

ROBERTS v. STATE OF LOUISIANA, 396 So.2d 566 (La.App. 1981). Plaintiff Roberts, a 75-year old man, was injured when knocked down in a hallway by Burson, a blind 25-year old man who operated a

concession stand in a U.S. Post Office. Plaintiff claimed that Burson "traversed the area from his concession stand to the men's bathroom in a negligent manner," specifically pointing to Burson's "failure to use his cane even though he had it with him in his concession stand." The trial court dismissed plaintiff's suit. *Held*, affirmed. Quoting the Prosser hornbook: "As to his physical characteristics, the reasonable man may be said to be identical with the actor. The man who is blind . . . is entitled to live in the world and to have allowance made by others for his disability, and he cannot be required to do the impossible by conforming to physical standards which he cannot meet. . . . At the same time, the conduct of the handicapped individual must be reasonable in the light of the knowledge of his infirmity, which is treated merely as one of the circumstances under which he acts. . . . [H]e must take the precautions, be they more or less, which the ordinary reasonable man would take if he were blind." Applying this standard to the facts, Burson did not breach this duty in relying on "his facial sense" rather than using a cane for a short trip to the bathroom in a familiar, and crowded, place.

Notes

1. *Shepherd* and *Roberts* reflect the rule on the role of physical impairments, disabilities, or limitations in setting the standard of care in negligence cases. Accord, RESTATEMENT SECOND OF TORTS § 283C (1965). What if the general rule were otherwise? For example, what if an actor's physical limitations were not taken into account in setting the standard of care to which courts would hold him?

2. Suppose, instead of having a physical infirmity, the actor has strength and agility not possessed by normal persons, or that the actor's reaction time is exceptionally good. How would you express the standard of care owed by such a person? How might *Shepherd* and *Roberts* contribute to your analysis?

3. What about the standard of care owed to persons with physical disabilities? In *Payne v. North Carolina Dept. of Human Resources*, 95 N.C.App. 309, 382 S.E.2d 449 (1989) a teacher in the state's school for the deaf was allegedly negligent in failing to instruct or supervise a student, who, as a result, suffered injury while working on a hydraulic lift. The plaintiff argued that the teacher owed a "greater than normal" duty of care because of the student's hearing impairment. The court held that the standard "remains that of the exercise of ordinary prudence," although it agreed that the "amount of care due a student increases with the student's immaturity, inexperience, and relevant physical limitations."

4. *Intoxication*. What is to be done about an intoxicated person? Suppose one is wildly intoxicated, but drives in a perfect way. Injury results, though the driving is flawless. Presumably the law should not attempt to judge the ultimate worth or character of persons, but should judge conduct instead. The general rule is that an intoxicated person owes the same care as a sober person, and that if his overt conduct would be negligence in a sober person, it is also negligence in a drunken one. What can be made of this? Can it be reconciled with the rule that one considers physical impairments as

one of the circumstances? Is it possible that in the case of voluntary intoxication the risk is taken when intoxicants are consumed rather than later, when the driver speeds?

5. *Memory.* The Restatement says you must exercise the memory of a reasonable person in recognizing a risk. If you knew an intersection was dangerous because vegetation obstructed vision there, you would be expected to remember that fact and slow down accordingly, if an ordinary prudent person would remember it. RESTATEMENT SECOND OF TORTS § 289 (1965).