

A LEGAL ANALYSIS OF LITIGATION AGAINST MISSISSIPPI EDUCATORS AND
SCHOOL SYSTEMS UNDER THE MISSISSIPPI TORT CLAIMS ACT

Sara B. Kriesel-Hall, B.A., B.S., M.A.

Dissertation Prepared for the Degree of

DOCTOR OF EDUCATION

UNIVERSITY OF NORTH TEXAS

May 2013

APPROVED:

Richard Fossey, Major Professor
John Brooks, Committee Member
Linda Stromberg, Committee Member
Jay Davis, Committee Member
Nancy Nelson, Chair of the Department of
Teacher Education and Administration
Jerry R. Thomas, Dean of the College of
Education
Mark Wardell, Dean of the Toulouse Graduate
School

Kriesel-Hall, Sara B. A Legal Analysis of Litigation Against Mississippi Educators and School Systems under the Mississippi Tort Claims Act. Doctor of Education (Educational Administration), May 2013, 99 pp., 82 references.

This dissertation analyzes court cases involving tort claims filed against Mississippi public schools and their employees under the Mississippi Tort Claims Act. The question addressed was: How have the Mississippi courts interpreted the Mississippi Tort Claims Act in litigation against Mississippi school districts and their employees?

The intent of this dissertation is to add to the understanding of the legal concept of sovereign immunity as it has been applied to public schools and their employees. This study's focus centers on litigation in the state of Mississippi involving school districts. Chapter 2 provides a historical summary of sovereign immunity (also known as governmental immunity) in the United States and the state of Mississippi up to the enactment of the Mississippi Tort Claims Act as well as an overview of general legal concepts involved in tort claims. Chapter 3 explains the research design and methodology used. This dissertation relied on legal principles of research and document analysis used in the legal profession. Chapter 4 consists of a thorough analysis of published case law brought before the Mississippi courts pertaining to the Mississippi Tort Claims Act and public school systems and their employees. Finally, chapter 5 describes the key findings of the analysis of case law involving Mississippi school districts and their employees under the Mississippi Tort Claims Act.

Copyright 2013

by

Sara B. Kriesel-Hall

ACKNOWLEDGMENTS

I want to take this opportunity to appreciate all the support and encouragement I received from family, friends and colleagues. I appreciate all your sacrifices and support on this journey. I would like to offer a special acknowledgment to Dr. Fossey in helping me through this process and supporting my efforts in completing this study.

TABLE OF CONTENTS

	Page
ACKNOWLEDGMENTS.....	iii
CHAPTER	
1. INTRODUCTION.....	1
Statement of the Problem	1
Significance of the Study.....	2
Research Question	3
Definitions of Important Terms	3
Summary of Chapters.....	6
2. REVIEW OF LITERATURE	8
Introduction	8
Sovereign Immunity and the Federal Government	9
Coverdell Teacher Protection Act	10
Governmental Immunity for State Governments.....	11
Governmental Immunity for the States and Their Political Subdivisions	13
Governmental Acts Versus Proprietary Acts by Governmental Agencies	15
Discretionary Acts Versus Ministerial Acts	17
Waiver of Governmental Immunity Based on Insurance Coverage	20
Ordinary Negligence Versus Gross Negligence	22
Governmental Immunity in Mississippi Prior to Passage of Mississippi Tort Claims Act.....	23
The Mississippi Legislature’s Response to the <i>Pruett</i> Decision	26
The Mississippi Supreme Court Responds to Legislative Delays	29
Mississippi Tort Claims Act (MTCA) of 1993	32

Conclusion	37
3. RESEARCH DESIGN AND METHODOLOGY	39
Introduction	39
Legal Research Design.....	39
4. ANALYSIS OF THE LAW.....	44
Introduction	44
Cases Involving Notice of Claim	44
Cases Involving Exemption from Liability	56
Conclusion	81
5. FINDINGS, CONCLUSIONS, AND IMPLICATIONS	83
Introduction	83
Outcome of Cases Involving Notice of Claim	84
Outcome of Cases Involving Negligence	86
Conclusion	91
Implications	93
REFERENCES.....	95

CHAPTER 1

INTRODUCTION

Statement of the Problem

Maher, Price, and Zirkel (2010) concluded in their state-by-state analysis of immunity and public schools that the “current literature reflects insufficient knowledge about the topics of governmental and official immunity within the context of public schools, contributing to a skewed perception of its present extent” (p. 247). Public schools and professional educators are well aware of the daunting responsibility given in their duty as *in loco parentis*; meaning their authority to act on students’ behalf in absence of the parent. However, little attention is given to studying school law and litigation in relation to educators’ exposure to legal liability for their actions. Fear of negligence lawsuits within the educational profession is not uncommon. As noted in Lacefield’s (2010) dissertation, legal liability proceedings in relationship to schools and their employees have become the norm. The anxiety of being sued is intensified by news media, colleagues, unions, and the insurance industry (Zirkel & Barnes, 2011). According to Dougherty (2004), tort claims are the most common litigation brought against school districts and employees, although many of the cases are unwarranted. The stream of legal action against school systems and their employees continues to be driven by the cultural conclusion that school systems are characteristically negligent and at fault.

Although litigation involving public schools and their employees occurs often, educational systems and individual educators enjoy extensive immunity from liability across the United States. As discussed by Maher et al. (2010), the majority of states do not allow absolute immunity or absolute liability, but they do ensure limited immunity for public school systems

and their employees. Interestingly, their study revealed that Alabama stands alone in offering immunity without exceptions in regard to school district negligence. Because the majority of state statutes call for limited immunity, the qualifications for immunity are a moving target based on current case law and interpretation of statutes. Thus, educators are often unclear as to the exact contours of their immunity and protection from lawsuits.

This dissertation adds to the body of work on the topic of immunity presented by Carman (2009) and Lacefield (2010) whose dissertations analyzed liability litigation in Texas and Oklahoma. This paper focuses on the state of Mississippi; specifically liability litigation against school districts and their employees under Mississippi's Tort Claims Act (MTCA).

Significance of the Study

The intent of this dissertation is to add to the understanding of the concept of sovereign immunity (also known as governmental immunity) as the concept is applied in litigation against Mississippi school districts and public-school educators. Teachers and school districts are not absolutely immune from lawsuits in today's litigious society. In fact the majority of cases involving public schools systems involve negligence torts (Dougherty, 2004). However, exposure to liability for school districts and educators varies from state to state depending on how a particular state's governmental immunity provisions are worded and how governmental immunity laws are interpreted by a particular state's court. According to Maher et al.'s (2010) study, which surveyed governmental immunity protection for school districts and their employees in all fifty states, some sort of governmental immunity protection exists in almost every state.

This dissertation analyzes Mississippi's governmental immunity statutes and their interpretation by the Mississippi courts in published decisions involving school districts and their employees. In Chapter 4, special attention is given to the discretionary function of employees' work in relationship to the concept of providing ordinary care. The analysis of cases brought before the Mississippi court system demonstrates that school districts and their employees are afforded a great deal of immunity and protection under the Mississippi Tort Claims Act.

Research Question

The following question guided this study:

1. How have the Mississippi courts interpreted the Mississippi Tort Claims Act in litigation against Mississippi school districts and their employees?

Definitions of Important Terms

Administrative discretion. "The power to choose between courses of conduct in the administration of an office or a duty pertaining thereto." (Bender & Co., 2010.)

Claim. "Claim means any demand to recover damages from a governmental entity as compensation for injuries." (Miss. Code Ann. § 11-46-1, 2011)

Claimant. "Claimant means any person seeking compensation under the provisions of the Mississippi Tort Claims Act, whether by administrative remedy or through the courts." (Miss. Code Ann. § 11-46-1, 2011)

De novo. "[De novo means] anew; over again; a second time." (Bender & Co., 2010.)

Discretionary act. "A deed involving an exercise of personal judgment and conscience" (Garner, 2004, p. 534).

Employee. "Employee means any officer, employee, or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation." (Miss. Code Ann. § 11-46-1, 2011)

Estop. "[Estop means] to bar; to stop; to prevent; to operate as an estoppel." (Bender & Co., 2010)

Governmental entity. "Governmental entity means and includes the state and political subdivisions as defined by Mississippi law." (Miss. Code Ann. § 11-46-1, 2011)

Injury. "Injury means death, injury to a person, damage or loss of property, or any other injury that a person may suffer that is actionable at law or in equity." (Miss. Code Ann. § 11-46-1, 2011)

Governmental function. "A government agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public" (Garner, 2004, p. 765).

Law. "Law means all species of law including, but not limited to any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decisions, court opinion, court judgment or mandate, administrative rules or regulation, executive order, or principle or rule of equity." (Miss. Code Ann. § 11-46-1, 2011)

Ministerial Powers. “[Ministerial powers refer to the] powers of a public officer which require no exercise of judgment or discretion. Powers of a trustee which are directory, there being no scope for discretion in any of the details of their exercise.” (Bender & Co., 2010)

Proprietary function. "A municipality's conduct that is performed for the profit or benefit of the municipality, rather than for the benefit of the general public" (Garner, 2004, p. 1339).

Motion for Summary Judgment. “A motion for summary judgment is not a trial; on the contrary it assumes that scrutiny of the facts will disclose that the issues presented by the pleadings need not be tried because they are so patently insubstantial as not to be genuine issues at all. Consequently, as soon as it appears upon such a motion that there is really something to “try,” the judge must at once deny it and let the cause take its course in the usual way.” (Bender & Co., 2010)

Negligent Act. “[A negligent act is] one from which an ordinarily prudent person would foresee such an appreciable risk of harm to others as to cause him not to do the act, or to do it in a more careful manner.” (Bender & Co., 2010)

Political Subdivision. “Political subdivision means any body politic or body corporate other than the state, responsible for governmental activities only in geographic areas smaller than that of the state including but not limited to any county, municipality, school district.” (Miss. Code Ann. § 11-46-1, 2011)

Proprietary Governmental Power. “The power exercised by the government as a sovereign, being distinguished from power exercised by the government in a proprietary or business capacity.” (Bender & Co., 2010)

State. “State means the state of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority, or other instrumentality thereof, whether or not such body or instrumentality thereof has authority to levy taxes or to sue or be sued in its own name.” (Miss. Code Ann. § 11-46-1, 2011)

Summary of Chapters

Chapter 2 provides an overview and historical summary of sovereign immunity, sometimes referred to as governmental immunity, in the United States. Sovereign immunity originated in English common law and was adopted early in American history. Its development began at the federal level when U. S. Congress passed several statutes. For educational systems the last action of immunity passed by the federal government was the Coverdell Teacher Protection Act. Although governmental immunity was initially adopted by the various state courts, by the middle of the twentieth century states began to adopt statutes—often called tort claims acts—which defined the contours of governmental immunity in each individual state. Eventually Mississippi also produced legislation laying out the specifics of immunity in relationship to the state and its political subdivisions.

Chapter 3 provides the framework of the research method used. For the purpose of this study, legal analysis was applied. This type of research is comprised of document analysis of law dissertations, law review journals, case law, and key texts within the field. Search engines such as LexisNexis and the University of North Texas Digital Library resources were invaluable tools in acquiring documents for study.

Chapter 4 consists of a thorough analysis of case law pertaining to the Mississippi Tort Claims Act and public school systems and its employees. Seventeen cases were selected and

reviewed based on the claims of the appellant(s). Two key cases were identified whose outcomes set important precedents. These cases were *Reaves v. Randall* (1999) and *L. W. v. McComb Separate Municipal School District* (1999). Of the cases reviewed, seven involved disputes with notice of claim and ten of the cases involved matters surrounding governmental or qualified immunity.

Chapter 5 consists of the key findings from the analysis of case law discussed in chapter four and implications of the courts' rulings. Two major key findings were identified. Firstly, in cases involving notice of claim, the court has swung the pendulum from strict compliance, in regards to all aspects of the statute, to substantial compliance in regards to most aspects of the statute. This paper substantiates the discussion of notice of claim by Fraiser (2007). Hence, the court has created the opportunity for cases to be heard on the merits of the case. The analysis revealed substantial compliance must be met in regard to who will receive the notice and the information it contains, but strict compliance in regard to meeting legislated time lines. Additionally, the court has adopted a two-pronged public policy function test in determining whether qualified immunity applies. In determining to use the policy function test, the court has established a pattern of rationale to its rulings. Finally, Chapter 5 makes recommendations for further study.

CHAPTER 2

REVIEW OF LITERATURE

Introduction

This study is an analysis of the Mississippi Tort Claims Act as applied by the Mississippi courts in published decisions involving tort claims against Mississippi school districts. The study follows the general outline and methodology of two previous dissertations on governmental immunity that were completed at the University of North Texas: Lacefield's (2010) study of governmental immunity in Oklahoma as it has been applied to school districts in that state; and Carman's dissertation (2009), which is a study of the Texas educator immunity statute as it has been applied to Texas professional employees in defamation cases, motor vehicle cases, and cases involving allegation of excess force in administering corporal punishment (Carman, 2009; Carman & Fossey, 2009).

This literature review discusses the recognition of sovereign immunity as a bar to suing the federal government, although the United States Congress subsequently provided a statutory framework whereby plaintiffs could bring claims against the federal government and its employees. The literature review also provides a brief overview of the Coverdell Teacher Protection Act, in which the U.S. Congress provided teachers protection from tort claims. The literature review also addresses the emergence of sovereign immunity (or governmental immunity) in the states, first as a principle of common law recognized by the state courts, and then through legislation passed by the various state legislatures. Although the concept of governmental immunity shares broad principles in all the states, the states have carved out exceptions to governmental immunity that vary significantly from jurisdiction to jurisdiction.

Sovereign Immunity and the Federal Government

The legal concept of sovereign immunity in the United States has its origins in the common law of England. As early as the thirteenth century, English courts adopted the principle of governmental immunity based on the principle that the king could do no wrong. Scholars believe that personal immunity was established in essence because no English court could obtain jurisdiction over the King without his consent (Fraiser, 1996).

It is not surprising that American courts adopted the English concept of sovereign immunity since most American law has its roots in English common law. Nevertheless, the history of the American courts' acceptance of the "feudal and monarchist doctrine of sovereign immunity [in the United States] is obscure" (Lacefield, p. 13, quoting the Commentary accompanying the Second Restatement of Torts § 895A [1979, p. 396]). In 1821, the United States Supreme Court recognized the principle of sovereign immunity in *Cohens v. Virginia*. The Court ruled that suits brought against the United States could not proceed without first gaining permission from the government (Lacefield, 2010). As noted by Lacefield (2010) in the case of *Nichols v. United States* (1869), the Supreme Court reiterated that sovereign immunity was alive and well when it declared, "it is a familiar doctrine of the common law, that the sovereign cannot be sued in his own courts without his consent" (p. 629).

Throughout the nineteenth century, the federal courts provided the national government with substantial protection against tort claims under sovereign immunity principles (Lacefield, 2010). However, the U.S. Congress perceived the need for a judicial framework for resolving contract claims against the federal government, and it created a court of claims in 1855, giving it jurisdiction to hear contract claims against the federal government. In 1887, the

U.S. Congress adopted the Tucker Act, which gave a federal Court of Claims authority to resolve various claims against the United States (Lacefield, 2010).

In 1946, the United States Congress passed the Federal Claims Tort Act, whereby Congress waived some aspects of sovereign immunity and established grounds for federal government employees to be sued for acts of negligence. A notable provision of the Federal Tort Claims Act is the discretionary function exception, which grants immunity for governmental employees whose actions are deemed as discretionary (Walker, 2001). Two important considerations made by the Supreme Court in early cases defined actions of employees into two categories; actions influenced at the planning level and those decisions made at the operational level (Walker, 2001). According to Cohen and Burrows (2007), in the case of *Dalehite v. United States*, the Court defined discretion as having taken place when policy judgment or decisions were left to the employees in the course of carrying out their duties. Additionally, Cohen and Burrows (2007) noted in the case of *Berkovitz v. United States* the Court reiterated that the government could be held liable. The Court explained that acts or decisions made by an employee cannot be found to be discretionary when an employee is prescribed a course of action or given specific directives to follow regardless of the level in which the policy was formulated.

Coverdell Teacher Protection Act

The Federal Tort Claims Act was not the last legislation by the United States Congress to address immunity in relationship to schools. In 2001, the Bush administration reenacted the Elementary and Secondary Education Act as a national school reform measure (Zirkel, 2003). Within this legislation were provisions commonly called the Coverdell Teacher Protection Act,

which “provide[s] teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment” (Coverdell Teacher Protection Act, 2001). The act was in response to a perceived crisis in education litigation and the need for educators to gain immunity protection to retain order and discipline in schools (Zirkel, 2003). However, according to Zirkel (2003), the act gave little protection due to the limitations, exceptions, and the redundancy of immunity already specified at the state level. Recently though the Coverdell Teacher Protection Act was cited by the defense in the case of *Dydell v. Taylor* (2011) on appeal to the Missouri Supreme Court. Craig Dydell, a high school student, was injured when another student cut his neck in the cafeteria. The student had previously been expelled from a school for bringing a knife on campus. The circuit court ruled in favor of the defendant, Dr. Taylor. Dydell appealed the ruling claiming the circuit court erred in holding summary judgment for Dr. Taylor, the superintendent of the Kansas City school system. The Supreme Court of Missouri concluded that the act was constitutional under Title I of the United States Constitution and upheld summary judgment for the defendant.

Governmental Immunity for State Governments

At the time the United States Constitution was ratified, there was a general presumption among governmental leadership at the state level that the states could not be sued in the federal courts without their permission (Hill, 2001). In 1793, this notion was shattered when the United States Supreme Court decided *Chisholm v. Georgia*. In ruling, by a four-to-one decision the court concluded that a North Carolina resident could sue the state of Georgia in a federal

court. This ruling necessitated states to consider the issue of government immunity in relationship to the citizens they served.

As noted by Lacefield (2010), Hill (2001) described the response to the *Chisholm* decision as “speedy and angry” (p. 497) and the House of Representatives of Georgia “adopted a bill making it a capital offense to attempt to levy a judgment in the [Chisholm] case” (p. 497). Hence, a movement began across states such as Massachusetts and Virginia for legislatures to reverse the decision. The notion of a bill at the state level to negate the decision in *Chisholm* gained momentum and before long eight additional state legislatures showed support for a similar legislation (Hill, 2001).

