

The day after a man completed the sale of his house and moved out, one of the slates flew off the roof during a windstorm. The slate struck the man's former neighbor, who was on the public sidewalk. The neighbor was seriously injured. Both the man and the neighbor were aware that the roof is old and had lost several slates in ordinary windstorms on other occasions.

If the neighbor sues the man to recover damages for his injuries, will the neighbor likely prevail?

- A. No, because the man was neither the owner nor the occupier of the house when the neighbor was injured.
- B. No, because the neighbor knew that in the past slates had blown off the roof during windstorms.
- C. Yes, because the man was aware of the condition of the roof and should have realized that it was dangerous to persons outside the premises.
- D. Yes, because the roof was defective when the man sold the house.

Explanation:

Sellers of real property

(negligence liability arising from dangerous condition on land)

Injured party	Seller's liability	Duration of liability
Person on land	Liable for physical harm caused by <i>natural or artificial</i> condition if: condition existed at time of sale seller knew or should have known condition existed & posed unreasonable risk to persons on land buyer neither knew nor should have known of condition or risk <i>and</i> seller had reason to believe buyer would not discover condition or realize risk	If seller created or actively concealed condition, liable until buyer discovers condition & has reasonable opportunity to remedy it Otherwise, liable until buyer has reasonable opportunity to discover & remedy condition
Person off land	Liable for physical harm caused by <i>artificial</i> condition if: condition existed at time of sale <i>and</i> seller knew or should have known condition existed & posed unreasonable risk to persons off land	

Obligations associated with real property are generally owed by whoever occupies and controls the land—ie, the current land possessor. But a **seller** (previous land possessor) remains **liable for negligence** to persons off the land for **physical harm caused by an artificial condition** on the land that:

existed at the **time of the sale** *and*

the **seller knew, or should have known**, existed and posed an **unreasonable risk of harm** to such persons.

That liability continues at least **until the buyer** has had a **reasonable opportunity to discover and remedy** the condition.*

Here, the day after the man sold his home and moved out, a slate flew off the roof (artificial condition) during a windstorm and struck his former neighbor on the public sidewalk. The man knew that the roof was old and had lost several slates in previous windstorms, so he should have realized that it was dangerous to persons outside the premises. And since the new owner had not yet had a reasonable opportunity to discover and remedy this danger, the neighbor will likely prevail against the man **(Choice A)**.

*If the seller created or actively concealed the condition, the seller's liability continues until the buyer has discovered and had a reasonable opportunity to remedy the condition.

(Choice B) In [comparative negligence jurisdictions](#) (default rule on the MBE), a plaintiff's recovery is reduced (not barred) if the plaintiff failed to exercise reasonable care. Therefore, the fact that the neighbor knew that slates had blown off the roof during windstorms and walked on the sidewalk anyway does not bar his claim.

(Choice D) Although the roof was defective when the man sold the house, he is only liable for negligence if he knew or should have known that the defect existed and was dangerous.

Educational objective:

A seller remains liable to persons off the land for physical harm caused by an artificial condition on the land that (1) existed at the time of sale and (2) the seller knew, or should have known, existed and posed an unreasonable risk of harm to such persons.

References

Restatement (Second) of Torts § 373 (duty of sellers to those off the land).

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