TORT LAW — SPORTS TORTS — CALIFORNIA SUPREME COURT EXTENDS ASSUMPTION OF RISK TO NONCONTACT SPORTS. — *Shin v. Ahn*, 165 P.3d 581 (Cal. 2007).

Participation in recreational sports almost always entails some degree of risky behavior.[1] Given the array of dangers that confront participants in many sports, it is not surprising that courts have felt the need to adapt traditional tort principles to suit the demands of competitive athletic activities.[2] In recent decades, California has been a focal point of this evolving doctrine, beginning with the landmark case of *Knight v. Jewett*,[3] in which the state supreme court held that participants in contact sports breach duties of care only if they act with recklessness that exceeds the bounds of ordinary conduct in those sports.[4] Since the early 1990s, California courts[5] have struggled with the appropriate extension of *Knight*'s rule to other sports.[6] Recently, in *Shin v. Ahn*,[7] the California Supreme Court elaborated on the state's developing paradigm, applying it to golf — and by implication to other noncontact sports — and reaffirming that liability attaches only to those defendants whose actions are "so reckless as to be totally outside the range" of normal participation in individual sports.[8] Although the court's holding reflected a fair application of *Knight* and its progeny, the majority's reasoning underscored key flaws in the *Knight*

---

[1] *See, e.g.*, RAYMOND L. YASSER, TORTS AND SPORTS: LEGAL LIABILITY IN PROFESSIONAL AND AMATEUR ATHLETICS 28 (1985) ("[O]ne thing that makes sports a special and unique form of human experience [may be that] participants are free to be unreasonable."); *see also* Bill Pennington, *Baby Boomers Stay Active, and So Do Their Doctors*, N.Y. TIMES, Apr. 16, 2006, § 8, at 1 (referencing 2003 study indicating sports injuries are the second most common impetus for Americans' visits to a doctor's office, trailing only the common cold).

[2] For a recent survey of prevailing sport participant tort standards in individual states, see Matthew G. Cole, Note, *No Blood No Foul: The Standard of Care in Texas Owed by Participants to One Another in Athletic Contests*, 59 BAYLOR L. REV. 435, 443–56 (2007). *See also* Keya Denner, Comment, *Taking One for the Team: The Role of Assumption of the Risk in Sports Torts Cases*, 14 SETON HALL J. SPORTS & ENT. L. 209 (2004). The basic legal principles that inform these issues can be traced to antiquity. *See, e.g.*, ELLIOT N. DORFF & ARTHUR ROSETT, A LIVING TREE: THE ROOTS AND GROWTH OF JEWISH LAW 324–26 (1988) (discussing fourteenth-century rabbinic responsum, which applied similar reasoning to a request for damages stemming from a wrestling accident, based on Talmudic principles).

[3] 834 P.2d 696 (Cal. 1992).

[4] *Id.* at 711.

[5] Numerous other states apply similar assumption of risk standards to sports torts. *See, e.g.*, Gauvin v. Clark, 537 N.E.2d 94 (Mass. 1989); Ross v. Clouser, 637 S.W.2d 11 (Mo. 1982) (en banc); Schick v. Ferolito, 767 A.2d 962 (N.J. 2001). *See generally* Cole, *supra* note 2, at 443–56.

[6] *See* Denise M. Yerger, Note, *High-Risk Recreation: The Thrill That Creates a Statutory and Judicial Spectrum of Response and Drives the Dichotomy in Participant and Provider Liability*, 38 SUFFOLK U. L. REV. 687, 693–97 (2005) (surveying California's post-*Knight* approach to sports torts).

[7] 165 P.3d 581 (Cal. 2007).

[8] *See id.* at 583 (quoting *Knight*, 834 P.2d at 711 (plurality opinion)).

rule, highlighting the tensions implicit in sport-specific liability determinations, the doctrine's confused consideration of tort incentives, and its deleterious impact on judicial efficiency.

