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TORTS—OWNERS AND OCCUPIERS OF LAND—THE
INVITEE-LICENSEE CLASSIFICATION YIELDS IN
FAVOR OF A SINGLE DUTY OWED TO ALL

Upon invitation, James Rowland, Jr. entered Miss Christian's apartment as a social guest. While using the bathroom, the porcelain handle of the cold water faucet broke causing Rowland to suffer severed tendons and nerves in his right hand. In an action by Rowland against Miss Christian for his medical and hospital expenses, loss of wages, damage to his clothing, and \$100,000 general damages, the California Superior Court entered a summary judgment for defendant pursuant to her motion. The accompanying affidavits stated that two weeks prior to the accident, Miss Christian informed her landlord that the faucet handle had cracked, but that neither Miss Christian nor the lessor had corrected the situation. The record does not indicate whether or not the crack was obvious upon normal inspection.¹

On appeal, the Supreme Court of California reversed, holding as a matter of law that a summary judgment was not proper since a jury could reasonably conclude that failure to warn the plaintiff of the defective condition constituted negligence. In so holding, the court in essence reversed an earlier holding to the effect that a landowner was not obliged to warn a licensee of a defective condition on the premises,² thereby abandoning the traditional test of liability of an owner or occupier of land advanced therein. Justice Peters, speaking for the majority, stated that the proper test to be applied to determine the liability of an owner or occupier of land is: whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others, *irrespective* of plaintiff's status as trespasser, licensee or invitee. *Rowland v. Christian*, 69 Cal. 2d 89, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

This test eliminates the terms, "trespasser," "licensee" and "invitee" from the legal vocabulary. The California Supreme Court thus becomes the first court to reach a decision concerning landowners and entrants neither by classifying the entrant in a specific category, nor by making an exception to the general rule limiting the landowner's liability; rather, this court predicated its decision simply on general principles of negligence law. So predicated, this decision is the last step in an erosion process which began almost as soon as the classifications were established. By reviewing the development of the traditional classification structure, this note attempts to reveal certain flaws inherent in the structure, which flaws have caused the California court to consider the classifications invalid despite more than a century of their use.

The classifications of trespasser, licensee and invitee evolved in the nine-

¹ *Rowland v. Christian*, 63 Cal. Rptr. 98 (Cal. App. 1967).

² *Fisher v. General Petroleum Corp.*, 123 Cal. App. 2d 770, 267 P.2d 841 (1954).

teenth century, an era which had not yet abandoned the basic feudal principle that an owner is sovereign on his own property. Professor Marsh observed that during this era the "privileged position of the landowner was taken for granted."³ Thus historically, the courts have had to cope with a property-biased philosophy, based on the principle that owners and occupiers of land have the right to make use of their land for their own benefit and according to their own desires, and further, that any invasion of a close could be neither justified nor excused. With this doctrine as his security, the landowner claimed dominion over infinite space above and below his surface, asserted the right to do whatever he pleased within those boundaries, and claimed a right of action against any intruder. A necessary corollary thereto was his immunity from any duty to one coming on his premises.⁴ Many of the earlier English cases are indicative of the influence of this principle without articulating it. Actions against a landowner for injuries arising from the condition of the premises or the owner's activities on the premises were summarily dismissed;⁵ the courts held simply that such an action against a landowner is not maintainable.⁶

The first successful assault on the landowner's wall of immunity came in the case of *Indermaur v. Dames*.⁷ In this case the plaintiff came onto the defendant's premises pursuant to a contract. While plaintiff was attending to the business prescribed in the contract, he fell down an open, unguarded shaft and was injured. The court held that the plaintiff was not of a class of persons described as "licensees," but rather of a class which go upon the land on business concerning the occupier; therefore, such occupier was held to owe to the plaintiff a duty of reasonable care in making the premises safe.⁸ The landowner's immunity from liability to entrants was thus subjected to its

³ Marsh, *The History and Comparative Law of Invitees, Licensees, and Trespassers*, 69 L.Q. REV. 182 (1953); see generally Comment, 22 MO. L. REV. 186 (1957).

⁴ Green, *Landowner v. Intruder; Intruder v. Landowner. Basis of Responsibility in Tort*, 21 MICH. L. REV. 495 (1923). The rule closely restricting the landowner's liability to those on the land other than for the benefit of the landowner has been traced to the dominion sovereignty traditionally ascribed to the ownership of land under the feudal system, under which even the King's courts had no concern with what the landowner did on his own property. See Bohlen, *Fifty Years of Torts*, 50 HARV. L. REV. 725, at 739-40 (1937); 2 HARPER AND JAMES, *THE LAW OF TORTS* 1432 (1956).

