

Defenses

Contributory and Comparative Negligence



Who needs this
Valentine? My love
for you is *res ipsa
loquitor.*



In-Class Exercise

Clarifying “intervening” causes and “superseding” causes

Different terms for the same thing: an event that occurs after the defendant’s negligent act and before the plaintiff’s injury that breaks the chain of causation.

Factual Cause

Stubbs v. City of Rochester: “Sewage in the Drinking Water”

Zuchowicz v. United States: “Prescribed Drug Overdose”

Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.:
“Multiple Fires Whodunnit”

Summers v. Tice: “Hunting Party Whodunnit”

Garcia v. Joseph Vince Co.: “Fencing Sabre Whodunnit”

Sindell v. Abbott Laboratories: “Toxic Harms”

Four typical scenarios in which factual cause may be contested

1. Toxic exposure
2. No idea what happened
3. Know what happened, but don't know that it wouldn't have happened if defendant had behaved reasonably
4. Know what happened, but don't know who to blame

Proximate Cause

In re Polemis: “The Plank that Made a Ship Explode”

Wagner v. International Railway Co.: “The Injured Rescuer”

Benn v. Thomas: “The Time-Delayed Heart Attack”

Steinhauser v. Hertz Corp.: “Sudden Schizophrenia”

Gibson v. Garcia: “The Rotten Telephone Pole that Fell on the Car”

Berry v. Borough of Sugar Notch: “The Rotten Tree that Fell on the Speeding Car”

Palsgraf v. Long Island Railway Co.: “Fireworks on the Train Platform”

Vicarious Liability

Miller v. Reiman-Wuerth Co.: “The Bank Errand”

Christensen v. Swenson: “The Lunch Break”

Kuehn v. Inter-city Freight: “Road Rage”

Sage Club v. Hunt: “The Violent Bartender”

Three criteria for scope of employment

- 1) Employee's conduct must be of the general kind the employee is hired to perform.
- 2) Employee's conduct must occur substantially within the hours and ordinary spatial boundaries of the employment.
- 3) Employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

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

“Blocking a Road with a Pole”

and

Davies v. Mann

“The Donkey on the Road”

Contributory Negligence in General:

