

A homeowner hired a building contractor to rebuild her front porch. The contractor told her that he planned to first rip out the old floorboards and pile them in the front yard. Because she thought that would look unsightly, the homeowner insisted that the contractor loosen each board individually and leave them all in place until he was ready to start replacing them with new boards.

The contractor loosened the boards and left them in place while he went out for lunch. While the contractor was away, a friend of the homeowner's stepped onto the porch to return a borrowed rake. As the friend crossed the porch, the loosened boards shifted and the friend fell, breaking her leg.

If the friend sues to recover for her injury, who is likely to be found liable to her?

- A. Both the contractor and the homeowner, because neither posted a warning that the porch boards had been loosened. (60%)
- B. Neither the homeowner nor the contractor, because the friend was a licensee. (0%)
- C. The contractor only, because he was an independent contractor and he loosened the boards in a dangerously deceptive fashion without posting a warning. (2%)
- D. The homeowner only, because she insisted on having the old boards removed in a dangerously deceptive fashion and posted no warning. (36%)

Correct

60% Answered correctly

02 mins Time Spent

2023 Version

Explanation:

A **principal** is generally not vicariously liable for torts committed by his/her independent contractor. That is because the principal generally has no right to control the method and means by which the task is performed or the result is reached by the independent contractor. However, a principal **who retains control over** any part of the **independent contractor's work** has a **duty of reasonable care** as to the exercise of that control. And a failure to exercise such care subjects the principal to direct liability for [negligence](#).

Here, the homeowner hired the building contractor as an independent contractor to rebuild her front porch. However, the homeowner maintained control over the project by specifically telling the contractor that he needed to loosen each porch board individually and leave them in place. As a result, both the homeowner and the contractor had a duty to exercise reasonable care—eg, by posting warning signs that the porch boards had been loosened. And since neither did so, both are likely to be found liable to the friend **(Choices C & D)**.

(Choice B) The friend was a licensee, so the homeowner had a duty to warn the friend about the loose floorboards.

Educational objective:

A principal is generally not vicariously liable for torts committed by his/her independent contractor. However, a principal who retains control over any part of the independent contractor's work is directly liable for any failure to exercise reasonable care as to the retained control.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 56 (Am. Law Inst. 2012) (explaining that a principal who retains control over any part of the independent contractor's work is directly liable for failure to exercise reasonable care).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 57 (Am. Law Inst. 2012) (explaining that a principal is generally not vicariously liable for independent contractor's torts).

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Principal's negligence liability involving independent contractor

