

A bright 12-year-old child attended a day-care center after school. The day-care center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice-skating when conditions were suitable.

At a time when the pond was obviously only partially frozen, the child sneaked away from the center's property and walked out onto the ice over the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby.

At the time of the incident, the pond was clearly marked with numerous signs that stated, "THIN ICE—KEEP OFF." When the child sneaked away from the day-care center, the center was staffed with a reasonable number of qualified employees, and the employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. There had not been a previous instance of a child coming onto the corporation's property from the day-care center.

The jurisdiction follows a rule of pure comparative negligence.

In a suit brought on the child's behalf against the corporation and based only on the facts above, who is likely to prevail?

- A. The child, because the corporation owes a duty to keep its premises free of dangerous conditions.
- B. The child, because the pond was an attractive nuisance.
- C. The corporation, because the danger of thin ice may reasonably be expected to be understood by a 12-year-old child.
- D. The corporation, because the day-care center had a duty to keep the child off the ice.

## Explanation:

### Attractive nuisance doctrine

(land possessor's duty to child trespassers)

Duty to protect child trespassers from artificial condition on land when:

condition exists where land possessor knows or should know children are likely to trespass  
land possessor knows or should know condition poses unreasonable risk of death or serious bodily harm to children

children of trespasser's age cannot reasonably discover or appreciate risk *and*  
risk outweighs condition's utility and burden of eliminating risk

Land possessors owe only limited **duties to trespassers**. But most jurisdictions apply a special rule to child trespassers since they lack the same experience and judgment as adults. This rule, known as the **attractive nuisance doctrine**, gives land possessors the **duty to protect child trespassers from artificial (ie, man-made) conditions** on the land when:

the condition exists 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 is liable for negligence if he/she breaches this duty (ie, fails to exercise reasonable care) and causes the child physical harm.

Here, the 12-year-old child was injured when he trespassed on the corporation's property and fell through obviously thin ice on its man-made pond (artificial condition). But a 12-year-old child may reasonably be expected to understand the danger of thin ice—especially since the pond was clearly marked with numerous warning signs. As a result, the pond was not an attractive nuisance and the corporation will likely prevail **(Choice B)**.

**(Choice A)** The corporation owed no duty to the child since the attractive nuisance doctrine does not apply. But even if it did, that duty would be to exercise reasonable care to protect him from the artificial condition—not to keep the premises free of dangerous conditions.

**(Choice D)** The day-care center's duty to protect the child (eg, by keeping him off the ice) would not negate the corporation's liability had the attractive nuisance doctrine applied.

**Educational objective:**

The attractive nuisance doctrine governs the duty of land possessors to protect child trespassers from artificial conditions on their land. But this doctrine does not apply when children of the trespasser's age can reasonably discover or appreciate the risk presented by the condition.

**References**

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

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.