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Latin & Timken on Trupia v. Lake George Cent. School Dist., 2010 N.Y. LEXIS 344 (Apr. 6, 2010) and Assumption of Risk in N.Y.

By Hon Richard Latin and Nelson Timken

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SUMMARY: Civil Court Judge Richard G. Latin and Associate Court Attorney Nelson Timken discuss the state of assumption of risk doctrine in New York after the decision of the Court of Appeals in *Trupia v. Lake George Cent. School Dist., 2010 N.Y. LEXIS 344* (Apr. 6, 2010). Latin and Timken first review pre-Trupia rulings by the high court, then discuss splits between the appellate departments, and finally break down the Trupia decision.

ARTICLE: Introduction

The common-law doctrine of assumption of risk, which was an affirmative defense in a negligence action similar in effect to contributory negligence, has been expressly abolished in most comparative fault jurisdictions or merged into the doctrine of comparative fault. However, in New York, even following the passage of N.Y. C.P.L.R. § 1411 in 1975, the doctrine of assumption of risk has somehow survived and remained viable, principally in actions involving athletic activities and sporting or recreational pursuits.

In light of the holding of the New York Court of Appeals in *Trupia v. Lake George Cent. School Dist., 2010 N.Y. LEXIS 344, 2010 NY Slip Op 2833* (Apr. 6, 2010), practitioners should be aware that few if any non-sporting, non-recreational activities may qualify for the defense of assumption of risk.

The doctrine of assumption of risk is a precept often applied to sporting activities in order to nullify any liability on the part of the sponsoring entity on the grounds that the participant voluntarily engaged in a qualifying activity and knew and assumed the risks inherent in the particular activity, thereby vitiating the defendant's duty of care in connection that activity. The policy underlying the doctrine of primary assumption of risk is to encourage free and unbridled participation in athletic activities. Without the doctrine, the fear is that athletes may be reluctant to play aggressively for fear of being sued by an opposing player.

Prior High-Court Rulings on Assumption of Risk

The doctrine of assumption of the risk was resurrected by New York's Court of Appeals in several cases decided after N.Y. C.P.L.R. § 1411, the comparative negligence statute, was enacted.

Maddox v. New York, 66 N.Y.2d 270, 487 N.E.2d 553, 496 N.Y.S.2d 726 (1985) involved a professional baseball player who fell on a wet and muddy field during a professional baseball game and was injured. He brought an action against the city, baseball club, umpires, stadium owner, builder, and maintenance company. The court held that as a

professional baseball player, the plaintiff was aware of and assumed the risks of continuing to play on a field that was wet and muddy, whether or not he had foreseen the exact manner in which his injury occurred.

In *Turcotte v. Fell, 68 N.Y.2d 432,502 N.E.2d 964, 510 N.Y.S.2d 49 (1986),* a jockey whose horse clipped the heels of another horse during the eighth race at Belmont Park was denied recovery for his injuries. He was deemed to have accepted the risk of injuries that were known, apparent, or reasonably foreseeable consequences of his participation in the race, thereby relieving the defendants of any legal duty toward him. According to the Court of Appeals, primary assumption of risk is applicable to sporting events, in which the risks are freely and voluntarily assumed, to the extent that each party is free to participate in the event or not. In such cases, the defendant's duty is one of reasonable care to make the conditions as safe as they appear to be. A plaintiff is deemed to consent to those risks that are fully comprehended or obvious, thereby discharging a defendant of its duty of care. The Court of Appeals reasoned that assumption of the risk, while not an absolute defense, survived the enactment of the comparative fault statute because it is a measure of the defendant's duty of care, based upon the plaintiff's actual consent which is implied from the act of electing to participate in the activity.

The plaintiff in *Benitez v. New York City Bd. of Educ., 73 N.Y.2d 650, 541 N.E.2d 29, 543 N.Y.S.2d 29 (1989)* was a 19[#8209]year[#8209]old senior star athlete at George Washington High School when he suffered a broken neck resulting in paralysis during a varsity football game. The Court of Appeals held that the plaintiff, by participating in the football game, accepted the dangers inherent in the sport, just as a fencer accepts the risk of a foil thrust by his opponent, or a baseball spectator the risk of being struck by a batted ball. It rejected any duty on the part of the defendant Board of Education to supervise the plaintiff, a 19[#8209]year[#8209]old senior star football player and college scholarship prospect.

