# DCPI 2725/2015

[2018] HKDC 323

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 2725 OF 2015

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BETWEEN

MAN HIN FUNG（文顯峰） Plaintiff

and

SKH CHAN YOUNG SECONDARY SCHOOL

（聖公會陳融中學） Defendant

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Before: His Honour Judge Andrew Li in Court

Dates of Hearing: 8 & 22 December 2017

Date of Judgement: 23 March 2018

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JUDGMENT

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*INTRODUCTION*

1. This is a personal injury claim brought by the plaintiff against the defendant in respect of an accident happened on 6 December 2014 in which the plaintiff sustained serious injury to his left eye resulting in loss of a larger portion of iris (“the Accident”). The quantum of damages has been agreed at HK$800,000 and the trial is only concerned with the issue of liability.

*BACKGROUND*

*The Accident*

1. At the material time, the plaintiff was a student at the defendant's school (“the School”) and was a member of the School’s athletics team.
2. On Saturday, 6 December 2014, the plaintiff returned to the School for athletics training in order to prepare for the upcoming Inter-School Athletics Championships which would take place in mid-December that year. The training was scheduled from 9:00 to 11:00 am and was attended by 27 students.
3. It is the evidence of the defendant’s witnesses that there were 3 adults responsible for the training on that day. They were (l) the School’s physical education (“PE”) teacher Ms Hui Kit Mei (許潔美) (“Ms Hui”); (2) a more senior teacher of the School one Mr Liu (廖老師) (“Mr Liu”); and (3) the coach of the athletics team Mr Yuen Chun Pong (原振邦) (“Coach Yuen”).
4. Mr Liu left the School at about 10:15 am in order to bring another group of students to practice indoor bowling at a bowling centre outside the School. Prior to the Accident and about half way through training that morning, Ms Hui took a group of 7-8 students to a public sports ground situated next to the School for them to practice hurdling and disc throwing. She did not witness how the Accident happened.
5. According to Coach Yuen, after Ms Hui left for the sports ground, the rest of the students who remained in the School were divided into the following groups:-
6. High Jump: 3 to 4 students;
7. Long Jump: 6 students, including Master Cheng On Sum (鄭安深) (“Cheng”) and Master Lee Ling Fung (李寧楓) (“Lee”);
8. Running: 5 to 7 students, including the plaintiff.
9. At about 10:50 am, Coach Yuen asked Cheng, Lee and some other students to put training equipment, including some round-shape plastic mats which were used for marking purposes, back to the storeroom. At the time of the Accident, he was overseeing the high jump practice and did not witness how the Accident happened. He only suddenly heard the plaintiff screamed. He immediately turned around and run to the plaintiff who was about 20 metres away from him. He saw the plaintiff covering his eye with his hand and his broken glasses were on the floor.
10. According to the plaintiff, Ms Hui asked the plaintiff to put training equipment back to the storeroom. When he came out from the storeroom, the plaintiff squatted down to tie his shoelaces. When he stood up, a red round-shape plastic mat (“the Mat”) suddenly hit his face, breaking the glasses he was wearing and injuring his left eye.
11. After the Accident, Ms Hui was told by other students that the Accident was caused by Cheng and Lee. Apparently, while they were putting away the training equipment, Cheng and Lee started to horseplay with each other. It started with Lee mocking the act of an Olympic player and clapping his hands over his head. Cheng then threw a tennis ball at Lee, with Lee threw back the Mat in return. Cheng managed to dodge and the Mat hit the plaintiff instead.
12. Subsequently, Cheng and Lee each wrote a letter of apology to the plaintiff.
13. The defendant denies liability and avers that it had fully discharged its duty of care by taking all reasonable steps by (a) providing sufficient and adequate supervision and control over the students; and (b) reminding and giving appropriate warning and safety instructions to the students: (See §6 of defence).

