

FACT SITUATION

In March of 2004, the plaintiff's 13-year-old child, Lesley Parker, was seriously injured when his/her homework project, a simulated volcano, exploded. The child's right hand received severe lacerations, and one finger was almost destroyed. Corrective and plastic surgery was required to restore the hand to its present functioning level of 80%.

The science teacher, Pat Mentor, asked the students in Lesley's class to prepare projects for demonstration on Science Day, March 10th, 2004. Lesley chose to build a simulated volcano. The volcano was constructed at Lesley's home, with the help of his/her father/mother and older brother. The powder used to create the "eruption" effect was taken from firecrackers purchased by Lesley's father/mother. As it happens, several other students also brought volcano projects for demonstration on Science Day, and all three volcanoes were stored in a closet in the teacher's classroom. One of these volcanoes was brought out and demonstrated.

The next day, Lesley picked up his/her volcano, as instructed, to take it home. While waiting for the school bus, Lesley decided to demonstrate the volcano for the other students. He/She gave one or two demonstrations and was pouring powder for a second or third demonstration. A spark apparently entered the plastic bottle containing the remainder of the powder and some fuses, causing the explosion.

On behalf of their minor child, Lesley's parents have brought this action against the school board for negligence due to the science teacher's lack of proper supervision in allowing Lesley to build and demonstrate a volcano with firecracker powder.

ROLES

Attorneys for the Plaintiffs and Three Witnesses

Lesley Parker, a 13-year-old in 6th grade at the time the injury occurred

Jonathan/Jane Parker, Lesley's father/mother

Marty Watkins, a classmate of Lesley's

Attorneys for the Defense and Three Witnesses

Pat Mentor, science teacher at Orange Canyon Elementary School

Sandy Todd, another teacher at Orange Canyon Elementary

Sy Intist, safety expert

ISSUES

1. Was the science teacher, Pat Mentor, negligent in allowing a 13-year-old child to build and to demonstrate a simulated volcano? (Assume the school board is liable under the doctrine of respondeat superior if the teacher were negligent.)
2. Was the child contributorily negligent in intentionally exposing him/herself to the obvious danger? Did the child assume the risk of this activity? Were the parent's actions negligent?

Note: Bus and after-school supervision is not an issue in this case.

WITNESS STATEMENT
PLAINTIFF WITNESS: LESLEY PARKER

My name is Lesley Lee Parker. I turned 14 years old on September 27, 2004. Last year, I was in sixth grade at Orange Canyon Elementary School. Now I attend Green River Junior High School.

When my science teacher, Pat Mentor, asked the class to think up projects to show off for our parents on Science Day, I decided to make a real working model of a volcano. I really liked the classes where we learned about Mount Vesuvius and Pompeii, and all the strange things they found when they dug out the old city; you know, the way the people were found frozen in positions like they didn't realize what was happening to them, and all the destruction caused by the hot lava.

Anyway, my brother had done a volcano for his science project a couple of years ago, and it was neat the way the thing exploded. They wouldn't let me get near it back then, but I knew I could get my mom/dad and my older brother, Michael, to help me build it, now that I was a little older.

I did what my mom/dad told me to do. I found a large jar and a heavy piece of board. I covered the board with aluminum foil and put the jar in the middle. Then Michael and I used some clay and mud Michael had mixed up and shaped it into a cone around the bottle, with a big crater-like dip at the top for the opening. We put a small metal can, with a wire attached to the top of the volcano so I could pull it out when I wanted to, in the bottom of the bottle. We tried it out on the floor of the garage.

Oh yeah, we also used firecracker powder from firecrackers my mom/dad bought. Mom/Dad told me to put enough powder into the can to cover the bottom of it, then to lower it into the bottle. The first time we tried it out, Michael threw in the match to start the explosion. Then she/he let me try it while she/he and Michael watched. Once I got the match lit (I broke one), I threw it in the center just like Michael did. Boy, did it work great!

Mom/Dad put the powder in an aspirin bottle, and he/she told me to keep it away from anything hot because it might catch fire accidentally. He/She also said I should be real careful when demonstrating the volcano because I could get hurt. On the day before Science Day, I asked Mom/Dad to give me some matches to take to school as a part of my volcano project, but he/she said no, that I could get matches from my teacher. I told him/her that I would be careful, but he/she just said no.

