

TortsCenter | Episode 1

Summary:

In our first episode of TortsCenter, hosts Segal McCambridge Shareholder and Chair of the firm's Sports, Recreation & Entertainment practice group, Carla Varriale-Barker and Associate Courtney Dunn discuss the assumption of the risk defense in sports, recreation, and entertainment settings. Carla and Courtney explore various aspects of assumption of the risk, including historical cases, essential elements, application to minors, and different types (express, implied, primary, secondary). They also delve into case strategies, the distinction between assumption of the risk and comparative negligence, and its application in different contexts like nightclubs and recreational facilities. Join us monthly on the first Monday of each month for a new episode on new topics!

Episode Transcription:

[00:00:19] **Courtney Dunn:** Quick note before we get into our episode, the content provided in the Tort Center podcast is for informational purposes only and should not be construed as legal advice. The information presented in each episode is based on general principles of law and may not apply to your specific legal situation.

[00:00:37] **Courtney Dunn:** Listening to the Tort Center Podcast does not create an attorney client relationship between the hosts, guests, or listeners. If you require legal advice or representation, please consult with a qualified attorney licensed to practice law in your jurisdiction. We disclaim any liability for any loss or damage, including without limitation, indirect or consequential loss or [00:01:00] damage, or any loss or damage whatsoever, arising from the use of information presented in the Tort Center Podcast.

[00:01:06] **Courtney Dunn:** By accessing and listening to the Tort Center podcast, you agree to these terms and conditions. Hello, everyone, and welcome to the very first episode of TortsCenter. I'm Courtney Dunn, a senior associate at Segal McCambridge Singer and Mahoney, and I'm here today with Carla Varriale-Barker

[00:01:25] **Carla Varriale-Barker:** Hi, everyone.

[00:01:26] **Carla Varriale-Barker:** I'm the chair of the firm's Sports, Recreation and Entertainment Committee today towards center will be addressing a subject near and dear to our hearts, which is the assumption of the

risk defense. We chose that because our first podcast episode is launching on April Fool's Day. And we like to say that we can't always protect someone from themselves, but we can apply the assumption of the risk defense when we work with our clients.

[00:01:59] **Carla Varriale-Barker:** Courtney, tell [00:02:00] us a little bit about the types of cases that you work on.

[00:02:02] **Courtney Dunn:** Of course. So in our sports, recreation, and entertainment group, we have a good variety of sports, recreation, nightclub, concerts, amusement park cases. And we do defense work, so we represent the premises, and that may be a stadium, a concert venue, or a park.

[00:02:20] **Courtney Dunn:** And a lot of times, assumption of risk does come up. Because we have to talk about protecting those patrons and participants, and when they maybe should have seen something coming.

[00:02:30] **Carla Varriale-Barker:** So, I think a good way to start off our discussion is by going back in history. I'm going to go back to 1929 and talk about one of the most important cases that addresses the assumption of the risk defense, and it comes from New York, our highest court, the Court of Appeals, and the opinion was authored by Justice Cardozo, who is a very well known lawyer.

[00:02:56] **Carla Varriale-Barker:** Judge, and you will see from the portions of the [00:03:00] opinion that I read to you, he's an excellent writer. I like to say that he is a poet and we cannot improve upon the poetry of Justice Cardozo when talking about the assumption of the risk defense. So here's what the case involved. It's an amusement park in Coney Island.

[00:03:22] **Carla Varriale-Barker:** And the attraction is known as the Flopper, like the Flopper already, as if the name didn't give you a hint that you might hurt yourself by flopping off of it. Think of like a conveyor belt or an escalator that the patrons got on and it moved up an incline. Well, Mr. Murphy claimed that during his ride on the Flopper, it suddenly jerked and he was violently thrown from it and he fractured his knee, not an insignificant injury.

