

A bartender was removing the restraining wire from a bottle of champagne produced and bottled by a wine company when the plastic stopper suddenly shot out of the bottle. The stopper struck and injured the bartender's eye. The bartender had opened other bottles of champagne, and occasionally the stoppers had shot out with great force, but he had not been injured.

The bartender brought an action against the wine company, and the jury found that the bottle that caused his injury was defective and unreasonably dangerous because its label did not warn that the stopper might suddenly shoot out during opening. The state has merged contributory negligence and unreasonable assumption of risk into a pure comparative fault system that is applied in strict products liability actions.

Will the bartender recover a judgment in his favor?

- A. No, if a reasonable bartender would have realized that a stopper could eject from the bottle and hit his eye.
- B. No, if the jury finds that a legally sufficient warning would not have prevented the bartender's injury.
- C. Yes, with damages reduced by the percentage of any contributory fault on the bartender's part.
- D. Yes, with no reduction in damages, because foreseeable lack of caution is the reason for requiring a warning.

Explanation:

Under products liability law, **commercial suppliers** are required to provide **adequate warnings** (or instructions) when:

their product poses a foreseeable and unobvious risk of physical harm *and* reasonable warnings could reduce that risk.

Failure to provide adequate warnings renders a product defective and subjects a commercial supplier to **strict liability** when that **defect causes the plaintiff harm**. To prove that the defect caused his/her harm, the plaintiff must show that the harm would not have occurred had a legally sufficient warning been provided.

Here, the bartender was injured by a champagne bottle stopper. The jury found that the bottle was defective due to its lack of warning about the stopper. But if the jury also finds that a legally sufficient warning would not have prevented the bartender's injury—eg, that even with a warning the bartender would have opened the bottle the same way he had in the past—then the bottle's absent warning did not cause his injury and he will not prevail.

(Choice A) If a reasonable bartender would have realized the stopper's risk of harm, then the bartender may have contributed to his harm by failing to protect himself against that risk (contributory negligence). However, the bartender's contributory negligence would merely reduce—not bar—his recovery in this **pure comparative fault jurisdiction**.

(Choice C) If the bartender could obtain a judgment in his favor, his recovery would be reduced by his percentage of contributory fault in this pure comparative fault system—eg, bartender 60% at fault would still recover 40% of his damages. But if the jury finds that a sufficient warning would not have prevented his injury (eg, because he would have ignored the warning), then *none* of his harm was caused by the absent warning and he will recover nothing.

(Choice D) The fact that a user's lack of caution may have been foreseeable would support the jury's finding that the bottle was defective. But to recover, the bartender must also prove that a legally sufficient warning would have prevented his injury.

Educational objective:

A commercial supplier is strictly liable for harm caused by a defective product that lacks adequate warnings if legally sufficient warnings would have prevented the plaintiff's harm.

References

Restatement (Third) of Torts: Prods. Liab. §§ 1, 2(c) cmt. i (Am. Law Inst. 1998) (strict products liability for inadequate warnings or instructions).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 26 cmt. g (Am. Law Inst. 2010) (harm caused by inadequate warnings).

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Strict products liability for inadequate warnings

