

While attending an amusement park's fireworks display, a spectator was struck and injured by a rocket set off as part of the display. The rocket unexpectedly failed to shoot upward but instead followed a trajectory parallel to the ground and struck the spectator. The spectator has sued the amusement park for damages.

On which of the following theories is the spectator most likely to be able to obtain a summary judgment as to liability?

- A. Abnormally dangerous activity. (82%)
- B. Battery. (6%)
- C. Nuisance. (0%)
- D. Strict products liability. (10%)

Incorrect

Correct answer A

82% Answered correctly

43 secs Time Spent

2023 Version

## Explanation:

### Abnormally dangerous activity

An activity is abnormally dangerous when:

it is uncommon in the community *and*

it presents a foreseeable & highly significant risk of physical harm that cannot be mitigated by reasonable care

A court should grant summary judgment as to the defendant's liability when there is no genuine issue of material fact and the evidence is legally insufficient for a jury to find in the defendant's favor. One potential basis for this is the theory that the defendant is **strictly liable**—ie, liable regardless of fault—for harm caused by an **abnormally dangerous activity**. An activity is abnormally dangerous if it is:

**uncommon** in the community *and*

poses a **foreseeable and highly significant risk** of physical harm (ie, bodily injury or property damage) that cannot be mitigated by reasonable care.

Here, the spectator was struck and injured by a rocket set off as part of the amusement park's fireworks display. The spectator can establish that fireworks displays are abnormally dangerous by arguing that they are generally uncommon in the community and pose foreseeable and highly significant risks of harm to attendees. Therefore, this is the most likely theory on which the spectator will be able to obtain summary judgment as to the amusement park's liability.\*

\*Jurisdictions are split as to whether a fireworks display constitutes an abnormally dangerous activity. However, the question asks which theory most likely entitles the spectator to summary judgment. Therefore, this is the best answer among the choices presented.

**(Choice B)** **Battery** requires proof that the defendant intended to cause the plaintiff harmful or offensive contact. Here, the amusement park did not act with such intent because the rocket *unexpectedly* struck the spectator.

**(Choice C)** Liability for **private nuisance** arises when the defendant substantially and unreasonably interferes with the plaintiff's use and enjoyment of his/her land—not when the defendant physically harms the plaintiff (as seen here).

**(Choice D)** Strict products liability applies to **commercial suppliers and sellers**—ie, persons who regularly manufacture, distribute, or sell the type of defective product that caused the plaintiff harm. However, this theory of liability does not apply to service providers like the amusement park here.

**Educational objective:**

A defendant is strictly liable for harm caused by an abnormally dangerous activity. An activity is abnormally dangerous if it is (1) uncommon in the community and (2) poses a foreseeable and highly significant risk of physical harm that cannot be mitigated by reasonable care.

**References**

Restatement (Third) of Torts: Liab. for Physical and Emotional Harm § 20 (explaining the requirements for strict liability for abnormally dangerous activities).

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