

A lawyer and an accountant were passengers sitting in adjoining seats on an airline's flight. There were many empty seats on the aircraft.

During the flight, a flight attendant served the accountant nine drinks. As the accountant became more and more obviously intoxicated and attempted to engage the lawyer in a conversation, the lawyer chose to ignore the accountant. This angered the accountant, who suddenly struck the lawyer in the face, giving her a black eye.

If the lawyer asserts a claim for damages against the airline based on negligence, will the lawyer prevail?

- A. No, because a person is not required by law to come to the assistance of another who is imperiled by a third party.
- B. No, because the lawyer could easily have moved to another seat.
- C. Yes, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.
- D. Yes, because the flight attendant should have perceived the accountant's condition and acted to protect the lawyer before the blow was struck.

## Explanation:

### Affirmative duty to act

<b>Assumption of duty</b>	Defendant who voluntarily aids or rescues another has duty to use reasonable care when rendering aid or performing rescue
<b>Creation of risk</b>	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
<b>By contract</b>	Duty to use care when performing contractual obligations
<b>By authority</b>	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
<b>By relationship</b>	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
<b>By statute</b>	Statute imposes obligation to act for another's protection
<b>Land possessor</b>	Duty to mitigate risks posed by natural or artificial conditions on land

An actor has a **duty** to use reasonable care to **protect a victim** if the actor knows (or reasonably should know) that his/her conduct has exposed the victim to an **unreasonable risk of harm from third parties**. The actor may either be:

**directly liable for negligence** if his/her breach of that duty caused the victim harm *or* vicariously liable (under the doctrine of **respondeat superior**) for his/her **employee's negligence** if it occurred within the scope of employment.

Here, the accountant struck the lawyer after a flight attendant served him nine drinks on a flight. The flight attendant had a duty to use reasonable care to protect the other passengers since the flight attendant should have known that the accountant was becoming intoxicated (creating an unreasonable risk of harm). The flight attendant then breached that duty by failing to protect the lawyer before the blow was struck. And since serving

drinks fell within the scope of the flight attendant's employment, the airline is vicariously liable for negligence.

**(Choice A)** A person generally is not required to come to the assistance of another who is imperiled by a third party. But a person *does* have a duty to assist another when the person's conduct has exposed the other to an unreasonable risk of harm from a third party (as seen here).

**(Choice B)** In a [comparative negligence jurisdiction](#) (default rule on the MBE), a plaintiff's recovery for negligence is reduced—not barred—if he/she failed to use reasonable care for his/her own protection. Therefore, the fact that the lawyer remained in her seat when she could have easily moved would not defeat her claim.

**(Choice C)** [Strict liability](#) applies to strict products liability, certain animals, and abnormally dangerous activities. Here, the lawyer was not harmed by a product sold by the airline (no strict products liability), an animal, or an abnormally dangerous activity.

**Educational objective:**

An actor has a duty to use reasonable care to protect others if the actor knows, or reasonably should know, that his/her conduct has exposed others to an unreasonable risk of harm from third parties.

**References**

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

Restatement (Third) of Agency §§ 2.04, 7.07 (Am. Law Inst. 2006) (vicarious liability of employer).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 19 (Am. Law Inst. 2010) (duty when conduct exposes others to an unreasonable risk of harm from a third party).

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