

Vicarious Liability

Miller v. Reiman-Wuerth Co.

“The Bank Errand”

Christensen v. Swenson

“The Lunch Break”

Three criteria

- 1) Employee's conduct must be of the general kind the employee is hired to perform.
- 2) Employee's conduct must occur substantially within the hours and ordinary spatial boundaries of the employment.
- 3) Employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

Kuehn v. Inter-city Freight

“Road Rage”

Sage Club v. Hunt

“The Violent Bartender”

Exercise: Causation and Vicarious Liability

Cooper seeks to dismiss the case against her for two independent reasons:

1. Cooper did not breach a duty of care to Boyd.
2. Cooper did not proximately cause Boyd's injuries.

Greene seeks to dismiss the case against her for two independent reasons:

1. Cooper putting out the trashcans was an intervening cause of Boyd's injuries.
2. Even if Cooper's actions were not an intervening cause, Greene still did not proximately cause Boyd's injuries.

ACME seeks to dismiss the negligence case against it for two reasons:

1. ACME is not liable for Greene's tortious acts because she was acting outside the scope of her employment.
2. ACME is not liable because asking Greene to pick up a birthday cake was not a factual cause of Boyd's injuries.

Factual Cause

Stubbs v. City of Rochester: “Sewage in the Drinking Water”

Zuchowicz v. United States: “Prescribed Drug Overdose”

Anderson v. Minneapolis, St. Paul & Sault Ste. Marie Railway Co.:
“Multiple Fires Whodunnit”

Summers v. Tice: “Hunting Party Whodunnit”

Garcia v. Joseph Vince Co.: “Fencing Sabre Whodunnit”

Sindell v. Abbott Laboratories: “Toxic Harms”

Four typical scenarios in which factual cause may be contested

1. Toxic exposure
2. No idea what happened
3. Know what happened, but don't know that it wouldn't have happened if defendant had behaved reasonably
4. Know what happened, but don't know who to blame

Proximate Cause

In re Polemis: “The Plank that Made a Ship Explode”

Wagner v. International Railway Co.: “The Injured Rescuer”

Benn v. Thomas: “The Time-Delayed Heart Attack”

Steinhauser v. Hertz Corp.: “Sudden Schizophrenia”

Gibson v. Garcia: “The Rotten Telephone Pole that Fell on the Car”

Berry v. Borough of Sugar Notch: “The Rotten Tree that Fell on the Speeding Car”

Palsgraf v. Long Island Railway Co.: “Fireworks on the Train Platform”

Vicarious Liability

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Sage Club v. Hunt: “The Violent Bartender”

Three criteria for scope of employment

- 1) Employee's conduct must be of the general kind the employee is hired to perform.
- 2) Employee's conduct must occur substantially within the hours and ordinary spatial boundaries of the employment.
- 3) Employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

Where are we?

Negligence

~~Elements of a cause of action:~~

~~---Duty~~

~~---Breach~~

~~---Causation~~

~~---Harm~~

Defenses:

--- Contributory or Comparative Negligence

--- Assumption of risk

Contributory Negligence

Reconciling

Butterfield v. Forrester

“Blocking a Road with a Pole”

and

Davies v. Mann

“The Donkey on the Road”

Contributory Negligence in General:

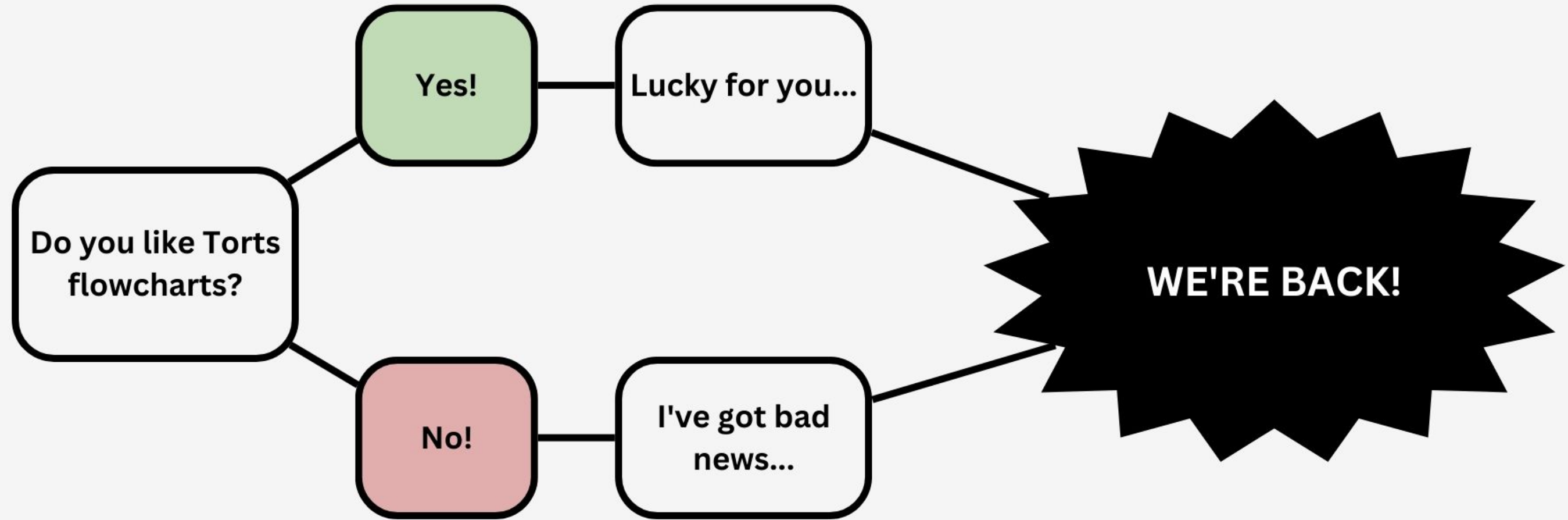
The defendant is not liable

If the plaintiff was also negligent

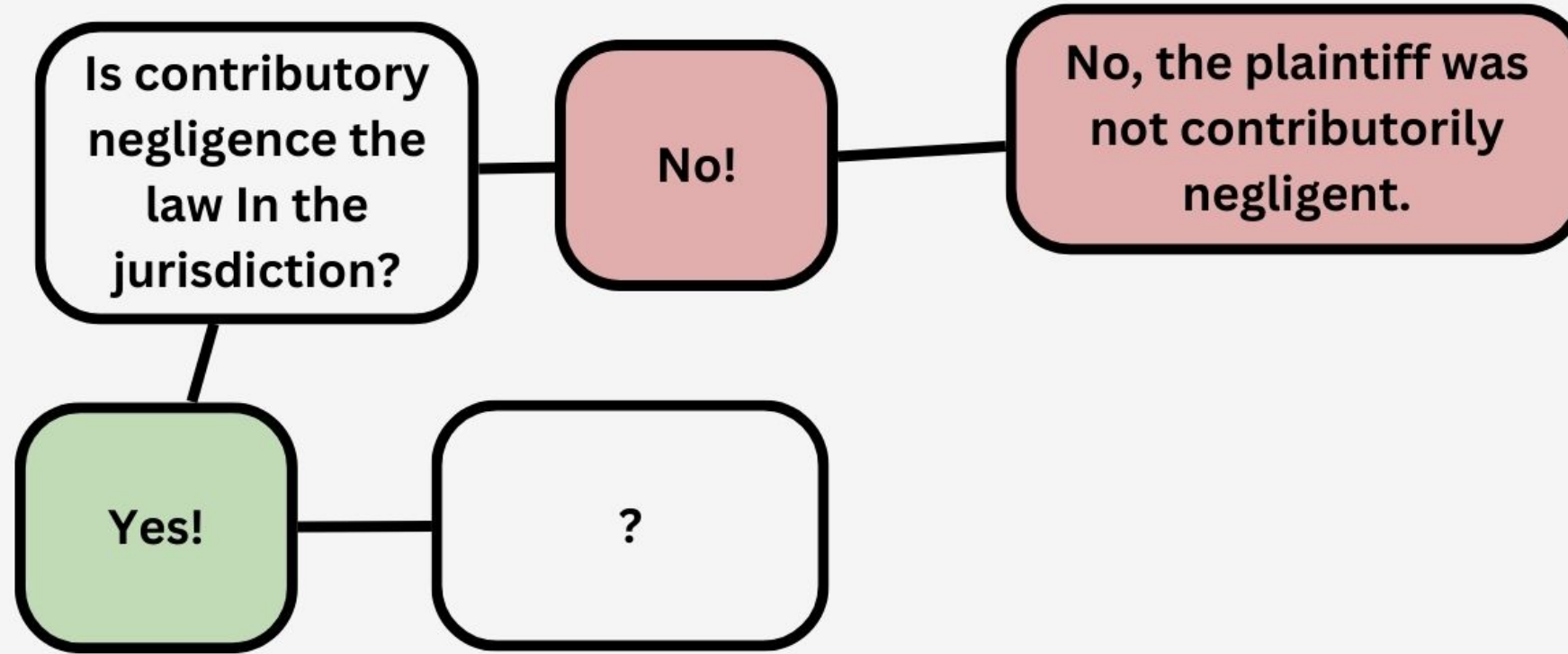
- Duty,
- Breach,
- Causation, and
- Harm

Unless an exception applies:

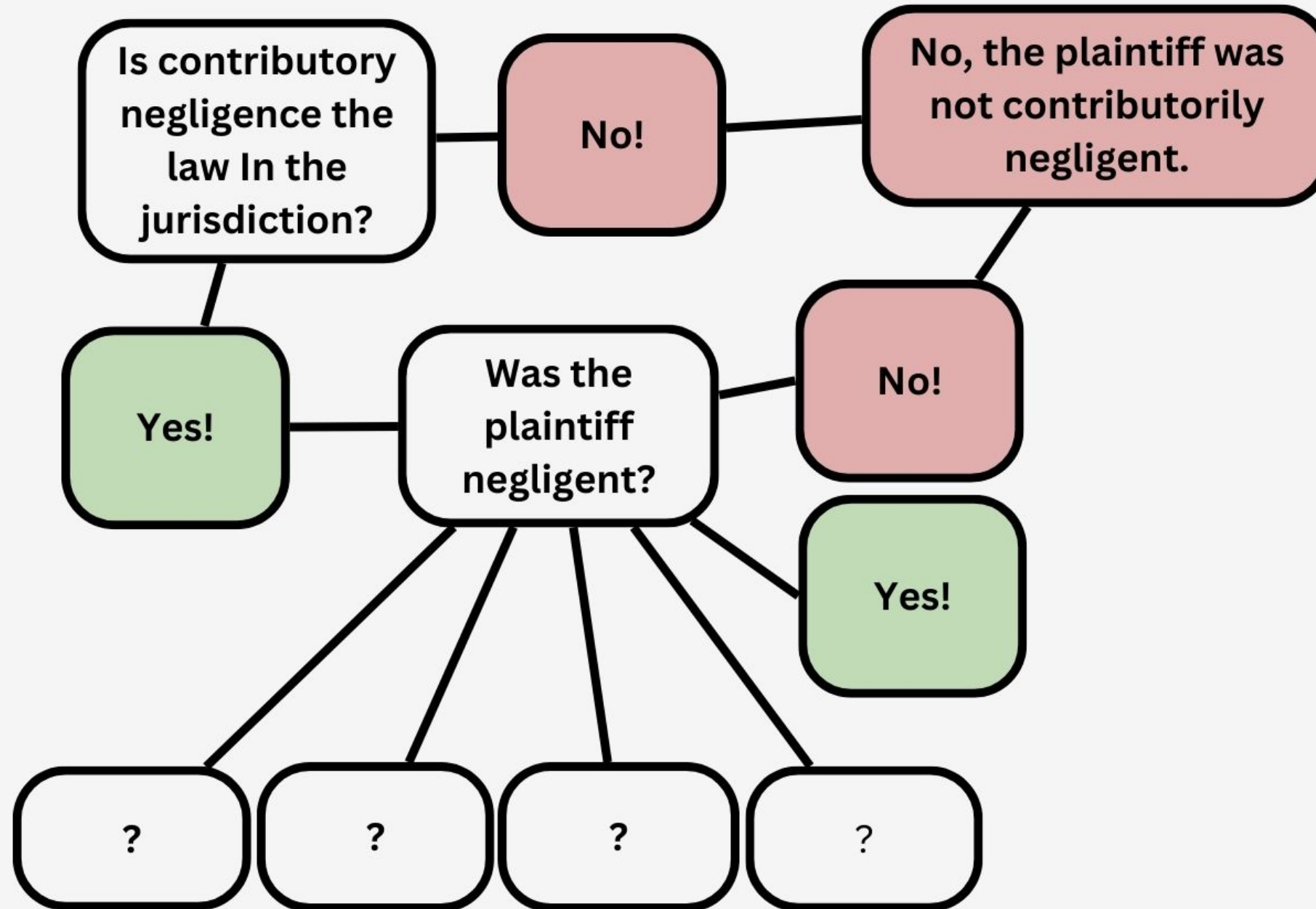
- Last clear chance,
- Recklessness or willfulness of defendant, or
- Statute