*DISCUSSION*

*Applicable legal principles*

1. I am grateful to both Mr Damian Wong, counsel for the plaintiff, and Mr Ramanathan SC, counsel for the defendant, for so ably and succinctly set out the applicable legal principles in this area of law in their opening submissions. They are largely not in dispute and I would summarize them in the ensuring paragraphs.
2. Mr Wong summarized the general duties owe by a school authority to its pupils and the extent of such duties in the following manner.
3. A school authority owes to its pupils a duty to ensure that reasonable care is taken of them whilst they are on the school premises during the hours when the school is open for attendance. The school authority must ensure that a system is established that will enable the teachers at the school to show such care towards children under their charge as would be exercised by a reasonably careful parent: *Chan Kin Bun v Wong Sze Ming* [2006] 3 HKLRD 208, 216F-H.
4. The duty of care exists so long as the school is aware that there will be students on the premises. That period must plainly include the period before school, when the school gates are opened to admit students prior to classes, and for the period at the end of either lessons or exams, during which students are permitted to remain on the premises: *Chan Kin Bun*, *supra,* at 218B-C.
5. Further, the school has a responsibility to see that students learning the techniques and skills taught by the school should do so in a safe environment with procedures and methods of teaching that would ensure their safety. It should provide adequate care to students of tender age taking part in a sport which is inherently dangerous; *Leung Sze Nok v Tsuen Wan Properties Limited t/a Riviera Ice Chalet* (2010) unrep, DCPI No 1470 of 2007, 20 July 2010, §39.
6. In addition, it is a schoolteacher’s duty to take all reasonable and proper steps, bearing in mind the known propensities of children, to prevent any of his pupils from suffering injury, whether from inanimate objects, from the actions of their fellow pupils, or from a combination of both. What things are likely to injure pupils is a question of degree, depending on the nature of the thing and the age of the pupils: *Tse Parc Ki v Atlantic Team Limited t/a Le Beaumont Language Centre* (2007) unrep, DCPI No 1981 of 2006, 11 December 2007, §17.
7. A schoolteacher is also under a duty to exercise supervision over pupils whilst they are on the school premises. The amount of supervision required depends on the age of the pupils and what they are doing at the material time, but no teacher could reasonably be expected to keep a close watch on each child every minute of the day, unless there is some reason to be alerted or put on inquiry: *Tse Parc Ki, supra* at §17.
8. The burden of proof lies upon the plaintiff to establish first that there has been a failure on the part of the school to establish an appropriate system of patrol or, if the school has established an appropriate system, that system was not properly operated or in place at the relevant time: *Chan Kin Bun, supra*, at 218F-G.
9. In *Commonwealth of Australia v Introvigne* (1982) 150 CLR 258 (a case referred to in *Chan Kin Bun, supra*), a pupil was injured shortly before the commencement of instruction one morning when part of a flagpole, on the halyard of which boys had been swinging, fell on him. Evidence showed that the number of staff actually exercising supervision in the grounds at such a time was normally between 5 and 20. However, on the date of the accident, all members of the teaching staff except one (who was supervising in the playground) were at a staff meeting called by the acting principal to inform the staff that the principal had died in the early hours of that morning. The meeting was called for 8:20 am and lasted till about 8:25 am, during which time the accident happened.
10. In reply to the Commonwealth’s argument that the school teachers' duty of care does not require that 15 years old boys be kept under constant observation and supervision. Mason J stated that:-

“Here, however, there were up to 900 pupils in the recreation area in the half hour preceding the commencement of instruction. It would be unreal to suggest that no supervision was called for. In ordinary circumstances supervision at that time was provided by members of the teaching staff ranging in number from five to twenty. This provides some measures of what was considered to be appropriate, it being notorious that school pupils in large numbers, if left to their own devices in a recreation area, will on occasions engage in activities involved some risk personal injury.” (265-266)

1. Murphy J also found that the Commonwealth, being the school authority, should “take all reasonable care to provide suitable and safe premises. The standard of care must take into account the well-known mischievous propensities of children, especially in relation to attractions and lures with obvious or latent hazards” (at p 274). The learned judge went on to say at p 275 that:

“It is enough that [the plaintiff’s] injuries were due to the inadequate system of supervision and care. The system did not provide for sufficient staff to exercise proper supervision over the children in the playground. As well, there was a failure to ensure that the system was carried out. The departure from the system by the teachers was understandable because of the death of the school principal, but this does not excuse the breach by the Commonwealth of this non-delegate duty.”

