CASE LAW UPDATE 2022: TORTS/NEGLIGENCE

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IOWA SUPREME COURT DECISIONS – 2021-2022 TERM

- **AMANDA DeSOUSA V. IOWA REALTY CO., No 21-00679 (June 10, 2022)**

  - **Facts**: The plaintiff slipped and fell on the icy driveway of a home she was touring. Neither the owners nor anyone from the listing agency for the then-vacant home were present at the time. The plaintiff was visiting the home with her own agent, who was not associated with the listing agency. The plaintiff sued the owners and the listing agency for premises liability. During his deposition, the owner of the house testified that the listing agent handled all scheduling and did whatever was necessary to "make sure it was ready for whoever was to come." The owner also testified that the listing agent did not have permission to use the house for his personal purposes and the realtor would not be excepted or allowed to make repairs or improvements to the property.

  - **Procedure**: The listing agent moved for summary judgment, which the district court denied. The district court held a jury could find that the listing agent knew or should have known that the exterior walkways were slick & should have exercised reasonable are to ensure they were safe.

  - **Issue**: Whether a listing agent who is not present at the time of the injury meets the definition of a possessor of land based merely on the fact that the listing agent has access to the property and gave permission to the prospective buyer and her agents to view the property.

  - **Holding:** The listing agent's role in selling the home did not entitle the brokerage to occupy or control the property and, therefore, it was not the possessor of the land. A listing agent who is not present and whose role is limited to granting access does not normally owe a duty of care to persons viewing the property.

  - **Analysis:** Under the Restatement (Third), land possessors have an affirmative duty of reasonable care to those who come upon their land. This duty extends to conduct by the possessor that creates a risk to entrants, artificial conditions on the land that pose a risk to entrants, and natural conditions on the land that pose risks to entrants. Accumulated snow and ice are natural conditions and the land possessor has a duty to exercise reasonable care to prevent a visitor from falling. In this case, the court was left to determine who the possessor of the house was. The home did not have an occupant, so the "possessor" was the person who was entitled to immediate occupation and control of the land. The Court determined that because the listing agent did not have the right to occupy or control the land,

it was not the possessor of the property and did not owe a duty to the plaintiff. The Court cautioned, however, that its holding was specific to a realtor who was *not* present at the time of the slip and fall, leaving the door open for a different holding for a listing agent who actively shows the property to the plaintiff.

- **THE ESTATE OF SUSAN FARRELL v. STATE OF IOWA, CITY OF WAUKEE, & CITY OF WEST DES MOINES, No. 20-1037 (May. 23, 2022)**

    - **Facts:** Susan Farrell, a Des Moines police officer, was killed in an automobile accident involving an intoxicated driver who was driving the wrong direction I-80. Farrell's estate filed suit against the State of Iowa and the cities of West Des Moines and Waukee, alleging that the I-80 interchange the intoxicated driver had entered the interstate on was unsafely designed and constructed. The plaintiffs alleged negligence, nuisance, and premises liability against the governmental parties.

    - **Procedure:** The defendants moved for judgment on the pleadings under Iowa Rule of Civil Procedure 1. 954, arguing the public-duty doctrine barred the plaintiffs' claims. The district court denied the motion noting the petition alleged affirmative negligence, including egregious conduct and, based on these allegations, no judgment could be had for the governmental parties. The Court of Appeals reversed, holding the doctrine barred all claims against the governmental defendants because the instrumentality causing injury was an intoxicated third-party driver.

    - **Issue:** Does the public duty doctrine apply to prohibit the plaintiffs' claims against the state and municipalities?

    - **Holding:** The public duty doctrine does not apply to the plaintiffs' claims and the governmental entities were not entitled to summary judgment.

