

Assumption of Risk

McCarty v. Pheasant Run, Inc.

“Unlocked Hotel Room Door”

and

Wassell v. Adams

“Opened Hotel Room Door”

Discussion Questions

Given the facts of these cases, what would a just outcome in each 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

Hanks v. Powder Ridge Restaurant Corp.

“Snowtubing Waiver”

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
Classical	Corrective justice	Individual accountability	Autonomy
New Deal	Political Economy	Distributive justice	Power
Neoliberal	Economics	Maximize utility	Efficiency

Murphy v. Steeplechase

“The Flopper”

volenti non fit injuria

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“to one who is willing, no wrong is done”

Cardozo's counter-examples

1. “Obscure and unobserved” dangers
2. Too many accidents

Knight v. Jewett

“Touch Football Injuries”

Explicit assumption of risk

Implicit assumption of risk