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## The Reflection and Countermeasures of University Sports Injury Accident

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### Abstract

Sports injury accident is a common phenomenon in university physical education and extracurricular activities. In the proceedings of such cases, the court often makes a judgment on the principle of equitable liability in the case of no fault of both parties and these judgments lead to the heavy burden of universities, and block the development of sports activities. From the perspective of the legal relationship between students and universities, the nature of university sports injury accidents and the liability of tort liability, this paper insists on the application of fault responsibility principle in such injuries, clears the responsibility of all parties, and puts forward effective measures to reduce the occurrence of such accidents.

**Key words:** Sports injury accidents in university; Principle of equitable liability; Fault responsibility principle; Effective measures

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In recent years physical education in colleges have faced troubles of safety and liability, which becomes a key factor that greatly jeopardizes college physical education and restricts the quality development of college physical education. Some teachers, colleges, and parents have concerns about safety accidents. Some classic physical exercise programs are often with risk features including swimming, long-distance running, pommel horse, pole vault, parallel bars, and hurdle etc. Gradually,

colleges start to condense physical training textbooks or cut down some of these programs, which are benefit to improve students' comprehensive qualities of mind and body. By doing so college physical education has taken a back seat on its quality and effectiveness. Now physical education teachers and colleges focus not only on the quality of education, but also on the avoidance of injury accidents instead of achieving the goals in class.

Taking Shandong University as an example, during the period from 1931 to 1949, this college had set physical examinations like rope climbing, hand ring, pull-up, all kinds of sports balls and track and field. To pass the physical education course, boys needed to take 23 events and girls 18 events. Before the its merger with Shandong Medical University and Shandong Industrial University, Shandong University had set programs such as morning exercise, class-break setting-up exercise, and winter long-distance running but programs of these kinds have all been canceled. They have been replaced by the so-called sunshine sports in which students take part out of their own will. Today there are only physical education courses left on the campus of Shandong University including basic ball games, gymnastics, aerobics, and wushu routine. Although many reasons can explain the cancelation of sports programs in colleges, the fundamental fact is that colleges want to avoid bearing legal liability caused by sports injury accidents.

Sports injury accidents in colleges and universities have badly hampered sports activities, thus causing an overall decline on college physical education and the physical quality of students. Furthermore, they run counter to China's policies on enhancing the physical quality of teenagers, on promoting the overall development of students, and on advancing education for all-around development. To cope with these problems, we need to do sound research on the precautionary prevention and relief afterwards concerning any sports injury accident. A workable system should be set up to

promote sports and help students build up physical quality and minimize injury accidents to the utmost. When dealing with the accidents that have occurred, it needs to be timely, effective, and feasible in order to minimize the negative outcomes. Based on the legal relationship between college students and colleges and universities and the classification of sports injury accidents in colleges and universities, this paper discusses the application of doctrine of liability fixation. It also puts forward the relevant legal measures on sports injury accidents in colleges and universities. So, it helps to clear the liabilities of the parties and protect the lawful rights and interests of the parties.

## 1. CORRECTLY DEFINING THE LEGAL RELATIONSHIP BETWEEN COLLEGE STUDENTS AND COLLEGES AND UNIVERSITIES

It is the basic prerequisite on dealing with college sports liability accidents to clarify the nature of the legal relationship between college students and colleges and universities. However, at present, there is no clear definition on the nature of the legal relationship between college students and colleges and universities in China. On this issue three main theoretical viewpoints are popular, namely Guardianship Relationship, Quasi-Administrative Relations, and Education Management Relations (Yuan, 2003; Zhu, 2011; Wang, 2011; Gong, 2013; Zuo, 2013).

