting in injury to the smaller boy. In your opinion, would you be held liable?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 18                       | 37                        |
| NO         | 23                       | 44                        |
| UNCERTAIN  | 10                       | 19                        |

Comments: Again, supervision is the real thing in question. Only 37 percent answered "yes," while 44 percent answered "no." It is your responsibility to know where all of your students are and that no one is involved in any dangerous horseplay.

11. In your opinion, would you be held liable for an injury resulting to a boy as a result of another boy tackling during a touch football game?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 14                       | 27                        |
| <u>NO</u> | 32                       | 62                        |
| UNCERTAIN | 6                        | 11                        |

Comments: It is impossible to predict what high school or junior high students are going to do under any given situation. There is always going to be a boy who wants to show everyone what a great tackler he is or how well he can block. Teach the fundamentals, have officials for

your games even though they might be student officials, and provide belts or flags for everyone eligible to carry the ball. As 62 percent indicated, you would not be held liable for an unpredictable thing of this nature. There were 11 percent that indicated they were uncertain. This would indicate that these 11 percent feel some responsibility to the situation.

12. In your opinion, would you be held liable for an injury resulting to a boy with a slightly damaged heart if you had him run a mile in your physical education track meet?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 28                       | 54                        |
| NO         | 14                       | 27                        |
| UNCERTAIN  | 10                       | 19                        |

Comments: Yes, you could be. If the boy had a doctor's physical indicating that he could participate in any physical education activity, then you would most likely escape liability. If the physical indicated limited activity done due to heart damage and you failed to heed the limitations suggested, or a student was participating without a physical, then you could be held liable. Fifty-four percent indicated they felt that they could be held liable, while there were just as many that were uncertain as there were that said "no."

13. Do you feel that you would be held liable if a student injured his eye due to the ball hitting his glasses while playing basketball in your physical education class?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 13                       | 25                        |
| NO         | 38                       | 73                        |
| UNCERTAIN  | 1                        | 2                         |

Comments: Twenty-five percent were correct in assuming that you could be held liable in a situation such as this. You are placing a student in a very hazardous position by putting him into a ball game of this nature while wearing glasses. The chances of getting hit in the eye are very great. Seventy-three percent did not feel that they would be held liable. We seem to be very poorly aware of many of the real common practices occurring which we could be taken to court on if someone really wanted to do so, and most likely collect.

14. Are you using a trampoline in your gymnastics and tumbling unit?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 18                       | 34                        |
| NO        | 32                       | 62                        |
| UNCERTAIN | 2                        | 4                         |

Comments: Sixty-two percent indicated that they were not using trampolines in their physical education programs. Thirty-four percent said "yes," they were using trampolines in their programs. Four percent were uncertain. Perhaps they didn't know what a trampoline is? The fact that such a high percent are not using trampolines could be contributed to the memo sent out to physical educators dated January 2, 1968, from Robert Leake, State Director of Health, Physical Education, and Recreation (13), suggesting how dangerous they could be. The problem is to provide enough of the trained supervision at all times.

#### Athletics

1. If a boy sustained an injury which didn't appear serious at the time, but later caused difficulty as a result of further play at request, would you be held liable?



|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 22                       | 42                        |
| NO         | 26                       | 50                        |
| UNCERTAIN  | 4                        | 8                         |

Comments: Surprisingly, only 42 percent answered this question correctly. You are considered a knowledgeable person in your field and could be held liable for not realizing the extent of the injury and anticipating further possible injury, especially if to the head or other vital regions such as the back. Most physical educators seem to be misled on this matter, as 50 percent felt they would not be considered liable.

2. In your opinion, would you be held liable for sending a boy into a ball game knowing that he possibly had an injury?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 50                       | 96                        |
| NO         | 0                        | 0                         |
| UNCERTAIN  | 2                        | 4                         |

Comments: This question becomes obviously more interesting. You definitely could be held liable for sending a boy back into a ball game knowing that he possibly had a serious injury or any injury, for that matter, that might potentially develop into something serious. A majority (96 percent) were in agreement of their liability in this instance.