⁵ *Iway v. Hedges*, 9 Q.B.D. 80 (1889); *Tolhausen v. Davies*, 57 L.J.Q.B. 392, *aff'd* 58 L.J.Q.B. 98 (C.A. 1888); *Southcote v. Stanley*, 156 Eng. Rep. 1195 (Ex. 1856); *Wilkinson v. Fairrie*, 158 Eng. Rep. 1038 (Ex. 1862); *Housnell v. Smyth*, 141 Eng. Rep. 1033 (C.P. 1860).

⁶ See, e.g., *Stiefsohn v. Brook, Bond, & Co.*, 53 J.P. 790, T.L.R. 684 (1889).

⁷ L.R. 1 C.P. 274 (1866).

⁸ *Accord*, *Kroger Co. v. Thomas*, 277 F.2d 854 (6th Cir. 1960); *Andrews v. Goetz*, 104 So. 2d 653 (Fla. App. 1958); *Dunham v. Hubert W. White, Inc.*, 203 Minn. 82, 279 N.W. 839 (1938); *Nelson v. F. W. Woolworth Co.*, 211 Iowa 592, 231 N.W. 665 (1930).

first exception, *i.e.*, "business invitees," and with it the foundation for the traditional classifications was created. By this approach, the three classes of entrants onto land were trespassers, licensees and invitees. Those who entered the land without permission or privilege were trespassers, and those who entered with the occupier's permission but only for their own purposes not connected with the occupier's interests, were licensees. To these two classes of entrants the landowner was under only a duty not to wilfully and wantonly injure them. Those who entered for the purpose of the occupier's business or interest were invitees, to whom the landowner owed a duty to exercise reasonable care to make the premises safe for their visit.⁹ One could imagine that the facility of the formula (*i.e.*, merely decide the plaintiff's status, then plug in the respective duty owing) lured many judges into using these classifications without analyzing the circumstances. Courts were eager to embrace this mechanistic "magic formula."

What I particularly wish to emphasize is that there are three different classes—invitees, licensees, trespassers. . . . Now the line that separates each of these three classes is an absolutely rigid line. There is no half-way house, no no-man's land between adjacent territories.¹⁰

Several years subsequent to *Indemauro*, the antithesis to the traditional classifications and the immunity which they offered to the landowner developed when Brett, the Master of the Rolls, made the first attempt to state a formula of duty.

Whenever one person is placed by circumstances in such a position in regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger of injury to the person or property of the other, a duty arises to use the ordinary skill and care to avoid such danger.¹¹

Shortly thereafter, Brett, who had then become Lord Esher, rejected his own formula as far too broad,¹² and sought an alternative method of implementing his general concept. Concurrently, American courts likewise fostered both the development of the classification structure *Indemauro*, and attempts to implement Lord Esher's concept of duty, sometimes referring to the concept as that of "limitations of duties."¹³ As in the English courts, the largest single area in which these limitations were applied involved owners and occupiers of land. Hence, though attempting to implement Lord Esher's broad concepts,

⁹ See generally *supra* notes 4, 5 and 7.

¹⁰ Robert Addie & Sons v. Dumbreck, [1929] A.C. 358, 371.

¹¹ Heaven v. Pender, 11 Q.B.D. 503, 509 (1883).

¹² LeLievre and Dennes v. Gould, [1893] 1 Q.B. 491.

¹³ Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 162 N.E. 99 (1928). See generally Green, *The Duty in Negligence Cases*, 28 COLUM. L. REV. 1014 (1928).

the American courts accepted the traditional classifications of trespasser, licensee and invitee and the limitations on duty they imposed, but did so within a framework of exceptions. The landowner's wall of immunity began to crumble under the weight of these exceptions, and the erosion process began. The most notable of these early judicially-founded exceptions to the general limitations on duty imposed by the classifications, are the attractive nuisance doctrine,¹⁴ the anticipated trespasser¹⁵ and the discovered trespasser.¹⁶ These exceptions caused problems to the courts, since the cases all rested on a value judgment between the landowner's right to use his land according to his own desires and the rights of those in the vicinity to be free from physical harm. The result has been a set of limitations of duty, quite complicated in their detailed variations, and tending to be quite rigidly distinguished.¹⁷

