

A man entered a drug store to make some purchases. As he was searching the aisles for various items, he noticed a display card containing automatic pencils. The display card was on a high shelf behind a cashier's counter. The man saw a sign on the counter that read, "No Admittance, Employees Only." Seeing no clerks in the vicinity to help him, the man went behind the counter to get a pencil. A clerk then appeared behind the counter and asked whether she could help him. He said he just wanted a pencil and that he could reach the display card himself. The clerk said nothing further.

While reaching for the display card, the man stepped sideways into a hidden, open shaft and fell to the basement, ten feet below. The clerk knew of the presence of the open shaft but assumed incorrectly that the man had noticed it.

The man sued the drug store to recover damages for the injuries he sustained in the fall. The jurisdiction has adopted a rule of pure comparative negligence, and it follows traditional common law rules governing the duties of a land possessor.

Will the man likely recover a judgment against the drug store?

- A. No, because the man was a trespasser.
- B. No, because the man's injuries did not result from the defendant's willful or wanton misconduct.
- C. Yes, because the clerk had reason to believe that the man was unaware of the open shaft.
- D. Yes, because the premises were defective with respect to a public invitee.

Explanation:

Under the traditional common law approach,* **land possessors** owe a **duty of reasonable care** to foreseeable land entrants—including **invitees**. But an invitee is treated as a trespasser if that person intentionally enters an area without permission. And if that person is a **known or anticipated trespasser**, the landowner owes a **limited duty** to:

warn the trespasser about **hidden, artificial (ie, man-made) dangers** that are known to the land possessor but **unlikely to be discovered** by the trespasser *and* **use reasonable care** in active operations (ie, activities conducted on the land).

A land possessor who breaches this duty and causes the trespasser physical harm is liable for negligence. And if the land possessor is an employer, the doctrine of **respondeat superior** holds the land possessor vicariously liable for its employees' negligence while on the job.

Here, the man was an invitee when he entered the drug store to shop. But he became a trespasser when he intentionally went behind the cashier's counter without permission **(Choice D)**. Nevertheless, the clerk owed him a duty to warn since she knew he was there and had reason to believe that he was unaware of the *hidden*, open shaft **(Choice A)**. And since her failure to warn the man caused him to fall into the shaft and suffer harm, the man will likely recover a judgment from the drug store (employer) for the clerk's (employee's) negligence.

*The traditional approach is followed in about half the jurisdictions. The other half follow the modern approach, under which land possessors owe a duty of reasonable care to all land entrants (except flagrant trespassers).

(Choice B) Although the man's injuries did not result from the drug store's willful or wanton (ie, **intentional or reckless**) misconduct, the store is still vicariously liable for its employee's negligence under the doctrine of respondeat superior.

Educational objective:

A land possessor owes a duty to known or anticipated trespassers to (1) warn them about hidden, artificial dangers that are known to the land possessor but unlikely to be discovered by trespassers and (2) use reasonable care in active operations.

References

Restatement (Second) of Torts § 337 (Am. Law Inst. 1965) (duty to known trespassers).

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Land possessor's duty to land entrants