3. Do you feel you would be held liable for sending a boy into a ball game not knowing he had an injury? ✓

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 6                        | 11                        |
| NO         | 43                       | 83                        |
| UNCERTAIN  | 3                        | 6                         |

Comments: Eleven percent answered correctly to this situation. If the injury the boy had, which wasn't known about, happened under your program and your supervision, it would be felt that you should have been aware of this. If the injury was something that happened independent of the athletic program, which the athlete did not tell you about for fear of not being able to play, then you would probably escape liability. The courts place a great responsibility on the coach or teacher to know his athletes and their condition as well as to best look after their physical well being. As 83 percent indicated, we are not aware of this extreme responsibility.

4. Do you feel you would be held liable for permanent injuries resulting to a boy who injured his back and was carried off by the arms and legs by fellow teammates?

|            | <u>Number responding</u> | <u>Percent Responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 44                       | 84                        |
| NO         | 4                        | 8                         |
| UNCERTAIN  | 4                        | 8                         |

Comments: There is no question on this situation, as many similar cases have resulted in claims being collected. The possibility for further damage to the spinal cord and nervous system is very high. Eighty-four percent agreed and 8 percent were uncertain, as were 8 percent of the feeling they would not be held liable.

5. Do you feel you would be held liable for an accident resulting from a boy colliding with the wall at the end of the basketball court?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 3                        | 6                         |
| <u>NO</u> | 44                       | 84                        |
| UNCERTAIN | 5                        | 10                        |

Comments: Eighty-four percent answered in defense of themselves in this question. You would not be held responsible. It is of no fault of your own that the wall is so close to the floor. The school district could be open to a claim, however.

### Safety practices

1. In your opinion, do you feel it is your responsibility to provide all students with belts or flags for touch football?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 23                       | 44                        |
| NO         | 26                       | 50                        |
| UNCERTAIN  | 3                        | 6                         |

Comments: Forty-four percent felt that it is our responsibility to provide students with belts and flags. Many problems could be eliminated. Students are much less apt to tackle and push, thereby creating possible hazards, if they have a flag or a belt to pull. Aside from reducing possible injury, the enjoyment of the game would be increased a great deal. Fifty percent felt it was not their responsibility. This question is not a liability question, in that someone would be found liable for not providing belts or flags; but it is intended to see how concerned the physical educators are about the safety practices they use.

2. Do you feel that it is your responsibility to explain the hazards and precautions necessary in learning a new skill along with the fundamentals of the skill?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 52                       | 100                       |
| NO         | 0                        | 0                         |
| UNCERTAIN  | 0                        | 0                         |

Comments: One hundred percent indicated that it was their responsibility to instruct students on the possible dangers involved in a skill.

If a student knows how to do tumbling skills correctly, he is less likely to injure himself than if he were attempting a skill not knowing how to do it or not aware of possible hazards.

3. Do you supervise the area where your activities are being played?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 52                       | 100                       |
| NO         | 0                        | 0                         |
| UNCERTAIN  | 0                        | 0                         |

Comments: Again, 100 percent responded to the correct answer. It is the responsibility of the physical education teacher to supervise all of his activities. More suits are filed against improper or lack of supervision than of any other thing, and more claims are collected.

4. Do you check your mats, trampolines, etc., for slip and faulty connections which might result in an accident if unnoticed?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 50                       | 96                        |
| NO         | 2                        | 4                         |

Comments: Ninety-six percent answered "yes," and rightfully so. All equipment should be checked for complete safety. Again, supervision and prevention are better than treatment and worry.

5. In your opinion, would you be held liable for injury to a group of boys as a result of an accident on the way to an activity in which you were driving them in your private car?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 43                       | 83                        |
| NO         | 9                        | 17                        |
| UNCERTAIN  | 0                        | 0                         |

Comments: Eighty-three percent were well-informed in this area.

Any time you assume a group of boys as your passengers, then you accept the responsibility of the well-being of those passengers. You would be less likely to be involved in a court case if you were to have a student use his own car and be the driver of that vehicle.