The next blow to the land-occupier resulted from the courts' difficulty in defining "invitee."¹⁸ Presently, there are two tests to determine who is an invitee: (1) the so-called "economic benefit"¹⁹ test; and (2) the "invitation"²⁰ test. In the "economic benefit" test there must be either an actual or a potential economic advantage to the occupier of the premises resulting from the entrant's visit before the latter may become an invitee. The invitation

¹⁴ *Keffe v. Milwaukee & St. Paul Ry. Co.*, 21 Minn. 207, 18 Am. R. 393 (1875). See *Eldridge, Tort Liability to Trespassers*, 12 TEMPLE L.Q. 32 (1937). See also RESTATEMENT (SECOND) OF TORTS § 339 (1965).

¹⁵ *Clark v. Longview Public Service Co.*, 143 Wash. 319, 255 P. 380 (1927); *Imre v. Riegel Paper Corp.*, 24 N.J. 438, 132 A.2d 505 (1957); *Eldridge, Tort Liability to Trespassers*, 12 TEMPLE L.Q. 32, 34-38 (1937).

¹⁶ *Frederick v. Philadelphia Rapid Transit Co.*, 337 Pa. 136, 10 A.2d 576 (1940); *Castonguay v. Acme Knitting Machine & Needle Co.*, 83 N.H. 1, 136 A. 702 (1927); See *Peaslee, Duty to Seen Trespassers*, 27 HARV. L. REV. 403 (1914).

¹⁷ PROSSER, TORTS § 58 (3d ed. 1964).

¹⁸ See *Prosser, Business Visitors and Invitees*, 26 MINN. L. REV. 573 (1942); *James, Tort Liability of Occupiers of Land: Duties Owed to Licensees and Invitees*, 63 YALE L.J. 605 (1954); *Bohlen, The Duty of a Landowner Towards Those Entering His Premises of Their Own Right*, 69 U. PA. L. REV. 142, 340 (1920). As *Denning L.J.* said in *Dunster v. Abbott*, [1954] 1 W.L.R. 58: "A canvasser who comes on your premises without your consent is a trespasser. Once he has your consent, he is a licensee. Not until you do business with him is he an invitee. Even when you have done business with him, it seems rather strange that your duty towards him should be different when he comes up to your door from what it is when he goes away. Does he change his colour in the middle of the conversation? What is the position when you discuss business with him and it comes to nothing? No confident answer can be given to these questions. Such is the morass into which the law has floundered in trying to distinguish between licensees and invitees."

¹⁹ *Supra* note 8.

²⁰ See, e.g., *Dowd v. Portsmouth Hospital*, 105 N.H. 53, 193 A.2d 788 (1963); *Bunnell v. Waterbury Hospital*, 103 Conn. 520, 131 A. 501 (1925); *Demarest v. Palisades Realty & Amusement Co.*, 101 N.J.L. 66, 127 A. 536, 38 A.L.R. 352 (1925).

test is based on an implied representation made by the occupier to the public—*i.e.*, by holding the land open to the public, thus preparing it for their reception—the existence of benefit to the landowner accruing from the visit notwithstanding. The latter test broadens the classification of invitee. Regardless which test is used, however, the “invitee” class has been consistently growing.²¹ A corollary to the extension of the “invitee” class has been the court’s problem of defining a licensee. Nearly all decisions are in agreement that a social guest, even though he may have been cordially invited and urged to come, is not in law an invitee—a distinction which has puzzled many students of the law. The guest, as a licensee, is owed no duty of inspection or affirmative care to make the premises safe for his visit.²²

The inconsistencies in this area have been unreasonable. One of the areas of conflict resulting from the classification of licensee (not the social guest-type) has been the courts’ relentless effort to find some possible pecuniary profit to the possessor in an effort to push the entrant over Lord Denedin’s “rigid line”²³ into the invitee class. Courts proceeding in this direction have found economic advantage in the form of possible advice or assistance which might be given to another about to buy,²⁴ and in the chance that the plaintiff might see something he likes.²⁵ Even children²⁶ and friends who accompany customers²⁷ have been held to be invitees. On the other hand, the courts have been rather reluctant in putting social guests into the invitee class even where the guest renders some incidental service to his host.²⁸

²¹ *Infra* notes 24, 25, 26 and 27.

