

Property - Landlord-Tenant - Landlord No Longer Immune from Tort Liability for Failure to Exercise Reasonable Care in Maintaining Premises. *Pagelsdorf v. Safeco Insurance Co. of America*, 91 Wis. 2d 734, 284 N.W.2d 55 (1979)

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It is right and just to disclose to vendees those hidden defects which materially lessen the value of the realty they are purchasing or renting. The Wisconsin court is apparently aware of the outmoded and no longer useful application of the maxim *caveat emptor* and has begun the process of eliminating it. It is hoped that the court will recognize the inequity of imposing the duty of disclosure on a certain class of vendors while retaining the rule of *caveat emptor* for others and will make the duty of disclosure espoused in *Ollerman* applicable to all vendors. Until then, *caveat emptor* in Wisconsin realty transactions is dying but not dead.

FREDERICK C. WAMHOFF

PROPERTY—Landlord-Tenant—Landlord No Longer Immune from Tort Liability for Failure to Exercise Reasonable Care in Maintaining Premises. *Pagelsdorf v. Safeco Insurance Co. of America*, 91 Wis. 2d 734, 284 N.W.2d 55 (1979). At common law, the lease of land was treated as equivalent to a sale of land for the term of the lease. The lessee acquired an estate in land and was, for the time he occupied the land, subject to virtually all the liabilities of the owner of a fee simple.¹ For this reason, the doctrine of *caveat emptor* applied to a lessee as well as to a vendee. The lessee, like a vendee, was required to inspect the land for himself and take it as he found it. The general rule was that there was no tort liability on the part of the landlord to the lessee or to others entering on the land for injuries resulting from conditions on the premises.²

In the recent decision of *Pagelsdorf v. Safeco Insurance Co. of America*,³ the Wisconsin Supreme Court changed the scope of a landlord's duty toward his tenants (whether under a lease or not) and their visitors for injuries resulting from

1. See, e.g., *Fowler v. Bott*, 6 Mass. 62 (1809); *Becar v. Flues*, 64 N.Y. 518 (1876).

2. W. PROSSER, *HANDBOOK OF THE LAW OF TORTS*, § 63 (4th ed. 1971) [hereinafter cited as Prosser]; 1 H. TIFFANY, *THE LAW OF REAL PROPERTY*, § 104 (3d ed. B. Jones 1939). For a thorough discussion of the historical development of the common law rules of landlord-tenant relationships, see generally Love, *Landlord's Liability for Defective Premises: Caveat Lessee, Negligence, or Strict Liability?* 1975 Wis. L. Rev. 19 [hereinafter cited as Love].

3. 91 Wis. 2d 734, 284 N.W.2d 55 (1979).

defects in the premises.⁴ The court held that a landlord must exercise ordinary care in the maintenance of his premises under all circumstances and that if a person lawfully on the premises is injured as a result of the landlord's negligence in maintaining those premises, the injured person is entitled to recover from the landlord under the general negligence principles of Wisconsin tort law:⁵ one is liable for injuries resulting from conduct foreseeably creating an unreasonable risk to others.⁶

I. THE CASE

In *Pagelsdorf*, the plaintiff, James Pagelsdorf, was injured in a fall from his neighbor's upper back porch. The neighbor was the defendant's tenant under an oral lease. Pagelsdorf was leaning on a section of a wooden railing while lowering a box spring from the upper back porch when the railing collapsed and he fell. His damage suit was brought against the landlord, Richard J. Mahnke, and his insurer, Safeco Insurance Company of America, for failure to exercise ordinary care in maintenance of the premises.⁷ The defendant's defense was that he had no prior knowledge of the rotting condition in the railing and that he had no duty to Pagelsdorf other than to warn him of known hazards.⁸ After the jury found that the landlord had no knowledge of the railing's defective condition, the trial court entered judgment for the defendant. Pagelsdorf appealed.

4. *Id.* at 744, 284 N.W.2d at 60. The court was careful to limit the landlord's duty to exercise ordinary care to those persons "lawfully on the premises." See notes 7 and 54 *infra* and accompanying text. See also note 33 *infra* and the accompanying text for a discussion of the impact of implied warranty of habitability.

5. *Id.* at 745, 284 N.W.2d at 61.