In August 2003, Jack Ahn and Johnny Shin were grouped together for a round of golf at Rancho Park Golf Course in Los Angeles.[9] As Ahn teed off on the thirteenth hole, he hit a ball that veered left, striking Shin in the head.[10] Shin filed suit for negligence, and Ahn moved for summary judgment, claiming that Shin's negligence claim was barred by the assumption of risk doctrine.[11]

After initially granting Ahn's motion, the trial judge reversed himself and ordered a new trial to determine whether Ahn had "increased the inherent risk" in the sport.[12] On appeal of the order granting a new trial, the California Court of Appeal held by a vote of two to one that Ahn had breached his "duty . . . to ascertain Shin's whereabouts before teeing off" and ordered a new trial to apportion fault between Ahn and Shin.[13] In so doing, the court resisted broad application of the *Knight* doctrine, concluding that Ahn's failure to verify Shin's location before swinging was not negated by Shin's decision to play golf, because it was "not an inherent part of the sport and involved an increase in golf's inherent risks."[14]

The California Supreme Court affirmed and remanded with directions. Writing for the majority, Justice Corrigan[15] framed the decision as "the next generation" of the court's jurisprudence following *Knight v. Jewett*.[16] She proceeded to outline the reasoning in *Knight*, noting the court's desire to avoid deterring enthusiastic participation in con-

---

[9] Shin v. Ahn, 46 Cal. Rptr. 3d 271, 275 (Ct. App. 2006).

[10] *Id.* at 275–76.

[11] *Id.*

[12] *Id.* at 276–77.

[13] *Id.* at 286.

[14] *Id.* at 285. Writing for the panel, Judge Doi Todd distinguished the decision from two previous Court of Appeal cases that had applied the *Knight* doctrine to golf, noting that Shin had been struck by a ball hit by a member of his own group, as opposed to "an errant ball from another fairway." *Id.* at 283; *see also* Am. Golf Corp. v. Superior Court, 93 Cal. Rptr. 2d 683, 689 (Ct. App. 2000) ("Golf is an active sport to which the assumption of the risk doctrine applies."); Dilger v. Moyles, 63 Cal. Rptr. 2d 591, 593 (Ct. App. 1997) ("While golf may not be as physically demanding as other more strenuous sports such as basketball or football, risk is nonetheless inherent in the sport."). The Court of Appeal's application of *Knight* in *American Golf Corp.* occasioned criticism of that doctrine's "uneven interpretation." *See* Nicholas J. Cochran, Recent Development, *Fore!* American Golf Corporation v. Superior Court*: The Continued Uneven Application of California's Flawed Doctrine of Assumption of Risk*, 29 W. ST. U. L. REV. 125, 126, 146 (2001) (critiquing the *Knight* framework and suggesting that "[p]erhaps it really is time to consider abolishing the doctrine").

[15] Justice Corrigan was joined by Chief Justice George and Justices Baxter, Werdegar, Chin, and Moreno.

[16] *See Shin*, 165 P.3d at 582. *Knight* had served as the leading case for sport participant tort jurisprudence in California since the decision was handed down in 1992. *See, e.g.*, Cheong v. Antablin, 946 P.2d 817, 820 (Cal. 1997) (affirming "*Knight*'s lead opinion as the controlling law").

tact sports by imposing liability for "ordinary careless conduct."[17] Justice Corrigan explained that concern for such a "chilling effect"[18] prompted the court to affirm in *Knight* and its progeny that participants in sports assumed the risk of any conduct except that which was "so reckless as to be totally outside the range of the ordinary activity involved in the sport."[19]

After detailing the court's application of the *Knight* standard to various other sports — including skiing,[20] swimming,[21] and baseball[22] — Justice Corrigan reviewed lower court analyses of *Knight* in the context of golf.[23] Justice Corrigan then rejected the Court of Appeal's assertion below that golf injury claims were not subject to primary assumption of risk principles, observing that the lower court had drawn an artificial distinction "among defendants based on whether they are members of the plaintiff's playing group."[24] She further buttressed the majority's conclusion by detailing other states' decisions to limit liability for golf-related injuries to instances of "reckless disregard or intentional conduct."[25]

Justice Corrigan concluded by formally extending the *Knight* doctrine of primary assumption of risk to golf — and by implication other noncontact sports[26] — and holding that Ahn was not liable for Shin's injury unless he had acted recklessly.[27] Accordingly, Justice Corrigan affirmed the trial court's denial of summary judgment, agreeing that material questions of fact remained as to whether Ahn had so behaved.[28] She cautioned the ultimate trier of fact, however, to remem-

---

[17] *Shin*, 165 P.3d at 585.

