

A man rented a beach house for a weeklong vacation. On the day he arrived, just after sunset, he took his bag upstairs to a second-floor bedroom and unpacked. As he was about to head back downstairs, he realized that the stairwell had become too dark to navigate without a light. The man spent about 30 seconds feeling the walls at the top of the stairwell but could not find a light switch. In fact, the switch was located in an awkward position not reachable without descending to the second step.

Although he recognized the danger of descending an unfamiliar staircase in darkness, the man started down the stairs. He lost his footing halfway down, fell, and was seriously injured.

The man has sued the owner of the beach house for negligence. The jurisdiction recognizes the traditional common law defense of assumption of risk.

If the action proceeds to trial, which of the following would be an appropriate (paraphrased) instruction for the court to give to the jury?

- A. "If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must assign a percentage of responsibility to the man." (30%)
- B. "If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must find for the owner." (64%)
- C. "If you conclude that the owner failed to provide reasonably safe premises, but that the man was a mere licensee, then you must find for the owner." (1%)
- D. "If you conclude that the owner failed to provide reasonably safe premises, then you may in your discretion award the man both compensatory and punitive damages." (3%)

Incorrect

Correct answer B

64% Answered correctly

01 min, 33 secs Time Spent

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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.

A land possessor (eg, the owner) is liable for **negligence** when a land entrant (eg, the man) is harmed due to the land possessor breaching his/her duty of reasonable care (eg, by failing to provide reasonably safe premises). However, in **traditional common-law** jurisdictions (as seen here), **assumption of the risk** is a **complete defense** to negligence liability. This defense applies if the **plaintiff**:

knew about the **risk of harm** *and* **voluntarily accepted** that risk.

Here, the man suffered injuries when he fell down the darkened stairs after being unable to find an awkwardly positioned light switch. However, the man *knew* the risk of descending a dark and unfamiliar staircase and *voluntarily* accepted that risk. Therefore, the following jury instruction is appropriate: "If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must find for the owner."

(Choice A) In a majority of pure comparative-negligence jurisdictions, assumption of the risk is a defense that can reduce the plaintiff's recovery by his/her proportionate share of the fault. Had the jurisdiction adopted this approach, it would have been appropriate for the court to instruct the jury to assign a percentage of responsibility to the man.

(Choice C) Under the traditional common-law approach, the man was a [licensee](#) because he entered the owner's land with permission. As a result, the owner owed the man a duty to use reasonable care. Therefore, it would be inappropriate for the court to instruct the jury to find for the *owner* if that duty was breached.

(Choice D) Even if the owner failed to provide reasonably safe premises, the man can recover *no* damages in this traditional common-law jurisdiction because he assumed the risk. Additionally, punitive damages are not [recoverable](#) in a negligence action.

Educational objective:

In traditional common-law jurisdictions, assumption of the risk is a defense to negligence that bars recovery if the plaintiff knew about and voluntarily accepted the risk that caused the plaintiff's harm.

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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