

An airport-shuttle company employs drivers to operate vans that carry multiple passengers to and from the airport along a regular route. The company exercises reasonable care in hiring and supervising all of its drivers. One day, one of the drivers was distracted by a conversation he was having with a passenger and failed to make a correct turn. Rather than immediately turning around, the driver decided to continue to deviate from the regular route and take an alternate route. While the van was on this alternate route, a sinkhole unexpectedly opened under the van and swallowed it. The van's passengers were injured.

If the passengers file a negligence action against the airport-shuttle company, will they be likely to succeed?

- A. No, because the company exercised reasonable care in selecting and supervising the driver.
- B. No, because there was no causal link between the driver's negligence and the passengers' injuries.
- C. Yes, because an airport-shuttle company is a common carrier and therefore subject to a heightened duty of care.
- D. Yes, because but for the driver's negligence, the van would not have been at the place where the sinkhole appeared.

Explanation:

Tort causation

Actual (factual) cause	Single cause – but for defendant's conduct, plaintiff would not have been harmed Multiple causes: Second Restatement (majority rule) – defendant's conduct was substantial factor causing plaintiff's harm Third Restatement (minority rule) – defendant's conduct regarded as factual cause of plaintiff's harm
Proximate (legal) cause	Plaintiff's harm was reasonably foreseeable consequence of defendant's conduct

To succeed in a **negligence** claim, the plaintiff must prove that there was a **causal link** (ie, connection) **between** the **defendant's tortious conduct** and the **plaintiff's harm**. This requires proof that the defendant's conduct was both the actual and proximate cause of that harm:

Actual cause – but for the defendant's conduct, the plaintiff would not have been harmed

Proximate cause – the plaintiff's harm was a reasonably foreseeable consequence of the defendant's conduct, meaning that the conduct was of a type that generally increases the risk of that harm

Here, the van would not have been where the sinkhole appeared but for the driver's missing a turn and taking an alternate route (actual cause). But since the driver's conduct was *not* of a type that generally increases the risk of being swallowed by a sinkhole, the passengers' injuries were not a foreseeable consequence of that conduct (no proximate cause).^{*} Therefore, the passengers are unlikely to succeed in their negligence action because there was no causal link between the driver's conduct and the passengers' injuries **(Choice D)**.

^{*}Even if the driver's conduct were treated as the proximate cause of the passengers' injuries, the sinkhole, as an extraordinary act of nature, constitutes an unforeseeable intervening cause that would break the chain of causation.

(Choice A) A company that used reasonable care in its hiring and supervisory activities is not liable in negligence for its own conduct (eg, for negligent hiring). But this would not preclude the company from being vicariously liable for its *employee's* negligent conduct while acting within the scope of employment.

(Choice C) At common law and in most jurisdictions, a common carrier (eg, plane, train, bus) has a heightened duty of care to its passengers. This means that a common carrier can be held liable for even "slight negligence." But here, even if the shuttle company is treated

as a common carrier, the driver's conduct was not the proximate cause of the passengers' injuries (no liability).

Educational objective:

To succeed in a negligence claim, the plaintiff must establish a causal link between the defendant's tortious conduct and the plaintiff's harm. Stated differently, the defendant's conduct must have been the actual and proximate cause of that harm.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm §§ 29–30 (proximate cause).

Copyright © UWorld. All rights reserved.