1. Mr Ramanathan SC in turn referred me to the following authorities, the principles stated therein are not disputed by Mr Wong and of which I would respectfully adopt.
2. Whilst a schoolteacher owes a duty to his students to take all reasonable and proper steps “as would have been exercised by a reasonably careful parent” (see *Chan Kin Bun, supra,* at 216 G-H, citing *Clerk and Lindsell on Torts* 18th ed, §7-230), it is trite that the duty of the schoolteacher is only to exercise reasonable care, and that the duty is not absolute:
   1. The reasonableness of the schoolteacher’s duty to take care of the students shall be determined in light of, inter alia, (i) the conditions of the school life as distinct from the home life, (ii) the number of children in the class, and (iii) nature of those students (see *Clerk and Lindsell* *on Torts* 21st ed, §8-209).
3. It is also established that teachers cannot be expected to insure children against injury from ordinary play in the playground, as it would be impossible to supervise all the school students that they never fall down and hurt themselves (*Clerk and Lindsell on Torts* 21st ed, §8-209).
4. It has been said that it is no part of the duty of a teacher to foresee every act of stupidity that might take place. It is necessary to strike a proper balance between too strict a supervision of children at every waking moment of their school life and the desirable object of encouraging sturdy independence as they grew up. Otherwise, as Goddard LJ put it in *Camkin v Bishop* [1941] 2 All ER 713, at 716:

“If every master is to take precautions to see that there is never racing or horseplay among his pupils, his school would indeed be too awful, a place to contemplate.”

1. The court generally requires a much higher threshold for liability to be established due to negligent conduct involved in a horseplay. In *Orchard v Lee* [2009] PIQR P16, a 13-year-old school boy was partaking in a game within a play area playing with another boy, during which he collided with a lunchtime assistant supervisor at the school, causing injury to the same. The action was brought by the lunchtime assistant supervisor against the 2 school boys. It was held that in order to establish liability based on acts of children horseplay, a very high degree of carelessness is required, and that a child of 13 playing in the play area without breaking any rules, and is not acting to any  significant degree beyond the norms of that game, is insufficient to establish liability (at p 289, 11-12).
2. In relation to the schoolteacher’s duty to take reasonable steps to supervise children in the playground, in *Tse Parc Ki*, *supra,* at §17, it has been specifically stated that “[t]he amount of supervision required depends on the age of the pupils and what they are doing at the material time, but *no teacher could reasonably be expected to keep a close watch on each child every minute of the day, unless there is some reason to be alerted or put on inquiry.”* (emphasis added)
3. This echoes with the English decisions in *Kearn-Price v Kent CC* [2003] PIQR P1 and *Dyer v East Sussex CC*, unrep, County Court (Brighton), 19 December 2016:-
4. In *Kearn-Price* the claimant suffered a serious injury to his left eye when he was struck by a full-size leather football in the playground of his school, which was controlled by the defendant. At the material time, owing to previous accidents involving facial injuries caused by footballs to pupils during the previous 2 months, there was a policy of banning full-size leather footballs, which was known to the staffs of the defendant, yet there was no patrolling or spot-checks of the playground to enforce the ban, and that full-sized leather footballs were continued be used in the playground on a regular basis. It was held by the Court of Appeal that the school was in breach of its duty of care in failing to take reasonable steps to enforce the ban effectively by introducing a more rigorous policy of enforcement and spot-checking because (a) the ban was known to be regularly flouted, (b) the full-sized leather balls were known to be dangerous, and (c) the additional steps of spot-checking would not impose an undue burden on the school (*Kearn-Price*, *supra.,* at p 176 28-29).
5. On the contrary, in *Dyer*, the claimant (aged 14) suffered injuries when he was playing football game with his other pupils, one of whom kicked open a metal gate which swung into the claimant’s face with considerable force. The metal gate was usually locked, but was unlocked at the material time. There was no teacher on site supervising the pupils. It was held that, as opposed to a particular known risk as in *Kearn-Price*, the accident was found to be a combination of unexpected events. As such, the accident was held to be not reasonably foreseeable, and that had there been increased supervision, it would not have prevented the accident. It was further held that the supervision was adequate in the circumstances as a teacher had reached the injured claimant within a reasonable time after the accident.
6. In light of the above, the defendant submits and I accept that in order to strike a balance between the protection that ought to be provided to the students on the one hand, and the burden on the school on the other hand, constant or increased supervision is required only when there is reason to be alerted or put on inquiry, for instance, previous occurrence of accidents of the same type.
7. Mr Ramanathan further submits it is well established that a high teacher to student ratio is not essential to the satisfaction of the school’s duty of care towards its student. In *HammerslevGonsalves v Redcar and Cleveland Borough Council* [2012] EWCA Civ 1135, where a pupil, during a golf class, accidentally struck the claimant when a golf club was swung causing injury to the same, the teacher supervising a golf lesson of 22 pupils of 12 years old was found to be not liable because “however observant a teacher is, however careful the lookout he is keeping, he could not and could not be expected to see every action of each of 22 boys walking in crocodile fashion as these boys were.” (at §11).

