

Summary of Legal Rules Governing Liability for Recreational Use of School Facilities

STATE	GOVERNMENTAL OR SOVEREIGN IMMUNITY	RECREATIONAL USE STATUTE	TRADITIONAL COMMON LAW TREATMENT OF ENTRANTS ON LAND	LIMITS ON DAMAGES
Alabama	Sovereign immunity unless contractual obligation exists ¹	Applicable ²	Distinctions retained; after-school users likely to be licensees ³	Recovery for damages for an individual are limited to \$100K; for 2 or more persons having claims arising out of the same occurrence, the limit is \$300K not including punitive damages ⁴
Alaska	Narrow immunity limited to discretionary decisions ⁵	Applies only to unimproved lands ⁶	No distinction ⁷	Compensatory noneconomic damages limited to \$8K per year or \$400K for life whichever is greater. For severe permanent injury, the limit is \$25K per year or \$1 Million for life whichever is greater. Punitive damages for actions against the state or its agencies are prohibited ⁸
Arizona	Extremely narrow immunity limited to discretionary decisions regarding spending and licensing ⁹	Not explicitly applicable, but arguable as statute applies to public lands, including open land, parks, and other similar lands, whether improved or not ¹⁰	Distinctions retained; after-school users could be either invitees or licensees ¹¹	Did not discover any limits
Arkansas	Sovereign immunity to the extent of liability insurance purchased ¹²	Strong protection as long as open and accessible to general public ¹³	Distinctions retained; after-school users likely to be classified as invitees ¹⁴	No limits, but sovereign immunity effectively sets limit at zero
California	Governmental immunity for hazardous recreational activity and design immunity for construction or improvement to public property ¹⁵	Does not apply to public entities ¹⁶	Distinctions altered by statute; reasonable person standard adopted ¹⁷	No joint and several liability for recovery of noneconomic damages; punitive damages limited to where plaintiff can show clear and convincing evidence of oppression, fraud or malice ¹⁸
Colorado	Governmental immunity with limited exceptions, including an exception for dangerous conditions ¹⁹	Applicable ²⁰	Distinctions retained ²¹	Statute limits liability to \$150K for a single occurrence that harmed a single person, or \$600K for multiple people limiting each individual claim to \$150K ²²
Connecticut	Governmental immunity subject to exceptions; in general, schools have broad discretionary immunity ²³	Does not apply to governmental entities ²⁴	Distinctions retained ²⁵	No specific limits; collateral source rule* for certain sources such as Medicaid ²⁶
Delaware	Governmental immunity subject to substantial exceptions; narrow interpretation of discretionary immunity ²⁷	Does not apply to governmental entities ²⁸	Distinctions retained; after-school recreational users likely to be licensees ²⁹	No limits on damages. Collateral source rule is applicable ³⁰
DC	Governmental immunity subject to exceptions; governmental immunity for discretionary acts ³¹	No recreational use statute	Distinctions retained; recreational users likely to be licensees by invitation or bare licensees ³²	Punitive damages are not generally recoverable ³³

STATE	GOVERNMENTAL OR SOVEREIGN IMMUNITY	RECREATIONAL USE STATUTE	TRADITIONAL COMMON LAW TREATMENT OF ENTRANTS ON LAND	LIMITS ON DAMAGES
Florida	Subject to common law duties that may trigger liability; in particular capital improvements and property control functions and providing professional, educational, and general services trigger common law duties ³⁴	Does not apply to governmental entities ³⁵	Distinctions retained; recreational users likely to be invitees if formal program; if grounds simply open to public then recreational users likely to be licensees ³⁶	State Tort Claims Act limits damages to \$100k for an individual and \$200k for a single occurrence, punitive damages prohibited. Judgments exceeding limits may be rendered but must be reported to legislature. General damages limits include: 1) collateral sources discounted from damage award 2) generally punitive damages are capped at 3 times compensatory damages or \$500K unless conduct was motivated by financial gain and likelihood of injury was known then damages capped at 4 times compensatory damages or \$2 million ³⁷
Georgia	Sovereign immunity with few exceptions ³⁸	Applicable ³⁹	Distinctions retained	Schools are exempted from Georgia Tort Claims Act therefore limits on liability not applicable ⁴⁰
Hawaii	Immunity waived, certain exceptions for broad policy decisions may apply, and state is not liable for act or omission of a state employee exercising due care in executing a statute or regulation ⁴¹	Applies only to private entities ⁴²	Distinctions abolished; reasonable care standard for all users ⁴³	State immune from punitive damages and interest; however, no cap on damages in negligence actions ⁴⁴
Idaho	Immunity waived, narrow exception for discretionary decisions which does not apply to operational decisions ⁴⁵	Applicable; broad statute that provides a strong defense against liability ⁴⁶	Distinctions retained ⁴⁷	Noneconomic damages in personal injury actions limited to \$250K, punitive damages limited to the greater of \$250K or 3 times compensatory damages. Modified collateral source rule is applicable ⁴⁸
Illinois	Governmental immunity subject to some exceptions including exception for ministerial acts. Tort Immunity Act also has provisions limiting liability for school districts providing recreational access ⁴⁹	Does not apply, statute applicable only to hunting or recreational shooting activities ⁵⁰	Distinctions retained ⁵¹	Public entities and officials are not liable for exemplary or punitive damages. Collateral source rule is applicable ⁵²