6. In your opinion, would you be held liable for an injury to a boy whose parents had given him permission to participate in an activity?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 10                       | 34                        |
| NO         | 32                       | 62                        |
| UNCERTAIN  | 2                        | 4                         |

Comments: The fact that the parents give permission for him to participate in a sport does not relieve you of responsibility. They do not expect that child to be injured when they give permission for him to participate. It is expected that he will be in as good or better physical condition after participating in the activity. Only 34 percent felt they were responsible in a situation such as this; 62 percent did not.

7. In your opinion, would you be held liable if a boy was struck by a piece of a broken bat which had previously been broken but not replaced because of a limited budget?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 41                       | 79                        |
| NO         | 9                        | 17                        |
| UNCERTAIN  | 2                        | 4                         |

Comments: Seventy-nine percent answered "yes" to this question, and did so wisely. It makes one wonder what is the matter with the other 21 percent. In question number 4, 100 percent answered "yes;" they felt it was their responsibility to check mats, trampolines, etc., for safety,

yet 22 percent felt they would not be held liable for a broken bat that was previously broken coming separated and injuring someone. As the number of accidents that happen would indicate, many teachers are saying one thing and doing another.

8. Do you feel it is a good practice to walk through your dressing room area before and after each class period?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 52                       | 100                       |
| NO         | 0                        | 0                         |
| UNCERTAIN  | 0                        | 0                         |

Comments: One hundred percent felt that it would be a wise practice to walk through the dressing room before and after class. By doing so, you can cut down on horseplay and feelings that could result in an eventual fight. Shower rooms are slippery and crowded, and horseplay should be avoided.

9. If an accident were to happen in an area which you had precisely reported to the principal as hazardous, would you be held liable? ✓

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 11                       | 21                        |
| NO         | 34                       | 66                        |
| UNCERTAIN  | 7                        | 13                        |

Comments: Although the same type of responsibility applies here as in the previous question, only 21 percent were properly informed. Sixty-six percent were wrong, and 13 percent were uncertain or did not know.

10. How serious do you feel an accident should be before it must be reported, and who should report it?

Comments: It was the feeling of 100 percent of the teachers answering that all accidents should be reported, and that the teacher should be the

one to report them. You are much safer listing all accidents and reporting them, no matter how small. You never know when something serious might develop from an injury which may seem minor at the time.

#### First aid

1. In your opinion, are you required to give first aid in case of an accident?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 40                       | 77                        |
| NO         | 10                       | 19                        |
| UNCERTAIN  | 9                        | 4                         |

Comments: As 77 percent have indicated, the physical education teacher should offer first aid. The teacher should not replace the doctor, but should offer simple first aid to the best of his knowledge and limits of his ability without causing further discomfort or injury to the victim.

2. Do you feel you would be held liable if you administered the wrong treatment?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 42                       | 81                        |
| NO         | 8                        | 15                        |
| UNCERTAIN  | 2                        | 4                         |

Comments: Yes, you could be. As stated above, offer first aid to the best of your knowledge and judgment. If the teacher's knowledge of first aid is limited, then he is in danger of trying to do anything that could not be considered obvious and easily handled by the average prudent adult. Eighty-one percent answered "yes."

3. Do you feel your responsibility as a physical education teacher should include a knowledge of first aid?

|            | <u>Number responding</u> | <u>Percent responding</u> |
|------------|--------------------------|---------------------------|
| <u>YES</u> | 52                       | 100                       |
| NO         | 0                        | 0                         |
| UNCERTAIN  | 0                        | 0                         |

Comments: It was the opinion of all teachers that they should be well-informed and have a good background of first aid if they are going to be working around physical education and athletics.

4. Do you feel adequate in your knowledge of first aid techniques?

|           | <u>Number responding</u> | <u>Percent responding</u> |
|-----------|--------------------------|---------------------------|
| YES       | 48                       | 92                        |
| NO        | 0                        | 0                         |
| UNCERTAIN | 2                        | 8                         |

Comments: Ninety-two percent indicated that they felt adequate in their knowledge of first aid. It might have been well to have had a follow-up question asking the other 8 percent if they were currently enrolled in a first aid course.

5. Do you always make it a practice to see that all of your students shower after each class period?

|     | <u>Number responding</u> | <u>Percent responding</u> |
|-----|--------------------------|---------------------------|
| YES | 47                       | 90                        |
| NO  | 5                        | 10                        |

Comments: Although it would be highly unusual to be taken to court over a student showering or not showering, it is a wise health practice and a concerned teacher that does everything he can to see that all of his students shower. There were only 10 percent who indicated that they did not make it a practice of making sure their students showered.



