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Torts - Premises Liability: Wyoming Extends the Duty of Owners and Occupiers to Warn Invitees of Dangers beyond the Premises - Mostert v. CBL & (and) Associates

David G. Ditto

TORTS—Premises Liability: Wyoming Extends the Duty of Owners and Occupiers to Warn Invitees of Dangers Beyond the Premises. *Mostert v. CBL & Associates*, 741 P.2d 1090 (Wyo. 1987).

On the evening of August 1, 1985 Gerrit and Kay Mostert took their seven-year-old daughter, Kumi Maria, to a movie in Cheyenne, Wyoming.[1] The Mosterts patronized the Frontier Six Theatres, operated by American Multi Cinema (AMC), and located in the Frontier Mall complex owned by CBL & Associates (CBL).[2] During the evening, Cheyenne experienced an unusual thunderstorm which increased in severity as the Mosterts viewed the show. The turbulence progressed to the point that the National Weather Service issued flash flood and tornado warnings.[3] Civil defense and law enforcement officials requested that all citizens remain indoors.[4] Although both CBL and AMC knew of the weather warnings,[5] neither advised the theatre patrons.[6] When the movie was over, the Mosterts left the theatre through a door leading directly to the parking lot. After travelling approximately two miles toward home,[7] their pickup stalled in flood waters.[8] While attempting to escape the vehicle, seven-year-old Kumi drowned.[9]

The Mosterts filed a complaint charging AMC and CBL with negligence and reckless conduct.[10] The trial court dismissed the action against AMC, and granted summary judgment in favor of CBL.[11] On appeal, the Wyoming Supreme Court affirmed the summary judgment in favor of CBL, but reversed and remanded the action against AMC.[12] The court ruled that AMC had an affirmative duty to warn the Mosterts of off-premises dangers that might be reasonably foreseeable.[13]

In determining the duty of owners and occupiers,[14] the Wyoming Supreme Court has traditionally invoked the common law classifications

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1. Mostert v. CBL & Assoc., 741 P.2d 1090, 1091 (Wyo. 1987).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 1092; Appellee's Brief (CBL) at 5, Mostert v. CBL & Assoc., 741 P.2d 1090 (Wyo. 1987) (No. 86-220) (the CBL brief records that Cheryl Ferris, a mall (CBL) employee reported the warnings to each of the mall tenants, including AMC).
6. *Mostert*, 741 P.2d at 1092.
7. Appellee's Brief, *supra* note 5, at 5.
8. *Id.*
9. *Mostert*, 741 P.2d at 1092.
10. *Id.*
11. In its letter opinion the trial court held:
    > Plaintiffs have been unable . . . to cite any authority to the proposition that an owner or occupier of land has a legal duty to business invitees to worn (sic) them, prior to their leaving the premises, of dangers that may exist at some point remote from the premises between it and the patrons' destination even if such dangers are known to the owner/occupier and unknown to the business invitee.

    Opening Brief of Appellant at 5, Mostert v. CBL & Assoc., 741 P.2d 1090 (Wyo. 1987) (No. 86-220) (citing C.R. at 55-56).
12. *Mostert*, 741 P.2d at 1099.
13. *Id.* at 1096.
14. When a lessor occupies the premises, he generally steps into the owner's shoes, assuming responsibility for conditions on the premises. 62 AM. JUR. 2D *Premises Liability*

of invitee, licensee, and trespasser.[15] Although several states have abandoned these classifications in favor of a single standard of reasonable care,[16] the Wyoming court recently rejected the reasonable care standard.[17] A careful examination of *Mostert* reveals, however, that the court did in fact employ such a standard to determine AMC's duty to the Mosterts.

BACKGROUND

Traditional Approach

The duty of a landowner to one who enters upon his land has traditionally depended upon the relationship between landowner and entrant. Early common law defined that relationship in terms of the entrant's status as an invitee, licensee, or trespasser.[18] These classifications have been refined and clarified over the years, and continue to this day in most jurisdictions.[19]

Under the classification scheme, the entrant's status as an invitee, licensee, or trespasser, determines the duty of the landowner. Each class has a unique set of rules defining first, those who fall within the class,

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§ 12 (1972). The law, therefore, treats a lessee the same as it does an owner for the purposes of determining landowner liability. Although CBL actually owned the theaters, as it did all the mall shops, AMC leased the theaters, and for all practical purposes is treated as an owner. This casenote makes no distinction between an owner, and an occupier or lessee.