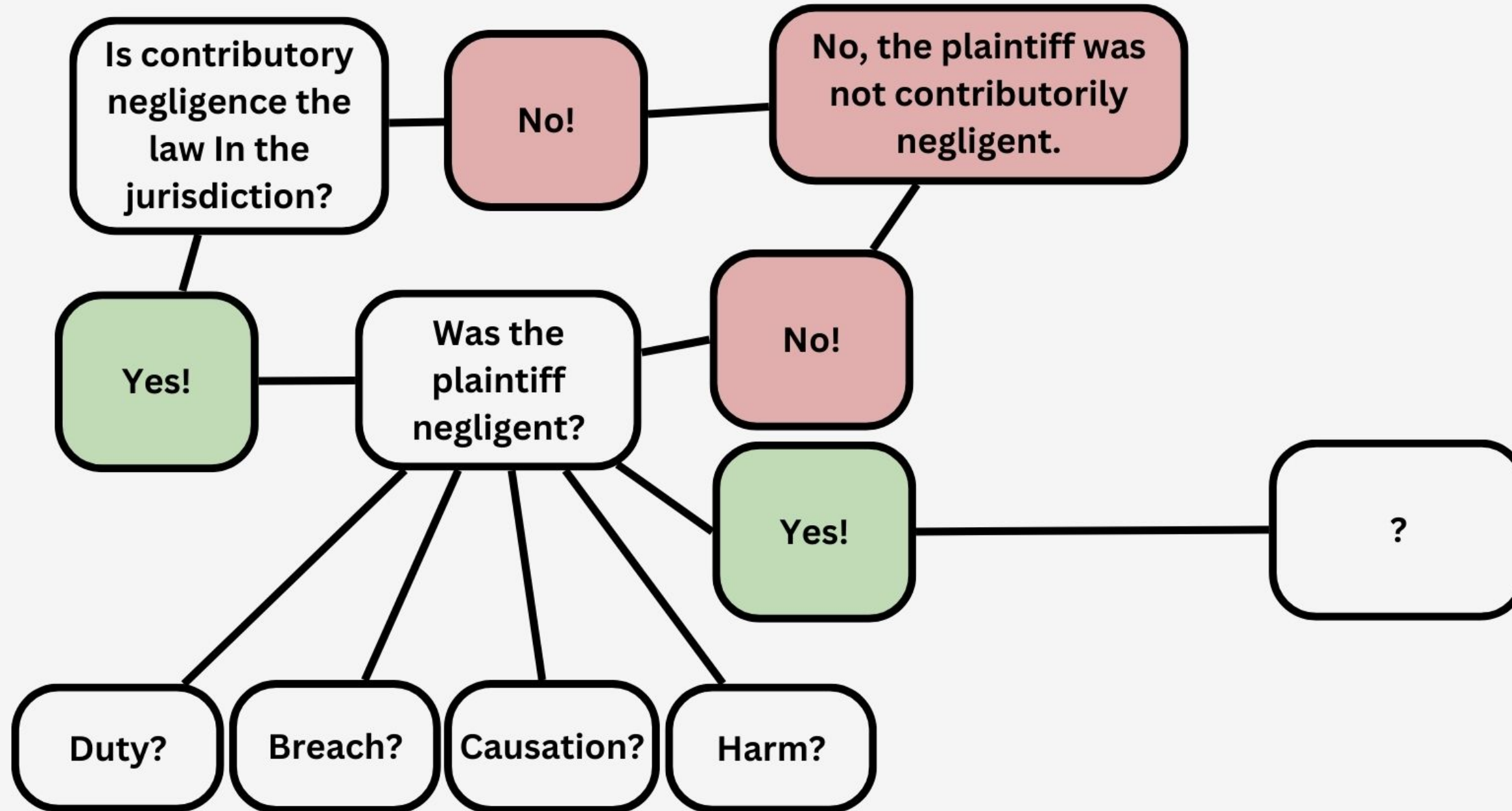
Was the plaintiff contributorily negligent?



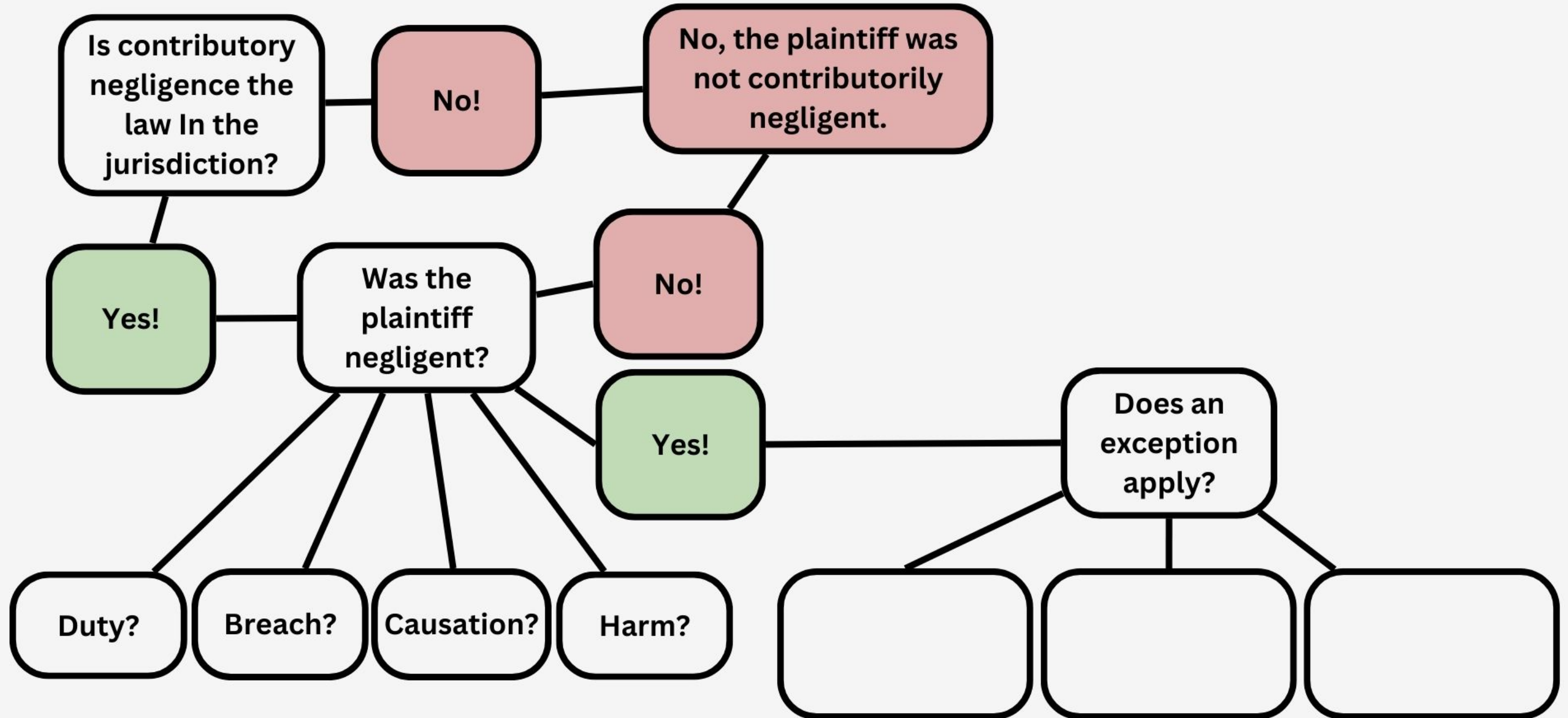
Was the plaintiff contributorily negligent?



