

***SYNOPSIS OF
SURVEY OF SPORT AND LEISURE
WAIVER AND RELEASE LAW
IN THE UNITED STATES***

An Analysis of the Fifty States

Sixth Edition (2015)

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**This booklet contains a synopsis of each state's Sport and Leisure Waiver and Release Law.
A more detailed legal analysis of each state is found on the included USB flash drive.**

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SURVEY INDEX

State	Waiver Enforceability	Assumption of Risk as Defense	Negligence Law	Waiver of SPL Claims*	SPL Avail.	Enforcement of Release Against Minors*	Recreational Use Statute(s)
Alabama	Yes	Complete	Contributory	N/A	No	No	Yes
Alaska	Yes	No	Pure Comp.	N/A		N/A	Yes
Arizona	Yes	Partial	Pure Comp.	Yes		Partial	Yes
Arkansas	No	Partial	Partial Comp.	No		N/A	Yes
California	Yes	Complete/Partial	Pure Comp.	No		Voidable	Yes
Colorado	Yes	Partial	Partial Comp.	Yes		No	Yes
Connecticut	Yes	Abolished	Partial Comp.	No		Partial	Yes
Delaware	Probable	Complete/Partial	Partial Comp.	N/A		N/A	Yes
Florida	Yes	Complete/Partial	Pure Comp.	N/A		Yes ¹	Yes
Georgia	Yes	Complete	Partial Comp.	Yes		Voidable	Yes
Hawaii	Yes	Complete/Partial	Partial Comp.	No		N/A	Yes
Idaho	Yes	Complete	Partial Comp.	N/A		N/A	Yes
Illinois	Yes	Complete/Partial	Partial Comp.	No		Partial	Yes
Indiana	Yes	Complete	Partial Comp.	No		Limited	Yes
Iowa	Yes	Partial	Partial Comp.	N/A		Unenforceable	Yes
Kansas	Yes	Limited	Partial Comp.	No		N/A	Yes
Kentucky	No	Abolished	Pure Comp.	N/A		Voidable	Yes
Louisiana	No	Abolished	Pure Comp.	N/A		N/A	Yes
Maine	Equivocal	Limited	Partial Comp.	Yes		No	Yes
Maryland	Yes	Complete	Contributory	No		No* ²	Yes
Massachusetts	Yes	Abolished	Partial Comp.	N/A		Yes	Yes
Michigan	Yes	Limited	Pure Comp.	N/A		No	Yes
Minnesota	Yes	Complete/Partial	Partial Comp.	Yes		Voidable	Yes
Mississippi	Equivocal	Complete	Pure Comp.	N/A		No	Yes

¹ Yes, but, only if the release applies to injuries resulting from risks inherent in the activity, and not for the negligence of the activity provider. See Fl. Statute § 744.301(3).

²If transaction affects public interest.

Missouri	Yes	Complete	Pure Comp.	No	N/A	Yes
Montana	No	Abolished except skiing	Partial Comp.	N/A	Voidable	Yes
Nebraska	Yes	Complete	Partial Comp.	N/A	N/A	Yes
Nevada	Yes	Abolished	Partial Comp.	N/A	N/A	Yes
New Hampshire	Yes	Equivocal	Partial Comp.	N/A	N/A	Yes
New Jersey	Equivocal	Complete	Partial Comp.	Yes	No	Yes
New Mexico	Equivocal	Complete/Partial	Pure Comp.	N/A	N/A	Yes
New York	Yes if not contrary to statute	Complete/Partial	Pure Comp.	N/A	Voidable	Yes
North Carolina	Yes	Complete	Contributory	N/A	Voidable	Yes
North Dakota	Yes	Abolished	Partial Comp.	N/A	Voidable	Yes
Ohio	Yes	Complete/Partial	Partial Comp.	N/A	Yes	Yes
Oklahoma	Yes	Complete	Partial Comp.	N/A	N/A	Yes
Oregon	Yes	Limited	Partial Comp.	N/A	N/A	Yes
Pennsylvania	Yes	Complete/Partial	Partial Comp.	Yes	No	Yes
Rhode Island	Equivocal	Complete	Pure Comp.	No	N/A	Yes
South Carolina	Yes	Complete	Partial Comp.	N/A	No	Yes
South Dakota	Yes	Complete	Comparative	N/A	N/A	Yes
Tennessee	Yes	Complete	Partial Comp.	Possible	Limited	Yes
Texas	Yes	Partial	Partial Comp.	N/A	No	Yes
Utah	Probable	Partial except skiing	Partial Comp.	N/A	No	Yes
Vermont	Limited	Complete/Partial	Partial Comp.	N/A	N/A	Yes
Virginia	Limited	Complete	Contributory	No	Limited	Yes
Washington	Yes	Complete/Partial	Pure Comp.	N/A	No	Yes
Washington, D.C.	Equivocal	Complete	Contributory	N/A	N/A	No
West Virginia	Yes	Partial with exceptions	Partial Comp.	N/A	N/A	Yes
Wisconsin	Yes	Complete/Partial	Partial Comp.	No	Limited	Yes
Wyoming	Yes	Partial	Partial Comp.	N/A	N/A	Yes

* Many states have not addressed this issue by either statute or case law. This is reflected by the term "N/A", meaning not applicable.

Alabama Synopsis

Waiver and Release

Generally, releases of liability for ordinary negligence are valid unless violative of public policy. Releases by participants and crew members in the context of sporting activities, such as auto racing, are enforceable and not against public policy. Case law is silent with respect to the enforceability of releases by spectators. Releases purporting to exculpate one from liability for wanton or willful conduct are invalid and contrary to public policy. The language of a release from liability must be plain, unambiguous and supported by consideration.

Assumption of the Risk

The doctrine of assumption of the risk is a viable defense in Alabama. Assumption of the risk is measured by a subjective standard. For the defense to apply, three elements must be met:

1. Knowledge by plaintiff of the condition;
2. An appreciation by the plaintiff of the danger or the risk posed by that condition; and
3. A voluntary, affirmative exposure to the danger or risk.

Negligence Law

Alabama is a contributory negligence jurisdiction. Any contributory negligence on plaintiff's part bars recovery. Contributory negligence is determined by an objective standard.

Products Liability

Alabama rejected the doctrine of strict products liability in favor of the "Alabama Extended Manufacturer Liability Doctrine" (AEMLD). The AEMLD extends liability to sellers and retailers, and allows only three affirmative defenses: causal relation, assumption of risk and contributory negligence. Alabama has no recent case law addressing the validity of release agreements in products liability cases.

Minors

The age of majority in Alabama is designated as 19 years and a minor has no power to contract. A parent may recover for injuries to a minor child or for loss of the child's services. A minor child himself may also recover for these damages. A parent bringing suit for the minor child waives that parent's right to recover for the parent's expenses or loss of services.

Recreational Statutes

Alabama has adopted a recreational use statute eliminating the duty of care owed by an owner of land except where the owner is willfully or maliciously negligent.

Alabama has also adopted a Bicycle Safety Act which states that merchants renting or selling bicycles who obtain a signature on a release form from those buying or renting the bicycle will not be liable in a civil action for damages resulting from personal injuries sustained by a bicyclist for failure to wear a helmet.

The Equine Activities Liability Protection Act also limits the liability of activity sponsors in the event of injury or death of a participant resulting from the inherent risks of equine activities.

A more detailed legal analysis of Alabama's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An exculpatory release can be enforced against a participant if the intent of the documents was to release a party from liability for future negligence and it is conspicuously, unequivocally and unambiguously expressed (i.e. the use of the word “negligence” is required). In addition, to be enforceable, such an agreement, read as a whole, must also clearly notify the prospective releasor or indemnitor of the effect of signing the release.

Also, a release cannot violate public policy, or involve any activities related to skiing, which are governed by the Ski Safety Act. No cases address enforcement of a release by a spectator.

Alaska has enacted the Ski Safety Act invalidating exculpatory agreements in the context of recreational skiing. However, the Act condoned exculpatory agreements within the context of competitive skiing or special event. This statute sets forth specific duties of ski resort operators, and also various immunities associated with the inherent risk of the sport of skiing.

Assumption of the Risk

The Comparative Fault Act incorporates in the definition of “fault” an unreasonable assumption of the risk, but Alaska case law does not specifically identify primary or secondary assumption of the risk, and instead incorporates it as a component of comparative fault.

Negligence Law

Alaska enacted a “pure” comparative negligence statute in 1986 whereby in an action based on fault, contributory fault chargeable to the claimant diminishes proportionately the amount awarded for the injury attributable to the claimant’s fault, but does not bar recovery.

Products Liability

Comparative negligence, including the plaintiff’s ordinary negligence, is a viable defense in products liability cases.

There are no cases applying a release in the context of a product liability claim.

Minors

Alaska has no recent case law addressing the validity of waivers executed by a minor or by a minor’s legal guardian.

Recreational Statutes

Alaska's Recreational Use Statute eliminates the liability of an owner of unimproved land only for negligent conduct in the maintenance of the property. Immunity is unavailable where the owner has acted recklessly, intentionally, or with gross negligence.

A more detailed legal analysis of Alaska's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Under Arizona law, a release and/or covenant not to sue is viewed under the doctrine of express contractual assumption of the risk. A waiver and release may be upheld by the trier of fact against both participants and spectators in motorsport and recreational activities where the release is knowingly given, there is an intentional relinquishment of a known right and the release does not violate public policy. Preprinted release forms will not be construed as a matter of law as an intentional relinquishment of a known right. Under the Arizona Constitution (Art. 18, Section 5), the ultimate question of enforceability of express contractual assumption of the risk may only be decided by a jury.

Arizona has enacted statutes condoning the use of release agreements in the context of skiing, equine, and closed-course motor sport activities. A ski operator's liability shall be determined by the terms of the release if the skier signed a valid release. ARIZ. REV. STAT. § 5-706. An equine owner, regardless of consideration, will not be liable for injury or death of a person taking control of an equine if the person signed a release before taking control of the equine. ARIZ. REV. STAT. § 12-553. A closed-course motor sport operator may require a nongeneral spectator to sign a liability release form as a condition of admission into any nongeneral spectator area of the facility. ARIZ. REV. STAT. §12-556.

Assumption of the Risk

Implied assumption of the risk is recognized in Arizona, but does not act as a complete bar to plaintiff's claim. Instead, plaintiff's recovery will be reduced in proportion to the relative fault of the parties under Arizona's system of comparative negligence. Arizona's constitution, Article 18, Section 5, states that questions of assumption of risk should always be submitted to the jury. Accordingly, in Phelps v. Firebird Raceway, Inc. (2005) 111 P.3d 1003 the Arizona Supreme Court held, that the issue of express contractual assumption of the risk cannot constitutionally be decided on summary judgment.

Negligence Law

Arizona enacted a comparative negligence statute in 1984. Damages recoverable by the plaintiff are reduced in proportion to the relative degree of the plaintiff's fault regardless of the relationship to the negligence of others. ARIZ. REV. STAT. § 12-2505.

Products Liability

In a commercial setting, Arizona has upheld a waiver limiting liability of a seller where there are equal bargaining positions, the parties have bargained for the waiver and the bargain was not the result of coercion or inadvertence. Aranki v. RKP Investments, Inc. (1999) 979 P.2d 534, 537.

ARIZONA

Arizona does not have any recent cases regarding the defenses of assumption of risk or comparative negligence in the context of motor sports and recreational activities. However, assumption of risk and comparative negligence (in the context of misuse) are both recognized as defenses to products liability actions.

Minors

Arizona’s Equine Liability Act allows a parent of a minor to sign a waiver and release form on the minor’s behalf.

Recreational Statutes

Arizona’s Recreational Use Statute eliminates the liability of a public or private owner of land may have to a recreational or educational user except where the owner is guilty of willful, malicious or grossly negligent conduct.

A more detailed legal analysis of Arizona's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

The Arkansas Supreme Court has never upheld an agreement releasing a party from liability from his/her own negligence. Arkansas courts have consistently held that agreements releasing a party from liability are against public policy. However, there are no cases reporting a release in the context of motorsports or other competitive sporting activity.

Assumption of the Risk

Arkansas courts are unclear whether assumption of the risk is a valid defense. Initially, the Courts shifted the application of assumption of risk to an assessment of fault and not as a complete bar from recovery. Most recently, courts have returned to the notion that assumption of the risk is not a defense separate from the defense of comparative negligence.

Negligence Law

Arkansas enacted a comparative negligence statute in 1975 whereby damages assessed in a plaintiff's claim can be reduced in correlation with plaintiff's fault. Recovery is barred if plaintiff's negligence is equal to or greater than defendants' negligence. There must be a determination of proximate cause before any fault can be assessed.

