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LEGISLATIVE NOTE

THE ILLINOIS PREMISES LIABILITY ACT: A NEW APPROACH TO THE DETERMINATION OF A LANDOWNER’S LIABILITY

Every tort case in which liability is imposed on a defendant is predicated upon a duty: an obligation to conform to a particular standard of conduct toward another to which the law gives recognition and effect.1 The scope of an individual’s duty, reflecting the scope of the law’s protection, is intimately linked to our notions of human relations.2 Thus, in theory, as social values, policies, and understandings change, the nature of citizens’ legal duties with respect to their neighbors tends to change as well.3

Individuals are expected to conform to the legal standard of reasonable conduct under the circumstances in their everyday activities.4 Therefore, they


2. Prosser, Palsgraf Revisited, 52 Mich. L. Rev. 1, 12-15 (1953). This Note makes only a brief attempt to familiarize the reader with the traditional principles of negligence theory and their application. For a general discussion of this area of tort law, see Prosser & Keeton, supra note 1, at 393-410; 2 F. Harper & F. James, Jr., The Law Of Torts 896-1161 (1956); Green, The Negligence Action, 1974 Ariz. St. L.J. 369, 372. Generally speaking, the tort of negligence requires proof of: (1) a recognized legal duty owed by the defendant to avoid exposing the plaintiff to a foreseeable and unreasonable risk of harm; (2) a breach of that duty; (3) some injury to the plaintiff that is compensable; and (4) a causal connection between the breach of the defendant’s duty and the plaintiff’s injury, usually termed “proximate cause.” Illinois Hous. Dev. Auth. v. Sjostrom & Sons, Inc., 105 Ill. App. 3d 247, 258, 433 N.E.2d 1350, 1359 (2d Dist. 1982).

3. Professor Leon Green refers broadly to the influence of the “general environment” on the development of the law. As Professor Green suggests, “It may be difficult to realize but any important change in the social environment or any significant scientific invention or discovery makes it necessary to discard or modify old law and frequently create new law.” Green, The Influence of Environment on the Litigation Process, 20 La. L. Rev. 548, 553 (1960), reprinted in L. Green, The Litigation Process In Tort Law 87, 92 (1965); see also Green, supra note 2, at 370-73 (noting the response of negligence law to changes in the social environment).

4. Duties are stated in broad terms. Theoretically, in negligence cases the duty is always to use reasonable care under the circumstances. Green, The Duty Problem in Negligence Cases, 28 Colum. L. Rev. 1014, 1025 (1928), reprinted in L. Green, The Litigation Process In Tort Law 153, 164 (1965). For example, it might be said that a person driving an automobile has a duty to others to use reasonable care in its operation. This simply recognizes that the law protects the interests of some persons from the driver’s conduct. What interests and how much protection, or what may specifically be required of the driver are not set out. The judge
are expected to act reasonably, even when they opt to take no action at all. Yet, owners or occupiers of property traditionally have not been obligated to act under this general standard of reasonable care in the use of their property. Instead, determining the extent of an owner's duty to an entrant who was injured on the owner's premises required that the entrant be classified either as a trespasser, licensee, or invitee. The landowner owed a different duty of care to each class of entrant. Landowners merely owed trespassers the duty to refrain from wilful and wanton misconduct. The same duty was owed to licensees, yet the owner had the additional responsibility to warn them of known hidden dangers on the premises. To invitees, the most favored class of entrants, the owner owed the highest duty—the duty to use reasonable care to maintain the premises in a safe condition. This was true whether the entrant was injured as a result of some condition existing on the premises or by some affirmative act of the owner.

On September 12, 1984, the 83d Illinois General Assembly passed the Illinois Premises Liability (Act). The Act abolished the common law dis-

will decide whether, in a given case, the particular plaintiff has protection against the particular defendant's conduct. Id.

The necessary complement of the concept of duty is the legal standard of care; the two are correlative. "What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty." Prosser & Keeton, supra note 1, at 356. Therefore, the actions of one having a duty to use reasonable care will be scrutinized by asking whether the person has conformed to the standard of reasonable conduct under the circumstances. Id. The jury determines whether an individual defendant acted reasonably according to the facts of the particular case.

5. Generally speaking, negligence theory is based on affirmative conduct. Negligence law broadly proposes that "no person is under a duty to another unless he has entered upon some course of conduct towards such other." Green, supra note 4, at 1026-27, reprinted in L. Green, the Litigation Process in Tort Law 153, 165-66 (1965). Where an individual has failed to act there is normally no liability for negligence. But when some relation exists between the parties or the individual has taken some prior action that creates a duty to act for the other's protection, then the failure of a defendant to act can be unreasonable conduct. Restatement (Second) Of Torts § 314 (1965).

6. The terms "owner," "occupier," and "landowner" are used interchangeably throughout this Note to refer to the person who has the legal right or exclusive title to the premises, whether or not they are in possession.

7. See infra text accompanying note 24.

8. See infra text accompanying note 29.

9. See infra text accompanying note 35.

10. There are four "special relationships" which give rise to the "highest duty": (1) common carrier-passenger; (2) innkeeper-guest; (3) business invitor-invitee; and (4) voluntary custodian-protectee under certain circumstances. Restatement (Second) Of Torts § 314A (1965). These relationships give rise to a high degree of care, including the duty to act for the benefit of another. Thus, mention is typically restricted to those cases presented with the question of whether the defendant was under a duty to protect the victim from a criminal attack by a third party. See, e.g., Comastro v. Village of Rosemont, 122 Ill. App. 3d 405, 461 N.E.2d 616 (1st Dist. 1984) (patron assaulted in owner's parking lot after rock concert); Burks v. Madyun, 105 Ill. App. 3d 917, 435 N.E.2d 185 (1st Dist. 1982) (babysitter shot by intruder on owner's premises); Krautstrunk v. Chicago Hous. Auth., 95 Ill. App. 3d 529, 420 N.E.2d 429 (1st Dist. 1981) (elevator repairman assaulted on owner's premises).

tinction between invitees and licensees with respect to the duty owed to such entrants by the owners of premises. Instead, the new legislation imposes upon owners the duty to exercise reasonable care toward these rightful entrants. Hence, with the enactment of the Premises Liability Act, Illinois joins the growing minority of jurisdictions that have abolished, in whole or in part, the common law scheme of status classifications. These jurisdictions have moved slowly toward imposing upon owners a duty of reasonable care for the benefit of all entrants on the premises.

This Note begins with a discussion of the traditional approach to premises liability in Illinois. Consideration is given both to the historical origins of the common law status rules and to the numerous exceptions that have made the law of premises liability increasingly complex and frequently confusing. Additionally, attention is given to the recent trend in the law of premises liability that is placing greater responsibility upon owners for the safety of entrants on their premises. After exploring the scope and extent of the Illinois Premises Liability Act, the focus shifts to an analysis of the strengths and weaknesses of the Act. While the elimination of the licensee-invitee dichotomy is viewed as a beneficial change, this Note suggests that the legislature should have taken the opportunity to abolish the common law distinctions in toto. Finally, this Note examines the implications of the Act for the courts, the practitioner, and the public.

**BACKGROUND**

The common law established three categories of persons to whom an owner owed a duty of care: trespassers, licensees, and invitees. The common law rules regarding an owner's duty to these persons emerged in an era when policies and values were far different from those of contemporary society. Initially, the three broad categories were sharply delineated and strictly applied.\(^3\) As the social and economic environment changed, numerous ex-
ceptions understandably were created in an attempt to alleviate the harsh results of the rigid rules. Despite these judicial exceptions, the law of premises liability has been slow to keep pace with modern values and mores. In response, many jurisdictions have recently abandoned or modified the common law rules. The trend among these jurisdictions has been toward imposing upon landowners the duty to use reasonable care to maintain their premises in a safe condition for those who enter the premises and remain there. With the enactment of the Premises Liability Act, Illinois follows this trend.

A. The Traditional Classification Scheme

It is generally acknowledged that the trespasser-licensee-invitee scheme had its origins in the English common law and the social and economic theory of the nineteenth century. Many of the common law standards can be traced to a feudal culture that was particularly rooted to the land. Landowners constituted the mainstay of society and the law carefully guarded the freedom of landowners to act as they pleased with regard to their property. The owners were assumed to be the sovereigns of their land. Consequently, the importance of not interfering with the activities of owners, except when these activities involved wilful and wanton misconduct, far outweighed the value of protecting the physical safety of those entering the owners' premises. Likewise, the extent of liability for reasonably foreseeable injury was in its infancy in the mid-nineteenth century. For these reasons, judges proceeded with caution in imposing new liabilities on landowners. Moreover, juries largely consisted of the class of potential visitors to the land, rather than the landowners themselves. As a result, even if judges had been predisposed to assess the liability of owners based upon the reasonable

14. See infra notes 39-71 and accompanying text.
15. See infra notes 80-108 and accompanying text.
16. See id.
19. The prevailing idea "was that freedom of contract, enterprise and unrestricted uses of property were uppermost over human welfare." Comment, supra note 17, at 187. "Subject to the duty of abstaining from avoidable injury to others, it is every man's right to manage his own volitions, interests, and property as he will, without liability to one casually harmed thereby." J. Bishop, Commentaries On The Non-Contractual Law 46 (1889).
conduct standard, rarely would they have been willing to subject landowners to the jury's verdict. 22

From this setting emerged the three broad categories of trespasser, licensee, and invitee. Together, they formed the rigid, mechanical system of status rules used for over a century in England and the United States to determine owners' duties to entrants upon their land. Assuming an entrant was injured while on the owner's premises, the determinative issue was the entrant's status as either a trespasser, a licensee, or an invitee. An individual's status was based upon the entrant's relationship to the landowner and the property. The entrant's common law status would define the extent of the owner's duty. For the landowner, the result was varying degrees of immunity from potential liability based upon the status of the injured entrant.

1. Trespassers

Trespassers 23 were least favored in the law. They entered the premises without permission, invitation, or other right, intruding for some purpose or convenience of their own. 24 Owners had no responsibility to the trespasser, regardless of the reason for the injury, 25 because the trespasser was a wrongdoer. Social policy was furthered by eliminating the owner's burden of watching for and protecting trespassers on the land. 26 The owner had no duty to maintain the premises in a safe condition for trespassers. 27 Consequently, the injured trespasser could only recover for injuries sustained as a result of the owner's wilful and wanton misconduct. 28

22. Id.

23. The new Illinois Premises Liability Act leaves intact the trespasser category, including the trespassing child entrant. See supra note 11. Therefore, this Note only briefly discusses the subject of the trespassing entrant. For a general survey of the status of the trespasser at common law, see PROSSER & KEETON, supra note 1, at 393-411; Hughes, Duties to Trespassers: A Comparative Survey and Reevaluation, 68 YALE L.J. 633 (1959); James, Tort Liability of Occupiers of Land: Duties Owed to Trespassers, 63 YALE L.J. 144 (1953).


25. Corcoran v. Village of Libertyville, 73 Ill. 2d 316, 325, 383 N.E.2d 177, 179 (1978); Green, The Duty Problem In Negligence Cases: II, 29 COLUM. L. REV. 255, 272 (1929), reprinted in L. GREEN, THE LITIGATION PROCESS IN TORT LAW 185, 202 (1965) (discussing the child trespasser); J. BISHOP, supra note 19, at 390 ("The owner of land is entitled to keep it in whatever condition he will, so long as he violates no duty to another. And he owes no duty to one who comes upon it without knowledge of owner's identity and without ever having met owner was trespasser.

26. PROSSER & KEETON, supra note 1, at 395. It is also suggested that landowners' immunity is based upon the understanding that a trespasser's presence is unexpected and therefore a reasonable person would not take steps to protect them. Id. at 394. Still, even where it is common knowledge that people do trespass, the majority of jurisdictions do not impose an obligation, regardless of the foreseeability of the trespass. Id.

27. Regardless of whether the trespasser's entry was intentional, negligent, or accidental, the duty of the owner was the same. RESTATEMENT (SECOND) OF TORTS § 329 comment C (1965).

2. **Licensees**

The licensee, one who entered the premises with the express or implied permission of the owner,29 was afforded slightly more protection than the trespasser. Traditionally, courts imposed upon the owner the same duty for the licensee as for the trespasser: to refrain from injuring the entrant by wilful and wanton misconduct.30 This duty was expanded, however, as courts became more willing to find that a failure to disclose or warn against a known hidden danger might constitute wilful and wanton misconduct.31

Despite the owner’s express or implied permission to enter the premises, licensees still were not among the privileged class of invitees. In theory, the licensee received the use of the premises as a personal favor, no matter how cordially invited. Therefore, licensees were expected to accept the owner’s premises as found.32 The purpose for entering the premises was the decisive factor distinguishing the licensee from the invitee. Though entering with permission, licensees were on the owner’s premises for their own purposes, or for some purpose unrelated to the owner’s activities.33 Hence, the social

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29. Schoen v. Harris, 108 Ill. App. 2d 186, 190-92, 246 N.E.2d 849, 852 (3d Dist. 1969); 2 F. HARPER & F. JAMES, supra note 2, at 1471. The common law distinction between licensees and invitees was based, in part, on the distinction between permission and invitation. As the official comment to the Restatement says, "invitation is conduct which justifies others in believing that the possessor desires them to enter the land; permission is conduct justifying others in believing that the possessor is willing that they shall enter if they desire to do so." RESTATEMENT (SECOND) OF TORTS § 332 comment a (1965). The distinction is particularly transparent, especially when the two concepts are considered in light of their bearing on the foreseeability of the entrant’s presence.


31. See, e.g., Latimer v. Latimer, 66 Ill. App. 3d 685, 688, 384 N.E.2d 107, 109 (1st Dist. 1978) (host’s failure to warn social guest of concealed dangerous condition of which owner had knowledge could be construed as wilful or wanton misconduct); Schoen v. Harris, 108 Ill. App. 2d 186, 191, 246 N.E.2d 849, 852 (3d Dist. 1969) (to constitute wilful and wanton conduct on part of owner, no ill will is required, because failure to disclose known dangerous condition is conscious disregard for safety of others); Kapka v. Urbaszewski, 47 Ill. App. 2d 321, 325, 198 N.E.2d 569, 572 (1st Dist. 1964) (violation of safety ordinance, while possibly constituting negligence, did not amount to wilful and wanton conduct); 1 J. DOOLEY, supra note 24, § 19.04 (owner has no duty to warn of obvious and overt dangers, but has duty to refrain from wilful and wanton negligence).