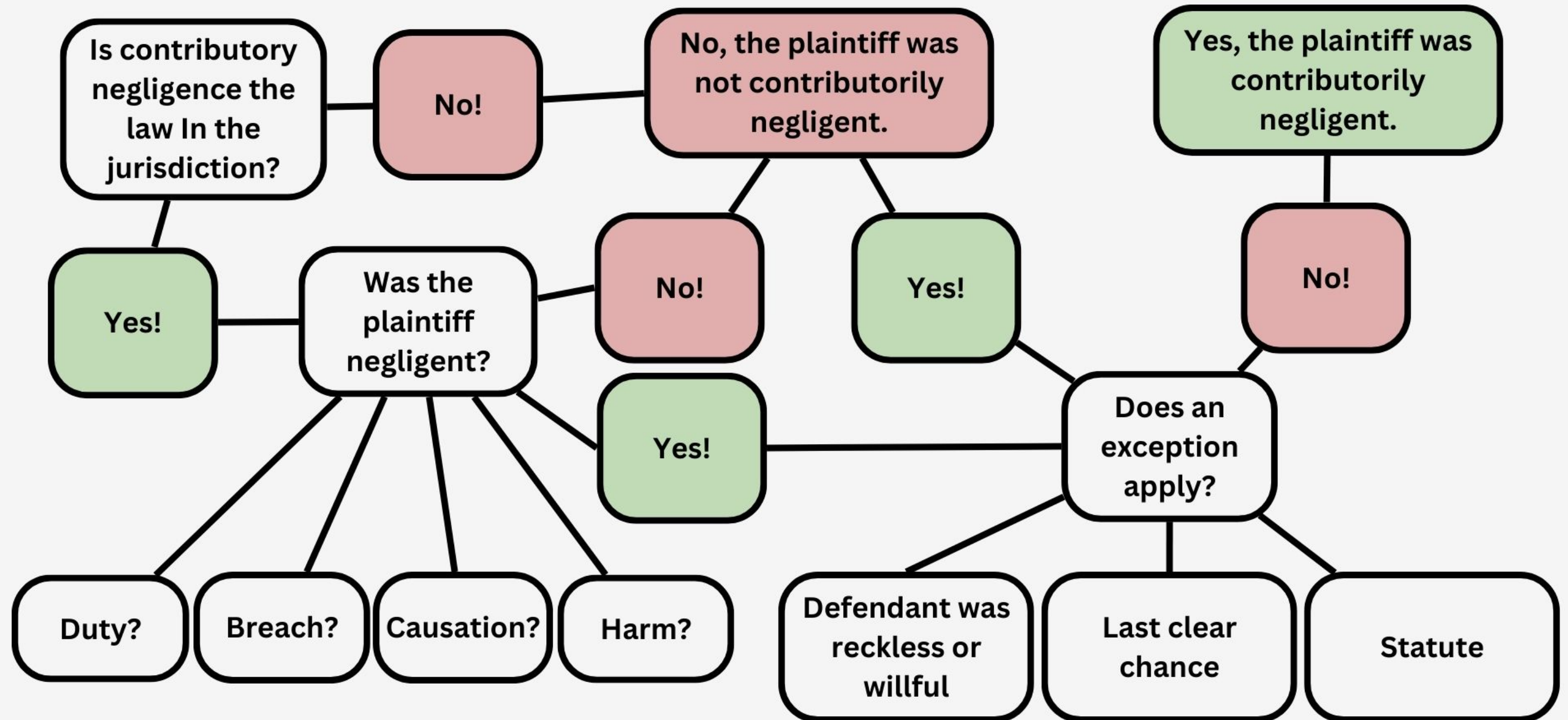
Was the plaintiff contributorily negligent?



Was the plaintiff contributorily negligent?



Was the plaintiff contributorily negligent?



Li v. Yellow Cab Company

“Car Accident Comparative Negligence”

Comparative Negligence

Three forms:

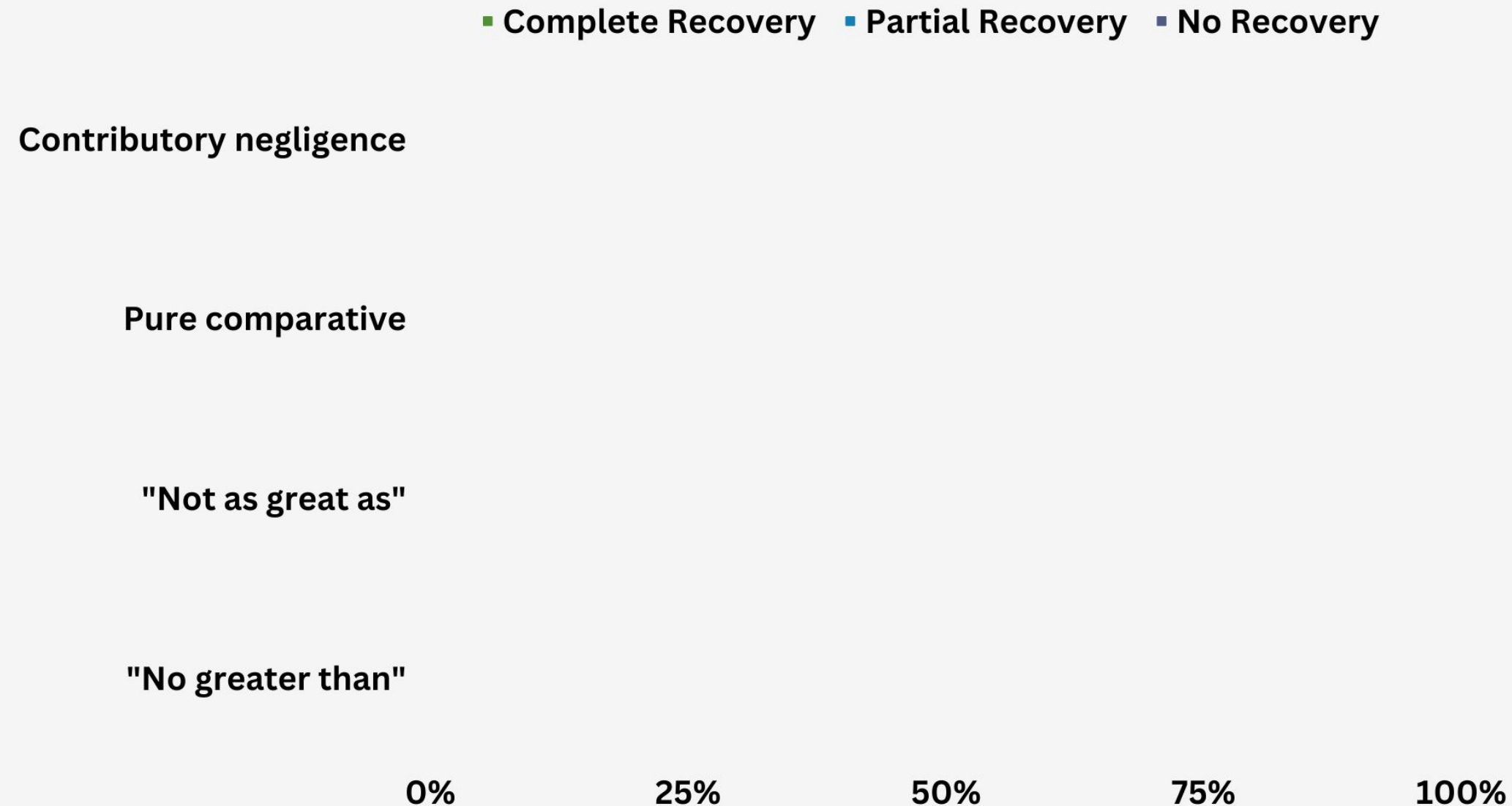
1. Pure comparative negligence
2. “Not as great as”
3. “No greater than”

