Torts - Duty of Occupier to Social Guests

Ben W. Lightfoot
strued to include the gestor's services? Apparently the court could justify an affirmative answer by looking to the French jurisprudence and holding that where the gestor renders professional or technical services in the ordinary lines of his profession or trade these services may be regarded as a reasonable and necessary expense.\textsuperscript{36} Second, should his services be regarded as voluntary? Apparently so, under the holding of Weber v. Grandguard. The fact that the gestor acted at the request of one who in fact had no authority should make no difference. The third question and undoubtedly the most difficult is: should an attorney be allowed to undertake, of his own accord, the management of another's affairs. The Civil Code makes no distinction between an attorney and any other gestor; however, the Canons of Professional Ethics provide that an attorney should not voluntarily impose his service upon another. Under the fund doctrine an attorney must have been employed by at least one interested party,\textsuperscript{37} but the articles on negotiorum gestio have no such limitation. It is submitted that since the law is adequately expressed as to this point the court might decide the case within the bounds of the code articles on the management of another's affairs.\textsuperscript{38} However, since the legal profession has chosen to limit the capacity of its members to act as gestors, the court should consider this and apply the articles only when the attorney has acted at the request of a third party, as in the Weber case; or when the circumstances are such, as in the instant case, that if no action is taken the group would stand to lose the entire fund.

\textit{Gordon A. Pugh}

\textbf{TORTS — DUTY OF OCCUPIER TO SOCIAL GUESTS}

Plaintiff brought an action to recover damages sustained when she slipped on a rug in the home of her son-in-law. The plaintiff was a guest in the home and she brought this action against the son-in-law's insurer. The rug sometimes stretched, thereby causing it to slip or wrinkle. The plaintiff maintained that the host negligently maintained premises unsafe for his

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\item \textsuperscript{36} Under the French holdings on negotiorum gestio and the French doctrine as applied at common law, recovery would be the same as the reasonable value of the attorney's services. See note 19 \textit{supra} and page 903 \textit{supra}.
\item \textsuperscript{37} See page 901 \textit{supra}.
\item \textsuperscript{38} See note 35 \textit{supra}.
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guests. The lower court dismissed the suit. On appeal the court of appeal held, affirmed. The defendant owed the social guest a duty to use reasonable care to ascertain that the premises were safe, although under the facts of the case recovery was precluded.\textsuperscript{1} \textit{Alexander v. General Accident Fire and Life Assurance Company}, 98 So.2d 730 (La. App. 1957).

Traditionally persons who come upon the land of others fall into one of three categories: trespassers, licensees, or invitees. The trespasser comes upon the land without permission of the occupier\textsuperscript{2} and no duty is owed except not to injure him intentionally or wantonly.\textsuperscript{3} A licensee is one who comes upon the premises with the express or implied permission of the occupier but not for any purpose of the occupier.\textsuperscript{4} The occupier has a duty to warn the licensee of any dangerous conditions which are actually known to him.\textsuperscript{5} The third group is that of the invitee who enters with the express or implied permission of the occupier but for some business reason or for the mutual advantages of the parties.\textsuperscript{6} To the invitee the occupier owes the duty to use reasonable care to learn of any dangerous conditions on the premises and either to make the premises safe or to warn the invitee of the danger.\textsuperscript{7} Some courts have held that the purpose for which the invitee enters must be a pecuniary one.\textsuperscript{8} It is said that this is the price which the occupier must pay when people come upon his premises for his potential economic gain.\textsuperscript{9} However, many cases have held the occupier liable whenever the occupier en-

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\item 1. The mother-in-law had been in the home for five weeks and was fairly familiar with the conditions in the house. The court found that she was contributorily negligent because of her knowledge of the dangerous rug. If the guest knows of the dangerous condition, the occupier owes the guest no duty to make the premises safe.
\item 2. \textit{Reconstruction, Torts} § 329 (1934).
\item 3. \textit{Id.} § 333; \textit{Prosser, Torts} § 76 (2d ed. 1955).
\item 4. \textit{Reconstruction, Torts} §§ 330, 331 (1934).
\item 5. \textit{Id.} § 342.
\item 6. \textit{Id.} §§ 331, 332; \textit{Prosser, Torts} § 78 (2d ed. 1955). The Restatement categorizes the three classes of persons who come upon the premises of another as trespassers, gratuitous licensees and business guests. Section 331 defines licensees as those who enter the premises with permission, but who do not qualify as business guests. In Section 332 business guests are defined as persons who are invited or permitted to remain on another's land for a purpose directly or indirectly concerned with business dealings between them.
\item 7. \textit{Inferiora v. Dames}, L.R. 1 C.P. 274, aff'd, L.R. 2 C.P. (1890); \textit{Prosser, Torts} § 78 (2d ed. 1955); \textit{Reconstruction, Torts} § 343 (1934).
\item 8. \textit{Reconstruction, Torts} §§ 322, 343, Comment a (1934). The pecuniary theory is adhered to in the Restatement. Courts which adopted this theory have often found some rather peculiar pecuniary situations. See, e.g., \textit{Ward v. Avery}, 113 Conn. 394, 155 Atl. 502 (1931) (person entered merely to use telephone); \textit{Campbell v. Weathers}, 153 Kan. 316, 111 P.2d 72 (1941).
\item 9. \textit{Harper, Torts} § 99 (1933).
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courages people to come on his land for this purpose, and the circumstances are such that there can be found an implied representation that the premises are safe.\textsuperscript{1} When the premises are held open to the public, such a representation is made. The social guest has not been included as an invitee under either of these theories but has been designated as a licensee. The courts have often held that the social guest enters as one of the family and that he is due no greater care than that owed to a member of the family. These courts adhere to the idea that one who accepts the accommodations of a host also accepts the conditions which are found there.\textsuperscript{11} The advocates of this position have suggested that it accords with the state of mind of the social guest.\textsuperscript{12} It has been suggested that the social guest does not belong in either the licensee or the invitee class but should be considered separately.\textsuperscript{13} However, it was maintained that the duty owed to the social guest was essentially the same as that owed to a licensee. In a recent English case it was held that in order to be liable to the social guest the owner did not have to have actual knowledge of the danger of the condition, provided that he had actual knowledge of the existence of the condition and that the circumstances were such that a reasonable man would have realized the danger.\textsuperscript{14} The adoption of this position increases the amount of protection afforded the licensee and yet it maintains a distinction between the invitee and the licensee. The distinction is that to the invitee a duty is owed to exercise reasonable care to discover dangerous conditions on the property while the occupier is liable to the licensee only for those conditions of which the occupier has knowledge. Under the English rule the occupier is liable to a licensee or to an invitee if he has knowledge of the existence of the condition regardless of whether he appreciates that the condition is dangerous.

