South Carolina Law Review

Volume 57 | Issue 2 Article 6

Winter 2005

Landowners' Duty to Guests of Invitees and Tenants: Vogt. v. Murraywood Swim & (and) Racquet Club and Goode v. St. Stephens United Methodist Church

Matthew D. Lincoln

LANDOWNERS' DUTY TO GUESTS OF INVITEES AND TENANTS: *VOGT V. MURRAYWOOD SWIM & RACQUET CLUB* AND *GOODE V. ST. STEPHENS UNITED METHODIST CHURCH*

I. SOUTH CAROLINA ENCOUNTERS THE GUEST ISSUE

South Carolina follows traditional premises liability law and defines the duty of care owed by the owner or controller of the premises by reference to categories of entrants, such as invitee and licensee.[1] A current issue in South Carolina courts is the classification of, and the duty of care owed to, guests of invitees or tenants vis-à-vis the landowner. The issue has presented itself in two scenarios: first, when the guest of a private club member is injured on the club's premises; and second, when the guest of a tenant is injured in the common area of the leased premises. *Vogt v. Murraywood Swim & Racquet Club*[2] involved the first of these two scenarios and held that while a club member on the club's premises is an invitee vis-à-vis the club owner, the guest of that member is merely a licensee; thus, the club owner owes the guest of a club member a lesser degree of care.[3] *Goode v. St. Stephens United Methodist Church*[4] involved the second situation above and indicated, like *Vogt*, that a guest of a tenant in the common area of leased premises is a licensee.[5]

This Note questions these two decisions by observing that, according to relevant South Carolina law and the law of other jurisdictions, guests of an invitee "stand in the shoes" of their host. Therefore, these guests are entitled to the same status and duty of due care from the landowners as the invitees or tenants who invited them onto the premises. To achieve this result, South Carolina should abandon the distinction between invitees and licensees and demand from landowners reasonable care for all lawful entrants. This solution would allow parties to avoid the currently unpredictable and time-consuming litigation surrounding a guest's proper categorical status. Further, by abandoning the distinctions, the law would no longer arbitrarily relieve landowners of liability for injuries caused by their negligence solely because a visitor did not meet certain legal criteria.

Part II of this Note summarizes common law premises liability, specifically focusing on licensees and invitees. Part III analyzes the holdings in *Vogt* and *Goode*, explaining the South Carolina Court of Appeals' rationale for categorizing guests as licensees in spite of the invitee status of the inviting person. Part IV provides a review of decisions from other jurisdictions with holdings contrary to South Carolina. Part V discusses the rationale of *Vogt* and *Goode* in the context of policy and reason, highlighting the desirability of avoiding potentially inconsistent decisions. Finally, Part VI focuses on a recent premises liability decision in North

1. A detailed discussion of the categories of entrants and the duties owed to each category follows in Part II.
2. 357 S.C. 506, 593 S.E.2d 617 (Ct. App. 2004).
3. *Id.* at 511, 593 S.E.2d at 620.
4. 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997).
5. *Id.* at 442, 494 S.E.2d at 831.

Carolina, arguing that the law of that state has made a positive change. Part VI concludes by suggesting that South Carolina courts establish a new legal framework for the treatment of the guests of invitees and tenants.

II. PREMISES LIABILITY COMMON LAW: LICENSEE AND INVITEE AS A CATEGORICAL STATUS & THE DUTIES OWED TO THEM

The common law classified adult entrants[6] who came onto privately owned land into three categories—trespasser, licensee, and invitee—and imposed different standards of care owed by the landowner with respect to each different category. South Carolina follows these common law classifications of entrants and the associated duties of the landowners.

