Florida State University Law Review

Volume 2 | Issue 3 Article 10

Summer 1974

Wood v. Camp, 284 So.2d 691 (Fla. 1973)

Florida State University Law Review

the statute. The state will benefit from an increased flow of useful testimony, and the witness from greater protection from governmental penalties.

Torts—STANDARD OF CARE—PROPERTY OWNER OWES INVITED LICENSEE DUTY TO DISCOVER AND WARN OF HAZARDOUS CONDITIONS ON PREMISES.—*Wood v. Camp*, 284 So. 2d 691 (Fla. 1973).

During the 1962 Cuban missile crisis, the Frank Wood family installed in their front yard an underground bomb shelter that in later years their teenaged son, Frank Layne Wood, used as his own room. On October 7, 1969, Randall Camp, a close friend of young Wood, visited the bomb shelter while Wood was sick in the main house. The shelter exploded, apparently because a faulty valve had allowed propane gas to escape and accumulate. Camp suffered severe and extensive burns, and died five days later. His father, John O. Camp, brought a wrongful death action against Mr. Wood and the gas company. The trial court granted summary judgment for the defendants, citing the limited duty of care a landowner owes to a social guest.[1] The Second District Court of Appeal reversed and remanded in an opinion which seemed to reject the traditional categories of invitee, licensee and trespasser, and which seemed to hold that a landowner owes all persons lawfully on his premises the duty of reasonable care under the circumstances.[2] Wood petitioned the Florida Supreme Court for a writ of

---

1. Camp v. Gulf Counties Gas Co., 265 So. 2d 730, 731 (Fla. 2d Dist. Ct. App. 1972).

2. Camp v. Gulf Counties Gas Co., 265 So. 2d 730 (Fla. 2d Dist. Ct. App. 1972). The test applied by Judge Mann, writing for the court, was the test originally used by Lord Denning in Hawkins v. Caulsdon & Purley Urban Dist. Council, [1954] 1 Q.B. 319, 337 (1953): "The duty is not to invitees as a class, nor to licensees as a class, but to the very person himself who is *lawfully* there. What is reasonable care in regard to him depends on all the circumstances of the case." (Emphasis added.) A close reading of this test suggests that it has no application to trespassers because they are not *lawfully* on the land. While it is true that, for tort purposes, trespassers are not always distinguished from licensees by the fact that they are unlawfully on the land, reference to the *Hawkins* case clearly indicates that Lord Denning was not concerned with trespassers when he formulated the test. The *Hawkins* case involved the licensee-invitee distinction, and it was that distinction that Lord Denning did "not believe . . . [to be] well-founded." *Id.* at 330. The *Hawkins* case did not consider or affect the trespasser category. It "consider[ed] simply the law about licensees." *Id.* at 333. Thus it is a mistake to conclude that Lord

certiorari, which was denied.[3] In an opinion accompanying the denial of certiorari, however, the supreme court did expand the class of invitees to include social guests[4] and at the same time struck from the opinion of the district court "all language further enlarging the rule regarding the categories of visitors upon the premises and the degrees of care" owed thereto.[5]

The *Wood* decision significantly modifies the traditional categorization of persons upon the land of another, which evolved in England during the mid-nineteenth century[6] and which represents the existing law in the overwhelming majority of American jurisdictions.[7] The traditional view recognizes three distinct classes: invitees, licensees and trespassers; the landowner is deemed to owe those within each class a separate, correlative duty of care. A trespasser is one who enters another's land without consent or other privilege to do so.[8] The landowner is not required to warn a trespasser of dangerous activities or conditions; the trespasser assumes the risk of whatever he may encounter.[9] A licensee is an individual who comes upon the land of an-