### 1.1 Guardianship Relationship

This viewpoint suggests that when underage college students are on the campus, the duty of guardianship has partly shifted to the college. During this time the college acts as an interim guardian to assume the actual guardianship responsibilities and are responsible for the personal security of students. According to this viewpoint, the college shall be legally liable for sports injury accidents in colleges and universities on the underage college students. Nevertheless, most scholars are not convinced by this viewpoint. Han Yanjie (2009) holds that there is insufficient legislative authority to support this viewpoint. Because the duty of guardianship is an identity right the college cannot be a guardian and therefore is impossible to assume the duty of guardianship. Following the relevant provisions of *General Provisions of the Civil Law of the People's Republic of China*<sup>1</sup>, colleges, on the one hand, are not included in the designated guardians. On the other hand, a college shall not be an entrusted guardian because it has not signed or will sign the assigned guardianship agreement. The college protects

<sup>1</sup> *General Principles of the Civil Law of the People's Republic of China*. Beijing: China Law Press. Date issued: 04-12-1986, Effective date 01-01-1987, Amendment Date: 08-27-2009.

and manages the students mainly in accordance with the provisions on protecting the juveniles included in the law of education and the law on the protection of minors. Hence, it does not mean the guardian has shifted partly or totally his duty of guardianship to the college. As to underage college students the colleges and universities—just like what they do to the adult college students—offer them teaching activities and meanwhile ensure the safety and security of the students' lives and their property. The only difference in terms of the subject of legal responsibility is that the guardians of the underage college students shall assume liabilities accordingly.

### 1.2 Quasi-Administrative Relations

This viewpoint suggests that although the relationship between colleges and college students is not administrative management relations, the colleges still have social responsibilities of education, management, and protection, which is a quasi-administrative relation. But this assertion that the relationship between colleges and college students is quasi-administrative relation is also untenable for lacking facts and legislative authority. "Only staff of administrative and administrative organs shall exercise administrative authority", the administrative litigation law of China places clearly. Colleges are public institutions but not administrative organs. So, the educational management activities are not the exercise administrative of authority and when not for exercising the authorized functions, colleges don't have executive status. Colleges have executive status only when it exercises its law granted authority of degree awarding. Students who have objections to colleges not awarding degrees shall raise an administrative litigation against colleges. Consequently, the education and management relations between colleges and students should not be mixed with administrative legal relations. When dealing with accountabilities of sports injury accidents on college, campus should not apply to administrative legal relations.

### 1.3 Education Management Relations

This viewpoint assumes that, based on education and management as its basic content, the relationship between college and students is a relation in public law, namely "educational management relation". In accordance with the provisions of *Education Law of the People's Republic of China*<sup>2</sup> and *Higher Education Law of the People's Republic of China*<sup>3</sup> colleges and universities are entitled to "organize and implement educational activities" and

<sup>2</sup> *Education Law of the People's Republic of China*. Beijing: China Law Press. Issuing authority: Standing Committee of the National People's Congress, Standing Committee of the National People's Congress. Date issued: 03-18-1995. Amendment Date: 12-27-2015.

<sup>3</sup> *Higher Education Law of the People's Republic of China*. Beijing: China Law Press. Issuing authority: Standing Committee of the National People's Congress, Standing Committee of the National People's Congress. Date issued: 08-28-1998, Effective date 01-01-1999, Amendment Date: 12-29-2018.

to “manage the student status, and give students rewards or punishment”. Li Jing (Li, 2008), a scholar, deems that colleges are entitled to set rules and regulations that the registered students must abide by. To some extent this viewpoint is in line with this paper.

Although it is a clear provision that schools have the obligation to “protect the lawful rights of students from infringement” in *Education Law of the People’s Republic of China*, in terms of the liabilities of education, management, and protection to students, colleges assume far less than primary schools and high schools. And especially when compared with college students, pupils and high school students enjoy more protection in schools. Most of the college students are adults. According to the provisions of civil procedure law, they are citizens with full capacity and shall have the abilities to protect themselves, control their behaviors and take responsibility for their own actions. As for college students, colleges have generally less duty of care on students, so colleges should fulfill their obligations on duty of care within the statutory duty of management. Therefore, the legal liabilities to be assumed on sports injury accidents, are much different between colleges and primary schools or high schools.

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## 2. THE CLASSIFICATION OF SPORTS INJURY ACCIDENTS IN COLLEGES AND UNIVERSITIES

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In accordance with the *Order of the Ministry of Education of the People’s Republic of China (No. 12)*, and the Article 2 of *Measures for the Handling of Student Injury Accidents* (hereinafter referred to as “Measure”)<sup>4</sup> places clearly that “These measures shall apply to the handling of the accidents that occur in the teaching activities carried out by the schools or the extra-scholastic activities organized by the schools, or in the schoolhouses, ground, other teaching and living facilities for which the schools are responsible, and that result in personal injuries of the students.” College physical education is included in the teaching activities the above-mentioned “Measure”, so the accidents that occur in the college physical teaching activities shall apply to the scopes mentioned above. Sports injury accidents in colleges and universities can be classified by three dimensions: “responsibility subject”, “nature of responsibility”, “and cause of accident”.