Comparative Negligence

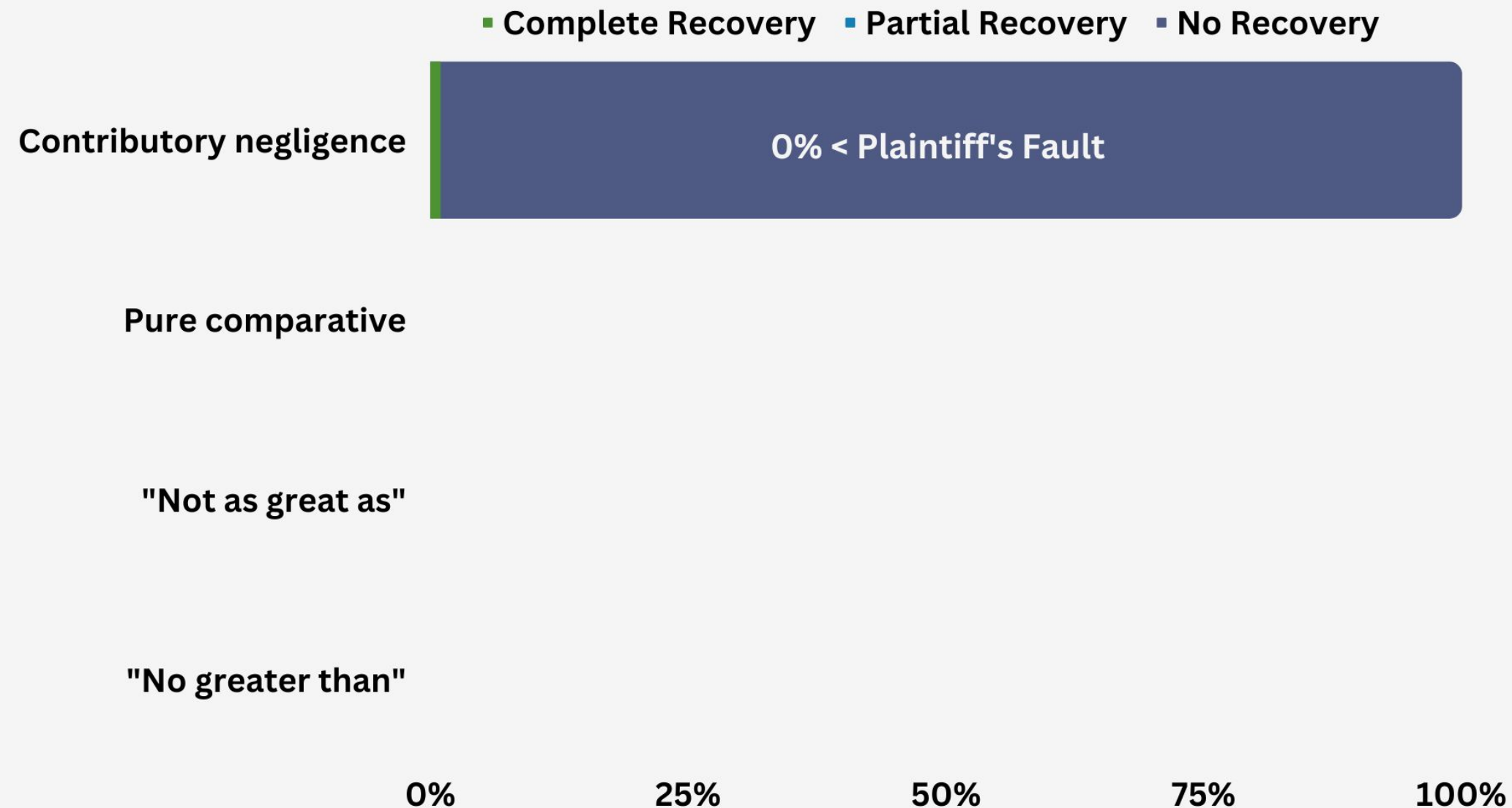
Three forms:

1. Pure comparative negligence
2. “Not as great as” = (Plaintiff less than 50% at fault)
3. “No greater than” = (Plaintiff 50% or less at fault)

Can the negligent plaintiff recover damages?

