

Toxic materials being transported by truck from a manufacturer's plant to a warehouse leaked from the truck onto the street a few miles from the plant. A driver lost control of his car when he hit the puddle of spilled toxic materials on the street, and he was injured when his car hit a stop sign.

In an action for damages by the driver against the manufacturer based on strict liability, is the driver likely to prevail?

- A. No, because the driver's injury did not result from the toxicity of the materials.
- B. No, because the driver's loss of control was an intervening cause.
- C. Yes, because the leak occurred near the manufacturer's plant.
- D. Yes, because the manufacturer is strictly liable for leaks of its toxic materials.

Explanation:

Common examples of abnormally dangerous activities

Transporting & storing hazardous materials & gasoline

Fumigating & crop dusting with toxic chemicals

Storing explosives & blasting

Operating nuclear facility

Burning fields

A defendant is **strictly liable**—liable regardless of fault—for harm caused by an **abnormally dangerous activity**. An activity is abnormally dangerous if it is (1) **uncommon** in the community and (2) poses a **foreseeable** and **highly significant risk** of physical harm to the plaintiff that cannot be mitigated by reasonable care. However, the defendant is only strictly liable for harm that stems from the **abnormally dangerous characteristic** of that activity.

Here, the transportation of toxic materials (uncommon activity in the community) is an abnormally dangerous activity since persons exposed to the materials have a high probability of becoming seriously ill (foreseeable and significant risk of harm). However, the manufacturer is not strictly liable to the driver since the driver's injury resulted from the puddle of spilled materials—not the materials' abnormally dangerous toxicity. Therefore, the driver's *strict liability* claim against the manufacturer will likely fail **(Choice D)**.

(Choice B) Only an *unforeseeable* **intervening cause** will negate the defendant's strict liability. Here, however, it was *foreseeable* that a person driving over spilled toxic materials would lose control of the vehicle, so the driver's loss of control will not negate the manufacturer's liability.

(Choice C) A defendant is strictly liable for harm resulting from his/her abnormally dangerous activity regardless of where the harm occurs. Therefore, the location of the leak is irrelevant.

Educational objective:

A defendant engaged in an abnormally dangerous activity is strictly liable for harm resulting from the abnormally dangerous characteristic of that activity—eg, illness caused by exposure to spilled toxic chemical, but not injury from a car accident caused by spilled chemicals.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 20 (Am. Law Inst. 2010) (abnormally dangerous activity).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 29 cmt. 1 (Am. Law Inst. 2010) (limitations on tortious conduct).

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