Products Liability

In products liability cases, Arkansas courts disapprove of releases of liability for the releasors' negligence on the basis of public policy.

Minors

There are no cases discussing whether a minor's signature on a release is valid. A release signed by a parent in favor of a government entity assuming the care and custody of school children violates public policy because such a release would not encourage the exercise of care.

Recreational Statutes

Arkansas' recreational use statute eliminates the duty of care owed by a land owner to a user of land for recreational purposes.

Arkansas has enacted an Equine Activity statute whereby sponsors of equine activities shall not be liable for injuries resulting from the inherent risks of equine activities.

A more detailed legal analysis of Arkansas' Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, releases of liability for ordinary negligence are valid unless violative of public policy. Releases by participants in sporting and recreational activities are enforceable and not against public policy. The language of the release must clearly, explicitly and unambiguously express the intent of the parties executing it. The law is unsettled with regard to the validity of releases by spectators. Case law suggests a release by a spectator may be valid if the language of the release specifically addressed active negligence.

Assumption of the Risk

Assumption of the risk is a viable defense in California and acts as a complete bar to plaintiff's claim. In the recreational context, assumption of the risk means that neither co-participants nor operators of sporting activities owe a duty of care to prevent injuries arising from risks inherent in the activity. However, recent decisional authority has held that participants in sporting events have a duty not to unreasonably increase the risks of the sport to other participants and/or to spectators. Spectators generally assume the risks normally inherent in the sports they attend, e.g., injuries from a foul baseball or an ice hockey puck.

California divides the doctrine of implied assumption of the risk into primary and secondary assumption of the risk. Under primary assumption of the risk, the nature of the sport or activity dictates that the defendant owes no legal duty to protect the plaintiff from the risk of harm that caused the injury. Under secondary assumption of the risk, the defendant owes a duty of care to the plaintiff but the plaintiff proceeds to encounter a known risk imposed by the defendant's breach of duty. Secondary assumption of the risk is merged with comparative fault.

Negligence Law

California judicially adopted comparative negligence in 1975. Under this theory, liability is apportioned in direct proportion to fault regardless of whether plaintiff's negligence exceeds that of defendants.

Products Liability

Comparative negligence is a valid defense in a products liability action. Plaintiff's lack of ordinary care can constitute a defense to strict tort liability.

CALIFORNIA

A product liability action arises from either a manufacturing defect, a design defect or a failure to warn. The action may sound in either negligence or strict liability. Liability can attach to everyone in the chain of distribution, from manufacturer to retailer.

An express assumption of the risk agreement does not bar an action in strict products liability.

Minors

A parent may execute a valid and enforceable release relating to participation in sporting events on behalf of his or her minor child.

Generally, a minor can disaffirm his or her agreement before the age of majority or within a reasonable time thereafter. The agreement is enforceable if signed by the minor’s parent or guardian.

Recreational Statutes

Landowners who open their land to the public for recreational use are immune from liability pursuant to California Civil Code section 846, as long as two preconditions are met: 1) defendant must be the owner of the property; and 2) plaintiff’s injury must result from entry or use for recreational purposes.

However, this immunity does not apply to injuries arising from the landowner's breach of non-property-related duties, e.g., vehicular negligence.

A more detailed legal analysis of California's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An exculpatory agreement will be upheld for simple negligence but is not valid for gross, willful or wanton negligence. Furthermore, the agreement must not be used in association with a duty to the public, the nature of the services must not be essential to the public, the contract must be fairly entered into, and the intention of the parties must be expressed in clear and unambiguous terms. Colorado courts have also considered plaintiff's knowledge and experience with the activity as a factor to determine the validity of the exculpatory agreement. Releases are valid as to both participants and spectators.

Exculpatory agreements purporting to relieve Defendants from strict product liability for defective products have been held unenforceable as against public policy

Assumption of the Risk

Colorado has statutorily defined the doctrine of assumption of the risk. Colorado recognizes express assumption of the risk as a total defense to an action based on negligence. Implied assumption of the risk will not serve as a total defense to plaintiff's recovery, except in specific statutorily created exemptions, including skiing, sport shooting, and baseball game spectators. Assumption of the risk in each of these sports acts as a complete bar to plaintiff's recovery. However, case law has held that assumption of the risk of injury to a spectator during a particular sporting event will constitute a complete defense only if the General Assembly has enacted a sport-specific statute.

Negligence Law

Colorado has statutorily adopted the doctrine of comparative negligence. A plaintiff can only recover if the plaintiff's negligence is less than the defendant's negligence. Plaintiff's recovery will be proportionately reduced by his/her negligence.

Products Liability

Exculpatory agreements have been upheld to protect against strict products liability claims in Colorado. The agreement must not be used in association with a duty to the public, the nature of the services must not be essential to the public, the contract must be fairly entered into, and the intention of the parties must be expressed in clear and unambiguous terms.

Minors

An exculpatory agreement signed by a minor will not be upheld in Colorado unless the minor participates in the activity after he/she has reached the age of majority.

Parents in Colorado are presumed to be acting in the best interest of their children and thus may waive child’s prospective claim for negligence if the decision is “voluntary and informed.” Colo. Rev. Stat. § 13-22-107(3).

Recreational Statutes

Colorado has several recreational statutes both protecting and regulating sponsors of activities.

A more detailed legal analysis of Colorado's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Exculpatory agreements may be valid against a participant in a sporting event if they explicitly reference negligence. An exculpatory agreement made in conflict with a public interest or public policy will be held invalid. Exculpatory agreements are decided on a case-by-case basis. No cases reference releases signed by spectators.

Assumption of the Risk

The defense of assumption of the risk has been abolished in Connecticut except in certain recreational activities. Connecticut still recognizes assumption of the risk for injuries sustained while participating in equestrian activities or for those injuries resulting from the risks inherent in the sport of skiing.

Negligence Law

In 1973, Connecticut became a comparative negligence state. CONN. GEN. STAT. ANN. § 52-572h. Plaintiffs may recover if their negligence is not greater than that of the defendants. Participants in sports activities owe a duty to refrain from reckless or intentional conduct toward other participants, not mere negligence.

Sports Exception Doctrine

Connecticut has adopted a "sports exception" doctrine for participation in team sporting events involving participant contact (e.g., football, basketball, and hockey). The doctrine holds that proof of mere negligence is insufficient to establish liability for injuries sustained during an athletic contest. Liability must instead be premised upon an allegation of recklessness or intentional conduct on the part of the defendant.

Products Liability

Connecticut enacted a "Consumer Contract" statute limiting consumers' ability to waive rights in written agreements for the purchase of property or services for personal, family or household purposes. CONN. GEN. STAT. ANN. §§ 42-151 to 42-158. A provision limiting liability in tort for a strict products liability claim is of no effect as a matter of law.

Minors

An exculpatory agreement signed by a minor or his/her parents is valid in certain circumstances, but will depend on the activity engaged in.

Recreational Statutes

In 1989, Connecticut adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct.

A more detailed legal analysis of Connecticut's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, exculpatory clauses are disfavored. An exculpatory clause which exonerates a party from the consequences of his negligence will be upheld only if it clearly and unequivocally spells out an intent to grant the immunity. There are no recently reported cases upholding an exculpatory agreement in the context of recreation or motorsports, with regard to either participants or spectators.

Assumption of the Risk

Under the doctrine of assumption of the risk, a participant in a sports activity accepts the obvious dangers inherent in the sport. Whether the plaintiff assumed the risk is measured by a subjective standard. The assumption of the risk by plaintiff must be voluntary. The assumption is not voluntary if defendant's tortious conduct left him no reasonable alternative to avert himself of harm.

"Primary assumption of the risk" is a complete bar to plaintiff's recovery. "Secondary assumption of the risk" is merged into the statutory comparative negligence scheme. Secondary assumption of the risk is treated as contributory negligence. It applies when the plaintiff encounters a known risk and unreasonably proceeds. Koutoufaris v. Dick (1992) 604 A.2d 390, 398.

Negligence Law

Delaware enacted a comparative negligence statute in 1975. If the plaintiff's contributory negligence is 50% or less, the plaintiff's recovery is proportionately reduced. If the plaintiff's contributory negligence is 51% or greater, plaintiff's claim is barred.

Products Liability

Delaware has not reported any relevant cases involving a release or waiver in the context of products liability and recreational activities. However, they have been reported cases involving the rental of recreational equipment, absent an express waiver of liability.

Strict products liability is an available remedy in a bailment/lease transaction. To determine whether a transaction results in a bailment transaction the court considers: (1) whether the damages should be borne by the party who placed the product into circulation and who can spread the cost of the risk; (2) whether the product was not fit as represented; and (3) whether there will be a greater incentive to furnish safer products.

Minors

Delaware has not reported any relevant case law discussing the validity of exculpatory agreements executed by a minors and/or their parents.

Recreational Statutes

Recreational statutes protect private landowners, equine activities and non-profit sports programs.

A more detailed legal analysis of Delaware's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An exculpatory agreement is generally looked upon with disfavor and will be void if it is against public policy or in violation of a statutory duty. Equal bargaining power between parties is not required when executing an exculpatory agreement for voluntary participation in sporting events. A release executed by a spectator is also enforceable.

An exculpatory agreement clearly reflecting a parties' intent to release the party from his or her own negligence can be upheld even if the word "negligence" is not included or if the agreement does not list every possible injury.

Florida has enacted statutes condoning the use of release agreements specifically in the context of equine and closed-course motorsports activities. An equine activity sponsor or professional may give the participant a written document containing release of liability from the inherent risk of equine activities. A closed-course motorsport operator may require a nonspectator to sign a liability release as a condition of admission into a nonspectator area of the facility.

Unlike many jurisdictions, Florida will allow a release to absolve defendants of gross negligence.

Assumption of the Risk

Express assumption of the risk is a bar to actions by participants in contact sports who knowingly encounter dangers inherent to the sport. The rule is not applied, however, to non-contact sports or to dangers not inherent to the sport.

Implied assumption of the risk does not bar a plaintiff from recovery in Florida. Where a plaintiff impliedly assumes a risk by appreciating the risk and acting unreasonably, that conduct will be analyzed using principles of comparative fault to proportionately reduce plaintiff's recovery.

Negligence Law

Florida adopted a comparative negligence statute in 1986, whereby a plaintiff's contributory fault will not bar recovery but diminishes plaintiff's recovery proportionately to plaintiff's fault.

Products Liability

Comparative negligence is a valid defense in a products liability action if based on grounds other than the failure of the user to discover the defect or to guard against the possibility of its existence.

Minors

Florida Statute §744.301 provides that natural guardians are authorized, on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a commercial activity provider which would accrue to a minor child for personal injury, including death, and property damage resulting from an inherent risk in the activity.

The term “inherent risk” means those dangers or conditions, known or unknown, which are characteristic of, intrinsic to, or an integral part of the activity and which are not eliminated even if the activity provider acts with due care in a reasonably prudent manner.

To be enforceable, a waiver or release executed under §744.301 must, at a minimum, include the following statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of the waiver or release:

NOTICE TO THE MINOR CHILD’S NATURAL GUARDIAN

READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT, EVEN IF (name of released party or parties) USES REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE GIVING UP YOUR CHILD’S RIGHT AND YOUR RIGHT TO RECOVER FROM (name of released party or parties) IN A LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND (name of released party or parties) HAS THE RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

If a waiver or release complies with the foregoing notice requirements and waives a claim resulting from an “inherent risk” in the activity, there is a rebuttable presumption that the waiver or release is valid and that any injury or damage to the minor child arose from the inherent risk involved in the activity.

Recreational Statutes

Florida extends statutory protection to sponsors of equestrian activities from the inherent risks of equine activities, sponsors from spectators who sign a release and waiver form, and landowners who open their land to the public for recreational use.

A more detailed legal analysis of Florida's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Georgia, waiver and release of liability by participants and spectators of sporting or recreational activities for ordinary negligence is generally upheld and not construed against public policy. However, the language of the release must be clear and unambiguous. It is not required that a plaintiff read an exculpatory contract before signing it, knowledge of the releases contents are imputed to him.

GA. CODE ANN. § 4-12-4 allows an equine professional equine activity sponsor to enter into a written contract releasing from liability for injuries from inherent risks of equine activities, provided that the contract contains language required by the statute.

Assumption of the Risk

Assumption of the risk acts as a complete bar to plaintiff's claim. Assumption of the risk means that the plaintiff, in advance, has given his consent to relieve the defendant of an obligation of conduct toward him and take his chance of injury from a known risk arising from what the defendant is to do or leave undone.

Participants in sporting and recreational activities assume the risks of danger inherent in the activity. Where the danger leading to the injury is obvious, a plaintiff assumes the risk as a matter of law.

