CHAPTER

4

Negligence: Duty

OVERVIEW QUESTIONS

1. In general terms, what is the duty of a defendant?
   a. What two approaches do the courts use to analyze the question of duty?
      (1)
      (2)

2. Was the common law designed to protect landowners or possessors?
   a. What was the purpose behind that protection?

3. To what duty of care was a possessor held under the common law?
   a. Have all states retained the common law classification when determining the duties owed by a possessor?

4. What duty of care does a possessor owe a trespasser?
   a. What are the four exceptions to that rule?
      (1)
      (2)
      (3)
      (4)

5. What are the five elements of the attractive-nuisance doctrine?
   a.
   b.
   c.
   d.
   e.

6. Is the age, experience, and intelligence of a child taken into consideration in the attractive-nuisance doctrine?

7. In what way is the difference between natural conditions and artificial conditions taken into consideration for purposes of this doctrine?

8. Does the attractive nuisance doctrine, in essence, require a possessor to make his or her land childproof?

9. What is the “rescue” or “danger invites rescue” doctrine?
   a. How does this doctrine protect plaintiffs?
   b. When is this doctrine inapplicable?

10. When does a possessor owe a duty of care to a known trespasser?
    a. What is the rationale behind this rule?
    b. Does a possessor owe a duty to warn known trespassers of a hazard she or he knows is in dangerous proximity to the trespassers if she or he believes the trespassers will not discover the hazard or understand its dangerousness?

11. What is the rule regarding trespassers who use only a limited portion of the possessor’s land?

12. What is a licensee?
    a. What duty of care is owed to a licensee?
    b. What is the most frequently litigated issue in reference to licensees?
    c. Is there any duty to inspect for dangers?
13. What is an invitee?
   a. What are two types of business invitees? Give an example of each.
      (1)
      (2)
   b. Is someone who is not doing business with the possessor at the time she or he is injured still considered an invitee?
   c. Can a social guest rise to the level of invitee by performing services for the host?
   d. What is a “slip and fall” case?
14. How does one lose one’s invitee status?
15. What duty of care is owed an invitee?
   a. How does one determine what “reasonable care” is?
   b. Does the posting of warning signs always constitute “reasonable care”?
16. Do all states distinguish between trespassers, licensees, and invitees?
17. What duty is owed to those injured outside of one’s property?
   a. How is that duty affected by whether the condition is artificial or natural?
18. To whom did the common law give the most protection—tenants or landlords?
   a. Why?
19. What are the duties of a tenant?
20. What duties does a landlord retain even though she or he transfers possession to a tenant?
   a. Is a landlord’s failure to keep the premises in good repair, if she or he contracts to do so, considered tortious conduct?
      (1) If yes, what must a tenant prove?
   b. What is the duty of landlords once they begin making repairs, even if they are not contractually obligated to do so?
   c. Does a landlord have a duty to take security precautions? (See arguments raised in Kline.)
21. Do sellers of land retain any liability once they turn property over to the buyers?
   a. If yes, what duties do they have?
22. Under the common law, do individuals have any duty to assist those with whom they have no special relationship?
   a. Does it matter that they could assist and incur no harm to themselves?
23. Give some examples of special relationships that create a duty of care.
24. Give an example of a situation in which a duty of care arises because of a special relationship between the defendant and a third party.
   a. Does a university have any duty to protect its students from harm?
25. How does Tarasoff affect professionals?
26. Can tavern owners and social hosts be held liable for the acts of intoxicated persons to whom they provide liquor?
27. What duty of care is owed to one to whom you administer emergency assistance?
   a. What is the reasoning behind this rule?
   b. What is a Good Samaritan statute, and what is its purpose?
   c. What is the voluntary-undertaking doctrine?
28. How does the analysis of duty for a public entity compare to the analysis for a private individual?
29. Under the common law, could a child recover for injuries sustained while a fetus?
   a. Has that rule changed today? If so, how?
30. What is the doctrine of vicarious liability?
31. What is the doctrine of respondeat superior?
   a. When is this doctrine applicable?
   b. What is the rationale behind this doctrine?
32. What is the family-purpose doctrine?
REVIEW QUESTIONS
1. What are the duties of care a possessor of land owes to others?
2. What special relationships create a duty of care?
3. What duties arise out of the landlord-tenant relationship and the buyer-seller relationship?
4. Give some examples of vicarious liability.

PUTTING IT INTO PRACTICE
One of your firm’s clients owns a rather large Arabian horse breeding farm. One day a young girl is thrown while riding one of the client’s horses and is badly hurt. Your client wants to know if he can be sued. What kinds of questions would you ask in order to answer his question? Would it matter if your client was on the premises at the time of the injury?

KEY TERMS
Define the following:

attractive nuisance
family-purpose doctrine
invitee
licensee
respondeat superior doctrine
vicarious liability