

**PITCHING IN YOUTH BASEBALL:
A PATH TO SUCCESS OR LONG-TERM INJURY?
A Hypothetical Illustration of Prospective Liability for the Injurious Overuse of Pitchers**

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INTRODUCTION:

The following synopsis of research was prepared at the request of Pinkman Pitching Clinic to investigate the potential liability of baseball coaches and little league organizations for the injurious overuse of young pitchers. The aim of this project is to illustrate that innings-pitched regulations may cause stress injuries to young pitchers for which courts will impose liability upon league organizations. This research is not comprehensive, nor are these findings conclusive; it is based on the application of dominant trends in tort law to a hypothetical fact pattern. The hypothetical – regarding stress injuries “Freddie Fastball” sustained to his pitching arm while participating in a generic league for twelve-year olds – was written to demonstrate the problem and examine a prospective legal solution.

UNDERSTANDING TORT LAW – FOUR ELEMENTS TO PROVE:

- ⇒ **Duty:** The scope of care one person owes so as not to subject others to unacceptable risks of injury. It is the threshold element to any cause of action.
 - ◆ **Assumption of Risk Defenses:** Defendants who demonstrate that their duty of care has been waived or that the harm complained of falls outside of their duty of care will not be held responsible.

- ⇒ **Breach:** A violation of one’s duty of care, either through action or inaction.
 - ◆ **Negligence Standard:** Whether a reasonable person of ordinary prudence and caution in like circumstances would have behaved in such a way.
 - ◆ **Reckless Standard:** Whether a defendant knew or should have known of the risk of harm to the plaintiff.

- ⇒ **Causation:** The defendant’s breach caused the plaintiff’s injury, thus the defendant should be liable.
 - ◆ **But-For Causation:** Whether the act of the defendant was a substantial factor causing the plaintiff’s injury. An empirical examination of the relationship between the defendant’s breach and the plaintiff’s injury.
 - ◆ **Proximate Causation:** Whether it was reasonably foreseeable that the plaintiff’s injury could result from the defendant’s act. A normative consideration of the relationship between the defendant’s breach and the plaintiff’s injury.

- ⇒ **Damages:** Tort law damage awards aim to compensate for the amount and the duration of loss resulting from plaintiffs’ injuries. Awards are based on the monetary value of the harm suffered to a particular degree of certainty, and are virtually always decided by juries.

FREDDIE'S PROBLEM:

- ⇒ Freddie Fastball, a pitcher, signed up to play little league baseball the season he was twelve years old. He was strong for his age, and had developed more speed than many of his peers.
- ⇒ Playing in the league was contingent on the submission of a signed liability waiver.
- ⇒ Freddie's league maintained rules regarding the number of innings a pitcher could pitch during the regular season and post-season (tournament) play.
- ⇒ The defensive halves of Freddie's innings got quite long. All pitchers faced more batters and threw more pitches per inning than was recommended.
- ⇒ The league organization and coaches were aware that, according to the latest and best research, twelve-year old pitchers should only throw a median 68 pitches (+/- 18) per game (which approximates to 11 pitches per inning for a six-inning outing, or 22 pitches per inning for a three-inning outing).
- ⇒ Often Freddie would pitch his weekly maximum of innings in one outing, easily throwing over 100 pitches; or he would pitch twice in one week, three innings per game, easily reaching 60 pitches each outing.
- ⇒ Mid-way through the season Freddie began to experience arm discomfort and fatigue. His coach noticed but continued to pitch Freddie according to the league's innings-pitched rule.
- ⇒ Freddie was chosen to play on the post-season tournament team. Freddie pitched often, due to the different innings-pitched rule for tournament play (nine innings allowed per game, no consecutive outings), and easily reached 150-200 pitches per week despite his arm pain.
- ⇒ One inning Freddie felt a stinging pain in his arm, and was diagnosed with severe elbow and shoulder tendonitis, and severe ligament damage and impinged nerves in his shoulder. Upon realizing the degree of overuse Freddie had been subjected to, Mr. and Mrs. Fastball sued the league for damages for the personal injuries the coach and the league caused Freddie.