The invitee classification of entrants can generally be split into two categories: "(a) 'public invitees' who are invited to enter the land as a member of the public, or (b) business visitors, invited to enter the land in connection with some business dealing with the possessor."[7] As the name suggests, an invitation is critical to this entrant's status. An invitation can be in the form of (a) the premises being held open to the public, as with airports, public parks, and stores, or (b) "the landowner [having] arranged for the [entrant] to be on the land."[8] Ultimately, "anyone who receives implicit or explicit assurance of safety is entitled to the invitee status and the reasonable care that goes with it."[9] South Carolina's description of an invitee mirrors general common law principles: "An invitee is a person who comes on the premises with express or implied permission and for the purpose of benefitting the owner/occupier."[10]

"Landowners ordinarily owe a duty of reasonable care to their invitees."[11] This duty includes the duty "to make conditions on the land reasonably safe and to conduct [one's] operations with reasonable care."[12] In some cases, providing a warning to the invitee may satisfy the duty, but in other cases the duty may require

---

6. Courts classify children differently from adults because of their inability to fully understand both the dangers that may be present upon the land and the nature of their entry onto another's premises. Generally, when a condition that is unreasonably dangerous to children exists on the premises, the landowner owes a child entrant a duty of due care, even if the child is a trespasser or a licensee. For a more complete discussion of this issue, see F. PATRICK HUBBARD & ROBERT L. FELIX, THE SOUTH CAROLINA LAW OF TORTS 119–21 (3d ed. 2004).

7. DAN B. DOBBS, THE LAW OF TORTS § 234, at 599 (2000) (citing RESTATEMENT (SECOND) OF TORTS § 330 (1965)).

8. *Id.* § 234, at 599–600.

9. *Id.* § 234, at 600. The following are examples of individuals who have invitee status:

> [c]ustomers and prospective customers on the premises of any business open to sell goods, provide services, entertainment or recreation [;] . . . employees[;] independent contractors[;] . . . the employees of independent contractors who have been expressly or impliedly invited to the land [;] . . . people who are invited to private portions of the premises[;] invited for the potential economic benefit of the landowner[; and w]hen consistent with the purpose for which the invitation is implicitly or explicitly issued, *those who accompany the invitee.*

Id. § 234, at 600–01 (emphasis added) (footnotes omitted).

10. HUBBARD & FELIX, *supra* note 6, at 116, *quoted in* Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 510, 593 S.E.2d 617, 619 (Ct. App. 2004); *see* Sims v. Giles, 343 S.C. 708, 716, 541 S.E.2d 857, 861 (Ct. App. 2001).

11. DOBBS, *supra* note 7, § 234, at 599.

12. *Id.* § 235, at 602 (footnote omitted).

"an inspection of the premises and active steps to make [the premises] safe."[13] The duty of reasonable care dictates that an invitee's suit against a landowner is typically one of ordinary negligence, requiring the invitee to prove actual and proximate cause in addition to "negligence by the defendant in creating or maintaining an unreasonably dangerous condition."[14] South Carolina law, again mirroring the common law, mandates that "[a]n owner/occupier owes an invitee a duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks."[15]

Licensees are those persons "on the land by the landowner's express or implied consent but who are there for their own purposes."[16] Licensees do not rise to the same status level of an invitee "because they are not on land open to the public generally and [are] not present for any potential economic transaction with or benefit to the landowner."[17] Traditionally, the common law included social guests in the category of licensees;[18] social guests do not typically attain invitee status "because, although the owner's invitation is a consent to their presence, they are not potentially engaged in direct economic transactions with the owner."[19] South Carolina Law similarly states that "[a] licensee has either the consent of the owner/occupier or some other privilege to visit the premises, but he is there for his own purpose rather than to benefit the owner/occupier."[20] South Carolina courts have also held that a licensee "'does not enter for a purpose directly or indirectly connected with the business dealings of the possessor.'"[21]

The common law duty landowners owe to licensees does not include a duty to inspect the premises for dangerous conditions or to make the premises safe. Surprisingly, when a landowner grants permission or extends an invitation to a social guest, he is not assuring that the "premises will be . . . safe."[22] The landowner has no "duty of reasonable care with respect to conditions on the land, but owes only the duty not to intentionally, willfully, or wantonly injure the licensee."[23] Simply stated, a landowner will generally not have to "inspect the land or correct unsafe conditions for the benefit of the licensee."[24] Some courts have held that if a landowner should have known a licensee might be present on the premises, an

---

13. *Id.*
14. *Id.* § 235, at 603.
15. HUBBARD & FELIX, *supra* note 6, at 117; *see Vogt*, 357 S.C. at 510, 593 S.E.2d at 619.
16. DOBBS, *supra* note 7, § 233, at 596.
17. *Id.*
18. *Id.*
19. *Id.* The following are examples of individuals who have licensee status:
> people who are hunting or fishing on the land with at least the tacit or implied permission of the landowner[;] . . . those permissibly on the land to look for their pet, take a short cut, sell goods or distribute advertising or religious literature or to solicit contributions[;] . . . people who are on the premises to help friends or relatives with work around the house or to help with a Girl Scout troop or to study the Bible with an owner who does not make a business of such things.

