

A woman went hunting in a remote forest at the beginning of winter, when no other hunters were in the area. Tired after a long day and fearing a possible snowstorm, the woman decided to stay at her brother-in-law's cottage rather than drive home. The cottage was located near several identical cottages, all of which were unoccupied. The woman entered a cottage that she thought was owned by her brother-in-law but actually belonged to someone else.

The owner of the cottage knew that uninvited hunters used the cottage during the summer and that one of those hunters had damaged the fireplace, rendering it hazardous to use. However, because the owner had posted no warning about the defective fireplace, the woman had no idea that it was defective and started the fireplace. Due to the defect in the fireplace, the cottage went up in flames, causing her to sustain third-degree burns on her arms and legs.

The woman sued the owner of the cottage to recover for her injuries.

Is the woman likely to prevail?

- A. No, because the owner had no duty to warn trespassers of the defective fireplace.
- B. No, because the woman was an unknown and unanticipated trespasser.
- C. Yes, because it was reasonably necessary for the woman to take shelter in the cottage and start the fireplace for warmth.
- D. Yes, because the owner knew that the fireplace was defective and had an affirmative duty to repair it.

## Explanation:

### Land possessor's duty to land entrants

(traditional approach)\*

Status	Characteristics	Duty
<b>Trespasser</b>	Intentionally enters land without permission	Known or frequent trespassers – warn of known artificial dangers & use reasonable care in active operations Unknown or unanticipated trespassers – no duty
<b>Licensee</b>	Enters land with permission (eg, social guest)	Warn of known latent dangers & use reasonable care in active operations
<b>Invitee</b>	Enters land open to public (eg, churchgoer) Enters land for business purpose (eg, store customer)	Inspect for unknown dangers Make premises safe or provide adequate warnings Prevent harm from active operations

\*In jurisdictions that follow the modern approach, land possessors owe a duty of reasonable care to all land entrants, except flagrant trespassers.

A land possessor owes a **duty** of reasonable care to **foreseeable plaintiffs** who enter the land. But a land possessor owes **no duty to trespassers**—ie, persons who intentionally enter another's land without permission—**unless** the land possessor **knows of or has reason to anticipate** their presence. A land possessor who breaches this duty and causes the plaintiff physical harm is liable for negligence.

Here, the woman was a trespasser because she intentionally entered the cottage without the owner's permission, thinking that it belonged to her brother-in-law. Her presence was *unforeseeable* because the owner (1) did not know that the woman was present and (2) had no reason to anticipate her presence since no other hunters were in the area during winter. The owner therefore did not owe the woman a duty of care, and she likely will *not* prevail.

**(Choice A)** A land possessor has a duty to warn known or anticipated trespassers (here, the summer hunters) about known, artificial (ie, man-made) dangers. But since the woman was an unknown and unanticipated trespasser, the owner owed the woman no such duty.

**(Choice C)** Despite the woman's fear of a possible snowstorm, it was not necessary for her to stay at the cottage because she could have driven home (ie, no **private necessity**). But this fact is irrelevant because the owner's duty depends on whether the woman's presence was foreseeable.

**(Choice D)** Land possessors generally have a duty to use reasonable care to prevent harm to persons on their land (eg, to repair known defects). But this duty does not extend to unanticipated trespassers such as the woman.

**Educational objective:**

A land possessor owes no duty of reasonable care to unforeseeable plaintiffs (eg, undiscovered or unanticipated trespassers).

**References**

Restatement (Third) of Torts § 7 (Am. Law Inst. 2010) (duty of reasonable care).

Restatement (Second) of Torts § 333 (Am. Law Inst. 1979) (no duty to unknown trespassers).

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