In *Morgan v. State, 90 N.Y.2d 471, 685 N.E.2d 202, 662 N.Y.S.2d 421 (1997),* a consolidated appeal of four separate cases brought against owners or operators of athletic facilities, the Court of Appeals drew an important distinction between inherent risks of activities that are assumed by injured participants as part of the activity, and those for which a distinctive, separate duty continues to be operative, which is not assumed by the participant. Thus, a claimant injured while driving a bobsled in a national championship race, a claimant injured while performing a tumbling technique over an obstacle at a karate school, and a claimant injured while performing a kick maneuver at a martial art training school were held to have assumed the risks inherent in those activities, and their cases were dismissed. However, a 60-year-old plaintiff who was injured when he snagged his foot in the hem of a torn net dividing indoor tennis courts, despite his prior knowledge that the net was ripped, was held not to have assumed the risk of the torn net. The Court of Appeals reasoned that a torn net, whose purpose is to prevent interference from bouncing balls or others players on adjacent courts, was not automatically a part of or sufficiently interwoven into the assumed inherent risk of the sport of tennis. Rather, it was more akin to an allegedly negligent condition arising during the ordinary course of any property's maintenance that implicates comparative negligence principles.

Finally, *Sykes v. County of Erie, 94 N.Y.2d 912,728 N.E.2d 973,707 N.Y.S.2d 374 (2000)* involved a plaintiff who was injured when he stepped into a recessed drain near the free-throw line while playing basketball on an outdoor court owned by the defendant. Because there was no evidence that the drain was defective or improperly maintained, the Court of Appeals held that the plaintiff assumed the risks inherent in playing basketball upon an irregular outdoor surface, particularly as the condition of the basketball court was open and obvious. A recent, similar holding occurred in *Trevett v. City of Little Falls, 6 N.Y.3d 884, 849 N.E.2d 961, 816 N.Y.S.2d 738 (2006),* in which plaintiff was injured while attempting a layup when he collided in midair with a pole supporting a basketball backboard and rim. In dismissing the case, the Court of Appeals held that the proximity of the pole to the court was open and obvious, and thus the risk of collision with the pole was inherent in playing on that court.

Conflicts in the Appellate Courts

Building upon these foundations, appellate courts in the First and Third Departments have liberally invoked these precepts in traditional sporting activities, holding that where activities were recreational in nature, a defendant's duty to the injured party was nullified by that party's voluntary participation in and knowledge of (and thereby assumption of) the risks inherent in the particular activity. Practitioners must be cautioned that appellate courts in the Second and Fourth Departments have expanded the doctrine to include situations in which the activities are neither athletic nor recreational.

A number of appellate cases have extended the Court of Appeals holding in *Sykes* in athletic contexts to include the condition of the playing surface or playing area, holding that, if the participant is injured as a result of a defect in, or feature of the field, court, track, or course upon which the sport is being played, the doctrine of assumption of risk bars

liability against the owner as long as the risk presented by the condition is inherent in the sport. For example, the doctrine was invoked in cases involving the following conditions:

- *hole in outdoor basketball court [Mendoza v. Village of Greenport, 52 A.D.3d 788* (2d Dep't 2008)]
- *hole in a surface of basketball court [Casey v. Garden City Park-New Hyde Park School Dist., 40 A.D.3d 901, 837 N.Y.S.2d 186* (2d Dep't 2007)]
- *an uneven, "very wavy" basketball court surface [Lincoln v. Canastota Cent. School Dist., 53 A.D.3d 851, 861 N.Y.S.2d 488* (3d Dep't 2008)]
- *crack in a sidewalk pavement [Yisrael v. City of New York, 38 A.D.3d 647, 832 N.Y.S.2d 598* (2d Dep't 2007)]
- *crack in a tennis court surface [Sammut v. City of New York, 37 A.D.3d 811, 830 N.Y.S.2d 779* (2d Dep't 2007)]
- *open and obvious wall behind out-of-bounds line in basketball court [Wilkes v. YMCA of Greater N.Y., 68 A.D.3d 542, 889 N.Y.S.2d 458* (1st Dep't 2009)]
- *raised manhole cover on soccer field [Manoly v. City of New York, 29 A.D.3d 649, 816 N.Y.S.2d 499* (2d Dep't 2006)]
- *cement strip running alongside a sideline of football field [Brown v. City of New York, 69 A.D.3d 893, 895 N.Y.S.2d 442* (2d Dep't 2010)]

