

A hot-air balloon touring company operated near a golf course. The company's property was separated from the golf course by a fence on which the company had posted signs warning people not to enter the property because of the dangers of balloons landing.

A golfer on the golf course hit an errant shot onto the company's property, ignored the warning signs, and jumped over the fence to retrieve her golf ball. At about the same time, one of the company's balloons experienced mechanical problems and had to make an emergency landing to avoid crashing. The balloon, which was out of control when it landed, struck the golfer and injured her.

The jurisdiction has decided that hot-air ballooning is an abnormally dangerous activity.

In an action by the golfer against the company, does the company have any affirmative defenses?

- A. No, because the balloon was out of control when it struck the golfer.
- B. No, because the company was engaged in an abnormally dangerous activity.
- C. Yes, because the balloon landed to avoid crashing.
- D. Yes, because the golfer assumed the risk by coming onto the company's property.

### **Explanation:**

Generally, a defendant is **strictly liable**—liable regardless of fault—for physical harm caused to the plaintiff by an **abnormally dangerous activity**. However, **assumption of the risk** is an affirmative defense to a strict liability claim when the plaintiff (1) **knows** of the risk of harm and (2) **voluntarily accepts** that risk.

Here, the company is strictly liable for the golfer's injury because one of its hot-air balloons (an abnormally dangerous activity in this jurisdiction) struck her as it landed. But since the golfer ignored the signs warning about the dangers of the balloons (knowledge) and entered the property (voluntary acceptance), the company can assert that the golfer assumed the risk as an affirmative defense **(Choice B)**.

**(Choice A)** Although the balloon was out of control when it struck the golfer, the company had posted signs warning people about the dangers of balloons landing. Because the golfer entered the property despite those warning signs, she assumed the risk of being harmed by a dangerous or out-of-control balloon landing.

**(Choice C)** Since a defendant is strictly liable for harm caused by an abnormally dangerous activity (eg, hot-air ballooning), the use of reasonable care is no defense. Therefore, while it may have been reasonable to land the balloon to avoid a crash, the reasonableness of the company's conduct is irrelevant.

### **Educational objective:**

Assumption of the risk is an affirmative defense to strict liability when the plaintiff (1) knows of the risk of harm and (2) voluntarily accepts that risk.

### **References**

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

Restatement (Second) of Torts § 523 (Am. Law Inst. 1977) (assumption of the risk as defense against abnormally dangerous activity).

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### Assumption of risk as a defense to strict liability



known risk + voluntary acceptance  
=  
assumption of the risk



unknown risk + no voluntary acceptance  
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assumption of the risk