*Issues in dispute*

1. The occurrence of the Accident itself is not disputed by the defendant. The main issue which is in dispute is whether the defendant had discharged its duties at the time of the Accident, particularly whether sufficient and adequate supervision, control, reminders, warnings and safety instructions, had been provided at the material time.
2. It is submitted by the defendant, of which I agree, that the issue of liability in the present case can be boiled down to the following sub-issues:
3. Whether there were any previous occurrence of accidents or incidents of similar nature that would cause the defendant to be conscious or more alert to the possibility that pupils may be throwing red mats or other objects that could result in injury;
4. Whether there were any prior incidents that would alert the defendant and/or it staff that Cheng and Lee required any particular attention or supervision; and
5. Whether the Accident was a sudden, unfortunate but totally unexpected occurrence and there was little that the defendant could have done to prevent it.

*Findings of fact*

1. The following summary of facts stated by Mr Wong for the plaintiff in his closing submissions, after hearing the plaintiff (PW1), Ms Hui (DW1), and Coach Yuen (DW2) giving evidence at the trial, are not controversial. With appropriate modifications, I shall adopt them as my findings of fact in this case:
2. The plaintiff was born in February 1997. At the time of the Accident on 6 December 2014, he was 17 years old studying Form 5 in the School. He was a member of the School's athletics team.
3. Training of the athletics team usually took place from 9:00 am to 11:00 am on Saturdays in the School and was supervised by Mr Liu, Ms Hui and Coach Yuen. Normally, they were present during the whole of the 2-hour training session.
4. Ms Hui has been the PE teacher of the School since 1995. Apart from PE, she also teaches Chinese Language. Mr Liu was (and still is) the panel head of the PE subject in the School. He was more senior than Ms Hui in terms of rank and age. Coach Yuen was an old boy of the School who graduated in 2004. He was once the student of Mr Liu and Ms Hui. He was hired by the School as the external coach of the athletics team from 2002 to 2015. He was 27 years old at the time of the Accident.
5. According to Ms Hui, the purpose of hiring Coach Yuen was to benefit from his more professional skill of training and to improve the overall athletic standard of the athletics team. Coupled with the fact that Coach Yuen was not a member of the teaching staff of the School, Coach Yuen’s main focus was on the students' training needs and any issue relating to the student's discipline were left to Mr Liu and Ms Hui.
6. As far as training duties are concerned, Coach Yuen was responsible for jumping events (long jump and high jump) and running. Ms Hui was responsible for discus throw, javelin and sprints (including hurdling). Mr Liu was responsible for shot put.
7. According to the plaintiff, Mr Liu was also responsible for the overall safety of the students. This is consistent with Coach Yuen’s evidence that Mr Liu was responsible for “watching the safety of the students” (sic): (See §5 of Coach Yuen’s witness statement). It is also Coach Yuen’s evidence that Mr Liu would help him oversee jumping events when there was no shot put training since he could only focus on one jumping event at a time.
8. According to Exhibit D1 (the attendance record of the training sessions), the training on 6 December 2014 was attended by 27 students, consisting of 8 Form 1 students; 7 Form 2 students (including Cheng who repeated both Form 1 and Form 2); 3 Form 4 students (including Lee); and 6 Form 5 students (including the plaintiff).
9. Mr Liu, Ms Hui and Coach Yuen were all present when the training session started at 9:00 am on that day. According to the plaintiff, Mr Liu took the roll call. After roll call, the students started doing warm-up exercise. I accept the plaintiff’s evidence that he did not see Mr Liu thereafter.
10. After the warm-up exercises, the students split into smaller groups for different events. Ms Hui was responsible for hurdling and discus throw in the open playground whereas Coach Yuen was responsible for jumping events and running. There is a dispute between the plaintiff and Coach Yuen on where high jump training actually took place but it appears that the dispute is of no great significance.
11. Ms Hui cannot recall whether there was any shot put training on that day. However, she agrees that, if there was no shot put training, Mr Liu would patrol the School premises to ensure that students in other events followed the training instructions given by Ms Hui and Coach Yuen. She believes that, if Mr Liu saw students chasing or playing, he would stop them.
12. At around 10:00 am, Mr Liu told Ms Hui that he would leave the School premises in order to take students of the Bowling Club to practice indoor bowling at a bowling centre somewhere else. Mr Liu however did not inform Coach Yuen of his departure. Coach Yuen realized only at around 10:20 am that Mr Liu had left but he did not know the reason of his early departure. At that time, training of all events was still on-going.
13. According to the plaintiff, this was the first time where the bowling practice schedule crashed with the athletics team’s training schedule. In any event, after the early departure of Mr Liu, Ms Hui and Coach Yuen continued to take care of the training of all 27 students.
