THE DUTY OWED BY LAND OCCUPIERS IN IOWA

I. INTRODUCTION

Negligence is predicated upon an unperformed duty. The duty of a land occupier is predicated upon the status of the person on his land. The law of negligence makes a person liable for his careless and negligent acts toward others to whom he owes a duty.[1] This liability is subject to various exceptions, including assumption of the risk, contributory negligence and the general exception that limits a land occupier's liability according to the status of the injured person.

The Iowa supreme court recognizes four classifications for persons upon the property of another: (1) trespasser; (2) bare licensee; (3) implied or express licensee; and (4) invitee.[2] Each of these classifications is determinative of a land occupier's liability in Iowa. The purpose of this Note is to examine existing Iowa law in this area, and contrast it with the law of California which is probably the most progressive jurisdiction in this area. The duties owed to trespassers and licensees are touched upon only briefly, with a more thorough examination made of the duties owed to invitees, the latter area having evidenced the most change in recent years.[3]

II. TRESPASSER

A trespasser is defined in the *Restatement of Torts* as "a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise."[4] Similarly, the Iowa supreme court has defined a trespasser as "one who is not rightfully upon the land or property of another, but enters it without the consent, either express or implied, of the owner or occupier thereof."[5] Generally, a possessor of land has no reason to anticipate the presence of a trespasser on his land.[6] The Iowa supreme court has taken the position that a possessor of land does not owe a general duty to unknown trespassers on his property, except to refrain from wil-

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[1] See Ann. Cal. Codes § 1714 (1954), which states: "Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property, or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself."

[2] Reasoner v. Chicago, R.I. & Pac. R.R., 251 Iowa 506, 101 N.W.2d 739 (1960).

[3] For a more detailed explanation of the duties owed to a trespasser and a licensee, see Note, *Duties Owed Trespassers, Licensees, and Invitees, in Iowa*, 9 Drake L. Rev. 119 (1960).

[4] RESTATEMENT (SECOND) OF TORTS § 329 (1965).

[5] Mann v. Des Moines Ry. Co., 232 Iowa 1049, 1056, 7 N.W.2d 45, 50 (1942).

[6] Blakesley v. Standard Oil Co., 193 Iowa 315, 187 N.W. 28 (1922).

fully or wantonly injuring them.[7] No duty arises until the presence is known,[8] and then the duty consists of using such reasonable care as the circumstances demand.[9] There are more exceptions to this general rule of the duty to a trespasser which, in effect, place more liability on the land occupier.[10]

III. Licensee

A licensee is defined in the *Restatement of Torts* as "a person who is privileged to enter or remain on land only by virtue of the possessor's consent."[11] A licensee has been defined by the Iowa supreme court as "one who goes on the property of another, either by express invitation, or with implied acquiescence, solely in pursuit or furtherance of business, pleasure, or convenience of the licensee."[12] Iowa thus has subclassified licensees into bare or mere licensees (by acquiescence) and licensees by express or implied invitation.

A bare licensee enters upon the land of another without objection, or by mere permission, sufferance or acquiescence of the land occupier.[13] The actual difference between a trespasser and a bare licensee is slight.[14] Under certain conditions the duty owed to a bare licensee is slightly more than that owed to a trespasser.[15] The bare licensee enters the land at his own risk and assumes the dangers existing in the property.[16]

The land occupier owes a bare licensee no duty to keep his land in reasonably safe condition.[17] When one goes upon another's land without express or implied invitation, the land occupier is not under a duty to look out for that person's safety, and there will be no recovery if that person is injured because of the possessor's negligence.[18]

A land occupier owes a duty, to those he expressly or impliedly invites onto his property, to use reasonable care to keep his premises in reasonably safe condition.[19] This duty extends to licensees. The land occupier has a duty not to unreasonably expose the licensee to danger, and to warn the licensee of dangers not obvious or apparent to him.[20]

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7 Mann v. Des Moines Ry. Co., 232 Iowa 1049, 7 N.W.2d 45 (1942). *See also* Restatement (Second) of Torts § 333 (1965).

8 Papich v. Chicago, M. & St. P. Ry., 183 Iowa 601, 167 N.W. 686 (1918).

9 Mann v. Des Moines Ry. Co., 232 Iowa 1049, 7 N.W.2d 45 (1942).

10 *See* Note, *Duties Owed Trespassers, Licensees, and Invitees, in Iowa,* 9 Drake L. Rev. 119 (1960).

11 Restatement (Second) of Torts § 330 (1965).

12 Wilson v. Goodrich, 218 Iowa 462, 467, 252 N.W. 142, 144 (1934). *See also* Sullivan v. First Presbyterian Church, 260 Iowa 1373, 152 N.W.2d 628 (1967).

