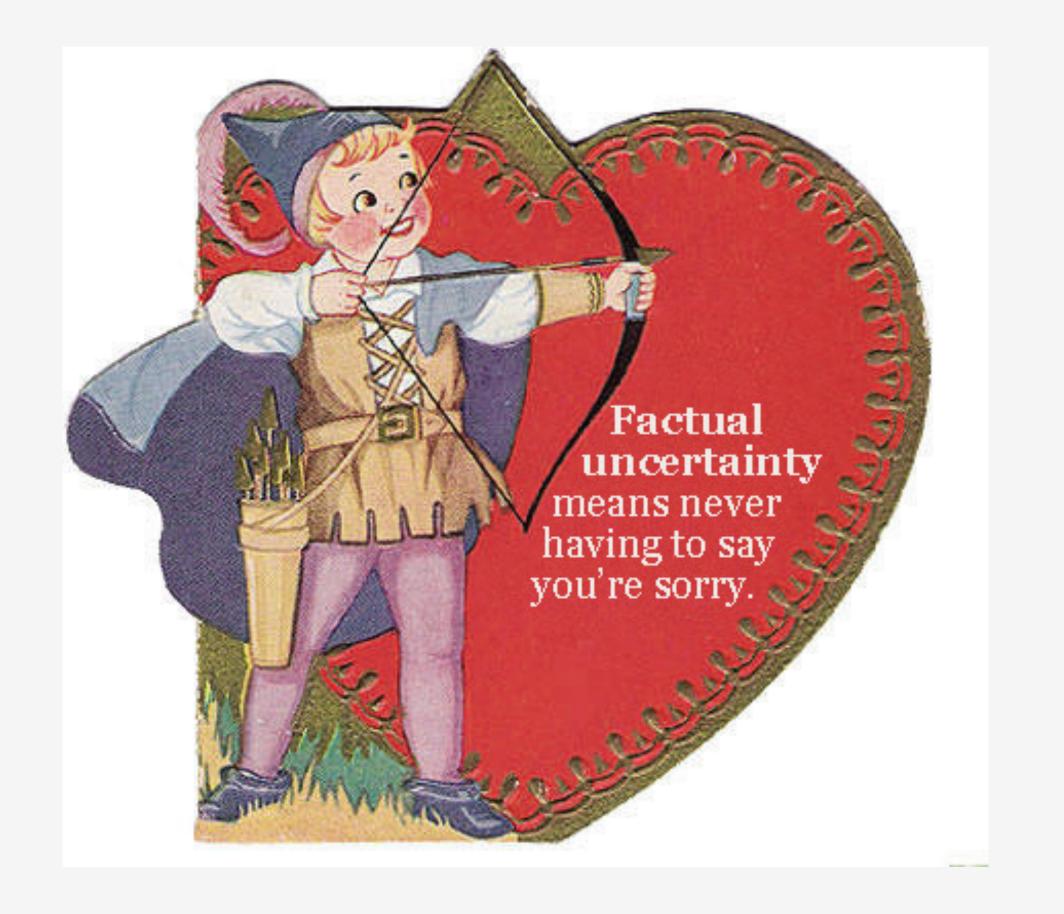
Assumption of Risk





Wassell v. Adams

Wassell v. Adams Discussion Questions

Given these facts, what would a just outcome in this case have been?

How capable is our legal system of producing just outcomes in these cases? How does it fall short? What would need to change?

Assumption of Risk

Where are we?

Negligence

Elements of a cause of action:

- -- Duty
- --- Breach
- --- Causation
- -- Harm

Defenses:

- --- Contributory or Comparative Negligence
- --- Assumption of risk

Assumption of Risk

- Explicit
- Implicit

Hanks v. Powder Ridge Restaurant Corp.

Two Common Issues

- 1. Was the contract clear enough about releasing the defendant from liability?
- 2. Will the court enforce contract?

- I fully assume all risks associated with [s]nowtubing, even if due to the NEGLIGENCE of [the defendants]
- I ... agree I will defend, indemnify and hold harmless [the defendants] ... from any and all claims, suits or demands ... including claims of NEGLIGENCE on the part of [the defendants]
- I will not sue [the defendants] ... for money damages for personal injury ... even if due to the NEGLIGENCE of [the defendants]

Will the court enforce contract?

Various legal tests for determining if liability waiver is against public policy:

- Liability waivers are unenforceable
- Totality of the circumstances
- Six factors from Tunkl

Tort Law Values

| Era | Philosophy | Primary Goal | Concern |
|------------|--------------------|---------------------------|------------|
| Classical | Corrective justice | Individual accountability | Autonomy |
| Neoliberal | Economics | Maximize utility | Efficiency |

Tort Law Values

| Era | Philosophy | Primary Goal | Concern |
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| Classical | Corrective justice | Individual accountability | Autonomy |
| New Deal | Political Economy | Distributive justice | Power |
| Neoliberal | Economics | Maximize utility | Efficiency |

Murphy v. Steeplechase

volenti non fit injuria

volenti non fit injuria

"to one who is willing, no wrong is done"

Cardozo's counter-examples

- 1. "Obscure and unobserved" dangers
- 2. Too many accidents