In reaction the U.S. Congress promptly introduced a constitutional amendment which stated, “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State” (U.S. Const., amend. XI). Within two years after the *Chisholm* decision, the amendment was ratified, and the constitutional provision protecting states from being sued in federal courts was adopted as known as the Eleventh Amendment to the United States Constitution in 1798. However, the amendment did not provide absolute immunity. Nowak and Rotunda (2007), in their treatise on constitutional law, specify that:

[The Eleventh Amendment] does not grant the states true immunity, for it does not exempt them from the restrictions of federal law; it only means that some types of suits must be initially brought in state rather than federal court. (p. 45)

According to Lacefield (2010), “In addition, the Eleventh Amendment does not prohibit a state from being sued in the courts of a sister state; and the Amendment does not protect

governmental officers from being sued (p.15).” Hence, the interpretation of the Eleventh Amendment brings forth many complex legal questions (Nowak & Rotunda, 2007). What is important to note in relation to the scope of this paper is that the majority of tort liability cases brought forth against public school systems and their employees are heard initially at the state level rather than federal. Hence, the responsibility of government entities in relationship to its obligation to protect citizens is not a new matter, but one that begins at the state level.

Governmental Immunity for the States and Their Political Subdivisions

Although the emergence of sovereign immunity as an element of common law is obscure in some states, it is clear that state courts did endorse this principle early in the nation’s history. As Lacefield (2010) discussed, a Massachusetts court recognized sovereign immunity as early as 1812, when it decided the case of *Mower v. Inhabitants of Leicester*. Lacefield (2010) noted that the court had relied on the precedent of an eighteenth-century English case, *Russell v. The Men Dwelling in the Town of Devon*, concluding that an entire town in Massachusetts could not be sued as one entity. Notable authorities such as Alexander and Alexander (2009) have concluded that the doctrine of sovereign immunity as it came to be applied to state and local governments cannot be traced to a single court case. These scholars conclude that the concept of sovereign immunity was adopted by justices relying on the laws and scholarly materials of the time first established in England.

Governmental immunity became a standard of common law in almost all of the states over time and by the twentieth century it was established as the norm. As discussed in Lacefield’s (2010) dissertation, in 1907, the Oklahoma Supreme Court endorsed the principle of governmental immunity as an element of Oklahoma common law in the case of *James v.*

Trustees of Wellston Township. The opinion contained an exhaustive survey of the law in other states. The court concluded governmental immunity was recognized almost universally and had been adopted by state courts across the country (Lacefield, 2010).

Although the legal principle of governmental immunity varied from state to state based on how the concept was recognized and shaped by various state courts, its broad contours are described in the Restatement (Second) of Torts (1979), which codifies the broad common law of torts in the United States. Section 895B of the Restatement provides:

- 1) A State and its governmental agencies are not subject to suit without the consent of the State.
- 2) Except to the extent that a State declines to give consent to tort liability, it and its governmental agencies are subject to tort liability.
- 3) Even when a State is subject to tort liability, it and its governmental agencies are immune to the liability for acts and omissions constituting (a) the exercise of a judicial or legislative function, or (b) the exercise of an administrative function involving the determination of fundamental governmental policy.
- 4) Consent to suit and repudiation of general tort immunity do not establish liability for an act or omission that is otherwise privileged or is not tortious. (pp. 399-400)

By the mid-twentieth century, however, state courts became increasingly uncomfortable with governmental immunity as a judicial concept, which often gave state and local governmental agencies almost total protection from liability for their acts of negligence. One by one, state courts abolished governmental immunity as a precept of common law and called on state legislatures to draft legislation that would define the limits of immunity for state and local governments. In 1983, for example, the Oklahoma Supreme Court announced that it was overruling its prior decisions recognizing governmental immunity and requested the Oklahoma Legislature to determine the limits of governmental immunity by statute (*Vanderpool v. State of Oklahoma*, 1983). The legislature accepted this invitation and adopted the Oklahoma Governmental Tort Claims Act that gave Oklahoma governmental units, including school

districts, substantial protection from being sued for negligence (Lacefield, 2010). The Mississippi Supreme Court also abolished governmental immunity as a common law principle in 1982 and directed the state legislature to pass legislation that would define governmental immunity for Mississippi governmental units, including school districts.

Thus, as Keeton, Dobbs, Keeton, & Owen commented in *Prosser and Keeton on Torts* (1984), states gradually began limiting the scope of governmental immunity over the years while providing plaintiffs with avenues for suing governmental agencies in certain circumstances. Either by statute or court decision, these broad categories of governmental immunity limitations became recognized: 1) governmental acts versus proprietary acts, which permit governmental agencies to be sued for their proprietary acts; 2) discretionary acts versus ministerial acts, whereby agencies could be sued for their ministerial activities but not their discretionary actions; 3) ordinary negligence versus gross or wanton negligence, in which states adopted the common-sense principle that governmental actors should not be immunized from suit for reckless behavior, and 4) waiver of governmental immunity to the extent that a public agency has insurance.

Governmental Acts Versus Proprietary Acts by Governmental Agencies

In many jurisdictions, courts distinguish between a political subdivision's governmental acts and so-called proprietary acts. In these jurisdictions, courts permit governmental units to be sued for their proprietary acts while immunizing them from suit for governmental acts based on the principle of governmental immunity.

For example, in *Galveston v. Posnainsky* (1884), a case in the state of Texas, a 9-year-old girl brought suit through her father against the city of Galveston for injuries she suffered when

she fell off a sidewalk into an open gutter maintained by the city. The girl suffered permanent injuries from the fall and was awarded \$10,000 in damages by a jury.

On appeal, the city made several arguments. The city maintained that the gutter's location was well known and that the accident occurred due to the girl's own negligence. It also claimed the seriousness of her injuries were the result of inadequate medical care and that the city could not be sued based on the principle of sovereign immunity.

On appeal, the Texas Supreme Court affirmed the judgment against the city of Galveston. In doing so, the court distinguished between two kinds of governmental activities: public duties and proprietary activities. Consulting court decisions from England and other states, the Texas Supreme Court concluded that the common law does not permit suits against municipalities when they are exercising powers "for purposes essentially public—purposes pertaining to the administration of general laws made to enforce the general policy of the state..." (*Galveston v. Posnainsky*, 1884, p. 127). On the other hand, municipalities can be sued "when they exercise powers intended for the private advantage and benefit of the locality and its inhabitants" and "when the exercise of those powers causes someone to be injured" (*Galveston v. Posnainsky*, 1884, p. 127). In the court's view, the prevailing views among courts that had considered similar cases was that a town such as Galveston "is liable for an injury resulting from its neglect to keep its streets in repair..." (*Galveston v. Posnainsky*, 1884, pp. 133–134). Thus, the case of *City of Galveston v. Posnainsky* (1884) articulated the common law in Texas with regard to when local subdivisions could be sued. If a municipality was engaged in a governmental function, it enjoyed immunity from liability. However, if the municipality was

performing a proprietary function, it could be sued, even though no Texas statute authorized such a suit at the time.

Likewise, in *City of Oklahoma City v. Taylor* (1970), the Oklahoma Supreme Court considered whether the municipality of Oklahoma City was immune from a suit for damages that occurred when a municipal employee driving a city-owned truck had a two-vehicle accident with a motorist. At the time of the accident, the city employee was en route to install some guardrail posts. Oklahoma City argued that the employee's activities at the time of the accident were presumably governmental activities, and thus the city was immune from suit. The Oklahoma Supreme Court disagreed, ruling that Oklahoma City could be held liable for the damages that resulted from the accident. "In our opinion," the court ruled, "guard rail posts, as such, are a part of the physical structure of a city's street system and the installation of guard rail posts is incidental to the maintenance and repair of streets in the absence of evidence to the contrary" (*City of Oklahoma City v. Taylor*, 1970, p. 327). In the court's opinion, "the installation of...guard rail posts is prima facie evidence that the city's employee was en route to perform a proprietary function at the time of the accident; being a proprietary function, the city is liable for its employee's negligence" (*City of Oklahoma City v. Taylor*, 1970, pp. 327–328).

Discretionary Acts Versus Ministerial Acts

Often, the liability of a political subdivision or a governmental employee is determined by whether the governmental employee was engaged in a discretionary act or a ministerial act at the time an injury occurred. A discretionary act involves choice or judgment in the day-to-day operations that involve the power to make decisions about policy at the planning or operational level (Cohen & Burrows, 2007). In contrast, a ministerial act involves an employee to carry out a

policy, plan, or instructions as directed. In jurisdictions that recognize this distinction, governmental employees are immune from suit for their discretionary acts so long as those acts were performed in connection with their official duties. On the other hand, if a governmental actor was engaged in a purely ministerial function that did not require the employee to exercise discretion, then the employee can be sued.

For example, in *Hughes v. Christiana School District* (2008), a Delaware case, a 12-year-old girl sued the Christiana School District, a school nurse, and a teacher for injuries she suffered when she fainted on the way to the nurse's office. The girl and her mother had previously advised school officials that the girl was subject to fainting spells; the nurse had recommended that the girl notify her teacher if she felt like she was going to faint and the nurse would come to the girl's classroom with a wheelchair.

On the day the girl was injured, she told her teacher that she felt weak and unwell, but she did not tell the teacher that she felt like she was going to faint. The teacher allowed the girl to go to the nurse's office without an escort. While walking to the nurse's office, the girl fainted and suffered physical injuries. The Delaware Supreme Court upheld the trial court's decision. The Delaware Tort Claims Act barred the girl's claims. The teacher's decision to allow the girl to walk to the nurse's office unescorted was a discretionary decision for which the teacher could not be held liable. The court cited 10 Delaware Code § 4001 (2012):

. . . [N]o judgment, damages, costs, or money entitlement shall be awarded against the State or any public officer or employee . . . unless at least one element of statutory immunity is missing:

(1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone

- over whom the public officer, employee, or member shall have supervisory authority;
- (2) The act or omission complained of was done in good faith and in the belief that the public interest would be best served thereby; and
- (3) The act or omission complained of was done without gross or wanton neglect [.]

The Delaware Supreme Court explained that this statute “provides immunity to discretionary acts committed in good faith, in the course or performance of official duties and without gross or wanton negligence” (*Hughes v. Christiana School District*, 2008, p. 9). In the court’s view, the evidence showed that the teacher exercised her discretion in allowing the student to walk to the nurse’s office. In addition, there was no evidence to support a conclusion that the teacher had committed an act of gross or wanton negligence (*Hughes v. Christiana School District*, 2008).

In Texas, the division between discretionary acts and ministerial acts is clear. The statute proclaims:

[A] professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students. (Texas Education Code § 22.0511(a), 2012)

The distinction between discretionary and ministerial duties is illustrated by two Texas cases against Texas school employees, both involving a claim for damages resulting from personal injuries.

In *Chesshir v. Sharp* (2000), a kindergarten teacher was sued for negligence after a student in her class was severely burned when an electric fryer overturned and burned him. The teacher had brought the fryer to school to cook doughnuts, which the teacher believed would reinforce her efforts to teach her students the letter *D*.

A trial court dismissed the suit against the teacher, and a Texas appellate court affirmed. In the court's view, the teacher's decision to cook doughnuts as part of her teaching activity was a discretionary decision for which she could not be sued.

On the other hand, in *Myers v. Doe* (2001), school officials were unable to get a negligence suit dismissed on the grounds that they had been performing discretionary duties for which they were immune. In the Myers case, Mary Doe, a special education student alleged another special education student had sexually assaulted her. According to court records the student was known as "Mad Dog." In response to this incident, school authorities prepared a detailed procedure for supervising Mary Doe and Mad Dog, including a provision that prohibited them from being alone together or from having access to the school elevator. Unfortunately, in spite of these rules, Mary Doe was assaulted two more times in the school elevator.

The school authorities attempted to have the case dismissed on the grounds that they had been engaged in discretionary acts and were immune from liability. A Texas intermediate appellate court upheld the trial court's decision, denying the dismissal motion of the school officials. In the appellate court's opinion, there was sufficient evidence for a fact-finder to conclude that the school authorities were engaged in ministerial functions—not discretionary functions—when they were implementing the formal supervision plan for Mary Doe and Mad Dog.

Waiver of Governmental Immunity Based on Insurance Coverage

In some jurisdictions, state legislatures have passed laws allowing governmental units to be sued to the extent they have insurance coverage to pay losses. "There is commonly a dollar

limit imposed on recoveries,” with agencies entitled to immunity for damages above some statutorily defined amount (Keeton, Dobbs, Keeton, & Owen, 1984, p. 1045). For example, a Tennessee statute provides:

No claim may be brought against an employee or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of the employee’s employment for which the governmental entity is immune in any amount in excess of the amounts established for governmental entities [by Tennessee statute], unless the act or omission was willful, malicious criminal, or performed for personal financial gain, or unless the act or omission was one of medical malpractice committed by a health care practitioner and the claim is brought against such health care practitioner. (Tennessee Code Ann. § 29-20-310, 2012)

Another Tennessee statute states that governmental agencies should have these minimum insurance limits:

[N]ot less than three hundred thousand dollars (\$300,000) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than seven hundred thousand dollars (\$700,000) for bodily injury or death of all persons in any one (1) accident, occurrence or act, and one hundred thousand dollars (\$100,000) for injury or destruction of property of others in any one (1) accident, occurrence or act. (Tennessee Code Ann. § 29-20-403(2)(B)(4), 2012)

Tennessee law does not require governmental entities to purchase insurance. If the Tennessee governmental agency does not purchase insurance, it has in essence elected to insure itself. In such event, the government agency has the same limits of liability as if it had purchased insurance (*McGaughy v. Memphis*, 1991).

In other states, however, agencies that elect not to purchase insurance are immune from suit, in which case the insurance waiver law provides protection that is “more apparent than real” (Keeton et al., 1984, p. 1045). In North Carolina, for example, state law provides that school boards may secure liability insurance and are deemed to have waived governmental immunity from negligence claims to the extent it has insurance coverage. However, immunity

“is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort” (North Carolina General Statutes, 2012).

Ordinary Negligence Versus Gross Negligence

In many of the states that define the limitations of governmental immunity through a state tort claims act or other legislation, governmental agencies and their employees are protected from suit for ordinary negligence, but they are not immune from liability for acts of gross or wanton negligence. The Delaware Tort Claims Act described above is a good example of a state that allows plaintiffs to sue governmental subdivisions and their employees for acts of gross or wanton negligence. The public policy considerations behind this distinction are obvious. Although state courts and state legislatures may be willing to give governmental actors protection against liability for careless acts, they are not willing to grant them immunity for conduct that is reckless and wanton or acts that show a total disregard for the safety of others.

Interestingly enough, Texas, which may provide Texas professional school employees with the strongest protection against liability for negligence of any state (Walsh, Kemerer & Maniotis, 2005; Lacefield, 2010), apparently does not recognize a distinction between ordinary negligence and gross negligence. In *Williams v. Chatman* (1999), a student died of cardiac arrest after an accident during a school-sponsored swimming trip. The deceased students’ parents sued school employees, charging them not only with negligence but gross negligence. The parents maintained even if school employees were protected by state law from liability for their discretionary acts that were merely negligent, they were not protected from discretionary acts that constituted grossly negligent conduct.

A Texas intermediate appellate court was not persuaded by the parents' argument. The court pointed out that the Texas educator immunity law does not expressly allow tort suits alleging gross negligence against a school district's professional employees to go forward, and that rules of statutory construction generally presume that omitted words are omitted for a reason. In applying these "well established rules of statutory construction", the court concluded that the school employees were immune not only from claims of ordinary negligence but from claims involving gross negligence as well (*Williams v. Chatman*, 1999, p. 702).

Governmental Immunity in Mississippi Prior to Passage of Mississippi Tort Claims Act

The state of Mississippi, like virtually every other state, adopted the principle of sovereign immunity as an element of the common law. As the Mississippi Supreme Court explained in a 1992 decision (*Presley v. Mississippi State Highway Commission*, 1992), the doctrine was first recognized in an 1844 decision of *Yalabusha v. Carbry*. According to the Mississippi Supreme Court, governmental immunity from suit was almost absolute under the common law except for statutory waivers that the state legislature chose to grant and "proprietary" functions of Mississippi municipalities (*Presley v. Mississippi State Highway Commission*, 1992, p. 1290).

An 1877 case, *Brabham v. Board of Supervisors of Hinds County*, illustrated how the doctrine of sovereign immunity was applied in Mississippi in the nineteenth century. In that case, the Mississippi Supreme Court upheld a lower court ruling that refused to allow a widow to sue Hinds County for negligently maintaining a county bridge after the bridge fell and killed her husband, who was crossing the bridge with a wagon and a team of draft animals.

The Mississippi Supreme Court, in a very brief opinion, acknowledged that if any county could be liable for negligently allowing a bridge to fall into disrepair, it would certainly be appropriate to find liability in the case before it, in which the county's alleged negligence led to a death. Nevertheless, the court refused to allow the widow's suit to go forward. "At common law, a county could not be so held liable" (*Brabham v. Board of Supervisors of Hinds County*, 1877, p. 364), the Mississippi Supreme Court ruled; and no statute established liability. Although Mississippi law permitted citizens to sue a county based on money claims for services or contractual claims, state law did not allow a county to be sued in tort. "The right to maintain a suit like this against a county is not only outside of the contemplation of the statutes," the Mississippi Supreme Court ruled, "but is opposed by every consideration of sound policy" (*Brabham v. Board of Supervisors of Hinds County*, 1877, p. 364).

In time, however, the Mississippi Supreme Court, like the supreme courts in numerous other states, became disenchanted with the concept of governmental immunity for the state and its subdivisions; and like many other state supreme courts, the Mississippi Supreme Court finally abolished governmental immunity as a judicially-created principle of common law. In *Pruett v. City of Rosedale* (1982), Mississippi's highest court reviewed a decision by a Mississippi trial court to dismiss a case brought by Keith Pruett for injuries Pruett received due to the alleged negligence of the town of Rosedale. (The Mississippi Supreme Court did not describe the nature of Pruett's injuries). The trial court's decision to disallow Pruett's lawsuit was based solely on the document of sovereign immunity.

The Mississippi State Supreme Court took the occasion of Pruett's lawsuit to abolish the doctrine of sovereign immunity for the state of Mississippi and its subdivisions, declaring that

the doctrine “is out of date in modern society and modern legal concepts” (*Pruett v. City of Rosedale*, 1982, p. 1047). The court noted that the doctrine had led to many inequities, including a provision of Mississippi law that required private parties to have motor vehicle insurance but permitting the state to operate vehicles without insurance.

Citing opinions by courts in several other states, the Mississippi Supreme Court ruled in *Pruett*, “the control and policing of sovereign immunity is a legislative responsibility and not that of the judiciary” (*Pruett v. City of Rosedale*, 1982, p. 1047). The court pointed out that courts in all but six states had either abolished the concept entirely or abolished it with some qualifications. The court then went on to cite judicial opinions in other states that explained why the concept of sovereign immunity was outmoded. For example, the Mississippi court cited the 1957 Florida Supreme Court opinion that abolished sovereign immunity in the state of Florida. The Florida court reasoned that the doctrine was based on the premise that it was better for one individual to “suffer a grievous wrong than to impose liability on the people vicariously through their government” (*Hargrove v. Town of Cocoa Beach*, 1957, quoted in *Pruett v. City of Rosedale*, 1982, p. 1048). In the Florida Supreme Court’s opinion, such a rule made a sham of the state’s constitutional guarantee that the state courts were open to redress wrongs and that there should be a remedy for every wrong.

