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RECENT DECISIONS

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defendant in the first action. The fact that the defendant may have represented other interests in addition to those derived from PRC Pictures was held immaterial.

In the determination of state law a federal court may not depart from what a lower state court announces as law unless convinced that a higher court of the state would decide otherwise. It is submitted that the court was justified in refusing to adopt the strict identity of party test of the Breen case in view of its clash with the broad and liberal construction given to Section 23 by the Court of Appeals in the Gaines case.

Torts—Duty Owed Inviter and Licensee.—Plaintiff stumbled and fell over a stone block while walking through an alleyway used in connection with defendant's bus terminal. Defendant was in possession of the alleyway under a lease wherein he agreed to promote the maximum flow of traffic through the terminal and passageway leading thereto. The objective of such promotion was to increase business in the stores, luncheonette and other concessions bordering upon and leading into the terminal, the alleys and arcade. Pedestrians to reach the stores in the terminal used the alleyway where the operative facts occurred. Held, judgment for plaintiff affirmed.

Because of the provision in the lease to encourage business in the alleyway, plaintiff, a pedestrian, is an invitee or business guest and not a bare licensee or trespasser. Pedro v. Newman, 277 App. Div. 567, 101 N.Y.S. 2d 146 (1st Dep't 1950).

A business visitor or invitee is a person who is invited or permitted to enter or remain upon land for a purpose which directly or indirectly concerns the business of the occupier. A licensee, on the other hand, is a person who is privileged to enter upon land merely by virtue of the possessor's consent. The occupier of land must extend reasonable care to an invitee as to activities or con-


24 "The statute is designed to insure to the diligent suitor the right to a hearing in court till he reaches a judgment on the merits. Its broad and liberal purpose is not to be frittered away by any narrow construction." Gaines v. City of New York, 215 N. Y. 533, 539, 109 N. E. 594, 596 (1915).

1 Heskell v. Auburn L., H. & P. Co., 209 N. Y. 86, 102 N. E. 540 (1913); Restatement, Torts § 332 (1934); Prosser, Torts 635 (1941).

2 Meyer v. Pleshkopf, 277 N. Y. 576, 13 N. E. 777 (1938); Restatement, Torts § 330 (1934); Prosser, Torts 625 (1941).


4 See Stelter v. Cordes, 146 App. Div. 300, 130 N. Y. Supp. 688 (2d Dep't 1911); Restatement, Torts § 341 (1934).
ditions on the land of which the occupier is or ought to be aware, by warning him or making the premises safe for him. But he is not to be considered an insurer of the invitee’s safety. As to a licensee, no affirmative duty of care is owed. Conversely stated, injury may not be inflicted through active negligence or intentional harm. No liability, however, is incurred to either a licensee or invitee, where the condition is known and the risk is realized by him.

The physical area of responsibility to the invitee extends from the entrance to the exit of the premises and includes those parts to which an invitee may reasonably be expected to go for business purposes.

The duty to the invitee is arbitrarily imposed upon the landowner as a price for the possible economic gain to be conferred by the inquirer. A second theory bases this affirmative duty of care owed to invitees upon an implied representation that the premises have.

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6 Paubel v. Hitz, 339 Mo. 274, 96 S. W. 2d 369 (1936). Superior knowledge on the part of the possessor is necessary for the invitee to recover.
8 Royer v. Najarian, 60 R. I. 368, 198 Atl. 562 (1938); Inndermaur v. Dames, L. R. I. C. P. 274 (1866); Restatement, Torts § 343 (1934).
13 See note 6 supra. Postman delivering mail had full knowledge of the slippery condition of the runway to defendant's establishment by observation and no oral warning could increase his knowledge. Restatement, Torts § 340 (1934).
17 Prosser, Torts 637 (1941); McNiece & Thornton, Affirmative Duties in Tort, 58 Yale L. J. 1275 (1949).
been made safe by the landowner for those persons invited to enter to further a purpose of the landowner.\textsuperscript{18}

In applying these definitions the courts have found that among those considered to be invitees are: government employees such as inspectors\textsuperscript{19} and collectors;\textsuperscript{20} vendors delivering their merchandise;\textsuperscript{21} those visiting patients in a hospital;\textsuperscript{22} persons meeting or seeing off friends or relatives on a train or boat;\textsuperscript{24} customers in a store\textsuperscript{25} whether intending to purchase,\textsuperscript{26} merely shopping,\textsuperscript{27} or returning for a lost article;\textsuperscript{28} friends accompanying a customer;\textsuperscript{29} garage patrons\textsuperscript{30} and those accompanying them;\textsuperscript{31} prospective tenants\textsuperscript{32} and purchasers\textsuperscript{33} of houses inspecting the premises and fa-

\textsuperscript{18} Prosser, Torts 638 (1941); McNiece & Thornton, supra note 17.

