

A shopper was riding on an escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

- A. No, because the finder of fact could infer that the escalator malfunction was due to negligence.
- B. No, because the store is strictly liable for the shopper's injuries.
- C. Yes, because an independent contractor maintained the escalator.
- D. Yes, because the shopper has not produced evidence of negligence.

Explanation:

A court should grant a defendant's motion for a directed verdict if the plaintiff fails to present legally sufficient evidence to support any theory of recovery. A plaintiff can recover for **negligence** under theories of:

direct liability (for the defendant's own conduct) – requires proof that the **defendant's failure to exercise reasonable care** caused the plaintiff harm *or*

vicarious liability (for an independent contractor's conduct) – requires proof that a contractor's work involved a **nondelegable duty** owed by the defendant—a duty that cannot be assigned to a third party to avoid liability—and the **contractor's breach** of that duty (ie, negligence) caused the plaintiff harm.

Since businesses have a **duty to provide safe conditions** for their invitees (eg, customers), the store could be directly liable if the shopper can show that her injuries were caused by the store's negligence. And since that duty is **nondelegable**, the store could also be vicariously liable for its independent contractor's negligence (**Choice C**). And though there is no direct evidence of the store's or the contractor's negligence, the doctrine of **res ipsa loquitur** allows **negligence to be inferred** from circumstantial evidence when:

the type of accident that caused the plaintiff's harm would not ordinarily occur absent negligence by someone in the defendant's (or the contractor's) position *and*

the evidence tends to eliminate other potential causes of that harm.

Here, an escalator would not ordinarily malfunction in the absence of negligence by someone operating or maintaining the escalator, and there is no evidence of other possible causes of the shopper's harm. The fact finder could therefore infer that the malfunction was due to either the store's or the contractor's negligence and that this negligence caused the shopper's injuries (**Choice D**). As a result, the evidence is legally sufficient to support the shopper's recovery under either theory, and the court should deny the store's motion for a directed verdict.

(Choice B) **Strict liability** applies to strict products liability, certain animals, and abnormally dangerous activities. But here, the shopper was not harmed by a product sold by the store (no strict products liability), an animal, or an abnormally dangerous activity.

Educational objective:

A defendant can be (1) directly liable for his/her own negligence or (2) vicariously liable for an independent contractor's negligence if the contractor's work involved a nondelegable duty owed by the defendant—eg, a business's duty to maintain safe premises for its invitees.

References

Fed. R. Civ. P. 50(a) (judgment as a matter of law).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 6 (Am. Law Inst. 2010)
(direct liability for negligence).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 62 (Am. Law Inst. 2012)
(vicarious liability for independent contractor's negligence).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 17 (Am. Law Inst. 2010)
(res ipsa loquitur).

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

