A COMPILATION OF THE LEGAL DUTIES AND LIABILITIES OF THE
TEXAS ATHLETIC COACH FOR SCHOOL INJURIES

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A COMPILATION OF THE LEGAL DUTIES AND LIABILITIES OF THE
TEXAS ATHLETIC COACH FOR SCHOOL INJURIES

THESIS

Presented to the Graduate Council of the North
Texas State College in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

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Aubrey, Texas

January, 1950
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CHAPTER I

INTRODUCTION

Background of the Study

Many of the early studies in the field of school law, such as those made by Burke, Smith, and Voorhees, were of school law in general. Although these writers reported the common law rule of the immunity of school districts from legal responsibility for negligence which results in personal injury, they did not deal specifically with the field of tort, which is that field of law that protects the right of personal security. It was not until 1926 that tort liability of our schools was studied specifically by Carmichael. His study was followed by Prince's study of tort liability of schools in Nebraska, and Edmondson similar study for Michigan.

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1Findley Burke, A Treatise on the Law of Public Schools.
2Lyndon A. Smith, Recent School Law Decisions.
4Robert V. Carmichael, Judicial Decisions Relating to Legal Liability of School Boards in the U. S.
6J. B. Edmondson, Legal and Constitutional Basis of a State School System.
In 1927 Trusler brought out a very complete text on school law,\(^7\) and in the same year Woellner published an article on school accidents.\(^8\) Two years later Edwards made a very fine report on tort liability of school districts in which he recommended that the common law rule of immunity be abrogated.\(^9\) Bowman made a study the next year limited to school pupils, emphasising injury as a result of corporeal punishment.\(^10\) Welzin followed by making a thorough study of the field of tort,\(^11\) and revised this study the following year.\(^12\) Hollenback agreed with Edwards that the common law rule of immunity be changed,\(^13\) and Hodgson gave statistics showing an increase in school litigation in the decade 1921–1931.\(^14\)

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10Mary Belle Bowman, *Placing of the Responsibility for the Injury of Children at School*.

11J. Fredrick Welzin, *The Legal Authority of the American Public School*.

12J. F. Welzin, *The Legal Authority of the American Public School as Developed by a Study of the Liabilities to Damages*.

13Warren Hollenback, *Tort Liability of School Districts as Shown by Court Decisions*.

14Daniel R. Hodgson, "What Price Litigation?" *School and Society*, XXXVI (October, 1932), 571.
Edwards wrote his excellent book on school law in 1933,\textsuperscript{15} and in 1940 Rosenfield brought out his manual of school law,\textsuperscript{16} probably the most complete report on liability for school accidents available today.

Statement of the Problem

The problem of this study is to compile the legal duties and liabilities of the Texas athletic coach for school injuries.

Definition of Terms

The term \textit{legal duties} means those services the coach must do in addition to the terms of his contract with the school that employs him. The term \textit{liabilities} means those legal responsibilities assumed by the coach as a consequence of his employment in the public schools of Texas, and for which he must answer in court if he fails in their performance. The term \textit{Texas athletic coach} as used in this study will be synonymous with the term \textit{teacher}, as defined in the case of \textit{Prendergast v. Masterson},\textsuperscript{17} and means any citizen of the United States holding a valid and bonifide contract of employment for instruction in the public schools of Texas.

\begin{flushright}
\textsuperscript{15}Newton Edwards, \textit{The Courts and the Public Schools}.
\textsuperscript{16}Harry N. Rosenfield, \textit{Liability for School Accidents}.
\end{flushright}
The term *school injuries* means any injury, either of accidental or willful nature, occurring to any individual while on school property, or while under the sponsorship or care of any teacher of the public school system of Texas. *Public School* shall in this study refer to the first twelve grades of our public, tax-supported schools in the state of Texas.

**Purposes of the Study**

The purpose of this study is to compile a concise and non-technical report of the Texas statutes and court decisions concerning school injuries. This study also strives to inform Texas athletic coaches of their duties and liabilities under present laws of Texas, so that they might realize their responsibilities for the prevention and care of school injuries. A worthwhile contribution will be made by this study if aid is given to school officials in the building of better school programs and school plants through their knowledge of school injuries.

**Limitations of the Study**

This study will be limited to those legal duties and liabilities of the Texas athletic coach for injuries to persons on public school property or under the sponsorship or care of public school officials. The athletic coach will be considered as a school teacher. The study will be limited
to the State of Texas, and to the laws of Texas that apply at the present time.

Sources of Data

The sources of data for this study are both documentary and human. The documentary sources are: The Constitution of the State of Texas, Bulletins and directives of the State Department of Education, State of Texas, Opinions of the Attorney General of Texas, Acts of the Texas Legislature, the Texas Digest, Texas Reports, Southwestern Reporter, and books and current periodicals concerned with school law.

The human sources are: experts in the field of school law, and personal experiences of the author.

Procedures Used in the Study

The study was organized in the following manner: The methods of modern legal research were ascertained from such authorities as Hicks\(^\text{18}\) and Cooley.\(^\text{19}\) Experts in Texas school law, such as McAlister\(^\text{20}\) were consulted to determine the direction of the study. A survey of previous studies was made to determine the background of the study. From the Words and Phrases Index of the Texas Digest significant

\(^{18}\)Fredrick C. Hicks, Materials and Methods of Legal Research.

\(^{19}\)Roger W. Cooley, Brief Making and the Use of Law Books.

\(^{20}\)Samuel B. McAlister, Professor of Government, North Texas State College, Denton, Texas. Personal interview.
words were selected and the Digest Key numbers were found for these words. When these key numbers were consulted with reference to school injuries, court decisions from many cases of school injury litigation were found. Although not all cases of school injury litigation were investigated, a sufficient number were found available to establish the common law trends in Texas. Other books and periodicals were examined for case studies and other primary data.

The data is treated in report form and non-legal language was used throughout the study. The study is divided into four parts. Chapter I presents the introduction, which gives the background of the study, the statement of the problem, the definition of terms, the purposes of the study, the limitations of the study, the sources of data, and the procedures that are used in the study. Chapter II reports all the statutes of the state of Texas, as well as Texas State Department of Education rulings and opinions of the Attorney General of Texas that concern the problem. Chapter III states the common law rules that determine the coach's liabilities for school injuries. Chapter IV summarizes the data, draws conclusions, and makes some recommendations for further studies of school injuries.
CHAPTER II

STATUTES OF THE STATE OF TEXAS AFFECTING THE DUTIES AND LIABILITY OF THE TEXAS ATHLETIC COACH FOR SCHOOL INJURIES

Introduction

There are two primary sources of law. Court decisions, or common law, constitutes the first source and statutory, or written law, constitutes the second and final source of law. Where the Constitution of Texas, and Acts of the Texas Legislatures apply, their laws are the dominant factors in the settlement of cases concerning school litigation within this state. When cases arise that cannot be judged by the statutes and rulings cited above, these cases must be decided by the common law as derived from court decisions.

