

A male attendant who worked at a hospital had sexual relations with a severely mentally incompetent patient in her room at the hospital.

In a tort action brought on the patient's behalf against the hospital, will the patient prevail?

- A. No, if the male attendant's actions were outside the scope of his employment.
- B. No, if the patient initiated the relationship with the male attendant and encouraged his actions.
- C. Yes, if the hospital failed to use reasonable care to protect the patient from such conduct.
- D. Yes, if the male attendant was an employee of the hospital.

Explanation:

Special relationships

imposing duty to protect others

Parent/child

Hospital/patient

Employer/employees

Shopkeeper/business invitees

Common carrier/passengers

Custodian/person in custody

Innkeeper/guests

Mnemonic: **Please Help Eliminate Safety Concerns Causing Injuries**

A defendant generally has **no duty to protect** a plaintiff from harm. But when the defendant has a **special relationship** with the plaintiff (eg, hospitals and their patients), the defendant has a **duty to exercise reasonable care** to protect the plaintiff from harm arising within the **scope of that relationship**. A defendant is liable for negligence if it breaches this duty and causes the plaintiff harm.

Here, the hospital had a duty to use reasonable care to protect the patient from harm arising within the scope of the hospital-patient relationship. Since the male attendant had sexual relations with the patient in her hospital room, her harm occurred within the scope of that relationship. Therefore, the patient will prevail in her action against the hospital if it failed to use reasonable care to protect her from the male attendant's conduct.

(Choice B) Consent to another's conduct is a complete bar to recovery for the resulting harm. But a person can only consent if he/she has the capacity to do so—ie, the ability to understand the nature and effect of his/her actions. And since the patient was *severely* mentally incompetent (no capacity), the fact that she initiated the relationship with the male attendant or encouraged his actions would not defeat her claim.

(Choices A & D) Under the doctrine of respondeat superior, an employer is vicariously liable for torts committed by its employees while acting within the scope of employment—ie, while (1) performing assigned work or (2) engaging in conduct subject to the employer's control. But even if the male attendant was not an employee or was acting outside the scope of employment (no vicarious liability), the hospital will still be directly liable for its own negligence.

Educational objective:

A hospital owes a duty to exercise reasonable care to protect its patients from harm arising within the scope of the hospital-patient relationship.

References

Restatement (Second) of Torts § 282 (Am. Law Inst. 1979) (definition of negligence).

Restatement (Second) of Torts § 314 (Am. Law Inst. 1979) (no duty to act to protect or aid another).

Restatement (Second) of Torts § 314A (Am. Law Inst. 1979) (duty to protect or aid based on special relationship).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.