Indiana	General exposure to liability subject to exceptions including immunity for discretionary acts ⁵³	Applicable ⁵⁴	Distinctions retained; recreational users would either be public invitees or licensees ⁵⁵	Aggregate limit for damages occurring before 1/1/06 cannot exceed \$300K; after 1/1/06 but before 1/1/08 limit is \$500K; and after 1/1/08 limit is \$750K. Limit for actions arising out of single occurrence is \$5 million. Punitive damages are limited to \$50K or 3 times compensatory damages ⁵⁶
Iowa	General exposure to liability subject to various exceptions including immunity for discretionary decisions, negligent design or construction of public facility for recreational use ⁵⁷	Does not apply to governmental entities ⁵⁸	Distinctions retained ⁵⁹	Immunity from punitive damages as well as a number of general limits on damages including partial abrogation of the collateral source rule ⁶⁰
Kansas	General exposure to liability through Tort Claims Act with a number of exceptions including discretionary and broad recreational use immunity ⁶¹	Applicable ⁶²	Distinctions abolished; trespasser status retained ⁶³	Damages for single occurrence limited to \$500K. Government entities cannot be liable for punitive or exemplary damages and are not required to pay pre-judgment interest. \$500K limit not applicable where liability insurance is purchased. In personal injury suit, pain and suffering damages limited to \$250K; wrongful death damages limited to \$250K ⁶⁴
Kentucky	Governmental immunity subject to limited exceptions; application of immunity turns on governmental/proprietary function distinction ⁶⁵	Applicable ⁶⁶	Distinctions retained ⁶⁷	Board of Claims limits damages to \$200K for single claim and \$350K for single occurrence. Recovery for pain and suffering is barred. The collateral source rule has been abrogated. Punitive damages only awarded where oppression, fraud, or malice can be shown by clear and convincing evidence ⁶⁸
Louisiana	General exposure to liability ⁶⁹	Applicable; school grounds must qualify as a public park to avail themselves to the statute's protections ⁷⁰	Distinctions abolished; a duty to reasonably maintain and manage property exists ⁷¹	Damages limited to \$500K for any one claimant regardless of number of claims. Punitive damages prohibited except in products liability cases ⁷²

STATE	GOVERNMENTAL OR SOVEREIGN IMMUNITY	RECREATIONAL USE STATUTE	TRADITIONAL COMMON LAW TREATMENT OF ENTRANTS ON LAND	LIMITS ON DAMAGES
Maine	Governmental immunity subject to limited exceptions; including exceptions for negligent maintenance or construction of a public building; however, recreational facilities are exempted and restore the grant of immunity ⁷³	Does not apply to governmental entities ⁷⁴	Distinctions abolished; trespass status retained, all others owed duty of reasonable care ⁷⁵	All claims arising out of a single occurrence limited to \$400K. Punitive and exemplary damages against government entity prohibited. Personal liability of a public employee within the scope of employment is limited to \$10K. Wrongful death damages limited to \$500K for loss of comfort and emotional distress and \$75K for punitive damages. Collateral source rule is applicable ⁷⁶
Maryland	General exposure to liability; school boards prohibited from raising governmental immunity defense for suits claiming less than \$100K ⁷⁷	Applicable only to open undeveloped space ⁷⁸	Distinctions retained; after-school recreational users likely to be invitees ⁷⁹	School boards can exercise governmental immunity for claims over \$100K. Punitive damages prohibited against local government. Noneconomic damages for personal injury limited to \$500K, increasing \$15K every year after 10/1/95 ⁸⁰
Massachusetts	General exposure to liability subject to narrow exceptions, including discretionary function immunity ⁸¹	Applicable ⁸²	Distinctions abolished; retained trespasser status ⁸³	Collateral source rule is applicable. Punitive damages only allowed when specifically authorized and recognized ⁸⁴
Michigan	Governmental immunity subject to some exceptions, including a proprietary function and public buildings exception ⁸⁵	Applicable only to large undeveloped tracts of land ⁸⁶	Distinctions retained; after-school users likely to be characterized as licensees unless monetary benefit is present ⁸⁷	Exemplary damages allowed only where action was malicious, willful, or reckless. Punitive damages allowed where expressly authorized by legislature. Collateral source benefit reduction statute reduces damages by amount recovered by a collateral source. Future damages exceeding \$250K must be paid by defendant or defendant's insurance ⁸⁸
Minnesota	General exposure to liability subject to narrow exceptions--recreational immunity may offer some protection ⁸⁹	None; however recreational use provision in Municipal Tort Liability Act likely to afford protection ⁹⁰	Distinctions abolished; retained trespasser status ⁹¹	Claims made prior to 1/2008 limited to \$300K. Claims between 1/2008 and 7/2009 limited to \$400K. Liability for multiple claims arising out of single occurrence limited to \$1.2-1.5 million depending on date of claim. Punitive damages generally not allowed ⁹²
Mississippi	General exposure to liability subject to narrow exceptions including a discretionary function and a dangerous condition exception ⁹³	Not explicitly applicable, but arguable ⁹⁴	Distinctions retained; unlikely to provide significant protection to school districts for recreational use ⁹⁵	Maximum liability for all claims arising from a single occurrence limited to \$50K for claims between 1993 and 1997, \$250K for claims between 1997 and 2001 and \$500K for claims after 2001. Punitive damages and prejudgment interest barred. Noneconomic damages for civil actions capped at \$1 million ⁹⁶
Missouri	Governmental immunity subject to limited exceptions including an exception for dangerous conditions on public property ⁹⁷	Not likely applicable; applies to large tracts of land outside of corporate boundaries ⁹⁸	Distinctions retained; unlikely to provide significant protection to school districts for recreational use ⁹⁹	Liability limited to \$2 million per occurrence and \$300K per person per occurrence. Punitive and exemplary damages are barred ¹⁰⁰
