

Under the Federal Tort Claims Act, with certain exceptions not relevant here, the federal government is liable only for negligence. A federally owned and operated nuclear reactor emitted substantial quantities of radioactive matter that settled on a nearby dairy farm, killing the dairy herd and contaminating the soil. At the trial of an action brought against the federal government by the farm's owner, the trier of fact found the following: (1) the nuclear plant had a sound design, but a valve made by an engineering company had malfunctioned and allowed the radioactive matter to escape; (2) the engineering company was universally regarded as a quality manufacturer of components for nuclear plants; and (3) there was no way the federal government could have anticipated or prevented the emission of the radioactive matter.

If there is no other applicable statute, for which party should the court enter judgment?

- A. The farm owner, on the ground that one who allows dangerous material to escape to the property of another is liable for the damage done.
- B. The farm owner, on the ground that the doctrine of *res ipsa loquitur* applies.
- C. The government, on the ground that a case under the Federal Tort Claims Act has not been proved.
- D. The government, on the ground that the engineering company is the proximate cause of the farm owner's damage.

Explanation:

Elements of negligence

Duty – defendant owed duty of reasonable care because his/her conduct created foreseeable risk of harm to others

Breach – defendant breached duty by failing to use reasonable care

Causation – defendant's breach actually & proximately caused plaintiff's harm

Damages – plaintiff suffered physical harm (ie, bodily injury or property damage)

Land possessors owe a **duty** of reasonable care when they **know or should know** that an **activity** on the land poses an **unreasonable risk** of **physical harm** (ie, bodily harm or property damage) to others. A land possessor who breaches this duty and causes the plaintiff physical harm is liable for negligence.

Here, the federally owned and operated nuclear reactor emitted radioactive matter that killed the farm owner's dairy herd and contaminated his soil. But since the federal government could not have anticipated the emission, it could not have known that the reactor posed an unreasonable risk of harm. Therefore, the court should enter judgment for the government on the ground that negligence cannot be proved.

(Choice A) Strict liability—ie, liability without proof of fault—is imposed for harm caused by **abnormally dangerous activities**. Operating a nuclear reactor may be abnormally dangerous. But under the Federal Tort Claims Act, the federal government is liable only for negligence.

(Choice B) The doctrine of **res ipsa loquitur** would not permit an inference of negligence by the federal government here. That is because the nuclear reactor is complex machinery that could have malfunctioned for reasons other than negligence by the federal government—eg, negligence by the engineering company that made its parts.

(Choice D) More than one defendant may be a **proximate cause** of the plaintiff's harm. Therefore, the fact that the engineering company proximately caused the farm owner's damage would not eliminate the federal government's liability had that damage also been a foreseeable consequence of the government's conduct.

Educational objective:

Land possessors have a duty of reasonable care when they know or should know that an activity on the land poses an unreasonable risk of physical harm to others (ie, when such a risk is foreseeable).

References

Restatement (Second) of Torts § 371 (Am. Law Inst. 1965) (explaining that land possessors are subject to liability for harm caused by activities on their land that pose an unreasonable risk of harm to others).

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