QUESTION:

Whether little league organizations can be held liable for maintaining innings-pitched requirements that may allow coaches to recklessly or negligently overuse their pitchers, causing stress injuries to their pitching arms?

BRIEF ANSWER – APPLYING TORT LAW ELEMENTS TO FREDDIE'S CASE:

Yes. It is plausible that little league organizations will be liable for personal injuries caused youth pitchers by the regular and post-season innings-pitched requirements.

⇒ **The league had a duty:** The league had a duty of care to protect Freddie from undue risks of the game, which are not legally excusable either by the league's express liability waiver or the degree of assumed risk Freddie incurred by participating in the game.

- ◆ **Primary Assumption of the Risk:** Excuses the league's duty of care, and thus all liability.
 - A court will not enforce Freddie's express assumption of the risk because the waiver was not freely and fairly negotiated; and it attempted to excuse the league for overly risky behavior.
 - Courts would not find this risk of injury as an objectively ordinary risk of pitching that Freddie impliedly assumed through his participation. Although the league has no duty to protect Freddie from risks that are "part of the game," it is not excused from its obligation to prevent risks of injury exceeding the realm of fair and responsible play.

- ◆ **Secondary assumption of the risk:** The league acknowledges its duty and its breach, but seeks to limit its liability by illustrating that Freddie affirmatively consented to encounter the risk
 - Entails that Freddie and his parents specifically knew of the risk of injury to his arm, appreciated the degree of harm that could result, and still voluntarily chose to participate. Given that Freddie’s parents were not aware of the risk and that Freddie, being twelve, could not know of or appreciate the risk, it is unlikely a court will find that they share responsibility for Freddie’s injuries.
- ⇒ **The league breached:** Maintaining the innings-pitched rule, in light of information the league possessed regarding the harmful effects of excessive pitch counts, can be held as either a reckless or negligent breach of its duty to care for Freddie.
 - ◆ **Reckless Standard:** The league intentionally implemented its innings-pitched rules, knowing, or with reason to have known, the strong possibility that harm may result to its pitchers.
 - ◆ **Negligence Standard:** The league’s rule was an unreasonable, careless, and imprudent precaution against a recognized risk of harm.
- ⇒ **The league caused Freddie’s injuries:** The stress injuries Freddie sustained were caused by his repetitively exceeding the recommended pitch counts for his age. Again, because the league was aware of published findings regarding the physiological effects of pitch counts on young pitchers, it was reasonably foreseeable Freddie’s injuries would result from the league’s innings-pitch rule; thus, the league should be liable.
 - ◆ **But-For Causation:** But-for the innings pitched rule that failed to protect Freddie from excessive pitch counts, he would not have suffered repetitive stress injuries to his pitching arm.
 - ◆ **Proximate Causation:** The league’s rule enabled a risk of harm that surpassed the acceptable realm of the sport. A person of ordinary intelligence would reasonably foresee that such an excessive risk of harm could lead to the injuries Freddie sustained; therefore, the league should be held liable.
- ⇒ **The league will pay damages:** A jury, aiming to fully compensate Freddie for the costs of his injuries, will likely award damages for past and future medical and rehabilitation expenses, disability damages for Freddie’s loss of normal life, and past and future pain and suffering damages to a degree sufficiently indicating its disapproval of the league’s behavior.

ⁱ John Pinkman of Pinkman Pitching provided information regarding innings-pitched requirements and recommended pitch counts that has been incorporated into the fact pattern. Professor Milton Regan of Georgetown University Law Center provided sample liability waivers, and assisted in shaping the scope of the project. Professor Heidi Li Feldman of Georgetown University Law Center advised on the case law selected for this study, and provided guidance throughout the project’s written development.