

SUPREME COURT OF LOUISIANA

No. 95-C-1466 c/w No. 95-C-1487

EARL GARLAND PITRE, JR. ET AL

Versus

LOUISIANA TECH UNIVERSITY ET AL

LEMMON, J., Concurring

In my view, the pivotal issue in the duty-risk analysis in this case is not the existence of a duty, but the breach of duty.

The duty-risk analysis usually focuses on the general duty imposed upon the defendant by statute or rule of law, according to the relationship between the parties and the circumstances of the particular case, and then determines whether there was a breach of that general duty. The statement that "the defendant had no duty," as noted in Professor David W. Robertson et al, Cases and Materials on Torts 161 (1989), should be reserved for those "situations controlled by a rule of law of enough breadth and clarity to permit the trial judge in most cases raising the problem to dismiss the complaint or award summary judgment for defendant on the basis of the rule." Thus, a "no duty" defense generally applies when there is a categorical rule excluding liability as to whole categories of claimants or of claims under any circumstances. In the usual case where the duty owed depends upon the circumstances of the particular case, analysis of the defendant's conduct should be done in terms of "no liability" or "no breach of duty."

Here, the defendant had a duty to act reasonably in view of the foreseeable risks of danger to students resulting from the winter storm. As noted by the majority, the

defendant did act reasonably under the circumstances. The defendant warned students by means of the Winter Storms Bulletin that sledding, while fun, can be dangerous unless limited to proper areas and accompanied by the use of good judgment. The bulletin provided several examples of bad judgment that had led to injuries in the past. Furthermore, the campus police halted any unsafe sledding and other dangerous activities that the officers observed. Because the particular risk in this case of colliding with the light poles was obvious and apparent to everyone, including the plaintiff and his companions, no warning was required, and the defendant did not breach its duty of reasonable care by failing to warn of that particular risk or by failing to erect protective barriers.