32. The licensee was said to receive the use of the premises as a "personal favor." RESTATEMENT (SECOND) OF TORTS § 330 comment h (1965). Because the owner consented to the licensee’s presence "out of mere grace," the owner was entitled to assume that the licensee: (1) knew that the owner had no interest in their visit; (2) could not expect any special preparation; and (3) would be alert to the condition of the premises. F. BOHLEN, STUDIES IN THE LAW OF TORTS 183-84 (1926).

guest, visiting the premises for companionship, diversion, and enjoyment of hospitality, was within the common law definition of a licensee.\textsuperscript{34}

3. Invitees

The common law imposed the highest duty of care upon owners in their dealings with invitees. Invitees, or business visitors as they were commonly referred to, entered the premises with the owner's express or implied invitation, for some purpose connected with the business of the owner or an activity the owner conducted or permitted on the premises.\textsuperscript{35} A mutually beneficial interest existed, usually in an economic sense, between the invitor and invitee.\textsuperscript{36} It was the mutuality of interest that most strongly implied the existence of the invitor-invitee relationship.\textsuperscript{37} To this privileged class of

\textsuperscript{34} See, e.g., Gregor by Gregor v. Kleisor, 111 Ill. App. 3d 333, 336, 443 N.E.2d 1162, 1164-5 (2d Dist. 1982); Ciaglo v. Ciaglo, 20 Ill. App. 2d 360, 367, 156 N.E.2d 376, 379 (1st Dist. 1959); I J. Dooley, supra note 24, \S 19.05.

In Illinois, the concept of the social guest-as-licensee can be traced to Biggs v. Bear, 320 Ill. App. 597, 51 N.E.2d 799 (1st Dist. 1943). In Biggs, the plaintiff was injured in a fall down an unlighted stairway in the defendant's residence while in search of a bathroom. The plaintiff had been invited on the premises for a luncheon. The trial court directed a verdict in favor of the defendant. The appellate court affirmed. In deciding that a social guest is no more than a licensee, the court looked to the English case of Southcote v. Stanley, 1 H & N 247, 25 L.J. Ex. (n.s.) 339, 156 Eng. Rep. 1195 (1856), the forerunner of most American cases defining the owner's duty to social guests. It has been noted, however, that the rationale put forward by the Southcote court "strikes a reader of today as unpersuasive." Pashinian v. Haritonoff, 81 Ill. 2d 377, 383, 410 N.E.2d 21, 23 (1980) (Ward, J., dissenting).


\textsuperscript{36} See, e.g., Burks v. Madyun, 105 Ill. App. 3d 917, 920, 435 N.E.2d 185, 188 (1st Dist. 1982) (babysitter on owner's premises); Mock v. Sears, Roebuck & Co., 101 Ill. App. 3d 103, 105-06, 427 N.E.2d 872, 875 (1st Dist. 1981) (customer went to store to pick up merchandise). \textit{But see} Barmore v. Elmore, 83 Ill. App. 3d 1056, 1058-59, 403 N.E.2d 1355, 1357 (2d Dist. 1980) (lodge member permitted on owner's premises to pay dues was not invitee of owner since primary benefit of service ran to fraternal organization and not to property owner himself).

37. See cases cited supra note 36. The Illinois Supreme Court has noted that this test of an entrant's status as an invitee does not cover all the circumstances that may arise, and therefore the facts of each case will be controlling. Ellguth v. Blackstone Hotel, Inc., 408 Ill. 343, 347-48, 97 N.E.2d 290, 293 (1951).

Nevertheless, the cases not involving commercial premises or some business activity that have held that the entrant was entitled to the status of an invitee are relatively few in number. See, e.g., Burks v. Madyun, 105 Ill. App. 3d 917, 435 N.E.2d 185 (1st Dist. 1982) (plaintiff in private residence as babysitter); Madrazo v. Michaels, 1 Ill. App. 3d 583, 274 N.E.2d 635 (1st Dist. 1971) (plaintiff assisted her niece in moving into new home and caring for her children);
entrants, the owner not only owed the obligation to refrain from injuring the entrant by unreasonably dangerous conduct, but also the affirmative duty to use reasonable care in making the premises safe. This duty included discovering dangerous conditions and either correcting them or warning the invitee of their existence.\(^{38}\)

**B. Common Law Developments**

The foregoing scheme of status categories, determining the owner’s duty with reference to the three broad common law distinctions, appeared to provide a simple, orderly test of the landowner’s duty to the injured entrant. The Illinois courts, however, as well as other jurisdictions, found the need to mitigate the frequently harsh results of the rigid rules in order to reach a just result in many instances.\(^{39}\) This desire to arrive at an equitable

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Some courts, however, have used an “invitation” test to determine whether the plaintiff was an invitee. This test rests on the assumption that the basis of liability is the implied representation by the owner that the premises are safe, arising from the encouragement or invitation of the owner. Prosser & Keeton, supra note 1, at 422. Dean Prosser argued that the courts have been more concerned with whether there was an “invitation” than with the question of whether there was some business interest or expected financial gain. See Prosser, supra note 17, at 611. He noted, further, that the notion of invitation as the foundation of the owner’s duty to an invitee is essentially sound because “encouragement to enter [carries] an implied assurance of care taken to make the place safe for the purpose.” Id. If this notion is accepted, however, it applies both to the individual who comes to transact business and to the one who enters on a social visit at the owner’s insistence. For a general discussion of the two tests, see 2 F. Harper & F. James, supra note 2, at 1478-87.


39. A brief digression demonstrates both the simplicity and the difficulties inherent in the common law status rules. Under the common law structure, for example, one who takes a shorter path to a destination by cutting across the owner’s gas station, and who is injured while doing so, is a trespasser and will not be able to recover for injuries in the absence of a deliberate act by the owner. Briney v. Illinois Cent. R., 401 Ill. 181, 81 N.E.2d 866 (1948). If this short-cut is typically used by the entrant and others on a daily basis, a habitual acquiescence in the trespass by the owner may make the entrant a licensee, provided that the tolerance is so pronounced as to be tantamount to permission. Trout v. Bank of Belleville, 36 Ill. App. 3d 83, 87, 343 N.E.2d 261, 265 (5th Dist. 1976). Yet, the landowner’s mere negligence will not suffice to establish liability; only the wilful and wanton misconduct of the owner, or some affirmative act by the owner to make the path more dangerous, without notice to the public, is actionable. Id. The same is true if the entrant has parked his or her car behind the gas station with the owner’s permission and, under cover of darkness, falls into a large hole on the premises. It makes no difference that the owner customarily permitted those persons who purchased gas at the station to park behind the station. Mazzeffi v. Schwanke, 52 Ill. App. 3d 1032, 368 N.E.2d 441 (1st Dist. 1977), appeal denied, 66 Ill. 2d 639 (1977); Dent v. Great Atl. & Pac. Tea Co., 4 Ill. App. 2d 500, 124 N.E.2d 360 (4th Dist. 1955). Assuming, however, that the entrant had parked the car on the premises in order to have work done, then the entrant is an invitee to whom the owner owes the duty to act reasonably to make the premises safe.
resolution unfortunately was coupled with an unwillingness to move from the formality of the common law categories. Consequently, the Illinois courts produced a vast array of exceptions to the rules, as well as reclassifications of various entrants.

At common law, the Illinois courts created special rules to deal with particular entrants. For example, firemen were considered not to have been invited onto the premises by the owner, and therefore were not considered to be invitees. Yet, they were not trespassers, because they were indeed conferring some benefit upon the owner by their presence. Under the strict common law definitions, these entrants could only be said to have the owner's implied permission to enter the premises. Hence, firemen and other public servants were considered licensees—an ironic conclusion given the distinct benefit bestowed upon the public by their presence.

In 1960, however, the Illinois Supreme Court rejected the application of the licensee label to firemen, elevating them to the status of invitees. In Dini v. Naiditch, one fireman was killed and another severely injured when, in the course of fighting a fire, a stairway that was not properly attached to a supporting wall collapsed and fell to the ground. The court held that the jury properly could have found the landowner liable for failing to exercise reasonable care in maintaining his property. Firemen, rightfully on the premises where they might reasonably be expected to be, were invitees entitled to the exercise of reasonable care by the owner. Recently, the Illinois Supreme Court reaffirmed its holding in Dini, but refused to extend this protection to the acts of negligence that caused the fire.

See, e.g., Geraghty v. Burr Oak Lanes, Inc., 5 Ill. 2d 153, 125 N.E.2d 47 (1955) (plaintiff injured in fall in parking lot maintained by defendant for patrons' use). Notwithstanding the entrant's status as an invitee, if the injury was the result of a natural condition on the premises, such as snow or ice, the owner would have no liability for the injuries sustained. See infra notes 60-62 and accompanying text.

41. Id. Professors Harper and James suggest that the owner's limited liability to firemen and policemen was due, in part, to the belief that the efforts required of the landowner in the exercise of reasonable care would be overly burdensome due to the infrequency and unpredictability of their visits, and the notion that the public would be deterred from calling upon firemen and policemen if liability was imposed. 2 F. Harper & F. James, supra note 2, at 1501-03. It has also been suggested that limitations on the liability of owners to firemen, as well as policemen, have been justified because these employees receive adequate compensation, including workmen's compensation and disability pension benefits, and on the theory of assumption of risk. Walker & Dunavant, Liability of A Possessor of Premises To Public Officials For Physical Harm Caused By A Condition of The Premises—a Rule For Virginia, 17 U. Rich. L. Rev. 467, 472 (1983).
42. 20 Ill. 2d 406, 170 N.E.2d 881 (1960).
43. Id. at 417, 170 N.E.2d at 886.
44. Id. at 416-17, 170 N.E.2d at 886.
45. In Washington v. Atlantic Richfield Co., 66 Ill. 2d 103, 361 N.E.2d 282 (1977), the shut-off valve in a gasoline hose used at the defendant's station was defective, causing gasoline to overflow from a car's tank. Id. at 104, 361 N.E.2d at 283. A third party inadvertently ignited the gasoline and the plaintiff, a fireman, was subsequently injured when he attempted to avoid an explosion. Id. In response to the plaintiff's allegations, the supreme court found that "[t]hese acts [of the defendant] relate only to the manner in which the fire was caused. We have rejected as overly broad a reading of Dini v. Naiditch which would permit liability to be predicated upon negligence in causing a fire . . . ." Id. at 109, 361 N.E.2d at 285.
The Illinois courts also modified the rule that policemen were licensees. In Illinois, an owner was obligated to use reasonable care for the protection of a policeman who was rightfully on the premises. As in the case of firemen, however, the owner's liability to policemen did not extend to the risks inherent in the occupation. Other public employees, such as sanitary and safety inspectors, also came to be classified as invitees within the common law scheme.

The trespasser category also underwent significant modifications at common law. While the Illinois courts retained the traditional rule regarding the typical or "bare" trespasser, many subclassifications were created. For example, when trespassers were known by the owner to frequently use a particular route, the owner's acquiescence in the continued trespass was said to amount to permission to use the land. These frequent trespassers were, at law, licensees.

Likewise, the "discovered trespasser rule" caused a relaxation of the traditional wilful and wanton misconduct standard for trespassers. This notion provided that an owner owed a duty of reasonable


47. Fancil v. Q.S.E. Foods, Inc., 60 Ill. 2d 552, 558, 328 N.E.2d 538, 541 (1975); Note, Landlord's Duty to the Police—Fancil v. Q.S.E. Foods, Inc., 26 De Paul L. Rev. 378 (1977). In Fancil, policemen went to the defendant's premises on a routine security check. 60 Ill. 2d at 554, 328 N.E.2d at 539. The building had previously been the subject of attempted and actual burglaries, and the defendant had installed a mercury light to illuminate a portion of the building. Id. The light, however, was disconnected, and on the evening of the officers' search burglars had concealed themselves in the shadows. Id. The officers were ambushed when they proceeded to the rear of the building. Id. The Illinois Supreme Court held that this was a risk inherent in a police officer's occupation, and refused to extend the landowner's duty to guard against the danger. Id. at 558, 328 N.E.2d at 541. Thus, a landowner in Illinois is not an insurer against the risks that every police officer encounters.

Recently, an off-duty Chicago policeman brought an action against the Chicago Transit Authority when he was injured while riding on its train. Martin v. Chicago Transit Auth., 128 Ill. App. 3d 837, 471 N.E.2d 544 (1st Dist. 1984). The plaintiff, not in uniform, was injured when three men boarded the train and shots were exchanged. The action was premised on the duty of a common carrier to protect its passengers against an unreasonable risk of physical harm. Id. at 841, 471 N.E.2d at 545. The trial court entered summary judgment in favor of the defendant, relying on the "inherent risk principle" announced in Fancil, supra. The appellate court reversed, holding that the inherent risk principle was limited to the context of landowner/occupier liability, and therefore did not bar the plaintiff's cause of action. Id. at 841, 471 N.E.2d at 546.


49. See supra note 25 and accompanying text.

50. Prosser & KEETON, supra note 1, at 395-96.

51. Trout v. Bank of Belleville, 36 Ill. App. 3d 83, 87, 343 N.E.2d 261, 265 (5th Dist. 1976). Even in the cases of habitual acquiescence to the trespass, the injured entrant was unable to recover by demonstrating the owner's mere negligence. Mentesana v. LaFranco, 73 Ill. App. 3d 204, 208, 391 N.E.2d 416, 419 (1st Dist. 1979); Trout, 36 Ill. App. 3d at 87, 343 N.E.2d at 265.
care to a trespasser after the trespasser’s presence was discovered in a place where the trespasser might have been injured by the owner’s negligence.52

Finally, a third exception was created for trespassing children. This applied where the owner knew or should have known that children would frequent a dangerous area, and that they were likely to be injured because of their inability to appreciate the risk. In Illinois, under these circumstances, there was a duty to use reasonable care to remedy the condition or otherwise protect the child from injury.53 In other words, the trespassing child entrant in Illinois was treated as a fictitious invitee.

