

In an action by a man against a pharmacy, the man offered only the following evidence:

The man took a clearly written prescription to a pharmacy. The pharmacy's employee filled the prescription by providing pills with 30 milligrams of the active ingredient instead of 20 milligrams, as was prescribed. Shortly after taking the pills as directed, the man, who had no previous history of heart problems, suffered a heart attack. Overdoses of the active ingredient had previously been associated with heart problems.

Does the man have a valid claim against the pharmacy?

- A. No, because pharmacies are not strictly liable for injuries caused by incorrectly filled prescriptions.
- B. No, because the man offered no specific proof as to the pharmacy's negligence.
- C. Yes, because a jury could reasonably conclude that the man would not have suffered a heart attack had the pharmacist provided the correct dosage.
- D. Yes, because by providing the 30-milligram pills rather than the 20-milligram pills, the pharmacy sold the man a defective product.

Explanation:

Vicarious liability

(liability for tortious acts of another)

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

A valid negligence claim requires proof that another's failure to use reasonable care caused the plaintiff harm. Under the doctrine of **respondeat superior**, an **employer is vicariously liable** for its **employee's negligence** if the negligent act occurred within the **scope of the employment relationship**—ie, while (1) performing assigned work or (2) engaging in conduct subject to the employer's control.

Here, the pharmacist (employee) filled the man's prescription (performing assigned work) with 30 milligrams of the active ingredient instead of 20 milligrams, as prescribed. That ingredient had been associated with heart problems. Since the man had no history of heart problems, he can likely prove that he would not have suffered a heart attack had the pharmacist used reasonable care to provide the correct dosage. And since the pharmacy (employer) is vicariously liable for the pharmacist's negligence, the man has a valid negligence claim against the pharmacy.

(Choice A) Pharmacies are generally not strictly liable (liable without proof of fault) for harm caused by incorrectly filled prescriptions since they are considered service providers—not **commercial sellers**. But the man still has a valid negligence claim against the pharmacy under vicarious liability principles.

(Choice B) An employer can be *directly* liable for its own negligence (eg, hiring an incompetent employee) or *vicariously* liable for its employee's negligence. Therefore, the

man does not need to offer specific proof as to the pharmacy's negligence since he has a valid claim against the pharmacy based on its pharmacist's negligence.

(Choice D) A product is **defective** when it contains a manufacturing defect, design defect, or inadequate warning/instruction at the time of sale or distribution. But proof that a product is defective is only necessary for a products liability claim—not a negligence claim. And since pharmacies (service providers) are generally not subject to products liability, the man will not prevail on this basis.

Educational objective:

Under the doctrine of respondeat superior, an employer is vicariously liable for torts committed by its employees while acting within the scope of employment—ie, performing assigned work or engaging in conduct subject to the employer's control.

References

Restatement (Third) of Agency § 2.04 (Am. Law Inst. 2006) (respondeat superior).

Restatement (Third) of Agency § 7.07 (Am. Law Inst. 2006) (scope of employment).

Restatement (Second) of Torts § 282 (Am. Law Inst. 1979) (definition of negligence).

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