

A racetrack held a motorcycle race, which was sponsored by a local motorcycle dealership. Under the sponsorship agreement, the dealership was required to arrange for licensed and trained emergency medical technicians (EMTs) to be present during the race. The dealership contracted with a licensed and reputable emergency medical services (EMS) firm that supplied EMTs for events such as these.

A motorcyclist participating in the race was injured when he lost control of his motorcycle. The motorcyclist was treated at the scene by the EMTs. In removing the motorcyclist's helmet, one of the EMTs twisted the motorcyclist's neck, causing him to become permanently paralyzed.

The motorcyclist has sued both the EMS firm and the dealership, alleging that the EMT's careless conduct caused his paralysis.

Assuming the validity of the motorcyclist's negligence claim against the EMS firm, which of the following best characterizes the dealership's potential liability?

- A. The dealership is directly liable for hiring the EMS firm.
- B. The dealership is vicariously liable, because it owed a nondelegable duty to provide emergency care for the race.
- C. The dealership is vicariously liable, because the EMT was careless in the course of her employment.
- D. The dealership is neither directly liable nor vicariously liable.

Incorrect

Correct answer D

Collecting Statistics

01 min, 17 secsTime Spent

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## Explanation:

### Nondelegable duties

(duties that cannot be assigned to another to avoid liability)

Maintain safe conditions on premises open to public (eg, store, restaurant)

Safely perform activities that:

are abnormally or highly dangerous

infringe on private property right (eg, nuisance, trespass)

are regulated by law *or*

are conducted in public place

A plaintiff can recover for **negligence** under theories of:

**direct liability** (for the defendant's **own conduct**) – requires proof that the **defendant's failure to exercise reasonable care** caused the plaintiff harm (eg, negligently hiring an independent contractor) *or*

**vicarious liability** (eg, for an **independent contractor's** conduct) – requires proof that an independent contractor's work involved a **nondelegable duty** (see image above) owed by the defendant that cannot be assigned to a third party and the **contractor's breach** caused the plaintiff harm.

However, if the independent contractor's work involved a *delegable* duty owed by the defendant, the defendant is not vicariously liable for the contractor's negligent performance of that duty.

Here, an EMT twisted the motorcyclist's neck, which caused the motorcyclist to become permanently paralyzed. The EMT was an employee of the EMS firm—not the dealership. As a result, the EMS firm is vicariously liable under the doctrine of respondeat superior for the EMT's careless conduct in the course of her employment. However, the dealership is neither directly liable nor vicariously liable for the EMT's negligence because:

the dealership exercised reasonable care in hiring the licensed and reputable EMS firm that supplied EMTs for similar events (no direct liability) **(Choice A)** *and*

although the EMT was careless in the course of her employment, the dealership's duty to provide emergency medical care is a *delegable* duty that was properly delegated to the EMS firm as its independent contractor (no vicarious liability) **(Choices B & C)**.

### Educational objective:

A defendant can be (1) directly liable for his/her own negligence or (2) vicariously liable for an independent contractor's negligence if the contractor's work involved a nondelegable

duty owed by the defendant and the contractor's breach of that duty caused the plaintiff harm.

### **References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 55 (Am. Law Inst. 2012) (explaining that one who hires an independent contractor can be directly liable for negligently hiring that contractor).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 57 (Am. Law Inst. 2012) (explaining that one is generally not vicariously liable for an independent contractor's negligence unless nondelegable duty exists).

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