Statutory law takes precedence over common law, subject to judicial interpretation.¹ When the legislative body of the state does not approve the interpretation of the court, it may amend or enact new statutes to make its intention clearer to the court. The court then interprets this new legislation, and this process continues until

¹F. C. Hicks, Materials and Methods of Legal Research, pp. 65-66.
the interpretation becomes sufficiently satisfactory to the legislature that it accepts the court's interpretation, or until the constitution is changed so that the people are satisfied with the legislation.

In this chapter, only written legislation at present in force in Texas will be compiled, and only that legislation which affects the athletic coach's duties and liabilities to the public school which employs him. In the absence of statutes, common law will be the chief factor in the ruling on the case by the courts, and this phase of law will be taken up in the following chapter.

Constitutional Provisions

The only provision of the Texas Constitution which concerns the athletic coach directly is the Teacher Retirement System Amendment,\(^2\) which will not be treated in this study, since it does not pertain to school injuries. However, the Texas Constitution clearly provides for the establishment of the public free schools as an agency of the state government, and authorizes the Legislature to make laws concerning it.\(^3\) As a governmental agency, the public schools have all the rights and responsibilities of other Texas governmental agencies, as shown by the laws of Texas.

\(^2\)Texas State Constitution, Article III, Section 48a.
\(^3\)Ibid., Article VII, Section 1.
Acts of the Texas Legislatures

Acts to determine eligibility to teach--The following Acts have been enacted to determine the eligibility of those who wish to teach in the public schools of Texas:

Article 2880. Applicant's Requisites.--No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the county superintendent that he is a person of good moral character, that he will support and defend the Constitution of the United States and the State of Texas, and has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and in giving instruction in all subjects prescribed for the class of certificates for which he applies. The county superintendent, unless he knows the facts personally, shall require satisfactory proof of the applicant as herein required before issuing his recommendation to the county board of examiners. No certificate shall be granted to a person under eighteen (18) years of age.4

Article 2675b, Sec. 8. Certification of Teachers. The State Board of Education, created by this Act, shall prescribe rules and regulations for the certification of teachers and for the system of examining applicants for teachers' certificates and otherwise granting certificates for teaching in the public schools of this State in accordance with the laws of this State.5

Article 2880a. Aliens: Prohibition.--No teacher's certificate shall be issued to an alien authorizing him or her to teach in the elementary or secondary public free schools unless evidence is produced showing his intention to become a citizen of the United States. . . .6

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4Acts 1935, 44th Legislature of Texas, Chapter 330, Section 1, p. 759.
5Acts 1929, 41st Legislature of Texas, 2nd C. S., Chapter 10, Section 8, p. 14.
6Acts 1929, 41st Legislature of Texas, R. S., Chapter 38, Section 1, p. 72.
Article 2882. Record of Certificates.—Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempted under the terms of this law.

Acts to validate contracts.—The following Acts have been enacted to validate the contracts of those teaching in the public schools of Texas:

Article 2693. General Duties.—The county superintendent shall examine all the contracts between the trustees and teachers of his county; and if, in his judgment, such contracts are proper, he shall approve the same. . .

Article 2781. Teachers' Contracts.—The board of trustees of any city or town or any independent school district may employ a superintendent principal, teacher, or other executive officers in the schools therein for a term of not to exceed three years, provided that the board of trustees of an independent

7 Acts 1920, 36th Legislature of Texas, 3rd C. S., Chapter 61, Section 123, p. 113.

school district which had a scholastic population of 5,000 or more in the last preceding scholastic year may employ a superintendent, principal, teacher, or other executive officers in the school therein for a term not to exceed five years. All twelve-month contracts made by trustees of independent school districts with employees herein mentioned shall begin on July first and end on June 30th of the year terminating the contract.\(^9\)

**Article 2750. Contracts with Teachers.**—Trustees of a district shall make contracts with teachers to teach in the public schools of their district, but the compensation to a teacher, under a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract. . . .\(^10\)

**Article 2750a. Contracts with principals, superintendents, and teachers.**—Term approved by the county superintendent.—That trustees of any Common School District or Consolidated Common School District shall have authority to make contracts for a period of time not in excess of two (2) years with principals, superintendents, and teachers of said Common School Districts or Consolidated School Districts, by the county superintendent. . . .\(^11\)

**Acts to define duties.**—The following Acts have been enacted to define duties which must be performed by those teaching in the public schools of Texas:

**Article 2908a, Sec. 1. Oath of Allegiance.**—That on and after the date this Act becomes effective, no

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\(^9\) Acts 1920, 41st Legislature of Texas, 5th C. S., Chapter 8, Section 1, p. 123.

\(^10\) Acts 1905, 29th Legislature of Texas, R. S., Chapter 124, Section 72, p. 281. For interpretation, Thomas v. Taylor, 123 S. W. 129 (1905).

\(^11\) Acts 1941, 47th Legislature of Texas, S. B. 126.
public funds may be paid to any person as a teacher, instructor, visiting instructor, or other employee in, for or connected with any tax-supported institution, school, college, university or other tax-supported institution of learning in this State, unless and until such person shall have taken the oath of office required to be taken by members of the Legislature and all other officers, as provided in Article XVI, Section 1, as amended by amendment adopted November 8, 1939.12

Article 2912. Registers and Reports.--Teachers shall keep daily registers in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the State Superintendent. Said registers shall be open to the inspection of all parents, school officers, and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the State Superintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the State Superintendent, and, until such term reports are made the trustees shall not approve vouchers for last month's salaries, nor shall the county treasurer pay the same.13

Article 2913. Shall Attend Summer Schools.--As far as possible all teachers in the public schools of this State shall attend the summer normal and county institutes.14

Article 2691. Teachers' Institutes.--The county superintendent, or ex officio county superintendent, in each county may call the white teachers of the county together for one or more meetings, not exceeding three such meetings in any one school year, the number to be determined by the county board and the county superintendent, such meetings to be held on Saturday for one or more hours, not to exceed three on any one day, as the program arranged may demand. Similar meetings may be held by the county superintendent for the colored teachers

12Acts 1941, 47th Legislature of Texas, R. S., S. B. 38.
13Acts 1905, 29th Legislature of Texas, R. S., Chapter 124, p. 263.
14Ibid., p. 263.
of the county, should there be any. The county superin-
tendent may require the attendance of the white teachers
upon the meetings for white teachers, and the attendance
of colored teachers upon the meetings for colored teachers,
and teachers shall not receive pay for such attendance.
The board of trustees of any independent district having
five hundred (500) or more scholastic population may
authorize the superintendent of schools in such district
to hold meetings of the teachers of the district in lieu
of the county meetings. Provided further, that the
superintendent must call any such meetings to be held at
a time when the schools of the county are all in session. 15

