1 ☐ **LANDOWNER LIABILITY**

2 ☐ **Obvious Natural Hazard?**
Shaw v. City of Lipscomb
Ala. 1980

3 ☐ **fall in park, slip on twig or gum ball**
carrying box of barbecue
area had been cleaned

4 ☐ **duty to keep premises reasonably safe**

5 ☐ **whether fall resulted from defect**
defendant knew or should have known at time of accident

6 ☐ **No duty to warn invitee of open & obvious defects on premises**

7 ☐ **which invitees are aware, or should be aware**
in exercise of reasonable care

8 ☐ **slip and fall - foreign objects on the premises**

twigs and sweet gum balls NOT foreign objects on ground under sweet gum trees

9 ☐ **Invitees should have expected presence**

and taken reasonable measures to avoid foreseeable hazard

10 ☐ **City NO duty to remove open & obvious defect**

which occurs naturally on premises of city park

11 **Plaintiff admitted NOT looking down at feet**

could NOT expect park to be sanitized of sweet gum balls

12 **Park in natural & normal condition**
NO violation of duty in failing to clean up ALL the gum balls

13 **Notice and Duty to Inspect**
Catalano v. Kansas City
Mo. 1972

14 **10 yr old severely cut foot on broken beer bottle**

15 **roughhousing in play area adjacent to pool in city park**

16 **Testimony glass commonplace in & around pool & playground**

17 **condition persisted despite daily inspection & trash pickup by park personnel**

18 **City: no notice of particular beer bottle which injured boy**

19 **Duty to park visitors to discover glass**

did NOT extend to all areas of park

20 **here, small playground where playground equipment**

21 **directed activities of children**
injury arose within restricted area

22 **Duty to search to discover piece of broken beer bottle**

23 **6" x 2" in grass 2 steps from hard surface with swings**

24 **several hours notice, take steps to remedy dangerous condition**

25 **Causation & Foreseeability**
Parness v. City of Tempe
Ariz. 1979

26 **7 yr old knocked down at rec. ctr.**
severely cut hand on broken glass

27 **Whether conduct of unidentified boys superceding cause**

28 **broken glass at rec. ctr. was unreasonably dangerous condition**

29 **If city had actual notice,**
had duty to remedy unreasonably dangerous condition

30 **if NO actual knowledge, duty if glass on ground sufficient period of time**

31 **for city, in exercise of reasonable care, to discover & remove hazard**

32 **Here, city had actual notice of broken glass**

rec leader at center testified
always saw broken glass around
including area where boy injured

33 **Leader had informed immediate supervisor of hazard before accident**

employees actual knowledge attributable to city

34 **Whether action of unknown boys superceding cause**

35 **if intervening cause reasonably foreseeable**

city liable for negligence

36 **Here, intervening cause foreseeable**

rec. center place where children constantly fighting, shoving, & falling to ground

37 **Reasonable person would anticipate if broken glass present someone would fall**

38 **Foreseeability is controlling factor**

irrelevant whether intervening conduct intentional or merely

negligent

39 **Concealed Danger Injures Participant**
Treps v. City of Racine
Wis. 1976

40 **broke ankle in parking lot of city park,**

participant in municipal softball game

41 **Players customarily used parking area adjoining ballfield to play catch prior to game**

42 **hole in concrete pavement 2 feet deep**

hole 12" x 10" created by removal of water fountain
6 mos prior to incident

43 **Treps had NO notice of hole before accident**

44 **witnesses testified hole usually uncovered**

covered by piece of wood for short periods

45 **Various measures taken to repair hole**

one or more unsuccessful asphalt patching operations

46 **Treps "public invitee" because on site for park purposes**

47 **one who goes upon lands for purpose for which land held open to public**

48 **NO duty to warn of an open, unconcealed & obvious defect**

49 **liable for injuries caused by dangerous condition NOT readily apparent to invitee**

50 **Dangerous condition,**
invitee exercising reasonable care,
NOT expected to discover

51 **duty to warn invitee of dangerous condition NOT open, obvious, & unconcealed**

52 **10" x 12" hole NOT open & obvious**

in area where players known to play catch

53 **Hole constituted hazard, city duty to foresee**

54 **permitting hole to exist over period of time**

was failure to exercise reasonable care

55 **Location**
Makes Known Condition Hazardous
Ardoin v. Evangeline Parish School Board
La.App. 1979