Montana	Legislative immunity and Public Duty Doctrine offer limited protection ¹⁰¹	Applicable; likely offers strong protection to schools ¹⁰²	Distinctions abolished; established ordinary care standard ¹⁰³	Modified collateral source rule may limit liability, collateral source rule still applies to Medicaid payments ¹⁰⁴
Nebraska	General exposure to liability subject to a number of exceptions, potential protection from recreational use exception ¹⁰⁵	Does not apply to governmental entities ¹⁰⁶	Distinctions abolished; established reasonable care standard ¹⁰⁷	Liability limited to \$1 Million for any person for claims arising out of a single occurrence. \$5 million for all claims arising out of a single occurrence. Collateral source rule applicable. Punitive damages prohibited ¹⁰⁸
Nevada	General exposure to liability with limited exceptions, including a discretionary function exception, and a failure to inspect any building exception ¹⁰⁹	Applicability doubtful; courts have interpreted statute to apply to rural, semi-rural or non-residential land ¹¹⁰	Distinctions abolished; established reasonable person standard ¹¹¹	Liability for state or state employee limited to \$75K for each cause of action. Exemplary and punitive damages prohibited ¹¹²
New Hampshire	General exposure to liability with limited exceptions, including an exception for discretionary acts ¹¹³	Applicable ¹¹⁴	Distinctions abolished; established reasonable care standard for maintenance and operation of property ¹¹⁵	Liability limited to \$275K for bodily/personal injury or property damage sustained by an individual or \$925K for a single occurrence. Punitive damages prohibited unless allowed by statute. Collateral source rule applicable ¹¹⁶
New Jersey	Governmental immunity subject to exceptions, including an exception for dangerous conditions and ministerial acts ¹¹⁷	Does not apply to land in residential or densely populated areas ¹¹⁸	Distinctions retained ¹¹⁹	Modified collateral source rule deducting payments paid by health insurers or other collateral sources of funds. Punitive damages determined by a bifurcated trial ¹²⁰

STATE	GOVERNMENTAL OR SOVEREIGN IMMUNITY	RECREATIONAL USE STATUTE	TRADITIONAL COMMON LAW TREATMENT OF ENTRANTS ON LAND	LIMITS ON DAMAGES
New Mexico	Governmental immunity subject to exceptions including an exception for negligence of public employees in the operation or maintenance of any building, public park, machinery or equipment ¹²¹	Not likely applicable; applies only to unstructured activities and rural activities ¹²²	Distinctions abolished; established reasonable care standard ¹²³	Liability limited to \$100K for property damage, and \$300K for medical expenses. Other damages limited to \$400K for a single claim and \$750K for a single occurrence. Punitive damages are prohibited ¹²⁴
New York	Limited governmental immunity including immunity for discretionary functions ¹²⁵	Not applicable to municipalities in their failure to fulfill their duty of reasonable care in maintenance of public parks or recreational facility ¹²⁶	Distinctions abolished; established reasonable care standard ¹²⁷	Punitive damages prohibited for personal injury or property damages in negligence actions unless expressly authorized by statute. Collateral source rule applicable ¹²⁸
North Carolina	Sovereign immunity few exceptions waived by purchase of insurance ¹²⁹	Does not apply to governmental entities ¹³⁰	Distinctions abolished; trespass status retained ¹³¹	Limited punitive damages ¹³²
North Dakota	General exposure to liability with limited exceptions including an exception for discretionary functions ¹³³	Applicable ¹³⁴	Distinctions abolished; established reasonable care standard ¹³⁵	Liability limited to \$250K for an individual and \$500K for three or more individuals for a single occurrence. Punitive and exemplary damages prohibited. Liability limits subject to waiver by purchase of insurance ¹³⁶
Ohio	Governmental immunity subject to limited exceptions, including an exception for proprietary functions ¹³⁷	Applicable ¹³⁸	Distinctions retained; after school users likely to be licensees or invitees depending on whether the program is formal or not ¹³⁹	Exemplary and punitive damages are prohibited and there is no collateral source rule. General limits for tort claims: Compensatory damages for noneconomic loss are limited to \$250K or 3 time economic loss for each plaintiff or \$500K for each occurrence ¹⁴⁰
Oklahoma	General exposure to liability with exceptions including a recreational use exception, an discretionary function exception ¹⁴¹	Applicable depending on whether the list of activities is exhaustive or illustrative ¹⁴²	Distinctions retained ¹⁴³	Individual claims of a single claimant limited to \$25K. Liability for a claim arising out of a single occurrence is limited to \$125K or \$175K if county population is greater than \$300K. Multiple claims arising out of single occurrence are capped at a total of \$1 Million ¹⁴⁴
Oregon	General exposure to liability with a narrow exception for discretionary acts ¹⁴⁵	Applicable ¹⁴⁶	Distinctions retained ¹⁴⁷	Punitive damages prohibited. Liability of public employees acting in a professional capacity is limited to \$50K for property damage and \$100K for other claims. Total damages arising out of a single occurrence are limited to \$500K ¹⁴⁸
Pennsylvania	Governmental immunity subject to exceptions including an exception that imposes liability for injuries from negligently causing real property to be unsafe ¹⁴⁹	Does not apply to significantly developed lands ¹⁵⁰	Distinctions retained; recreational use of school grounds likely to confer invitee status ¹⁵¹	Damage awards limited to \$500K in the aggregate. Benefits received from and insurance policy for an enumerated loss may be deducted from award amount. PA retains the collateral source rule ¹⁵²