Article 4477. Sanitary Code, Rule 16.--It is the
duty of the teacher in the public school system of Texas
to exclude persons actually suffering from tonsillitis,
scabies (itch), impetigo contagiosa and favus. 16

Article 4477. Sanitary Code, Rule 26.--The teacher
must exclude persons suffering from trachoma, granulated
lids, or contagious catarrh unless they have a certifi-
from a doctor expressly exempting them. 17

Article 4477. Sanitary Code, Rule 10.--No teacher
shall permit a person with a contagious disease to remain
in school. 18

Article 2876b. Rules by Superintendent.--No
teacher or employee of the school engaged in the distri-
bution of text books under this law as the agent or
employee of the State, or of any county or district in the
State shall, in connection with this distribution sell
or distribute, or in any way handle, any kind of school
furniture or supplies, such as desks, stoves, black-
boards, crayon, erasers, pins, pens, ink, pencils,
tables, etc. 19

15Acts 1933, 43rd Legislature of Texas, Chapter 41,
p. 72.
16Vernon's Texas Statutes, 1948 edition, Article 4477,
p. 1281.
17Ibid., p. 1281. 18Ibid., p. 1281.
19Acts, 1945, 49th Legislature of Texas, R. S., H. B.
545.
Article 2884. Cancellation of Certificates.--Any certificate may be cancelled for cause by the authority issuing it; and the State Superintendent shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the State or is a person unworthy to instruct the youth of this State. If any teacher holding a certificate to teach in the public schools of this State shall enter into a written contract with any board of trustees to teach in any public school of this State and shall, after making said contract, and without the consent of the trustees, abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be cancelled upon the complaint of said trustees, or either of them. Before any certificate shall be cancelled, the holder thereof shall be notified, and shall have an opportunity to be heard, and shall have the right of appeal from such decision to the State Superintendent, and the State Board; provided, that when the State Superintendent shall have cancelled the certificate, the appeal shall be to the State Board. The State Superintendent shall have the authority upon satisfactory evidence being presented, to reinstate any teacher's certificate cancelled under the provisions of this article, and upon a refusal of the Superintendent to so reinstate such certificate, the applicant shall have the right of appeal to the State Board.\footnote{\textit{Acts}, 1917, 35th Legislature of Texas, R. S. Chapter 157, p. 366.}

Article 2876a. Teachers to Report.--Teachers and school officers must make such reports as to the use, care and condition of free text books as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employe who neglects to make such report at the proper time may be withheld until each report be received in a condition satisfactory in form and content.\footnote{\textit{Acts} 1945, 49th Legislature of Texas, R. S., H. B. 545.}

Article 5767. Exemption from Military Service.—All teachers engaged in public institutions and public schools are exempt from military duty except in case of war, insurrection, invasion, or imminent danger thereof.23

Article 2896. Parole of Pupil.—Any child within the compulsory school attendance ages who shall be insubordinate, disorderly, vicious or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves therein so as to render himself an incorrigible, shall be reported to the attendance officer, who shall proceed against such child in the juvenile court. . . . 24

Article 288, P. C. Shall use English Language.—Each teacher employed in the public free schools of this State shall use the English language exclusively in the conduct of the work of the schools and recitations and exercises of the school shall be conducted in the English language and any such teacher having responsibility in the conduct of the work of such schools who fails to comply with the provisions of this Article shall be fined not less than twenty-five dollars ($25.00) nor more than one-hundred dollars ($100.00), cancellation of certificate or removal from office, or both fine and such cancellation or fine and removal from office.25

Article 289, P. C. Shall Teach Patriotism.—The daily program of every public school shall be so formulated by the teacher, principal or superintendent as to include at least ten minutes for the teachings of intelligent patriotism, including the needs of the State and Federal governments, the duty of the citizen to the State, and the obligation of the State to the citizen. Any official or employee of the public free schools who fails to perform his legal duty in connection with the


24Acts 1931, 42nd Legislature of Texas, C. S., Chapter 221, p. 66.

25Acts 1933, 43rd Legislature of Texas, R. C., Chapter 125, p. 325.
provisions of this law shall be subject to a fine of not more than five-hundred dollars or removal from office, or both fine and removal from office.  

Article 290, P. C. To Teach Texas History.--The history of Texas shall be taught in all public schools in and only in the history course of all such schools. The said course shall not be less than two hours in any one week. The State Superintendent of Public Instruction shall notify the different county and city superintendents as to how said course shall be divided, and any city or county superintendent who fails or refuses to follow out the provisions of this Article shall be fined not less than twenty-five dollars nor more than two-hundred dollars.  

Article 293b P. C. Rebate on Textbooks.--No trustee or teacher shall ever receive any commission or rebate on any books used in the schools with which he is concerned as such trustee or teacher and if any such trustee or teacher shall receive or accept any such commission or rebate he shall be guilty of a misdemeanor and upon conviction he shall be fined not less than fifty dollars and not more than one-hundred dollars.  

Article 292, P. C. Traffic in Examination Questions.--Any . . .teacher who shall accept or otherwise obtain possession of such examination questions, or the answers thereto, prior to any such examination; or whoever shall use the same fraudulently at the time of said examination, or thereafter, or who shall permit or aid in the substitution of examination papers fraudulently prepared to be substituted for examination prepared during the examination; or who accepts remuneration for aiding others to obtain certificates, except as provided for by law, shall be fined not less than one-hundred dollars and not more than five-hundred dollars and imprisoned in jail for not less than twenty nor more than sixty days.  

26 Acts 1918, 35th Legislature, C. S., Chapter 38, p. 67.  
27 Acts 1917, 35th Legislature, R. S., Chapter 112, p. 302.  
29 Acts 1920, 36th Legislature, 3rd C. S., Chapter 61, Section 124a, p. 114.
Special Act.--The following Acts have been enacted by the Legislature of Texas, and are included in the study to make the compilation more complete, as well as to show the intent of the Legislature to reserve the right of immunity to tort.

Article 2185. A special statute creating certain school districts and endowing them with the customary power to "sue-and-be-sued," and specifically providing statutory immunity from suit in tort.30

Article 2749. Control of Schools.--Trustees shall have the power to employ and dismiss teachers; but in case of dismissal, teachers shall have the right of appeal to the county and State superintendents.31

Some rulings of the State Department of Education.--Rulings made by the Attorney General of Texas, the State Superintendent and the State Board of Education of Texas, and the State Department of Education of Texas yield to provisions of the Constitution of Texas, to the Statutes of Texas, and to decisions of the courts of Texas, where there is any conflict.32 All rulings are subject to judicial interpretation, and are used as a means of eliminating litigation over school problems.