To assert the defense of assumption of the risk, defendant must establish that plaintiff: (1) had actual knowledge of the danger; (2) understood and appreciated the risks associated with such danger; and (3) voluntarily exposed himself to those risks. Assumption of the risk is determined by a subjective standard.

Pursuant to GA. CODE ANN. § 43-43 A-8, Ski competitors shall be held to accept any and all risks of injury or death that result from course conditions.

Negligence Law

Georgia's comparative negligence statute has been interpreted to deny recovery if plaintiff's negligence equals or exceeds defendant's. Damages are proportionately reduced where defendant's fault exceeds that of the plaintiff. Thus, if each party is 50 percent at fault, there can be no recovery. But should plaintiff's negligence be 49 percent, he is entitled to recover 51 percent of his damages. GA. CODE ANN. § 51-11-7.

Georgia also recognizes the "superior/equal knowledge rule" whereby a knowledgeable plaintiff cannot recover damages if by ordinary care he could have avoided the consequences of defendant's alleged negligence.

Products Liability

Assumption of the risk is a valid defense in products liability cases. However, contributory negligence is not a valid defense to a strict liability claim. A waiver and release form purporting to release a bailor from his/her own negligence is not void as to public policy. A bailee can limit or waive liability in warranty and in tort by express contract provisions.

Minors

An exculpatory agreement signed by a minor is voidable as a matter of law. Whether a minor assumes the risk of injury is a question of fact for the jury.

Recreational Statutes

Georgia statutorily defines parties liabilities for sponsors of equine activities, volunteers of nonprofit sports programs, owners of water crafts, operators of motor vehicle racetracks, sports officials at amateur athletic events, rollerskaters, and private landowners who open their land for public recreational use.

A more detailed legal analysis of Georgia's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In 1997, Hawaii adopted a statute limiting the liability of operators of businesses providing recreational activities to the public. Operators shall not be liable for injuries resulting from inherent risks of participation provided the participant signs a written release. Furthermore, the operator must provide full disclosure of the inherent risks of the activity and take reasonable steps to ensure the participant is physically able to participate. However, operators will be liable for damages resulting from their negligent acts or omissions. Case law is silent with regard to the enforceability of releases signed by spectators.

Assumption of the Risk

Hawaii recognizes express and implied assumption of the risk. Express assumption of the risk can serve to bar plaintiff's recovery. Implied assumption survived the adoption of comparative negligence in the context of recreational activities.

Primary implied assumption of the risk is applicable: (1) where defendant owed a duty to protect plaintiff from the particular risk of harm that caused the injury; (2) where plaintiff had both knowledge and a full appreciation of the danger involved and; (3) where plaintiff voluntarily exposed himself to the risk. Primary implied assumption of the risk can act as a complete bar to plaintiff's recovery. Secondary implied assumption of the risk is a form of comparative negligence that reduces plaintiff's recovery.

Negligence Law

In 1969, Hawaii adopted a comparative negligence statute, whereby a plaintiff may recover as long as plaintiff's fault is not greater than that of the defendant.

Products Liability

A strict products liability action cannot be discharged through a release of liability.

Minors

Hawaii has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities.

Recreational Statutes

Hawaii statutorily limits the liability of recreational activity operators, private landowners and innkeepers who open their property for recreational use and equestrian activity.

A more detailed legal analysis of Hawaii's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Idaho, unambiguous written agreements relieving a defendant from negligence are upheld as to participants in recreational activities except where: (1) one party is at an obvious disadvantage in bargaining power; or (2) a public duty is involved (public utility companies, carriers). A release is to be strictly construed against the party who prepared it. The Idaho courts have not addressed exculpatory agreements by spectators.

Assumption of the Risk

Primary, or express, assumption of risk remains an absolute bar to recovery. In 1979, Idaho enacted a statute entitled “Duties of Skiers.” Under this act skiers expressly assume the risk of any injury which results from participation in the sport of skiing.

Secondary assumption of the risk has been merged into Idaho’s comparative negligence statute and is no longer an absolute bar to recovery.

Negligence Law

Idaho enacted a comparative negligence statute in 1971 whereby plaintiff’s negligence is apportioned with defendant’s, as long as plaintiff’s negligence is not equal to or as great as defendant’s.

Although Idaho statutes generally espouse the comparative negligence approach to negligence actions, the Idaho Legislature is not precluded from subsequently limiting or rejecting the application of comparative negligence in negligence actions arising out of particular circumstances.

Products Liability

Comparative negligence and assumption of risk are viable defenses in products liability cases. Idaho has not reported any cases involving a release in a products liability action in the context of motorsports or recreational activities.

Minors

A release signed by a minor’s parent bars the parent’s claim. Courts have declined to address whether a pre-injury release signed by a minor bars a minor’s claim. Idaho recognizes the general rule that minors are not capable of entering into contracts.

Recreational Statutes

Idaho enacted statutes defining the liabilities of ski area operators, equine activity sponsors and recreational outfitters and guides.

A more detailed legal analysis of Idaho's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Illinois courts have consistently upheld the validity of waiver and releases in the context of motorsports and recreational activities executed by both participants and spectators. A waiver and release is characterized as an express written assumption of the risk. The plaintiff expressly consents to relieve the defendant of his duty to exercise reasonable care.

Exculpatory clauses will be upheld: (1) in the absence of fraud; (2) in the absence of willful or wanton conduct; (3) where there is no legislation to the contrary; (4) where it is not contrary to the settled public policy; and (5) where there is nothing in the social relationship of the parties which militates against upholding the agreement.

Contact Sports Exception

Illinois has adopted a form of "Contact Sports Exception" to the rule of liability for team sporting activities. Participants in team sports, where physical contact among participants is inherent and virtually inevitable, assume greater risks of injury than nonparticipants or participants in noncontact sports. Recovery will be granted for injuries sustained by participants in contact sports only if the injuries are caused by willful and wanton or intentional misconduct of co-participants.

Assumption of the Risk

Illinois statutorily recognizes assumption of the risk in its Equine Activity Liability Act and its Roller Skating Rink Safety Act whereby assumption of the risk acts as a complete defense.

Primary implied assumption of the risk applies where a plaintiff assumes the risk which is inherent in the activity itself. The assumed risks are not created by the defendant's negligence, but by the nature of the activity. Defendant owes no duty and plaintiff's claim is barred. However, primary implied assumption of the risk does not bar recovery based upon willful and wanton acts of defendant.

Secondary implied assumption of the risk has been abolished as a complete defense. This doctrine applies when plaintiff implicitly assumes the risks created by defendant's negligence. To the extent that a plaintiff assumes the risk under this doctrine, it will serve to apportion damages under the comparative negligence scheme.

Negligence Law

In 1986, Illinois enacted a contributory negligence statute. The statute was amended in 1995 to reflect the common law. The Act which enacted the statute has subsequently been found to be unconstitutional by the Illinois Supreme Court. The contributory negligence statute was not specifically found unconstitutional however, because the unconstitutional provisions could not be severed from the Act, the entire Act was found unconstitutional.

Illinois recognizes that the inherent risks in contact sports are greater than those of non-contact sports. The plaintiff must therefore allege willful and wanton or intentional misconduct to maintain a cause of action for injuries in contact sports.

Products Liability

Illinois courts distinguish claims between manufacturers and non-manufacturers in products liability claims. A manufacturer cannot bar an action based on strict liability through an exculpatory clause. However, an exculpatory clause relieving a non-manufacturing party of liability will not be void against public policy.

Minors

In the context of Equine Activities, a minor participant or a minor's parent or guardian, may execute a release assuming the risk of injury from engaging in equine activities.

Recreational Statutes

Illinois has enacted statutes protecting sponsors of equine activities, owners or operators of baseball facilities, hockey facilities, roller skating rinks, and private landowners opening their land to the public for recreational use.

A more detailed legal analysis of Illinois' Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, waiver and releases signed by both participants and spectators are held to be valid in the context of motorsports and recreational activities. A contract to engage in voluntary and purely recreational activity is neither unconscionable nor against public policy. However, a release will be held void if: (1) there is legislation to the contrary; (2) there is undue disparity between the parties' respective bargaining power; (3) the release affects a public interest; or (4) the language of the release does not specifically and explicitly release the defendant from liability caused by the defendant's own negligence.

Assumption of the Risk

Assumption of the risk is a viable defense in Indiana. In the context of roller skating, assumption of the risk acts as a complete defense. I.C. § 34-31-6-4. Indiana courts also recognize the doctrine of incurred risk.

The elements of assumption of the risk include: (1) notice (express or implied) of the risk to be undertaken; and (2) a contractual relationship between the parties.

The doctrine of incurred risk involves a subjective analysis of: (1) actual knowledge of the risk; (2) appreciation of the specific risk involved; and (3) voluntary acceptance of the risk.

Negligence Law

In 1983, Indiana enacted a comparative negligence statute whereby plaintiff's recovery is diminished in proportion to plaintiff's negligence. Plaintiff's recovery is barred where his/her contributory negligence is greater than the contributory negligence of the defendant(s).

Products Liability

A release cannot preclude a strict products liability claim.

Minors

Indiana gives partially emancipated minors the ability to sign liability releases for the purposes of participating in professional motorsports, provided they meet certain requirements set by the court.

Recreational Statutes

Indiana statutorily protects sponsors of equine activities, volunteers in sporting activities, owners or operators of roller skating rinks, and private landowners allowing the public to use their land for recreational activities, from liability.

A more detailed legal analysis of Indiana's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Iowa courts hold that contracts exempting parties from liability for their own negligence are not against public policy. A written release must include specific identification of the tortfeasors. Failing to read the exculpatory clause will not invalidate the agreement. However, if the exculpatory clause is on the back of an agreement, there must be language on the front of the agreement referring the reader to the back of the agreement. A release is enforceable against participants and spectators of recreational activities.

Assumption of the Risk

Iowa recognizes both primary and secondary assumption of the risk. Primary assumption of the risk is applied where defendant does not owe a duty and is therefore not negligent. Secondary assumption of the risk recognizes a duty; however, the defendant is asserting that the plaintiff acted unreasonably in encountering a known risk. Secondary assumption of the risk has been abolished as a separate defense where the defendant could allege contributory negligence.

Negligence Law

In 1984 Iowa enacted a comparative negligence statute whereby the contributory fault of the plaintiff does not bar recovery unless the plaintiff bears a greater percentage of the fault than the combined percentage of the fault of all the parties.

Contact Sports Exception

Iowa has adopted a "contact sports" exception, which is a less stringent duty of care for participants in contact sports activities to protect others from injury. The exception does not embrace intentional conduct or conduct undertaken with a reckless disregard for safety of others.

Products Liability

Iowa has not recently reported any relevant case law which discusses exculpatory agreements in the context of product liability claims.

Minors

Iowa follows the general rule that a minor may contract; however, a minor may also disaffirm the contract within a reasonable time after reaching the age of majority. Preinjury releases executed by parents purporting to waive the personal injury claims of their minor children violate public policy and are therefore unenforceable.

Recreational Statutes

Iowa statutorily protects sponsors of domesticated animal activities and private landowners who open their land for public recreational use from liability in specific circumstances.

A more detailed legal analysis of Iowa's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, exculpatory agreements by participants have been upheld in the context of motorsports and recreational activities. Case law has not addressed the validity of releases signed by spectators. An agreement will be strictly construed against the party seeking enforcement. Exculpatory agreements will be held void where they are contrary to public interest. An exculpatory agreement will be upheld if: (1) it does not attempt to dismiss a legal duty or is in conflict with a public interest; (2) it does not attempt to limit liability for gross negligence or willful and wanton conduct; and (3) the intention of the parties is expressed in clear and unequivocal language.

Assumption of the Risk

Kansas statutorily recognizes the doctrine of assumption of the risk in the context of domestic animal activities. However, the case law only recognizes the doctrine in the context of an employer-employee or master-servant situation. In these situations, assumption of the risk is a complete bar to plaintiff's recovery.

Negligence Law

Kansas enacted a comparative negligence statute in 1976 whereby plaintiff's recovery is diminished in proportion to the amount of negligence attributed to him/her.

Products Liability

A waiver will not preclude a purchaser from recovering under the doctrine of strict liability.

Minors

Kansas has no reported case law addressing the validity of an exculpatory agreement signed by a minor or his/her parent(s).

Recreational Statutes

Kansas enacted several statutes offering protection from liability including sponsors of domestic animal activities, volunteers in athletic events, and private landowners opening their land to the public for recreational use.

