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Restatement 2nd of torts 343

Posted Thursday, September 22, 2016 by Ed Harper There are 3 definitions that govern premises liability as well as real estate values. The state of Washington relies on an ancient distinction formulated for many centuries, dating back to English common law - of responsibility and the duty of the landowner - that depends on the status of the one on the property. They are defined as invitees, licensees and intruders. The standard of care that an owner of the land owes to a participant on the land depends on whether the participant is an intruder, licensee or business invited. (Restatement (Other) of Torts Sections 328-344 (1965)) So to be clear, the three elements are defined as follows: Invited is one who is invited into the premises, either by express or implied permission, to enter or remain on land for a purpose directly or indirectly related to the business trades (providing an economic benefit) of the possessor of the country. (Restatement (Others) by Torts Sec. 332, and Thompson v. Katzer, 86 Wn.App. 280, 286, 936 P.2d 421) A rights pick is a person who is privileged to enter or remain on land only by virtue of the possessor's consent. (Restatement (Other) by Sec. Torts 330, and Younce v. Ferguson, 106 Wn.2d 658 at 667, 724 P.2d 991 (1965)) And an intruder is a person who enters or remains on land in possession of another without the privilege of doing so created by the possessor's consent or otherwise. (Restatement (Other) by Sec. Torts 329) Why should we care about the status of a person? For that reason that this determines how much care or responsibility we need to offer to those on our property. Section 343 of restatement Second of Torts, states that an owner of land is subject to liability for physical harm caused by his invited by a state of the country if, but only if:1. he knows or by the exercise of reasonable care would detect the condition, and should realize that it implies an unreasonable risk of harm to such invitees, and 2. should expect that they will not detect or realize the danger , or will fail to protect themselves from it, and 3. fails to exercise reasonable care to protect them from the danger. (Iwai v. State, 129 Wn2d 84, 93-94, 915 P.2d 1089 (1996)) For a rights holder, an owner of land is liable for damage caused by a state of the land only if:1. the possessor knows or has reason to know about the condition and should realize that it carries an unreasonable risk of harm to

such rights holders, and should expect that they will not detect or realize the danger, and 2. the possessor shines to exercise reasonable caution to make the condition safe , or to warn the licensees about the condition and risk involved, and 3. licensees do not know or have reason to know about the condition and risk involved. (Tincani v. Inland Zoological Society, 124 Wn. 2d 121, 133, P.2d 621)And to an intruder, generally no duty of care with respect to the safety of conditions in premises (exceptions for some known invaders), but can not intentionally ignore them and possess must still refrain from intentionally or intentionally harm them. Although our office does not handle all types of cases, we hope that you will contact us regarding any legal issues you may encounter. We will answer your questions, or refer you to another quality and trusted lawyer if we are not able to help you. Section 335 - Artificial conditions very dangerous for constant intruders in restricted areas. An owner of countries that know, or from the facts within his knowledge should know, that intruders constantly interfere with a restricted area of the country, are subject to liability for bodily harm caused by an artificial condition of the country, if: (a) the condition (i) is that the possessor has created or maintains, and (ii) is, to his knowledge, likely to cause death or serious bodily harm to such invaders and (iii) is of such a nature that he has reason to believe that such intruders will not detect it, and (b) the possessor has bailed to exercise reasonable caution to warn such intruders of the condition and risk involved. Section 337 - Artificial conditions very dangerous for known intruders. - An owner of land that maintains in the country an artificial condition that carries a risk of death or serious bodily harm to persons who come into contact with it, is subject to liability for bodily harm caused by intruders by his failure to exercise reasonable care to warn them of the condition if: (a) the possessor knows or has reason to know about their presence in dangerous proximity to the condition , and (b) the condition is of such a nature that he has reason to believe that the intruder will not detect it or realize the risks involved. § 339 - Artificial conditions very dangerous for intrusion children - An owner of land is subject to liability for physical harm to children intrusion thereafter caused by an artificial condition of the country if: (a) the place where the possessor exists is one who possesses know or has reason to know that children are likely to penetrate, and (b) the condition is one that the possessor knows or has reason to know , and as he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and (c) the children due to their youth not