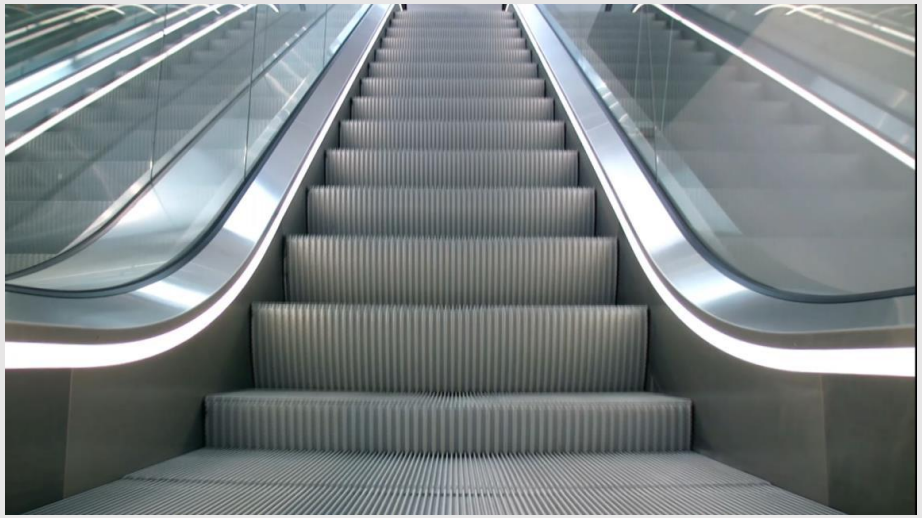

NALI

Premises Liability Investigations

Taking you the Extra Step!

Bearden
INVESTIGATIVE AGENCY
DALLAS HOUSTON FORT WORTH NEW ORLEANS NEW YORK

Wes Bearden, CEO & Chairman

Dallas, Texas

BeardenInvestigations.com

Tip #1 Know Your Elements

- Special Form of Negligence.

- Generally, where an event arises from a dangerous condition of the premises.

- *Western Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005).

Tip #2 Know Your Premises.

- Have to have a Homicide for a Murder.

- You have to have a premises for premises liability.

Tip # 3 Know Your Plaintiff.

Invitee – Someone who enters the premises with the owner's knowledge and consent and for the *mutual* benefit of both parties. **(Employees, Service Repairmen or Patrons of Business).**

Licensee – Someone who enters with the owner's consent but for the licensee's own purpose. **(Social Guests, Hospital Visitors).**

Trespasser – Someone who enters the property without the authority, permission, or invitation of another.

Tip #4 Know Your Duty - Invitee

- **Invitee** – A duty to exercise reasonable care to protect the individual from an unreasonable risk of harm and condition that could be discovered with the exercise of reasonable care. Plaintiff must prove:
- 1. the existence of a condition of the premises creating an unreasonable risk of harm;
- 2. the landlord ***knew or should have known*** of the existence of the condition;
- 3. landlord failed to use reasonable care to reduce or eliminate the risk by rectifying or warning of condition; and,
- 4. such failure was the proximate cause of plaintiff's injury.


• Sometimes you are an invitee.
• But, you can lose your status as well.
• Facts matter and the time that the occur matter.

Tip #5 Know Your Duty - Licensee

- **Licensee** – A duty to not injure a plaintiff willfully, wantonly, or through gross negligence and has a duty to warn only if actual knowledge of a condition exists. Plaintiff must prove:
- 1. A condition on the premises posed an unreasonable risk of harm;
- 2. the landlord ***had actual knowledge*** of the existence of the condition;
- 3. the licensee did not have actual knowledge of the danger; and,
- 4. landlord failed to warn or make safe the condition thus causing plaintiff's injury.

Sampson v. University of Tex. at Austin, 500 S.W.3d 380, 391 (Tex. 2016).

Tip #6 Know Your Duty - Trespasser

- **Trespasser** – A duty to not inure a trespasser willfully, wantonly or by gross negligence. Plaintiff must prove:
- 1. the existence of a condition of the premises creating an unreasonable risk of harm;
- 2. the landlord breached his duty of care by acting willfully, wantonly or with gross negligence; and,
- 3. such failure was the proximate cause of plaintiff's injury.

Coyote Gone Wild?

- *Boerjan v. Rodriguez*, 436 S.W.3d 307 (Tex. 2014).
- No Unlawful Acts Doctrine use Comparative Liability.
- No liability because not Gross Negligence.
-

Tip # 7 – Know Gross Negligence

- Must be:
- “(1) Viewed objectively from the actor’s standpoint, the act or omission complained of must involve an extreme degree of risk considering the probability and magnitude of the potential harm to others; and (2) the actor must have actual, subjective awareness of the risk involved, but proceeds to dos so in conscience indifference to the rights, safety, or welfare of others.”