In addition, the Illinois courts created exceptions to deal with particular circumstances. For instance, the Illinois courts have held the owner to a greater duty of care based upon the owner’s active, as distinguished from passive, negligence.54 Such active negligence may arise from the operation of a car on the premises,55 the use of equipment,56 or some other affirmative act by the owner.57 Injuries arising from active conduct were distinguished


53. Kahn v. James Burton Co., 5 Ill. 2d 614, 625, 126 N.E.2d 836, 841 (1955). In Kahn, the Illinois Supreme Court criticized the “attractive nuisance” doctrine as it had existed prior to that time. Under that doctrine, child trespassers who, because of their immaturity and inability to appreciate dangerous conditions, were attracted or allured to certain premises were considered invitees in the law. Id. at 624, 126 N.E.2d at 841. Attraction is only significant, the Kahn court noted, as it helps to indicate when the trespass should be anticipated. Id. at 625, 126 N.E.2d at 842. The court found that the basis of liability should properly be the foreseeability of harm to the child. Id.

In Corcoran v. Village of Libertyville, 73 Ill. 2d 316, 383 N.E.2d 177 (1978), the Illinois Supreme Court discussed the foreseeability issue as stated in Kahn, supra. The supreme court noted two prerequisites to finding that harm to children is foreseeable. First, the owner must know, or should know, that children frequent the premises. Second, if the cause of the child’s injury was a dangerous condition on the premises, that condition must be one that is likely to cause injury to the general class of children incapable of appreciating the risk. Id. at 326, 383 N.E.2d at 180. “If both of these prerequisites are met, it is deemed that harm to children is sufficiently foreseeable for the law to impel an owner or occupier of land to remedy the condition.” Id.

54. For a general discussion of the active/passive distinction, see 2 F. Harper & F. James, supra note 2, at 1475-76.

55. In Cullmann v. Mumper, 83 Ill. App. 2d 395, 228 N.E.2d 276 (3d Dist. 1967), for example, the defendant asked the plaintiff to meet him at his house. The plaintiff arrived first and remained in her car in the driveway. When the defendant arrived he proceeded to back his car into the driveway at a speed of 25 to 35 miles per hour, knowing plaintiff was in her car, and subsequently struck the plaintiff’s car, injuring her. The appellate court affirmed the jury’s verdict for the plaintiff, rejecting the defendant’s contention that as a social guest the plaintiff was only owed the duty to refrain from wilfully and wantonly injuring her. Id. at 397, 228 N.E.2d at 277. Recognizing the distinction between injuries resulting from the condition of the premises and those resulting from the owner’s activities, the appellate court stated that in the latter context, where the plaintiff is known to be on the premises, the owner has the duty to exercise ordinary care to avoid injury caused by affirmative activity. Id. at 401, 228 N.E.2d at 279.


from injuries resulting from the owner's failure to maintain the premises. Accordingly, if a licensee's presence was known or should have been known, the owner might be held liable for failing to exercise ordinary care for the visitor's safety.

Unfortunately, not all of the special rules developed by the Illinois courts were favorable to the injured entrant. An exception that particularly favored the landowner was the "natural conditions rule." The natural conditions rule absolved the landowner of liability for injuries to an entrant that resulted from natural conditions on the land, such as a natural accumulation of snow and ice. This was so even if the condition was present for such a time that the courts would normally charge the owner with knowledge of the potential danger. Liability was imposed only in situations where an act of the owner caused an unnatural condition or where the owner had aggravated the condition originally created by natural elements.

Finally, a great deal of attention in recent years has been attracted by those cases that deal with the liability of an owner for the criminal acts of third parties. In Boyd v. Racine Currency Exchange, Inc., for example, the plaintiff brought a wrongful death action against the owner of a currency exchange for damages resulting from the death of her husband during an armed robbery attempt. The robber entered the store, placed a gun to Boyd's head, and told the teller to give him the money or Boyd would be killed. The teller did not accede, but fell to the floor, and Boyd was shot in the head. The Illinois Supreme Court held that the defendants did not owe the

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58. See, e.g., Chapman v. Foggy, 59 Ill. App. 3d 552, 375 N.E.2d 865 (5th Dist. 1978) (plaintiff received injuries from splinter in wood railing in defendant's skating rink); Lewis v. Hull House Assoc., 25 Ill. App. 3d 617, 323 N.E.2d 600 (1st Dist. 1975) (plaintiff injured in fall from stationary ladder allegedly constructed too close to wall).


62. Clauson v. Lake Forest Improvement Trust, 1 Ill. App. 3d 1041, 1045, 275 N.E.2d 441, 444 (2d Dist. 1971); see, e.g., Graham v. City of Chicago, 346 Ill. 638, 178 N.E. 911 (1931) (city allowed water from adjacent skating pond to overflow onto sidewalk where plaintiff was injured in fall on resulting ice); Lapidus v. Hahn, 115 Ill. App. 3d 795, 450 N.E.2d 824 (1st Dist. 1983) (defective condition of roof and depression in front of tenant's door caused unnatural accumulation of ice on which plaintiff was injured); Linde v. Welch, 95 Ill. App. 3d 581, 420 N.E.2d 490 (1st Dist. 1981) (plaintiff injured when leaky overhead gutter caused ice to form on stairs below); McCann v. Bethesda Hosp., 80 Ill. App. 3d 544, 400 N.E.2d 16 (1st Dist. 1979) (whether slope of parking lot caused unnatural accumulation of ice was question for jury); Cupp v. Nelson, 5 Ill. App. 3d 37, 282 N.E.2d 513 (1st Dist. 1972) (jury could find that owner's attempt to remove natural accumulation of snow with application of rock salt aggravated condition, thereby imposing duty of care); Fitzsimons v. National Tea Co., 29 Ill. App. 2d 306, 173 N.E.2d 534 (2d Dist. 1961) (improper placement of drain spout allowed ice to accumulate and freeze over customer's path).

63. 56 Ill. 2d 95, 306 N.E.2d 39 (1973).

64. Id. at 96, 306 N.E.2d at 40.

65. Id.
invitee Boyd a duty to comply with the demand of the criminal. The court determined that nothing would have prevented Boyd’s death except a complete acquiescence to the robber’s demands, and even that was speculative at best. The court reasoned that to create a duty to accede to criminal demands would impose upon the owner an unwarranted dilemma: whether to comply and surrender the money or to refuse and be held civilly liable for damages to the customer.

The Boyd court decided that the owner did not have a duty to accede to the criminal demands of a third party. The plaintiff in Boyd, however, did not raise the issue of whether the owner had a duty to guard against the criminal attacks of third parties. In this regard, the Illinois courts appear to be more willing to place the responsibility upon the owner of the premises. Where there are previous incidents or special circumstances that enable the court to charge the owner with knowledge of the danger, the owner’s responsibility may include the duty to guard entrants against the criminal attacks of third persons.

66. Id. at 100, 306 N.E.2d at 42.
67. Id. at 99-100, 306 N.E.2d at 42.
68. Id. at 100, 306 N.E.2d at 42. In his dissent, Justice Goldenhersh urged that the case be given to the trier of fact, stating that the majority’s considerations find “little support in logic and none whatsoever in the legal authorities.” Id. at 101, 306 N.E.2d at 42 (Goldenhersh, J., dissenting).
69. Burks v. Madyun, 105 Ill. App. 3d 917, 921, 435 N.E.2d 185, 189 (1st Dist. 1982); Krautstrunk v. Chicago Hous. Auth., 95 Ill. App. 3d 529, 534, 420 N.E.2d 429, 433 (1st Dist. 1981); O’Brien v. Colonial Village, Inc., 119 Ill. App. 2d 105, 108, 255 N.E.2d 205, 207 (2d Dist. 1970); see also Phillips v. Chicago Hous. Auth., 89 Ill. 2d 123, 431 N.E.2d 1038 (1982) (complaint alleging that owner voluntarily undertook to close off and secure certain floors of building in order to prevent commission of crimes and did so negligently states a cause of action); Cross v. Chicago Hous. Auth., 74 Ill. App. 3d 921, 393 N.E.2d 580 (1st Dist. 1979), aff’d, Cross v. Wells Fargo Alarm Serv., 82 Ill. 2d 313, 412 N.E.2d 472 (1980) (where defendant had no duty at law, but voluntarily assumed duty to provide security guards for benefit of persons on premises, defendant may be negligent in failing to provide security services during late evening hours if failure created known dangerous condition); Pippin v. Chicago Hous. Auth., 78 Ill. 2d 204, 399 N.E.2d 596 (1979) (where defendant voluntarily provided guard services on premises, without independent duty to protect against criminal acts on premises, defendant’s liability for negligent hiring of guard service was question for jury); Stribling v. Chicago Hous. Auth., 34 Ill. App. 3d 551, 340 N.E.2d 47 (1st Dist. 1975) (where plaintiff’s apartment had been burglarized on three separate occasions, by breaking through wall from adjacent, vacant apartment, defendant owed plaintiff duty to guard against subsequent burglaries after reasonable notice). But see Martin v. Usher, 55 Ill. App. 3d 409, 371 N.E.2d 69 (1st Dist. 1977) (landlord has no duty to control conduct of third persons so as to prevent third person from causing physical injury to tenant); Smith v. Chicago Hous. Auth., 36 Ill. App. 3d 967, 344 N.E.2d 536 (1st Dist. 1976) (landlord defendant has no duty to protect tenants against criminal acts of third persons which occur on premises); Trice v. Chicago Hous. Auth., 14 Ill. App. 3d 97, 302 N.E.2d 207 (1st Dist. 1973) (notwithstanding knowledge of risk of injury, owner of multiple dwelling unit has no actionable duty to protect tenant from fatal injuries caused by criminally reckless acts of third person); Mancha v. Field Museum of Natural History, 5 Ill. App. 3d 699, 283 N.E.2d 899 (1st Dist. 1972) (absent knowledge of previous incidents or special circumstances to charge owners with knowledge of danger, defendant not obligated to guard against risk that 12-year-old would be assaulted by other youths while on school trip).
When one considers the exceptions noted above, as well as others, it becomes apparent that the Illinois courts have found the need to adapt the trespasser-licensee-invitee rules to changing social values and policies. Change by exception, however, is a slow process, frequently leading the courts away from the relevant considerations. The Illinois Premises Liability Act abolishes the common law licensee and invitee categories, imposing upon the owner the duty of reasonable care under all the circumstances for these entrants. In so doing, the Act eliminates the need for change by exception. It provides instead a flexible framework for determining a landowner's liability to such entrants. Illinois, however, is not the first jurisdiction to recognize the need to move away from the common law rules.

C. The Movement Away From The Traditional Distinctions

The movement toward discarding or modifying the trespasser-licensee-invitee distinctions began in England. In 1957, the English Parliament adopted the Occupier's Liability Act, which merges the categories of licensees and invitees. Alternatively, the Act imposes upon the owner of property a "common duty of care" toward all persons lawfully upon the premises.

70. Many states, for example, have enacted "recreational use of land and water area statutes" that limit the liability of an owner who makes land or water available to the public for recreational purposes. The Illinois Recreational Use of Land and Water Areas Act provides that an owner owes no duty to keep the premises safe for the entry or use of any person for recreational purposes, or to give warning of any dangerous condition on premises used for such purposes. Ill. Rev. Stat. ch. 70, § 33 (Supp. 1984). But when the owner's failure to guard or warn against the dangerous condition was willful or malicious, or when the injury was suffered by one paying an admission fee, the owner may be subject to liability. Id. § 36 (Supp. 1984). Apparently, some 42 other states have enacted such statutes. Comment, Landowner Liability Under The Wyoming Recreational Use Statute, 15 Land & Water L. Rev. 649, 650 n.4 (1980).

Additionally, under the Snowmobile Registration and Safety Act, an owner of premises owes no duty to keep the premises safe for the use/entry of others for the purpose of snowmobiling, or to give warning of unsafe conditions on the premises. Ill. Rev. Stat. ch. 95 1/2, § 605-1(l)(I) (Supp. 1984). This does not apply where the snowmobiler has given consideration in exchange for the owner's permission. Id. Permission alone, however, does not assure that the premises are safe, and does not indicate the owner's assumption of responsibility. Id. § 605-1(l)(J). Notwithstanding, the owner may be liable for "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." Id. §§ 605-1(l)(1)-(J).

71. See supra note 11.

72. Occupier's Liability Act, 5 & 6 Eliz. II, ch. 31 (1957). The Act states that "An occupier of premises owes the same duty, the 'common duty of care', to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise." Id. § 2(1). The preamble, however, limits the scope of the Act's protection to "injury or damage resulting to persons or goods lawfully on any land or other property . . . ." Preamble to Occupier's Liability Act, 5 & 6 Eliz. II, ch. 31 (1957) (emphasis added).

73. The "common duty of care" is essentially a standard of reasonable conduct. The Occupier's Liability Act defines the standard as "a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there." Id. § 2(2).

More recently, the English law has been modified to include a duty to treat all trespassers with "common humanity." Keeler, Recent Developments in the Law of Occupiers and Trespassers, 46 Austl. L.J. 444 (1972).
The trend toward abolishing the common law distinctions has been much slower in the United States. In 1958, in *Kermarec v. Compagnie Generale Transatlantique*, the United States Supreme Court was asked to apply the common law rules of premises liability to the law of admiralty. The Supreme Court declined to do so. In *Kermarec*, the plaintiff went aboard the defendant's ship to pay a social call upon one of the ship's crew. The plaintiff was injured when he fell on a stairway. He brought an action for his injuries based on negligence. The lower court held that under New York law the common law status categories applied to deny the plaintiff recovery. The Supreme Court, however, noted the outmoded heritage of the common law classifications and the "semantic morass" through which the common law had moved toward imposing a single duty of reasonable care in all circumstances. Justice Stewart, writing for a unanimous Court, refused to burden the admiralty law with the subtle, and often confusing, distinctions of the traditional common law rules.