I put the volcano in Mr./Ms. Mentor's closet when I took it to school that day, and I was really disappointed to see that there were two other kids who had brought volcanoes. They looked a little different from mine, though. One was made of white stuff, and the other one wasn't shaped as well as mine.

When it came time to demonstrate the volcano projects, they chose to use mine, I guess because it looked more realistic than the others. Mr./Ms. Mentor wouldn't let me demonstrate it though, and when he/she demonstrated it, he/she lit the match to a string running into the center of the volcano instead of throwing the match in the way Mom/Dad had taught me. It took a little longer to work that way, but the end result was the same: KABLOOM!

The next day, I picked up my volcano project to take it home. The bottle with the powder in it looked different, somehow bigger, than the one I brought to school. There were a couple of stiff string-like things inside, but the powder still looked the same. All of the other projects had been picked up, and there were no other aspirin bottles laying around.

As I waited for the bus, several kids told me they wanted to see it work. I refused at first, and I ran across the street to the drugstore to buy a pack of chewing gum. I know it's against school rules to go across the street, but all the kids do it. After I came back, they told me they didn't think I could make it work, so I said okay. At the time, I thought it was real lucky that Mr./Ms. Mentor left the book of matches with my project, because otherwise I wouldn't have been able to do it.

I thought there was a school rule against having matches on school grounds, but since we had used them to demonstrate the project yesterday, I thought the rule was meant to stop kids from starting fires on purpose. I remembered what Mom/Dad had told me about being real careful with matches near the powder, and I thought I was doing it right.

I put some powder from the aspirin bottle in the can and put the bottle aside, while I lit a match and threw it in. It worked, and I felt real proud. Some more kids heard the explosion and came running, and they asked me to do it again, so I did. The third time I had just started putting powder into the can, when the aspirin bottle just exploded in my right hand. I never felt so much pain before in my life, even when I had a tooth pulled at the dentist. One of the kids found a teacher who took me to a hospital and called my dad/mom.

The doctor says my hand will never be the same again.

LESLEY LEE PARKER

WITNESS STATEMENT
PLAINTIFF WITNESS: JONATHAN/JANE PARKER

My name is Jonathan/Jane Parker. Lesley Lee Parker is my child. I have one other child, a 15-year-old son named Michael. I am divorced. When Lesley came home from school one day in February, he/she said that the science teacher had told the class to come up with projects to show all the parents on Science Day, March 10th, 2004. Lesley said that the teacher had okayed a volcano project, and that he/she wanted to build one for his/her project just like Michael had done two years before.

Lesley is an average student. He/She has never been very good in reading or writing; as a matter of fact, he/she flunked third grade. I think a lot of his/her problem was that my ex-spouse never got Lesley up in time for school the way he/she should have. But for the first time in a long time, Lesley was excited about a school project, and even though I was concerned about the danger involved, I thought it was okay if the teacher had approved it. Besides, I had learned with Michael how to do this kind of thing safely.

I told Lesley what to do, and I bought some firecrackers for the powder. I was afraid of combustion, so I didn't want Lesley to use the fuses from the firecrackers, and I was with them when we took the firecrackers apart. We laid them out on the garage floor and removed the powder very carefully. I was watching the whole time. Then we put the powder in an empty aspirin bottle and put a plastic cap on it. I got rid of the fuses and the other remains of the firecrackers.

I showed Lesley how to light the volcano safely, by throwing the match into the center and pulling his/her hand away fast. I told him/her not to let the match get close to the powder while he/she was still holding onto the match. I warned him/her about combustion and how he/she could get hurt if he/she weren't careful. We even did a couple of trial runs with the volcano at home, and it worked beautifully. I didn't expect Lesley to be demonstrating the project without adult supervision. I didn't even give him/her any matches. I assumed he/she would be supervised at school just as I supervised him/her at home. When the teacher called and told me something had happened to Lesley, and that they had taken him/her to the hospital, it never occurred to me that it had anything to do with the volcano. I had given him/her strict instructions about it, and even though he/she may be a little mischievous now and then, he/she obeys me.

The doctor said Lesley received several severe lacerations, and one finger was almost destroyed. When I think about the pain he/she must have suffered, it breaks my heart. He/She is just a kid, and he/she will never have the full use of his/her hand again. The doctor says it will never get better than it is right now, about an 80% functioning level. The corrective and plastic surgery helped, but it sure cost us a pretty penny. It doesn't matter though; I'd pay anything to make this whole nightmare go away. I just can't believe the school would let this sort of thing happen. . . .

