

A schizophrenic patient who was institutionalized in a psychiatric facility pushed a nurse down a stairwell at the facility. The nurse, a paid employee of the facility who was trained to care for schizophrenic patients, was injured. The patient is an indigent whose care is paid for by the government.

The jurisdiction generally follows the rule that a person with a mental deficiency is held to the standard of a reasonable person. In a negligence action brought by the nurse against the patient, the patient's lawyer will argue that the patient should not be held responsible for the nurse's injury.

Which of the following facts will be LEAST helpful to the patient's lawyer's argument?

- A. At the time she pushed the nurse, the patient thought she was being attacked by an elephant.
- B. The nurse was a professional caregiver.
- C. The nurse was trained to care for patients with schizophrenia.
- D. The patient is an indigent whose care is paid for by the government.

Explanation:

Assumption of the risk

(voluntary exposure to known risk of harm)

Traditional *contributory* negligence

Bars plaintiff's recovery

Pure *comparative* negligence*

Majority view: Reduces recovery by plaintiff's proportionate share of fault

Minority view: Bars plaintiff's recovery

*Default rule on MBE.

In this jurisdiction, persons with mental deficiencies (eg, schizophrenia) are held to the [standard of care](#) of a reasonable person, which means that mental deficiency is not a defense to **negligence**. But in pure comparative negligence jurisdictions (default rule on the MBE), **assumption of the risk** is a **defense** that can either reduce (majority view) or bar (minority view) the plaintiff's recovery. This defense applies if the **plaintiff**:

knew about the **risk of harm** (eg, based on prior training or experience) *and* **voluntarily accepted** that risk (eg, by agreeing to confront the risk for compensation).

Here, the schizophrenic patient pushed the nurse down a stairwell, and the nurse sued the patient for negligence. But the nurse should have known about this risk since he was a professional caregiver trained to care for patients with schizophrenia (**Choices B & C**). And by agreeing to work at a psychiatric facility, the nurse voluntarily accepted the risks posed by hallucinating patients (**Choice A**). Therefore, these arguments are helpful to establishing assumption of the risk, which would reduce or negate the patient's responsibility for the nurse's injury.

However, **inability to pay** is **never a defense** to tort liability. As a result, the patient's least helpful argument is that she is an indigent whose care is paid for by the government.

Educational objective:

Assumption of the risk is a defense to negligence that either reduces or bars recovery if the plaintiff knew about and voluntarily accepted the risk that caused that plaintiff's harm. But inability to pay is never a defense to tort liability.

References

Restatement (Second) of Torts § 496C (Am. Law Inst. 1965) (explaining that a plaintiff cannot recover for negligence when he/she fully understood and voluntarily confronted a risk).

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