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## WHITE PAPER ALERT

Torts - Primary Assumption of Risk Defense

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*Saville v. Sierra College*  
Court of Appeal, Third District (October 26, 2005)

As a general rule, everyone has a duty to use due care to avoid injuries to others, and can be held liable if their careless conduct injures another person. Civil Code Sec. 1714(a) The doctrine of primary assumption of the risk is an exception to that general rule. This complete defense arises where, by virtue of the nature of the activity and the parties' relationship to the activity, the defendant owes no legal duty to protect a plaintiff from the type of harm that caused injury.

The California Supreme Court established the primary assumption of the risk defense in 1992. Since that time, primary assumption of the risk has almost exclusively been applied to sporting activities<sup>1</sup>. In this case, Plaintiff Robin Saville enrolled in a class at Defendant Sierra College entitled Administration of Justice - PC 832 - Arrest, Communications and Firearms. Mr. Saville took the police training course because he felt it would help him with his goal of becoming a helicopter search and rescue pilot. The course included arrest techniques.

The classes involved lectures and role-playing, wherein students played the role of officer and suspect. During a particular class, police instructors demonstrated various maneuvers for controlling a suspect. The students then paired up and practiced the techniques. Saville understood the role-playing was part of the course and did not object at any time. During a lunch break, Saville and his partner practiced the techniques they learned that morning. Saville, playing the role of the suspect, was injured while being taken down. He sustained a herniated cervical disc that required surgery.

Saville filed suit against Sierra College alleging the College negligently failed to: 1) inform Saville when he registered for the class of the risk of injury and 2) supervise and properly train students to perform the takedown maneuvers. Specifically, Saville claimed that his neck struck his partner's knee during the takedown. Saville contended the students did not receive instruction on where to place their feet when performing the maneuvers and that his partner was positioned in the wrong way. At deposition, police instructors acknowledged Saville's partner performed the maneuver incorrectly.

Sierra College filed a motion for summary judgment arguing Saville's claims were barred by the primary assumption of the risk doctrine. The trial court granted the motion and Saville appealed claiming: (1) primary assumption of the risk did not apply to the activity, (2) the instructors increased the risks inherent in the maneuvers being taught and (3) the College negligently structured the class.

<sup>1</sup> The only other significant context California courts have recognized the defense is in certain employment settings.

The Third Appellate District affirmed the trial court decision. In doing so, the Court of Appeal reiterated that primary assumption of the risk does not depend on a particular plaintiff's subjective knowledge or appreciation of the potential for risk. Rather, the court looks to the nature of the activity and the relationship of the defendant and plaintiff to that activity. A defendant has no duty to prevent risks inherent in the activity.

While it is true that primary assumption of the risk has traditionally been applied to sports, the takedown maneuvers in the police training course were found to be similar to the risk of injury inherent in sports. The maneuvers were inherently dangerous. The maneuvers were also a necessary part of the curriculum. The Court of Appeal reasoned that imposing a duty to eliminate the risk of injury from this activity would defeat the very purpose of the class. The Court concluded that there was no reason the primary assumption of the risk doctrine should not apply to this type of activity.

In his complaint, Saville contended that Sierra College was negligent as the instructor and sponsor of the course. The primary assumption of the risk doctrine applies to instructors and sponsors, except where the instructor increases the risks inherent in the learning process. In order to prevail, a plaintiff must show the instructor acted with intent to cause injury or was reckless. Here, Sierra College acknowledged that while instructors did demonstrate proper techniques, they did not verbally teach students how to position their feet. The Court of Appeal held that these facts did not rise to the level of intentional or reckless action. Therefore, primary assumption of the risk applied and Sierra College had no duty to prevent the risk of harm.

## COMMENT

One for the good guys! This case is a good indication that the full scope of the defense of primary assumption of the risk has yet to be established. Primary assumption of the risk can be applied to non-sports activities.

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