6. *Osborne v. Montgomery*, 203 Wis. 223, 234 N.W. 372 (1931).

7. The facts of the case arose when Wisconsin still determined the duty of an occupier of land on a sliding scale according to the status of the visitor. To trespassers, the landlord owed only a duty to refrain from willful and intentional injury. *Copeland v. Larson*, 46 Wis. 2d 337, 341, 174 N.W.2d 745, 748 (1970). A person who had permission to enter the land, but who went upon it for his own purposes rather than to further an interest of the possessor was a licensee to whom the limited duty of keeping the property safe from traps and avoiding active negligence was owed. *Id.* at 341, 174 N.W.2d at 748. The highest duty—that of ordinary care—was owed to the invitee who entered the land upon business concerning the possessor and at his invitation. *Id.* at 342, 174 N.W.2d at 748.

8. *Id.* at 342, 174 N.W.2d at 748.

On appeal, the parties argued that the extent of the defendant-landlord's liability to Pagelsdorf was dependent on whether he was found to have been an invitee or licensee. The Wisconsin Supreme Court, however, pointed out that the arguments on the status of the visitor were not applicable because the parties' arguments overlooked the effect on a landlord's duty under common law when the landlord has transferred the premises under a lease to a tenant.⁹ When property is leased, as it was in this case, the duty of the landlord under common law is controlled by a different rule: a landlord is not liable for injuries to his tenants and their visitors resulting from defects in the premises unless the facts of the case constitute one of the exceptions to the rule of landlord tort immunity.¹⁰ The court found that none of the exceptions to the general rule were applicable to the facts of this case. Therefore, if the court were to follow the traditional rule, Pagelsdorf would not be entitled to the instruction that the landlord, Mahnke, owed him a duty of ordinary care. But the court held instead "that the better public policy lies in the abandonment of the general rule of nonliability and the adoption of a rule that a landlord is under a duty to exercise ordinary care in the maintenance of the premises."¹¹

II. BACKGROUND AND ANALYSIS

Under the common law of the state of Wisconsin, a lease was viewed as a conveyance of an estate in land.¹² The tenant as holder of the estate was entitled to exclusive use and possession of the land. Inherent in this right was the landlord's lack of any right of re-entry. Therefore, the landlord was

9. 91 Wis. 2d at 740, 284 N.W.2d at 58.

10. The exceptions to the doctrine of tort immunity subjecting the landlord to liability were: (1) there were undisclosed or hidden dangers known only to the landlord; (2) the land was leased for public use; (3) the particular area was a common area of which the landlord maintained control; (4) the landlord has made the land dangerous through negligently made repairs. 2 F. HARPER & F. JAMES, *THE LAW OF TORTS*, § 27 (3d ed. 1956) [hereinafter cited as Harper & James] and *RESTATEMENT (SECOND) OF TORTS* §§ 356-62 (1965).

11. 91 Wis. 2d at 741, 284 N.W.2d at 59.

12. See generally Quinn and Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 *FORDHAM L. REV.* 225 (1969). See also, Harper & James, *supra* note 10, at 1506; *RESTATEMENT (SECOND) OF TORTS* § 356, Comment a (1965).

under no obligation to look after the leased premises. The landlord was entitled to rent; but, absent an agreement to the contrary, a landlord was under no obligation to repair.¹³ As the concept of tort liability developed, the courts formulated a general rule exempting landlords from liability for injuries caused by defective or dangerous conditions on the leased premises. Certainly a landlord who had no power to enter and repair had no liability for injuries resulting from the unmade repairs. This was the responsibility of the tenant who had taken possession under the terms of the lease.¹⁴ This general common law rule on nonliability of a lessor of land to others for injuries occurring after the lessee had taken possession was based on the concept of the lease as a conveyance of property with the lessee becoming the owner and occupier of the premises.¹⁵

The concept of landlord immunity from tort liability received authoritative support from the doctrine of caveat emptor. The application of this "sale of goods" concept to leases purported to put the tenant on notice that he took possession at his own risk.¹⁶ The landlord was under no duty to deliver the premises in a safe condition because it was the responsibility of the tenant to determine for himself the condition of the property before entering into the lease agreement.¹⁷ However, as the agrarian leaseholders of the sixteenth and seventeenth centuries were replaced by the urban tenant, the doctrine of caveat emptor became less appropriate.¹⁸ The urban tenant in an industrial economy was no longer inter-

13. Prosser, *supra* note 2, § 63 at 400 (4th ed. 1971); See Note, *Lessor's Duty to Repair: Tort Liability to Persons Injured on the Premises*, 62 HARV. L. REV. 669 (1949), for a general discussion of the historical development of landlord-tenant tort law. See *Awad v. McColgan*, 357 Mich. 386, 390, 98 N.W.2d 571, 573 (1959), where the court stated: "A tenant may rent tumble-down property if he wishes and if it does in fact tumble down during his occupancy, the landlord without more, is not liable."

