

A trucker driving down an isolated country road late one night struck cattle that had escaped from a farmer's pen and wandered into the road. The trucker was unable to stop before hitting the cattle but was not driving carelessly. While he was not injured in the collision, the trucker sustained damage to his truck and lost income during the time it took to repair the truck.

The trucker sued the farmer for his damages and invoked the doctrine of *res ipsa loquitur*. At trial, the farmer introduced evidence that his cattle pen was of a sufficient height to prevent cattle from stepping over it and was constructed of thick steel pipe sitting in concrete with a substantial top rail. A sturdy pen such as this one would be more difficult for cattle to break through than one constructed of barbed wire or electric wire.

Should the trial court allow the case to go to the jury with a *res ipsa loquitur* instruction?

- A. No, because it is possible that a third party wrongfully let the cattle out of the pen.
- B. No, because the trucker must submit direct evidence of negligence in order to invoke the *res ipsa loquitur* doctrine.
- C. Yes, because the farmer is strictly liable for harm caused by his escaping cattle.
- D. Yes, because the jury could conclude that cattle would not ordinarily escape a strong, secure cattle pen in the absence of negligence.

Correct

Collecting Statistics

01 min, 46 secsTime Spent

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## Explanation:

Negligence liability arises when a defendant's negligent conduct (ie, failure to use reasonable care) causes the plaintiff harm. But when there is no direct evidence of the defendant's negligent conduct, the traditional doctrine of **res ipsa loquitur** allows such **negligence** to be **inferred** by the fact finder (eg, the jury) from circumstantial evidence if: the **accident** was of a kind that **ordinarily does not occur** in the absence of negligence the thing that caused the harm was under the **defendant's exclusive control** *and* that harm was **not due to the plaintiff's actions**.\*

Here, the trucker collided with the farmer's cattle that had escaped from their pen and wandered into the road. Although there is no direct evidence that the farmer was negligent, the jury could conclude that cattle would not ordinarily escape a strong, secure cattle pen in the absence of negligence. And since the cattle were under the farmer's exclusive control and the collision was not due to the trucker's driving, the jury can infer the farmer's negligence. Therefore, the trial court should allow the case to go to the jury with a res ipsa loquitur instruction.

\*Today, many jurisdictions do not strictly enforce the exclusive-control requirement in [medical malpractice](#) and [products liability claims](#) based on negligence. And a vast majority of [comparative fault jurisdictions](#) loosely apply the third requirement—that the harm not be due to the plaintiff's own actions—since contributory negligence is no longer a total bar to recovery.

**(Choice A)** It is possible that a third party wrongfully let the cattle out of the pen, but there is no evidence to support that contention. Instead, the farmer's negligence is the most likely explanation for the cattle's escape.

**(Choice B)** The doctrine of res ipsa loquitur allows the jury to infer the defendant's negligence from [circumstantial evidence](#). Therefore, the trucker can invoke the doctrine without submitting *direct* evidence of the farmer's negligence.

**(Choice C)** [Strict liability](#) is imposed when livestock or other animals (except dogs or cats) enter another's land and cause damage. However, negligence applies if an animal strays onto a public road and contributes to an accident there (as seen here).

## Educational objective:

Under the traditional standard for res ipsa loquitur, negligence is inferred if (1) the plaintiff's harm would not normally occur absent negligence, (2) the defendant had exclusive control over the thing that caused the harm, and (3) the plaintiff did nothing to cause that harm.

## References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (defining the doctrine of res ipsa loquitur).

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**Res ipsa loquitur—“the thing speaks for itself”**  
(*Byrne v. Boadle*)



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