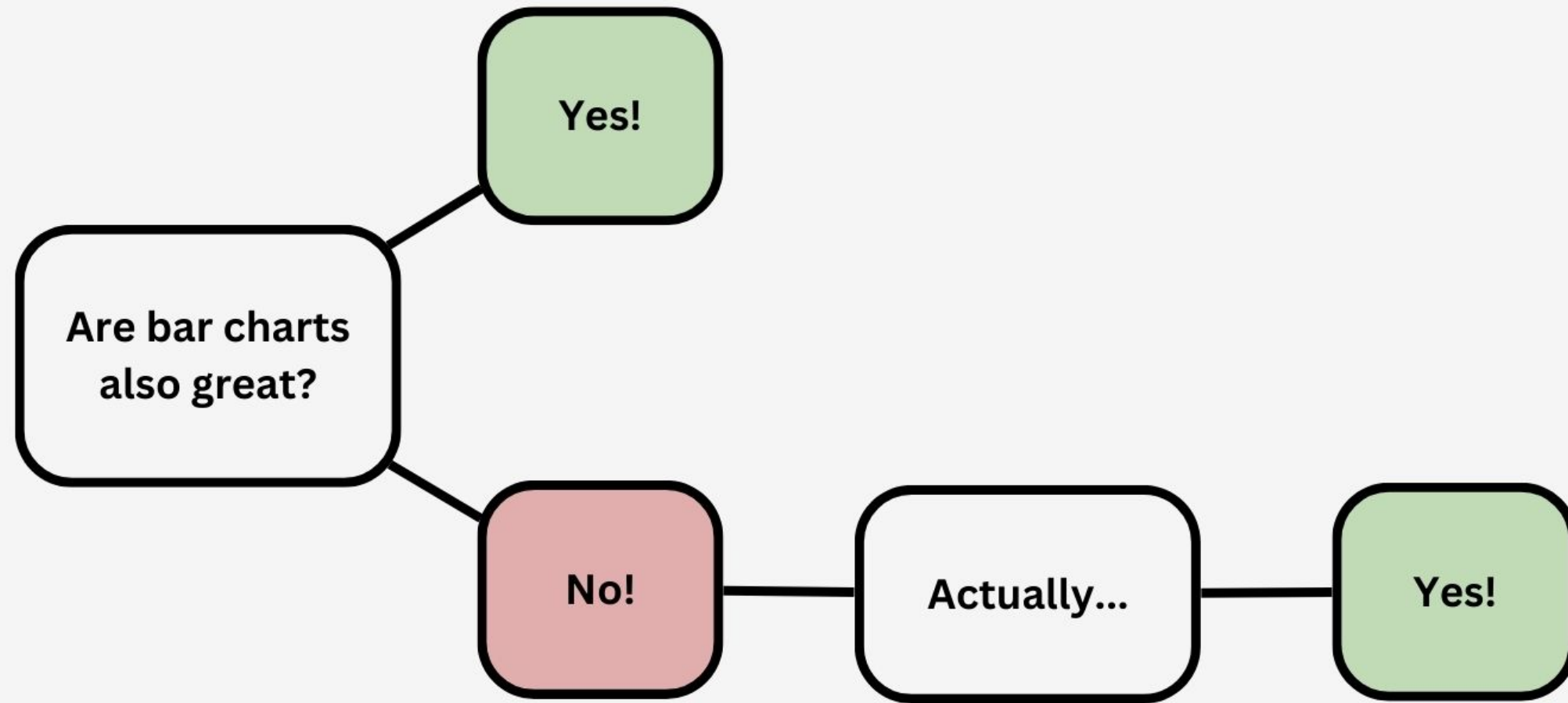


Can the negligent plaintiff recover damages?

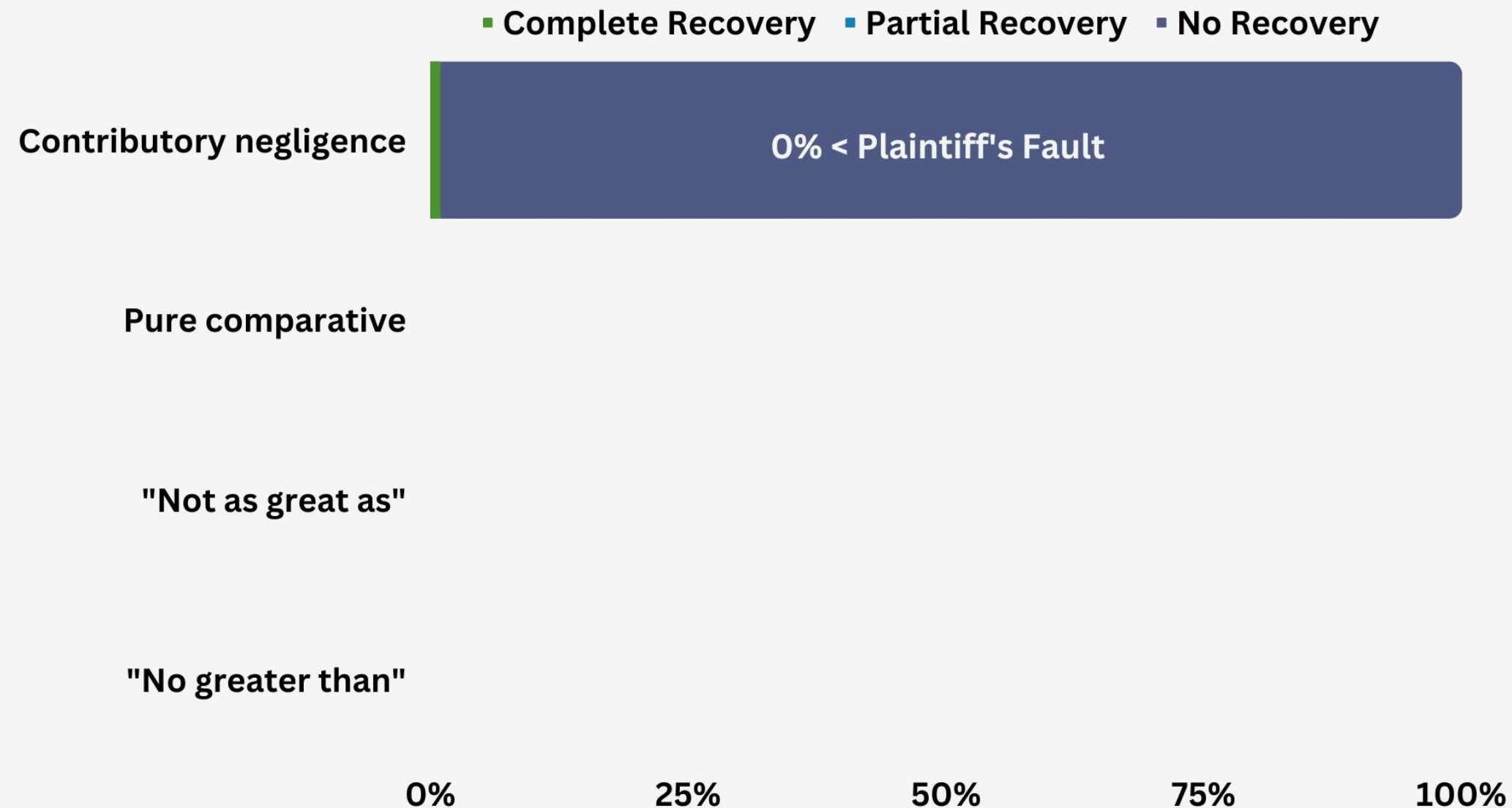


That's not
a flowchart!