Id.
20. HUBBARD & FELIX, *supra* note 6, at 113–14; *see Vogt*, 357 S.C. at 510, 593 S.E.2d at 619.
21. *Vogt*, 357 S.C. at 510, 593 S.E.2d at 620 (quoting RESTATEMENT (SECOND) OF TORTS § 330 cmt. h(3) (1965)) (alterations and omissions in original).
22. DOBBS, *supra* note 7, § 233, at 597 (citing Landry v. Hilton Head Plantation Prop. Owners Ass'n, 317 S.C. 200, 452 S.E.2d 619 (Ct. App. 1994)).
23. *Id.*
24. *Id.*

additional duty is imposed on the landowner; specifically, "ordinary care and diligence must be used to prevent injuring [the licensee] after his presence is known or *reasonably should be anticipated.*"[25] South Carolina courts have again followed the common law, holding that the duty landowners owe to licensees is less than a duty of due care but is higher than the duty owed to trespassers:[26]

> "The possessor is under no obligation to exercise care to make the premises safe for [the licensee's] reception, and is under no duty toward him except:
> (a) To use reasonable care to discover him and avoid injury to him in carrying on activities upon the land.
> (b) To use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover."[27]

Generally, in the context of leased premises, a lessor does not have a duty to use due care to insure the premises are safe, nor is "a lessor of land . . . liable to his lessee or to others on the land for physical harm caused by any dangerous condition . . . which existed when the lessee took possession."[28] The same is true for conditions arising after the lessee took possession.[29] However, exceptions to these rules exist. One exception relates to situations where the landlord maintains control over a portion of the property, such as the common areas.[30] "South Carolina has followed the traditional rule and has not imposed a duty on the lessor to use due care unless one of the exceptions . . . is applicable."[31] South Carolina courts recognize the common-area exception, holding that lessors have a duty to use due care to maintain common areas when they retain control of them[32]—thereby classifying tenants as invitees when the tenant is in a common area.

---

25. Cooper v. Corporate Prop. Investors, 470 S.E.2d 689, 691 (Ga. Ct. App. 1996) (emphasis added).

26. HUBBARD & FELIX, *supra* note 6, at 114–15. Both a licensee's permission to be on the premises and the absence of any wrongdoing justify the rule that a landowner owes a higher duty of care to a licensee than a trespasser. *See id.* at 114.

27. Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (quoting Frankel v. Kurtz, 239 F. Supp. 713, 717 (W.D.S.C. 1965) (emphasis omitted)).

28. RESTATEMENT (SECOND) OF TORTS § 356 (1965).

29. *Id.* § 355.

30. *Id.* § 360. The *Restatement* provides other exceptions to the general rule precluding liability of lessors. These exemptions include repairs made pursuant to a contract with the lessor; undisclosed, dangerous conditions known to the lessor; land leased for a purpose involving admission of the public; and negligent repairs made by the lessor. *Id.* §§ 357–59, 362.

31. HUBBARD & FELIX, *supra* note 6, at 123.

32. *Id.* at 126.

III. RECENT SOUTH CAROLINA CASES ADDRESSING THE STATUS OF AN INVITEE'S OR TENANT'S GUEST

A. An Invitee's (Club Member's) Guest

Vogt v. Murraywood Swim & Racquet Club involved Vincent A. Vogt, an adult who entered the private club's premises at the invitation of, and accompanied by, a club member.[33] The social guest Vogt was later injured on the club's premises as a result of a diving board accident at the swimming pool.[34] Vogt sued the club, asserting negligence and strict liability.[35] The South Carolina Court of Appeals, affirming the trial court's ruling, held that Vogt, the guest of a club member, was only a licensee vis-à-vis the club owner.[36] This holding was contrary to the court of appeals' prior determination that property owners association members are invitees, warranting a greater degree of care from the owner.[37] Also, even though the club charged non-members a two-dollar admission fee and limited the number of times a guest could visit, the court was not convinced by Vogt's contention that the pool facility's similarity to a business entitled him to the same invitee status as the member who invited him.[38]