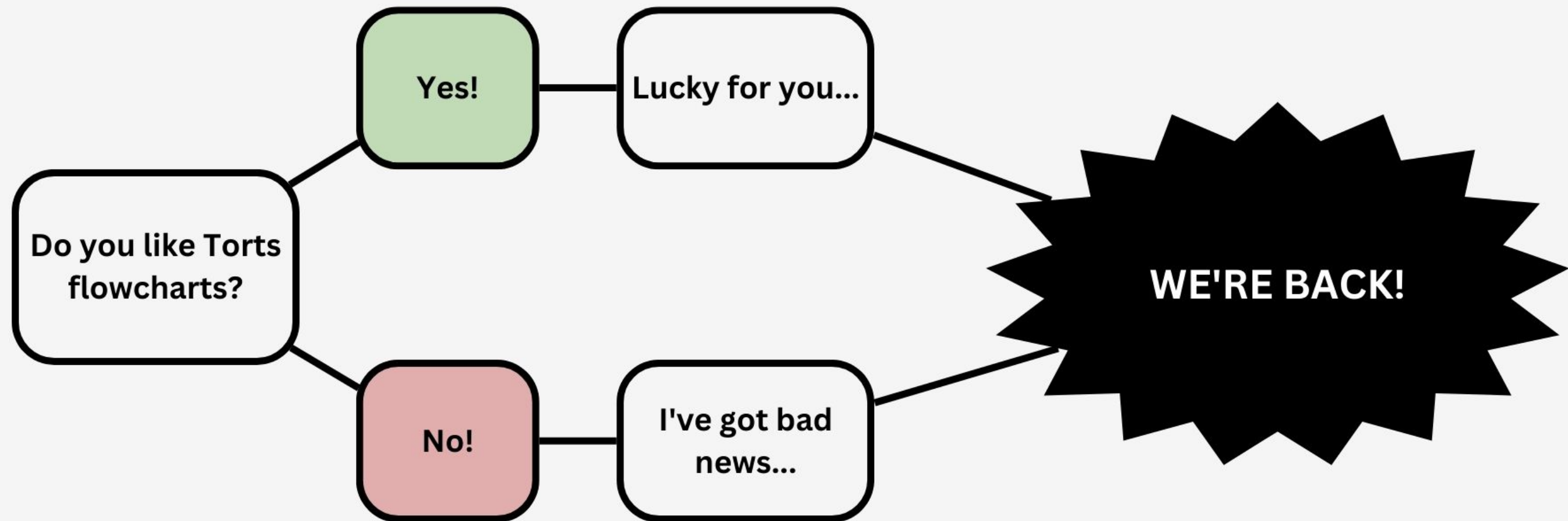
The defendant is not liable

If the plaintiff was also negligent

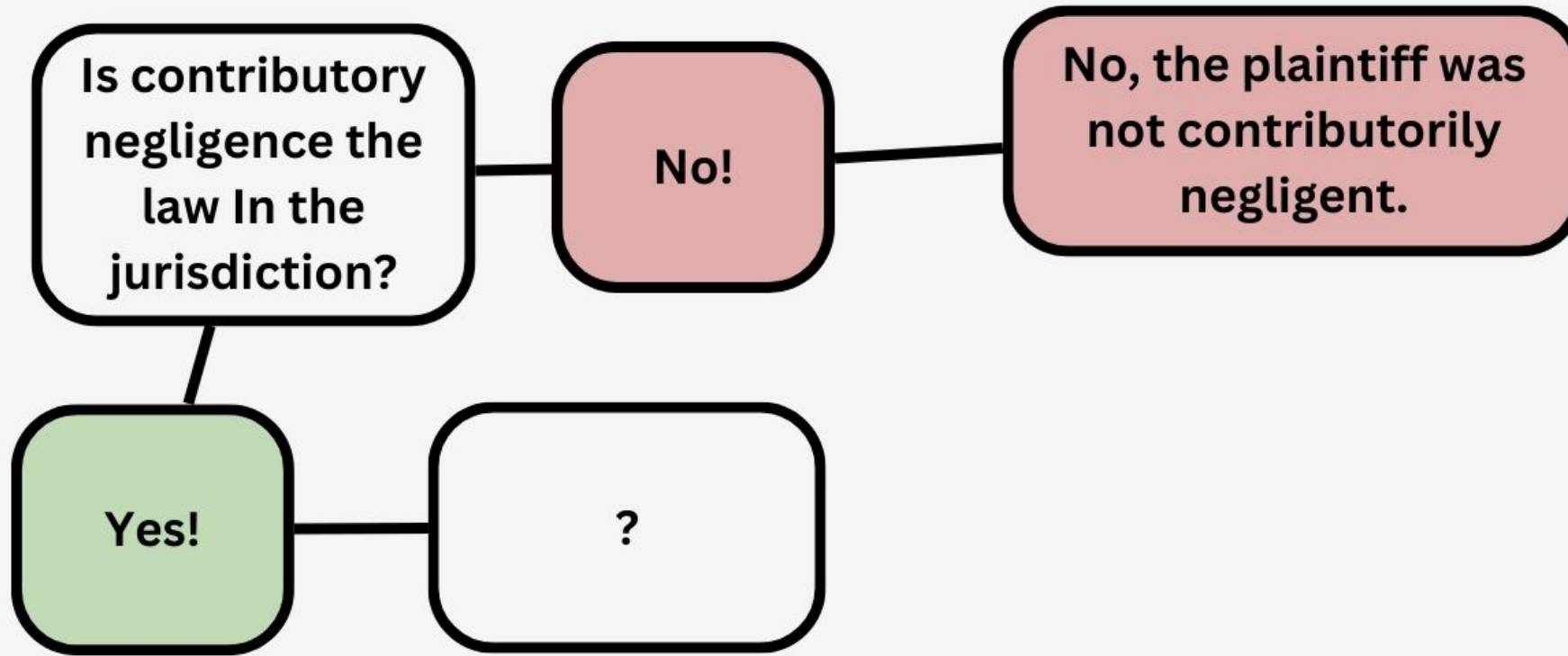
- Duty,
- Breach,
- Causation, and
- Harm

Unless an exception applies:

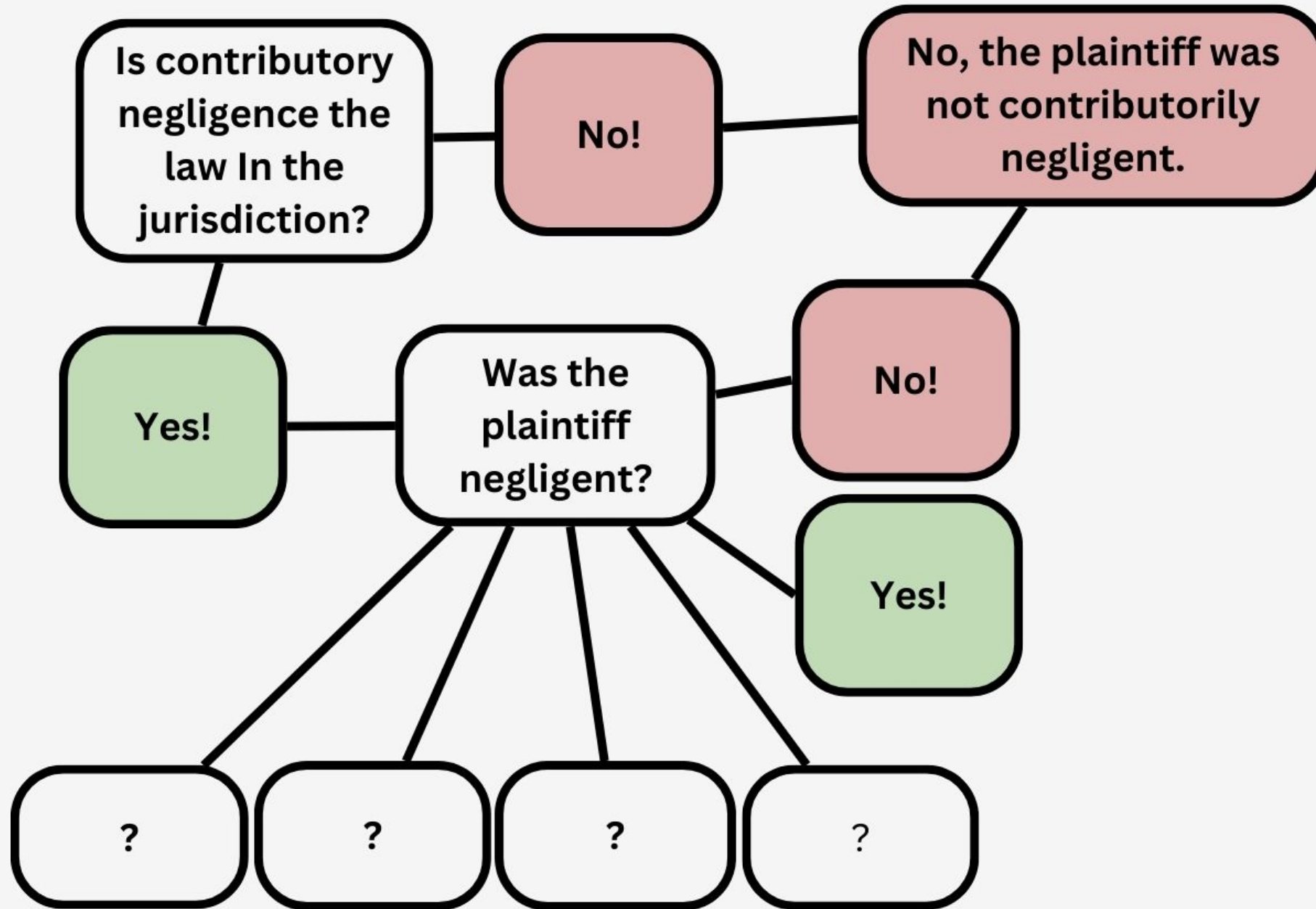
- Last clear chance,
- Recklessness or willfulness of defendant, or
- Statute