\textsuperscript{19} Gilchrist v. Eustrom, 69 Fed. 794 (8th Cir. 1895) (grain inspector on ship); Anderson & Nelson Distilling Co. v. Hair, 103 Ky. 196, 44 S. W. 658 (1898) (revenue inspector); Low v. Grand Trunk Ry., 72 Me. 313 (1881) (customs inspector).

\textsuperscript{20} Toomey v. Sanborn, 146 Mass. 28, 14 N. E. 921 (1888) (city employee collecting garbage and offal).


\textsuperscript{22} Greenfield v. Hospital Ass'n of City of Schenectady, 258 App. Div. 352, 16 N. Y. S. 2d 729 (3d Dep't 1940).


\textsuperscript{27} MacDonough v. F. W. Woolworth, 91 N. J. L. 677, 103 Atl. 74 (1918). Cf. Rigans v. Mott, 156 Md. 340, 144 Atl. 355 (1929).

\textsuperscript{28} H. L. Green Co. v. Bobbitt, 99 F. 2d 281 (4th Cir. 1938).

\textsuperscript{29} Kennedy v. Phillips, 319 Mo. 573, 5 S. W. 2d 33 (1928).


\textsuperscript{33} Bonello v. Fowell, 223 S. W. 1075 (Mo. App. 1920).
cilities; those using public telephones. 34 Included too as an invitee is: a milkman; 35 an air raid warden; 36 a postman; 37 an interior decorator 38 and a contractor 39 while working on a house; a person going upon the premises to read the details of a "to-let" sign posted on a building. 40

Establishments deemed to owe their patrons the care due invitees because of the nature of the activities conducted number among them: a restaurant; 41 a skating rink; 42 an athletic stadium; 43 a bank; 44 a theatre; 45 a bathing beach; 46 a fair ground; 47 a bath house; 48 a park; 49 a bowling alley; 50 a public picnic. 51

Coming within the category of a licensee is: a salesman; 52 a


37 Paubel v. Hitz, 339 Mo. 274, 96 S. W. 2d 369 (1936).


41 Holmes v. Ginter Restaurant Co., 54 F. 2d 876 (1st Cir. 1932).


44 Sinn v. Farmers' Deposit Sav. Bank, 300 Pa. 85, 150 Atl. 163 (1930); Howlett v. Dorchester Trust Co., 256 Mass. 544, 152 N. E. 895 (1926) (child accompanying mother making a deposit in the bank also considered to be an invitee).


47 Smith v. Cumberland County Agr. Society, 163 N. C. 346, 79 S. E. 632 (1913); Dunn v. Brown County Agricultural Soc'y, 46 Ohio St. 93, 18 N. E. 496 (1888).

48 Radin v. State of New York, 192 Misc. 247, 80 N. Y. S. 2d 189 (Ct. of Cl. 1948).

49 Indianapolis Street Ry. v. Dawson, 31 Ind. App. 605, 68 N. E. 909 (1903) (park offering a free concert); Brown v. Rhoades, 126 Me. 186, 137 Atl. 58 (1927) (amusement park); Dorsey v. Chautauqua Institution, 203 App. Div. 251, 196 N. Y. Supp. 798 (4th Dep't 1922) (a recreation park where no charge is made in the off season).

50 See Stelter v. Cordes, 146 App. Div. 300, 130 N. Y. Supp. 688 (2d Dep't 1911).

51 Mastad v. Swedish Brethren, 83 Minn. 40, 85 N. W. 913 (1901).

continuous user of a railroad crossing; a house guest; a child accompanying a parent making purchases in a store; a student visiting a factory on a tour. Among those also only entitled to the care owed a licensee is one who: uses a toilet by permission; seeks employment; visits defendant's employees socially or to collect a debt or to solicit business from them or to deliver their lunch; visits a tenant of an office building on his own business.

The present inclination is to hold persons encouraging ingress on their property for purposes of their own to a duty comparable to that owed an invitee. Consequently, it would appear that the principal case would have been decided for the plaintiff even without the court's emphasis on the "traffic promotion" clause in the lease.


Benson v. Baltimore Traction Co., 77 Md. 535, 26 Atl. 973 (1893). Contra: Gilliland v. Bondurant, 332 Mo. 881, 59 S. W. 2d 679 (1933) (the visit of the class to defendant's plant was not merely occasional but part of a long established and continued custom).


Berlin Mills Co. v. Croteau, 88 Fed. 860 (1st Cir. 1898).

Indian Refining Co. v. Moberly, 134 Ky. 822, 121 S. W. 657 (1909).


Baker v. Seneca Hotel Corp., 265 App. Div. 41, 37 N. Y. S. 2d 819 (4th Dep't 1942) (plaintiff held to be an invitee though passing through an arcade on her own business).