A more detailed legal analysis of Kansas' Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, exculpatory agreements which attempt to release a person from the consequences of his/her own negligence are held invalid. However, the Kentucky courts have carved out an exception to this general rule for certain recreational activities such as basketball tournaments and automobile race participants as long as the release meets specific elements: (1) the release must be **voluntarily** signed; (2) it must be created under **equal bargaining power** of the parties; and (3) the activity must not be against **public policy**. Release agreements signed by spectators are not enforceable.

Assumption of the Risk

Assumption of the risk as a complete bar to plaintiff's claim has been abolished.

Negligence Law

Kentucky adopted a judicially created comparative negligence doctrine in 1984. This doctrine was codified in 1988. The statute is based on a pure comparative scheme, and liability is apportioned according to each party's proportionate share of fault. In the event that a culpable party is released from an obligation of contribution pursuant to an enforceable release, any award to plaintiff is reduced in the amount of that party's equitable share of fault.

Products Liability

Kentucky has not recently reported any relevant case law which discusses exculpatory agreements in the context of a products liability claim.

Minors

Kentucky has not reported any relevant case law which discusses the validity of exculpatory agreements executed by minors and/or their parents. However, Kentucky follows the general rule that contracts are voidable by minors.

Recreational Statutes

In 1998, Kentucky adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct.

A more detailed legal analysis of Kentucky's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In 1984, Louisiana enacted LA. CIV. CODE ANN. art. § 2004. Under this statute, a party cannot contract in advance to relieve another from intentional or gross fault, or for causing physical injury. Under LA. CIV. CODE ANN. art. § 2004, the extent of the waiver and release would presumably apply only to property damage and not to physical injury.

Assumption of the Risk

Assumption of the risk is no longer a viable defense and will not bar plaintiff's recovery. The doctrine of assumption of the risk has been merged with the principles of comparative negligence. The percentage of plaintiff's contributory negligence reduces his/her recovery proportionately. The plaintiff's awareness of the danger encountered is a factor to be considered by the trier of fact in assessing percentage of fault.

Negligence Law

Louisiana enacted a comparative fault statute in 1979. Plaintiff's recovery is proportionately reduced by the percentage of plaintiff's contributory negligence. LA. CIV. CODE ANN. art. § 2323.

Products Liability

Louisiana courts have not reported any cases involving the viability of exculpatory clauses and products liability in the context of recreational activities. However, LA. CIV. CODE ANN. art. § 2004 would presumably apply to such cases.

Minors

Louisiana courts have also not reported any cases involving the viability of exculpatory clauses and minors in the context of recreational activities. However, LA. CIV. CODE ANN. art. § 2004 would also presumably apply to such cases.

Recreational Statutes

Louisiana has enacted several statutes offering protection from liability including sponsors of equine activities, sponsors of Mardi Gras parades, and private landowners opening their land to the public for recreational use.

A more detailed legal analysis of Louisiana's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Maine, contracts which provide immunity from negligence are not favored. Waiver and release agreements are construed strictly. Contracts providing for immunity from liability for negligence must spell out the intentions of the parties with specificity so there can be no doubt that the plaintiff intended to release a defendant from liability. Although releases are enforceable against participants, case law does not address spectators.

Assumption of the Risk

Maine statutorily adopted the doctrine of assumption of the risk for recreational activities including skiing, hang gliding, roller skating and ice skating. Participants in these activities assume the risks inherent in the activity and are barred from recovery where the injury was caused by an inherent risk.

Negligence Law

Maine adopted a comparative negligence statute in 1969 whereby plaintiff's recovery is reduced in proportion to plaintiff's contributory fault. However, if plaintiff's contributory fault is equal to or greater than the fault of the other party(s), plaintiff cannot recover.

Products Liability

Comparative negligence is a viable defense to a claim of strict products liability. A release will protect a ski resort from a products liability action for faulty ski equipment if limitation of liability is clearly expressed within the release.

Minors

A guardian cannot release a child's cause of action.

Recreational Statutes

Maine has adopted many recreational statutes both protecting sponsors of activities and the participants in activities. Sponsors or operators of ski areas, roller skating rinks, ice skating rinks, equine activities and hang gliding facilities enjoy protection from liability due to the inherent risks of an activity. Private landowners are also protected when they open their land to the public for recreational use. However, Maine's motor vehicle racing and commercial white water rafting statutes create additional responsibilities of sponsors and participants to ensure the safety of the activity.

A more detailed legal analysis of Maine's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, exculpatory clauses are enforceable in Maryland against participants in recreational activities. Case law is silent concerning releases signed by participants. Furthermore, a waiver and release will not be void if plaintiff fails to read the release prior to signing it.

However, an exculpatory agreement will be held unenforceable and void if: (1) a party to the contract attempts to avoid liability for intentional conduct or harm caused by reckless, wanton or gross behavior; (2) the contract results from grossly unequal bargaining power; (3) the transaction is one adversely affecting the public interest; or (4) the exculpatory clause does not clearly, unequivocally, specifically and unmistakably express the parties' intention to exculpate the party seeking enforcement from his/her own negligence (the clause will be insufficient for that purpose).

Assumption of the Risk

The doctrine of assumption of the risk is a viable defense in Maryland and acts as a complete bar to plaintiff's claim. A voluntary participant in a game, sport or contest, assumes all risks incidental to the activity which are obvious and foreseeable.

To establish the defense of assumption of risk, the defendant must show that the plaintiff: (1) had knowledge of the risk of the danger; (2) appreciated that risk; and (3) voluntarily confronted the risk of danger. Assumption of the risk is based upon an objective standard and is a previous abandonment of a right.

Negligence Law

Maryland is a contributory negligence state. Therefore, any negligence by plaintiff, no matter how slight, bars plaintiff's recovery.

Products Liability

A disclaimer of implied warranties of merchantability and fitness for a particular purpose is unenforceable. Also, under Maryland law, contributory negligence is not a defense to strict liability claim; however, assumption of risk is a valid defense.

Minors

Parents are empowered to make significant decisions on behalf of their children, and as long as the waiver signed on behalf of the minor is not one affecting the public interest, the waiver's validity will be upheld. A minor may be barred from recovery by either the assumption of risk doctrine or contributory negligence.

Recreational Statutes

Maryland enacted a statute eliminating the duty of care owed by a landowner where there is no charge for recreational use and the landowner is not willfully or maliciously negligent.

A more detailed legal analysis of Maryland's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, waiver and release agreements in the context of recreational activities are deemed valid. A speedway or racetrack can relieve itself from liability to participants which might subsequently occur as a result of its own ordinary negligence. To be valid, the document must clearly state that it is a release. As long as the nature of the agreement or its context is not concealed, it does not matter whether the plaintiff has read the agreement. However, a release may not shield the defendant from liability for a violation of a statutory duty or gross negligence or where there is an obvious disadvantage in bargaining power. The validity of releases signed by spectators has not been addressed.

Health club membership contracts shall not contain any provisions waiving a claim or defense arising out of the health club services.

Assumption of the Risk

The defense of assumption of the risk has been abolished by Massachusetts comparative negligence statute. However, the Legislature has created a narrow exception to this general rule in the context of skiing, whereby skiers assume the risk of injury caused by the inherent risks in skiing.

Negligence Law

Massachusetts enacted a “less than equal to” comparative negligence statute in 1969. In the context of recreational sports, including non-contact sports, participants owe a duty to the other participants to refrain from reckless misconduct.

Products Liability

Massachusetts has not recently reported any relevant case law which discusses exculpatory agreements in the context of a products liability claim.

Minors

A release executed by a minor’s parent will be enforced even though the minor repudiates it on reaching the age of majority and even though neither the parent nor the minor read or understood it.

Recreational Statutes

Massachusetts has adopted recreational statutes protecting ski area operators, sports program volunteers, boat racing sponsors, and equine activity sponsors.

A more detailed legal analysis of Massachusetts' Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An express waiver and release signed by a participant will be upheld by the Michigan courts in the recreational and motorsports context. A waiver and release acts as a complete bar to a plaintiff's action based upon the principal of express assumption of the risk. Unless there is evidence of fraud or mutual mistake, one who signs an exculpatory contract cannot seek to invalidate it because he did not read it or misunderstood its terms. A waiver and release must clearly state the intention to release one party from his or her own negligence. Case law is silent with respect to spectators.

Assumption of the Risk

Generally, Michigan recognizes the doctrine of assumption of the risk only in two situations: (1) where an employer/employee relationship exists; or (2) express contractual assumption of the risk. Secondary implied assumption of the risk has been abolished. Michigan recognizes statutory exceptions for skiing, sport shooting and roller skating/blading whereby the participant assumes the risk of injury resulting from inherent dangers in the sport.

Negligence Law

Michigan adopted a judicially created comparative negligence doctrine in 1977, and codified by statute in 1996. A person is held fully responsible for his acts to the full extent they caused the injury. Plaintiff's negligence reduces his or her liability proportionately regardless of its relationship to the fault of others. A plaintiff's negligence will not bar his or her recovery.

Products Liability

Michigan courts have not recently reported any case law which discusses exculpatory agreements used as a defense to a products liability cause of action in the context of recreational activities.

Minors

A parental preinjury waiver is unenforceable under Michigan's common law because, absent special circumstances, a parent has no authority to bind his child by contract.

Recreational Statutes

Michigan extends additional protection to sponsors of equine activities, ski area operators, sport shooting operators and owners of roller skating rinks for injuries resulting from the inherent risks of such activities. Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes so far as there was no charge to enter the land and the landowner's conduct was not willful or malicious.

A more detailed legal analysis of Michigan's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, waiver and releases executed by participants in the context of motorsports and recreational activities will be upheld. However, a clause which releases a party from liability will be strictly construed against the party seeking to enforce it. The language of the release must be clear and unambiguous, using words with common and everyday meanings. Releases will not be upheld if they purport to release a party from liability for intentional, willful or wanton acts or if it is against public policy. A release violates public policy if there was a disparity of bargaining power and if the service is a public or essential service. Case law is silent with respect to the validity of releases signed by participants.

Assumption of the Risk

Minnesota recognizes two forms of assumption of the risk. Primary assumption of the risk relieves a defendant of any duty to plaintiff where plaintiff voluntarily engages in activities with known risks, appreciates the risks, and has a choice to avoid the risk but voluntarily chooses to chance the risk. Primary assumption of the risk amounts to a denial of a duty and can act to bar plaintiff's claim.

Secondary assumption of the risk is a form of contributory negligence where defendant has a duty of care to the plaintiff. The doctrine of assumption of the risk generally applies to cases involving patrons of inherently dangerous sporting events.

Negligence Law

Minnesota enacted a comparative negligence statute in 1978. If the plaintiff's contributory negligence is not greater than the defendant's negligence, plaintiff can recover damages. However, the damages are proportionately reduced by the percentage of plaintiff's contributory negligence. MINN. STAT. § 604.01.

Products Liability

An exculpatory clause in a products liability action will be enforced where: (1) there is no disparity of bargaining power; (2) the clause does not involve a public or essential service; (3) **the clause does not exonerate the party for liability for personal injuries**; (4) all known hidden risks have been disclosed; and (4) the clause does not attempt to shield the party from willful, wanton, or intentional acts.

Primary assumption of the risk may be a valid defense in a products liability action where the plaintiff assumed a well-known risk.

Minors

A minor may enter into an exculpatory agreement, however, such agreement is voidable by the minor. If the agreement has been fully executed, the minor must disaffirm within a reasonable time after reaching the age of majority.

Recreational Statutes

In 1994, Minnesota adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct.

Minnesota also protects sponsors of livestock activities, including horseback riding, from liability for injuries resulting from the inherent dangers of participating in such activities. If the sponsor does not provide faulty equipment, makes reasonable efforts to determine the ability of the participant, does not possess the land where a participant is injured because of a dangerous latent condition on the land, or intentionally injures the participant, the sponsor will not be liable.

A volunteer or coach for an athletic activity who provides assistance without compensation will also not be liable to a participant for damages.

A more detailed legal analysis of Minnesota's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, exculpatory clauses are enforceable. However, an exculpatory clause will be void if it: (1) violates public policy; (2) purports to release the defendant from gross negligence; (3) purports to release a public service company from liability; or (4) is the result of unequal bargaining power. An exculpatory agreement executed by a participant in the context of a voluntary recreational activity does not implicate a public concern. No cases discuss an exculpatory agreement signed by a spectator.

Releases will be strictly construed against the drafting party and will not be enforced unless the clause was fairly and honestly negotiated and understood by both parties. The language of the release must be clear and unambiguous so that reasonable minds could not differ.

Assumption of the Risk

The doctrine of assumption of the risk is a viable defense in Mississippi except in an employer/employee relationship. In the context of sporting activities, a participant assumes all ordinary and normal hazards of the sport. The defense of assumption of the risk reduces the percentage of fault attributable to the plaintiff and will only act as a bar to plaintiff's recover if the jury finds that the plaintiff's assumption of the risk proportionately reduces the damages to zero.

