

A construction company was engaged in blasting operations to clear the way for a new road. The construction company had erected adequate barriers and posted adequate warning signs in the vicinity of the blasting. Although a hiker read and understood the signs, he entered the area to walk his dog. As a result of the blasting, the hiker was hit by a piece of rock and sustained head injuries. The jurisdiction follows the traditional common law rules governing the defenses of contributory negligence, assumption of risk, and last clear chance.

In an action by the hiker against the construction company to recover damages for his injuries, will the hiker prevail?

- A. No, because the construction company exercised reasonable care to protect the public from harm.
- B. No, because the hiker understood the signs and disregarded the warnings.
- C. Yes, because the hiker was harmed by the construction company's abnormally dangerous activity.
- D. Yes, unless the hiker failed to use reasonable care to protect himself from harm.

Explanation:

Assumption of the risk

(defense to strict liability)

Traditional *contributory* negligence jurisdiction

Bars recovery when plaintiff voluntarily exposed him/herself to known risk

Pure *comparative* negligence jurisdiction*

Reduces recovery when plaintiff voluntarily exposed him/herself to known risk

Narrow exception: *Bars* recovery when plaintiff received *benefit* (eg, financial gain, employment) from his/her exposure to risk

* Default rule on MBE.

Individuals who engage in **abnormally dangerous activities** (eg, blasting—as seen here) are generally subject to strict liability. To prevail on a **strict liability** claim, the plaintiff must show that he/she was harmed by the defendant's **abnormally dangerous activity**. But under the traditional common law rules, **assumption of the risk** is a **complete defense** to strict liability when the plaintiff **voluntarily confronted a known risk** of harm.

Here, the construction company erected barriers and warning signs near its blasting operations. The hiker read and understood these signs, so he knew that entering the area was risky. And he voluntarily confronted that risk by disregarding the warnings and entering the area. Therefore, although the hiker was harmed by the company's abnormally dangerous activity, he assumed the risk and cannot prevail in this common law jurisdiction **(Choice C)**.

(Choice A) Strict liability claims do not require proof of **fault**. Therefore, the construction company could be liable even though it exercised reasonable care by erecting adequate barriers and posting adequate warning signs.

(Choice D) Contributory negligence is not a defense to strict liability in common law jurisdictions. Therefore, the hiker's mere failure to use reasonable care for his own protection would not bar his recovery. Instead, the hiker's recovery is barred by his voluntary assumption of the risk.

Educational objective:

Individuals who engage in abnormally dangerous activities are generally subject to strict liability for any resulting harm. But in traditional common law jurisdictions, assumption of the risk is a complete defense to strict liability if the plaintiff voluntarily confronted a known risk of harm.

References

Restatement (Second) of Torts § 524 (Am. Law Inst. 1965) (explaining that contributory negligence is not a defense to strict liability unless the plaintiff's negligence amounts to assumption of the risk).

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