

### Facts:

Steve was a construction worker, who had just been hired to help construct the new Wynn casino. Steve had just moved to Las Vegas from California and did not yet have a car. Fortunately for Steve, his friend Bobby would give him a ride home after work. As the Wynn casino reached its grand opening, Steve was required to work overtime. On one particular day, Steve worked a double-shift and Bobby was unable to take him home.

It was getting quite late and Steve crossed the street to a local bar and grill. After dining on some happy hour appetizers, he met Ron, who to Steve's surprise lived only a few blocks from Steve. Ron offered to give Steve a ride home, but only after Ron had the opportunity to finish his beers. At first, Steve was hesitant because he knew that Ron probably had one beer too many, but Steve was anxious to get home to watch the basketball game.

On the way home, Ron, driving in a dangerous manner, was involved in a collision with another car driven by Paula. Steve and Paula were injured in the collision. Assume for this question that Nevada is a contributory negligence state.

### Questions:

1. If Steve asserts a claim against Ron, will Steve prevail?
2. If Paula asserts a claim against Ron, will Paula prevail?

### Example Answer:

1. No. Ron is likely to assert the defense of assumption of the risk. The defense of assumption of the risk requires proof that the plaintiff knowingly entered into, or stayed in, a position of danger. The fact pattern clearly shows that Steve assumed the risk of injury when he allowed Ron to take him home. Assumption of the risk is a complete defense to a claim in states that follow the contributory negligence doctrine.

2. A prima facie case of negligence requires: duty, breach of that duty, causation, and damages. The Plaintiff must prove these elements by a preponderance of the evidence. A duty of care is owed to all foreseeable plaintiffs. The question is whether Ron did what a reasonable person would do under the circumstances. Here, the answer appears to be no; a reasonable person would not drive while intoxicated. Ron breached his duty to Paula by driving while he was intoxicated.

Ron's breach of this duty appears to have been the actual and proximate cause of Paula's injuries. That is, but for Ron's breach of this duty, Paula would not have been injured. Paula was clearly a foreseeable Plaintiff because she was driving.

The facts indicate that Paula was injured. Compensatory damages for personal injury include the elements of loss of earnings, medical expenses, and pain and suffering.