“While we are not compelled to follow the example of other courts,” the Mississippi Supreme Court acknowledged, “We are persuaded by their logic and adopt their conclusion” (*Pruett v. City of Rosedale*, 1982, p. 1048). In the court’s opinion, the members of a civilized society have an interest in being protected against harm to their persons, their property, and

their characters (meaning their reputations), including harm caused by government agencies.

Citing a Supreme Court decision from Minnesota, *Neiting v. Blondell*, the Court quoted:

The logical extension of that interest is that, if harm is wrongfully inflicted upon an individual in such a society, he should have an opportunity to obtain a reasonable and adequate remedy against the wrongdoer, either to undo the harm inflicted or to provide compensation therefore. If the state is properly to serve the public interest, it must strive, through its laws, to achieve the goals of protecting the people and of providing them with adequate remedies for injuries wrongfully inflicted upon them. So long as the state fails to do so, it will be functioning in conflict with the public interest and the public good. (*Pruett v. City of Rosedale*, 1982, pp. 1048–1049)

At the same time, the Mississippi Supreme Court pointed out that good policy reasons existed for retaining immunity from suit when the government performs legislative, judicial, and executive acts. Therefore, the court said that its decision to abolish sovereign immunity “does not apply to legislative, judicial, and executive acts by individuals acting in their official capacity, or to similar situations of individuals acting in similar capacities in local governments, either county or municipal” (*Pruett v. City of Rosedale*, 1982, p. 1052).

In order to give the state legislature time to pass laws that would determine the scope of sovereign immunity through legislation, the court ruled sovereign immunity would not be recognized by the courts in Mississippi on or after July 1, 1984. The court then explicitly overruled all previous decisions in which the Mississippi courts had recognized sovereign immunity, including a list of decisions that the court attached as an appendix to the case.

The Mississippi Legislature’s Response to the *Pruett* Decision

The Mississippi Legislature did not respond immediately to the Mississippi Supreme Court’s directive to establish governmental-immunity principles through legislation. Although the Mississippi House of Representatives adopted a governmental immunity bill during the 1983 legislature, the legislation failed to be adopted in the state senate (Case, 1994).

Later, the Mississippi Legislature passed the Sovereign Immunity Act of 1984; the first of several laws intended to codify governmental-immunity principles for the state of Mississippi. The new law provided general tort immunity to the state, its departments, and its agencies with certain exemptions and established clear deadlines for implementation. The law would apply to claims against the state that arose on July 1, 1985 and thereafter and to claims against Mississippi political subdivisions that arose on or after October 1, 1985. The Tort Claims Fund was established, and the legislature “limited the maximum waiver of immunity to \$500,000 for all claims arising out of a single occurrence” (Case, 1994, p. 547). All tort claims that arose prior to the new law’s established time line were to be governed by pre-*Pruett* case law. Several legislative sessions passed with no changes to the body of the act, except the extension of the time line for implementation (Case, 1994).

As Case (1994) observed in his extensive study of the *Pruett* decision and the legislative response, “The 1984 Act was clearly intended to be a temporary measure” (p. 548). Over the next eight years, the legislature amended the Sovereign Immunity Act several times, each time delaying the date on which it would become effective. In fact, according to Case, from 1985 through 1992, “The Legislature exhibited an unceasing vigilance against allowing the provisions of the Sovereign Immunity Act to become law” (p. 549).

During the 1987 legislative session, the legislature made a few substantive changes to the 1984 law, approving specific protections for state employees and employees of Mississippi’s political subdivisions. Employees were protected from liability for their acts or omissions that occurred within the course and scope of their employee duties. The amended legislation also called for all governmental state agencies and political subdivisions to provide a legal defense

for their employees and to pay legal fees and expenses if the court found the employees' acts were within the scope of their employees' duties. A graduated schedule establishing the maximum waiver of liability was also established (Case, 1994).

Minor changes to the Act followed over the next several legislative sessions. In 1988, changes to the statute of limitations were made in regard to the notice of claim subsection, Miss. Ann. Code § 11-46-11. Under the 1988 amended law, a plaintiff was required to file a notice of claim with the executive officer of the appropriate governmental agency at least 90 days prior to filing any court action. Changes to the Tort Claim Fund and liability insurance were also made along with another provision that pushed back the implementation date of the law. In 1990, the legislature modified the Sovereign Immunity Act again by waiving sovereign immunity for any governmental entity that in effect carried liability insurance (Case, 1994). The 1992 legislative session brought one additional change in which the graduated scale regarding maximum waiver of liability was restructured (Case, 1994). This was the last update and extension of the statute prior to passage of the Mississippi Tort Claims Act.

The compound effect of all the legislative amendments to the 1984 Sovereign Immunity Act over the years was to delay the law's implementation. As summarized by Case (1994),

Regardless of the extensive modifications to the 1984 Act produced during eight subsequent legislative sessions, it did not appear in 1992 that Mississippi was significantly closer to the abrogation of common law sovereign immunity than it had been in 1982, when *Pruett* was decided. Although *Pruett's* mandate had ostensibly taken effect on July 1, 1984, the Legislature had systematically continued to keep the common law as it had existed prior to *Pruett* alive through statutory edicts. As such, the comprehensive statutory scheme regulating governmental tort liability, which had now existed for nine years, had never taken effect, and constituted little more than an annual academic exercise for the Legislature. (p. 553)

The Mississippi Supreme Court Responds to Legislative Delays

For almost a decade, the Mississippi Supreme Court tried to accommodate the legislature's continuing commitment to pre-*Pruett* case law. In deciding cases involving tort claims against Mississippi's governmental agencies, the state's highest court continued to cite pre-*Pruett* cases as if they were still good law, even though the court had explicitly overruled them in *Pruett*. For example, in *Grantham v. Mississippi Department of Corrections* (1988) and *Strait v. Pat Harrison Waterway District* (1988), the Mississippi Supreme Court cited pre-*Pruett* case law in granting immunity (Case, 1994).

In the 1989 case of *Richardson v. Rankin County School District*, the Mississippi Supreme Court responded to a request by a party on appeal to explicitly reaffirm its holding in *Pruett* and declare that governmental immunity in Mississippi as it existed prior to *Pruett* was firmly abolished. The Richardson case arose from an accident between a school bus operated by a Rankin County School District employee and an automobile driven by a private citizen. The driver of the private vehicle was injured, and she sued the school district, claiming the district had negligently failed to train the bus driver and that the district had negligently allowed the driver to continue driving a bus in spite of the fact that a school district official knew she had been involved in various other traffic mishaps.

A Mississippi trial court granted partial summary judgment in favor of the defendants, granting immunity for all the school-district defendants except the bus driver. Citing a Mississippi statute that expressly permitted lawsuits based on negligent operation of a school bus, the court ruled that the bus driver had been negligent and awarded the plaintiff damages as determined by Mississippi statutory law. As for the other school district defendants, the trial

court ruled that they enjoyed governmental immunity under common law principles that existed prior to the Mississippi Supreme Court's *Pruett* decision.

On appeal, the plaintiff (the driver of the private vehicle) asked the Mississippi Supreme Court to reaffirm its ruling in *Pruett* and to clearly state that the doctrine of governmental immunity had been abolished as a principle of Mississippi common law. The Supreme Court declined to take this action, stating, "[t]here is no challenge to the constitutionality of the statute itself, only a request that this Court finally abolish governmental immunity." In the court's view, "This request infringes upon the policy making authority of the legislature, and this Court refrains from infringing upon this legislative prerogative" (*Richardson v. Rankin County School District*, 1989, p. 10). Thus, the court declined to repudiate the legislature's tactic of maintaining sovereign immunity as an element of the common law in virtual defiance of the *Pruett* decision.

1992: Mississippi's Highest Court Declares Sovereign Immunity Act to be Unconstitutional

In 1992, however, in the case of *Presley v. Mississippi State Highway Commission*, the Mississippi Supreme Court lost patience with the state legislature's foot dragging. Reviewing a tort case against the state highway commission, the court determined that the Sovereign Immunity Act as it had been amended over the years specifically required the court to continue applying case law that it had repudiated in its *Pruett* decision. In the court's view, the legislature had exceeded its constitutional authority by constraining the state's highest court in such a way, and thus the Sovereign Immunity Act was found unconstitutional and void.

Justice Hawkins, who wrote the majority opinion in *Presley*, cited three reasons why the Sovereign Immunity Act was unconstitutional. First, the law "requires the court to apply legal

principles which this Court specifically rejected in *Pruett*” (p. 1294). In *Pruett*, Justice Hawkins emphasized, the court had concluded, “the common law does not grant courts the authority to make graduations and exceptions [to sovereign immunity] which can only be made by statute” (p. 1294).

Second, Justice Hawkins wrote, instead of giving a statutory statement of the contours of sovereign immunity in Mississippi, the legislature delegated all authority to the court to define the limits of sovereign immunity, with “the court being told to apply ‘case law’ on sovereign immunity as it existed” prior to the *Pruett* decision (p. 1294). In the *Presley* court’s majority opinion, the legislature had come “perilously close to delegation to the court the power to legislate on this particular subject [sovereign immunity], which under our Constitution only the legislature may do” (p. 1294).

Finally, the *Presley* majority opinion stated, the state legislature mandated to the Mississippi Supreme Court that it follow the common law principles of interpretation, but stated only the law as it existed prior to *Pruett* could be applied. This legislative mandate “freezes in time and place the common law as it existed at that particular moment, and tells the court this is the only substantive law it can apply” (p. 1295).

While common law grows and changes over time, the court observed, “grow and change it must” (p. 1295). Thus:

[W]hile a court may be statutorily mandated to follow the common law principles of interpretation, it cannot—without impinging on its powers—be told to follow the common law and in the same breath also told that the common law as it applies cannot change, cannot grow. The judicial function cannot be thus stultified. This is precisely what the courts of this State had been told to do for four successive years....The common law was encased and entombed. (p. 1295)

In short, the *Presley* majority opinion declared,

The Supreme Court has the authority to declare for itself what the common law of this state is. The common law is the perfection of reason, and, when a rule of the common law ceases to be reasonable and just, it is no longer the common law. (p. 1296)

Thus, the court concluded,

We hold, as we must, that the portion of the 1987 [Sovereign Immunity] Act requiring the courts of this state in determining sovereign immunity to apply the case law as it existed [at the time of the *Pruett* decision] unconstitutional and void. (p. 1296)

Mississippi Tort Claims Act (MTCA) of 1993

In 1992, the Mississippi Legislature convened a special session to address the court's ruling in *Presley*. Three vital proclamations were produced during this legislative session, which marked the end of governmental immunity as a common law concept. Unlike its past governmental statutes, the legislature passed a law that called for governmental immunity to end immediately on the passage of the statute (Case, 1994). Second, the special session legislation eliminated prospective application of the statute; meaning cases prior to the enactment of the Act could be brought forward. Noticeably, the legislature eliminated all of the language involving the claims and causes of action and application in the Sovereign Immunity Act found to be unconstitutional in *Presley*.

Lastly, the special session addressed liability insurance, allowing any state agency or subdivision to carry liability insurance to cover any wrongful or tortious acts or omission of action by the entity or employees. The legislature concluded that sovereign immunity would be waived only to the scope of the policy coverage. These measures involving liability were temporary, and the legislature enacted expiration dates noting the need of a thorough policy reform (Case, 1994).

During the next regular session in 1993, the legislature enacted more than 10 statutes, which were collectively titled as the Mississippi Tort Claims Act (MTCA). As noted by Case (1994) the most striking feature of the Mississippi Tort Claims Act was the declaration of the legislative intent:

The “state” and its “political subdivisions,”...are not now, never have been and shall not be liable, and are, always have been, and shall continue to be immune from suit at law or in equity on account of any wrongful or tortious act or omission or breach of implied term or condition of any warranty or contract. (Miss. Code Ann. §11-46-3, 2012)

According to Chase (1994), the second section of the act stating, “The immunity of the state and its political subdivisions recognized and reenacted herein and always has been the law in this state, before and after November 10, 1992, and before and after July 1, 1984...” (Miss. Code Ann. §11-46-3, 2012) implies the legislature’s commitment for retroactive application of the legislation by the courts.

The Sovereign Immunity Act in some respects continued to provide partial security for the state. For instance, the legislature continued to support monetary limits for liability claims. “Immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15... “ (Miss. Code Ann. §11-46-5, 2012). This was an important measure providing security to the state by not allowing excessive settlements. The same statute also allowed for the governmental entity to separate itself from an employee under certain conditions limiting its liability.

An employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee’s conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations. (Miss. Code Ann. §11-45-5, 2012)

In essence, the statute allows for the limitation of damages and establishes criteria defining when an employee's action or inaction is wanton, releasing the governmental entity from liability. This provided reassurance to the state and its agencies that, even though the door of litigation had been opened, protection was afforded.

Another provision provided state employees who were joined with the state as defendants in class action suits with legal protection and addressed the state's responsibility in providing legal representation and payment upon settlement.

- (2) An employee may be joined in an action against a governmental entity in a representative capacity if the act of omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable.
- (3) Every government entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or the settlement of any claim against an employee. (Miss. Code Ann. § 11-46-7, 2012)

The assurance of immunity and protection to employees when ministerial duties were being performed was another important aspect of the legislation.

One of the most cited subsections of the statute in litigations is the provision entitled "governmental entities and employees; exemption from liability." The legislature resolutely stated in this provision, "A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim" (Miss. Ann. Code § 11-46-9 (1), 2012). Although this statement seems to be in almost direct contradiction with the declaration of intent, the statute also declares under what conditions the immunity may be applied. For instance, immunity applies in these circumstances:

- (b) Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution of performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;
- (d) Based upon the exercise or performance or the failure to exercise or perform a

discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

(g) Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary..., the construction or maintenance of facilities, the hiring of personnel and in general, the provision of adequate governmental services;

Conclusion. (Miss. Code Ann. 11-46-9, 2012)

The statute lists over twenty occurrences in which the state finds immunity. The extensive list of exemptions will be discussed in Chapter 4 as it provides a platform for the litigation that is the subject of this research.

The final significant change to the Sovereign Immunity Act was the statute of limitations and notice of claim provision. The notice of claim statute is broken into two sections; one pertaining to the time requirements of filing notice and suit and the other involving the factual information that the claimant must provide. The first subsection provides the time line in which the claimant must file a notice of claim.

[Any person] shall proceed as he might in any action at law or in equity; provided however, that ninety (90) days prior to maintain action thereon, such a person shall file a notice of claim....All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of action is base. (Miss. Code Ann. §11-46-11 (1) and (3), 2012)

The statute sets forth the information that the claimant must provide prior to filing suit:

Every notice of claim required by subsection (1) of this section shall be in writing, and shall be delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filling notice. (Miss. Code Ann. §11-46-11(2), 2012)

As will be highlighted in Chapter 3, subsection two of this statute, prior to amendment, had caused a great many cases to be dismissed based on technicalities without a court ever considering the claims' merits.

According to Fraiser (2007), Mississippi court verdicts mirrored the historical path taken by the federal courts in relationship to the Federal Tort Claims Act and notice of claims requirements; relying first on strict compliance with all aspects of the statute, followed by substantial compliance in regards to meeting the timeline prescribed by the statute, and finally defining quite clearly the intent of the statute. Two landmark cases that set precedent in how the statute would be applied by the Mississippi courts were *University of Mississippi Medical Center v. Easterling* and *Medical Center v. Guffy* (Fraiser, 2007). On appeal to the Supreme Court of Mississippi, The University of Mississippi Medical Center claimed the Hinds County Circuit Court had erroneously denied its request for summary judgment claiming Easterling had not fulfilled the requirements of the notice of claim statute. The facts of the case were as follows: the plaintiff's newborn daughter died during the first few weeks of life. During the funeral, the plaintiff insisted that the child in the casket was not her daughter. Friends and family assured the plaintiff that the body was her child as indicated on the wristband from the hospital. Two months later, the plaintiff was contacted and told that the child buried was not her child. She filed suit against the Medical Center and acknowledged the failure to comply with 11-46-11(1); allowing 90 days prior to filing. The Supreme Court ruled in favor of the defendant and the case was reversed and judgment was rendered for the defendant. In concluding for the majority, Chief Justice Smith closed by stating,

We hold the responsibility to comply with the 90-day notice requirement under Section 11-46-11(1) lies with the plaintiff. After the plaintiff gives notice, he must wait the

requisite 90 days before filing suit. Because Easterling failed to comply with the 90-day waiting period, her case must be dismissed. (p. 820)

In the case of *South Central Regional Medical Center v. Guffy* (2006), the plaintiff, Rhonda Guffy, was injured when she stepped in a hole in the medical center parking lot. She received medical attention, was released, and later, filed suit. On appeal from Jones County Circuit Court, the medical center filed a motion to dismiss arguing that the plaintiff had failed to comply with the MTCA section 11-46-11. The facts of the case indicated Guffy failed to strictly comply with the time line required in 11-46-11(1) by failing to file suit 90 days after the notice of claim had been given. Guffy filed 55 days after the accident. Secondly, no written notice describing the incident was given to the Hospital. Guffy argued substantial compliance had been fulfilled when she spoke to the risk manager at the hospital and reviewed the emergency room bill. In concluding for the court, Justice Easterly stated,

We find the trial court committed reversible error in finding that Guffy substantially complied with the notice provisions of Miss. Code Ann. § 11-46-11(2) and denying the Hospital's motion to dismiss. We find that Guffy did not comply with the notice provisions of Miss. Code Ann. § 11-46-11(2). Furthermore, Guffy did not comply with the statutory 90-day requirement under Miss. Code Ann. § 11-46-11(1) Therefore, the judgment of the Circuit Court of Jones County, Mississippi, is reversed, and judgment is rendered here dismissing Guffy's complaint against South Central Regional Medical Center without prejudice. (*South Central Regional Medical Center v. Guffy*, 2006, p. 1258)

According to Fraiser (2007), these two cases provided the court clear guidelines going forward in regard to notice of claim.

Conclusion

The legal concept of immunity in the United States has changed and evolved over time. From its beginnings in England, where the doctrine of 'the king can do no wrong' first originated, to federal and state legislative acts that provided an avenue of recourse for citizens,

the courts and policy makers have interpreted and adapted the definition of immunity and its limitations. As the examples of case law previously discussed demonstrate, each state's courts have provided insight to the common understanding of liability protection. However the level of governmental immunity and official immunity granted varies from state to state (Maher et al., 2010).