The State Department of Education has ruled that any teacher's certificate may be cancelled for the following causes:

31Acts 1905, 29th Legislature, R. S., Chapter 124, Sections 70-71, p. 281.
1. Immoral conduct with pupils.
2. Dishonesty in the use and care of school funds.
3. Assisting minors in immoral matters.
4. Padding or helping to pad census rolls.
5. A conviction for rape.
6. Drinking to excess.
7. Gross negligence of duty.
8. Abandoning contract without permission and cause.
9. Payment of a fine for assault by corporeal punishment.

Summary.—This chapter has compiled for the Texas athletic coach all the provisions of the Texas Constitution and Texas Legislative Acts that affect his status as a teacher in the public schools of Texas. Four laws which are prerequisite to becoming an employee were shown. Four laws affecting his contractual status were given. Eighteen laws describing his duties and liabilities as a teacher were listed. A special law was given in which the intention of the Legislature to reserve the immunity of school districts to tort soundings through precedent in common law decisions was implied. Some special rulings of the State Department of Education were noted.

From the study of this chapter, it is readily observed that the Texas Constitution and the Texas Legislature have not made any laws up to the present time which specifically provide for litigation concerning school injuries. In the absence of statute laws as guiding precepts, the position of
the Texas athletic coach with regard to his duties and liabilities for school injuries must be determined from court decisions of the various courts of the United States. This will be the subject matter of the following chapter.
CHAPTER III

COURT DECISIONS AFFECTING THE DUTIES AND LIABILITIES OF THE TEXAS ATHLETIC COACH FOR SCHOOL INJURIES

Introduction

The preceding chapter has shown that Texas has not provided constitutional or legislative enactments to control litigation of its schools concerning school injuries. Therefore, any tort involving school injuries which results in a law suit will be decided by Texas courts from doctrines and court decisions derived from the common law. This chapter will establish the school district's relationship to school injuries in the common law, the athletic coach's status to the school which employs him, the athletic coach's personal liability for school injuries, the legal remedies of the athletic coach when faced with litigation, and will conclude with a brief summary of the main points of the chapter.

Common Law

Common law is the law found in court decisions which are not based on a specific statute. Certain doctrines have been derived from these decisions and are generally accepted by Texas courts in order to make the law more understandable.

The first of these is the doctrine that the language of a judicial decision must be based on the facts and the question
actually under consideration in each particular case. The second doctrine generally accepted is that when a cause of action is finally determined by a court, without appeal, it cannot again be brought before that court or any other court. Another doctrine is known as The Law of the Case. Through this doctrine, when a point of law has been decided by the highest possible court, this point of law becomes binding on all lower courts. A final doctrine, that of Stare Decisis, is not binding on Texas courts, but is persuasive in that the courts may follow the interpretation of other courts outside Texas. This accounts for the fact that the common law concerning a school district's liability for school injuries differs in interpretation among the states of the United States. In Texas, the basis for common law decisions is the English Common Law, and Texas courts accept the above doctrines as binding, except the doctrine of Stare Decisis, which is followed if the courts consider it applicable.

Cases before Texas courts are guided by common law when the facts surrounding them are similar to cases previously decided, or the law involved has been pointed out in a similar case previously decided. If legislation covers the subject, it may modify or overrule the common law.

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1Black's Law Dictionary (1933), p. 1651. "Stare Decisis--To stand by decided cases; to uphold precedents, to maintain former adjudications."
Immunity of School Districts

It is fairly well known that Texas school districts are not liable for torts or wrongs committed by their school boards, school officials, teachers and employees. This common law principle is usually justified by the courts on the theory that the State is sovereign, and "can do no wrong." The Montana court has outlined other theories justifying this principle of law as follows:

Even the school board itself cannot render the district liable in tort, for when it commits a wrong or tort, it does not in that respect represent the district. Various reasons are assigned why a school district should not be liable in tort. Some authorities place it on the ground that the relation of master and servant does not exist; others take the ground that the law provides no funds to meet such claims. Still other authorities hold that school districts in performing the duties required of them exercise merely a public function and agency for the public good, for which they receive no private or corporate benefit. Many authorities do not base their holding on any single ground, but rely on two or more of them at the same time.²

The Ohio court has given later theories.³ The courts of Wisconsin,⁴ Pennsylvania,⁵ and Texas⁶ stated the rule in similar language. The Texas Attorney General has ruled

²Perkins v. Trask, 95 Mont. 1, 5, 23 Pac. (2d) 982 (1933).
³Board of Education of Cincinnati v. Volk, 72 Ohio St. 469, 74 N. E. 646, (1905).
⁴Folk v. City of Milwaukee, 108 Wis. 359, 364, 84 N. W. 420 (1900).
that "without a statute specifically excusing the common law principle of immunity, payment to parents by a school board for injuries are illegal." The Texas courts have upheld this ruling and have definitely shown their intention to be governed by the common law principle of immunity in several cases. Rosenfield says,

\begin{quote}
The prevailing principle of law in the United States is that a school district or a school board is not, in the absence of a statute, subject to liability for injuries suffered by pupils or others during and in their attendance upon school.\end{quote}

The school districts of Texas have been well-established as governmental agencies through the Constitution of Texas, and through court decisions. Thus all court decisions which apply to municipal corporations also apply to the school district. The school district may be required to answer for its torts if it acts as a private or proprietary

\begin{itemize}
\item \textsuperscript{7}Letter Opinions, Attorney General of Texas, Vol. 327, (October 28, 1931), p. 666.
\item \textsuperscript{9}Harry N. Rosenfield, Liability for School Accidents, p. 17.
\item \textsuperscript{10}Texas State Constitution, Article VII, Section 1.
\item \textsuperscript{12}Law of Municipal Corporations, second edition revised, 6 McQuillin 2796 (1937).
\end{itemize}
body and not as a governmental body. It may also have to answer for wrongs committed within a contract, but these are not torts.

Only two states have enacted statutes which limit this common law principle of immunity to a great extent, although several have adopted "safe-place," "save-harmless," or "sue-and-be-sued" laws. England, birthplace of this legal principle of immunity, has now abandoned it. The trend of common law in United States is now toward allowing some liability for school injuries to school districts and boards for the negligent performance of their functions, but Texas


Thomas M. Cooley, A Treatise on the Law of Torts, p. 3.

California School Code, Section 2.801-2.804. New York Education Law 881-a, 868 (11), and 882.

These laws make governmental agencies liable for the construction, repair, and maintenance of public schools so as to render them safe for people using them for a lawful purpose.

This law allows schools to indemnify teachers against financial loss arising from judgments against them when accidents occur in the performance of their duties.


courts have continued to place a strict interpretation of the school districts' immunity to liability for school injuries.