Ten years later, California became the first state to discard the common law categories of trespasser, licensee, and invitee. In *Rowland v. Christian*, the plaintiff was injured while using a bathroom faucet during a visit to the defendant's apartment. The plaintiff sued based on negligence. The defendant responded that the plaintiff was merely a social guest. On this basis, the trial court entered summary judgment in favor of the defendant. On appeal, the California Supreme Court found that, regardless of the historical justifications for the common law rules, they were no longer applicable in modern society. The classifications, the court noted, often do not reflect the factors that should determine the landowner's liability. These factors include the connection between the injury and the defendant's conduct, the moral blame attached to the defendant's conduct, and the policy of preventing future harm. Therefore, the California Supreme Court abolished

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75. Id. at 626.
76. Id. at 626-27.
77. Id. at 627.
78. Id. at 630-31. Because the Court found that admiralty law and not the substantive law of New York applied, it was necessary to determine whether the lower court's misapplication of the law resulted in prejudice to the plaintiff. Id. at 629-30. While under admiralty law a shipowner owed a duty of reasonable care to those lawfully aboard the vessel, the duty to a visitor who could be a "licensee" remained undecided. Id. at 630.
79. Id. at 630-31. Justice Stewart noted that the imposition of the status rules on the admiralty law would be "contrary to its traditions of simplicity and practicality." Id. at 631. Hence, the Court held that "the owner of a ship in navigable waters owes to all who are on board for purpose not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case." Id. at 632.
81. Id. at 110, 443 P.2d at 562, 70 Cal. Rptr. at 98.
82. Id.
83. Id.
84. Id. at 117, 443 P.2d at 567, 70 Cal. Rptr. at 103.
85. Id.
the traditional scheme in favor of imposing a uniform duty upon the landowner to act reasonably under all the circumstances.\textsuperscript{86}

Since \textit{Rowland}, nearly one-half of the states have joined the movement to abolish or modify the common law categories. The use of the common law scheme has been abandoned in toto in Hawaii,\textsuperscript{87} Colorado,\textsuperscript{88} Rhode Island,\textsuperscript{89} New York,\textsuperscript{90} New Hampshire,\textsuperscript{91} Louisiana,\textsuperscript{92} Alaska,\textsuperscript{93} and the District of Columbia.\textsuperscript{94} These jurisdictions have replaced the common law scheme with the standard of reasonable care under all the circumstances.\textsuperscript{95}

With the passage of the Premises Liability Act, Illinois joins Minnesota,\textsuperscript{96} Massachusetts,\textsuperscript{97} Wisconsin,\textsuperscript{98} North Dakota,\textsuperscript{99} Tennessee,\textsuperscript{100} and Maine\textsuperscript{101} in partially modifying the common law scheme by eliminating the licensee-invitee distinction. These states created a broad category of "rightful" entrants to whom the owner owes the duty of reasonable care. These rightful entrants include all persons except trespassers.\textsuperscript{102} Finally,
Missouri, Washington, Kentucky, Florida, Michigan, and Connecticut have limited their modification to the elevation of the social guest into the invitee category or, alternatively, have established special standards of care for social guests.

**The Illinois Premises Liability Act**

The Illinois Premises Liability Act abolishes the licensee-invitee dichotomy. Instead, the Act imposes upon the owner of property the duty to such entrants of "reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." The status of the trespasser, including the trespassing child, remains as it did under prior Illinois law. Likewise, the responsibility of an owner to persons entering or using the premises for a recreational purpose is unaffected.

At common law, the duty owed by a landowner to an invitee was active and positive. It included the duty to protect or warn against an unreasonable risk of harm that was foreseeable. This was true not only with regard to known dangers, but also with respect to dangers that were discoverable in the exercise of reasonable care. The change in Illinois law does not alter the owner's duty to the common law invitee. Instead, Illinois landowners now owe the same positive duty to both the common law licensee and invitee.

103. See Scheibel v. Hillis, 531 S.W.2d 285 (Mo. 1976) (eliminating all distinctions once an entrant's presence is known).
104. See Memel v. Reimer, 85 Wash. 2d 685, 538 P.2d 517 (1975) (eliminating distinction between licensee and invitee once presence is known).
105. See Hardin v. Harris, 507 S.W.2d 172 (Ky. 1974) (eliminating distinction between invitee and licensee once presence is known).
106. See Wood v. Camp, 284 So. 2d 691 (Fla. 1973) (owner has obligation to use reasonable care for licensees expressly or impliedly invited).
110. Id.
111. Id. at § 3.
112. Id. at § 4. See supra note 70 for discussion of owner's responsibility to those entering the premises for a recreational purpose.
113. See supra note 38 and accompanying text.
114. The presumption that the Act was intended to raise the duty owed to licensees to the level of invitees is based upon two notions. First, neither the Illinois Supreme Court nor other jurisdictions that have urged the abolition of the status categories have suggested that the duty of care toward invitees is to be less than it previously was at common law. Second, the language of the Act contemplates an active, positive duty. By including the duty to use reasonable care with regard to omissions as well as active conduct, the Act proposes liability for a failure to inspect or to repair. Conversely, it may be said that the Act contemplates an affirmative duty for the benefit of all lawful entrants to use reasonable care not only with regard to known dangers, but also with respect to hazards that may be discovered in the exercise of reasonable care.
The Premises Liability Act draws the line of demarcation between those entrants who are rightfully on the premises, and those who, like the trespasser, are wrongfully on the premises. Instead of three categories, as in the common law scheme, the Act creates two broad categories: rightful entrants and trespassers. Those persons entering the premises with the owner’s express or implied consent are considered “rightful” entrants. The owner owes all rightful entrants the duty to exercise reasonable care to maintain the premises in a safe condition and to refrain from injuring these visitors by affirmative conduct. The owner’s duty to trespassers, however, will still be determined under the common law rules. Hence, the exceptions created for frequent trespassers, child trespassers, and discovered trespassers will still be applied.116

Under the prior Illinois law, the common law distinctions were crucial to the plaintiff’s case. The owner’s duty to the plaintiff depended upon the plaintiff’s status as a trespasser, licensee, or invitee. The Illinois Premises Liability Act abandons this approach, at least with respect to licensees and invitees. Under the Act, the owner has the duty to use reasonable care under the circumstances, regardless of the entrant’s status. This, however, is not to say that the landowner is an insurer of the safety of all rightful entrants.117 The owner’s liability to an injured visitor is to be determined with reference to all the circumstances surrounding the incident. Consideration will be given to, among other things, the foreseeability of the entrants’ presence, the likelihood of injury to them, the seriousness of the injury, the burden of avoiding the risk, and the social policies that are furthered by imposing liability upon the owner.118

115. The term “consent” is used here in an effort to select a word that adequately encompasses all rightful entrants, that is, all those who do not fall within the common law trespasser category. The author acknowledges, however, that any effort to define the particular characteristics of the “rightful” entrant will necessarily be misleading.

116. See supra notes 49-53 and accompanying text.

117. Applying the reasonable conduct standard to the favored class of business invitees, Illinois courts have repeatedly noted that possessors of land are not insurers for all accidents or injuries occurring on their premises. See, e.g., Timmons v. Turski, 103 Ill. App. 3d 36, 430 N.E.2d 1135 (5th Dist. 1981) (patient fell on ice in front of dentist’s office); Longnecker v. Illinois Power Co., 64 Ill. App. 3d 634, 381 N.E.2d 709 (5th Dist. 1978) (subcontractor’s employee fell from power company’s distribution pole); Donoho v. O’Connell’s Inc., 13 Ill. App. 2d 250, 141 N.E.2d 661 (1st Dist. 1957), rev’d, 13 Ill. 2d 113, 148 N.E.2d 434 (1958) (patron of restaurant slipped on food).


A strict textual reading of the Act suggests that the status of the entrant as a licensee or invitee will no longer be considered. Nevertheless, it is reasonable to assume that the circumstances of a visitor’s entry upon the owner’s premises will continue to have an effect upon the question of the owner’s potential liability. In determining whether an entrant was an invitee or licensee, the courts previously considered whether the entrant had been permitted or invited on the premises, the purpose for the visit, and other factual questions. Under a reasonableness standard, these considerations become useful in determining the foreseeability of the entrant’s presence. Foreseeability of a visitor’s entry determines, in part, the likelihood of injury to the visitor. It also helps to calculate the extent of the interest that may be sacrificed in order to avoid the risk of injury. Thus, while the entrant’s common law status may not be expressly referred to, it will implicitly be considered by the court. Importantly, however, the circumstances of the visitor’s entry, or the visitor’s common law status as a licensee or invitee, is relegated to a subordinate role. It is only one of the myriad factors to consider when determining the issue of liability.

ANALYSIS

The Illinois legislature left little clue as to the concerns prompting its revision of the common law approach. Nevertheless, the change in Illinois law accomplished by the Premises Liability Act is strongly supported by the twenty-one jurisdictions that have moved away from the common law rules. As a result, there is a substantial body of academic and judicial discussion in this area that provides insight into the motivation for this trend in the law of premises liability.

In analyzing the strengths and weaknesses of the Premises Liability Act, it is helpful to examine the role of the Illinois Supreme Court. Indeed, it is clear that the court prompted the change in the law of premises liability.

119. The Illinois Premises Liability Act expressly abolishes the distinction between licensees and invitees. See supra note 11. Thus, on its face the Act alleviates the need to classify an entrant as either an invitee or licensee. Arguably, because the Act creates two classes of entrants, rightful and wrongful, this is the only determination that must be made.

120. Some courts, such as the California Supreme Court in Rowland v. Christian, 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968), have made specific reference to the use of the status rules after their abolition. See supra note 86. There is some question, however, as to the benefit of this approach. Apparently, the Rowland court’s suggestion that the categories still have some vitality led to hesitation by the lower courts of that state to immediately adopt the new approach. See Beauchamp v. Los Gatos Golf Course, 273 Cal. App. 2d 20, 77 Cal. Rptr. 914 (1969) (reading Rowland as abrogating only licensee category, and holding that the substantive duties of owners to invitees, as outlined by prior case law, are consonant with Rowland).


122. The State of Illinois rarely publishes transcripts of the House or Senate debates or of the various committee meetings. It may be noted, however, that earlier attempts were made to change the Illinois law of premises liability. See S. 1283, 81st Ill. Gen. Assembly, 1981 Sess. (1981) (died in committee).

123. See supra notes 80-108 and accompanying text.

124. See infra text accompanying notes 131-47.
Furthermore, contemporary social policy, concerned with the safety of the individual in society, supports the new approach. Two concerns, however, are evident. One is the potential for eliminating all predictability and stability in the law of premises liability. Yet, there is little reason to believe that the common law status rules provided any greater predictability than may be expected under the Act. Second, there is concern for the greater role of the jury created by the Premises Liability Act. Nevertheless, general negligence theory provides ample control over the limits of liability. Additionally, the available evidence suggests that there is no need to fear a substantial increase in owners' liability.

The Premises Liability Act eliminates the confusion and injustice incident to classifying entrants as licensees and invitees. Unfortunately, the Act stops short of completely abandoning the common law status rules. Maintaining the trespasser status perpetuates, in part, the confusion and complexity that existed at common law. Moreover, there is no reason to believe that the reasonable conduct standard will be unable to adequately fix the limits of landowners' liability to trespassers. Finally, social policy urges the abolition of the trespasser status.

A. The Role of the Illinois Supreme Court

From all appearances, the Illinois Supreme Court was content with the common law trespasser-licensee-invitee trichotomy. The Illinois Supreme Court most recently addressed the issue in 1980, when a majority of the court refused to modify the traditional classification scheme. In Pashinian v. Haritonoff, the plaintiff sought to recover for personal injuries sustained when she fell down a flight of stairs in the defendant's home while in search of a bathroom. The appellate court affirmed the dismissal of the plaintiff's complaint. The apparent basis of this ruling was that the plaintiff was a social guest and therefore, as a licensee, was unable to recover without demonstrating wilful and wanton misconduct on the part of the owner. On appeal, the plaintiff argued that, given its ancient origins, the traditional classification scheme was no longer applicable. Further, the plaintiff noted that the exceptions to the general classification rules caused confusion and created doubt as to the validity of the doctrine. The plaintiff urged the adoption of a single standard of ordinary care to be applied in all premises

125. See infra text accompanying notes 148-63.
126. See infra text accompanying notes 164-75.
127. See infra text accompanying notes 176-201.
128. See infra text accompanying notes 183-201.
129. See infra text accompanying notes 202-21.
130. See infra text accompanying notes 222-35.
131. 81 Ill. 2d 377, 410 N.E.2d 21 (1980).
132. Id. at 379, 410 N.E.2d at 21.
133. Id. The appellate court's opinion was an unpublished order under Illinois Supreme Court Rule 23. Id.
134. Id.
135. Id. at 380, 410 N.E.2d at 21.
liability cases. The Illinois Supreme Court, however, was unpersuaded. The court took the position that owners are entitled to some degree of protection from liability on their own property. The court found that the common law status scheme provided an appropriate balance between the need for such immunity and the imposition of liability for tortious conduct. Accordingly, the court held that the plaintiff's complaint had been properly dismissed. Finally, the court stressed that any change in the common law was best accomplished on a case-by-case basis.

Notwithstanding the decision in Pashinian, it is clear that the Illinois Supreme Court recognized the need to move away from the common law approach. The court strongly advocated such a change in its 1978 Annual Report to the Illinois General Assembly. Submitted almost six months before the Pashinian opinion, the report charged that the Illinois courts were "struggling to do justice" within the arbitrary labels of the common law classifications. In the report the court also acknowledged, with approval, the trend away from the traditional distinctions both in England and in the American courts. Accordingly, the Illinois Supreme Court urged the legislature to adopt a uniform standard of reasonable care, based on foreseeability of harm, to replace the trespasser, licensee, and invitee classifications.

The Illinois Supreme Court renewed its opposition to the common law status rules one year after the decision in Pashinian. In the Illinois Supreme Court's 1980 Annual Report to the General Assembly, the court again invited the Illinois legislature to assess the merits of a common standard of reasonable care. Understandably, the court addressed the inconsistency between its earlier recommendations and the court's position in Pashinian. The report stated that the legislature's prerogative to address the viability of the common law rules was implicit in the Pashinian opinion. Thus, it

136. Id. at 380, 410 N.E.2d at 21-22.
137. Id. at 380-81, 410 N.E.2d at 22.
138. Id.
139. Id. The Illinois Supreme Court acknowledged that a change in the circumstances on which the law of premises liability is based would justify a change in the law. Id. The court, however, added that the "conditions have not so changed that the common law should be rewritten." Id.
141. Id.
142. See supra note 72 and accompanying text.
143. See supra notes 87-108 and accompanying text.
144. 1978 ANNUAL REPORT, supra note 140, at 19.
146. Id. at 21-22.
147. Id. at 21. The hesitation to depart from the common law rules regarding premises liability, leaving the issue to the legislature, demonstrated by the Illinois Supreme Court in Pashinian, is frequently seen in premises liability cases. See, e.g., Antoniewicz v. Reszczynski,
is apparent that the Illinois Supreme Court recognized and openly advocated the abolition of the common law rules for nearly six years before the passage of the Premises Liability Act.