### 2.1 Classification by Responsibility Subject of the Accident

Shen Renjie (2008) classifies student injury accidents as liability on college accidents and non-liability on college accidents and the later is classified into two

kinds: liability on student and his legal representative accident and liability on the third part. According to Article 9 of the “*Measure*” liability on school accidents can be further divided into school liabilities and teacher liabilities. These scenarios include the place and equipment provided by the college fail to meet safety standards, the physical education teachers arranged by the college are not competent, the college has not given students any education on safety and security, the teachers apply improper training methods, the teachers do not pay attention to the possible security problems and ignore those students who are of peculiar physical status or with certain diseases, the teachers take improper measures after an accidents, etc. Hence, Liang Kai (Liang, 2012) has brought up that the “faulty” analysis should be specific and specific analysis on the cause of faulty should be applied so as to define the liabilities of the college. He has made an expatiation by four dimensions: the liabilities of college physical education teachers on predication and professional judgment, the college liabilities on misadministration, liabilities of information and description in advance, and the liabilities on sports competition organizers. This paper holds that taking account the complexity and variety of the causes of these accidents, it is more comprehensive to classify the accidents to liabilities on college accidents, non-liabilities on college accidents, and mixed liability accidents. Most sports injury accidents are involved in the combined action of participants. So, as to mixed liability accidents, it is needed to define the extent of responsibility that shall be assumed by the responsibility subjects according to the size of the responsibility.

### 2.2 Classification by Nature of Responsibility of the Accident

Wang Shengwei (Wang, 2012) has classified injury accidents to athlete injury from fault (including one party at fault and both parties at fault) and athlete injury without fault. Sports injury without fault refers to the accident injuries from fault, when the participant is involved in a sports activity, caused by either party that is not imputable, for example, fair charge within the rules. This paper holds that it is more suitable to classify sports injury accidents to injury accidents from fault and injury accidents without fault by the nature of responsibilities. Making analysis on the nature of responsibilities is the basis of discussion on legal imputation. Only when the principle of legal imputation has been built up can we make clear the problems of the apportionment of liabilities.

### 2.3 Classification by Cause of Accident

Different sports injury accidents are often caused by a variety of reasons; according to the provisions of China’s law on the elements of tort liability, tort shall have a legal causal relationship with the result of damage, in order to produce the corresponding tort liability. Only by analyzing the different reasons and clarifying the

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<sup>4</sup> *Measures for the Handling of Student Injury Accidents*. Date issued: 09-01-2002. Amendment Date: 12-13-2010.



causality between each other can we define the subject of responsibility. Wang Yan (Wang, 2011) has analyzed the causes of sports injury accidents from four aspects: the reasons of teachers, the reasons of students, the reasons of material environment, and the reasons of school management. According to this, we can also divide the college physical injury accidents into accidents caused by teachers, accidents caused by students, accidents caused by material environment, and accidents caused by college management, so as to distinguish the causes of accidents and determine the size of the shared responsibility of all parties.

### 3. PRINCIPLES OF IMPUTATION APPLICABLE TO COLLEGES AND UNIVERSITIES

At present, there are three imputation principles in China: fault liability, no fault liability and fair liability. Chinese scholars currently have different views and opinions on various kinds of responsibilities on different sports injury accidents in colleges and universities. Some scholars believe that all three principles of imputation have applicable value. Some scholars argue that the principle of fault liability should be the main principle; when the college has no fault in the sports injury accident, the principle of fair liability can be applied to both parties on the economic basis. Some scholars regard the principle of fair liability as the request form of responsibility, not the principle of imputation. It is therefore concluded that only the principle of fault is applicable, which is also the point of view in this paper.