However, the *Sykes* doctrine has *not* been applied to foreclose liability against cities and municipalities for the maintenance of paved public roadways, paved pathways in parks, and sidewalks because courts have been unwilling to hold, as a matter of law, that merely by choosing to operate a bicycle on a paved public roadway, or by engaging in some other form of leisure activity or exercise such as walking, jogging, or roller skating on a paved public roadway, a plaintiff consents to the negligent maintenance of such roadways by a municipality or a contractor. For example, in both *Vestal v. County of Suffolk, 7 A.D.3d 613, 776 N.Y.S.2d 491* (2d Dep't 2004) and *Cotty v. Town of Southampton, 64 A.D.3d 251, 880 N.Y.S.2d 656* (2d Dep't 2009), the Court held that riding a bicycle on a paved public roadway normally does not constitute a sporting activity for purposes of applying the primary assumption of risk doctrine, as opposed to mountain biking and other forms of off[#8209]road bicycle riding in which the irregular surface of an unimproved dirt[#8209]bike path is the attraction for dirt[#8209]bike riders. In these cases, the courts' concern is that expanding the doctrine of primary assumption of risk in situations involving paved thoroughfares could have the arbitrary effect of eliminating all duties owed to participants in such leisure or exercise activities, not only by the defendants responsible for road maintenance, but by operators of motor vehicles and other potential tortfeasors. *See also Moore v. City of New York, 29 A.D.3d 751, 816 N.Y.S.2d 131* (2d Dep't 2006) (plaintiff did not assume risk that his bicycle tire would fall through a gap between roadway and sewer grating); *Phillips v. County of Nassau, 50 A.D.3d 755, 856 N.Y.S.2d 172* (2d Dep't 2008) (bicyclist did not assume risk that his tire would hit a raised concrete mound on a county road); *James v. Newport Gardens, Inc., 70 A.D.3d 1002, 896 N.Y.S.2d 116* (2d Dep't 2010) (a ten-year-old plaintiff did not assume risk of crack in a sidewalk on a public street).

In *Farnham v. Meder, 45 A.D.3d 1315, 845 N.Y.S.2d 619* (4th Dep't 2007), the court considered the assumption of risk doctrine in a non-sporting, non-recreational context. In *Farnham*, the plaintiff was chasing the defendant's bull from his property, when the defendant's bull turned and knocked him to the ground, injuring him. The Fourth Department, acknowledging that it had extended the doctrine of assumption of risk to activities other than sporting, recreational, and entertainment activities, nonetheless concluded that the risk of injury in *Farnham* was not fully comprehended or perfectly obvious because the plaintiff had chased the bull from his property on other occasions and at no time had the bull ever acted in an aggressive manner toward the plaintiff, thereby affording the plaintiff no awareness that it would do so on this particular occasion. However, the practitioner must be cautioned that, in a recreational context, even the risk that a horse would bite a plaintiff in the shoulder while being prepared for the activity of horseback riding was held to have been a known danger, inherent in the activity, and assumed by the plaintiff, an experienced recreational horseback rider. *Tilson v. Russo, 30 A.D.3d 856, 818 N.Y.S.2d 311* (3d Dep't 2006). Thus, the defendant in *Tilson*, who neither concealed nor enhanced the danger, was held to owe no further duty of care to the plaintiff. *See also Dalton v. Adirondack Saddle Tours, Inc., 40 A.D.3d 1169, 836 N.Y.S.2d 303* (3d Dep't 2007) (risk that horse might suddenly break into a run is inherent in the activity of horseback riding).

Cases That Are Incorrectly Decided under the Reasoning in Trupia

In *Davis v. Kellenberg Mem'l High Sch., 284 A.D.2d 293, 725 N.Y.S.2d 588* (2d Dep't 2001), the plaintiff, a student at the defendant's school, was injured when he and some other students stood on top of a concrete bench, and began rocking it to amuse themselves, while waiting for his mother after school. He attempted to dismount the bench as it

was rocking, and it toppled over, catching his foot and landing on top of it. The Second Department held that the injured plaintiff assumed the risk of injury inherent in his horseplay.

Lamandia-Cochi v. Tulloch, 305 A.D.2d 1062, 759 N.Y.S.2d 411 (4th Dep't 2003) involved an infant plaintiff who fell while attempting to slide down a wooden handrail adjacent to porch steps of the defendant's residence. The court held that in attempting to slide down the handrail, the child was aware of and voluntarily assumed the risks inherent in the activity, including that the handrail might bend or shift beneath him.

