The “ Attractive Nuisance” Doctrine (3 pages)

UNION PACIFIC RAILWAY COMPANY v. McDONALD.

No. 224.

SUPREME COURT OF THE UNITED STATES

152 U.S. 262; 14 S. Ct. 619; 38 L. Ed. 434; 1894 U.S. LEXIS 2117

In Railroad Co. v. Stout, the principal question was whether a railroad company was liable for an injury received by an infant, while upon its premises, from idle curiosity, or for purposes of amusement, if such injury was, under the circumstances, attributable to the negligence of the company. The facts in that case were these: The railway company owned and used for its roadbed and depot grounds a tract of unenclosed land, in the town of Blair, Nebraska, upon which the company had its depot house, a quarter of a mile from which was a turn-table belonging to it. The plaintiff, a boy a little over six years of age, together with one or two other boys, went to the company's depot, about a half a mile distant, without any definite purpose in view. Upon arriving there, the boys, at the suggestion of one of them, proceeded to the turn-table, about a quarter of a mile distant, travelling along the defendant's roadbed or track. When they reached the turn-table, which was not attended or guarded, nor at that time fastened or locked, revolving easily on its axis, two of the boys commenced to turn it. The plaintiff's foot, while he was attempting to get on it, was caught between the end of the rail on the turn-table, as it revolved, and the end of the iron rail on the main track of the defendant's road, whereby it was badly cut and crushed, resulting in a serious and permanent injury. It appeared in evidence by one of the employes of the company that he had previously seen boys playing at the turn-table, but this fact was not communicated to the officers of the company having charge of the turn-table. The plaintiff had never been at the turn-table before.

The Minnesota case is referred to by Judge Cooley in his Treatise on Torts. Alluding to the doctrine of implied invitation to visit the premises of another, he says: "In the case of young children, and other persons not fully *sui juris*, an implied license might sometimes arise when it would not on behalf of others. Thus, leaving a tempting thing for children to play with exposed, where they would be likely to gather for that purpose, may be equivalent to an invitation to them to make use of it; and, perhaps, if one were to throw away upon his premises, near the common way, things tempting to children, the same implication should arise." c. 10, p. 303.

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THE HISTORY AND DEVELOPMENT OF THE ATTRACTIVE NUISANCE DOCTRINE

Traditionally, courts have distinguished the duties owed to an entrant upon one's land on the basis of the entrant's status as a trespasser, licensee, or invitee. Under the traditional rule a trespasser, defined as "a person who enters or remains upon land in the possession of another without a privilege to do so, created by the possessor's consent or otherwise," has been afforded only a limited amount of protection. The owner or occupier of the land has only owed a trespasser the duty not to inflict harm willfully or wantonly nor trap the entrant once his presence has become known.

An exception to this rule with respect to trespassing children was first enunciated by the United States Supreme Court in Sioux City & Pacific Railroad v. Stout. In Stout a trespassing child was injured while playing with a railroad turntable. For this reason the doctrine originally was known as the "turntable doctrine." Under this doctrine, an owner or occupier of land was liable for injuries to trespassing children caused by conditions or objects on the premises if the occupier knew or should have known that the condition or object was in a place where children were likely to trespass, and the occupier failed to exercise reasonable care to protect against the threatened injury. The Stout decision was based on the foreseeability of injury to a minor, rather than the minor's status as either trespasser, licensee, or invitee. The Stout rationale remains the basis of most actions of this type today.

Two years after Stout was decided the Minnesota Supreme Court, in Keffe v. Milwaukee & St. Paul Railway Co., n27 first used the terminology "attractive nuisance" and enunciated a modified theory based on allurement or attraction. The theory was based on the judicial fiction that the enticement (i.e., the turntable or other similarly hazardous condition that attracted the young child) substituted for an invitation and imposed upon the landowner the duties and obligations owed to an invitee. The United States Supreme Court adopted this "implied invitation" version of the doctrine in 1922 in United Zinc & Chemical Co. v. Britt, n29 stating: "[I]t may be held that knowingly to establish and expose, unfenced, to children of an age when they follow a bait a mechanically as a fish, something that is certain to attract them, has the legal effect of an invitation to them although not to an adult."

THE RESTATEMENT'S REJECTION OF THE ALLUREMENT REQUIREMENT

In 1934, the American Law Institute (A.L.I.) promulgated the Restatement of Torts. In an effort to avoid the judicial fiction of the attractive nuisance doctrine that originated in Keffe, the A.L.I. in section 339 of the Restatement n32 devised a rule which forthrightly recognized the child's status as a trespasser, but nevertheless imposed a carefully limited duty of reasonable care upon the landowner toward the child. That section of the Restatement, entitled "Artificial Condition Highly Dangerous to Trespassing Children," grew out of widespread resistance to the allurement theory upon which Keffe had been based. It has been adopted by the vast majority of American jurisdictions. Thus, the term "attractive nuisance" came to be and remains a misnomer.... The Restatement Rule replaced the allurement theory with a rationale based on foreseeability.

Karsten, "Explaining the Attractive Nuisance Rule" 10 Law & History Rev. 45 ('92)

Attractive Nuisance Doctrine

There is normally no particular care required of property owners to safeguard trespassers from harm, but an attractive nuisance is an exception. An attractive nuisance is any inherently hazardous object or condition of property that can be expected to attract children to investigate or play (for example, construction sites and discarded large appliances). The doctrine imposes upon the property owner either the duty to take precautions that are reasonable in light of the normal behavior of young children--a much higher degree of care than required toward adults--or the same care as that owed to "invitees"--a higher standard than required toward uninvited, casual visitors (licensees).

Nuisance

An obstructive, dangerous or offensive activity, object or condition of property that harms or disturbs others or interferes with the use and enjoyment of property either by particular persons or by the public at large.

Invitee

A person who enters the premises of another by the owner's request or inducement. Customers of a business are considered invitees. The one who invites has an obligation to maintain the property in a safe condition for any invitee.

Agency: an overview

Agency law is concerned with any "principal"-"agent" relationship; a relationship in which one person has legal authority to act for another. Such relationships arise from explicit appointment, or by implication. The relationships generally associated with agency law include guardian-ward, executor or administrator-decedent, and employer-employee.

The law of agency is based on the Latin maxim "Qui facit per alium, facit per se," which means "he who acts through another is deemed in law to do it himself." Agency, in its legal sense, nearly always relates to commercial or contractual dealings.