

- 1 Overview
Negligence Liability Principles

- 2 Reasonableness Standard

risk reasonably to be perceived
defines the legal duty to be obeyed

- 3 Foreseeable risk of injury

not a mere possibility
but a probability

- 4 Based on own experience of common understanding
Injury has occurred before, likely to happen again
unless precautions taken

- 5 Only foresee AN injury, not THE injury

within general scope of danger
not particular manner injury incurred

- 6 Negligence: conduct involving UNREASONABLE risk of injury

weigh social utility of conduct against risk of injury

- 7 Negligence presupposes defendant has SUPERIOR KNOWLEDGE
of an unreasonable risk

- 8 General scope of risk not reasonably known to plaintiff prior to injury

Where plaintiff's risk knowledge at least EQUAL
not unreasonable, if readily observable through use of senses

9 Reasonableness is Two-Way Street

plaintiff has duty to look out reasonably for his/her own safety
and avoid known or discoverable hazards

10 Known or obvious dangers
do not impose an unreasonable risk of harm
necessary to impose negligence liability

11 Hueston
v.
Narragansett Tennis Club, Inc.
R.I. 1986

Foresee "An" Injury, Not "The" Injury

12 Prudent person rule

standard to measure conduct
whether due care exercised

13 Ordinary Care

such care as person of ordinary prudence exercises under
circumstances

of danger to be apprehended

- 14 D: duty to guard against usual occurrences

no duty to protect P from remote, unusual events

- 15 ISSUE

While P's injury unusual whether foreseeable

- 16 Foreseeable

relates to natural & probable consequences of an act

- 17 One need only reasonably to foresee that AN injury may result from a dangerous condition on the premises

- 18 The particular kind of injury
need not have been foreseen

- 19 Proximate cause
need not be the sole & only cause

may occur with some other cause
acting at same time to produce injury

- 20 P's wearing unusual ring

not independent intervening cause of injury

21 NELSON BY TATUM

v.

COMMONWEALTH EDISON

465 N.E.2d 513

(Ill.App. 2 dist. 1984)

22 P, 10yrs, electrocuted tossing wire spool 30ft into wires above playground;

23 trial ct. dismissed, not foreseeable like kite, ball

24 Whether unforeseeable,
no duty to protect

25 For proximate cause, not necessary to foresee exact method or precise manner of injury;

result foreseeable (electrocution), method is irrelevant.

26 D, utility & park district duty of protection commensurate with risks

, i.e. wires properly placed & insulated where circumstances indicate persons in close proximity.

27 Holding: when high voltage wires in public playgrounds duty to provide safe air space.

28 height, location, voltage, clear chance of contact and severe injury;
reducing risk not onerous,

29 wires insulated, underground, redirected around playground air space causing no undue economic, social costs.

30 COLEMAN

v.

WINDY CITY BALLOON PORT, LTD.

Crash & burn, collision with wires 1.5 mi from port
approaching storm,
wind to 37 mph;

31 D insulation for trees,
depends on location, circuit breakers;
balloons taught to avoid wires,

32 D seminars,
wires used as reference point;
wire marking warning devices available; wires conformed to regs.

33 Trial summary judgment to D,
danger open & obvious,

not reasonably foreseeable,
requiring insulated wires would impose duty for entire system.

34 P: duty to warn for even known dangers;
signs, lights in balloon traffic area.

35 Electricity for profit, duty care corresponding to danger;

wires properly insulated & placed for safety of those likely to come into contact with wires.

36 Trial ct. could conclude crash site not area where people likely to come into contact with wires;

unforeseeable nature of accident est. lack of duty.

37 Foreseeable: what reasonable, prudent person likely to happen;

what was apparent to D
at time of injury,
not 20/20 hindsight;

38 ballfield lime eye injury to 10 yr. old

City of Jacksonville

v.

Raulerson

Fla.App. 1982

39 Injury Foreseeable,
Safer Alternative Available

40 City responsible for maintaining ballfield

local youth athletic association helped line fields

- 41 plaintiff helped employee of association
machines containing lime
left unattended
- 42 Issue: whether reasonably foreseeable
use of lime would result in any eye injury to a child which
occurred...
- 43 which could have been reasonably prevented
by an available alternative to the use of lime
- 44 City had knowledge of injury causing propensity of lime
- 45 7 yrs prior to accident 8 employees sustained minor eye injuries
while using lime to line playing fields
- 46 No evidence of injuries to minors
inert marble dust available as alternative
- 47 City planned to switch to marble dust
but continued to use lime in stock
until it was used up
- 48 Whether injury to minor unforeseeable
- reasonably foreseeable - natural & probable
as opposed to simply possible
- 49 Foreseeability relates to the injury causing propensity of the condition
(lime)

rather than the status and expected presence of the injured plaintiff
(employee or child)

50 Lime was inherently dangerous substance dispensed by city

51 child had helped line field in presence of city employees

employees had been previously injured through use of lime

52 Foreseeable one of child helpers would be similarly injured

could have been prevented by use of existing safer alternative

53 Jenkins

v.