B. Policy Considerations

The proponents of the trespasser-licensee-invitee rules point to the policies underlying the common law approach and assert the continued viability of those policies. For example, in regard to trespassers, social policy favors the uninhibited use of one's land, free from the burden of watching for and protecting wrongful entrants. Similarly, the licensee or social guest receives the use of the premises as a gift, somewhat akin to a member of the family. Therefore, the licensee should accept the premises in their present condition, with no expectation that the owner will do more than refrain from wilful and wanton misconduct. The mere presence of the invitee, however, presumably benefits the owner in a material sense; thus, the invitee is entitled to expect that the premises will be maintained in a safe condition. Clearly, these rationalizations emerge from the underlying policy favoring the free use and enjoyment of one's property over the safety and mobility of the public.

Those who favor the abandonment of the common law classifications assert, on the other hand, that the policies that led to the creation of the trespasser-licensee-invitee categories no longer retain their viability in a modern society. Society's steadily increasing concern for the general safety of


With few exceptions, however, the traditional scheme of status categories has been a wholly judge-made doctrine. As the late Justice Dooley of the Illinois Supreme Court argued: "It is the fundamental duty of courts to keep the common law current with the problems and mores of the day . . . . Since it was the judiciary which was the genesis of these particular labels, it is the judiciary which must abolish them." Washington v. Atlantic Richfield Co., 66 Ill. 2d 103, 117-18, 361 N.E.2d 282, 289 (1977) (Dooley, J., dissenting).

148. See, e.g., McMullan v. Butler, 346 So. 2d 950, 951 (Ala. 1977) (asserting the rationale behind the social guest-as-licensee rule); Antoniewicz v. Reszynski, 70 Wis. 2d 836, 864-65, 236 N.W.2d 1, 15 (1975) (Hansen, J., dissenting) (resting upon economic policy behind licensee-invitee distinction).

149. See supra note 26 and accompanying text.

150. See supra note 32.

151. Dean Prosser declared:

The theory adopted is that . . . the duty of affirmative care to make the premises safe is the price which the man in possession must pay for the economic benefit, present or prospective, to be derived from the visitor's presence, and that when no such benefit is to be found, he is under no such duty.

Prosser, Business Visitors and Invitees, 26 Minn. L. Rev. 573, 574 (1942).

152. 2 F. Harper & F. James, supra note 2, at 1432. See also supra notes 19-20 and accompanying text.

the individual, many cases and commentators suggest, outweighs the privileges of land ownership. In fact, the growing feeling that human safety is of greater importance than the landowners' interest in unrestricted use of their land can be seen in the exceptions created to the general common law rule regarding trespassers. The recent decisions of the Illinois Supreme Court, elevating firemen and policemen to the status of invitee from their former position within the common law licensee category, also illustrate this attitude.


155. See Prosser & Keeton, supra note 1, at 395; supra notes 50-53 and accompanying text.

156. See supra notes 40-47 and accompanying text. As one judge noted, "the American courts have sought to modify the rule and substitute a more logical and humane rule . . . ." Mercer v. Fritts, 236 Kan. 73, 74, 689 P.2d 774, 775 (1984) (Prager, J., concurring).

Development in the area of landlord-tenant law closely parallels the trend in the law of premises liability and expresses the same social policy concerns. For example, many exceptions have recently been made to the traditional common law rule that the lessor had no liability to the tenant or others for defective conditions existing at the time of the lease. Prosser &
Indeed, the common law categories bear no logical relationship to the exercise of reasonable care for the safety of others. Under the common law rules, the owner was expected to use reasonable care to maintain the premises for an invitee, but not for a social guest. Certainly, the presence of the social guest who is invited to the owner's premises is as predictable, if not more so, than the presence of the business visitor. Moreover, both the social guest and the invitee have legitimate expectations that the owner, who has requested or consented to their visit, will exercise reasonable care for their safety.

Consideration must also be given to the the owner's position in relation to the premises. The owner, and not the entrant, has the greater opportunity, incentive, and capacity to maintain the condition of the premises and guard against the risk of injury to the entrant. The appropriate inquiry is whether the burden of guarding against the risk of injury to the entrant and the expense of taking such precautions is greater or less than the risk of harm to the entrant. If the burden on the owner is less than the risk of injury to the entrant, then the imposition of a duty upon the owner for the benefit of the entrant is reasonable. Accordingly, one must ask whether the common law scheme has lost its ability to reflect contemporary community values and expectations.


158. This is merely an application of the negligence formula articulated by Judge Learned Hand in United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947). Judge Hand proposed that duty is a function of three variables that can be expressed in an algebraic formula where B is the burden of taking precautions against the risk of injury, P is the probability that the injurious condition is likely to occur, and L is the gravity of the resulting injury. Thus, Hand suggested that duty depends upon whether B < P x L. Id. at 173.
159. "Why in common reason should a person invited for the occupier's pleasure be worse off than one who is about business concerning both?" P. Landon, Pollock's Law Of Torts 408 (15th ed. 1951). As one court suggested, "To state the question is to answer it. There is no good reason . . . ." Antoniewicz v. Reszcynski, 70 Wis. 2d 836, 854, 236 N.W.2d 1, 10 (1975).

In an effort to bring the law of premises liability into accord with the legitimate expectations of the parties and contemporary community standards, the Illinois courts have periodically introduced changes into the law by reclassifying entrants or making exceptions to the common law rules. See supra notes 40-71 and accompanying text. Proceeding piecemeal tends to increase confusion, however, because of the lingering adherence to traditional nomenclature and because of the legal fictions that frequently arise, for example, that the frequent trespasser has the owner's permission. As Professors Harper and James suggest, while this pattern of change marks the transition to new rules, change by exception distorts the transitional process and
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... the Illinois General Assembly has answered that question affirmatively. The enactment of the Premises Liability Act by the General Assembly represented a significant policy judgment: It is desirable to impose upon the property owner the duty to use reasonable care under all the circumstances for the safety of those rightfully on the owner's premises.

Furthermore, the common law status categories have the effect of keeping modern values, policies, and mores out of the law of premises liability. Changing social conditions are expected to lead to modifications in an individual's duty toward others. This is due to the elasticity of the reasonable conduct standard applied in negligence cases. Negligence law does not posit definite rules in advance for every combination of circumstances that may arise. Instead, the jury is expected to examine whether the defendant's conduct was that of a reasonable person under the circumstances. Importantly, this approach achieves a community-oriented evaluation of the defendant's conduct.

The common law rules, on the other hand, frequently resulted in the judge's resolution of the issue of the owner's liability as a matter of law. Hence, cases were often dismissed at the pleading stage and summarily removed from the jury's consideration. Accordingly, the common law rules...
had the very real potential to absolve the owner of liability for injury to the entrant despite the fact that community standards might compel the opposite conclusion. The Illinois Premises Liability Act imposes a uniform duty on the part of the owner to exercise reasonable care and will provide greater opportunity for the application of community standards by the lay jury.\textsuperscript{163}

C. Predictability and Stability

A strong argument in favor of the common law trespasser-licensee-invitee rules can be made, because these rules lend predictability to the law of premises liability.\textsuperscript{164} Undoubtedly, the benefit of any rigid, mechanical rule of law is that the outcome is predetermined. Under the common law approach, the court need only consider the status of the injured entrant to determine the corresponding duty of the owner. This leads to established, predictable allocations of liability. One must weigh, however, the benefit of predictability against the burden of an unjust result.\textsuperscript{165} Predictability has little value within a system of rules that obscures the relevant circumstances and precludes the application of community standards because of the primary concern for the plaintiff's status.\textsuperscript{166}

Similarly, it has been suggested that the common law approach is more predictable for landowners as well, affording them some measure of insight into their responsibility to entrants even before they enter the premises.\textsuperscript{167} This argument is weak for three reasons. First, it presumes that the average

\begin{itemize}
\item therefore the defendants had no duty to maintain the premises safe for the plaintiff. \textit{Id.} at 688, 384 N.E.2d at 108. The trial court directed a verdict for the defendants, taking the case from the jury. The appellate court reversed and remanded the case for consideration of whether the carpet remnant could have been a known hidden danger of which the defendant had a duty to warn. \textit{Id.} at 689, 384 N.E.2d at 109.
\item The question remains, however, whether the increased role of the jury will open the door to potentially unlimited liability for the owner of premises. See \textit{infra} notes 176-201 and accompanying text.
\item One commentator defended the mechanical common law rules based on the function of the legal system to resolve and prevent disputes and the law's need to "create and impose its own comparatively rigid categories on the phenomena which it seeks to control." Payne, \textit{The Occupiers' Liability Act}, 21 MOD. L. REV. 359, 373 (1958).
\item Certainly, the common law status rules can lead to capricious results that do not adequately reflect the need to impose liability upon the owner. Thus, in two substantially identical cases a strict application of the common law rules produces an egregious result. \textit{Compare} Abbs v. Rob Roy Country Club, Inc., 337 Ill. App. 591, 86 N.E.2d 412 (1st Dist. 1949) \textit{with} Krantz v. Nichols, 11 Ill. App. 2d 37, 135 N.E.2d 816 (4th Dist. 1956), both involving an injury to a younger riding upon the back of a tractor with the knowledge of the driver. \textit{See also} Walton v. Norphlet, 36 Ill. App. 3d 4, 371 N.E.2d 978 (1st Dist. 1977) (dinner guest who stepped onto broken concrete stair and was injured in fall denied recovery); Helfenbein v. Malzahn, 24 Ill. App. 3d 616, 321 N.E.2d 394 (1st Dist. 1974) (social guest who stepped into hole in owner's driveway denied recovery).
\item See \textit{supra} notes 162-63.
\item \textit{See Rowland v. Christian}, 69 Cal. 2d 108, 120, 443 P.2d 561, 569, 70 Cal. Rptr. 97, 105 (1968) (Burke, J., dissenting); \textit{see also} Recent Decision, \textit{Torts/Premises Doctrine}, 69 ILL. B.J. 582, 583 (1981) ("[T]he landowner can know his responsibilities to an entrant before the person sets foot on the possessor's property").
\end{itemize}
owner knows the common law status rules and has an understanding of the consequent protection the law affords to the various categories of entrants. Undoubtedly, this overstates the knowledge of a majority of society.168

Nevertheless, in theory people are presumed to know the law and, thus, the consequences of their actions. Despite this imputed knowledge, the predictability argument requires a further assumption. This argument implicitly assumes that the average landowner is likely to reflect on a visitor’s common law status to determine the extent of responsibility owed to the visitor. Inasmuch as the visitor’s status is based upon the foreseeability of the visit, this may well be true. The average owner, however, looks to what can be done to improve the condition of the premises rather than to what responsibilities can be avoided.169 Reasonable people do not ordinarily vary their conduct based upon whether someone has come onto their premises for a social, as opposed to a business, purpose.170

Finally, the predictability argument assumes that an owner will no longer be able to forecast potential liability under the reasonableness standard of the new Illinois approach. In this regard, one must not overlook the fact that under general negligence principles, the law rarely sets forth hard and fast rules for a citizen’s duty.171 Negligence theory, however, provides a measure of predictability because the court will later ask whether the owner acted as a reasonable and prudent person would have acted under the circumstances. Notwithstanding that it is applied by the jury in hindsight, the reasonable person standard approximates the common sense judgment and intuition of the owner more closely than the rigid common law rules. Additionally, because the reasonable conduct standard is a community stand-

168. See Comment, Torts—Landowner’s Liability—Traditional Distinctions Between Trespassers, Licensees, and Invitees Abolished as Determinative of the Standard of Care Owed a Visitor, 25 A.L.A. L. REV. 401, 410 (1973) (“In most jurisdictions the law of landowner’s liability is far from certain or predictable; it has become a complex, confusing, and self-contradictory area”).

169. Moreover, the law of premises liability should seek to encourage this distinction. Imposing an affirmative duty upon owners to use reasonable care under the circumstances for all entrants accomplishes this task. The common law status rules, however, frustrate this purpose.

170. Rowland v. Christian, 69 Cal. 2d 108, 118, 443 P.2d 561, 568, 70 Cal. Rptr. 97, 104 (1968). It is absurd to imagine residential owners, for instance, pausing to ask themselves whether their visitor has come upon the land with an implied invitation or whether they have some mutually beneficial interest, so that the owner will be alerted to exercise reasonable care to make the premises safe. Reason and intuition dictate that the average person is more likely to consider the probability of the visitor’s presence and the condition of the premises. Thus, a standard of reasonable care based on foreseeability of harm more closely approximates the owner’s expectations.

171. This aspect of general negligence theory has traditionally caused confusion. “Aside from those few cases where duties have been stated in terms of conduct, the duty a defendant was under, or the protection a plaintiff was entitled to have, is unknowable until the case has been adjudged.” Green, supra note 4, at 1025. This flexibility, however, is desirable. It is impossible to foresee all possible combinations of conduct that may arise. Further, assuming that this was accomplished, it would be equally impossible to maintain such a body of rules in a constantly changing environment.
ard, it derives some semblance of certainty from the social values and mores of the owner’s community while providing the flexibility needed in the law.\textsuperscript{172}

The predictability and stability afforded by the common law classifications is questionable for other reasons, as well. Consideration must be given to the nature of the predictability gained from a rigid rule structure. Essentially, it is predictability in the sense of who will win, not in the sense of a fair result.\textsuperscript{173} In fact, the trespasser-licensee-invitee rules only serve to obscure the answer to an important question: What precautions does society require of owners for the safety of those entering the premises?\textsuperscript{174} There is no predictability in such an analysis. There is only the illusion of predictability.

Admittedly, the Illinois Premises Liability Act may result in some loss of certainty in these cases. It is difficult to say, however, that the common law approach, with its numerous exceptions,\textsuperscript{175} provided a high degree of predictability for the landowner or the judge at common law. Furthermore, there is little merit in the nature of the predictability provided by the common law status rules. Therefore, there is no cause to believe that the Act will usher in an era of unpredictable confusion and instability in the law of premises liability.

\textbf{D. The Role of the Judge and Jury}

The Illinois Premises Liability Act will presumably allow more cases to reach a jury on the issue of the reasonableness of the owner’s conduct than under the prior law.\textsuperscript{176} The common law scheme had the effect of taking a large percentage of cases away from the jury’s consideration.\textsuperscript{177} The defenders of the common law categories do not, however, favor an increase in jury involvement. Elimination of the explicit status rules, it is argued, will cause confusion in the jury box.\textsuperscript{178} Jurors will be unable to properly balance the

\textsuperscript{172} See \textit{supra} note 161.

