

A farmer kept antiques in an uninhabited farmhouse on his property. The farmhouse had been broken into several times in the past, and some of the farmer's goods had been stolen. Instead of posting "No Trespassing" signs, the farmer decided to install an alarm system to deter intruders. While the farmer was in the farmhouse installing the alarm system, he heard a window open in the adjoining room. The farmer crept very quietly to the door of the room, threw the door open, and found a 10-year-old intruder. The farmer immediately struck the child very hard in the face, breaking her nose.

In an action on behalf of the child against the farmer to recover for the injury to her nose, is the child likely to prevail?

- A. No, because the farmer did not use deadly force.
- B. No, because the farmer had probable cause to believe that the child was a thief.
- C. Yes, because the farmer should have posted a "No Trespassing" sign.
- D. Yes, because the farmer used excessive force.

Explanation:

A defendant is only **privileged** to use the amount of **force reasonably necessary** to prevent or **terminate** a **trespass** (ie, privileged to use proportionate force). Therefore, if a trespass could have been deterred by less forceful means, then the defendant is liable to the trespasser for harm caused by the use of **excessive force** (unreasonable or unnecessary force used in defense of oneself or property).

Here, the child entered the farmer's property without his consent (trespass), so the farmer was privileged to use *reasonable force* to remove her from his farmhouse (eg, by carrying the child off his property). Instead, the farmer used *excessive force* because he struck the girl very hard in the face and broke her nose. Therefore, the child will likely recover for the injury to her nose.

(Choice A) To prevail on a claim for **battery**, the child need only show that the farmer's intentional infliction of harmful contact constitutes excessive force—not deadly force (force likely to cause death or serious bodily harm).

(Choice B) Even if the farmer had probable cause to believe that the child was a thief, he was only privileged to use reasonable force to protect his property.

(Choice C) A defendant is not required to post "No Trespassing" signs to use reasonable force in defense of property. And though the absence of a warning sign may be considered in determining whether a defendant took **reasonable steps** to stop the trespass, that analysis is unnecessary since the farmer clearly used excessive force.

Educational Objective:

A defendant is only privileged to use the amount of force reasonably necessary to prevent or end a trespass. If the defendant uses excessive force (unreasonable or unnecessary force used in defense of oneself or property), then the defendant is liable for the harm caused to the plaintiff.

References

Restatement (Second) of Torts § 81 (Am. Law Inst. 1965) (amount of force allowed in defense of property).

Restatement (Second) of Torts § 82 (Am. Law Inst. 1965) (effect of excessive force).

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Degree of force permitted to defend property

