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Hotels Aren't Always Protected From Falling Children

Property owners have a legal duty to protect guests from an unreasonable risk of physical harm. Courts have tended to interpret that duty narrowly, generally requiring owners to use only "ordinary care" to keep their premises "reasonably safe" but not turning the owners into "the insurers of the safety" of their guests.

But the scope of that duty often seems to broaden if the guest is a child, as a recent Court of Appeal decision demonstrates.

The guest in *Lawrence v. La Jolla Beach & Tennis Club* was a five-year-old boy who fell out of a second-story window in his family's hotel room and suffered serious head and brain injuries. The trial court threw out his and his parents' lawsuits on the ground that the hotel didn't owe them a duty to install a safety device on the window.

The appellate court reversed. It held the lawsuits could go before a jury because "the scope of a landlord's duty to exercise due care for the safety of tenants … [includes] 'adopting reasonable precautions to prevent young children from toppling out of windows.'''

The hotel faced some challenging facts. The family had reserved a ground-floor room but got the second-story room instead. Some of the windows in the hotel did have safety bars, including some of the ones in the plaintiffs' room — just not the one looking out toward the beach.

In its opinion, the Court of Appeal quoted extensively from other cases dating from 1937 forward about children falling from windows. Its analysis focused on the two most recent California precedents, one from 1998 relied on by the hotel in which the landowner was held to have no duty and one from 1999 reaching the opposite result.

Both involved apartment building, not hotels. A key difference between the two earlier cases was that in the first, the child fell from a window in his family's apartment, while in the second — where liability was found — he fell from a window in a common area.

The trial court followed the first case, concluding the landlord had no duty to guard against a family's own negligence in its own room. But the appellate court said a window in a hotel room is more like a window in an apartment building's common area than one within a residence.

That's because "the temporary nature of most hotel occupancies" means that "hotel owners generally exercise far greater control over hotel rooms than landlords are able to exercise over leased premises."

Further, it was "reasonably foreseeable that guests in defendants' ocean front hotel rooms will open windows to let in ocean breezes and enjoy the sound of the ocean, and that a five-year-old child will stand on the sill of a window that is 25 inches above the floor," the court said.

Nor would it be burdensome for the hotel to make its windows safer, the court noted. Many already had safety bars. Alternatively, very basic measure such as wooden bars or thumb screws could have kept the window from opening too wide.

Finally, the court rejected the hotel's argument that it had no duty because its windows and sills satisfied all state and local building codes and requirements. "A defendant property owner's compliance with a law or safety regulation, in and of itself, does not establish that the owner has utilized due care," it held, quoting an earlier case.

Justices Knock Down Lawsuit by Kickboxing Beginner

For more than 20 years, Californians hurt by participating in a sport or a recreational activity have had a hard time suing over their injuries thanks to a doctrine known as "primary assumption of risk."

The rule declares that one player has no duty to protect another player from risks inherent in a sport. There generally can be no liability for a bad tackle, an aggressive foul or even an intentional "beanball" pitch.

The doctrine also protects coaches and instructors teaching a sport to a beginner, as a new decision from a state Court of Appeal panel shows. In *Honeycutt v. Meridian Sports Club*, the court blocked a suit by an overweight woman injured during her first kickboxing lesson.

According to the opinion, the instructor was teaching a class how to deliver a roundhouse kick. The plaintiff was not doing the kick properly, so the instructor grabbed her elevated right calf and tried to get her to pivot on her left foot. Instead, she stiffened her left knee and damaged her anterior cruciate ligament, requiring surgery.

She claimed that he hadn't demonstrated the kick properly, and her expert testified that roundhouse kicking was an advanced skill best taught verbally, not through physical contact.

A trial court judge initially said the case could go to trial, but the Court of Appeal ordered the judge to reconsider. When he then granted a motion for summary judgment, the plaintiff appealed.

The appellate court noted that "coaches and instructors have a duty not to increase the risks inherent in sports participation." But under the primary assumption of risk doctrine, they can be held liable only if they injure a student on purpose or engage "in conduct that is reckless in the sense that it is 'totally outside the range of the ordinary activity,'" the court noted.

That didn't happen here, the court held. The plaintiff's injury "falls squarely within the doctrine of primary assumption of the risk."

Pushing a student a bit too far is an inherent risk of learning a sport. “To hold otherwise would discourage instructors from requiring students to stretch, and thus to learn, and would have a generally deleterious effect on the sport as a whole,” the court noted, quoting a case about an injured judo student.

In this case, the instructor was merely trying to show the plaintiff how to perform a kick properly. “Injuries to shoulders, hands, and knees are risks inherent in a vigorous, physical activity such as kickboxing. These types of injuries are entirely foreseeable, with or without the physical intervention of an instructor,” the court said.

In fact, the court concluded, the plaintiff “could have suffered the exact same knee injury in the kickboxing class without [the instructor] grabbing her leg. [His] conduct did not increase the risks already inherent in the sport.”

Barry L. Rodolff

The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.