detecting the condition or realizing the risk involved in intermeddling with it or in getting within the range made dangerous by it, and (d) the tool of the possessor to maintain the condition and burden of eliminating the danger is small in relation to the risk of children involved , and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect § 343 - Hazardous conditions known to or visible by Possessor. An owner of land is subject to liability for physical harm caused by his invited by a state of the country if, but only if, he (a) knows or by the exercise of reasonable care would detect the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not detect or realize the danger, or will fail to protect themselves from it, and (c) fail to exercise reasonable care to protect them from danger. Section 343A - Known or obvious dangers. (1) An owner of land is not liable to his invitees for physical harm caused by any activity or condition of the country whose danger is known or obvious to them, unless the possessor should foresee the damage despite such knowledge or obviousness. (2) By determining whether the possessor should foresee harm from a known or obvious danger, the fact that the invitee has the right to use the public land, or of the facilities of a public utility, is a factor of significance indicating that the damage should be expected. Vermont Civil Jury Instruction Committee Regular English Jury Instructions Section 5. Premises Liability 5.0 Premises Responsibility – Business invite, licensee, and trespasser definition. 5.1 Duty of care owed by the landowner to Trespasser 5.2 Duty of Care owed by the landowner to licensee 5.3 The business owner's duty to public/business invitations 5.4 The duty of the business owner to inspect for hazardous conditions 5.5 Business Invite a duty to observe Dangerous Activities and Conditions if they are obvious 5.6 business owner duty: Where the place of damage is in a business using self-service marketing that creates a predictable danger when customers handle merchandise 5.0 premises liability – definition of business invitation, licensee and intruder. This is a case of premises liability. From a legal point of view, it makes a difference whether [the plaintiff's name] was a business invite, a licensee or an intruder. A business invite is one who has entered or remained on a person's property for a business purpose. A licensee is someone who came in or remained on someone's property for their own reasons and without the benefit of the owner of the property. A trespasser is someone who entered or remained on someone's property without the permission of the owner or without a legal reason to be there. Reporter's Notes The definition of business invite comes from Ball v. Melsur Corporation, 161 Vt. 35 (1993). See also Menard v. Lavoie, 174 Vt 479 (2002). The definition of licensee comes from Cameron v. 127 years old, 127 years old 111 (1968). In the opinion, Justice Keyser noted that the trend in case law was to expand the class of invitees to include more the kind of person who had previously been thought of as licensees. The definition of trespasser is from Restatement (Other) of Torts § 329 (1965) and quoted in Baisley v. Mississquoi Cemetery Association, 167 Vt. 473 (1998). Another version of the same definition can be found in Farnham v. Inland Sea Resort Properties, Inc., 175 Vt 500 (2003). There are few cases where the question of the plaintiff's status as a rights holder, depositor or intruder was submitted to the jury. This question is usually settled as a matter of law by the judge. The purpose of this instruction is to give the suggested wording if there is a need for an instruction on the issue of one plaintiff's status on the property of another, not to suggest that it be given in all cases. 5.1 Duty of care owed by the landowner to Trespasser If [the plaintiff's name] was an intruder, the sole duty of the owner was to avoid willful or wilful neglect that could harm [the plaintiff's name]. Intentional and intentional behavior refers to intentional behavior that the owner knows, or should have known, tends to harm someone. On the other hand, an intruder is not an outlaw. The owner of the property may be responsible for an intruder by an action made in his presence if it is clear that the owner should have endangered the intruder. Also, if the intruder's presence was known or reasonably should have been expected, the landowner has a duty to act with reasonable care against the intruder. Reporter's Notes See Keegan v. Lemieux Security Services, 177 Vt 575 (2004); Baisley v. Mississquoi Cemetery Association, 167 Vt. 473 (1998) and cases cited in that opinion. The terms intentionally and wildly are defined as willful behavior, which is or should be known to have a tendency to harm. Behr courage. Hook, 173 Vt. 122 (2001). The second sentence comes from Lavallee v. In 1960 he was 1960 1960 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 000 0000. Vermont has not adopted the doctrine of attractive nuisance, so the absence of duty applies to both adult and child intruders. Baisley v. Mississquoi Cemetery Association, 167 Vt. 473, 477 (1998); Trudo courage. Lazarus, 116 Vt. 221, 223 (1950). The term trespasser is defined in the first premises responsibility instruction. 