Rhode Island	General exposure to liability with limited exceptions including the public duty doctrine ¹⁵³	Applicable; more likely to apply if no formal recreational program is in place ¹⁵⁴	Distinctions abolished; trespass status retained ¹⁵⁵	Damages limited to \$100K for nonproprietary functions leading to injury. Damages may be increased by Special act of the General Assembly ¹⁵⁶
South Carolina	General exposure with substantial exceptions including an exception for discretionary functions, and injuries resulting due to maintenance, security and supervision of school facilities ¹⁵⁷	Applicable ¹⁵⁸	Distinctions retained; separate status for children; classifications work with recreational use statute to classify users. A recreational user would classify as a trespasser under Recreational Use Statute ¹⁵⁹	Damages limited to \$300K for an individual for a single occurrence and \$600K for a single occurrence. Punitive or exemplary damages and prejudgment interest are prohibited. Retains collateral source rule ¹⁶⁰
South Dakota	Sovereign immunity few exceptions ¹⁶¹	Not likely applicable, intent seems to be encouragement of rural activities ¹⁶²	Distinctions retained ¹⁶³	Limited joint and several liability. Maintains liability pool to pay for property damage and injury. Payments limited to 2% of pool's yearly funds. Claims covered by insurance are limited to \$200K for a single claim ¹⁶⁴
Tennessee	Governmental immunity subject to substantial exceptions including an exception for injuries that occur as a result of defective or unsafe conditions of public buildings, or structures ¹⁶⁵	Limited applicability ¹⁶⁶	Distinctions abolished; trespass status retained ¹⁶⁷	Damages are limited to the minimum amount of insurance required by statute. For injury or death between 7/1/87 and 7/1/02 the minimum would be \$130K for one person and \$350K total; between 7/1/02 and 7/1/07 \$250K for an individual and \$600K total; after 7/1/07 the limit is \$300K for one person and \$700K for a single occurrence. Judgment can exceed minimums to the extent of insurance purchased in excess of minimum ¹⁶⁸

STATE	GOVERNMENTAL OR SOVEREIGN IMMUNITY	RECREATIONAL USE STATUTE	TRADITIONAL COMMON LAW TREATMENT OF ENTRANTS ON LAND	LIMITS ON DAMAGES
Texas	Broad governmental immunity; waiver of immunity through Tort Claims Act Does not apply to schools ¹⁶⁹	Applicable; courts have found playing on playground equipment to be within statutes purview ¹⁷⁰	Distinctions retained; recreational users may be classified as licensees ¹⁷¹	Immunity of school districts only waived for motor vehicle accidents. Limits for injuries resulting from a motor vehicle accident would be \$100K for an individual and \$300K for a single occurrence. Punitive and exemplary damages are prohibited ¹⁷²
Utah	Governmental immunity subject to substantial exceptions including an unsafe building exception ¹⁷³	Does not apply to urban land; potential protection through municipality exception ¹⁷⁴	Distinctions retained; recreational users likely considered public invitees ¹⁷⁵	Eliminated joint and several liability. No specific limits on damages ¹⁷⁶
Vermont	General exposure to liability sometimes turning on the governmental/proprietary function distinction ¹⁷⁷	Does not apply to lands owned by a municipality or state ¹⁷⁸	Distinctions retained; recreational users likely to be public invitees or licensees depending on the formality of the program ¹⁷⁹	No limits on damages, damages generally left to the discretion of the jury ¹⁸⁰
Virginia	Sovereign immunity offering school districts a broad range of protections ¹⁸¹	May be applicable if list of activities is simply illustrative, Virginia Code Annotated § 15.2-1809 may also provide protection ¹⁸²	Distinctions retained; recreational users likely to be invitees or licensees depending on circumstances surrounding the program ¹⁸³	Schools would be immune from the liability imposed by the Virginia Tort Claims Act. VA TCA limits compensatory damages to \$100K or to the extent liability insurance covers claim. Punitive damages prohibited under the act. Generally, punitive damages limited to \$350K ¹⁸⁴
Washington	General exposure to liability subject to limited exceptions including a discretionary functions exception ¹⁸⁵	Applicable ¹⁸⁶	Distinctions retained; recreational users may be classified as licensees ¹⁸⁷	Punitive damages and joint and several liability are prohibited ¹⁸⁸
West Virginia	General exposure to liability subject to limited exceptions including exceptions for weather conditions and natural conditions of property ¹⁸⁹	Does not apply to schools ¹⁹⁰	Distinctions abolished; established reasonable care standard ¹⁹¹	Punitive and exemplary damages are prohibited. Noneconomic damages arising from the same cause or series of transactions are limited to \$500K ¹⁹²
Wisconsin	Governmental immunity subject to exceptions including exceptions for ministerial functions ¹⁹³	Applicable; fact specific inquiry necessary to determine whether recreational activity or not ¹⁹⁴	Distinctions abolished; established ordinary care standard ¹⁹⁵	Punitive damages are prohibited; damages arising out of an act of an officer or employee of the school district acting in their official capacity are limited to \$50K. Generally the collateral source rule is applicable ¹⁹⁶
Wyoming	Governmental immunity subject to exceptions including an exception for injury or death resulting from negligent maintenance or operation of a building, recreation area or park ¹⁹⁷	Applicable ¹⁹⁸	Distinctions abolished; trespass status retained ¹⁹⁹	Damages limited to \$250K for a single claim and \$500K for all claims arising out of a single occurrence. Punitive damages are prohibited. Damage limits will increase to the extent of insurance coverage purchased by public entity ²⁰⁰

* The collateral source rule allows for plaintiffs to include costs already covered by other sources (such as insurance) in damages claims.