## CHAPTER V

## SUMMARY

The primary purpose of this study was (a) to define clearly what the teachers' liability is under the Tort law, (b) to determine how well physical education teachers understand this existing law and their limits of its application pertaining to their position.

To secure data regarding the physical education teachers' understanding of the law and their liabilities, a questionnaire was sent out to all physical education teachers in the Class A high schools of Utah. The questionnaire helped to determine what teachers felt they would or could be held liable for and the present safety practices incorporated in the teachers' instructional programs.

A tort is a wrong committed to the person or property of another. Liability is the responsibility of one who committed a wrong against the property or person of another to answer to the injured by payment of damages. Negligence is unreasonable danger to others. The burden of proof is on the plaintiff.

Teachers are personally liable to pupils for injuries growing out of their own negligence. To avoid liability, all that is required of a teacher is that he exercise in the management of pupils the care that a reasonably prudent person would have exercised in the same or similar situation.

Just a few years ago, a person seldom read of law suits involving school teachers. Now, if an individual is injured as a result of someone's negligence, it is very probable that the wronged person may want to sue to recover for the loss of earning power, medical care, and hospital

care. As a matter of fact, the educational field is beginning to feel the impact of this philosophy, as school districts and employees are being named as defendants in numerous cases throughout the United States. Some state legislatures have rewritten the law. For example, since July, 1966, school boards as well as other instrumentalities of the state of Utah are subject to legal suits for certain negligent acts (10).

The first test for determining liability is whether or not the defendant's conduct was the legal cause of the plaintiff's injury. When a reasonably prudent person could have foreseen the harmful results of his act and disregards the foreseeable consequences, his act is the legal cause of the injury, and he is liable for his negligent conduct. It is much easier to charge a physical education teacher with negligence than it is to prove it.

#### Summary of the Questionnaire

##### General section

This survey indicated that physical education instructors are drastically misinformed in most areas by the way they responded. It was the feeling of most instructors that letters from parents relieved them of all or most of the liability. Teachers also felt that when doing something requested by the principal it would relieve them from liability. It was obviously evident that teachers were slow to accept liability by the number that felt it wise to have additional liability insurances beyond that provided by the public school district.

Correct response for the general section was 40 percent. Some questions were answered correctly by as few as 13 percent. Many were uncertain on two questions, which would indicate a poor understanding of the law, inasmuch as one question dealt directly with the law.

Physical education class

Although 60 percent of the questions in this section were answered correctly by most teachers, physical educators cannot feel they are removed from danger. Many of the questions answered would indicate a definite lack of feeling for the responsibility of their equipment and playing fields. Many things that often are likely to happen which seem relatively insignificant or unpredictable should be curbed by teacher discipline and control. Horseplay, as it is commonly referred to, is a good example. Teachers were in agreement on such practices which might result in liability cases in their class, such as settling disputes with boxing gloves or mismatching sizes of boys in wrestling.

Athletics

More teachers answered correctly to this section than to either of the two preceding sections. Percentage of correct responses was only 66 percent, but all but two questions were answered by a majority. The two questions not understood were numbers 1 and 3, both of which dealt with the same type of thinking. In number 1, a boy sustained an injury which didn't appear serious at the time by the athlete. In number 3, the teacher or coach sent a boy into a game not knowing he had an injury. There is an old saying, "Ignorance is no excuse of the law."

The courts feel that the coach and physical education teachers should be aware of the seriousness of an injury, and if not sure to request medical advice before further activity is permitted. Students will often say they are fine when they are really not because of their eagerness to play.

These two questions and others of a similar type seem to be the least understood on liability for injury throughout the study.

### Safety practices

Response to the area of safety practices was good. Seventy-five percent of the questions were answered correctly. The type of questions missed were similar in nature of responsibility to those missed in the section on athletics. Although a teacher is not likely to be held liable for an injury to a boy not wearing belts or flags while playing football, it would be a very wise safety practice designed to cut down the amount of "horseplay" and roughness resulting from an unusually rough type of play.

