

A farmer owns a large farm on which he allows his friends to hunt during quail-hunting season. He does not provide his friends with any instructions about gun safety. The neighbor who owns property adjacent to the farm knows of the friends' use of the property during the hunting season.

One day during the hunting season, without the farmer's knowledge or permission, the neighbor took a shortcut across the farm to visit an acquaintance. The neighbor was wounded by a shot fired by one of the farmer's friends, who was shooting at quail and carelessly failed to see the neighbor.

Traditional rules of landowners' and occupiers' liability apply.

In an action by the neighbor against the farmer to recover for the injuries, will the neighbor be likely to prevail?

- A. No, because the farmer is not responsible for his friends' conduct.
- B. No, because the neighbor was trespassing.
- C. Yes, because the careless friend was permitted to hunt without safety training.
- D. Yes, because the use of firearms is an abnormally dangerous activity.

## 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.

Under the traditional approach, persons who occupy and control land (ie, **land possessors**) owe foreseeable land entrants a duty to exercise reasonable care. But a land possessor owes **no duty to trespassers**—ie, those who intentionally enter another's land without permission—**unless** the land possessor **knows of**, or can **reasonably anticipate**, their **presence**. The land possessor is then liable for **negligence** if he/she breaches this duty and causes the trespasser physical harm.

Here, the neighbor was a trespasser since the neighbor intentionally entered the farmer's land without permission. And the farmer did not know that the neighbor was on the farmer's land. Nor is there any indication that the farmer had reason to anticipate the neighbor's presence (eg, from frequently witnessing the neighbor cut across the farm). As a result, the farmer did not owe his neighbor a duty of care, and the neighbor is unlikely to prevail.

**(Choice A)** Although the farmer is not responsible (ie, **vicariously liable**) for his friends' conduct, the farmer could have been liable for his *own* negligent conduct had he owed his neighbor a duty (not seen here).

**(Choice C)** Had the neighbor been a foreseeable land entrant, the farmer would have owed the neighbor a duty to use reasonable care in active operations on the farm—eg, by

ensuring that his friends had gun-safety training. But since the neighbor was an *unknown* and *unanticipated* trespasser, the farmer owed the neighbor no duty.

**(Choice D)** Using firearms in rural areas during hunting season is not an **abnormally dangerous activity** that subjects a defendant to strict liability—ie, liability imposed regardless of fault—since this is a common activity whose risks can be mitigated by reasonable care.

**Educational objective:**

A land possessor only owes a duty of reasonable care to foreseeable land entrants—not unforeseeable ones (eg, unknown and unanticipated trespassers).

**References**

Restatement (Second) of Torts § 333 (Am. Law Inst. 1965) (no duty to unknown trespassers).

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