SE-02 · OUTLINE

The Jurisprudence of Voluntary Risk

When institutions may penalise lawful private conduct

Outline · October 2026 · S. Harrison Knudson, J.D.

Liberty follows the person; liability follows the risk

Lawful private conduct that carries risk — smoking, cannabis use, motorcycling, firearm ownership — is treated one way by an insurer, another by an employer, another by a civil service, and another again by the military. The variation is large, and it has no author.

An accidental jurisprudence

Insurance regulation, employment law, civil-service rules and military policy each settled their own corner of the question. Taken together they amount to a body of law no one set out to write, and it does not answer to a single principle.

The test

The outline proposes that an institution may act on lawful private conduct only where it can show an institutional interest, a nexus between the conduct and that interest, and a response proportionate to the risk — and it separates inquiry from action, since asking about conduct and penalising it are different acts.

A further distinction does much of the work: between risk a person creates and carries, and risk a person externalises onto others.

The revenue trap

A state that licenses and taxes a vice acquires a fiscal interest in its consumption. Legalisation therefore changes the institution’s position as well as the citizen’s, and the outline treats that shift as part of the question.

> The full outline works through the paired hard cases, risk pooling, the objections, and an open research checklist.