[00:03:56] **Carla Varriale-Barker:** So he sued the steeplechase amusement [00:04:00] company for in negligence and one of the defenses that was raised was the assumption of the risk defense. And the case went all the way up to the Court of Appeals. Can you believe that the case went that far to the highest

court? So Justice Cardozo made short work of the case and his opinion is cited across the country as one of the leading cases.

[00:04:26] **Carla Varriale-Barker:** I like the opinion because it applies assumption of the risk, not just sports and recreation activities, but it specifically applies to attractions at an amusement park and by extension, we can use it for water park cases, amusement park cases, family, entertainment centers. go kart facilities. It has a broad application.

[00:04:54] **Carla Varriale-Barker:** Let me tell you why I also like the case. The language is [00:05:00] fantastic. In terms of legal prose, it's one of the best opinions I can think of.

[00:05:06] **Courtney Dunn:** Can you read us some of it?

[00:05:07] **Carla Varriale-Barker:** I'll give you a little flavor for what Justice Cardozo wrote. One who takes part in such sport accepts the dangers that inhere in it, so far as they are obvious and necessary.

[00:05:20] **Carla Varriale-Barker:** Just as the fencer accepts the risk of a thrust by his antagonist, or a spectator at a ball game, the chance of contact with the ball. The antics of the clown are not the paces of the cloistered cleric. The rough and boisterous joke, the horseplay of the crowd, evokes its own guffaws. But they are not the pleasures of tranquility.

[00:05:45] **Carla Varriale-Barker:** The plaintiff was not seeking a retreat or meditation. Visitors were tumbling about the belt to the merriment of onlookers when he, the plaintiff, made his choice to join them. He took a [00:06:00] chance of fate with whatever damage to his body might ensue from such a fall. The timorous may stay at home.

[00:06:09] **Courtney Dunn:** ooh

[00:06:10] **Carla Varriale-Barker:** I guess Mr. Murphy was not a timorous person.

[00:06:14] **Courtney Dunn:** I guess not.

[00:06:15] **Carla Varriale-Barker:** So, this brings me to what are the essential elements of the assumption of the risk defense, which basically says you assumed with knowledge and awareness the risk of injury in this particular situation.

[00:06:32] **Courtney Dunn:** Yeah, so it applies really when somebody willingly engages in activity that they know might cause them some kind of injury or harm, right?

[00:06:41] **Courtney Dunn:** So to look into whether we can apply it, we really look at the participant himself or herself to see what their background is, what's their experience, do they have an idea or should they have an idea that something might occur? And that has to be kind of foreseeable, something inherent to that activity.[00:07:00]

[00:07:00] **Carla Varriale-Barker:** What about children? We see this defense applied with minors. Can an assumption of the risk defense ever be successful with a minor?

[00:07:12] **Courtney Dunn:** Can, but it also depends. We usually use the same kind of analysis to see if the assumption of risk applies. So we have a child participant or a minor playing a sports game or at an amusement park and we again look to see whether they could have known and appreciated the risks associated with that activity.

[00:07:34] **Courtney Dunn:** So that could be that they saw somebody else doing it or they were in a previous game where they were hit by a ball and were able to understand that they could become injured or harmed.

[00:07:42] **Carla Varriale-Barker:** The assumption of the risk defense really depends on the individual skill. Knowledge and expertise and even a young child may emphasis may

[00:07:55] **Courtney Dunn:** Emphasis on the may

[00:07:56] **Carla Varriale-Barker:** be held to have assumed the risk of
[00:08:00] injury because that particular child I'm thinking about cases where someone is in a competitive sport, whether it's Cheerleading or gymnastics or figure skating, where that child, even at a young age, has developed the requisite skill, knowledge and experience to appreciate the risk of injury.

[00:08:23] **Carla Varriale-Barker:** I like to remind people that assumption of the risk is another way of saying I understand and consent. to the risk of injury. And when somebody consents to the risk of injury, what does that do with the elements of a negligence case?