---

Denning's test abolished the category of trespasser. Moreover, since Denning's test is the one Judge Mann adopted it would seem that he may not have rejected all the traditional categories out of hand; instead, he may have merely simplified the categories. In other words, Mann may have only regrouped the traditional classes into two categories: those lawfully upon the land of another and trespassers. The application of Denning's standard to the facts in *Camp* is a further indication that the "reasonable care under the circumstances" test was only extended to those lawfully on the property of the landowner. Judge Mann stated that the members of the jury "are fit judges of the question whether the *host* acted reasonably, in all circumstances, toward Randall Camp." 265 So. 2d at 731-32 (emphasis added). Reference to the landowner by the term "host" implies that Judge Mann was not concerned with the landowner-trespasser relationship. Nevertheless, the Florida Supreme Court read the Second District opinion "to remove all distinctions of standing and degrees of care involving trespassers, licensees and invitees upon a property owner's premises." Wood v. Camp, 284 So. 2d 691, 693 (Fla. 1973). This reading of Judge Mann's opinion seems to be an unnecessary and perhaps incorrect extention of the holding in *Camp*. Furthermore, the supreme court's rejection of *Camp* seems to be in large part the result of the court's concern that the Second District had abolished the category of trespasser, *id.* at 693-94; in fact, *Camp* does not seem to go that far. It is true that Judge Mann observed a move *"toward imposing on owners and occupiers a single duty of reasonable care in all the circumstances."* 265 So. 2d at 731. Nevertheless, the move Mann observed is not the test he adopted and applied. *See id.* at 731-32.

3. Wood v. Camp, 284 So. 2d 691, 697 (Fla. 1973).

4. *Id.* at 694-95.

5. *Id.* at 697.

6. *See* Latham v. R. Johnson & Nephew, Ltd., [1913] 1 K.B. 398, 410 (1912):

> Where a question arises . . . between parties of whom one is the owner or occupier of the place and the other, the party injured, is not there as of right, but must justify his presence there if he can, the law has long recognized three categories of obligation.

7. W. PROSSER, THE LAW OF TORTS § 58 (1971) [hereinafter cited as PROSSER].

8. *See id. See also* RESTATEMENT (SECOND) OF TORTS § 329 (1965).

9. PROSSER § 58; Lygo v. Newbold, 156 Eng. Rep. 129, 130 (Ex. 1854) (Pollock, C.B.).

other for his own convenience or pleasure, with the express or implied consent of the landowner.[10] Social guests, such as Randall Camp, fall within this traditional category.[11] The landowner owes his licensees a duty to warn of known dangers on the premises.[12] An invitee is one who, upon an express or implied invitation, enters the premises of another in connection with business concerning the owner or occupier.[13] The landowner owes an invitee the duty to inspect for any condition or activity involving a risk of harm, and either to warn of or eliminate such danger.[14]

Settled Florida law recognized the traditional hierarchy of invitees, licensees and trespassers.[15] In *Post v. Lunney,* however, the Florida Supreme Court expressly enlarged the class of invitees.[16] The district court in *Camp* extrapolated from the *Post* opinion "a trend toward the sound view" that a standard of reasonable care under the circumstances

---

The landowner is obligated, however, to warn a *discovered* trespasser of known dangers. *See* PROSSER § 58.

10. *See* POSSER § 60. *See also* cases cited in note 12 *infra.*

11. *See* PROSSER §§ 60-61.

12. *See* POSSER § 60; Bolch v. Smith, 158 Eng. Rep. 666, 670 (Ex. 1862) (Martin, B.); Southcote v. Stanley, 156 Eng. Rep. 1195, 1197 (Ex. 1854) (Pollock, C.B.).

13. *See* PROSSER § 61. In many jurisdictions, including Florida, an invitee also is one who enters premises apparently held open to the general public. *See, e.g.,* Post v. Lunney, 261 So. 2d 146 (Fla. 1972); Black v. Central R.R., 89 A. 24 (N.J. Ct. Err. & App. 1913).

14. *See* PROSSER § 61; Smith v. Steele, L.R. 10 Q.B. 125, 127 (1875) (Blackburn, J.); Indermaur v. Dames, L.R. 1 C.P. 274, 286-87 (1866) (Willes, J.), *aff'd,* L.R. 2 C.P. 311 (1867).

