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Summarizing recent significant New York appellate cases

The Court of Appeals recently used two personal injury cases to clarify two important limitations on the primary assumption of the risk doctrine. First, the Court held that the doctrine does not apply when a plaintiff can show that the risks of sports have been unreasonably enhanced by the particular activity or by a course or venue design. And second, the Court explained that the assumption of the risk doctrine simply does not apply when the plaintiff is not participating in the sport at the time, even if the injury occurs at the facility or venue. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

TORTS, ASSUMPTION OF THE RISK

Katleski v Cazenovia Golf Club, Inc., 2025 NY Slip Op 02178 (Ct App Apr. 15, 2025)

Issue: **Does the assumption of the risk doctrine apply to unreasonably enhanced risks and may it be applied in cases outside of participation in athletics and recreation?**

Facts: In two companion cases involving the primary assumption of the risk doctrine, plaintiffs were injured while involved in the game of golf in some way. In the first case, the plaintiff was injured when he was struck by a flying golf ball while participating in a golf tournament. In the second, the plaintiff was injured when she was thrown from a golf cart after the cart was struck by a car in the golf course parking lot before starting her round.

In the first case, Supreme Court denied the golf club's summary judgment motion, holding that the plaintiff's "opposition, which included an expert affidavit on the dangers of the course layout, raised a triable issue of fact as to whether that risk was unreasonably enhanced, thereby precluding application of the assumption of risk doctrine." A 3-2 split Third Department majority reversed, however, and granted the club summary judgment dismissing the complaint, holding that "despite conflicting expert opinion on certain issues, there was no evidence that the course design exposed plaintiff . . . to a risk over and above the usual dangers that are inherent in the sport of golf." Thus, the primary assumption of the risk doctrine applied and barred the plaintiff's suit.

In the second case, a 3-2 split Fourth Department majority granted the golf club's summary judgment, holding that "although [the plaintiff] was not actively engaged in golf at the time of the accident, the accident occurred in a designated recreational venue. The court further concluded that the risk of being injured while driving a golf cart is inherent in the sport of golf and that plaintiff was aware of that risk and assumed it."

Holding: The Court of Appeals used these cases to clarify "the scope of two important limitations on the [assumption of the risk] doctrine: its inapplicability to unreasonably enhanced risks and its confinement to cases involving participation in athletics and recreation." The Court explained that "[t]he rule that sports players do not assume risks that have been unreasonably enhanced is well settled in our case law and serves as an important counterweight to an undue interposition of the assumption of risk doctrine." Indeed, "[t]he risks of a sport can also be unreasonably enhanced through the negligent design or operation of a sports venue," but a plaintiff must show that "the design enhanced the inherent risk of being struck by a ball beyond what is *customary in the sport*"; "[i]t is not enough for [a plaintiff] to show that the layout of the course was less safe than it ideally could have been." Moreover, a defendant can show that a course or venue design does not *unreasonably* enhance the risks of the sport by establishing that the design has a competitive purpose, the Court held. Based on these clarified principles, the Court held, "the Appellate Division [in the first case] correctly determined that there was no question of fact as to whether the club unreasonably enhanced the risk of players being struck by golf balls, and that [the plaintiff] therefore must be deemed to have assumed that risk as a matter of law."

In the second case, however, the Court of Appeals reversed and held that the assumption of the risk doctrine did not preclude the plaintiff's claim. "Although the primary assumption of risk doctrine remains in full force in the limited context of athletic and recreative activities following the enactment of CPLR 1411, we have not applied the doctrine outside of this limited context and it is clear that its application must be closely circumscribed if it is not seriously to undermine and displace the principles of comparative causation. To that end, we have instructed that primary assumption of risk applies only to personal injury claims arising from sporting events, sponsored athletic and recreative activities, or athletic and recreational pursuits that take place at designated venues. Persons injured while traversing streets and sidewalks generally are not subject to the doctrine because this would create an unwarranted diminution of the general duty of landowners—both public and private—to maintain their premises in a reasonably safe condition, potentially swallowing the general

rule of comparative fault." Thus, because the plaintiff in the second case "was merely driving a golf cart in a parking lot at the time of her injury," "the fact that the accident occurred adjacent to a designed venue for golf does not" implicate the assumption of the risk doctrine.

CRIMINAL LAW

***People v Cleveland*, 2025 NY Slip Op 02144 (Ct App Apr. 15, 2025)**

Issue: **May the police pursue a suspect when the suspect flees during a lawful level three *DeBour* stop founded on reasonable suspicion of criminal activity?**

Facts: "Defendant was arrested after abandoning a plastic bag containing crack cocaine while being pursued by police. Before trial, defendant moved to suppress this evidence on the ground that the pursuit was unlawful." At the suppression hearing, the police testified that they observed a woman throw a glass bottle at the car in front of them and then observed defendant stop and exit his car in the middle of the road and vigorously approach the woman with clenched fists, while yelling at her. The police testified that they exited their patrol car and told the defendant to stop, which he did and then turned away from them, moved his hands toward his waistband, and fled, leaving his car in the middle of the road. The police pursued him and observed defendant discard "what looked like a plastic bag with some type of . . . white substance, onto the ground in a vacant lot and then continued running." The police then stopped and arrested him.