Legal Position of the Athletic Coach

The athletic coach, or teacher, occupies a special role in legal matters. He is not a servant under the doctrine of respondent superior, which means, literally, let the employer answer for the wrongs of the employee.\(^1\) He is not protected by the school district from damage suits which arise out of his wrongful acts.\(^2\) He is always liable for his own negligence, but the school district is not liable for this same negligence, even when it is present in the discharge of the regular duties assigned him by the school. Texas courts do not place any special immunity on the teacher merely by virtue of his being employed by an agency of the government that enjoys such immunity.\(^3\) In a recent case, the Supreme Court of the United States ruled:


The Government does not become the conduit of its immunity in suits against its agents or its instrumentalities merely because they do its work.\textsuperscript{22} Thus the Texas athletic coach must answer in court for his negligence in connection with school injuries.

Negligence of the Athletic Coach

Negligence consists in the failure to act as a reasonably prudent and careful person would under the circumstances involved. Since the athletic coach is concerned with a great number of school injuries in the course of his duty, and because he must answer in court if need be for his negligence, it is vital that he be aware of what the law expects a reasonably prudent and careful person to do under various circumstances.

The Texas athletic coach must first be aware of the extent of his duty. As a teacher, his duty will not be as concerned with general supervision as will the duty of the principal or superintendent.\textsuperscript{23} As a playground supervisor, it will be his duty to make rules and regulations for the use of the playground facilities and equipment, and failure to do so may be ruled neglect of duty.\textsuperscript{24} The coach must not

\textsuperscript{22}Keifer & Keifer v. Reconstruction Finance Corporation, supra. n. 18.


\textsuperscript{24}Taylor v. Oakland Scavenger Co., 75 Pac. (2d) 106 (1938), reversed 12 Cal. (2d) 310, 83 Pac. (2d) 948 (1938).
be negligent in his supervision of the playground either.\textsuperscript{25} He must inspect the equipment and report any defective and dangerous apparatus to his superiors.\textsuperscript{26} Where situations of possible danger exist, he must anticipate misfortune more readily.\textsuperscript{27} Where a reasonably prudent and careful person would anticipate danger or an accident--not the specific accident, but some accident under the specific circumstances--it is negligent to permit those circumstances to continue to exist without remedial action.\textsuperscript{28}

The question might be asked, "Would a reasonably prudent and careful person who is not an employee or teacher in the public schools of Texas be expected to act in the same manner as a teacher?" Texas court decisions reveal that higher standards of care and prudence may be required of teachers because of their daily contact with children,\textsuperscript{29} and because the teacher acts \textit{in loco parentis}, in the place of


\textsuperscript{28}Drum v. Miller, 135 N. C. 204, 47 S. E. 421 (1904).

the parent of the student.\textsuperscript{30} The usual standard for the
determination of reasonable prudence and care under given
circumstances is whether or not children usually would act
in a certain way under certain circumstances,\textsuperscript{31} and the de-
gree the teacher is able to foresee their conduct.\textsuperscript{32} Of
course, this same reasoning applies to adults under the
supervision of the school employee.

However, where there is no duty, the teacher owes no
prudence and care to those who are injured.\textsuperscript{33} A child hurt
on school apparatus during the summer vacation cannot re-
cover on the grounds that the playground supervisor should
have been on duty, if no such supervisor was employed.\textsuperscript{34}
Neither is the coach liable where injuries occur on a sloping
playground,\textsuperscript{35} during a game of "Black Man" on the school play-
ground,\textsuperscript{36} or from slipping on an icy schoolyard.\textsuperscript{37}

\textsuperscript{30} Stevens v. Fassett, 27 Maine 266 (1847). State ex rel

\textsuperscript{31} Drum v. Miller, 135 N. C. 204, 47 S. E. 421 (1939).

\textsuperscript{32} Hoose v. Drumm, 281 N. Y. 54, 22 N. E. (2d) 233 (1939).
Wynn v. Gandy, 170 Va. 590, 197 S. E. 527 (1938).

\textsuperscript{33} Swenson v. Van Harpen, 230 Wis. 474, 283 N. W. 309 (1939).

\textsuperscript{34} Bailey v. School District #49 of King County, 185 Pac.
810, 108 Wash. 612 (1919).

\textsuperscript{35} Medsker et al. v. Etchison, 199 N. E. 429 (1936).

\textsuperscript{36} Ellis v. Burns Valley School District of Lake County,

\textsuperscript{37} Bigelow v. Inhabitants of Randolph, 80 Mass. 541 (1860).
Many school injuries are caused by conditions which the athletic coach cannot change, even though he has reported them.\textsuperscript{38} Where he is able to foresee danger and take steps to prevent an injury, he is held to take that action as a part of his normal duty, and if he fails to do so he is negligent.\textsuperscript{39} This is true even when he has issued instructions to immature children, forbidding certain acts.\textsuperscript{40} Thus telling a child not to play near an unguarded incinerator on the schoolyard will not absolve the teacher from negligence if the child’s clothing catches fire.\textsuperscript{41} Nor will telling a six-year-old girl not to play on a horizontal ladder seven feet high absolve the coach from negligence if she becomes tired, falls,


\textsuperscript{40}Holt v. School District #71 of King County, 173 Pac. 335, 102 Wash. 442 (1918).

\textsuperscript{41}Huff v. Compton City Grammar School District et al., 267 Pac. 918 (1928).
and is hurt. The coach cannot create an unsafe condition on a swing and not be negligent. In another case, the playground supervisor was negligent in directing a pupil to stand near a batter in a baseball game. The bat slipped from the batter's hand and injured the child's face. In such cases, the supervisor should take care to foresee that the batter may lose his grip on the bat.

Occasionally the athletic coach must drive a school bus on a school trip. When this event occurs, he must exercise the same reasonably prudence and care as would any bus driver of the school, and will be liable for his carelessness in the same manner. If he collides with another car while traveling at an excessive speed, or through careless driving, or fails to warn his passengers of possible

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42. Howard v. Tacoma School District #10, Pierce County, 152 Pac. 1004, 88 Wash. 167 (1915).


44. Kenney v. Antioch Live Oak School District et al., 63 Pac. (2d) 1143 (1936).


47. Smith v. Fall River Joint Union High School District et al., 5 Pac. (2d) 930, 118 Cal. App. 673 (1931).

dangers, he may be called upon to answer in court. Of course it does not matter if the bus driver is negligent or not as far as the school district is concerned, since in most states the school districts are immune to liability for school bus accidents. The bus driver also must inspect the bus he drives for possible defects that may cause injuries and should take steps to remedy any defects found, even though he is not the regular driver of the bus.