[18] *Id.*

[19] *Id.* (quoting Knight v. Jewett, 834 P.2d 696, 711 (Cal. 1992) (plurality opinion) (internal quotation marks omitted)).

[20] *See id.* at 586 (citing *Cheong*, 946 P.2d 817).

[21] *See id.* (citing Kahn v. E. Side Union High Sch. Dist., 75 P.3d 30 (Cal. 2003)).

[22] *See id.* (citing Avila v. Citrus Cmty. Coll. Dist., 131 P.3d 383 (Cal. 2006)).

[23] *See id.* at 586–87. The majority's survey of lower court approaches to golf torts included a lengthy quotation from the Court of Appeal in *Dilger v. Moyles*, 63 Cal. Rptr. 2d 591 (Ct. App. 1997), extolling the verdant pleasures of golf courses. *See Shin*, 165 P.3d at 587 ("The physical exercise in the fresh air with the smell of the pines and eucalyptus renews the spirit and refreshes the body." (quoting *Dilger*, 63 Cal. Rptr. 2d at 593)).

[24] *Id.* at 588.

[25] *See id.* at 588–90 (citations omitted). For an approving reflection on the early application of the reckless disregard standard to competitive sports in general, see Mel Narol, *Sports Participation with Limited Litigation: The Emerging Reckless Disregard Standard*, 1 SETON HALL J. SPORT L. 29 (1991).

[26] The *Knight* plurality had left the applicability of primary assumption of risk to noncontact sports an open question, explaining that since *Knight* involved a game of touch football, "we have no occasion to decide whether a comparable limited duty of care appropriately should be applied to other less active sports, such as archery or golf." Knight v. Jewett, 834 P.2d 696, 711 n.7 (Cal. 1992) (plurality opinion).

[27] *See Shin*, 165 P.3d at 590–91.

[28] *See id.* at 592.

ber that a golfer need not break her concentration by checking the field after lining up a shot, nor must she "conduct a head count of the other players in the group."[29] Justice Corrigan also clarified that the absence of a breach of duty on Ahn's part would preclude any consideration of comparative fault.[30]

Justice Kennard concurred in the majority's decision to affirm the denial of summary judgment, but dissented from the majority's reasoning. Reiterating her longstanding objection to the *Knight* doctrine, Justice Kennard averred that discerning what risks inhere in a given sport is an "amorphous and fact-intensive" exercise, which is the appropriate province of a civil jury.[31] Accordingly, she took issue with the majority's continued subscription to *Knight*'s framework, "whether applied to an 'active' sport such as touch football or a 'less active' one such as golf."[32] Warning that the court's distortion of ordinary negligence principles "t[ore] at the fabric of tort law,"[33] Justice Kennard concluded that Ahn's liability would be best determined by jurors' application of traditional tort principles of negligence, assumption of risk, and comparative fault.[34]

On its face, the *Shin* majority's extension of principles of *Knight* to the realm of noncontact sports offers useful guidance to lower courts concerning the breadth of California's limitation on sport participant liability. However, the court's application of *Knight*'s artificial and imprecise categorization of sports, coupled with its myopic measure of the impact of assumption of risk doctrine on sports participation, highlighted lurking tensions in California's sports torts doctrine. In light of the ambiguity, inefficiencies, and shortsightedness that continue to encumber the standard, California lawmakers would be well advised to codify the dissent's commonsense approach, which allows juries to consider sports-related injuries in the context of traditional negligence.

When the Supreme Court of California first articulated the *Knight* standard, the decision was touted as a bright line rule that brought much-needed clarity to the murky landscape of sports torts.[35] Yet,

---

[29] *Id.*

[30] *Id.* at 591.

[31] *Id.* at 592–93 (Kennard, J., concurring and dissenting).

[32] *Id.* at 593.

[33] *Id.* (quoting Cheong v. Antablin, 946 P.2d 817, 825 (Cal. 1997) (Kennard, J., concurring) (internal quotation marks omitted)).

[34] *See id.* For a fuller articulation of Justice Kennard's opposition to the *Knight* doctrine, see Knight v. Jewett, 834 P.2d 696, 714 (Cal. 1992) (Kennard, J., dissenting) ("Although I agree that in organized sports contests played under well-established rules participants have no duty to avoid the very conduct that constitutes the sport, I cannot accept the plurality's nearly boundless expansion of this general principle to eliminate altogether the 'reasonable person' standard as the measure of duty actually owed between sports participants.").