13 Mann v. Des Moines Ry. Co., 232 Iowa 1049, 7 N.W.2d 45 (1942).

14 Reasoner v. Chicago, R.I. & Pac. R.R., 251 Iowa 506, 101 N.W.2d 739 (1960).

15 *Id.*

16 Mann v. Des Moines Ry. Co., 232 Iowa 1049, 7 N.W.2d 45 (1942).

17 Rodefer v. Clinton Turner Verein, 232 Iowa 691, 6 N.W.2d 17 (1942).

18 Keeran v. Spurgeon Merc. Co., 194 Iowa 1240, 191 N.W. 99 (1922).

19 Rueter v. Iowa Trust & Savings Bank, 244 Iowa 939, 57 N.W.2d 225 (1953); Leonard v. Mel Foster Co., 244 Iowa 1319, 60 N.W.2d 532 (1953).

20 Lattner v. Immaculate Conception Church, 255 Iowa 120, 121 N.W.2d 639 (1963). *See also* Restatement (Second) of Torts § 341 (1965).

The duty owed to a licensee is discussed in section 342 of the *Restatement*:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
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> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
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> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
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> (c) the licensees do not know or have reason to know of the condition and the risk involved.[21]

Comment (d) of section 342 states that a land occupier owes no duty to a licensee "to prepare a safe place for the licensee's reception or to inspect the land to discover possible or even probable dangers." It appears, therefore, that the land occupier only owes a duty to licensees for those dangers of which the occupier knows but the licensee does not.[22]

IV. Invitee

A. *Definition*

An invitee is defined in section 332 of the *Restatement* as:

> (1) An invitee is either a public invitee or a business visitor.
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> (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
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> (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.[23]

The Iowa supreme court has held that an invitee is one who goes to a place of business, by express or implied invitation of the owner or occupant, on business of mutual interest to both or in connection with the business of the owner or occupant.[24] With the introduction of the second *Restatement*, the Iowa supreme court adopted the *Restatement's* definition.[25] Thus, Iowa now recognizes two classes of invitees—business visitors and public invitees. The majority of cases in Iowa concern business visitors, but a few fall within the second class.

As noted at comment (d) of section 332 of the *Restatement*, where land

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21 Restatement (Second) of Torts § 342 (1965).

22 *See* Note, *Duties Owed Trespassers, Licensees, and Invitees, in Iowa*, 9 Drake L. Rev. 119 (1960).

23 Restatement (Second) of Torts § 332 (1965).

24 Sullivan v. First Presbyterian Church, 260 Iowa 1373, 152 N.W.2d 628 (1967); Smith v. Cedar Rapids Country Club, 255 Iowa 1199, 124 N.W.2d 557 (1964); Holmes v. Gross, 250 Iowa 238, 93 N.W.2d 714 (1958).

25 Bradt v. Grell Const., Inc., 161 N.W.2d 336 (Iowa 1968); Meader v. Paetz Grocery Co., 259 Iowa 1101, 147 N.W.2d 211 (1966); Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

is held open to the public and there is some encouragement or conduct indicating that the land is intended for public use, those of the public that enter are invitees. The presence of the public need not be related to any business dealing. A member of the public, however, must enter the land for the purpose that it is held open to the public in order to be classified as an invitee. Thus, one who goes to a public library for the purpose for which libraries are held open to the public is a public invitee.[26] This would also include one who enters government land, such as a park.

Examples of a business visitor include a patron of a grocery[27] or department store;[28] a paying guest of a hotel[29] or one who has paid admission to a theater[30] or other place of amusement;[31] and more recently, a patron of a shopping center.[32] One usually becomes a business visitor by entering an establishment for the purpose of doing business with that establishment or by paying an admission.

The invitation extended to the invitee is either express or implied. An example of an express invitation is a request for an invitee to come onto the premises to perform some type of work for the owner or occupant.[33] An implied invitation exists where a business establishment is open to the general public and people are expected to enter the premises to become patrons. One is an invitee only as long as he remains on the premises, and only as long as he stays within the scope of the invitation.[34]

B. *Duty Owed to Invitee*

Section 343 of the *Restatement* delineates the special liability of land occupiers to invitees:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
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> (a) knows or by the exercise of reasonable care would discover

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[26] Lindstrom v. Mason City, 256 Iowa 83, 126 N.W.2d 292 (1964).

[27] Meader v. Paetz Grocery Co., 259 Iowa 1101, 147 N.W.2d 211 (1966); Bartels v. Cair-Dem, Inc., 255 Iowa 834, 124 N.W.2d 514 (1963); Atherton v. Hoenig's Grocery, 249 Iowa 50, 86 N.W.2d 252 (1957).