\textsuperscript{173} Comment, \textit{Loss of the Land Occupier’s Preferred Position—Abrogation of the Common Law Classifications of Trespasser, Invitee, Licensee}, 13 St. Louis U.L.J. 449, 456 (1969) (“Judicial emphasis on predictability, when over-emphasized, is abhorrent to our system of case by case analysis to legal problems. Predictability in the sense of who wins the law suit [sic] becomes separable from predictability in the sense of a fair result, and the former becomes master and the latter servant.”).

\textsuperscript{174} Henderson, \textit{Expanding the Negligence Concept: Retreat from the Rule of Law}, 51 Ind. L.J. 467, 511 (1976) (the author poses the same question).

\textsuperscript{175} See \textit{supra} notes 39-70 and accompanying text.

\textsuperscript{176} See \textit{supra} notes 160-63 and accompanying text.

\textsuperscript{177} See \textit{supra} note 162 and accompanying text. Indeed, the control over the imposition of liability exercised by the judge is acknowledged as one of the guiding factors in the development of the common law status rules. Marsh, \textit{supra} note 17, at 185-86. When the common law categories were created, “judges found that by classifying the persons into various classes they could more effectually control the power of the jury. The more classes, the more necessity of defining those classes, the more ‘duties’ to be determined . . . and thus the fewer cases to be sent to a jury . . . .” Green, \textit{supra} note 25, at 272 n.56.

\textsuperscript{178} Henderson argues that the reason for this confusion is the “special relationship” between the owner and the entrant. Henderson, \textit{supra} note 174, at 512-13. The suggestion is that, unlike other situations where the actors are at arm’s length, there is a need to define the contours of
complex factors that are required to reach an appropriate verdict. This argument ignores the jury's role under the common law approach and in other negligence cases. In these cases, juries have been entrusted with the function of assessing the defendant's conduct in light of the circumstances in order to reach a verdict. In negligence cases, the only determination that the jury generally does not make is the existence of a duty. Presumably, juries have accomplished their task with a high degree of success.

Apparently, the concern over an increase in jury involvement under the Premises Liability Act exposes a more serious fear in the legal community. Introducing a single standard of reasonable care into the law of premises liability may result in too much control by the lay jury over these cases. Under the Act, the door to the jury room is opened wider than it had previously been for licensees. Thus, the abolition of the licensee-invitee distinction in Illinois will understandably create concern. Some practitioners the relationship between owner and entrant. Id. at 513. Thus, the jury will be unable to give meaning and effect to the owner-entrant relationship "on a case by case basis, guided only by common sense and intuition." Id. Perhaps, however, it is better that the jury determine the special values and priorities that exist in the owner-entrant relationship in response to contemporary community standards.

179. See, e.g., Basso v. Miller, 40 N.Y.2d 233, 243, 352 N.E.2d 868, 874, 386 N.Y.S.2d 564, 569-70 (1976) (Breitel, C.J., concurring) (under reasonable conduct standard "no guidance is offered courts or juries for particular cases or classes of cases"); Wood v. Camp, 284 So. 2d 691, 695 (Fla. 1973) (reasonable conduct standard is too vague to apply to landowner because of inherent distinctions in the relationships between owners and entrants, and cannot "sufficiently afford a reasonable standard which can be applied as a measure by the jury").

One court summarized the concern as follows:

- Can a lay jury reasonably be expected to consider the proper relative effect of natural and artificial conditions on the premises which are or may be dangerous, the degree of danger inherent in such conditions, the extent of the burden which should be placed on the possessor of premises to alleviate the danger, the nature, use and location of the condition or the force involved, the foreseeability of the presence of the plaintiff on the premises, the obviousness of such dangerous condition or the plaintiff's actual knowledge of the condition or force which resulted in injury?


180. See infra text accompanying note 186.

181. Support for the jury's performance can be seen in H. KALVEN & H. ZEISEL, THE AMERICAN JURY (1966), a much acclaimed social scientific analysis of jury functioning, concluding that, overall, jurors understand the case, id. at 158, follow the evidence, id. at 161-62, and arrive at the same conclusion as the judge in more than 75 percent of the cases. Id. at 56. See also Joiner, From The Bench, in THE JURY SYSTEM IN AMERICA: A CRITICAL OVERVIEW 145 (R. Simon ed. 1975); Corboy, From The Bar, Id., in THE JURY SYSTEM IN AMERICA: A CRITICAL OVERVIEW 181.

Apparently, England has virtually discarded the use of a jury in negligence actions altogether. Gerchberg v. Loney, 223 Kan. 446, 450, 576 P.2d 593, 597 (1978). The United States, however, has yet to make any substantial change in the role of the lay jury in negligence cases.

may fear that a mere proof of injury, combined with the ability of the owner to bear the burden of liability, will move the jury toward a verdict on behalf of the injured entrant. Still, such fears appear particularly unfounded. An examination of the allocation of judge and jury functions under general negligence law, and the available research in this area, indicate that reasonable limits on owners' liability are likely to be retained.\textsuperscript{183}

The general negligence formula provides a flexible system for the allocation of decisional functions between the judge and jury.\textsuperscript{184} Simply speaking, two broad allocations are made. The trial judge determines the issues of law, while all factual questions raised by the litigation will be subject to the jury's discretion.\textsuperscript{185} Thus, based on the pleadings submitted by the parties, the judge will first determine whether a duty does in fact exist—a purely legal question.\textsuperscript{186} If the judge determines that the defendant does owe the plaintiff a duty, the case will proceed to the jury for a determination of whether the defendant was negligent and, if so, the extent of the plaintiff's injury. On the other hand, if the judge decides that the particular defendant did not owe the plaintiff a duty, the action will be dismissed.\textsuperscript{187}

This basic allocation functions to control the limits of liability. For example, in \textit{Boyd}, as previously mentioned,\textsuperscript{188} the plaintiff brought a wrongful death action against the owner of the currency exchange. The action sought to impose liability upon the owner for failing to accede to a criminal's demands during an attempted robbery.\textsuperscript{189} The appellate court recognized that because Boyd was a business invitee, the owner owed him the duty to use reasonable care for his protection while on the premises.\textsuperscript{190} The Illinois Supreme Court, however, held that this duty did not extend to the risk that an invitee may be injured by the refusal to honor a criminal's demands.\textsuperscript{191}

\textsuperscript{183} See infra notes 184-201 and accompanying text.


\textsuperscript{185} Green, \textit{supra} note 2, at 375.

\textsuperscript{186} Prosser \& Keeton, \textit{supra} note 1, at 236.

\textsuperscript{187} The discussion in the text is likely to be confusing to those who are unfamiliar with the law of negligence. To clarify, it should be noted that negligence theory imposes upon each person, for the benefit of others, the duty to use reasonable care under the circumstances not to injure others by their unintentional acts. This recognizes, in a broad sense, that the interest of some persons are given protection against the acts of others. See Green, \textit{supra} note 4, at 1025. This, however, does not set forth the particular interests that are protected, the degree of protection, or the specific requirements needed to fulfill this duty. \textit{Id.} In each particular case the judge must determine these questions, albeit in hindsight. When the judge permits the case to go to the jury on the issue of negligence, the judge is deciding, implicitly or explicitly, that the duty that the law imposes extends to the particular risks involved in the case. See Green, \textit{supra} note 2, at 378 ("Duties are based on policies which enable a court to exclude or include the risks of injury sought to be brought under the protection of the particular duty owed the victim"). The risk of injury, given the facts, circumstances, and policies applicable to the case, must come within the protective umbrella of the defendant's duty to the victim. \textit{Id.}

\textsuperscript{188} See \textit{supra} notes 63-69 and accompanying text.

\textsuperscript{189} See \textit{supra} text accompanying notes 64-65.

\textsuperscript{190} Boyd, 8 Ill. App. 3d 140, 143-44, 289 N.E.2d 219, 221 (1st Dist. 1972).

\textsuperscript{191} See \textit{supra} text accompanying note 66.
As a matter of law, the owner had no duty to accede to the robber’s demands. The power to control the “duty question” is apparent. The Boyd court precluded any consideration of the owner’s conduct by a jury. The exercise of this discretionary power gives the court the ability to delineate the various risks against which owners must protect their entrants. In this way, the judge-jury allocation functions to control the limits of owners’ liability.

The basic allocation of judge and jury functions serves to illuminate the importance of the duty concept in negligence cases. Yet, other control mechanisms are available as well. Professors Prosser and Keeton, for example, point to three additional ways in which the judge has the ability to control the imposition of liability. First, the judge may determine that the facts are insufficient as a matter of law to establish the existence of negligence. Moreover, the general standard of conduct is a matter of law to be applied by the court. Thus, the judge typically controls this issue by means of instructing the jury. Finally, the court may remove the case from the jury by finding that reasonable minds could not differ with respect to whether the defendant’s conduct did or did not conform to what the community requires. Hence, it is clear that general negligence theory makes ample provision for the judge’s control over the decisional process.

Those who fear the increased role of the jury under the Illinois Premises Liability Act assume that these control provisions in the general negligence formula cannot or will not be applied to retain practical limits on an owner’s liability. This assumption, however, is unsupported by the available evidence. For example, a 1981 study concerned with the question of jury control examined the decisions that had accumulated in the jurisdictions abolishing the status categories. The researchers concluded that the disposition of the cases was apparently consistent with the handling of negligence cases generally. Moreover, the results tended to support the abolition of the common law categories as the means of determining the owner’s duty to an entrant.
The research suggests that the majority of cases examined would have been resolved the same under the common law approach. Importantly, however, the use of the general standard of reasonable care increased the probability that meritorious cases would not be summarily dismissed solely on the basis of the plaintiff's status.

Despite the probability that the decisionmaking function is likely to be shifted to the lay jury, the apprehension that the abolition of the common law status rules will result in unlimited liability for landowners is unwarranted. Indeed, the general negligence formula provides ample opportunities for the court to set the limits of liability. Furthermore, this approach has two advantages over the common law status rules. First, a general standard of reasonable conduct eliminates the need for the court to deny the existence of a duty simply on the basis of the plaintiff's status. Therefore, the judge has more flexibility to allow meritorious claims to reach the jury, while still retaining ample control over the limits of liability. Second, as more claims reach the jury on the issue of the owner's conduct, there is a greater opportunity for the application of community standards to the law of premises liability.

E. The Borderline Cases: Confusion v. Injustice

Critics of the trespasser-licensee-invitee rules argue that a single standard of reasonable care in all circumstances will lessen the confusion that accompanies the traditionally strict adherence to the common law scheme. Ap-
parently, the application of the traditional scheme itself has not confused the courts. Based upon the facts of the case, the suing plaintiff can almost always be placed within one of the three broad categories. Confusion arises, however, when courts attempt to arrive at a just result under the circumstances while limited by the confines of these antiquated rules.

An examination of the social guest cases in Illinois as they have developed under the common law exemplifies the potential for confusion. Recall that under the common law approach social guests were no better off than licensees, no matter how cordially they were invited on the premises by the owner. Thus, owners did not have a duty to use reasonable care to make the premises safe for their social guests. Accordingly, the social guest was expected to accept the condition of the premises without complaint.

These principles were applied by the Illinois Appellate Court for the First District in *Ciaglo v. Ciaglo*. In *Ciaglo*, the plaintiff was visiting her son, the defendant, on his farm. While visiting her son, she attended to some of the usual housekeeping and farm chores. No payment was mentioned for her assistance, and none was expected to be exchanged by either party. The plaintiff sued when she was injured in a fall from a ladder while picking plums. The court refused to reverse a directed verdict on behalf of the defendant based on the trial court's finding that the plaintiff was a social

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203. Rowland v. Christian, 69 Cal. 2d 108, 117-18, 443 P.2d 561, 567, 70 Cal. Rptr. 97, 103 (1968). The difficulty with the status rules is clear when one considers that they form a continuum based on the foreseeability of the entrant, with the trespasser being the most unforeseeable plaintiff and the invitee being, theoretically, the most foreseeable. Comment, *A Re-examination Of The Land Possessor's Duty To Trespassers, Licensees, And Invitees*, 14 *San Diego L. Rev.* 332, 348 (1969) (the modification of existing tests "causes confusion and complexity without attaining a workable approach to the problem of determining the duty of the land possessor").

204. See *supra* note 29 and accompanying text.

205. 20 Ill. App. 2d 360, 156 N.E.2d 376 (1st Dist. 1959).

206. *Id.* at 364, 156 N.E.2d at 378.

207. *Id.* at 365, 156 N.E.2d at 378. A young cow had bumped the ladder. The plaintiff argued that the defendant had a duty to warn her of the propensity of young cows to bump into objects, a fact known to the defendant.
In its decision, the appellate court relied on the common law principle that incidental tasks performed for the host's benefit by the guest do not modify the entrant's status as a licensee. More recently, however, some Illinois courts seem to be willing to find that under similar circumstances such a guest may be entitled to the protection afforded the common law invitee. In Madrazo v. Michaels, for example, the plaintiff went to live with her niece to help her move into a new home and care for her children. While carrying some clothing down a stairway, she stepped into a misplaced box, fell, and consequently was injured. The First District reversed a directed verdict in favor of the defendants. The court held that, although no mention was made of renumeration for her services, the plaintiff was an invitee and not a social guest.

Similarly, in Drews v. Mason, the plaintiff went to her daughter's home to aid in cleaning up and repairing the house after a recent fire. The plaintiff was injured when she slipped on a curtain rod that had been left on the floor. As in Madrazo, there was no offer or promise of payment to the plaintiff, and the only benefit she could have received was her own satisfaction. Indeed, the plaintiff had taken the obligation upon herself. The Illinois Appellate Court for the Third District held that the jury could properly find that the plaintiff was an invitee. Thus, while the plaintiff in Ciaglo was performing substantially the same services as the plaintiffs in Madrazo and Drews, under much the same conditions, only in the former was the plaintiff considered a social guest who was unable to recover for the defendant's negligence in maintaining the premises.