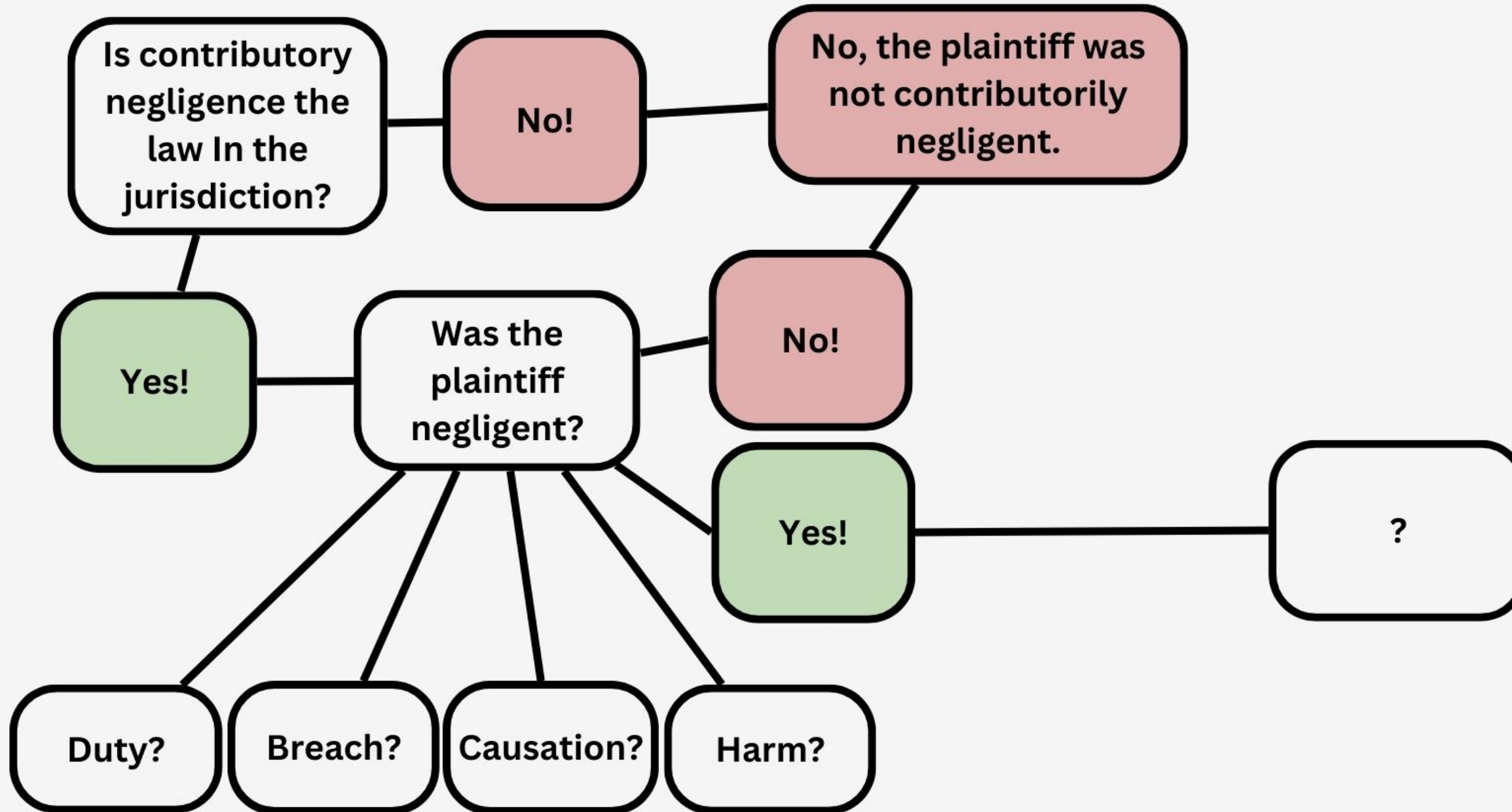
Was the plaintiff contributorily negligent?



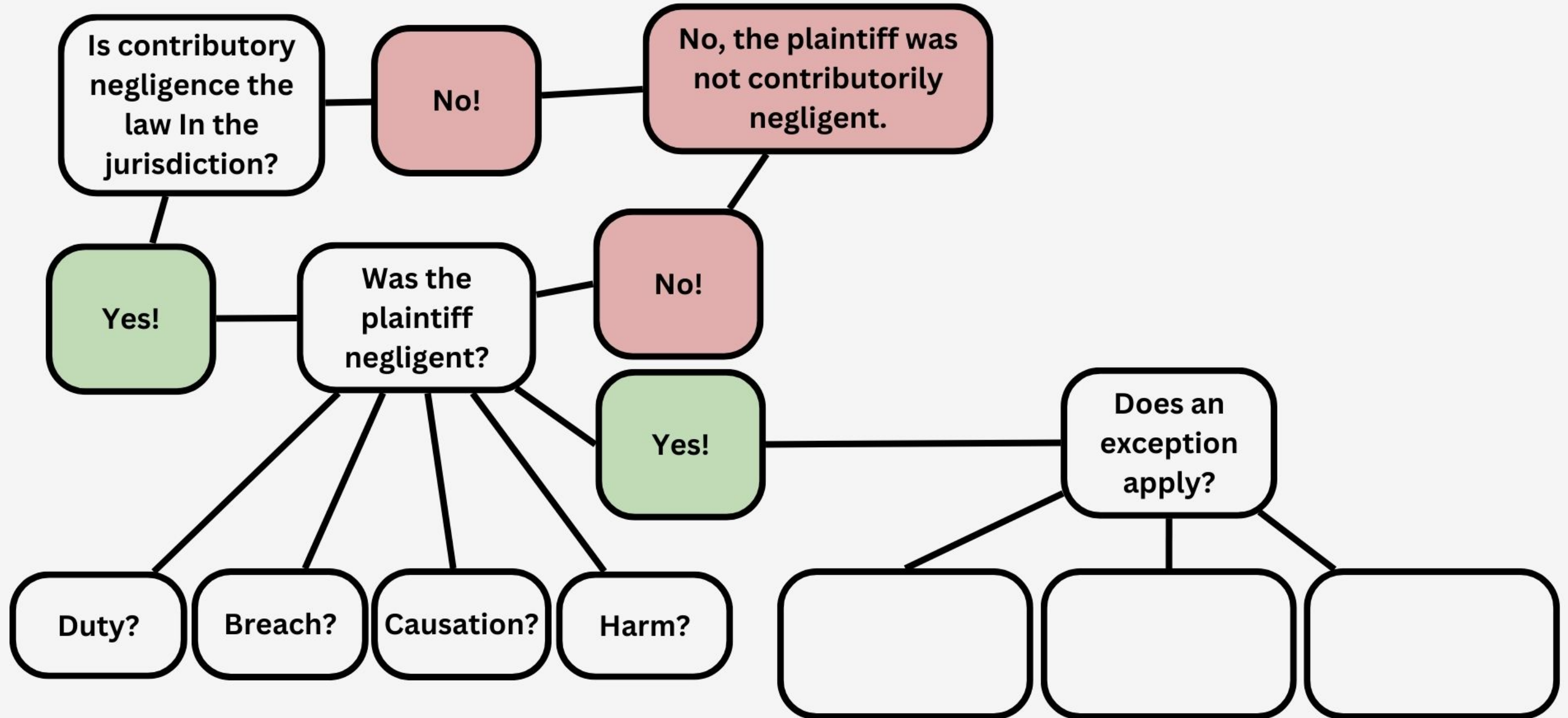
Was the plaintiff contributorily negligent?