Supreme Court credited the officers' testimony and held that "the pursuit was lawful, and denied defendant's suppression motion. Defendant proceeded to a jury trial, and the jury found defendant guilty of criminal possession of a controlled substance in the fourth degree and aggravated unlicensed operation of a motor vehicle in the second degree." The Appellate Division affirmed, holding that "[b]ecause the stop was supported by reasonable suspicion, . . . the subsequent pursuit was also supported by reasonable suspicion, especially considering that, immediately following the stop, defendant turned his back to the officers, grabbed at his waistband, and then fled on foot, leaving his vehicle in the middle of the street with its driver's door open."

Holding: The Court of Appeals affirmed, holding that "[a] court's focus during any analysis of a governmental invasion of a citizen's person must be on the reasonableness of the police conduct. Under the four-tiered framework set out in *De Bour*, pursuit of a fleeing suspect constitutes a level three detention, for which the police must have a reasonable suspicion that defendant has committed or is about to commit a crime. Like a level three stop, pursuit results in infringement on freedom of movement, but a lesser interference with freedom than does a level four arrest. Thus, a defendant's flight in response to an approach by the police, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity may give rise to a lawful pursuit. Flight alone, however, or even in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit because an individual has a right to be let alone and refuse to respond to police inquiry."

Thus, the Court held, while "an individual's flight from a level one or two police encounter, without more, does not provide the reasonable suspicion necessary to pursue them," flight from a level three encounter does. Indeed, the Court rejected the defendant's argument that "a suspect can legally flee a level three stop so long as their flight dissipates the reasonable suspicion of the crime that initially gave rise to the stop. Rather, we hold that police may pursue a suspect who flees an ongoing, lawful level three stop. Unlike flight from a level one encounter based on an objective credible reason, which allows police to approach to request information, or a level two encounter founded suspicion of criminality which gives police a common-law right of inquiry, a level three stop permits a forcible stop and detention for questioning and a frisk for weapons if the officer reasonably suspects that they are in danger of physical injury by virtue of the detainee being armed. A suspect's flight in response to an attempted stop based on reasonable suspicion therefore interferes with officers' legal authority to temporarily detain them. Thus, unlike a level one or two encounter, an individual's right to be let alone and refuse to respond to police inquiry cannot justify flight from a lawful level three stop." Here, the Court held, ample facts existed to allow the police officer to pursue the defendant, and the suppression motion was therefore properly denied.

SECOND DEPARTMENT

INSURANCE LAW, SUBROGATION

***Drive N.J. Ins. Co. v RT Hospitality Group, LLC*, 2025 NY Slip Op 02188 (2d Dept Apr. 16, 2025)**

Issue: **May a subrogee maintain an action under the Dram Shop Act?**

Facts: "The plaintiff, Drive New Jersey Insurance Company provided automobile insurance to Ironbound Fitness, LLC, which owned a 2019 BMW i8." DNJIC alleged that an Ironbound employee was at the defendant's gentleman's club with two other individuals and was overserved even after the three became visibly intoxicated. When the three left in Ironbound's BMW, with its employee driving, they were involved in the single vehicle accident and were injured. DNJIC then paid more than $500,000 in insurance claims for their injuries and damage to the BMW, and filed a Dram Shop Act claim against defendant. Defendant moved to dismiss, arguing, among other things, that an insurance subrogee was not permitted to pursue a Dram Shop Act claim. Although Supreme Court paired down the plaintiff's claim, it rejected defendant's argument that plaintiff, as subrogee, could not maintain the Dram Shop Act claim.

Holding: The Second Department affirmed, holding that the Dram Shop Act, with certain exceptions, allows a person injured because of intoxication to bring a claim against the establishment that "by unlawful selling to or unlawfully assisting in procuring liquor for such

intoxicated person, . . . caused or contributed to such intoxication." Rejecting the defendant's arguments that an insurance subrogee could not maintain a Dram Shop Act claim, the Court explained, "[t]he purpose of subrogation is to allocate responsibility for the loss to the person who in equity and good conscience ought to pay it, in the interest of avoiding absolution of a wrongdoer from liability simply because the insured had the foresight to procure insurance coverage. Equitable subrogation entitles an insurer to stand in the shoes of its insured to seek indemnification from third parties whose wrongdoing has caused a loss for which the insurer is bound to reimburse . . . Contrary to [defendant's] contention, there is no support in the statute which suggests that subrogation claims may not be made under the Dram Shop Act. Moreover, [defendant's] contention that allowing subrogation here would improperly shift liability onto dram shop keepers is without merit. All subrogation actions involve an insurer seeking to recover sums paid out, pursuant to a policy for which it received premiums, from the wrongdoer who caused the harm, rather than allowing that wrongdoer to escape all liability simply because the insured paid for insurance. Accordingly, public policy and the purpose of equitable subrogation favor the subrogee over a dram shop keeper."

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