The *Vogt* court justified its classification of the plaintiff as a licensee by emphasizing the social guest's permission to be on the property. The court drew attention to the South Carolina Supreme Court's definition of a licensee as "'a person who is privileged to enter upon land by virtue of the possessor's consent.'"[39] The *Vogt* court further stated that while a guest may be invited to enter the premises, the invitation does not establish the guest's status as an invitee. To the contrary, because "'[t]he use of the premises is extended to him merely as a personal favor to him[,]'" a social guest must be deemed a licensee.[40] "'[A]n invitee'" by contrast "'is a person who comes on the premises with express or implied permission.'"[41] The court then referenced *Landry v. Hilton Head Plantation Property Owners Ass'n*[42] where a member of a property owners association, injured in a common

33. 357 S.C. 506, 508, 593 S.E.2d 617, 618–19 (Ct. App. 2004). The court held that the defendant Murraywood was not liable, the court classified Vogt as a licensee, and the court noted the absence of negligence on which to base liability. The appellate court stated that "[t]he trial court extended wide latitude to Vogt . . . to establish negligence against Murraywood"; thus, the appellate court chose not to reverse the determination that Vogt failed to prove negligence. *Id.* at 513, 593 S.E.2d at 621.

34. *Id.* at 508, 593 S.E.2d at 618.

35. *Id.*

36. *Id.* at 511, 593 S.E.2d at 620.

37. *Id.* at 510–11, 593 S.E.2d at 619–20 (citing Landry v. Hilton Head Plantation Prop. Owners Ass'n, 317 S.C. 200, 202, 452 S.E.2d 619, 620 (Ct. App. 1994)).

38. Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 509–10, 593 S.E.2d 617, 619 (Ct. App. 2004).

39. *Id.* at 510, 593 S.E.2d at 619 (quoting Neil v. Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986)); *see also* Sims v. Giles, 343 S.C. 708, 720, 541 S.E.2d 857, 863 (Ct. App. 2001) ("A licensee is a person who is privileged to enter or remain upon land by virtue of the possessor's consent.").

40. *Vogt*, 357 S.C. at 510, 593 S.E.2d at 620 (quoting RESTATEMENT (SECOND) OF TORTS § 330 cmt. h(3) (1965)).

41. *Id.* at 510, 593 S.E.2d at 619 (quoting HUBBARD & FELIX, *supra* note 6, at 112); *see also Sims*, 343 S.C. at 716, 541 S.E.2d at 861–62 (stating that an invitee enters another's property at an express or implied invitation of the possessor).

42. 317 S.C. 200, 452 S.E.2d 619 (Ct. App. 1994).

area, was characterized as an invitee, largely because the member "had the *right* to use the common areas without the association's permission."[43]

Vogt emphasized that the dispositive issue in determining the plaintiff's status was that he did not have a right—independent from that of the club member's right—to use Murraywood's facilities.[44] Vogt was a licensee because his presence was "entirely permissive," he "visited the pool only because [a member] invited him," and he did not "'enter for a purpose directly or indirectly connected with the business dealings of the possessor.'"[45]

B. A Tenant's Guest

Alphonso Goode went to the St. Stephens Apartments to visit a friend who lived there.[46] While on the common grounds of the apartment complex, Goode, as a non-resident social guest, sustained injuries when three individuals attacked and severely beat him.[47] Goode sued the apartment complex owners, asserting they negligently failed to provide adequate security.[48] The trial court ruled in favor of the defendant apartment complex, deeming Goode a licensee and holding that the apartment complex had no duty to protect a social guest from the intentional attacks of third parties.[49]

The South Carolina Court of Appeals affirmed the trial court's ruling.[50] The court of appeals justified classifying Goode as a licensee in the same manner the court justified classifying the social guest in *Vogt* as a licensee. The court emphasized that Goode was privileged to be on the premises due to a tenant's consent, rather than as an independent right.[51] The court noted that Goode was on the property primarily for his own benefit, not for the benefit of the apartment complex owners,[52] and was not a public invitee since the apartment complex was "not a place held open to the public and [was] instead a private place for only

---

43. *Vogt*, 357 S.C. at 511, 593 S.E.2d at 620 (citing *Landry*, 317 S.C. at 204, 452 S.E.2d at 621).

