

A private school held a bake sale to raise money. Three parents separately made chocolate chip cookies at their own homes, following their own recipes. The parents brought their cookies to school on the designated day, and a volunteer divided the cookies among small plates for sale. Each small plate contained at least one cookie from each of the three parents. Several people who purchased treats from the bake sale became ill and were diagnosed with food poisoning. After an investigation, the Health Department determined that the chocolate chip cookies caused the outbreak, and that someone who made the cookies did not follow appropriate food-safety measures.

A student who purchased a plate of the chocolate chip cookies became so ill that she required hospitalization. She sued the three parents who made the chocolate chip cookies for negligence, claiming that the parents are jointly and severally liable for her harm. The student was able to conclusively establish that the chocolate chip cookies were the cause of her illness, but not which specific parent made the contaminated cookies.

Is the student likely to succeed in her negligence suit?

- A. No, because the student cannot sue multiple defendants for the same harm.
- B. No, because there is no evidence that each of the parents was negligent.
- C. Yes, because the parents have the burden to prove that they did not cause the student's harm.
- D. Yes, because the parents were acting in concert to raise money through the bake sale.

Explanation:

Joint and several liability arises when **two or more defendants** were **negligent** and any one of them **could have caused** the **plaintiff's indivisible harm**. This allows the plaintiff to recover the full amount of damages from any of the negligent defendants, even if it is impossible to prove which one actually caused the harm. However, the plaintiff must first prove that **each defendant was negligent**.

Here, the parents were not acting in concert—ie, pursuant to a common plan or design—because they each made the cookies in their own homes, following their own recipes **(Choice D)**. And there is no evidence that each parent was negligent because the Health Department merely determined that someone (not everyone) failed to follow appropriate food-safety measures. This means that the parents are *not* jointly and severally liable for the student's illness. Therefore, the student is unlikely to succeed in her negligence suit.

(Choice A) A plaintiff can sue multiple defendants for the same harm based on joint and several liability. However, the plaintiff must still prove that each defendant acted negligently.

(Choice C) In a joint and several liability action, the burden shifts to each defendant to prove that his/her negligence did not cause the plaintiff's harm *only* after the plaintiff proves that each defendant was negligent (not seen here).

Educational objective:

If multiple defendants were negligent and any one of them could have caused the plaintiff's harm, joint and several liability allows the plaintiff to recover from any of them even if it is impossible to prove which defendant actually caused the harm. But the plaintiff must first show that each of the defendants was negligent.

References

Restatement (Second) of Torts § 875 (Am. Law Inst. 1979) (explaining that multiple tortfeasors who cause an indivisible harm can be held liable individually for the entire harm).