

A seven-year-old child regularly visited a neighboring farm to play and to visit the neighbor's horses. The neighbor told the child that he was welcome at the farm anytime. However, the neighbor warned the child that the horses had to remain in their stable or in their paddock unless the neighbor was present. One day while the neighbor was away, the child went to visit the horses. The child wanted to watch the horses run, so he let them out of their paddock and into an adjoining pasture. One horse escaped from the pasture and ran across a busy road. A driver who swerved to avoid hitting the horse lost control of her car, sustaining serious injuries to herself and damage to the car.

This jurisdiction has a statute that states, in part: "Any person who knowingly releases or causes the release of a domesticated animal is liable in negligence for damage caused by that animal."

The driver of the car sued the child and the child's parents for her injuries and the damage to her car, alleging negligence per se.

Which of the following would likely be the child's best defense?

- A. Neither the child nor the child's parents had ownership or control of the horse.
- B. The child exercised the care that a child of his age and maturity would have exercised.
- C. The driver's harm was not of the type that the statute was designed to prevent.
- D. The driver's harm was not proximately caused by the child's actions.

Explanation:

Defenses to negligence per se

Violation of law excused by:

use of reasonable care

incapacity

need to avoid greater risk of harm

impossibility of complying

vagueness of law

reasonable ignorance (rare)

Negligence requires proof of duty, breach, causation, and damages. **Duty and breach** are **presumed** under the doctrine of **negligence per se** when the following facts are proved:

The defendant **violated a statute or ordinance**.

The plaintiff suffered a **type of harm** that the statute or ordinance was **intended to protect against**.

The plaintiff was in the **class of persons intended to be protected** by the statute or ordinance.

However, the defendant's **violation** of an applicable statute or ordinance will be **excused** if the violation was reasonable in light of the defendant's **physical disability or incapacity** OR because the defendant is a **child**. This means that a child's violation will be excused, and negligence per se will not apply, if the child acted with the same level of care as other children of similar age and maturity. Therefore, this would likely be the child's best defense.

(Choice A) The statute applies to *any* person who releases a domestic animal; it is not limited to persons who own or control the animal.

(Choice C) While the statute does not specify the exact type(s) of harm it was designed to prevent, it seems likely that traffic accidents caused by escaped domestic animals is one of them.

(Choice D) Proximate (legal) cause requires that the plaintiff suffer a *foreseeable* harm that is not too remote from, and is within the risk created by, the defendant's conduct. Here, it is foreseeable that letting a horse out of its enclosure could result in the horse entering a nearby roadway and causing a traffic hazard.

Educational objective:

A defendant's violation of an applicable statute or ordinance will be excused, and negligence per se will not apply, if the violation was reasonable in light of the defendant's childhood, physical disability, or physical incapacitation.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 15 (Am. Law Inst. 2010)
(discussing excused violations of a statute).

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