

Defenses

Contributory and Comparative Negligence

Where are we?

Negligence

~~Elements of a cause of action:~~

~~—Duty~~

~~—Breach~~

~~—Causation~~

~~—Harm~~

Defenses:

--- Contributory or Comparative Negligence

--- Assumption of risk

Contributory Negligence

Reconciling

Butterfield v. Forrester

and

Davies v. Mann

Contributory Negligence in General:

The defendant is not liable

If the plaintiff was also negligent

- Duty,
- Breach,
- Causation, and
- Harm

Unless an exception applies:

- Last clear chance,
- Recklessness or willfulness of defendant, or
- Statute

Comparative Negligence

Three forms:

1. Pure comparative negligence
2. “Not as great as”
3. “No greater than”

Comparative Negligence

Three forms:

1. Pure comparative negligence
2. “Not as great as” = (Plaintiff less than 50% at fault)
3. “No greater than” = (Plaintiff 50% or less at fault)

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 1: In a traditional common law jurisdiction, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 2: Assume instead that we are in a jurisdiction that has adopted the Uniform Comparative Fault Act (UCFA) rule for “pure” comparative negligence. How would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 3: Assume instead that we are in a jurisdiction that has adopted the Iowa statute for “no greater than” modified comparative negligence. How would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 50%, B - 30%, C - 10%, D - 10%**

Question 4: Assume the comparative fault of the parties has changed. Under the Iowa statute for “no greater than” modified comparative negligence, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 51%**, B - 30%, C - 10%, **D - 9%**

Question 5: Assume the comparative fault of the parties has changed. Under the Iowa statute for “no greater than” modified comparative negligence, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 50%**, **B - 30%**, **C - 10%**, **D - 10%**

Question 6: Assume the comparative fault of the parties has changed. Under a “not as great as” modified comparative negligence statute, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 40%, B - 30%, C - 10%, D - 20%**

Question 7: Assume the comparative fault of the parties has changed back to the original numbers. Under a “not as great as” modified comparative negligence statute, how would damages be allocated? Why?