[28] Weidenhaft v. Shoppers Fair of Des Moines, Inc., 165 N.W.2d 756 (Iowa 1969); Kramer v. F.W. Woolworth Co., 255 Iowa 633, 123 N.W.2d 572 (1963); Corrigan v. Younker Bros., Inc., 252 Iowa 1169, 110 N.W.2d 246 (1961); Vollmar v. J.C. Penney Co., 251 Iowa 1026, 103 N.W.2d 715 (1960).

[29] Ling v. Hosts, Inc., 164 N.W.2d 123 (Iowa 1969).

[30] LaSell v. Tri-States Theatre Corp., 233 Iowa 929, 11 N.W.2d 36 (1943).

[31] Grall v. Meyer, 173 N.W.2d 61 (Iowa 1969); Foust v. Kinley, 254 Iowa 690, 117 N.W.2d 843 (1963).

[32] Knudsen v. Merle Hay Plaza, Inc., 160 N.W.2d 279 (Iowa 1968); Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

[33] *See* Anthes v. Anthes, 255 Iowa 497, 122 N.W.2d 255 (1963); and Stupka v. Scheidel, 244 Iowa 442, 56 N.W.2d 874 (1953) (invitees were asked to come on the premises to do some work).

[34] Holmes v. Gross, 250 Iowa 238, 93 N.W.2d 714 (1958). For example, the court held in that it was a question of fact for the jury on whether the plaintiff's status as an invitee ceased when he looked for the restroom in defendant's restaurant and fell down a stairway. The court thereby implied that one's status could change even though he was still a guest on the premises.

> the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
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> (c) fails to exercise reasonable care to protect them against the danger.[35]

The Iowa supreme court has consistently held that a land occupier owes a duty to invitees on his land to use reasonable care to keep the premises in reasonably safe condition for the contemplated use.[36] However, the land occupier is not an insurer of his invitee's safety.[37] Failure to keep the premises in reasonably safe condition constitutes negligence.[38] The law, however, is not quite as simple as these statements make it appear.

The invitor's duty applies to "defects or conditions which are in the nature of dangers, traps, snares, pitfalls, and the like, which are not obvious or known to the invitee, but which are or in the exercise of due care should be known to the possessor."[39] The "dangers," "traps," "snares" and "pitfalls" appear to be defects that are not open or obvious to the invitee.[40] Yet, they may also extend to defects that are open and obvious, but the danger of which the invitee does not realize or appreciate.[41] A "defect" includes "any hazardous condition on the premises to which the invitation extends."[42] The land occupier's duty extends to either remedying the defect or warning the invitee of it.[43]

Recovery is predicated upon a showing that the land occupier either had knowledge of the defect or in the exercise of due care should have had knowledge of it. In other words, the liability is contingent upon the land occupier's superior knowledge.[44] However, the occupier is not presumed to have superior knowledge. This knowledge is inferred from the evidence.[45] In *Denison v. Weise*,[46] the defendant was held liable for injuries to the plaintiff-invitee when she fell off a wobbly bar stool. The court based this liability

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35 RESTATEMENT (SECOND) OF TORTS § 343 (1965).

36 Grall v. Meyer, 173 N.W.2d 61 (Iowa 1969); Chevraux v. Nahas, 260 Iowa 817, 150 N.W.2d 78 (1967); Anthes v. Anthes, 255 Iowa 497, 122 N.W.2d 255 (1963); LaSell v. Tri-States Theatre Corp., 233 Iowa 929, 11 N.W.2d 36 (1943).

37 Grall v. Meyer, 173 N.W.2d 61 (Iowa 1969); Chevraux v. Nahas, 260 Iowa 817, 150 N.W.2d 78 (1967); Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

38 Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

39 Anthes v. Anthes, 258 Iowa 260, 266, 139 N.W.2d 201, 205 (1965). *See also* Denison v. Wiese, 251 Iowa 770, 102 N.W.2d 671 (1960).

40 Meader v. Paetz Grocery Co., 259 Iowa 1101, 147 N.W.2d 211 (1966).

41 Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

42 Grall v. Meyer, 173 N.W.2d 61, 65 (Iowa 1969).

43 Ling v. Hosts, Inc., 164 N.W.2d 123 (Iowa 1969); Foust v. Kinley, 254 Iowa 690, 117 N.W.2d 843 (1963).

44 Smith v. Cedar Rapids Country Club, 255 Iowa 1199, 124 N.W.2d 557 (1964); Kramer v. F.W. Woolworth Co., 255 Iowa 633, 123 N.W.2d 572 (1963); Denison v. Wiese, 251 Iowa 770, 102 N.W.2d 671 (1960).