14. At about 10:35 am, Ms Hui brought 6 to 7 students to the public football pitch next to the School for hurdling and discus throw training. Ms Hui believes that Coach Yuen was able to look after the remaining 19 to 20 students on the School premises but she admits that she did not inform Coach Yuen of that.
15. After Ms Hui’s departure, Coach Yuen was the only adult on the School premises who needed to supervise the training of 19 to 20 students in long jump, high jump and running all by himself.
16. Before the Accident, Coach Yuen was supervising high jump training, which had a higher risk of injury than long jump and running, but he also looked out for long jump training from time to time to ensure that the students were lining up and started the approach run at the correct positions.
17. Coach Yuen however admits that he had difficulty in supervising the students who remained on the School premises as there were too many of them. He agrees that when he was paying his attention to the students in high jump training, he would inevitably neglect the students doing long jump and running.
18. According to the plaintiff, he finished the training at about 10:50 am and was instructed to put the training equipment to the storeroom. After putting the training equipment inside, he came out from the storeroom and squatted down to tie the shoelaces. Whilst he was standing up after tying the shoelaces, the Mat suddenly hit him, breaking his glasses and injured his left eye.
19. According to the apology letter written by Lee, he was pretending to be an “Olympic player” and was clapping his hands over his head. Cheng threw something (which, according to Ms Hui, was a tennis ball) at him from behind. Lee turned around, grabbed the Mat from the ground and threw it at Cheng. Cheng dodged and the Mat hit the plaintiff instead.
20. According to the plaintiff, he did not pay attention to the whereabouts of Lee and Cheng before the Accident. He only knew how the Accident had happened when he received the apology letters from Lee and Cheng.
21. According to Ms Hui, the tennis ball that Lee threw at Cheng belonged to the School and was kept in the storeroom. She confirms that tennis balls were not used in the athletics training that morning and she did not know how Lee got hold of the tennis ball.
22. Coach Yuen admits that he did not see horseplay described in Lee’s apology letter. He agrees that, if Mr Liu had not left the School premises, he would have helped supervise long jump training.
23. Ms Hui confirms that she had taught Lee and Cheng when they were in Form l. According to Ms Hui, they were playful -- they liked chasing and hitting each other -- and used to cause troubles in PE lessons. Subsequently, Cheng repeated Form 1 and Form 2 whereas Lee progressed normally. Therefore, they were not in the same class and did not have PE lesson together again. However, they were both members of the athletics team and met at the team’s training. Ms Hui agrees that they occasionally chased and hit each other at the training.
24. Besides the above, I would further make the following findings based on the evidence of the 3 witnesses:
25. The School was and is a Band 1 school where most of the students were hardworking, focused in their learning, well behaved and disciplined.
26. That occasionally students would be playing amongst themselves at times, but there were no serious disciplinary issues at the School and there had never been any accident of a similar nature at the School before.
27. The plaintiff did not disagree with the suggestion that the occasional playing and chasing of each other on the playground amongst the students were just “normal school kids playing around”.
28. Whilst Mr Liu would generally stop students who were playing around during training when he carried out his patrol in the playground, both Ms Hui and Coach Yuen would also stop students who were being too playful and were doing anything wrong. Further, Ms Hui had seen Coach Yuen stopping students playing around before. They did not have to consult each other before exercise such disciplines on students.
29. While Cheng and Lee had caused problems in class before, those “problems” referred to their tendency of being playful at times, chasing each other and hitting each other. They had never caused any injury to anybody before the occurrence of the Accident. When Cheng and Lee was being playful chasing each other in class or during training, Ms Hui would stop them verbally and they would always listen.
30. The Mat involved in the Accident was only used as a spot marker for long jump practice, it had never been used (or expected to be used) as a substitute of discus in the throwing practice. A rubber ring would be used as an imitation discus for the purpose of training.
31. Despite Coach Yuen’s estimate that the distance the blue cushion mats that the long jump students were supposed to land on was about 30 metres away from where he was standing at the time of the Accident, I find that in fact the distance between Coach Yuen and the plaintiff, Cheng and Lee was much less than that.
32. I do not accept Coach Yuen’s evidence that he was able to supervise the students who were doing the long jump while he was supervising the students at the starting position doing the high jump.