As is the case many times, statistics here seem to be distorted. Many of the safety practices which teachers felt should be practiced are practiced only on paper. Many teachers indicated that they would not be held liable for something which they also indicated should be carried out as an essential safety factor.

### First aid

There were five questions on aspects of liability regarding the administration of first aid. All of the questions were answered in the affirmative. Teachers felt they should have a good knowledge of first aid and wherever possible should provide the best treatment in accordance with proper first aid knowledge.

It was felt that if one did not have a knowledge of first aid it should be acquired. Ninety-two percent indicated that they felt adequate in their knowledge of first aid.

CHAPTER VI  
CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to define the Utah Tort law and to determine teachers' understanding of this law. We can conclude from the research and the tabulated response to selected questions that the teachers in Utah do not understand the state's liability law. The author feels that there is a complacent attitude toward ever being held liable.

In some areas there appeared to be some good understanding of teachers' responsibility to student welfare. These areas were in first aid and safety practices. However, the response to several questions would indicate that what the teacher thinks should be done and what is being done are two different things.

The complacent attitude toward ever being held liable is a serious problem. Teachers need to realize that parents cannot legally waive the teacher's responsibility for a child. The teacher is a professional and is expected to make judgments accordingly in face of problems which may arise. Teachers do not seem to realize that they personally are held liable for negligent acts whether by omission or commission. The law does require that school districts provide liability insurance for its employees; however, this should not relieve the teacher from the responsibility of making his program as safe as possible. One other factor which might induce this complacent attitude towards liability would be the fact that the school district can now be sued and more claims are filled on the district because of amounts of money.

Physical educators must become more and more aware of the safety of pupils and provide the necessary supervision to make this possible. Much more confidence and discretion needs to be employed in making professional decisions; and if the teacher's knowledge doesn't merit a decision, the additional professional advice should be sought when a student's well-being is in danger. If this is not done, the teacher or coach stands a high risk of being involved in a law suit.

Physical education teachers are more open to liability than they like to believe, more so than coaches. Lack of supervision is the biggest claim filed in physical education. This should not be the case; there should be good supervision and teaching in both physical education and coaching. Physical education teachers should be sure they follow proper sequences in lines of progression and advance a student to higher skill levels by their achievement rather than by number of days or general class flow. Teachers are often exposed to more liability by the size of classes they are faced with. Large classes cut down on the amount of supervision a teacher can give in each area.

The author would recommend that colleges make more of an effort to educate the students in education, especially in physical education, to be more aware of the liability that could be inflicted upon them. It would also be wise to suggest physical education teachers and coaches buy individual liability insurance. The national association (AAHPER) does not offer this insurance as they have in the past; however, there are other reasonable sources.

Districts should take the responsibility for making teachers aware of district policy toward liability policies of that district. Once informed, teachers and administrators must assume responsibility for

their actions. Principals perhaps are not always aware that upon demanding the attention of the teacher to the office, they leave the teacher open to liability claims unless someone trained is left to supervise.

The whole basis of Tort liability is to insure the best practices for the protection and benefit of the student concerned. This would best be accomplished by mass recognition of teacher responsibility.

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## APPENDICES

Appendix ACover Letter

December 12, 1968

Dear Physical Educator:

I am making a study of the "Opinion of Physical Educators on Tort Liability".

As fellow Physical Educators, I would appreciate your cooperation in filling out this short questionnaire dealing with some of our teaching habits and your opinion concerning liability for injury.

All data gathered will be used in a strictly confidential manner; names of persons, schools or localities will not be made known. If you desire a summary of this study, I will be glad to send one to you.

Please make this your own opinion.

If you have further comment on questions please feel free to do so on the questionnaires.

A stamped self-addressed envelope is enclosed for your convenience.

A prompt reply will be greatly appreciated.

Sincerely yours,

Eldon C. Louder

ECL:cl

Appendix BPhysical Education Opinion Questionnaire on Tort Liability

Please check the answer you feel is correct in the following questions. In those questions which require a one- or two-word answer, write the answer in the blank provided.

Please put a check in the blank that best describes the type of school you are working in, and list the number of students enrolled.