Tip #8 Know Inadequate Security

- **Generally, no duty.**
- **"Was there a foreseeable and unreasonable risk that the <u>invitee</u> plaintiff would be the victim of a crime on the premises?"**
- You must determine whether any criminal conduct:

1. previously occurred on or near the property (proximity);
2. how recently it occurred (recency);
3. how often it occurred (frequency);
4. how similar the conduct was to the conduct on the property (similarity);
5. whether the landowner knew or should have known of prior criminal activity (publicity)

Timberwalk Apartments, Partners, Inc. v. Cain, 972 S.W.2d 749, 756 (Tex. 1998).

Your State's Test?

Delta Tau Delta v. Johnson, 712 N.E.2d 968, 973 (Ind. 1999);	Doe v. Gunny's Ltd. Partnership,, 256 Neb. 653, 593 N.W.2d 284, 289 (Neb. 1999);	Clohesy v. Food Circus Supermkts., 149 N.J. 496, 694 A.2d 1017, 1021 (N.J. 1997);	Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339, 341 (Ga. 1997);	Nivens v. 7-11 Hoagy's Corner, 133 Wn.2d 192, 943 P.2d 286, 292-93 (Wash. 1997);
McClung v. Delta Square Ltd. Partnership, 937 S.W.2d 891, 899 (Tenn. 1996);	Doe v. Wal-Mart Stores, Inc., 198 W. Va. 100, 479 S.E.2d 610, 616-17 (W. Va. 1996) (per curiam);	Zueger v. Carlson, 542 N.W.2d 92, 97 (N.D. 1996);	Whittaker v. Saraceno, 418 Mass. 196, 635 N.E.2d 1185, 1187 (Mass. 1994);	Ann M. v. Pac. Plaza Shopping Ctr., 6 Cal. 4th 666, 863 P.2d 207, 213-14 (Cal. 1993);
Seibert v. Vic Regnier Builders, Inc., 253 Kan. 540, 856 P.2d 1332, 1338 (Kan. 1993);	*Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 864 P.2d 796, 799 (Nev. 1993);	Taco Bell, Inc. v. Lannon, 744 P.2d 43, 47-48 (Colo. 1987);	Jardel Co., Inc. v. Hughes, 523 A.2d 518, 525 (Del. 1987);	Martinko v. H-N-W Assoc., 393 N.W.2d 320, 321-22 (Iowa 1986).

But, beware...

- *Trammell Crow Cent. Tex., Ltd. v. Gutierrez*, 267 S.W.3d 9 (Tex. 2008)("SIMILAR AND RECENT" = "IDENTICAL AND YESTERDAY?").
- *Del Lago Ptnrs. v. Smith*, 307 S.W.3d 762 (Tex. 2010)(Is a bar fight foreseeable?).
- *UDR Tex. Props., L.P. v. Petrie*, 517 S.W.3d 98 (Tex. 2017)(What is the burden?).

Attractive Nuisance

Tex. Civ. Prac. & Rem. Code § 75.007

- **(b)** An owner, lessee, or occupant of land does not owe a duty of care to a trespasser on the land and is not liable for any injury to a trespasser on the land, except that an owner, lessee, or occupant owes a duty to refrain from injuring a trespasser wilfully, wantonly, or through gross negligence.
- **(c)** Notwithstanding Subsection (b), an owner, lessee, or occupant of land may be liable for injury to a child caused by a highly dangerous artificial condition on the land if:

Tex. Civ. Prac. & Rem. Code § 75.007

- **(1)** the place where the artificial condition exists is one upon which the owner, lessee, or occupant **knew or reasonably should have known that children were likely to trespass**;
- **(2)** the artificial condition is one that the owner, lessee, or occupant knew or reasonably should have known existed, and that the owner, lessee, or occupant realized or **should have realized involved an unreasonable risk of death or serious bodily harm to such children;**
- **(3) the injured child**, because of the child's youth, **did not discover the condition or realize the risk involved in** intermeddling with the condition or coming within the area made dangerous by the condition;
- **(4)** the utility to the owner, lessee, or occupant of maintaining the artificial condition and **the burden of eliminating the danger were slight** as compared with the risk to the child involved; and
- **(5)** the owner, lessee, or occupant **failed to exercise reasonable care to eliminate the danger** or otherwise protect the child.

Attractive Nuisance Cases? Not Many!

- *Meredith v. Chezem*, No. 03-18-00256-CV, 2018 Tex. App. LEXIS 10065 (Tex. App.—Austin Dec. 7, 2018)(ATV is not a dangerous condition).

1. DPPA Attacks
2. Data Privacy Act
3. Pro Act of 2021

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