January 1997

Assault on the Common Law of Premises Liability: What Duty of Care Does an Owner or Occupier of Land Owe to a Police Officer Who Enters the Premises of Another by Authority of Law? Newton v. New Hanover County Board of Education

Linda Sayed

Follow this and additional works at: http://scholarship.law.campbell.edu/clr

Recommended Citation

This Note is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.
ASSault on the Common Law of Premises Liability: What Duty of Care Does an Owner or Occupier of Land Owe to a Police Officer Who Enters the Premises of Another by Authority of Law? Newton v. New Hanover County Board of Education

I. Introduction

Someone or something sets off a silent alarm in a deserted office or home. The trigger may be an unwelcome intruder or a rodent scurrying across the floor. Whatever the cause, the local law enforcement agency promptly dispatches a police officer to investigate. When the officer arrives on the scene, he intervenes on behalf of the landowner if there is a burglar on the premises or ensures the security of the premises if the prowler was merely a mouse. Citizens depend on the police to faithfully perform the duties necessary to protect them and to defend their property against unlawful damage, destruction, or misappropriation. What duty of care should police officers expect from a landowner when they enter the landowner's property by authority of law?

Under the common law of North Carolina, the nature and extent of the duty owed by an owner or occupier of land to persons injured on his land depends upon whether the injured person is classified as an "invitee," a "licensee," or a "trespasser." An invitee is a person who enters by express or implied invitation of the landowner for the mutual benefit of the landowner and the invitee. A licensee is a person who enters with permission, express or implied, but solely for his own purposes. A trespasser is a person who enters the land of another without permission or other right. Some jurisdictions have abandoned any distinctions based upon the status of an entrant. Because some entrants do not fit well

4. Hood, 249 N.C. at 540, 107 S.E.2d at 158.
5. Newton, 342 N.C. at 561, 467 S.E.2d at 64 (citing Rowland v. Christian, 443 P.2d 561 (Cal. 1968); Mile High Fence Co. v. Radovich, 489 P.2d 308 (Colo. 1971)).
into these traditional classifications, some jurisdictions classify such entrants injured on the land of another in a unique class, as *sui generis*. Other jurisdictions apply the "firefighter's rule" to police officers who enter another's land in the discharge of public duties. The rule effectively bars recovery from negligent landowners.

Under the traditional rules for premises liability, there is "an ascending degree of duty owed" by a landowner to persons on the land based on their status of entry, i.e., trespasser, licensee, or invitee. A landowner is under a duty to an invitee to use ordinary care to keep his property reasonably safe and to warn of hidden perils or unsafe conditions that could be discovered by reasonable inspection. A property owner is liable "for injuries sustained by an invitee which are caused by dangerous conditions known, or which should have been known, by the property owner but which are unknown and not to be anticipated by the invitee." The duty owed to a licensee is similar to the duty owed to a trespasser, but because the owner has the duty of anticipating the presence of a licensee, the duty owed to a licensee is greater. If a licensee, exercising due care for his own safety, is upon the property of another and the land owner is "affirmatively and actively negligent in the management of his property or business, as a result of which the licensee is subjected to increased danger, the owner will be liable for injuries sustained as a result of such active and affirmative negligence." The duty owed to a trespasser is that a trespasser must not be willfully or wantonly injured.

7. Newton, 342 N.C. at 561, 467 S.E.2d at 63-64 (citing Flowers v. Rock Creek Terrace Ltd. Partnership, 520 A.2d 361 (Md. 1987)).
8. Id. at 63.
9. Id. at 562, 467 S.E.2d at 64 (quoting Newton, 114 N.C. App. 724, 443 S.E.2d at 350, in turn citing Roumillat v. Simplistic Enters. Inc. 331 N.C. 57, 414 S.E.2d 339 (1992)).
10. Id. at 560, 467 S.E.2d at 63 (quoting Williams v. McSwain, 248 N.C. 13, 102 S.E. 2d 464 (1958), in turn quoting Harris v. [Nachamson] Dep't Stores Co., 247 N.C. 195, 198-99, 100 S.E.2d 323, 326 (1957)).
12. Id.
In cases of premises liability, North Carolina has generally followed the common law doctrine that the nature and extent of the duty owed by the owner or occupier of land to persons injured on the land depends upon the classification of the injured person. What duty of care does a landowner owe to a police officer who is injured when he responds to a call on the landowner’s property? Does it depend on whether his status on the land is invitee, licensee, or trespasser? Do the circumstances surrounding the injury matter? Is the reason for the police officer’s presence on the property relevant?

In *Newton v. New Hanover County Board of Education*, a police officer sued the school district for injuries he sustained while responding to a silent alarm on school property. The North Carolina Supreme Court determined as a matter of first impression that the duty of care owed by an owner or occupier of land to a police officer on the landowner’s premises in the performance of his public duty is the same as the duty owed to invitee. It appears that in order to avoid liability to police officers coming onto the premises, a landowner must use ordinary care to keep his property reasonably safe and must also warn of hidden perils or unsafe conditions that could be ascertained by the landowner by reasonable inspection. In order for a police officer to recover for his injuries, he “must show that the property owner either negligently created the condition that caused the injury or that the owner failed to correct the condition after receiving actual or constructive notice of its existence.” *Newton* clearly sets forth the duty of care owed by North Carolina landowners to police officers who enter the land under authority of law. However, the decision leaves some questions concerning application of the law unanswered.

This Note examines the liability of landowners to police officers who enter upon the land in the execution of their public duties and are injured as a consequence of a coincident hazardous condition on the land. Section II presents the relevant facts of *Newton v. New Hanover County Board of Education* and the conclusions of the North Carolina Court of Appeals and Supreme Court.