JONATHAN/JANE PARKER

WITNESS STATEMENT
PLAINTIFF WITNESS: MARTY WATKINS

My name is Marty Watkins. I was also in sixth grade at Orange Canyon Elementary School last year. I graduated to junior high, just like Lesley. I will turn 13 years old on January 3, 2005.

Lesley's a lot of fun— always doing something funny, getting him/herself into trouble, like the time he/she drew a picture of Mr./Ms. Mentor on the drawing board when the teacher stepped out for a minute; the teacher didn't see it until we started laughing so hard he/she couldn't help but wonder what was so funny. Lesley didn't mean any harm; he/she never does. I guess he/she just likes to get everyone's attention. We all know he/she is older than the rest of us.

When Mr./Ms. Mentor told us about Science Day, Lesley and I talked about making volcanoes, and I got really excited. When I went home that night, I signed on to the internet to find out how to make a really cool volcano. I knew how to make a regular volcano, but I wanted mine to be really cool. After looking for a while, I found a website that told me how to make a supercharged volcano. I printed it out because it didn't look too hard to make. The instructions said that if I added powder from bottle rockets, the volcano would be really cool. I was making my volcano when my mom got home from work. She asked what I was doing, and I showed her the instructions. Mom freaked out! She said that it was way too dangerous for me and that I couldn't make it. I got mad and yelled, but she still wouldn't let me. She said I had to make a plaster of paris volcano. I was really mad because plaster volcanoes are for babies, and I was in sixth grade! Anyway, the next day at school I told Lesley what my mom said. Lesley said a supercharged volcano sounded really cool and then asked me for the instructions. I gave them to Lesley and also got some bottle rockets. After school that day, I took the bottle rockets apart and put the powder in a bag before my mom got home. On science day, after Mr./Ms. Mentor demonstrated Lesley's volcano, I asked Lesley if I could look at the aspirin bottle. I put some bottle rocket powder in Lesley's aspirin bottle so that the volcano would be even cooler the next time we tried it.

While we were waiting for the school bus to take us home, some of the kids asked Lesley to show them his/her volcano. At first, he/she said no. He/She ran across the street and went into the drugstore for a few minutes. When he/she came out, he/she had a small package. The other kids started in again, asking him/her to demonstrate the volcano. This time Lesley said yes.

Lesley told everyone to stand back, and he/she put some powder in the can in the center of the volcano. Lesley used a set of matches; he/she said they were just laying with the project when he/she picked it up from Mr./Ms. Mentor. I didn't see where the matches came from; at least, I just don't remember clearly. But I believe Lesley over that jerk Alex. Alex said that he/she saw Mr./Ms. Mentor lock up the matches in a desk drawer. Alex was finally caught cheating last year and was suspended for two weeks.

Lesley threw a lighted match into the center of the volcano, and almost immediately there was a big bang with sparks coming out of the top of the volcano. More kids came around, I guess because of the sound, so Lesley agreed to do it again. Lesley told me that his/her mom/dad told him/her that if a spark got into the powder, it could explode, so he/she had to be careful.

The third time Lesley tried to demonstrate the volcano, the bottle with the powder just exploded in his/her hand, for no reason at all that I could see. One thing I thought was strange, though: Lesley said that his/her mom/dad wouldn't let him/her use a fuse the way the science teacher did on Science Day, but I could see a couple of firecracker fuses in the aspirin bottle along with the powder. I don't know whether Lesley realized that or not, but I am sure the fuses were there.

I really thought Lesley knew what he/she was doing, being older than the rest of us. I just don't understand how it happened.

MARTY WATKINS

WITNESS STATEMENT
DEFENSE WITNESS: PAT MENTOR

My name is Pat Mentor. I teach science to fifth and sixth graders at Orange Canyon Elementary School. I teach only science, taking over from the regular teachers for that subject at specific times during the day. This is a special program initiated by the Red Rock County School Board to focus on certain subjects, such as science and math, taught by teachers with superior education and experience in teaching those subjects.

