

# Assumption of Risk

Who needs this  
Valentine? My love  
for you is *res ipsa  
loquitor.*





# 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

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Era	Philosophy	Primary Goal	Concern
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