56 ☐ **PE class softball, fall running between 2nd & 3rd**

57 ☐ **concrete slab 12" X 12" to 30" dia, 8" thick**

embedded in ground in basepath
protruding 1 to 1.5 inches from ground

58 ☐ **Whether concrete hazardous condition**

whether breach of duty to allow it to exist on playground

59 ☐ **Board liable if actual or constructive knowledge of condition unreasonably hazardous to children under its supervision**

60 ☐ **Custodian testified concrete had little edge 3" long, sticking 1" above surface**

61 ☐ **Piece of concrete constituted hazardous or dangerous condition**

because in or near basepath of field on which children regularly play

62 ☐ **Location of concrete on basepath produced condition**

which was necessarily inherently dangerous

63 ☐ **Reasonable examination of area assigned for use as softball diamond**

would have revealed hazard

64 ☐ **NOT instance where child wandering to perimeter of playground here, injury at specific play area in basepath of softball field**

65 ☐ **Signed Area More Dangerous Than Apparent in Warning**
Walter v. State of New York
N.Y. Clams Court 1991

66 ☐ **Sign "DANGER Keep Inside Rail, Watch Your Children**
CAUTION, People Walking Below
Do Not Throw Anything Over Cliff"

67 ☐ **Nothing in wording of sign warned of hidden precipice**
wholly obscured by foliage
1 step and fall 60 feet

68 ☐ **Warning clearly did NOT inform general public**
area beyond fence was significantly more dangerous
than it appeared to be

69 ☐ **Warning of one danger & NOT another**
warning was misleading & insufficient

70 ☐ **Warning did NOT adequately apprise park users**
of type & degree of danger
which they faced beyond fence

71 ☐ **Fence construction did NOT impose significant barrier**

to provide implicit warning passage was
potentially dangerous

72 **Simple rewording of sign**
would have sufficed
point out edge of cliff was hidden

73 **and/or fall from 60 ft cliff could be life threatening**

74 **Sound & Fury Signifies Obvious Danger**

Smith v. North Carolina DNR
N.C.App. 1993

75 **Warning Sign: "Danger, Falls Below"**

76 **Smith: sign should have been more specific**

77 **Smith: warn of slippery rocks at top of falls**

because State aware of previous fatality
at that location

78 **Risk of injury associated with water falls & surrounding rocks**
"obvious and clearly visible to any onlookers"

79 **Park Ranger: sloping nature of area "immediately apparent"**

80 **"visibility and sound of falls" & warning sign**

made dangerous nature of area even more obvious

81 **Court: warning sign was adequate**
because danger involved was "obvious and apparent"

82 **Presence of other people in area**
did NOT render sign meaningless

83 **Visitors to area had legal responsibility to act reasonably**
using ordinary care to protect themselves
and discover obvious dangers

84 **Universally Known, Easily Avoided Risk**
Henshaw v. Audubon Park Commission
La.App. 1992

85 **P intoxicated climbed tree in city zoo**

fell 25 to 40 ft from tree
when police ordered him to climb down

86 **P: City negligent had rule against climbing trees**

but had not posted any such rule or WARNING

87 **No duty to warn, because no unreasonable risk of injury**

88 **risk of falling from tree obvious, universally known**

therefore, easily avoided

89 **Mere existence of rule does not create legal duty to post the rule**

90 **Rule did not establish City's recognition of a potential danger to climbers**

91 **Rule designed to protect trees, not intoxicated climbers**

92 **no duty to inform climber of what he already knew**

would impose unreasonable burden

to post signs on each and every tree

93 **Insufficient Warning of Hidden Stairway Peril**
Prunier v. City of Watertown (1991)
P crashed bike down flight of stairs in park

94 **P: city's failure to warn of stairs caused accident**

95 **P: anyone riding bike on path would be unable to see stairs until immediately before reaching them**

96 **Testimony overhanging bush obscured view of steps from walkway**

97 **steps only visible from distance of 5 feet**

bush & curve in walkway made stairs difficult to see

98 **Bike rider traveling faster than witnesses**

would have insufficient warning of peril posed by stairs

99 **No sign warning cyclists**
that path was interrupted by stairs

100 **Rope Swing Presents Obvious Risk**
Barrett v. Forest Preserve of Cook County
Ill.App. 1992

