

I. CONTRIBUTORY NEGLIGENCE

A Defined:

Plaintiff's conduct which falls below standard for self protection, and is a legally contributing cause with the negligence of the defendant in bringing about the harm to the plaintiff. Restatement Torts 2d, §463

B Bar to Action:

C Distinguish from Negligence

D Role of Causation: Substantial factor

E Doctrine of avoidable consequences. (mitigation)

F Knowledge of peril

G Momentary forgetfulness

II. LAST CLEAR CHANCE

A Purpose: to mitigate contributory negligence rule

B Helpless Plaintiff

C Inattentive plaintiff

III. COMPARATIVE NEGLIGENCE

A A statutory scheme to reduce plaintiff's recovery for defendant's negligence by the percentage of plaintiff's negligence

B Elements:

1. Defendant's actionable negligence harming plaintiff
2. plaintiff's negligent act contributing to injury
3. identification of the percentages of relative negligence
4. award of damages reduced by plaintiff's negligence

C Systems:

1. Pure comparative negligence
2. modified, the 50% system
3. slight/gross system

D Joint tortfeasors:

1. joint and several
2. variation: equality rule of joint and several tortfeasors

3. comparative contribution:

IV. ASSUMPTION OF RISK

A Elements:

1. voluntary
2. assumption of known risk
3. full knowledge of danger

B Express Consent

1. bargaining power
2. consent freely given
3. consent for the particular risk that leads to injury

C implied consent

D knowledge of risk