    - **Analysis:** In reaching its decision, the Court first analyzed the state of the public duty doctrine in Iowa, noting the doctrine was "alive and well in Iowa" and was not supplanted by the adoption of the Restatement (Third) of Torts. The Court then explained that the doctrine applies when the injury was directly caused by a third party or independent force *and* the plaintiff alleges the governmental entity breached a uniquely governmental duty to protect the plaintiff from the third party or independent force. However, when a governmental defendant's affirmative negligence (misfeasance) creates a dangerous condition on government-owned property, the doctrine will not protect the governmental defendant from suit. In this case, the plaintiffs had alleged that the governmental defendants' confusing design and inadequate signage induced the intoxicated driver to mistakenly drive into oncoming traffic. The intoxicated driver's fault was, therefore, "intertwined with the fault of the government defendants." Because the allegations in the petition alleged affirmative negligence, rather than just nonfeasance, the plaintiffs could escape judgment on the pleadings.

SELECT IOWA COURT OF APPEAL DECISIONS – 2021-2022 TERM

- **TRACY EVEN & ALL PURPOSE STORAGE, LLC, v. TITLE SERVICES CORPORATION, No. 21-0727 (June 29, 2022)**

    - **Facts:** The plaintiff purchased a plot of land he intended to use to build his storage business. The seller, who had prepared an abstract of the land for the buyer, failed to identify any easements on the property. When the buyer-plaintiff learned of the existence of easements on the land, he filed suit for negligence in disclosing the easement, affecting the title to the property.

    - **Procedure:** The defendant-seller filed a motion for summary judgment, arguing it did not owe a duty of care to the plaintiff and any failure to identify the easement was not the proximate cause of the plaintiff's damages. The district court granted the defendant-seller's motion.

    - **Issue:** Did the seller owe a duty of care to the plaintiffs and, if so, did the evidence show the seller's error caused the plaintiffs to lose money as a result of a breach of that duty.

    - **Holding:** While there was a duty of care to provide accurate information on easements to a potential buyer, the plaintiff's case must be dismissed because there is no evidence the failure to provide accurate information was the cause of any injury to the plaintiff.

    - **Analysis:** The Court of Appeals began by analyzing whether the seller owed a duty of care to the plaintiffs. Citing the Restatement (Second) of Torts, the Court noted that when a business provides false information to another, and that person justifiably relies upon the false information, the business is liable for any pecuniary loss caused by the reliance. In this case, the defendant provided an abstract to the buyer which failed to identify an easement and it would be liable for any damages caused by the buyer's justifiable reliance on the easement-free abstract. The appellate court next considered whether the buyer's reliance had caused any *damage* to the buyer. It applied the "but for" causation test and determined the failure to include the easement on the abstract was not the cause of the buyer's claimed damages, lost profits. "It was the existence of the easement itself - not TSC's failure to include the easement in the abstract - that prohibits construction of storage units on the easement." Therefore, any loss of profits for an inability to build storage facilities was not caused by the easement-free abstract. The court also rejected the plaintiff's claim that, had he known of the easement, he would have negotiated a lower sale price. The evidence showed the plaintiff had entered into the purchase agreement, which stated it was subject to all easements, *prior* to receiving the abstract. This, it held, negated any claim that the failure to disclose the easement would have affected the purchase price.

- **JACQUELINE SUE UHLER v. THE GRAHAM GROUP, INC., 21-0723 (June 15, 2022)**

- **Facts:** The plaintiff began experiencing headaches, a sore throat, and difficulty breathing one afternoon while working at her office building. The plaintiff noted that, prior to developing these symptoms, she had noticed a harsh, chemical smell like rotten eggs in her cubicle. The evidence revealed that earlier that afternoon, a maintenance worker at the building had poured Draynamite, a chemical drain cleaner, into a clogged sink. The plaintiff sued the maintenance company for negligence, claiming that pouring the chemicals down the sink had caused her to seek medical treatment and sustain personal injuries. In support of her claims, she produced the expert report of Dr. Jacqueline Stoken, which stated that the plaintiff had "sustained a chemical fume injury with Draynamite which has caused permanent lung damage." She also produced the report of Dr. Daniel Dodge, which similarly opined the plaintiff had suffered permanent injury "as a result of her exposure to fumes."

