Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: CALIFORNIA

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This memorandum summarizes California law governing liability for after-hours recreational use of school facilities. It should be read with this project's overview memorandum, which can be found at *www.changelabsolutions.org/publications/liability-schools-50-states*. It does not provide the kind of detailed analysis necessary to support the defense of a liability action, nor is it a substitute for consultation with a lawyer. If there are important cases, statutes, or analyses that we have overlooked, please inform us by sending an email to *info@changelabsolutions.org*.

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In 1963 California enacted a comprehensive system of governmental liability in tort that superseded any common law liability but that, nevertheless, is very similar to a cause of action under the doctrine of negligence.[1] As for a negligence action generally in California, a plaintiff must prove five elements: (1) the defendant owed the plaintiff a legal duty of due care, (2) the defendant breached that duty, (3) the breach by the defendant caused an injury or detriment to the plaintiff (a loss or harm suffered in person or in property), (4) the plaintiff's detriment was a proximate result of the defendant's breach, and (5) damages resulted.[2] For purposes of evaluating the legal rules that affect the liability risk involved in opening up schools to after-hours recreational use, the crucial issues involve the existence and definition of the school's legal duty.

In general, schools in California have strong protections against liability. During school hours, schools have a duty to provide a "prudent person" standard of care in supervising students who participate in school-sponsored activities. In addition, school officials must take reasonable care in the design of recreational facilities to prevent possible injuries. Schools benefit from statutorily created immunities that may help shield them from tort claims arising from injuries on school grounds, provided that they have taken reasonable care to prevent those injuries. In terms of after-school or non–school-related activities, or the use of school facilities by third parties, schools bear no greater duty than they do during school hours and probably bear less duty in most circumstances. In addition, schools may be able to take advantage of liability waivers to further protect them from suit.

Part A of this memorandum addresses the duty of the school system. Part B addresses issues relating to limits on damages. Part C addresses two risk management issues that involve legal questions susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district.

A. Public Schools, the Duty Element, and After-Hours Use

Absent special liability protection, school districts and other providers of recreational facilities have the legal duty to take *reasonable* precautions to prevent injury. What is reasonable is very context specific and depends on many things, but most importantly the nature of the harm, the difficulty of preventing it, and generally accepted standards in the management of recreational facilities.

As any lawyer who has tried to explain the concept of negligence to a layperson knows, the standard of reasonable care can seem frustratingly vague and imprecise. Yet it is the standard that generally governs liability risk for organizations and individuals in the United States. On the whole, it is a flexible standard that balances the competing interests of the providers and users of many kinds of services.

This section explains the ways California law limits the legal duty of school districts. California law sometimes protects school districts from liability so that school districts that do not take reasonable precautions may still be able to avoid legal responsibility for any resulting injuries. California law does this through governmental immunity, which we explain in subsection 1. In our judgment, governmental immunity is likely to protect school districts against liability for injuries relating to many activities typical to after-hours recreational programs. Subsection 2 discusses the liability and indemnification of school employees, a topic closely related to school districts' overall liability risk.

Subsection 3 discusses recreational use statutes, which sometimes also offer liability protection to school districts. Unlike those in many other states, however, California's recreational use statute does not apply to public entities, so that statute does not provide any protection to school districts.

Subsection 4 discusses the impact of the California courts' decision to replace the traditional distinctions among different categories of entrants on land with a single test that measures the landowner's actions using a reasonable person standard. Subsection 5 concludes this part of the memorandum by comparing the legal duties that a school already faces for activity during the school day with the legal duties that the school would face if it permitted after-hours use of its facilities.