15. *Id.* at 556, 467 S.E.2d at 61.
16. *Id.* at 562, 467 S.E.2d at 64.
17. *Id.* (quoting *Newton*, 114 N.C. App. at 724, 443 S.E.2d at 351).
18. *Id.*
Court. Section III reviews the traditional common law in the United States related to the duty of care owed by landowners to invitees, licensees, and to a limited extent, trespassers. It also examines the modern trend that eliminates or modifies the common law rules related to premises liability and bases liability on a standard of reasonable care. Included among the modern treatments are "entrants upon the land by right," a class *sui generis*, the "firefighter's rule" and its application to police officers injured, and the unique duty of care owed to police officers who enter the land of another under authority of law. Section III concludes with a discussion of the reasons for retaining the common law classification system and reasons to abandon or modify it. Section IV discusses the possible ramifications of this decision on premises liability for North Carolina landowners when police officers are injured while acting under authority of law. A concern is raised about a landowner's duty to warn a police officer of hidden perils and unsafe conditions when the officer enters when the landowner is unaware of the officer's presence. Section V concludes with a suggestion that the duty to warn should exist only when the landowner has had a reasonable opportunity to warn the officer of hidden perils and unsafe conditions. It also suggests the possibility that North Carolina may have taken a first step in joining the trend away from the traditional system of "invitee, licensee, and trespasser" classifications and toward landowner premises liability based on the standard of reasonable care and foreseeability.

II. The Case

A. Facts of the Case - At the Trial Court

On June 6, 1989, plaintiff Stewart B. Newton, a uniformed patrol officer, was dispatched by the Wilmington City Police to the New Hanover High School field house in response to a silent alarm.\(^{20}\) After arriving at the school, Officer Newton climbed an outside stairway to the second floor of the field house and found the door secure.\(^{21}\) As he descended the steps, he had difficulty maneuvering the stairway and he fell down the steps injuring his hand, wrist, and arm severely enough to require medical care and be out of work for a period of time.\(^{22}\) Consequently, Officer

\(^{20}\) *Id.* at 556, 467 S.E.2d at 61.
\(^{21}\) *Id.* at 557, 467 S.E.2d at 61.
\(^{22}\) *Id.* at 557-58, 467 S.E.2d at 61-62. Plaintiff suffered a fifty-five percent permanent physical impairment of his left little finger. Plaintiff incurred
Newton brought suit against the New Hanover County Board of Education.

On March 5, 1990, the jury in New Hanover County Superior Court returned a verdict for plaintiff, Officer Newton, and awarded damages in the amount of $20,000.23 In his charge to the jury, the trial judge instructed the jury that Officer Newton was an invitee on the premises of New Hanover County Schools at the time of the injury, and the defendant therefore "owed plaintiff a duty to exercise reasonable care to keep its premises in a reasonably safe condition."24 Defendant then moved for judgment notwithstanding the verdict, and the trial court granted this motion, holding that "the evidence showed as a matter of law that [Plaintiff] was a licensee rather than an invitee at the time of the injury, and that no evidence was presented to show that defendant violated the duty owed to a licensee.25

B. In The Court of Appeals

Officer Newton appealed the trial court's decision, arguing that the trial court erred in holding that he was a licensee at the time of his injury.26 The defendant argued that "plaintiff should be considered a licensee because public policy considerations prohibit a police officer from recovering from a property owner when

medical expenses in the amount of $1,233.41 and lost wages in the amount of $1,856.57. He also received workers' compensation benefits from his employer in the amount of $5,086.67.

23. Id.
24. Id. at 558, 467 S.E.2d at 63.
26. Id. The trial court made a number of findings:
The Undersigned [judge] hereby finds that evidence presented in this case discloses as a matter of law that the plaintiff was a licensee as opposed to an invitee at the time of the injury on the defendant's premises.
The Undersigned also finds that there was no evidence presented that defendant violated the duty owed to a licensee;
The Court also finds that if the plaintiff were an invitee on the premises of the defendant at the time of the injury, the Court finds as a matter of law that there was insufficient evidence of negligence on part of the defendant for the issue to be submitted to the jury;
The Court also holds that the evidence presented in this case demonstrates as a matter of law that the plaintiff was contributorily negligent.

Id.
the officer entered the premises in the course of performing his
duty and was injured by the condition which required his pres-
ence."27 The Court of Appeals noted, however, that Plaintiff was
injured from a condition of the premises which was inherently
dangerous (the stairway) and "not as a result of a risk incident to
the performance of his duties as a police officer."28 Because Plain-
tiff entered the school system property at the defendant's "implied
invitation to perform a service which was of benefit to defend-
ant"29 (answering a silent alarm on property owned by the school
system), the Court of Appeals concluded that Plaintiff was an invi-
tee. The Court of Appeals reversed and remanded with one judge
dissenting.30

In his dissenting opinion Judge Johnson stated that a police
officer who enters property in response to a silent alarm fits
neither the definition of an invitee nor a licensee.31 Judge John-
son continued his reasoning by stating that the police officer is not
a licensee, "one who enters on the premises with the possessor's
permission, express or implied, solely for his own purposes rather
than the possessor's benefit,"32 because he did not enter the prem-
ises solely for his own purposes.33 Also, Plaintiff did not intend to
benefit himself by going onto the school's premises and so is not an
invitee, "a person who goes upon the premises in response to an
express or implied invitation by the landowner for the mutual
benefit of the landowner and himself."34 Judge Johnson believed
the police officer intended to benefit both the landowner and the
public;35 he stated:

[T]he predominant "nature of the business bringing [the police
officer] to the premises" herein is the officer's duty, as a law
enforcement officer, to carry out the responsibilities of his job. A
police officer is one who enters the premises of a property owner
under the authority of law. On the facts herein, the police officer is

27. Id. at 724, 443 S.E.2d at 350. See infra text accompanying notes 101-14
for a discussion of the "firefighter's rule."
28. Id.
29. Id.
30. Id. at 725, 443 S.E.2d at 350-51.
31. Id. at 725, 443 S.E.2d at 351.
32. Id. at 726, 443 S.E.2d at 351.
33. Id.
34. Id.
35. Id.
entering the school property for the benefit of the public, to maintain civil order and to promote the public welfare.\textsuperscript{36}