[00:08:43] **Courtney Dunn:** In that case, a negligence cause of action has four elements for our listeners out there.

[00:08:50] **Courtney Dunn:** We start with a duty of care, which is owed by the facility, the league, whoever it may be. Second element is a breach of that duty of care. And then we have damages and proximate cause of those damages, which would have been the breach. But if somebody is consenting to possible injury or harm, there goes our duty of care.

[00:09:10] **Courtney Dunn:** And that's our first element. And if we have no duty of care, there can be no negligence claim.

[00:09:15] **Carla Varriale-Barker:** That's right. I think that's why the defense is so valuable and it's one of the first things I put in my answer. It's one of the first things that I develop when I'm meeting with my clients and gathering information.

[00:09:33] **Carla Varriale-Barker:** What kinds of information would you pursue in order to assess an assumption of the risk defense?

[00:09:41] **Courtney Dunn:** We like to look into signage, warnings, previous accidents or incident reports, and kind of the due diligence that our clients do to assess what those possible risks are and what they think is foreseeable.

[00:09:55] **Courtney Dunn:** Because then we can kind of have an idea of who is attending this, who's going to be playing in [00:10:00] this game, should they have more warning or security for a certain kind of event, concert, game, whatever it may be, based upon what could happen at that event and what those people are going to assume the risk of.

[00:10:13] **Carla Varriale-Barker:** I really like the point that you made about getting to know the nature of the client's business. I like the idea of doing a site visit and meeting with people early on. I think it's really important for the lawyer to know what the facility looks like, what the maintenance conditions are, what is the field of play look like.

[00:10:36] **Carla Varriale-Barker:** What are some of the information that is provided to participants and spectators? Is there a waiver? Is there ticket language? What are the warnings and signage? Are they reasonable? Are they redundant? Could even the most oblivious person be found to have been [00:11:00] apprised of the risks of injury? Yeah. So that leads me to another question.

[00:11:06] **Carla Varriale-Barker:** There can be different kinds of assumption of the risk. There might be implied. There might be expressed. Can you let our viewers know what the difference is between the two of them?

[00:11:19] **Courtney Dunn:** Of course. So when we're talking express assumption of risk, we're talking somebody Gave written approval or verbal approval that they're going to do this.

[00:11:28] **Courtney Dunn:** And they consent to all the risks and possible harm. When we say written, we usually are talking about a waiver, which you just mentioned, we could do a whole episode on waivers

[00:11:40] **Carla Varriale-Barker:** and we will

[00:11:41] **Courtney Dunn:** and we will a lots of ins and outs and they can get a little sticky in New York, determining what you need and what you don't.

[00:11:48] **Courtney Dunn:** So that's our express assumption of risk. You write down your name or you tell somebody, Hi, I Courtney Dunn consent to this participation. Implied, you don't need to write it down. You don't need to tell anybody, but just by way of you doing that activity, you've consented to the risk of that activity.

[00:12:06] **Carla Varriale-Barker:** Right?

[00:12:07] **Carla Varriale-Barker:** Like being a spectator at a hockey game, a baseball game, et cetera. And when we're talking about express assumption of the risk, keeping up with technology, and when we say it can be written. It can also be electronic, you can electronically accept by doing a click through on an agreement, chances are you have a click through agreement if you are like, I love city bikes here in New York and before you can check a bike out of the kiosk.

[00:12:41] **Carla Varriale-Barker:** You have to sign off on an agreement whereby you assume an array of risks that would make your hair stand up, Courtney, including up to death, but I guess that is sort of foreseeable for somebody riding a bike on New York City.

[00:12:57] **Courtney Dunn:** So, yeah, I think so.

[00:12:59] **Carla Varriale-Barker:** So [00:13:00] it can be in the form of a waiver, it can be in the form of something like a click through agreement.

[00:13:07] **Carla Varriale-Barker:** Those are two types of assumption of the risk. Can you also differentiate for us the difference between primary and secondary? That confuses a lot of people.