In Mississippi, the concept of sovereign immunity has also changed over time. *Pruett v. the City of Rosedale* (1982) and *Presley v. Mississippi State Highway Commission* (1992) were two defining cases that shaped the current Mississippi Tort Claims Act. Future chapters address how statutes have been applied to cases brought before the court and if the Mississippi courts have developed patterns in their rulings. Chapter 4 examines all pertinent liability cases in which school districts and their employees were involved. The analysis shows that the Mississippi Tort Claims Act provides a fair amount of immunity to school districts and their employees. This study also examines in depth the handling of discretionary acts by Mississippi courts, since doubt has been raised as to whether the discretionary function of the MTCA has been misapplied (Walker, 2001). Finally, the analysis provides a clearer understanding of immunity as a matter of common law.

CHAPTER 3

RESEARCH DESIGN AND METHODOLOGY

Introduction

This dissertation relies on legal research, methodology, and analysis to answer the research question listed earlier. In preparation for writing this paper and to gain a comprehensive perspective of legal research design, I consulted Lacefield's dissertation (2010) titled, *A Legal Analysis of Litigation Against Oklahoma Educators and School Districts Under the Oklahoma Governmental Tort* and Carmen's dissertation (2009) titled, *Analysis of Qualified Immunity for Texas Public School Professional Employees as Interpreted by the Texas Courts*, specifically the sections pertaining to methodology and research.

Legal Research Design

Legal research is essentially document analysis, the process whereby judges, lawyers, and legal scholars analyze the law to determine the state of the law as it pertains to a particular legal question (Carmen, 2009; Lacefield, 2010). Law review articles, like the articles that appear in the Harvard Law Review, Yale Law Review, and several hundred other legal periodicals, utilize legal research to address scholarly questions; but these articles, unlike many articles that appear in the scholarly journals of the social sciences, rarely describe their methodology. Instead, the quality of the legal research displayed in scholarly legal journals is determined by the journal's editor and its' subscribers. The value of the article/essay in return is determined by its use within and outside the profession such as referenced in an article by others in their analysis and application of the article or paper.

As stated earlier, the focus of this dissertation is legal analysis of how Mississippi courts have applied the Mississippi Tort Claims Act in tort lawsuits brought against Mississippi school districts and their employees. As it was explained in the literature review, the Mississippi Legislature passed the Mississippi Tort Claims Act after the Mississippi Supreme Court abolished governmental immunity as an element of Mississippi common law in *Pruett v. City of Rosedale* (1982). Indeed, the emergence of governmental immunity as a statutory concept as opposed to a court-created doctrine parallels many states. Such was the case in Oklahoma analyzed by Lacefield (2010) in which he concluded that lawsuits brought forth involving tort claims and public school systems were determined by statute.

Legal research can be approached through various avenues, but scholars commonly begin a legal research project by consulting treatises on their research topic, law review articles, and other secondary sources (Carmen, 2009; Lacefield, 2010). Legal analysis gives the researcher a broad overview of the topic as well as historical perspective. For example, this dissertation is an examination of Mississippi State tort law as it has been applied to Mississippi school districts and school-district employees. In addition, a 2010 law review written by Maher et al. (2010) provided the first comprehensive overview of governmental immunity laws that apply to school districts.

In addition, this researcher also consulted several key texts also cited by Carmen (2009) and Lacefield (2010) in order to trace the development of the doctrine of sovereign immunity within the United States. The doctrine of sovereign immunity originated in England in the thirteenth century as an element of British common law and was later adopted by state courts in the United States (Lacefield, 2010). To study the development of sovereign immunity, several

foundation texts were consulted, including *Prosser and Keeton on Torts* (Keeton, Dobbs, Keeton, & Owen, 1984), a respected treatise on American tort law; Nowak and Rotunda's *Principles of Constitutional Law* (4th ed., 2007), and *Restatement (Second) of the Law of Torts* (1979) authored by the American Law Institute, which is a summary of the common law principles of tort law in the United States. In addition, passages of Walsh, Kemerer, and Maniotis (2010), respected scholars of treatment of Texas school law, provided discussions of governmental immunity as it applies to Texas school districts and public-school educators. As Lacefield (2010) concluded in his research design no comprehensive overview of educational law in Oklahoma exists that is comparable to Walsh et al.'s work in the state of Texas, this was found to be true for Mississippi as well. *The Educator's Guide to Texas School Law* (6th ed., 2005) served as a mentor text and provided guidance for an examination of the way governmental immunity has been applied in a state(Texas), which, like Mississippi, forms part of the jurisdiction of the Fifth Circuit Court of Appeals. This study also profited from the consideration of Alexander and Alexander's *American Public School Law* (2009) and Fossey, Melear, and Beckham (2011), both of which contain brief discussions on legal terms, legal research, and the organization of the courts.

This analysis focused specifically on the state of Mississippi, and I searched for law review articles that expounded on the doctrine of sovereign immunity or governmental immunity as it developed within the state of Mississippi.

As was the case for Carmen (2009) and Lacefield (2010) in their research design, I conducted a series of searches using the LexisNexis database. Customary and accepted methods of a computerized data search were utilized such as used in performing searches on Google or

other search engines. Explorations of this type are commonly referred to as “Boolean” searches; named for British-born mathematician and logician George Boole (Burriss, 2010). Basic Boolean operators such as AND and NOT are used to broaden or limit a search. These words act as logic connectors between a researcher and a computer in order for the computer to reveal relevant materials in conjunction to a research topic or question (Minneapolis Community and Technical College, 1999). The search conducted using the LexisNexis law review database turned up several articles in Mississippi law journals that contained detailed discussions of governmental immunity as it developed in Mississippi.

As is customary in law analysis, after consulting secondary sources and the law review articles that were identified in the search of the LexisNexis law review database, I began specifically searching the LexisNexis database for Mississippi cases. The LexisNexis database contains all of the published decisions by Mississippi courts dating back to the nineteenth century. In addition, I searched the LexisNexis database for Mississippi statutes. The LexisNexis database contains all of the Mississippi statutes currently in force that were adopted by the Mississippi legislature. This statutory database also makes available the legislative history of the Mississippi statutes. The text of the Mississippi Tort Claims Act in full was located within the database and is a central focus of this dissertation’s research.

Further analysis using the LexisNexis database identified relevant published Mississippi court decisions, which initially assisted the researcher in clarifying the research question of this study. Secondly all identified and pertinent case law was analyzed and interpreted as to how the Mississippi Tort Claims Act had been applied in negligence lawsuits against Mississippi school districts and their employees. In order to find all the relevant published court decisions, this

researcher conducted a series of Boolean searches in LexisNexis case law database. For example, one search was constructed using these search terms: [name (school!) and “tort claim!"]. I also identified and examined Mississippi court decisions that applied the doctrine of governmental immunity prior to passage of governmental immunity legislation by the Mississippi Legislature.

Also, through a separate series of Boolean searches in the LexisNexis databases, all published Mississippi appellate court decisions that applied the Mississippi Tort Claims Act to Mississippi school districts and school employees were identified. I then reviewed each case in detail, discarding cases that did not directly relate to the research question or had little relevance in relationship to the development of this research.

After all the relevant cases were identified, this researcher analyzed the facts and legal rulings in each case to determine how Mississippi appellate courts had applied the Mississippi Tort Claims Act to the facts in negligence cases against Mississippi school districts and school employees. As fully discussed in Chapters 4 and 5, this analysis revealed some differences in the governmental immunity protection afforded Mississippi educators and the protection given to educators and school districts in the states of Texas and Oklahoma.

CHAPTER 4
ANALYSIS OF THE LAW

Introduction

This chapter provides a chronological overview of case law involving school districts and their employees since the passage of the MTCA. The Supreme Court of Mississippi heard the majority of the cases analyzed; The Court of Appeals of Mississippi decided five. Cases involving public schools and tort claims can be logically divided into two categories; cases ruled on procedural issues concerning notice of claim and cases brought forward and ruled on issues concerning the subject of negligence. Alexander and Alexander (2009) frame the issue of negligence by comparing it to deliberate wrongdoings, "...negligent acts are neither expected nor intended, whereas an intentional tort can be both anticipated and intended. With negligence, a reasonable person in the position of the actor could have anticipated the harmful results" (p. 645). Further analysis and review of cases involving negligence will follow the in-depth discussion of cases involving notice of claim.

Cases Involving Notice of Claim

The notice of claim established in the MTCA involves three important subsections. Firstly, it calls for a notice of claim to be provided to the "chief executive office of the governmental entity" prior to filing suit (Miss. Code Ann. §11-46-11 (1), 2011).

...[A]ny person having a claim for injury arising under the provisions of this chapter against a governmental entity or its employee shall proceed as he might in any action at law or inequity; provided, however, that 90 days prior to maintain an action hereon, such person shall file a notice of claim with the chief executive officer of the governmental entity. (Miss. Code Ann. §11-46-11 (1), 2011)

Secondly, the notice of claim provision of the MTCA describes how the notice is to be delivered and what information must be included.

Every notice of claim required by subsection (1) of this section shall be in writing, and shall be delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all person known to be involved, the amount of money damages sought, and the residence of the person making the claim at the time of the injury and at the times of filing the notice. (Miss. Code Ann. §11-46-11 (2), 2011)

Lastly, subsection three calls for the time line in which all actions shall be resolved.

All actions brought under the provisions of this chapter shall be commenced within one year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after; provided, however, that the filing of a notice of claim as required by subsection (1) of this section shall serve to toll the statute of limitations for a period of 95 days from the date the chief executive officer of the state agency receives the notice of claim, or for 120 days from the date the chief executive officer or other statutorily designated official...receives notice of claim. (Miss. Code Ann. §11-46-11 (3), 2011)

According to Fraiser (2007), Mississippi courts in applying subsection §11-46-11 of the MTCA, first required strict compliance to all aspects of the statute as discussed in the landmark decision of *City of Jackson v. Lumpkin* (1997). This resulted in a rash of cases being dismissed on procedural grounds instead of the merits of the case; thereby denying citizens the opportunity for redress.

The first case to be heard by the Mississippi Supreme Court involving notice of claim against a school district after *City of Jackson* was *Reaves v. Randall* (1999). The facts of the case were that Ashley Reaves, a minor, and her friend, Brandon Lancaster, were bicycling toward their elementary school. A pick-up truck owned by the school district and operated by Mr. Randall, a school district employee, was approaching the bike riders. Seeing the approaching

vehicle, Lancaster stopped. Reaves, not noticing right away that her friend, Brandon, had stopped, bumped the back of his bike and swerved left and hit the truck driven by Mr. Randall. Counsel for the appellant had sent a letter to the superintendent indicating the day and time of the accident as well as the child's name and requested the school district's insurance carrier to contact him. The insurance company and Greenwood Municipal Separate School District investigated the incident. When the case came before the court, the Leflore County Circuit Court granted the school district's motion for summary judgment applying strict compliance in regard to the notice of claim statute. Reaves's mother filed an appeal with the Supreme Court of Mississippi arguing error, and questioned whether defects to the notice letter were waived when the district participated with its insurance carrier in investigating and rejecting the original claim. In writing for the majority, Justice Mills stated,

The Mississippi Tort Claims Act stands in contrast to the old common law principle of sovereign immunity where an injured party was barred from recovery against a political subdivision. The Act was adopted to reduce the harsh effect of the common law. In order to carry out the legislative purpose of providing relief to injured citizens, we hold that substantial compliance with the notice provisions of the Act is sufficient. (pp. 9–11)

This ruling opened the door for cases questioning first the fulfillment of the notice of claim. The court was conflicted in reversing and remanding this case for further ruling. Four justices concurred. Justice Sullivan concurred with the ruling only, and three justices dissented. The ruling was almost in direct contrast to *City of Jackson v. Lumpkin* (1997) in which the court called for strict compliance.

Justice Prather produced the written dissent. He argued the legislature's intention was to require strict compliance. In support of his view and the earlier ruling in *City of Jackson*, Justice Prather's argument noted the detail in which the statute was written and admits the

provisions may produce “harsh results” (*Reaves v. Randall*, 1999, p. 12). However, he argued the usage of the word “shall” indicated the level of which compliance that the statute is mandated: strict. In concluding, he stated, “This court today abandons the ‘almost universal’ interpretation of § 11-46-11 which we adopted scarcely over a year ago, in favor of a very liberal substantial compliance scheme” (p. 15). The court heard three additional cases in 1999 involving notice of claim, *Overstreet v. George County School District* (1999), *Smith County School District v. McNeil* (1999), and *Hays v. Lafayette County School District* (1999).

Only a few months after the *Reaves* decision, the Court of Appeals of Mississippi heard the case of *Overstreet v. George County School District* (1999). The trial court previously had ruled in favor of the defendant, citing that the notice of claim had not been delivered “in person or by registered mail or certified U.S. mail and did not contain all the information required” (p. 967). The trial court also concluded, “Compliance with the notice provisions of section §11-46-11 of the Mississippi Case, as amended, was jurisdictional and therefore dismissed the complaint with prejudice” (p. 967). The trial court thus indicated it would rule, in cases involving notice of claim, as the court did in *City of Jackson v. Lumpkin* (1999), which had required strict compliance.

The original facts of the case were that Mary Jane Overstreet was injured when a George County school bus hit her vehicle. Overstreet had filed a complaint with the district within the year allotted. The district filed a motion to dismiss stating Overstreet had not complied with the notice of claim, as mentioned above, purporting that Overstreet failed to meet strict compliance standard. However, during the investigation, Superintendent Shows gave testimony that he was made aware of the accident on the day it occurred, and he knew that the district’s

insurance carrier would be handling the claim *Overstreet v. George County School District* (1999).

Overstreet appealed the dismissal and raised the following question with the lower court's ruling: "Did the court err in dismissing the case based on failure to comply with the notice of claim requirement, and are the provisions of the MTCA requiring a monetary demand within a period of one year following the accident unconstitutional, denying due process" (*Overstreet v. George County School District*, 1999, p. 967)? For the purposes of this study, whether the appellant fulfilled the notice of claim is the most pertinent discussion.

In writing for the court, Justice Bridges addressed in great detail the prior rulings from *City of Jackson v. Lumpkin* (1999), which directed the court to apply strict compliance, and *Reaves v. Randall* (1999), which directed the court to apply substantial compliance (*Overstreet v. George County School District*, 1999). Trying to add clarity to notice of claim requirement, Justice Bridges wrote,

Even though this Court now finds substantial compliance to be sufficient, we stress that substantial compliance is not the same as, nor a substitute for, non-compliance. The determination of substantial compliance is a legal, though fact sensitive question and is, therefore, necessarily decided on an ad hoc basis. (pp. 968-969)

In looking at all the facts presented, the court reversed and remanded the lower court's ruling finding that Overstreet had substantially complied in providing notice of claim. This also was indication to the lower courts of how further rulings in regard to notice of claim would be handled by substantial compliance on a case-by-case basis.

Although the decision was unanimous, Justice Southwick produced an opinion that gave great detail in deciphering each requirement of the notice of claim and finally stated in his closing,

The language of the statute is no longer significant, and in fact many problems under the notice statute arose because litigants did not appear to know it. Now there needs to be some rather clear judicial guidance on what constitutes sufficiency. (*Overstreet v. George County School District*, 1999, p. 975)

Justice Southwick's opinion cautioned the court to provide clarity as to what constituted substantial compliance in regard to the subsections of the statute, to whom and how the notice can be delivered, what information to include, and adherence to time lines. Additional cases heard by the court involving schools and their employees provided more transparency to the courts' interpretation of substantial compliance.

Additionally in 1999, the court ruled in the case of *Smith County School District v. McNeil*. Ernestine McNeil suffered injuries while attending a local football game. Although, the insurance carrier for the district had corresponded with Ms. McNeil, the school district filed a motion to dismiss for failure to comply with § 11-46-11, specifically noting the failure of the appellant to notify the "chief executive officer of the governmental entity" (Miss. Code Ann. §11-46-11 (1), 2011). Judge Evans from the Smith County Circuit Court denied the district's request and the district appealed to the Mississippi Supreme Court.

Unanimously the Court affirmed the lower court's decision and remanded the case. In writing for the majority, Justice Sullivan stated, "All of our decisions are fact driven" (*Smith County School District v. McNeil*, 1999, p. 379) and noted the "Trial judge determined that there were actual issues concerning notice and estoppel unresolved" resulting in the denial for summary judgment (p. 379). Justice Smith, concurring, reiterated to whom the notice of claim must be filed by quoting from *Reaves v. Randall* the extensive list of titles in which notification could be given. It was clear that the Court intended substantial compliance to be the standard,

so citizens' cases could be heard on the merits of their cases rather than on procedural concerns.

Lastly, in 1999, the case of *Hays v. Lafayette County School District* was heard. Kawanza Hays, a special education student, was a passenger on one of the Lafayette County school buses. She claimed to have suffered injuries when the bus driver without warning accelerated the bus before she was able to sit down. The date of the incident was March 30, 1994. Ella May Hays, mother of the young girl, filed suit more than two years after the incident occurred. The appellant claimed statute of limitations set forth in the MTCA was overruled by statute § 15-1-59 (1995) in which "the statute of limitations was tolled due to her disability of infancy.." (*Hays v. Lafayette County School District*, 1999, p. 1145). The Lafayette County Circuit Court had granted the motion to dismiss in favor of the school district citing that Hays had failed to file within the one year limitation as directed by the MTCA § 11-46-11.

Hays appealed to the Mississippi Supreme Court contending the lower court had erred in granting the motion to dismiss. Hays concluded Miss. Code Ann. § 15-1-59 allowed the notice of claim to surpass the one-year limitation. Hays quoted from the statute,

If any person entitled to bring any of the personal actions mentioned shall, at the times at which the cause of action accrued, be under disability of infancy or unsoundness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. (*Hays v. Lafayette County School District*, 1999, p. 1146)

The Court found flaw with Hays's reasoning and remarked,

The savings clause contemplates the person rather than the action, while a statute of limitations looks to the nature of the claim rather than the person. [Internal citations omitted] Moreover, this case examines an alleged injury by Hays which was immediate rather than latent. (p. 1148)

The Court clearly stated that the one year statute of limitations of the MTCA was applicable, it was supported by other recent case law, and was the proper statute to be applied within the MTCA; specifically § 11-46-11. Thus the court rejected the claim of the minor savings clause applied by Hays. In essence, the time period from when the alleged injury had occurred was of importance only. The Lafayette Circuit Court's ruling in favor of the Lafayette County School District was affirmed. The court had clearly communicated that any claim under the MTCA would adhere to its statutes specifically in regard to application of the one-year notice provision.

Only a few additional cases were heard the next year by the Mississippi courts involving notice of claim. In 2000, *Jones v. Mississippi School for the Blind* and *Douglas v. Blackmon* were both reversed and remanded citing issues with the lower courts applying strict compliance to all aspects of the notice of claim statute. What was unique in these cases was the leniency that the court allowed in *Jones* in regard to the 90-day waiting period between providing notice and filing suit, and similarly reversing in *Douglas* for further fact finding in regard to adherence to the time line prescribed by statute.

