

While a businesswoman was leaving an elevator, it suddenly dropped several inches, causing her to fall. An investigation of the accident revealed that the elevator dropped because it had been negligently maintained by an elevator company. The elevator company had a contract with the owner of the building to inspect and maintain the elevator. The businesswoman's fall severely aggravated a preexisting physical disability.

If the businesswoman sues the elevator company for damages for her injuries, what should she recover?

- A. Damages for the full amount of her disability, because a tortfeasor must take its victim as it finds her.
- B. Damages for the injury caused by the falling elevator, including the aggravation of her preexisting disability.
- C. Nothing, if the accident would not have caused significant harm to an ordinarily prudent elevator passenger.
- D. Nothing, if the elevator company could not reasonably have been expected to foresee the extent of the harm that the businesswoman suffered as a result of the accident.

## Explanation:

### Relevance of foreseeability for negligence

<b>Duty</b>	Defendant's duty only extends to <i>foreseeable</i> risks of his/her conduct
<b>Breach</b>	Defendant fails to act like reasonable person under similar circumstances by not mitigating <i>foreseeable</i> risks
<b>Causation</b>	Actual (but for) cause – foreseeability irrelevant Proximate cause – plaintiff's harm must have been <i>foreseeable</i> consequence of defendant's breach
<b>Damages</b>	Foreseeability irrelevant (ie, eggshell-skull rule)

To recovery under a theory of **negligence**, the plaintiff must prove duty, breach, causation, and **damages**. Under the **eggshell-skull rule**, damages are available for **all of the harm** stemming from the defendant's negligence. This is true **even if** the extent of that harm was **unforeseeable** and unusually severe—eg, due to the plaintiff's preexisting vulnerability or medical condition.

Here, the elevator company's negligent maintenance caused the elevator to suddenly drop several inches while the businesswoman was leaving it. Since this caused the businesswoman to fall, she can recover damages for her injury, including the aggravation of her preexisting disability. This is true even if the elevator company could not have reasonably foreseen the extent of the businesswoman's harm (**Choice D**).

**(Choice A)** Under the eggshell-skull rule, a tortfeasor "takes its victim as it finds her." This means that the elevator company must pay for the full extent of the businesswoman's injuries *caused* by its negligence (eg, the aggravation of her disability). But it need not pay for any injury that was *not* caused by its negligence (eg, her entire disability).

**(Choice C)** The extent and severity of the plaintiff's harm never has to be foreseeable, so the fact that the accident would not have caused an ordinary elevator passenger significant harm is irrelevant.

### Educational objective:

Under the eggshell-skull rule, a tortfeasor is liable for all of the harm resulting from his/her tortious conduct—even if the extent of that harm was unforeseeable and unusually severe (eg, due to the victim's preexisting vulnerability).

### References

Restatement (Second) of Torts § 435 (Am. Law Inst. 1965) (explaining that a tortfeasor can be liable for harm that he/she neither foresaw nor should have foreseen).

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