In most schools of Texas the athletic coach is the teacher who teaches activities in the gymnasium, and it is in the gymnasium that many school accidents occur. In exercising prudence and care with such activities, the coach should know what activities are suitable, especially in the

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case of girls' activities. One coach was held negligent for failure to lock the gym doors at the end of the school day, when a small boy entered by himself, climbed up a portable basketball backstop, and was injured when it fell with him. Even refereeing games is subject to future judgment by a court, since it has been ruled that more strict refereeing is necessary in competitive sports than in non-competitive activities. One case required the jury to determine if the instructor knew the proper way to teach a "flip" and where he should stand to properly supervise the activity, and in another case the jury had to decide on whether the teacher was using the degree of supervision necessary for the activity.

Not all accidents that occur in the gymnasium are due to negligence, nor must all gymnasium activities be closely supervised. For example, locker room supervision is not

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55 Kerby v. Elk Grove Union High School District et al., 36 Pac. (2d) 431 (1934).


required by law,\textsuperscript{58} and in some activities the pupil assumes the normal risk involved in that activity.\textsuperscript{59} Some dangerous conditions cannot be changed, such as a gym mat slipping\textsuperscript{60} or a radiator protruding in such a manner as to constitute a hazard.\textsuperscript{61} In all cases, it remains for the jury to decide if the teacher has used reasonable care and prudence in the exercise of his duties.\textsuperscript{62}

Football, basketball, and other contact sports cause many of the injuries reported by schools, although many of the accidents do not result in litigation. In football especially does the athletic coach have to exercise care. Even though football players normally assume the risk of the game,\textsuperscript{63} the coach must be responsible for any risk involved in the use of unsafe equipment,\textsuperscript{64} or dangerous practice field.


\textsuperscript{59}Kanofsky v. Brooklyn Jewish Center, 265 N. Y. 634 193 N. E. 420 (1934).


\textsuperscript{61}Spencer v. School District #1, 254 Pac. 357, 121 Oreg. 511 (1927).


\textsuperscript{63}Wells v. Minnesota Baseball and Athletic Association, 122 Minn. 327, 142 N. W. 706 (1913). Ingerson v. Shattuck School, 185 Minn. 16, 239 N. W. 687 (1931).

\textsuperscript{64}Mitchell v. Hartman et al., 297 Pac. 77, 112 Cal. App. 370 (1931).
One coach was declared negligent when a player lost an eye when unslaked lime got into it from the playing field.\textsuperscript{65} The practice of having a player bring written consent of his parents for his participation in sports does not lessen the liability of the coach for his care. If the coach knowingly sends an injured player back into a game, he is clearly negligent, and if he does not know of the injury, he is negligent for his ignorance of it.\textsuperscript{66} If a student manager selected by the coach is guilty of negligence and causes an injury, the coach is guilty also for selecting the assistant.\textsuperscript{67} If the coach specifically orders an act to be performed, a person may well not assume the risk for obeying such instructions.\textsuperscript{68}

The athletic coach does not have the responsibility for providing safe bleachers, as this duty rests upon the school board. However, even if it fails to fulfill this obligation, the school board is not liable.\textsuperscript{69}

\begin{itemize}
\item \textsuperscript{65}Mokovich v. Independent School District, 177 Minn. 446, 225 N. W. 292 (1929).
\item \textsuperscript{66}Morris v. Union High School District A. of King County, 294 Pac. 998 (1931).
\item \textsuperscript{67}McClay v. Huntington Park High School District of Los Angeles et al., 33 Pac. (2d) 882 (1934).
\item \textsuperscript{68}Gardner v. State of New York, supra. n. 53. Marion County v. Cantrell, 166 Tenn. 358, 61 S. W. (2d) 477 (1933).
\end{itemize}
board is not liable for accidents happening in the stands, even though those watching from the stands paid a fee to sit there.\textsuperscript{70} In general, although the coach's negligence in failing adequately to protect his charges should make him liable, the school district has no liability except where statutes create such liability.\textsuperscript{71}

In the classroom the same reasonable prudence and care should be exercised by the teacher. This care should include the keeping of records of instruction in shop techniques, and should require the strict supervision of chemicals, since in these areas occur the majority of classroom accidents. The teacher, by keeping records of his instruction on the various machines in the shop and the various chemicals being handled in the classroom, may be able to show that he was not negligent in his teaching.\textsuperscript{72}

First aid should be learned by every athletic coach, since one court has ruled a teacher negligent in not giving

\begin{footnotesize}
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\item \textsuperscript{71} Restatement of the Law of Torts, American Law Institute, Vol. 2 (1934) p. 458.

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\end{footnotesize}
first aid to an injured pupil. The courts expect the teacher to render only first aid, and that only in emergencies. There is at present a very strong implication that physical education teachers will be held liable for negligence if they compel pupils to participate in certain activities without a physical examination. A person making such an examination would not be expected to detect illness and defects such as that which caused the death of one pupil, when hit in the head with a basketball.

Legal Remedies of the Coach

When the Texas athletic coach is faced with litigation in which he is charged with negligence, with failure in his legal duty to use reasonable prudence and care under the circumstances involved, he has recourse to several legal remedies which the law recognizes. The first of these legal defenses which must be decided is whether the negligence of the coach (assuming that there was negligence) was the proximate cause of the injury.

Proximate cause refers to the factors which brought


74 Bellman v. San Francisco High School District, supra. n. 53.

75 Kerby v. Elk Grove Union High School District, supra. n. 55.
about the injury, and may be interpreted as the real or chief cause of the injury. If the coach is able to show the court that, although he was negligent, his negligence did not cause the accident, or that his negligence was not the chief cause of the injury, then he will not be liable for damages due to the injury. A case that illustrates this principle is found in the decision of a Michigan court. In this case the principal of a school gave the physical education teacher permission to conduct a foot race in a street near the school. During the race, a runner collided with a pedestrian. It was shown that the principal's permission has no substantial connection with the collision.76

Once negligence is shown as the proximate cause of the injury, however, the coach becomes liable unless he can show negligence on the part of the one who was injured by his actions. This defense is called "contributory negligence" and has been described thus:

Any want of ordinary care on the part of the person injured (or on the part of another whose negligence is imputable to him) which combined and concurred with the defendant's negligence, and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred.77

When a child is guilty of contributory negligence,

77Blacks Law Dictionary, p. 1231.
it must be shown that the child knows of the danger of being injured, and does not use the precautions that other children of that same age would have used to avoid the injury. When an adult is guilty of contributory negligence, the doctrine is applied in a stricter sense. When either a child or an adult voluntarily exposes himself to a known danger, then negligence on the part of the person who causes the injury is not sufficient to make him liable. A parent can be guilty of contributory negligence by taking a small child into a danger area where the child normally would not have gone. Usually, however, the parent or custodian of a small child cannot be charged with contributory negligence if he exercises a reasonable degree of care and prudence for the child's safety.

