Mock Class Case
Section 2
Nadav Shoked

SPRECHER V. ADAMSON COMPANIES

30 Cal.3d 358 (1981)

BIRD, Chief Justice.

This case concerns the present validity of the old common law rule which immunized a possessor of land from liability for injury caused by a natural condition of his land to persons or property not on his land.

I.

The following facts are not in dispute. Respondent, South Winter Mesa Associates, a joint venture between respondents The Adamson Companies and Century-Malibu Ventures, Inc., owns a 90-acre parcel of land in Malibu, California. The parcel is bounded on the north by the Pacific Coast Highway and on the south by Malibu Road. Across Malibu Road and opposite the parcel are a number of beach front homes, including the home of appellant, Peter Sprecher.

Respondents' parcel of land contains part of an active landslide which extends seaward from the parcel for some 1,700 feet along Malibu Road and beyond the boundaries of respondents' property. The Sprecher property is situated within the toe of this slide. The landslide, which has been evident since the area was first developed in the early 1900's, is classified as active because it exhibits periodic cycles of activity and dormancy. The parties agree that the slide is a natural condition of the land which has not been affected by any of respondents' activities on the 90-acre parcel.

In March 1978, heavy spring rains triggered a major movement of the slide which caused appellant's home to rotate and to press against the home of his neighbor, Gwendolyn Sexton. As a result, Sexton filed an action against appellant, seeking to enjoin the encroachment of his home upon hers. Appellant cross-complained against Sexton, the County of Los Angeles and respondents [Neither Sexton nor the County of Los Angeles is a party to this appeal]. Specifically, appellant sought damages for the harm done to his home by the landslide. He alleged that such damage proximately resulted from respondents' negligent failure to correct or to control the landslide condition.

Respondents moved for summary judgment, arguing primarily that a possessor of land has no duty to remedy a natural condition of the land in order to prevent harm to property outside his premises. Since the landslide was a natural condition, they argued that they were not liable for the damage to appellant's home.

In opposition, appellant challenged the present validity of the common law rule of nonliability for a natural condition, arguing that the rule is neither premised upon sound public policy nor in accord with modern principles of tort liability.

The trial court ruled in favor of respondents and this appeal followed.

II.

Under the common law, the major important limitation upon the responsibility of a possessor of land to those outside his premises concerned the natural condition of the land. While the possessor's liability for harm caused by artificial conditions was determined in accord with ordinary principles of negligence, the common law gave him an absolute immunity from liability for harm caused by conditions considered natural in origin. No matter how great the harm threatened to his neighbor, or to one passing by, and no matter how small the effort needed to eliminate it, a possessor of land had no duty to remedy conditions that were natural in origin.

This court has held that it will not depart from the fundamental concept that a person is liable for injuries caused "by his want of ordinary care ... in the management of his property or person ..." (Civ. Code, s 1714) except when such a departure is "clearly supported by public policy." (Rowland v. Christian (1968) 69 Cal. 2d 108, 112) Accordingly, common law distinctions resulting in wholesale immunities have been struck down when such distinctions could not withstand critical scrutiny.

There appear to be only five California cases which refer to or deal with the distinction between artificial and natural conditions on land. Three of these decisions were concerned with the question of liability for damage caused by a natural, as opposed to an artificial, condition. Boarts relied on this distinction to deny recovery (Boarts v. Imperial Irrigation Dist., *supra*, at p. 578); Wisher questioned its applicability in an urban setting (Wisher v. Fowler, *supra*, 7 Cal. App. 3d at p. 229); and Harris held that in an urban area, "a landowner is liable for conditions occurring where he fails to exercise reasonable care to (prevent) an unreasonable risk of harm to users of the highway from trees on his property" (Harris v. De La Chapelle, *supra*, 55 Cal. App. 3d at p. 648). This court has not previously addressed the wisdom of the common law rule of nonliability for harm caused by a natural condition to persons outside the premises. Coats v. Chinn, *supra*, 51 Cal. 2d at p. 308, did no more than tacitly recognize that the rule of nonliability existed.

