Torts Tutorial Chapter 8 – Premises Liability

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year torts class and is based on DeWolf, Cases and Materials on Torts (http://guweb2.gonzaga.edu/~dewolf/torts/text). You have accessed the tutorial for Chapter 8, "Premises Liability." Prior to doing these exercises you should read the relevant material in DeWolf, Cases and Materials on Torts. A brief overview of this Chapter is provided below.

OVERVIEW

Ch. 8. Owners and Occupiers: Premises Liability

The owner (or occupier)'s duty to prevent harm to his visitors arising from a condition of the premises usually depends upon the status of the visitor. (A minority of jurisdictions have purported to replace the traditional status categories with a duty of reasonable care under "all the circumstances." In practice this usually produces similar results.) Business and public invitees are owed the duty of reasonable care, which includes inspection of the property for potentially dangerous conditions, and reasonable efforts to repair conditions that create hazards. "Bare" licensees (including social guests), on the other hand, are only owed the duty to be warned of hidden dangers of which the owner is aware. As to trespassers those who have no permission to be on the owner's premises the owner need only refrain from willful or wanton injury.

Next Page Skip to Exercise

Determining the plaintiff's status can be tricky; it can change depending upon the purpose for which the plaintiff happens to be using them. Business invitees are those who come upon the premises for a purpose connected with the *owner*'s business; money need not change hands on the particular occasion, but there must be some benefit to the owner in the plaintiff's presence. Public invitees are those who are invited by a nonprofit entity for the advancement of the owner's interests (e.g. a museum or library), where the public expects the same care to be exercised as if they had paid to enter. An owner's invitation or permission may extend to only some parts of the premises, and thus a visitor's status may change mid-visit.

As to child trespassers, the courts have recognized the doctrine of "attractive nuisance." The RESTATEMENT sets out criteria for determining when an *artificial* condition will create liability for the owner. Essentially the criteria provide that there must be a serious, known risk to unsuspecting children, and the owner failed to undertake a cheap fix.

Torts Tutorial Chapter 8 – Premises Liability

EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Information Button  takes you to the Torts Glossary. The Home Button  takes you to the Torts Tutorial Home Page.

Questions:

1 2 3 4 5 6 7 8 9

 First Page Previous Page 

Question #1

Ralph was at the Franklin Park Mall when he was injured by a pane of plate glass that shattered into very sharp pieces, cutting him badly. Ralph is contemplating a suit against the owner of the Franklin Park Mall to recover compensation for his injuries. Ralph cannot recover from the Mall owner unless

(1)The owner knew of the danger that caused Ralph's injury, and failed to warn him;

(2)The manufacturer of the glass was negligent;

(3)Ralph's presence at the mall furthered a business interest of the owner;

(4)Ralph's status at the mall is determined.

Torts Tutorial Chapter 8 – Premises Liability

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(1)The owner knew of the danger that caused Ralph's injury, and failed to warn him;

(2)The manufacturer of the glass was negligent;

(3)Ralph's presence at the mall furthered a business interest of the owner;

(4)Ralph's status at the mall is determined.

Sorry, that's incorrect. This is the standard that would apply if Ralph were found to be a licensee, who must be warned of hidden dangers. However, if Ralph is an invitee (highly likely), then premises liability principles would make the owner liable if he fails to do something that a reasonable person would do, such as to inspect for potentially dangerous conditions. In exercising reasonable care toward an invitee, an owner must not only warn of dangers he knows of, but inspect for potential ones. Please try again.

Torts Tutorial Chapter 8 – Premises Liability

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(1)The owner knew of the danger that caused Ralph's injury, and failed to warn him;

(2)The manufacturer of the glass was negligent;

(3)Ralph's presence at the mall furthered a business interest of the owner;

(4)Ralph's status at the mall is determined.

Sorry, that's incorrect. Since Ralph's suit is against the owner, proving that the manufacturer was negligent wouldn't be a necessary part of Ralph's claim against the owner. What Ralph must prove in a premises liability case is that the owner breached the particular duty he owed Ralph. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(4)Ralph's status at the mall is determined.

