

Last Clear Chance: A Defense To A Defense

Ben Neil, Retired Professor, Legal Studies, USA

ABSTRACT

This case problem will provide the student with the familiarity that they will need for the concepts of contributory negligence and last clear chance. It should also be noted that the concept of last clear chance is on the wane as a legal maxim. It is applicable in states that still use the legal defense of contributory negligence. Whereas in other states, which constitute the majority, the courts apply the concept of comparative negligence, which apportions the monetary damages given by the fact finder. There may be other considerations depending upon the country of the legal action, as this case study is based solely on United States laws.

Keywords: Last Clear Chance; Tort; Contributory Negligence; Comparative Negligence; Notice; Negligence

HYPOTHETICAL FACTUAL SCENARIO

It was a pleasant sunny summer afternoon. When Ms' Levine decided that she would leave her row house and take a walk, just a few blocks away, to shop at the local mall. When she got to the intersection, which was controlled by a traffic signal, she then continued on her journey and attempted to cross the street. She stepped off of the curb and began to cross all three lanes of traffic. Before stepping off of the curb, she made sure that it was safe to do so. As she looked to her left, towards the oncoming traffic, to make certain that it was safe for her to cross.

She was however, deaf in her right ear. But that wasn't a problem, as she had already looked to her left, for the possibility of oncoming traffic. When she had completed her journey across the three west bound lanes, she stepped up onto the concrete divider.

At the same time, Steven was driving westbound, toward Ms' LeVine, and on the opposite side of the street. This roadway was also a three lane highway and Steven was driving in the fast lane or the lane furthest to the left. Ms. LeVine stepped off of the concrete divider, just as Steven was going through the intersection. At the time, the traffic signal was green for him. And there was no other traffic near him going in the same direction. He indicated to the investigating police officer that he had seen her crossing the other three lanes, from approximately over 100 yard away. And then saw her step up onto the concrete divider. However, he expected her to wait before she attempted to proceed on her way across the other three lanes.

Unfortunately, when Ms' LeVine stepped off of the divider, she stepped directly into the path of Steven's oncoming car. She did not look to her right, according to witnesses of the accident, and since she was deaf in her right ear, she did not hear any oncoming traffic.

As a result, she was struck by Steven's vehicle and thrown over 50 feet. Witnesses stated that they thought Steven was going over the speed limit, but that was only their impression. As a result of the impact, Ms' LeVine suffered severe head trauma, as well as a broken arm and a broken hip. She is now confined to a wheelchair and has a steel plate placed in her head. She suffers from memory loss, has little, if any, control of her bodily functions and has the mind of a 10 year old.

When her attorney filed suit in the appropriate court, the insurance company for Steven argued contributory negligence on the part of Ms' LeVine, as the accident occurred in the State of Maryland.

QUESTIONS

- 1) Since the accident occurred in Maryland, which is a state that recognizes the defense of contributory negligence, is there no other legal option for Ms' LeVine?

Yes. Her attorney can argue "last clear chance". Under this theory, the plaintiff (Ms' LeVine) can use the doctrine as a defense. But the plaintiff needs to show that the defendant (Steven) had the last clear chance to avoid the accident.

- 2) Is the doctrine an absolute defense?

Not necessarily. If the defendant had an opportunity to avoid the accident, but the amount of time for the defendant to react is negligible, then the defense would, most likely, not apply.

- 3) Is this defense known by any other name?

Yes. It is also known as the humanitarian doctrine, the doctrine of discovered peril, the doctrine of discovered negligence, the doctrine of subsequent negligence and the doctrine of supervening negligence.

- 4) Are there other exceptions to this doctrine?

Yes. Admiralty courts, as a general rule, do not use this doctrine.

- 5) How does the doctrine of "last clear chance" work?

It is effective, even though the plaintiff was contributorily negligent. It is intended to provide justice and reasonableness.

- 6) Are there restrictions or dissatisfaction with the defense of contributory negligence?

Yes. Because the rule, when applied, is a complete bar to recovery and therefore becomes very rigid in its application to the cases involved.

- 7) Are there other defenses to negligent acts?

Yes. The majority of states use comparative negligence which allows judges or juries to apportion their damage awards.

- 8) Under the doctrine of last clear chance, when would the plaintiff be able to recover?

When the defendant had proper "notice" of the plaintiff's peril, in enough time to alter or correct their actions in order to avoid or prevent the injuries to the plaintiff.

AUTHOR BIOGRAPHY

Ben Neil served as a business law faculty member for 37 years, at Towson University, located in Baltimore, Maryland before retiring from teaching in 2015. E-mail: bneillaw@gmail.com

SUGGESTED REFERENCES

The Restatement (Second) of Torts

Columbia Law Review, “The Last Clear Chance Doctrine”, pp745-748, Vol. 22 #8, (Dec 1922)

www.WCL.American.edu/journal/law_rev/04/benton; “The Doctrine of Last Clear Chance”, pp 58-67

Contributory Negligence and Maryland’s “Last Clear Chance” Doctrine, Sept 16, 2013, Trey Ross, Esq.

Schultz v. Bank of Am., 990 A 2d 1978, (Md 2010)

Ritter v. Potera, 59 Md App 65 (1984)

<http://law.justia.com/cases/florida/supreme-court/1967/33710-0.html>

<http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6039&context=lawreview>

APPLICABLE COURSES

- Legal Studies
- Business Law
- Torts
- Legal Environment

ADDITIONAL RESEARCH

- Contributory Negligence
- Comparative Negligence
- Torts

NOTES