Sy v. Kopet, 18 A.D.3d 463, 795 N.Y.S.2d 75 (2d Dep't 2005) involved a plaintiff whose door had been padlocked by the landlord because he was late with his rent. Plaintiff attempted to gain re-entry to his room in the defendant's boarding house by entering a second-floor window. Dismissing his injury lawsuit, the court held that the plaintiff had assumed the risk of injury by attempting to enter his room through the second story window by climbing window-guard rails and a gutter on the house. Likewise, in *Belloro v. Chicoma, 8 A.D.3d 598, 599, 779 N.Y.S.2d 231* (2d Dep't 2004) the plaintiff assumed risk of injury in attempting to enter his room through second story window by climbing a ladder that was placed on top of another ladder. Similarly, in *Shaw v. Lieb, 40 A.D.3d 740, 836 N.Y.S.2d 213* (2d Dep't 2007), the plaintiff was held to have assumed the risk of injury when he chose to ride on a vehicle while standing on its rear bumper.

The Third Department Decision in *Trupia*

The case which is the focus of this commentary was first addressed on appeal by the Third Department in *Trupia v. Lake George Cent. School Dist., 62 A.D.3d 67, 875 N.Y.S.2d 298* (3d Dep't 2009). Anthony Trupia, not yet twelve years old, was injured while participating in a summer school program. During a break between classes he attempted to slide down the banister of a stairway, and fell to the bottom of the stairwell, sustaining serious injuries. The defendants moved to amend their answer to interpose the defense of assumption of risk. The lower court permitted the amendment and the plaintiff appealed. Acknowledging that the Second and Fourth Departments had expanded the application of the doctrine beyond sporting and recreational activities, the Third Department, without any discussion of the plaintiff's theory of negligent supervision whatsoever, held that it would decline to apply the doctrine in this case because to do so would be to sanction reversion to the former doctrine of contributory negligence, wherein any recovery is barred. Thus, the Third Department in *Trupia* rejected the applicability of the doctrine, reversing the lower court, and denying the defendants' motion to amend its answer.

The Court of Appeals Holding in *Trupia*

The Court of Appeals entertained the appeal presumably in order to provide guidance and direction in light of differing opinions among the appellate divisions. Upon review by the Court of Appeals, Chief Judge Lippman, writing for the court, noted initially that the plaintiff's complaint sought recovery principally upon a theory of negligent supervision. That single statement set the tone for the balance of the decision in which the Court of Appeals affirmed the Third Department's decision, but on entirely distinct legal grounds. Judge Lippman noted the inconsistencies between the First and Third Departments, which generally invoked the doctrine of assumption of risk only in athletic and recreational activities, and the Second and Fourth Departments, which adopted a more expansive application of the doctrine. Tracing the history of the precept of assumption of the risk, and its survival as a bar to recovery in light of the passage of N.Y. C.P.L.R. § 1411, the comparative fault statute, the Court of Appeals concluded that the doctrine logically could not coexist in the wake of comparative causation. In reality, it is a rebirth of the supplanted contributory negligence theory justified by the societal value in facilitating aggressive and vigorous participation in athletic activities.

Practitioners should note the Court of Appeal's statement that it had not applied the doctrine of assumption of risk outside of the context of athletic activities, and its pronouncement that the doctrine's application should be closely circumscribed in order not to seriously undermine and displace the principles of comparative causation. Query whether this statement, which could have sweeping consequences, is *dicta*, or whether the Court actually intended to strictly limit the doctrine of assumption of risk to activities that can be deemed to be of social value, such as athletic activities, and other similarly beneficial pursuits.

In addition, Judge Lippman noted that application of the doctrine of assumption of the risk in a context where there is a concurrent obligation of an educational institution to supervise children would have unfortunate consequences. The reasoning behind such a rule is that a child, lacking the mature judgment to foresee consequences of his or her actions cannot validly be deemed to have voluntarily consented to the risk of those consequences. Even if the child can validly be charged with some culpable conduct or complicity in connection with the activity, the concept of comparative fault would more logically synthesize a just result than the invocation of the assumption of risk doctrine. While children

can, in an appropriate case, be held to have assumed the risk of injury in activities such as athletics, in which they voluntarily engage, both in and out of school, where adults are concerned, the use of the doctrine should be reserved for pursuits that are both unusually risky and beneficial that the defendant has in some non-culpable way enabled.