15. *See* Byers v. Gunn, 81 So. 2d 723 (Fla. 1955) (trespasser); Stewart v. Texas Co., 67 So. 2d 653 (Fla. 1953) (licensee); Cavezzi v. Cooper, 47 So. 2d 860 (Fla. 1950); Goldberg v. Straus, 45 So. 2d 883 (Fla. 1950) (social guest as licensee); J.G. Christopher Co. v. Russell, 58 So. 45 (Fla. 1912) (invitee). *See also* McNulty v. Hurley, 97 So. 2d 185 (Fla. 1957).

The three-tiered hierarchy has not been strictly applied to children upon the land of another. *See* Burdine's, Inc. v. McConnell, 1 So. 2d 462, 463 (Fla. 1941); Annot., 16 A.L.R.3d 25, 118-24 (1967).

16. Post v. Lunney, 261 So. 2d 146, 148-49 (Fla. 1972). Invitee status was extended to those upon the land of another "for a purpose for which the land is held open to the public." *Id.* at 148, *following* RESTATEMENT (SECOND) OF TORTS § 332 (Tent. Draft No. 5, 1960). *But cf.* RESTATEMENT OF TORTS §§ 332, 343 (1934). The original RESTATEMENT OF TORTS § 329 (1934) redefined an invitee as a business visitor—that is, a person invited onto the land in connection with business dealings between himself and the possessor of the land. This position reflected the view held by the Reporter, Professor Bohlen, that the duty owed to an invitee by the occupier rested on the benefit to be derived by the latter. *See* Bohlen, *The Basis of Affirmative Obligation in the Law of Tort,* 44 AM. L. REG. (N.S.) 209, 234 n.67 (1905). The view that the status of invitee arises from a relation inuring to the mutual benefit of both the owner and his visitor, or to the economic benefit of the owner, was eventually accepted in Florida. *See* McNulty v. Hurley, 97 So. 2d 185, 188 (Fla. 1957). *Cf.* City of Boca Raton v. Mattef, 91 So. 2d 644 (Fla. 1956); J.G. Christopher Co. v. Russell, 58 So. 45 (Fla. 1912).

The position taken by the first Restatement and Professor Bohlen was vigorously attacked in an influential article written by Dean Prosser, who, *inter alia,* contended that

should be substituted for the varying duties of care owed to persons lawfully upon the land of another.[17]

---

the early British cases did not apply an economic benefit test. *See* Prosser, *Business Visitors and Invitees,* 26 MINN. L. REV. 573 (1942). As Reporter of the *Restatement (Second) of Torts,* Dean Prosser was probably responsible for expanding the category of invitees to include public invitees (members of the public invited for a purpose for which the land is held open to the public) as well as business visitors. In Post v. Lunney, *supra,* the court specifically referred to the *Restatement (Second) of Torts,* and to Dean Prosser's research on the matter, as the rationale for expanding the Florida definition of invitees to include public invitees. 261 So. 2d at 148.

17. 265 So. 2d at 731. The existence of such a trend in Florida is somewhat questionable. In fact, on its face the supreme court opinion in Post v. Lunney, 261 So. 2d 146 (Fla. 1972), represents an adjustment more than a trend. As the opinion stated:

> In adopting the [public] invitation test, we adopt the older of the two rules, and the one preferred by legal scholars and a majority of the jurisdictions in this country. And we feel we are adopting the more realistic of the two views. The licensee status of the social guest in the home remains unchanged as does the status of the trespasser and the respective standards of care applicable to each.

Id. at 149 (footnotes omitted).

There is little in this language to support any extrapolation of a trend toward abolition of the separate categories of invitee, licensee and trespasser. The opinion retained the framework of three categories while basing its adjustment on a rule which is supported by scholars and founded in legal history and legal realism. *See* Annot., 95 A.L.R.2d 992 (1964). On the other hand, it might be argued that total abolition of the categories is the more realistic view; moreover, it is a view not without support among legal commentators. *See* Sideman v. Guttman, 330 N.Y.S.2d 263, 267 (App. Div. 1972) (citing authorities). Nevertheless, the movement toward total abolition is of recent origin, and hardly has won universal acceptance among American courts. *See* PROSSER § 58.

