

In the course of a bank holdup, a robber fired a gun at a guard. The guard drew his revolver and returned fire. One of the bullets fired by the guard ricocheted off the wall and struck a bystander.

If the bystander asserts a battery claim against the guard, will she prevail?

- A. No, because the guard did not intend to shoot the bystander.
- B. No, because the guard fired reasonably in his own defense.
- C. Yes, under the doctrine of transferred intent.
- D. Yes, unless the bystander was the robber's accomplice.

Explanation:

Self-defense is the privilege to use reasonable force to protect oneself against the intentional infliction of harmful or offensive contact by another. When acting in self-defense, the actor must **use reasonable care to avoid harming bystanders** (ie, refrain from unnecessarily dangerous conduct). If the actor fails to do so, then he/she is liable to any injured bystanders.

Here, the guard was acting in self-defense when he returned fire against the armed robber. And though one of the guard's bullets ricocheted off the wall and struck a bystander, the guard used *reasonable care* because his responsive fire was not unnecessarily dangerous given the exigency of the encounter (eg, the guard used a revolver instead of a machine gun). Therefore, the bystander will not prevail on her **battery** claim.

(Choices A & C) Liability for battery arises under the doctrine of **transferred intent** when the defendant intends to contact one person but instead contacts the plaintiff—even if the plaintiff was not a foreseeable victim. Here, although the guard only intended to shoot the robber, the guard's intent *transferred* to the bystander when she was hit by the guard's misfired bullet. But the bystander's battery claim will ultimately fail because the guard was *privileged* to shoot in self-defense and used *reasonable care* while doing so.

(Choice D) The self-defense privilege shields a defendant from liability for an intentional tort committed against any third party, regardless of the third party's connection to the initial aggressor. Therefore, the bystander's battery claim would fail even if she was the robber's accomplice.

Educational objective:

An actor must use reasonable care to avoid harming bystanders when acting in self-defense. Otherwise, the actor will be liable to bystanders for any resulting harm.

References

Restatement (Second) of Torts § 65 (Am. Law Inst. 1965) (self-defense by deadly force).

Restatement (Second) of Torts § 75 (Am. Law Inst. 1965) (liability to third party for privileged conduct).

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Liability to injured bystanders



Guard used *reasonable* care
in self-defense
(Not liable)



Guard used *unreasonable* care
in self-defense
(Liable)