In *Trupia*, Judge Lippman takes the opportunity to explain the application of assumption of risk since the enactment of N.Y. C.P.L.R. § 1411, which abolished contributory negligence and assumption of risk as absolute defenses in personal injury cases. The court acknowledges and explains that the doctrine has survived as a bar to recovery based upon theory that by freely assuming a known risk, a plaintiff negates any duty on the part of the defendant to protect the plaintiff from the known risk. Judge Lippman reminds us that the Court of Appeals has not applied the doctrine of assumption of risk outside the limited context of athletic and recreational activities. Yet he acknowledges that the Second and Fourth Departments have expanded and permitted a broader use of the doctrine. He uses the *Trupia* case as a vehicle to explain how assumption of risk should be applied.

The courts all acknowledge that the application of assumption of risk must be limited if comparative fault is to remain the law of the land. Allowing its broad application weakens the comparative law rules and permits the culpable conduct of the defendant to be eliminated from the equation of complete fault. In *Trupia*, Judge Lippman explains (as he did before, in his majority decision in *Roberts v. Boys and Girls Republic, 51 A.D.3d 246, 850 N.Y.S.2d 38 (1st Dept. 2008))* that sports activities have great societal benefits and must be permitted to encourage vigorous competition in sports and recreation.

In *Roberts,* the court espouses what it calls primary assumption of risk for sports. *Trupia* does not mention primary assumption of risk but does again explain that sports and recreation are special and provide benefits to society. The benefits require the courts, on policy grounds, to shield defendants from liability based on foreseeable injuries. If the risks of the activity are fully comprehended or perfectly obvious, the plaintiff has consented to them and the defendant owes no further duty. Furthermore, athletes and sports enthusiasts need to be encouraged to give their best performance without having to be worried about being sued by someone they may injure during an event.

In *Trupia*, Judge Smith writes the concurring opinion joined by Judges Read and Pigott, who take a different direction to reach the result. Judge Smith views the case simply. No child can consent to negligent supervision, therefore, assumption of risk does not apply in this case. In fact, the concurring opinion says that the majority acknowledges this principle and therefore the remainder of the majority decision is merely dicta. The concurring opinion is very clear on what the assumption of risk is not; however, the opinion declines to define what assumption of risk is. Judge Smith notes that the assumption of risk doctrine in tort law is hard to understand. Presumably, Judge Smith's difficulty originates from the fact that the legislature has abolished the doctrine of assumption of risk as an absolute bar. Judge Smith goes on to criticize the majority for making sweeping pronouncements in a case that did not need them, especially since the majority does not answer the questions that they have raised.

The concurring Judges want to know exactly what athletic or recreational activities are and why participants in these activities (which are encouraged by society) are penalized by the application of assumption of risk, while participants in horseplay (which is not valued by society) receive a benefit that allows participants to sue. To answer this question, read the *Trupia* decision alongside *Roberts v. Boys & Girls Republic, Inc., 51 A.D.3d 246, 850 N.Y.S.2d 38* (1st Dep't 2008), which is not cited in either the majority or dissenting *Trupia* decision. Judge Lippman, who wrote for the majority in *Trupia*, has at least once before addressed the doctrine of assumption of risk. When he wrote for the majority as an appellate division justice in *Roberts*, he also referred to the benefits that sports and recreational activity has for society. Judge Lippman wrote in *Roberts* that one assumes commonly appreciated risks that are inherent in and arise out of the nature of the activity and flow from such participation.

The plaintiff in *Robert*s, who was watching her son practice at a baseball field, was struck by a bat being swung in a warm-up area adjacent to the bleachers by an "on-deck" batter when she traversed the area. The majority and dissenting opinions in *Roberts* differed in their interpretation of the operative facts of the case, particularly in the logistics and demarcation or lack of marking of the *de facto* warmup area. The majority held that the danger associated with people swinging bats on the sideline while warming up for the game is inherent in the game of baseball, and one which the plaintiff assumed. Furthermore, the location of the injury and the plaintiff's right to be at that location did not negate the plaintiff's assumption of the risks inherent with the activity. The majority also rejected the dissent's suggestion that the improvised on-deck area posed a unique or enhanced risk because it was immediately adjacent to the field, open and obvious to any spectator or bystander. The dissent in *Roberts* believed that the fact that the location of the on-deck circle was in an unofficially designated area meant the risk was not to be perceived. This argument misses the point. The holding in *Roberts* is essentially that people at baseball games assume the risk of being hit by a bat if they get to close.