The Mississippi Supreme Court has held that where assumption of the risk overlaps and coincides with contributory negligence, the comparative negligence statute is employed to reduce recovery to the plaintiff in the percentage of his negligence. The court distinguished the doctrine of assumption of the risk from contributory negligence. Assumption of the risk is measured by a subjective standard. Contributory negligence is measured by an objective standard.

Negligence Law

Mississippi enacted a comparative negligence statute in 1910. Plaintiff's contributory negligence does not bar recovery. Damages are diminished in proportion to the amount of plaintiff's comparative negligence.

Products Liability

In 1976, Mississippi enacted a statute whereby liability for a claim based on a warranty of merchantability cannot be disclaimed or limited. Mississippi has not recently reported any relevant case law which discusses exculpatory agreements in the context of a product liability claim.

Minors

Neither minors nor their representatives can waive any rights of the minor. Minors are helpless in the eyes of the law.

Recreational Statutes

In 1978, Mississippi adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct.

Mississippi also limits the liability of volunteers at sporting events and of sports officials, and sponsors of equine activities as long as their conduct does not amount to willful or wanton disregard for the safety of the participants or intentionally injures the participants.

A more detailed legal analysis of Mississippi's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Missouri has upheld waiver and releases signed by participants in the context of sporting activities. Exculpatory clauses of the kind contained in releases, which exonerate parties from acts of future negligence are not against public policy. The release must use the word “negligence” or its equivalent to clearly and unmistakably express the intent of the parties. An exculpatory clause will not be upheld for a party’s gross negligence, willful, wanton or reckless conduct. Case law is silent with respect to waiver and releases signed by spectators.

A person competent to contract is presumed to know the contents of the contract he signed. The fact that the plaintiff does not read the contract or does not have it read to him or her before signing, does not rebut the presumption of validity.

Assumption of the Risk

The doctrine of assumption of the risk is an affirmative defense. Although its viability has been questioned, the defense may still be asserted as a bar to a negligence cause of action. One who takes part in a sport accepts the obvious and ordinary risks associated with the sport.

Assumption of the risk applies where one voluntarily exposes oneself to a danger. To prove this, the defendant must show that the plaintiff: (1) knew that the risk was present and understood its nature; and (2) freely and voluntarily chose to incur the risk.

Express assumption of the risk occurs when the plaintiff expressly agrees in advance that the defendant owes him no duty. Express assumption of the risk acts as a complete bar to plaintiff’s recovery.

Implied primary assumption of the risk also relates to the duty a defendant has to protect the plaintiff. It applies when the plaintiff assumes well-known incidental risks and defendant has no duty to protect the plaintiff from those risks. Implied primary assumption of the risk also acts as a complete bar to recovery.

Implied secondary assumption of the risk occurs when the defendant owes a duty to the plaintiff, but the plaintiff voluntarily encounters the known risk anyway. Fault rests on the question of the reasonableness of the plaintiff’s actions. Implied secondary assumption of the risk has been merged with contributory negligence and does not act as a bar to plaintiff’s recovery.

Negligence Law

Missouri enacted a comparative negligence statute in 1983. Any contributory fault of the claimant diminishes proportionately the amount awarded as compensatory damages, regardless of its relationship to the negligence of others.

A cause of action incurred during an athletic competition must be predicated on recklessness, not mere negligence.

Products Liability

A Missouri court has held that where an unreasonably dangerous product is marketed, any right that a manufacturer or seller has to disclaim liability, either by warranty or contract, is eliminated.

Minors

Missouri has not reported any relevant case law which discusses the validity of exculpatory agreements executed by minors and/or their parents.

Recreational Statutes

Missouri adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct. Missouri also extends additional protection to sponsors of equine activities when a participant has been injured by a risk inherent in the sport.

A more detailed legal analysis of Missouri's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

A contract exempting a party from responsibility for fraud, willful injury, or in violation of a law is void as against public policy, including when used in conjunction with recreational activities.

Assumption of the Risk

In 1989, Montana enacted MONT. CODE Ann. § 23-2-736. Under this statute, a skier assumes the risk of injuries which result from the inherent risks of skiing. A ski area operator will be relieved of liability only for the inherent risks listed in the statute.

Negligence Law

Montana enacted a comparative negligence statute in 1975 whereby contributory negligence may not bar recovery when plaintiff's negligence is not greater than the negligence of the defendant. A plaintiff's damages shall be diminished in proportion to his or her negligence. MONT. CODE Ann. § 27-1-702.

Products Liability

Montana has not recently reported any relevant case law which discusses exculpatory agreements in the context of a product liability claim. The defense of assumption of the risk is a viable defense, however, contributory negligence is not viable defense.

Minors

Although Montana has not reported any relevant case law which discusses the validity of exculpatory agreements executed by minors and/or their parents, any exculpatory agreement (whether executed by an adult or on behalf of a minor) purporting to limit a Defendant's future liability for future negligence, fraud or willful misconduct, are unenforceable as against public policy. In other respects, Montana follows the general rule that contracts may be disaffirmed by minors.

Recreational Statutes

Montana adopted a recreational use statute to encourage landowners to open their property to the public for recreational purposes. If the landowner does not charge for recreational use, the duty of care owed by the landowner is eliminated if there is no willful or maliciously negligent conduct. Montana also adopted statutes protecting sponsors or operators of equine activities, snowmobile areas, ski areas, and recreational outfitters whereby participant's of these activities assume the risk of injury occurring from an inherent risk of the activity.

A more detailed legal analysis of Montana's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Waiver and release agreements in the context of motorsports and recreational activities have been upheld as against participants by Nebraska courts. Such agreements are not against public policy. A plaintiff signing a waiver and release agreement cannot contest the document if he failed to read it before signing, if he was afforded the opportunity to do so. A waiver and release agreement is void if it purports to release a party for gross negligence or willful and wanton misconduct. Case law has not addressed the enforceability of waiver and release agreements against spectators.

Assumption of the Risk

Assumption of the risk is an affirmative defense and is statutorily defined. Assumption of the risk requires: (1) actual knowledge and understanding of a specific danger; (2) voluntary exposure to the danger; and (3) the injury occurred as a result of the exposure to the danger. Assumption of the risk is determined by a subjective standard.

Negligence Law

Actions accruing after February 8, 1992 are governed by the state's revised comparative negligence statute. Plaintiff can recover damages reduced proportionately by the percentage of his or her contributory negligence. However, if plaintiff's contributory negligence is equal to or greater than the negligence of defendants, plaintiff's recovery is barred.

Comparative fault and/or contributory negligence are not available as defenses to an action for strict product liability.

Products Liability

Unless explicitly mentioned in the language of a customer's waiver, an equipment manufacturer is not shielded from liability asserted by a third party beneficiary.

Minors

"Minor's Releases" executed by parents for a minor engaged in a sporting event have been held enforceable.

Recreational Statutes

Nebraska extends protection to owners of land allowing use by others for recreational purposes. This protection is available only to private landowners, not to public entities.

Nebraska has also extended protection to sponsors of equine activities for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of Nebraska's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Nevada courts will uphold a clear and unequivocal written waiver and release agreement signed by a participant in the sporting context, but will not enforce a generalized agreement that a sport is undertaken at the participant's "own risk." Case law is silent with respect to spectators.

Assumption of the Risk

In 1987, the Nevada Supreme Court held that the defense of implied assumption of the risk has been subsumed by Nevada's comparative negligence statute and is no longer a complete bar to plaintiff's recovery.

Whether a Plaintiff impliedly assumed the risk of injuries either as a spectator or participant in a recreational activity should be incorporated into the trial court's initial duty analysis, and should not be treated as an affirmative defense to be decided by the jury.

Negligence Law

Nevada enacted a comparative negligence statute in 1973, which provides that a negligent plaintiff may recover if his or her negligence is not greater than the negligence of defendants.

Products Liability

Nevada has not recently reported any relevant case law which discusses exculpatory agreements executed in a products liability cause of action in the context of recreational activities.

Comparative fault is unavailable as a defense to actions for strict product liability.

Minors

Nevada has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities.

Recreational Statutes

Nevada extends additional protection to ski area operators and owners of amusement parks for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of Nevada's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In New Hampshire exculpatory contracts are generally prohibited; however, they will be enforced if they do not violate public policy, the plaintiff or a reasonable person would have understood the import of the agreement, and the claims were contemplated by the agreement. A waiver and release signed by a participant in a motorsport event will be upheld if the language of a release clearly and specifically indicates an intent to release a defendant from liability for personal injuries caused by a defendant's negligence. A plaintiff's failure to read the entire release form prior to using a racetrack does not preclude enforcement of the release agreement. The New Hampshire courts have not discussed exculpatory agreements by spectators.

Assumption of the Risk

New Hampshire has three statutorily created doctrines: (1) skiers accept the inherent risks of skiing; (2) drivers of off highway recreational vehicles accept the risks inherent in the sport; and (3) participants in equine activities assume the risk of participation. In addition, at common law, a participant assumes all risk inherent to ordinary sporting activities.

Negligence Law

New Hampshire is a comparative fault state by statute. N.H. REV. STAT. ANN. § 507:7-3 was enacted in 1986. A plaintiff may recover where his or her fault is not greater than that of defendants.

Products Liability

New Hampshire courts have not recently reported any relevant case law which discusses exculpatory agreements in products liability causes of action in the context of recreational activities.

Plaintiff's comparative fault (e.g., product misuse) is an available defense to an action for strict product liability.

Minors

New Hampshire courts have not recently reported any relevant case law which discusses exculpatory agreements signed by a minor or the minor's parents in the context of recreational activities.

Recreational Statutes

New Hampshire extends protection to sponsors of equine activities, owners of land where off highway recreational vehicles are being operated, and ski area operators for risks inherent in each sport.

A more detailed legal analysis of New Hampshire's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

New Jersey statutorily defines certain safety requirements specifically for motorsport racing. These safety requirements may not be contracted away by racers. There has been no interpretation of the statute with respect to spectators.

Assumption of the Risk

Assumption of the risk is a viable defense in New Jersey and is measured by an objective standard. However, the courts have not expressly decided the effect of the comparative negligence statute enacted in 1982 on the defense of assumption of the risk. A plaintiff will not have assumed the risk of danger unless he actually appreciates the danger or unless an ordinarily prudent person in his position and with his experience would have appreciated it.

Negligence Law

New Jersey is a comparative negligence state whereby contributory negligence shall not bar recovery in any action by any person if such negligence was not greater than the negligence of the person against whom recovery is sought.

Products Liability

Strict products liability theory applies in context of sports related equipment and materials.

Comparative negligence is an available affirmative defense in actions for strict product liability.

Minors

A parent's execution of a pre-injury release of a minor's future tort claims arising out of the use of a commercial recreational facility is unenforceable.

Unless appointed guardian, a parent has no authority to compromise or release claims or causes of action belonging to the child.

Recreational Statutes

Recreational statutes immunize the use of private property for specified uses. Residential or developed properties are not within the purview of the statute.

A more detailed legal analysis of New Jersey's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In New Mexico, liability releases for personal injury, signed by a participant in a sporting context will be enforced, where the intent of the parties is clear, unambiguous, and does not violate public policy. Case law does not address liability releases vis-a-vis spectators.

Contact Sports Exception

In 1983 New Mexico adopted the Contact Sports Exception for injuries sustained by participants in contact sporting activities. Voluntary participation in a contact sport (e.g., football) constitutes implied consent to normal risks attendant to bodily contact permitted by the rules of the sport, as such risks are foreseeable or inherent to the playing of the sport. However that consent does not extend to contacts prohibited by the rules or usages of the sport if such rules are designed for the protection of the participants and not merely to control the mode of play of the game.

Assumption of the Risk

Assumption of the risk is not recognized as an affirmative defense in New Mexico. The principles of assumption of the risk are subsumed into the comparative negligence scheme. In 2010, New Mexico rejected the "baseball rule" for spectators injured by errant balls, in favor of a "limited duty" owed by owners/occupiers of commercial baseball stadia: Spectators must exercise ordinary care to protect themselves from the inherent risk of being hit by a projectile that leaves the field of play and the owner/occupant must exercise ordinary care not to increase that inherent risk.

Negligence Law

A plaintiff is contributorily negligent if: (1) the plaintiff intentionally and unreasonably exposes himself to a danger created by defendant's negligence; and the plaintiff knows or has reason to know of danger; or (2) the plaintiff engages in conduct which does not meet the ordinary prudent person standard in protecting himself from harm.