As Judge Mann noted in *Camp,* the move away from the common law categories began in Britian. 265 So. 2d at 731. In Hawkins v. Coulsdon & Purley Urban Dist. Council, [1954] 1 Q.B. 319, 336 (1953), Lord Denning concluded:

> [N]owadays, in the case of an unusual danger which is not obvious or known to the visitor, it can fairly be said that the occupier owes a duty to every person lawfully on the premises to take reasonable care to prevent damage. The duty is not to invitees as a class, nor to licensees as a class, but to the very person himself who is lawfully there. What is reasonable care in regard to him depends on all the circumstances of the case.

Three years later Parliament abolished the categories by statute, imposing on all occupiers the "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." Occupiers' Liability Act of 1957, 5 & 6 Eliz. 2, c. 31, § 2.

More recently, in the United States, the California Supreme Court abolished the categories judicially. *See* Rowland v. Christian, 70 Cal. Rptr. 97, 443 P.2d 561 (1968). The court determined that a "reasonable care under the circumstances" test should be recognized as the duty owed by a landowner to all those upon his premises. While heralded by several commentators as a leading case to be followed in other jurisdictions, the opinion in *Rowland* actually turned on a reinterpretation of a civil code provision and not on a change in the common law. *See* Note, *Rowland v. Christian: New Protections Afforded a Social Guest in California,* 3 U. SAN FRAN. L. REV. 170, 175 (1968). *Contra,* 44 N.Y.U.L. REV. 426, 432 (1969). Nevertheless, *Rowland* has been cited and followed by several jurisdictions. *See, e.g.,* Mile High Fence Co. v. Radovich, 489 P.2d 308, 314 (Colo. 1971); Smith v. Arbaugh's Restaurant, Inc., 469 F.2d 97, 105 (D.C. Cir. 1972). On the other hand,

The supreme court in *Wood* understood the district court to have abolished all distinctions among the traditional categories,[18] but the supreme court repudiated the existence of any "trend" toward such a total abolition.[19] Two considerations were determinative. First, the court observed that the district court's "reasonable care under the circumstances" standard failed to allow for the "inherent distinctions in relationships involved between persons who come upon an owner's property."[20] The court feared that total abrogation of those distinctions would interfere with the privacy to which a landowner is entitled.[21] Secondly, the court concluded that a reasonable care standard would not provide a sufficiently precise measure for a jury to apply in all factual situations.[22]

Thus *Wood v. Camp* has, for now, precluded the abolition in Florida of the separate common law duties owed to those who enter another's land.[23] More significantly, however, the *Wood* decision does alter the classification of invitees, licensees and trespassers as set forth by *Post v. Lunney,* and provides for Florida a current definition of each. *Post* expanded the category of invitee to include not only those upon the land of another for a business purpose, but also those upon that land "for a purpose for which the land is held open to the public."[24] *Wood* further enlarges the invitee class to include those who have been extended either an "express or reasonably implied invitation" to enter another's land.[25] Thus social guests—heretofore classified as

---

several jurisdictions have expressly declined to follow *Rowland. See, e.g.,* Hessler v. Cole, 289 N.E.2d 204, 206 (Ill. App. 1972) (noting the civil code basis of *Rowland*); Benedict v. Podwats, 271 A.2d 417, 418 (N.J. 1970). Still other jurisdictions have rejected *Rowland* by implication. *See, e.g.,* Mion Constr. Co. v. Rutledge, 182 S.E.2d 500 (Ga. Ct. App. 1971); Osterman v. Peters, 272 A.2d 21 (Md. 1971).

See also Annot., 32 A.L.R.3d 508 (1970) (Rowland v. Christian, *supra*); Annot., 16 A.L.R.3d 25, 118-24 (categories abolished as to children).