Sorry, that's incorrect. If Ralph wanted to establish that he was an invitee, and therefore owed a duty of reasonable care, then he would have to show that the owner somehow enjoyed a business benefit from Ralph's presence. However, even if Ralph is not there for a business purpose of the owner, and therefore is a licensee, he could still recover if he establishes that the owner failed to warn him of a hidden danger of which the owner was aware. Try again.

Ralph was at the Franklin Park Mall when he was injured by a pane of plate glass that shattered into very sharp pieces, cutting him badly. Ralph is contemplating a suit against the owner of the Franklin Park Mall to recover compensation for his injuries. Ralph cannot recover from the Mall owner unless

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(4)Ralph's status at the mall is determined.

That's correct. Although it is highly likely that Ralph is an invitee (one who is on the owner's premises pursuant to a business purpose of the owner), the exact duty that is owed must be determined before any further conclusions can be drawn. For example, here Ralph might have been using the mall to test out a new set of in-line roller skates. Remember that the first question to ask in a premises liability case is, "What was the plaintiff's status?"

Question #2

Penny was visiting her uncle's restaurant. While she was there a ceiling fixture fell on her. It would be enough for Penny to be classified as an invitee (thereby enjoying the right to expect reasonable care from the owner) if Penny could prove:

(1)Penny was there pursuant to an actual invitation from her uncle.

(2)Penny was there pursuant to an implied invitation from her uncle.

(3)Either (1) or (2).

(4)None of the above.

Torts Tutorial Chapter 8 – Premises Liability

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(3)Either (1) or (2).

(4)None of the above.

Sorry, that's incorrect. Even if the uncle actually invited her there, that's not enough to establish that she's an invitee; she might be a social guest. Try again.

Torts Tutorial Chapter 8 – Premises Liability

Penny was visiting her uncle's restaurant. While she was there a ceiling fixture fell on her. It would be enough for Penny to be classified as an invitee (thereby enjoying the right to expect reasonable care from the owner) if Penny could prove:

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Torts Tutorial Chapter 8 – Premises Liability

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(3)Either (1) or (2).

(4)None of the above.

Sorry, that's incorrect. Typically a social guest is actually invited by the owner, but that's not enough to make him an invitee. Try again.

Torts Tutorial Chapter 8 – Premises Liability

Penny was visiting her uncle's restaurant. While she was there a ceiling fixture fell on her. It would be enough for Penny to be classified as an invitee (thereby enjoying the right to expect reasonable care from the owner) if Penny could prove:

(1)Penny was there pursuant to an actual invitation from her uncle.

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(3)Either (1) or (2).

(4)None of the above.

That's correct. The essential element of an invitation is proof that the plaintiff was there pursuant to a business purpose of the owner. The fact that the plaintiff was invited by the owner isn't enough; after all, a social guest is usually invited by the owner, but is not an invitee for legal purposes.

Question #3

At the beginning of the boating season, Plutonic Boats set up a big display of their newest boats in their parking lot. Liz dropped off her two daughters at a movie and did her grocery shopping. To kill time waiting for the movie to let out, Liz wandered over to the boat show. She slipped and fell on a patch of oily water that dripped from one of the outboard engines. Liz would not be an invitee if:

(1)The owner received no benefit from her presence;

(2)Liz had no intention of buying a boat;

(3)Liz was there primarily to serve her own purposes, rather than those of the owner.

(4)Liz did not use reasonable care in failing to avoid the danger.

Torts Tutorial Chapter 8 – Premises Liability

At the beginning of the boating season, Plutonic Boats set up a big display of their newest boats in their parking lot. Liz dropped off her two daughters at a movie and did her grocery shopping. To kill time waiting for the movie to let out, Liz wandered over to the boat show. She slipped and fell on a patch of oily water that dripped from one of the outboard engines. Liz would not be an invitee if:

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(4)Liz did not use reasonable care in failing to avoid the danger.

That's correct. The test for an invitee is whether the owner receives some benefit from the visitor's presence. The benefit may be indirect, as where a customer returns spoiled milk for a refund; or where the plaintiff is accompanying another person who's actually shopping. Here, Liz is merely "window shopping," but she could claim that the owner's purpose of attracting potential customers was furthered by her presence. However, if the owner derived NO benefit from her presence, however indirectly, then she would not be a business invitee.

