

Mentor applicants: Please analyze this short exam answer below. What would you tell a mentee who brought this answer to you for your advice?

Question:

Pamela was driving along a road and noticed a dangerous condition on the sidewalk, which was negligently caused by Donald. Pamela got out of her car and looked over the defect, but she did not report the condition to city officials. The next day, when Pamela was driving along the same road, her car ran out of gas. She got out of the car to telephone for help and tripped over the dangerous condition in the sidewalk, causing a broken leg. She sued Donald for negligence.

Donald responded (1) that Pamela should have reported the condition to city officials when she first noticed it, (2) that Pamela should not have run out of gas, and (3) that Pamela had already learned about the dangerous condition the day before the accident. Please analyze how each of Donald's contentions might affect Pamela's recovery from Donald.

Answer:

Donald probably committed negligence in creating a dangerous condition on the sidewalk. Negligence requires that a duty exists, breach, proximate and actual cause, and damages. Donald should have known that the condition he created was dangerous. Even if it was a public sidewalk and not Donald's property, he has a duty to not create dangerous conditions. He obviously breached this duty by creating the dangerous condition. The condition did cause the injury to Pamela and it was probably foreseeable that someone might trip over it. However, Pamela is not a foreseeable plaintiff, as she already knew the dangerous condition existed. A reasonable person who knows of a dangerous condition would avoid the condition. Pamela knew about the condition and is therefore no longer a foreseeable plaintiff.

Also, Donald's age is not disclosed. If he is under the age of 18, a standard of care analysis is necessary. Whether he would be liable depends on his age, intelligence, experience, maturity and training. Would he have been able to foresee the danger to Pamela? If he is a minor, probably not. Also, creating a dangerous situation on a sidewalk would probably not be considered an adult activity, which would create liability for Donald. This case does not appear

to be similar to *Nicholsen v. Brown*, in which a child was liable for damage created by a car the child was driving. Because driving a car is an “adult activity,” the child was held liable for the injuries created. This dangerous condition is not inherently an adult activity, so it does not create liability for Donald.

Whether Pamela reported the dangerous condition doesn’t really matter. She does not have a duty to report a dangerous condition created by someone else. Duties to report potentially dangerous conditions are generally limited to those who are in special relationships with a person who potentially may hurt someone else. Pamela has no relationship to Donald and her knowledge of something Donald has done does not rise to the level of reporting to the city. Because she has no duty to report, it would not affect her ability to recover from Donald.

As discussed above, Pamela’s knowledge of the condition negates Donald’s liability for negligence. Pamela is no longer a foreseeable plaintiff, as she knew about the dangerous condition, so proximate cause is defeated. Pamela’s knowledge of the dangerous condition will negate her ability to recover from Donald.