[00:13:19] **Courtney Dunn:** Yeah, and I can see how it can be confusing, but the easiest way to look at it It's primary assumption of risk. We apply that when there is an injury sustained while you're participating.

[00:13:30] **Courtney Dunn:** You engaged in a baseball game. You got hit in the face by a baseball. That's primary assumption of the risk. You're the one playing, and there's something about this activity that might be considered dangerous, but you're going to play it anyway. Secondary assumption of risk. is when the defendant owes a duty of care.

[00:13:48] **Courtney Dunn:** So that would be if you go to a recreational facility, and there might be something dangerous about the activity. The second prong of that is that that facility also has to ensure your [00:14:00] safety. For example, if you go to a facility where there's a rock climbing wall, you know that rock climbing is probably a little bit dangerous.

[00:14:09] **Courtney Dunn:** That facility should make sure that the rope that you're using was maintained and inspected before you started participating. If they didn't, and you're claiming that that was the dangerous aspect of your participation, that's secondary assumption of risk.

[00:14:23] **Carla Varriale-Barker:** So let's talk a little bit more about how do you, through the course of Developing a case defense strategy.

[00:14:33] **Carla Varriale-Barker:** How do you learn more information and build your case about the plaintiff's assumption of the risk? What are some tools you use

[00:14:42] **Courtney Dunn:** So to determine where we're going to fit in our assumption of risk? What we want to do is, of course, develop the facts that this plaintiff had the background, the experience, the understanding of this game, this event, whatever it may be.

[00:14:56] **Courtney Dunn:** And we do that in discovery to start out. You know, we request all the documents we need, all the information, and we want to get into depositions having an idea, if we could, of that person's experience in participating in like events. And that could be through some snooping, as you like to call it.

[00:15:14] **Carla Varriale-Barker:** I do. I don't want to give away all my, all my secret sauce, but there's so much that is available, publicly available, that can help you to understand the scope of your plaintiff's assumption of the risk.

[00:15:29] **Carla Varriale-Barker:** People's stats, if they participated in school sports. Recreational week don't sleep on publicly available social media in order to understand the scope, the depth, the breadth of their knowledge and experience with the activity. I also like the idea of developing the defense and trying to understand what's inherent in the activity.

[00:15:56] **Courtney Dunn:** Yes.

[00:15:57] **Carla Varriale-Barker:** Can you talk to us a little bit more about that? [00:16:00]

[00:16:00] **Courtney Dunn:** Yeah, so that's a big factual question that comes up, right? It's really a factual determination, what's inherent to an activity. Because if we take baseball again as our example, we think that A baseball getting hit by a bat might hit somebody, and that's an inherent risk.

[00:16:16] **Courtney Dunn:** A recent New York case tells us that an umbrella blocking a spectator's view of an incoming ball is also inherent to the game of baseball, right?

[00:16:25] **Carla Varriale-Barker:** And why would that be? I mean, a umbrella is not a necessary component of this activity. How did the court arrive at a determination that the umbrella was a risk, or it didn't enhance the risk presented to a spectator in a baseball game. So

[00:16:44] **Courtney Dunn:** it's very fact specific depending on all these different aspects of the case. And here we had a spectator who was sitting in the stands of a game on a rainy day. Somebody in front of him opened up their umbrella, blocked his view of a ball that came and whacked him in the face.

[00:17:02] **Courtney Dunn:** The court found that It was foreseeable that another spectator in the stands would use their umbrella in, at a rainy game and they found that this plaintiff should have known that as somebody who went to games and watched games and it's, in that case, foreseeable that, hey, there might be an umbrella in the stands the day you go.

[00:17:21] **Carla Varriale-Barker:** I went to watch the appellate argument of that case.

[00:17:25] **Courtney Dunn:** Ooh.