Torts Tutorial Chapter 8 – Premises Liability

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(2)Liz had no intention of buying a boat;

(3)Liz was there primarily to serve her own purposes, rather than those of the owner.

(4)Liz did not use reasonable care in failing to avoid the danger.

Sorry, that's incorrect. One of the owner's purposes in attracting customers would be to show how attractive the new boats were, so that people who might not consider themselves potential boat purchasers would become potential buyers, and therefore acquire invitee status.

Torts Tutorial Chapter 8 – Premises Liability

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(2)Liz had no intention of buying a boat;

(3)Liz was there primarily to serve her own purposes, rather than those of the owner.

(4)Liz did not use reasonable care in failing to avoid the danger.

Sorry, that's incorrect. Most people who go shopping, even those who intend to buy something, are there to serve their own purposes as well as those of the owner. The test for an invitee is not whether the visitor is serving their own purpose (they usually are, or they wouldn't be there), but rather whether their presence serves the *owner's interests*, making it fair to impose a duty to use reasonable care. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(1)The owner received no benefit from her presence;

(2)Liz had no intention of buying a boat;

(3)Liz was there primarily to serve her own purposes, rather than those of the owner.

(4)Liz did not use reasonable care in failing to avoid the danger.

Sorry, that's incorrect. The plaintiff's negligence might reduce (or even bar, depending on the jurisdiction) her recovery, but it won't affect whether or not she's an invitee. Try again..

Question #4

Stanley goes to Warren's house for a backyard picnic. He trips on a sprinkler head that is hard to see because of tall grass grown up around it. In the subsequent fall he suffers serious injury. Assume that Stanley's presence didn't confer a business benefit on Warren. Stanley will be UNABLE to recover if:

(1)Warren was unaware that the sprinkler was hidden in the grass;

(2)The cost of removing the hazard outweighed the risk of injury;

(3)Stanley was a public invitee;

(4)Stanley used reasonable care to avoid being injured.

Torts Tutorial Chapter 8 – Premises Liability

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(4)Stanley used reasonable care to avoid being injured.

That's correct. Although the rule is often formulated in terms of whether the owner knew "or had reason to know" of the danger, it is not enough for the plaintiff to show that the owner failed to take reasonable steps to discover the danger. The philosophy behind the licensee standard is that the owner merely has to put the visitor on an equal footing, so to speak. If the owner has conveyed such knowledge as he has to the licensee, the licensee can expect no more.

Torts Tutorial Chapter 8 – Premises Liability

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(1)Warren was unaware that the sprinkler was hidden in the grass;

(2)The cost of removing the hazard outweighed the risk of injury;

(3)Stanley was a public invitee;

(4)Stanley used reasonable care to avoid being injured.

Sorry, that's incorrect. Proof that the cost of removal was greater than the risk of injury would go to the issue of whether Warren used reasonable care. However, a licensee isn't entitled to reasonable care. In this case the issue is whether Warren had a duty to WARN. Even if Warren didn't remove the hazard, if he knew about it and Stanley didn't, Warren would have a duty to warn of its existence.

Torts Tutorial Chapter 8 – Premises Liability

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(2)The cost of removing the hazard outweighed the risk of injury;

(3)Stanley was a public invitee;

(4)Stanley used reasonable care to avoid being injured.

Sorry, that's incorrect. If he were a public invitee, Stanley would enjoy a higher duty of care--reasonable care--than that owed to a licensee. Far from being a stumbling block to recovery, it would actually improve his case. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(3)Stanley was a public invitee;

(4)Stanley used reasonable care to avoid being injured.

Sorry, that's incorrect. Whether or not Stanley used reasonable care would determine whether or not Stanley's claim would be reduced or barred under principles of comparative negligence. However, it doesn't usually prevent a plaintiff from recovering in the premises liability context.

Question #5

Martha agreed to have lunch with her friend Bill downtown. She suggested that they meet in front of the dinosaur exhibit at the state museum of natural history (since it was free), and then find a take-out place where they could pick up some sandwiches. Martha didn't really have any interest in dinosaurs, and while she was waiting, she went to the ladies' room. On the way out she slipped on some soap left by a leaking soap dispenser, causing a fractured wrist. Martha would most likely be classified as:

(1)A trespasser;

(2)A licensee;

(3)An invitee;

(4)None of the above.

