

A hiker sustained a head injury when he was struck by a limb that fell from a tree. At the time of his injury, the hiker was walking through a forest on private property without the property owner's knowledge or permission. It was determined that the limb fell because the tree was infested with termites.

In an action by the hiker against the property owner to recover for his head injury, will the hiker likely prevail?

- A. No, because the property owner breached no duty to the hiker, who was a trespasser.
- B. No, because the property owner could not foresee that anyone would be injured.
- C. Yes, because the property owner had a duty to prevent the trees on his property from becoming dangerous.
- D. Yes, because the property owner is liable for hidden dangers on his property.

## Explanation:

### Land possessor's duty to land entrants

(traditional approach)\*

Status	Characteristics	Duty
<b>Trespasser</b>	Intentionally enters land without permission	Known or frequent trespassers – warn of known artificial dangers & use reasonable care in active operations Unknown or unanticipated trespassers – no duty
<b>Licensee</b>	Enters land with permission (eg, social guest)	Warn of known latent dangers & use reasonable care in active operations
<b>Invitee</b>	Enters land open to public (eg, churchgoer) Enters land for business purpose (eg, store customer)	Inspect for unknown dangers Make premises safe or provide adequate warnings Prevent harm from active operations

\*In jurisdictions that follow the modern approach, land possessors owe a duty of reasonable care to all land entrants, except flagrant trespassers.

**Land possessors** are in the best position to prevent harm to those who enter their land. As a result, they owe a **duty** of reasonable care **to foreseeable land entrants**. But **no such duty** is owed to **trespassers**—ie, persons who intentionally enter another's land without permission—**unless** the land possessor knows of, or has **reason to anticipate**, their **presence on the land**.

Here, the hiker was injured by a falling tree limb while walking through a forest on private property. The hiker was a trespasser because he intentionally entered the forest without the property owner's permission. And since there is no evidence that the owner knew of—or had reason to anticipate—the hiker's presence, he was an *unforeseeable* trespasser. As a result, the owner owed no duty to the hiker and the hiker will not recover for his injury.

**(Choice B)** Had the hiker been an invitee, the owner would have owed him a duty to make reasonable inspections of the property. In that case, the owner likely would have discovered the weak tree limbs and foreseen that they could injure someone. But the owner owed no such duty to the hiker since he was a trespasser.

**(Choice C)** The owner would have owed the hiker a duty to prevent the trees on his property from becoming dangerous (or to provide adequate warnings) had the hiker been an invitee—not a trespasser.

**(Choice D)** Land possessors must warn discovered or anticipated trespassers about hidden, *artificial* (ie, man-made) dangers on the land of which the land possessor is aware. But even if the hiker had been such a trespasser, the owner would not be liable since he had no knowledge of this hidden, *natural* danger.

**Educational objective:**

A land possessor owes a duty of reasonable care to *foreseeable* land entrants. But no such duty is owed to *unforeseeable* land entrants (eg, undiscovered or unanticipated trespassers).

**References**

Restatement (Second) of Torts § 333 (Am. Law Inst. 1979) (no duty to unknown trespassers).

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