18. Wood v. Camp, 284 So. 2d 691, 693 (Fla. 1973). The supreme court's reading of *Camp* was perhaps incorrect. *See* note 2 *supra.*

19. 284 So. 2d at 696.

20. *Id.* at 695.

21. *Id.* at 696.

22. *Id.* at 695. The supreme court read *Camp* to apply the "reasonable care under the circumstances" test to all persons upon the land of another. This is the same test that applies in determining the liability of a landowner to an invitee. *See* Post v. Lunney, 261 So. 2d 146 (Fla. 1972); J.G. Christopher Co. v. Russell, 58 So. 45 (Fla. 1912). The supreme court's opinion in *Wood* reflects a fear that a jury might award an uninvited licensee, or even a trespasser, as substantial a recovery as would be awarded to an invitee under the same circumstances. *See* 284 So. 2d at 694.

23. *See* 284 So. 2d at 696. The court felt that abolishing the categories would practically "make the owner an insurer of those who come on his premises." *Id.*

24. 261 So. 2d at 148, *citing* RESTATEMENT (SECOND) OF TORTS § 332 (Tent. Draft No. 5, 1960).

25. 284 So. 2d at 695.

licensees[26]—now enjoy the status of invitee. This reclassification is significant; while the homeowner formerly was bound only to refrain from "wilfully or wantonly" injuring or exposing his social guests to danger,[27] he now owes them the same duty of care owed to business visitors, namely, "reasonable care under the circumstances."[28]

By expanding the class of invitees the *Wood* decision narrows the category of licensees. Licensees in Florida are now only those who enter the premises of another solely for their own convenience without either an express or reasonably implied invitation.[29] As the court itself noted,[30] this limited class of licensees seems to overlap the classification of trespassers set forth in *Post*[31] and reiterated in *Wood*.[32] The *Wood* decision, however, purports to leave unchanged the separate standards of care owed to licensees and trespassers by the landowner.[33]

While the *Wood* court's reclassification of invitees, licensees and trespassers is clear enough, several questions are not definitively resolved by the opinion. Historically, the duty of care owed to a licensee has not been contingent upon the landowner's actual discovery of his presence; his license to come upon the land has constituted sufficient notice of the probability of his presence to require that he be warned of known dangers.[34] The duty to warn a licensee of known dangers before he is actually discovered has been the margin of protection that the law has granted to a licensee because his presence, if not welcomed, is at least not unexpected.[35] A trespasser's presence, on the other hand, cannot reasonably be anticipated; therefore he is owed no duty of warning before actual discovery.

The *Wood* opinion was silent, however, on the question of whether the duty to warn a licensee of known danger continues to attach before his actual discovery, now that social guests have been elevated to in-

26. *See* Post v. Lunney, 261 So. 2d 146, 149 (Fla. 1972).

27. *Id.* at 147.

28. 284 So. 2d at 695.

29. 284 So. 2d at 695. *Wood*'s differentiation between uninvited and invited licensees (who are now invitees) is similar to Iowa's subdivision of licensess into two classes: (1) licensees by acquiescence and (2) licensees by express or implied invitition. *See* Wilson v. Goodrich, 252 N.W. 142 (Iowa 1934); Note, *The Duty Owed by Land Occupiers in Iowa*, 20 DRAKE L. REV. 159, 160 (1970). An uninvited licensee in Florida is the same as a licensee by acquiescence in Iowa, and is owed the same duty of care.

30. 284 So. 2d at 695.

31. 261 So. 2d at 147, *quoting from* 23 FLA. JUR. *Negligence* § 54 (1959): "[A] trespasser is one 'who enters the premises of another without license, invitation, or other right, and intrudes for some definite purpose of his own, or at his convenience, or merely as an idler with no apparent purpose, other than perhaps to satisfy his curiosity' . . . ."

32. *See* 284 So. 2d at 695.

33. *See id. But see* notes 36-44 and accompanying text *infra*.

34. *See* Gainesville & G.R.R. v. Peck, 46 So. 1019, 1022 (Fla. 1908).