15. The first recorded Wyoming case to make legal distinctions based upon the entrant's status is Loney v. Laramie Auto Co., 36 Wyo. 339, 255 P. 350 (1927).

16. For a discussion of the position taken by various states with regard to the classes see Annotation, *Modern Status of Rules Conditioning Landowner's Liability Upon Status of Injured Party as Invitee, Licensee, or Trespasser,* 22 A.L.R. 4TH 294 (1983).

17. Yalowizer v. Husky Oil Co., 629 P.2d 465 (Wyo. 1981) (holding that the common law classifications were still good law, and the court, therefore, would not abondon the classifications in favor of a single standard of reasonable care).

18. Some authors have suggested that the classifications of invitee, licensee, and trespasser evolved separate from general principles of negligence which were not recognized until the middle part of the nineteenth century. Those in favor of abolishing the common law classifications argue that the sanctity of land ownership in feudal times severely limited the imposition of any duty upon the landowner. They further argue that these immunities continue today within the classification scheme. *See generally* James, *Tort Liability of Occupiers of Land: Duties Owed to Trespassers,* 63 YALE L.J. 144 (1953); Marsh, *The History and Comparative Law of Invitees, Licensees, and Trespassers,* 69 LAW Q. REV. 182 (1953). It appears, however, that no authority can be found in support of such a proposition, and that it is offered only to advocate abolition of the classifications. The more probable theory is that the feudal landowner's duty reflected general notions of liability prevailing at the time, and afforded landowners no greater protection than that afforded other producers of goods or services. Certainly by today's standards the feudal landowner was less subject to liability; however, due to the rural nature of the land, and the fact that liability was often based upon intent, it is no surprise that a landowner was not liable for every condition of his land. And if public sentiment favored some protection for the feudal landowner, the same is true today, as is apparent by the prevalence of recreational use, and premises guest statutes which significantly limit the duty of landowners in many circumstances. *See, e.g.,* WYO. STAT. § 34-19-102 (1977); Annotation, *Effect of Statute Limiting Landowner's Liability For Personal Injury to Recreational User,* 47 A.L.R. 4TH 262 (1986); DEL. CODE ANN. tit. 25, § 1501 (Supp. 1986) (Del. Premises Guest Stat.).

19. Annotation, *supra* note 16, at 301, 307, 310-12 (listing states which have either accepted or rejected the reasonable care standard); PROSSER AND KEETON ON THE LAW OF TORTS § 62 n.7 (Supp. 1988).

and second, the duty owed by the landowner.[20] Application of the rules involves a two step approach. The first step is to determine within which class the entrant fits. This is typically accomplished by looking to the purpose of the entrant's visit to the premises. One who enters without authorization, either express or implied, is generally classified as a trespasser.[21] At the other extreme is one who pays to enter, thereby conferring benefit upon the landowner. Paying visitors, as well as those who enter property held open to the public, are classified as invitees.[22] Those who enter with permission of the owner, but for their own enjoyment or benefit, are termed licensees.[23] This class includes social guests, and others who enter with nothing more than the owner's consent.

Once the status of the entrant is determined, the second step requires application of the corresponding duty. The landowner's duty is entirely dependant upon the status of the entrant, and is the counterpart to that determination. Thus, once an entrant is characterized as a trespasser, the corresponding duty of the landowner is to refrain from willful or wanton injury.[24] If the entrant is a licensee, the owner's duty is to warn of those dangers of which the entrant does not know, or is not likely to discover.[25] If the entrant is labeled an invitee, the duty is more stringent. The duty to an invitee is an affirmative one, requiring the landowner to inspect his premises, or take other precautions to be certain he is not inviting another into danger.[26] The landowner is not, however, an absolute insurer of his patrons' safety.[27]

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20. These common law rules are codified in the RESTATEMENT (SECOND) OF TORTS §§ 328E-387 (1965) (the first few sections of the Restatement define the members of each class, while the remaining sections define the landowner's corresponding duty).