#### 3.1 Liability for Wrongs

In China, generally speaking, we deal with college sports injury accidents according to the principle of fault liability imputation, that is, where there is fault there is responsibility, no fault no responsibility. The principle of fault requires that in sports activities, in addition to intentionally causing damage, colleges only bear the legal duty of caution to prevent students from being injured. If the injured party investigates the responsibility of the college, it needs to prove that there is fault in the performance of the college's obligations, the college will bear the corresponding civil liability. In addition, there is a presumption of fault liability under the principle of imputation, and according to the provisions of the *Tort Law of the People's Republic of China*<sup>5</sup>, the scope of application of the presumption of fault liability is very limited, only applicable to the identification of eight types of tort. In connection with the accountability of

<sup>5</sup> Tort Law of the People's Republic of China. Beijing: China Law Press. Issuing authority: Standing Committee of the National People's Congress, Standing Committee of the National People's Congress. Date issued: 12-26-2009. Effective date: 07-01-2010.

educational institutions, article 38 of the Act provides that: "Where a person without civil capacity has suffered personal injury while studying or living in a kindergarten, school or other educational institution, the kindergarten, school or other educational institution shall bear the responsibility, but those who can prove that they have fulfilled their educational or administrative duties shall not bear the responsibility." From the subject of infringement, the victim of sports injury accident in colleges and universities cannot be a person without civil capacity, so the application of presumption of fault is excluded. Sun Dongqing (Zhou, 2015) puts forward the idea that the prerequisite to constitute fault liability can only be fault, not the result of injury, and the scope of liability should also be consistent with the severity of fault.

#### 3.2 No-Fault Liability

The application of the principle of no-fault liability listed in the *General Principles of Civil Law* in China mainly includes six cases of damage or injury caused by product defects, highly dangerous operations, environmental pollution, ground construction, raised animals, persons without civil capacity and persons with limited civil capacity, which are mainly designed for the force mismatch and force majeure of both parties. Correspondingly, the principle of no-fault liability is also regulated by the special laws and regulations of China, such as articles 39 and 40 of the Health Law; article 56 of the Drug Administration Law; article 47 of the Veterinary Drug Administration Law; article 23 of the Environmental Protection Law; and articles 41 and 42 of the Water Pollution Prevention and Control Law. The principle of no-fault liability must be applied within the scope clearly stipulated by the law, and cannot be expanded or reduced at will. It can be concluded from the existing legal provisions that the injury accident in college sports is not within the scope of applying the principle of no-fault liability, so the principle of no-fault liability cannot be applied to such cases.

#### 3.3 Principle of Fair Liability

Whether to apply the principle of fairness to college sports injury accidents is controversial in academic world and judicial practice. The principle of fair liability (Wang, 2001), that is, in the case where the parties have no fault in causing the damage, the people's court shall, in accordance with the concept of fairness and on the basis of considering the property status of the parties and other circumstances, order the perpetrator to give appropriate compensation to the victims' losses. This practice is in fact a discretionary power granted to judges in the spirit of legislation when both parties are not at fault with the result of the damage. There are two kinds of imputation principle (fault liability principle and no-fault liability principle) in the law of tort, and there is still debate in academic world whether the fair liability principle is imputation principle or compensation principle. Professor

Yang Lixin put forward that the principle of fair liability and balance is developed together, but at the beginning of the promulgation of the Tort Liability Law in China, the former is one of the forms of tort liability, and the latter is the principle of compensation (Yang, 2005). Professor Wang Liming insists that the principle of fair liability belongs to the principle of tort law imputation in theory, but the status cannot be equal to the principle of fault liability (Yang, 2005; Wang, 2004).

Throughout the legislation and judicial practice of various countries, the principle of fair liability and the principle of no-fault liability are not to take the subjective fault of the perpetrator as the condition of liability, but the principle of fair liability is different from the principle of fault liability and the principle of no-fault liability in terms of its legislative spirit and purpose (Shao, 2012), which is also one of the reasons why the principle of fairness is not suitable for being recognized as the principle of imputation. The principle of fault liability is the general principle of liability to bear tort liability, and no-fault liability is an exception, which is only applicable to the case where the law has special provisions, and is a relief and supplement to tort liability. And the principle of fair liability in tort law provisions is not essentially imputable, focusing on economic significance and compensation, and does not have the mandatory application of imputation clause. Its application is based on the economic basis of both parties, if it is regarded as the principle of imputation is tantamount to the negation of the “fault” imputation system. The author believes that the principle of fairness, as a way to deal with compensation, has its reasonable value, should be based on the voluntary basis of the parties, and it cannot and should not be regarded as the principle of imputation, let alone mixed with fault liability and no-fault liability.