35. *See id.*

vitee status. Nevertheless, it seems reasonable to conclude that licensees are no longer entitled to such a warning. The duty to warn arose when the class of licensees included those on the premises by virtue of an express or implied invitation (usually social guests) placing the landowner on notice of their probable presence.[36] Since *Wood* reclassified as invitees all those entering the premises of another in response to an express or implied invitation,[37] a rationale for the imposition of a duty to warn remaining members of the licensee class, prior to discovery of their presence, no longer seems to exist. *Hix v. Billen*,[38] decided soon after *Wood*, appears to affirm this conclusion. The *Hix* court reasoned that the presence of a trespasser or uninvited licensee is not likely to be anticipated; hence, neither is owed a warning of known dangers until his presence is discovered.[39] Citing *Wood*, the *Hix* court added that the "limited duty"[40] owed to trespassers and uninvited licensees—which, after *Wood*, means *all* licensees[41]—"continues as our basic law."[42]

36. *Id.*

37. *See* 284 So. 2d at 695.

38. 284 So. 2d 209 (Fla. 1973). The *Hix* and *Wood* opinions were issued only eight days apart and are virtually companion cases. Both were written by Justice Dekle and each cited the other. *See* Wood v. Camp, 284 So. 2d 691, 695 (Fla. 1973); Hix v. Billen, 284 So. 2d 209, 211 (Fla. 1973). *Hix* imposed ordinary negligence as the standard of care for any landowner who, by act or omission, injures a person whose presence is known to him. *Id.* at 210. The holding in *Hix* embraces the majority rule regarding such negligence by a landowner and expressly overrules Cochran v. Abercrombie, 118 So. 2d 636 (Fla. 2d Dist. Ct. App. 1960). *See* 284 So. 2d at 210.

39. Hix v. Billen, 284 So. 2d 209, 210-11 (Fla. 1973), stating:

> There is a distinction to be noted between active, personal negligence on the part of a landowner and that negligence which is based upon a negligent condition of the premises. The real reason which gave rise to the limited liability to a trespasser or uninvited guest licensee, is not because his injury upon defendant's premises is of any less concern as an injury, but because his presence is not likely to be anticipated, so that the owner or occupier owes him no duty to take precautions toward his safety beyond that of avoiding willful injury and if his presence be discovered, to give warning of any known dangerous condition not open to ordinary observation by the uninvited licensee or trespasser. This rule relating to the limited duty to uninvited licensees (and trespassers) continues as our basic law with respect to an alleged negligent condition of the premises. Wood v. Camp, 284 So.2d 691 (Fla. 1973), filed October 3, 1973.

This language accords uninvited licensees significantly less legal protection than they previously have enjoyed in Florida. *See* cases cited in note 51 *infra*. Moreover, it is difficult to understand why the *Wood* and *Hix* courts felt compelled to retain the separate categories of "uninvited licensee" and "trespasser." Since, according to the court, the duty of care owed to each is the same, there is no reason to distinguish between the two.

40. Presumably, the court was referring to the duty to warn *discovered* trespassers and uninvited licensees of known dangers. *See* note 39 *supra*.

41. Since *Wood* elevates to invitee status all those with an express or implied invitation to enter another's land, all remaining licensees are, by definition, uninvited licensees.

42. 284 So. 2d at 210-11.

Hix v. Billen suggests that the "narrow distinctions" in *Wood* between trespassers and the "very limited," newly defined category of uninvited licensee have been or will be narrowed into oblivion. Apparently, after *Hix*, the additional protection afforded pre-*Wood* licensees[43] no longer is available to that class. Thus, just as invited licensees are now the equivalent of invitees, it seems that uninvited licensees enjoy no stricter legal protection than do trespassers.[44]

The *Wood* court felt compelled to retain the traditional categorization of those upon the premises of another because of the "responsibility of the law to provide guidance" for juries—a responsibility that the district court allegedly had ignored.[45] However, the court hinges the status of an intruder without an express invitation on the factual determination of whether there was "an invitation which can be reasonably implied from the circumstances."[46] This language provides little more guidance for the jury than the standard of care that the district court had proposed: "reasonable care in regard to [a person on the premises of another] depends on all the circumstances of the case."[47]