- **Procedure:** The defendant moved for summary judgment, claiming the plaintiff had failed to provide an opinion on causation sufficient to prove her claims at trial. The district court granted the defendant's motion and the plaintiff appealed.

- **Issue:** Did the plaintiff produce sufficient evidence to establish a causal connection between the Draynamite and her alleged injuries?

- **Holding:** The plaintiff did not produce sufficient expert evidence of causation to submit the case to a jury.

- **Analysis:** The Court began its decision by explaining the importance of causation in personal injury cases. It noted that in toxic tort cases, such as the case before it, the plaintiff must prove both general causation and specific causation through expert testimony. "General causation is a showing that the drug or chemical is capable of causing the type of harm from which the plaintiff suffers." "Specific causation is evidence that the drug or chemical in fact caused the harm from which the plaintiff suffers." In this case, the parties agreed that inhalation of Draynamite could, in theory, cause lung damage at some level of exposure. However, this was not a sufficient admission to satisfy general causation. The court found that, because there was no expert testimony identifying the exposure levels necessary to cause the injury claimed by the plaintiff, the plaintiff could not prove general causation. The court further noted that the plaintiff had failed to produce sufficient evidence of specific causation to submit her case to a jury. To generate a fact question, it held, the plaintiff must produce evidence that the amount of Draynamite used was capable of traversing the distances in the office building to her cubicle and causing injury. This, the court held, required evidence of (1) the specific amount of the substance capable of causing the alleged injury and (2) the amount to which the plaintiff was probably exposed. Because no expert testified to these figures, the court held the plaintiff could not submit her case to a jury.

- **SHELLEY BARNES & CAMERON BARNES v. CDM RENTALS, LLC, No. 21-0854 (May 11, 2022)**

    - **Facts:** The plaintiff slipped and fell in the driveway of a condominium she rented. She sued the owner of the condominium unit, her landlord, for negligent failure to clear ice and snow. The condominium community's declaration provided that the homeowner's association was responsible for "maintenance, repair, and replacement" including "snow removal" of all common elements, including driveways assigned to individual units. The declaration also expressly prohibited a condominium unit owner from maintaining common elements.

    - **Procedure:** The Iowa District Court for granted the defendant condominium owner's motion for summary judgment, holding that the defendant did not own or control the driveway, a common element, and therefore, it had no duty to maintain the driveway.

    - **Issue:** Did the condominium owner/landlord have sufficient control over the driveway to create liability for the driveway's unsafe condition?

    - **Holding:** The owner of the condominium had no duty to maintain the driveway to the condominium under any theory of liability.

    - **Analysis:** The Court of Appeals analyzed and rejected each of the plaintiff's theories of liability. First, the court examined liability under the common law, noting that a landlord is not liable for injuries caused by an unsafe condition on property after it is leased unless the landlord retains control over the dangerous property. In this case, it held, the declaration prohibited the landlord/owner from maintaining the driveway and, therefore, there was no evidence the owner/landlord had control over the property. The appellate court next dismissed the plaintiff's claims under a contractual theory noting that the lease contained no language suggesting the landlord/owner had a duty to maintain the driveway. Finally, the Court of Appeals examined the Iowa Uniform Residential Landlord and Tenant Act and concluded that the Code does not create a duty to maintain a portion of the premises that the landlord has no right to maintain.

- **RICHARD ROSS & LINDA ROSS v. DOUGLAS WAYNE WALKER & WEST BEND MUTUAL INSURANCE COMPANY, No. 21-0741 (April 27, 2022)**

    - **Facts:** This personal injury action arose from a late-night accident on Interstate 80. The defendant, Douglas Walker, negligently attempted to make a U-turn on the interstate, causing an accident with a third-party. The accident shut down both westbound lanes on I-80 and caused traffic to back up. Approximately 20 minutes after the accident, the plaintiff approached the stopped traffic and rear-ended the vehicle in front of him. He brought suit against Walker, claiming that his negligence caused the plaintiff's accident and resulting injuries.

