



Land Owner/Occupier Duties

Torts
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General observations (1/5)

- What follows is a *simplified* view of the law on the duties of care owed by landowners and land occupiers.
- In reality, there is a great deal of variation among courts on what rules to apply for land owner/occupier defendants – not just in how these are worded, but in the substance.
- “[T]here has been little uniformity among the states in determining the measure of the duty owed to certain persons coming onto the land.”
– Understanding Torts (5th ed.) Diamond et al.)

General observations (2/5)

- I personally would say there's too much variation to make this a subject for the bar exam.
- Yet the multistate bar includes within the scope of coverage for the exam: "special rules of liability" for "[c]laims against owners and occupiers of land[.]" (2020 MBE Subject Matter Outline p. 8; 2020 MEE Subject Matter Outline, p. 11).
- Thus, I'm giving you a **simplified approximation** of the law – it's a view that doesn't really represent the general state of the law or even what you'd call a "majority approach." But it provides what I would consider to be a useful approximation of the general state of the law.

General observations (3/5)

- I've looked at various secondary sources to see how commentators and scholars approximate the law in this area – but they differ considerably!
- The approximation I'm giving you is my approximate synthesis of various treatise writers' approximate syntheses. 😊
- For what it's worth, what I'm giving you is a view that is somewhere between the Second Restatement of Torts and the Third Restatement of Torts.
- That strikes me as a good place to be, because the Second Restatement is arguably outdated at this point, but the Third Restatement is controversial and might be said to be "ahead of its time."

General observations (4/5)

- In the real world, you'll have to look this stuff up! That's not only because it varies so much by jurisdiction, but also because precedent can be applied in an extremely fact-specific way.
 - For instance, if you've got a case of a trespasser being hit by a front loader operated by the land owner, then it would be good to look for construction-equipment-vs-trespasser precedent in your jurisdiction.

General observations (5/5)


- So, what I'm giving you in the following grid is what you should assume the law to be for the purposes of my class, including my exam.
- It should also be useful for the bar exam!
- *But* if your bar prep company tells you something different, then you should probably go with what they say in terms of the bar exam.

Land owner/occupier duties of care

	Conditions on the land	Activities on the land
Unanticipated / undiscovered trespassers	No duty	Reasonable person
Anticipated / discovered trespassers	Warn of or fix seriously dangerous, known, artificial, concealed hazards	Reasonable person
Anticipated / discovered child trespassers	Fix seriously dangerous, known, artificial hazards, so long as cost-benefit justified	Reasonable person
Licensees	Warn of or fix known, concealed hazards	Reasonable person
Invitees	Warn of or fix known and reasonably knowable, concealed hazards	Reasonable person

Note: "Seriously dangerous" means capable of causing death or serious bodily harm.


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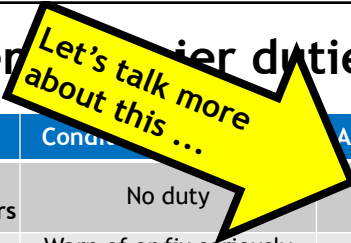
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Note the word “known” in here. The casebook doesn’t mention that the land owner/occupier has to know about the hazardous condition. And some courts might not, in fact, require such knowledge. But the best approximation of the law I can give you is that this duty applies only when the seriously dangerous, artificial, concealed condition is known.

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Land owner/occupier duties of care

Let's talk more about this ...

	Conditions on the land	Activities on the land
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- Remember, the general rule is that only foreseeable plaintiffs are owed a duty of care.
- So, in this upper right box, we must be talking about trespassers that are *foreseeable*, but neither *unanticipated* nor *undiscovered*. (Could there even be such a thing? I don't know!)
- My point to you is that when it comes to activities on the land (as opposed to conditions), you shouldn't use the special land owner/occupier rules.
- Modern sources that I trust are in accord.
- *But* I found one old bar prep book that says there's "No duty" in this situation. Indeed, that's the general rule from a long time ago, but I don't believe that approximates the general view in modern American tort law. Indeed, that bar prep book's view conflicts with learned, trustworthy secondary sources I've consulted.

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A mazuku (from the Swahili for “evil wind”) is a pocket of heavier-than-air oxygen-poor gas that accumulates in a depression. They result from natural geologic processes. Mazukus, which are odorless and invisible, can cause asphyxiation of people and animals that wander into them.

Linda is a landowner that knows about a mazuku on her land. Is she liable for a trespassing child that falls in and dies?

- A. Yes**
- B. No**

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A. Yes

B. No

The answer is no because it's a natural hazard. The duties to trespassers, including child trespassers, apply only to artificial conditions.

Geologist George, walking nearby, happens to see the child fall into the mazuku. George has a breathing mask and could safely go and rescue the child. Is George liable for not walking down to pull the kid out?

A. Yes

B. No

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A. Yes

B. No

(This is a review question.) The answer is no because there's no affirmative duty to rescue.

A different mazuku is on a golf course owned and operated by Funstar Resorts, and they know mazukus tend to form on the land. Is Funstar Resorts liable if a golfer falls in and is injured?

A. Yes

B. No

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A. Yes

B. No

Yes. The golfer is an invitee, so there is a duty to warn of known and reasonably knowable natural hazards.

Does it make a difference if Funstar Resorts doesn't actually *own* the property, instead they just lease it?

A. Yes

B. No

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A. Yes

B. No

No. They're still the land "occupier," so the special rules apply the same as if they were the owner.

Linda knows people are sometimes on her land without permission. She sets off a huge fireworks display where it's foreseeable that a trespasser might be walking. Must she use reasonable care to avoid injury to them?

A. Yes

B. No

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A. Yes

B. No

Yes. When it's an activity, as opposed to a condition, don't use the special rules for land owner/occupiers.