45 Robinson v. Fort Dodge Limestone Co., 252 Iowa 270, 106 N.W.2d 579 (1960).

46 251 Iowa 770, 102 N.W.2d 671 (1960).

on the defendant's superior knowledge since he had repaired some bar stools because they were wobbly and had a tendency to loosen. The plaintiff has the burden of proving this knowledge.[47] Accordingly, in *Kramer v. F.W. Woolworth*,[48] the plaintiff was denied recovery because she could not prove knowledge, either actual or constructive, on the part of the defendant.[49]

The Iowa supreme court has recognized a difference between places of amusement or entertainment and other privately-owned premises.[50] The court has stated that "[t]he law is well established that a proprietor of a place of public amusement or entertainment is held to a stricter account for injuries to patrons than the owner of private premises generally."[51] He owes the patrons "what, *under the particular circumstances*, is ordinary and reasonable care."[52] This "higher" duty "does not change the standard of reasonable care by which liability is measured. All it does is recognize that the greater the danger, the higher the precaution necessary to constitute reasonable care."[53]

When the land occupier has knowledge of the defect, it is often because he has created it. This is especially true in distraction cases, which usually arise when a patron of a store is injured when distracted by a display.[54] Holding that a store owner is liable for injuries suffered by a customer, the Iowa supreme court has reasoned that it is not unreasonable to expect the proprietor of a store to recognize that his display of goods will distract the customer's attention from floor conditions.[55] A merchant displays his goods in the most pleasing manner possible, hoping to attract customers in his store. Shoppers usually want to inspect goods, but they cannot do this unless they look at them. Some allowance must be made, for if they are looking at the goods they cannot be watching where they are walking.[56]

Prior to *Hanson v. Town and Country Shopping Center, Inc.*[57] in 1966, the superior knowledge of the land occupier was limited to those situations where the defect was not open and obvious, and to those situations where the invitee did not have knowledge of the defect. This concept has been referred to as the *Atherton* rule,[58] based on *Atherton v. Hoenig's Grocery*.[59] This concept, however, existed prior to *Atherton*. *In Shreve v. Edmundson Art*

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47 Kramer v. F.W. Woolworth Co., 255 Iowa at 636, 123 N.W.2d at 574 (1963).
48 255 Iowa 633, 123 N.W.2d 572 (1963).
49 *Id.* at 635, 123 N.W.2d at 573.
50 Grall v. Meyer, 173 N.W.2d 61 (Iowa 1969); Foust v. Kinley, 254 Iowa 690, 117 N.W.2d 843 (1963).
51 Foust v. Kinley, 254 Iowa 690, 694, 117 N.W.2d 843, 845-46 (1963).
52 *Id.* at 694, 117 N.W.2d at 846 (emphasis added).
53 Grall v. Meyer, 173 N.W.2d 61, 63 (Iowa 1969).
54 Kramer v. F.W. Woolworth Co., 255 Iowa 633, 123 N.W.2d 572 (1963); Crouch v. Pauley, 254 Iowa 14, 116 N.W.2d 486 (1962); Warner v. Hansen, 251 Iowa 685, 102 N.W.2d 140 (1960).
55 Warner v. Hansen, 251 Iowa 685, 102 N.W.2d 140 (1960).
56 *Id.*
57 259 Iowa 542, 144 N.W.2d 870 (1966).
58 54 IOWA L. REV. 659 (1969).
59 249 Iowa 50, 86 N.W.2d 252 (1957).

Foundation, Inc.,[60] the court disallowed recovery to the plaintiff-invitee who had slipped and fallen on the defendant's waxed floor. The court reasoned that the plaintiff could see the condition of the floor and that everything was obvious to her. In *Atherton*, the plaintiff fell on the threshold of the doorway to the defendant's store when she was leaving. There was evidence that the plaintiff knew of the defective condition. The court stated that the "duty owed by the inviter is to those, and to those only, who do not know, or, in the exercise of reasonable care for their own safety, have no reasonable means of knowing, of defects or dangers."[61] Until *Hanson*, the supreme court had stated many times that a land occupier was not liable for injuries to an invitee when either the defects were open and obvious, or the invitee knew of the defects.[62]

The law was significantly changed in *Hanson*. In connection with *Hanson*, section 343A of the *Restatement* should be read with section 343.[63] Section 343A states:

> (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.[64]

The section is clarified in accompanying Comment (b):

> The word "known" denotes not only knowledge of the existence of the condition or activity itself, but also appreciation of the danger it involves. Thus the condition or activity must not only be known to exist, but it must also be recognized that it is dangerous, and the probability and gravity of the threatened harm must be appreciated. "Obvious" means that both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising ordinary perception, intelligence, and judgment.