The proximity to the field is unimportant. Presumably, if you got hit by a home run ball in the parking lot at the game, that is a risk you would have assumed as well. Justice Lippman explained that the primary assumption of risk doctrine is based upon the policy that sports have many societal benefits and must be permitted to exist despite the risks inherent in the activity. Therefore, a certain level of risk that may not provide optimal safety to the participants must be tolerated.

In addition to all the other benefits of sports and recreation, each sport has its own rules and its own inherent risks. This other benefit is discussed in *Roberts* and implied in *Trupia*. Judge Lippman wrote in *Roberts* that one assumes commonly appreciated risks that are inherent in and arise out of the nature of the activity and flow from such participation.

Whether a baseball game is played in New York, California, or Japan, the risks for the players or the fans are well known. Spectators at a game know that they can be hit by a ball or broken bat. Football players know the risks of being hit by other athletes and fans know someone could make a diving catch and fall on top of them if they are too close to the field. At the Indy 500, spectators as well as racers know that cars can hit the wall and burst into flames. Those risks are known, easily perceived and not of the type that a defendant would be responsible for guarding against. Obviously one would not assume the risk of a piece of concrete falling from the stadium's structure or other risks not associated with the game.

The running of the bulls is a perfect example of how and why the principle should be viewed and applied. The running of the bulls is an event that involves running in front of six bulls that have been let loose on a course of a sectioned[#8209]off subset of a town's streets. The purpose of this event is to transport the bulls from the off[#8209]site corrals to the bullring. People jump among them to show off their bravado. Surely, the sponsors of this event do not owe a duty to the people who jump in with the bulls to prevent them from being gored or trampled.

As for applying a special rule to horseplay, the question is really whether a person assumes all the risk for every stupid thing they do. Surely the Legislature and the courts did not intend that people should assume all the risk for every stupid thing they do that leads to an injury. It is not that the person engaged in the horseplay or the ill-advised activity is getting a benefit; it is that the risk is not generally known or easily perceived. That being the case, the defendant should not be released from culpable conduct, and the general principles of comparative fault should be applied as per N.Y. C.P.L.R. § 1411.

The Court of Appeals has spoken, albeit in *dicta*, and assumption of risk should only be applied when participants, competitors and spectators are injured as result of a risk that is generally associated with that activity.

Conclusion

In the aftermath of *Trupia*, the lines of demarcation in the tumultuous coexistence between the comparative fault statute and the doctrine of assumption of risk have become better defined. The lesson here for the practitioner is that comparative law principles will be applied in most cases.

Certainly, a literal reading of the *Trupia* decision's more sweeping semantics would compel the conclusion that the Court of Appeals intends to use the doctrine when activities that it considers athletic and recreational and that possess social value need protection, even though they involve significantly heightened risks. The continuing discussion and application of the assumption of risk doctrine create confusion for the bench and bar. The courts should consider abolishing the doctrine of assumption of risk. The legislature buried it and it should not have been resurrected. The legal arguments for exempting it from comparative negligence are artificial and not compelling. The doctrine of assumption of risk should be replaced with "the no duty rule," specifying that in sports and recreational activities there simply is no duty owed for perceived and ordinary risks. Accordingly, recovery is precluded in those cases.

RELATED LINKS: Cross-References:

- Warren's Negligence in the New York Courts Chs. 80, 101, 145 (sports participants; spectators; recreational facilities);
- New York Practice Guide: Negligence " 27.01[8][e] (ballfields);
- Premises Liability: Law and Practice Ch. 5 (recreational premises liability);
- 1-3 LexisNexis AnswerGuide New York Negligence " 3.07 Analyzing Duty Owed to Participants in Sporting Activities);
- 1-5 LexisNexis AnswerGuide New York Negligence " 5.24 (Considering Culpable Conduct, Comparative Fault, and Assumption of Risk);

- 1-3 LexisNexis AnswerGuide New York Negligence " 3.15 (Checklist for Anticipating Applicable Defenses in Premises Liability Cases);
- 1-3 LexisNexis AnswerGuide New York Negligence " 3.17 (Raising Defense of Plaintiff's Fault);
- 1-2 LexisNexis AnswerGuide New York Negligence " 2.05 (Checklist for Evaluating Motor Vehicle cases)

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