[00:17:26] **Carla Varriale-Barker:** And it was really interesting to me for a couple of reasons. Thanks. One, I would focus on baseball has a limited duty of care. It is unique to any other sport. I know that people may be fans of football, hockey, et cetera, but baseball has a liability specific rule, which is another way of saying no duty of care.

[00:17:53] **Carla Varriale-Barker:** And that means if you are a spectator who does not sit. In an area that is protected by the screening, which is the area behind home plate, this is to be specific. If you are in a state that applies the limited duty of care, and there are a number of them, New York is one of them. You don't have a cause of action.

[00:18:17] **Carla Varriale-Barker:** It's a little distinct from assumption of the risk but assumption of the risk was also discussed in the case that you are mentioning right. And I think the fact that it's hard to say that an umbrella in the stands is somehow concealed or not obvious.

[00:18:35] **Courtney Dunn:** Yeah.

[00:18:36] **Carla Varriale-Barker:** So the plaintiff having occupied seats in an unprotected area where He knew that it was raining and the people were using umbrellas to keep watching the game consented to the risk of injury by continuing to sit there.

[00:18:53] **Courtney Dunn:** Right.

[00:18:54] **Carla Varriale-Barker:** And let's be honest, it's hard for me to think of something that's more inherent to a baseball game than a baseball entering the stand.

[00:19:03] **Courtney Dunn:** I agree with you.

[00:19:04] **Carla Varriale-Barker:** People bring gloves for exactly that reason. And I think the fact that some people in the stands were using an umbrella doesn't really change the calculus of how I assess that case, and I'm happy to say that the appellate court here in New York agreed.

[00:19:20] **Courtney Dunn:** Yeah, right.

[00:19:22] **Carla Varriale-Barker:** That brings me to another question. There are some things that come up in the cases that we deal with, like less than optimum fields of play, sometimes maintenance and repair issues. Can you talk to us a little bit about the distinction between the two?

[00:19:39] **Courtney Dunn:** Yeah, definitely. So we, especially in New York, have some good case law that we use a lot, and that tells us that a participant that plays on a field, even if those field conditions are not perfect, less than optimal, You consent to those field conditions, right?

[00:19:54] **Courtney Dunn:** Whatever they may be for the most part. Now that changes a little bit if it's an issue of maintenance or something that's hidden or that the player wouldn't expect,

[00:20:03] **Carla Varriale-Barker:** right. Or an enhanced risk,

[00:20:04] **Courtney Dunn:** right? So it's not always just a muddy field or pebbles in the outfield. If there's something that's there that really could have been caught and is not inherent to the game, a broken tennis net, for example, that was ripped or torn or just sticking out

[00:20:18] **Carla Varriale-Barker:** that somebody trips on themselves.

[00:20:20] **Carla Varriale-Barker:** Yeah. That's sort of hard to. Argue that it is, um, an inherent part of the sport, but there are cases that say a field that gets muddy when it's wet, a field that is less than perfectly manicured, especially if you've played on it before, or that day you're there for hours and your accident happens later into the game.

[00:20:45] **Carla Varriale-Barker:** Yeah, it's hard to avoid an assumption of the risk defense in those instances. That's. What do you think about assumption of the risk when it gets applied outside of the sports and recreation area?

[00:21:00] Some people try to apply it to nightclubs. Some people try to apply it to getting involved in an altercation or a fight.

[00:21:11] **Carla Varriale-Barker:** Can you talk to us a little bit about that?

[00:21:14] **Courtney Dunn:** Yeah, definitely. So, you know, our, our bread and butter is, you know, Assumption of risk in sports. But we do deal with other venues and other activities where it applies. And really, we do look at the same analysis, whether the person going to that concert or going to that nightclub knew that whatever it was might happen.

[00:21:32] **Courtney Dunn:** And that could be a mosh pit. If you're going to a concert and you're going to see an artist that you know incites a mosh pit or incites the guests to come run up to the stage, you're really assuming the risk of that activity. I think it's a little different if you're going to an Adele concert and a mosh pit forms.