The Iowa supreme court soon adopted this position.[65]

In *Hanson*,[66] the plaintiff sustained injuries from a fall alleged to have resulted from a condition of the premises due to an accumulation of old, rough snow and ice in an area used by patrons of the defendant's tenants. The snow and ice had been pushed off the sidewalk and had accumulated in an area that extended from the curb into the parking lot. The plaintiff walked over this

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[60] 243 Iowa 237, 50 N.W.2d 26 (1951).

[61] Atherton v. Hoenig's Grocery, 249 Iowa 50, 55, 86 N.W.2d 252, 255 (1957).

[62] Christianson v. Kramer, 255 Iowa 239, 122 N.W.2d 283 (1963); Crouch v. Pauley, 254 Iowa 14, 116 N.W.2d 486 (1962); Corrigan v. Younker Bros., Inc., 252 Iowa 1169, 110 N.W.2d 246 (1961); Warner v. Hansen, 251 Iowa 685, 102 N.W.2d 140 (1960); Chenoweth v. Flynn, 251 Iowa 11, 99 N.W.2d 310 (1959).

[63] Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W.2d 870 (1966).

[64] RESTATEMENT (SECOND) OF TORTS § 343A (1965).

[65] Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 144 N.W. 2d 870 (1966).

[66] A commentary on *Hanson*, *Meader* and *Chevraux* has been published at 54 IOWA L. REV. 659 (1969).

area after coming out of a store when he slipped. The plaintiff apparently saw this accumulation of snow and ice. The court held that a jury question of liability existed, instead of holding that there was no liability since the condition was open and obvious and the plaintiff had seen it.

The court based its decision on the *Restatement*. After citing the appropriate sections and comments of the *Restatement*, the court stated:

> [T]his court has talked of hidden dangers, traps and pitfalls as distinguished from obvious and readily apparent defects in the premises.
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> While these characterizations, of course, have a bearing on what is reasonable care under the circumstances, they seem to have developed into an arbitrary rule that the possessor of land is under no duty to invitees with respect to open or obvious defects. *We do not believe a defect in the premises must necessarily be hidden or in the nature of a trap or pitfall in order to constitute negligence in every case.*[67]

Continuing, the court stated:

> To arbitrarily deny liability for open or obvious defects and apply liability only for hidden defects, traps or pitfalls is to adopt a rigid rule based on objective classification in place of the concept of the care of a reasonable and prudent man under the particular circumstances.[68]

The court emphasized that the fact the invitee comes onto the premises after being warned of the danger or with knowledge does not affect or alter the duty of the land occupier toward the invitee. This duty does not change even though the invitee may assume the risk or be contributorily negligent.[69] The court concluded by reasoning that negligence can still exist even though a defect is open and obvious where the facts are such that it is reasonable to anticipate it would not be discovered or become obvious to the invitee, or the risk of harm would not be anticipated by the invitee.[70] A jury question is thus generated as to the question of anticipation, and as to whether the premises are reasonably safe.

The supreme court, thereafter, adhered to the rule stated in *Hanson*, and yet it did not allow recovery in all cases. In *Meader v. Paetz Grocery Co.*,[71] which immediately followed *Hanson*, the plaintiff-invitee fell over a box of fruit placed in the aisle by a store employee. While citing to and adhering to the new statement of the law in *Hanson*, the court reversed a verdict for the plaintiff, declaring that the facts did not generate a jury question.

The court in *Meader* stated that the test "as to whether the invitee under the circumstances should anticipate or appreciate the risk of harm involved is not a subjective test, but is that of a reasonably prudent man under the revealed

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67 Hanson v. Town and Country Shopping Center, Inc., 259 Iowa 542, 547, 144 N.W.2d 870, 873-74 (1966). (emphasis added).
68 *Id.* at 547, 144 N.W.2d at 874.
69 *Id.* at 548, 144 N.W.2d at 874.
70 *Id.* at 549, 144 N.W.2d at 875.
71 259 Iowa 1101, 147 N.W.2d 211 (1966).

circumstances."[72] In other words, even though an open or obvious defect may be the same as a trap or pitfall where the land occupier should know the invitee would not anticipate and appreciate the hazard, there is no liability if the invitee disregards the hazard[73]—if it is reasonable for the land occupier to know that the invitee, as a reasonably prudent person, would anticipate and appreciate the hazard. The court held that the plaintiff not only knew of this manner of stocking shelves, but also that there was enough room for her to walk by the box; that the box was a different color than the floor, and, therefore, easy to see; and that in a store where boxes and cartons are commmonly found and are placed in a disorderly way the invitee must *expect* to find and guard against them since they are an ordinary and usual incident of the business. In other words, it was reasonable for the owner to expect that the plaintiff would anticipate, discover and appreciate the condition.

