

Infants, Injury Claims And Waivers Of Liability

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When people participate in riskier organized sports such as martial arts, mountain biking, skiing or rafting often times the companies that organize these events require participants to sign a 'waiver of liability' agreement.

These agreements generally state that in the event the participants are injured while performing the events, even if injured through the fault of the organizers, the participants will not sue the organizers of the events. These waivers of liability come in many different forms and these contracts can be binding and effectively take away a persons rights to sue.

What about when infants (in BC people under the age of 19 are considered infants) or their parents enter into these contracts on the infants behalf? Can these be binding? Reasons for judgement were released today by the BC Supreme Court dealing with this issue.

In today's case ([Wong v. Lok's Martial Arts Centre Inc.](#)) the Plaintiff alleged he was injured when engaged in a sparring match with the Defendant. He claimed that the defendant company was "negligent in failing to take preventative measures to ensure that injuries did not occur in the course of sparring matches by taking such measures as screening participants, instructing participants, requiring suitable protective gear or carefully supervising matches."

At the time the Plaintiff began taking martial arts courses with the Defendant the Plaintiff's mother signed a contract which stated in part that "It is expressly agreed that all exercises and treatments, and use of all facilities shall be undertaken by the student's sole risk. LOK'S HAPKIDO SCHOOL and its affiliated studio's (Flying Eagle Hapkido, Flying Tiger Hapkido Studio and any other studio's) shall not be liable for any injuries, past/future medical complications, any claims, demand, injury, damages, actions or cause of actions whatsoever, including without limitation, those resulting from acts of active or passive negligence on the part of Lok's Hapkido School. YOU ARE RESPONSIBLE FOR ALL INJURIES.!"

The Martial Arts School brought a motion to dismiss the lawsuit based on this contract. Mister Justice Willcock was asked specifically "whether a child's parent can effectively execute a pre-tort release on behalf of a minor". The Court held that the contract was not enforceable because the Infant's Act "does not permit a parent or guardian to bind an infant to an agreement waiving the infant's right to bring an action in damages in tort."

Mr. Justice Willcock engaged in a thorough and lengthy analysis of the law at paragraphs 19-53 of the judgement which are worth reviewing in full for anyone interested in BC Infants Law. In holding that this contract was not enforceable Mr. Justice Willcock concluded as follows:

[55] *The release is a simple document. It clearly states that the club shall not be liable for injuries, damages, actions or causes of actions whatsoever, including without limitation those resulting from acts of negligence on the part of the Hapkido school...*

[59] *I have considered the defendant's submissions that the Court should not limit the full range of parental authority. I am also cognizant of the policy reasons for permitting parents to sign limited releases (considered in the Washington State cases *Scott v. Pacific West Mountain Resort*, 834 P. 2d 6 (Wash. 1992); and *Wagenblast v. Odessa School Dist.*(1988), 110 Wn.2d 845, 758 P.2d 968) and the arguments that such releases are permissible in the common law. (Malamud and Karyan "Contractual Waivers for Minors In Sports-Related Activities" (1991-1992) 2 *Marquette Sports L.J.* 151; Doyice J. Cotten & Sarah J. Young, in "Effectiveness of Parental Waivers, Parental Indemnification Agreements, and Parental Arbitration Agreements as Risk Management Tools" (2007) 17 *J. Legal Aspects Sport* 53; Robert Nelson, "The Theory of the Waiver Scale: An Argument Why Parents Should Be Able to Waive their Children's Tort Liability Claims" (2001-2002) 36 *U.S.F. L. Rev.* 535)*

[60] I am of the opinion, however, reading the Infants Act as a whole that the legislature intended the Act to establish the sole means of creating contractual obligations that bind minors. In coming to this conclusion I place some weight upon the fact that the rationale for prohibiting parents and guardians from releasing infants' claims after a cause of action has arisen applies with some force to pre-tort releases as well.

[61] The Act does not permit a parent or guardian to bind an infant to an agreement waiving the infant's right to bring an action in damages in tort. The Defendant's application is therefore dismissed.