

A man rented a car from a car rental agency. Unbeknownst to the rental agency, the car had a bomb hidden in it at the time of the rental. The bomb exploded an hour later, injuring the man.

Immediately prior to renting the car to the man, the rental agency had carefully inspected the car to be sure it was in sound operating condition. The rental agency did not inspect for hidden explosive devices, but such an inspection would have revealed the bomb.

There had been no previous incidents of persons hiding bombs in rental cars.

In a negligence action by the man against the car rental agency, is the man likely to prevail?

- A. No, because the rental agency could not have reasonably foreseen the likelihood of someone placing a bomb in the car it was about to rent to the man.
- B. No, because the rental agency did not hide the bomb in the car.
- C. Yes, because an inspection for explosive devices would have revealed the bomb.
- D. Yes, because the bomb made the car abnormally dangerous.

Explanation:

Relevance of foreseeability for negligence

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

Negligence has four elements, three of which require proof of foreseeability: duty, breach, and causation. The **duty** element can only be satisfied if the defendant's conduct created a **reasonably foreseeable risk of harm** to others. This occurs when the defendant **knows or has reason to know** of the risk—eg, from past occurrences leading to harm. And since foreseeability is needed to establish duty, as well as breach and proximate cause, plaintiffs harmed by an unforeseeable risk cannot prevail.

Here, the man was injured when a hidden bomb exploded in his rental car. But the rental agency did not know about the bomb. And it could not have reasonably foreseen such a risk since there had been no previous incidents of persons hiding bombs in rental cars. Therefore, the rental agency had no duty to inspect for explosive devices, and the man likely will not prevail.

(Choice B) Although the rental agency did not hide the bomb in the car, it could have been liable for failing to inspect for explosive devices had it been reasonably foreseeable that one might be planted in a rental car—eg, because this was a common occurrence in the area.

(Choice C) An inspection for explosive devices would have revealed the bomb and prevented the man's harm, so the rental agency's failure to conduct such an inspection was an **actual cause** of that harm. But the man still cannot prevail since the agency had no duty to inspect for explosive devices.

(Choice D) A person is strictly liable for harm caused by his/her **abnormally dangerous activity**. And though storing explosives can be abnormally dangerous, the rental agency did not store (or even know about) the bomb.

Educational objective:

Every person has a duty to mitigate the reasonably foreseeable risks of his/her conduct—ie, risks that the person knows or should know about. But no such duty exists for unforeseeable risks.

References

Restatement (Second) of Torts § 281 cmt. f (Am. Law Inst. 1965) (explaining that a defendant is not liable for negligence when the plaintiff's harm was not a recognizable risk of the defendant's conduct).

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