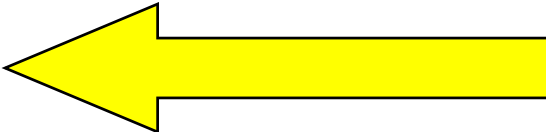


Chapter III Duty

The prima facie case in negligence:

Duty 

Breach

Causation

Damages

Chapter III (D): Duty: Landowners and Occupiers

The two step, classical approach:

When a person is injured on another's property and sues the person who is in possession of the property:

- 1) Determine the plaintiff's status.
- 2) Determine the precise duty that attaches to an entrant with that status.

Step One: Status

Trespasser: Enters without privilege or consent (R2dT 329)

Licensee: Enters with privilege created by consent or otherwise (R2dT 330)

Invitee: Two categories

- A **business visitor:** Enters for a purpose directly or indirectly connected with possessor's business.
- A **public invitee:** Enters land open to the public for a particular purpose

Step Two: Duty for Dangerous Condition of Land

Liable to licensee if you:

- knows / reason to know of condition & should realize it involves unreasonable risk
- should expect that licensee will not discover
- fails to exercise reasonable care to make condition safe, or to warn of risk
- licensees do not know or have reason to know of the condition & risk

Liable to invitee if:

You fail to use reasonable care, which means you:

- knows or by the exercise of reasonable care would discover the condition
- should realize involves an unreasonable risk of harm to invitees
- should expect they will not discover or realize the danger, or will fail to protect themselves
- fails to exercise reasonable care to protect them against the danger.

Negligence: Duty

Restatement (Third) of Torts Proposed Final Draft No. 1

§ 7. Duty

(a) An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.

(b) In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or **that the ordinary duty of reasonable care requires modification.**

Usually --

DUTY:

Is there an obligation to use reasonable care?

Question of law

General

BREACH:

Under the circumstances, did the actor behave reasonably?

Question of fact

Specific

Chapter III Duty: The “Rowland” test

We depart from this fundamental principle only upon the balancing of a number of considerations:

- 1) **foreseeability** of harm to the plaintiff
- 2) degree of **certainty** that the plaintiff suffered injury
- 3) **closeness of connection** between the defendant’s conduct and the injury suffered
- 4) **moral blame** attached to the defendant’s conduct
- 5) the policy of **preventing future harm**
- 6) the extent of the **burden** to the defendant and consequences to the community of imposing a duty
- 7) the availability, cost, and prevalence of **insurance**

Chapter III (D): Duty: Landowners and Occupiers

When a person is injured on another's property and sues the person who is in possession of the property:

The *Rowland* or *Heins* approach:

A person in possession of land owes a duty to use reasonable care to protect entrants onto his or her land.

Including trespassers?

Duty owed to a trespasser (R2dT 333)

With some exceptions, a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care

(a) to put the land in a condition reasonably safe for their reception, or

(b) to carry on his activities so as not to endanger them.

NARROW EXCEPTIONS:

- 1) Child trespassers
- 2) Known trespasser, limited area, harmed by activity

What makes trespassers different?

- Liberty interest of landowners?
- Wrongdoers?
- Contributorily negligent by definition?
- Assume the risk, because they know there are no protections?

Chapter III : Landowners & Occupiers

The Duty to Prevent Criminal Acts

Problem: Landowners and Occupiers (#2)

When is there an obligation to take steps to prevent crime by a third party?

Landlord / Tenant, injury in common area (Kline v. 1500 Mass Ave)

Business / Patron (Posecai v. WalMart)

University / Student?

Chapter III : Landowners & Occupiers

The Duty to Prevent Criminal Acts

Problem: Landowners and Occupiers (#2)

When is there an obligation to take steps to prevent crime by a third party?

Landlord / Tenant, injury in common area (Kline v. 1500 Mass Ave)

Business / Patron (Posecai v. WalMart)

University / Student?

Factors: vulnerability

control

economic benefit

Chapter III Landowners & Occupiers

The Duty to Prevent Criminal Acts

Problem: Landowners and Occupiers (#2)

When is there an obligation to take steps to prevent crime by a third party?

What kind of relationships give rise to a duty?

What triggers the obligation?

- Specific harm rule
- Prior, similar incidents test
- Totality of the circumstances test
- Balancing approach