[00:21:49] **Carla Varriale-Barker:** That would be very unusual, not an inherent risk. So I think some courts push back, or at least we've seen that here in New York, with if the activity isn't the sort of socially useful activity as the courts have found engaging in sports and recreation are. There was a case in New York very recently that caught my eye where they wanted to apply the assumption of the risk defense to a hookah lounge! But the activity now a hookah lounge itself may be a place of entertainment and respite. However, this particular case involved facts where the hookah itself was on a table. It wasn't where it was supposed to be prior to the accident. The conditions were that the plaintiff was at a portion of the premises that was crowded and there was dancing, the hookah wasn't where it was supposed to be, it was knocked over and badly injured the plaintiff.

[00:22:53] **Carla Varriale-Barker:** So the assumption of the risk defense did not go far in that case. Why do you think that is?

[00:23:00] **Courtney Dunn:** Did the court look at the fact that there was really not say no social benefit, but you know, we see cases a lot of the times that say the court admires or takes into account the social aspect and the positivity of a little league game or, or a pickup game.

[00:23:19] **Courtney Dunn:** Is there a differentiation there made in the opinion?

[00:23:21] **Carla Varriale-Barker:** I think it was a factor for the court. I also think that the risk presented to the plaintiff was enhanced because of the overcrowding and because the hookah, I don't know if you call it a hookah device, a hookah pipe or whatever, was not where it was usually supposed to be.

[00:23:42] **Carla Varriale-Barker:** And it made it easier for. Somebody who was at the club restaurant event space to knock it over and therefore harm the planet. So I think that's a good illustration of the tension with assumption of the risk. It can be applied in aspects other than sports and recreation. But you need to be careful that it makes sense so that you can justify it as being inherent in the premises, not the sort of thing that increases the ordinary, obvious risks presented to someone.

[00:24:18] **Carla Varriale-Barker:** Right. Or that it's not a hidden danger.

[00:24:20] **Courtney Dunn:** Yeah.

[00:24:21] **Carla Varriale-Barker:** I mean, I was also thinking when I read that case, if there was overcrowding and maybe there's a code violation, that would be a problem for the assumption of the risk defense.

[00:24:33] **Courtney Dunn:** Absolutely.

[00:24:34] **Carla Varriale-Barker:** What are some other takeaways that people need to know about the assumption of the risk defense?

[00:24:40] **Carla Varriale-Barker:** Like why don't just use comparative or contributory negligence?

[00:24:45] **Courtney Dunn:** Well, assumption of risk is a little bit different, and of course, there's always a little bit of an exception for comparative negligence, and we see those kind of work into play together.

[00:24:54] **Carla Varriale-Barker:** So, New York, for example, is a pure comparative negligence state.

[00:24:58] **Carla Varriale-Barker:** If you are 99 percent responsible for your accident, a jury can award you 99 percent of your damages, so you'd get 99 cents on your dollar. Some other states apply things like contributory negligence and modified contributory negligence. Some states like New Jersey, if you're 51 percent or more responsible, you don't recover at all.

[00:25:23] **Carla Varriale-Barker:** Some courts like to apply comparative or contributory negligence. But here's what I think they're missing. If something can be taken out as a matter of law, absence of a duty. It's a legal question. It's not a jury question. Why not apply assumption of the risk or the limited duty of care on a motion or make it clear that the case has some legal failures.

[00:25:53] **Carla Varriale-Barker:** I think that by not doing that or some courts tendency to default to comparative negligence leaves cases. that need not be in the court system or on the docket there for an eventual determination by a jury. But again, many of these cases lend themselves to a dismissal as a pure question of law.

[00:26:19] **Courtney Dunn:** Can you give some examples of comparative negligence?

