Notes page 459 – 462 Premises Liability/Owners and Occupiers of Land

Traditional CL – classifies entrants on land as either trespassers, licensees, or invitees.

Landowners = possessors of land and those who stand in their shoes.- owe different duties to each class –

Stand in their shoes = persons in actual occupancy of land and exercising control over it as well as members of the possessor’s household, may take advantage of these limited-duty rules

The duty of trespassers and licensees are closely similar

The standard duty of care – that of the reasonable and prudent person under the same of similar circumstances – is owed only to invitees; a lesser duty is owed to those in either of other categories.

Trespasser includes anyone who enter’s another’s land without the owner’s express or implied consent. A person who is carried onto someone’s land unconscious by others might be a trespasser for the purpose of determining the landowner’s duty of care. The category is fluid.

No duty of reasonable care to trespassers. The landowner does not owe a duty of reasonable care to trespassers. The duty is merely not to cause intentional injury, to set a trap or to cause wanton injury.

The Discovered-Trespasser Exception – once the landowner comes about the trespasser in circumstances that suggest he might encounter danger, the landowner comes under the care of ordinary care of duty. The landowner must know or have reason to know the trespasser is there and is under the duty of reasonable care.

Breach of duty – P has the burden of showing that it was violated by failure to act as a reasonable person under the circumstances. A warning from the landowner can suffice. If the trespasser can see for himself, then warning may not be required.

Affirmative action to save trapped trespasser – A landowner must provide assistance if a trespasser is trapped, injured or helpless.

Foreseeability test – “have reason to know” danger. The landowner must have specific knowledge of trespassers. Example: Landowner places a cable in a wooded area which is know for horseback riders, snowmobiles, etc and knows they could be harmed. He owes a duty of care. Some courts would say he has acted willfully or wantonly.

I licensee is someone invited by an landowner but is not potentially engaged in direct economic transactions with the owner. This can be people who are hunting or fishing, allo,, wed on the land looking for a pet, taking a short cut, selling goods or distributing

advertising or religious literature, or solicit contributions. Also, people who are on the premises to help friends or relatives with work around the house or to help with Girl Scout troops or to study the Bible with the owner. Or just family members of the owner.

Duty owed: the landowner does not need to inspect the land or correct unsafe conditions for the licensee’s benefit. A duty of care is imposed once the landowner actually knows or has notice of the licensee’s presence and knows of the danger the licensee if about to encounter.

Conditions on the land : As to conditions, the landowner has to warn when has reason to know ,or has reason to know, BOTH 1. The existence of a danger AND 2. The P is in a place where she/he might encounter it. This is the same rule for trespassers.

The 2nd Restatement says If the person is a licensee and the landowner did NOT know about the danger, there is no duty to the licensee. However, other courts may say the landowner is responsible. The Restatement does not make clear about the licensee’s presence on the land. Example: a person knew the friends of farm employees of his knew they came to the land to help the employee with his work sometimes. The landowner owed a duty or reasonable warning to the licensee-visitors because the farm equipment is dangerous**. Pick up at page 464 from here.**

**Page 473 – 478**

**Children on the Land**

**When adults are classified as invitees, the children with them are categorized as the same. Children can be invitees when they enter a store by themselves. There is a duty of reasonable care. BUT what counts differently can be because the children may overlook dangers that adults would avoid. Some are obvious they everyone would see – fire, water, falling from heights. Social adult guests with children – the children will be looked at the same. Care is only owed to the adults. The responsibility shifts to the adults to care for the children. BUT, if the landowner has assumed care for supervising the child, then he owes the duty of care for the child.**

**CHILD TRESPASSER**

**The landowner does not owe more duties to than to an adult but the children are more vulnerable because they fail to understand danger or its seriousness. Courts today generally recognize a duty of care to the trespassing child and liability for negliglence. The child’s adult rescuer is given the same status of the child and comes under the same protection.**

**Origins of the special rule page 475**

**1875 – child playing on train equipment – loses his leg when it gets caught. The railroad said they had no duty to the trespasser. The court said the child was “induced” to use the turntable by its very attractivemess. Used the example of meat with a dog – dog is drawn to the meat like a child to the machinery. The trespass was forgiven and the child treated as an invitee. ATTRACTIVE NUISANCE DOCTRINE**

