

**44-545. Defenses available in certain cases.** In an action to recover damages for an injury by accident arising out of and in the course of employment which was sustained by an employee, who is an employee subject to the provisions of the workmen's compensation act other than by election filed pursuant to K.S.A. 44-542a, or for death resulting from an injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer and where such employer at the time of the accident was subject to the provisions of the workmen's compensation act, it shall be a defense for such employer in all cases where said employee has elected not to come within the provisions of the workmen's compensation act pursuant to a valid declaration of election as provided in K.S.A. 44-543: (a) That the employee either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; or (c) that said employee was guilty of contributory negligence: *Provided*, That none of these defenses shall be available where the injury was caused by the willful negligence of such employer, or of any managing officer, or of managing agent of said employer.

**History:** L. 1927, ch. 232, § 53; L. 1974, ch. 203, §39; July 1.