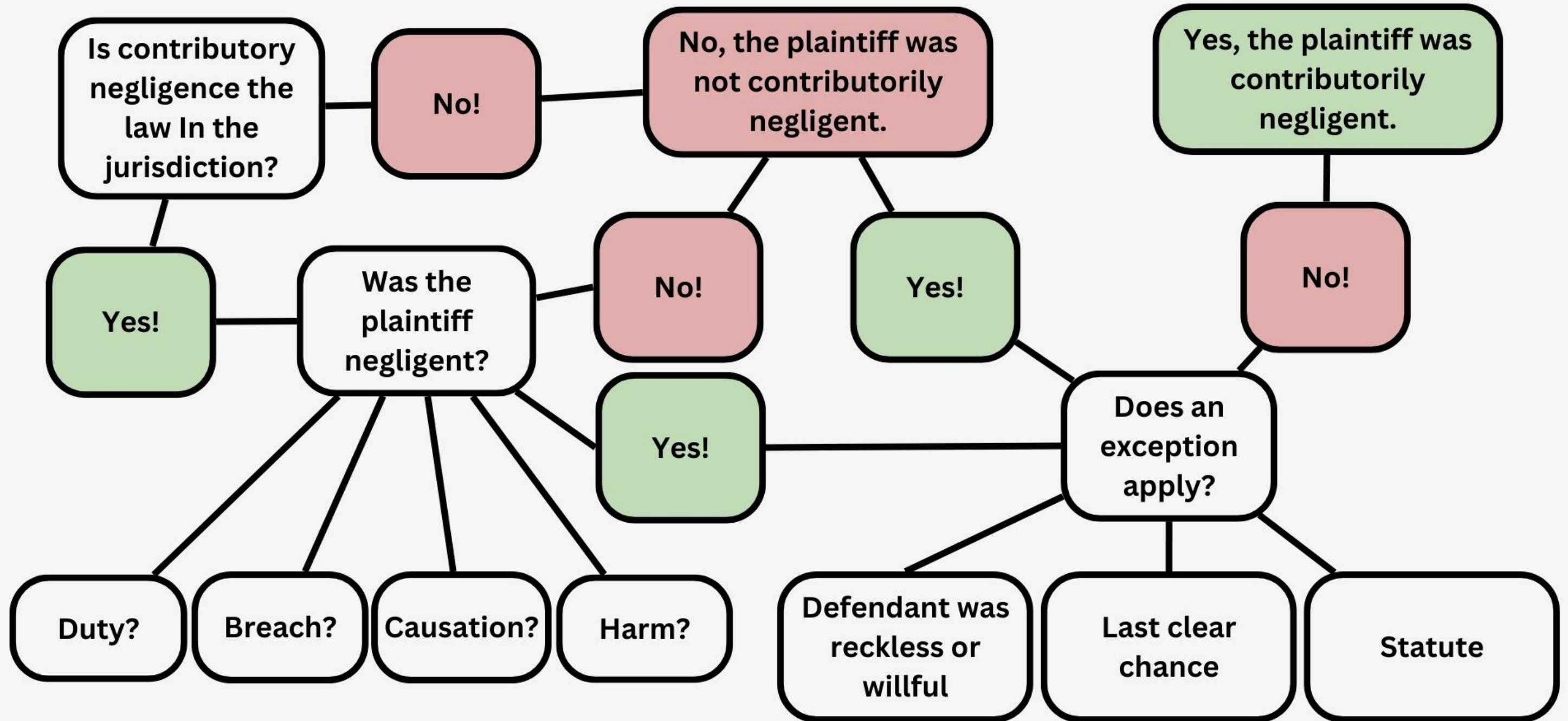
Was the plaintiff contributorily negligent?



Was the plaintiff contributorily negligent?



Was the plaintiff contributorily negligent?



Li v. Yellow Cab Company

“Car Accident Comparative Negligence”

Comparative Negligence

Three forms:

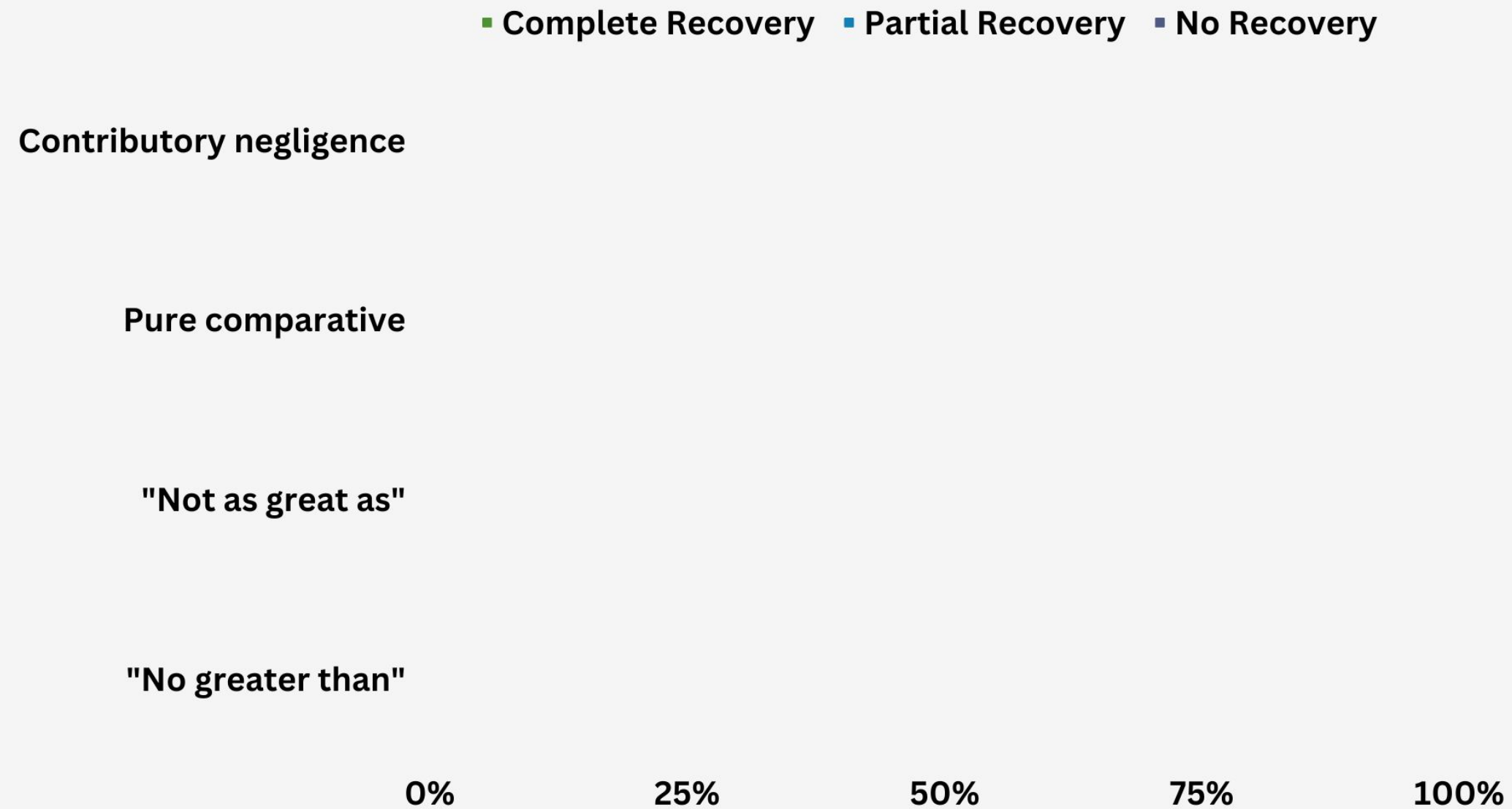
1. Pure comparative negligence
2. “Not as great as”
3. “No greater than”