Torts Tutorial Chapter 8 – Premises Liability

Martha agreed to have lunch with her friend Bill downtown. She suggested that they meet in front of the dinosaur exhibit at the state museum of natural history (since it was free), and then find a take-out place where they could pick up some sandwiches. Martha didn't really have any interest in dinosaurs, and while she was waiting, she went to the ladies' room. On the way out she slipped on some soap left by a leaking soap dispenser, causing a fractured wrist. Martha would most likely be classified as:

(1)A trespasser;

(2)A licensee;

(3)An invitee;

(4)None of the above.

Sorry, that's incorrect. Martha clearly had permission to be there and thus was not a trespasser. Try again.

Torts Tutorial Chapter 8 – Premises Liability

Martha agreed to have lunch with her friend Bill downtown. She suggested that they meet in front of the dinosaur exhibit at the state museum of natural history (since it was free), and then find a take-out place where they could pick up some sandwiches. Martha didn't really have any interest in dinosaurs, and while she was waiting, she went to the ladies' room. On the way out she slipped on some soap left by a leaking soap dispenser, causing a fractured wrist. Martha would most likely be classified as:

(1)A trespasser;

(2)A licensee;

(3)An invitee;

(4)None of the above.

Sorry, that's incorrect. Although Martha conferred no business benefit upon the owner, she was not what is sometimes called a "bare" licensee. Try again.

Torts Tutorial Chapter 8 – Premises Liability

Martha agreed to have lunch with her friend Bill downtown. She suggested that they meet in front of the dinosaur exhibit at the state museum of natural history (since it was free), and then find a take-out place where they could pick up some sandwiches. Martha didn't really have any interest in dinosaurs, and while she was waiting, she went to the ladies' room. On the way out she slipped on some soap left by a leaking soap dispenser, causing a fractured wrist. Martha would most likely be classified as:

(1)A trespasser;

(2)A licensee;

(3)An invitee;

(4)None of the above.

That's correct. She would be a public invitee, since the museum is open to the public and encourages the public to use its facilities in this way. Even though there is no direct financial benefit from her presence, a non-profit agency "earns" tax or charitable support from serving the public in this way. Moreover, the public expects the same level of care as would be found in a facility operated for profit.

Torts Tutorial Chapter 8 – Premises Liability

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(1)A trespasser;

(2)A licensee;

(3)An invitee;

(4)None of the above.

Sorry, there is a correct answer among the group. Try again.

Question #6

Bob and Loretta Young invited their friend Simon to use their mountain hideaway in their absence, which they said was the third house on the left on Azure Road. (Unbeknownst to the Youngs, a new house was built, making their house the fourth on the left.) On the drive up the mountain Simon's car radiator overheated. When he pulled into the driveway of the third house on the left (actually the Olds' house), Simon opened the garage and found a gallon jug with clear liquid labeled "Crystal Springs Distilled Water." He unscrewed the cap, preparing to pour it on the car, but discovered too late that the jug actually contained unleaded gas for a Coleman stove. Some of the gas spilled, causing a fire and serious injuries. Simon could recover for his injuries from the Olds:

(1)If his mistake in coming onto the wrong property was reasonable, and the danger was known to the Olds and concealed from Simon.

(2)If a reasonable person in Olds' place would have known of the risk and either warned against it or removed it;

(3)Only if he received actual permission from the Olds.

(4)If the Olds actually knew of the danger and failed to warn against it.

Torts Tutorial Chapter 8 – Premises Liability

Bob and Loretta Young invited their friend Simon to use their mountain hideaway in their absence, which they said was the third house on the left on Azure Road. (Unbeknownst to the Youngs, a new house was built, making their house the fourth on the left.) On the drive up the mountain Simon's car radiator overheated. When he pulled into the driveway of the third house on the left (actually the Olds' house), Simon opened the garage and found a gallon jug with clear liquid labeled "Crystal Springs Distilled Water." He unscrewed the cap, preparing to pour it on the car, but discovered too late that the jug actually contained unleaded gas for a Coleman stove. Some of the gas spilled, causing a fire and serious injuries. Simon could recover for his injuries from the Olds:

(1)If his mistake in coming onto the wrong property was reasonable, and the danger was known to the Olds and concealed from Simon.