I earned my bachelor of science and master's degree in education (summa cum laude) from Salt Lake University. After two years' experience teaching science in a high school setting, I decided to further my education. I received a full scholarship at the Massachusetts Institute of Technology, where I earned a Ph.D. in 2000. Although I was offered a lucrative research position at a major pharmaceutical company, I accepted this job because teaching has always been my first love. There's nothing quite as rewarding as seeing a child's eyes open wide when I show him or her the magic of science . . . but I digress.

I suppose an accident of this nature was bound to happen someday because children at this age tend to be a little careless. But I cannot believe I am being blamed. Kids are so fascinated by the concept of combustion that I constantly warn them of the dangers of being careless.

About the time we started teaching the subject of "Earth Surfaces", I told the students to prepare projects for the upcoming Science Day, last March 10th. Lesley Parker, the class "cut-up", told me he/she was going to make the best volcano we had ever seen. It was encouraging to see a goof-off such as Lesley finally taking an interest in something.

Several kids chose to make volcanoes, although I never suggested volcanoes as a project. As with anyone using even slightly dangerous products, I gave them oral and written warnings (see safety rules). I told them never to demonstrate their projects without me or a parent watching, and I warned them that they should never use matches or lighters near any of the chemicals and powders they would be using.

Knowing Lesley's playful nature, I told him/her that I didn't want him/her to do this project if he/she couldn't obey the safety rules. We talked in general terms about matches and fire, but I don't recall exactly what was said.

The written warnings also give strict instructions that the kids should not light a fire without using a paper-extender or a string-like fuse. I don't understand why Mr./Ms. Parker thinks that fuses are more dangerous than throwing matches; that just doesn't make sense.

Now, I did offer an alternative way of making a volcano--with a chemical compound and plaster of paris. I made a special point of suggesting this type of volcano to Lesley, but, of course, that sort of volcano doesn't create the loud explosion and sparks that a firecracker powder volcano makes. One student did choose to make the safer version.

When I demonstrated Lesley's volcano for Science Day, I used fuses from one of the other kid's projects. I may have put a few fuses in the bottle with the powder, since I was asked to demonstrate it several times and was expecting to be asked again. Of course, I would not allow the kids to demonstrate it; I kept a fire extinguisher nearby (just in case) even when I was demonstrating.

Know this: I would never have left any matches with any of the kids' projects when they picked them up to take home. I lock all matches and dangerous items in a drawer in my desk when I am out of the room. I am a very careful, tidy person.

I am sorry for what happened to Lesley Parker, but it was his/her own fault. I did my job, and my responsibility ends at the classroom door.

PAT MENTOR

WITNESS STATEMENT
DEFENSE WITNESS: SANDY TODD

My name is Sandy Socrates Todd. I teach sixth grade at Orange Canyon Elementary School, and Lesley Parker was my student when this terrible accident happened. Pat Mentor comes into my class four times a week to teach science. I have regular meetings with Pat and the visiting math teacher to evaluate students' progress and to discuss problems.

It's a strange coincidence that we had been talking about Lesley Parker a few weeks before the accident. Lesley is a bit of a pain in the neck, if you know what I mean. Maybe it's partly because his/her parents are divorced; I don't really know. I told Pat to pay extra careful attention to that kid, not to expect him/her to obey orders. We discussed the fact that Lesley failed a grade and that insecurity might be at the root of his/her problems. I remember that we both thought he/she had a good mind, if only he/she could direct his/her energies toward something positive.

I am a little surprised, to be honest, that Pat allowed Lesley to create such an inherently dangerous project as a volcano. I am not sure I would have approved of it had I known about it. But, you must remember, Pat is the teacher when it comes to science, and if this, or anything for that matter, would spark Lesley's interest in school, then it would be the right thing to do. After all, our primary concern is that these young people take an interest in learning, for their own sakes.

Pat Mentor is extremely well-qualified, and he/she really seems to care about these young minds. I don't believe he/she has worked with kids this age very much; most of his/her experience is at a higher education level, but Pat is learning fast what you can or cannot expect out of sixth-grade kids. I am working very closely with Pat at the request of the Principal. The school has published safety rules. I gave copies to Pat to hand out to the class, and I am sure that he/she discussed the rules with the class. I also discussed these rules with every class at the beginning of the school year, so I know Lesley Parker was aware of the rule against demonstrating projects without an adult present.

