

To: Street Law Participants
 From: Eric Carter
 Date: January 30, 1995
 Re: Detailed Case Study to be Used to Discuss Negligence (Duty) and Landlord-Tenant Relations

Wylie v. Gresch, 191 Cal.App.3d 412, 236 Cal.Rptr. 552 (1987).

FACTS

The defendants own residential property in San Jose, California. The plaintiffs rented an apartment at the complex from the Greschs for about two months before the incident at issue. On October 19, 1981, one of the plaintiff's three children, Teresa, was playing "at or near her residence" when she was attacked by Michael Buzzel's pit bullterrier named "Bud". The dog bit off her ear and inflicted other serious injuries. Buzzel, a defendant in another part of this suit, does not rent from the Greschs but lives next door to their apartment building.

The dog "had attempted to attack persons, had attacked other dogs and animals in the neighborhood, and had damaged property and otherwise shown vicious propensities" and has "run rampant throughout the neighborhood". The Greschs had actual knowledge of the dog's vicious propensities because it had broken through and damaged the fence separating the two properties, which they had repaired prior to the Wylies' moving in. The Greschs "failed to warn the Wylies of the danger of [the] dog" before they moved in.

The Wylies brought this action against their landlord for damages resulting from the attack on their daughter. They claimed that because of the special landlord-tenant relationship, the Greschs had a duty to warn prospective tenants about a vicious dog owned by neighbors living next to the rented premises.

QUESTIONS

1. If you were the Wylies, what arguments would you make that the defendant owes you a duty of care to warn you about the dog?
2. If you were the Greschs, what arguments would you make that you don't owe a duty of care to warn the Wylies about the dog?
3. If you were the trial court, how would you rule? Do landlords owe a duty to warn of all possible dangers, no matter how unlikely or remote? Where do you draw the line?
4. What factors would you consider in deciding whether a duty of care is owed to someone?

5. The Appellate Court's opinion is ambiguous as to the exact location of the occurrence because the parties disagreed on where the attack occurred. Does it matter whether it occurred on the premises that the Wylies rented or on the city sidewalk in front of the apartment complex? Why?
6. After reading the actual case, answer the following:
- a. How did the trial court and California Court of Appeals rule?
 - b. What reasons did they give for their decision?
 - c. What major factors or considerations did the court rely on in determining whether or not a duty was owed to the Plaintiff?
 - d. What are some of the duties enumerated by the court that landlords owe their tenants?
 - e. What other special relationships exist in society where a special duty might be owed (e.g. Doctor/patient)? Why?
7. Extra Credit. Read the Dissent opinion and explain Justice White's dissatisfaction with the majority opinion.

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ISSUE

Does a landlord have a duty to warn prospective tenants about the presence of a vicious dog, not under landlord's control, that lives in the neighborhood?

WHAT HAPPENED AT TRIAL?

The trial court dismissed plaintiff's complaint, without leave to amend. Plaintiff appealed to the Court of Appeals.

ARGUMENTS

Plaintiff-

Claims that the landlord had a legal duty to use due care and warn them about the vicious dog in the neighborhood because of the special landlord-tenant relationship between them. They feel the elements of negligence are met (duty to warn, breach of duty, causal connection between the breach and the resulting injury, and actual injury or damage). The case focuses on the first element, duty to warn, and the plaintiffs feel the public policy considerations (below) are met, satisfying the element.

Defendant-

Claims that although there are many duties of care a landlord owes his tenant, they do not include a duty to warn about a dangerous dog that lives off-premises, that the landlord has no control over.

WHO WON?

The defendant (Gresch) won. The Court of Appeals held that the trial court correctly dismissed plaintiff's complaint against the landlord for failure to state a cause of action.

HOW THE COURT EXPLAINED ITS DECISION

To bring a cause of action for negligence, four elements must be met: 1) a legal duty to use due care, 2) a breach of that duty, 3) a reasonable causal connection between that breach and the resulting injury, and 4) actual injury or damage. As to the first element, whether or not a legal duty is owed is a question of law. Public policy requires a balancing of the following considerations to determine whether a duty is owed:

- the foreseeability of harm to the plaintiff,
- the degree of certainty that the plaintiff suffered injury,
- the closeness of the defendant's conduct and the injury suffered,
- the moral blame attached to the defendant's conduct,
- the policy of preventing future harm.
- the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach,
- the availability, cost, and prevalence of insurance for the risk involved.

The opinion discusses a number of situations where an extra duty of care is owed by a landlord because of a special relationship between the parties, including:

- if a landlord knows of past incidents (rape, assault) and can foresee similar situations occurring in the future.
- if a landlord leases a building with latent dangerous conditions the landlord is unaware of, he has a duty to inspect for them,
- where the landlord misrepresents the safety of an apartment through deceit, like where she says the area is patrolled at night and it is not,
- where there are known dangers on the premises,
- where the landlord creates the dangerous situation.

Here, the court held that no special duty was owed by the landlord. The landlord had no control over the dog, it came from off their premises, the attack was not easily

foreseeable and could not have been prevented by the landlord, the landlord did not fail to maintain a defect on their premises that caused the injuries, and the landlord did not create the dangerous situation. The court was reluctant to even state that the special relationship between the plaintiff and defendant required a special duty of care. Finally, the court stressed that there is no duty to warn of obvious dangers or disclose conditions that are so obvious and open that the tenant and the general public should reasonably be aware of them. There was no reason for the plaintiffs to expect the landlord to warn them of all possible dangers in the neighborhood.

APPLICATION

The factors relied upon by the court to decide whether a duty is owed is not an all-inclusive list. These decisions will ultimately be somewhat subjective because the judges deciding them may put different weight upon the factors than other people would. Which factors should be more important? (Foreseeability is usually given extra weight.) Should they all be treated equally? What other factors should the court have considered in this decision or in future decisions?

Should the court have been more strict to "make an example" out of the landlord here? Similarly, is the landlord's liability so unlikely or remote that sanctions should have been brought against the plaintiff for bringing a frivolous suit? Was this attack really not foreseeable and not easily preventable as this court indicates?

The opinion cites numerous situations where a special duty of care was either found to exist or not exist. Try using the facts of some of these as hypotheticals, without disclosing how the court resolved them, and have the students analyze them using the public policy considerations used in *Wylie v. Gresch*.