

# Duty-Relevant Excerpts from the Restatement (Third) of Torts: Liability for Physical and Emotional Harm

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## § 6 Liability for Negligence Causing Physical Harm<sup>1</sup>

An actor whose negligence is a factual cause of physical harm is subject to liability for any such harm within the scope of liability, unless the court determines that the ordinary duty of reasonable care is inapplicable.

## § 7 Duty [Risk of Physical Harm]<sup>2</sup>

(a) An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm.

(b) In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.

## § 51 General Duty of Land Possessors

Subject to § 52, a land possessor owes a duty of reasonable care to entrants on the land with regard to:

- (a) conduct by the land possessor that creates risks to entrants on the land;
- (b) artificial conditions on the land that pose risks to entrants on the land;
- (c) natural conditions on the land that pose risks to entrants on the land; and
- (d) other risks to entrants on the land when any of the affirmative duties provided in Chapter 7 is applicable [see §§ 37-44 ].

## § 52 Duty of Land Possessors to Flagrant Trespassers

(a) The only duty a land possessor owes to flagrant trespassers is the duty not to act in an intentional, willful, or wanton manner to cause physical harm.

(b) Notwithstanding Subsection (a), a land possessor has a duty to flagrant trespassers to exercise reasonable care if the trespasser reasonably appears to be imperiled and (1) helpless; or (2) unable to protect him- or herself.

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<sup>1</sup> Find and read all of § 6, including the Comment. The Reporters' Note is optional.

<sup>2</sup> Find and read all of § 7, including the Comment. The Reporters' Note is optional.

### **§ 47 Negligent Conduct Directly Inflicting Emotional Harm on Another**

An actor whose negligent conduct causes serious emotional harm to another is subject to liability to the other if the conduct:

- (a) places the other in danger of immediate bodily harm and the emotional harm results from the danger; or
- (b) occurs in the course of specified categories of activities, undertakings, or relationships in which negligent conduct is especially likely to cause serious emotional harm.

### **§ 48 Negligent Infliction of Emotional Harm Resulting from Bodily Harm to a Third Person**

An actor who negligently causes sudden serious bodily injury to a third person is subject to liability for serious emotional harm caused thereby to a person who:

- (a) perceives the event contemporaneously, and
- (b) is a close family member of the person suffering the bodily injury.

### **§ 37 No Duty of Care with Respect to Risks Not Created by Actor**

An actor whose conduct has not created a risk of physical or emotional harm to another has no duty of care to the other unless a court determines that one of the affirmative duties provided in §§ 38-44 is applicable.

**§ 38. Affirmative Duty Based on Statutory Provisions Imposing Obligations to Protect Another**

**§ 39. Duty Based on Prior Conduct Creating a Risk of Physical Harm**

**§ 40. Duty Based on Special Relationship with Another**

**§ 41. Duty to Third Parties Based on Special Relationship with Person Posing Risks**

**§ 42. Duty Based on Undertaking**

**§ 43. Duty to Third Parties Based on Undertaking to Another**

**§ 44. Duty to Another Based on Taking Charge of the Other**