**Now the courts say a reasonable landowner should know, or have reason to know, or FORESEE that children are likely to trespass and because of their youth, will be at unreasonable risk for serious injury. Not they say
“attractive nuisance” is no longer a good description of the doctrine.**

**FORSEEABILTY V. REASON TO KNOW**

**2nd Restatement says landowner must know or have reason to know BOTH that child trespassers are likely and that a condition on the land may endanger them.**

**Some courts say “should know” in place of “reason to know.”**

**HARMFUL POTENTIAL – the attractive nuisance doctrine is basically an application of ordinary negligence law. Not liable unless he fails to act with ordinary care. If a reasonable person would not have perceived risk, then the landowner is not negligent and not liable.**

**Balance of risk and utilities - If the cost or burden is great and the foreseeable risk is small, then D not negligent or not liable at all.**

**Changing Duties – Extending the Duty of Reasonable Care to Entrants other than Invitees – page 478**

**The 3rd Restatement now suggests a duty to all entrants on land with the exception of “flagrant trespassers,” Uniformity seems largely out of reach on this between states.**

**Reasonable care does not require action to warn or protect visitors whose coming is not known or reasonably foreseeable. Page 478**

Cases

*Roberts v. Roberts*

P is the daughter-in-law of D and neighbors. Storm approaching, P walks to D’s house to check on her. While walking home, a tree falls on P and she suffers serious personal injuries. P had told D about tree needing to cut down at least 2 times. D agreed it was dangerous. The evidence showed the P had knowledge of the dangerous condition. Trial court decision affirmed the motion for summary judgment for D. Possessors of land are not insurers of the safety of those who enter their land.

*Metropolitan Gov’t. of Nashville v. Counts*

Cleophius and Mary Alice Counts (hereinafter referred to as plaintiffs) filed an action against the Metropolitan Government of Nashville and Davidson County (hereinafter \*135 referred to as defendant), seeking to recover damages for the death of their son, Michael, by drowning in a pond located on the premises of the Bordeaux County Hospital. The hospital is owned and maintained by defendant. At the close of plaintiffs' proof, the trial court directed a verdict for defendant on the ground of governmental immunity, plaintiffs' proof not having shown any affirmative act by defendant necessary to invoke the nuisance exception to the rule of governmental immunity. In granting the motion for directed verdict, however, the trial court specifically found that plaintiffs' proof would have been sufficient to submit the case to the jury under the doctrine of attractive nuisance if the rule of governmental immunity had not been applicable. The Court of Appeals agreed that plaintiffs' proof had made out a prima facie case of attractive nuisance and reversed the trial court's dismissal of the action, holding that a prima facie case of attractive nuisance triggers application of the nuisance exception to the rule of governmental immunity. The Court of Appeals thus remanded the case for a jury determination of defendant's liability under the doctrine of attractive nuisance. We granted defendant's petition for the writ of certiorari in order to consider two issues: (1) whether as a matter of law plaintiffs' proof was sufficient to establish defendant's liability under the attractive nuisance doctrine; and (2) whether the nuisance exception to the rule of governmental immunity encompasses the doctrine of attractive nuisance.

*Bloodworth v. Stuart – playground doctrine*

Defendant is a general contractor specializing in masonry work. In the latter part of May, 1963, defendant began construction of a one-story concrete block addition to Norman Binkley School in Nashville and continued throughout the summer vacation.