14. Comment, *The Fall of Landlord Tort Immunity*, 35 OHIO ST. L.J. 212, 215 (1974).

15. *Skrzypczak v. Konieczka*, 224 Wis. 455, 272 N.W. 659 (1937).

16. See also *Harper & James*, *supra* note 10, at 1510. Harper and James do not use the term caveat emptor, but instead talk of the tenant's assumption of risk. This assumption of risk that the premises are safe is the basic premise of caveat emptor. See *Love*, *supra* note 2, at 27-31.

17. See generally Note, *Lessor's Duty to Repair: Tort Liability to Persons Injured on the Premises*, 62 HARV. L. REV. 669 (1949).

18. See *Love*, *supra* note 2, at 28.

ested in working the land as a source of income to pay the rent. He was, instead, interested in adequate living conditions in which to house his family.¹⁹ As buildings became more complicated and expensive to repair and as the tenant population became more mobile, many tenants found themselves occupying dwellings which they had neither the expertise nor the funds to repair.²⁰ The courts gradually recognized that the common law doctrine did not reflect the needs of the urban tenant. Responsibility for repairs and liability for personal injuries and property damages should be shifted to the landlord. However, instead of adopting a fundamentally different theory of lessor liability, the court created a number of exceptions to the rule of *caveat emptor*.²¹ The landlord was held liable in damages for injuries caused by undisclosed latent defects,²² negligently made repairs,²³ breach of covenant to repair,²⁴ defects in premises leased to the public,²⁵ or defects in "common areas" under the landlord's control.²⁶ The result was potential lessor liability under certain circumstances but no fundamental alteration of the application of *caveat emptor* to landlord-tenant relationships.

Outside the law of torts, however, there has been an erosion of this general applicability. Acknowledging the modern-day apartment lease as a contract and not a conveyance, the

19. Quinn and Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 *FORDHAM L. REV.* 225, 231 (1969).

20. *Id.* "The new type of tenant was anything but self-sufficient and the last thing he wanted was to be left alone. Since he occupied only a part of the building, he was dependent on the rest of it. He relied upon the building's water system, lighting system, and heating system; he was sharing walls, doors, corridors and stairways. Agrarian self-reliance in this context is simply not possible."

21. Grimes, *Caveat Lessee*, 2 *VAL. L. REV.* 189, 209-26 (1968); Note, *Lessor's Duty to Repair: Tort Liability to Persons Injured on the Premises*, 62 *HARV. L. REV.* 669, 671 (1949). See also *Cole v. McKay*, 66 *Wis.* 500, 505-06, 29 *N.W.* 279, 280 (1886).

22. *E.g.*, *Flood v. Pabst Brewing Co.*, 158 *Wis.* 626, 149 *N.W.* 489 (1914); *Kurtz v. Pauly*, 158 *Wis.* 534, 149 *N.W.* 143 (1914).

23. *E.g.*, *Gill Building Co. v. Central Garage Co.*, 258 *Wis.* 76, 44 *N.W.2d* 905 (1950); *Forkenbridge v. Excelsior Mutual Bldg. & Loan Ass'n*, 240 *Wis.* 82, 2 *N.W.2d* 702 (1942); *Skrzypczak v. Konieczka*, 224 *Wis.* 455, 272 *N.W.* 659 (1937).

24. *E.g.*, *Flood v. Pabst Brewing Co.*, 158 *Wis.* 626, 149 *N.W.* 489 (1914).

25. *RESTATEMENT (SECOND) OF TORTS* § 359 (1965).