[35] *See, e.g.*, John Bianco, Comment, *The Dawn of a New Standard?: Assumption of Risk Doctrine in a Post-*Knight *California*, 15 WHITTIER L. REV. 1155, 1191 (1994) ("[T]he [*Knight*] court

from its outset, the *Knight* plurality's holding was marred by its strange decision to distinguish between "active" and "less active" sports,[36] a formulation that the court in *Shin* recast as "contact" versus "noncontact"[37] athletic activities. Regardless of phrasing, this distinction falters upon even rudimentary application. For instance cycling, a sport that involves no intentional contact, would seem to defy easy classification under the *Knight* framework.[38] Similarly, participants in such inherently perilous, but noncontact, athletic activities as canyoning[39] seem far more likely to have assumed the injurious risks of their activities than, for example, participants in recreational softball games.[40] More immediately, golf itself has proven prone to alternative classifications under the *Knight* framework.[41] Thus, although *Shin* suggests that the significance of the contact distinction may be diminishing, the majority's adoption of *Knight* with respect to only some sports along an arbitrary line remains troubling.

Perhaps inevitably, the ambiguity implicit in the *Knight* decision as to the appropriate classification of individual sports resulted in a series of sport-by-sport assumption of risk determinations by California courts.[42] Far from discouraging lower court consideration of sport-

clarified the doctrinal confusion associated with assumption of risk, and created a bright line rule regarding what areas of assumption of risk survived the adoption of comparative fault.").

[36] *See Knight*, 834 P.2d at 711 n.7 (plurality opinion).

[37] *See Shin*, 165 P.3d at 582–83.

[38] In assessing liability for cycling harms, courts have applied *Knight* without explicit consideration of whether or why the activity qualifies as an "active" sport. *See, e.g.*, Moser v. Ratinoff, 130 Cal. Rptr. 2d 198 (Ct. App. 2003).

[39] *See* Christopher S. Wren, *A Sport Called Extreme, with Reason*, N.Y. TIMES, July 29, 1999, at A8 (discussing the dangers inherent in "canyoning," which "involves roping down into a river gorge, then riding the fast whitewater by swimming, sliding or jumping from rock to rock to the eventual safety of dry land").

[40] Appropriate classification of individual sports as "active" or "less active" is further complicated by the array of variations on even the most venerable of sporting activities. Consider, for instance, the difficulties inherent in effectively grouping such popular permutations of traditional sports as whiffle ball, flag football, or speed golf. This is to say nothing of the doctrine's potentially problematic application to an ever-expanding array of amateur competitive "sports." *See, e.g.*, Steve Friess, *Rock, Scissors, Pay-Per-View?*, N.Y. TIMES, May 14, 2007, at A14 (describing how "a game best remembered as the way children decide who gets the last Twinkie has matured into a real competition with [mainstream television coverage and] a $50,000 first prize").

[41] *Compare Shin*, 165 P.3d 581, *with* Louis J. DeVoto, *Injury on the Golf Course: Regardless of Your Handicap, Escaping Liability is Par for the Course*, 24 U. TOL. L. REV. 859, 880 (1993) (asserting that golfers cannot reasonably be expected to assume risks of serious injury), *and* Daniel E. Lazaroff, *Golfers' Tort Liability — A Critique of an Emerging Standard*, 24 HASTINGS COMM. & ENT. L.J. 317, 318 (2002) (averring that golf should be an exception to sports-related assumption of risk doctrine).

[42] *See, e.g.*, *Moser*, 130 Cal. Rptr. 2d at 204 (chronicling California courts' application of *Knight* to a wide range of sports, including skiing, touch football, college baseball, off-roading, skateboarding, lifeguard training, tubing behind a motorboat, wrestling, cheerleading, little league baseball, cattle roundup, sport fishing, ice skating, football practice, judo, rock climbing, river rafting, and sailing). See Lazaroff, *supra* note 41, for an intriguing defense of such sport-by-sport

specific assumption of risk issues, the *Shin* court seemed to consider it par for the course, noting with apparent approval that lower courts have "grappled" with the application of primary assumption of risk to golf[43] and suggesting that the "next generation" of *Knight* jurisprudence would involve similar struggles in other contexts.[44] The fact that such diverse and fact-specific determinations invite confusion apparently escaped the court's attention. So too, the majority proved undaunted by the prospect of allowing appellate courts to make situation-specific determinations at considerable remove[45] from the community standards that shape participation in recreational sports.[46]

