



ANNUAL POLICY & LEGAL ISSUES SYMPOSIUM  
TO PROMOTE CHILDREN'S OBESITY

## Facilitating Joint Use: Legal Liability for After Hours Use of School Facilities

Amy S. Ackerman, J.D.  
California Obesity Conference  
June 9, 2009

---

---

---

---

---

---

---

---

### What we want



---

---

---

---

---

---

---

---

### One problem:



---

---

---

---

---

---

---

---

One solution: School Playgrounds



---

---

---

---

---

---

---

---

New Problem:



Liability!!!



---

---

---

---

---

---

---

---

Is Liability



---

---

---

---

---

---

---

---

## Tort Liability

- Quick Introduction to Tort Law
- California After School Liability Law
- Other Ways Districts Protect Themselves from Liability
  - Insurance
  - Indemnity

---

---

---

---

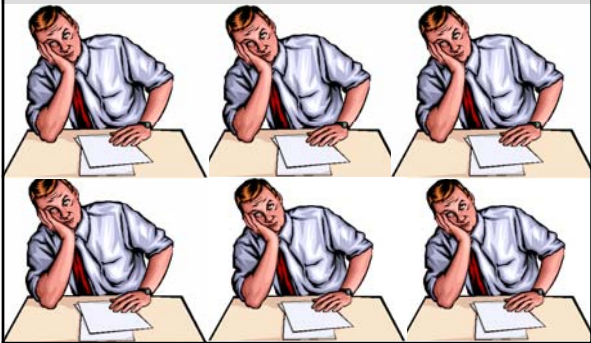
---

---

---

---

## Time for Torts 101



---

---

---

---

---

---

---

---

## What is a tort?



---

---

---

---

---

---

---

---

## Proving Liability (legal responsibility)



Duty



Breach



Causation



Damages



Defenses

---

---

---

---

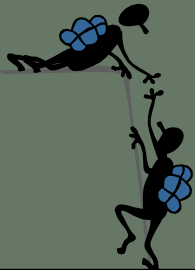
---

---

---

---

## A word about defenses and immunities



---

---

---

---

---

---

---

---

## Legal Research

### Tort Law



50 state survey of liability rules applicable to after hours use of school property ("The Treatise")

---

---

---

---

---

---

---

---

## Professor Baker's Findings

- Governed by state law
- All 50 states have some defenses
  - All 50 have some level of governmental immunity
  - Some states have recreational users defenses
- In no state are rules for recreation use more onerous than rules that apply during school day
- In many states the rules are more lenient

---

---

---

---

---

---

---

---

## California



---

---

---

---

---

---

---

---

## California Tort Claims Act

- Liability only if a statute specifically provides for liability or establishes a specific duty
- Strong governmental immunities

---

---

---

---

---

---

---

---

## California After School Liability



---

---

---

---

---

---

---

---

## During the School Day



Duty to supervise students' conduct "on the way to and from school, on the playgrounds, or during recess."

---

---

---

---

---

---

---

---

## Proving Liability (legal responsibility)



Duty



Breach



Causation



Damages



Defenses

---

---

---

---

---

---

---

---

## After the School Day



No Duty to Supervise

---

---

---

---

---

---

---

---

## “Hazardous Recreational Activity” Immunity

- “a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.”
- Includes, body contact sports (“sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants”), and tree climbing

---

---

---

---

---

---

---

---

## Examples



---

---

---

---

---

---

---

---

## Why immunity?

“The Legislature had in mind immunizing public entities from liability arising from injuries sustained by members of the public during voluntary unsupervised play on public land, in order to prevent public entities from having to close off their land to such use to limit liability. Such activities may be fairly characterized as recreational.”

*Avila v. Citrus Community College District*, 38 Cal.4th 148, 159 (2006)

---

---

---

---

---

---

---

---

## “Dangerous Condition”

condition of property that creates a substantial risk of injury when the property is used with due care in a manner in which it is reasonably foreseeable that it will be used



---

---

---

---

---

---

---

---

## Not a dangerous condition



*Bartell v. Palos Verdes Peninsula School District*, 83 Cal.App.3d 492, 497-498 (1978).

---

---

---

---

---

---

---

---

## California After School Liability

- No duty to supervise (non school related) after school activities
- Hazardous Recreational Activity Immunity
  - Contact Sports
  - Water Sports
  - Tree Climbing
- Don't have a dangerous condition on property

---

---

---

---

---

---

---

---

## Still Awake?



---

---

---

---

---

---

---

---

## Other Forms of Protection from Liability



---

---

---

---

---

---

---

---

## Insurance



- All schools in California must be insured
- All groups using schools must be insured

---

---

---

---

---

---

---

---

## Indemnity



Indemnification clause: a contract provision in which **one party agrees to be responsible for any liability** that the other party might incur.

---

---

---

---

---

---

---

---

## Example: San Francisco

City assumed all liability



---

---

---

---

---

---

---

---

## Is Liability



---

---

---

---

---

---

---

---



ANNUAL POLICY & LEGAL SERVICES NETWORK  
TO PROMOTE CHILDREN'S SAFETY

**Amy S. Ackerman**

2201 Broadway, Suite 502  
Oakland, CA 94612  
[Amy.ackerman@phlpnet.org](mailto:Amy.ackerman@phlpnet.org)

[www.nplanonline.org](http://www.nplanonline.org)

---

---

---

---

---

---

---

---