*The plaintiff’s contentions*

1. Mr Wong in his closing submissions submits that the defendant had failed to operate or put in place an appropriate system of supervision at the time of the Accident, which he says was the “direct cause” of the Accident. He submits that Mr Liu, who played a very important role in the system of supervision and was entrusted with the duty of overseeing the students’ safety, should not have left the School premises early and left Coach Yuen to supervise both the long jump and high jump training at the same time. Further, Mr Wong submits that when Ms Hui left for the public sports ground outside the School with a group of students, this effectively had left Coach Yuen to supervise a group of 19 to 20 students who were doing long jump and high jump in 2 different places at the same time on his own.
2. In short, the plaintiff submits that there was a failure on the part of the defendant in providing adequate and sufficient supervision which resulted in the Accident.
3. In my judgment, it is clear from the authorities that the question of adequacy of supervision in place is a question of a balancing exercise between (a) the foreseeability of risk of a particular accident and injury on one hand; and (b) the burden to be placed on the school authority on the other; bearing in mind factors such as nature and number of pupils involved, frequency and magnitude of previous occurrence of accident of similar nature, the nature of the activity is involved, financial and other costs of provision of staff: (see *Chan Kin Bun, supra*; *Kearn-Price* *v Kent, supra*; *Dyer v East Sussex CC*, *supra*; and *Trustee of the Roman Catholic Church for the Diocese of Canberra and Goulburn v Hadba* (2005) 216 ALR 415 (*“Hadba”*)).

*Was there adequate supervision in this case?*

1. I agree that the foreseeability of risk must be specific to that particular type of accident (see *Dyer, supra*, at p 2, citing *Darby v National Trust for Places of Historic Interest or Natural Beauty* [2001] EWCA Civ 189), and that the balancing exercise must not be approached with too much of a hindsight (*Hadba*, at [26]).
2. As Mr Ramanathan SC has submitted, of which I respectfully agree with, the group of pupils involved in the present case (including Cheng and Lee) are generally well-behaved and harmless who did not present themselves as a high safety risk. There were no serious disciplinary issues, no occurrence of accidents resulting in serious injuries during track and field practice or dangerous horseplay. The teachers or coaches of the defendant were simply not alerted nor put on inquiry to provide extraordinary supervision over Cheng and Lee, especially when there are other students who might also be playful on that particular day.
3. In the absence of any factors showing an increased risk of the particular kind of that resulted in the accident, the position is that even if the teacher, in this case Mr Liu and perhaps with the help of Ms Hui, is not exercising constant supervision over each group of students to prevent occurrence of accident, as long as the teacher is able to reasonably promptly attend the injured pupil after the accident has occurred, the supervision would still be adequate (See *Dyer, supra*).
4. Similar to the situation in *Hadba*, the evidence in the present case suggests that there were in fact rules against students playing around out of control, the students were constantly reminded of the same, and that all the teachers, including Coach Yuen, would enforce the rule by telling the students to behave when seeing them playing around, and when they do so, the students (including Cheng and Lee) would listen and stop playing.
5. Further, at around the time of the Accident, there is evidence from Coach Yuen that he had been keeping a glance of the long jump students who were lining up not far from him from time to time to make sure there were no safety issues. Yet, as in the case of *Hadba*, the Accident occurred when the supervising teacher/coach was not currently looking.
6. In relation to the question of whether constant supervision over long jump practice, or in particular Cheng and Lee, was called for, I accept the defendant’s submission that it is against public policy and damaging teacher-pupil relationship by removing the slightest element of trust to impose a duty on the teacher to constantly supervise students like Cheng and Lee who are just being playful at times, without being violence or having a history of causing injuries while they were playing around (see *Hadba, supra*, at [25]).
7. In that regard, I find that, in light of the decision of *Hadba*, the staff to student ratio in the present case is appropriate. In *Hadba*, the only teacher patrolling on site was required to oversee a large area, there were 40 primary school students in the vicinity, who were playing around during recess time, engaged in various types of activities. Nonetheless, the High Court of Australia regarded this arrangement of supervision to be adequate. Whereas in the present case, 19 to 20 secondary school students with considerable maturity and generally of a well-behaved nature were carrying out regular sports training. In my view, they were less unpredictable than the 40 primary school students having fun as in the case of *Hadba*.
8. Based on the evidence from all 3 witnesses, I accept the defendant’s submission that, as the participants of the track and field practice (including Cheng and Lee) were a generally disciplined and obedient group of pupils, in the absence of any evidence suggesting that the horseplay of Cheng and Lee was at the material time way beyond the norms of common horseplay amongst teenage students, and that there is no previous occurrence of incidents of similar type, I therefore find the supervision provided was adequate in the circumstances.