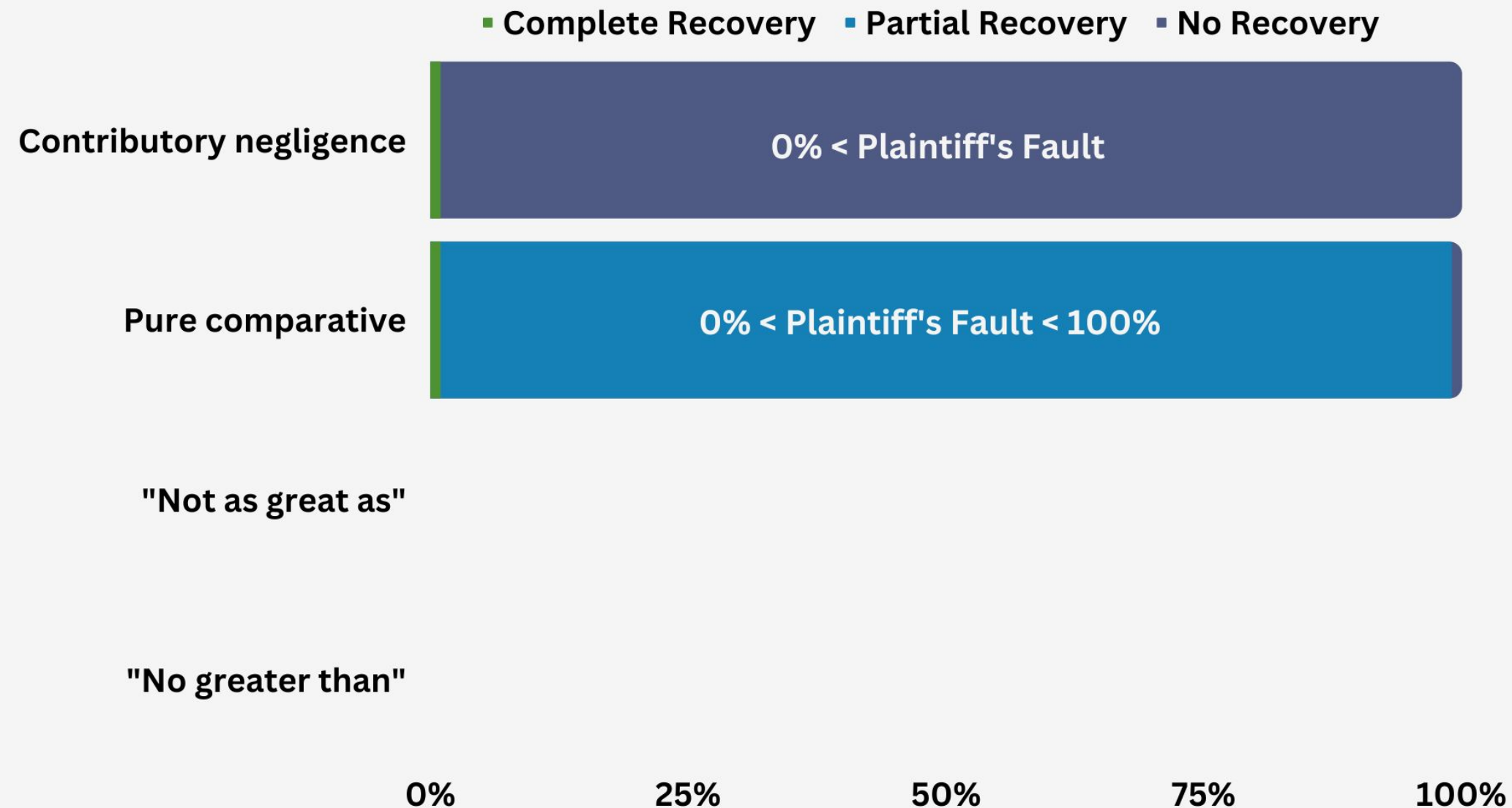
It's cool



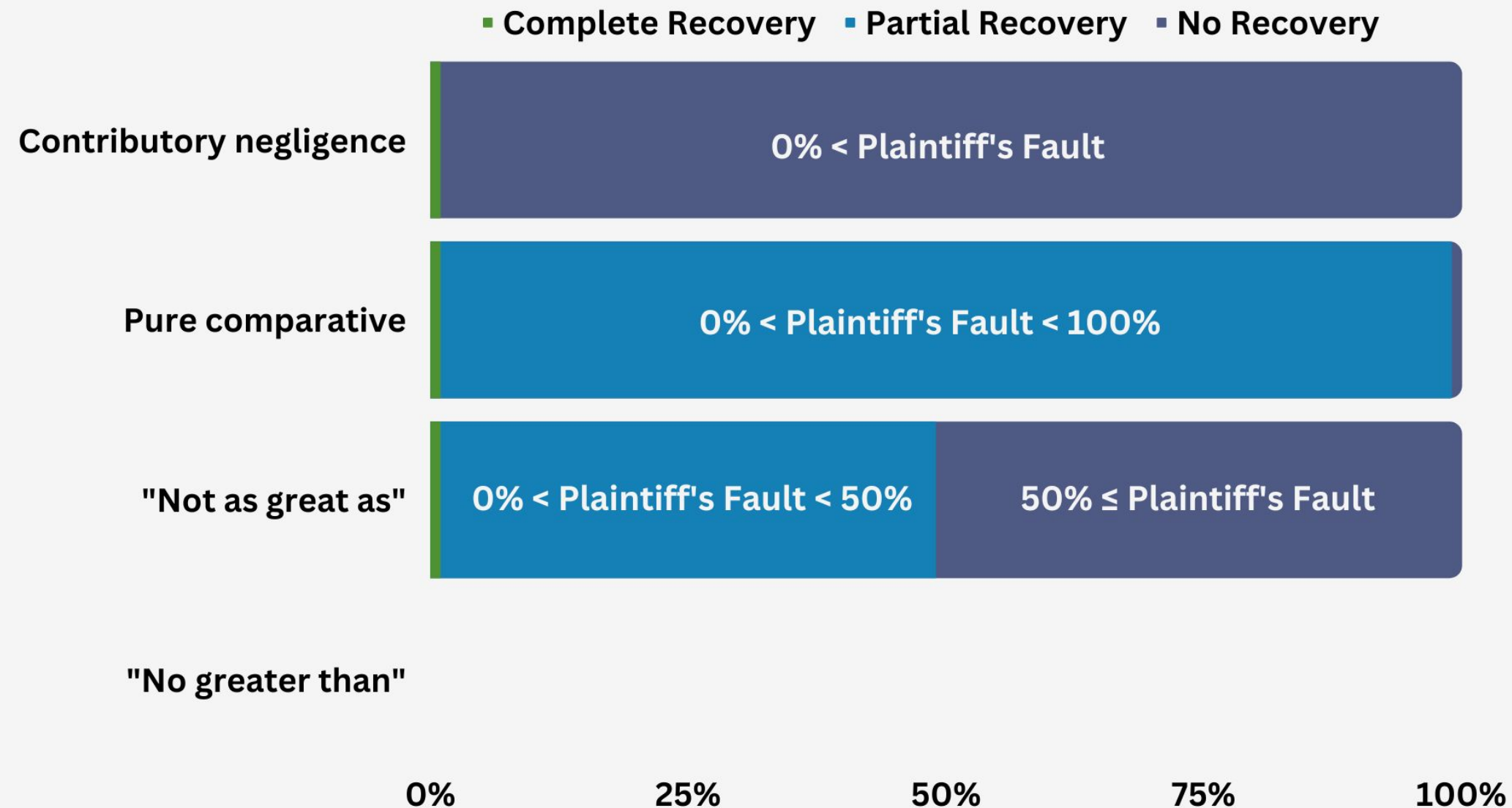
Can the negligent plaintiff recover damages?