Judge Johnson concluded Plaintiff's status more closely resembled that of a licensee.\textsuperscript{37}

\textbf{C. In the Supreme Court}

The North Carolina Supreme Court held that the Court of Appeals properly reversed the trial court's entry of judgment notwithstanding the verdict and thus affirmed the Court of Appeals' decision.\textsuperscript{38} The Court held, as a matter of first impression, that the duty owed to a police officer when he enters a landowner's premises in the performance of his public duty is the same as the duty owed to an invitee.\textsuperscript{39} In conducting his public duties, a police officer enters land by authority of law and his invitation to enter the premises of a landowner should be implied in law.\textsuperscript{40} Therefore, a property owner owes a police officer the duty to use ordinary care to keep his property reasonably safe and to warn of hidden perils or unsafe conditions that could be ascertained by reasonable inspection.\textsuperscript{41} In order to recover for injuries suffered on the premises, a police officer must show either that the land owner "negligently created the condition that caused the injury or that the owner failed to correct the condition after receiving actual or constructive notice of its existence."\textsuperscript{42}

\textbf{III. THE BACKGROUND}

\textbf{A. Traditional Common Law Status Rule}

Most jurisdictions follow the traditional common law approach to premises liability.\textsuperscript{43} When a person comes upon the premises of a landowner or occupier of land and is injured because of the condition of the premises, the scope of the landowner's liability depends on the status of the entrant at the time of the accident.\textsuperscript{44} Traditionally, entrants are classified as invitees,
licensees, or trespassers, and the duty owed to the entrant by the landowner varies according to the classification.\textsuperscript{45}

1. \textit{Duty of Care Owed to “Invitees”}

Invitees enter the land by invitation, either express or implied, of the landowner for their mutual advantage.\textsuperscript{46} An invitee is known as a “business visitor” if he is “invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.”\textsuperscript{47} 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.”\textsuperscript{48} The courts extend “public invitee” status to visitors who may enter to attend free public lectures, church services, places of amusement such as parks, playgrounds, swimming pools, libraries, wharves, golf courses, community centers, and state and federal land.\textsuperscript{49}

“Invitee” is a word of legal art.\textsuperscript{50} The meaning of the word “invitation” in the context of premises liability is misleading because the meaning in this context is not the same as the common meaning.\textsuperscript{51} For example, a social guest who is invited to a host’s home or business in response to an “invitation” is not an invitee in most jurisdictions, but rather a licensee.\textsuperscript{52} In order to be an invitee in some jurisdictions, it is necessary for the person entering the premises to be there for the mutual advantage of both parties.\textsuperscript{53} If the invitation is for the convenience, pleasure, or benefit of the person entering the land, he is only a licensee.\textsuperscript{54} Although a person may enter as a social guest, his status some-
times changes from licensee to invitee by certain transactions between the parties after entrance onto the premises.55

One test the courts use to determine whether to classify an entrant as an invitee is the "economic benefit" test.56 Courts classify an entrant as an invitee when the landowner has an actual financial or economic interest in the visit.57 Courts also use the "mutual interest" test instead of, or in conjunction with, the economic benefit test.58 This test requires the visitor to enter for a purpose connected with the business of the landowner, or there must be at least "some mutuality of interest in the subject, to which the visitor's business relates."59 Such a business relationship is not required to be a commercial enterprise.60 For example, if the landowner asks the entrant to perform some needed service, even if it is gratuitous, some jurisdictions accord the entrant status as an invitee.61

A landowner is under an affirmative duty to an invitee to protect him not only against dangers of which the landowner knows, but also against those dangers he should have discovered if he exercised reasonable care.62 This duty of care extends only to "area[s] of invitation,"63 including "the entrance to the property and to a safe exit after the invitee's purpose is concluded. The duty also extends to all parts of the premises to which the invitee's purpose may reasonably be expected to take him."64

55. Id.
56. Id. at § 90.
57. Id.
58. Id. at § 91. The "mutual interest test" is also known as the "mutual advantage test."
59. Id.
60. Id.
61. Id. This may occur when a friend or relative is invited for dinner and then remains to help repair a leaky faucet.
62. One who enters or goes upon the premises of another as a business visitor, at the express or implied invitation of the owner (or occupant), or in connection with the business of the owner (or occupant), is called in law an invitee. The invitation to enter extends not only to those parts of the premises which the invitee or business visitor may be expressly invited to use, but also to such parts as he is invited to enter by fair implication. That is to say, the invitation extends to all parts of the premises where the invitee, under the circumstances and condition of his invitation, should reasonably be expected to go.

EDWARD J. DEVITT, ET AL. FEDERAL JURY PRACTICE AND INSTRUCTIONS, Part V. § 80.11, Duty of Owner or Occupant of Premises to Invitee (1987).
63. KEETON ET AL., supra note 49, § 61, at 424.
64. Id. See also DEVITT ET AL., supra note 62.
2. Duty of Care Owed to "Licensees"

The second category of entrant upon the land is licensee. A licensee "enters the property of another for his own convenience, pleasure, or benefit, only for purposes of his own and not in response to an implied invitation to the public generally to make use of the premises." The Restatement describes a licensee as "a person who is privileged to enter or remain on land only by virtue of the possessor's consent."