In the instant case the court felt that the exclusion of the ex-

\textsuperscript{10} Often the application of the economic benefit theory and the implied representation theory will give the same results. However, the implied representation theory may allow a person without a shadow of a pecuniary interest to recover. Davis v. Central Congressional Society, 129 Mass. 367, 37 Am. Rep. 368 (1880) (person injured on church grounds); City of Columbia v. Wilke, 166 So. 925 (Miss. 1936) (public swimming pool); Caldwell v. Village of Island Park, 304 N.Y. 268, 107 N.E.2d 441 (1952) (public playground).


\textsuperscript{12} Harper, Torts § 98 (1933).

\textsuperscript{13} Scheibel v. Lipton, 156 Ohio St. 308, 102 N.E.2d 453 (1951).

\textsuperscript{14} Hawkins v. Coulsdon and Purley Urban District Council, 1 All Eng. L.R. 97 (1954).
pressly invited social guest from the protection accorded invitees was unsound and illogical. The court, feeling that the invitation theory rather than the pecuniary benefit theory is the general criterion for the determination of an invitee, stated that it is illogical to give greater protection to one expressly invited into the home for business purposes than to one expressly invited for social purposes.\(^\text{15}\) The duty owed to one on the premises as the result of an expressed invitation was distinguished from the duty owed to one on the premises merely by implied invitation in that an express invitation carries with it an implied assurance that the host has exercised reasonable care for the guest’s safety. Such a distinction was drawn between permissive use and an express invitation in a Connecticut case.\(^\text{16}\) In that case the court said that mere passive acquiescence by the owner did not place on him a duty to use reasonable care; but that if the owner induced another to come onto his land then he represents his land to be in safe condition and he is liable if he does not exercise reasonable care. In the instant case, although the court ruled that the plaintiff was owed the duty of reasonable care, recovery was precluded on the ground that the plaintiff was contributorily negligent because she had been in the home for five weeks and should have been familiar with the condition of the rug. The host is not liable for a condition of which the guest has knowledge or of which he should have knowledge.

The holding of the court would not move all social guests into the classification of invitees, but only those who come in response to an express invitation. A duty of exercising reasonable care would be owed to the expressly invited social guest and no longer would mere ignorance of the condition by the occupier absolve him of liability to these guests. From this it appears that social guests are divided into two categories: (a) the guest who comes by express invitation and who is accorded the protection of an invitee, and (b) the guest who comes only by an implied invitation and who remains in the licensee class. There is a question as to whether according a greater amount of protection to the expressly invited social guest and denying the increased protection to the impliedly invited guest is justified. It appears that many guests who come onto the premises without an express invitation should be accorded as great a measure of protection as

\(^{15}\) Laube v. Stevenson, 137 Conn. 469, 78 A.2d 693 (1951). In a dissent by Judge Jennings it was stated that it seemed illogical that one who enjoys an express invitation should be denied the protection accorded an invitee.

\(^{16}\) Guilford v. Yale University, 128 Conn. 449, 23 A.2d 917 (1942).
is the expressly invited guest. Should a friend who drops in for an afternoon visit be given less protection than an expressly invited guest? It should be considered that the extension of the protection of reasonable care to the expressly invited social guest is a rule which the court may have difficulty applying. There are many situations which would practically defy classification as being either express or implied invitations. For an example consider the guest who enters the premises without an express invitation but who remains on the premises in response to an express invitation. While in the past cases of guests suing their hosts were not common, the increasing prevalence of insurance covering domestic injuries will likely cause an increase in the number of such suits. An increasing volume of suits coupled with a rule which is often difficult to apply could burden the courts with a difficult administrative problem. It seems logical that all social guests should be owed a duty of reasonable care. The argument that the social guest merely enters on the same footing as the family and that he does not expect reasonable care seems irrational and not in keeping with the true attitude of one who enters the premises of another as a guest. The burden of reasonable care is not an onerous one; the owner is not under absolute liability. It is submitted that the rule that all social guests should be accorded reasonable care is logical and would not be difficult to apply. In answer to those who might criticize the expansion of protection because they feel that it will threaten a homeowner with financial ruin, it should be pointed out that insurance will allow the cost to be distributed among all homeowners.

Ben W. Lightfoot

TORTS — LIABILITY OF A MUNICIPAL CORPORATION — DUTY TO GIVE ADEQUATE POLICE PROTECTION TO INFORMANTS

Plaintiff sued the City of New York for the wrongful death of his son, who was allegedly killed because of the city's failure to provide adequate police protection. The deceased, Arnold Schuster, in response to an FBI poster, had given the city police information leading to the capture of the notorious criminal Willie "The Actor" Sutton. Subsequently, Schuster received numerous anonymous threats. He appealed for and was given special police protection, but this protection was soon discon-