Comparative Negligence

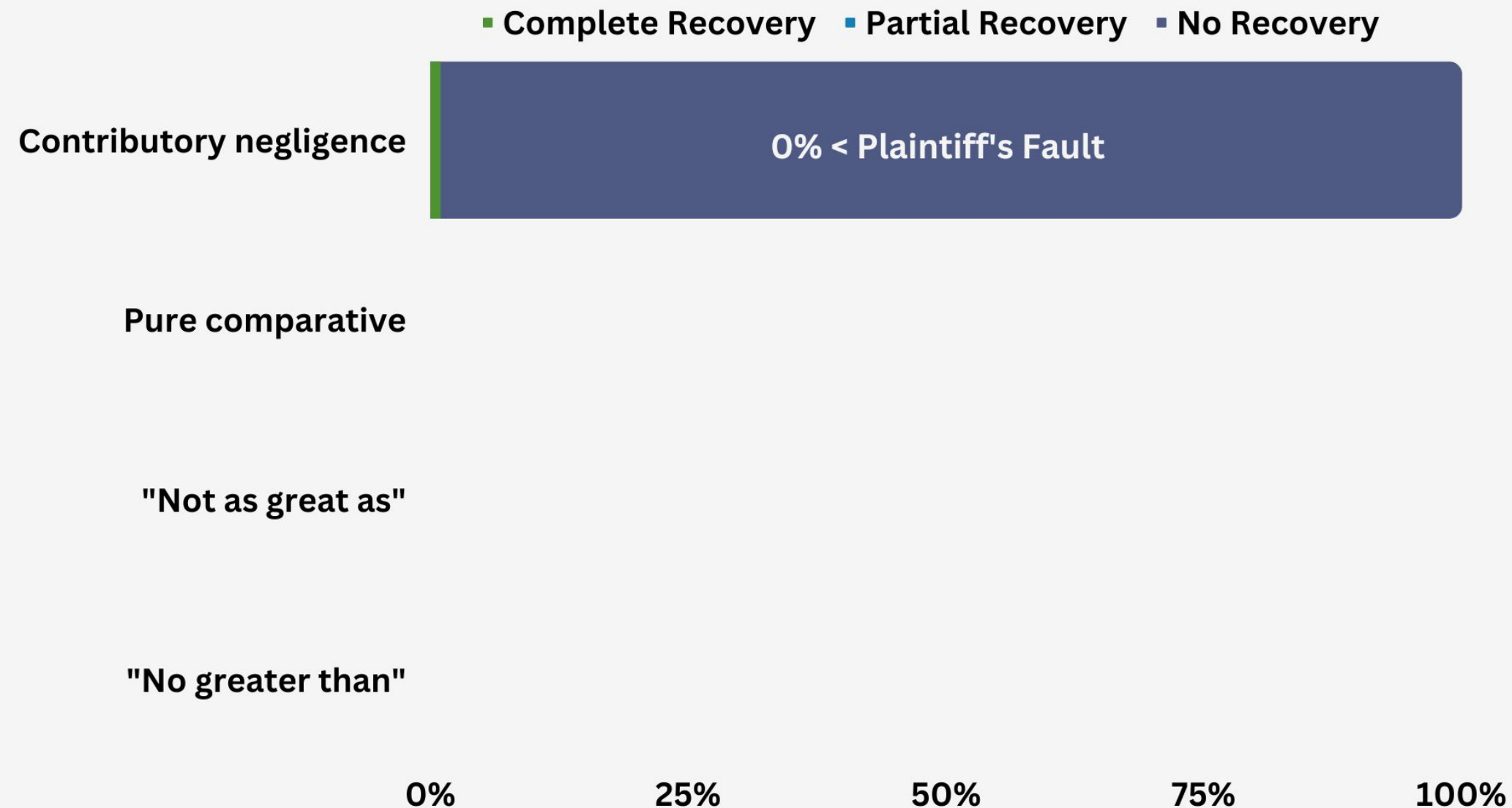
Three forms:

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)

Can the negligent plaintiff recover damages?