101 **P fell from rope swing**
alleged negligent maintenance of area

102 **P not engaged in intended or permitted use of forest preserve**
at time of injury

103 **No landowner duty to remedy a defective condition on premises**

which presented an obvious risk
which plaintiff should have been capable of understanding

104 **Danger of swinging from a 30 foot rope over a deep ravine**

105 **presented an obvious risk to children**

of similar age and experience of 16 yr old plaintiff

106 **Fall from Rope Swing in Wooded, Natural Area of City Park**
Bennett v. City of Lafayette
La.App. 1994

107 **"Trial Close" & "Trai Close"**
2 green signs, white lettering
on trail where P entered area of park

108 **P: city had duty to discover admittedly dangerous condition through periodic inspection of 120 acre park**

109 **P: duty to remove rope swing**
before public attempted to swing over rugged ravine

110 **thinking rope was part of park's recreational equipment**

111 **ISSUE: whether City acted reasonably**
in management of its property
in view of probability of injury to others

112 **Landowner NOT liable for injury caused by obvious condition should have been observed, in exercise of reasonable care**

113 **Rope hanging from tree in park NOT unreasonable risk of harm as obvious to visitor as it is to landowner**

114 **Risk obvious & easily avoidable**

115 **P did not act with reasonable care for her own safety**

116 **Benefit to society of park preserved as natural undisturbed woodland**

117 **outweighs attendant risks that unauthorized persons might hang ropes from branches of trees**

118 **Unreasonable to require city to inspect all trees in parks for such dangers**

given number of trees and damage of inspections to vegetation

119 **Injury took place in restricted area off closed trail**

120 **Average adult should have understood signs defaced and actual meaning**

121 **Second Accident More Likely, Easily Prevented?**
Mesick v. State of New York
N.Y.A.D. 1986

122 **Fall from rope swing in area used as swimming hole**

123 **area posted with signs permitting fishing**
other activities declared unlawful

124 **Unknown persons attached rope to tree**
required to swing clear of rocky bank to reach water

125 **State employees aware of swimming in area and use of the rope swing**

126 **State police aware of incident 2 yrs earlier**

girl broke her wrist falling from rope swing

127 **no subsequent action to prevent swimming or rope swing use**

128 **Rule: Risk reasonably to be perceived defines the duty to be obeyed**

129 **Landowner legal duty of care maintain property in reasonably safe condition**

based upon likelihood of injury

and foreseeability of plaintiff's presence on the premises

130 **Court: potential for serious injury should have been obvious to State**

131 **aware of illegal swimming activity & earlier rope swing accident in area open to the public**

132 **Inadequate for State to post signs and occasionally cut down rope swings**

133 **State negligent in not simply cutting down tree known to attract rope swings**

134 **actual knowledge of injury on this particular tree**
avoid similar incident

135 **Adequate Warning Sign:**
Communication is the Key

136 **Adequate Warning takes hidden hazard**

and communicates general scope of risk

clear, conspicuous, unambiguous

137 **"Hot Water" Inadequate Warning Sign**
Van Gordon v. Portland General Electric
Ore. 1985

138 **Warning signs reading "Hot Water"**
in area containing thermal pools

139 **water temp varied dramatically from pool to pool**

140 **2 yr old scalded fell into pool**
temp in adjacent pool suitable for wading

141 **Subsequent sign: better communication of risk**
associated with temperature variation in thermal pools

142 **Caution:**

Hot Water

Some water and rock temperatures in this area are high enough to cause burns

Activities of children and pets should be monitored closely

143 **Warning Sign Ignored**
Palumbo v. State Game & Fish Comm.
Fla.App. 1986

144 **Series of signs containing language & symbols illustrating alligator hazard at university recreational lake**

145 **P claimed had NOT read signs**
had NOT had warning communicated to him
had been to site on numerous occasions

146 **Irrelevant whether P had actually read signs**
given reasonable opportunity under circumstances to read the warning message

147 **P charged with knowledge that "would be obvious to him upon the ordinary use of his senses."**

148 **Signage Color, Size, Shape**
Davis v. United States (1985)

