31 PREMISES LIABILITY

General Background on Liability of Landowners

Up until 1977, Alaska generally followed the views expressed in the Restatement (Second) of Torts with regard to the duty of care owed by the owner or possessor of land towards those entering upon that land. The Alaska Supreme Court re-examined the basis for its prior decisions and concluded that the rigid common law classifications of trespassers, licensees, and invitees added confusion to the law and were no longer desirable.[1] The court joined other jurisdictions, which rejected those categories, and Alaska no longer predicates the potential liability of a landowner upon the status of the person entering upon the land. Instead, the Alaska Supreme Court chose to apply ordinary principles of negligence to govern the conduct of a landowner. Consequently, Alaska adopted the following rule:

> A landowner (a term encompassing occupiers and possessors of land) must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden on the respective parties of avoiding the risk.[2]

Without formally recognizing it as a break with the Restatement, the Alaska Supreme Court had previously adopted a similar rule in connection with claims against the State of Alaska alleging improper maintenance of state highways.[3] The State is required to act with the amount of care that a reasonably prudent person would use under the same or similar circumstances.[4]

The Alaska Supreme Court has held that the State was immune from liability after an injured motorist sued the State, alleging that the State had negligently left boulders in a right of way.[5] The court held that the State was entitled to immunity, where its decision as to whether it should put up a guardrail was within its discretion.

Even though the common law categories of trespasser, licensee and invitee have been eliminated, the court has recognized that the foreseeability of the person's presence on the land is relevant, since it determines in part the likelihood of injury to that person and the extent to which the landowner must take action or the interest it must sacrifice to avoid the risk of injury to that person. Consequently, the

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[1] *Webb v. City and Borough of Sitka*, 561 P.2d 731 (Alaska 1977).

[2] *Webb*, 561 P.2d at 733; *see also Hibschman v. City of Valdez*, 821 P.2d 1354, 1359 (Alaska 1991).

[3] *State v. Abbott*, 498 P.2d 712, 725 (Alaska 1972).

[4] *Leigh v. Lundquist*, 540 P.2d 492, 494 (Alaska 1975).

[5] *Wells v. State*, 46 P.3d 967 (Alaska 2002).

circumstances of the person's presence on the land do have some relation to ultimate liability. As the Alaska Supreme Court stated in *Division of Corrections v. Neakok*, 721 P.2d 1121, 1125 (Alaska 1986), in the context of a claim against the state alleging negligence in failing to impose special conditions of release at the time of parole of an individual with dangerous propensities, "the most important single criterion for imposing a duty of care is foreseeability." Ultimately, the determination of liability is to be based on the totality of relevant circumstances, not the mere classification of the plaintiff.

Implicitly included is the duty to warn of hidden or latent dangers of which the entering person is unaware. In this regard, the Alaska Supreme Court followed the lead of the California Supreme Court in *Rowland v. Christian*, 443 P.2d 561 (Cal. 1968), where it was held that if a landowner is aware of a concealed (*i.e.*, latent) condition involving an unreasonable risk of harm to those coming in contact with it, a failure to warn or repair constitutes negligence. Whether or not those entering upon the land have a right to expect that such dangerous conditions will be remedied, they are entitled to be warned of the dangerous condition so they can take precautions.

In the construction context, and in the absence of facts imposing other duties, such as where the landowner retains control over the work or responsibility for certain safety measures (an area of law discussed in greater detail below), the landowner's duty to warn of latent hazardous conditions can be satisfied by warning or giving notice to the independent contractor or to other supervisory personnel, even if the warning is not in turn passed on to subcontractors or their employees.[6] In this regard, Alaska has expressly rejected the idea that the landowner must warn each and every worker on a job site of a latent hazardous condition of the land.

Generally, the former possessors of land are not liable for injuries caused to others while upon the land by any dangerous condition, natural or artificial, which existed when the possession of the land was transferred.[7] However, the Alaska Supreme Court has adopted the Restatement (Second) of Torts § 385 that states that an independent contractor is held to the standard of reasonableness for the protection of third-parties who may foreseeably be endangered by his negligence, even after acceptance of the work by the owner/contractee.[8]

Causation – the link between the defendant's breach of duty and the harm to plaintiff – is a required element of all personal injury cases. Generally, in order to have his or her case heard by a jury, the plaintiff must come forward with facts sufficient for a reasonable juror to conclude that the landowner's alleged breach of duty was more likely than not a substantial factor in causing plaintiff's injury. The Alaska Supreme Court reached the conclusion that the fact that the landowner negligently maintained a dangerous stairway, and that plaintiff was found severely injured at the bottom of the

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[6] *Moloso v. State*, 644 P.2d 205, 219-220 (Alaska 1982).