26. *E.g.*, *Masek v. Bubenheimer*, 229 *Wis.* 194, 281 *N.W.* 924 (1938); *Inglehardt v. Mueller*, 156 *Wis.* 609, 146 *N.W.* 808 (1914). See also *RESTATEMENT (SECOND) OF TORTS* §§ 358-62 (1965).

Wisconsin Supreme Court in *Pines v. Perssion*²⁷ became the first court to judicially recognize an implied warranty of habitability in an apparent lease.²⁸ In *Pines*, the court determined that the general common law principle—that the lessee takes the premises as he finds them—was in opposition to social policy judgments inherent in various state legislation and administrative rules. “Legislation and administrative rules, such as the safe-place statute, building codes, and health regulations, all impose certain duties on a property owner with respect to the condition of his premises.”²⁹ This judicial recognition of the lease as primarily a contractual agreement for the purchase of shelter for a specified period of time provides the tenant with all the protections of the general law of contracts. Thus, the lessor’s contractual liability was no longer protected by the doctrine of caveat emptor.³⁰ This gave the tenant, upon a breach by the landlord, a contract action with contract remedies for breach of implied warranty, including rescission, damages and rent abatement.³¹ However, the implied warranty of habitability encompassing an implied warranty to make the necessary repairs is totally inconsistent with the idea that the landlord is immune from tort liability for injuries resulting from a failure to make repairs. On the contrary, a warranty to repair creates a legal duty to repair, and a breach of this duty should serve as the basis for tort liability, not merely as a contractual remedy for personal injuries.

It was at this stage in the development of landlord-tenant law that the *Pagelsdorf* court succinctly addressed the question left unanswered by common law development: What tort remedies did the tenant or third persons have against the

27. 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

28. *Id.* at 596, 111 N.W.2d at 413.

29. *Id.* at 595-96, 111 N.W.2d at 412.

30. See U.C.C. §§ 2-314 and 2-315 (1979) for explanation of implied warranties in sales of goods.

31. The court characterized the lease as a contract instead of a conveyance with the tenant’s covenant to pay rent and the landlord’s covenant to provide a habitable house as mutually dependent. 14 Wis. 2d at 596, 111 N.W.2d at 413. Citing *Pines*, the Wisconsin Supreme Court recognized an implied warranty in a commercial lease that the premises were fit for their intended purpose when the tenant took possession in *Earl Millikin, Inc. v. Allen*, 21 Wis. 2d 497, 124 N.W.2d 651 (1963). Subsequent to *Pines*, the Wisconsin legislature enacted legislation allocating responsibility for major repairs to the landlord, Wis. STAT. § 704-07 (1977). This was in essence a codification of Wisconsin’s implied warranty of habitability.

landlord for injuries resulting from a defective condition on the premises? A tenant could withhold rent for the landlord's failure to repair the premises, yet he could not recover for personal injuries or property damages sustained as a result of the landlord's failure to make those same repairs unless one of the common law exceptions to the general rule of nonliability applied. The court reasoned that the trend away from special immunities³² in tort law and the recognition of an implied warranty of habitability in an apartment lease supported abolishing the common law rule of nonliability. "It would be anomalous indeed to require a landlord to keep his premises in good repair as an implied condition of the lease, yet immunize him from liability for injuries resulting from his failure to do so."³³

The court cited as precedent the New Hampshire ruling in *Sargent v. Ross*³⁴ in which the plaintiff's four-year-old daughter died as the result of a fall from an outdoor stairway of a residential building owned by the defendant. At the time of the accident, the child was a guest of a tenant and the only apparent causes for the accident were the steepness of the stairs and the insufficiency of the railing to keep a child from falling over the side. The plaintiff sued the landlord for negligent construction and maintenance of the stairway. The jury returned a verdict for the mother, and the defendant-landlord objected on the grounds that she owed no duty of care to the deceased child.

The *Sargent* court realized that an anomalous result would have arisen from an application of the doctrine of landlord tort immunity. The tenants argued that it was unreasonable to impose upon them the duty of repairing a major structural defect. The landlord, however, denied liability "because the stairs were not under her control."³⁵ Both tenant and landlord thus claimed the other party should be responsible, and the doctrine of landlord tort immunity supported both arguments. As a result, the plaintiff faced a dilemma in the form of a rule which left "neither landlord nor tenant responsible for dan-

32. See note 10 *supra*, and notes 46-51 *infra*, and accompanying text.

33. 91 Wis. 2d at 744, 284 N.W.2d at 60.