There are a number of types of licensees. When a landowner gives a person permission to enter by words that express a manifest consent for the licensee to enter, the entrant is an "express licensee." This consent may be given either in writing or orally. If the landowner speaks or acts in such a way that "give[s] the entrant reason to believe that he consents to the entry upon his land," the entrant is an implied licensee because consent to enter can be implied from the landowner's words or actions. This is true even if the owner did not intend to consent to the entrance. When a landowner habitually acquiesces in the use of his property by the public, his tolerance may transform trespassers into licensees. A "licensee by invitation" or "social guest" is a person who has been invited by "some affirmative act which would justify a reasonable person in believing that the owner has given his consent to the entry of the particular person." When a social guest gratuitously performs household tasks of obvious benefit to his host, his status as a licensee does not change to invitee in most jurisdictions. One who enters by mere sufferance or acquiescence is a "bare," "naked," or "mere" licensee.

The liability of a landowner to a licensee is limited in scope. A landowner is under no obligation to the licensee to inspect his land for unknown dangers or to disclose their existence or to take pre-
cautions against them.\textsuperscript{75} While the licensee must accept the premises as the landowner uses them, he is entitled to know of the dangers the landowner has discovered.\textsuperscript{76} A landowner will be held to the reasonable person standard in realizing the significance of dangers he uncovers.\textsuperscript{77} If the danger is obvious, the licensee must look out for himself and there is no obligation on the part of the landowner to warn of these obvious dangers.\textsuperscript{78}

3. Duty of Care Owed to “Trespassers”

The third category for entrants upon the land is “trespasser.”\textsuperscript{79} A trespasser is any person who enters the land of another without permission, privilege, or other right.\textsuperscript{80} In North Carolina, the duty owed by an owner or occupier of land to a trespasser is to avoid actions that may willfully or wantonly injure the entrant.\textsuperscript{81}

B. Modern Trend Toward Abolition of Traditional Categories

In 1957, England abolished the distinction between invitees and licensees by statute and imposed a common duty of care toward all lawful entrants.\textsuperscript{82} In 1958, the Supreme Court of the United States followed England’s lead and declined to apply the traditional entrant classification distinction to the law of admiralty.\textsuperscript{83} In 1968, the Supreme Court of California abolished the traditional classifications of invitee, licensee, and trespasser in a landmark decision and declared the ordinary negligence principles of foreseeable risk and reasonable care to be the standard for premises liability in California.\textsuperscript{84} Between 1969 and 1985, eleven jurisdictions followed California’s lead and abolished all distinc-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{75} KEETON ET AL., supra note 49, § 61, at 412, 416.
\item \textsuperscript{76} Id. at 416-417.
\item \textsuperscript{77} Id. at 418.
\item \textsuperscript{78} Id. at 416-417.
\item \textsuperscript{79} Because a police officer who enters the land of another under authority of law is generally not a trespasser, the discussion of trespassers is limited in this Note.
\item \textsuperscript{80} HOOD, 249 N.C. at 540, 107 S.E.2d at 158.
\item \textsuperscript{81} Jessup, 244 N.C. at 245, 93 S.E.2d at 87.
\item \textsuperscript{82} KEETON ET AL., supra note 49, § 62, at 432-33.
\item \textsuperscript{83} Id. at 433 (citing Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959)).
\item \textsuperscript{84} Id. (citing Rowland v. Christian, 443 P.2d 561 (Cal. 1968)).
\end{enumerate}
\end{footnotesize}
tions among entrants on land.\textsuperscript{85} In the last decade only Nevada has abolished all entrant classifications.\textsuperscript{86}

Eleven states abolished the distinction between invitees and licensees but retained limited duties to trespassers.\textsuperscript{87} Six other states have modified the common law categories without abolishing them outright. Missouri and Kentucky require a duty of care to all entrants equal to the duty of care owed to invitees once the landowner is aware of the presence of the entrant.\textsuperscript{88} Connecticut and Illinois passed legislation modifying the common law status of a social guest from licensee to invitee.\textsuperscript{89} Indiana and Maine judicially altered the status of social guest from licensee to invitee.\textsuperscript{90}

C. \textit{Persons on the Land as a Matter of Right - Sui Generis}

Some entrants to land such as public officers and employees who enter another's property for either a public or private purpose


\textsuperscript{86} Heins, 552 N.W.2d at 54 (citing Moody v. Manny's Auto Repair, 871 P.2d 935 (Nev. 1994)).


\textsuperscript{88} Heins, 552 N.W.2d at 54-55. This treatment is similar to the "discovered trespasser" rule. \textit{Id.}

\textsuperscript{89} Id. at 55.

\textsuperscript{90} Id.
often do not fit neatly within the common law categories of invitee, licensee, or trespasser and are therefore treated as a special class, sui generis. They are not trespassers because they are privileged to come onto the land. The privilege to enter is absolutely independent of any permission, consent, or license of the occupier. "They normally do not come onto the land for any of the purposes for which the premises are held open to the public" and when they enter upon private lands they do not enter for any benefit of the landowner.

Many courts, however, do not consider those who enter as a matter of right or in the performance of a duty as a distinct class, and classify them in one of the traditional categories. Firefighters and police officers entering under authority of law are generally classified as licensees but some courts classify them as invitees or find them to have a special status. Where a public officer or employee enters land in the performance of his duties, he is usually classified as an invitee if he uses the premises as any other invitee. Where the public employee comes upon the land for a purpose related to the business of the occupier such as a garbage collector, a city water meter reader, a postal delivery person, or a building inspector, courts generally treat him as an invitee because the landowner can reasonably anticipate the arrival of such visitors. Finally, if the public employee enters the land of another when he had no lawful occasion to so enter, the courts may classify him as a trespasser.

93. Keeton et al., supra note 49, § 61, at 429.
94. Id. For example, fire fighters and police officers have the right to enter premises independent of any permission of the possessor of the property. In fact, the landowner has no right to exclude them. Id.
95. Id.
97. Id. at § 412; Keeton et al., supra note 49, § 61, at 429.
99. Id. § 414; Keeton et al., supra note 49, § 61, at 429.
D. The Firefighter's Rule and Its Application to Police Officers

1. The "Firefighter's Rule"

The original fireman's rule applied only to firefighters and precluded recovery from the landowner for injuries sustained by a firefighter who was injured while fighting a fire caused by the negligence of the landowner. This rule applies to prevent recovery by a firefighter not only for injuries caused directly by the fire, but also for injuries which result from the original hazard which caused the firefighter's presence on the premises. The firefighter's rule is sometimes applied to police officers and precludes recovery by them when they are injured as a result of foreseeable risk as a part of their duties as police officers. Recovery against the landowner on grounds that the landowner negligently created the situation requiring the assistance of the police officer is also precluded. The rule applies to any injury to a police officer which may result whether the injury occurred on private or public property.