Rural \_\_\_\_\_  
City \_\_\_\_\_

Combined \_\_\_\_\_  
Enrollment \_\_\_\_\_

YES      NO      UNCERTAIN

General

- |                                                                                                                                                                    |       |       |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. In your opinion, would you be held liable for injuries due to over-work and fatigue of a student who had not had a physical examination required by the school? | _____ | _____ | _____ |
| 2. If you felt a student was unfit for participation, but he had a slip from his parents, do you feel that you would be held liable for an injury by the school?   | _____ | _____ | _____ |
| 3. If you were called to the office and a serious accident occurred while you were gone, would you be held liable?                                                 | _____ | _____ | _____ |
| 4. In your opinion, does the law do anything to discourage nuisance lawsuits?                                                                                      | _____ | _____ | _____ |
| 5. If you were to use parents as chaperones for a class and these parents are negligent, would you be held liable?                                                 | _____ | _____ | _____ |
| 6. Do you feel that the school district should set up a standard that would define sensible actions on the part of the employees?                                  | _____ | _____ | _____ |

|                                                                                                                                                                                                                                            | <u>YES</u> | <u>NO</u> | <u>UNCERTAIN</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|------------------|
| 7. In your opinion, should you buy liability insurance that is offered during school hours, aside from the coverage your school offers under the tort law?                                                                                 | _____      | _____     | _____            |
| 8. In your opinion, would you be considered negligent if an accident happened while working under the principal's instructions?                                                                                                            | _____      | _____     | _____            |
| 9. In your opinion, would you be held liable for an accident happening to a small elementary child who had strayed from the playground of the elementary school across the street on your playing field and was struck by a hard hit ball? | _____      | _____     | _____            |
| 10. In your opinion, if you post signs or warnings about hazardous conditions, will this remove you from responsibility?                                                                                                                   | _____      | _____     | _____            |
| 11. In your opinion, would you be held liable for injury resulting to a boy who was cut on a sharp edge of the fence around your playing area?                                                                                             | _____      | _____     | _____            |
| 12. Do you feel that you would be held liable for a burn resulting from a boy falling into an incinerator which was located next to the playing field?                                                                                     | _____      | _____     | _____            |
| 13. Do you feel that you limit most of your activities to only the more physically fit students?                                                                                                                                           | _____      | _____     | _____            |
| 14. Do most of your accidents happen indoors or outdoors? _____                                                                                                                                                                            |            |           |                  |
| 15. When resentment or defiance enter into discipline, do you think the teacher should handle the problem or turn it over to the principal?<br>_____                                                                                       |            |           |                  |

YES                      NO                      UNCERTAIN

Physical education class

- |                                                                                                                                                             |       |       |       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. In your opinion, would you be held liable if a student fell on a piece of glass in the playing field and was badly hurt?                                 | _____ | _____ | _____ |
| 2. Do you feel you would be held liable for an injury resulting from two boys settling a dispute with boxing gloves under your supervision?                 | _____ | _____ | _____ |
| 3. While you were calling roll, the class was flipping rocks, and a boy's eye was put out. Do you feel that you would be held liable?                       | _____ | _____ | _____ |
| 4. A boy came to your class with an infected finger. You put it in boiling water to draw out the infection. In your opinion, would you be held liable?      | _____ | _____ | _____ |
| 5. In your opinion, would you be held liable if a student bled to death as a result of an accident in your class?                                           | _____ | _____ | _____ |
| 6. If a boy broke his arm and you walked him to the supervisor's office for treatment, do you feel you would be held liable for making the student walk?    | _____ | _____ | _____ |
| 7. In your opinion, would you be held liable for a student leaving your class to go to town during school hours at the request of his parents?              | _____ | _____ | _____ |
| 8. Do you feel that you would be held liable for injury to a girl who was playing a basketball game with a group of boys during a physical education class? | _____ | _____ | _____ |
| 9. In your opinion, would you be held liable for injury resulting to a boy running into a low hanging limb sticking out over the playing area?              | _____ | _____ | _____ |