1. Limited Duty Due to Governmental Immunity

In California, the Tort Claims Act[3] sets forth all governmental immunities and tort liability.[4] This statute was created specifically to prevent public entities, which includes schools,[5] from closing their land out of fear of liability.[6]

In enacting the Tort Claims Act, the California legislature intended to limit the liability of public entities arising from injuries sustained in the course of physical activities, though it did not abrogate a school's duty to provide reasonable supervision of students engaging in school-sponsored activities.[7] Under the act, public entities and their employees are immune from liability arising out of "hazardous recreational activity."[8] Hazardous recreational activity includes activity that carries a substantial risk to the participants or spectators, as opposed to activity that carries a minor risk of injury.[9] The statute provides an extensive list of activities that qualify as hazardous, including bicycle racing, body contact sports, cross-country and downhill skiing, and trampolining.[10]

Courts make an important distinction between recreational activities, hazardous or otherwise, and school-sponsored physical education or extracurricular activities. Recreational activities are voluntary and unsupervised; school-sponsored physical education or extracurricular activities are mandatory and supervised by school personnel.[11] When supervising school-sponsored athletic activities, school officials have no duty to eliminate risks inherent in the sport, but have a duty to not increase the risks over and beyond those inherent in the sport.[12] If they meet this standard, courts have applied a prudent person standard of care to school officials supervising school-sponsored athletic activities; this standard of care is "the same care as persons of ordinary prudence, charged with the duty of carrying on the public school system, would use under the same circumstances."[13]

The statute and applicable common law are also likely to protect schools from liability in connection to a host of after-hours recreational activities.[14] Such activities are unlikely to qualify as hazardous, and none would be other than voluntary. Generally, the school's duty of supervision exists only during school-related or -encouraged functions and to activities taking place during school hours.[15]

In addition, public entities and employees are not liable for injuries resulting from conditions of public property if the act or omission that created the condition is reasonable[16] or if the public entity or employee can establish that the actions taken to deal with the risk of injury were reasonable.[17]

There is also "design immunity" for any injury caused by the plan or design of a construction of, or an improvement to, public property, so long as that plan or design was approved in advance of its construction by a legislative body or other entity that has discretionary authority to give approval.[18] A public entity claiming design immunity must establish three elements: (1) a causal relationship between the plan or design and the accident, (2) discretionary approval of the plan or design prior to construction, and (3) substantial evidence supporting the reasonableness of the plan or design.[19] A claim of design immunity can be defeated if the entity has notice that "the plan or design, under changed physical conditions, has produced a dangerous condition. . . ."[20] Three elements are necessary to show that the entity has lost design immunity:

1. the plan or design has become dangerous because of a change in physical conditions
2. the public entity had actual or constructive notice of the dangerous condition
3. the public entity had a reasonable time to obtain the funds and carry out the necessary remedial work to bring the property back into conformity with a reasonable design or plan, or the public entity, unable to remedy the condition, had not reasonably attempted to provide adequate warnings.[21]

Most California cases dealing with design immunity concern the liability of state and local authorities for the design and construction of roadways and intersections. However, in an unpublished[22] case, one court rejected a school's claim of design immunity on the grounds that the design of a wall from which the plaintiff fell and was injured did not conform to the school's original design for that wall.[23]

2. Duties and Indemnification of Public School Employees

In general, school district employees benefit from the same governmental immunity as the school district, and thus there will rarely be cases in which a school district is immune and the employee is not (as long as the employee was acting in the scope of employment). Public employees have limited discretionary immunity, a qualified immunity available to public employees when an injury results from an employee's act or omission when that act or omission is the result of the exercise of discretion available to that employee.[24] In general, any act that requires the exercise of judgment and choice is discretionary.[25] In contrast, ministerial acts involve the execution of a set task without the exercise of discretion.[26] If discretionary immunity does not apply, public employees may make use of the same defenses as they would if they were private citizens.[27]

In general, a public entity will be liable for injuries caused by the negligent act or omission of an employee if the employee's negligent act or omission occurred within the scope of his employment and no other statutory immunities apply.[28] When an employee of a public entity faces a claim, California law breaks the role of the public entity into two parts: the entity's ability to defend its employee, and the entity's ability or duty to indemnify the employee for any claim or judgment against him. Public entities can defend an employee only if the employee was acting within the scope of her employment and the employee requests the defense, in writing, within ten days of the incident.[29] The public entity may reserve the right to indemnify the employee until after it has been determined whether the injury arose out of an act or omission occurring within the scope of the employee's employment.[30]