- ¹ ALA. CONST. art. I, § 14; *L.S.B. v. Howard*, 659 So. 2d 43, 44 (Ala. 1995); *Hutt v. Etowah County Bd. of Educ.*, 454 So. 2d 973, 974 (Ala. 1984).
- ² ALA. CODE § 35-15 (2008).
- ³ *Ex parte Mountain Top Indoor Flea Market, Inc.*, 699 So. 2d 158, 161 (Ala. 1997).
- ⁴ ALA. CODE § 11-93-2 (2008).
- ⁵ ALASKA STAT. § 09.50.250 (2008).
- ⁶ *Id.* § 09.65.200.
- ⁷ *Webb v. City & Borough of Sitka*, 561 P.2d 731, 733 (Alaska 1977).
- ⁸ ALASKA STAT. § 09.17.010 (2008).
- ⁹ ARIZ. REV. STAT. ANN. § 12-820.01 (2007).
- ¹⁰ *Id.* § 33-1551
- ¹¹ RESTATEMENT (SECOND) OF TORTS § 328E et seq.; 1-11 LAW OF NEGLIGENCE, *supra* note 1, at Scope, § 11.01.
- ¹² Ark. Code Ann. § 21-9-301.
- ¹³ *Id.* § 18-11-305.
- ¹⁴ *Heigle v. Miller*, 332 Ark. 315, 319-321 (1998).
- ¹⁵ CAL. GOV'T CODE § 810 et seq
- ¹⁶ CAL. CIV. CODE § 846 (West 2007).
- ¹⁷ *Rowland v. Christian*, 443 P.2d 561, 568-69 (Cal. 1968);
- ¹⁸ Proposition 51, CAL. CIV. CODE § 1431.2 (West 2007).
- ¹⁹ Colo. Rev. Stat. Ann. § 24-10-101 (West 2006).
- ²⁰ *Id.* § 24-10-106(c).
- ²¹ *Id.* § 13-21-115(1.5)(a) (West 2006).
- ²² *Id.* § 24-10-114(1)(a); 7A COLO. PRACTICE GUIDE § 28.25.
- ²³ *Heigl v. Bd. of Educ.*, 587 A.2d 423, 425 (Conn. 1991).
- ²⁴ CONN. GEN. STAT. ANN. § 52-557g(b) (West 2008).
- ²⁵ THOMAS B. MOONEY, A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW 138 (5th ed. 2006); RICHARD L. NEWMAN & JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT § 149 (1996).
- ²⁶ CONN. GEN. STAT. ANN. § 52-225a (West 2008).
- ²⁷ DEL. CODE ANN. tit. 10, § 4003 (West 2008)
- ²⁸ *Id.* tit. 7, § 5901, et seq.
- ²⁹ *Tucker v. Albus, Inc.*, 1999 WL 1241073, *6 (Del. Super. Ct. Sept. 27, 1999)
- ³⁰ *Spencer v. Wal-Mart Stores East, LP*, 930 A.2d 881, 887 (Del. 2007), *quoting Yarrington v. Thornburg*, 205 A.2d 1 (Del. 1964).
- ³¹ *Elgin v. District of Columbia*, 337 F.2d 152, 155 (D.C. Cir. 1964)
- ³² *Firfer v. United States*, 208 F.2d 524, 528 (D.C. Cir. 1954).
- ³³ *Teart v. Wash. Metro. Area Transit Auth.*, 686 F. Supp. 12, 13 (D.D.C. 1988).
- ³⁴ FLA. STAT. ANN. § 768.28 (West 2007).
- ³⁵ *Id.* § 375.251(2)(a).
- ³⁶ *Davis By & Through Davis v. City of Miami*, 568 So. 2d 1301 (Fla. Dist. Ct. App. 1990)
- ³⁷ FLA. STAT. ANN. § 768.76(1) (West 2007).
- ³⁸ GA. CODE ANN. § 50-21-20 et seq. (2007).
- ³⁹ GA. CODE ANN. § 51-3-20 et seq.
- ⁴⁰ *Id.* § 50-21-20 et seq.
- ⁴¹ HAW. REV. STAT. § 662-2 (2008)
- ⁴² *Id.* § 520-4.
- ⁴³ *Farrior v. Payton*, 562 P.2d 779, 786 (Haw. 1977).
- ⁴⁴ HAW. REV. STAT. § 662-2 (2008).
- ⁴⁵ IDAHO CODE ANN. § 6-901 (2008)
- ⁴⁶ *Id.* § 36-1604.
- ⁴⁷ *O'Guin v. Bingham County*, 122 P.3d 308, 311 (Idaho 2005); *Boots ex rel. Boots v. Winters*, 179 P.3d 352, 356 (Idaho Ct. App. 2008).