In practice, China’s laws and regulations do not make any clear provisions on the principle of fair liability, but instead of principle provisions. Students, as the victims of sports injury in colleges and universities, are usually in a “weak” position in the college. In the case of no fault between the two parties, the discretion given by the law to the judge in compensation often leads to the application of the principle of fair liability, which requires the college to bear part of the liability, which also seems to be more in line with the view of the public. However, this practice of compensating the victims regardless of whether the college is at fault has brought great financial pressure to the college and violated the basic principle of fault liability, and its practical effect is unfair to the college. At the same time, it also causes colleges to feel afraid to carry out slightly risky sports such as javelin, shot put and high jump, which causes the quality of physical education and quality education in schools to get worse. After many cases of sudden death of students in daily physical exercise activities, many colleges and universities have adopted the practice of eliminating traditional sports such

as exercise between classes, morning run, winter long run and so on, which seriously hinders the development of sports in China and is not conducive to the overall health of college students. Based on dividing the liability according to the fault principle and on the premise of the parties’ voluntary willingness, it should be more feasible to use the fair principle to solve the problem of compensation for no-fault sports injury.

Article 12, paragraph 5, of the Measures issued by the Ministry of Education in 2002 states: “The school has fulfilled the corresponding duty, does not act improperly, shall not bear the legal responsibility”; Article 26: “Schools are not responsible and, if conditions permit, may give appropriate assistance to the injured students on a voluntary and possible basis, depending on the circumstances.” The Measures stipulate the principle of fault imputation for injury accidents of college students; at the same time, they make clear the initiative and non-mandatory nature of university compensation, and better reflects the relationship between responsibility division and fair handling, which is also the viewpoint supported in this paper. However, it is regrettable that the Ministry of Education’s Measures, which are sectoral regulations, are significantly less effective than the *General Principles of Civil Law* and the *Tort Liability Law*, and have only reference value for the determination of cases. Although regulations are far less effective than the level of force at which the law is applied, legislation is ultimately based on a just and reasonable social basis. In response to the call of the Ministry of Education, the original intention of colleges and universities to carry out various competitive and basic sports activities is to enhance the physical quality of college students, the application of the principle of fair responsibility gives colleges and universities heavy economic burden under the condition of no fault, resulting in the decrease or even stagnation of sports projects carried out by colleges and universities. Thus, it hinders the overall development of college students’ physical and mental health.

With the increase of school sports activities, the flourish of students’ club activities, the growing of students’ adventurous spirit, sports injury accidents have become a common phenomenon in campus life. Especially since the national implementation of physical fitness tests, injury accidents have occurred frequently in physical fitness tests, which makes the disputes between the parties become almost irreconcilable contradictions. If we take the principle of fairness as the principle of dividing responsibility, it will inevitably cause the school to be overburdened and restrict the development of normal sports activities in colleges and universities. Yang Lixin, a scholar, believes that the responsibility for college sports injury accidents should be fault liability, and the college only bears the corresponding liability to pay compensation for students’ personal injury (Yang, 2005). If there is college at fault, the college will bear the

responsibility vice versa, so there is no such problem of the so-called fair sharing of responsibility. Therefore, it can prevent the school from bearing improper excessive responsibility, and then damaging the vital interests of most students. This article recognizes this perspective: the college takes the initiative to offer the injured student certain financial help, which belongs to the moral and the initiative behavior, but does not belong to the legal compulsory obligation.

In the countries with developed sports, it is widely recognized that the injury in physical education and sports is the natural result of physical and competitive sports activities, and the idea that “participants should be willing to take risks, and injury does not necessarily lead to compensation from the injured participants”. Shao Qiang (Zhou, 2015) believes that participating in sports and competition activities is a voluntary exposure to dangerous activities, if the other party is not at fault, its behavior is not punishable; according to the principle of foresight and acquiescence, the victim shall bear the result of the injure himself. Shen Renjie (2008) also mentioned that the charm of sports lies in its unpredictable risk, and it is because of this characteristic that the team consciousness and brave character of the participants can be cultivated. In sports activities, the injury caused by the other party under the condition of obeying the rules of sports should not be held responsible, otherwise everyone shrinks their hands and has too many concerns, sports will lose the value of existence. Therefore, from the point of view of tort law, as long as the perpetrator has the physical and intellectual condition consistent with the movement and has the corresponding civil capacity, in the case of the participant’s voluntary participation, it means the participant takes on the risks inherent in the activity, and once if “voluntary” as a defense established, the defendant shall be exempted from liability. Although this principle has not been introduced in the current laws, regulations and judicial practice in China, the victim still gives consent, which means that the victim has a clear understanding of the possible danger of the activity, to participate in sports activities which are more confrontational, such as football matches, boxing matches, resulting the exemption from the responsibility of the accused party to a certain extent or completely, as has been the case in judicial practice (Liu, 2006; Gong & Chang, 2015).

