

Brief Survey of Basic Premise Liability Law of West Virginia

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I. Landowner's Duty to Licensees and to Invitees.

Under common law in many states, a landowner's⁴ duty to a visitor is contingent on the legal classification of the visitor. The duty changes based on whether the visitor is considered a licensee or an invitee. In a landmark 1999 ruling from its Supreme Court, West Virginia officially abandoned this traditional distinction. In its place the court indicated that a landowner would be held to a foreseeability³ test of would the ordinary [person] in the defendant's position, knowing what he knew or should have known; anticipated that harm of the general nature of that suffered was likely to result?³ In Mallett v. Pickens, the Supreme Court further articulated West Virginia's new standards as follows:

We hold that, in determining whether a defendant in a premise liability case met his or her burden of reasonable care under the circumstances to all non-trespassing entrants, the trier of fact must consider (1) the foreseeability that an injury might occur; (2) the severity of injury; (3) the time, manner and circumstances under which the injured party entered the premises; (4) the normal or expected use made of the premises; and (5) the magnitude of the burden placed upon the defendant to guard against the injury.

This new standard is very subjective. It makes obtaining summary judgment in a premise liability case extremely difficult. It also leaves a landowner with little confidence that sufficient safety precautions are being employed to make their property safe and to avoid liability exposure.

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⁴Landowner³ is being used in this article to refer to both owners and possessors of property and is not meant to delineate liability between parties holding interests in a property.

II. Landowner=s Duty to a Trespasser.

While West Virginia abandoned the common law analysis and distinction between licensee and invitee, it still recognizes the common law distinction for a trespasser. As to a trespasser, the landowner need only refrain from willful or wanton injury. West Virginia law defines a trespasser as **A**one who goes upon the property or premises of another without invitation, expressed or implied, and does so out of curiosity, or for his own purpose or convenience, and not in the performance of any duty to the owner. @ Syllabus Point 1, Huffman v. Appalachian Power Company, 187 W.Va. 1, 415 S.E.2d 145 (1991); accord, Waddell v. New River Co., 141, W.Va. 880, 93 S.E.2d 473 (1956).

III. Landowner=s duty to Children

When it comes to children, West Virginia does not recognize the Doctrine of Attractive Nuisance *per se*. However, it does provide a specific standard for children stating:

Where a dangerous instrumentality or condition exists at a place frequented by children who thereby suffer injury, the parties responsible for such dangerous condition may be liable for such injury if they knew, or should have known, of the dangerous condition and that children frequented the dangerous premises either for pleasure or out of curiosity.

So while a landowner is not held to the Attractive Nuisance Doctrine common throughout the country, they are still held to a unique standard when a child sustains injury.