- ⁴⁸ IDAHO CODE ANN. § 6-1606 (2008);. § 6-1603(c); § 6-1604(3);. § 6-1604(1).
- ⁴⁹ 745 ILL. COMP. STAT. ANN. 25/0.01 et seq. (West 2008).
- ⁵⁰ *Id.* 65/2(b).
- ⁵¹ *Clifford v. Wharton Bus. Group*, 817 N.E.2d 1207, 1214 n.3 (Ill. App. Ct. 1st Dist. 2004).
- ⁵² 745 ILL. COMP. STAT. ANN. 10/2-102 (West 2008).
- ⁵³ *Campbell v. State*, 284 N.E.2d 733, 737 (Ind. 1972).
- ⁵⁴ IND. CODE ANN. § 14-22-10-2.
- ⁵⁵ INDIANA PRACTICE, *Personal Injury Law and Practice* § 3:14 (2007-2008).
- ⁵⁶ IND. CODE ANN. § 34-13-3-4(a)(1) (West 2008).
- ⁵⁷ IOWA CODE ANN. § 670 (West 2008).
- ⁵⁸ *Id.* § 461C.
- ⁵⁹ *Clinkscales v. Nelson Sec.*, 697 N.W.2d 836, 845 (Iowa 2005).
- ⁶⁰ IOWA CODE ANN. § 670.4(5) (West 2008).
- ⁶¹ KAN. STAT. ANN. § 75-6101 et seq. (West 2008).
- ⁶² *Id.* § 58-3201 et seq.
- ⁶³ *Jones v. Hansen*, 867 P.2d 303, 310 (Kan. 1994).
- ⁶⁴ KAN. STAT. ANN. § 75-6105(a)-(c) (West 2008).
- ⁶⁵ *Yanero v. Davis*, 65 S.W.3d 510, 517-19 (Ky. 2001).
- ⁶⁶ KY. REV. STAT. ANN. § 411.190 (LexisNexis 2008).
- ⁶⁷ *Perry v. Williamson*, 824 S.W.2d 869, 875 (Ky. 1992).
- ⁶⁸ KY. REV. STAT. ANN. § 44.070(1) (LexisNexis 2008).
- ⁶⁹ LA. REV. STAT. ANN. § 13:5101 et seq. (2007).
- ⁷⁰ 1-11 LOUISIANA TORT LAW § 11.05 (2007).
- ⁷¹ *Cates v. Beauregard Elec. Coop., Inc.*, 328 So. 2d 367 (La. 1976).
- ⁷² LA. REV. STAT. ANN. § 13:5106.
- ⁷³ ME. REV. STAT. ANN. tit. 14, § 8101 et seq. (West 2008).
- ⁷⁴ *Id.* § 159-A.
- ⁷⁵ *Poulin v. Colby College*, 402 A.2d 846, 851 (Me. 1979).
- ⁷⁶ ME. REV. STAT. ANN. tit. 18, § 8105(1) (West 2008).
- ⁷⁷ *Bd. of Educ. v. Riverdale*, 578 A.2d 207, 210 (Md. 1990).
- ⁷⁸ MD. CODE ANN., NAT. RES. §§ 5-1101 to 1109 (West 2008).

- ⁷⁹ MD. HANDBOOK, *supra* note 1, at § 11.3.
- ⁸⁰ MD. CODE ANN., CTS. & JUD. PROC. § 5-518, 11-109 (West 2008).
- ⁸¹ MASS. GEN. LAW. ANN. ch. 258, § 1 et seq. (West 2008).
- ⁸² *Id.* ch. 21, § 17C.
- ⁸³ Mounsey v. Ellard, 297 N.E.2d 43 (Mass. 1973).
- ⁸⁴ *Id.* ch. 258, § 2.
- ⁸⁵ MICH. COMP. LAWS ANN. § 691.1401 et seq. (West 2008).
- ⁸⁶ *Id.* § 324.73301.
- ⁸⁷ MICH. CIV. JUR. *Negligence* § 40 (2007); Stitt v. Holland Abundant Life Fellowship, 614 N.W.2d 88, 91 (Mich. 2000).
- ⁸⁸ *Id.* *Damages* § 162.
- ⁸⁹ MINN. STAT. § 3.732 (West 2007).
- ⁹⁰ *Id.* § 466.03, subd. 6e.
- ⁹¹ Peterson v. Balach, 199 N.W.2d 639, 647 (Minn. 1972).
- ⁹² MINN. STAT. § 466.04, subd 1(a).
- ⁹³ MISS. CODE ANN. § 11-46-5(1) (2008).
- ⁹⁴ *Id.* § 89-2-1.
- ⁹⁵ Anderson v. Claiborne County Recreational Club, Inc., 812 So. 2d 965 (Miss. 2002); Skelton v. Twin County Rural Elec. Ass'n, 611 So. 2d 931 (Miss. 1992).
- ⁹⁶ MISS. CODE ANN. § 11-46-15.
- ⁹⁷ MO. REV. STAT. § 537.600 (2007).
- ⁹⁸ *Id.* §§ 537.345–537.348.
- ⁹⁹ Carter v. Kinney, 896 S.W.2d 926, 927 (Mo. 1995) (en banc).
- ¹⁰⁰ MO. REV. STAT. § 537.610 (2007).
- ¹⁰¹ MONT. CODE ANN. § 2-9-111 (2007).
- ¹⁰² *Id.* § 70-16-302.
- ¹⁰³ *Id.* § 27-1-701.