The public entity is obligated to indemnify an employee if the following statutory requirements are met: (1) the employee seeks indemnification; (2) the employee proves that the act or omission occurred within the scope of his employment with the public entity; and (3) the public entity fails to establish that the employee "acted or failed to act because of actual fraud, corruption or actual malice or that [the employee] willfully failed or refused to conduct the defense of the claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the public entity."[31] The employee must also be indemnified for any claim, judgment, or reasonable defense costs incurred if the public entity does not defend the employee or reserve the right to indemnify the employee after the trial.[32] Likewise, the public entity can seek indemnification from the employee if it paid any claim or judgment and the employee failed to establish the above requirements.[33]

As a result of these broad indemnity obligations, school districts must be attuned not only to their own liability but also to the liability of their employees.

3. Limited Duty Under Recreational Use Statute

California's recreational user statute limits the liability of landowners who open their land to the public free of charge for recreational purposes.[34] An owner "owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, . . . structures, or activities. . .."[35] However, in California, the statute does not apply to public entities such as schools and therefore cannot be used to protect against liability resulting from after-school recreational activities.[36]

4. Limited Duty Due to the Historical Distinctions Among Entrants on Land

California has replaced the traditional tripartite approach to the duties owed to entrants on land with a simpler test of whether the landowner acted as a reasonable person "in view of the probability of injury to others."[37] The California Supreme Court in *Rowland* made this change clear: "[A]lthough the plaintiff's status as a trespasser, licensee, or invitee may in the light of the facts giving rise to such status have some bearing on the question of liability, the status is not determinative."[38]

The present negligence standard looks at a variety of factors to determine the status of the entrant and the duty of the property owner to protect against injury.[39] The most critical factor is the foreseeability of harm.[40] This new standard does not reduce the duty owed to people who would have been considered invitees under the traditional approach, but instead can raise the duty owed to licensees and trespassers to that of invitees.

Under this standard, if the school knows, or should reasonably know,[41] of a natural or artificial condition on the premises that exposes entrants to an unreasonable risk of harm, and the school has no reasonable basis for believing that the entrants will discover the condition or realize the risks involved, then the school is under a duty to exercise ordinary care either to make the condition reasonably safe for the entrants' use or to give a warning adequate to enable them to avoid the harm.[42] This includes a duty to take reasonable care in maintaining the premises in a reasonably safe condition[43] and/or to warn any entrants of concealed dangers.[44] The school should not be liable for any injury caused by an obvious danger or any danger discovered through reasonable care.[45]

This duty is lessened by some of the innate risks of recreation. Schools do not have to eliminate dangerous conditions that are integral to the sports played on the property. Likewise, schools have no duty to protect participants from the risks inherent in the sport, so long as they do not increase the danger.[46]

5. Duty During the School Day and After: A Comparison

When deciding whether to open up school facilities for recreational use, it is useful to evaluate how the legal risk arising out of opening the school grounds for recreational use compares with the legal risk arising out of the use of school grounds for programs that the school already runs.

California's common law includes a duty to supervise students and enforce rules necessary for their protection.[47] The school cannot use government immunity from hazardous activities to avoid this liability, as long as the activity is school-sponsored or extracurricular.[48] A school's duty to provide supervision during school-sponsored activities is that of a "prudent person."[49]

School districts generally have not been found liable for injuries sustained in activities unrelated to school.[50] Schools need to maintain a prudent person standard of supervision only during school-related activities and functions that require persons to be on school grounds.[51] As long as the school has met this standard, courts have held schools to a lower standard for after-school- and outside-school-sponsored events since students participate in these voluntarily,[52] and, as one court held, "[w]e require ordinary care, not fortresses; schools must be reasonably

supervised, not truant-proof."[53] In a case involving skateboarders trespassing on school property, for example, the California Supreme Court held that there was no negligent failure to supervise outside-school-sponsored activities.[54] This lower standard of supervision has applied to consumption of alcohol on school property[55] and gang violence.[56] For more on schools' liability during non-school-sponsored and after-hours activities, see section C2 of this memo, which addresses schools' liability when they open their facilities to third parties.