The court again cited to *Hanson* with approval in *Chevraux v. Nahas,*[74] but again a verdict for the plaintiff was reversed. The plaintiff there was leaving the defendant's hotel when she fell because of a four-inch drop-off from one part of the sidewalk to another. The court held that a variance in elevation of four inches was not a hidden defect or an unrecognizable hazard for a person using the sidewalk in daylight without distraction and keeping a reasonable watch.[75] The court also stated it was reasonable to assume that because the plaintiff used a cane she would be expected to give closer attention than normal to where she would be stepping.[76] Again the court concluded that there was no reason for the land occupier to anticipate that the invitee would not anticipate and appreciate the condition.

It would appear that the supreme court has confused the issue by not adhering to the *Hanson* rule in subsequent cases. However, in 1968, the court reversed a verdict for the defendant in *Adams v. R.S. Bacon Veneer Co.*[77] The plaintiff there was helping deliver logs to the defendant company. Logs were normally unloaded in such a manner that the unloader would have to move quickly to get out of the way. As the plaintiff attempted to move out of the way he slipped and fell on snow and ice. The court felt the defendant knew the method of unloading involved quick movement. It expressly followed the *Hanson* rule in reaching its decision.[78]

In *Weidenhaft v. Shoppers Fair of Des Moines, Inc.*,[79] the court affirmed a verdict for the defendant in holding that the land occupier was not liable for plaintiff's injuries. The accident occurred during the winter, while the parking lot at the defendant store was snow packed. Corrugated rubber mats were sur-

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[72] *Id.* at 1106, 147 N.W.2d at 215.
[73] *Id.*
[74] 260 Iowa 817, 150 N.W.2d 78 (1967).
[75] *Id.* at 824, 150 N.W.2d at 82.
[76] *Id.* at 825, 150 N.W.2d at 82.
[77] 162 N.W.2d 470 (Iowa 1968).
[78] See also Bradt v. Grell, 161 N.W.2d 336 (Iowa 1968) (Judgment for plaintiff reversed on other grounds).
[79] 165 N.W.2d 756 (Iowa 1969).

rounded with water on the inside of the entrance to the store. As the plaintiff entered the store she walked across the mats and then stepped from them onto the floor and fell. The evidence showed that the plaintiff had seen the water on the floor. The court again cited *Hanson* with approval. Yet, it held that, considering the weather conditions, the plaintiff should have been aware of the risk created by the asphalt tile floor made wet, dirty and slippery by snow and water. The defendant was entitled to assume that the plaintiff, seeing the condition of the floor, would appreciate the risk involved and conduct herself accordingly.

Judgments for the plaintiffs were affirmed in the two most recent cases, *Grall v. Meyer,* [80] and *Capener v. Duin.*[81] In *Grall,* the plaintiff was a paying patron of the defendant's dance hall. In order to provide more seating for the patrons, the defendant set up extra tables and chairs around the dance floor. At times these items encroached onto the dance floor area. The evidence established that the plaintiff was familiar with the dance hall and its arrangement. While dancing, the plaintiff tripped over one of the chairs. Deciding that the defendant knew the arrangement involved some hazard to dancers and that the patrons would not necessarily anticipate or appreciate the danger, the court stated:

> Beginning with Hanson v. Town and Country Shopping Center, Inc., supra, our business-invitee rule has been qualified to put it more in harmony with rules 343 and 344, Restatement, Second Torts. . . . Since Hanson, the owner of land may nevertheless be liable if the circumstances are such that he should anticipate the harm despite the invitee's knowledge of such danger.
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> While we have not always been in complete agreement as to what facts bring a particular case within the Hanson rule, we have been in accord that the rule itself is now the proper test against which negligence should be measured in such cases.[82]

In *Capener,* the plaintiff was a mail-carrier and the defendant owned property on the plaintiff's route. The weather prior to the accident consisted of snow with intermittent periods of thawing and refreezing. The condition of the area in question at the time of the accident was icy. The plaintiff, having to climb icy steps to reach the defendant's mailbox, fell when he climbed down the steps. The defendant not only knew that the steps at the time were icy, but also that because of the way the house was constructed ice would form on the steps from water dripping from the roof. The plaintiff stated that he saw the ice, but did not realize how slippery it was. Even though the dangerous condition was open and obvious, and even though the plaintiff saw it, the defendant was still held liable because he should have anticipated that the invitee would not appreciate the danger. The court based its decision on *Hanson.*

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[80] 173 N.W.2d 61 (Iowa 1969).
[81] 173 N.W.2d 80 (Iowa 1969).
[82] Grall v. Meyer, 173 N.W.2d 61, 64-65 (Iowa 1969).

