The manager of a department store noticed that a customer was carrying a scarf with her as she examined various items in the blouse department. The manager recognized the scarf as an expensive one carried by the store. The customer was trying to find a blouse that matched a color in the scarf and, after a while, found one. The manager then saw the customer put the scarf into her purse, pay for the blouse, and head for the door. The manager, who was eight inches taller than the customer, blocked the customer's way to the door and asked to see the scarf in the customer's purse. The customer produced the scarf, as well as a receipt showing that it had been purchased from the store on the previous day. The manager then told the customer there was no problem and stepped out of her way.

In an action by the customer against the store for false imprisonment, which of the following, if supported by the evidence, will be the store's best defense?

A. The customer assumed the risk of being detained by carrying the scarf in public view and then putting it into her purse.

B. The customer should have realized that her conduct would create a reasonable belief that facts existed warranting a privilege to detain her.

C. The customer was not detained, but was merely questioned about the scarf.

D. The manager had a reasonable belief that the customer was shoplifting and detained her only briefly for a reasonable investigation of the facts.

Explanation:

False imprisonment occurs when the defendant intentionally confines the plaintiff within fixed boundaries AND the plaintiff is aware of the confinement at the time it occurs or suffers actual harm as a result. The **shopkeeper's privilege** is a **defense** to false imprisonment when:

the defendant **reasonably believes** that the plaintiff was **shoplifting** and

detains the plaintiff for a **reasonable** amount of time necessary to conduct an **investigation**.

Here, the manager reasonably believed that the customer was shoplifting when the customer put a scarf carried by the store in her purse and headed for the door without paying for the scarf. As a result, the manager stopped the customer to ask her about the scarf (conduct an investigation) and only detained her long enough to ask a question and see her receipt (reasonable amount of time). Therefore, the shopkeeper's privilege is the store's best defense to the customer's false imprisonment claim.

(Choice A) Assumption of the risk (the plaintiff's voluntary acceptance of a known risk of harm) is only a defense to claims alleging *negligent* or *reckless* conduct. Since false imprisonment requires proof of *intentional* conduct, this defense is irrelevant.

(Choice B) What the customer should have realized is an issue of *contributory negligence* (conduct that falls below the standard of care a plaintiff should use for his/her own protection). Contributory negligence is only a defense to *negligence*—not recklessness or intentional torts like false imprisonment.

(Choice C) For false imprisonment, confinement occurs when the defendant restricts the plaintiff within fixed boundaries and causes an apparent lack of reasonable escape. The confinement can be for any length of time (eg, 1 minute or 1 day). Therefore, the customer was confined even though the manager only *briefly* blocked her exit to question her about the scarf.

Educational objective:

The shopkeeper's privilege is a defense to false imprisonment when the defendant reasonably believes that the plaintiff was shoplifting and detains the plaintiff for a reasonable amount of time to investigate the facts.

References

Restatement (Second) of Torts § 35 (Am. Law Inst. 1965) (false imprisonment).

Restatement (Second) of Torts § 120A (Am. Law Inst. 1965) (shopkeeper's privilege).

Available defenses for tortious conduct

	Privilege	Assumption of the risk	Contributory negligence
Intentional conduct	✓		
Reckless conduct	✓	✓	
Negligent conduct	✓	✓	✓