149 **Davis injured in dive onto rock outcropping**
18" below surface of manmade lake

150 **Court: neither size or color of signs (white on blue) indicated danger**

151 **NO reference to subsurface rocks or any other hazard to swimmer diver**

152 **Presumably more adequate sign**
red on white with international symbol

153 **No Swimming or Diving**
Danger Submerged Rocks

154 **PARK POT HOLE BIKE FATALITY**
***Phelan v. State*, 2005 NY Slip Op 25506 (NY 6/29/2005)**

155 **Phelan died following an accident in Thompson Lake State Park.**

156 **Phelan lost her balance and fell from her bicycle after riding over a depression in the road.**

157 **alleged that "the death occurred as a result of defendant's negligence in the design, construction, maintenance, and repair of the road where the accident happened.**

158 **claimant "must establish by a preponderance of the credible evidence that**
defendant's negligence caused decedent's death. "

159 **State, as a landowner, had a legal "duty to use reasonable care under the circumstances in maintaining its property in a safe condition"**

160 **protect the public from foreseeable risks of harm.**

161 **State is not an insurer of the safety of those using the property for recreational purposes,**

the mere happening of an accident does not render the State liable

162 **Did State had actual or constructive notice of the condition and failed to act reasonably to**
remedy it?

163 **major repair had been undertaken at the depression located on the right side of the park roadway**

164 **repair was negligently undertaken in that it was not properly packed, thereby causing a sinking of the road, creating a depression.**

165 **State had failed to rebut the testimony of claimant's engineer that the path was not constructed in accordance with good practice**

166 **State had "knowledge of the depression" based upon the testimony of park manager**

167 **he was aware of the depression before the accident, [but] he did**

not request that repairs or modifications be made.

168 **court found the State had "actual notice of this condition"**

because the State had "created it" and "failed to remedy it."

169 **court found "the depression was not open and obvious."**

170 **decedent, "a recreational bicyclist, who had not traveled on the roadway previously,**

did not assume the risk of encountering this type of unwarned hazard."

171 **court noted depression caused by a sinking repair" was "not an ordinary rut or bump in the roadway"**

172 **BURNING RING OF FIRE**

173 **landowner liability for ordinary negligence**

presupposes an unreasonably dangerous condition on the premises.

174 **danger is unreasonable if it is known or discoverable to the landowner, but not known or discoverable to invitees or recreational users of the premises through the reasonable use of their senses**

175 **if the general scope of the risk would be open and obvious through the reasonable use of one's senses, the condition would not be considered unreasonably dangerous.**

176 **certain dangers, like "fire is hot," are presumed to be open and obvious to anyone old enough to be at large.**

177 **Social utility is also a factor in determining whether a particular condition is unreasonably dangerous under the circumstances**

178 **When the social utility or usefulness of a particular situation or condition outweighs the foreseeable risk of injury, it will not be considered unreasonably dangerous under the circumstances.**

179 **issue whether hot coals and ashes left overnight in a campground fire ring constituted an unreasonably dangerous condition**

180 **Morris v. Texas Parks and Wildlife Department, 226 S.W.3d 720 (Tex.App. 5/24/2007)**
child was burned after falling into a fire ring while visiting a state park.

181 **appeals court found the Department had "no duty to protect the Morris from this obvious and expected condition."**

182 **Morris would reasonably expected to encounter a campfire ring that contained ashes or coals from a fire made the night before, in the course of the permitted use of the property.**

183 **conclude this is a condition which is inherent in the use to which the land was put.**

appeals court affirmed the judgment of the trial court in favor of the Department.

184 **Trespasser Liability**
No Mantraps,

No Willful/Wanton Misconduct

No Duty to Keep Premises Reasonably Safe

185 **Business Purpose**
IS
Not Mantrap
Johnson v. Rinker Materials, Inc.
Fla.App. 1988

186 **P's son drove all terrain cycle over excavated hill**

187 **hill excavated as part of D's cement business**
hill attracted joy riding trespassers

188 **P: D duty to warn about dangerous condition**
created by excavation of hill

189 **D: no breach of duty to trespasser**
i.e., simply to refrain from willful & wanton negligence

190 **Ct: danger of sand hill open to ordinary observation**
no warning of danger required

191 **Landowner entitled to assume trespassers will realize**
no preparation has been made for their reception

192 **Trespassers must be alert to observe conditions on the land**

193 **particularly, discover dangerous conditions**
which are inherent in the use of the land by landowner

194 **Here, alteration of sand hills were inherent condition of Rinker's operation**

195 **ATC trespassers expected to discover dangerous condition of hills**
prior to traversing them

196 **Trespassers Take Premises As They Find Them**
BALDWIN v. TEXAS UTILITIES ELECTRIC COMPANY
819 S.W.2d 264
(Tex.App. 1991)

197 **P's decedent drowned trespassing**
on property owned by D.

