

During a professional baseball game, a pitcher was continuously heckled by some spectators seated behind a wire mesh fence in the stands above the dugout. On several occasions, the pitcher turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. The pitcher then wound up as though he was preparing to pitch in the direction of his catcher but threw a fastball toward the hecklers instead. The ball passed through the wire mesh fence and struck a woman who was one of the hecklers.

The woman brought an action against the pitcher and the team to recover damages for battery. The trial court entered judgment as a matter of law in favor of the defendants on the battery claim. The woman has appealed the judgment, contending that the trial court erred in entering judgment as a matter of law in favor of the defendants. The appellate court has held that the battery claim presents a jury issue.

How should the court rule on the judgment as a matter of law entered in favor of the team?

- A. Affirm, because an employer is not vicariously liable for a servant's battery.
- B. Affirm, if the pitcher's act was a knowing violation of team rules.
- C. Reverse and remand, because a jury could find the team vicariously liable for a battery committed by the pitcher in the course of his employment.
- D. Reverse and remand, if a jury could find negligence on the part of the team's management.

### **Explanation:**

An employer is vicariously liable under the doctrine of **respondeat superior** for any tort committed by its employee while acting within the scope of the **employment relationship**—ie, when:

the employee's conduct is **inherent** in the **employment** position (eg, a security guard batters a thieving customer) *or*

the employee acts to **further** the **employer's business** (eg, a waiter batters a customer who is complaining about food quality to protect the restaurant's integrity).

Here, a reasonable jury could find that the pitcher committed the battery within the course of his employment—eg, to further the team's success by quieting the hecklers. Therefore, the appellate court should reverse the judgment as a matter of law and remand the case for a jury to ultimately determine the team's vicarious liability (**Choice A**).

**(Choice B)** An employer (master) may be vicariously liable for a tort committed by its employee (servant) acting within the scope of the employment relationship, even if the employee knowingly violated employment guidelines or rules.

**(Choice D)** Vicarious liability holds the employer liable for torts committed by its employee within the scope of employment based solely on the relationship between the two parties—not based on the employer's negligent supervision or control of its employee. Therefore, it is irrelevant whether the team's management acted negligently.

### **Educational objective:**

Under the doctrine of respondeat superior, an employer is vicariously liable for its employee's torts committed within the scope of the employment relationship. Torts are committed within the scope of employment when the employee's conduct is (1) inherent to the job or (2) in furtherance of the employer's business.

### **References**

Restatement (Third) of Agency §§ 2.04, 7.07 (Am. Law Inst. 2006) (doctrine of respondeat superior).

Fed. R. Civ. P. 50(a) (judgment as a matter of law).

Manning v. Grimsley, 643 F.2d 20 (1st Cir. 1981).

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

## Respondeat superior

Employer vicariously liable when employee's conduct:



is inherent in employment position



furtheres employer's business

or