²² *See, e.g.*, *Quinlan v. Quinlan*, 76 N.J. Super. 11, 183 A.2d 712 (1962); *Cordula v. Dietrich*, 9 Wis. 2d 211, 101 N.W.2d 126 (1960); *Laube v. Stevenson*, 137 Conn. 469, 78 A.2d 693 (1951); *Comeau v. Comeau*, 285 Mass. 578, 189 N.E. 588 (1934).

²³ *Supra* note 10.

²⁴ *Sears, Roebuck & Co. v. Donovan*, 137 A.2d 716 (1958); *Kennedy v. Phillips*, 319 Mo. 573, 5 S.W.2d 33 (1928).

²⁵ *Campbell v. Weathers*, 153 Kan. 316, 111 P.2d 72 (1941). In this case plaintiff entered defendant’s cigar store and loitered for fifteen to twenty minutes without making a purchase, and then went to the back of the building to use the washroom. He stepped into an open trap door and was injured. The court, without using the more inclusive invitation test, found the plaintiff to be an invitee on the basis that he might have become interested in a new brand of cigars on display which he might have purchased then or on some future occasion.

²⁶ *Anderson v. Cooper*, 214 Ga. 164, 104 S.E.2d 90 (1958); *Valunas v. J. J. Newberry Co.*, 336 Mass. 305, 145 N.E.2d 685 (1957). *Contra*, *O’Rourke v. Marshall Field & Co.*, 307 Ill. 197, 138 N.E. 625 (1923); *Petree v. Davison-Paxon-Stokes Co.*, 30 Ga. App. 490, 118 S.E. 697 (1923).

²⁷ *Goldsmith v. Cody*, 351 Mich. 380, 88 N.W.2d 268 (1958); *Nave v. Hixenbaugh*, 180 Kan. 370, 304 P.2d 482 (1956).

²⁸ *See, e.g.*, *Kapka v. Urbaszewski*, 47 Ill. App. 2d 321, 198 N.E.2d 569 (1964); *Lucas v. Barner*, 56 Wash. 2d 136, 351 P.2d 492 (1960); *Laube v. Stevenson*, 137 Conn. 469,

Aside from these problems, the biggest blow to the landowner's position of limited liability has come through the courts' expansion of those duties owed to a licensee. The earlier decisions frequently held that there was no duty owed a licensee except the duty to refrain from "wilful or wanton misconduct."²⁹ Some courts still so hold.³⁰ With an increasing regard for human safety, however, there has been a tendency on the part of many courts to apply those general principles of negligence law which were formulated in *Heaven v. Pender*.³¹ Realizing the fundamental antitheses between "foreseeability of harm" and the "traditional classifications," the courts have been anxious to find exceptions to the classifications in order to impose upon an owner or occupier the duty to exercise ordinary care in any event. In each case, once the exception is found, the licensee becomes indistinguishable from an invitee, and thus is owed a duty of ordinary reasonable care. These courts have found a distinct line between harm caused by the static, passive condition of the premises, and harm caused by the activity or current operations of the occupier.³² The earlier cases which have held a landowner to an obligation to exercise reasonable care for the protection of a licensee with regard to active operations were basically concerned with the use of railroads³³ or machinery.³⁴ However, more recently, the principle has been applied to a greater number of fact situations. The following cases illustrate how the courts have side-stepped traditional classification rules limiting liability, by finding the exception which allows them to impose a general negligence standard:

(1) The defendant-landowner fell down her stairs and injured the plaintiff, who was standing at the bottom of that stairway. The court noted that it is now generally held in cases involving injury resulting from active conduct, rather than mere passive condition of the premises, that the landowner

78 A.2d 693 (1951). See generally *Schiebel v. Lipton*, 156 Ohio St. 308, 102 N.E.2d 453 (1951).

²⁹ See, e.g., *Cleveland, C.C. & St. L. Ry. v. Potter*, 113 Ohio St. 591, 150 N.E. 44 (1925); *O'Brien v. Union Freight R.R. Co.*, 209 Mass. 449, 95 N.E. 861 (1911).

³⁰ *Duff v. United States*, 171 F.2d 846 (4th Cir. 1949); *Hill v. Baltimore & Ohio R.R.*, 153 F.2d 91 (7th Cir. 1946); *Biggs v. Bear*, 320 Ill. App. 597, 51 N.E.2d 799 (1943).

³¹ *Supra* note 11.