In the case of *Jones v. Mississippi School for the Blind* (2000), the court reversed the dismissal of the appellant's personal injury case citing Jones had substantially complied with the notice of claim requirements. Paul Jones, a student at the school, filed a notice of claim to Richard Boys, Interim State Superintendent of Education, giving the relevant details of the injury he sustained in a wheelchair accident on school grounds and claimed negligence of school employees. The circuit court had previously dismissed his suit, stating he had failed to strictly comply with the notice requirements of the MTCA.

In ruling for the appellant, the court concluded two aspects of the MTCA had been applied incorrectly. Firstly, the court acknowledged the adoption of substantial compliance brought forth in cases such as *Reaves v. Randall*. Addressing the issue of time line, the court concluded that the notice of claim was filed within the year of the accident: January 14, 1998 and January 16, 1997, respectively. However, the appellant had filed a suit of negligence, April 1, 1998, prior to the 90-day notice being fulfilled. Chief justice Prather in writing for the court concluded,

The dismissal of a lawsuit based on failure to comply with the waiting period is a disproportionate remedy and contrary to the purpose of the legislature in enacting the Tort Claims Act. We conclude that the better approach is, instead, for a governmental entity to request that the trial court issue an order staying the lawsuit until such time as the entity has been given the benefit of the applicable waiting period. (*Jones v. Mississippi School for the Blind*, 2000, p. 429)

In essence, Chief Justice Prather recognized that the 90-day notice had not been adhered to, but the court could have easily provided a remedy by ordering a stay to allow ample time for fact finding to occur. This suggests the courts' continuance to allow cases to proceed on the merits of the case instead of the case dismissed on procedural error.

In addressing the defendant's claim that Jones did not file his notice with the correct entity, the court stated,

This Court in *Reaves* adopted a substantial compliance standard interpreting notice of provisions of the Torts Claims Act, and the school acknowledges that the sending of notice of the claim to the State Superintendent substantially complied with §11-46-11's requirement that Jones notify the "chief executive officer of the governmental entity". (*Jones v. Mississippi School for the Blind*, 2000,p. 430)

The court unanimously reversed and remanded the case, stating clearly that the guidelines for substantial compliance in regard to notice of claim were firm, but adhering to the one-year limitation to fill suit from the date of the occurrence necessitated strict compliance.

Additionally in 2000, the Supreme Court of Mississippi heard the appeal of *Douglas v. Blackmon*. In August of 1996, Barbara Douglas was driving her car when she was struck by a Ford van owned by the Jackson Public School and operated by Ricky Blackmon. She sustained severe injuries. Previously, the Hinds County Circuit Court had granted motion to dismiss on the grounds that the appellant had failed to give notice as outlined in the MTCA, applying strict compliance to the case. In regard to the first issue, notice of provision, Justice Mills commented,

Even though this Court now finds substantial compliance to be sufficient, we stress that substantial compliance is not the same as, nor a substitute for, non-compliance. The determination of substantial compliance is a legal, though fact-sensitive, question and is, therefore, necessarily decided on an ad hoc basis. (p. 1219)

The court noted that at the time of the initial ruling, strict compliance to the statute was the correct measure; but on appeal substantial compliance could be applied, allowing both parties to add evidence to support whether the notice of claim had been met or not (*Douglas v. Blackmon, 2000*).

Additionally, at issue was whether the school district and its insurer should be estopped from asserting that she [Douglas] failed to comply with the notice of claim provision (*Douglas v. Blackmon, 2000*). In writing for the court, Justice Mills concluded on the issue of estoppel, that the court was barred from ruling on this issue. Quoting from *Vinson v. Johnson*, Justice Mills stated, "This court simply refuses to review any allegation of error which is unsupported by the record" (*Douglas v. Blackmon, 2000, p. 1220*). The court continued,

In the present case, the estoppel issue is barred from appellate review because it was not first raised at the trial level. Even if the issue had been raised in the lower court, we find there are insufficient facts before this Court to determine if estoppel is proper. (p. 1211)

As in *Jones v. Mississippi School for the Blind*, the case was reversed and remanded for determination as to whether substantial compliance was met.

Lastly, in 2001, the Supreme Court heard the case of *Cotton v. Paschall*. Gregory and Tammy Cotton were involved in a traffic accident. They suffered injuries when their vehicle collided with a Pass Christian Public School bus driven by Barbara Paschall. The trial court had dismissed the school district because the district had not been served with process within 120 days as outlined in statute §11-46-11(3).

...[T]he filing of notice of claim as required by subsections (1) of the section shall serve to toll the statute of limitations for a period of 95 days from the date the chief executive officer of the state agency received the notice of claim or for 120 days from the date the chief executive officer of the state agency receives the notice of claim or other statutorily designated official of a municipality, county, or other political subdivision receives the notice of claim... (Miss. Code Ann. § 11-46-11 (3), 2011)

The lower court had also concluded that the bus driver, Barbara Paschall, was also immune, acting within the course and scope of her employment. Motion to reconsider the case was denied by the trial court and so the Cottons appealed, citing the following issues: Firstly, if the trial court erred in granting motion to dismiss for Barbara Paschal; secondly, if the court's denial of motion for reconsideration of the court's earlier ruling was proper; and lastly, could a cause of action exist against a public employee working within the duties of his or her job be feasible when the political subdivision maintains an insurance policy. Paschall in response raised the issue of whether a plaintiff can sue an employee without joining the governmental employer for acts of negligence committed within the scope of the employee's duty (*Cotton v. Paschall*, 2001).

The court concluded that although the Cottons raised three issues, only the third issue was supported by their argument, citing Miss. Code Ann. § 11-46-15 (2) and § 11-46-7(3). The statutes cited by the Cottons address the following:

Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award" (§ 11-46-15, 2011) and "Exclusiveness of remedy; joinder of governmental employee; immunity for acts or omission occurring with course and scope of employees duties; provision of defense for and payment or judgments or settlements of claims against employees; contribution or indemnification by employee. (Miss. Code Ann. § 11-46-7, 2011)

In writing for the court, Justice Cobb addressed the issue raised of insurance and whether the statutes cited by the plaintiff were just. "This Court has previously held that the purchase of insurance does not affect potential defenses under Miss. Code. Ann 11-46-9" (*Cotton v. Paschall*, 2001, p. 1217). Because the Cottons did not appeal the dismissal of the school, they also acknowledged the immunity of Paschall since she was working within the scope and duties of her position. Justice Cobb stated,

The section of the MTCA that is controlling in the case sub judice is §11-46-7(2) which provides: An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held liable for acts or omissions occurring within the course and scope of the employee's duties. (p. 1218)

The court also cited *Duncan v. Chamblee* as evidence for its ruling. This particular case is discussed in further detail in the upcoming section, "Cases Involving Exemption of Liability". In *Chamblee*, a teacher, was dismissed from a suit involving personal injury because the plaintiff agreed that her actions were within the scope of her duties and had dismissed the district from liability. In both instances the defendant school districts were dismissed although for different reasons, but nonetheless the dismissal of the districts in each case was lethal for the appellants.

The *Cotton* court reiterated and concluded that since the district was immune due to the failure of the appellants to serve notice within the 120 days, so also was the bus driver, Barbara Paschall. This thus affirmed the lower court's ruling that Paschall was immune and could not be held individually liable for the personal injuries sustained during the accident (*Cotton v. Paschall*, 2001).

In cases involving notice of claim, the court continues to first apply substantial compliance in regard to who may receive notice, how it is to be delivered, and the information included. The court demonstrated consistency in its rulings specifically in regards to the one-year limitation to file suit from time of the accident. The court has revealed some discrepancy in matters of time allowance for fact finding to occur as in the case of *Jones v. Mississippi School for the Blind* (2000), finding the lower court could have ordered a stay; and in the case of *Cotton v. Paschall* (2001) in which the lower court dismissed the school district and its employee, citing failure to serve process within the 120 days allotted led to an affirmed judgment for Barbara Paschall. Lastly, the court has also demonstrated a strong commitment to immunity for employees for political subdivisions when those employees are acting within their prescribed duties and within the scope of their employment.

Cases Involving Exemption from Liability

The majority of cases heard before the courts after the passage of the MTCA involve some form of negligence. According to Alexander & Alexander (2009), a prerequisite must exist before an action or inaction can be determined negligence. They are: "a duty to protect others, a failure to exercise an appropriate standard of care, the existence of a causal connection

between the act and injury, called proximate or legal cause, and an injury, damage, or loss” (p. 646).

The first case to be heard on the grounds of negligence after the passage of the MTCA in which a school district was involved was *Prince v. Louisville Municipal School District* (1999). Richard Prince was a member of the Nanih Waiya High School Football Team. In 1994, Prince suffered a heat stroke during practice and was hospitalized. He claimed the coaches, Bowman and Chambliss, were negligent in monitoring his health, failed to provide liquids, and did not seek medical care quickly, resulting in hospitalization. In hearing the appeal, two distinct points were brought forth by the appellants: “Was qualified immunity warranted to the school district and the coaches and did the court err in dismissing the claims against Homestead Insurance Company” (*Prince v. Louisville Municipal School District*, 1999, p. 209)? The school district was insured by Homestead under a plan titled “Liability Catastrophe Plan”. For the purposes of this paper, the appellant’s claim of whether the defendants’ actions or inactions were discretionary is of relevant concern.

The court had concluded the district and coaches qualified for immunity based primarily on the time line presented. Although this case occurred after the *Pruett* decision, in which the court abolished judicial created immunity, it also occurred prior to *Presley*, in which judicial immunity was held as unconstitutional. Because of the timing of this case the court was required to apply pre-*Pruett* common law. Thus the court was directed to establish whether the actions of the coaches were ministerial or discretionary in nature (*Prince v. Louisville Municipal School District*, 1999). The trial court had previously concluded that defendants qualified for immunity. The Supreme Court of Mississippi affirmed the lower court’s ruling, finding the

actions of the coaches discretionary as well. The court relied on two similar cases in its ruling, *Quinn v. Mississippi State University* (1998) and *Lennon v. Petersen from the Supreme Court of Alabama* (1993). According to the trial record, in both cases athletes were injured and filed suit claiming coaches were negligent in providing care to avoid the injury. In both cases the courts ruled in favor for the defendant coaches, citing qualified immunity applied because their actions were discretionary in nature. In writing for the court, Justice Waller stated,

A coach must use his discretion in judging whether or not an individual player is injured and then, whether the player should report to a trainer or seek medical aid. There was no evidence presented in the lower court to show that either Bowman or Chambliss did anything beyond exercising ordinary discretion... (*Prince v. Louisville Municipal School District*, 1999, p. 212)

The court concluded that the coaches' acts were discretionary and pointed to the fact that no evidence was given to believe he [Prince] did not receive 'ordinary care.' "Prince produced no facts that evidenced any disregard for his health or any other outrageous action on the part of Bowman or Chambliss that might have warranted a departure from our previous holdings" (p. 212). Since no merit was found in support of the plaintiff's claim on the grounds of negligence, the court affirmed the lower court's ruling for summary judgment of sovereign immunity for the district and qualified immunity for its employees. However, the court also reversed and remanded in part in answering to the claim set forth by Prince in regard to Homestead Insurance and its dismissal of the company by the lower court.

In the argument for reverse and remand in part, Justice Waller began his written argument for the court by defining the terms of the policy, specifically the med-pay provision. By definition this type of payment is received by the injured party without assignment of fault (*Prince v. Louisville Municipal School District*, 1999). In defining the terms of purchased policy by

the district, the court began to build the case for why Prince should be given the opportunity for redress. The court also determined two aspects of Prince's claim that led to the lower court's decision being reversed and remanded in part for further considerations. Firstly, although the coaches and the district qualified for immunity, this did not necessarily extend to Homestead (*Prince v. Louisville Municipal School District*, 1999). Justice Waller commented that Prince must provide evidence that he meets the criteria of a "student catastrophically injured" (p.213) in order to file a claim with Homestead. Secondly, the court stated,

Homestead states in its letter to Prince that because his hospital stay was lengthened due to a hospital acquired staph infection, his total medical costs related to the covered injury would be reduced. However, it is important to point out any costs incurred as a result of Prince's covered injury would be chargeable to Homestead under the policy. Prince should be able to include all costs resulting from his initial injury for purposes of calculating the amount required to be considered a 'student catastrophically injured'. (p. 214)

Although the decision of the court allowed Prince an opportunity for redress, the decision was controversial between the judges. Two dissenting opinions were produced in which immunity was discussed.

Justice Banks in his dissent declared that the court erred in citing *Lennon v. Peterson* and *Quinn v. Mississippi State University* (*Prince v. Louisville Municipal School District*, 1999, p. 215). In the reviewing the case of *Lennon*, Justice Banks rejects borrowing from neighboring state ruling, "The Alabama Supreme Court construing Alabama law reaches a different result, *Lennon v. Peterson*, [Internal citations omitted], but that simply is not our law"(p.215). He also contended the application of *Quinn* was misguided on the grounds that the defendants in that case did not have direct supervisory duties nor responsibilities in deciding or requiring activities which involved the injury discussed; unlike the coaches, Bowman and Chambliss, who did have

direct supervisory duties when the injury occurred. He concluded by noting that his argument did not assign negligence, but only stated that there should be no qualified immunity granted.

Justice McRae concurred (as did Justice Banks) in regard to the ruling for Homestead, but he found fault in granting summary judgment for the district and for the coaches. Justice McRae considered the case of *Churchill v. Pearl River Basin Dev. Dist.* (1993) [internal citations omitted] as a more accurate application of case law.

While the majority fails to dutifully apply it, *Churchill* provides the opportunity to recover tort claims up to the extent of liability insurance coverage. In the instant case, the school district and the coaches thereof were covered by a liability insurance policy the limit of which was \$1,000,000.00. (*Prince v. Louisville Municipal School District*, 1999, p. 215)

Justice McRae also contended that the coaches' actions were ministerial in nature: "Coaches Chambliss and Bowman maintained duties to manage their players. Randall Prince suffered harm because his coaches failed to perform their duties such that he suffered heat stroke" (pp. 215-216). Both Justice Banks and Justice McRae pointed to qualified immunity being applied inappropriately, each concluding respectively, "Qualified immunity goes to public officials for policy decision-making" (p. 214) and "...[Q]ualified immunity serves to protect the discretions of public officials so that such officials may make decisions and formulate policies for the public without the deterring concern of lawsuits" (p. 215).

The next negligent case to be heard involving schools was *Lang v. Bay St. Louis/Waveland School District* (1999), in which the court spoke to the issue of schools providing a safe environment for students as a ministerial duty. Vincent Lang was injured falling off a 7-foot wall after a school-sponsored concert. Lang stated his friends and he were waiting for a ride home when other students approached and began an altercation. Trying to escape the

situation, he fell off the wall. The court record stated that on occasion students were asked not to sit on the wall, but no signage was posted to that effect. Shelia Lang on behalf of her son filed suit claiming the district did not adequately supervise and failed to provide a safe environment. She stated because of the district's negligence in supervising students and not maintaining a safe environment, her son had suffered damages of \$250,000. The circuit court had granted the district's motion to dismiss citing qualified immunity, and that no statutory law required the district to provide security at the school. Lang appealed to the Supreme Court of Mississippi questioning whether the acts of the district were discretionary, did the trial court ignore the feasibility of the claim, and did the trial court err in granting a motion to dismiss pending discovery (*Lang v. Bay St. Louis/ Waveland School District*, 1999).

Lang claimed that the school had a duty to "exercise necessary supervision" and provide a safe environment for her son (*Lang v. Bay St. Louis/ Waveland School District*, 1999, p. 1237). Lang brought forth three points for the court to consider: Firstly, when providing immunity to districts for discretionary acts, all actions can be traced back to a discretionary decision, thus avoiding all negligence; secondly, Lang asserts, "The law does not shield districts of this state from an obligation to protect students from reasonable foreseeable harm or an obligation to provide them with safe places to attend school" (p. 1237); and lastly, determining whether conduct is discretionary or ministerial is not clear. Lang called upon the court to carefully analyze sovereign immunity and clearly distinguish between conduct that should be protected and conduct that should not (*Lang v. Bay St. Louis/ Waveland School District*, 1999). Lang argued, "There is nothing inherently governmental about decisions regarding care and safety of children" (p. 1238). Citing *Womble v. Singing River Hosp.* (1993), Lang argued that public school

personnel, much like doctors in *Womble*, were not protected by immunity because they did not implement policy in making medical decisions; standards of ‘reasonableness’ apply and that like private schools, public schools purchase insurance to provide compensation for negligent acts (*Lang v. Bay St. Louis/ Waveland School District*, 1999).). Lang produced four questions for the court to consider:

(1) Does the challenged act, omission, or decision necessarily involve basic governmental policy, program, or objective? (2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one, which would know to change the course or directions of the policy, program, or objective? (3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the government agency involved? (4) Does the governmental agency involved possess the requisite constitutional, statutory, or local authority, and duty to do or make the challenged act, omission, or decision? (p. 1239)

Lang concluded by citing statutes in which school personnel are required to “hold pupils accountable for disorderly conduct”, the requirement of “schools to maintain a discipline plan, code of conduct, and report to the superintendent unlawful activity by students” (p. 1239). Lang claimed by statute, the district is conducting ministerial duties, which calls upon ruling whether ordinary care was in place (*Lang v. Bay St. Louis/ Waveland School District*, 1999).

The court concluded the district’s actions were ministerial in nature, stating, “It was the district’s duty to control and discipline students” (*Lang v. Bay St. Louis/ Waveland School District*, 1999, p. 1240). The ruling was centered on statute 37-9-69, which calls school districts to control student behavior and to provide a safe environment for students,

It shall be the duty of each superintendent, principals, or teachers in the public schools to enforce in the schools...to observe and enforce the statutes, rules, and regulations prescribed for the operation of schools. Such superintendents, principals, and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and

from school, on the playgrounds, and during recess. (p.1239)

In responding to Lang's argument, the school district argued that the trial court was correct in concluding all the actions of the district as discretionary. Thus, because all functions and duties are discretionary, the entity is protected under the MTCA. The district argued, "The Legislature expressly provided in Subsection (1)(d) that a government actor may abuse his discretion and still remain immune" (*Lang v. Bay St. Louis/ Waveland School District*, 1999, p. 1239). In response to Lang's assertions found in statute, specifically section 37, the district argued that applying Lang's own assertions would rule such acts as "necessary supervision" and providing of a "safe place," as a discretionary function, concluding immunity as prescribed by the MTCA applied (p. 1239). The district also cited several court cases involving the discretionary action of hiring and supervising employees as well as several cases involving the maintenance of public areas such as roads, giving weight to its claim that the district's acts were discretionary as found in those cases. For example, the argument put forth was that the repairing of roads concerns the decision making of public employees to whether safe or unsafe conditions are present and need to be rectified; much like providing a safe school environment is left to the decision of public employees. In both cases they argued acts or omissions by employees are found to be discretionary in nature (*Lang v. Bay St. Louis/ Waveland School District*, 1999).