New Mexico adopted a judicially created "pure" comparative negligence system in 1981. Plaintiff's negligence proportionately reduces the amount of damages recoverable.

Products Liability

New Mexico courts have not recently reported any cases which discuss an exculpatory agreement used in a products liability cause of action in the context of recreational activities. Comparative fault is available as defense in actions for strict product liability.

Minors

New Mexico courts have not recently reported any cases which discuss an exculpatory agreement signed by a minor or the minor's parents in the context of recreational activities.

Recreational Statutes

New Mexico extends additional protection to operators of ski areas and equine activity sponsors.

A more detailed legal analysis of New Mexico's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Since 1976, waiver and release agreements in recreational activities have been governed by General Obligations Law Section 5-326 which voids releases obtained by recreational establishments which charge admission for use of an amusement facility. This code voids releases for paid use of facilities such as riding a mechanical bull or watching an auto race. This section applies to both participants and spectators. Multiple cases interpret this statute, requiring careful analysis of varying factual situations. Clear and unequivocal releases executed by both participants and spectators will be upheld if the statute does not apply.

Although exculpatory contracts for patrons of amusement facilities under Section 5-326 will often be voided by the courts, many decisions hold that sporting spectators will not be allowed to recover because they assumed the risk of injury by watching a sport. Accordingly, care should be taken in analyzing such cases.

Assumption of the Risk

Assumption of the risk is a viable defense in New York. Sports participants assume the risks normally associated with the particular sport and will not be allowed recovery unless they are injured by intentional conduct or unforeseen risks. The high court of New York has also limited the doctrine to sporting events, sponsored athletic and recreative activities that take place at designated venues. By statute, assumption of the risk is included in comparative negligence analysis to proportionately reduce liability. However, analysis is made more difficult because several decisions even after enactment of the comparative negligence statute contain language stating that assumption of the risk bars recovery.

Negligence Law

New York statutorily adopted comparative negligence in 1975. The statute states that contributory negligence or assumption of the risk shall not bar recovery, but shall proportionately reduce plaintiff's damage recovery.

Products Liability

Product liability claims against manufacturers of recreational equipment are permissible. The doctrine of primary assumption of the risk cannot constitute a defense to a claim of strict products liability.

Minors

Exculpatory contracts entered into by minors are voidable. An injured minor is not bound by a release of claims signed by a parent.

Recreational Statutes

New York has enacted a recreational use statute which immunizes the property owner from liability for injuries incurred while participating in one of the statutorily enumerated recreational activities.

A more detailed legal analysis of New York's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In North Carolina, contracts for exemption from liability for negligence are not favored and will be strictly construed against the party asserting them. While there are several statements in state court opinions that waivers can be permitted, the courts have never in fact upheld a waiver agreement. The courts have bent over backwards in the state to insure that strict construction takes place, and thereby have invalidated all of the releases presented to them. Exculpatory contracts by participants will be upheld in the recreational context if they contain clear and explicit words indicating the intent of the parties. Case law is silent with respect to exculpatory contracts by spectators. Failure to read the exculpatory agreement prior to signing the agreement will not render the agreement invalid.

Assumption of the Risk

The defense of assumption of the risk is an affirmative defense which is available in two situations: (1) the parties have a contractual relationship; or (2) employer/employee relationships. To assume the risk of injury: (1) a plaintiff must have knowledge, either actual or constructive, of the risks to be encountered; and (2) a plaintiff must give consent to risking an injury. Assumption of the risk is also recognized statutorily for the inherent risks of skiing and roller skating.

In the context of sporting events, where the risk is obvious and apparent, the court appears to tacitly apply the doctrine of implied assumption of the risk.

Negligence Law

North Carolina judicially adopted the doctrine of contributory negligence. Under the rule of contributory negligence, a plaintiff's negligence will bar recovery, even though the plaintiff's negligence is comparatively small.

Products Liability

North Carolina has not recently reported any relevant case law which discusses exculpatory agreements as a defense in a products liability cause of action in the context of recreational activities.

Minors

North Carolina courts have not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities. However, a federal district court predicting North Carolina law held that a liability waiver signed by parent on behalf of minor child was enforceable because the parent allowed the minor to participate in the activity and knew that a liability waiver was required.

Recreational Statutes

North Carolina extends additional protection to sponsors of equine activities, ski area operators and owners of roller skating rinks for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of North Carolina's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Under the law of contracts, a party may contract out of liability for negligence. In order for such a contractual exculpatory clause to be valid, the language must be plain and precise and set forth in unequivocal terms that the limitation of liability extends to negligence or other fault. Releases by participants are valid in the sporting context, but no cases discuss a release signed by a spectator.

To determine whether an exculpatory agreement violates public policy a court will consider whether there was a disparity of bargaining power between the parties, and whether the type of service being provided is a public or essential service.

Assumption of the Risk

North Dakota does not recognize the defense of implied assumption of the risk, except by statute for the inherent risks of skiing. Voluntary participants in sporting and recreational activities are presumed to have consented, by their participation, to those injury-causing events which are known, apparent, or reasonably foreseeable consequences of the participation.

Negligence Law

North Dakota enacted a partial comparative negligence statute in 1973.

Products Liability

North Dakota has not recently reported any relevant case law which discusses exculpatory agreements as a defense to a products liability cause of action in the context of recreational activities. Comparative negligence in a "pure" form is an available defense in actions for strict product liability.

Minors

A minor can enter into a contract, with the power to disaffirm it. A parent can execute a release on behalf of a minor.

Recreational Statutes

North Dakota extends additional protection to sponsors of equine activities, and ski area operators for injuries suffered from the inherent risks of such activities. Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes if there was no charge to enter the land and the landowner's conduct was not willful or malicious. The North Dakota Supreme Court ruled that the recreational use statute did not bar suits by students injured on school grounds during the school day.

A more detailed legal analysis of North Dakota's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Ohio has consistently upheld waiver and release clauses executed by both participants and spectators in the context of motorsports and recreational vehicles. Waiver and release agreements constitute an express assumption of the risk and are a complete bar to plaintiff's action. It is not necessary that a waiver and release contain the word "negligence." However, the intent of the parties must be clearly and unequivocally stated. A release agreement is not invalid or unenforceable because a party failed to read it.

Assumption of the Risk

Assumption of the risk is a defense in Ohio. Primary assumption of the risk arises where a participant or spectator assumes the ordinary and inherent dangers and risks of a recreational activity. Primary assumption of the risk is an absolute bar to recovery.

Secondary assumption of the risk arises when the injured party had knowledge of the danger, the condition was patently dangerous and the injured party voluntarily exposed himself to the risk. Secondary assumption of the risk is merged with the defense of contributory negligence and plaintiff's negligence must be determined under the comparative negligence statute.

Negligence Law

Ohio enacted a comparative negligence statute in 1980. Under this statute, a plaintiff may recover from injuries proportionately reduced by the degree of his contributory negligence. However, plaintiff's negligence cannot be greater than the combined negligence of all persons from whom he seeks recovery.

Products Liability

Ohio does not have any reported cases addressing the application of an exculpatory agreement to a product liability claim. Comparative negligence does not apply to actions for strict product liability.

Minors

A parent can validly bind a minor to an exculpatory contract in a sporting environment.

Recreational Statutes

Ohio grants immunity to landowners who open their land for recreational use without charging a fee. This immunity exists even if the property owner affirmatively created a dangerous condition.

A more detailed legal analysis of Ohio's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Oklahoma has upheld waiver and release clauses executed by participants in motorsport and recreational activities. No cases discuss waiver and release clauses signed by spectators. To be upheld, a waiver: (1) must clearly, definitely and unambiguously display the intent of the parties; (2) must be entered into with no disparity of bargaining power between the two parties at the time the agreement was executed; and (3) must not violate public policy. However, in other areas, waiver and release agreements are strictly construed and generally not favored.

Assumption of the Risk

Assumption of the risk is a viable defense in Oklahoma. It requires knowledge of the danger, as well as a full appreciation and acceptance of the risk involved. Assumption of the risk is a total bar to a plaintiff's recovery.

Negligence Law

Oklahoma enacted a comparative negligence statute in 1987. Contributory negligence does not bar a recovery unless the negligence of the person injured is greater than the negligence of the person causing the injury.

Products Liability

Oklahoma has not recently reported any relevant case law which discusses exculpatory agreements as a defense to a products liability cause of action in the context of recreational activities.

Minors

Oklahoma has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities.

Recreational Statutes

Oklahoma enacted a Recreational Land Use Act to encourage landowners and lessees to make their land available for recreational use by limiting liability to persons using that land. Exceptions to the immunity exist when there is a charge for use of the land or for injuries caused by wilful acts.

A more detailed legal analysis of Oklahoma's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An exculpatory release relieving a party from responsibility for negligence is enforceable unless it contravenes public policy or the contract is one of adhesion. A release is enforceable against a participant in a sporting context, but case law is silent as to spectators. A release including gross negligence or willful conduct will be void as against public policy. While a release is not required to contain the word “negligence” to be valid, the language of the release must clearly and unequivocally express the intent of the parties. Express agreements limiting liability are governed by contract principles. A party is not excused from the consequences of signing a contract if the party fails to read the contract.

Assumption of the Risk

Implied assumption of the risk was statutorily extinguished in 1975. Case law has applied the statute in the sporting context, and Oregon has carved out a specific exception for the inherent risks of skiing.

Negligence Law

Oregon enacted a comparative fault statute in 1971 whereby contributory negligence shall not bar recovery in an action by plaintiff if the fault attributable to the plaintiff is not greater than the combined fault of the defendants.

Products Liability

Oregon has not recently reported any relevant case law discussing the use of an exculpatory agreement in a products liability cause of action in the context of recreational activities. A plaintiff’s ordinary negligence may be asserted as an offset or possible defense against his or her products liability claim

Minors

Oregon has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities. However, minors do not have the power to exercise the same legal rights as adults. Further, the guardian cannot waive any substantial rights of the infant.

Recreational Statutes

Oregon extends additional protection to sponsors of equine activities for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of Oregon's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Waiver and release agreements signed by both participants and spectators in the context of motorsports and recreational activities are generally upheld. However, they are not favored and will be construed strictly against the party asserting the immunity.

Assumption of the Risk

Assumption of the risk is variously interpreted by Pennsylvania courts. Although the Pennsylvania Supreme Court specifically stated in a 1981 opinion that implied assumption of the risk was abolished, subsequent cases continued to apply the doctrine. As a practical matter, no duty exists where plaintiff's injury is caused by risks inherent to the activity, such as a sports participant or spectator injured in the normal course of the sport. Assumption of the risk may be found in the exceptional case where plaintiff specifically accepts a known risk

Pennsylvania has specifically preserved assumption of the risk as a complete defense to downhill skiing injuries. This express affirmation is embodied in the comparative negligence statute.

Negligence Law

Pennsylvania enacted a comparative negligence statute in 1976. Plaintiff's contributory negligence does not bar recovery unless it is greater than the combined fault of all defendants. Plaintiff's recovery is reduced proportionately in the amount of his or her contributory negligence.

Products Liability

Pennsylvania courts may uphold exculpatory agreements in products liability causes of action if the contract was made between two private parties of equal bargaining power. However, public policy may prohibit strict products liability actions disclaimed in 'garden variety' consumer transactions. Ordinary comparative negligence by the plaintiff is admissible in a strict product liability action only where the evidence is offered to prove that the negligence was the sole cause of the injury.

Minors

A release of liability agreement executed by a minor is not enforceable in Pennsylvania because it is contrary to public policy.

Recreational Statutes

Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes so far as there was no charge to enter the land and the landowner's conduct was not willful or malicious.

A more detailed legal analysis of Pennsylvania's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Rhode Island an exculpatory agreement will be strictly construed against the party seeking to be exonerated. The language in the release must clearly establish the party's intent to release the party from liability for his or her own negligence. There are no recent case decisions discussing waiver and release agreements in the context of recreational or sporting activities.

Assumption of the Risk

Assumption of the risk is a complete defense to a negligence action. It is defined by a subjective standard. Defendant must establish that the plaintiff knew of the existence of a danger, appreciated its unreasonable character and voluntarily exposed himself to the danger.

Negligence Law

Rhode Island enacted a "pure" comparative negligence statute in 1971. Damages awarded to the plaintiff are reduced in proportion to the amount of comparative negligence attributable to the person injured regardless of the relationship of plaintiff's negligence to others.

Products Liability

A waiver and release will not preclude a product liability claim.

Minors

Rhode Island courts have not reported any cases involving the viability of exculpatory clauses and minors in the context of recreational activities.