- ¹⁰⁴ *Id.* § 27-1-308 (2007).
- ¹⁰⁵ NEB. REV. STAT. ANN. § 13-901 et seq. (Lexis 2007).
- ¹⁰⁶ *Id.* § 37-729 et seq.
- ¹⁰⁷ Heins v. Webster County, 250 Neb. 750 (Neb. 1996).
- ¹⁰⁸ NEB. REV. STAT. ANN. §§ 13-926, 13-922.
- ¹⁰⁹ NEV. REV. STAT. ANN. § 41.031 (West 2007).
- ¹¹⁰ *Id.* § 41.510.
- ¹¹¹ Moody v. Manny's Auto Repair, 871 P.2d 935, 941 (Nev. 1994).
- ¹¹² NEV. REV. STAT. ANN. § 41.035(1), as amended by Nev. Legis. 512 (2007).
- ¹¹³ Merrill v. City of Manchester, 332 A.2d 378 (N.H. 1974); N.H. REV. STAT. ANN. § 541-B:1(I) (West 2008).
- ¹¹⁴ N.H. REV. STAT. ANN. § 508:14 (West 2008); *id.* § 212:34.
- ¹¹⁵ Ouellette v. Blanchard, 364 A.2d 631, 634 (N.H. 1976).
- ¹¹⁶ N.H. REV. STAT. ANN. § 507-B:4(I) (West 2008).
- ¹¹⁷ N.J. REV. STAT. § 59:1-1 et seq. (2007).
- ¹¹⁸ *Id.* § 2A:42A-2 et seq.
- ¹¹⁹ Sussman v. Mermer, 862 A.2d 572, 574-75 (N.J. Super. Ct. App. Div. 1997).
- ¹²⁰ N.J. REV. STAT. §§ 2A:15-5.12, 2A:15-97
- ¹²¹ N.M. STAT. §§ 41-4-1 to 41-4-27 (2008).
- ¹²² *Id.* § 17-4-7.
- ¹²³ Ford v. Bd. of County Comm'rs of County of Dona Ana, 879 P.2d 766, 771 (N.M. 1994).
- ¹²⁴ N.M. STAT. § 41-4-19 (2008).
- ¹²⁵ Rubino v. City of N.Y., 498 N.Y.S.2d 831, 835 (App. Div. 1986)
- ¹²⁶ N.Y. GEN. OBLIG. LAW § 9-103 (McKinney 2008).
- ¹²⁷ Basso v. Miller, 352 N.E.2d 868, 871-72 (N.Y. 1976); Scurti v. City of N.Y., 354 N.E.2d 794, 795 (N.Y. 1976).
- ¹²⁸ Krohn v. N.Y. City Police Dep't, 811 N.E.2d 8, 11 (N.Y. 2004); N.Y. C.P.L.R. § 4545(b)-(c) (McKinney 2008).
- ¹²⁹ Evans v. Hous. Auth., 602 S.E.2d 668, 670 (N.C. 2004).
- ¹³⁰ N.C. GEN. STAT. § 38A-1 (2008).
- ¹³¹ Nelson v. Freeland, 507 S.E.2d 882, 892 (N.C. 1998).
- ¹³² N.C. GEN. STAT. § 143-299(2).
- ¹³³ N.D. CENT. CODE § 32-12.1-03 (2007).
- ¹³⁴ *Id.* §§ 53-08-01 to 53-08-06.
- ¹³⁵ O'Leary v. Coenen, 251 N.W.2d 746 (N.D. 1977).
- ¹³⁶ N.D. CENT. CODE § 32-12.1-03(2) (2007).
- ¹³⁷ OHIO REV. CODE ANN. § 2744.02 et seq. (West 2008).
- ¹³⁸ *Id.* § 1533.181.
- ¹³⁹ Blair v. Ohio Dep't of Rehab. & Corr., 582 N.E.2d 673 (Ohio Ct. Cl. 1989);
- ¹⁴⁰ OHIO REV. CODE ANN. § 2744.05(A) (West 2008).
- ¹⁴¹ OKLA. STAT. tit. 51 § 152 (2007).
- ¹⁴² *Id.* tit. 76, § 10.1.
- ¹⁴³ Brewer v. Indep. Sch. Dist. #1, 848 P.2d 566 (Okla. 1993).
- ¹⁴⁴ OKLA. STAT. tit. 51 § 154(1) (2007).
- ¹⁴⁵ OR. REV. STAT. § 30.265 (2008).
- ¹⁴⁶ *Id.* § 105.682 (2008).
- ¹⁴⁷ Walsh v. C & K Market, Inc., 16 P.3d 1179 (Or. Ct. App. 2000) (citing RESTATEMENT (SECOND) OF TORTS § 343 (1965)).
- ¹⁴⁸ OR. REV. STAT. § 30.270 (2008).
- ¹⁴⁹ PENN. JUR. 2D *Torts* § 6.32 (2007); 42 PA. CONS. STAT. ANN. § 8541.
- ¹⁵⁰ 68 PA. CONS. STAT. ANN. § 477-1 et seq. (West 2007).
- ¹⁵¹ WEST'S PENNSYLVANIA PRACTICE SERIES, *Torts: Law and Advocacy* § 5.1.
- ¹⁵² 42 PA. CONS. STAT. ANN. § 8553.
- ¹⁵³ R.I. GEN. LAWS § 9-31-1 (2008); *see also* Reagan Const. Corp. v. Mayer, 712 A.2d 372 (R.I. 1998).
