

Assumption of Risk, Where Art Thou?

I'm thinking seriously about and making moves toward selling property and casualty insurance, part-time. (No, I'm not leaving my current employment, just hoping to expand my skillset and supplement my income.) In order to do so, the company I wish to sell for requires that I obtain a bit of education and a license from my local rulers.

In the course of obtaining this education I have come across a concept called "assumption of risk". Here's how my materials explain this concept:

Assumption of Risk – *The injured party was aware of the **risk** and put themselves in a situation in which he or she could get hurt; that, the injured party assumed the **risk**.*

*Under the **assumption of risk** argument, an injured person is not able to hold someone else responsible for his or her injuries.*

For example, Sharon was hurt bungee jumping at the Bigbadbugee Amusement Park; Sharon had signed a waiver telling her about the dangers of the activity; therefore, she is not able to hold Bigbadbugee Amusement Park responsible for her injuries.

One of the major lessons we learn growing up is understanding the concept of risk, that is, the possibility of getting hurt. Different activities have more or less risk as it concerns our physical safety.

When we join a gym, our assumption of risk is explicit in the form of a written and signed waiver. This protects the gym from being sued when we injure ourselves.

Less explicit though no less of an assumption is going for a hike in the mountains. If we get injured, there's no one to blame but ourselves. We take protective precautions in order to mitigate the risks that we have assumed.

Does this concept have any place in the current discussion on sexual harassment and sexual assault?

Can we say that men and women take on the assumption of risk of these sorts of dangers when they put themselves in certain situations?

Maybe it's a test. Based on the concept's explanation above, when a person is aware of a risk and voluntarily puts themselves in the risky situation anyway, they have assumed the risk. The two key qualifiers seem to be *knowingly* and *voluntarily* putting oneself in a risky situation.

Here's a situation where I would consider the assumption of risk to being sexually assaulted applies: A college girl who likes to party, dance, and get drunk goes to a soiree at a nearby fraternity house. She willingly attends, gets drunk and is then taken advantage of sexually by a couple of mostly sober college boys.

Here's another situation where I would consider the assumption of risk to being sexually assaulted applies: A college boy who likes to keep his female friends safe offers to be the designated driver for a group of them. He sips soda all night while they get plastered. When he's trying to get them all in the car to take them home, a couple of them drunkenly start to grope him, manage to get his belt unbuckled, pants down and start to rub his crotch. Thanks to "**arousal nonconcordance**" he gets an erection anyway trying to fend them off without hurting them, and this causes his friends to think he's into it, so they continue their drunken, sex-based attack on him.

Here's a situation where I would *not* consider the assumption of risk to being sexually assaulted applies: A career woman lands a high paying management position over a team of marketers. The company is dedicated to combating sexual harassment and other types of inappropriate workplace behavior. Another manager is stricken by the beauty of this career woman and decides to romantically pursue her. Taking a cue from *Seinfeld* for brevity, yadda, yadda, yadda, one day a few weeks later, he's fed up that all of his advances are turned down and gets physical in the break room, grabbing her arm to spin her around and rips open her blouse.

These situations make the applicability of the assumption of risk to being sexually assaulted pretty clear. Of course, life is not always so clear, but there are times when the risk is real and times when the risk [should not be] real.

I don't think it's either wise or fair to lump all situations together and say that a victim of sexual assault is always free from fault. I believe in the concept of **assumption of risk** and believe it should be a part of this conversation.

I think we do responsible adults an injustice when we ignore this concept, especially here. Mostly sober men taking advantage of a party girl or drunk girlfriends taking advantage of a gentlemen boyfriend are not instances of sexual assault. But when a career woman is attacked by a colleague in a place she believed was safe, that is.

These instances should not be treated the same, in my humble opinion. And we would be wise parents to teach our children about the assumption of risk for the activities they

choose to engage in.