[7] *Brock v. Rogers & Babler,* 536 P.2d 778 (Alaska 1975).

[8] *Brent v. Unicol,* 969 P.2d 627 (Alaska 1998).

stairway, with no recollection as to how she got there, was enough for a jury to reasonably infer that the dangerous condition of the stairs caused the injury.[9]

Doctrine of Attractive Nuisance

The Alaska Supreme Court has held that the doctrine of attractive nuisance only permits a child to recover for injuries caused by land condition if the child, because of his or her youth, does not discover the condition or realize the risk involved.[10] If the risk that the condition presents is obvious even to a child, the doctrine does not apply and child injured by that risk cannot recover.

Snow and Ice Cases

The traditional rule of both English and American courts has been that landowners are under no affirmative duty to remedy conditions that are purely natural in origin, even though they may be highly dangerous or inconvenient to those who may enter the land, or to neighbors. An exception was recognized where the landowner altered his land such that the resulting hazardous condition was no longer considered a natural one.[11] As noted by Dean Prosser, the rule of non-liability for natural conditions was a practical necessity in early days, when land was largely in a primitive state, but it is not suited to cities.

In 1994, the Alaska Legislature, in an effort to immunize private landowners for personal injury or death occurring on unimproved land, adopted AS 09.65.200, which is a law similar to the concept outlined by Prosser.

The statute was analyzed extensively in *University of Alaska v. Shanti*, 835 P.2d 1225 (Alaska 1992), where the court adopted a multi-step process to determine whether a particular tract of land was entitled to the immunity provided by the statute. The court determined that summary judgment could be granted where reasonable minds could not disagree as to the condition of the land. Under the court's rationale, however, a quasi-abandoned ski hill was not unimproved land since the University mowed it during the summer. However, the mere placement of warning signs did not constitute "improvements" under the statute.

Beginning in the context of the business-invitee-private possessor of land, Alaska modified the traditional "natural-unnatural accumulation of ice and snow" rule, and concluded that a possessor of land may very well be obligated under the circumstances to undertake affirmative steps to clear ice and snow or otherwise remedy conditions which amount to unreasonable risks of harm to those entering the property.[12] The mere

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[9] *Hinman v. Sobocienski*, 808 P.2d 820 (Alaska 1991).

[10] *Schumacher v. City and Borough of Yakutat*, 946 P.2d 1255 (Alaska 1997).

[11] *See* William L. Prosser, *The Law of Torts*, § 57 at 354-55 (4th ed. 1971).

[12] *Kremer v. Carr's Food Ctr.*, 462 P.2d 747, 751-752 (Alaska 1969).

fact that snow and ice conditions prevail for many months throughout various regions of the state is not in and of itself sufficient rationale for insulating possessors of land from liability. Nor do such climatic conditions negate the possibility that the possessor should have anticipated harm to those entering the property despite their knowledge of the dangerous snow and ice conditions, or the general obviousness of such conditions.

On the other hand, the **possessor of land is not the insurer** of the safety of those entering the land, and Alaska does not adopt a requirement that the possessor attempt to keep the land **free** of ice and snow. Dependent on the circumstances, reasonable care may be demonstrated by other acts, such as sanding of the area or the application of salt.[13] After all, icy conditions are virtually unavoidable in Alaska. In the context of a worker's compensation claim, slipping on an icy street has been found to be a "common hazard" such that a slipping injury will not, for that reason at least, fall within the "special hazard" exception to the "going and coming rule"[14] under Alaska's worker's compensation system.[15] On the other hand, an employee who slipped on ice walking from the city parking garage to the municipal building was held to have a compensable injury.[16]

Landlord and Tenant Obligations

Alaska has adopted the Uniform Residential Landlord Tenant Act. Under AS 34.03.100, landlords have a duty to "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition," and to "keep all common areas of the premises in a clean and safe condition."

In one case, a tenant brought a slip-and-fall action against a landlord for injuries caused when the tenant fell on a wet board walkway on the leased premises.[17] The walkway was not part of the "common areas" because it was for the sole use of the tenant. Traditionally, and consistent with AS 34.03.120, it is the tenant's obligation to "keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit." However, the court rejected the traditional rule that the landlord is not liable for dangerous conditions that are contained within the leased premises, holding that the landlord has a "continuing" duty to make the "permanent" types of repairs necessary to keep the premises in a fit and habitable condition. The tenant must still show that the landlord either knew or should have known of the defect in question and that the landlord had a reasonable opportunity to repair it.

