

A door attendant at a downtown hotel also served as the hotel's security guard. He regularly exchanged greetings with a woman who passed the hotel on her way to and from work. One day, the attendant saw a first-time hotel guest exit the hotel and proceed down the street behind the woman. Just after the two left the hotel's property, the attendant observed the guest reach into the woman's purse and remove her wallet. The attendant later confessed to the woman that he had failed to act despite seeing the guest take the wallet.

The woman has brought a negligence action against the hotel to recover the money taken from her by the guest.

Which of the following best describes the standard by which the attendant's conduct as an employee of the hotel should be judged in this matter?

- A. As a security guard employed by an innkeeper, the attendant had a duty to prevent the hotel guest from harming the woman.
- B. As an employee of a business with no special relationship with the woman, the attendant was not under an affirmative duty to act.
- C. As an employee of a property owner, the attendant had a duty to warn the woman of the concealed danger that the pickpocketing guest presented.
- D. As an employee of an innkeeper, the attendant was required to act with the highest degree of care with regard to the woman and is responsible for even slight negligence.

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 person generally has **no duty to protect** another from harm. However, a person in a **special relationship** with another may have an **affirmative duty to use reasonable care** to protect the other from harm arising within the **scope of that relationship**. For example, an **innkeeper** has a duty to use reasonable care to **protect its guests** while they are **on the premises**.

Here, the hotel (innkeeper) did not have a special relationship with the woman, who was merely a passerby and not a guest at the hotel. Consequently, neither the hotel nor its employees had an affirmative duty to protect her from the pickpocketing guest. Therefore, the attendant's conduct as an employee of the hotel should be judged by this standard.

(Choice A) A person with the actual ability and authority to control another may have a duty to use reasonable care to prevent that person from injuring others.* But here, even as the hotel's security guard, the attendant had no control over a hotel guest off the premises.

*This duty generally is only imposed if the person in control knows or should know that the other is likely to commit the injuring act. And here, the attendant had no reason to know that the first-time guest was a pickpocket.

(Choice C) Property owners (the hotel) generally owe no duty to persons *off* the premises (the woman) unless the owner or someone under his/her control conducts an activity on the premises that poses an unreasonable risk of harm to persons off the premises. Here, the pickpocketing guest was not under the hotel's control and did not act on the hotel's premises.

(Choice D) At common law, innkeepers and their employees owed the highest duty of care to their guests and could be liable for even slight negligence. But here, the woman was not the hotel's guest. And even if she were, most courts today hold that an innkeeper and its employees are liable only for ordinary negligence.

Educational objective:

A person in a special relationship with another (eg, an innkeeper with its guests) has a duty to use reasonable care to protect the other from harm arising within the scope of that relationship.

References

Restatement (Third) of Torts: Phys. & Emot. Harm § 40 (Am. Law Inst. 2012) (duty based on special relationship).

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