5.2 Duty of care owed by the landowner to licensee If [the plaintiff's name] was a licensee at the time [he/she] was injured, the owner is liable if the Plaintiff was harmed due to [a hidden danger at the site that the landowner did not remove, repair or warn the Plaintiff about.] [Or, alternative wording if appropriate: the landowner did affirmative action to harm the plaintiff.] Reporter's Notes For the source of this instruction, see Cameron v. 1968 – Abaitell, 127 Vt. 111 (1968). See Lomberg Lomberg Renner, 121 Vt. 311 (1959) (guest can recover where the damage is the result of active and affirmative negligence of the host while the guest was known to be on site, or if there is such a hidden defect on the property that it constitutes a trap or pitfall, and which the host has not removed, or warned the guest about). The term affirmative or active negligence has been replaced in modern practice, except, perhaps in cases where the plaintiff seeks punitive damages. The term licensee is defined in the first premises liability instruction. 5.3 The duty of a business owner to public/business invitations A business owner owes the public a duty to see that [describes the parts of the premises commonly used by invitees in this case; for example, the production aisle in the grocery store or the entrance to the apartment.] is kept in a reasonably safe state. Therefore, the owner is responsible for damages caused by conditions that the owner actually knew existed, unless the dangers were obvious. The owner is also responsible for damage caused by a condition that existed long enough, so the owner should have known about it and should have known that it could be unreasonably dangerous. Reporter's Notes See General Forcier v. Grand Union, 390 Vt. 389 (1970) (quoting Dooley v. Economy Stores, Inc., 109 Vt. 138 (1937)). Note that this formulation of the venue-owner's responsibility differs somewhat from the Restatement (Second) of Torts § 343, which focuses on not only the dangerous state, but also on the duty of the invitee to discover the danger and protect himself from it. The section states that the person in possession of land is responsible for damage caused by a condition on the spot if, and only if, he (a) knows or by the exercise of reasonable care would detect the condition, and should realize that it carries an unreasonable risk of harm to such invitees, and (b) should expect that they will not detect or realize the danger, or will fail to protect themselves from it, and (c) fail to exercise reasonable caution to protect them from the danger. The plaintiff's duty, as recognized in the Vermont cases, is dealt with in a later instruction. The first sentence of the instruction is supported in the concept of a number of Vermont cases, beginning with Wool v. Larner, 112 Vt. 138 (1942) and Wakefield v. In 1955 he became 118 1955 1955. A shopkeeper's duty is described as a duty to use reasonable care to keep the premises in a safe and appropriate condition so that (the plaintiff) would not be unnecessarily or unreasonably endangered. At this point in the case, presumably the judge has decided as a matter of law that the defendant is a person in possession of the premises, that the premises were open to and that the place where the accident happened was part of the premises that was open to the public. If these are the facts of dispute that will be submitted to the jury, the jury should be instructed using a version of the first premises responsibility instruction on the need to determine the plaintiff's status. A defendant may have reason to know that a condition poses an unreasonable risk of harm to a plaintiff for a variety of reasons, including how long the condition existed, other accidents caused by the same or similar conditions, the fact that the condition violates a current standard or code, or the likelihood of harm. 5.4 The duty of the business owner to inspect for hazardous conditions A business owner must be reasonably careful to know the condition of [describing the part of the premises where the accident occurred; for example, the entrance to the building, the sidewalk in front of the store, producing the aisle of the grocery store, etc.] Also, if the owner detects a dangerous condition, the owner must either take reasonable steps to make it safe or must adequately warn about it for a reasonable period of time until it can be fixed. Reporter's Notes Forcier v. Grand Union, 390 Vt. 389 (1970) (opening premises for public carrying with it a certain degree of security, which the owner does well, by active care, if necessary); see also Smith v. Monmaney & Spano, 127 Vt. 585 (1969) (duty extends to danger event to accumulations of snow and ice). At this point in the case, presumably the judge has decided as a matter of law that the defendant is a person in possession of the premises, that the premises were open to the public and that the place where the accident occurred was part of the premises that is open to the public. If these are the facts of dispute that will be sent to the jury, the jury should be properly instructed on the law to be applied to such a dispute. These matters are not addressed in this instruction. 