Torts – Chapter 11 and Chapter 12

Chapter 11, Defenses not on the Merits (page 283); Part 5, Limiting or Expanding the Duty of Care (page 297)

Chapter 12, Carriers, Host-Drivers, and Landowners (pages 299-312, 316-28)

FROM CLASS

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Statute of Limitations

* Not peculiar to Tort law
* Two distinct purposes:
	+ Bar stale claims, the presentation of which might be unfair or costly because evidence is lost or changes with time
	+ Ensure there is no indefinite carrying time
* Claim accrues
	+ When the claim accrues, starting the ticking of the limitations period time clock, is often a contested issue.
* Only commencement of the action is required
* FROM CLASS
	+ “Tolled” – capacity or out of state.
	+ When a case accrues
		- Someone injured
		- Someone discovered they were injured
	+ In Florida – statutory 95.11
		- Intentional 4 years
		- Negligence – 4 years
		- Wrongful acts – 2 years

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Limiting or Expanding the Duty of Care

* Duty
	+ Definition – it is a standard or general principle that measures the defendant’s obligations
	+ Typically – the normal duty is the duty to use the care of the reasonable, prudent person under the same or similar circumstances

Pg. 299

* Carriers and Host Drivers
	+ **CASE: Doser v. Interstate Power (Pg. 299)**
		- PURPOSE: Illustrate one type of special relationship duty
		- COURTS:
		- FACTS: Car turns left in front of D’s bus => passenger P was injured
		- ISSUE:
		- RULE: A carrier of passengers for hire must exercise more than ordinary diligence for their protection… It is bound to protect its passengers as far as human care and foresight will go and is liable for slight negligence
		- ANALYSIS:
		- FROM OTHER OUTLINE
			* **Just an example of an extended duty due to status of passenger.**
				+ Opposite of a normal driver who owes a much lower duty of care to their passengers.
				+ Enacted to prevent collusion of “friends” who would stage an accident to rip off $$$
			* Guest Passenger Statutes
				+ Enacted to encourage hospitality in allowing extra riders
	+ NOTE 1 – A high degree of care. How is it defined? Must be exercised in foreseeing as well as guarding against, danger.
	+ NOTE 2 – Contemporary Rules – most courts have rejected high degree of care in favor of general negligence standard
	+ NOTE 3 – Rationale – the degree of care which would be exercised by a very cautious and prudent person. Passengers must feel safe when traveling.
	+ NOTE 4 - common carriers – one who undertakes to transport all persons indiscriminately and is in the business of carrying passengers.
* Alabama Code 32-1-1
	+ - Must refrain from willful or wanton misconduct
		- Non paying guests
	+ NOTE 1 – Lower Standards
		- Gross negligence and bad state of mind
	+ NOTE 2 – Who is a guest?
		- Who is a guest?
	+ NOTE 3 – Guest Statutes
		- Antiquated and discriminatory
	+ NOTE 4 – Limited Duties
		- Era of guest statutes is over.
* Landowners – Duties to trespassers, licensees, invitees, children
* FROM CLASS
	+ Common law duties to entrants on land
		- Invitee: Duty of care
		- Trespasser/Licensee: Avoid willful and wanton misconduct
		- Discovered Trespasser: Duty to warn
	+ Strays
		- Foreseeable entrance
	+ Hazards on adjacent lands
		- No duty
	+ Passerbys
		- Trees are likely to fall on passerbys
	+ **CASE: Gladon v. Greater Cleveland Regional Transit (pg. 301)**
		- PURPOSE: illustrate landowner duties
		- COURTS: There were two issues at trial: claim of negligent security and claim of negligent train operation. Trial court granted summary judgment on negligent security claim. Trial court overruled defendant’s motion for directed verdict. Jury verdict for Plaintiff (Gladon) for $2.7mm in damages. Defendant (Greater Cleveland RTA) appeals.
		- FACTS: Gladon went to a night game with friends. After going to the restroom he could not find them so he boarded the train alone and exited at the wrong station. There, he was attacked by two males and found himself on the tracks rolled up in a ball. The train operator saw him and pulled the emergency brakes. However the train struck him.
		- ISSUE: Did the duty extend to Gladon after he became a trespasser?
		- RULE:
		- ANALYSIS:
			* Invitees are persons who rightfully come upon the premises of another by invitation, express or implied, for some purpose beneficial to the owner.
			* Invitee only while on that part to which his invitation extends.
			* Outside that part, he becomes a trespasser or licensee, depending upon whether he goes there without the consent of the possessor or with such consent.
			* Trespasser Duty – a landowner owes no duty to a licensee or a trespasser except to refrain from willful, wanton or reckless conduct which is likely to injure him.
		- NOTE 1 – Traditional Rule
			* Classifies entrants as trespassers, licensees, or invitees
			* Trespasser: is any person who has no legal right to be on another’s land and enters the land without the landowner’s consent
			* Invitee: any person on the premises (1) at least in part of the benefit of the landowner or (2) who is on premises held open to the general public.