The construction site was adjacent to a public playground. The playground was supervised by James E. Smith, an employee of the Metropolitan government of Davidson County, from nine A.M., to five P.M., five days a week.Plaintiff, a young boy of the age of eleven years and eleven months at the time of the accident and injury, lived in the neighborhood and habitually played on the playground during the summer months.On the day of the accident, August 22, 1963, concrete block walls to the class rooms had been constructed to a height of nine feet. The walls to closets inside the class rooms had not been completed. No doors or windows had been installed. Shortly before five thirty P.M., on that day, defendant's employees had laid a slab of concrete, known as a lintel, across the top of a door to an unfinished closet. This lintel was about four feet long, four inches thick, eight inches high, and weighed about seventy-five pounds. The workmen left a metal scaffold next to the door from which they had laid the lintel.The workmen, soon after laying the lintel, in wet mortar, left for the day.Shortly after the workmen had left, plaintiff and Jimmy Starr went into an area of the building under construction and \*788 climbed upon a wall. While sitting on the wall, they noticed some boys on the playground. They called to them and while they were on their way to the building, plaintiff and Starr left the wall and ran into the room where the scaffold was. Plaintiff placed his foot on a brace of the scaffold and grasped the lintel. The scaffold slipped forward and he fell back. As he fell, his weight caused the lintel to fall and strike his leg. His leg was crushed and later had to be amputated below the knee.

Defendant had not hired a watchman, erected a fence or barricade, or posted signs; but left the site unattended after working hours.

The declaration filed was in two counts: the first count was predicated upon the attractive nuisance doctrine; and the second count invoked the playground doctrine. To the declaration, defendant filed a plea of not guilty. The jury returned a general verdict for $50,000.00. Went to Appeals court

Finally, it is very forcibly argued in behalf of defendant the construction was a temporary project. The children had been told not to go there and play. Their use of it as a playground was surreptitious and for a short period of time. And, therefore, the playground doctrine is not applicable.Having found the jury was justified in finding liability under the count of the declaration based on the playground doctrine, the verdict will be applied to that count. T.C.A. Section 20-1317.

The judgment of the Court of Appeals is modified as indicated; and, as modified, affirmed. The costs are adjudged against the defendant.

*McIntyre v. McIntyre - attractive nuisance*

Plaintiff avers that on or about April 4, 1976, plaintiff's minor son, Bob McIntyre, was visiting on the premises owned by the defendant, James L. McIntyre, in Tipton County, Tennessee.Plaintiff would show that the defendant, with full knowledge, allowed to be maintained on said premises an attractive nuisance consisting of agricultural land which he allowed children of minor and tender ages to use to ride motorcycles; that defendant knew said area consisted of rolling hills and to be a dangerous condition, and knew same to be an attraction to children.Plaintiff would show that said area where defendant allowed children to ride motorcycles on his premises existed for a period of time and that the defendant knew or should have known that same was a dangerous area and should have taken steps to remove and prevent children from engaging in this dangerous activity on his property.Plaintiff would further show that, having knowledge of the activity of children riding motorcycles on his property, he failed to properly supervise and use reasonable precautions or to properly supervise the use of said premises for the activities named herein and, further, that he failed to warn the children of the dangers of said activity. Plaintiff would further show that on or about April 4, 1976, his minor son, Bob McIntyre, was invited and allowed to ride his motorcycle on defendant's premises at which time, while going over a hill, he collided with another minor child of tender years and was severely injured and sustained multiple contusions and abrasions and permanent injuries to his eye... .

**a.** Plaintiff minor was not a trespasser as he must have been to invoke the attractive nuisance doctrine**.b.** There is no allegation that defendant maintained upon his premises any condition, artificial or natural, that would constitute an unusual or hidden danger. To the contrary, the complaint alleges the "attractive nuisance consist[ed] of agricultural land ... and rolling hills." While we acknowledge the picturesque beauty of the rolling hills and majestic mountains of Tennessee and agree that they are attractive, the fortunate fact that God has strewn His splendor with such a lavish hand and blessed our state with great beauty, and has made it a veritable playground, hardly affords a reason to classify any normal topographical feature as an attractive nuisance. To so hold would subject every landowner in Tennessee to potential liability by virtue of the mere ownership of land**. c.** To invoke the "playground doctrine," which is but an exception to the rather harsh requirement of attractive nuisance that the child be enticed or lured upon the property, there must be a showing of conditions involving "unreasonable risk of bodily injury and which children because of their  youth will fail to discover and appreciate."We do not hold categorically that the operator of a motorcycle or a motor driven cycle could not bring himself within the attractive nuisance or playground doctrine; however, a licensed driver of such a vehicle would encounter substantial difficulty in establishing the existence of a risk "which children because of their youth will fail to discover and appreciate."

The judgment of the trial judge is Affirmed.