City of Miami Beach

Fla.App. 1980

Injury Within Scope of Danger?

54 P injured when struck in eye by piece of copper wire pulled from park
water fountain

55 alleged failure to supervise park at night despite knowledge frequented
by minors

failure to maintain fountain proximate cause of injury

56 P: Intervening act reasonably foreseeable

given D's knowledge of previous incidents of vandalism & unruly
conduct by minors in park at night

57 Alleged negligent maintenance of fountain did not make it foreseeable
that boy would use protruding coil as fortuitous missile to hurl at P

58 foreseeable risk of laceration by protruding coil when using fountain

59 Foreseeable if harm that occurred was within the scope of danger
attributable to D's negligent conduct

60 No evidence D had knowledge that failure to maintain fountain
would result in this type of injury

61 Or, in field of human experience allowing loose coil on fountain
frequently resulted in it being used as missile to assault others

and D should have expected such a thing to occur in park

62 Verdun

v.

Dept of Health & Human Resources

La.App. 1992

Lake Pollution Causes Bacterial Infection

63 Trial court: no duty to monitor or warn

of lake bacteria

- 64 Causation: whether D's conduct played significant or substantial role in causing P's harm
- 65 Evidence of warnings, but P did not know whether read or heard warnings
that Lake polluted or not to swim in lake
- 66 P admitted knew Lake polluted
but not to point that it would harm anyone
- 67 P: no signs at boat launch,
did not see signs elsewhere on lake
- 68 Landowner duty to discover any unreasonably dangerous conditions

and either to correct the condition or warn of its existence
- 69 Bacteria did not pose a significant health risk

esp. to a person with momentary contact with water
- 70 Marine bacteria here no result of pollution or human use
capable of causing disease, but very rarely caused illness

risk of P's injury statistically insignificant
- 71 Lake did not pose any danger other than those normally associated

with all warm, brackish salt water

- 72 Likelihood far to remote
to be considered an unreasonable risk of harm
- 73 Boat launch great social utility
signs warning of every bacteria would effectively close lake
- 74 No evidence D assumed duty to warn or monitor lake
absent evidence of UNREASONABLY dangerous condition

D owed no such duty to those using boat launch

- 75 Coates
v.
Mulji Inn, Inc.
Ga.App. 1986

Relative Risk Knowledge

- 76 P's son, 17, drowned in D's pool, lights out.

drowning readily observable condition.
- 77 Landowner liability based upon superior knowledge
of unreasonable risk of harm
not reasonably known by invitee.
- 78 Landowner not liable for readily observable condition

which should be known & appreciated by invitee

79 No duty to warn because invitee has knowledge conveyed by warning.

No necessity to warn against the obvious.

80 Superior or equal knowledge of SIGNIFICANCE regarding physical facts.

81 D liable for injuries caused by defects not disclosed by reasonable inspection by invitee.

82 Jury could find D had greater knowledge of greater degree of danger & risk than apparent to invitee

no pool lights.

83 Comprehension of hazard is quality of risk & quantity of danger.

84 Physical facts lack of pool light increased risk of drowning

not equally known to P's son & D.

85 Hanks

v.

Mount Prospect Park District

Ill.App. 1993

Hazard Off Premises,
No Duty to Fence

86 Whether locating playground immediately contiguous to driveway or parking lot

a hazardous & unreasonably dangerous condition?

87 Here, no allegation of any dangerous condition on playground

88 no dangerous condition on D's property

condition of D's property did NOT increase danger
in adjacent parking lot

89 ISSUE: whether D owed duty to provide safe means of ingress & egress
to playground

90 landowner has duty to provide a safe means of ingress & egress to his premises for his invitees

91 Within limits, duty may extend beyond precise boundaries of landowner's property

92 Not liable where landowner has exercised NO CONTROL over adjacent property

93 NO Duty to erect fence, or take other steps to prevent injury on

adjacent roadway

- 94 would place intolerable burden on P.D. to protect children from traffic injuries

access to restricted or every park & playground relocated

- 95