It is safe to conclude that a school district's duty would not be greater during an after-hours recreational program and, in almost all cases, would be less.

B. Limits on Damages

1. Damages Limits Under State Tort Claims Act

Research did not reveal any damage limits under the state Tort Claims Act.

2. General Damages Limits for Tort Claims

California limits recovery in joint and several liability situations[57] and punitive damages.[58] The joint and several liability reform bars the application of the rule of joint and several liability in the recovery of noneconomic damages.[59] The punitive damages reform requires a plaintiff to show by "clear and convincing" evidence that a defendant acted with oppression, fraud, or malice.[60]

C. Selected Risk Management Issues

In this section we consider two risk management issues that involve legal questions susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district. In brief, we conclude that California law generally approves of liability waivers used in a recreational sports context. In addition, although a California law makes it easier for third parties to use school facilities for recreational programming, a school's potential liability in such situations is limited by the fact that the school is not responsible for supervision of the facilities during third-party use.

1. Liability Waivers

Although California courts view liability waivers with a degree of skepticism,[61] waivers can be an effective way of limiting liability in some recreational contexts. Schools should be able to use waivers, for example, to shift the risk directly to individuals using the school's property. In one analogous case, *YMCA of Metropolitan Los Angeles v. Superior Court*,[62] the California Court of Appeal examined a contract waiving a YMCA's liability to an individual using its premises and equipment for recreation. The court looked on the contract favorably, concluding that there was a fair exchange of consideration: the individual was able to use the property and equipment, and the YMCA was released from negligence liability.[63] In general, California courts hold that waivers used in recreational sports

contexts are valid and will be given effect as long as the injury suffered by the plaintiff can be reasonably construed to fall within the scope of the language used in the release.[64]

Waivers may be void for public policy reasons.[65] For instance, waivers cannot release parties from liability owing to any legal responsibilities or regulations.[66] Neither can they protect parties offering a service of great public importance, which may be a matter of practical necessity for some people and which therefore may place the parties offering the service in a decisive bargaining advantage.[67] Additionally, one California court held that waivers may not release a public entity from liability for gross negligence as opposed to ordinary negligence.[68] However, recreation has not qualified as a necessity, and waivers involving recreation have ordinarily been upheld.[69] In addition, waivers are broadly held by California courts not to violate public policy when they are used in a recreational sports context.[70]

While children can enter into waivers, they or their parents may later void the agreement.[71] However, waivers signed by parents or guardians are usually binding on their children.[72]

2. Providing Access Through Third Parties

The California Civic Center Act,[73] passed in 1996, opens up school property to any group that does not have an alternative civic center to promote the creation of "civic centers" in public schools and on their grounds.[74] Supervised recreation falls under the approved uses of school property.[75] The school board is in charge of managing the property and setting the rules governing its use.[76] These rules govern the process for approving use of school property as well as making sure it does not interfere with the school's primary purpose.[77]

According to the Civic Center Act, schools cannot use waivers or indemnification to shift their costs or liability onto other groups that use their property.[78] The act breaks liability on school grounds into two halves.[79] Schools continue to be responsible for any injury resulting from negligence in the ownership or maintenance of school grounds, while the group using school property is liable for any injuries resulting from negligence in that group's use.[80] Both parties have to bear any defense or insurance costs separately; they cannot waive or alter the division of liability or agree to indemnify the other party for insurance or defense costs.[81] However, the school keeps any defenses and immunities it has for injuries caused by a dangerous condition of public property,[82] including design immunity, as outlined above.