³² See, e.g., *Oettinger v. Stewart*, 24 Cal. 2d 133, 148 P.2d 19, 156 A.L.R. 1221 (1944); *Lambert, Recent Important Tort Cases*, 16 NACCA L.J. 317 (1955); *infra* notes 35-38 and 40-43.

³³ See, e.g., *Louisville & Nashville R.R. v. Blevins*, 293 S.W.2d 246 (Ky. 1956); *Smithwick v. Pacific Electric Ry.*, 206 Cal. 291, 274 P. 980 (1929); *Pomponio v. New York, N.H. & H.R.R.*, 66 Conn. 528, 34 A. 491 (1895).

³⁴ See, e.g., *Standard Steel Car Co. v. McGuire*, 161 F. 527 (3d Cir. 1908); *DeHaven v. Hennessey Bros. & Evans Co.*, 137 F. 472 (6th Cir. 1905).

may be held liable for failure to exercise ordinary care toward a licensee whose presence on the land is known or should reasonably be known to the possessor. Accordingly, even if plaintiff were a licensee rather than a business visitor, it is clear that defendant had a duty to exercise ordinary care to avoid injuring her.³⁵

(2) Plaintiff and defendant were neighbors and from time to time helped each other with various projects on their respective premises. Plaintiff alleged that while he was on defendant's land helping to assemble and join pipe, defendant negligently failed to warn him before giving the pipe a hard turn, thereby injuring the plaintiff. The action was dismissed on the ground that plaintiff was a mere social guest toward whom defendant owed only a duty to refrain from wilful injury. On appeal, the Superior Court of New Jersey, Appellate Division, reversed and held that in conducting activities on his land, the occupier of premises owes a duty of reasonable care to both licensees, including social guests, and invitees. Evidence of negligence was for the jury, irrespective of whether plaintiff was deemed licensee or invitee.³⁶

(3) Plaintiff, a social guest, was injured while defendant, his host, was demonstrating a golf swing. The court explained that while the court had often enunciated the rule that an owner or occupier of land owes no duty to a licensee other than the duty not to wilfully or wantonly injure him, almost invariably, where the rule had been applied, the licensee was injured because of some defect in or the condition of the premises. Limiting the ruling to active conduct, the court held an owner or occupier of land has a duty to exercise reasonable care to avoid injuring a person who is on the land with his permission.³⁷

(4) In an action for the wrongful death of a drowned youth, the court held that liability could be predicated upon the active conduct of throwing a party for a large number of youthful guests, knowing the dangers of a swimming pool.³⁸ As one commentator has so cogently observed:

The doctrine or theory that a property owner may be liable to a bare licensee, or even to a trespasser, for "active negligence" constitutes an attempt to remedy a perceived injustice by mitigating the old rule that the property owner was liable to noninvitees only for wilful or wanton injuries. While the purpose of the doctrine is a laudable one, the difficulties in drawing a line between active and passive negligence make it an unsatisfactory means of reaching the desired end.³⁹

³⁵ Oettinger v. Stewart, 24 Cal. 2d 133, 148 P.2d 19 (1944).

³⁶ Cropanese v. Martinez, 35 N.J. Super. 118, 113 A.2d 433 (1955).

³⁷ Potts v. Amis, 62 Wash. 2d 777, 384 P.2d 825 (1963).

³⁸ Hensen v. Richey, 237 Cal. App. 2d 475, 46 Cal. Rptr. 909 (1965); This decision has been characterized as an "ingenious process of finding active negligence. . ." WITKIN, SUMMARY OF CALIFORNIA LAW, Torts § 255, at 535-536 (Supp. 1967).

³⁹ 156 A.L.R. 1226, 1234.

Quite closely related to active negligence, and sometimes indistinguishable, are a line of cases which follow yet another exception to the limitations imposed by the classification structure: the "duty to warn of dangerous condition" cases. The theory behind these cases is that the possessor of land is under a duty to exercise ordinary reasonable care to warn licensees of hidden dangers known to the possessor.

