

A patron at a diner suffered a severe allergic reaction after her waiter accidentally served her the wrong meal. A doctor sitting at the adjoining booth noticed that the patron was struggling to breathe. However, the doctor did not provide any medical assistance because he had just completed a hectic 12-hour shift and wanted to enjoy his meal. The patron's throat swelled, and she eventually passed out. Later, the patron died due to oxygen deprivation. It was determined that swift medical attention would have prevented her death.

The patron's spouse has brought a wrongful death action against the doctor in a jurisdiction that has enacted a Good Samaritan statute.

Will the spouse likely recover?

- A. No, because the doctor had no duty to aid the patron.
- B. No, because the patron assumed the risk of eating in the diner.
- C. Yes, because a reasonable doctor would have assisted the patron.
- D. Yes, because the jurisdiction has enacted a Good Samaritan statute.

## Explanation:

A wrongful death action allows a decedent's spouse, next of kin, or personal representative to sue a defendant for wrongfully causing the decedent's death. These actions are typically based on **negligence**—ie, a breach of the defendant's duty to use reasonable care that caused physical harm. However, a defendant generally has **no duty to aid** a person facing a foreseeable risk of physical harm **unless**:

the **defendant's conduct created that risk** *or*  
the defendant and that person share a **special relationship**.

Here, the patron suffered a severe allergic reaction while she was eating at a diner. Although swift medical attention would have saved her life, the doctor sitting at an adjoining booth had no duty to aid her since his conduct did not create this risk and they did not share a special relationship. Therefore, the patron's spouse likely will not recover from the doctor.\*

\*However, the patron's spouse may be able to recover from the diner since one of its employees created the risk by accidentally serving the patron the wrong meal and a special relationship existed between the patron and the diner.

**(Choice B)** **Assumption of the risk** is a defense that reduces or bars recovery if the injured person voluntarily exposed him/herself to a known risk of harm. This defense does not apply here because the patron did not know that the wrongly served meal would cause an allergic reaction.

**(Choice C)** The fact that a reasonable doctor would have assisted the patron does not mean that the doctor here had a duty to do so. That is because the law generally does not require a defendant to aid another unless the defendant created the foreseeable risk of physical harm or had a special relationship with that person.

**(Choice D)** Many states have enacted Good Samaritan laws that relieve medical professionals of malpractice liability for voluntarily rendering emergency first aid. These laws are designed to *encourage* medical professionals to provide such assistance without the threat of a lawsuit, but they do not create a *duty* to aid.

## Educational objective:

A defendant generally has no duty to aid a plaintiff who is at risk of physical harm unless the defendant's conduct created that risk OR the defendant and the plaintiff share a special relationship.

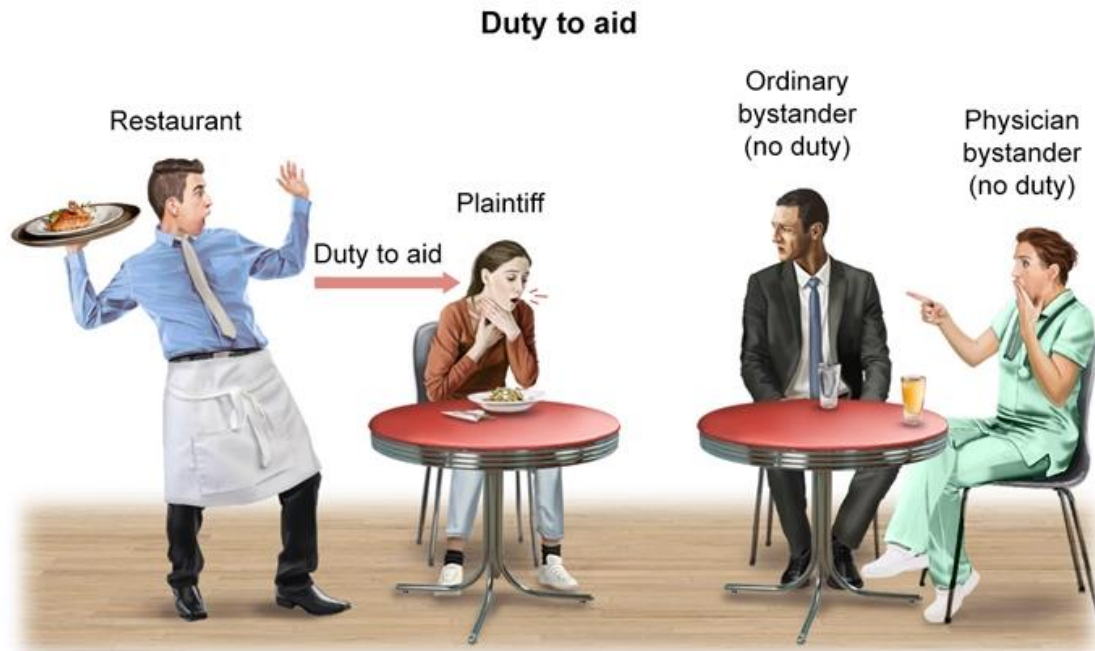
## References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 6 (Am. Law Inst. 2010) (negligence liability).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 7 (Am. Law Inst. 2010) (general duty requirement).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 37 (Am. Law Inst. 2012) (no duty to aid).

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