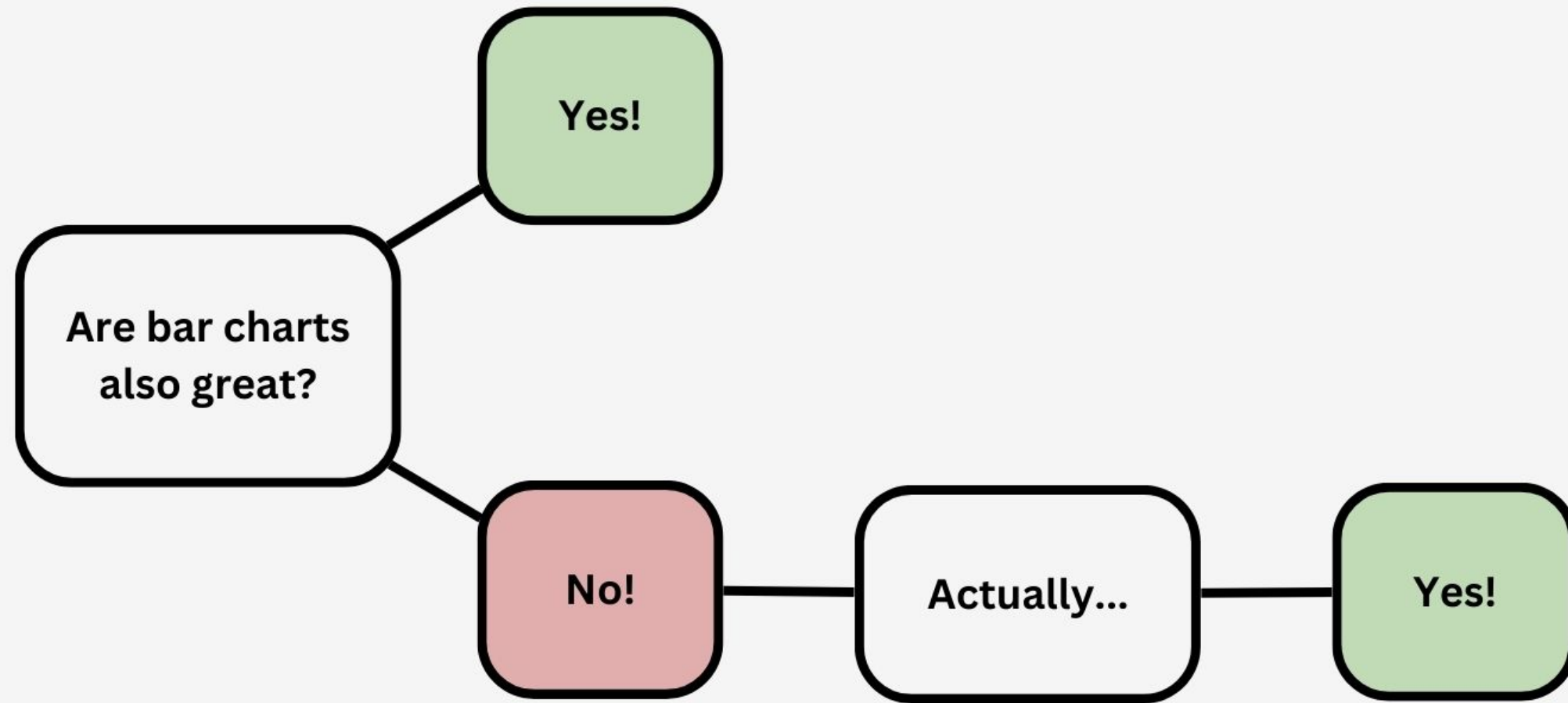


Can the negligent plaintiff recover damages?