The liability risk of schools or third parties running or sponsoring after-hours recreational programs is an important question that will be addressed in future research on joint venture agreements for public schools.

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[1] CAL. GOV'T CODE § 815 et seq. (West 2012) ("A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person."); B. E. WITKIN, CALIFORNIA PROCEDURE § 581 (4th ed. 2013).

[2] 1-1 CALIFORNIA TORTS § 1.01 (2008).

[3] CAL. GOV'T CODE § 810 et seq.

[4] CAL. JUR. 3D *Government Tort Liability* § 1 (2013).

[5] *See* CAL. GOV'T CODE § 811.2 ("'Public entity' includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State.").

[6] Avila v. Citrus Community Coll. Dist., 131 P.3d 383, 389 (Cal. 2006) (observing that the statute "was designed to limit liability based on a public entity's failure either to maintain public property or to warn of dangerous conditions on public property.").

[7] *Id.*

[8] CAL. GOV'T CODE § 831.7(a); *see also* CAL. JUR. 3D *Government Tort Liability* § 54.

[9] CAL. GOV'T CODE § 831.7(b); *see also* CAL. JUR. 3D *Government Tort Liability* § 54.

[10] CAL. GOV'T CODE § 831.7(b).

[11] *Avila*, 131 P.3d at 390 (school-sponsored sports not "recreational" in the sense of voluntary unsupervised play; rather they are an "integral component of public education," *quoting* Hartzell v. Connell, 679 P.2d 35 (Cal. 1984)).

[12] Hemady v. Long Beach Unified Sch. Dist., 143 Cal. App. 4th 566, 574-75 (2006).

[13] *Id.* at 580.

[14] CAL. JUR. 3D *Government Tort Liability* § 54.

[15] Iverson v. Muroc Unified Sch. Dist., 32 Cal. App. 4th 218, 227-28 (1995).

[16] CAL. JUR. 3D *Government Tort Liability* § 42 (the test of reasonableness is a balance between "weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of: (1) taking alternative action that would not create the risk of injury; or (2) protecting against such risk.").

[17] *Id.*

[18] *See id.* at §§ 43, 44.

[19] Cornette v. Dep't of Transp., 26 Cal. 4th 63, 69 (2001).

[20] CAL. JUR. 3D *Government Tort Liability* § 44.

[21] *Id.*

[22] Cases that are "unpublished" have no precedential value and are binding only on the parties to the case in which the opinion was issued.

[23] *See* Oliveira v. Pollock Pines Elementary Sch. Dist., 2002 Cal. App. LEXIS 11479, at *44 (Cal. Ct. App. 2002).

[24] *See* CAL. JUR. 3D *Government Tort Liability* § 17.

[25] *See id.*

[26] *See id.*

[27] *See id.* at §§ 14, 17.

[28] *Id.* at §§ 11, 14.

[29] CAL. GOV'T CODE § 825(a) (West 2007); *see also* CAL. JUR. 3D *Government Tort Liability* § 9.

[30] CAL. GOV'T CODE § 825(a); *see also* CAL. JUR. 3D *Government Tort Liability* § 141.

[31] CAL. GOV'T CODE § 825.2(b).

[32] *Id.* § 825.2(a).

[33] *Id.* § 825.6.

[34] CAL. CIV. CODE § 846 (West 2012).

[35] *Id.*

[36] Delta Farms Reclamation Dist. v. Superior Ct., 660 P.2d 1168, 1170-71 (Cal. 1983) (observing that while the statute is not clear, the legislative history shows that this statute was meant only to apply to private landowners).

[37] Rowland v. Christian, 443 P.2d 561, 568-69 (Cal. 1968); *see also* B. E. WITKIN, CALIFORNIA PROCEDURE § 581 (4th ed. 2007).

[38] *Rowland*, 443 P.2d at 568.

[39] 1-15 JEANNE P. ROBINSON, CALIFORNIA TORTS § 15.01(2)(c) (2007).

