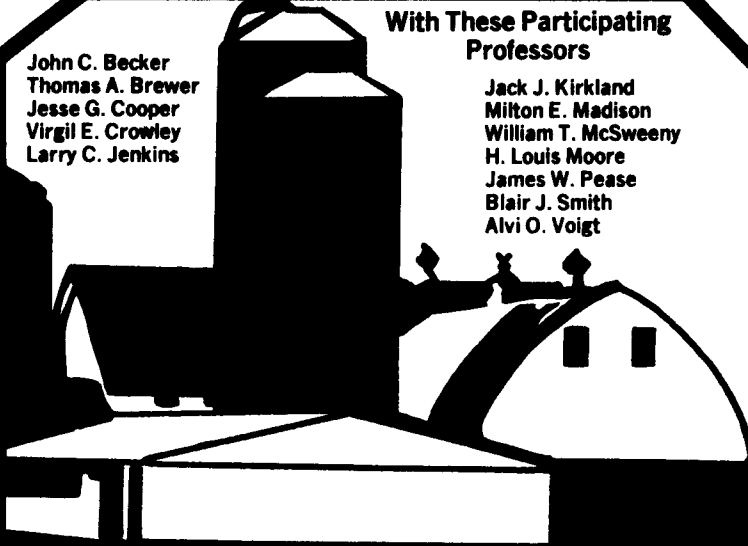


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From time to time questions arise about a landowner's liability for injuries suffered by people

who are on their property. In this article I will discuss some of the general rules that courts have applied in resolving these kinds of issues. The discussion will be very general in nature and more specific fact situations may influence the final decisions of liability.

As a starting point consider that each owner has a general obligation to use his or her property in such a way that does not injure another person or another's property. Each person has a right to be safe and secure in their person and property.

A person can become liable to another person as a result of an intentional act which causes harm or damage, or as a result of a negligent act which causes harm or damage. By negligence is generally meant a person's failure to do something which a reasonable person would do in the same situation or the failure to act in a way which a reasonable man would have acted in the same situation. Negligence can arise from doing an act

or failing to do an act and these elements are important.

Although a person may have been negligent, not every negligent act will result in liability on the part of the person who is charged with negligence. In order for liability to attach to a particular incident, four factors have to exist.

The first factor is the party who is charged with being negligent must have owed a duty to the person who was injured. This duty can arise from a statute such as the Vehicle Code which outlines very specific duties for those who travel the highways. The rules of the road, for example, describe such duties. Law in general can also create this duty and the general rule which was mentioned earlier could be such a situation.

The second element is that the specific duty was breached by the party who is charged with the negligence. In other words, the party who is charged must have failed to live up to or follow the duty which the statute described.

The third element is that of causation. This means that the breach of duty is the legal cause of the injury complained of by the party seeking a recovery. In many lawsuits, the issue of causation is the crucial bone of contention between the parties involved in the suit and an issue which is always hotly contested.

The final element is that of damages to the injured party or the par-

ty's property. In some way the party was injured physically, emotionally, or their property was damaged or destroyed by the negligent act. In this situation, the issue of damages is crucial because that is the yardstick by which the injured party's recovery is to be measured. Various legal rules exist to determine what types or kinds of losses can be compensated in specific legal actions and these are dependent upon the facts of a particular case.

If an injured party can satisfy a judge or jury that these elements exist in a given situation, then the defendant, the party charged with liability, may have such liability judicially imposed. A party held liable, in defense of such a claim against him or her, may raise the issue of the injured party's own conduct and the relationship which such conduct had to the cause of the accident.

If the party held liable can show that injured party actually contributed to the occurrence of the accident, then the injured party's actions may be evaluated in the degree to which they contributed to the accident. As a result, the injured party's damages will be reduced by that portion which represents the injured parties own contribution to the occurrence of the accident. If an injured party contributes to the occurrence of an accident, he or she should bear the consequence of their own acts.

Courts also recognize that a person who performs an act, even though he or she knows and understands the dangers associated with it, may lose his or her opportunity to recover for injuries suffered while performing the act. If the injured party knew and understood

the danger involved and proceeded anyway, he or she may have assumed the risk of injury by doing the act.

In regard to a landowner's liability for injuries caused to a person who crosses or enters upon the landowner's property, a number of additional elements are considered. For example, the status of the injured party on the land when the injury occurred becomes important. For example a person who enters onto another's land without permission or authority is owed less of a duty than a person who was asked or invited onto the premises.

The three types of individuals include trespasses (those without permission or authority) licensees (those who have permission) and invitees (those who are asked to come onto a person's land).

Two points must be mentioned here. First, the permission or invitation need not be specifically given to the injured person. It can be implied from the facts of the situation. For example, if a person knows that someone is crossing their land and does nothing to stop this crossing then it may be implied that the person crossing has permission to continue it. Second, a person's status can change based on the facts of a situation. For example, a person may be invited to enter a person's store, but certain parts of the building may not be within the scope of this invitation and in those areas, a person may be a trespasser.

In regard to the duties owed, a landowner generally owes a duty to a trespasser to avoid willful or wanton conduct which would

injure the trespasser. Willful conduct intends the result of the action taken. Wanton conduct, on the other hand, is such that a person performs an act without regard to any risk of harm or injury which the action may pose to other people. In regard to a license, a landowner owes a duty to warn of any dangerous conditions which exist on the property. In regard to invitees, landowner's duty is greatest, namely to make reasonable inspection of the premises for hidden dangers and to warn of dangers that cannot be made safe for the general public.

The situation involving trespassing children and artificial or unnatural conditions on the land is somewhat of an exception to these general rules. For example, to establish a landowner's liability or injury to a trespassing child, five factors must be proven.

These are: first, the landowner know or should have known that children would trespass in the area where the artificial condition was located. Second, the landowner knows the condition creates an unreasonable risk of death or serious bodily harm to young children. Third, the children are too young to realize the risk of injury they face by going to the area where the condition is located. Fourth, the value to the landowner of maintaining the condition is slight when compared to the risk of harm to children which is great. Fifth, the landowner fails to exercise reasonable care to eliminate the danger or otherwise protect the children.

As you can see these five factors are somewhat general and are very

(Turn to Page C3)

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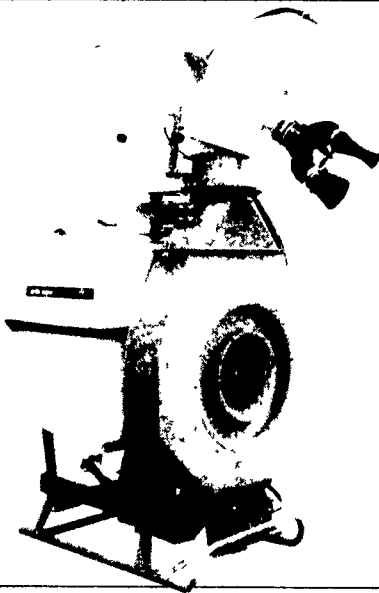
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