There is one thing that's for sure: Lesley Parker violated the school rule prohibiting students from crossing the street. Every student has that rule drilled into his/her head from first grade onward, since it is such a busy street and children have been hit by passing cars before. If I had seen Lesley begin to cross the street, I would have stopped it. However, I was watching other children, so I only saw Lesley run back towards the school after going to the store. I told Lesley to stop and reprimanded him/her for breaking the rule. I remember I was curious what was in the bag because I heard a shaking sound. It could quite possibly have been a box of matches, but I cannot say for sure. I wanted to check the contents of the bag, but a student started yelling for me because two fifth-graders were pushing each other. I had to leave Lesley in order to deal with the other students.

By the way, I was on bus guard duty that day. I heard some commotion where some kids were gathering, and I was on my way to investigate what sounded like an explosion, when Marty Watkins came running to tell me about the accident. Marty Watkins is the ideal student: good grades, good manners, and good grooming. The school board has investigated the incident and has already cleared me of any responsibility. I guess that's why I am not a party to this lawsuit, and why bus guard duty is not even an issue in this case. With so many kids, there's no way to watch them all. In my twenty years of teaching, this is the first time anything so serious as this has happened to one of my students.

SANDY TODD

WITNESS STATEMENT
DEFENSE WITNESS: SY INTIST

My name is Sy Intist. I am a Physics Professor at Salt Lake University. For about ten years now, the Red Rock County School Board has asked me to come to science classes to teach elementary school children about safety. The School Board referred my services to Pat Mentor, so that the children could have a safety lesson before preparing their projects for Science Day. I have conducted hundreds of experiments both alone and with college students and can proudly say I have never witnessed an injury. The foundation of science experiments is safety, and I take great care to educate children about being extremely careful.

For Science Day, I gave my usual instructions to the students: wear goggles and gloves, stay away from flames, don't wear loose clothing, etc. I pointed out the fire extinguisher and told the children how to use it. I identified the nearest emergency exits and the nearest sink and explained how to use the eye-wash fountain. I told them to stay away from all chemicals and powders unless their teacher expressly told them they needed to grab them. I was told ahead of time that multiple children were considering volcanoes for their science project. Due to the explosive nature of these volcanoes, I was especially careful to talk to the children about safety concerning these projects.

The one point that I most carefully covered was flammable objects. I told the children to absolutely keep all lighters and matches away from their projects at all times. The only people who should be using matches or lighters, I told them, are your teacher and parents. I also told the children to follow the instructions for their volcanoes exactly. I've heard about "extra special" volcanoes that emit flames or shoot stuff into the air. I expressly told the children that if they wanted to make their volcano any differently from the instructions, they needed to talk to a teacher about their plans first. Mr./Ms. Mentor knew that if he/she received a question he/she could not answer, my expertise was only a phone call away. I specifically told the children that they should not demonstrate their project. I know students want to try out their handiwork, but with something as serious as this, only a responsible adult should conduct the actual experiment.

Because these were sixth-graders, there were a few students who were talking and goofing off during this safety lecture. I tried to get their attention, but I know I did not have it at all times. I don't go into these classes very much, so I don't know who Lesley Parker is or if he/she were one of the students goofing off. In order for all of the children to be clear on the safety rules, I wrote up a list of rules for them to follow which I have submitted to this court. I am very sorry that a child got injured in this case, but I know I did my job in teaching them about safety.

SY INTIST

SAFETY RULES

1. If you're not sure if something is safe or not, **ASK YOUR TEACHER!**
2. Follow instructions and rules **EXACTLY** as stated.
3. Absolutely **DO NOT TOUCH ANYTHING FLAMMABLE**, such as matches, lighters, chemicals, gasses, etc., unless your teacher specifically tells you to and watches you use it!
4. If you want to add something to your project that is not in the instructions given to you, **YOU MUST TALK TO YOUR TEACHER FIRST.**
5. Do not wear loose or baggy clothing. **GIRLS:** If your hair is very long, put it in a pony tail.
6. If your teacher tells you to wear goggles or gloves, you **MUST** put them on before beginning any experiment.
7. **LISTEN** to your teacher, not your neighbor or friend.
8. **DO NOT DEMONSTRATE YOUR EXPERIMENTS UNLESS A TEACHER OR PARENT TELLS YOU IT'S OKAY AND SUPERVISES THE EXPERIMENT.**
9. Even if you think something is edible, **DON'T EAT IT!** Do not chew gum, eat food, or drink anything while preparing or conducting science experiments.
10. Wash your hands before and after every science experiment. If something gets in your eyes, **TELL YOUR TEACHER IMMEDIATELY** and go to the eye-washing station I showed you. If something gets on your clothes or desk, **TELL YOUR TEACHER!** If a substance will not come off of your hands, **TELL YOUR TEACHER!**