Recreational Statutes

Ski area operators and equine activity sponsors are not liable for injuries resulting from the inherent risks of the activities. An owner or occupier of land who permits without charge any person to use that property for recreational purposes owes no duty of care. However, where there is knowledge of a strong likelihood that a visitor to a recreational area would suffer serious injury or death, a duty may be found.

A more detailed legal analysis of Rhode Island's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Waiver and release contracts signed by participants in the context of automobile racing are generally upheld because auto racing is a voluntary undertaking and such releases do not violate public policy. Case law is silent with respect to spectators.

Assumption of the Risk

Assumption of the risk is applicable when plaintiff: (1) has knowledge of the facts constituting a dangerous condition; (2) has knowledge the condition is dangerous; (3) appreciates the nature and extent of the danger; and (4) voluntarily exposes himself or herself to the danger. The court applies a subjective test of plaintiff's actual knowledge.

Express assumption of the risk and primary implied assumption of the risk act as a complete defense or bar to plaintiff's claim. Express assumption of the risk constitutes an express agreement to discharge a defendant from a legal duty prior to participation. Primary implied assumption of the risk arises when plaintiff implicitly assumes known risks.

Plaintiff is not barred from recovery by the doctrine of secondary assumption of the risk unless the degree of fault arising therefrom is greater than the negligence of the defendant. Secondary implied assumption of the risk arises when the plaintiff knowingly encounters a risk created by defendant's negligence.

In 2006, the South Carolina Supreme Court held that a negligence action brought by a spectator injured during a sporting event from a risk inherent to spectators in the sport (i.e., being struck by an errant hockey puck), is barred by the doctrine of implied primary assumption of the risk.

Contact Sports Exception

In 2011, the South Carolina Supreme Court adopted the "Contract Sports Exception" implemented in other jurisdictions, under which voluntarily participants in contact sports, including informal softball, impliedly assume all risks of injury attendant to the sport, unless there is evidence of recklessness, gross negligence and/or intention misconduct.

Negligence Law

The South Carolina judiciary created a comparative negligence doctrine. Any cause of action arising after July 1, 1991 shall apply the comparative negligence rule. A plaintiff may recover damages if his negligence is not greater than that of the defendants. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his negligence.

Products Liability

Liability for a design defect may be based on negligence, strict tort or warranty.

Assumption of the risk is a statutory defense to an action for strict product liability. If the user or consumer discovers the defect and is aware of the danger, and nevertheless proceeds unreasonably to make use of the product and is injured by it, he is barred from recovery. However, whether Plaintiff assumed the risk barring such a recovery is a factual question for the jury and cannot be resolved on summary judgment.

Minors

Neither a minor nor his or her guardian can waive a substantial right of a child, or consent to anything which may be prejudicial to a child. However, in the context of athletic participation, South Carolina will allow a minor to sign a written waiver if the state athletic commission unanimously votes to waive the age limit.

Recreational Statutes

Sponsors of equine activities are not liable for injury resulting from the inherent risks of participation. Private landowners who open their land to the public for recreational use have limited liability.

A more detailed legal analysis of South Carolina's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In South Dakota, waiver and release agreements in the context of motor sports, whether the injured party is a participant or a spectator, are upheld for ordinary negligence but not willful or intentional torts.

Assumption of the Risk

Assumption of the risk is a viable doctrine in South Dakota. To charge a party with assumption of the risk, it must be established that plaintiff: (1) had actual or constructive knowledge of the existence of the specific risk involved; (2) appreciated the risk's character; and (3) voluntarily accepted the risk, having had the time, knowledge and experience to make an intelligent choice.

Negligence Law

South Dakota enacted a comparative negligence statute in 1964. However, evidence establishing more than slight negligence on Plaintiff's part in comparison to that of the Defendant will bar recovery. This determination is generally a question of fact for the jury, but may be decided as a question of law when the undisputed facts establish significantly more than "slight" fault on Plaintiff's part.

Products Liability

South Dakota courts have not reported any cases involving the viability of exculpatory clauses in products liability actions in the context of recreational activities.

Minors

South Dakota courts have not reported any cases involving the viability of exculpatory clauses by minors in the context of recreational activities.

Recreational Statutes

Sponsors of equine activities and suppliers of snowmobile equipment are not liable for injury resulting from the inherent risks of participation. Private landowners who open their land to the public for recreational use have limited liability.

A more detailed legal analysis of South Dakota's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Tennessee statutorily expressly recognizes the validity of releases signed by participants in motor racing events. A release under this statute can serve to relieve a track owner or promoter from ordinary negligence but not intentional conduct, recklessness or gross negligence. The failure of a party to read such an agreement does not affect its validity. An exculpatory agreement will not be upheld if the language of the agreement is ambiguous or unclear. Exculpatory agreements in other sporting contexts are also enforceable against a participant, but case law is silent with respect to spectators.

An exception to the general enforceability of exculpatory clauses exists where the duty owed by the defendant is to the general public. In order to determine whether a duty is owed to the general public, the court will look at several factors as set forth in Childress v. Madison County, *infra*.

Tennessee has enacted statutes permitting equine professionals and landowners who permit others entry on land for recreational purposes to enter into written contracts releasing them from liability caused by negligence.

Assumption of the Risk

Express assumption of the risk is a viable defense in Tennessee, and will act as a complete bar to a plaintiff's recovery. However, implied assumption of the risk in both its primary and secondary form has been abolished.

Negligence Law

Tennessee is a comparative negligence state whereby plaintiff's recovery is reduced in proportion to the plaintiff's fault. However, Plaintiff may recover only if his or her percentage of fault is less than that of all of the Defendants combined.

Products Liability

Tennessee has not recently reported any relevant case law which discusses exculpatory agreements as a defense in a products liability cause of action in the context of recreational activities. However, in one recent case, assumption of risk by means of an express contract was a defense to strict liability.

Assumption of the risk and comparative negligence are valid defenses in products liability actions.

Minors

An exculpatory agreement signed by a parent on behalf of a minor will be enforced as to a parent's cause of action but will not be enforceable against a minor.

Recreational Statutes

Tennessee extends additional protection to private landowners who open their land to the public for recreational use and sponsors of equine activities, motor racing events, sports officials and ski area operators for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of Tennessee's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Texas, releases signed by both participants and spectators, to exempt a defendant from ordinary negligence in the context of motorsports or recreational activities, are deemed valid if they are not contrary to public policy. Texas courts have held that a clause in a release attempting to exempt one from liability or damages occasioned by gross negligence is against public policy and will not be upheld.

The specific intent of the parties must be expressed within the four corners of the exculpatory contract. The intent is to be determined by an objective standard. Furthermore, the exculpatory contract should expressly list “negligence” as a claim being released. However, a plaintiff may not claim as defense that the intent was not clearly expressed because the plaintiff failed to read the agreement prior to signing it.

TEX. CIV. PRAC. & REM. § 87.005 permits an equine professional to enter into a written contract releasing liabilities, provided the requisite warning language is incorporated in the contract and clearly readable.

Inherent Risk Doctrine

Texas has adopted the "Inherent Risk Doctrine" with respect to sports injuries. If the risk that resulted in plaintiff's injury is inherent in the nature of the sport in which the plaintiff chose to participate, then a participant-defendant owes the plaintiff no negligence duty. If the risk that resulted in the plaintiff's injury is not inherent in the nature of the sport in which the plaintiff chose to participate, then a participant-defendant owes the plaintiff an ordinary negligence duty. However, regardless of whether the risk that resulted in the plaintiff's injury is inherent in the nature of the sport in question, a participant-defendant owes a duty not to engage in gross negligence or intentional conduct causing injury to plaintiff.

Assumption of the Risk

The defense of implied assumption of the risk (*volenti no fit injuria*) was abolished in 1975 by case law in ordinary negligence cases. However, assumption of the risk remains a viable defense where a participant in a sporting activity expressly consents either orally or through written consent to the conduct. Further, a participant in a recreational activity consents to assume all risks inherent in the sporting activity.

Negligence Law

Pursuant to TEX.CIV. PRAC. & REM. § 33.001, enacted in 1985, and amended in 1995, Texas is a partial comparative negligence state (Plaintiff's recovery is barred if Plaintiff's percentage of fault for his or her injuries exceeds 50 percent).

Products Liability

Texas has not recently reported any relevant case law which discusses exculpatory agreements as a defense in a products liability cause of action in the context of recreational activities.

Contributory negligence of the plaintiff is not a defense when such negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence. On the other hand, if the user or consumer discovers the defect and is aware of the danger, and nevertheless unreasonably proceeds to make use of the product and is injured by it, he is barred from recovery. Comparative negligence is available as a defense in all tort actions, including actions for strict product liability.

Minors

Although the Texas Supreme Court has not spoken on the issue, a federal district court basing its opinion on Texas appellate court case law and the underlying statutes, predicted that preinjury releases executed by parents on behalf of minors in favor of commercial enterprises are not enforceable.

Volunteers of Charitable Organizations Immunized in Sporting Activities

Texas law furnishes immunity to volunteers participating in sporting events hosted by charitable organizations.

Recreational Statutes

Texas extends additional protection to sponsors of equine activities and private landowners who open their land to the public for recreational use.

A more detailed legal analysis of Texas' Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

An exculpatory clause must be clear and unequivocally express the intent of the parties. The exculpatory language should be set apart or typed in bold type. Further, exculpatory agreements are to be strictly construed against the party who drafted the agreement. Exculpatory agreements may be enforceable against participants in recreational activities; case law is silent with respect to spectators.

Assumption of the Risk

Assumption of the risk is recognized as a defense, but has been subsumed in the comparative fault analysis. Assumption of the risk is the voluntary and unreasonable exposure to a known danger.

Utah recognizes a statutory application of the doctrine of assumption of the risk. In 1986 Utah enacted an act, entitled “Inherent Risks of Skiing,” which prohibits skiers from making any claim against, or recovering from, a ski operator for injury resulting from inherent risks in skiing. Utah has enacted similar statutes whereby amusement park riders and participants in shooting sports assume the risks inherent in each activity.

Negligence Law

Utah enacted a comparative negligence statute in 1986. A plaintiff can recover from a defendant only when that defendant’s fault exceeds plaintiff’s fault. The plaintiff’s recovery is reduced in proportion to his or her comparative negligence. Defendants are liable only for their own proportionate share of fault and will not be held jointly liable for the fault of other defendants or non-party tortfeasors.

Products Liability

Utah courts have not recently reported any relevant case law which discusses exculpatory agreements as a defense in a products liability cause of action in the context of recreational activities.

Minors

Utah follows the general rule that a contract signed by minor may be disaffirmed by the minor within a reasonable time after attaining the age of majority.

Also, an exculpatory agreement signed by a minor’s parent is void as against public policy and will not be enforced.

Recreational Statutes

Utah extends additional protection to sponsors of equine activities, private landowners opening their property to the public for recreational use, sports officials, ski area operators, amusement park operators and hockey facility owners.

However, ski area operators owe a duty to use ordinary care to protect its patrons. If injury was caused by unnecessary hazard that could have been eliminated by the use of ordinary care, such hazard is not an inherent risk of skiing and would fall outside of Inherent Risk of Skiing Act.

A more detailed legal analysis of Utah's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Exculpatory contracts, including those in the context of sporting activities, are disfavored and are subject to close judicial scrutiny. To be effective, such contracts must meet higher standards for clarity than other agreements, and must pass inspection for negative public policy implications. Failure to include the word negligence in the release is not fatal to its enforceability. In the competitive sports context, where such agreements are clear and unambiguous and do not violate public policy, they will be enforced.

VT. STAT. ANN. §1039 permits an equine activity sponsor to enter into a written contract releasing liability for injuries from inherent risks of equine activities, as long as the contract contains in clearly readable print the appropriate warning notice required by the statute.

Assumption of the Risk

Under VT. STAT. ANN. § 1037, a person who takes part in any sport accepts as a matter of law the dangers that inhere therein insofar as they are obvious and necessary. The statute incorporates the primary assumption-of-risk rule, used in determining whether there has been breach of any duty owed, rather than secondary assumption-of-risk rule, which creates affirmative defense to established breach of duty.

Assumption of the risk is an affirmative defense and requires that the plaintiff have knowledge of the risk and appreciate the extent of its danger. No cases have interpreted assumption of the risk since the state legislature adopted the comparative negligence statute in 1979. The state's courts have not spoken to the issue of whether assumption of the risk will survive as a total bar or be subsumed in the application of comparative fault.

Negligence Law

Vermont enacted a comparative negligence statute in 1979. Contributory negligence shall not bar recovery by a plaintiff if the plaintiff's negligence is not greater than the total negligence of the defendants.