34. 113 N.H. —, 308 A.2d 528 (1973).

35. *Id.* at —, 308 A.2d at 532.

gerous conditions on the premises."³⁶ Furthermore, the landlord was encouraged to remain idle by the doctrine of landlord tort immunity since any attempt to repair might serve as evidence of his control, and repairs actually made might only increase his exposure to liability if such repairs were negligently undertaken.³⁷

The court acknowledged that it "could strain this test to the limits and find control in the landlord" or "broaden the exception to include the negligent construction of improvements to the premises,"³⁸ but concluded that "now is the time for the landlord's limited tort immunity to be relegated to the history books where it more properly belongs."³⁹ The *Sargent* court outlined the rule to be followed:

Henceforth, landlords as other persons must exercise reasonable care not to subject others to an unreasonable risk of harm A landlord must act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk The questions of control, hidden defects and common or public use, which formerly had to be established as a prerequisite to even considering the negligence of the landlord, will now be relevant only inasmuch as they bear on the basic tort issues such as foreseeability and unreasonableness of the particular risk or harm.⁴⁰

Having previously adopted the rule implying a warranty of habitability, the New Hampshire court has now held that the landlord's liability in tort for injury caused by the condition of rented residential property will be evaluated under ordinary principles of negligence.⁴¹ The essence of the court's decision

36. *Id.*

37. See generally Comment, *Landlord Tort Immunity Abrogated in Favor of Basic Tort Duty of Due Care in All Circumstances*, 8 SUFFOLK L. REV. 1305 (1973); Note, *Abrogation of Landlord's Tort Immunity*, 1974 DUKE L.J. 175; Note, *Abolition of Basic Premise of Landlord Tort Immunity*, 59 CORNELL L. REV. 1161 (1973); Note, *The Fall of Landlord Tort Immunity*, 35 OHIO ST. L.J. 212 (1974).

38. 113 N.H. at —, 308 A.2d at 532-33.

39. *Id.*

40. *Id.* at —, 308 A.2d at 534.

41. See Annot., 40 A.L.R. 3d 646 (1971); Comment, *Implied Warranty of Habitability: An Incipient Trend in the Law of Landlord-Tenant?* 40 FORDHAM L. REV. 123 (1971); Comment, *Tenant Protection in Iowa—Mease v. Fox and the Implied War-*

is that, in a legal system which seeks to compensate injured parties for the harm they have suffered, there is no place for a doctrine which would immunize landlords from liability. All tortfeasors must shoulder the responsibility for the foreseeable consequences of their actions.

Taking the initiative from the New Hampshire court, the Wisconsin Supreme Court in *Pagelsdorf* held that a landlord owes his tenant (or anyone on the premises with the tenant's consent) a duty of ordinary care.⁴² In so holding, the court rejected the doctrines of caveat emptor in the lease contract and of landlord immunity in tort. The court rejected the issues as framed by the parties and shifted the primary focus of the inquiry for judge and jury from the traditional questions of status⁴³ of the injured party and the contractual remedies⁴⁴ to a determination of whether the landlord and injured party had exercised due care under all of the circumstances. "Issues of notice of the defect, its obviousness, control of the premises, and so forth are all relevant only insofar as they bear on the ultimate question: Did the landlord exercise ordinary care in the maintenance of the premises under all of the circumstances?"⁴⁵

The court in *Pagelsdorf* found that the retention of landlord tort immunity would also be incompatible with the judicial trend toward abrogation of the traditional immunities of certain groups from tort liability.⁴⁶ Earlier Wisconsin decisions had eliminated the tort immunities for family members,⁴⁷ governmental entities,⁴⁸ charitable entities,⁴⁹ spouses⁵⁰ and religious institutions.⁵¹ In addition, it would be consistent with those products liability decisions imposing a duty of rea-

ranty of Habitability, 58 IOWA L. REV. 656 (1973).

42. 91 Wis. 2d at 745, 284 N.W.2d at 61.

43. See note 7 *supra*, and note 54 *infra*, and accompanying text.

44. See note 33 *supra* and accompanying text.

45. 91 Wis. 2d at 745, 284 N.W.2d at 61.