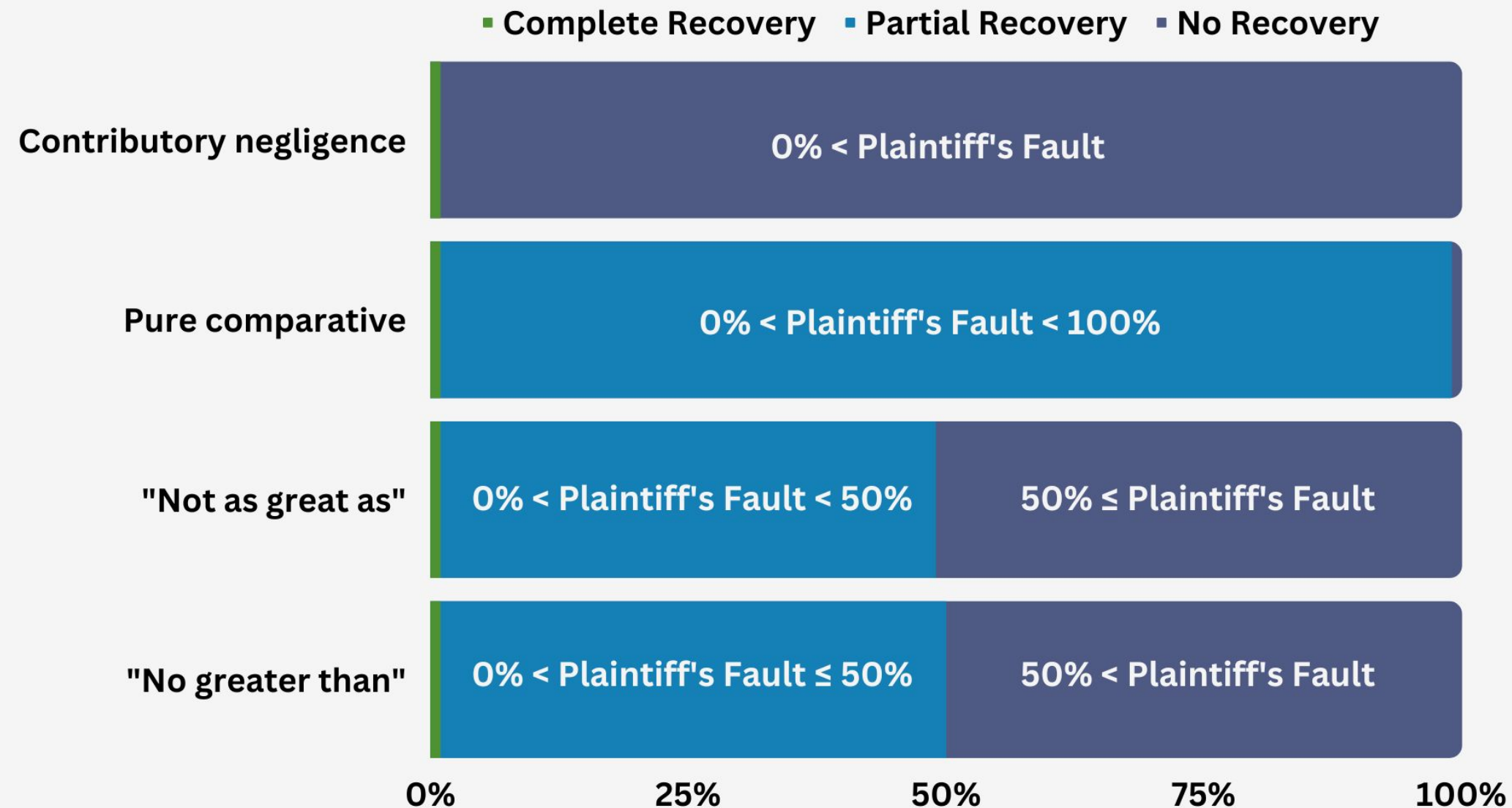
Can the negligent plaintiff recover damages?



Can the negligent plaintiff recover damages?



Can the negligent plaintiff recover damages?



Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 1: In a traditional common law jurisdiction, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 2: Assume instead that we are in a jurisdiction that has “pure” comparative negligence. How would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: A - 40%, B - 30%, C - 10%, D - 20%

Question 3: Assume instead that we are in a jurisdiction that has “no greater than” modified comparative negligence. How would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 50%, B - 30%, C - 10%, D - 10%**

Question 4: Assume the comparative fault of the parties has changed. Under “no greater than” modified comparative negligence, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 51%**, B - 30%, C - 10%, **D - 9%**

Question 5: Assume the comparative fault of the parties has changed. Under “no greater than” modified comparative negligence, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 50%**, B - 30%, C - 10%, **D - 10%**

Question 6: Assume the comparative fault of the parties has changed. Under “not as great as” modified comparative negligence, how would damages be allocated? Why?

Comparative Negligence Exercise

Plaintiff A has suffered \$100,000 of damages in a car accident with B, C, and D.

A now sues B, C, and D for negligence.

Comparative fault of the parties: **A - 40%, B - 30%, C - 10%, D - 20%**

Question 7: Assume the comparative fault of the parties has changed back to the original numbers. Under “not as great as” modified comparative negligence, how would damages be allocated? Why?

If multiple defendants are liable,
how much are they each paying?

Doctrine of Contribution

Traditional Common Law Approach

Two versions:

1. Joint and several liability
2. Several liability

Apportionment based on factual cause

Don't
forget about
factual cause!

Don't forget about factual cause!

Tortfeasors are only liable for the injuries they caused.

Order of operations with multiple injuries and multiple liable defendants

First step:

Separate injuries based on factual cause.

Second step:

For injuries that multiple defendants caused, sort out liability based on the contribution rule in the jurisdiction.

Doctrine of Contribution

Traditional Common Law Approach

Example:

Four defendants (A, B, C, and D) with \$100k damages.

Joint and several liability jurisdiction

A, B, C, and D have plenty of money

Who pays what?

Doctrine of Contribution

Traditional Common Law Approach

Example:

Four defendants (A, B, C, and D) with \$100k damages.

Several liability jurisdiction

A, B, C, and D have plenty of money

Who pays what?

Doctrine of Contribution

Traditional Common Law Approach

Example:

Four defendants (A, B, C, and D) with \$100k damages.

Joint and several liability jurisdiction

A and B have plenty of money

C and D have no money

Who pays what?

Doctrine of Contribution

Traditional Common Law Approach

Example:

Four defendants (A, B, C, and D) with \$100k damages.

Several liability jurisdiction

A and B have plenty of money

C and D have no money

Who pays what?

Doctrine of Contribution

Modern Approach

Apportionment based on comparative fault.

Example: Four defendants (A, B, C, and D) with \$100k damages.

A is 40% at fault.

B is 10% at fault.

C is 20% at fault.

D is 30% at fault.

Doctrine of Contribution

Modern Approach

Apportionment based on comparative fault.

Example: Four defendants (A, B, C, and D) with \$100k damages.

A is 40% at fault. So A owes \$40k.

B is 10% at fault. So B owes \$10k.

C is 20% at fault. So C owes \$20k.

D is 30% at fault. So D owes \$30k.

What about vicarious liability?

Vicarious liability and the doctrine of contribution

Modern Approach

Apportionment based on comparative fault.

Example: Four defendants (A, B, C, and D) with \$100k damages.

A is 40% at fault.

B is 10% at fault.

C is 20% at fault.

D is 30% at fault.

E is vicariously liable for D's negligence.

Vicarious liability and the doctrine of contribution

Modern Approach

Apportionment based on comparative fault.

Example: Four defendants (A, B, C, and D) with \$100k damages.

A is 40% at fault. So A owes \$40k.

B is 10% at fault. So B owes \$10k.

C is 20% at fault. So C owes \$20k.

D is 30% at fault. E is vicariously liable for D's negligence. So E owes \$30k.

Fritts v. McKanne

McCarty v. Pheasant Run, Inc.

“Unlocked Hotel Room Door”

and

Wassell v. Adams

“Opened Hotel Room Door”

Discussion Questions

Given the facts of these cases, what would a just outcome in each case have been?

How capable is our legal system of producing just outcomes in these cases? How does it fall short? What would need to change?