198 **the north discharge canal, including the "weir,"**
is a necessary part of the operation of the power plant;

199 ☐ **"no trespassing" signs posted along fence, with barbed wire**

200 ☐ **"warning" signs posted, clearly visible to persons both on and off the property**

201 ☐ **Signs stating:**
"Danger, Keep Out,
Deep Water,
Strong Current,
Stay Away For Your Own Safety";

202 ☐ **A landowner has NO obligation**
to maintain his premises in a safe condition
for strangers entering without authorization.

203 ☐ **The landowner may assume that persons**
will not penetrate his boundaries uninvited.

204 ☐ **Trespassers must take the premises**
as they find them,
and, if they are injured by unexpected dangers, the loss is their own.

205 ☐ **Landowner liability for trespasser injury**
requires proof of gross negligence.

206 ☐ **Gross negligence:**
entire want of care,
result of a conscious indifference to the right or welfare

of the person or persons to be affected by it.

207 **No 'entire want of care' for D**

area is surrounded on land by a six feet tall chain link fence which is topped by three strands of barbed wire & other measures.

208 **Intoxicated Trespasser Drowns in Closed City Pool**

No Duty to Supervise Known Trespassers
Garcia v. City of New York
N.Y. App. Div. 1994

209 **Garcia, 32, illegal entry into pool, 50-100 others drinking, no lights, no lifeguards**
fell face down in 3 ft water, drowned

210 **No duty for City to operate pool facility after operating hours trespassers do not dictate operating hours**

211 **No duty City night watchman to expel trespassers or call police City's provision of police protection is public duty**

212 **immune for failure to provide adequate general police protection Garcia assumed the risk of her own conduct**
i.e., swimming while intoxicated

213 **voluntary encounter with a known danger**

Participants, by their participation, consent to injury causing events

214 **known, apparent or reasonably foreseeable consequences of participation**

215 **PARK VISITOR TRESPASSER AFTER DARK**
***Bennett v. Napolitano*, 746 A.2d 138 (R.I. 2000)**

216 **"[w]hat duty, if any, does a municipality owe to an individual who walks in a city park after it has closed for the night?"**

217 **plaintiff set out to walk his dogs at approximately 2 a.m. struck by a falling tree limb that he approximated to be forty to sixty feet in length.**

218 **landowner owes a legal duty of reasonable care to those authorized or permitted to enter the premises**

219 **individuals who enter the premises without authorization or permission (i.e, trespassers), the legal duty owed is simply "refraining from willfully or wantonly causing injury. "**

220 **According to the state supreme court, "an individual who enters a city park after closing**
is a trespasser."

221 **Bennett had admitted that he was "in the park after closing."**

claimed that “the failure of the Providence police and park rangers to eject him from the park upon seeing him on his late-night

excursions constituted an invitation or implied consent to him to visit the park after regular hours.”

park was closed under a duly enacted ordinance.

Local police or park rangers are not endowed with power to waive the provisions of the ordinance by affirmatively or impliedly inviting persons into the park after closing

tree limb had fallen because it was internally infested with carpenter ants.”

damage caused by the ants was “not visible by external observation.”

state supreme court found that Bennett had failed to establish any willful or wanton misconduct on the part of the city

Cain v. Johnson, (R.I. 2000),
alleged defendants’ negligence caused the decedent's death because
defendants failed to properly inspect, maintain, and repair the Cliff Walk.”

City: decedent was a trespasser because the Cliff Walk had closed at 9 p.m.”

231 **trial court noted that “a landowner owes a trespasser only the duty to refrain from willful and wanton conduct.”**

232 **decedent was a trespasser even though the Cliff Walk was not so intensively posted as to notify all possible visitors of the hours of operation. ”**

233 **individual who, in violation of a city ordinance, entered a park after closing” is a trespasser,**

“even if the person is completely unaware of the ordinance.”