- ¹⁵⁴ R.I. GEN. LAWS § 32-6-3 (2008).
- ¹⁵⁵ Mariorenzi v. Joseph DiPonte Inc., 333 A.2d 127, 132 (1975).

- ¹⁵⁶ R.I. GEN. LAWS § 9-31-2 (2008).
- ¹⁵⁷ S.C. CODE ANN. § 15-78-20(a) (2008).
- ¹⁵⁸ *Id.* § 27-3-10.
- ¹⁵⁹ Singleton v. Sherer, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008); Brooks v. Northwood Little League, Inc., 489 S.E.2d 647, 651 (S.C. Ct. App. 1997).
- ¹⁶⁰ S.C. CODE ANN. § 15-78-120; Atkinson v. Orkin Exterminating Co., 604 S.E.2d 385, 393 (S.C. 2004).p
- ¹⁶¹ S.D. CODIFIED LAWS § 21-32A-3.
- ¹⁶² *Id.* § 20-9-13 (2008).
- ¹⁶³ Musch v. H-D Elec. Co-op., Inc., 460 N.W. 149 (S.D. 1990); Polluch v. Minneapolis & St. L.R. Co., 183 N.W. 859 (S.D. 1921).
- ¹⁶⁴ S.D. CODIFIED LAWS §§ 15-8-15.1, 3-22-10 (2008).
- ¹⁶⁵ TENN. CODE ANN. § 29-20-101 et seq. (West 2008).
- ¹⁶⁶ *Id.* § 70-7-101 et seq. (West 2008).
- ¹⁶⁷ Carson v. Headrick, 900 S.W.2d 685 (Tenn. 1995).
- ¹⁶⁸ TENN. CODE ANN. §§ 29-20-311, 29-20-403 (West 2008).
- ¹⁶⁹ Heyer v. N. E. Indep. Sch. Dist., 730 S.W.2d 130, 133 (Tex. App. 1987).
- ¹⁷⁰ TEX. CIV. PRAC. & REM. CODE ANN. §§ 75.001-75.003 (2007).
- ¹⁷¹ Fleming v. Astroworld, L.P., No. 01-06-00094-CV, 2007 WL 2446981, at *2 (Tex. App. Aug. 30, 2007).
- ¹⁷² TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.023-101.024 (2007).
- ¹⁷³ UTAH CODE ANN. § 63G-7-101 (West 2008).
- ¹⁷⁴ *Id.* §§ 57-14-1 to 57-14-7 (West 2008).
- ¹⁷⁵ Tjas v. Proctor, 591 P.2d 438, 440 (Utah 1979).
- ¹⁷⁶ UTAH CODE ANN. § 78-27-40 (West 2008).
- ¹⁷⁷ Morway v. Trombly, 789 A.2d 965, 968 (Vt. 2001).
- ¹⁷⁸ VT. STAT. ANN. tit. 12, § 5794 (2008).
- ¹⁷⁹ Garafano v. Neshobe Beach Club, Inc., 238 A.2d 70, 74-75 (Vt. 1967).
- ¹⁸⁰ Woodhouse v. Woodhouse, 130 A. 758, 789 (Vt. 1925).
- ¹⁸¹ Kellam v. Sch. Bd. of Norfolk, 117 S.E.2d 96, 97 (Va. 1960).
- ¹⁸² VA. CODE ANN. § 29.1-509(B).
- ¹⁸³ Pearson v. Canada Contracting Co., 349 S.E.2d 106, 110 (Va. 1986).
- ¹⁸⁴ VA. CODE ANN. § 8.01-195.3 (2008).
- ¹⁸⁵ WASH. REV. CODE § 4.92.090 (2008).
- ¹⁸⁶ *Id.* § 4.24.210.
- ¹⁸⁷ Thompson v. Katzer, 936 P.2d 421 (Wash. Ct. App. 1997).
- ¹⁸⁸ Spokane Truck & Dray Co. v. Hoefler, 2 Wash. 45 (1891); WASH. REV. CODE § 4.22.070 (2008).
- ¹⁸⁹ W. VA. CODE ANN. § 29-12A-1 (Lexis 2007).
- ¹⁹⁰ *Id.* §§ 19-25-1, 19-25-2.
- ¹⁹¹ Mallet v. Pickens, 522 S.E.2d 436 (W. Va. 1999).
- ¹⁹² W. VA. CODE ANN. § 29-12A-7 (Lexis 2007).
- ¹⁹³ Wis. STAT. ANN. § 893.80 (West 2008).
- ¹⁹⁴ *Id.* § 895.52(1)(d).
- ¹⁹⁵ Antoniewicz v. Reszczyński, 236 N.W.2d 1, 11 (Wis. 1975).
- ¹⁹⁶ Wis. STAT. ANN. § 893.80(3) (West 2008); Leitinger v. DBart, Inc., 736 N.W.2d 1, 7 (Wis. 2007).
- ¹⁹⁷ WYO. STAT. ANN. § 1-39-102(b) (2008).
- ¹⁹⁸ *Id.* §§ 34-19-101 to 34-19-106.
- ¹⁹⁹ Clarke v. Beckwith, 858 P.2d 293 (Wyo. 1993).
- ²⁰⁰ WYO. STAT. ANN. § 1-39-118(a)(i)-(d) (2008).

Support provided by a grant from the Robert Wood Johnson Foundation.

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.