

A company set up a website for the advertisement of goods and services offered by individuals, as well as other public notices.

One of the notices on the site announced that the furnishings in a home at a specified address were free for the taking. Within a few hours of the posting, all the furnishings had been taken.

The notice had been placed by the homeowner's cousin without the homeowner's knowledge. The cousin bore a grudge against the homeowner and had placed the notice while the homeowner was away and had left the door to the home unlocked.

In a negligence action brought by the homeowner against the company, what will be the company's strongest defense?

- A. The company had no duty to the homeowner. (55%)
- B. The cousin's actions were a proximate cause of the homeowner's loss. (16%)
- C. The First Amendment prohibits all tort actions based upon mere speech. (0%)
- D. There is no evidence of careless conduct by the company. (26%)

Incorrect

Correct answer A

55% Answered correctly

01 min, 43 secs Time Spent

2023 Version

Explanation:

Affirmative duty to act

Assumption of duty	Defendant who voluntarily aids or rescues another has duty to use reasonable care when rendering aid or performing rescue
Creation of risk	Defendant whose conduct creates foreseeable risk of harm or places another in peril has duty to exercise reasonable care to prevent further harm by rendering care or aid
By contract	Duty to use care when performing contractual obligations
By authority	Duty to exercise reasonable control over third party whom defendant has actual ability & authority to control Examples: parent over child, custodian over person in custody, employer over employee, mental-health professional over patient
By relationship	Duty to protect, aid, or assist plaintiff with whom defendant shares unique relationship Examples: business proprietor with patron, common carrier with passenger, innkeeper with guest, employer with employee, parent with child
By statute	Statute imposes obligation to act for another's protection
Land possessor	Duty to mitigate risks posed by natural or artificial conditions on land

To be liable for [negligence](#), the defendant must have breached a duty owed to the plaintiff. A defendant generally has no **affirmative duty to act**. But such a duty **arises when**, for example:

the defendant's **conduct created a reasonably foreseeable risk of harm** to the plaintiff *or* the defendant and the plaintiff share a **special relationship**—eg, business proprietor with patron.

Here, all of the homeowner's furnishings were taken after the cousin placed a notice on the company's website stating that the furnishings were free for the taking. Although the company provided the website to advertise goods and services, it was not reasonably foreseeable that a person would intentionally misuse the site as the cousin did. Additionally, the homeowner and the company do not share a special relationship. As a result, the company had no duty to the homeowner, so this is the company's strongest defense to the homeowner's negligence action.

(Choice B) Even if the cousin's actions were a proximate cause of the homeowner's loss that breaks the chain of causation (ie, a superseding cause), that is not the company's strongest defense. That is because causation will only be considered if the company had a duty to act. Therefore, a stronger defense is that the company had no duty to the homeowner.

(Choice C) The First Amendment specifies limitations in some tort actions based upon mere speech (eg, in defamation actions). However, the First Amendment does not prohibit such tort actions.

(Choice D) Whether there is evidence that the company acted carelessly—eg, by permitting the cousin to place the notice without the homeowner's knowledge—would only be considered if the company owed the homeowner a duty. Therefore, the company's strongest argument is that it had no duty.

Educational objective:

Although a defendant generally has no affirmative duty to act, such a duty arises when, for example, (1) the defendant's conduct created a foreseeable risk of harm to the plaintiff or (2) the defendant and the plaintiff share a special relationship.

References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 6 (Am. Law Inst. 2010) (explaining negligence liability).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 7 (Am. Law Inst. 2010) (explaining general duty requirement).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 37 (Am. Law Inst. 2012) (explaining no duty to aid).

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