44. *Id.*

45. Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 511, 593 S.E.2d 617, 620 (Ct. App. 2004) (quoting RESTATEMENT (SECOND) OF TORTS § 330 cmt. h(3) (1965)) (alterations and omissions in original).

46. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 438, 494 S.E.2d 827, 829 (Ct. App. 1997).

47. *Id.* at 438, 494 S.E.2d at 829.

48. *Id.* at 440, 494 S.E.2d at 830.

49. *Id.* at 439–40, 442, 494 S.E.2d at 830–32. For the purposes of this Note, the nature of the specific injuries to Vogt and Goode are secondary to both the analysis of their status and the duty of care the respective landowners owed to them.

50. *Id.* at 437, 494 S.E.2d at 829. The court classified Goode as a licensee and held the defendant St. Stephens not liable. In doing so, the court stressed the absence of negligence. Specifically, the court held that the defendant had no duty to protect Goode, found a lack of evidence that the defendant's safety measures "were performed with less than due care," and found a lack of proximate cause. *Id.* at 442–47, 494 S.E.2d at 832–34.

51. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441–42, 494 S.E.2d 827, 831 (Ct. App. 1997).

52. *Id.* at 441–42, 494 S.E.2d at 831. Similarly, Goode was not a business invitee for the same reasons stated in *Vogt*; his presence at the apartment complex was not related to the business dealings of the owner. Because Goode was not visiting the apartment complex as a prospective tenant, which the court implied would have qualified him as an invitee, but was merely visiting a friend, the court deemed him a social guest deserving no more than the status of a licensee—even though he was in the common area when he was injured. *Id.*

people who were specifically invited."[53] Further, the court distinguished the apartment building from a place of public resort, where the owner profits simply by inviting the public and must therefore bear the losses the public creates.[54]

Goode relied on a statement in *Cramer v. Balcor Property Management, Inc.* that "'a landlord does not owe a duty to a tenant to provide security *in and around a leased premises* to protect the tenant from criminal activity of third parties.'"[55] In relying on this notion, the court stated:

> *Even if Goode were a business invitee* at the time of the incident, St. Stephens would not be liable for his injuries . . . . [The duty of reasonable care] does not extend to protection from criminal attacks from third parties unless the business owner knew or had reason to know the criminal attack would occur.[56]

IV. GENERAL COMMON LAW RULE FOR GUESTS

A. Club Members' Guests on the Club's Premises

The position expressed in *Vogt* classifying guests of members on club premises as licensees is contrary to the majority rule. "A social club owes persons entering a club the duty of care as invitees, regardless of whether the persons are members of the club or guests of members, although in some cases it appears that the guest of a member is assumed to be a licensee."[57] As previously discussed, invitee status includes a duty of reasonable care on the landowner.

The Court of Appeals of New York dealt with the issue of the duty of care owed to a club guest in *Mulligan v. New York Athletic Club of New York.*[58] In

---

53. *Id.* at 441, 494 S.E.2d at 831.

54. *Id.* (citing Cramer v. Balcor Prop. Mgmt., Inc., 312 S.C. 440, 443, 441 S.E.2d 317, 318 (1994)).

55. *Goode*, 329 S.C. at 442, 494 S.E.2d at 831–32 (quoting *Cramer*, 312 S.C. at 444, 441 S.E.2d at 319).

56. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 443, 494 S.E.2d 827, 832 (Ct. App. 1997) (citing Bullard v. Ehrhardt, 283 S.C. 557, 559, 324 S.E.2d 61, 62 (Ct. App. 1984)).