## 4. LEGAL COUNTERMEASURES OF SPORTS INJURY ACCIDENTS IN COLLEGES AND UNIVERSITIES

### 4.1 Clarifying the Responsibilities of All Parties in Sports Injury Accidents

The occurrence of sports injury accidents involves

students, teachers, schools, other organizers and other aspects, we should clarify the responsibilities of all parties, so as to determine the sharing of responsibilities.

#### 4.1.1 College Responsibilities

Article 9 of the *Measures of the Ministry of Education* clearly stipulates 12 types of responsibility for schools, among which there are six main cases involving physical education teaching and sports activities. If the school is at fault of the following situations, it shall bear the corresponding responsibility: (1) The schoolhouses, ground, and other public facilities of the school, and the study utensils, teaching and living facilities and equipment provided by the school but fail to meet the quality standards of our country, or contain obviously unsafe factors; (2) When organizing the students to participate in teaching activities or extra-scholastic activities, the school hasn’t given corresponding safety education to the students and fails to take necessary safety measures for predictable dangers; (3) The school, in violation of the relevant provisions, organizes or arranges minor students to participate in the labor, sports, or other activities that are unsuitable for minors; (4) The school knows or should have known that a student has special physique or certain disease and is unsuitable for some kind of teaching activity, but fails to pay necessary attention; (5) The school finds out that a student suffers from acute disease or is injured at school, but fails to take corresponding measures according to the actual situations and thus causes aggravation of the bad consequences; (6) Any teacher or other staff member of the school gives physical punishment to the students or does so in a disguised form, or violates the work requirements, operational rules, professional ethics or other relevant provisions in the performance of duties.

According to the articles above, the college must bear the responsibility as long as it is their fault, for example, the inferior quality of teaching facilities including sports places, sports equipment resulting in the personal injury of students. At the same time, the college should also formulate a scientific and reasonable physical education curriculum syllabus, students’ physical health monitoring system, sports venues, equipment management system, provide students with physical education teachers and coaches who meet the professional requirements, and when holding competitive sports activities, it should take routine safety measures, such as the placement of medical staff, the maintenance of site order, and so on. In accordance with the above provisions, colleges shall not be legally liable or shall have exemption from liability (Tan, 2013; Luo, 2016), if they comply with their legal obligations and responsibilities without the lack of management defects and misconduct:

(1) Teaching facilities meet safety requirements. This is a fundamental prerequisite, including sports equipment to meet product quality standards, there are no safety risks in the sports venues.



(2) School management is not improper. This reflects the responsibility of colleges and universities to educate and manage students. Improper management is manifested in two situations: action and omission. Misconduct refers to the violation of laws and regulations or beyond the proper authority, which is manifested in the adoption of wrong management measures. For example, while the haze weather is serious, the sports competition activity still carries on, causing the student body discomfort. The misconduct of omission occupies a large proportion in the management loss of colleges and universities, including careless omission and overconfident omission. Colleges should foresee but fail to foresee the safety risks and possible safety accidents. For example, it belongs to the college management responsibility, in the cases where colleges and universities should establish health records for students in schools and carry out special management for students whose physical illness is not suitable for physical activity. But the process of filing is mere a formality without enough cautious, thus missing the students who should have special attention, and finally causing the injury accident. Similarly, the college is too confident that there is no problem with the existing safety risks, such as the aging of sports equipment and the disrepair of sports venues, which leads to the occurrence of injury, and the college should also bear the responsibility for the injury.

(3) Injury Caused by Unforeseen Factors. For example: force majeure, such as earthquakes; accidental or sudden infringement; colleges do not know the special physical condition, disease or abnormal psychological state of individual students; injury accident from confrontational and risky sports competition (Wang & Gao, 2016).