In considering both arguments, the court concluded the district had been negligent in fulfilling its ministerial duties. "The most important criteria is if the duty is one which has been positively designated, the duty to perform under the condition specified, not being dependent upon the officer's judgment or discretion, that act or discharge thereof is ministerial" (*Lang v.*

Bay St. Louis/ Waveland School District, 1999, p.1240). The court concluded that Lang's allegation was that the school had failed to provide "adequate supervision" as directed in section 37, resulting in the fall of her son (p.1236). The MTCA 11-46-9(1)(d) was thus misapplied. The action or inaction of school personnel was found to be ministerial in nature (*Lang v. Bay St. Louis/ Waveland School District*, 1999). The court also noted by statute, "School boards are required to erect, repair, and equip school facilities as well as maintain control and care for the same" (p. 1241). Finally, after establishing the district's acts as ministerial, Justice Sullivan wrote, "Whether ordinary care was, in fact, exercised is a question for the trial court, sitting without a jury, to decide" (p.1241). The concept of ordinary care was the crux that the court concluded reasonable uncertainty could be established. Unanimously the court reversed and remanded the case.

In the same year the Court heard the case of *Duncan v. Chamblee* (1999). The case was heard on appeal from the Leake County Circuit Court. Raymond Duncan, along with his mother, filed an appeal stating that the court had erred in dismissing *Duncan* and ignored what they called "overwhelming weight of the law" (p. 948). Duncan claimed he was physically injured when Chamblee administered corporal punishment on two occasions in February of 1996. In considering the case de novo, the Court reviewed whether or not Chamblee's actions were within the course and scope of her employment. In writing for the Court, Justice Smith concluded, "Duncan had failed to state a claim upon which relief can be granted because she [Duncan's mother] alleges that Chamblee was acting within the course and scope of her employment" (p. 951). Duncan acknowledged Chamblee's actions were within the scope of her

role. Thus, by legislative statute her actions were ministerial. As noted in the case notes, the MTCA; Miss Code Ann. § 11-46-7 (2) states:

(1) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omission occurring within the course and scope of the employee's duties. (p. 949)

Duncan had previously dismissed voluntarily the Leake County School District. That decision was a "fatal" flaw to the case (p. 951). In conclusion, the Court affirmed the lower court's ruling of immunity, but unlike the lower court which granted sovereign immunity, the court arrived at the decision under the MTCA specifically § 11-46-7. The court was split on the decision and a dissent was produced.

Justice McRae found fault with the ruling and in his dissent stated, "Further, the facts pled clearly exhibit excessive corporal punishment by paddling, which is equivalent to gross negligence and the talismanic phrase 'assault and battery,' thereby removing the case from the realm of the tort claims act" (p. 952). He concluded, stating, "The case should be reversed and remanded so as to allow Duncan the 30 days he is due to amend his complaint on the issue of corporal punishment" (p. 952). Two other justices joined this opinion.

L. W. v. McComb Separate Municipal School District (1999) set a new precedent when, on appeal to the Supreme Court of Mississippi, the Court called for the case be reversed and remanded. Twice a fellow student threatened the appellant minor, J. A; J.A. reported the first threat to a teacher who did not act on the complaint and later a second threat was made during after-school detention. The detention teacher was present when the second threat was made and did not intervene. After both students left school, the appellant was beaten and

forced to perform oral sex. The Pike County Circuit Court granted the McComb Separate Municipal School District's motion to dismiss on grounds of sovereign immunity as legislated in statute and denied. L. W. claimed that the purchase of liability insurance waived immunity as argued. Motion for rehearing was denied by the circuit court.

L. W. appealed on the grounds that the trial court erred in its ruling, citing three aspects of the case: Firstly, discretionary acts of negligence were combined together with general acts of negligence; secondly, several of the acts were discretionary; and lastly, were certain protections under the MTCA waived when liability insurance was purchased. In answering the first question, the court concluded that the only remedy for these proceedings would be the application of the MTCA; negating L. W.'s claim that alleged acts of negligence were both general and specific. "The Mississippi Tort Claims Act provide the exclusive civil remedy against a governmental entity or its employee for acts or omissions which give rise to suit" (*L. W. v. McComb Separate Municipal School District*, 1999, p. 1138).

In addressing the second question the court gave careful analysis in interpreting the application of subsections of the MTCA in relation to the whole (*L. W. v. McComb Separate Municipal School District*, 1999). The court concluded, "Common law must give way to statutes" (p. 1140). In addressing the specifics of subsection 11-46-9 (1)(d), the school district argued to the lower court that this was a 'catchall' exemption for discretionary function. L. W. warned, "In other words, if the broad interpretation employed by the trial court is allowed, then the exemptions will swallow the waiver of immunity" (p. 1141). The school replied by stating that L. W.'s argument attempts to marry statutory immunity and common law immunity. The school concluded its argument by stating, "The Legislature specifically chose not to put any additional

requirements on statutory sovereign immunity, for example, the Legislature expressly stated that it does not matter ‘whether or not discretions be abused’ in order to be exempt from liability” [internal citations omitted] (p. 1141). In the end, the court determined that L. W.’s assertions that the school district actions were discretionary and not ministerial were supported. Nevertheless, the court set new precedence when it stated,

However, merely finding that the conduct at issue in the instant case was discretionary does not fully resolve the matter as the school suggests. As will be shown below, both state and federal law support our conclusion that public schools have the responsibility to use ordinary care and take responsible steps to minimize risks to students thereby providing a safe environment. (p. 1141)

It is significant to note that the court addressed beyond whether the act is not only ministerial or discretionary, but also recognized that a level of protection should be determined. “The issue of ordinary care is a fact question. The trial court, confronted with all the relevant facts, should then under our law, decide whether or not those responsible used ordinary care as required by the statute” (p. 1142). The lower court’s verdict was reversed and remanded.

Finally, in addressing the issue of liability insurance, L. W. claimed the school carried a \$500,000 liability insurance policy, in which it should be able to sue up to its limit. The district argued that under the MTCA, liability had to first be established prior to damages being considered. The court agreed with the district, stating,

The purchase of insurance does not affect potential defenses under Miss. Code Ann. § 11-46-9. Otherwise sovereigns would be unlikely to continue to purchase insurance if it had the effect of waiving all of their defenses under the MTCA—an undesirable and unintended result in the Court’s view. (*L. W. v. McComb Separate Municipal School District*, 1999, p. 1144)

In concluding for the court, Justice Smith again addressed the issue of ordinary care, “The Defendant School’s conduct at issue is best described as discretionary. However, there is a

ministerial aspect, because both state and federal law place a duty of ordinary care on school personnel to minimize risks of personal injury to provide a safe school environment” (*L. W. v. McComb Separate Municipal School District*, 1999, p. 1144). The case was reversed and remanded to determine the questions of whether there was an established insurance policy and what were the limitations of that document. Again, the court was conflicted and two additional opinions were produced.

Justice Banks's concurring opinion with the ruling discussed further the issue of liability insurance. He concluded his argument by stating, “The conclusion is inescapable, then, that the provision for excess coverage in Section 11-46-17(4) speaks to the limitation on damages rather than whether the entity may be held liable for the substantive claim” (*L. W. v. McComb Separate Municipal School District*, 1999, p. 1146). Hence, Justice Banks hinted at the need to consider first the wantonness of negligence rather than reparations. The second opinion was a dissent written by Justice McRae. He also addressed the issue of the liability insurance policy. His concluding remarks are driven and to the point:

The language and intent of the legislation is clear, concise, and simple. If a political subdivision purchases insurance, sovereign immunity is waived up to the amount of the insurance. Accordingly, I dissent as to this issue, but join the majority on issues I and II and in its judgment to reverse and remand. (p. 1147)

As will be discussed, *L. W. v. McComb Separate Municipal School District* entangled the concept of ordinary care being applied not only to ministerial acts, but discretionary acts as well.

The next case to be addressed by the Supreme Court of Mississippi involving schools and the MTCA on the issue of immunity was not until 2001, *Pearl Public School District v. Rita Groner*. Previously, the trial court entered its findings and judgment in favor of Groner, awarding her \$45,000. The district filed a notice of appeal. Rita Groner was a spectator at a basketball

game. On the night of Feb. 6, 1996 a fight broke out between the local high school and Brandon High School without warning and Mrs. Groner was thrown from the stands to the floor. She injured her fingers, wrist, and hand. The Mississippi High School Activities Association had required each school to submit a security plan at the start of the year. The plan required two officers to be present at sporting events. At the game in question, only one officer, Officer Williams, arrived for duty. He informed his superior that only one officer was needed. It was stated that the responsibility of implementation of the security plan rested with the security officer. The district appealed on the grounds that no determination of ordinary care was made, damages should be apportioned among all potential responsible parties, and the trial court erred in granting the district credit for amounts paid (p. 916).

For the purpose of this analysis, the conclusion of the court involving the issue of ordinary care is of greatest importance. Citing both *Lang* and *L. W.*, on the issue of ordinary care, the court stated,

We do not find that the duty turns upon the issue of whether the function was discretionary or ministerial. Instead *L. W.* stands for the proposition that the school district has a duty of ordinary care with respect to providing a safe environment for its patrons. (*Pearl Public School District v. Rita Groner*, 2001, p. 915)

In reversing and remanding the case, Justice Smith in writing for the court concluded,

The Mississippi High School Activities Association did provide regulations for a security plan and the officer exceeded his authority when he decided only one security guard was needed. For this reason, this case is reversed and remanded to the circuit court for a determination on ordinary care and for further findings consistent with this opinion. (p. 916–917)

Secondly, on the issue of allocating responsibilities to all potential parties, the court concluded that the trial court had erred.

On remand the trial court should determine the issue of apportionment based upon the

proof already in the record to the extent that any of these other tort-feasors is deemed to have been negligent thereby contributing to Groner's injury and damages. (*Pearl Public School District v. Rita Groner*, 2001, p. 916)

Lastly, the court ruled on the question of granting the district credit for amounts paid.

The maximum cap on damages was \$50,000. The verdict in favor of Groner was \$45,000. The District's insurance company paid Groner \$4,880 under its medical provision. It appears to this Court that the total amount of damages was, in fact, reduced by the amount that had already been paid. (p. 916)

Although the court concluded to reverse and remand, Justice McRae dissented, noting that although the circuit court did not use the term "ordinary care," it established that "ordinary care" had not been followed. Justice McRae noted that the fight originated from events earlier in the day, the security guard failed to perform his job as a "reasonably prudent person," and that the security plan filed with the Mississippi High School Activities Association had not been followed when two security officers were not present as instructed by the security plan and when the guard decided to not request an additional officer (*Pearl Public School District v. Rita Groner*, 2001, p. 917). Hence, the guard failed to implement the plan, a discretionary act by the officer. Additionally Justice McRae established the district was involved in proprietary acts when Groner paid a fee to attend the game (*Pearl Public School District v. Rita Groner*, 2001), thus restricting the district's immunity. In regard to limits on damages, Justice McRae concluded, "In other words, insurance waives immunity up to the policy limits, while at the same time not limiting the recovery available under section 11-46-15(1)(a)" (p. 918). Hence, he believed the trial court could have awarded Groner damages upward of \$55,000 (*Pearl Public School District v. Rita Groner*, 2001). Finally, he also took issue with determination of apportionment, noting, "the defendant bears the burden of proof" (p. 919). He called into question whether the established record provided sufficient details to name the tort-feasors in order for

apportionment to be applied. He concluded his argument by affirming the lower court's judgment and was joined by Justice Diaz.

A few years after the ruling of *Groner*, the court of appeals heard the personal injury case of *Pigford v. Jackson Public School District* (2005). The appellant, Jacob Pigford, was an autistic student at Forest Hill High school. On November 15, 1999, Magill Jones, a teacher's aide, escorted Jacob. On a typical day his teacher escorted him, but on this day his teacher was unavailable because he was attending a meeting. It was not uncommon for Jacob to become agitated and suffer severe anxiety when the bell rang and other students were in the hallways. As Mrs. Jones escorted Jacob into the building and down the hall, he became agitated. The aide attempted to restrain him so that Jacob would not injure himself or others. Jacob resisted, and that evening when Jacob's parents were getting him ready for bed they noticed excessive bruising. It was not noticed during the day because Jacob's clothing covered his arms. His parents took him to the doctor but he was not given any medications or treatment. The circuit court had applied MTCA § 11-46-6(1)(x) and concluded that the defendants had not acted in a willful, wanton, reckless, or grossly negligent conduct" (*Pigford v. Jackson Public School District*, 2005, p. 578).

On appeal, the Pigfords claimed the circuit court erred in applying the willful and wanton standard of care and questioned whether Jacob was afforded a safe environment. In discussing the first argument of the appeal, Justice Chandler remarked on the distinction in this case separating it from *L. W. v. McComb Separate Municipal School District*. In writing for the court he stated, "Jones's restraint of Jacob constitutes control and discipline. The legislature specifically directs our courts to apply Mississippi Code Annotated section 11-46-9(1)(x) when a

school official controls and disciplines a student under Mississippi Code Annotated Section 37-11-57” (*Pigford v. Jackson Public School District*, 2005, p. 579). In the case of *L. W.*, the district was found to have not provided the ministerial responsibility of providing a safe environment, but the acts of the teachers were defined as discretionary (*L. W. v. McComb Separate Municipal School District*, 1999). In addressing the second argument of the appeal, Justice Chandler acknowledged the requirement of school employees to take “ordinary and reasonable steps” to provide a safe environment (*Pigford v. Jackson Public School District*, 2005, p. 580). In his discussion he noted, “The IDEA requires the school to mainstream disabled students to the extent possible, in the least restrictive environment” (p. 580). He also described Jacob’s ability and inability to handle crowds during other school activities such as pep rallies and lunch. In closing he stated,

While it would have been ideal for Fraizer [Jacob’s Special education teacher] to have escorted Jacob to the classroom, we find that Jones’s supervision was sufficient to create a reasonably safe environment for Jacob and for the other students at Forest Hill. (p. 581)

The ruling of the circuit court was affirmed unanimously.

It wasn’t until 2009 that the Mississippi Appellate Court heard a case involving negligence and schools. In the case of *A. B. v. Stone County School District* (2009), the intermediate appellate court affirmed the judgment of the court. The facts of the case were that on April 7, 2005, the bus driver heard A. B. saying that she did not want to go to school and she had not finished an assignment for class. The bus driver, Raymond Collins, asked if she would like to go home with him instead of school. She agreed. After completing his route, he took her back to the bus barn and snuck her into his vehicle. Collins made sexual advances to her, but was pushed away. He dropped her off at his residence with his teenage nephew. Shortly

after arriving home with A. B., Raymond Collins left to go to another job. A. B. claims that the nephew raped her three times before Raymond Collins returned. When he arrived home, he instructed his nephew to drive her to school. In the afternoon, A. B. boarded the bus of Raymond Collins and was dropped off at her regular stop. It was noted that A. B. had a pattern of not attending classes or skipping school to visit her boyfriend who lived nearby. Also important to the case was the fact that her parents were unaware of the unexcused absences from school. The lower court had granted summary judgment for the district in regard to the plaintiff's claims for injuries resulting from sexual assault. The lower court also concluded immunity for a majority of the allegations. Where immunity did not apply, the court had concluded her injuries were not foreseeable when the district did not exercise ordinary care such as notification of her absences.

On appeal, A. B. claimed the court erred in granting immunity when the district's discretionary acts were not measured against a standard of ordinary care and the circuit court wrongly held that the injuries sustained were not a foreseeable result. In writing for the court, Justice Griffis begins his opinion by reiterating A. B.'s admonition that the acts of the district were discretionary. He calls her assertion that the district did not provide her ordinary care misguided. Because A. B. fully admitted that the acts of the district were discretionary, the court explained there was no issue to address. Thus, the action or inaction of the district equated to qualified immunity. Making sure to separate this case from *L. W.*, Justice Griffis highlighted two distinct differences between the cases. Firstly, the court cited its discussion about *L. W.* quoting from the case of *Collin v. Tallahatchie* (2004):

This court recognized *in L. W.* that the school's conduct was of a discretionary nature [internal citations omitted]. However, this Court never found that the school officials

were performing a discretionary function. Indeed, this Court actually found that the school officials in *L. W.* were performing a function required by statute and, therefore, properly analyzed the school's actions... (*A. B. v. Stone County School District*, 2009, p. 798)

The second point made by Justice Griffis that differentiated this case from *L. W.* was [in *L. W.*] the student was threatened twice on campus and was overheard by teachers; in this case the alleged sexual assault occurred off campus and no school employee was present to witness. In *L. W.*, there was a clear issue as to whether the school was a safe environment for the student. *A.B.* was not harmed at school (*A. B. v. Stone County School District*, 2009).

To the claim that the district was negligent in hiring Raymond Collins, the court cited *T. M. v. Noblitt* (citation excluded), "The duty to hire and supervise employees is necessarily and logically dependent upon judgment and discretion (citation excluded). As such, this discretionary function does not require that the school district exercise ordinary care" (*A. B. v. Stone County School District*, 2009, p. 799). As Justice Griffis began his conclusion he concurred with the lower court's ruling on the issue of compulsory attendance as well, "A. B.'s assault by her bus driver's nephew, which occurred at the bus driver's home, was not a reasonably foreseeable result of the school district's failure to exercise ordinary care in reporting A. B.'s absences" (p. 799). Thus, the court of appeals affirmed the lower court's ruling of summary judgment for the defendant.

This case did produce one dissenting opinion by Justice Carlton. "[I] find it obvious that the duty of the school district and the school bus driver to safely load and unload students from the bus upon arrival at the school is a ministerial duty; not a discretionary duty" (*A. B. v. Stone County School District*, 2009, p. 801). To the question whether A. B.'s injuries were foreseeable,

Justice Carlton drew insight from the case of *Glover v. Jackson State University* and in his written opinion stated:

[In] satisfying the requirement of foreseeability, a plaintiff is not required to prove that the exact injury sustained by the plaintiff was foreseeable; rather, it is enough to show that the plaintiff's injuries and damages fall within a particular kind of class of injury or harm which reasonable could be expected to flow from the defendant's negligence ([Internal citation excluded]. (*A. B. v. Stone County School District*, 2009, p. 804)

Justice Carlton ended his argument by concluding that the case should be reversed and remanded for further proceedings.