The decisions since *Hanson* appear to have left some confusion.[83] The supreme court itself realizes that it is not in complete agreement as to what facts bring a case within *Hanson*.[84] Justice LeGrand's dissent in *Adams* may be the key to understanding the distinctions between the recent cases. While the majority in *Adams* felt that the defendant could be liable because he knew of the existing conditions, LeGrand felt they had applied the *Restatement* rule in reverse. He stated that "[t]he test is not whether defendant knew the method of unloading logs, and its hazards, but whether *he should have anticipated* [that] *plaintiff did not appreciate them and would not protect himself against them.*"[85]

Some do apply this rule in reverse.[86] One must keep in mind these three things: anticipation by the invitee, anticipation by the land occupier, and knowledge of what the rule is and its exception. The rule is that the land occupier is not liable if the condition is open and obvious, or if the invitee knows of the condition. The exception is that the rule governs *unless* it is reasonable for the occupier to anticipate that the invitee will not anticipate or appreciate the condition.[87] Thus, the rule is the same as in *Atherton*, with the *Restatement* and *Hanson* adding an exception. *Hanson* is therefore the exception while *Meader*, *Chevraux* and *Weidenhaft* follow the rule.

The rule is stated in comment (e) of section 343A of the *Restatement*: "The possessor of the land may reasonably assume that [the invitee] will protect himself by the exercise of ordinary care, or that he will voluntarily assume the risk of harm if he does not succeed in doing so." Reasonable care of the possessor *does not ordinarily* require precautions or warnings against conditions known to the invitee or so open and obvious he should discover them. The exception is stated in comment (f) of section 343A: "[T]here are, *however*, cases in which the possessor of land can and should anticipate that the dangerous condition will cause physical harm to the invitee notwithstanding its known or obvious danger."[88] Only in exceptional cases should the possessor realize or anticipate that the invitee will not anticipate or appreciate the dangers. Thus, it is easier to understand the differences in the cases.

V. Recent Developments

There has been a trend over the years toward a broader application of the requirement of reasonable care for these types of cases,[89] with the old common law rules relating to the classifications of persons on another's land giving way to modern day needs. These classifications were developed during the nineteenth century. Commentators have stated:

[T]he special privilege these rules accord to the occupation of land

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83 *See, e.g.*, 54 Iowa L. Rev. 659 (1969).
84 Grall v. Meyer, 173 N.W.2d 61, 64 (Iowa 1969).
85 Adams v. R.S. Bacon Veneer Co., 162 N.W.2d 470, 476 (Iowa 1968).
86 *See, e.g.*, 54 Iowa L. Rev. 659 (1969).
87 See Restatement (Second) of Torts § 343A (1965).
88 Emphasis added.
89 2 F. Harper & F. James, The Law of Torts 1432 (1956).

> sprang from the high place which land has traditionally held in English and American thought and the still continuing dominance and prestige of the landowning class in England during the formative period of this development. This sanctity of land ownership included notions of its economic importance and the social desirability of the free use and exploitation of land. Probably it also included, especially in England, more intangible overtones bound up with the values of a social system that traced much of its heritage of feudalism.[90]

The United States Supreme Court has also discussed this trend:

> The distinctions which the common law draws between licensee and invitee were inherited from a culture deeply rooted to the land, a culture which traced many of its standards to a heritage of feudalism. In an effort to do justice in an industrialized urban society, with its complex economic individual relationships, modern common-law courts have found it necessary to formulate increasingly subtle verbal refinements, to create subclassifications among traditional common-law categories, and to delineate fine gradations in the standards of care which the landowner owes to each. Yet even within a single jurisdiction, the classifications and subclassifications bred by the common law have produced confusion and conflict. As new distinctions have been spawned, older ones have become obscured. Through this semantic morass the common law has moved, unevenly and with hesitation, towards "imposing on owners and occupiers a single duty of reasonable care in all the circumstances."[91]

In 1968, the California supreme court—recognizing the trend of the common law courts, especially those of its own state—held in *Rowland v. Christian*[92] that the status of a person is no longer determinative of the land occupier's liability. Recognizing that the fundamental rule of liability for negligence is basically that one is liable for injuries to another caused by his want of ordinary care,[93] the California court took the position that one exception to the rule "has been accomplished by classifying the plaintiff either as a trespasser, licensee, or invitee and then adopting special rules as to the duty owed by the possessor to each of the classifications."[94] This exception restricting the land occupier's liability to social guests "is based on the theory that the guest should not expect special precautions to be made on his account and that if the host does not inspect and maintain his property the guest should not expect this to be done on his account."[95]