46. *Id.* at 743, 284 N.W.2d at 60.

47. *Goller v. White*, 20 Wis. 2d 402, 122 N.W.2d 193 (1963).

48. *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d 618 (1962).

49. *Kojis v. Doctors Hosp.*, 12 Wis. 2d 367, 107 N.W.2d 131, 107 N.W.2d 292 (1961).

50. *Wait v. Pierce*, 191 Wis. 202, 210 N.W. 822 (1926).

51. *Widell v. Holy Trinity Catholic Church*, 19 Wis. 2d 648, 121 N.W.2d 249 (1963).

sonable care on manufacturers, distributors of new products, vendors of used products, repairers and lessors of personal property, and building contractors of real property.⁵²

General landlord immunity frustrated the sound principle that due care should be the standard of conduct if it can reasonably result in a reduction of injury to another person. *Pagelsdorf* abrogated a rule riddled with exceptions and archaic fictions and relegated it to the history books.

III. CONCLUSION

In repudiating the doctrine of the landlord tort immunity, the *Pagelsdorf* court adopted a new standard with which to judge the conduct of a landlord: the standard of care required by the general law of negligence. The *Pagelsdorf* holding addresses many of the problems inherent in the conventional immunity doctrine. First, the new rule eliminates the common law basis for immunity disclaimers by the landlord for dangerous conditions on the leased premises. Second, landlords are no longer deterred from making repairs that under prior law would have been seen as incidents of continuing control imposing liability if injury had occurred. Third, the new standard of care imposed is compatible with general negligence principles in Wisconsin and with current trends in tort law contributing to judicial consistency in the determination of landlord tort liability. Fourth, the imposition of tort liability should produce an improvement in the safety conditions of leased premises supporting the intent of legislative enactment relegating responsibility to the landlords for liability resulting from foreseeable danger or defects on leased premises.

However, the *Pagelsdorf* decision does leave some issues unsettled. First, it does not purport to impose liability upon the landlord for all injuries incurred on the property. Instead, the court persists in holding that the owner of land has only a duty to refrain from willful and intentional injury toward a trespasser.⁵³ This persistence by the court that a lesser duty is

52. See Love, *supra* note 2, at 118.

53. 91 Wis. 2d at 738, 284 N.W.2d at 58. See *Antoniewicz v. Reszczyński*, 70 Wis. 2d 836, 263 N.W.2d 1 (1975). *Antoniewicz* abolished the distinction between the duty owed to a licensee and that owed to an invitee. See note 7 *supra*. But the court in *Antoniewicz* felt the distinction was so great between the legal status of the trespasser and that of the licensee-invitee that the merits of total abolition should be

owed by the landlord to a trespasser injured on the premises has no logical relationship to the exercise of reasonable care for the safety of others. The difference in treatment accorded to a trespasser should have been abolished.⁵⁴ Second, the *Pagelsdorf* decision may well restrict the availability of rental housing. Faced with the prospect of remedying potential hazards in leased premises, landlords may find that the cost of repairs and the cost of higher liability insurance will increase rents beyond the reach of the lessee or so restrict the profit margin that renting will be an unprofitable endeavor. The tenant may be entitled to demand that the landlord deliver a suitable dwelling and accept liability for the foreseeable consequences of his conduct; the economics of renting will pass these costs on to the tenant and the landlord will be entitled to demand a rent reflective of this increased burden.

In sum, the *Pagelsdorf* decision is a logical progression of both property and tort law in Wisconsin. The once justifiable basis in an agrarian society for landlord tort immunity no longer exists. What was once a simple property conveyance is now a complex contractual arrangement subject to the accompanying warranties of sales agreements. Whatever the practical impact of the *Pagelsdorf* decision, it does serve to bring the tort liability of landlords into line with general tort principles and is another in a growing series of cases in which tort immunity for a particular class of persons is abolished. Clearly, the landlord, whether in control of the defective premises at the time of the injury or not, must be held liable if his conduct foreseeably created an unreasonable risk to others.

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considered by a common law court only in a case involving a trespasser.

54. *Rowland v. Christian*, 69 Cal. 2 at 108, —, 443 P.2d 561, 568, 70 Cal. Rptr. 97, 104 (1968) summarized this clearly:

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 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 illuminate the proper considerations which should govern determination of the question of duty.