(2)If a reasonable person in Olds' place would have known of the risk and either warned against it or removed it;

(3)Only if he received actual permission from the Olds.

(4)If the Olds actually knew of the danger and failed to warn against it.

Sorry, that's incorrect. Whether or not his behavior was reasonable is irrelevant. Unless the owner actually consents to the visitor's presence, he owes no duty to make it safe for visitors, either by fixing the danger or by warning against it.

Torts Tutorial Chapter 8 – Premises Liability

Bob and Loretta Young invited their friend Simon to use their mountain hideaway in their absence, which they said was the third house on the left on Azure Road. (Unbeknownst to the Youngs, a new house was built, making their house the fourth on the left.) On the drive up the mountain Simon's car radiator overheated. When he pulled into the driveway of the third house on the left (actually the Olds' house), Simon opened the garage and found a gallon jug with clear liquid labeled "Crystal Springs Distilled Water." He unscrewed the cap, preparing to pour it on the car, but discovered too late that the jug actually contained unleaded gas for a Coleman stove. Some of the gas spilled, causing a fire and serious injuries. Simon could recover for his injuries from the Olds:

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(2)If a reasonable person in Olds' place would have known of the risk and either warned against it or removed it;

(3)Only if he received actual permission from the Olds.

(4)If the Olds actually knew of the danger and failed to warn against it.

Sorry, that's incorrect. You're applying a negligence standard. Simon couldn't be considered an invitee under these facts. Try again.

Torts Tutorial Chapter 8 – Premises Liability

Bob and Loretta Young invited their friend Simon to use their mountain hideaway in their absence, which they said was the third house on the left on Azure Road. (Unbeknownst to the Youngs, a new house was built, making their house the fourth on the left.) On the drive up the mountain Simon's car radiator overheated. When he pulled into the driveway of the third house on the left (actually the Olds' house), Simon opened the garage and found a gallon jug with clear liquid labeled "Crystal Springs Distilled Water." He unscrewed the cap, preparing to pour it on the car, but discovered too late that the jug actually contained unleaded gas for a Coleman stove. Some of the gas spilled, causing a fire and serious injuries. Simon could recover for his injuries from the Olds:

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(3)Only if he received actual permission from the Olds.

(4)If the Olds actually knew of the danger and failed to warn against it.

That's correct. The standard for determining whether the visitor is a trespasser is not whether the plaintiff acted reasonably in coming onto the property; the issue is whether the visitor has actual permission to be on the property.

Torts Tutorial Chapter 8 – Premises Liability

Bob and Loretta Young invited their friend Simon to use their mountain hideaway in their absence, which they said was the third house on the left on Azure Road. (Unbeknownst to the Youngs, a new house was built, making their house the fourth on the left.) On the drive up the mountain Simon's car radiator overheated. When he pulled into the driveway of the third house on the left (actually the Olds' house), Simon opened the garage and found a gallon jug with clear liquid labeled "Crystal Springs Distilled Water." He unscrewed the cap, preparing to pour it on the car, but discovered too late that the jug actually contained unleaded gas for a Coleman stove. Some of the gas spilled, causing a fire and serious injuries. Simon could recover for his injuries from the Olds:

(1)If his mistake in coming onto the wrong property was reasonable, and the danger was known to the Olds and concealed from Simon.

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(3)Only if he received actual permission from the Olds.

(4)If the Olds actually knew of the danger and failed to warn against it.

Sorry, that's incorrect. Even if the Olds actually knew about the danger, they would have no duty to warn under these circumstances. Try again.

Question #7

Bill and Barbara Boxer have been friends with Mike Marshall for years. The Boxers often borrow the Mike's chain saw, and Mike often borrows the Boxer's canoe. One weekend Mike isn't home, and Bill Boxer wanders over to Mike's house to see about borrowing the chain saw. Hearing no answer to his knock at the door, Bill steps inside and turns on the electric light. Unfortunately the light switch contains a short and the electrical shock causes Bill serious injury. Which of the following is correct?