78 City of Menard v. Coates, 60 S. W. (2d) 831, (1933).
79 Cecchi v. Lindsay, 75 Atl. 376, 1 Boyce 165 (1910).
80 O'Pry v. Berdun, 149 So. 267 (1933).
Pendarvis v. Pfeifer, supra, n. 27.
82 McKenna v. Andreassi, 197 N. E. 879, (1935).
Gravel v. LeBlanc, 162 Atl. 749 (1932).
The defense of the athletic coach for negligent acts might be based on the doctrine of *Via Majore*, or that the injury was caused by an "act of God." This is not a good defense if it can be shown that prudent care and anticipation of danger could have prevented the injury, even though it was caused by an "act of God."

The athletic coach should avoid leaving any dangerous machinery or equipment out in a public place where children can see it and be attracted to it. In such cases the doctrine of *Attractive Nuisance* is in effect, creating liability to the person who maintains the nuisance, even though the children playing around the equipment, machinery, or other appliance are trespassers. To constitute an attractive nuisance, the object must be displayed where it will attract children from a public place in which they may be expected to gather, it must be attractive to children as something to play with, and the object must be the proximate cause of an injury sustained while playing on the object. Some examples of attractive nuisances are: an open pit on the school grounds with a plank across it; a sand and gravel pile left on the

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85 Lane v. District Township of Woodbury, 12 N. W. 478, 58 Iowa, 462 (1882).

playground; \textsuperscript{87} a boiler tank left on the school property; \textsuperscript{88} a well-digging machine left unguarded and unlocked on the school grounds; \textsuperscript{89} an unguarded fire; \textsuperscript{90} or an attractive nuisance left by the city in its streets. \textsuperscript{91} Of course, the character of the object and the maturity and intelligence of the child must be considered by the courts in deciding if an object is an attractive nuisance. \textsuperscript{92} Injuries from playground equipment are not actionable as caused by an attractive nuisance, since articles intended for use by children are not covered by this doctrine. \textsuperscript{93}

The teacher has another defense from his negligence when administering corporeal punishment. The right to administer corporeal punishment extends even to adult students, and the State of Texas will uphold this right. \textsuperscript{94}


\textsuperscript{88} Stovall v. Toppenish School District, 110 Wash. 97, 118 Pac. 12 (1920).

\textsuperscript{89} Wood v. Independent School District of Mitchell et al, 44 Iowa 27 (1876).

\textsuperscript{90} Lombardi v. Wallad, 120 Atl. 291, 98 Conn. 510 (1923).

\textsuperscript{91} Hogan v. Houston Belt & Terminal Ry Co., 148 S. W. 1166 (1912).

\textsuperscript{92} Arkansas Valley Trust Co. v. McIlroy, 133 S. W. 816, 97 Ark. 160 (1911).

\textsuperscript{93} Solomon v. Red River Lumber Co., supra n. 42.

\textsuperscript{94} Metcalf v. State, 21 Tex. Crim. App. 174, 17 S. W. 142 (1886).
provided the teacher does not willfully cause excessive hurt in the act. The teacher has the right to punish students for acts after school hours, and for acts away from the school premises. This right does not extend to the use of words intending to arouse fear of personal security, such as threatening to have a young girl of fourteen sent to a reform school. Texas courts approve school rules and regulations governing fighting after school hours, loitering on the school grounds, and hazing.

Every individual has the right of security of his person, and any violation of this right is a tort. When the Texas courts find the athletic coach has failed in his legal duty of using reasonable care and prudence to his charges, and that injury has been the result of this failure, the court will award damages to the injured party. If the damage is slight, it is called *nominal* damage. Upon proof of actual damage, the injured party will be awarded damages.

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95Fertich v. Michener, 111 Ind. 472, 11 N. E. 605 (1887).
97Johnson v. Sampson, 167 Minn. 203, 208 N. W. 814 (1926).
98Holding v. State, 23 Tex. Crim. App. 172, 4 S. W.
579 (1887).
99Hutton v. State, 5 S. W. 122 (1887).
99King v. State, 167 S. W. 675 (1914).
compensatory damages, to compensate him for his actual loss. If the act which caused his loss be willful or malicious on the part of the coach, the court will award the injured person with exemplary or punitive damages. In this instance, the court is trying to prevent future offenses of this nature. If the one who has been injured can prove a reasonable likelihood of future loss because of the injury, the court may award prospective damages. In case of the death of the injured, action can be brought by individuals who can show loss as a result of the death. In Texas, one convicted of negligent homicide may have to pay a thousand dollar fine or go to jail for one year.

Summary

Common law guides all cases in court when the facts of those cases are similar to previously decided cases. Common law of tort and negligence bind or persuade the Texas courts in cases of school injury because Texas has not enacted statutes covering those injuries. Thus the laws of tort and of negligence derived from court decisions must be understood before decisions can be handed down on Texas school-injury litigation. Certain doctrines are

101 Ibid. 102 Ibid., p. 501 103 Ibid., p. 503.

104 Peavy v. Hardin, 288 S. W. 583 (1926).

accepted as binding or persuasive, among which are the doctrines of *Res Judicata*,106 *The Law of the Case*,107 and *Stare Decisis*.108 The common law principle that school districts are not liable for the tort of their employees is also accepted as binding in Texas courts.

In general, the Texas athletic coach must assume liability for his acts, if those acts are not given the ordinary care and prudence commonly demanded of an adult in charge of children, and if those acts are the chief cause of an injury. He must owe the child a legal duty, and his failure to perform that duty results in an injury to the person; otherwise he cannot be held liable. This duty holds true even in the case of attractive nuisances.

The Texas athletic coach may defend himself in court by pleading contributory negligence, assumption of risk, act of God, or a special immunity, such as is given in cases of corporeal punishment.

The Texas athletic coach may have to pay damages if the court rules that he was negligent and the proximate cause of the injury. These damages may be provided by statute, as in the case of wrongful death through injuries, or by the court, as nominal, compensatory, exemplary and prospective damages. Failure to pay damages subjects the coach to possible fine and imprisonment.

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106 The doctrine of *Res Judicata* prevents the reopening of cases which have been decided by the courts, supra, p. 21.
107 See supra, p. 21.
108 See supra, p. 21.
CHAPTER IV

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This study began with an investigation into the background of school law concerned with negligence acts of school employees. It was found that California, Washington, and New York have enacted statutes liberalizing their governmental immunity to suit in tort, as established by English Common Law, and followed, for the most part, by the other forty-five states of the United States. Texas especially has been strict in following the common law principles, and the courts of Texas have interpreted many cases cited in this study in the light of those common law precedents.

The Texas athletic coach must take full responsibility for any wrongful acts that he commits which result in injury to those to whom he owes a duty. This has the effect of restraining him in the scope of the activities in which he engages. Many useful activities are thus eliminated through a fear that negligence may ensue. An investigation of all laws pertaining to the coach personally revealed no statute mitigating this liability, and it is evident that Texas expects its courts to hold the athletic coach to his responsibilities.
In drawing conclusions from the study, one outstanding fact draws immediate attention. From the cases studied, not many are concerned with the teacher as defendant. This indicates that the injured parties sued the school districts because they believed the individual teacher did not have sufficient money to pay damages. It is possible that today's higher-salaried teacher will be involved in more and more litigation, and it might be a wise policy to study school activities and duties with that possibility in mind.

