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Torts—Liability of State to Users of Land It Possesses

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curve and plunged through a guard rail near the entrance to the overpass. The Court of Claims found that the State had been negligent in that it failed to give adequate and timely warning of an existing uncommon highway danger. Reversed by the Appellate Division, the finding was reinstated by the Court of Appeals.

There is no question today concerning the compulsory duty of the State to maintain its highways in a reasonably safe condition.¹⁰ Its liability is not predicated merely on the existence of physical defects or dangers,¹¹ but also on its duty reasonably to forewarn highway users of any defect or danger.¹² The Legislature, in the creation of a State Traffic Commission, has provided that ". . . it shall be its duty to regulate the type, location, erection, maintenance . . . of all traffic control signals . . . on or along any state highway . . ." ¹³ [Emphasis added.] A failure by the Commission to observe the legislative mandate will subject the State to liability.¹⁴

Liability of State to Users of Land It Possesses

Generally, the liability of a possessor of land for bodily harm to others, who enter for a public or private purpose, caused by natural or artificial conditions thereon is predicated upon several conditions, *viz.*, an awareness that others are upon his land or are likely to enter in the exercise of their privilege, and of the condition of risk not reasonably discoverable by those on the land, as well as a failure to rectify such condition or provide adequate warning of the risk involved.¹⁵

LeRoux v. State,¹⁶ is illustrative of the point that the State bears the same duty as any private person to protect those who rightfully enter upon its land. Plaintiff fell into an abandoned well on State property maintained by the Conservation Depart-

10. *Doughlin v. State*, 277 N.Y. 558, 13 N.E. 2d 472 (1938).

11. *Ibid.* State held liable for damages to automobile caused by rocks falling from adjacent slopes; *Barna v. State*, 267 App. Div. 261, 45 N. Y. S. 2d 513 (3rd Dep't 1943), *aff'd*, 293 N. Y. 877, 59 N. E. 2d 784 (1944), where State was held liable for death of decedent, evidence having been introduced to show that the guard rails were "rotted" and "wobbly" at a point where decedent's car crashed through.

12. *Van de Walker v. State*, 278 N.Y. 454, 17 N.E. 2d 128 (1938). State held liable for damages resulting from an accident where it failed to re-erect a warning sign which had been obliterated prior to the accident in suit. *Ziehm v. State*, 270 App. Div. 876, 61 N. Y. S. 2d 99 (4th Dep't 1946) (failure to remove "dead end" sign where road had been joined to heavily traveled highway).

13. VEHICLE & TRAFFIC LAW Art. 7, §95 (a).

14. *Foley v. State*, 294 N.Y. 279, 62 N.E. 2d 71 (1945) (improperly functioning signal).

15. RESTATEMENT, TORTS § 345.

16. 307 N. Y. 397, 121 N.E. 2d 386 (1954).

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ment. The land was used for reforestation purposes and as a public hunting grounds. Signs posted in the area indicated the propriety of hunting on the land. Further, the district forester in charge of the area testified that the place was open to, and popular with, the public, that he was aware of the presence of wells on the property, but that no systematic check had ever been made to find such wells. The existence of abandoned wells as a source of danger has been recognized by the Legislature.¹⁷ Whether or not ordinary care has been employed to combat such danger is a question to be determined by the test of foreseeability of risk.¹⁸ Little question arises as to the propriety of the State's liability under the facts of the instant case. Plaintiff need not, nor should he be held to prove active negligence on the part of the State or an unreasonable disregard for the safety of others. It is sufficient in any case that he prove facts from which the negligence of the State and causation of the accident by that negligence might be reasonably inferred.¹⁹

Wrongful Death

One who causes the death of another as a result of any wrongful act, neglect, or default is liable in damages to the executor or administrator of the decedent if he would have been so liable in an action brought by decedent had not death ensued.²⁰

In *Wank v. Ambrosino*,²¹ defendant stopped his automobile twice in an effort to discover the reason for a disturbing "bump" he felt while driving. Expecting a flat tire, defendant discovered the cause to be the presence of the body of plaintiff's intestate. The evidence adduced at the trial did not indicate how the body got under defendant's automobile, and defendant claimed he had not seen decedent before, nor heard any outcry. Testimonial evidence by disinterested witnesses indicated that there were "drag marks" seen extending some one hundred and seventy feet behind the defendant's car and terminating with it. The Court of Ap-

17. PENAL LAW § 1904(a), which provides that any person, firm or corporation owning or being in possession of land upon which there is located an abandoned well or cesspool must cover the same with suitable protection. This provision applies with equal force to the State by reason of General Construction Law § 37 providing in part that: ". . . when used to designate a party whose property may be the subject of an offense, the term person also includes the state . . ."

18. *People v. Sandgren*, 302 N. Y. 331, 98 N. E. 2d 460 (1951); *O'Neil v. City of Port Jarvis*, 253 N. Y. 423, 171 N. E. 694 (1930); *Palsgraf v. Long Island R. Co.*, 248 N. Y. 339, 162 N. E. 99 (1928). "The risk reasonably to be perceived defines the duty to be obeyed." Cardozo, J. at 344. See also Note 59 A. L. R. 1263.

19. *LeBoeuf v. State*, 169 Misc. 372, 7 N. Y. S. 2d 621 (1938), *aff'd* 256 App. Div. 798, 12 N. Y. S. 2d 640 (4th Dep't 1939), *aff'd* 281 N. Y. 737, 123 N. E. 2d 550 (1939).

20. DECEDENT ESTATE LAW § 130.

21. *Wank v. Ambrosino*, 307 N. Y. 321, 121 N. E. 2d 246 (1954).