

A man and a woman had been dating for two years and decided to go to a baseball game for their anniversary. Before the game started, the woman decided to listen to music on her headphones while the man went to get snacks. Another fan, bored before the game, found a baseball in the stands and tossed it as hard as he could into the air. As the ball came back down, despite the fan's attempt to get the woman's attention, the ball hit her in the head, causing her to collapse.

When the man returned, he administered CPR to resuscitate the woman while waiting on an ambulance. However, the man did not know CPR and broke the woman's ribs in the process. The paramedics then transported the woman to the hospital, where a triage nurse did a head-to-toe examination and determined that the woman did not need immediate medical attention. While waiting to see the doctor, the woman suffered a brain hemorrhage.

Which of the woman's injuries will the fan be liable for causing?

- A. None, because the woman was contributorily negligent by wearing headphones at the ballpark.
- B. Head injury, because the man's negligent administration of CPR was a superseding cause that cut off the fan's liability.
- C. Head injury and broken ribs, because the triage nurse's specialized training imposed a higher duty of care that, when breached, cut off the fan's liability.
- D. Head injury, broken ribs, and brain hemorrhage, because all of the injuries were a foreseeable result of the fan's actions.

Explanation:

Intervening causes

Foreseeable cause	<i>Foreseeable</i> intervening act or force that contributes to plaintiff's harm Defendant remains <i>liable</i>
Superseding cause	<i>Unforeseeable</i> intervening act or force that breaks chain of causation between defendant's tortious conduct & plaintiff's harm Defendant is <i>not liable</i>

Negligence requires proof of the following elements: duty, breach, causation, and damages. To prove causation, the plaintiff (the woman) must show that the defendant (the fan) was the actual *and* proximate cause of the plaintiff's injuries:

Actual (factual) cause – the plaintiff's harm would not have occurred "**but for**" the defendant's actions. Here, the head injury would not have occurred if the fan had not thrown the ball in the air.

Proximate (legal) cause – the plaintiff's harm was a **reasonably foreseeable consequence** of the defendant's conduct.* Here, it was reasonably foreseeable that throwing a ball in the air could result in the ball injuring someone nearby.

However, the chain of proximate causation can be **broken by a superseding cause**—ie, an **unforeseeable, intervening act** or force that occurred after the defendant's negligence and contributed to the plaintiff's harm. But **negligent intervening acts** (eg, medical malpractice) are typically regarded as **foreseeable** and therefore **do not break the chain** of proximate causation.

Here, the man may have been negligent when he administered CPR since he did not know how to do so **(Choice B)**. And the triage nurse may have committed medical malpractice when she incorrectly assessed the woman's need for medical attention **(Choice C)**. But since their negligence is considered foreseeable, it does not break the chain of proximate causation. Therefore, the fan will be liable for causing *all* of the woman's injuries.

*This is the **majority rule** for proximate causation that should be applied unless the question states otherwise.

(Choice A) In a pure comparative-fault jurisdiction (default rule on the MBE), a plaintiff's contributory negligence is *not* a complete bar to recovery. Instead, the plaintiff's full damages are calculated by the trier of fact and then reduced by the proportion that the plaintiff's fault bears to the total harm.

Educational objective:

Superseding causes—ie, *unforeseeable*, intervening acts that occur after the defendant's negligence and contribute to the plaintiff's harm—break the chain of proximate causation. But negligent intervening acts (eg, medical malpractice) are typically regarded as *foreseeable* and therefore do not cut off the defendant's liability.

References

Restatement (Second) of Torts § 447 (Am. Law Inst. 1965) (negligence of intervening acts).

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