School boards should assume more responsibility in the prevention of school accidents. Where statutes do not exempt the school from its common law immunity, schools are more lax in the repair of buildings, facilities, and equipment. An increasing number of accidents are happening in industrial art workshops, on the playground, in the gymnasiums, and during the transportation of school children. Legislation is not the answer to the problem of prevention of these accidents, though in many instances it would be of great help. Warning children of dangerous places and activities is a common practice in the cases studied. This practice is not considered sufficient to discharge the coach's responsibility; neither does it contribute to the prevention of accidents to any appreciable extent. The dangerous situations should be fixed, and if legislation is necessary to accomplish this, then such legislation should be enacted.
It is recommended that studies be made of the true facts concerning school accidents, and that sets of principles and practices be drawn up from these studies to guide the administrators and teachers of the Texas public schools.

It is recommended that school administrators require better practices in the treatment and reporting of school injuries. The possibility that many school accidents might be prevented if all the facts surrounding previous injuries were known is evident in systems where administrators require full reports of all injuries.

It is recommended that the Texas State Legislature study closely the legislation of California, New York, and Washington, the states that permit suits against school districts when the districts are the cause of school injuries, and it is further recommended that similar legislation be enacted in Texas.

It is recommended that Texas school administrators extend insurance coverage to all phases of the school's program, instead of just to the competitive activity program. Legislation permitting this insurance should be enacted, if necessary.

It is recommended that school administrators of Texas make definite policies concerning away-from-school trips and excursions. They should differentiate school activities from non-school activities, and should provide reasonable responsibilities for those in charge of the trips.
It is recommended that school districts maintain a regular system of inspection of buildings and equipment.

It is recommended that teachers, principals, superintendents, and all employees of the Texas public school system be covered under some legislative act such as the Workmen's Compensation Act so that any pupil at school, regardless of negligence or fault, would be assured of proper medical attention and sufficient funds for rehabilitation.
BIBLIOGRAPHY

Books


Kent, James, Commentaries on American Law, twelfth edition, Boston, Little, Brown, and Co., 1873.


Weltzin, J. Fredrick, The Legal Authority of the American Public School as Developed by a Study of Liability to Damages, Grand Forks, N. D., Mid-West Book Concern, 1931.
Public Documents


Articles


Hodgon, Daniel R., "What Price Litigation?" School and Society, XXXVI (October, 1932), 571.


Unpublished Material


APPENDIX

LEGAL SOURCES AND ABBREVIATIONS USED IN CITATIONS

In referring to cases throughout the study, the first number indicates the number of the volume, the abbrevia-
tion designates the name of the report, and the last number shows the page of the citation. If a case is cited
in two or more reports, each reference is separated by a comma.

Atl.-------------------Atlantic Reporter
Ala.------------------Alabama Reports
Am. R.------------------American Reporter
App. D. C.-------------Appeals, District of Columbia
App. Div.------------Appellate Division, New York
Ariz.-------------------Arizona Reports
Ark.---------------------Arkansas Reports

Boyce-------------------Delaware Reports

Cal.---------------------California Reports
Cal. App.---------------California Appellate Reports
C. C. A.---------------Circuit Court of Appeals Reports,
                      United States
Colo.-------------------Colorado Reports
Conn.-------------------Connecticut Reports

Et al.------------------And others
Et ux.------------------And wife

F.----------------------Federal Reporter
F. (d)------------------Federal Reporter, Second Series
Fla.---------------------Florida Reports

Ga.---------------------Georgia Reports
Ga. App.--------------Georgia Appellate Reports

Idaho-------------------Idaho Reports
Ill.---------------------Illinois Reports
Ill. App.--------------Illinois Appellate Reports
Ind.---------------------Indiana Reports
Ind. App.--------------Indiana Appeals Reports
Iowa---------------------Iowa Reports
Kan.----------------------Kansas Reports
Ken. Law Rep.-------------Kentucky Law Reporter
Ky.-----------------------Kentucky Reports

La.------------------------Louisiana Reports
La. App.-------------------Louisiana Appeals Reports
L. R. A. (N. S.)----------Lawyers Reports Annotated, New Series

Mass.----------------------Massachusetts Reports
Md.-----------------------Maryland Reports
Me.------------------------Maine Reports
Mich.----------------------Michigan Reports
Minn.----------------------Minnesota Reports
Misc.----------------------Miscellaneous Reports, New York
Misc. Rep.----------------Miscellaneous Reports, New York
Miss.----------------------Mississippi Reports
Mo.------------------------Missouri Reports
Mo. App.------------------Missouri Appeal Reports

N. C.----------------------North Carolina Reports
N. E.----------------------Northeastern Reporter
Neb.-----------------------Nebraska Reports
N. H.----------------------New Hampshire Reports
N. J. L.-------------------New Jersey Law Reports
N. J. Misc. R.-------------New Jersey Miscellaneous Reports
N. W.----------------------Northwestern Reporter
N. Y.----------------------New York Court of Appeals Reports
N. Y. Supp.----------------New York Supplement
N. Y. Supp. (2d)----------New York Supplement, Second Series

Ohio App.-----------------Ohio Appellate Reports
Ohio L. R.----------------Ohio Law Reports
Ohio St.------------------Ohio State Reports
Oklahoma-------------------Oklahoma Reports
Ore.----------------------Oregon Reports

Pac.----------------------Pacific Reporter
Pac. (2d)----------------Pacific Reporter, Second Series
Pa.-----------------------Pennsylvania State Reports
Pa. S. Ct.----------------Pennsylvania Superior Court Reports
Pennewill------------------Delaware Reports

R. I.----------------------Rhode Island Reports

S. C.----------------------South Carolina Reports, New Series
S. Ct.---------------------Supreme Court Reporter
S. E.----------------------Southeastern Reporter
Sc.------------------------Southern Reporter
S. W.----------------------Southwestern Reporter
S. W. (2d)----------------Southwestern Reporter, Second Series
Tenn.-------------------Tennessee Reports
Tex.-------------------Texas Reports
Tex. Civ. App.---------Texas Civil Appeal Reports
Tex. C. R.------------Texas Court Reporter

U. S.------------------United States Reports
Utah-------------------Utah Reports

Va.---------------------Virginia Reports
Vt.---------------------Vermont Reports

Wall.--------------------Wallace's U. S. Supreme Court Reporter
Wash.-------------------Washington Reports
Wis.---------------------Wisconsin Reports
W. Va.------------------West Virginia Reports
W. W. Harr.-----------Delaware Reports