This progression of the law in California mirrors what appears to be a general trend toward rejecting the common law distinction between natural and artificial conditions. Instead, the courts are increasingly using ordinary negligence principles to determine a possessor's liability for harm caused by a condition of the land. The early case of Gibson v. Denton (1896) 4 A.D. 198 was a precursor of this trend. In Gibson, the court held a possessor of land liable for damage caused when a decayed tree on her premises fell on the home of her neighbor during a storm. After noting that the defendant clearly would be liable for the fall of a dilapidated building, or artificial structure, the court observed that it could "see no good reason why she should not be responsible for the fall of a decayed tree, which she allowed to remain on her premises." "(T)he tree was on her lot, and was her property. It was as much under her control as a pole or building in the same position would have been." Thus, "(t)he defendant had no more right to keep, maintain, or suffer to remain on her premises an unsound tree ... than she would have had to keep a dilapidated and unsafe building in the same position."

In more recent years, at least 13 other states and the District of Columbia have begun applying ordinary negligence principles in determining a possessor's liability for harm

caused by a natural condition.

Not surprisingly, all the[] cases [in these states] involved an injury caused by a fallen tree. However, the principles expressed by these courts are not so limited. For example, the court in Dudley v. Meadowbrook, Inc., *supra*, 166 A.2d 743, held that a possessor of land has a "duty of common prudence in maintaining his property, including trees thereon, in such a way as to prevent injury to his neighbor's property."

The courts are not simply creating an exception to the common law rule of nonliability for damage caused by trees and retaining the rule for other natural conditions of the land. Instead, the courts are moving toward jettisoning the common law rule in its entirety and replacing it with a single duty of reasonable care in the maintenance of property. This development is reflected in the Restatement Second of Torts, which now recognizes that a possessor of land may be subject to liability for harm caused not just by trees but by any natural condition of the land.

Furthermore, the courts are not imposing the duty of reasonable care only on possessors of land located in urban and suburban areas. The cases indicate that the duty of reasonable care for the protection of those outside the premises against natural conditions applies even in rural areas.

[C]ourts have questioned the efficacy of a "rural" versus "urban" distinction even as regards the standard of care, noting that with the growth of suburbs and the increase in traffic through rural areas, it has become less workable.

The latest formulation of the duty owed by a possessor of land to persons outside his premises with regard to natural conditions which is set forth in the Restatement Second of Torts still limits the reach of the duty to persons traveling on the public streets and highways. The American Law Institute, however, noted that at the time this formulation was promulgated, the authority was insufficient to support a position regarding whether the duty was owed adjoining landowners as well. Nevertheless, a number of jurisdictions have held a possessor of land liable for harm caused an adjoining landowner by a natural condition of the land. It is difficult to discern any reason to restrict the possessor's duty to individuals using the highways. To do so would create an unsatisfying anomaly: a possessor of land would have a duty of care toward strangers but not toward his neighbor.

In rejecting the common law rule of nonliability for natural conditions, the courts have recognized the inherent injustice involved in a rule which states that "a landowner may escape all liability for serious damage to his neighbors (or those using a public highway), merely by allowing nature to take its course." (Prosser, *supra*, at p. 355.) As one commentator has observed: "(w) here a planted tree has become dangerous to persons on the highway or on adjoining land, and causes harm, the fault lies not in the planting of the tree but in permitting it to remain after it has become unsafe." (Noel, Nuisances from Land in its Natural Condition (1943) 56 Harv. L. Rev. 772, 796-797.)

Proponents of the rule of nonliability for natural conditions argued that a defendant's failure to prevent a natural condition from causing harm was mere nonfeasance. A natural condition of the land was by definition, they argued, one which no human being had played a part in creating. Therefore, no basis for liability existed because a duty to exercise reasonable care could not arise out of possession alone. Conversely, a defendant's failure

to prevent an artificial condition from causing harm constituted actionable misfeasance.

Whatever the rule may once have been, it is now clear that a duty to exercise due care can arise out of possession alone. One example is provided by modern cases dealing with the duty of a possessor of land to act affirmatively for the protection of individuals who come upon the premises. In days gone by, a possessor of land was deemed to owe such a duty of care only to invitees. That is, the duty to act affirmatively was grounded in the special relation between the possessor-invitor and the invitee. Rowland held that whether the individual coming upon the land was a trespasser, a licensee or an invitee made no difference as to the duty of reasonable care owed but was to be considered only as to the issue of whether the possessor had exercised reasonable care under all the circumstances.

Modern cases recognize that after Rowland, the duty to take affirmative action for the protection of individuals coming upon the land is grounded in the possession of the premises and the attendant right to control and manage the premises.

Moreover, the possessor's control and supervisory power over the land has been expressly relied upon by some courts in imposing a duty of reasonable care with regard to a natural condition of the land. Husovsky v. United States, *supra*, 590 F.2d 944, involved a motorist's suit for injuries he sustained when a poplar tree fell on his automobile while he was driving through a public park.