21. The RESTATEMENT (SECOND) OF TORTS § 329 (1965) defines a trespasser as "a person who enters upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise."

22. Section 332 of the Restatement provides:

> (1) An invitee is either a public invitee or a business visitor.
> (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.
> (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.

RESTATEMENT (SECOND) OF TORTS § 332 (1965).

23. The RESTATEMENT (SECOND) OF TORTS § 330 (1965) defines a licensee as "a person who is privileged to enter or remain on land only by virtue of the possessor's consent."

24. *Yalowizer*, 629 P.2d at 467.

25. RESTATEMENT (SECOND) OF TORTS § 341 (1965).

26. *Id.* at § 343 comment b, which explains:

> As stated in § 342, the possessor owes to a licensee only the duty to exercise reasonable care to disclose to him dangerous conditions which are known to the possessor, and are likely not to be discovered by the licensee. To the invitee the possessor owes not only this duty, but also the additional duty to exercise reasonable affirmative care to see that the premises are safe for the reception of the visitor, or at least to ascertain the condition of the land, and to give such warning that the visitor may decide intelligently whether or not to accept the invitation, or may protect himself against the danger if he does accept it.

27. In Dudley v. Montgomery Ward & Co., 64 Wyo. 357, 192 P.2d 617 (1948) the Wyoming Supreme Court made it clear that the storekeeper is not an insurer of the safety of his patrons. In *Dudley*, a patron slipped and fell when entering the store. The court found that under the law, an invitee owes a reciprocal duty to the invitor to use care to avoid injuring himself. *Id.* at 374, 192 P.2d at 622.

As early as 1927 the Wyoming Supreme Court adopted these common law classifications. In *Loney v. Laramie Auto Co.*,[28] the court found that the defendant, who owned and operated an auto repair garage, had a duty to protect the plaintiff who was injured while at the garage. The court held that the plaintiff was an invitee, to whom the proprietor owed a duty, rather than a licensee, who takes the premises as is.[29] Later, in *Maher v. City of Casper*,[30] the court applied the common law rules to find that the City of Casper was not liable for the drowning of two boys in a city-owned pond. The court determined that the boys were trespassers, or licensees at best, and the city therefore owed the boys no duty other than to refrain from willful or wanton misconduct.[31]

Under the common law classifications, the landowner's duty extends only to those dangers over which he has control. Because a landowner's control is limited to his premises, the common law imposes no duty upon him to warn or protect against dangers encountered off the premises. Nor does the relationship between landowner and invitee continue beyond the premises. Once an invitee leaves the premises, the relationship is terminated. As the comments to the Restatement (Second) of Torts note, the possessor of land is liable to an invitee "only for harm sustained while he is on the land within the scope of his invitation."[32] Similar limitations are placed upon duties to licensees.[33]

The Wyoming Supreme Court endorsed these limitations in *Loney*, where the court observed that "[t]he duty to protect an invitee is necessarily coextensive with the invitation, though no further."[34] The court later

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28. 36 Wyo. 339, 255 P. 350 (1927).
29. *Id.* at 349, 255 P. at 352.
30. 67 Wyo. 268, 219 P.2d 125 (1950).
31. *Id.* at 279-80, 219 P.2d at 128.
32. RESTATEMENT (SECOND) OF TORTS § 332 comment l (1965). The remainder of that same comment provides:

> Thus an invitee ceases to be an invitee after the expiration of a reasonable time within which to accomplish the purpose for which he is invited to enter, or to remain. . . .
>
> *Likewise the visitor has the status of an invitee only while he is on the part of the land to which his invitation extends* . . . . (emphasis added).

Id. See also id. at § 314A comment c:

> *The rules stated in this Section apply only where the relation exists between the parties, and the risk of harm, or of further harm, arises in the course of that relation.* A carrier is under no duty to one who has left the vehicle and ceased to be a passenger, nor is an innkeeper under a duty to a guest who is injured or endangered while he is away from the premises. *Nor is a possessor of land under any such duty to one who has ceased to be an invitee.* (emphasis added).

33. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 341 comment b (1965):

> The rule stated in this Section applies to subject the possessor to liability only to those persons who sustain bodily harm *within that part of the land which they are permitted to enter*, and during the time covered by the permission.
>
> One who is permitted to enter a particular part of the land for a particular time or for a particular purpose becomes a trespasser if he enters another part of the land, or remains upon the land after that time has expired or for an unreasonable time after the purpose of the visit is accomplished. (emphasis added).

34. *Loney*, 36 Wyo. at 350, 255 P. at 352.

reaffirmed that position in *Johnson v. Hawkins*.[35] In *Johnson*, the plaintiff slipped and fell when she stepped off the store's doorstep onto the public sidewalk. The court observed that because the sidewalk was not subject to the exclusive control of the storekeeper, his duty did not, therefore, extend to the sidewalk.[36]

Over the years, courts have carved out numerous exceptions to the common law classifications to better reflect the needs of a changing society. Examples of these include discovered trespassers[37] and constant trespassers.[38] These exceptions subject the landowner to liability if he discovers a trespasser on his land, but fails to warn of dangerous activities. Another exception is that of the child trespasser.[39] Like those previously mentioned, this exception actually elevates the child trespasser to a licensee. The duty to a child is, however, more exacting. If a condition of the premises creates a risk of harm which the child cannot fully appreciate, the owner must eliminate the danger, or otherwise protect the child. These exceptions, along with many others, reflect modern concepts of foreseeability, as well as other policy considerations.[40] They also act as guidelines, defining the duty of owners and occupiers. Most courts, therefore, currently prefer the common law classifications over the less well defined "reasonable care" standard.[41]

Departure From the Traditional Classifications

In 1968 the California Supreme Court abandoned the common law classifications in favor of a single standard of reasonable care. In *Rowland v. Christian*,[42] the court argued that traditional notions of premises liability do not comport with fundamental principles of negligence. The court

35. 622 P.2d 941 (Wyo. 1981).

36. *Id.* at 943.

37. The RESTATEMENT (SECOND) OF TORTS § 336 (1965) states:

> A possessor of land who knows or has reason to know of the presence of another who is trespassing on the land is subject to liability for physical harm thereafter caused to the trespasser by the possessor's failure to carry on his activities upon the land with reasonable care for the trespasser's safety.

See also id. at §§ 337-338.

38. *Id.* at § 334:

> A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area thereof, is subject to liability for bodily harm there caused to them by his failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for their safety.

See also id. at § 335.

39. *Id.* at § 339.

40. When the courts created these exceptions they were implicitly recognizing that certain entrants were more foreseeable than others. They were also taking into account other considerations such as the knowledge of the landowner, as well as the moral blame attached to his conduct when he acted upon that knowledge. Case Comment, *TORTS-Negligence-Premises Liability: The Foreseeable Emergence of the Community Standard*, 51 DENVER L.J. 145, 161 (1974).

41. *See* Annotation, *supra* note 16, at 301, 307, 310-12 (listing states which have either adopted or rejected the reasonable care standard); PROSSER AND KEETON ON THE LAW OF TORTS § 62 n.7 (Supp. 1988).

42. 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968). In *Rowland*, the plaintiff was a social guest at the house of the defendant. While using the bathroom fixtures, the por-

maintained that the proper test of the landowner's duty is whether he has acted as a "reasonable man" in view of the likelihood of injury to others.[43] The court suggested that the reasonable care standard is comprised of several policy considerations which include: (1) the foreseeability of harm to the plaintiff, (2) the degree of certainty that the plaintiff suffered injury, (3) the closeness of the connection between the defendant's conduct and the injury suffered, (4) the moral blame attached to the defendant's conduct, (5) the policy of preventing future harm, (6) the extent of the burden to the defendant, (7) the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and (8) the availability, cost, and prevalence of insurance for the risk involved.[44] The court further held that the plaintiff's status as an invitee, licensee, or trespasser may have some bearing on the question of liability; however, the status is not determinative.[45]

