

While walking on a public sidewalk, a pedestrian was struck by a piece of lumber that fell from the roof of a homeowner's house. The homeowner had hired a roofer to make repairs to his roof, and the lumber fell through negligence on the roofer's part.

If the pedestrian brings an action against the homeowner to recover damages for the injury caused to him by the roofer's negligence, will the pedestrian prevail?

- A. No, because the roofer was an independent contractor rather than the homeowner's servant.
- B. No, if the homeowner exercised reasonable care in hiring the roofer to do the repair work.
- C. Yes, because the roofer's act was a breach of a nondelegable duty owed by the homeowner to the pedestrian.
- D. Yes, under the *res ipsa loquitur* doctrine.

Explanation:

Nondelegable duties

(duties that cannot be assigned to another to avoid liability)

Maintain safe conditions on premises open to public (eg, store, restaurant)

Safely perform activities that:

are abnormally or highly dangerous

infringe on private property right (eg, nuisance, trespass)

are regulated by law *or*

are conducted in public place

A principal is generally not vicariously liable for torts (eg, negligence) committed by his/her independent contractor. But **vicarious liability** can be imposed when the **independent contractor's work** involves a **nondelegable duty**—ie, a duty of care that cannot be assigned to a third party to avoid liability. This includes a **land possessor's duty to safely conduct activities on the land** that pose foreseeable risks of harm to others (eg, construction, repairs).

Here, the homeowner (land possessor) hired the roofer (independent contractor) to repair the homeowner's roof. Since repairing a roof poses a foreseeable risk of harm to others, the homeowner had a nondelegable duty to ensure that the repairs were conducted safely. And since the roofer's act (negligently allowing lumber to fall from the roof) breached that duty, the homeowner is vicariously liable for the resulting harm (the pedestrian's injury).

(Choice A) Employers are vicariously liable for torts committed by their employees (ie, servants) while acting within the scope of employment. But the fact that the roofer was an independent contractor—not an employee—does not defeat the pedestrian's claim since the roofer's work involved a nondelegable duty.

(Choice B) The fact that the homeowner exercised reasonable care in hiring the roofer would show that the homeowner is not *directly* liable for negligently hiring an incompetent contractor. But the homeowner can still be *vicariously* liable for the roofer's negligence since the roofer's work involved a nondelegable duty.

(Choice D) When there is no direct evidence of negligence, the doctrine of *res ipsa loquitur* allows negligence to be inferred from circumstantial evidence if (1) the event that caused the plaintiff's harm would not ordinarily occur absent negligence by someone in the defendant's position and (2) the evidence tends to eliminate other potential causes of that harm. But this doctrine does not apply since the roofer's negligence is stated.

Educational objective:

A principal is generally not vicariously liable for its independent contractor's torts. However, vicarious liability can be imposed when the principal owed a nondelegable duty of care—eg, a land possessor's duty to safely conduct activities on the land that pose a foreseeable risk of harm to others.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 57 (Am. Law Inst. 2012) (general rule: no vicarious liability for independent contractors' torts).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm §§ 54, 62 (Am. Law Inst. 2012) (exception: land possessor's nondelegable duty to safely conduct activities on the land).

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