As Justice Kennard asserted in her dissent,[47] an additional problem with the *Knight* test rests in the "amorphous and fact-intensive" inquiry necessary to determine what conduct is "inherent" to a particular sport.[48] The court's remanding of *Shin* illustrates that this inquiry is by no means complete once a court has determined whether the sport at issue falls under the ever-expanding umbrella of *Knight*. Even the *Shin* majority recognized that a jury would have to undertake a "more complete examination of the facts" before assessing liability in *Shin*.[49] Despite the *Knight* plurality's expectation that assumption of risk determinations would prove "much more amenable to resolution by summary judgment"[50] than alternatives, the amount of judicial resources consumed in evaluating the comparatively simple circumstance presented by *Shin* suggests that laborious, situation-specific determinations as to whether defendants acted "recklessly" are virtually inescapable.[51]

---

determinations. Professor Lazaroff cites golf as a prime example of a sport meriting *exemption* from assumption of risk analysis, since "golfers do not improve their play . . . by acting with disregard for the well-being of others." *Id.* at 318.

43 *See Shin*, 165 P.3d at 586.

44 *See id.* at 582.

45 *See, e.g.*, Paul H. Robinson, *Legality and Discretion in the Distribution of Criminal Sanctions*, 25 HARV. J. ON LEGIS. 393, 416–17 (1988) ("[A] judge is less likely than a jury to render a normative judgment that reflects the shared community sense on an issue.").

46 For reflection on sports and community development, see ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 109–15 (2000).

47 For extended evaluation of Justice Kennard's often outspoken contributions to California jurisprudence, see Jeremy Speich, *Joyce L. Kennard: An Independent Streak on California's Highest Court*, 65 ALB. L. REV. 1181 (2002).

48 *Shin*, 165 P.3d at 593 (Kennard, J., concurring and dissenting) (quoting Avila v. Citrus Cmty. Coll. Dist., 131 P.3d 383, 397 (Cal. 2006) (Kennard, J., concurring and dissenting)).

49 *Id.* at 592.

50 Knight v. Jewett, 834 P.2d 696, 706 (Cal. 1992) (plurality opinion).

51 *See, e.g.*, *Shin*, 165 P.3d at 592 (discussing material questions of fact to be adjudicated on remand). Inasmuch as such assessments appear unavoidable, the flexibility inherent in individualized applications of the traditional negligence standard would seem particularly well suited to their just resolution. *See* Kathleen M. Sullivan, *The Supreme Court, 1991 Term—Foreword: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 59 (1992) ("Standards allow the decisionmaker to take into account all relevant factors or the totality of the circumstances.").

In light of the inevitability of such analyses, determining what risks inhere in fact-specific variations on a vast array of popular sports represents an additional strain on judicial economy. Eliminating this step in sports suits would concededly risk expanding the pool of such litigation likely to survive summary judgment. However, this effect would be mitigated by the consolidation of assessment of liability into a single inquiry, guided by the same negligence standard applied in other torts cases, and the shifting of primary responsibility for applying this standard in an athletic context to the sensibilities of jurors.[52] In short, both the nuanced judgments required for courts to determine sports' inherent risks, and the advantages presented by a simplified alternative, suggest that the *Knight* regime does not offer meaningful efficiency benefits over a traditional negligence approach.[53]

The *Shin* court's expansion of the *Knight* standard also highlighted the regime's distorted interpretation of judicial incentives. In seeking to avoid "chilling" participation in competitive sports, the majority echoed *Knight*, honing in on the impact of judicial incentives on potential defendants in tort suits.[54] Accordingly, the court was careful to avoid imposing too great a duty of care on Ahn, lest his liability for Shin's injuries preclude other golfers' vigorous participation in the sport.[55] Yet, in protecting sports-related injurers, *Shin* exposed sport injury victims to the risk of bearing the full cost of harms inflicted on them by nonreckless fellow participants. Although some recreational athletes may be emboldened by the tort protections they enjoy, others might shy away from vigorous participation in sports, out of fear of absorbing the burden of nonremediable, nonreckless injuries.[56] Thus, it is unclear whether California's assumption of risk standard is more

---

[52] *See* Note, *Reasonable Doubt: An Argument Against Definition*, 108 HARV. L. REV. 1955, 1972 (1995) (referencing the "common sense, or community judgment, for which juries are prized"); *see also* Robinson, *supra* note 45, at 416–17.