BACKGROUND INFORMATION on the APPLICABLE LAW in the STATE OF UTAH

- I. **There are many types of law; this case involves tort liability. It's a CIVIL MATTER.**
- A. **Civil** suits are where someone sues someone else for wrongdoing, and a judge or jury decides which party should be “held liable” i.e., what amount of money one party might have to pay the other or what action might be required of one or the other. It's important to realize that *this is not a criminal issue*. In a criminal case, the burden of proof that the prosecution must establish is high. It is guilt “beyond a reasonable doubt.” In a civil matter, the burden of proof is somewhat lower; it is by a “preponderance of the evidence.” What this means is that one party must prove his or her position is stronger than the other party's position. His/Her case doesn't have to be perfect, but as long as it is better than the other side's case, he/she wins.
- A analogy for this might be made by using 100 grains of sand. If Party Apple establishes that he is right by 51 grains of sand, and Party Banana establishes she is right by 49 grains of sand, Party Apple wins the case.
- B. When someone breaks the law, he or she is charged criminally and may face probation, fines, imprisonment, or even death. In a criminal case, the prosecution is always the government. In a civil case, the plaintiff (prosecution in a criminal case) may be any person who has a claim against a defendant.
- C. A **tort** is a civil wrong for which a remedy may be obtained; that remedy is usually in the form of damages. A tort can be a breach of a duty that the law imposes on persons who stand in a particular relationship to one another. A **negligent tort** is a tort committed by failure to observe the standard of care required by law under the circumstances.
- D. Courts may provide relief for torts in the form of damages, varying from \$1.00 to millions of dollars depending upon the severity of the injury. Tort cases offer remedies to persons, through civil suits, for harm caused by the *unreasonable conduct of others*.
- E. Tort actions may be grouped into three major categories: 1) **negligence**, 2) **intentional torts**, and 3) **strict liability**.

1. **Negligence** is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; in other words, any conduct that falls below the legal standard established to protect others against unreasonable risk of harm. **This is the basis for the tort filed in this case.**
2. **Intentional torts** are committed with the desire to inflict harm, including such torts as assault, battery, false imprisonment, and defamation.
3. **Strict liability** is when an injury results from the exposure to an unusual or inherently dangerous hazard (the transportation of nuclear weapons, for example); the injured party does not need to establish that the injury resulting from the hazard was knowingly or negligently caused.

II. Due to the nature of this case, it is a tort action for negligence.

A. In order to establish negligence, the injured party (plaintiff) must prove:

1. That the person accused of negligence owed a duty of care towards the person injured;
2. That the accused person failed to exercise a reasonable standard of care commensurate with that duty (through action or inaction);
3. That there was, in fact, an injury;
4. That there is a causal relationship between the alleged negligent conduct and the injury; and
5. That the injury was a foreseeable result of the conduct.

B. Through judges or juries, courts must decide whether or not a reasonable person would have anticipated the harmful results of the conduct under similar circumstances. A teacher's conduct is compared with how a reasonable teacher, with special training in teaching, would have acted in a similar situation.

C. Courts have noted that teachers and school systems owe students a duty to provide adequate supervision and instruction, to maintain equipment and buildings in good repair, and to provide warnings regarding any known dangers. Factors in establishing the extent of those duties are the age of the students, the environment, and the type of instructional activities taking place.

- D. The duty to protect students from harm is increased in laboratory classes and gymnasiums, where the risk of harm is greater than in an English class. In one case, school officials were held negligent for breaching their duty to provide safety precautions on a playground where there was a fence in disrepair.
- E. A teacher, however, does not have a duty to keep each student under constant surveillance or to anticipate every possible accident. Even if supervision is inadequate, a teacher will not be held negligent if the injury could have occurred as easily had there been proper supervision.

For example, a court has determined that a kindergarten teacher did not breach her duty of supervision during recess simply because she was attending to other students when a child fell while trying to swing down from a jungle gym. The court concluded that a teacher is not required to have each student in sight at all times.

- F. The courts are in disagreement about the responsibility of school personnel to supervise the activities of students on school grounds after regular school hours.
- G. PRAYER FOR RELIEF was INTENTIONALLY DELETED. This is not an issue for students to address in the course of this mock trial.

