

Contract Law

Case 6: The
Tumbled
Cheerleader

Sharon v. City of Newton

Contracts Not to Sue

OBJECTIVE

To understand the use of a release to limit a party's liability for injuries caused by its own alleged negligent acts.

TOPICS COVERED

- Contract Not to Sue
- Capacity of a Minor Child to Enter into a Contract
- Validity of Release as Condition to Participation in Extra-curricular Activities
- Parental Consent

Sharon v. City of Newton

Contracts Not to Sue

BACKGROUND

- Merav Sharon, a high school junior, had been a cheerleader for her school's football and basketball teams since her freshman year.
- During her junior year, while still a minor, the high school she attended required all students and at least one parent/guardian to sign a release in the event a student was injured during a voluntary extra-curricular activity.
- Merav and her father signed the release.
- Merav fell from a teammate's shoulders while rehearsing a pyramid formation cheer and sustained a severe injury to her left arm ultimately resulting in surgery.
- Merav alleged that the high school was negligent in its failure to train and supervise the cheerleaders.
- The school argued that since Merav and her father signed a parental consent release, the school was not responsible for her injuries.

BEFORE YOU BEGIN

What is a contract?

A contract is an agreement between two or more competent parties to perform or to refrain from performing some legal act. If one party breaches the contract, the other party can attempt to enforce their contractual rights in a court of law.

What is a parental consent release?

In the absence of fraud, a person, or parent/guardian on behalf of a minor, may enter into a contract with another party which releases the party (school) from any liability caused by its own alleged negligent acts.

Can a minor enter into a contract?

A contract cannot be entered into by a minor (a person 17 or younger). If a minor signs a contract, that contract will not be enforceable against the minor unless a parent or guardian represented the minor at the time of the contract formation. A parent/guardian acting in the best interest of the child has a fundamental right to make decisions regarding the minor's health and safety.

Is a release valid as a condition to participate in extra-curricular activities?

Yes, releases are widely used by educational institutions to protect the school from lawsuits by students who are injured during participation in these activities.

ISSUE BEFORE THE COURT

Whether a release signed by the parent of a minor child for the purpose of permitting the child to engage in public school extra-curricular sports activities is a valid way to protect the school from liability where a student gets injured while engaged in the activities.

THE FACTS

On November 8, 1995, 16-year-old Merav Sharon was injured while participating in cheerleading practice at Newton North High School in Massachusetts. Merav fell from a teammate's shoulders while rehearsing a pyramid formation cheer and sustained a serious compound fracture to her left arm that required surgery. At the time of her injury, Merav had four seasons of cheerleading experience at the high school level.

On November 5, 1998, having reached the age of majority (18 years old), Merav filed a lawsuit against the City of Newton, alleging negligence and the negligent hiring and retention of the cheerleading coach. Merav sued for money damages resulting from her injury.

In late October 1999, the city produced a document entitled "Parental Consent Release from Liability and Indemnity Agreement" signed by Merav and her father in August 1995, three months prior to the injury. The relevant part of the release read as follows:

"I, the undersigned [father of] . . . Merav Sharon, a minor, do hereby consent to [her] participation in voluntary athletic programs and do forever RELEASE, acquit, discharge, and covenant to hold harmless the City of Newton . . . from any and all actions, causes of action, [and] claims . . . [for] personal injuries or property damage which [I] may now or hereafter have as the parent . . . of said minor, and also all claims or right of action for damages which said minor has or hereafter may acquire, either before or after [she] has reached [her] majority resulting . . . from [her] participation in the Newton Public Schools Physical Education Department's athletic programs. . ."

Merav argued that neither she nor her father realized that by signing the release they were waiving their future claims against the school.

A covenant not to sue is an agreement entered into by a person who may have a legal claim against another in the future, but agrees not to pursue the claim.

Merav and her father both signed the front of the release, which they indicated was for the sport of cheerleading. In addition, they filled out the back of the release that called for information regarding Merav's address, date of birth, health insurance provider, and emergency contacts, and provided the opportunity for them to purchase student accidental insurance through the school (an option which they explicitly declined on the form). Merav's father signed the back of the release giving parental consent to a physical examination of Merav prior to her participation in the cheerleading program.

The City of Newton argued that the release was a clearly labeled, two-sided document, which Merav brought home from school for her parents to review. As such, both Merav and her father had ample time to read and understand the release before signing it, and they should be deemed to have understood the release was a waiver of liability against the school.

Studies have shown that cheerleading is the number one cause of catastrophic injuries among high school and college athletes.

Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Sharon v. City of Newton, 437 Mass. 99, 769 N.E.2d 738 (Mass. 2002).

Supreme Judicial Court of Massachusetts, Middlesex

June 10, 2002. Opinion written by the Honorable Justice Robert J. Cordy.

NAME _____

DATE _____

Review the Case

After reading Sharon v. City of Newton, answer the following:

1. Identify the Plaintiff(s) in the case.

2. Identify the Defendant(s) in the case.

3. Is the Plaintiff seeking money for her injuries?

4. Describe the incident in which Merav was injured.

5. Describe Merav's injuries from her fall.

6. What was Merav's cheerleading experience at the time of her injury?

7. What is a parental consent release form?

NAME _____

DATE _____

Review the Case (continued)

8. Explain the City of Newton's reason(s) for asking the court to enforce the parental consent release.

9. List the facts that support the school's argument that Merav and her father understood the terms of the parental consent release.

10. Did Merav voluntarily assume any risks associated with cheerleading?

11. BONUS: What is your school's policy on extracurricular activities? Are parents/guardians required to sign a release prior to participation? Explain.

NAME

DATE

Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did the Plaintiff and one of her parents sign a parental consent release?

2. Did the Plaintiff and at least one of her parents understand the parental consent release?

3. Should the school be permitted to protect itself against lawsuits by having parents/guardians sign parental consent release forms?

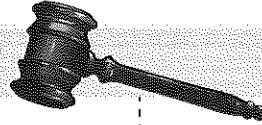
NAME _____

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You Be the Judge

Having reviewed the case and considered the questions involved, decide the case for either the **Plaintiff** or the **Defendant**:

Decision for the Plaintiff



Decision for the Defendant

Merav Sharon

City of Newton

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