*Could the Accident have been prevented if the system of supervision had been greater?*

1. Mr Wong in his closing submissions makes the remarks that if Mr Liu were present to help supervise the long jump training, it is most likely that Cheng and Lee would not have started the horseplay at all as it is unlikely that they would dare to do so in front of their teacher. Further, he submits that Mr Liu would have stopped Cheng from throwing the tennis ball to Lee in the first place.
2. I reject the plaintiff’s submission that had Mr Liu been present at the School at the time of the Accident, he could have prevented the horse-playing between Cheng and Lee. The evidence suggests that the horseplay between Cheng and Lee took only a couple of seconds, involved the throwing of a tennis ball by Cheng first, with Lee retaliated by immediately picking up and throwing back the Mat. It was purely a freak accident in the sense that Cheng had managed to dodge the “flying” mat at the very moment while the plaintiff was just getting up from tying his shoelaces.
3. I do not consider that even with Mr Liu and Ms Hui’s presence (and therefore in theory was able to provide the requested supervision) in the long jump area at the time, Cheng and Lee could be stopped in time and the Accident could be prevented. In my view, to require the defendant to provide staff to oversee the long jump students, as well as the high jump students, in the same time would effectively require the School to arrange teachers to be present at every corner of the covered and open playground. In my judgment, that goes well beyond the bounds of reasonableness and is not what the law requires.
4. As was pointed out, in *Hadba* (at [27]), it was held that as the accident happened only within a few seconds, even if the teacher had exercised uninterrupted supervision, the accident may still occur nonetheless, so that no causation can be established between the lack of supervision, if any, and the occurrence of the accident.
5. The approach of the Hong Kong Courts is also similar. In *Chan Kin Bun, supra*, the court also observed that if the accident occurs within a short period of time, then even if there is sufficient supervision, the accident and the injury would still not be prevented:

“38. Even assuming that the system of patrol established was not, on the relevant day, properly carried out, *the evidence does not establish that a proper carrying out of the patrol would have prevented the accident.* It is important to note the following passage from *Introvigne*, p 275:

*“It is enough that Introvigne’s injuries were due to the inadequate system of supervision and care. The system did not provide for sufficient staff to exercise proper supervision over the children in the playground. As well, there was a failure to ensure that the system was carried out.”*

Both as to system, and the carrying out of that system, there had been a failure on the part of the school authorities. *In that case the court was of the view that had there been sufficient staff present supervising the children the incident which gave rise to the injury would not have occurred.*

39. That was also the situation in Beaumont, a decision described by *Clerk & Lindsell* as “much criticised”: para 7-230 fn 35. Those cases, on the facts, may be compared with Mullin where, at the time of the incident, the two students were at their desks in a classroom, with a teacher present throughout. *In the present case the incident which was one which took place in a very short period of time. Bearing in mind that the obligation on the School and teachers does not extend to constant supervision, the evidence does not establish that had a teacher been on patrol in the playground, the incident would necessarily not have occurred.”* (emphasis added)

1. It is the plaintiff’s own evidence that the Accident occurred very quickly, and the Mat was flying towards him from a short distance. Under such circumstances, just as the situation contemplated in *Chan Kin Bun* and *Hadba*, I accept Mr Ramanathan SC’s submission that, even if there was one or more teachers on duty at the playground, he/they would most likely be unable to stop the Mat from hitting the plaintiff, given the time frame within which the incident occurred and the sudden and impulsive nature of the actions of Cheng and Lee.