[53] Of course, under either approach, juries are still bound to make difficult comparative fault determinations once they have decided that a duty has been breached. *See Shin*, 165 P.3d at 591.

[54] *See id.* at 585.

[55] *See id.* at 590.

[56] This assumes that recreational athletes are attentive to controlling legal standards. For opposing viewpoints on participant liability's deterrent effect on vigorous engagement in sports, compare Mark M. Rembish, Casenote, *Liability for Personal Injuries Sustained in Sporting Events After* Jaworski v. Kiernan, 18 QUINNIPIAC L. REV. 307, 340 (1998) ("[A]llowing players to commit negligent acts and violate safety rules will chill both coed competitiveness and coed participation, depriving participants of the casual fun and enjoyment for which they joined the league in the first place."), with Cameron Jay Rains, Note, *Sports Violence: A Matter of Societal Concern*, 55 NOTRE DAME LAW. 796, 800 (1980) ("[A]pplication of a strict negligence standard to team contact sports would not only deter sports violence but participation in sports as well."). *See also* Stephen D. Sugarman, *Rethinking Tort Doctrine: Visions of a Restatement (Fourth) of Torts*, 50 UCLA L. REV. 585, 614–15 (2002) (expressing "substantial doubts about the correctness of the predicted [chilling effect of] imposing liability on carelessly dangerous recreational activity").

effective at avoiding the chilling effect that so concerned the majority than would the application of traditional negligence principles.

Finally, the *Shin* court's approach ignored the degree to which the reciprocal nature of sports-related risk taking lends itself to analysis under an ordinary negligence model.[57] In the course of participation in competitive sports, "each participant contributes as much to the community of risk as he suffers from exposure to other participants."[58] By joining Ahn in their ill-fated outing, Shin not only assumed the risk that Ahn might injure him, but he also assumed the risk that he would himself injure a fellow participant. Under traditional theories of tort law, liability attaches to any harms resulting from activity "that unduly exceeds the bounds of reciprocity."[59] In other words, negligence standards are designed to deter precisely the sort of norm-defying behavior that the *Shin* majority's standard sought to prevent: dangerous actions to which plaintiffs have not consented.[60] Moreover, that such standards avoid shielding all nonreckless actors from the consequences of nonreciprocal risk creation allows for shifting the burden of some sports-related injuries from unwitting victims of accidents to those nonreckless defendants who might still have been in the best position to avoid inflicting harms.[61]

Although the *Shin* majority fairly applied assumption of risk doctrine as articulated in *Knight*, the court's professed "next generation" of *Knight* jurisprudence drove California sports torts standards further into the rough by deepening their fundamental tensions. Commentators have proposed myriad variations on the *Knight* standard aimed at improving the problematic doctrine,[62] but *Shin* illustrates the challenges inherent in further adapting this flawed and cumbersome approach. Restoring a more limited *Knight* regime may resolve some of the intuitive inconsistencies in the emergent doctrine. Alternatively, California legislators could take Justice Kennard's advice and restore traditional principles of negligence to the fore of sports torts jurisprudence.

---

[57] *See* George P. Fletcher, *Fairness and Utility in Tort Theory*, 85 HARV. L. REV. 537, 548 (1972) (evaluating "sporting ventures" as an example of reciprocal risk taking).

[58] *Id.*

[59] *Id.*

[60] *See Shin*, 165 P.3d at 593 (Kennard, J., concurring and dissenting).

[61] *See generally* GUIDO CALABRESI, THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS 174–97 (1970) (exploring the notion of "best cost avoiders" in the context of specific deterrence).

[62] *See, e.g.*, Teri Brummet, Comment, *Looking Beyond the Name of the Game: A Framework for Analyzing Recreational Sports Injury Cases*, 34 U.C. DAVIS L. REV. 1029 (2001) (proposing a hybrid objective-subjective approach to integrating participant expectations into liability determinations); Lura Hess, Note, *Sports and the Assumption of Risk Doctrine in New York*, 76 ST. JOHN'S L. REV. 457, 481 (2002) (advocating an assumption of risk exception for student athletes).