

A politician and a businessman were passengers sitting in adjoining seats on an airline's flight. There were many empty seats on the aircraft.

During the flight, a flight attendant served the businessman eight drinks. As the businessman became more and more obviously intoxicated and attempted to engage the politician in a conversation, the politician chose to ignore the businessman. This angered the businessman, who suddenly struck the politician in the face, giving her a black eye.

If the politician asserts a claim for damages against the airline based on battery, will she prevail?

- A. No, because the businessman was not acting as an agent or employee of the airline.
- B. No, unless she can establish some permanent injury from the contact.
- C. Yes, because she suffered an intentionally inflicted harmful or offensive contact.
- D. Yes, if the flight attendant acted recklessly in continuing to serve liquor to the businessman.

## Explanation:

### Vicarious liability

(liability for tortious acts of another)

<b>Respondeat superior</b>	Employee's conduct occurred within scope of employment—ie, under employer's control or while performing assigned work
<b>Nondelegable duty</b>	Independent contractor's work involved abnormally or inherently dangerous activity, condition on land open to general public, or activity regulated by law
<b>Parent</b>	Child committed tort while acting as parent's agent
<b>Business partner</b>	Business partner's conduct occurred within scope of business
<b>Automobile owner</b>	Family member drove car with permission (family-car doctrine) <i>or</i> any person drove car with permission under owner-liability statute
<b>Dram shop* &amp; social host</b>	Alcohol sold (dram shop) <i>or</i> served at noncommercial setting (social liability) to visibly intoxicated person or minor

\*Only applies when question provides dram-shop statute.

**Vicarious liability** is a type of strict liability in which a principal is liable for the tortious act (e.g., [battery](#)) of his/her agent if the act was committed within the scope of an agency relationship. An **agency relationship** exists when the parties mutually agree that the agent will **act on the principal's behalf** and subject to the principal's control (e.g., employer–employee).

Here, the businessman intentionally struck the politician in the face (battery) on the airline's flight. But since the businessman was not an employee of the airline or otherwise acting on its behalf (no agency relationship), the airline is not vicariously liable for the businessman's battery. Therefore, the politician will not prevail in her battery claim against the airline.

**(Choice B)** Battery merely requires proof of harmful or offensive contact—not permanent injury. Therefore, the politician's ability to show permanent injury will not affect the success of her claim against the airline. Instead, her claim will fail because the airline is not vicariously liable for the businessman's conduct.

**(Choice C)** The fact that the politician suffered an intentionally inflicted harmful or offensive contact when the businessman struck her face would support a battery claim against the *businessman*. But since the businessman was not the airline's agent, this fact will not allow the politician to prevail against the *airline*.

**(Choice D)** The airline could be vicariously liable for the flight attendant's (i.e., an employee's) negligence or recklessness in continuing to serve liquor to the businessman. But since the politician's battery claim against the airline is based on the businessman's conduct—not the flight attendant's negligence—the politician's claim will fail.

**Educational objective:**

A principal is vicariously liable for a tort committed by his/her agent if the tort was committed within the scope of an agency relationship. An agency relationship exists when both parties agree that the agent will act on the principal's behalf and subject to the principal's control (e.g., employer–employee).

**References**

Restatement (Third) of Agency § 7.03 (Am. Law Inst. 2006) (principal's liability for acts of its agents).

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