A customer fell and injured himself when he slipped on a banana peel while shopping at a grocery store. The banana peel was fresh and unblemished except for a mark made by the heel of the customer's shoe. In an action brought by the customer against the store, these are the only facts in evidence.

Should the trial judge permit the case to go to the jury?

A. No, because the customer had an obligation to watch where he stepped.

B. No, because there is not a reasonable basis for inferring that the store knew or should have known of the banana peel.

C. Yes, because it is more likely than not that the peel came from a banana offered for sale by the store.

D. Yes, because the store could foresee that a customer might slip on a banana peel.

Explanation:

Land possessor's duty to land entrants

(traditional approach)*

Status	Characteristics	Duty
Trespasser	Intentionally enters land without permission	Known or frequent trespassers – warn of known artificial dangers & use reasonable care in active operations Unknown or unanticipated trespassers – no duty
Licensee	Enters land with permission (eg, social guest)	Warn of known latent dangers & use reasonable care in active operations
Invitee	Enters land open to public (eg, churchgoer) Enters land for business purpose (eg, store customer)	Inspect for unknown dangers Make premises safe or provide adequate warnings Prevent harm from active operations

*In jurisdictions that follow the modern approach, land possessors owe a duty of reasonable care to all land entrants, except flagrant trespassers.

When an invitee (eg, customer) is harmed by a **dangerous condition on the premises**, the **land possessor** (eg, grocery store) is liable for **negligence** if it:

knew or should have known about the condition *and*

failed to use reasonable care to protect the invitee from it.

In the absence of direct evidence, the doctrine of res ipsa loquitur allows **negligence** to be **inferred** from circumstantial evidence. This doctrine may be applied to a defect in the building or its fixtures (eg, escalator malfunction). But it **does not apply** to a **temporary danger** that could have arisen immediately before the plaintiff was harmed (eg, spill).

Here, the customer injured himself when he slipped on a banana peel at the grocery store. But there is no basis for inferring that the store knew or should have known of this temporary danger since the fresh and unblemished peel could have been dropped immediately before the accident. Therefore, the doctrine of res ipsa loquitur does not apply, and the trial judge should not permit the case to go to the jury.

(Choice A) The customer had an obligation to use reasonable care for his own protection—eg, by watching where he stepped. But the customer's contributory negligence would not bar his claim.

(Choice C) The grocery store would be strictly liable had (1) the customer been injured by a defective product and (2) the store been the likely seller of that product. But strict liability is inappropriate because the customer was harmed by a discarded banana peel—not a defective product.

(Choice D) The store had a duty to inspect and clean the floor periodically since it could foresee that a customer might slip on debris (eg, banana peel). But the banana peel was *fresh and unblemished*, indicating that it had not been on the floor for an unreasonably long time.

Educational objective:

The doctrine of res ipsa loquitur does not permit an inference of negligence when the plaintiff was harmed by a temporary danger that could have arisen immediately before the injury occurred (eg, spill).

References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (explaining when a defendant's negligence can be inferred based on the type of accident that injured the plaintiff).

Cox v. Wal-Mart Stores East, L.P., 350 F. App'x 741, 744 (3d Cir. 2009) (explaining that res ipsa loquitur applies to defects in buildings and fixtures, but not to transitory dangers that cause slip-and-falls).