

A man has a small trampoline in his backyard which, as he knows, is commonly used by neighbor children as well as his own. The trampoline is in good condition, is not defective in any way, and normally is surrounded by mats to prevent injury if a user should fall off.

Prior to leaving with his family for the day, the man leaned the trampoline up against the side of the house and placed the mats in the garage. While the family was away, a new boy in the neighborhood, aged 11, wandered into the man's yard and saw the trampoline. The boy had not previously been aware of its presence, but having frequently used a trampoline before, he decided to set it up and started to jump. He lost his balance on one jump and took a hard fall on the bare ground, suffering a serious injury that would have been prevented by the mats.

An action has been brought against the man on the boy's behalf to recover damages for the injuries the boy sustained from his fall. In this jurisdiction, the traditional common law rules pertaining to contributory negligence have been replaced by a pure comparative negligence rule.

If the boy's suit fails, what will be the most likely reason?

- A. An 11-year old child who has frequently used a trampoline should reasonably understand the danger of using a trampoline without mats.
- B. The boy did not know about the trampoline before entering the man's yard and thus was not "lured" onto the premises.
- C. The boy entered the man's yard and used the trampoline without the man's permission.
- D. The boy failed to exercise reasonable care commensurate with his age, intelligence, and experience.

Explanation:

Under the **attractive nuisance doctrine**, land possessors have a **duty** to exercise reasonable care to **protect child trespassers** from **artificial (ie, man-made) conditions** on their land when:

the condition is located where the land possessor knows or should know that **children are likely to trespass**

the land possessor knows or should know that the condition poses an **unreasonable risk of serious bodily harm** or death to children

children of the trespasser's age **cannot reasonably discover or appreciate** the risk *and*

the **risk outweighs** the condition's **utility and the burden** of eliminating the risk.

A land possessor who breaches this duty and causes the child trespasser physical harm is liable for negligence.

Here, the 11-year-old boy was a trespasser because he wandered into the man's yard without permission. The boy then suffered a serious injury when he fell off the man's trampoline (artificial condition). But an 11-year old child—especially one who has frequently used a trampoline—should reasonably understand the risk of using a trampoline without mats. Therefore, the attractive nuisance doctrine does not apply, and the boy's suit will likely fail.

(Choice B) Traditionally, the attractive nuisance doctrine only applied when the child was attracted (ie, lured) onto the property by the artificial condition. But since this is no longer required, the fact that the boy did not know about the trampoline before entering the man's yard is irrelevant.

(Choice C) Although the boy trespassed by entering the man's yard without permission, the boy could have recovered had the attractive nuisance doctrine applied.

(Choice D) The boy's failure to exercise reasonable care commensurate with his age, intelligence, and experience would completely *bar* his recovery if traditional **contributory negligence** rules applied. But this jurisdiction has adopted a pure comparative negligence rule, which would only *reduce* his recovery.

Educational objective:

Under the attractive nuisance doctrine, land possessors have a duty to protect child trespassers from artificial conditions on their land under certain circumstances. But this doctrine does not apply when children of the trespasser's age could reasonably discover or appreciate the risk presented by the condition.

References

Restatement (Second) of Torts § 339 (Am. Law Inst. 1965) (attractive nuisance doctrine).

Attractive nuisance doctrine
(land possessor's duty to child trespassers)