|                                                                                                                                                                                                                                                                                                                          | <u>YES</u> | <u>NO</u> | <u>UNCERTAIN</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|------------------|
| 10. During your physical education class a 140-lb. boy and a 190-lb. boy slipped away from the mat where you are instructing your class in techniques of wrestling and safety precautions, and the large boy falls on the smaller boy resulting in injury to the smaller boy. In your opinion, would you be held liable? | _____      | _____     | _____            |
| 11. In your opinion, would you be held liable for an injury resulting to a boy as a result of another boy tackling during a touch football game?                                                                                                                                                                         | _____      | _____     | _____            |
| 12. In your opinion, would you be held liable for an injury resulting to a boy with a slightly damaged heart, when you had him run a mile in your physical education track meet?                                                                                                                                         | _____      | _____     | _____            |
| 13. Do you feel you would be held liable if a student injured his eye due to the ball hitting his glasses while playing basketball in your physical education class?                                                                                                                                                     | _____      | _____     | _____            |
| 14. Are you using trampolines in your gymnastics and tumbling units?                                                                                                                                                                                                                                                     | _____      | _____     | _____            |

#### Athletics

|                                                                                                                                                                            |       |       |       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. If a boy sustained an injury which didn't appear serious at the time, but later caused difficulty as a result of further play at his request, would you be held liable? | _____ | _____ | _____ |
| 2. In your opinion, would you be held liable for sending a boy into a ball game knowing that he possibly had an injury?                                                    | _____ | _____ | _____ |
| 3. Do you feel you would be held liable for sending an injured boy into a ball game not knowing he had an injury?                                                          | _____ | _____ | _____ |

- |                                                                                                                                                                      | <u>YES</u> | <u>NO</u> | <u>UNCERTAIN</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|------------------|
| 4. Do you feel you would be held liable for permanent injuries resulting to a boy who injured his back and was carried off by the arms and legs by fellow teammates? | _____      | _____     | _____            |
| 5. Do you feel you would be held liable for an accident resulting from a boy colliding with the wall at the end of the basketball court?                             | _____      | _____     | _____            |

Safety practices

- |                                                                                                                                                                                     |       |       |       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. In your opinion, do you feel that it is your responsibility to provide all students with belts or flags for touch football?                                                      | _____ | _____ | _____ |
| 2. Do you feel that it is your responsibility to explain the hazards and precautions necessary in learning a new skill along with the fundamentals of the skill?                    | _____ | _____ | _____ |
| 3. Do you supervise the area where your activities are being played?                                                                                                                | _____ | _____ | _____ |
| 4. Do you check your mats, trampolines, etc., for slip and faulty connections which might result in an accident if unnoticed?                                                       | _____ | _____ | _____ |
| 5. In your opinion, would you be held liable for injury to a group of boys as a result of an accident on the way to an activity in which you were driving them in your private car? | _____ | _____ | _____ |
| 6. In your opinion, would you be held liable for an injury to a boy whose parents had given him permission to participate in the activity?                                          | _____ | _____ | _____ |
| 7. In your opinion, would you be held liable if a boy was struck by a piece of broken bat which had previously been broken but not replaced because of a limited budget?            | _____ | _____ | _____ |



- |                                                                                                                                        | <u>YES</u> | <u>NO</u> | <u>UNCERTAIN</u> |
|----------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|------------------|
| 8. Do you feel it is a good practice to walk through your dressing room area before and after each class period?                       | _____      | _____     | _____            |
| 9. If an accident were to happen in an area which you had previously reported to the principal as hazardous, would you be held liable? | _____      | _____     | _____            |
| 10. How serious do you feel an accident should be before it must be reported, and who should report it? _____                          | _____      | _____     | _____            |
- 
- 

First aid

- |                                                                                                             |       |       |       |
|-------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. In your opinion, are you required to give first aid in case of an accident?                              | _____ | _____ | _____ |
| 2. Do you feel you would be held liable if you administered the wrong treatment?                            | _____ | _____ | _____ |
| 3. Do you feel your responsibility as a physical education teacher should include a knowledge of first aid? | _____ | _____ | _____ |
| 4. Do you feel adequate in your knowledge of first aid techniques?                                          | _____ | _____ | _____ |
| 5. Do you always make it a practice to see that all of your students shower after each class period?        | _____ | _____ | _____ |