(1)Bill can only recover from Mike if he proves that Mike's failure to repair the light socket was willful and wanton.

(2)Bill could establish that he was a licensee even if Mike didn't know about this particular visit.

(3)If Bill can prove that he had permission to be on the premises, then Mike would owe him a duty to use reasonable care.

(4)Bill would be able to recover if he could prove his conduct was reasonable.

Torts Tutorial Chapter 8 – Premises Liability

Bill and Barbara Boxer have been friends with Mike Marshall for years. The Boxers often borrow the Mike's chain saw, and Mike often borrows the Boxer's canoe. One weekend Mike isn't home, and Bill Boxer wanders over to Mike's house to see about borrowing the chain saw. Hearing no answer to his knock at the door, Bill steps inside and turns on the electric light. Unfortunately the light switch contains a short and the electrical shock causes Bill serious injury. Which of the following is correct?

(1)Bill can only recover from Mike if he proves that Mike's failure to repair the light socket was willful and wanton.

(2)Bill could establish that he was a licensee even if Mike didn't know about this particular visit.

(3)If Bill can prove that he had permission to be on the premises, then Mike would owe him a duty to use reasonable care.

(4)Bill would be able to recover if he could prove his conduct was reasonable.

Sorry, that's incorrect. This statement would be true if Bill were a trespasser, but on these facts that's not necessarily the case. If Bill can escape classification as a trespasser, he's owed a higher duty than merely refraining from willful and wanton conduct.

Torts Tutorial Chapter 8 – Premises Liability

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(3)If Bill can prove that he had permission to be on the premises, then Mike would owe him a duty to use reasonable care.

(4)Bill would be able to recover if he could prove his conduct was reasonable.

That's correct. In cases where the owner has IMPLIED permission to be on the premises, explicit permission is unnecessary. Mike's course of conduct in this case may have led Bill to conclude that he had permission to borrow the chain saw, and if so, the jury could decide that Bill in fact had permission in this particular case, making him a licensee.

Torts Tutorial Chapter 8 – Premises Liability

Bill and Barbara Boxer have been friends with Mike Marshall for years. The Boxers often borrow the Mike's chain saw, and Mike often borrows the Boxer's canoe. One weekend Mike isn't home, and Bill Boxer wanders over to Mike's house to see about borrowing the chain saw. Hearing no answer to his knock at the door, Bill steps inside and turns on the electric light. Unfortunately the light switch contains a short and the electrical shock causes Bill serious injury. Which of the following is correct?

(1)Bill can only recover from Mike if he proves that Mike's failure to repair the light socket was willful and wanton.

(2)Bill could establish that he was a licensee even if Mike didn't know about this particular visit.

(3)If Bill can prove that he had permission to be on the premises, then Mike would owe him a duty to use reasonable care.

(4)Bill would be able to recover if he could prove his conduct was reasonable.

Sorry, that's incorrect. If Bill had permission, then Bill would be a licensee. Only invitees are owed the duty of reasonable care. Here Bill clearly wouldn't be an invitee, because there's no business purpose involved. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(3)If Bill can prove that he had permission to be on the premises, then Mike would owe him a duty to use reasonable care.

(4)Bill would be able to recover if he could prove his conduct was reasonable.

Sorry, that's incorrect. The issue in premises liability is not whether the plaintiff's behavior was reasonable, but whether he can establish that the defendant breached the duty that he owed. Try again.

Question #8

Ben Bradley, aged 8, lived next door to a golf course. After the course had closed one night, he and some friends slipped through the fence and found a golf cart. Ben got into the drivers seat and his friends pushed the cart to try to start it. The cart tipped over and Ben was seriously hurt. This jurisdiction uses the Restatement test for "attractive nuisance." Which of the following is correct?

(1)Ben could recover by showing that the golf cart was an artificial condition;

(2)Ben could recover even if he actually knew of the danger posed by the golf cart;

(3)Ben could recover by showing that reasonable care would have avoided the injury.

(4)None of the above.

Torts Tutorial Chapter 8 – Premises Liability

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(2)Ben could recover even if he actually knew of the danger posed by the golf cart;

(3)Ben could recover by showing that reasonable care would have avoided the injury.