Madrazo and Drews represent a more equitable approach than would have resulted under a strict application of the common law rules. Nonetheless, the confusion that is created is obvious. If the common law status rules were still in force today, these Illinois decisions leave too many unanswered questions and too little guidance for other courts. It is unlikely that the decisions rest upon whether the guest has been asked to assist in the home. In Drews, for example, there was no request by the defendant that the

208. Id. at 366, 156 N.E.2d at 380.
209. Id. at 366, 156 N.E.2d at 379.
210. 1 Ill. App. 3d 583, 274 N.E.2d 635 (1st Dist. 1971).
211. Id. at 585, 274 N.E.2d at 637.
212. Id. at 587-88, 274 N.E.2d at 639. The court purportedly applied an invitation test. The court stated that "the status of an invitee does not depend on whether the invited person is to gain an economic advantage or benefit from his entry . . . ." Id. at 587, 274 N.E.2d at 638. This was, however, in contradiction to the court's definition of an invitee as including "a mutuality of benefit or a benefit to the owner." Additionally, it is clear from the court's opinion that the court sought to find something other than the benefit of hospitality, diversion, or enjoyment.
214. Id. at 272, 172 N.E.2d at 385. The plaintiff had not performed any work on the day of the accident. Id. at 276, 172 N.E.2d at 385.
215. Id. at 273, 172 N.E.2d at 386. The defendant had never explicitly asked her mother, the plaintiff, to help. Id. at 273, 172 N.E.2d at 386.
216. Id. at 277-78, 172 N.E.2d at 387.
plaintiff assist with the housework, but the court held that the plaintiff was an invitee nonetheless.\textsuperscript{217}

Likewise, it is questionable whether the imposition of greater liability in the \textit{Drews} and \textit{Madrazo} cases rested upon the plaintiff-guest’s activities while on the premises.\textsuperscript{218} If this is so, both courts failed to state how much activity would be enough to distinguish between a social guest and an invitee. Perhaps, alternatively, the decisions were based upon the fact that the guests were active visitors as opposed to passive callers. If this is indeed the case, little justification exists for affording more protection to the guest who performs incidental tasks than one who has come on the invitation of the owner simply for enjoyment or diversion.\textsuperscript{219}

Critics strongly oppose the common law approach because of this potential for confusion.\textsuperscript{220} Clearly, it would be unjust to deny an injured entrant recompense merely because the entrant was not on the premises for a business purpose. This is particularly true if the visitor’s presence was foreseeable and the burden of maintaining the premises was not onerous. Yet, by failing to indicate the considerations that motivated their decisions, these Illinois courts add materially to the uncertainty that surrounds the law of premises liability. Furthermore, the defenders of the trespasser-licensee-invitee rules stress the need for predictability and stability.\textsuperscript{221} But, straining the rules in order to reach the appropriate conclusion detracts from these virtues. Hence, the common law rules, originating in a vastly different social order and pock-marked by judicial refinements, caused increased confusion and complexity. This confusion is, in part, remedied by the Illinois Premises Liability Act.

\textbf{F. The Trespasser Problem}

Arguably, the weakness of the Premises Liability Act as enacted by the Illinois General Assembly is that it does not effect a wholesale abandonment

\textsuperscript{217} See supra note 216.

\textsuperscript{218} The plaintiff in \textit{Drews} had not yet performed any services on the day of the accident. 29 Ill. App. 2d 269, 276, 172 N.E.2d 383, 385 (3d Dist. 1961).

\textsuperscript{219} Both are justified in their expectation that the premises are reasonably safe for their visit and that the owner will take reasonable steps not to injure them by their own acts. Moreover, in either case, the foreseeability of the plaintiff’s presence is the same, as is the ability to be aware of dangers that may exist on the premises.

\textsuperscript{220} See supra note 202 and accompanying text. Likewise, other Illinois courts have occasionally deviated from the traditional common law status rules. \textit{Compare} Augsburger v. Singer, 103 Ill. App. 2d 12, 242 N.E.2d 635 (2d Dist. 1968) (plaintiff was invitee where he volunteered to assist defendant in dismantling defendant’s carnival display); Hamilton v. Faulkner, 80 Ill. App. 2d 159, 224 N.E.2d 304 (4th Dist. 1967) (jury could find that tenant was an invitee when he went on roof of apartment building to fix television aerial); and Bognovich v. Shermer, 16 Ill. App. 2d 197, 147 N.E.2d 711 (4th Dist. 1958) (plaintiff was invitee where he answered request for help in removing property from defendant’s burning building, though with no benefit to himself) \textit{with} Krantz v. Nichols, 11 Ill. App. 2d 37, 135 N.E.2d 816 (4th Dist. 1956) (demonstrating the traditional common law approach that one who comes onto premises to volunteer assistance, although conferring a benefit, is no better off than a licensee).

\textsuperscript{221} See supra notes 164, 167 and accompanying text.
of the common law status rules. The newly created distinction between those rightfully and wrongfully on the premises is subject to criticism. The Premises Liability Act eliminates the confusion and complexity incident to the licensee-invitee distinction. The common law rules regarding trespassers, however, are as troubled with exceptions and fictions as the other categories of the tripartite common law scheme. The Act requires that the courts continue to apply the status rules to distinguish the owner’s duty toward the trespassing entrant.

Retaining trespassers as a separate category perpetuates the need to separate trespassers from rightful entrants and “good trespassers” from “bad trespassers.” For example, as previously noted, trespassing children are not subject to the wilful and wanton misconduct standard generally applicable to all trespassers. Instead, child trespassers are owed the duty of reasonable care by the owner if their presence and the risk of injury to them is known or should be known by the owner. Likewise, “discovered” trespassers are owed the duty of reasonable care after they are found in a place where they may be injured by the owner’s negligence. The difficulty with such an approach is that it mitigates some of the results of the common law rule without eliminating the rule itself. Instead of challenging the efficacy of the common law trespasser status, the exceptions are created to try to fit modern values into an archaic, rigid system. The law should require an owner to do what a reasonable person would do under the circumstances for the safety of entrants whom the owner knows or has reason to expect are on the premises.

A reasonable conduct standard for the benefit of all entrants would proceed from the premise that a duty of reasonable care is automatically owed to each entrant. As Dean Prosser has noted, however, “[i]f the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in light of what he could anticipate, there is no negligence, and no liability.” Certainly, a judge or jury would have little difficulty applying such a standard to the very different situations of a customer on commercial premises and a burglar in an owner’s home. On the other hand, the exceptions to the common law trespasser category only impose a duty of reasonable care when the specific elements are met. Hence, if one element is absent there is no need to assess the reasonableness of the owner’s conduct.

Ultimately, the law of premises liability should have two objectives: to impose liability for harm on unreasonably dangerous conduct, and to prompt landowners to take precautions for the physical safety of others who may enter on their land. If this is indeed the case, an approach that posits a duty of reasonable care to all entrants is justified. Imposing an affirmative duty upon owners to use reasonable care under the circumstances for all entrants

223. See supra note 53 and accompanying text.
224. See supra note 52 and accompanying text.
further these objectives. An unconditional rule of immunity for trespassers gives owners a privilege to be careless.\textsuperscript{226} 

Furthermore, consider the exceptions to the general limited-duty rule of the common law trespasser category as they reflect the underlying nature of the circumstances they encompass. All of the instances warranting exceptions are circumstances in which the trespasser’s presence is reasonably foreseeable to the owner, and the risk of injury to the trespasser is great.\textsuperscript{227} It becomes apparent that these exceptions implicitly rely on factors that are inherent in the general negligence formula. When considered in light of the ability of general negligence theory to determine the owner’s liability to licensees and invitees, there is little reason not to believe that the same analysis can adequately determine the owner’s liability to the trespassing entrant as well.\textsuperscript{228} 

Of course, even without the status label the trespasser remains, in substance, an intruder. The landowner’s responsibility to trespassers was first denied because they were wrongful entrants.\textsuperscript{229} It is not suggested, however, that the landowner be responsible for trespassers in all instances. Yet, the desirability of requiring owners to be highly respectful of human life, wherever and however encountered, and the ability of owners to reduce the risk of injury, is sufficient to warrant judgment in many cases.\textsuperscript{230} If an owner creates an unreasonable risk of harm and it is foreseeable that others may be injured, the owner’s liability should not be automatically denied simply because the person injured is unexpected or because that person is a wrongdoer.\textsuperscript{231} 

By perpetuating the common law trespasser category, the Premises Liability Act preserves, at least to some extent, the confusion and misdirection of the common law trespasser-licensee-invitee scheme. There is little logic in suggesting that the status of the entrants should be controlling if they are trespassers, but should not be the guiding factor if they are lawful entrants.\textsuperscript{233} 

\textsuperscript{226} Essentially, the Act “confers on an occupier of land a special privilege to be careless.”

\textsuperscript{2} E. Harper & F. James, supra note 2, at 1440.

\textsuperscript{227} See Comment, supra note 162, at 161.


\textsuperscript{229} Green, supra note 25, at 272.

\textsuperscript{230} The reasonable care standard would not impose a requirement upon owners to place fences around their land, post conspicuous warnings in conspicuous places, or patrol their premises. “Instead, where the trespass is to be expected or where the burden would not be unreasonable if steps were taken to warn of the hazard, the danger to the intruder outweighs the imposition on the occupier.” Comment, Liability Of A Land Occupier To Persons Injured On His Premises: A Survey And Criticism Of Kansas Law, 18 U. Kan. L. Rev. 161, 175 (1969). In the latter situation, the owner would be expected to use reasonable care to remedy the condition or warn of its existence. The duty would, understandably, be greater when the condition results from the owner’s active operations. Unlike the condition of the premises, these operations are normally of short duration and are subject to spontaneous change. Therefore, the burden of assuring the trespasser’s safety is likely to be less. Id.

\textsuperscript{231} Green, supra note 25, at 274.

\textsuperscript{232} Comment, supra note 168, at 449, 457.

\textsuperscript{233} Denying recovery to trespassers because they are wrongfully on the premises ignores altogether the culpability of the landowner. Comment, Torts—Abolition Of The Distinction Between Licensees And Invitees Entitles All Lawful Visitors To A Standard Of Reasonable
Our modern social policies favoring human safety and our humanitarian values are in sharp contrast with this approach. Finally, the general negligence formula was created for cases such as these, defying uniformity and requiring the widest range of judgment. Instead of directing this change, the Illinois Premises Liability Act leaves these considerations to the courts, which will undoubtedly move slowly toward developing a cohesive doctrine of premises liability.

**IMPACT**

The abrogation of the common law licensee and invitee categories in Illinois will have immediate procedural consequences. Under the reasonable conduct standard established by the Premises Liability Act, the owner's duty to those who would formerly have been licensees will no longer be determined as a matter of law by the status rules. Consequently, more cases are likely to proceed past the pleading stage, instead of being summarily disposed of by the court. This will understandably lead to an increase in jury involvement in the premises cases, promising that the owner's liability will more closely reflect community standards. But it is questionable whether there

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Care, 8 Suffolk U.L. Rev. 795, 809-10 (1974). The similarity between this notion and the concept of contributory negligence is striking. In both, the plaintiff's conduct acts as an absolute bar to recovery. Id. at 810. Illinois, however, has replaced the doctrine of contributory negligence with the more equitable concept of comparative negligence. See Alvis v. Ribar, 85 Ill. 2d 1, 421 N.E.2d 886 (1981). Under comparative negligence principles, the parties are permitted to recover the proportion of damages not attributable to their own fault. Id. at 16, 421 N.E.2d at 892. The rule with respect to trespass is a unique exception to the idea of comparative negligence. "It would be rather inconsistent for Illinois to retain the status of trespasser as a complete defense rather than to make it just one factor in the comparison of fault." Davis v. United States, 716 F.2d 418, 425 (7th Cir. 1983).

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See supra notes 153-56 and accompanying text. The duty of care toward trespassers would not necessarily be an unreasonable burden for the owner. In the first place the duty not to be negligent is only a duty to take reasonable precautions against undue risk of harm. Even if the possessor were to come under the ordinary rule of negligence, therefore, he could always repel the obligation to take any precautions he could show to be unreasonably burdensome. See supra note 2, at 1437.

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Explaining the impact of their repudiation of the common law rules on the status of trespasser, one court noted:

When the intrusion is not foreseeable or is against the will of the landowner many intruders will be denied recovery as a matter of law. In other words, a landowner cannot be expected to maintain his premises in a safe condition for a wandering tramp or a person who enters against the known wishes of the landowner. Ouellette v. Blanchard, 364 A.2d 631, 634 (N.H. 1976). The two statements, however, are contradictory. It appears that what the court meant to say was that the landowner cannot be expected to anticipate the presence/foreseeability of such persons. Thus, the specific conduct that would satisfy the reasonable care standard would be minimal, at best.

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See supra note 162 and accompanying text.

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See supra notes 159-63 and accompanying text.
will be a significant increase in cases imposing liability upon the owner. Increased jury involvement, considered in light of the greater likelihood that meritorious claims will survive the pleading stage, suggests such a conclusion. Apparently, however, this has not been the case in other jurisdictions that have abolished the common law categories.238

The greatest impact of the Act can be expected in the social guest cases, in which the application of the common law distinctions often produced an illogical and unjust result. Under the common law the owner was not required to exercise reasonable care to maintain the premises in a safe condition for social guests.239 This was true even when the guest's presence was particularly foreseeable, as where the guest had been expressly invited by the owner. Importantly, the reasonable conduct standard hereafter imposed upon the owner for the benefit of all rightful entrants will lend the law of premises liability the flexibility that is needed to deal with such cases. There is no longer a need for the Illinois courts to determine whether the plaintiff is a licensee or an invitee. Hence, recovery is no longer dependent upon the existence of some economic relationship between the parties. This can be expected to be significant only where it aids the court in determining the foreseeability of the visitor's presence.

It is reasonable to expect that the Illinois Premises Liability Act will result in a more economical use of judicial resources. Abolishing the common law licensee and invitee classifications significantly reduces the need for time-consuming litigation over the plaintiff's common law status.240 Additionally, fewer cases will be seen at the appellate level contesting the issue of the plaintiff's status. This factor, coupled with the reluctance of counsel generally to test the jury's verdict, can be expected to ultimately result in a higher percentage of cases settled at earlier stages of the litigation process. The likelihood that the landowner's liability will be less predictable under the

238. The results of the Hawkins study, supra notes 197-201 and accompanying text, however, suggest that of the cases sampled in those jurisdictions that had abolished the status rules, the outcome in a majority of the decisions would have been the same if the common law rules had been applied. Therefore, while it is very likely that there will be an increase in cases imposing liability, it is questionable whether this will be an extreme increase.