234 **supreme court held that “a landowner does not owe a trespasser any duty until after the trespasser is discovered in a position of peril.”**

235 **Once the trespasser is discovered, the landowner owes the trespasser a duty to**
refrain from willfully or wantonly injuring the trespasser

236 **state supreme court found “defendants did not owe the decedent any duty” because decedent was never discovered in a position of peril.**

237 **ENJOYING NATURAL ENVIRONMENT INCLUDES RISK OF DANGEROUS INSECTS**

238 ***Nicholson v. Smith*,**
(Tex.App. Dist.4, 1999)

Nicholson died after he was attacked by fire ants which were known to inhabit defendants' "Choke Canyon RV Park."

239 **law does not require an owner or possessor of land to anticipate the presence of, or guard invitees against the harm from, wild animals**

240 **unless he or she has reduced them to possession, harbors them,**

241 **or has introduced onto the premises wild animals which are not indigenous to the locality...**

242 **premises owner could be negligent with regard to wild animals found in artificial structures or places where they are not normally found; e.g. stores, hotels, apartment houses, or billboards, if**

243 **landowner knows or should know of the unreasonable risk of harm posed by an animal on its premises, and cannot expect patrons to realize the danger or guard against it...**

244 **premises owner who holds his or her land open to business invitees has duty to exercise reasonable care to protect those invitees from animals coming onto the premises,**

245 **under no duty until the landowner knows or has reason to know that dangerous acts by wild animals are occurring or are about to occur...**

246 **“Fire ants, by legal definition, are indigenous wild animals,**

and, without more, do not pose an unreasonable risk of harm in their natural habitat.”

247 **GOVERNMENTAL IMMUNITY & LIABILITY FOR WILD ANIMAL ATTACKS**

248 **Palumbo v. State Game and Fresh Water Fish Commission (Fla.App. 1986)**

249 **landowners generally owe no legal duty to prevent attacks by wild animals.**

250 **law generally “does not require the owner or possessor of land to anticipate the presence of or to guard an invitee or trespasser against harm from wild animals, unless one of two conditions exists:**

251 **animal has been reduced to possession, or the animal is not indigenous to the locality but been introduced onto the premises.”**

252 ***Carlson v. State of Alaska*, 598 P.2d 969 (Ak. 1979),**

253 **“whether the State of Alaska may be held liable for personal injuries inflicted by a bear,**

254 **when the bear is attracted to the site of the attack by garbage that had accumulated on state-owned property.”**

255 ☐ **plaintiff did "not contend that the State was liable simply because of its 'inherent possession or control' of wild animals."**

256 ☐ **P: State created a dangerous situation, that it knew the situation was dangerous, and that it failed either to correct the situation or to warn people of the danger."**

257 ☐ **landowner or owner of other property must act as a reasonable person in maintaining**
his property in a reasonably safe condition

258 ☐ **including the likelihood of injury to others, the seriousness of the injury, and the burden on the**
respective parties of avoiding the risk.

259 ☐ **If landowner knows a wild animal is creating a dangerous situation on his**
property, duty either to remove the danger or to warn the people who may be
threatened by the danger.

260 ☐ **unclear whether the bear attack was completely unforeseeable**

261 ☐ **evidence that the bear was attracted to the site of the attack by garbage that had accumulated on state-owned property.**

262 ☐ **NOTICE OF VICIOUS PROPENSITIES DETERMINES ANIMAL LIABILITY**

263 ***Brophy v. Columbia County Agricultural Society*, 498 N.Y.S.2d 193 (1986)**

264 **young girl was bitten by a horse while attending a county fair**

265 **To establish a prima facie case for an injury caused by a domestic animal,**

a horse,

266 **demonstrate not only that the animal had vicious propensities but that the owner had knowledge**

of such propensities

267 **or that a reasonably prudent person would have discovered them.**

268 **Brophy attested to the fact that Ernst warned her just moments before the**

incident in question, that Copies Reflection "bites."

269 **reasonable minds could differ as to whether or not the Society and the Eigenbradt's bad notice of Copies Reflection's vicious**

nature.

270