The implications of *Wood* and *Hix* may be illustrated by considering the position of a homeowner whose premises—neither held open to the public nor used for a business purpose—contain a concealed defect that causes a personal injury. Before the principal case was decided, if the injured party was a licensee or a discovered trespasser the homeowner would be liable only if he had known of the defect and had failed to give warning of the latent danger. Under *Wood*, however, it appears that if the jury finds an invitation, express or implied, the owner can be held liable for a condition of which he was ignorant.[48] Apparently, a host is now the insurer of the safety of his social guests.

---

43. This additional protection was provided by the landowner's duty to warn licensees of known dangers. *See* note 12 and accompanying text *supra*.

44. The resulting categorization of invited and uninvited persons is similar to Montana's separation of persons on the land of another into two categories: invitees and trespassers-licensees. *See* Jonosky v. Northern Pac. Ry., 187 P. 1014 (Mont. 1920); Egan v. Montana C. Ry., 63 P. 831 (Mont. 1901); Comment, *Liability for Personal Injuries Caused by Use and Occupation of Real Estate*, 30 MONT. L. REV. 153 (1969).

45. *See* 284 So. 2d at 694.

46. *Id.* at 694-95.

47. Camp v. Gulf Counties Gas Co., 265 So. 2d 730, 731 (Fla. 2d Dist. Ct. App. 1972), *citing* Hawkins v. Coulsdon & Purley Urban Dist. Council, [1954] 1 Q.B. 319, 337 (1953) (Denning, L.J.).

48. Since those with expressed or implied invitations are now grouped with business visitors as invitees, it should follow that a host is now obliged to *search* for concealed defects in order to protect his social guests. The landowner has traditionally owed his invitees the duty to inspect for conditions or activities involving a risk of harm. *See* note 14 and accompanying text *supra*. On the other hand, both *Post* and *Wood* characterized the

Conversely, if the jury does not find an invitation, *Hix* and *Wood* suggest that the owner cannot be held liable—even if he had full knowledge of the condition that caused the injury. This result hardly comports with the supreme court's professed "concern for the welfare of our neighbor."[49] For example, the presence of door-to-door salesmen, while usually not solicited, is not unforeseeable, and it seems unreasonable that Florida law will accord them no greater protection than is provided to trespassers.[50] While announcing a decision that purports to impose increased duties of care upon a landowner, the *Wood* court effectively has relegated uninvited licensees to trespasser status. This result is contrary not only to established Florida law,[51] but also to the overwhelming weight of authority, which imposes a duty on the landowner to warn all licensees of known dangerous conditions.[52]

When the elevation of a social guest to invitee status is considered in isolation, an argument can well be made that "the continuing inroads of a crowded society" now call for the imposition of an increased

---

duty owed to invitees as "reasonable care," and *Wood* added that application of that standard should include consideration of the following factors:

> The presence upon the premises, reasonably to be expected by the owner, his family, agents or servants, of the person who is injured; the person's purpose for being on the premises; . . . the location where he was at the time of the injury, . . . together with all other evidence bearing on the duty allegedly owed and bearing on what constitutes "reasonable care in the circumstances."

284 So. 2d at 695. It therefore appears that failure to inspect might not itself give rise to liability, but would be one factor for the jury to consider in determining whether the host had exercised reasonable care.

49. 284 So. 2d at 696.

50. It seems more reasonable, for example, to require a homeowner with knowledge of a defective step leading to his front door to post a warning, in order to avoid injury to unwary Avon ladies or Girl Scouts peddling cookies. As uninvited licensees, neither saleswomen nor Girl Scouts are entitled to such a warning after *Wood* and *Hix*. *See* note 39 *supra*.