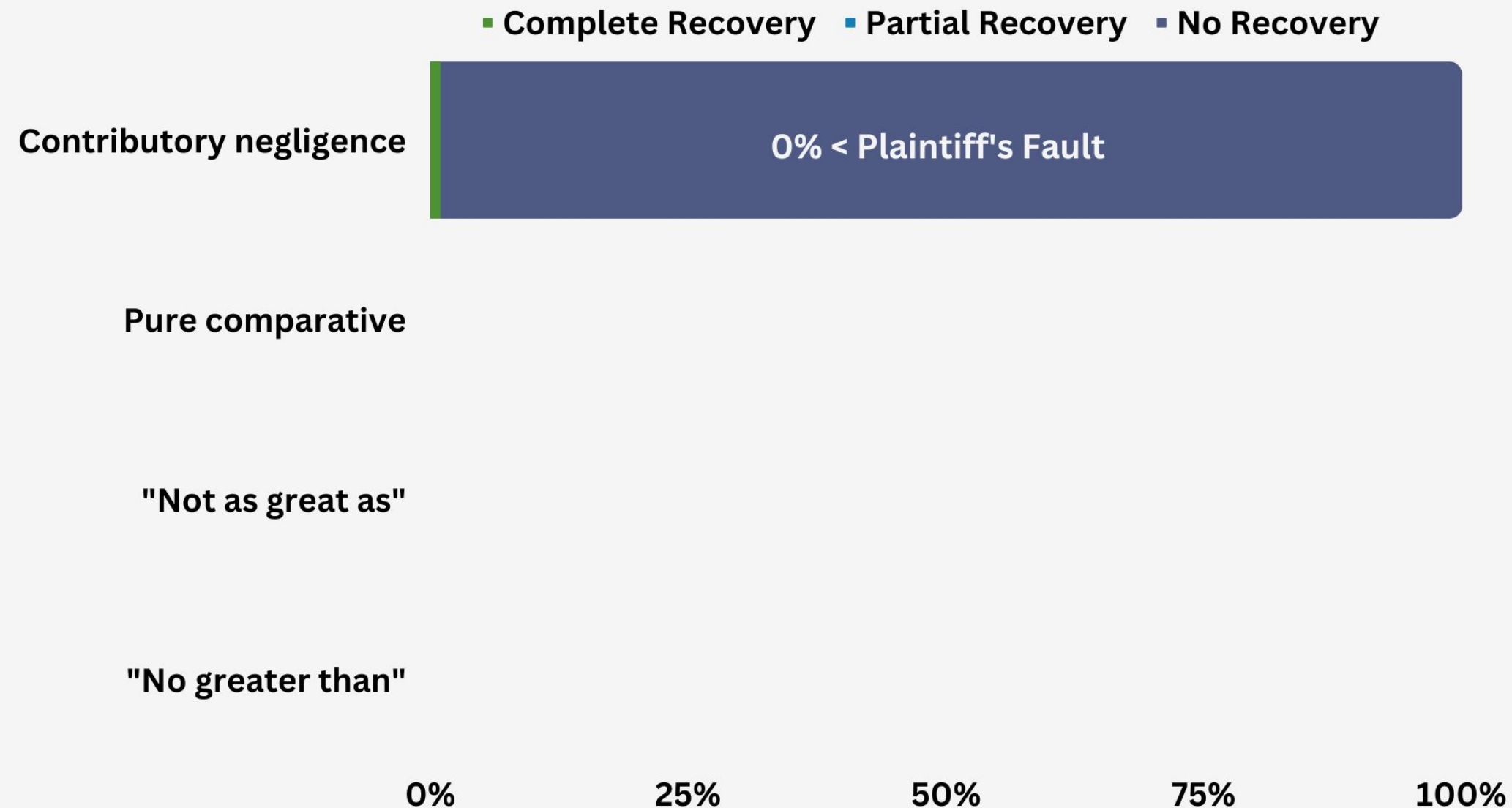


**That's not
a flowchart!**

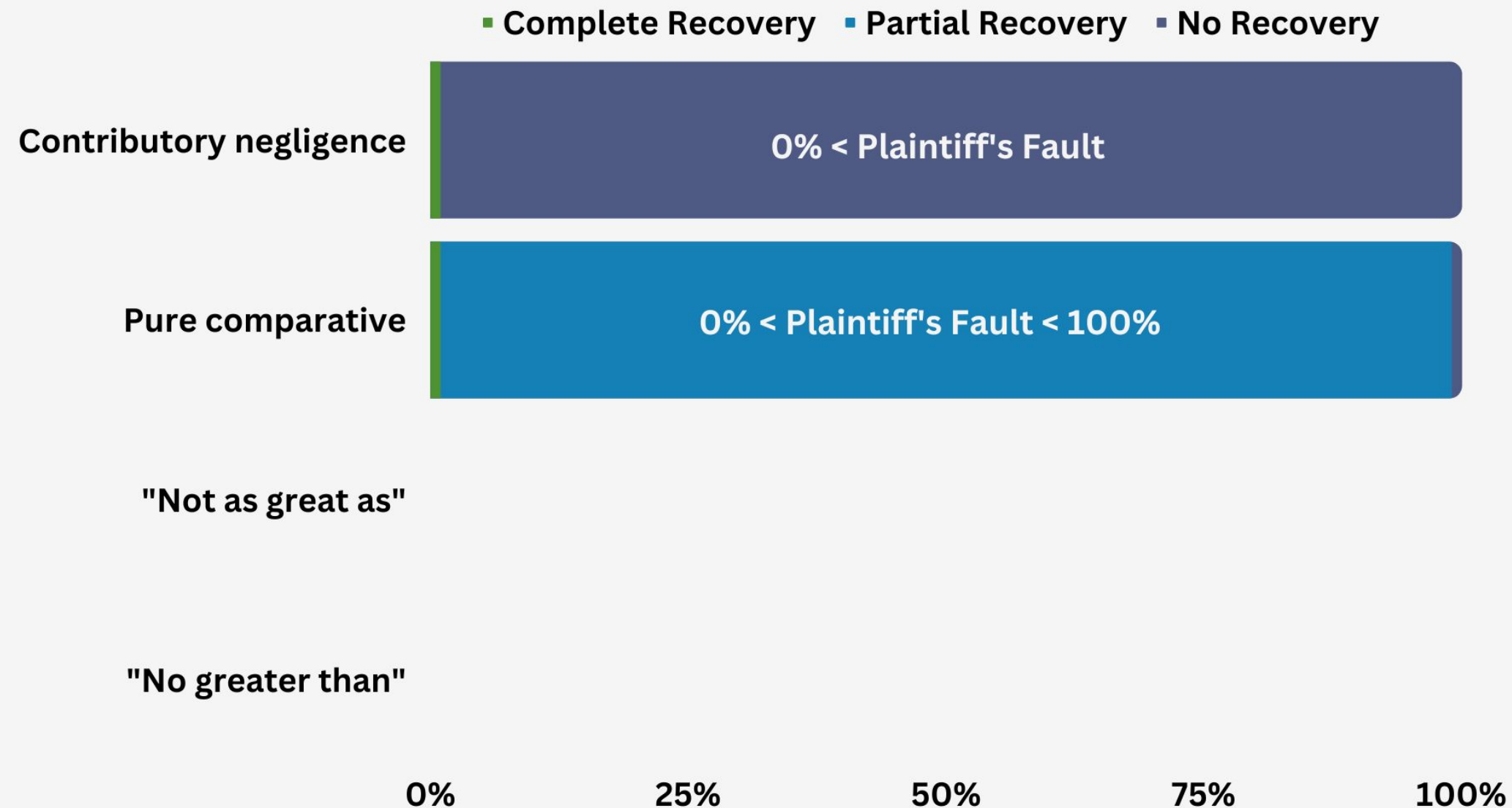
It's cool



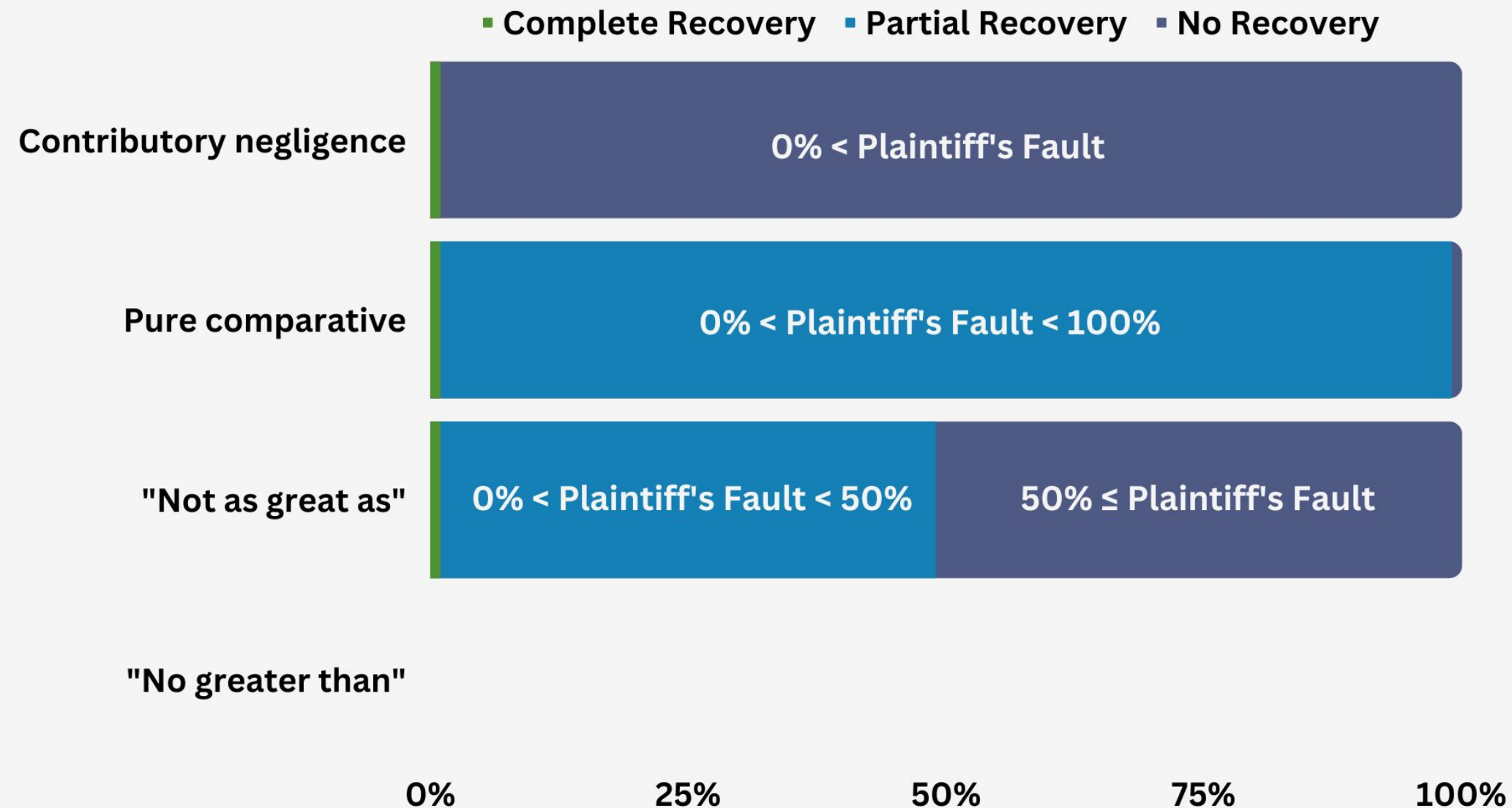
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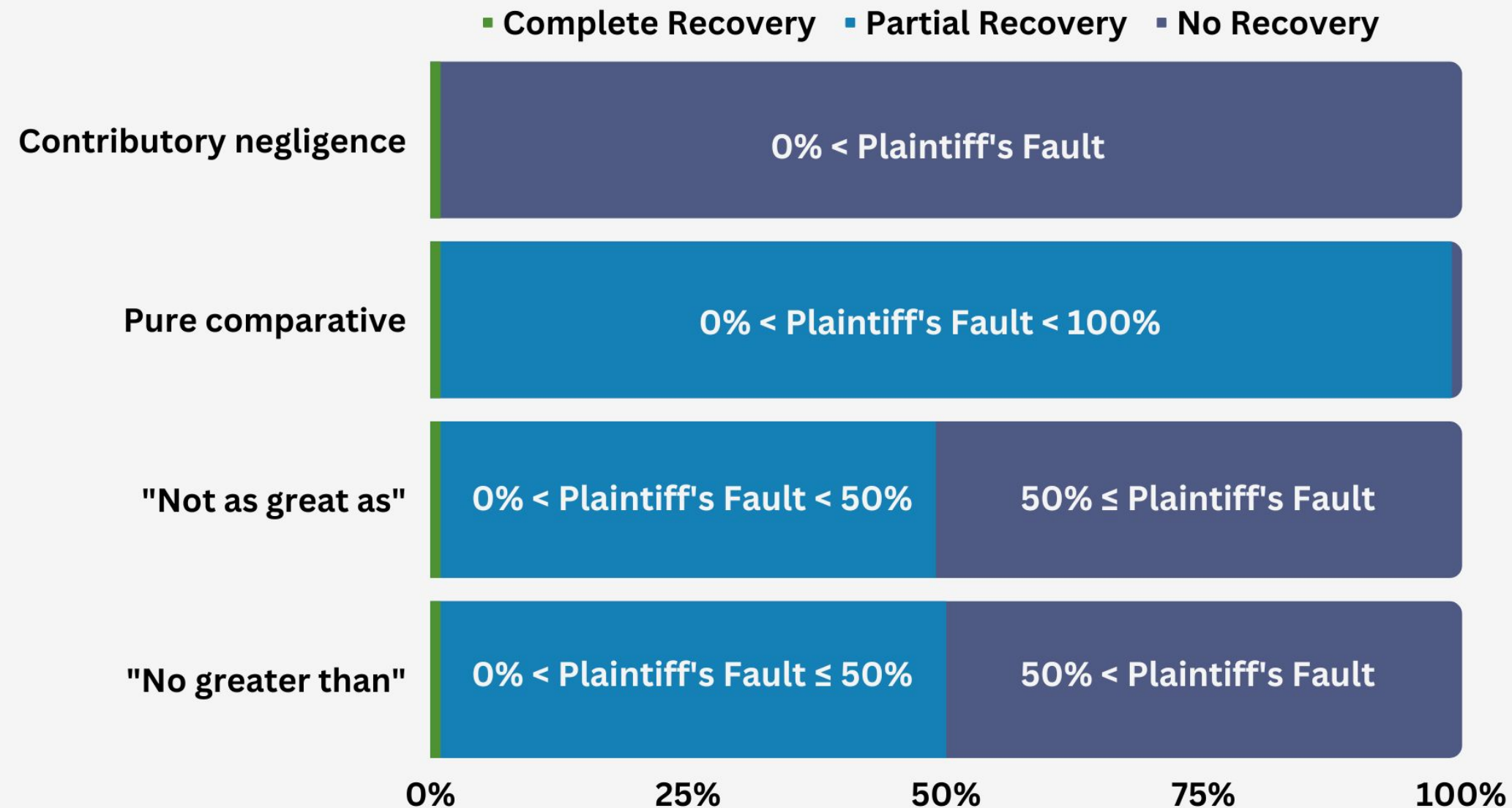
Can the negligent plaintiff recover damages?



Can the negligent plaintiff recover damages?



Can the negligent plaintiff recover damages?



**If multiple defendants are liable,
how much are they each paying?**

Doctrine of Contribution

Traditional Common Law Approach

Two versions:

1. Joint and several liability
2. Several liability

Apportionment based on factual cause

Don't
forget about
factual cause!

Don't forget about factual cause!

Tortfeasors are only liable for the injuries they caused.

Order of operations with multiple injuries and multiple liable defendants

First step:

Separate injuries based on factual cause.

Second step:

For injuries that multiple defendants caused, sort out liability based on the contribution rule in the jurisdiction.

Fritts v. McKanne