2. Examples of the Application of the "Firefighter's Rule" to Police Officers

Some examples of the application of the firefighter's rule to police officers may be helpful in understanding the scope of the rule. The first example is a case in which a police officer was dispatched to a tavern and was injured while attempting to break up a fight in the tavern. Recovery was barred because the police officer incurred the injury as a direct result of the purpose for which he entered the tavern. Recovery was barred because the police officer incurred the injury as a direct result of the purpose for which he entered the tavern. In the second example, a police officer who was injured when he stepped in a hole in the landowner's yard while responding to a burglar alarm on the premises was allowed to recover. The injury resulted from an act of neg-

101. The "fireman's rule" is also known as the "firefighter's rule."
104. Id. at § 434.
105. Id.
106. Id. at § 431.
107. Id. at § 434.
108. Id. at § 435 n.83.
ligence by the landowner independent of the activation of the alarm, the cause of the police officer's presence at the scene.\textsuperscript{109} The third example is less clear cut. A police officer slipped on a snowy ramp in a bus parking lot while walking to confront a protestor throwing snowballs at the buses.\textsuperscript{110} Here, the court found the firefighter's rule barred recovery because the risk of slipping was a particular risk of employment that the officer was compensated to confront.\textsuperscript{111}

3. \textit{Exceptions to the Application of the "Firefighter's Rule"}

There are several common exceptions to the application of the firefighter rule. Courts have carved out these exceptions because of the perceived unfairness of the rule in certain circumstances. In instances of willful or wanton conduct by a property owner that results in the injury of a public rescuer, recovery has been allowed.\textsuperscript{112} Courts also allow recovery for injuries suffered when landowners know of hidden dangers on their property, have the opportunity to warn the public rescuer of the danger, and fail to so warn.\textsuperscript{113} Many courts also allow recovery when the landowner violates a statute or ordinance requiring safety guards, precautions, or other maintenance and failure to perform these lawfully imposed safety measures results in injury to a public rescuer.\textsuperscript{114}

E. \textit{Landowner Liability for Injuries to Police Officers in the United States}

The duty of care owed by landowners to police officers injured because of a dangerous land condition varies among jurisdictions. Police officers are treated as invitees, licensees, and \textit{sui generis} depending both upon the jurisdiction and the particular facts of the case.

1. \textit{Police Officer as "Invitee"}

Some courts consider police officers to be invitees only under certain circumstances. These circumstances include when they

\textsuperscript{109} \textit{Id.}


\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{62 Am. Jur. 2d Premises Liability} § 437 (1990); \textit{Keeton et al.}, \textit{supra} note 49, § 61, at 430.


\textsuperscript{114} \textit{62 Am. Jur. 2d Premises Liability} § 438 (1990). \textit{See also Kenneth C. Payumo, Cops Assuming the Position (of Risk), 68 N.Y. St. B.J. 46 (1996).}
come upon the premises as part of their regular patrol or at the specific invitation of the owner, or only when they are upon those parts of the premises open to the public generally. Courts do not always find that a police officer who comes upon the premises in response to an alarm is an invitee. Other courts require the duty of care owed by a landowner to all police officers who enter the premises in performance of their public duties to be the duty owed to an invitee. These courts impose liability on the landowner for injury to a police officer if the landowner:

1. knows or by the exercise of reasonable care could discover the condition, and should realize that it involves an unreasonable risk of harm to such invitee, and
2. should expect that the invitee will not discover or realize the danger, or will fail to protect himself against it, and
3. fails to exercise reasonable care to protect the invitee against the danger.

2. Police Officer as "Licensee"

In jurisdictions observing the traditional common law categories for entrants upon the land, the majority of courts hold that a police officer who enters upon premises in the discharge of his public duty has the status of a licensee. Under these circumstances, the landowner must exercise reasonable care for the police officer's protection and must also refrain from injuring him intentionally or by willful and wanton conduct. As with other licensees, there is no general obligation to inspect and prepare the premises, but there is a duty to give warning of hidden dangers of which the landowner knows.

3. Police Officer as "Sui Generis"

Some jurisdictions reject the classification of a police officer as an invitee or licensee. These jurisdictions treat police officers as sui generis, a special class privileged to enter the land for public
purposes. In these jurisdictions, for purposes of determining the duty owed by landowners of private premises to police officers who enter the premises in performance of their duties without any express or implied request, invitation, or permission of the owners or occupiers, the police officers are either to be considered as sui generis or as having a special status as persons rightfully on the premises. Police officers do not fit within any of the common law categories of trespasser, licensee, or invitee, and their legal status according to these common law categories is not determinative of the duties and liabilities of landowners.

F. The Basis for Selection of Premises Liability Standards

1. Reasons for Retaining Traditional Common Law Entrant Classifications

The majority of jurisdictions continue to follow the common law rules for premises liability. Since 1985, only one jurisdiction has abolished the common law classification of invitee, licensee, and trespasser and six other jurisdictions have altered the classification scheme in some way. Of the thirty-seven jurisdictions reconsidering the common law classification scheme, twenty-three have abolished either some or all of the common law categories. However, fourteen states expressly retained the common law entrant categories, and another fourteen jurisdictions continued to apply the common law doctrine without specifically addressing its continuing validity.