III. **Defenses Against Negligence**

- A. There are several defenses to the accusation of negligence. The ones with which we are concerned in this case are: 1) **contributory negligence**, 2) **intervening act**, and 3) **assumption of risk**. Other possible defenses, such as governmental immunity and acts of nature, are not to be raised in the course of this trial.

B. **Contributory Negligence**

Contributory negligence is when a plaintiff's own negligence played a part in causing the plaintiff's injury and is significant enough to bar the plaintiff from recovering damages. This defense relies on evidence that the action of the injured party was a substantial factor in causing the injury. School officials may be successful in using this defense if they are able to prove that the child was aware of, or should have been aware of, the consequences of the actions, yet still engaged in the dangerous activity.

One court has stated: “A child is not held to the same degree of care as an adult; the test is whether the particular child, considering his age, background, and inherent intelligence, indulged in gross regard of his own safety in the face of known, understood, and perceived danger.” *Simmons v. Beauregard Parish School Board*, 315 So.2d 883 (La. App.3d cir. 1975)

Note: That same court indicated that a 13-year-old child could be contributorily negligent.

C. **Intervening Act**

Even where a teacher has breached a duty of care, the teacher will not be held liable if the teacher’s actions were not the “proximate cause” of the injury. “Proximate cause” in this situation means immediately in time. An intervening act, such as the negligence of a third party, has relieved school personnel of liability. However, even when an intervening event actually causes a given injury, school personnel may still be held liable if they place students in a dangerous situation or if they should have expected a special risk of harm.

D. **Assumption of Risk**

This is another defense which is closely related to contributory negligence. Simply, this means the injured party assumed the risk of a known danger. This defense can only be used successfully when the injured party had full knowledge of and appreciated the danger, yet voluntarily exposed him/herself to the risk.

IV. **Respondeat Superior**

This phrase is Latin for “let the superior make answer”. This doctrine holds that an employer or principal is liable for the employee’s or agent’s wrongful acts committed within the scope of the employment or agency. At least one case has held that evidence in an action for injuries sustained by a student on school grounds, resulting from a teacher’s negligent actions, could support a finding of actionable negligence on the part of a school board via the doctrine of respondeat superior.

Note: For this case, all parties should assume the court has already ruled that the school board could be liable for damages to Lesley Parker if Pat Mentor’s conduct were negligent.

UTAH LAW

“A person has a duty to use reasonable care to avoid injuring other people or property. ‘Negligence’ simply means the failure to use reasonable care. Reasonable care does not require extraordinary caution or exceptional skill. Reasonable care is what an ordinary, prudent person uses in similar situations. The amount of care that is considered ‘reasonable’ depends on the situation. You must decide what a prudent person with similar knowledge would do in a similar situation.” *Summerill v. Shipley*, 890 P.2d 1042, Utah App. (1995)

“A minor engaging in adult activity, that is, an activity which is normally performed by adults and which requires a higher degree of maturity and judgment than activities minors would normally engage in, is held to the same standard of care as an adult engaging in that activity.” *Summerill v. Shipley*, 890 P.2d 1042, Utah App. (1995)

“(A) child must exercise that degree of care which ordinarily would be observed by children of the same age, intelligence, and experience under similar circumstances.” *Donohue v. Rolando*, 400 P.2d 12, 14 (Utah 1965)

“The question as to whether a child’s capacity is such that it may be chargeable with contributory negligence is a question of fact for the jury, unless so young and immature as to require the court to judicially know that it could not contribute to its own injury or be responsible for its acts, or so old and mature that the court must know that, though an infant, yet it is responsible.” *Mann v. Fairbourn*, 366 P.2d 603 (Utah 1961)

“The degree of care required of a child must be graduated to its age, capacity, and experience, and must be measured by what might ordinarily be expected from a child of like age, capacity, and experience under similar conditions.” *Mann v. Fairbourn*, 366 P.2d 603 (Utah 1961)

(The general duty of care required of a minor is) “limited by consideration of the [child’s] age, intelligence and experience.” *Morby v. Rogers*, 252 P.2d 231, 234 (Utah 1953)

“Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engaged in the exercise and discharge of a governmental function.” *UCA §63-30-3 (Utah Code Annotated Section 63-30-3)*