- **Procedure:** The defendant moved for summary judgment, claiming the plaintiff's accident was beyond the scope of liability for a negligent U-turn 20 minutes prior. The district court granted the defendant's motion and the plaintiff appealed.

- **Issue:** Did the district court correctly determine that the plaintiff's harm was outside of the defendant's scope of liability as a matter of law?

- **Holding:** The district court erred in granting the defendant's motion for summary judgment because a jury *could* find that the defendant's negligent U-turn created the risk of a pile-up of vehicles behind him.

- **Analysis:** The appellate court began its analysis by outlining the scope of liability framework under the Restatement (Third) of Torts. It noted that scope-of-liability is a fact-intensive inquiry that "requires consideration of the risks that made the actor's conduct tortious." It noted that this analysis requires the court to "consider all the range of harms risked" by the defendant when committing the negligent act. The court then applied this standard to the case before it, noting that a jury could find a wide range of harms risked by the defendant's actions. "A driver who attempts to complete a U-turn across interstate traffic on a foggy night has risked not only (1) an initial collision but also (2) a resulting pile-up of vehicles on the interstate and (3) an approaching driver's failure to avoid running into those piled-up vehicles." Under these facts, the court determined that it could not, as a matter of law, determine that the plaintiff's harm was not among the risks that resulted from the defendant's negligence.

- **DARYL BORTVIT & SHEILA BORTVIT v. DONALD CHRISTENSEN & ROGER CHRISTENSEN, No. 20-1394 (Feb. 16, 2022)**

  - **Facts:** The plaintiffs' son was killed after being shot with a pistol. A jury found the shooter guilty of second-degree murder. Following the criminal trial, the plaintiffs filed suit against the shooter's uncle and grandfather who owned the property where the shooting had occurred. The plaintiffs claimed the defendants had "failed to take reasonable steps to prevent use of the property for the purpose of firing loaded pistols by persons under the age of 21, unsupervised."

  - **Procedure:** The district court granted the defendants' motion for summary judgment, finding they had no duty to protect the plaintiffs' son from the shooter's actions and the shooting was not within their scope of liability.

  - **Issue:** Did the shooting fall within the landowner's scope of liability?

  - **Holding:** The purposeful shooting of the plaintiffs' son was outside the defendants' scope of liability for allowing target shooting practice to occur on their property.

  - **Analysis:** The appellate court first acknowledged that scope of liability is a fact-driven analysis which requires evidence the defendant did or did not do

something that increased risk to the plaintiff. It then analyzed the facts of the case before it. The court noted that the defendants did not give the gun to the shooter and never saw the pistol being used. Under these facts, there was no evidence that the defendants *directly* contributed to the shooting at issue. The court of appeals rejected the plaintiffs' argument that the defendants' act of allowing underage target practice to occur on their land was the cause of the plaintiffs' injuries, noting that the only cause of the death was the purposeful firing of a firearm at the deceased. "Even if we were to assume [the defendants] turned a blind eye to unsupervised underage target shooting on the farm, a reasonable juror would not assign the risk of a purposeful shooting of a stranger to the farm among the risks arising from the recreational activity." Based on these facts, the court determined the shooting was outside of the defendants' scope of liability and the court had properly granted summary judgment in their favor.

