

A man who was visiting a shooting range misunderstood a signal that indicated shooting in progress and walked in front of another customer who was shooting toward a target. The man was hit by a bullet and seriously injured.

The man sued the customer, the owner of the range, and the manufacturer of the signaling apparatus. The jurisdiction prohibits a plaintiff from recovering against a defendant whose fault is less than or equal to that of the plaintiff.

If the jury determines that the man was 25% responsible and that each defendant was also 25% responsible, will the man be able to recover damages, and if so, how much from each defendant?

- A. The man will be able to recover 25% of his damages from each defendant. (1%)
- B. The man will be able to recover 25% of his damages from the customer but nothing from the owner or the manufacturer. (0%)
- C. The man will be able to recover 75% of his damages from any defendant. (25%)
- D. The man will not be able to recover damages. (72%)

Incorrect

Correct answer D

72% Answered correctly

01 min, 17 secs Time Spent

2023 Version

Explanation:

In traditional contributory-negligence jurisdictions, a plaintiff who fails to use reasonable care for his/her own safety and thereby contributes to his/her own injury is barred from recovering damages. However, **almost all jurisdictions** apply some form of **pure or modified comparative fault**. In a pure comparative-fault jurisdiction (default rule on MBE), recovery is *reduced* by the plaintiff's percentage of fault. And in a **modified comparative-fault jurisdiction**, recovery is reduced like in a pure comparative-fault jurisdiction but is **barred**:

in the vast majority of such jurisdictions if the **plaintiff's share of fault** is ***greater than*** the **share of fault for the defendant** against whom recovery is sought *or*

in a small minority of such jurisdictions (including the jurisdiction here) if the **plaintiff's share of fault** is ***equal to or greater than*** the **share of fault for the defendant** against whom recovery is sought.

When there is **more than one defendant**, the **plaintiff's degree of negligence is compared** to the **total negligence of all defendants** combined—**unless the jurisdiction provides** that the plaintiff's degree of negligence is **compared to each defendant's share of negligence** individually (as seen here).

Here, the jury determined that the man (plaintiff) was 25% responsible and the customer, the owner, and the manufacturer (defendants) were each 25% responsible. Since the man's share of fault is equal to each defendant's share of fault, the jurisdiction's modified comparative-fault rule prohibits recovery (**Choice B**). Therefore, the man will not be able to recover damages from any defendant.

(Choices A & C) Had the jurisdiction adopted another type of comparative fault, the man would be able to recover damages. In a *joint and several liability* jurisdiction (default on MBE), the man could then recover the total amount of damages minus his share of fault (75%) from any defendant. In a *several* liability jurisdiction, the man could then recover from each defendant the amount of damages owed based on their level of fault (25%).

Educational objective:

In a modified comparative-fault jurisdiction, recovery is reduced by the plaintiff's percentage of fault but is barred if the plaintiff's share of fault is (1) greater than the share of fault for the defendant (majority rule) or (2) equal to or greater than the share of fault for the defendant (minority rule).

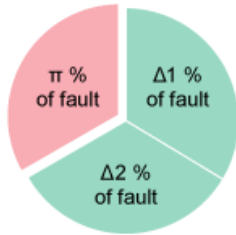
References

57B Am. Jur. 2d Negligence §§ 956, 957 (2022) (discussing modified comparative negligence involving multiple defendants).

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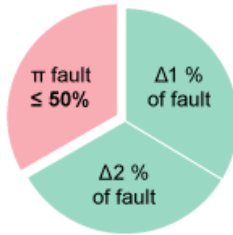
Negligence rules of recovery

Pure comparative negligence*



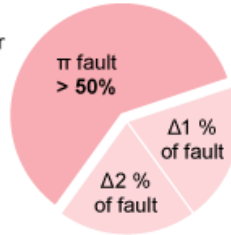
Damages – π % of fault

Modified comparative negligence



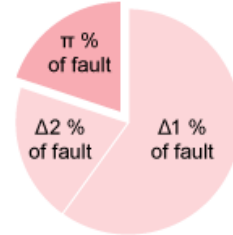
Damages – π % of fault

or



No recovery

Contributory negligence



No recovery

*Default rule on MBE; π = plaintiff; Δ = defendant

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