In 2010, a case involving the death of a student came before the Supreme Court of Mississippi: *Covington County School District v. Magee*. Lonnie C. Magee, Jr. was a member of the Mount Olive Attendance Center School's football team. During practice on August 8, 2007, Lonnie collapsed and emergency medical personnel were called. They were unable to revive him and he was pronounced dead at the Covington Hospital. The cause of death was listed as heat stroke. Lutricia Magee filed a wrongful death suit claiming negligence and *res ipsa loquitur*, breach of duty by the district and its employees. The district filed motion for summary judgment followed by a response from Magee. The district filed a rebuttal and finally on June 20, 2008, a hearing was held in regard to the motion for summary judgment. Judge Evans ruled that genuine issue of material facts were present and questioned whether the school district had indeed provided a safe environment. The defendant's motion for summary judgment was denied, but was granted in part as to the *res ipsa loquitur*, breach of duty by the district and its employees. The district filed a petition to appeal and a stay of trial arguing the court had erred in granting only partial summary judgment (*Covington County School District v. Magee*, 2010).

At the core of this case was the question of whether the acts of the coaches and the district were ministerial or discretionary in nature. The Covington School District argued that the actions of its employees were discretionary under the MTCA, specifically section 11-46-9. The plaintiff argued that the district failed to provide a safe environment as prescribed by law and if its actions were indeed ministerial as provided in statute, a determination of material fact was needed to determine whether ordinary care had been provided. Magee argued that the district and its employees were mandated to provide a safe environment for her son under statute:

It shall be the duty of each superintendent, principal, and teacher in the public schools of this state to enforce in the schools the courses of study prescribed by law or by the state board of education, to comply with the law in distribution and use of free textbooks, and to observe and enforce the statutes, rules, and regulations prescribed for the operation of schools. Such as superintendents, principals and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess (Miss. Ann. 37-9-69, 2007). (*Covington County School District v. Magee*, 2010, p. 10)

In concluding for the court, Justice Carlson stated that Magee's reliance on Mississippi Code 37-9-69 was misguided. In writing for the court, he stated, This court has applied this statute only in a limited context, mainly in cases concerning the disorderly conduct of students, or intentional acts on the part of individuals, and has never applied it to timing or oversight of football practice (*Covington County School District v. Magee*, 2010). Summary judgment was granted in full for the Covington School District.

Two dissenting opinions were produced, the first by Justice Kitchens. Although the Justice agreed that supervising of a football practice was discretionary, he argued that it was unclear if the defendant's discretionary acts were 'rooted' in policy. In illustrating his opinion, Justice Kitchens claimed much like the bus driver that did not assist Stewart to the adult day care center in *Stewart v. City of Jackson* which resulted in an injury, it was plausible the coaches

may have acted in a negligent manner causing the death of Magee (as cited in *Covington County School District v. Magee*, 2010).

This Court cannot rule out that some discretionary conduct by some athletic coaches may be comparable to that of the bus driver in *Stewart*: neither rooted in social, economic, nor political policy nor contemplated by the Legislature when it enacted MTCA...I would hold that the trial judge did not err in denying the school district's summary for judgment motion, and I would remand the case for further proceedings. (p. 8)

Justice Chandler wrote the second dissent. Although he drew a similar conclusion to Justice Kitchens, he built his argument upon Miss. Code Ann. § 37-9-69 mentioned above, "[It is the duty] to enforce the statutes, rules, and regulations prescribed for the operation of schools" (Miss. Code Ann. § 37-9-69, 2007). To make his point, Justice Chandler, citing *Dotts v. Pat Harrison Waterway District*, in which the mother of a deceased boy claimed the waterway district, a swimming facility, had a written policy in place and it was not followed, questioned if the district might have a written policy as well. He argued that a two-pronged test established by the court should be used to determine whether qualified immunity existed: Does the conduct involve the element of choice or judgment, and if it does, does the choice or judgment involve social, economic, or political policy. Justice Chandler's dissent concluded in a similar manner to that of Justice Kitchens, noting, "Discovery is critical to determine whether the District had information such as an operational policy, what the policy terms stated, and whether personnel followed the policy or knowingly disregarded the policy" (*Covington County School District v. Magee*, 2010, p. 12).

In 2011, the Court of Appeals for Mississippi ruled on the case of *Q. A. v. Pearl Public Schools*. The appellant had argued that the circuit court erred in concluding that the acts of the district were discretionary in nature. Q. A. was a cadet with the ROTC at Pearl High School. He

was injured after an after-school meeting had concluded in the school parking lot. Another cadet, T. B., left the building at the same time as Q. A. and headed for his car. T. B. and another witness testified that Q. A. was sitting on the hood of T. B.'s car. After several verbal attempts to get Q. A. off his car, he began to back up slowly. As he made a turn, Q.A. fell off the car and sustained injuries to his head that included a concussion and bleeding on the brain (*Q. A. v. Pearl Public School District, 2011*).

In reviewing the facts of the case and the law, the court used the two-pronged test described by the court. The initial question addressed was whether the act in question involved a component of choice or judgment. Secondly, if the act or judgment included choice, then a determination must be made to determine whether the act or decision involved social, economic, or political policy (*Q. A. v. Pearl Public School District, 2011*). The court determined there was no choice involved in deciding to supervise the parking lot.

As PPSD notes, no Mississippi statute mandates that a school district monitor a parking lot more than an hour after school. Similarly, no Mississippi statute requires that a school district assume that students leaving an after-school activity are behaving in a disorderly conduct after being dismissed from ROTC meetings. (p. 1077)

In reviewing the second prong the court concluded, "We further find that there are no genuine issues of material fact regarding the second prong of the discretionary-function test" (p. 1077).

The judgment of the circuit court was affirmed unanimously.

Clein v. Rankin County School District (2012) was one of two cases heard in 2012 involving public schools and their employees. Zachary Clein was injured during his 8th grade physical education class; knocking out his front teeth and spraining his knee. The P. E. teacher had assigned students to "run the bleachers" as a warm-up exercise. As Clein was descending

the bleachers, he slipped and fell head first, hitting a metal rail. The lower court had granted Rankin School District immunity and concluded no premises liability existed as well.

Clein filed an appeal claiming the court erred in concluding summary judgment and immunity from premises liability for the defendant (*Clein v. Rankin County School District*, 2012). In writing for the court, Justice Carlton applied the two-pronged test developed by the Court, citing *Jones v. Miss Dept. of Transp.*, [Internal references omitted] and *United States v. Gaubert*, [Internal references omitted], to determine whether Coach Walker's requirement of "running the bleachers" was in fact a discretionary act.

Although the RCSD implemented guidelines for physical education, these guidelines merely appear to require the instructors to apply appropriate warm-up and cool-down techniques. In so doing, the guidelines leave the type of technique and implementation of the warm-up and cool-down techniques to the instructor's discretion. (*Clein v. Rankin County School District*, 2012, p. 388)

In affirming the judgment, Justice Carlton concluded the decision making power to determine the appropriate physical activity by Coach Walker was valid thus, fulfilling the first prong of immunity (*Clein v. Rankin County School District*, 2012). In addressing the second prong, Justice Carlton concluded, "We agree that regulating the establishment and operation of athletic programs and other school activities, such as physical education classes, constitutes an exercise of political policy, thus satisfying the second prong of the discretionary-function analysis" (p. 309). Thus, the court affirmed in part the lower court's assertion.

In ruling on the issue of negligence in regard to the condition of the bleachers, the court concluded, "Clein failed to show the bleachers were a dangerous condition created by negligent or wrongful conduct of RCSD, and Clein failed to provide proof that RCSD or Coach Walker possessed actual or constructive notice of the condition of the bleachers" (*Clein v. Rankin*

County School District, 2012, p. 390). In conclusion the Court found no err and upheld summary judgment for the district unanimously.

Finally, in 2012 the court again affirmed summary judgment in the case, *J. S. v. Lamar County School District* (2012). Two vehicles in the school parking lot were involved in a collision on February 6, 2008. Amy was a passenger in her brother's car while another student, Nicky, was driving his vehicle. The car in which Amy was traveling was stopped due to campus traffic issues. Nicky was not paying attention and ran into the back of the car. Amy claimed she suffered multiple injuries from the accident. The appellant claimed the district was negligent by failing to provide a safe environment, i.e. parking lot and traffic conditions. Amy also maintained that reasonable control of the area and her safety were in question; violating Mississippi Law (*J. S. v. Lamar County School District*, 2012, p. 3). In response, the district stated that the controlling of traffic is to be determined by the police department and this is a discretionary function as addressed in the MTCA. The district also reported it had done everything it could to provide a safe environment (*J. S. v. Lamar County School District*, 2012).

Justice Maxwell in discussing the merits of the case cited *Miss. Transp. Comm'n v. Montgomery*,

Recently, the Mississippi Supreme Court expressly overruled previous cases that has interpreted section 11-46-9 (1)(d) in conjunction with section 11-46-9 (1)(b)4 to find that, if a duty fell within a statute, the governmental entity has to exercise ordinary care in order to be immune from suit. (*J. S. v. Lamar County School District*, 2012, p. 5)

In essence, the Court concluded ordinary care only needed to be applied when actions were found to be ministerial. The court applied the 'two part public-function test' to determine if the acts of the district were discretionary or ministerial. "There is no statute directing how a school district is to direct and control traffic on its campuses. How traffic flowed, where students could

park, and where speed bumps were placed all involved choice or judgment” (*J. S. v. Lamar County School District*, 2012, p. 9-10). Justice Maxwell also addressed the Mississippi statute §37-9-69, requiring school districts and its employees to “account for disorderly conduct”. Nick’s actions—not paying attention while driving through the school parking lot—was not the same type of “disorderly conduct” that triggered ministerial duties in Lang” (*J. S. v. Lamar County School District*, 2012, p. 11). Thus, the district passed the first prong of the public function test.

The second prong of the test was to determine whether the driving policy of the district was economic and public in nature.

By allowing students to transport themselves to school, the District does not have to pay to bus these students to school but does have to pay to maintain a parking lot. Because its [the district] decision to allow student drivers, like Nicky, is within its discretion, and because the control of student drivers involves economic and public policy, we find the District’s activities met both prongs of the public-function test and were entitled to immunity under section 11-46-9(10(d)). (*J. S. v. Lamar County School District*, 2012, pp. 14–15)

The Court affirmed summary judgment in favor of the district.

Conclusion

Two broad categories of cases were revealed during the analysis of the case law: cases involving notice of claim and cases calling into question negligence and immunity of the state and its employees. In cases involving notice of claim, the court applied MTCA § 11-46-11 with strict compliance. After the ruling in *Reaves v. Randall* (1999), the court established a more lenient interpretation of the statute, noting substantial compliance was sufficient in regard to providing the facts of the incident. The court continued to demand strict compliance in regard to fulfilling the one-year limitation time line set by statute. This allowed more cases to be heard

on the merits of the case instead of procedural errors, allowing for an avenue of redress for citizens of the state.

In the cases involving the issue of negligence, the court in good faith reviewed each case, examining the immunity of the state or its employees in context to the facts of the case. The court set an unusual precedent in its ruling of *L. W. v. McComb Separate Municipal School District* (1999), when it applied two subsections of the statute finding that the actions of the public school system and its employees were both discretionary and ministerial, respectively. Later cases brought clarification to the issue, but the court continued to rule that public schools had a statutory duty to provide a 'safe school environment' regardless of whether the concept of the 'ordinary care' condition had been met. The court also had established a two-pronged public-function test to provide clarity in determining acts as discretionary or ministerial. In conclusion, the court had clearly established that the only remedy for plaintiffs when public schools and its employees were alleged to be involved in negligent acts is found under the MTCA.

CHAPTER 5

FINDINGS, CONCLUSIONS, AND IMPLICATIONS

Introduction

This study analyzed Mississippi court cases involving the application of the Mississippi Tort Claims Act and specifically the notice of claim, waiver of immunity, and governmental entities and employees' exemption from liability. In all the cases reviewed, the Mississippi Tort Claims Act was the exclusive remedy applied as directed by statute.

(1)...the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions... (Miss. Code Ann. § 11-46-5, 2011)

Although the intent of the Mississippi Legislature seems to be clear, several appellants tried to persuade the courts to interpret the MTCA in a way that favored their interests, including the cases of, *L. W. v. McComb Separate Municipal School District* (1999), *Hays v. Lafayette County School* (1999), and *Duncan v. Chamblee* (1999). In the case of *L. W.*, the appellant claimed the trial court had erred when it included discretionary acts of negligence in combination with general acts of negligence. The court clearly stated that the only remedy available to *L. W.* was found within the MTCA. In the case of *Duncan*, the appellant claimed assault and battery (intentional torts) in which no defendant can claim immunity. Citing *McFadden v. State*, the court held, "When an individual who is a state government official is named as a defendant in a civil action, our law directs that he or she enjoy no immunity to a civil action from damages if his breach of legal duty causes injury..." (*Duncan v. Chamblee*, 1999, p. 950). The court acknowledged the statement as correct, but underscored that the case cited was decided prior

to the passage of the MTCA and the only remedy which applied was found within the MTCA. Ultimately, the court continued to affirm the legislative intent of the statute to protect the state and its political subdivisions from litigation and excessive awarded damages.

Outcome of Cases Involving Notice of Claim

Seven cases were heard by the court due to procedural issues involving notice of claim in relationship to school districts in the state of Mississippi; six of the cases were heard before the Supreme Court of Mississippi and one was heard by the intermediate appellate court. Of the seven, four of the cases were reversed and remanded, two were affirmed, and one was affirmed and remanded.

Reaves v. Randall (1999) was the first case to be remanded involving a notice of claim against a school district. The case seemed to signal a new direction for the court, establishing the precedence of substantial compliance. Prior to the ruling in *Reaves*, many cases were dismissed due to procedural errors rather than the merits of the case. Following the *Reaves* ruling, in which the Mississippi Supreme Court reversed and remanded on the grounds that the plaintiff had substantially complied with the notice provisions of the MTCA, one might assume that all future cases would also rely on the doctrine of substantial compliance; and indeed this was generally the case. *Overstreet*, which followed shortly after the *Reaves* decision, affirmed the doctrine of substantial compliance, although it also emphasized the importance of fact finding on a case-by-case basis and the dissent called for clearer judicial guidance from the Mississippi Supreme Court as to what is to be considered sufficient notice (*Overstreet v. George County School District*, 1999). The other two cases that were reversed and remanded came approximately a year after *Reaves*. *Jones v. Mississippi School for the Blind* was reversed and

remanded in 2000 on the grounds that the trial court had applied the strict compliance standard instead of substantial compliance; and a month later, the court reversed and remanded *Douglas v. Blackmon* on the same principle as *Jones*.

The two cases that were affirmed were *Hays v. Lafayette County School District* (1999) and *Cotton v. Paschall* (2001); *Hays* followed shortly after the *Reaves* decision, followed by *Cotton* almost two years later. In the *Hays* decision, the court upheld the one-year statute of limitations under the MTCA and concluded that the MTCA was the only remedy available to Hays, the plaintiff in the case. Furthermore, the court determined that Hays had failed to meet the statutory requirement for filing suit under the MTCA. In the case of *Cotton v. Paschall*, the court affirmed the lower court's ruling. Pass Christian Public School District and the bus driver, Barbara Paschall, had not been served process within the 120-day tolling period after they had first received Cotton's complaint. The Cottons never appealed the district's dismissal, but claimed that Paschall could be found liable individually. The court concluded that Paschall was not liable due to the immunity granted to employees working within the course and scope of their duties since she was an employee of a political subdivision of the state.

Lastly, in regard to notice of claim issues, the Mississippi Supreme Court affirmed and remanded the case of *Smith v. McNeil* (1999) back to the trial court. The court concluded that there were unresolved issues concerning notice and estoppel and remanded the case to determine the outcome after the conclusion of discovery. Thus, in regard to notice of claim rulings involving school districts and their employees under the MTCA, the researcher's analysis of the case law reviewed concurs with Fraiser's findings in his 2007 article. Specifically, the Mississippi courts have continued to apply the substantial compliance doctrine as it pertains to

delivery of notice and the information within the notice. However, the Mississippi courts have returned to the doctrine of strict compliance with regard to adhering to the established time line for filing suit as directed by the statutory language of the MTCA.

Although the courts have consistently ruled that the MTCA is the exclusive remedy for plaintiffs seeking tort damages against Mississippi governmental defendants, the concepts of supervision and providing a safe environment were considered in many of the proceedings. In cases in which providing a safe environment was questioned, the court relied on the Mississippi statute § 37-9-69 with regard to whether the actions or inactions of the political subdivision provided grounds for suit under MTCA. This statute reads:

It shall be the duty of each superintendent, principal and teacher in the public schools of this state to enforce in the schools the courses of study prescribed by law or by the state board of education, to comply with the law in distribution and use of free textbooks, and to observe and enforce the statutes, rules and regulations prescribed for the operation of schools. Such superintendents, principals and teachers shall hold the pupils to strict account for disorderly conduct at school, on the way to and from school, on the playgrounds, and during recess. (Miss. Code Ann. § 37-9-69, 2012)

The application of this Mississippi statute, Miss. Code Ann. § 37-9-69, to claims against school districts and their employees will be discussed in the next section.

Outcome of Cases Involving Negligence

Eleven cases involving negligence have been heard by the courts since the establishment of the MTCA. In a majority of these cases the courts considered the actions or inactions of the governmental entity and its employee(s), debating in each case on an 'ad hoc' basis to determine whether the action or lack of action was a ministerial or a discretionary function. As Walker (2001) and Diaz and Weems (2010) have pointed out, the Mississippi Supreme Court had confused the issue by incorporating a standard of ordinary care in regard to discretionary

actions. According to Walker (2001), The Mississippi Legislature patterned the MTCA in part after a similar law in South Carolina. The South Carolina courts hold that the discretionary function exemption “must be construed liberally in favor of limiting the liability” of the governmental entity. In attempting to provide each case the thorough deliberation its due, the Mississippi Supreme Court cluttered the path of immunity in cases involving tort claims and personal injury at times; later on The Mississippi Supreme Court provided more clarity to its rulings. Again, it seemed the intention of the court was to remove the levy of sovereign immunity and provide citizens a means of remedy. In doing so, the courts’ rulings confused the letter of the law and misapplied legislative statutes. Of the 11 negligent claims heard by the Court, four involved personal injury claims unrelated to student participation in athletics, three involved injury or death during athletic class or practice, two involved sexual assault, and two cases involved excessive force.

