A delivery driver backed her truck up to the loading dock of a large home improvement store. Although it was not her job to unload the truck, the driver would sometimes open the truck's rear doors after parking it in position.

On this occasion, when the driver was about to open the rear doors, she observed through the doors' windows that some large boxes appeared to be pressed against the doors. At that point, she sought assistance. Two people who were on the loading dock responded to her request: the store's shipping manager and the manager's adult friend who was a former employee of the store and was visiting to catch up with the manager.

The driver and the friend stood back as the manager opened the doors; no boxes fell out. With the doors open, all three observed a nylon rope that ran tightly across some of the boxes near the doors. As the manager began to cut through the rope, the driver, who with the friend remained at a distance, said, "Are you sure you want to do that?"

A moment later, the friend noticed that the padlock from the truck's rear doors had fallen to the dock floor between him and the truck. Without saying anything to the manager or the driver, the friend took several steps forward to retrieve the lock. At that instant, the manager succeeded in cutting the rope, and the boxes that had been held in place by the rope fell and hit the friend's head, injuring him.

The friend has sued the store for negligence. The jurisdiction has a system of modified comparative fault but also recognizes assumption of risk as a distinct and complete defense.

Assuming that the store has raised an assumption-of-risk defense and that both sides have filed summary judgment motions based on the facts set out above, how should the trial court rule?

A. The court should enter judgment as a matter of law for the friend. (3%)
B. The court should deny both motions. (77%)
C. The court should rule that the friend's action fails as a matter of law because he implicitly assumed the risk of the manager's carelessness. (15%)
D. The court should rule that the friend's action fails as a matter of law because no reasonable jury would find him less at fault than the manager. (3%)

Correct

77%Answered correctly

01 min, 53 secsTime Spent

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Explanation:

Assumption of risk

(tort defense)

	Applicability	**Public policy limitations**
Express	Plaintiff assented to liability waiver intended to cover type of conduct that caused plaintiff's harm	Not a defense when defendant: is plaintiff's employer is a hotel or common carrier is a public servant/service has substantially more bargaining power
Implied	Plaintiff voluntarily accepted known risk of harm	Not a defense when plaintiff: suffered intentional harm is member of statutorily protected class

A court must grant summary judgment if (1) there is no genuine dispute as to any material fact and (2) no reasonable jury could find for the opposing party—thereby entitling the movant to judgment as a matter of law. Such motions are often brought in **negligence** claims (as seen here). This jurisdiction recognizes the following affirmative defenses in such actions:

Modified comparative fault – if the **plaintiff's share of fault** is **less than or equal to** the **defendant's share of fault**, **recovery is *reduced*** by the plaintiff's percentage of fault* *and*

Assumption of the risk – if the plaintiff **voluntarily accepts** a **known risk** of harm, **recovery is *barred***.

Here, the friend was injured when boxes from the rear of the driver's truck hit him after the store's manager cut the rope holding the boxes in place. However, the friend (plaintiff) may also have been at fault and/or voluntarily accepted a known risk of harm by stepping toward the back of the truck after the driver had asked the manager, "Are you sure you want to [cut the rope]?" And since a jury could reasonably find in either party's favor, the trial court should deny both parties' motions for summary judgment **(Choices A, C & D)**.

*This is the view in the vast majority of modified comparative-fault jurisdictions. However, in a small minority of these jurisdictions, a plaintiff recovers nothing when the plaintiff and defendant are equally at fault.

Educational objective:

Modified comparative fault is an affirmative defense to negligence that reduces a plaintiff's recovery by the plaintiff's percentage of fault if the plaintiff's share of fault is less than or equal to the defendant's share of fault. Assumption of the risk is such a defense that bars a plaintiff's recovery if the plaintiff voluntarily accepts a known risk of harm.

References

57B Am. Jur. 2d Negligence §§ 898–899 (2022) (defining modified comparative negligence).

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).