*The maxim of Res ipsa louqutur does not apply*

1. The plaintiff sought to rely on the doctrine of *res ipsa loquitur* (see §5 of the statement of claim). It is trite that in order to rely on the doctrine of *res ipsa loquitur*, there must be “no evidence as to why or how the occurrence took place”: (*Leung Sze Nok*, §15, at O-P).
2. It is common ground that the Accident was occasioned from the horseplay of Cheng and Lee, as they threw tennis ball and the Mat at each other. Thus, in my judgment, it is clear that the maxim of *res ipsa loquitur* is not applicable.

*Findings on sub-issues*

1. Based on the above findings of fact, I shall briefly deal with the sub-issues defined by the parties as stated in §32 above.

*(i) Whether there were any previous occurrence of accidents or incidents of similar nature that would cause the defendant to be conscious or more alert to the possibility that pupils may be throwing red mats or other objects that could result in injury?*

1. In my view, there is simply no or sufficient evidence in this case to suggest that there was any previous occurrence of accidents or incidents of similar nature that would cause the defendant to be conscious or more alert to the possibility that pupils may be throwing mats or other objects which could result in injury.

*(ii) Whether there were any prior incidents that would alert the defendant and/or it staff that Cheng and Lee required any particular attention or supervision*

1. Based on my above findings of fact, there is in my judgment simply no evidence to suggest that there were any prior incidents that would alert the defendant and/or its staff that Cheng and Lee required any particular attention or supervision.
2. The evidence at its highest suggests that there had been occasions where Cheng and Lee had mishaved by “horsing around” with each other in the playground or during PE lessons. But there had never been any incident involving with throwing of objects which might result in any injury. Further, on each of those occasions when Cheng and Lee misbehaved, they would always stop when asked to do so.
3. In *Orchard v Lee* [2009] PIQR P16, the court laid down the principle that horseplay, not breaking any rules, should be permissible unless it is of a significant degree beyond the norms of that game; similarly, horseplay involving the activity of T-square fighting as was described by the court in *Chan Kin Bun* as “high-spirited and good-natured horseplay” [at §§9 & 11] and is therefore not objectionable.
4. In this regard, I bear in mind of the passage of Goddard LJ in *Camkin v Bishop, surpa* cited in §25 above and find that it is necessary for a school authority to strike a proper balance between too strict a supervision of children at every waking moment of their school life and the desirable object of encouraging them to become independent adults as they grow up. In this case, I particularly bear in mind that the participants involved in this case are not young children but are 11 to 17 years old secondary school students who are normally well behaved and well disciplined.

*(iii) Whether the Accident was a sudden, unfortunate but totally unexpected occurrence and there was little that the defendant could have done to prevent it.*

1. As much sympathy I have for the plaintiff (and his family), who was an exemplary student and outstanding athletic, and who had done absolutely nothing wrong in causing this unfortunate freak accident, based on the evidence transpired at the trial, reluctantly and sadly, I have to arrive the conclusion that the Accident was a sudden, unfortunate but totally unexpected occurrence and there was little that the defendant could have done to prevent it.

*CONCLUSION*

1. In light of the aforesaid, having examined the evidence carefully and taking into account of the applicable legal principles involved, regrettably, I have to come to the conclusion that the Accident was no more than an unfortunate freak accident which did not involve any breach of duty of care on the part of the defendant towards the plaintiff. Alternatively, even if there is a breach of such a duty, I am of the view that it was not causative of the Accident and/or the injuries suffered by the plaintiff.
2. In the circumstances, I order that the plaintiff’s claim herein be dismissed with a costs order in favour of the defendant with certificate for counsel. The plaintiff’s own costs to be taxed in accordance with the legal aid regulations.
3. Lastly, I would like to express my gratitude to counsel on both sides for their very helpful assistance in this case.

( Andrew SY Li )

District Judge

Mr Damian Wong, instructed by Yip, Tse & Tang, assigned by the Director of Legal Aid, for the plaintiff

Mr Kumar Ramanathan SC, instructed by Leung & Lau, for the defendant