

1 **13-2101. Assumption of risk - *No instruction to be given.***

2 *No instruction to be given.*

3 USE NOTES

4 No instruction is to be given on the doctrine of assumption of risk as a separate defense,  
5 per se.

6 However, the principle still applies in New Mexico under the "reasonable person" standard  
7 of contributory negligence. A voluntary exposure to a known danger will preclude recovery.

8 [As amended, effective November 1, 1991.]

9 **Committee commentary.** — In the case of *Williamson v. Smith*, [~~83 N.M. 336, 341, 491 P.2d~~  
10 ~~1147 (1971)~~], 1971-NMSC-123, ¶ 29, 83 N.M. 336, 491 P.2d 1147, after reviewing previous  
11 decisions and discussing the doctrine, it was stated:

12 “For these reasons, assumption of risk will no longer be a defense in New Mexico, and UJI 13-  
13 1310 NMRA on that subject will no longer be given. If pleaded and warranted by the evidence,  
14 the ground formerly occupied by the doctrine of assumption of risk will be covered by the law  
15 pertaining to negligence and contributory negligence....By what we have said, we do not mean to  
16 infer that a given state of facts which would heretofore have constituted a valid defense on the  
17 basis of assumption of risk will no longer prevail. To the contrary, such a set of facts, if properly  
18 pleaded and proven, will be as efficacious as formerly. It will however henceforth be regarded as  
19 contributory negligence and governed by the principles pertaining to that doctrine.”

20 Contributory negligence is a broad and flexible doctrine keyed to reasonableness of conduct. This  
21 court has approved the Restatement (Second) of Torts[.]

22 Section 466 states:

23 "§ 466. Types of Contributory Negligence

1           The plaintiff's contributory negligence may be either  
2           (a) an intentional and unreasonable exposure of [~~himself~~] that plaintiff to danger created  
3 by the defendant's negligence, of which danger the plaintiff knows or has reason to know, or  
4           (b) conduct which, in respects other than those stated in Clause (a), falls short of the  
5 standard to which the reasonable [~~man~~] person should conform in order to protect [~~himself~~]  
6 themselves from harm."  
7 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]

8