

A consumer brought a federal diversity action against a manufacturer, seeking damages for products liability claims. In its answer, the manufacturer included the affirmative defense of contributory negligence. Applicable state law had recently abolished contributory negligence as a defense in such actions.

Before trial, the judge allowed the parties to submit proposed jury instructions. The manufacturer's attorney proposed an instruction that the jury should not return a verdict for the consumer if it found that the consumer had been contributorily negligent. After the close of the evidence, the judge told the parties that he would give the contributory negligence instruction. The consumer's attorney did not object.

The judge instructed the jury. After the jury began their deliberations, the consumer's attorney objected to the contributory negligence instruction.

Should the judge consider the objection?

- A. No, because the consumer's attorney did not object before the judge gave the instruction. (36%)
- B. No, because the consumer's attorney did not object when the judge gave the instruction. (10%)
- C. Yes, because the fact that the judge gave the inapplicable instruction constituted plain error that affected the consumer's substantial rights. (52%)
- D. Yes, because the consumer's attorney objected within 28 days after the judge gave the instruction. (0%)

Correct

52% Answered correctly

52 secs Time Spent

2023 Version

## **Explanation:**

### **Jury instructions**

(FRCP 51)

#### **Requests**

Party:

must file request by close of evidence unless earlier, reasonable deadline set by court

may file request after close of evidence when:

request relates to issue that party could not have reasonably anticipated by deadline *or*

court permits late submission related to any issue

#### **Instructions**

Court:

must inform parties of proposed instructions before instructing jury & closing arguments

must allow parties to object on record & outside jury's presence before instructing jury & closing arguments

may consider objection made after court instructs jury if instruction constituted plain error

may instruct jury at any time before discharge

#### **Objections**

Party:

must distinctly state objection & its grounds on record

must object at court-appointed time or promptly after learning of proposed instruction

**FRCP** = Federal Rule of Civil Procedure.

A court can consider an objection to an error in the jury instructions when the objection was raised either:

at the close of evidence – by filing a written request for a proposed instruction and obtaining a definitive ruling from the court on the record *or*

before the court instructed the jury and before closing arguments – by clearly identifying, and stating the grounds for, the objection on the record.

If an **objection** to a jury instruction is made **after the court instructs the jury**, the court can consider the objection only if the instruction **constituted plain error**. A plain error is an **obvious error** that **affects a substantial right** and the fairness of judicial proceedings—eg, a jury instruction that misstates the law.

Here, the consumer's attorney failed to object to the judge's jury instruction that contributory negligence is an affirmative defense to products liability actions until after the judge had instructed the jury. However, state law had abolished contributory negligence as a defense in such actions. As a result, the instruction was plain error that affected the consumer's substantial rights because it could cause the consumer to lose the case based on a misstatement of law. Therefore, the court should consider the consumer's objection.

**(Choice A)** Although the consumer's attorney did not object before the judge gave the instruction, the judge can consider the objection since the instruction constituted plain error.

**(Choice B)** A party's objection to a jury instruction is timely if it is made before the judge instructs the jury—not when the judge gives the instruction. Nevertheless, the judge here can consider the objection since the instruction affected the consumer's substantial rights.

**(Choice D)** Most objections to jury instructions must be made before the judge instructs the jury—not within 28 days after the judge gives the instruction.

**Educational objective:**

A court can consider an objection to a jury instruction that is made after the instruction was given to the jury only if the instruction constituted plain error—ie, an obvious error that affected a substantial right and the fairness of judicial proceedings.

**References**

Fed. R. Civ. P. 51 (explaining when a court can consider objections to jury instructions).

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