51. Without differentiating between those invited and those uninvited, Florida courts in the past have required that *all* licensees be warned of known dangers. *See* McNulty v. Hurley, 97 So. 2d 185, 187 (Fla. 1957); 1661 Corp. v. Snyder, 267 So. 2d 362, 363 (Fla. 1st Dist. Ct. App. 1972); Freeman v. Hallevue, Inc., 179 So. 2d 859, 860 (Fla. 3d Dist. Ct. App. 1965); Banks v. Y.M.C.A., 176 So. 2d 570, 571 (Fla. 3d Dist. Ct. App.), *cert. denied*, 183 So. 2d 213 (Fla. 1965); Jerrell v. Whitehurst, 164 So. 2d 875, 876 (Fla. 1st Dist. Ct. App. 1964); Wagner v. Owens, 155 So. 2d 181, 182 (Fla. 2d Dist. Ct. App.), *cert. denied*, 155 So. 2d 693 (Fla. 1963); Crutchfield v. Adams, 152 So. 2d 808, 811 (Fla. 1st Dist. Ct. App. 1963); North Broward Hospital Dist. v. Adams, 143 So. 2d 355, 356 (Fla. 2d Dist. Ct. App.), *cert. denied*, 149 So. 2d 47 (Fla. 1962).

52. Dean Prosser states:

> [A landowner] may be liable if he places an obstruction in a private way or path, or digs a hole, installs a dangerous electric wire, or sets a vicious horse where licensees customarily pass, or establishes or permits some similar new danger where it may reasonably be expected that they will not discover it. The liability is based . . . on the duty to give warning of a known danger.

PROSSER § 60, at 382 (footnotes omitted).

duty of care upon a social host.[53] This alteration of traditional tort doctrine means that a family extending its hospitality gratuitously may now be liable for unknown dangers which pose as great a threat to the host family as to its guests.[54] Moreover, relatives residing apart from the host household now enjoy a privileged status denied residents of the household.[55] By making hosts as liable to their social guests as merchants are to their customers, *Wood* pits guest against host (or, more likely, both against an insurance company), while putting uninvited visitors at their peril.

Criminal Law—FLORIDA RULES OF CRIMINAL PROCEDURE—INVESTIGATIVE REPORTS NEITHER SIGNED BY NOR DIRECTLY QUOTING A DECLARANT ARE NOT DISCOVERABLE "STATEMENTS" WITHIN RULE 3.220.—*State v. Latimore,* 284 So. 2d 423 (Fla. 3d Dist. Ct. App. 1973), *cert. denied,* 291 So. 2d 7 (Fla. 1974).

One week after James Latimore was charged with second degree murder, his defense counsel filed a motion for pretrial discovery of all police reports compiled in connection with the charge. In its order granting the motion and compelling discovery, the trial court ruled that "all police reports are 'statements' within the meaning of Rule 3.220(a)(l)(ii), Florida Rules of Criminal Procedure."[1] Rather than comply with this order, the State sought review by writ of certiorari to the Third District Court of Appeal. The Third District granted the State's petition and quashed the trial court's order, holding that

---

53. *See* 284 So. 2d at 696. *See also* Mounsey v. Ellard, 297 N.E.2d 43, 51 (Mass. 1973).

54. In Peterson v. Balach, 199 N.W.2d 639 (Minn. 1972), the head of a household, his young daughter and her young house guest all died in their sleep from carbon monoxide poisoning resulting from failure to maintain a gas refrigerator line. The estate of the house guest was allowed recovery from the estate of the head of the household.

55. In Phillips v. Phillips, 287 So. 2d 149 (Fla. 1st Dist. Ct. App. 1973), the court, following *Wood,* ruled that a seven-year-old boy was an invited social guest upon the premises of his grandfather and hence an invitee. *Cf.* Peterson v. Balach, 199 N.W.2d 639 (Minn. 1972), where the daughter's house guest had a cause of action against the father but the daughter presumably did not.

1. The trial court's ruling is stated in State v. Latimore, 284 So. 2d 423 (Fla. 3d Dist. Ct. App. 1973), *cert. denied,* 291 So. 2d 7 (Fla. 1974).