Historically, courts were hesitant to impose upon landlords a duty to protect their tenants (and their tenant's invitees) from foreseeable misconduct by third parties. Many courts today treat foreseeable misconduct by third parties like any other risk in the landlord-tenant relationship. In South Carolina, a landlord does not owe a general duty to protect tenants from all misconduct by third parties, such as harm resulting from criminal entry or attacks within apartment units. HUBBARD & FELIX, *supra* note 6, at 131–32. Courts following the more recent approach typically hold that if an exception to the general rule applies, like the requirement that the landlord use due care in a common area, this duty of due care includes a duty to protect tenants from foreseeable misconduct by third parties within that common area. *Id.*

Cramer and *Cooke v. Allstate Management Corp.*, 741 F. Supp. 1205 (D.S.C. 1990), both indicate that South Carolina limits a landlord's duty in common areas to instances where the conditions of the property, such as a defective floor, directly harm the tenant. This is different from conditions of the property that facilitate misconduct of third parties, like defective lighting. Given the due care owed to tenants and other lawful entrants in common areas, South Carolina may choose to expand a landlord's duty to include protection of the tenant from foreseeable misconduct of third parties in common areas. *See* HUBBARD & FELIX, *supra* note 6, at 132.

57. 62 AM. JUR. 2D *Premises Liability* § 453 (2005) (footnotes omitted).

58. 302 N.Y. 705 (1951).

Mulligan, the plaintiff-guest was injured after falling into a pit while receiving a tour of the club facilities from a member he accompanied to the club.[59] The court affirmed a judgment in favor of the plaintiff, who alleged the club was negligent in maintaining a dangerous condition and failing to provide sufficient safeguards against foreseeable accidents.[60] The holding in *Mulligan* implies the court considered the guest to be an invitee.

The Washington Supreme Court has also classified the guest of a member at a club as an invitee. In *Hooser v. Loyal Order of Moose, Inc.*[61] the plaintiff attended a New Year's Eve party at a lodge owned by the defendant, the Loyal Order of Moose, Inc., as a guest of her husband, who was a "member of the Moose."[62] The court stated that the plaintiff was an invitee and that the club thus "had the duty to use ordinary care to keep the premises in reasonably safe condition."[63] The court held that to recover as an invitee, the plaintiff needed to prove

> "[the club owner] was negligent toward her, . . . [and she] must establish that [the club owner] creat[ed] a dangerous condition, and with knowledge of this condition, either actual or constructive, failed to remedy it or to warn of the danger. In other words, [the plaintiff] must establish that [the defendant] failed to exercise that degree of care that a reasonably prudent and careful owner would deem sufficient to protect [those on the premises], while exercising ordinary care for their own safety."[64]

Even though the court did not determine that the defendant acted with due care,[65] the case is relevant because the court attributed invitee status to a club member's guest.

The Vermont Supreme Court has also ruled on the issue of the duty of care owed to a club guest.[66] Where a guest was injured at a social function on club premises, the court ruled that "[t]he use of [the club's] recreational area by [the member] and his guests was to its interest and advantage and was in furtherance of its purposes and functions. The status of such persons is that of a business visitor."[67] The court equated a business visitor with an invitee, explaining:

> [The club owner] owed the plaintiff *the same duty respecting the condition of its premises that it owed to its members individually.* In the discharge of its duty, [the club owner] was bound to use *reasonable care to keep its premises in a safe and suitable condition* so that plaintiff would not be unnecessarily or unreasonably exposed to danger. If a hidden danger existed,

---

59. *Id.* at 706.
60. *Id.* at 707.
61. 416 P.2d 462 (Wash. 1966) (en banc).
62. *Id.* at 462.
63. *Id.* at 463.
64. *Id.* (quoting Kalinowski v. YWCA, 135 P.2d 852, 859 (Wash. 1943)).
65. *Id.* at 464.
66. Garafano v. Neshobe Beach Club, Inc., 238 A.2d 70 (Vt. 1967).
67. *Id.* at 75 (citing Robillard v. Tillotson, 108 A.2d 524 (Vt. 1954)).

> known to the defendant, but unknown and not reasonably apparent to the plaintiff, it was [the club owner's] duty to give warning of it to the latter. In those circumstances [the guest] had a right to assume that the premises, aside from obvious dangers, were reasonably safe for the purpose for which he was upon them, and that proper precaution had been taken to make them so.[68]

As additional justification for granting invitee status to a guest and the commensurate duty of due care, the court examined the behavior of the club owner, who permitted and even compelled members and their guests to enter the premises.[69] Specifically, "[i]f the owner or occupier of land 'directly or by implication induces persons to enter on and pass over his premises, he thereby assumes an obligation that they are in a safe condition, suitable for such use.'"[70]