Following the *Rowland* decision, Colorado,[46] Hawaii,[47] and several other states[48] adopted similar positions. Most states, however, have reaffirmed their allegiance to the common law classifications.[49] Thirteen years after *Rowland*, the Wyoming Supreme Court considered the issue in *Yalowizer v. Husky Oil Co.*[50] In *Yalowizer*, the plaintiff sustained injuries while driving her car through a vacant service station. A steel cover plate flipped up, forcing the wheel of plaintiff's car into a hole, bringing the car to a sudden halt. The plaintiff, citing *Rowland*, argued that the common law classifications should be abolished in favor of a single standard of reasonable care.[51] The court rejected plaintiff's argument, finding that the common law classes were still acceptable, and that the plaintiff, a licensee, was not entitled to relief.[52]

Although the Wyoming court did not articulate its reasons for rejecting *Rowland*, many courts have found the reasonable care standard to be overly subjective.[53] Courts have deemed it essential that landowners have some concept of when liability will or will not be imposed. One court argued that adopting a single standard of reasonable care would not lessen the confusion, as suggested by the *Rowland* court, but instead would produce inconsistent and unpredictable results.[54] Many courts have concluded that absent the classifications, juries would be granted a free hand to impose or withhold liability without reference to legal standards.[55]

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celain handle on one of the water faucets broke, severing the nerves and tendons of his right hand. The defendant knew of the crack and had asked her landlord to repair it, but she gave plaintiff no warning of its dangerous condition. *Id.*, 443 P.2d at 562, 70 Cal. Rptr. at 98.

43. *Id.*, 443 P.2d at 568, 70 Cal. Rptr. at 104.
44. *Id.*, 443 P.2d at 564, 70 Cal. Rptr. at 100.
45. *Id.*, 443 P.2d at 568, 70 Cal. Rptr. at 104.
46. Mile High Fence Co. v. Radovich, 489 P.2d 308 (Colo. 1971).
47. Pickard v. City and County of Honolulu, 452 P.2d 445 (Haw. 1969).
48. *See* Annotation, *supra* note 16, at 301-07.
49. PROSSER AND KEETON ON THE LAW OF TORTS § 62 n.7 (Supp. 1988).
50. 629 P.2d 465 (Wyo. 1981).
51. *Id.* at 467.
52. *Id.* at 469-70.
53. *See, e.g.*, Alston v. Baltimore & O.R.R., 433 F. Supp. 553, 568 (D.D.C. 1977).
54. Gerchberg v. Loney, 576 P.2d 593, 597 (Kan. 1978).
55. *See, e.g., id.* at 597.

THE PRINCIPAL CASE

In *Mostert v. CBL & Associates,* the Wyoming Supreme Court declared that landowners have a duty to warn invitees of foreseeable risks beyond the premises.[56] To arrive at that conclusion the court employed the traditional two-step analysis. The court first looked to the common law classifications to determine the Mosterts' status as invitees, licensees, or trespassers. Although the death occurred some distance from the theatre, the court found the plaintiff to be an invitee.[57]

After characterizing the Mosterts as invitees, the court turned to the second step of the analysis to furnish the corresponding duty. In doing so the court stated that it would find a duty where "*reasonable persons* would recognize it and agree that it exists." (emphasis added).[58] Further discussing the landowner's duty, the court observed that "duty is . . . only an expression . . . of those *considerations of policy* which leads the law to say that the plaintiff is entitled to protection." (emphasis added).[59] The court focused on these policy considerations as it looked to *Tarasoff v. Regents of University of California.*[60] In *Tarasoff,* a patient told his therapist that he intended to kill Tatiana Tarasoff. Although the therapist recognized that Ms. Tarasoff was in danger of injury or death, he failed to warn her of the danger. Based upon a custodial relationship between the therapist and his patient,[61] the California court held that the therapist had a duty to warn Ms. Tarasoff of the danger.[62] The *Mostert* court found *Tarasoff* to be analogous to *Mostert.*[63] In *Tarasoff,* the patient made the threat of harm while at Cowell Memorial Hospital, but inflicted the injury at the victim's home. Thus, the *Mostert* court reasoned that *Tarasoff* also involved the failure to warn of an off-premises risk.[64] The *Mostert* court then weighed individually the eight policy considerations articulated in *Rowland* and quoted in *Tarasoff.* Balancing these elements, the court first looked to the foreseeability of the harm. The court concluded that AMC was aware of the severity of the storm, as well as the request by civil authorities that citizens stay off the streets.[65] Weighing the other seven factors, the court held that the injury was not remote, and that AMC was