There are a number of reasons purported for the retention of the common law classification scheme of “invitee,” “licensee,” and “trespasser.” Supporters believe that a “unitary standard would not lessen the confusion inherent in the common law scheme but would instead produce inconsistent and unpredictable rules of law.” These proponents of the traditional common law

123. Id.
124. Id. For a discussion of persons rightfully on the premises, see supra text accompanying notes 91-100.
125. Id.
126. Id. at § 72. See supra text accompanying notes 82-90.
127. Heins, 552 N.W.2d at 55.
128. Id.
130. Heins, 552 N.W.2d at 55.
131. Id.
scheme are more comfortable with a stable and established system of loss allocation than with the establishment of a system devoid of standards for liability. Some courts fear a radical change will shift "social policy decisions to the jury with minimal guidance from the courts." Other supporters believe there is sufficient flexibility in the common law approach brought about by judicial grafting of exceptions and subclassifications to fulfill the needs of modern society.

2. The Argument for Abolishing the Traditional Common Law Entrant Classifications

The common law treatment of the duty of care owed by owners and occupiers of land to entrants upon the land based on the classification of the entrant as invitee, licensee, and trespasser has been criticized by a host of commentators because it is "harshly mechanical, unduly complex, and overly protective of property interests at the expense of human safety." Critics of the traditional classification of entrants upon the land present a number of reasons to support abandonment of the common law scheme. One reason is the "lack of a relationship between the common law categories and the exercise of reasonable care." A second reason is the change in society from a chiefly rural one to

133. Heins, 552 N.W.2d at 55.
135. Id.
137. Keeton et al., supra note 49, § 62, at 432.
138. 62 Am. Jur. 2d Premises Liability § 80. See also Heins, 552 N.W.2d at 55 (quoting Rowland v. Christian, 443 P.2d 568 (Cal. 1968)):

A man's life or limb does not become less worthy of protection by the law nor a loss less worthy of compensation under the law because he has come upon the land of another without permission or with permission but without a business purpose. Reasonable people do not ordinarily vary their conduct depending upon such matters, and to focus upon the status of the injured party as a trespasser, licensee, or invitee in order to determine the question whether the landowner has a duty of care, is contrary to our modern social mores and humanitarian values. The common law rules obscure rather than illuminate the proper considerations which should govern determination of the question of duty.
an urban industrial society. Another justification for abandoning the harsh common law rules is elimination of the complexity and unpredictable results which sometimes result from the application of harsh common law rules. Critics of the common law scheme contend that sometimes contemporary community standards and the complexity of the rules present conflicts and confusion for juries resulting in verdicts incompatible with the common law. Jurisdictions that urge the abandonment of premises liability based upon the distinctions of the status of the entrant suggest the substitution of a standard based upon reasonable care and the foreseeability of the injury under ordinary negligence principles.

3. The Rationale for the "Firefighter's Rule"

Three rationales have been offered as the foundation for the firefighter’s rule. The first rationale for the firefighter’s rule is the principle of assumption of the risk. The second rationale is based upon the officer’s assumption of duties or the foreseeable

139. Heins, 552 N.W.2d at 55-56, quoting Mounsey v. Ellard, 297 N.E.2d 43, 51 (Mass. 1973), where the court found:

It no longer makes any sense to predicate the landowner's duty solely on the status of the injured party as either a licensee or invitee. Perhaps in a rural society with sparse land settlements and large estates, it would have been unduly burdensome to obligate the owner to inspect and maintain distant holdings for a class of entrants who were using the property “for their own convenience” . . . but the special immunity which the licensee rule affords landowners cannot be justified in an urban industrial society.

140. Heins, 552 N.W.2d at 56 (citing Kermarec v. Compagnie Generale, 358 U.S. at 630-31) where the Court declared:

[C]ourts have found it necessary to formulate increasingly subtle verbal refinements, to create subclassifications among traditional common law categories, and to delineate fine gradations in the standards of care which the landowner owes to each. Yet even within a single jurisdiction, the classifications and subclassifications bred by the common law have produced confusion and conflict. [D]istinctions which the common law draws between licensee and invitee were inherited from a culture deeply rooted to the land, a culture which traced many of its standards to a heritage of feudalism.

The Supreme Court went on to describe the common law as a “semantic morass” and declined to apply it to admiralty law. Id.


142. Id. at § 431.

143. Riley, supra note 102, at 218.

144. Id.
risks of employment and the consequent compensation for risk.145 A firefighter or police officer cannot complain of negligence in the creation of dangerous situations requiring his assistance because they have voluntarily committed themselves to dealing with hazardous circumstances.146 Where states have abolished the doctrine of implied assumption of risk, the firefighter's rule is abolished as a rule of law.147 The third rationale is a cost-spreading rationale under which recovery is barred because of the availability of a statutory compensation scheme funded with tax dollars which usually includes enhanced salaries, disability benefits, and retirement benefits.148 This rationale is based on the public policy decision to meet the public obligation to firefighters and police officers injured in the line of duty through tax supported compensation mechanisms rather than individual tort claims.149

4. Reasons for Adoption of a Special Premises Liability Rule for Police Officers

Commentators promote several reasons for adopting the classification scheme which makes police officers sui generis. When police officers enter the land of another in the performance of their public duties they act in the best interest of the public, not for their own convenience and pleasure.150 The landowner does not have the freedom to approve or refuse the admission of a police officer who enters by authority of law and could not lawfully stop the officer if he wished to do so.151 An express or implied invitation by the land owner to enter the land is an essential element of the invitee classification.152 Police Officers are not trespassers since they are privileged to enter the premises when acting within the bounds of their official duties.153 Because police officers often do not fit neatly into the common law categories of invitee, licensee, and trespasser, some jurisdictions place them in a separate category for purposes of determining premises liability.154

145. Id. See also 62 AM. JUR. 2D Premises Liability § 431 (1990); KEETON ET AL., supra note 49, § 61, at 431.
147. Id.
148. Riley, supra note 102, at 218.
149. Id. at 235-236.
151. Id.
152. Id.
153. Id.
IV. ANALYSIS

Police officers acting by authority of law are treated under the common law categories of entrants to land as invitees, licensees, and trespassers in the vast majority of jurisdictions. Whether they are treated as invitee or licensee depends both on the circumstances of the case and the jurisdiction. A few jurisdictions treat police officers *sui generis* and afford them distinct treatment. Until recently in North Carolina, the status of police officers entering the land of another by authority of law was uncharted territory.