[40] *Id.*

[41] CAL. JUR. 3D *Government Tort Liability* § 40 ("As one prerequisite to the imposition of liability on a public entity for a dangerous condition of public property, either actual or constructive notice of the defective condition must be shown…").

[42] ROBINSON, *supra* note 39, at § 15.04(1).

[43] *Id.* at § 15.04(2).

[44] *Id.* at § 15.04(3).

[45] *Id.* at § 15.04(4). There are some recent cases that limit this principle by the relative contexts of what is "obvious." *Id.*

[46] CAL. JUR. 3D *Negligence* § 146 (2007). *See also* Luna v. Vela, 169 Cal.App.4th 102, 107 (2008) ("…[D]efendants generally do not have a duty to protect the plaintiff from the risks inherent in the sport, or to eliminate risk from the sport, although they generally do have a duty not to increase the risk of harm beyond what is inherent in the sport.").

[47] Dailey v. Los Angeles Unified Sch. Dist., 470 P.2d 360, 363 (Cal. 1970) (finding that the school was negligent when it failed to develop a supervision schedule).

[48] CAL. GOV'T CODE § 831.7 (West 2007); Avila v. Citrus Community Coll. Dist., 131 P.3d 383, 392-93 (Cal. 2006) (immunity does not apply to school athletes). The California Supreme Court held that school-sponsored sports are not "recreational" in the sense of voluntary unsupervised play, which is what the legislature intended when it created the statute; rather, they are an "integral component of public education." *Id*. at 390, *quoting* Hartzell v. Connell, 679 P.2d 35 (Cal. 1984). *See also* Iverson v. Muroc Unified Sch. Dist., 32 Cal. App. 4th 218, 227 (1995) (Cal. Gov't Code § 831.7 does not apply to injuries sustained on school grounds during physical education); Acosta v. Los Angeles Unified Sch. Dist., 31 Cal. App. 4th 471, 475-76 (1995) (the question of whether the plaintiff is engaged in hazardous recreational activity is a question of law and does not include school-sponsored extracurricular athletic activities).

[49] Hemady v. Long Beach Unified Sch. Dist., 143 Cal. App. 4th 566, 580 (2006).

[50] 5 WITKIN, SUMMARY TORTS § 325, at 527 (10th ed. 2005) (citing 57 AM. JUR. 2D (2001)); *see also* Bartell v. Palos Verdes Peninsula Sch. Dist., 83 Cal. App. 3d 492, 500 (1978) (finding a school not liable when a child entered school grounds through a hole in a fence and suffered a fatal injury while playing on a skateboard); Wright v. Arcade Sch. Dist., 230 Cal. App. 2d 272, 280 (1964) (holding a school not liable for injuries suffered by a student who was struck by a truck while crossing a public street on his way to school).

[51] WITKIN, *supra* note 50 (citing *Bartell*, 83 Cal. App. 3d at 500) (finding no "general duty on the school district to supervise and control the conduct of persons on its premises apart from school-related activities and functions which require persons to be on school grounds.").

[52] *Bartell*, 83 Cal. App. 3d at 492.

[53] Hoyem v. Manhattan City Sch. Dist., 22 Cal. 3d 508, 519 (1978).

[54] *See Bartell*, 83 Cal. App. 3d at 499.

[55] *See* Crow v. California, 222 Cal. App. 3d 192, 209, 271 (1990); Baldwin v. Zoradi, 123 Cal. App. 3d 275, 291, 292 (1981). These cases concern supervision on college campuses.

[56] *See* Brownell v. Los Angeles Unified Sch. Dist. 4 Cal. App. 4th 787, 796 (1992). In *Brownell* the court held that the district did not need to directly supervise students after school hours. *Id.* The school needs only to exercise reasonable care in supervising the conduct of its students; it is not an insurer of the students' safety. *Id.* So long as the school had no advance warning of potential gang violence, and it took general precautions to minimize gang-related problems, it had no liability. *Id. See also* CAL. JUR. 3D *Government Tort Liability* § 56 (stating that government tort laws made to prevent injuries on public property are not made to prevent the occurrence of criminal acts, so long as a defect in the property does not increase the risk of criminal acts).