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56. *Mostert,* 741 P.2d at 1096.
57. *Id.* at 1094.
58. *Id.* at 1093 (quoting from PROSSER AND KEETON ON THE LAW OF TORTS § 53, at 357-59 (5th ed. 1984)).
59. *Id.* at 1093.
60. 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976).
61. The "special relationship" which the court invoked is found in the RESTATEMENT (SECOND) OF TORTS § 315 (1965):

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
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> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> (b) a special relation exists between the actor and the other which gives the other a right of protection.

62. *Tarasoff,* 551 P.2d at 343, 131 Cal. Rptr. at 23.
63. *Mostert,* 741 P.2d at 1095.
64. *Id.*
65. *Id.* at 1094.

morally culpable. The court further reasoned that imposing such a duty on landowners would have the positive effect of preventing future harm to others, and that the burden placed upon landowners to warn patrons would be minimal. Finally, the court found that the consequences to the community and cost of insurance, even if neutral factors, would not outweigh the other elements.

Justice Urbigkit specially concurred, while Justices Thomas and Cardine dissented. The dissents maintained that AMC owed no duty to the Mosterts once they left the premises.[66] They also argued that the majority had departed from well settled rules governing premises liability. Justice Cardine contended that the court should not have looked to the policy considerations to find a duty in this case.[67] Nevertheless, he considered the same policies as did the majority, coming to the opposite conclusion. Justice Cardine found the accident to be remote from the premises, and therefore unforeseeable by any practical standard.[68] He further argued that AMC was not morally culpable, and that because weather warnings are common place in Wyoming, it is doubtful that a warning would have made any difference. Finally, he argued that the burden on similar defendants would be staggering, and that the consequences to the community and court system would be vast.[69]

Justice Thomas argued that the ruling would make it difficult to place any practical limitation upon the duties of owners and occupiers.[70] He reasoned that the holding would open the door to unlimited liability, requiring owners and occupiers to foresee and warn of every conceivable risk that a patron might encounter, regardless of whether that risk was on the premises.[71] He also argued that *Tarasoff* had no application to *Mostert*, and that the majority's reliance upon that case was unacceptable. Justice Thomas further questioned the issue of causation, reasoning that the natural forces, coupled with the conduct of travelling in such conditions, amounted to superseding causes as a matter of law. He argued that the usual basis for imposing a duty is that performance of that duty will avoid harm to others. He observed that it makes no sense to structure a duty which cannot be the legal cause of harm to another.[72]

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66. *Id.* at 1099 (Thomas, J., concurring in part and dissenting in part). *Id.* at 1103 (Cardine, J., concurring in part and dissenting in part).

67. *Id.* at 1104 (Cardine, J., concurring in part and dissenting in part).

68. *Id.*

69. *Id.*

70. *Id.* at 1100 (Thomas, J., concurring in part and dissenting in part).

71. *Id.*

72. *Id.* at 1101. As Justice Thomas noted, the case raises a causation issue. Although causation is generally a question for the jury, when the issue is so clear that reasonable persons cannot disagree, it may become a question of law. Kopriva v. Union Pac. R.R., 592 P.2d 711, 713 (Wyo. 1979). "The law does not charge a person in negligence with all the consequences of a wrongful act, but ignores remote causes and looks only to the proximate cause." *Id.* at 713. Apparently Justice Thomas was of the opinion that no reasonable juror could possibly find that AMC was more than 50% negligent under Wyoming's comparative negligence statute, thereby precluding recovery as a matter of law. It appears, however, that the majority intentionally avoided the causation issue, preferring instead to leave it to the jury.

ANALYSIS

Although the court employed the traditional two step approach to determine AMC's duty to the Mosterts, it misapplied the rules in both steps. The court first erred by classifying the plaintiff as an invitee. An owner's duty is determined by the relationship of the parties *at the time of the injury.*[73] Certainly the Mosterts were invitees while at the movie theatre. Once they left the premises, however, they terminated that relationship. After travelling a distance of two miles from the theatre, the Mosterts were subject to the elements of nature. AMC had no control over the public streets, the weather, or the Mosterts' decision to proceed through flood waters. At that point they no longer stood in any relationship to AMC.