The four personal injury cases that did not involve athletics were *Lang v. Bay St. Louis/Waveland School District* (1999), *Pearl Public School District v. Groner* (2001), *Q. A. v. Pearl Public School District* (2011), and *J. S. v. Lamar County School District* (2012). Two of the cases were reversed and remanded and two cases affirmed the judgment of the lower court. In the case of *Lang*, the Mississippi Supreme Court concluded a Mississippi school district was not immune from liability under Miss. Ann. Code § 11-46-9(1)(b) noting that the district was aware of a hazardous wall and failed to provide ordinary care in exercising its ministerial duty to supervise students and provide a safe environment. In the case of *Pearl Public School District v. Groner*, the court reversed and remanded but concluded the district’s actions were ministerial, again evoking statute 11-46-9(1)(d), and noting that, “School administrators and teachers are

required, by statute, to hold students in strict account for disorderly conduct at school” (*Pearl Public School District v. Groner*, 2001, p. 15). The court remanded the case for further proceedings to determine whether ordinary care had been established. In the case of *Q. A.*, a Mississippi intermediate appellate court reviewed whether a school had a duty to monitor parking lots for after-school activities. To determine whether the monitoring of the parking lot was a discretionary function, the court relied on the two-part public-policy function test adopted by the Supreme Court of Mississippi. The court concluded that the acts of the school were ministerial under the Mississippi Ann. Code § 11-46-9(1)(d) and affirmed the trial court’s ruling. Lastly, in *J. S. v Lamar County School District*, an intermediate appellate court affirmed summary judgment for Lamar County Schools (2012), a case involving a student who was injured during a ‘fender bender’ in the school parking lot. In its ruling, the court provided clarity to the application of Miss. Ann. Code § 11-46-9(1)(b) and (d), stating:

So long as the employee was performing a discretionary function, the government is immune, even if the employee abused his discretion [citation omitted, p. 4]. Recently, the Mississippi Supreme Court expressly overruled previous cases that had interpreted section 11-46-9 (1)(d), in conjunction with 11-46-9(1)(b) to find that, if a duty fell within a statute, the governmental entity had to exercise ordinary care in order to be immune from suit [citations omitted]. (*J. S. v Lamar County School District*, 2012, p.1250)

As it had in *Q. A.*, the court applied the two-pronged public function test to determine whether the action was a discretionary function or a ministerial function. In discussing whether the activity involved choice or judgment, the court concluded no statute applied to the school parking lot. The court was clear to point out that Miss. Code Ann. § 37-9-69 did not apply because the Supreme Court had noted in *Covington v. Magee* that the statute applied in a “limited context” (*J. S. v Lamar County School District*, 2012, p.1251). In applying the second prong, the court concluded that the district in allowing students to drive to school involved

economic and public policy, and was within its discretion (*J. S. v Lamar County School District*, 2012). In conclusion, the court affirmed summary judgment for Lamar county schools.

Three published cases involving athletics have been heard before the Mississippi appellate courts. The first case was *Prince v. Louisville Municipal School District* (1999) in which the court affirmed summary judgment for the school district. Prince suffered heat stroke during practice and was hospitalized. The actions of the football coaches were found to be discretionary and summary judgment was awarded to the defendants.

The second case heard by the court also involved football coaches and conduct during practice. In *Covington County School District v. Magee* (2010), Lonnie Magee was pronounced dead after suffering heat stroke at practice. Mississippi's highest court ruled as it had in *Prince*; the coach had performed discretionary acts in making judgments about football practice and the players. The court reversed the circuit court's denial of the school district's motion for summary judgment and granted summary judgment in full.

Finally, a Mississippi intermediate appellate court heard the case of *Clein v. Rankin County School District* (2012). During Physical Education class, Clein sustained injuries after he tripped "running the bleachers" (p. 387). Again the court found the actions of the teacher to be discretionary in deciding in which activities the students would participate and at what intensity. The court affirmed summary judgment for the defendants. In all three cases the court concluded that the acts of the coaches were a discretionary function and granted qualified immunity. Thus, in published cases involving athletics, the Mississippi courts have unanimously applied § 11-46-9 (1)(d)'s discretionary function exemption in order to immunize school districts and their employees.

The two cases involving sexual assault were *L. W. v. McComb Separate Municipal School District* (1999) and *A. B. v. Stone County School District* (2009). In the case of *L. W.*, the Court reversed and remanded on grounds that even though the allegations involved discretionary conduct by the employees, they were not immune unless their actions met the standard of ordinary care as prescribed by Miss. Code Ann. § 37-6-9: providing a safe environment (a ministerial act). J. A., the son of L.W. and the victim in the case, had been threatened twice by a student, which was reported and overheard by staff. On the way home from detention, in which he served with the fellow student, J. A. was sexually assaulted. In the case of *A. B.*, the court had affirmed the judgment holding that the school was not negligent because the alleged assault happened off school grounds and it was not foreseeable that something bad might happen to an unsupervised teen who was absent from school without parent consent or knowledge (*A. B. v. Stone County School District*, 2009, p. 800).

In reviewing these cases it is important to note the similarities and differences. J. A. was 14 years old and at his middle school under supervision by teachers while attending class and detention, when he was threatened and eventually assaulted on his way home. Upon reviewing the facts of the case, it becomes foreseeable that the assault would occur. A. B. was a 15-year-old high school student who had decided not to follow the compulsory attendance policy. Because of her decision to not attend, she was not on school grounds when she was allegedly assaulted and the court concluded it was not foreseeable that an alleged assault could occur.

According to an essay by Diaz and Weems (2010), the Mississippi Supreme Court misapplied the Miss. Code Ann. § 11-46-9 in *L. W.* Later the court corrected its error. Diaz and Weems wrote, “However, the Court did not overrule the *L. W.* decision, but instead attempted

to distinguish that case, saying that it found merely in 'L. W. that the school's conduct was of a discretionary nature' but 'never found that the school officials were performing a discretionary function [internal citation omitted]' (Diaz & Weems 2010, p. 41). This left the lower courts with uncertainty about how to proceed if a similar case were to come before them. To rectify and provide some clarity, the Mississippi Supreme Court adopted the two-pronged public-function test (Diaz & Weems, 2010). In adopting the two-pronged test, the court provided itself a measurement standard by which it could more effectively review and conclude the cases before a determination of exemption was required.

The two cases involving excessive force were *Duncan v. Chamblee* (1999) and *Pigford v. Jackson Public School District* (2005). In both cases, the lower court's ruling was affirmed although on different grounds. In *Duncan*, the Mississippi Supreme Court concluded there was no claim whereby relief could be granted, since the actions of the employee were within the scope and sequence of her duties. In the case of *Pigford*, the Mississippi Court of Appeals concluded that Jacob's supervision had been reasonable and that he had been afforded a safe school environment.

Conclusion

In conclusion, in attempting to provide each litigant with due process under the law and judicial review on the basis of a plaintiff's claim, the Mississippi Supreme Court refined its understanding of what constitutes a notice of claim: The 'when, how, and what' of a cause of action. As noted by Fraiser (2007), the court began by applying a strict compliance standard to all aspects of a notice of claim. Later, the court reinterpreted the notice of claim provision to articulate a more liberal interpretation of substantial compliance. Recently, the court has ruled

more moderately that some aspects of the MTCA's notice of claim mandate strict compliance in regard to time line, while the information to be provided in the notice and the party to whom the notice is served require substantial compliance with the statutory mandate for providing a notice of claim.

In cases that were heard on the basis of negligence and in relationship to public schools, its employees, and the MTCA, the courts have overwhelmingly ruled in favor of school districts and their employees. Discounting *L. W. v. McComb Separate Municipal School District* (1999), in which scholars have asserted that the Mississippi Supreme Court misapplied the statutory language of the MTCA, eight of the 11 cases reviewed concluded that school districts and their employees were entitled to qualified immunity from suit. The two cases in which the court ruled in favor of the appellants were *Lang v. Bay St. Louis/Waveland School District* (1999), in which a student was injured after falling off a wall, and *Pearl Public School District v. Groner* (2001), in which a spectator was injured at a sporting event. In both cases the acts of the district and its employees were found to be a ministerial function and the cases were remanded for determination as to whether the school defendants had exercised ordinary care. Based on the analysis of published decisions by the Mississippi appellate courts, it is safe to say that the Mississippi Tort Claims Act differs from the language of the governmental immunity laws in Texas (Carmen, 2009) and Oklahoma (Lacefield, 2010). However, the judicial philosophy in all three states is one that disfavors litigation against school districts and their employees based on claims of negligence.

Implications

In considering further research, a continuance of a state-by-state analysis of tort claims against public schools and their employees as first proposed by Maher et al. (2010), could produce the possibility of in-depth comparison of states that would clearly deepen the understanding of sovereign immunity as it pertains to public school systems. It could be that state court decisions and state laws express various philosophies about whether school districts and school employees should enjoy legal protection against being sued in tort. It seems likely, however, that many states have laws in place that insulate school districts and school professional employees from litigation to some extent.

Recently, Holben, and Zirkel (2011) published an article titled, "Empirical Trends in Teacher Tort Liability for Student Fights." The methodology used for this article included a sample selection of court decisions found through the Westlaw database. Cases were selected based on the established criteria of the researchers (2011). The researchers concluded that teachers' fear of litigation was higher if they did not intervene rather than interceding to stop an altercation. However, the researchers also acknowledged that when students are fighting, staff must make split second decisions and are not likely to consider the thought of litigation until after the fact (2011).

Additional research might be done to determine whether teachers and school administrators have an accurate perception of the legal environment in which they work and an accurate perception of the protections they enjoy, specifically in regard to being held personally liable in tort-based claims involving personal injury. It would be interesting to determine whether better and accurate information about their exposure to litigation might lessen school

employees' anxiety about being sued, and whether understanding more clearly the parameters of liability might change districts' policies and teachers' actions.

REFERENCES

- A. B. v. Stone County School District*, 14 So. 3d 794 (Miss. App. 2009).
- Alexander, K., & Alexander, M. (2009). *American public school law* (7th ed.). Belmont, CA: Wadsworth.
- American Law Institute (1979). *Restatement of the law (second) of torts* St. Paul, MN: American Law Institute Publishers.
- Bender, M. & Co. (2010). *Ballentine's law dictionary* (3rd ed.). New Providence, NJ: Mathew Bender & Co. Retrieved from Lexis Nexis Academic [database]
<http://libproxy.library.unt.edu:2052/hottopics/lnacademic/>
- Brabham v. The Board of Supervisors of Hinds County*, 54 Miss. 36 (Miss. 1877).
- Burris, Stanley (Summer Edition, 2010) George Boole, *The Stanford encyclopedia of philosophy*. Retrieved from <http://plato.stanford.edu/archives/sum2010/entries/boole/>
- Carman, J. N. (2009). *Analysis of qualified immunity for Texas public school professional employees as interpreted by the Texas courts* (Unpublished doctoral dissertation). University of North Texas, Denton, Texas.
- Carman, N., & Fossey, R. (2009). Statutory immunity for teachers and administrators in public schools: Texas educators enjoy strong protection against defamation suits. *Education Law Reporter*, 247, 581–599.
- Case, D. W. (1994). From Pruet to Presley: The long and winding road to abrogation of common law sovereign immunity in Mississippi. *Mississippi Law Journal*, 63, 537–581.
- Chesshir v. Sharp*, 19 S.W.3d 502 (Tex. Ct. App. 2000).
- Churchill v. Pearl River Basin Dev. Dist.*, 619 So. 2d 900 (Miss. 1993).
- City of Jackson v. Lumpkin*, 697 So. 2d 1179 (Miss. 1997).
- City of Oklahoma City v. Taylor*, 470 P.2d 325 (Ok. 1970).
- Clein v. Rankin County School District*, 78 So. 3d 384 (Miss. App. 2012).
- Cohen, H., & Burrows, V. (2007). *CRS report for congress: Federal tort claims act (95-717)*. Washington, DC: Congressional Research Service.
- Collin v. Tallahatchie*, 876 So. 2d 284 (Miss. 2004).

Cotton v. Paschall, 782 So. 2d 1215 (Miss. 2001).

Coverdell Teacher Protection Act, 20 U.S.C. §§ 6731–6738 (2001).

Covington County School District v. Magee, 29 So. 3d 1 (Miss. 2010).

Craig v. New Hanover County Board of Education, 678 S.E.2d 351 (N.C. 2009).

Delaware Code Annotated, 10 Del. C. § 4001 (2012).

Diaz, S. & Weems, R. (2010). Exempt or not exempt: Clarifying the confusion surrounding the relationship between the discretionary function exemption and the performance of statute exemption in the Mississippi Tort Claims Act, *Mississippi Law Journal Online*, 80, pp. 35–47. Retrieved from <http://mississippilawjournal.org/category/mississippi-law-journal/>

Dougherty, J. (2004). Torts and liability: An educator's short guide. *Phi Delta Kappa Fastbacks*, 527, 3.

Douglas v. Blackmon, 759 So. 2d 1217 (Miss. 2000).

Duncan v. Chamblee, 757 So. 2d 946 (Miss. 1999).

Dydell v. Taylor, 332 S.W.3d 848; (Mo. 2011).

Fetcher, A. S. (2003). Outdated, confusing, and unfair: A glimpse at sovereign immunity in Kentucky. *Brandeis Law Journal*, 41, 959–975.

Fossey, R., & Carman, N. (2009). *Craig v. New Hanover County Board of Education*: A blow to governmental immunity for North Carolina school districts. *Education Law Notes*, 44, 13.

Fossey, R., Melear, K.B., & Beckham, J. (2011). *Contemporary issues in higher education law*. Dayton, OH: Education Law Association.

Fraiser, J. (2007). Recent developments in Mississippi tort claims act law pertaining to notice of claim and exemptions to immunity issues: Substantial/strict compliance, discretionary acts, police protections, and dangerous conditions. *Mississippi Law Journal*, 76, 973–1006.

Fraiser, J. (1996). A review of issues presented by § 11-46-11 of the Mississippi Tort Claims Act: The notice of provisions and statute limitations. *Mississippi Law Journal*, 65, 643–733.

- Galveston v. Posnainsky*, 62 Tex. 118 (Tex. 1884).
- Garner, B. A. (Ed.) (2004). *Black's Law Dictionary*. St. Paul, MN: West.
- Haney v. City of Lexington*, 386 S.W.2d 738 (Ky. 1964).
- Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130 (Fla. 1957).
- Harris v. Robinson*, 273 F.3d 927 (U.S. Ct. App. 2001).
- Hays v. Lafayette County School District*, 759 So. 2d 1144 (Miss. 1999).
- Hill, A. (2001). In defense of our law of sovereign immunity. *Boston College Law Review*, 42, 485–585.
- Holben, D., & Zirkel, P. (2011). Empirical trends in teacher tort liability for student fights. *Journal of Law and Education*, 40, 151–169.
- Hughes v. Christiana School District*, 950 A.2d 659 (Del. 2008).
- J. S. v. Lamar County School District*, 2011-CA-00260-COA (Miss. App. 2012).
- James v. City of Charlotte*, 112 S.E. 423 (N.C. 1922).
- Jones v. Mississippi Scholl for the Blind*, 758 So. 2d 428 (Miss. 2000).
- Keeton, W., Dobbs, D., Keeton, R., & Owen D. (1984). *Prosser and Keeton on torts* (5th ed.). St. Paul, MN: Thomson Reuters.
- L. W. v. McComb Separate Municipal School District*, 754 So. 2d 1136 (Miss. 1999).
- Lacefield, K. (2010). *A legal analysis of litigation against Oklahoma educators and school districts under the Oklahoma Governmental Tort Claims Act* (Unpublished doctoral dissertation). University of North Texas, Denton, Texas.
- Lang v. Bay St. Louis/Waveland School District*, 764 So. 2d 1234 (Miss. 1999).
- Lennon v. Petersen*, 624 So. 2d 171 (Ala.1993)
- Louisville v. Hehemann*, 171 S.W. 165 (Ky. Ct. App. 1914).
- Maher P., Price K., & Zirkel, P. (2010). Governmental and official immunity for school districts and their employees: Alive and well? *Kansas Journal of Law and Public Policy*, 19, 234–251.

McGaughy v. Memphis, 823 S.W.2d 209 (Tenn. Ct. App. 1991).

Minneapolis Community & Technical College (1999). *Informational literacy tutorial*. Retrieved March 19, 2013 from <http://camellia.shc.edu/literacy/index.html>

Mississippi Code of 1972 Annotated, § 11-46-1, 3 & § 37-9-69 (2012), 5, 7, 9, 11 & 15 (2011).

Molitor v. Kaneland Community Unit District, No. 302, 163 N.E.2d 89 (Ill. 1959).

Mower v. Inhabitants of Leicester, Mass. 247 (Mass. 1812).

Myers v. Doe, 52 S.W.3d 391 (Tex. Ct. App. 2001).

Nichols v. United States, 74 U.S. 122, (1868).

North Carolina General Statutes, § 115C-42 (2012).

Nowak, J., & Rotunda, R. (2007). *Principles of constitutional law* (4th ed.). St. Paul, MN: Thomson Reuters.

Oklahoma City v. Taylor 76 470 P.2d 325 (OK 1970).

Overstreet v. George County School District, 741 So. 2d 965 (Miss. App. 1999).

Pearl Public School District v. Groner, 784 So. 2d 911 (Miss. 2001).

Pigford v. Jackson Public School District, 910 So. 2d 575 (Miss. App. 2005).

Presley v. Mississippi State Highway Commission, 608 So. 2d 1288 (Miss. 1992).

Prince v. Louisville Municipal School District, 741 So. 2d 207 (Miss. 1999).

Pruett v. City of Rosedale, 421 So. 2d 1046 (Miss. 1982).

Q. A. v. Pearl Public School District, 87 So. 3d 1073 (Miss. App. 2011).

Quinn v. Mississippi State University, 720 So. 2d 843 (Miss. 1998).

Reaves v. Randall, 97-CA-00982-ST (Miss. 1999).

Richardson v. Rankin County School District, 540 So. 2d 5 (Miss. 1989).

- Smith County School District v. McNeil*, 743 So. 2d 376 (Miss. 1999).
- Strait v. Pat Harrison Waterway District*, 523 So. 2d 36 (Miss. 1988), overruled by *Churchill v. Pearl River Development District*, 619 So. 2d 900 (Miss. 1993).
- South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252 (Miss. 2006).
- Tennessee Code Annotated, § 29-20-310 & 29-20-403(2)B4 (2012).
- Texas Education Code, § 22.0511 (2012).
- University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815 (Miss. 2006).
- U.S. Const., Amend. XI.
- Vanderpool v. State of Oklahoma*, 672 P.2d 1153, (Okla. 1983).
- Walker, R. (2001). Mississippi Tort Claims Act: Is discretionary immunity useless? *Mississippi Law Journal*, 71, 695–710.
- Walsh, J., Kemerer, F., & Maniotis, L. (2005). *The educator's guide to Texas school law* (6th ed.). Austin, TX: University of Texas Press.
- Zirkel, P. (2003). The Coverdell Teacher Protection Act: Immunization or illusion? *West's Education Law Reporter*, 179, 547-558.
- Zirkel, P. A., & Barnes, M. B. (2011). Negligence liability of K–12 chemistry teachers: The need for legal balance and responsible action. *Journal of Chemical Education*, 88(8), 1057–1061.