[57] Proposition 51, CAL. CIV. CODE § 1431.2 (West 2012).

[58] Punitive Damages Reform, CAL. CIV. CODE § 3294(a).

[59] CAL. CIV. CODE § 1431.2. The Fair Responsibility Act, which abolished joint liability for noneconomic damages, did not violate the equal protection provisions of the state or federal constitutions. *See also* Evangelatos v. Superior Court, 753 P.2d 585 (Cal. 1988); American Tort Reform Association—California Reforms, *www.atra.org/legislation/CA*.

[60] Punitive Damages Reform, CAL. CIV. CODE § 3294(a).

[61] Gardner v. Downtown Porsche Audi, 180 Cal. App. 3d 713, 716 (1986) ("Traditionally the law has looked carefully and with some skepticism at those who attempt to contract away their legal liability for the commission of torts.").

[62] 55 Cal. App. 4th 22 (1997).

[63] *YMCA*, 55 Cal. App. 4th at 27-28.

[64] Cohen v. Five Brooks Stable, 159 Cal. App. 4th 1476, 1484 (2008).

[65] CAL. JUR. 3D *Contracts* § 139 (2007).

[66] *E.g.,* Gavin W. v. YMCA of Metro. Los Angeles, 106 Cal. App. 4th 662, 670-76 (2003) (day care not relieved of its negligence liability because it was a regulated business, and litigation risk imposed by legislation cannot be transferred for public policy reasons).

[67] *Gavin W*., 106 Cal. App. 4th at 662.

[68] *See* City of Santa Barbara v. Superior Ct., 161 P.3d 1095, 1115 (Cal. 2007) (release signed by mother on behalf of her 14-year-old developmentally disabled child barred liability for future ordinary negligence, but not for gross negligence).

[69] Platzer v. Mammoth Mountain Ski Area, 104 Cal. App. 4th 1253, 1257 (2002) (upholding a waiver freeing a ski life operator from liability, signed by a mother for her child); YMCA of Metropolitan Los Angeles v. Superior Court, 55 Cal. App. 4th 22, 27-28 (1997).

[70] Lund v. Bally's Aerobic Plus, Inc., 78 Cal.App.4th 733, 739 (2000); *Randas v. YMCA of Metropolitan Los Angeles*, 17 Cal.App.4th 158, 162 (1993).

[71] CAL. FAM. CODE § 6700 (West 2012) ("[A] minor may make a contract in the same manner as an adult. . . ."); *id.* § 6710 ("[A] contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards or, in case of the minor's death within that period, by the minor's heirs or personal representative.").

[72] *See City of Santa Barbara*, 161 P.3d at 1110 (observing that most California courts enforce liability waivers signed by parents on behalf of their children, while acknowledging that this constitutes the minority view among the states); *Platzer*, 104 Cal. App. 4th at 1257 (allowing the mother to sign the waiver on behalf of her child and herself).

[73] CAL. EDUC. CODE § 38134(a) (West 2007).

[74] *Id.* § 38134(a); *see also* Establishment of a Civic Center, 56 CAL. JUR. 3D *Schools* § 197 (2007).

[75] CAL. EDUC. CODE § 38131 ("the governing board of a school district may grant the use of school facilities or grounds as a civic center . . . for any of the following purposes: . . . supervised recreational activities. . . .").

[76] CAL. EDUC. CODE § 38133.

[77] *Id.*

[78] CAL. EDUC. CODE § 38134(i); 56 CAL. JUR. 3D *Schools* § 201.

[79] WITKIN, *supra* note 50, at § 326.

[80] CAL. EDUC. CODE § 38134(i); 56 CAL. JUR. 3D *Schools* § 201; WITKIN, *supra* note 50, at § 326.

[81] CAL. EDUC. CODE § 38134(i).

[82] *Id.*