Products Liability

Vermont has not recently reported any relevant case law which discusses exculpatory agreements as a defense in a products liability cause of action in the context of recreational activities. However, the doctrine of assumption of the risk is a viable defense against a products liability cause of action. Vermont law is undecided whether comparative negligence applies to strict products liability cases.

Minors

Vermont has not recently reported any relevant case law which discusses exculpatory agreements signed by a minor or the minor's parent in the context of recreational activities.

Recreational Statutes

A landowner is not liable for property damage or personal injury sustained by a person who, without consideration, enters upon the land for recreational use, unless the damage or injury is the result of willful or wanton misconduct of the owner. Vermont extends additional protection to sponsors of equine activities for injuries suffered from the inherent risks of such activity.

A more detailed legal analysis of Vermont's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In 1992, the Virginia Supreme Court case of Hiatt v. Lake Barcroft Community Assoc., Inc. held that a pre-injury waiver and release is prohibited by public policy. Conflicting district and federal cases suggest in certain circumstances a release by a participant may be valid; case law is silent with respect to spectators. However, such agreements may be used as evidence that plaintiff understood certain risks outlined in the agreement. The Equine Activity Liability Act and Ox Activity Liability Act permit an equine activity sponsor or ox activity sponsor, respectively, to permit a participant or parent or guardian of a participant to execute a waiver of right to sue or agree to assume all risks.

Assumption of the Risk

Assumption of the risk is a viable affirmative defense in Virginia. Assumption of the risk requires a subjective test and has two requirements: (1) the nature and extent of the risk must be fully appreciated, i.e. actual knowledge of the recognized hazards of the sport, and (2) the risk must be voluntarily incurred. Assumption of the risk is a question usually decided by a jury but in certain circumstances can be decided as a matter of law. Virginia has declined to adopt the "inherent" or "primary" assumption of the risk doctrine, instead holding the existing common law assumption of the risk defense analysis sufficient to address the risk assumed by participants resulting in sporting-related injuries.

Negligence Law

Virginia is a contributory negligence state. Any negligence of the plaintiff which is the proximate cause of an injury will bar recovery and is measured by an objective test, and should be decided by a jury.

Products Liability

Virginia courts generally hold exculpatory clauses to be void as against public policy. The doctrine of assumption of the risk is also not a viable defense in a products liability cause of action. Available defenses include unforeseen misuse of the product by the plaintiff or an obvious or known defect in the product. Contributory negligence is a defense to actions based on negligence, as well as failure to warn cases, but is not a defense to breach of warranty claims.

Minors

Virginia has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities. The Equine Activity Liability Act and Ox Activity Liability Act permits an equine activity sponsor or ox activity sponsor, respectively, to permit a participant or parent or guardian of a participant to execute a waiver of right to sue or agree to assume all risks.

Recreational Statutes

Virginia extends additional protection to sponsors of equine and ox activities for injuries suffered from the inherent risks of such activities. Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes so far as there was no charge to enter the land and the landowner's conduct was not willful or malicious.

A more detailed legal analysis of Virginia's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Washington courts have upheld express waiver and releases by participants in the context of motorsports racing and other sporting events. An exculpatory clause is valid if: (1) The activity does not involve a public interest or public duty; and (2) The form and language of the release are clear, unambiguous and conspicuous. No cases discuss release agreements signed by spectators.

The release is valid even though the exculpatory clause does not explicitly use the word “negligence.” However, gross negligence is sufficient to invalidate a contractual exculpatory clause.

Assumption of the Risk

Implied and express primary assumption of the risk is invoked when a defendant shows that the plaintiff has a full subjective understanding of the presence and nature of the specific risk and voluntarily chooses to encounter the risk. A sport spectator's assumption of risk and a defendant sports team's duty of care are accordingly discerned under the doctrine of primary assumption of risk. The doctrine serves as a complete bar to recovery when an injury results from a risk inherent in the activity in which the plaintiff was engaged

Generally, one who participates in sports impliedly assumes the risks that are inherent in the sport. However, a participant does not assume the risk of negligence on the part of the operator.

Express assumption of the risk exculpates a party from liability by shifting the duty of care from one party to the other.

Implied primary assumption of the risk acts as a complete bar to a plaintiff’s recovery where the damages resulted from the specific risks assumed. Implied primary assumption of the risk occurs where the plaintiff has consented to relieve the defendant of a duty of care.

Implied reasonable and unreasonable assumption of the risk arise where the plaintiff is aware of a risk that already has been created by the negligence of the defendant, yet chooses voluntarily to encounter it. These circumstances are analyzed under the Washington comparative fault statute and do not completely bar plaintiff’s recovery.

Negligence Law

Washington has statutorily enacted comparative negligence whereby any fault chargeable to the claimant diminishes proportionately the amount compensable for an injury, but does not bar recovery.

Products Liability

Washington courts have not recently published any cases discussing the validity of an exculpatory agreement in a products liability cause of action. However, a plaintiff may be barred from recovery if the injury sustained was caused by a known or obvious danger of the product.

Minors

A parent does not have the legal authority to waive a child’s own future cause of action. However, an exculpatory clause signed by a parent will bar the parent’s cause of action. In the context of school sponsored interscholastic activities, an exculpatory clause signed by a student or the students’ parent(s) as a requirement to participation is void as against public policy and will not be upheld.

Recreational Statutes

Washington extends additional protection to sponsors of equine activities for injuries suffered from the inherent risks of such activities. Private landowners will not be liable for injuries to individuals using the landowner’s property for recreational purposes as long as there was no charge to enter the land and the landowner’s conduct was not willful or malicious.

A more detailed legal analysis of Washington's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

In Washington, D.C., waivers and releases relating to sporting activities are enforceable if they are not contrary to public policy, the parties possessed equal bargaining power, and the language of the release is clear and unambiguous. Recklessness, wanton behavior, or gross negligence are not subject to exculpation. Such a release need not expressly employ the word "negligence" to be enforceable as against a defendant's ordinary negligence.

Assumption of the Risk

Assumption of the risk operates as a complete bar to liability. This defense relieves the defendant of a duty toward a plaintiff. The courts use a subjective standard. Primary assumption of risk is applied where defendant has no duty to protect plaintiff of risk, whereas secondary assumption of risk is applied where plaintiff who is aware of risk created by defendant's negligence deliberately chooses to encounter that risk. The essential elements of assumption of the risk, whether primary or secondary, are a knowledge of the danger and a voluntary exposure to that known danger.

The Washington, D.C. courts have held that a plaintiff, who through inexperience or immaturity fails to comprehend a risk, may not be held to the same level of understanding as a plaintiff who has superior intelligence or experience.

Negligence Law

Washington, D.C. is a contributory negligence jurisdiction. Any negligence on the part of the plaintiff bars recovery.

Products Liability

Washington, D.C. has not recently reported any relevant case law which discusses exculpatory agreements used to protect against products liability actions in the context of recreational activities.

Assumption of risk is a valid defense in products liability cases, whether based on negligence or strict liability. Contributory negligence is not a defense in strict products liability cases.

Minors

Washington, D.C. has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities.

Recreational Statutes

Washington D.C. does not have statutes regarding recreational use. There are no reported cases regarding recreational use.

A more detailed legal analysis of Washington D.C.'s Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

West Virginia regulates whitewater rafting, skiing and equine activities by statute. In unregulated sports, releases by participants may be upheld if they are clear, definite and specifically release a defendant from negligence. No cases discuss releases by spectators.

Assumption of the Risk

Assumption of the risk in whitewater rafting and skiing are regulated by statute. Assumption of the risk is a recognized defense when a plaintiff knows and appreciates a danger and voluntarily accepts it.

Negligence Law

West Virginia judicially adopted comparative negligence. Plaintiff may recover if plaintiff's negligence is equal to or less than the negligence of the defendants.

Products Liability

West Virginia has not recently reported any relevant case law which discusses exculpatory agreements in the context of a products liability action. However, the doctrine of assumption of the risk is a viable defense to a products liability action.

Minors

West Virginia has not recently reported any relevant case law which discusses exculpatory agreements executed by minors or their parents in the context of recreational activities.

Recreational Statutes

West Virginia extends additional protection to ski area operators, whitewater rafting outfitters, and sponsors of equine activities for injuries suffered from the inherent risks of such activities.

A more detailed legal analysis of West Virginia's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Generally, releases executed by participants in sporting activities are valid and will relieve the defendant from liability for his own negligence. Releases by spectators will not be upheld. A release will not extend to injuries sustained due to defendant's reckless conduct. Wisconsin utilizes two elements, based on public policy, to assess whether a valid release exists: (1) the language of the waiver and release must clearly and unequivocally express that the party signing it is releasing others for their negligent acts; and (2) the agreement must convey to the signer the nature and significance of the agreement.

Where the release includes an assumption of the risk clause, the language must clearly define that the participant is assuming the risk of harm caused by the negligent acts of others. The release must also specifically identify who will be released from liability.

The equine immunity statute permits an equine professional to use a written contract to release liability from death or personal injury resulting from the inherent risks of equine activities.

Assumption of the Risk

Assumption of the risk is a viable defense in Wisconsin for recreational activities. Where the risks and hazards of a particular sport are consciously borne, assumption of the risk will bar plaintiff's recovery. In determining whether a sports participant assumed the risk, the focus is on the particular danger presented by the sport. Therefore, if a sports participant understands the danger presented in the activity and proceeds in the face of such danger, although he or she might not have known the degree of the risk, he or she is deemed to have assumed the risk of injury.

Where defendant cannot show that plaintiff had a clear understanding of the particular risk, plaintiff's conduct constitutes contributory negligence and is subject to the comparative negligence statute. Under these circumstances, assumption of the risk will act as a bar to plaintiff's recovery only if plaintiff's negligence is greater than defendant's negligence.

Negligence Law

Wisconsin enacted a comparative negligence statute in 1971. Contributory negligence does not bar recovery if such negligence was not greater than the negligence of the defendant. When negligent plaintiffs may recover, damages are reduced in proportion to the amount of negligence attributable to the plaintiff, based on an individual comparison rule, where plaintiff's negligence is compared with the negligence of each defendant rather than the combined negligence of all defendants.

Products Liability

Generally, an exculpatory clause will not be enforced in a products liability cause of action; however, an exception has been allowed in motorsport causes of action where the plaintiff fairly bargained for the agreement and consciously bore the risk of injury for the benefit of participation. Assumption of the risk and comparative negligence are viable defenses to product liability cases.

Minors

Parents may execute a release on behalf of a minor, so long as the release is otherwise valid.

Recreational Statutes

Wisconsin extends additional protection to anyone, including sponsors of equine activities, for injuries suffered from the inherent risks of such equine activities. Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes so far as there was no charge to enter the land and the landowner's conduct was not willful or malicious.

Members of a ski patrol unit are immune from civil liability unless their actions constitute willful, wanton or intentional conduct. Owners or operators of sport shooting ranges are also immune from civil liability for injuries sustained due to the noise inherent in the sport.

A more detailed legal analysis of Wisconsin's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.

Waiver and Release

Wyoming has upheld waiver and release agreements signed by participants in the context of motorsport and recreational activities. Exculpatory agreements which release a party from liability for negligence are valid and enforceable if they do not violate public policy and the intention of the parties is expressed in clear and unambiguous language. Wyoming courts consider four factors to determine whether an exculpatory agreement violates public policy: (1) whether a duty to the public exists; (2) the nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the parties expressed their intentions in clear and unambiguous language. Case law is silent with respect to releases signed by spectators.

Assumption of the Risk

The doctrine of primary assumption of the risk is statutorily recognized in the context of recreational activities. The doctrine of secondary assumption of the risk has been merged into the comparative negligence scheme.

Negligence Law

Wyoming enacted a comparative negligence statute in 1977. If the contributory negligence of the plaintiff is more than fifty percent, the plaintiff's recovery is barred.

Products Liability

Wyoming has not recently reported any relevant case law which discusses exculpatory agreements in a products liability cause of action in the context of recreational activities.

In 1994, the legislature amended the comparative fault statute, Wyo. Stat. § 1-1-109, extending its application to strict liability, product liability, and breach of warranty claims.

Minors

Wyoming allows minors to consent to participation in an amateur rodeo competition by contract if the contract is also signed by the minor's parent or legal guardian. There has been no reported decisional authority yet testing the constitutional validity of the statute.

Recreational Statutes

Wyoming extends additional protection to sponsors of amateur rodeo sponsors, and providers of recreational activities for injuries suffered from the inherent risks of such activities. Private landowners will not be liable for injuries to individuals using the landowner's property for recreational purposes so far as there was no charge to enter the land and the landowner's conduct was not willful or malicious.

A more detailed legal analysis of Wyoming's Sport and Leisure Waiver and Release Law is found on the included USB flash drive.
