

四川大學

## 本科生毕业论文（设计）



题    目    论自甘风险规则的理解与适用

——《民法典》第 1176 条的解释论展开

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# 论自甘风险规则的理解与适用

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**摘要：**自甘风险是比较法上一项古老的抗辩事由。《民法典》第 1176 条确立自甘风险规则前，司法实践中“自甘风险”概念常被法官、当事人滥用于各个领域，文体活动伤害事故也往往“同案不同判”，有公平责任说、过错责任说等。自甘风险作为一种违法阻却性免责事由，对处理文体活动伤害事故责任分配有着独特作用。《民法典》第 1176 条第 1 款中“有一定风险的文体活动”应当排除风险极高的自发性危险娱乐活动和风险极低的文化艺术活动、技能准确型体育运动等，而限定在竞技性、对抗性体育活动和嬉戏活动、冒险性户外活动等风险适中的文体活动之中。自甘风险规则下，其他参加者将免除因其一般过失、轻微过失造成损害的赔偿责任，但若其他参加者有严重犯规，则应当认为其对损害的发生有故意或重大过失，排除适用自甘风险规则。活动组织者的责任承担取决于其是否履行了合理的安全保障义务，虽然其在三方案件中的责任承担存在困境，但可以通过解释方法解决该问题。如若受害人对损害发生亦有过错的，应在前述基础上适用过失相抵规则。目前自甘风险规则的适用范围被严格限制，案例责任分配呈现多元化样态，而未来其发展却可能有多条路径。

**关键词：**自甘风险 解释论 适用范围 责任分配 案例模型

# **The Understanding and Application of Assumption of Risk Rule ——On the Interpretation of Article 1176 of the Civil Code**

**Abstract:** Assumption of risk is an ancient defense in comparative law. Before the rule of assumption of risk was established in article 1176 of the Civil Code, the concept of assumption of risk was often abused by judges and parties in various fields of judicial practice, and the injury accidents in recreational and sports activities were often judged differently in the same case, with the theory of fair liability or fault liability. As a kind of elimination of misfeasance, assumption of risk plays a unique role in dealing with the liability distribution of injury accidents in recreational and sports activities. In article 1176 (1) of the Civil Code, the style of "a certain degree risk activities" should be ruled out spontaneous dangerous recreational activities of high risk as well as culture and art activities, skill accurate sports, which have very low risks, etc., so it will be limited in the style of moderate risk activities, such as competitive and confrontational sports activities, frolic activities and outdoor adventure. Under the assumption of risk rule, other participants will be exempted from the liability for damages caused by their general negligence and slight negligence. However, if other participants commit serious fouls, they shall be deemed to have intention or gross negligence for the occurrence of damages and be excluded from the application of the assumption of risk rule. The responsibility of the activity organizers depends on whether they fulfill the reasonable safety-guard duty. Although there is a dilemma in the tripartite cases, the problem can be solved by interpretation. If the victim is also at fault for the occurrence of the damage, the comparative negligence rule should be applied on the basis of the foregoing. At present, the application scope of assumption of risk rule is strictly limited, and the apportionment of liability in cases presents a pluralistic pattern. In the future, there may be multiple paths for its development.

**Key words:** Assumption of risk; Interpretation theory; Scope of application; Apportionment of liability; Case models