In considering whether the United States had a duty to use reasonable care to protect motorists from hazards posed by natural conditions on the tract, the court reasoned [that] it was the United States that exercised control and supervision over the tract of land on which the tree stood. Accordingly, the court held that "the United States had a duty to exercise reasonable care in its supervision thereof, and thereby became obligated to use reasonable diligence to protect motorists ... from hazards posed by the land."

Thus, it becomes clear that the traditional characterization of a defendant's failure to take affirmative steps to prevent a natural condition from causing harm as nonactionable nonfeasance conflicts sharply with modern perceptions of the obligations which flow from the possession of land. Possession ordinarily brings with it the right of supervision and control. As Justice Mosk has aptly stated, the right of supervision and control "goes to the very heart of the ascription of tortious responsibility ...." (Connor v. Great Western Sav. & Loan Assn. (1968) 69 Cal.2d 850, 874 (dis. opn. of Mosk, J.).)

Another deficiency of the historical justification of the rule of nonliability is simply that it proves too much. Under the traditional analysis, a possessor of land should be excused from any duty to prevent harm to persons outside his land whenever he has played no part in the creation of the condition which threatens the harm, be it artificial or natural. However, most courts recognize that the possessor is under an affirmative duty to act with regard to a dangerous artificial condition even though the condition was created solely by some predecessor in title or possession or by the unauthorized conduct of some other third person "To impose such a duty is to cross the line from misfeasance to nonfeasance" unless the present possessor somehow aggravates the danger. (See Weinrib, The Case for a Duty to Rescue, supra, 90 Yale L.J. at p. 257.)

Interestingly enough, in the cases holding that a possessor has an affirmative duty to prevent harm by a dangerous artificial condition created solely by another, the liability of

the defendant has been predicated upon his possession and control of the artificial condition which caused the harm. Thus, these cases confirm that mere possession with its attendant right to control conditions on the premises is a sufficient basis for the imposition of an affirmative duty to act. In sum, the historical justification for the rule of nonliability for natural conditions has lost whatever validity it may once have had.

In addition, adherence to the rule in California would produce an anomalous result. A possessor of land would owe a duty of care to protect trespassers, invitees and licensees, but not his neighbor, from harms threatened by a natural condition of the land. It has long been established in California that a possessor of land is subject to liability for harm caused a person upon the land by a natural condition. It is difficult to see why this court should support a rule which would allow a trespasser to bring an action in negligence that would be denied a neighbor, where both were standing on either side of the possessor's boundary line and were both struck by a dead limb from his tree.

The distinction between artificial and natural conditions should be rejected.

It must also be emphasized that the liability imposed is for negligence. The question is whether in the management of his property, the possessor of land has acted as a reasonable person under all the circumstances. The likelihood of injury to plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor's degree of control over the risk-creating condition are among the factors to be considered by the trier of fact in evaluating the reasonableness of a defendant's conduct.

III.

Respondents next contend that the summary judgment must be affirmed because appellant failed to introduce admissible evidence sufficient to raise a triable issue of fact regarding the reasonableness of respondent's failure to take affirmative steps to control the landslide condition on the 90-acre parcel.

Respondents' expert witness testified, by affidavit, that it ordinarily would be quite expensive for respondents even to determine the measures required to correct the landslide condition on the 90-acre parcel. Construction of the corrective measures would entail even greater expense. Moreover, it would not be possible for respondents totally to control the landslide. A full solution would require that measures also be taken upon the property of other landowners in the slide area. Finally, respondents' geologist asserted that the measures proposed for control of the slide by appellant's expert witness would be, at best, only slightly effective and that the cost of implementing them, therefore, would not be justified by the benefit to appellant.

On the other hand appellant's evidence establishes that respondents knew or had reason to know of the landslide but did nothing to abate the condition. Further, proper excavation and sloping at the head of the slide together with dewatering might have been effective in preventing the landslide from harming appellant's home.

[A] rational inference can be drawn that effective measures for the control of the slide were within respondents' reach and that such measures would have entailed a substantial expense. Although the cost of implementing only slightly effective measures would not be justified by the benefit to appellant, it can be inferred that the cost of implementing effective

measures might (or might not) be justified by the benefit to appellant and to respondents. Although the case is a close one, the evidence does not conclusively establish that no rational inference of negligence can be drawn under the circumstances of this case.

IV.

The judgment of the trial court is reversed and the cause remanded to the trial court for further proceedings consistent with the views expressed in this opinion.