

A woman signed up for a bowling class. Before allowing the woman to bowl, the instructor required her to sign a waiver explicitly stating that she assumed all risk of injuries that she might suffer in connection with the class, including injuries due to negligence or any other fault. After she signed the waiver, the woman was injured when the instructor negligently dropped a bowling ball on the woman's foot.

The woman brought a negligence action against the instructor. The instructor has filed a motion for summary judgment based on the waiver.

What is the woman's best argument in opposition to the instructor's motion?

- A. Bowling is an inherently dangerous activity.
- B. In circumstances like these, it is against public policy to enforce agreements that insulate people from the consequences of their own negligence.
- C. It was unreasonable to require the woman to sign the waiver before she was allowed to bowl.
- D. When she signed the form, the woman could not foresee that the instructor would drop a bowling ball on her foot.

Explanation:

Assumption of risk

(tort defense)

	Applicability	Public policy limitations
Express	Plaintiff assented to liability waiver intended to cover type of conduct that caused plaintiff's harm	Not a defense when defendant: is plaintiff's employer is a hotel or common carrier is a public servant/service has substantially more bargaining power
Implied	Plaintiff voluntarily accepted known risk of harm	Not a defense when plaintiff: suffered intentional harm is member of statutorily protected class

A person can **assume the risk** of another's tortious conduct by **expressly waiving** the right to sue. Such waivers are **generally valid** if the plaintiff assented (eg, by signing the waiver) AND the waiver was intended to cover the type of conduct that caused the plaintiff's harm. But liability waivers are **invalid** and cannot justify summary judgment if they are **against public policy**—ie, when the defendant (1) is the plaintiff's employer, (2) is a hotel or common carrier, (3) is a public servant or service, or (4) has substantially more bargaining power.

Here, the woman signed a waiver assuming all risk of injuries that she might suffer in connection with a bowling class. Since this waiver included injuries due to negligence or any **other fault**, it was intended to cover the instructor's negligence in dropping a ball on the woman's foot. But the woman can still oppose the instructor's motion for summary judgment by arguing that it is against public policy to enforce the waiver in circumstances like these—eg, due to a substantial imbalance in bargaining power.

(Choice A) Bowling is not inherently dangerous since it rarely results in serious injuries. And even if bowling were inherently dangerous, this would be irrelevant to whether the waiver violates public policy.

(Choice C) In determining the validity of liability waivers, courts will consider whether the defendant had significantly more bargaining power than the plaintiff—but not the reasonableness of requiring the plaintiff to sign the waiver.

(Choice D) The woman assumed *all* risk of injuries, including unforeseeable risks. Therefore, the validity of the waiver does not depend on whether the woman could foresee that the instructor would drop a ball on her foot.

Educational objective:

A person can expressly waive the right to sue over another person's tortious conduct. Such waivers are generally valid unless they violate public policy—ie, when the defendant (1) is the plaintiff's employer, (2) is a hotel or common carrier, (3) is a public servant or service, or (4) has substantially more bargaining power.

References

Restatement (Second) of Torts § 496B cmts. c–j (Am. Law Inst. 1965) (explaining that a person can expressly assume the risk of another's negligence unless the waiver is against public policy).

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