- **TAMARA MACKAY v. JUDY RUSSELL**, **No. 21-0365 (Nov. 23, 2021)**

    - **Facts:** The plaintiff served as the executive director of the Mamie Eisenhower Birthplace Foundation from 2016 - 2018. During her time with the foundation, it suffered immense financial difficulties. The plaintiff was terminated from her position in 2018, although she continued to volunteer for the foundation for several months thereafter. An audit of the foundation released in 2020 revealed several improper disbursements had been made, including reimbursements to the plaintiff in excess of the amount specified in her employment offer. Following the auditor's report, an NPR reporter contacted the plaintiff for a statement. The plaintiff alleged the reporter told the plaintiff that a former coworker claimed the plaintiff had removed dehumidifiers from the Mamie Doud Eisenhower Birthplace and caused mold to form at the historical site. The plaintiff sued the former coworker for slander based on the claimed statements regarding the dehumidifier.

    - **Procedure:** The district court granted the defendant's motion for summary judgment, determining that, even if the alleged statements were defamatory, the plaintiff had failed to present admissible evidence that would allow a jury to determine the statements had been made.

    - **Issue:** Is there sufficient admissible evidence of slander to avoid summary judgment for the defendant?

    - **Holding:** The plaintiff failed to produce *admissible* evidence that a defamatory statement was made and therefore, the district court correctly granted the defendant's motion for summary judgment.

    - **Analysis:** The court of appeals first set forth the basic law of defamation, which includes the twin torts of libel and slander. It noted that to establish a case for slander, the plaintiff must show that the defendant published a defamatory statement concerning the plaintiff. This, however, requires the plaintiff to have *admissible* evidence regarding the defamatory statement. In this case, the only

evidence of the defendant's statement was a NPR reporter calling the plaintiff to tell her what the defendant had said. The court rejected all theories of set forth by the plaintiff for the admissibility of the reporter's hearsay statement, noting that the statement was not against the reporter's interest and did not fall within the residual exception to the rule against hearsay because the plaintiff could have obtained the testimony of the reporter directly. Because the plaintiff had no *admissible* evidence of the defamatory statement, summary judgment for the defendant was proper.

- **MATTHEW KEVIN BAILEY v. DAREN W. DAVIS & MONDELEZ GLOBAL**, **No. 20-1717 (Nov. 3, 2021)**

  - **Facts:** This personal injury action arose from a two-vehicle accident at a partially-controlled intersection. The defendant failed to stop at a stop sign and collided with the plaintiff's vehicle, which was traveling through the intersection without a stop sign or traffic light controlling his travel. At trial, the defendant testified that although he *believed* he had stopped at the stop sign prior to entering the intersection, he could not be certain whether he had *actually* stopped. He further testified he did not see the plaintiff prior to the impact and that, had he not pulled into the path of the plaintiff, there would have been no crash. There was no evidence that the plaintiff was speeding or driving in a reckless manner. The jury returned a verdict that the defendant was not at fault.

  - **Procedure:** Following the jury's verdict, the plaintiff moved for a new trial, alleging the verdict was contrary to law and unsupported by sufficient evidence. The district court granted the motion and the defendant appealed.

  - **Issue:** Was there sufficient evidence presented for a jury to find the defendant was not at fault?

  - **Holding:** There was insufficient evidence for a jury to find the defendant was not at fault and a new trial for the plaintiff was properly granted.

  - **Analysis:** The court of appeals began its analysis by publishing a lengthy excerpt from the district court's opinion, which set forth the basis for the district court's decision to award a new trial. The appellate court noted that the district court had considered all evidence in the light most favorable to the defendant when it determined that the evidence could not support a finding that the defendant was not at fault. It emphasized that the evidence suggested that, even if the defendant *had* stopped at the stop sign, his own testimony was that had he not pulled away from the stop sign, the accident would not have occurred. It determined that, although the jury need not have found the defendant 100% at fault, it must assess at least a minimal portion of fault to the defendant in order for the verdict to be consistent with the evidence.

- **THES ESTATE OF ANTHONY ZDROIK v. IOWA SOUTHERN RAILWAY COMPANY, BRIAN OSTROWSKI, JOHN OSTROWSKI, STEVEN RUNSTROM & PHIL GLINIECKI, No. 20-0233 (Oct. 6, 2021)**

    - **Facts:** Anthony Zdorik was dispatched by his employer to repair a railroad bridge belonging to Iowa Southern Railroad. As he worked on the railroad, he was struck by a railroad tie. He died from his injuries. Zdorik's estate sued the railroad for violations of the Federal Employers' Liability Act and for negligence in training crew members. It also sued four people associated with Zdorik's employer for gross negligence in training him.