By finding an invitee relationship, the court not only departed from precedent, but also created confusion as to who is or is not an invitee. If a patron continues to be an invitee two miles from the premises, at what distance does he lose that status? If ten minutes after leaving the premises a patron remains an invitee, how much time must elapse before that relationship is terminated? Further confusion arises in determining which landowner has a duty to the entrant. Does one who goes on a shopping spree remain an invitee as to all shopowners, provided he remains within a mile or two of the shops?

Having labeled the Mosterts invitees, the court turned to the second step of the analysis to determine the duty. Rather than looking to established rules defining the duty to invitees, the court observed that "duty is as broad as the whole law of negligence."[74] Certainly the veracity of such a statement cannot be questioned; however, it is of no aid in determining the duty of owners and occupiers. In Wyoming, as well as most other states, the broad scope of duty under the reasonable person standard should not apply to duties of owners and occupiers. The court itself rejected that standard in *Yalowizer.* In states which depend upon the common law classifications, the scope of a possessor's duty is defined first by the class of the entrant, and second, by the rules which relate to that class.

The court declared that it would find a duty where "*reasonable persons* would recognize it and agree that it exists." (emphasis added).[75] This statement confirms the view that the court is employing a reasonable person standard, identical to that utilized by the *Rowland* court. Although the court cites *Yalowizer* to determine that the Mosterts were invitees,[76] it does so only to establish an invitee relationship. Once the relationship is established, the court shifts to a reasonable care standard, abandoning the rules which define and limit the scope of the invitee relationship.

73. 62 AM. JUR. 2D *Premises Liability* § 37 (1965).

74. *Mostert,* 741 P.2d at 1093 (quoting from PROSSER AND KEETON ON THE LAW OF TORTS § 53, at 357-59 (5th ed. 1984)). In part I of the opinion, dealing with AMC's duty to the Mosterts, the court devotes approximately seventy-five percent of the analysis discussing duty under a reasonable person standard. *Id.* at 1092-96.

75. *Id.* at 1093.

76. *Id.* at 1094.

To bolster the use of a reasonable care standard, the court turned to *Tarasoff.* Although the court argued that *Tarasoff* concerned the failure to warn of an off-premises risk,[77] the court's analysis was misplaced. The duty imposed in *Tarasoff* was of a custodial nature,[78] and in no way related to premises liability. The duty of the therapist in *Tarasoff* was to control the acts of a mental patient, who may inflict injury on or off the premises. The duty of an owner, on the other hand, is to warn of dangerous conditions on his land. In Justice Thomas' words, "[t]he circumstances of [*Tarasoff*] . . . are as far removed from this case as Wamsutter [Wyoming] is from New York City."[79]

CONCLUSION

In *Mostert v. CBL & Associates,* the court concluded that landowners must advise patrons of off-premises dangers that are reasonably foreseeable. Although the court has traditionally depended upon the common law classifications to determine premises liability issues, *Mostert* appears to compromise that position. The court did not expressly adopt *Rowland;* however, it applied *Rowland principles.* While the court paid lip service to the classifications, determination of the duty was based upon a "reasonable care" standard. It appears that the court found, as did *Rowland,* that although the plaintiff's status may have some bearing on the question of liability, the status is not determinative. *Mostert,* therefore, creates a conflict in Wyoming law as to which standard governs in premises liability issues. Rather than relying upon the broad scope of duty under the reasonable person standard, the court should have followed Wyoming precedent and the common law rules relating to premises liability. By embracing the more subjective "reasonable care" standard, the court, in effect, rendered the classifications useless, and opened businesses to unlimited liability.

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77. *Id.* at 1095.

78. *Tarasoff,* 551 P.2d at 343, 131 Cal. Rptr. at 23. (citing RESTATEMENT (SECOND) OF TORTS § 315 (1965) (set out in full *supra* note 61).

79. *Mostert,* 741 P.2d at 1100 (Thomas, J., concurring in part and dissenting in part).