Are Employers Liable to Visitors Who Suffer Injuries on the Property? – Quiz

Occupiers liability laws require owners to make their property reasonably safe for visitors.

The reason workers who suffer injuries at work don't sue their employers for negligence is workers comp. **The rule:** Workers are guaranteed benefits for their work-related injuries regardless of whether those injuries were the result of their employers' negligence. But the workers comp bar applies only to workers. Visitors and other third parties who get hurt on an employer's property can bring lawsuits for money damages under so-called occupiers liability laws. However, limits apply, as illustrated by the following scenario.

SITUATION

Lightning strikes a light pole near a soccer field owned by the Ontario Town of Whitby, damaging the wires inside the pole and causing electricity to leak into the ground. While aware of the lightning strike, the Town doesn't detect the leak. Later, an 18-year-old girl sitting on the grass beside the pole after playing soccer puts her hand on the grass to get up. The current surges through her and she's electrocuted, suffering serious, but thankfully not fatal injuries. The parents sue the Town under the Ontario *Occupiers' Liability Act* (OLA), which requires owners to make their property

‘reasonably safe’ for and use ‘reasonable care’ to protect visitors from ‘foreseeable harm.’

QUESTION

Do the parents have a valid OLA claim against the Town’

1. No, because the hazard caused by the lightning strike was unforeseeable
2. Yes, because it’s possible that a lightning strike would cause an electricity leak
3. No, because the OLA doesn’t apply to public property
4. Yes, because the fact that the tragedy occurred proves the property wasn’t reasonably safe

ANSWER

1. **The parents don’t have a valid OLA claim because the danger caused by the lightning strike wasn’t reasonably foreseeable.**

EXPLANATION

This scenario, which is based on a 2020 case from Ontario’s Court of Appeal, the highest in the province, illustrates an important point occupiers’ liability in not only Ontario but all parts of the country: The OLA isn’t an absolute guarantee of safety. As with due diligence, the OLA standard for occupiers isn’t perfection but reasonableness based on hazards that could have been reasonably foreseen under the circumstances.

In a close case in which experts from both sides testified, the trial court determined that the hazard in this case wasn’t reasonably foreseeable. Sure, it’s foreseeable that lightning could strike a light pole and cause it to malfunction. But the court reasoned that it wasn’t reasonably foreseeable, noting

that the **type of** damage in this case was totally unique to the extent it:

- Was restricted to the pole's internal wiring;
- Wasn't visible or detectable without an interior inspection; and
- Didn't affect the normal functioning of the lights or cause the circuit breakers to trip.

The Court of Appeal concluded that the ruling was reasonable and refused to overturn it. And the Canadian Supreme Court refused the appeal, leaving the case to stand [*Onley v. Whitby (Town*), 2020 ONCA 774 (CanLII), December 8, 2020].

WHY WRONG ANSWERS ARE WRONG

B is wrong because the fact that a hazard is **possible** doesn't make it reasonably foreseeable. 'Obviously, any harm that has occurred was by definition possible,' the court explained. 'For harm to be reasonably foreseeable, a higher threshold than mere possibility must be met.'

C is wrong because occupiers liability laws do, in fact, apply to public land and landowners. However, the liability of municipalities and governments is often more restricted as compared to liability for private owners.

D is wrong because determination of reasonably foreseeable is based on what's known and should reasonably have been known at the time and not on the basis of hindsight.