			* Licensee: is someone who is on the land with permission, but with a limited license to be there.
		- NOTE 2 – Social Guests
			* Social guests are considered licensees
		- NOTE 3 – Classifying Entrants
			* Would a hotel guest’s guest count as an invitee
		- NOTE 4 – changing categories
		- NOTE 5 – Duty owed to invitees
			* Owe a duty of reasonable care to invitees
		- NOTE 6 - Duty owed to trespassers and licensees
			* Undiscovered
				+ Landowners do not owe a duty of reasonable care to either trespassers or licensees
				+ Landowners owe only the duty to avoid intentional, wanton, or willful injury
			* Discovered
				+ Must try to warn
			* Undiscovered, but know they frequent
	+ **CASE: Bennett v. Stanley (Pg. 307)**
		- PURPOSE: What level of duty is owed a child trespasser
		- COURTS: Trial court granted summary judgment. The appeals court affirmed. The summary judgment was granted finding the decedents were trespassers and the only duty owed them was to refrain from wanton and willful misconduct. Reversed and remanded
		- FACTS: Bennetts moved in next door to the Stanleys. The Stanleys had a swimming pool which they had allowed to fill with rainwater, grow algae. The pool had no ladders. In addition the Stanleys had taken down fencing. The Bennetts had small children who would sometimes look for frogs at the pool. On the afternoon of the incident the five year old boy, Chance was playing with his sister looking for frogs. He fell in. His mother drowned trying to save him.
		- ISSUE:
		- RULE: Children are entitled to a greater level of protection than adults are
		- ANALYSIS: Court has traditionally held that children have a special status. Duty of care is greater than that required to an adult under the same circumstances. Landowners duty is defined by the status of the plaintiff and that children, even child trespassers, are accorded special protection. The attractive nuisance doctrine.
	+ Attractive Nuisance Doctrine – A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition
		- The place where the condition exists – children likely
		- Unreasonable risk or death
		- Because of youth, children do not realize the risk
		- Maintaining cost is slight compared with the risk
		- The possessor fails to eliminate the danger
	+ NOTE 1 – attractive nuisance rule – widely accepted
	+ NOTE 2 – tender years – Typically grade school or younger
	+ NOTE 3 – Something other than the nuisance
	+ NOTE 4 – identifying nuisance
	+ **CASE: Kentucky River Medical Center v. McIntosh (Pg. 312)**
		- PURPOSE: Landowners.
		- COURTS: Hospital moved for summary judgment. Denied.
		- FACTS:
		- ISSUE:
		- RULE:
		- ANALSYS: Open and Obvious doctrine. Landowners owe a duty to invitees to discover unreasonably
	+ Open and Obvious Conditions
		- A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness
	+ Page 316
		- NOTE 1
* The Firefighters Rule (Pg. 318)
	+ **CASE: Minnich v. Med-Waste (Pg. 318)**
		- PURPOSE: to answer the question of the firefighters rile
		- COURTS: Federal Judge certified question to SC
		- FACTS: Assisted in loading medical waste into defendant’s truck. Plaintiff noticed truck begin to roll forward. He ran forward, jumped in, and stopped the truck.
		- ISSUE: Is plaintiff’s claim barred by firefighters rule?
		- RULE:
		- ANALYSIS: Common law originated in 1892. Firefighter as a licensee and was afforded such care. Many courts reason firefighters and police are aware of risks in their profession. Second, sometimes they enter at times that are unforeseeable. Third, courts argue the public has already trained them and pays them.
	+ NOTE 1 – States disagree on the merits of the rule.
	+ NOTE 2 –
	+ NOTE 3 – some states see it as public policy
	+ NOTE 4 – Expansions – building inspectors?
	+ NOTE 5 – Private rescuers – has no application to private rescuers.
	+ NOTE 6 – Privately employed rescuers – had no application.
	+ NOTE 7 – Wrongdoing
		- Does not foreclose suit against intentional wrongdoer
		- Does not foreclose suit from violation of ordinance
		- Does not foreclose suit from harms not inherent
* Adopting Reasonable Care Standard for Landowners (Pg. 323)
	+ 1968 Cal. Sup. Ct. – held that landowners and occupiers would be subject to the duty of ordinary care to those upon the land.
	+ **CASE: Scurti v. City of New York (Pg. 324)**
		- PURPOSE: illustrate changing duty versus status of plaintiff
		- COURTS:
		- FACTS: 14-year old boy was electrocuted in a railroad yard after crawling through a hole in the fence.
		- ISSUE:
		- RULE:
		- ANALYSIS: Must use reasonable care. The defendant can always show it would have been unduly burdensome to prevent injury. The plaintiff entered without permission and that is important too.
	+ NOTE 1 – Negligence Standard – not liable unless negligent
	+ NOTE 2 –
* Recreational Uses (Pg. 326)
	+ Owner of real estate owes no duty of care to keep the premises safe for entry or others for recreational uses.
* Lessors (Pg. 327)
	+ A lease is a conveyance of land
	+ The lessee is the “owner” of the land
	+ Duty of reasonable care
		- The portions of the leased premises over which the lessor retains control
		- The conduct of the lessor creating risks
		- Disclosure of certain dangerous conditions
	+ Problems Christie v. Embry
	+ Problems Padget v. Owen