239. See supra note 34 and accompanying text.

240. One Colorado case provides an excellent illustration of confusion and judicial waste. In Windsor Reservoir & Canal Co. v. Smith, 92 Colo. 464, 21 P.2d 1116 (1933), the trial court entered summary judgment for defendant on the basis of the plaintiff's common law status. The Colorado Supreme Court reversed and remanded the case for trial. Id. at 465, 21 P.2d at 1117. On remand, the trial court entered judgment on the jury's verdict in favor of plaintiff. Id. On appeal, however, the Colorado Supreme Court reversed for errors in instructions and ordered a new trial. Id. This time, however, the trial court granted the defendant's motion for directed verdict on the basis that the plaintiff's evidence was insufficient as a matter of law. Id. On appeal the Colorado Supreme Court reversed and held that the plaintiff's evidence was sufficient. Id. After another trial, the lower court entered judgment on the jury's verdict in favor of the plaintiff. Id. Finally, the Colorado Supreme Court affirmed the decision. Id. at 469, 21 P.2d at 1118. Thus, the case was before the Colorado Supreme Court four times in eight years as the result of the common law status rules. For the reports of these supreme court decisions, see Windsor, 92 Colo. 464, 21 P.2d 1116 (1933); Windsor, 88 Colo. 422, 298 P. 646 (1931); Windsor, 82 Colo. 497, 261 P. 872 (1927); Windsor, 78 Colo. 169, 240 P. 332 (1925).
Premises Liability Act than it appeared to be under the status rules can also be expected to prompt an increase in settlements. Unfortunately, because the Act leaves the trespasser category untouched, these cases will still be dealt with as they were at common law.

Although the Illinois Premises Liability Act expressly abandons the common law licensee and invitee categories, the practitioner would do well to retain an interest in the substantial body of case law relating to the common law status rules. The duty imposed at common law for the benefit of the invitee was that of reasonable care, the same standard imposed by the Act. Further, the reasonable conduct standard requires a consideration of all the circumstances in determining the owner’s liability. Therefore, the circumstances of the entrant’s presence will still remain a factor for consideration. Consequently, the entrant’s common law status, and the case law applicable thereto, may provide the source of arguments regarding the likelihood of injury and the foreseeability of the entrant’s presence.

The Premises Liability Act has the potential to introduce significant modifications into the law of premises liability. For example, the “natural conditions rule” established at common law, protected landowners from liability for injuries resulting from natural conditions on their land. The natural conditions rule is unaffected by the Act. Recently, however, following the new trend in the law of premises liability, some states have eliminated this rule. In *Quinlivan v. Great Atlantic and Pacific Tea Co.*, for example, the Michigan Supreme Court refused to apply the rule when a business visitor slipped and fell on ice and snow in the defendant’s parking lot. No affirmative acts of the owner had created or aggravated the hazard. Still, the Michigan Supreme Court held that the owner had a duty to exercise

241. See *supra* note 11 and accompanying text.
242. See *supra* note 38 and accompanying text.
243. For example, under the traditional approach, an invitation to transact business extended not only to the portion of the premises where the transaction occurred, but also to all other areas where it was reasonable for the visitor to believe the invitation extended. *Pauckner v. Wakem*, 231 Ill. 276, 282, 83 N.E. 202, 205 (1907) The corollary of this principle was, logically, that the invitee might lose the invitee status as such and become a licensee when the bounds of the invitation were violated. *Elguth v. Blackstone Hotel Inc.*, 340 Ill. App. 587, 92 N.E.2d 502 (1st Dist. 1950), *aff’d*, 408 Ill. 343, 348, 97 N.E.2d 290, 293 (1951); *Avery v. Moews Seed Corn Co.*, 131 Ill. App. 2d 842, 845-46, 268 N.E.2d 561, 564-65 (3d Dist. 1971); *Prosser & Keeton, supra* note 1, at 424-25. Moreover, the same was said of the common law licensee who went beyond the implied or express permission of the owner. *Id.* at 433. Consequently, an understanding of the impact of such principles upon the common law scheme allows the practitioner increased flexibility in arguing the presence or absence of a duty, or the foreseeability of injury, to an entrant under the general negligence formula.
244. See *supra* notes 60-62 and accompanying text.
246. On appeal, the record did not disclose any affirmative act by the defendant that increased or aggravated the hazard.
247. 395 Mich. at 261, 235 N.W.2d at 740.
reasonable care to diminish the hazard caused by the snow and ice.\textsuperscript{248} Moreover, the court expressly stated that its holding was applicable to any case involving an invitee.\textsuperscript{249}

\textit{Quinlivan} follows similar decisions in Alaska,\textsuperscript{250} New Mexico,\textsuperscript{251} and Indiana.\textsuperscript{252} California has also recently joined this movement, holding that landowners' liability for injuries resulting from natural conditions is based on the duty to act reasonably with respect to their land.\textsuperscript{253} Many other jurisdictions have reached a similar result in cases involving defective trees on the premises.\textsuperscript{254}

In Illinois, ironically, the rejection of the natural conditions rule seems to have preceded this state's acceptance of the trend abolishing the trespasser-licensee-invitee rules. In \textit{Mahurin v. Lockhart},\textsuperscript{255} the Illinois Appellate Court for the Fifth District began to erode the traditional rule of immunity for

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  \item \textsuperscript{248} Id. at 260-61, 235 N.W.2d at 740. This requires "that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury ..." \textit{Id.} at 261, 235 N.W.2d at 740.
  \item \textsuperscript{249} Id.
  \item \textsuperscript{250} See \textit{Kremer v. Carr's Food Center, Inc.}, 462 P.2d 747 (Alaska 1969) (plaintiff fell on unsalted, unscraped ice and snow in defendant supermarket's parking lot).
  \item \textsuperscript{251} See \textit{Proctor v. Waxler}, 84 N.M. 361, 503 P.2d 644 (1972) (landowner has duty to warn or protect invitee against dangerous conditions created by ice and snow when condition is unreasonably dangerous).
  \item \textsuperscript{252} See \textit{Hammond v. Allegretti}, 311 N.E.2d 821 (Ind. 1974) (duty of reasonable care to invitee was in no way diminished by natural accumulation of ice and snow).
  \item \textsuperscript{254} See \textit{Husovsky v. United States}, 590 F.2d 944 (D.C. Cir. 1978) (an owner has a duty to use reasonable care to protect passers-by on adjoining public ways from hazardous trees on owner's land); \textit{Carver v. Salt River Valley Water Users' Ass'n}, 8 Ariz. 513, 456 P.2d 371 (1969) (where risk of injury from defective trees is unreasonable, owner has duty to exercise reasonable care to protect others); \textit{Kurtigian v. City of Worcester}, 348 Mass. 284, 203 N.E.2d 692 (1965) (plaintiff injured by falling tree limb); \textit{Cornett v. Agee}, 143 Ga. App. 55, 237 S.E.2d 522 (1977) (owner liable to adjoining owner when tree that was visibly defective fell into neighboring yard); \textit{Rowe v. Mcgee}, 5 N.C. App. 60, 168 S.E.2d 77 (1969) (regardless of natural growth, owner had duty to eliminate danger of decayed tree on premises); \textit{Hay v. Norwalk Lodge, B.P.O.E.}, 92 Ohio App. 14, 109 N.E. 2d 481 (1951) (plaintiff injured when portion of tree on defendant's premises fell onto highway); \textit{Taylor v. Olsen}, 282 Or. 343, 578 P.2d 779 (1978) (owners have duty to inspect trees on their land and guard against unreasonable risk of injury to others off the land); \textit{Barker v. Brown}, 236 Pa. Super. Ct. 75, 340 A.2d 566 (1975) (owner subject to liability for harm to others off premises caused by defect in tree on premises if owner failed to use reasonable care to inspect and repair); \textit{Fabbri v. Regis Forcier, Inc.}, 114 R.I. 207, 330 A.2d 807 (1975) (owners may be required to eliminate unsound tree on their land regardless of fact that its condition was result of natural growth). \textit{But see Lemon v. Edwards}, 344 S.W.2d 822 (Ky. 1961) (owner of densely wooded forest land had no duty to inspect trees and therefore was not liable when tree fell on passing motorist); \textit{Albin v. Nat'l Bank of Commerce of Seattle}, 60 Wash. 2d 745, 375 P.2d 487 (1962) (duty of inspection for defective trees does not extend to rural land).
  \item \textsuperscript{255} 71 Ill. App. 3d 691, 390 N.E.2d 523 (5th Dist. 1979).
\end{itemize}
the owner. The Mahurin court held that an owner would no longer be free of liability for injuries to others off the premises resulting from a falling tree located on the owner's land. Yet, Mahurin is still a minority position in Illinois. It is not unreasonable, however, to suggest that the landowner in Illinois will soon be expected to exercise reasonable care to protect others, both on and off the premises, against injury from natural conditions of which they have knowledge.

Another area that may potentially be affected by the implementation of the reasonable conduct standard for licensees and invitees is the liability of the owner for the criminal acts of third parties. The Illinois courts have proceeded cautiously in imposing liability on the owner in this area. Nevertheless, the trend toward imposing greater responsibility upon landowners to act reasonably with regard to their premises expresses an important public policy. An owner's interest in land is no longer paramount to society's interest in the safety of its members. This notion, quickly gaining acceptance in Illinois and other jurisdictions, can be expected to influence the outcomes in these cases. Thus, Illinois is likely to see an increase in cases stressing the owner's responsibility to use reasonable efforts to guard entrants against the criminal attacks of third parties.

While the implications of the Illinois Premises Liability Act discussed above are beneficial in their overall effect, their ultimate burden on the

256. Id. Thus, one would be justified in stating that, until today, occupiers owed a greater duty to strangers off their land, with regard to the condition of their land, than they owed to their social guests. Recent Decision, Torts/Premises Liability, 68 ILL. B.J. 676, 680 (1980).

257. Professors Prosser and Keeton recognize that the natural conditions rule is of questionable validity in an urban society:

It remains to a considerable extent a necessity in rural communities, where the burden of inspecting and improving the land is likely to be entirely disproportionate not only to any threatened harm but even to the value of the land itself. But it is scarcely suited to the cities, to say that a landowner may escape all liability for serious damage to his neighbors, merely by allowing nature to take its course. A different rule accordingly has been developing as to urban centers.

PROSSER & KEETON, supra note 1, at 391. In Gilberg v. Toys "R" Us, Inc., 126 Ill. App. 3d 554, 467 N.E.2d 947 (1st Dist. 1984), the court rejected the plaintiff's request that the natural accumulation rule be abolished. In that case, the plaintiff was injured when he slipped on a patch of ice in the defendant's parking lot. The court, however, noted that since the adoption of comparative negligence, the Illinois courts are more closely comparing the conduct of the plaintiff to that of the defendant. Id. at 558, 467 N.E.2d at 950 (citing Williams v. Alfred N. Koplin & Co., 114 Ill. App. 3d 482, 448 N.E.2d 1042 (2d Dist. 1983) and Kittle v. Liss, 108 Ill. App. 3d 922, 439 N.E.2d 972 (3d Dist. 1982)).

258. See supra notes 63-69 and accompanying text.

259. See id. But see Gordon v. Chicago Transit Auth., 128 Ill. App. 3d 493, 470 N.E.2d 1163 (1st Dist. 1984) (upholding jury's verdict in action charging carrier with responsibility to use reasonable care to prevent rape which could reasonably have been foreseen and avoided).

owner remains speculative. For example, it is reasonable to expect that an increase in lawsuits seeking to impose liability on owners will affect the cost and, therefore, the availability of insurance. Any increase in the burden on commercial owners is typically passed on to the public through higher prices. Residential owners, however, are unable to distribute increases in insurance costs and may be forced to reduce their coverage. Increases in insurance costs will vary with the willingness to impose liability upon the landowner. Thus, the impact of the Premises Liability Act upon the cost and availability of insurance is questionable. Moreover, while the average homeowner is most likely to be in no greater financial position than an injured guest, the potentially greater burden on the owner is justifiable. The landowner is in a better position than the entrant to have knowledge of defects in the premises and to avoid the risk of injury by either curing the defect or warning of its existence.

Owners can also be expected to bear the increased burden of maintaining their premises in a reasonably safe condition. As with insurance, however, it is reasonable to place the burden upon the individual who is in the best position to guard against the risk of injury. If any particular class of owners will bear a greater burden, it will likely be residential owners. Theoretically, commercial owners are more accustomed than their residential counterparts to anticipating the presence of the common law invitee. Contemporary community standards of reasonableness, applied via traditional negligence principles, guard against this result. What is reasonable conduct in one context may be unreasonable in another. Consequently, the conduct that may reasonably be expected in a business establishment will differ from the conduct expected in a residence. Therefore, it cannot be said with certainty that landowners in Illinois will bear a measurably greater burden in making their premises safe or in obtaining insurance under the Premises Liability Act.

CONCLUSION

The common law rules regarding trespassers, licensees, and invitees emerged in an era when policies and values were far different than those of contemporary society. The difficulty of the common law approach to adequately deal with societal changes is apparent. It is seen in the growing trend that is imposing upon owners the duty to exercise reasonable care under all the

262. It can hardly be said that the end result would be "an inhibition of social relations." Recent Decision, Torts/Premises Doctrine, 69 Ill. B.J. 582, 585 (1981).
265. In Hunter, the court contemplated the development of a "neurosis domicilia," and visualized signs in homes saying "Enter at your own risk," or "Examine each chair." Id. at 436-37, 251 N.E.2d at 306. This extreme position, however, is not borne out by the evidence, see supra note 200 and accompanying text, or by common sense.
circumstances for entrants on their premises. The passage of the Premises Liability Act aligns Illinois with the twenty-one other jurisdictions that have abandoned or modified the common law approach. Like these other jurisdictions, Illinois has made a significant policy judgment, recognizing the pre-eminent value of human safety over a landowner's freedom to act as they please with regard to their property.

The Premises Liability Act abolishes the common law distinction between licensees and invitees. In so doing, the Act promises to have a favorable impact on the law of premises liability in Illinois. In addition to eliminating much of the confusion and complexity existing under prior Illinois law, the Act provides flexibility and ensures that the law will more accurately reflect contemporary community values. It marks a transition in Illinois from a rigid, fragmented methodology to a more comprehensive, uniform approach to the determination of a landowner's liability for injury to others.

Despite its advantages, however, the Premises Liability Act falls short of abolishing the common law trespasser status. Therefore, the benefits that could potentially be gained from a single standard of reasonable care in all cases are not fully realized. Indeed, the Act simply modifies the common law rules to create two classes of entrants instead of three. This perpetuates the categorical approach taken by the common law. It is hoped that the policies behind the Premises Liability Act will encourage the courts to complete the transition by eliminating the last remnant of the outmoded trespasser-licensee-invitee trichotomy.

Marc D. Sherman