    - **Procedure:** All defendants moved for summary judgment. The district court denied the motion with respect to the individual defendants, holding they could be sued for gross negligence as co-employees of Zdorik. With respect to the railroad, the court denied the motion on the negligence claim but granted the motion with regards to the FELA violations.

    - **Issue:** Can individuals who owned and worked for Zdorik's employer be held liable for gross negligence and, can the railroad, as an owner of the bridge, be liable for violations of the Federal Employers' Liability Act?

    - **Holding:** There was insufficient evidence to show Zdorik's co-employees were grossly negligent and the claims against them should have been dismissed. The case against the other individual defendants, the owners of Zdorik's employer, was remanded for a determination as to the status of the owners as co-employees or employers. Additionally, because the railroad was not Zdorik's employer, violations of FELA did not constitute negligence per se.

    - **Analysis:** The court first examined whether two individual defendants who owned of the business which employed the plaintiff could be held liable for gross negligence as co-employees of Zdorik. Central to this analysis, the court determined, was whether the individuals were Zdorik's co-employees, or whether they were his employers. Under section 85.20 of the Iowa Code, the only remedy available to an employee for an on-the-job injury is an action against his employer under the worker's compensation code. An exception to this rule allows an employee to bring suit against a co-employee for gross negligence resulting in injury. The appellate court determined that in Zdorik's case, there was insufficient available to determine whether the individual defendants were co-employees and, therefore, the court remanded the case to the district court for a determination as to whether the individuals were co-employees for purposes of Iowa Code 85.20. The court next analyzed the liability of the two individual defendants that were admittedly co-employees to determine if there was evidence of gross negligence. It noted that in order to state a case for gross negligence, the plaintiff must prove the defendant had knowledge that injury was probable, as opposed to possible, and consciously failed to avoid the danger. The evidence showed that the first co-employee had held a safety training session on the day of the accident and that he did not know it was probable an

injury would occur based on the protocols conveyed during the session. The second co-employee, who was on site at the time of the accident, had actual knowledge of the correct procedure to be followed while working on railroad bridges but, based on the evidence, did not have knowledge that an injury was probable. Summary judgment was appropriate for the two co-employee defendants. Finally, the court evaluated the negligence claims against the railroad. Specifically, the court considered whether the railroad's violation of portions of the FELA constituted negligence per se. The railroad argued that, because it was not Zdorik's employer, the FELA violations could not serve as a basis for negligence per se claims. The court agreed, holding that because Zdorik was not employed by the railroad, the railroad did not owe any duty to Zdorik based on the regulations. Therefore, summary judgment should have been granted for the railroad.

