## 5.11 ASSUMPTION OF RISK – IN THE PRIMARY SENSE

(Approved 04/2001; Revised 11/2023)

### *NOTE TO JUDGE*

The Committee notes, except in cases where there is a statutory foundation, the defense of assumption of the risk is not a valid defense in the normal negligence action. The Committee has eliminated the pre-1984 Assumption of Risk Charge, since there is no viable defense to a negligence action remaining in our law for which such a charge would be required. *See, McGrath v. American Cyanamid Co.*, 41 *N.J.* 272 (1963), and *Meistrich v. Casino Arena Attractions, Inc.*, 31 *N.J.* 44 (1959).

There are fact scenarios, however, in which the concept of risk assumption has been recognized by statute, and in such cases it would be the obligation of the court to instruct the jury as to the applicability of the statute in question. Such examples include:

Skiing: *N.J.S.A.* 5:13-1, *et seq.*
Roller Skating: *N.J.S.A.* 5:14-1, *et seq.*
Equestrian Activities: *N.J.S.A.* 5:15-1, *et seq.*

With regard to sports injuries in general, New Jersey has adopted a recklessness standard of care in determining the duty that a recreational player owes to another. *Schick v. Ferolito*, 167 *N.J.* 7 (2001) (golf); *Crawn v. Campo*, 136 *N.J.* 494 (1994) (softball). A negligence standard of care applies as to non-participants injured by a participant/coach involved in the athletic endeavor. *Dennehy v. Windsor Regional Bd. of Ed.*, 252 *N.J.* 201 (2022).