(4)None of the above.

Sorry, that's incorrect. Although it is necessary for Ben to prove that the golf cart was an artificial condition, it is not enough to prove that. In addition to proving an artificial condition, Ben must show knowledge of its danger by the owner, and knowledge that children would be likely to come in contact with the condition. There are other requirements as well. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(4)None of the above.

Sorry, that's incorrect. Liability only extends to dangers of which the children, BECAUSE OF THEIR YOUTH, are unaware. If a child actually knows of the risk, then there can be no liability for "attractive nuisance." Of course, in any given case it will usually be an issue of fact whether the child really knew of the risk; he may know he's not supposed to be there, but be unaware that he could be seriously hurt or killed.

Torts Tutorial Chapter 8 – Premises Liability

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Sorry, that's incorrect. Although there is an aspect of the attractive nuisance test that relies upon reasonable care (once the owner identifies a means to avoid the hazard that imposes only a slight burden upon him, he must use reasonable care to implement the "fix"), it is inaccurate to say that the plaintiff must merely show a lack of reasonable care. A variety of preconditions must be met before liability is imposed for injuries to trespassing children. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(3)Ben could recover by showing that reasonable care would have avoided the injury.

(4)None of the above.

That's correct. None of these answers is correct. Liability under the Restatement's attractive nuisance test is only imposed for artificial conditions on land, of which the owner has knowledge, which he knows may be encountered by trespassing children, which pose a high degree of danger, of which the children are unaware, and which slight effort could alleviate.

Question #9

Wesley operated a lathe at Custom Woodworking, Inc. His boss, Fiona, volunteered to show the plant to a group of third graders as part of a school program called "Where Our Parents Work." While Kevin Milford, one of the third graders, passed through the part where Wesley was working, a piece of wood flew off the lathe and struck Kevin in the eye, causing permanent eye damage. Kevin sued Custom. Which of the following would be correct?

(1)Kevin would be an invitee, since the Shop derived good will from the visit;

(2)Regardless of Kevin's status, the shop owed a duty to use reasonable care to prevent the wood from flying into his eye.

(3)Both (1) and (2).

(4)None of the above.

Torts Tutorial Chapter 8 – Premises Liability

Wesley operated a lathe at Custom Woodworking, Inc. His boss, Fiona, volunteered to show the plant to a group of third graders as part of a school program called "Where Our Parents Work." While Kevin Milford, one of the third graders, passed through the part where Wesley was working, a piece of wood flew off the lathe and struck Kevin in the eye, causing permanent eye damage. Kevin sued Custom. Which of the following would be correct?

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(3)Both (1) and (2).

(4)None of the above.

Sorry, that's only partially correct. Although Kevin indeed could be classified as an invitee, there's more to the answer. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(4)None of the above.

Sorry, that's only partially correct. Kevin is owed a duty based upon the maintenance of the premises, and also based upon the operation of the lathe. Try again.

Torts Tutorial Chapter 8 – Premises Liability

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(3)Both (1) and (2).

(4)None of the above.

That's correct. Kevin could assert that while on the premises pursuant to Fiona's invitation, Fiona owed a duty of reasonable care to keep him from dangerous conditions, including proximity to the lathe. The decision to take the tour past the lathe area was perhaps negligent. In that capacity Fiona was acting as an owner of the premises. In addition, however, Kevin could assert that Wesley was negligent in his operation of the lathe, and that it would be analogous to the exploding firecracker in *Herrick v. Wixom*. That is, the injury arose from an activity independent of the maintenance of the premises. Either theory could be relied upon.

You have now completed the exercises for Chapter 8. You will now be returned to the menu.

Torts Tutorial Chapter 8 – Premises Liability

Wesley operated a lathe at Custom Woodworking, Inc. His boss, Fiona, volunteered to show the plant to a group of third graders as part of a school program called "Where Our Parents Work." While Kevin Milford, one of the third graders, passed through the part where Wesley was working, a piece of wood flew off the lathe and struck Kevin in the eye, causing permanent eye damage. Kevin sued Custom. Which of the following would be correct?

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(4)None of the above.

Sorry, there is a correct answer among the group. Try again.

END

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