- **McKINNON PANGBURN v. ROOKIES, INC., No. 20-1353 (Oct. 20, 2021)**
  - **Facts:** The plaintiff was assaulted in the parking lot of Rookies Sports Bar by Anthony Keckler, another patron of Rookies. Keckler and a group of friends had arrived at Rookies four hours prior to the incident to celebrate one of the men's 21st birthdays. Rookies had a special whereby individuals celebrating a 21st birthday could obtain 21 pitchers of beer for just $21.00. One of the group members, Brandon Rheingans, ordered the special for the birthday boy and paid for the pitchers. Rheingans carried the pitchers to the group's table two at a time. The group shared the beers and, when the pitchers ran dry, Rheingans ordered another round. Keckler drank from the pitchers and eventually became intoxicated. Near the end of the evening, a fight broke out in Rookies' parking lot. The birthday group was not involved in the dispute but Keckler, nevertheless, decided to jump in and joined the altercation. He assaulted the plaintiff in the altercation, causing fractures and permanent brain damage. The plaintiff brought suit against Rookies, asserting claims of dram shop and premises liability.
  - **Procedure:** The district court granted Rookies' motion for summary judgment. The district court found there was no evidence Rookies sold and served any alcohol directly to Keckler and, therefore, it could not be liable under the dram shop statue. It further held the plaintiff had failed to present sufficient evidence to establish Rookies had breached a duty of reasonable care to the plaintiff.
  - **Issue:**
  - **Holding:** The Iowa Court of Appeals reversed the grant of summary judgment for Rookies on the plaintiff's dram shop claim, holding the district court had applied the wrong standard when it found the bar had not violated the dram shop act and there remained a genuine issue of material fact as to whether Rookies had sold and served alcohol to Keckler when Rookies knew or should have known Keckler was intoxicated or would become intoxicated. The appellate court affirmed summary judgment on the plaintiff's premises liability claim, holding there was no evidence the bar was aware of Keckler would become violent or that Rookies created an environment where misconduct was likely to occur.

- **Analysis:** The Court of Appeals first addressed the plaintiff's dram shop claim and the district court's determination that Rookies had not sold and served alcohol to Keckler because Rheingans, rather than Keckler, had ordered the beer and delivered it to the table Keckler's table. The appellate court began with the "sold" requirement contained in the statute, noting that a direct sale to the allegedly intoxicated patron is not necessary. An indirect sale, the court explained, satisfies the statute when the bar has "reason to know" multiple people will consume the alcohol. The appellate court explained that the statute "is meant to encourage responsible business practices" and "because bars derive profit even if the sale was indirect, the statute appli[es] to patrons who dr[i]nk on someone else's tab." The Court next addressed the "served" prong of the dram shop statute. It noted the "operative question" in evaluating the "served" requirement is whether the sale was made with the intent that the alcohol be consumed on the premises. Because Rookies sold the pitchers with the intent they be consumed at Rookies, the "served" requirement was established. As for the premises liability claim, the Court analyzed whether there was sufficient evidence in the record to sustain the plaintiff's allegation that Rookies created an environment where instances of misconduct were *likely* to take place. The appellate court noted there was no evidence Keckler acted aggressively prior to the incident, nor was there evidence that a lack of security in the parking lot prompted the altercation to commence. Because there was no evidence that Rookies had violated a duty of reasonable care, the plaintiff's premises liability claim failed as a matter of law.

- **LYLE DUMONT & HELEN DUMONT v. QUINCY PLACE HOLDINGS, LEXINGTON REALTY INTERNATIONAL & MICHAEL NELSON, No. 20-1054 (Oct. 6, 2021)**

  - **Facts:** The plaintiff tripped and fell as he entered the mall one morning. After the fall, he noticed that the rug in the entrance to the mall was curled over, which he assumed had caused him to trip. The defendants, the mall owner and the mall janitor, presented evidence that the rugs were cleaned nightly and that, 20 minutes prior to the fall, the area had been inspected and no rug was folded over.
  - **Procedure:** The defendants moved for summary judgment, arguing there was no evidence it breached any duty to the plaintiff. The district court granted the motion.
  - **Issue:** Did the plaintiff present sufficient evidence that the defendants were aware of the dangerous rug to avoid summary judgment.
  - **Holding:** There was insufficient evidence that the defendants knew or should have known about the folded rug in the mall to generate a jury question on the defendant's negligence.
  - **Analysis:** The appellate court cited the Restatement (Third) of Torts to explain that the person who controls property owes a duty of reasonable care to entrants for "conditions that pose risks." This duty, the court explained, is not imposed without evidence the land possessor had actual or constructive knowledge of the

dangerous condition. In this case, there was insufficient evidence that the mall owner and the mall janitor knew or should have known that the rug was curled over before the plaintiff fell. Because the plaintiff's theory was based on mere speculation, summary judgment was correctly granted for the defendants.