#### 4.1.2 Teachers' Responsibilities

(1) Whether physical education teachers perform professional duties. Physical education teachers should have professional knowledge suitable to college physical education courses, students' sports competition activities, including the degree of difficulty of the curriculum, the control of sports risk, the understanding of students' physical condition, the evaluation of students' personal sports ability, etc. Otherwise, physical education teachers should bear the fault responsibility caused by negligence. And the professional duties should change with the variation of the characteristics of the activity, the number of students, the age of the students, the level of skills and training of the students, and the characteristics of the equipment used.

(2) Whether physical education teachers take measures to prevent the occurrence or deterioration of injury results. For the possible risk of a sports event and how to avoid the risk as far as possible, the teacher should inform the students in an appropriate way, let the students choose whether to participate according to their own situation, so the students who participate can also have a sense of

prevention of the occurrence of the risk and be prepared in the course of the activities. In the warm-up preparation of physical activity, during the competition and in the post-competition recovery training, the whole series process, the teacher should supervise and instruct all the time. If there is a physical injury accident, teachers should take timely measures to avoid the further expansion of the damage results.

China's higher education regulations stipulate: "The relationship between higher education institutions and teachers is a management relationship determined by the distribution of powers and responsibilities, and by the characteristics of school work, and teachers are employed in schools to achieve their educational goals in accordance with the appointment agreement." In the teaching work, teachers' dereliction of duty causes the injury of students, the main responsibility should be borne by the college and to make the compensation; after the school has assumed responsibility, it can make internal treatment according to the teacher's dereliction of duty. It should be noted that if the teacher's behavior has exceeded the teaching requirements, such as giving physical punishment to the students or doing so in a disguised form, thus causing damage to students, teachers are also liable for tort.

#### 4.1.3 Third Party Liability

The third party involved in a physical injury accident caused by other than a school, a teacher, includes the victim himself and other third parties. The victim's own reasons (Gong & Chang, 2015) are multifaceted, in which he may not obey the requirements of physical education teachers, not abide by physical education course discipline, act without authorization; exercise beyond his own ability without permission; conceal his own disease or physical defects. Many sports injury accidents are caused by the victim's own reasons, the lack of necessary vigilance, over self-confidence in themselves, coupled with other accidental factors, resulting in injury accidents. For example, a student in a football class ignoring the teacher's explanation of technical movements, and in the team, he plays a trick by stepping on the ball, then accidentally falling from the ball, resulting in fracture of the calf bone.

The third person is also an important cause of sports injury accidents; in sports activities, for the lack of safety awareness, not abiding by sports rules, rough movements, serious violations of sports morality, he should be responsible for the resulting injury. If the victim's injury is caused solely by a third party, the school and the teacher are not at fault, the school shall be exempt from responsibilities. Articles 130 and 131 of the *General Principles of Civil Law of People's Republic of China* respectively stipulate that "if two or more persons jointly infringe upon another person, they shall be jointly and severally liable". "If the victim is also at fault with the occurrence of the damage, the civil liability of the

infringer may be reduced.” If both the infringer and the victim are at fault with the result of the damage, in the case of mixed fault, the civil liability of the infringer can be appropriately reduced.

#### **4.2 Possible Legal Remedies**

In sports injury accidents, the victim may claim compensation for personal injury from the infringer, including medical expenses, nursing expenses, parents’ lost wages, hospital meals, transportation expenses, accommodation expenses, living allowance for the disabled, fees for disabled appliances, funeral expenses (Liu, 2006; Gu, 2012), mainly through the following two ways to obtain relief:

One is to settle the compensation through negotiation. For those sport injury accidents with clear damage facts and clear subject of responsibility, the two sides can reach an agreement through consultation on compensation, which can solve the problem quickly, save the cost, reduce the mental torture caused by the long legal proceedings, and at the same time avoid intensifying contradictions. College sports injury accidents are mostly applied to the settlement of consultation. Of course, if an agreement reached by consensus does not agree to the implementation of the agreement, the victim may still file a civil lawsuit in a people’s court.