A. The Reasoning of the Supreme Court Decision

Our Supreme Court joined a minority of jurisdictions recognizing the status *sui generis* of a police officer injured while acting in his official capacity as the result of landowner negligence in the maintenance of the premises. In reaching this decision, the Court discussed briefly the ways in which various jurisdictions treat police officers who are injured on the land of another while acting under authority of law. The Court accounted for jurisdictions which recognize the poor fit of some entrants to land into the traditional classifications of invitee or licensee, and the consequent application in some jurisdictions of the "firefighter's rule," classification of some entrants *sui generis*, and the abandonment in some jurisdictions of all or some of the distinctions based upon an entrant's status as invitee, licensee, or trespasser.

Defendant urged the Court to adopt the "firefighter's rule" and apply it to the facts of this case to preclude recovery by Plaintiff. Justice Frye responded by stating where the "firefighter's rule" applies, "a police officer ... who is injured in the line of duty, generally cannot recover damages for negligence in the very situation that creates the occasion of their services." The majority of the Court of Appeals concluded that "plaintiff was injured not as a result of a risk incident to the performance of his duties as a police officer, but from a condition of the premises which plaintiff's

156. *Newton*, 342 N.C. at 561-62, 467 S.E.2d at 63-64.
157. *Id.*
158. *Id.* at 562, 467 S.E.2d at 64.
159. *Id.* at 561, 467 S.E.2d at 64.
evidence tended to show was inherently dangerous." Accord-
ingly, Justice Frye concluded that "the 'firefighter's rule' is inap-
plicable to the facts of Newton." 

The police officer in this case was summoned to defendant's
premises in response to a silent burglar alarm and was required to
enter the premises in the performance of his public duty. Justice Frye stated that this police officer "does not fit the traditional
definitions of either licensee or invitee, [but] he should be accorded
the same protection as one who is invited to the landowner's prem-
ises." Justice Frye continued:

The police officer entering the premises of a landowner in the per-
formance of his public duty enters by authority of law, and the
officer's invitation to enter the premises should be implied in law.
Thus, the landowner's duty toward the police officer who enters
the premises in response to an emergency call to the premises
should be no less than the duty owed to a person entering the
premises at the specific invitation of the landowner. Accordingly,
we hold that the duty owed to the police officer in the instant case
is the same as the duty owed to an invitee.

B. The Scope of the Decision

1. Impact on Adoption of the "Firefighter's Rule" in North
   Carolina

Although the "firefighter's rule" has been applied in many
jurisdictions to limit recovery by police officers injured in the line
of duty for more than 100 years, this rule has not been applied
in North Carolina. The Supreme Court declined to apply the
"firefighter's rule" to the facts of this case, presumably because the
rule would not be applicable to these facts in other jurisdictions.
The question is left open as to whether the "firefighter's rule" may
be applied in North Carolina under an appropriate fact pattern
such as when a drunken bar patron shoots a police officer respond-
ing to a call from a bar owner complaining of a disturbance.

160. Id. at 562, 467 S.E.2d at 64 (citing Newton v. New Hanover County Bd. of
   Ed. 114 N.C. App. 719, 724, 443 S.E. 2d 347, 350 (1994)).
161. Id.
162. Id.
163. Id.
164. Id.
165. Straus, supra note 102, at 2032.
2. The Implication of Invitee Status for All Police Officers Acting by Authority of Law

In the Newton opinion, Justice Frye specifically stated that the “police officer entering the premises of a landowner in the performance of his public duty enters by authority of law.” According to Justice Frye, “the officer's invitation to enter the premises should be implied in law.” The further implication is that the duty of care owed to a police officer who enters the land of another by authority of law is the duty of care owed to an invitee. In North Carolina, the duty of care owed by a landowner to an invitee is to use ordinary care to keep his property reasonably safe and to warn of hidden perils or unsafe conditions that could be discovered by a landowner's reasonable inspection. A police officer could thus not recover damages from a landowner if his injury is caused by a reasonably apparent risk, but he may recover if his injury is proximately caused by a hidden or unanticipated risk attributable to the landowner's negligence.

3. Circumstances Implying an Invitation to Enter the Land of Another

Officer Newton was injured when he responded in performance of his public duty to a silent burglar alarm on the premises of defendant. It appears that the court treated this silent “call for assistance” as an invitation to enter the premises of the defendant landowner in order to establish a duty of care as a “quasi-invitee”. It is clear from the facts of the case, the analysis by the Court of Appeals, and the Supreme Court that Plaintiff was neither a traditional common law invitee nor a licensee. Justice Frye stated:

 Plaintiff was obliged to enter the premises to discharge his duties as a public officer. While plaintiff does not fit the traditional definitions of either licensee or invitee, we believe that he should be

166. Newton, 342 N.C. at 562, 467 S.E.2d at 64. See supra text accompanying notes 91-100 for a discussion of persons on the land as a matter of right. In other jurisdictions, police officers entering under authority of law have generally been found to be licensees, but some courts find them to be invitees or to have special status.

167. Id.

168. Id.

accorded the same protection as one who is invited to the landowner's premises.\footnote{170}

It is certain from the \textit{Newton} decision that a police officer responding to a silent alarm in North Carolina is afforded the duty of care due to an invitee. It is not certain under what circumstances this status will be extended?