(1) In an action brought by the plaintiff for injuries resulting from a fall due to a newly waxed floor, the court held that even if the plaintiff was found to be a mere licensee, the defendant, knowing of her presence, was under a duty to use ordinary care to avoid injuring her by a positive act of negligence or by a breach of duty equivalent to such an act, and it could reasonably be found that the failure to give warning of a slippery floor was such a breach of duty.⁴⁰

(2) Defendant had hung plaintiff's coat in what appeared to be a closet, but what was, in reality, an entrance to a cellar stairway. As plaintiff prepared to leave, she went to get her coat and fell down the stairway. The court held that the only duty owed a licensee or trespasser was to see that he was not injured by reason of wanton, wilful, or other active negligence but that this does not preclude a finding that the owner of land might owe a gratuitous licensee, whose presence was known, the duty to warn of a known danger involving an unreasonable risk to the licensee, which the possessor had reason to believe that the licensee would not discover.⁴¹

(3) Plaintiff, a photographer, went to defendant's depot to photograph an arriving delegation. Unable to take pictures through the crowd, defendant's employees helped the plaintiff to a glass canopy which had warning signs posted on it to "keep off." The court found that a failure to give an oral warning was actionable negligence.⁴²

(4) Defendant had placed sand over portions of an icy walk and alleyway but ran out of sand before he could do the front porch. As plaintiff, a social guest, left after her visit, she slipped on the porch. The court held that the "placing of the sand" could be either considered as active negligence for which defendant would be liable to a licensee, or that the ice on the porch was a condition for which defendant would be liable for his failure to warn.⁴³

These cases exemplify the manner in which modern courts, in an effort to do justice, have developed subtle verbal refinements to define the standards

⁴⁰ *Ward v. Avery*, 113 Conn. 394, 155 A. 502 (1931). See, e.g., *Choate v. Carter*, 98 Ga. App. 375, 105 S.E.2d 909 (1958); *Newman v. Fox West Coast Theatres*, 86 Cal. App. 2d 428, 194 P.2d 706 (1948). *Contra*, *Fisher v. General Petroleum Corp.*, 123 Cal. App. 2d 770, 267 P.2d 841 (1954).

⁴¹ *Maher v. Voss*, 46 Del. 418, 84 A.2d 527 (1951).

⁴² *Mathias v. Denver Union Terminal R.R.*, 137 Colo. 224, 323 P.2d 624 (1958).

⁴³ *Mistretta v. Alessi*, 45 N.J. Super. 176, 131 A.2d 891 (1957). See generally 55 A.L.R.2d 525 (1957) for a collection of cases dealing with warning.

of care which the landowner owes to the traditional categories of entrants. In all these cases the finding of the exception has been a disguised attempt to mitigate the traditional rules and apply a single duty, that of reasonable care. These cases are also illustrative of what Justice Peters refers to as the "subtleties and confusion"⁴⁴ which result from applying common law principles to the liability of the possessor of land. His reasoning is sound and logical—simply stated, once a court recognizes that a possessor of land is liable for active negligence⁴⁵ to a licensee or imposes a duty on the possessor to warn a licensee of the conditions of the premises,⁴⁶ the court is in effect imposing a standard of ordinary reasonable care on the possessor. Therefore, once a court has reached this stage of progress, the word "licensee" and the phrase "wilful and wanton" become obsolete. Hence, the classification thus becomes meaningless. Justice Peters is not alone in his criticism.⁴⁷ In speaking of the confusion and conflicts bred by the attempts to apply the common law status classifications to an industrialized urban society with complex economic and individual relationships, the United States Supreme Court in *Kermarec v. Compagnie Générale Transatlantique*⁴⁸ noted that the common law had moved, unevenly and with hesitation, toward imposing on owners and occupiers a single duty of reasonable care in all circumstances. The Court therein declined to import the traditional rules into admiralty law.

In *Taylor v. New Jersey Highway Authority*,⁴⁹ the New Jersey Supreme Court stated:

In modern times the immunities have rightly, though gradually, been giving way to the overriding social view that where there is foreseeability of substantial harm,

⁴⁴ Rowland v. Christian, 69 Cal. 2d 89, 443 P.2d 561, 566, 70 Cal. Rptr. 97 (1968).

⁴⁵ See, e.g., *W. S. Fowler Rental Equipment Co. v. Skipper*, 276 Ala. 593, 165 So. 2d 375 (1963); *Fabrizio v. Youhas*, 148 Conn. 426, 172 A.2d 69 (1961); *Anderson v. Welty*, 334 S.W.2d 132 (Mo. Ct. App. 1957); *Vincent v. Superior Iron Works & Supply Co.*, 170 So. 2d 184 (La. 1964); *Draper v. Switous*, 370 Mich. 468, 122 N.W.2d 698 (1963); *Henderson v. Baird*, 100 Ga. App. 627, 112 S.E.2d 221 (1959); *Krauth v. Geller*, 54 N.J. Super. 442, 149 A.2d 271 (1959); *Lomberg v. Renner*, 121 Vt. 311, 157 A.2d 222 (1960); *Le Compte v. Wardell*, 134 Mont. 490, 333 P.2d 1028 (1958). See the dissent in *Peter Cunag v. McCarthy*, 42 Ill. App. 2d 36, 191 N.E.2d 404 (1963) for a good comparison between Michigan and Illinois Law.

