

While visiting at his son's home, a grandfather tripped on a toy left on the floor by his four-year-old grandson. The grandfather fell and was severely injured. The grandfather regularly visited his son's home and was aware that the grandson routinely left toys scattered about the house. The son had never warned the grandfather to look out for toys.

The grandfather brought an action against his son to recover for his injuries. At trial, after the close of evidence, both the grandfather and the son have moved for judgment as a matter of law as to liability. The jurisdiction has abolished intra-family immunity and applies the traditional rules of landowner liability.

What action should the court take?

- A. Deny both motions and submit the case to the jury based on negligence.
- B. Deny both motions and submit the case to the jury based on strict liability.
- C. Grant the grandfather's motion, because the son is liable as a matter of law for failing to warn about the risk of toys being left on the floor.
- D. Grant the son's motion, because the son had no duty to warn that the grandson might leave toys on the floor.

Explanation:

After the parties have presented their evidence to the jury, any party may move for **judgment as a matter of law** (JMOL). This motion asks the judge to bypass the jury and render a decision in favor of the moving party because no reasonable jury could find in favor of the opposing party. Therefore, a judge should **grant a defendant's motion** for JMOL if there is **legally insufficient evidence** to support **any element** of the plaintiff's claim.

In a **negligence claim**, the plaintiff must first prove that the **defendant owed a duty** to the plaintiff. When the defendant is a land possessor, the duty owed to the plaintiff under the traditional rules of landowner liability depends on the plaintiff's **status on the land**. Many land entrants are licensees—ie, persons who enter another's land with permission (eg, social guests). And a land possessor has a **duty to warn licensees** about **latent (ie, hidden) dangers** of which the land possessor is, or should be, aware.

Here, the grandfather (plaintiff) was injured when he tripped on his grandson's toy. The grandfather was a licensee because he was visiting his son's (defendant's) home at the time. But since the grandfather already knew that his grandson routinely left toys scattered about the house, the son had *no duty* to warn the grandfather that toys might be on the floor. And since the grandfather cannot establish this element of negligence, the court should grant the son's motion (and deny the grandfather's motion) for JMOL (**Choices A & C**).

(**Choice B**) Strict liability (ie, liability regardless of fault) is appropriate only in **limited situations**—none of which apply here.

Educational objective:

A land possessor traditionally owes licensees (eg, social guests) a duty to warn about latent dangers of which the land possessor is, or should be, aware.

References

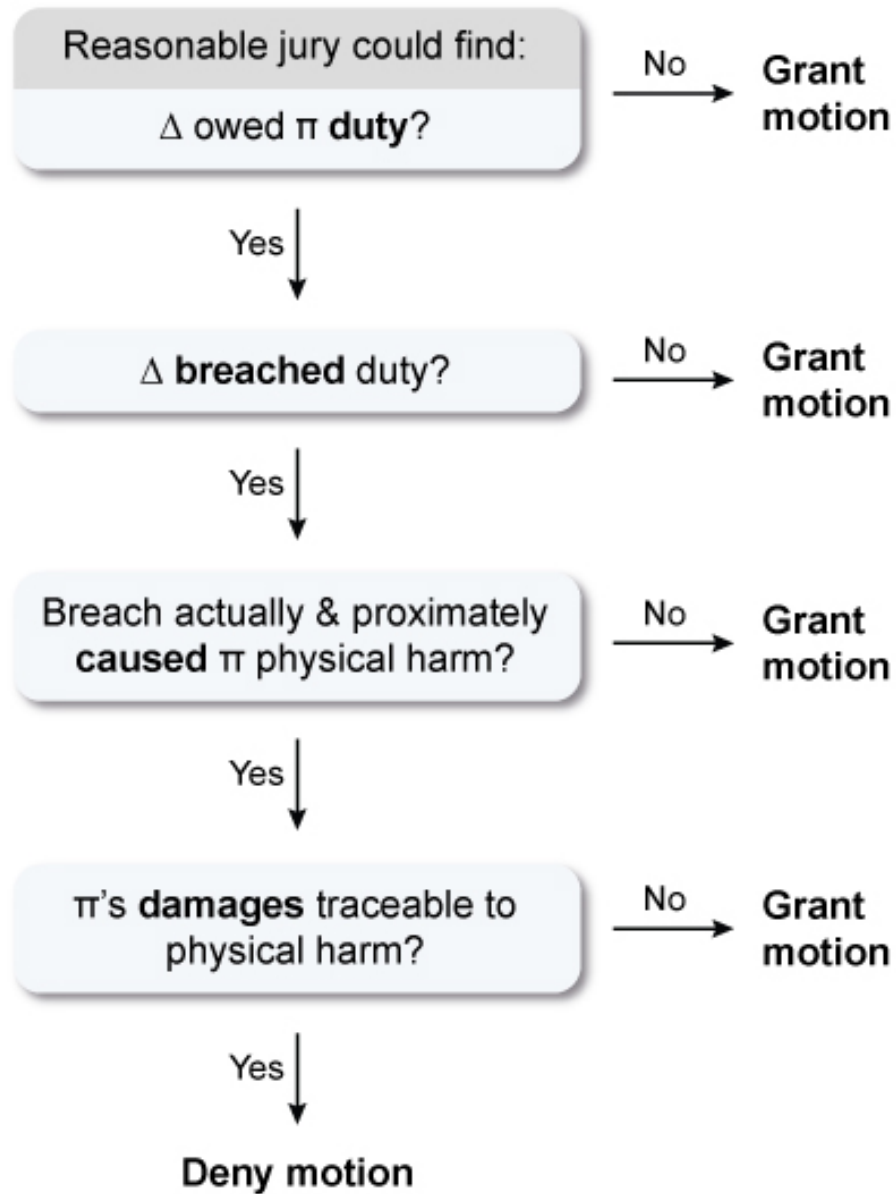
Restatement (Second) of Torts § 342 (Am. Law Inst. 1965) (duty to licensees).

Fed. R. Civ. P. 50(a) (judgment as a matter of law).

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Defendant's motion for judgment as a matter of law (negligence claim)



Δ = defendant; π = plaintiff