The court then stated that because of an increased regard for human safety there has been a retreat from the above position. Therefore, an exception to the general rule limiting liability has been made by other courts regarding active operations.[96] Other California decisions regarding traps in relation

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90 *Id.*
91 Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630-31 (1959).
92 70 Cal. Rptr. 97, 443 P.2d 561 (1968).
93 *See* ANN. CAL. CODES § 1714 (1954).
94 Rowland v. Christian, 70 Cal. Rptr. 97, 101, 443 P.2d 561, 565 (1968).
95 *Id.*
96 *Id.* at 101-102, 443 P.2d at 565-66.

to licensees and invitees were discussed by the court to show the "subtleties and confusion which have resulted from application of the common law principles governing the liability of the possessor of land. Similar confusion and complexity exist as to the definitions of trespasser, licensee, and invitee."[97]

The court in *Rowland* further stated that California courts have recognized the failings of these common law rules relating to a land occupier's liability. The California court has held in the past that these rules were often applied arbitrarily and with difficulty. The court stated another objection to the common law rules:

> Whatever may have been the historical justifications for the common law distinctions, it is clear that those distinctions are not justified in the light of our modern society and that the complexity and confusion which has arisen is not due to difficulty in applying the original common law rules . . . but is due to the attempts to apply just rules in our modern society within the ancient terminology.[98]

The court further stated that these classifications of persons, the immunities from liability based on these classifications, and the exceptions to those immunities often do not reflect the major factors which are determinative of liability. Some of these factors, including the closeness of the connection between the injury and the defendant's conduct, moral blame, prevention of future harm and the availability of insurance, bear little relationship to the classifications and the liability.[99]

Discussing these factors, the court in *Rowland* stated that there are many cases where a relationship between the remaining factors and the classifications do not exist. Thus, foreseeability of harm to a trespasser may be greater than that to an invitee. Moreover, the defendant's burden and the community's consequences for imposing a duty to exercise care which results in liability for a breach may, in some cases, be greater to trespassers than to invitees. Sometimes the burden of exercising due care toward invitees will be the same as to licensees and trespassers. The court felt that there was no evidence that by applying the fundamental rules of negligence law the prevalence of insurance due to increased cost will be reduced.[100]

The court concluded by stating:

> A man's life or limb does not become less worthy of protection by the law nor a loss less worthy of compensation under the law because he has come upon the land of another without permission or with permission but without a business purpose. Reasonable people do not ordinarily vary their conduct depending upon such matters, and to focus upon the status of the injured party as a trespasser, licensee, or invitee in order to determine the question whether the landowner has a duty of care, is contrary to our modern social mores and humanitarian values. The common law rules obscure rather than illu-

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97 *Id.* at 102, 443 P.2d at 566.
98 *Id.* at 103, 443 P.2d at 567.
99 *Id.*
100 *Id.* at 103-104, 443 P.2d at 567-68.

> minate the proper considerations which should govern determination of the question of duty.[101]

The court thus suggested that further adherence to the common law distinctions could lead to injustice, possibly resulting in complexity and confusion.[102]

VI. Conclusion

Iowa has moved with hesitation toward the stand that California now takes. This is apparent with the ruling in *Hanson* and subsequent cases. If this trend in Iowa continues, the Iowa supreme court should eventually hold as the California supreme court has. It would be best for the Iowa supreme court to adhere to the California rule in the near future.

The *Rowland* decision, and those California cases that have adhered to *Rowland*,[103] are based on sound reasoning. It does not seem equitable for a land occupier to be liable to an invitee but not to a licensee. There is not much difference between a person who is invited by his neighbor to help build something on his neighbor's property than one who is invited by his neighbor for a social visit. In the first instance the person would be an invitee, and in the second a licensee. The chances of liability are greater in the first instance than in the second. This does not seem equitable, yet this is the existing law in Iowa. The Iowa supreme court should realize, as the California court has, that old rules based upon old values are no longer applicable in our modern society.

Larry Blumberg

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101 *Id.* at 104, 443 P.2d at 568.

102 *Id.*

103 Fitch v. LeBeau, 81 Cal. Rptr. 722, 1 Cal. App. 3d 320 (1969); Beauchamp v. Los Gatos Golf Course, 77 Cal. Rptr. 914, 273 A.C.A. 25 (1969); Dixon v. St. Francis Hotel Corp., 77 Cal. Rptr. 201, 271 A.C.A. 842 (1969).