The other is to file a civil lawsuit. If the parties to the injury accident cannot reach an agreement on compensation, the victim may, by way of civil action, determine the subject of liability and investigate the liability for compensation. The sports injury accident belongs to the general tort, applying to the fault liability principle. The plaintiff shall make a specific claim to the court and bear the burden of proof. The scope of evidence includes: evidence of injury, including transcript of conversation, witness testimony, audio-visual materials, etc.; evidence of the result of the damage, including examination results, certificates of identification, medical expenses, transportation expenses, etc.; relevant provisions on college physical education teaching norms that may help to determine whether the college has fulfilled the corresponding obligations and should bear responsibility.

#### **4.3 Preventive Measures Against Sports Injury Accidents in Colleges and Universities**

Sports activities have the features of mass involvement, confrontation and danger and it is inevitable to cause some injuries. The risk of physical activity is one of its own characteristics, which has endowed the sports activity the charm of excitement and stimulation, and has the irreplaceable function to shape the students’ brave spirit, the independent personality, and the cooperation consciousness. On the one hand, we should not be afraid to carry out sports activities because of the dare not carrying out sports activities. On the other hand, we should not blindly focus on investigating the responsibility

of schools, for the injured individuals to find a “large household” who can bear the responsibility. In order to promote the development of sports, improve students’ physical quality and avoid sports injury accidents to the maximum extent, the state, education departments and colleges should establish and perfect the prevention system of sports injury accidents.

First of all, the college sports activities safety system construction should be strengthened. The data shows that the majority of physical injury accidents occur in physical education classes, so colleges and physical education teachers have an important responsibility to reduce the occurrence of physical accidents. In order to minimize the occurrence of injuries, colleges should strengthen the construction of safety systems for sports activities, including: (1) Ensure the safety of college’s sports facilities. Carry on the safety inspection to the sports equipment and the sports venues regularly, eliminating the possible danger of safety in time. (2) Strict the selection, management and assessment of physical education teachers. Physical education teachers should fully master the teaching content, understand and follow the rules of sports, carry out effective safety education for students; at the same time, they should have enough supervision ability on classroom activities, and put an end to injury accidents caused by personal negligence.

Secondly, colleges should make regular physical health examination on students and establish student’s health records. They should timely check out the students with special physical quality or possible serious disease danger, and carry on special management to the students, so as to avoid the occurrence of sudden injury accident and sudden death phenomenon. At present, most colleges and universities tend to pay more attention to freshmen, but after entering school, students are rarely given regular physical examination; then the new possible disease danger cannot be found. At the same time, college students rely on their young health, and often do not care about some symptoms of their own body, which is also an important unsafe factor. Therefore, the school should perfect the management system of students’ physical health, check and monitor the students’ health regularly, which cannot be mere a formality.

Finally, college may have risk sharing through accidental injury insurance. China’s laws and regulations encourage students to purchase accidental injury insurance. The Measures of the Ministry of Education stipulate that when students participate in high-risk and confrontational sports events or competitive competitions, schools, educational institutions or organizers may organize students to purchase accidental injury insurance. Therefore, colleges can share risk by purchasing accidental injury insurance on the events that have higher requirements for physical fitness, may trigger possible diseases, or are paroxysmal or of strong endurance.



The occurrence of sports injury accidents in colleges and universities are not welcomed by students or schools. In order to prevent such accidents, some people put forward the establishment of sports insurance, sports injury special fund, these ideas have opened up new ideas for the prevention of college sports accidents, but under the existing college management system, the above ideas are still at scenario phase. At present, with the popularization of medical security and commercial insurance, we prefer to rely on the existing social security system and insurance system, and advocate the school to organize and force college students to join urban medical insurance within the scope of *Measures for the Handling of Student Injury Accidents*, and advocate students to purchase accidental injury insurance. In the case of no fault in the college, the significance of the injured party still asking the college to bear the liability lies in sharing the medical burden of the injured party. Accidental injury insurance and urban medical insurance just make up for the shortage of medical expenses of the injured party and realize the common protection of both the victim and the college. In addition, when taking the above safety and preventive measures, we must put an end to the injury accidents caused by human factors such as improper organization, management and supervision of teachers, and clarify the supervision and management responsibilities of relevant personnel. For martial arts, swimming, football, hurdle and other sports with large amount of exercise, high intensity and fierce confrontation, we should do all kinds of preparatory work fully to minimize the occurrence of sports injury accidents of students.

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