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[13] *Kremer*, 462 P.2d at 752.

[14] Under the "going and coming rule," travel between home and work is considered a personal activity, and injuries occurring off the work premises during such travel are generally not compensable under worker's compensation acts. *See generally* 1 A. Larson, Workmen's Compensation, §15 (Desk ed. 1990).

[15] *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286, 293 (Alaska 1991).

[16] *Municipality of Anchorage v. Robertson*, 35 P.3d 12 (Alaska 2001).

[17] *Newton v. McGill*, 872 P.2d 1213 (Alaska 1994).

The duty of care extends to commercial landlords. Lessors of commercial property owe a duty of care to tenants' employees. In another case, the Alaska Supreme Court held the duty is to exercise reasonable care under the circumstances.[18]

Appendices:

AS 09.65.200
AS 34.03.100 – 120

[18] *Sauve v. Winfree*, 985 P.2d 997 (Alaska 1999).

Sec. 09.65.200. Tort immunity for personal injuries or death occurring on unimproved land. (a) An owner of unimproved land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if

(1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and

(2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.

(b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932 (R.S. 2477).

(c) In this section, "unimproved land" includes land that contains

(1) a trail;

(2) an abandoned aircraft landing area; or

(3) a road built to provide access for natural resource extraction, but which is no longer maintained or used. (§ 1 ch 138 SLA 1980; am §§ 2, 3 ch 168 SLA 1988)

Sec. 34.03.100. Landlord to maintain fit premises. (a) The landlord shall

(1) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(2) keep all common areas of the premises in a clean and safe condition;

(3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(4) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to ensure safety to the tenant's person and property; and

(7) provide smoke detection devices as required under AS 18.70.095.

(b) A landlord of a single family residence located in an undeveloped rural area or located where public sewer or water service has never been connected is not liable for a breach of (a)(3) or (5) of this section if the dwelling unit at the beginning of the rental agreement did not have running water, hot water, sewage, or sanitary facilities from a private system.

(c) The landlord and tenant of a one- or two-family residence may agree in writing that the tenant perform the landlord's duties specified in (a)(4), (5), (6), and (7) of this section. A tenant may agree to perform the duties specified in (a)(3) of this section in rental units where the rent exceeds $2,000 a month. They may also agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but the tenant may not agree to maintain elevators in good and safe working order. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set out in a separate writing signed by the parties and supported by adequate consideration; and

(2) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of a separate agreement described in (d) of this section as a condition to an obligation or performance of a rental agreement. (§ 1 ch 10 SLA 1974; am §§ 3, 4 ch 129 SLA 1988; am § 18 ch 121 SLA 1994)

Sec. 34.03.110. Limitation of liability. (a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance. However,

(1) the landlord remains liable to the tenant for the property and money to which the tenant is entitled under AS 34.03.070, unless the property and money are specifically assigned to and accepted by the purchaser; and

(2) the provisions of

(A) a premises condition statement prepared under AS 34.03.020(e) between the landlord and the tenant remains valid as between the purchaser and the tenant until a new premises condition statement is entered into between the purchaser and the tenant; and

(B) a contents inventory prepared under AS 34.03.020(e) between the landlord and the tenant remains valid as between the purchaser and the tenant for the contents remaining on the premises after the conveyance of the premises until a new contents inventory is entered into between the purchaser and the tenant.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management. (§ 1 ch 10 SLA 1974; am § 19 ch 121 SLA 1994)

Sec. 34.03.120. Tenant obligations. (a) The tenant

(1) shall keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit;

(2) shall dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;

(3) shall keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(4) shall use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators in the premises;

(5) may not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so;

(6) may not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises;

(7) shall maintain smoke detection devices as required under AS 18.70.095;

(8) may not, except in an emergency when the landlord cannot be contacted after reasonable effort to do so, change the locks on doors of the premises without first securing the written agreement of the landlord and, immediately after changing the locks, providing the landlord a set of keys to all doors for which locks have been changed; in an emergency, the tenant may change the locks and shall, within five days, provide the landlord a set of keys to all doors for which locks have been changed and written notice of the change; and

(9) may not unreasonably engage in conduct, or permit others on the premises to engage in conduct, that results in the imposition of a fee under a municipal ordinance adopted under AS 29.35.125.

(b) The tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving gambling or promoting gambling, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises. (§ 1 ch 10 SLA 1974; am § 5 ch 129 SLA 1988; am §§ 20, 21 ch 121 SLA 1994; am § 3 ch 111 SLA 2002)