A broad interpretation of \textit{Newton} would extend this "quasi invitee" duty of care to all circumstances in which a police officer enters the land of another by authority of law. Possibilities include routine security patrols, service of process, pursuing an alleged burglar across the premises, conducting surveillance of potentially criminal behavior, responding to an altercation between rowdy citizens at a public facility, or a noisy domestic dispute reported by an annoyed neighbor. In some of these examples, there is no direct benefit to the landowner, and hence no explicit reason to infer an invitation. This absence of benefit to the landowner suggests an unfairness in assigning a landowner liability for injuries to an individual he did not invite onto his land.

A more narrow interpretation would limit this "quasi-invitee" status to situations where an invitation can realistically be implied. Examples may include stepped up security patrols in response to a business owner's request after a break-in or vandalism, a telephone call to 911 for help during a domestic conflict or suspected burglary attempt, investigation by police officers of a crime reported by the landowner on his property, or presentations by police officers in schools, churches, or at other civic meetings. In these instances, the landowner requests the presence of a police officer and implicitly commits to liability for injuries caused by negligent maintenance of the premises.

4. \textit{The Landowner's Duty to Warn of Hidden Perils or Unsafe Conditions}

When a landowner purposefully invites a person onto his premises for the purpose of transacting business, he has both the obligation to use ordinary care to keep his property reasonably safe and the obligation to warn of dangers on the premises. In North Carolina, when a police officer enters another's property under authority of law, the officer is impliedly owed the same duty of care as an ordinary invitee. Apparently, invitation or consent to a police officer's presence upon the land is irrelevant in establish-

\footnote{170. \textit{Newton}, 342 N.C. at 562, 467 S.E.2d 64.}
ing the landowner’s liability for injuries sustained by the officer. The landowner has a duty to warn invitees of hidden perils or unsafe conditions. However, the Newton decision did not indicate how a landowner can be expected to convey such a warning if he does not know and has no reason to know the police officer is on his property.

The role of a police officer is unique. He enters the land of others routinely in the performance of his public duties, often without the landowner even being aware that he has entered the premises. Perhaps the duties owed to a police officer by landowners should be unique as well. One court imposes liability on a possessor of land for physical harm to a police officer which is caused by a condition of the land only if the possessor:

1. knows or by the exercise of reasonable care could discover the condition, and should realize that it involves an unreasonable risk of harm to such invitee, and
2. should expect that the invitee will not discover or realize the danger, or will fail to protect himself against it, and
3. fails to exercise reasonable care to protect the invitee against the danger.

The third requirement implies that the landowner must know about the police officer’s presence in order to be held liable for injury to the police officer. Another court spelled it out clearly when it established that the duty of care owed by a landowner or occupier of land to a police officer who enters the land under authority of law, regardless of whether he was summoned by the owner or entered of his own volition, was:

1. to use reasonable care to keep in safe condition those parts of the premises which are used as the ordinary means of access for all persons entering thereon, and
2. If he knew of the officer’s presence on the premises, was cognizant of a dangerous condition thereon, and had reason to believe that the officer was unaware of the danger, to warn him of the condition and of the risk.

A reasonable alternative to the invitee duty of care may require a landowner to warn a police officer of hidden perils where

171. Tinney, supra note 169, § 4(c).
172. Id.
173. Tinney, supra note 169, § 4(b) (discussing Fancil v. Q.S.E. Foods, Inc., 328 N.E. 2d 538 (Ill. 1975)).
the landowner has knowledge of the peril, but only when the landowner has the opportunity to give warning.\textsuperscript{175} The "proper test to be applied to the liability of the landowner [is] that of 'reasonableness' which should be resolved by the trier of fact."\textsuperscript{176}

V. Conclusion

The North Carolina Supreme Court's decision in \textit{Newton v. New Hanover County Board of Education} establishes North Carolina as one of the minority jurisdictions that recognize police officers \textit{sui generis} when they enter the land of another under authority of law.\textsuperscript{177} Rather than applying the traditional common law categories of "invitee," "licensee," and "trespasser" to police officers, our Supreme Court has carved an exception to landowner liability when a police officer is injured on the premises as a result of the landowner's negligence. In so doing, police officers are now entitled to sue negligent landowners for injuries that occur when they enter upon the land by authority of law. It is unknown at this time whether the holding will be limited to instances when an invitation to a police officer to enter can be realistically implied (i.e. entry in response to the landowner's silent alarm), or whether the holding will apply to all circumstances when a police officer enters the land of another by authority of law, even when there is no direct benefit to the landowner.

While the rights of police officers are expanded by this decision, the responsibility of landowners for injury to police officers is expanded as well. In North Carolina, the common law regarding invitees requires a landowner to use ordinary care to keep his property reasonably safe and to warn of hidden perils or unsafe conditions that could be ascertained by reasonable inspection. It is untenable that a landowner should be under a similar duty to warn an entrant to land of hidden perils or unsafe conditions if the landowner is unaware that the entrant is upon his land. The duty to warn should be imposed only where there is reasonable opportunity to warn, a circumstance that is possible only when the landowner is aware that a police officer is on his premises or is about to enter his premises.

By eliminating the need for a police officer to be classified as invitee or licensee in order to recover for injuries due to landowner

\textsuperscript{175} Tinney, \textit{supra} note 169, § 4(c).

\textsuperscript{176} Tinney, \textit{supra} note 169, § 9(a).

\textsuperscript{177} Newton, 342 N.C. 554, 467 S.E.2d 58.
negligence, and treating this class *sui generis*, the Court may have opened the door to future consideration of eliminating these classifications for other groups who enter the land in the performance of a public duty, e.g. firefighters. Perhaps the Court or the legislature will consider the complete elimination of the common law classifications of "invitee," licensee," and "trespasser" and thereby join a growing minority of jurisdictions that recognize that the foundation of determining whether a landowner is liable for the injuries to an entrant on his property is the standard of reasonable care and foreseeability.

*Linda Sayed*