5.5 Business Invite's Duty to Observe Dangerous Activities and Conditions if they are Obvious to [name of plaintiff] if [he/she] was injured by something dangerous on the premises that [he/she] knew about or that would have been obvious to a reasonable person in [his/her] situation. Reporter's Notes See Wall v. A. N. Deringer, 119 Vt. 36 (1955) where the plaintiff fell at a change in floor height in the defendant's place of business. The plaintiff testified that she had noticed the change in height when she had gone over the change in height moments before the accident, but forgot about it when she went back over the same area. The trial judge (Shangraw) set aside a plaintiff's judgment and the Supreme Court confirmed, saying the owner of the premises is not responsible for one who goes there for injuries resulting from a danger that was obvious to the latter or should have been observed in the exercise of regular care. See also Morgan v. Renenhan-Akers Co., 126 Vt. 494 (1967) (platform scale holes used for truck weighing); Dooley v. Economy Stores, Inc., 109 Vt. 138 (1937) (lack of handrails for step in store); The Restatement (Second) of Torts § 343A (1), An owner of land is not responsible for its invitees for physical harm caused by any activity or condition of the country whose danger is known or obvious to them, unless the possessor should foresee the damage despite such knowledge or obviousness. One problem with finding support for this instruction in Vermont is that for much of the 20th century, any negligence from a plaintiff resulted in a conviction for the defendant. There were few opportunities for the Supreme Court to discuss the plaintiff's duty in a local liability case. At this point in the case, presumably the judge has decided as a matter of law that the defendant is a person in possession of the premises, that the premises were open to the public and that the place where the accident occurred was part of the premises that is open to the public. If these are the facts of dispute that will be sent to the jury, the jury should be properly instructed on the law to be applied to such a dispute. These matters are not addressed in this instruction. 5.6 Business owner's duty: Where the place of damage is in a business using self-service marketing that creates a predictable danger as customers handle goods The place where [the plaintiff's name] was damaged in [the name of the defendant's store] was a place that showed [describe goods] for customers to handle themselves and choose what they wanted to buy. When a store owner uses this type of self-service marketing, the store must take reasonable steps to protect customers from danger that can be expected from this method of doing business. If [the plaintiff's name] persuades you that [he/she] was damaged due to a danger created by self-service marketing of [describe the goods], the store is responsible unless the store used reasonable measures to detect and remove from the floor debris that may have been knocked to the floor [or insert other description of the kind of care that the defendant may have adopted to protect customers from predictable hazards under the circumstances presented in the trial]. Reporter notes This instruction should be given in cases where the premises owner displays items for sale in a self-service format, for example, in the produce section of a supermarket. The instruction changes the instruction on the premises owner's duty to inspect the premises and either to warn of dangers or take action to make the dangerous condition safe. The instruction changes the plaintiff's evidence in cases arising from dangers created by self-service marketing that creates a predictable risk to customers. The instruction comes from Maleney v. Hannaford Bros. Co., 2004 VT 76. The statement confirms the principle that the plaintiff has the burden of making out a prima facie case of negligence in a local liability act as a result of a danger created by the practice of displaying and selling goods through self-service operations that creates a predictable risk to customers from spilled goods, for example in the produce part of a supermarket. In ordinary premises' liability cases, the plaintiff's burden of proof includes the burden of coming forward with evidence that the jury could find that store employees either knew about the specific dangerous condition that caused the plaintiff's injury, or that the condition existed for such a period of time that store employees should have known about it. In cases arising out of dangerous conditions created by self-service marketing, but the plaintiff is relieved of this burden, and in fact, after the plaintiff otherwise makes out a prima facie case, the burden shifts to the defendant to prove that it took reasonable steps to prevent the predictable risk of harm posed by the self-service screen. The statement reiterates that the Plaintiff always carries the ultimate burden of proof that the defendant was negligent in failing to respond adequately to a predictable danger. The statement also warns that it is for the court, in the assessment of a proposed corrected verdict, to determine whether the defendant has met his burden of producing evidence, as opposed to its burden of proof, which is still a jury question. The jury should not be instructed on a changing burden of proof. Evidence.

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