⁴⁶ RESTATEMENT (SECOND) OF TORTS § 342; see, e.g., *Deacy v. McDonnell*, 131 Conn. 101, 38 A.2d 181 (1944); *Little v. Brutner*, 186 Kan. 75, 348 P.2d 1022 (1959); *Snyder v. I. Jay Realty Co.*, 53 N.J. Super. 336, 147 A.2d 572 (1962); *Rushton v. Winters*, 331 Pa. 78, 200 A. 60 (1938); *Hamilton v. Union Oil Co.*, 216 Ore. 354, 339 P.2d 440 (1959); *Cutler v. Dushoff*, 192 Pa. Super. 37, 159 A.2d 524 (1959); *Holcombe v. Buckland*, 130 F.2d 544 (4th Cir. 1942).

⁴⁷ *Infra* notes 50-53.

⁴⁸ 358 U.S. 625 (1959).

⁴⁹ 22 N.J. 454, 126 A.2d 313.

landowners, as well as other members of society, should generally be subjected to a reasonable duty of care to avoid it.⁵⁰

In addition to the solution offered by Justice Peters, many legal writers have questioned the applicability of the classifications and have offered somewhat different approaches to the problem.⁵¹ Some writers have suggested the abolition of a distinction between invitees and licensees on the basis that the classifications are not just, logical or reasonable.⁵² Thus far the only jurisdiction which has been affected is Louisiana, which has raised the status of social guest to that of an invitee.⁵³ Lambert remarked, in discussing *Cropanese v. Martinez*,⁵⁴ that the court "refused to flounder in the morass of the categories of classification."⁵⁵ It was enough for the court that defendant's acts involved a risk of harm to plaintiff, and therefore, the law of negligence imposed a duty upon the defendant.

In support of the decision in *Rowland v. Christian* it should be pointed out that in 1957, in England, a statute was enacted which abolished the distinction between licensees and invitees, and declared that the occupier owes the same "common duty of care to both."⁵⁶

It is submitted that the true test of the possessor's liability should be based on foreseeability of harm to others without regard to the terms, "trespasser," "licensee" or "invitee." They tend only to add exceptions and confusions to the law. The basic consideration, that a landowner is sovereign on his property, must be balanced with the general security of human rights. It has been shown that the law of negligence seeks to accomplish this within the framework of rigid classifications, but the confusion and chaos which has developed is overwhelming. It is time to abolish these outdated classifications, and to allow the general principles of negligence law to determine the liability of possessors of land on an objective case-to-case basis. Why must we continue to hide the fact that a "possessor must exercise ordinary care" under a blanket of exceptions to general rule?

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⁵⁰ *Id.* at 319. See generally *Gould v. DeBeve*, 330 F.2d 826 (D.C. Cir. 1964); *Good v. Whan*, 335 P.2d 911 (Okla. 1959).

⁵¹ McCleary, *The Liability of a Possessor of Land in Missouri to Persons Injured While on the Land*, 1 Mo. L. REV. 45 (1936); James, *Tort Liability of Occupiers of Land; Duties Owed to Licensees and Invitees*, 63 YALE L.J. 605 (1954).

⁵² See generally Comment, 22 Mo. L. REV. 186, 191 (1957) "The legal cloak under which a person comes does not fashion a veil of unforeseeability, hiding the eye of vigilance from what human considerations compel it to see."

⁵³ *Alexander v. General Accident, Fire & Life Assurance Corp.*, 98 So. 2d 730 (La. App. 1957). Cf. *Scheibel v. Lipton*, 156 Ohio St. 308, 102 N.E.2d 453 (1951).

⁵⁴ *Supra* note 36.

⁵⁵ Lambert, *Recent Important Cases*, 16 NACCA L.J. 317 (1955).

⁵⁶ OCCUPIER'S LIABILITY ACT, 5 & 6 Eliz. II c. 31.