[00:26:23] **Carla Varriale-Barker:** Sure. If you aren't using the proper equipment and you continue to participate in something like comparative negligence, you know, a certain area has a defect in the curb and you continue to walk through it or you traverse it. Where you walk over, I mean, here we are in New York City, walk over a sidewalk and it's buckled or it's raised or uneven.

[00:26:51] **Carla Varriale-Barker:** That's a question of comparative negligence most of the time. It's not going to be assumption of the risk.

[00:26:57] **Courtney Dunn:** Right.

[00:26:58] **Carla Varriale-Barker:** So that's one example that I can think of that illustrates the distinction.

[00:27:03] **Courtney Dunn:** Yeah.

[00:27:04] **Carla Varriale-Barker:** But again, these sports, recreation and entertainment cases. really lend themselves to the application of Assumption of Purpose for a whole bunch of reasons.

[00:27:14] **Courtney Dunn:** They do. We see it time and time again.

[00:27:17] **Carla Varriale-Barker:** And I think there might be some takeaways that we want to give our listeners about how to develop these cases and how to work them up. Can you give them some of your personal insight?

[00:27:31] **Courtney Dunn:** Yeah, of course. So when you have a case that you think you may want to rely on the assumption of risk doctrine for, you want to, as we spoke a little bit about, get all the info from your client that you need.

[00:27:43] **Courtney Dunn:** Whether that comes to warnings, going for that site inspection, signage that they have, and kind of the due diligence that they do in terms of what event they're hosting.

[00:27:52] **Carla Varriale-Barker:** Yeah, raise it in your initial pleadings, raise it early, raise it off.

[00:27:56] **Courtney Dunn:** And then when you're starting to work toward discovery, you [00:28:00] want to focus on that as, as a possible future summary judgment argument.

[00:28:04] **Courtney Dunn:** So you want to get it out there in the beginning and then At your plaintiff's deposition, that participant's deposition, you want to ask them about their background, their experience, how long they've played, and I think a lot of people at their deposition like to take that as an opportunity to talk about all the things they've done, that they played baseball through college, that they coached their son's games, and that's a big way to, to get all those details, Throw them into your summary judgment motion to show, look, he is experienced.

[00:28:31] **Courtney Dunn:** He did know that something like this could happen.

[00:28:33] **Carla Varriale-Barker:** Yep. It's amazing. Everybody's an expert. Everybody is a budding. Derek Jeter.

[00:28:39] **Courtney Dunn:** Right.

[00:28:40] **Carla Varriale-Barker:** It is quite amazing. And I find also not every plaintiff's lawyer knows this niche area of law. I also use it as an early opportunity to talk to them about the body of case law, what difficulties their client faces, and that it's not a straightforward premises or negligence case, that there are very specific strong dispositive defenses.

[00:29:14] **Carla Varriale-Barker:** And if I've got the facts that support it, I want to talk to them about it early on, ask for a discontinuance, tell them my plan is to move for summary judgment, or to leverage the case for an early nickels on the dollar resolution. So, today we're launching on April Fool's Day, appropriately enough, and talking about the assumption of the risk defense.

[00:29:43] **Carla Varriale-Barker:** We can't necessarily save people from themselves, but we can put forward a good defense while we're doing it. Courtney, why don't you talk to us a little bit more about what our listeners have to look forward to with future episodes and where they can post [00:30:00] their comments and questions for us.

[00:30:02] **Courtney Dunn:** We have so many exciting episodes coming out.

[00:30:05] **Courtney Dunn:** We have a lot of fun topics and some special guest appearances for our future episodes. So please tune in. You could listen to us on pod bean or at Apple, and please do send us any questions you have, whether they're about assumption of risk or anything else in the sports recreation and entertainment law.

[00:30:23] **Courtney Dunn:** You can email us at info@smsm.com. And don't forget to rate, review, and subscribe.

[00:30:31] **Carla Varriale-Barker:** Please meet us next time at the intersection of tort law and sports law. We'll see you there. Thank you. See you there.