In *Lucas v. Hesperia Golf & Country Club*,[71] the California Court of Appeals held that a minor who drowned in a country club pool "was an invitee by virtue of his father's membership which entitled members of the immediate family *and their guests* to use the recreational facilities of the club."[72] The invitee status meant that "the defendant owed him a duty of exercising due care to keep the premises in a reasonably safe condition."[73] It is important to reiterate that the plaintiff in *Lucas* was not himself a member of the club.[74] Rather, he was a relative of the member, and the court still deemed him worthy of due care.[75] By simultaneously addressing both the club member's family and unrelated guests,[76] the court seems to suggest there is no distinction with regard to the duty of care owed by the club owner to these two types of individuals.

B. Tenant's Guests in Common Areas

There exists some South Carolina authority that contradicts the position articulated in *Goode* that a guest of a tenant is a licensee in the common areas of an apartment complex. *Binnicker v. Adden*,[77] though not a case dealing with residential leased property, adopted the position of the then-current *Restatement of Torts*:

> "A possessor of land, who leases a part thereof and retains in his own possession any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee *and others lawfully upon the land with the consent of the lessee* or a sub-lessee for bodily harm caused to them by a dangerous condition upon that part of the land retained in the

68. *Id.* (emphasis added).
69. *Id.* at 74–75.
70. *Id.* at 74 (quoting Hobbs v. George W. Blanchard & Sons, 70 A. 1082, 1087 (N.H. 1908)).
71. 63 Cal. Rptr. 189 (Ct. App. 1967).
72. *Id.* at 193 (emphasis added).
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. 204 S.C. 487, 30 S.E.2d 142 (1944).

> lessor's control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe."[78]

Binnicker is at odds with *Goode* regarding the status of a tenant's guest in common areas that remain in the control of the landowner.

Other jurisdictions also provide authority that contradicts *Goode*. In *Sjogren v. Properties of Pacific Northwest, LLC*,[79] the Washington Court of Appeals ruled directly on the issue of the duty of care owed to a tenant's guest in a common area. In *Sjogren*, the guest of an apartment-building tenant fell down an unlit staircase and sustained injuries.[80] The court stated that "[a] property owner's duty of care is defined by the status of the person who enters the property. A residential tenant is an invitee. So is a tenant's guest."[81] Thus, the "landlord has an affirmative obligation to maintain common areas in a reasonably safe condition for a tenant or her guest."[82] The *Sjogren* court went on to describe the general negligence principle that liability only arises if the landlord knew or should have known about the dangerous condition.[83] Fundamentally, the *Sjogren* analysis provides a good model for South Carolina, recognizing that residential tenants and their guests are entitled to the same duty of care from landlords in common areas—the same duty owed to an invitee.

The Ohio Court of Appeals ruled on this issue in *Bae v. Dragoo & Associates, Inc.*,[84] when a child, who was a guest of a tenant, drowned in an apartment complex swimming pool.[85] The court ruled that the complex owner's "duty is to keep the premises in a *reasonably* safe condition."[86] Ultimately, the court ruled against the plaintiff and held that the owner did not breach that duty and was not negligent in maintaining its property in a safe condition.[87] Although the injured guest's claim failed, Ohio's position is that owners owe tenants and their guests the same standard of care—reasonable care—in common areas of apartment complexes.

The Texas Court of Appeals established a similar position in *Houston v. Northwest Village, Ltd.*,[88] a case involving a newspaper delivery person injured after slipping on an apartment complex sidewalk.[89] *Northwest Village* directly addressed whether the plaintiff was a licensee or an invitee in the common area.[90] The court expressly rejected both of the landowner's contentions: first, that the entrant's status depended solely on the delivery person's relationship with the landowner and second, that the delivery person was a licensee "because [the plaintiff] had no

78. *Id.* at 492, 30 S.E.2d at 145 (quoting RESTATEMENT OF TORTS § 360 (1934)) (emphasis added).
79. 75 P.3d 592 (Wash. Ct. App. 2003).
80. *Id.* at 593.
81. *Id.* at 594 (citations omitted).
82. *Id.*
83. *Id.* at 594 n.1.
84. 804 N.E.2d 1007 (Ohio Ct. App. 2004).
85. *Id.* at 1009.
86. *Id.* at 1015.
87. *Id.* at 1016.
88. 113 S.W.3d 443 (Tex. App. 2003).
89. *Id.* at 444.
90. *Id.*

business or other relationship inuring to the benefit of [the landowner] from which the invitation required for invitee status can be implied."[91] The court stated that the entrant's relationship with the tenant was integral to the entrant's status determination:

> [W]ith respect to the condition of parts of the premises over which a landlord retains control, the duty owed by the landlord to an invitee of a tenant is determined under the standard stated in Sections 360 and 361 of the Restatement (Second) of Torts. . . .
>
> [The focus is] not on the relationship between the landlord and the one entering the premises, but on that person's relationship with the tenant.[92]

Based on this principle, the court determined that the contract between the paper delivery person and the tenant implicitly gave the delivery person an invitation from the tenant to enter the property.[93] The court deemed the delivery person to be an invitee and held "a landlord's duties to the invitees of its tenants include the duty to exercise reasonable care to discover unreasonably dangerous conditions on those parts of the premises over which the landlord retains control."[94]

Conversely, the Georgia Court of Appeals in 2003 agreed with South Carolina's position that social guests of tenants are licensees vis-à-vis the landlord. In *Spear v. Calhoun*,[95] the Georgia Court of Appeals held that a landlord is not liable for a shooting that occurrs on the landlord's premises.[96] As in *Goode*, a third-party attacker caused the injury, instead of a defect or condition of a common area.[97] However, the *Spear* court still stated that "when the person on the premises is merely a social guest, '[t]he owner of the premises is liable to a licensee only for willful or wanton injury,'" and because the plaintiff "was, at most, a social guest or licensee, [the landlord] owed only the duty not to injure her willfully or wantonly."[98] These statements are troubling because the shooting did not occur inside a unit—in that case the landlord would have no control and no duty of reasonable care—but occurred outside on property owned, and presumably controlled, by the landlord.[99]

However, the Georgia Court of Appeals chose not to apply the *Spear* precedent in *Gomez v. Julian LeCraw & Co.*,[100] where the plaintiff slipped, fell, and sustained injury in the hallway of an apartment building.[101] The plaintiff in *Gomez* was a resident of the apartment building. After witnessing workers pull up carpet some time prior to the fall, the plaintiff entered the hallway, which was devoid of any

91. *Id.* at 445–47.
92. *Id.* at 445 (citations omitted).
93. *Id.* at 446.
94. Houston v. Nw. Vill., Ltd., 113 S.W.3d 443, 446 (Tex. App. 2003).
95. 584 S.E.2d 71 (Ga. Ct. App. 2003).
96. *Id.* at 72–73.
97. *Id.*
98. *Id.* at 73 (quoting GA. CODE ANN. § 51-3-2(b) (2000)).
99. *Id.* at 72.
100. 604 S.E.2d 532 (Ga. Ct. App. 2004).
101. *Id.* at 534.

warning signs or barricades, and slipped on the previously carpet-covered cement.[102] A slippery chemical that the workers had used to strip the carpet glue still covered the cement; upon failing, this chemical burned the plaintiff's skin.[103] Despite the fact that the plaintiff resided in the apartment building, the court found that the plaintiff was a trespasser. Still, the court held that "'[g]enerally, members of a tenant's family, *his guests*, servants, employees, or others present by his express or implied invitation, *stand in his shoes*, and are controlled by the rules governing the tenant as to the right of recovery for injuries arising from failure to keep the premises in repair.'"[104] The court also stated that "guests of a tenant are invitees upon the landlord's property."[105] Thus, it seems that the Georgia Court of Appeals adopted a new position that guests of tenants should receive the same duty of reasonable care as tenants in common areas of apartment complexes.

Like Georgia, North Carolina, before adopting a new position, initially followed the South Carolina courts' reasoning on this issue. *Street v. Moffitt*[106] and *Andrews v. Taylor*[107] are decisions with holdings similar to *Goode*. *Street* involved a minor who suffered injuries while on the landlord's premises from a power mower operated by a tenant; the court held that the landlord was not liable to the minor.[108] The court followed South Carolina rationale when it determined that the landlord was not liable, stating that "the minor plaintiff was a social guest of [the landlord's] tenants" and "even though the minor plaintiff may have been injured in a common area his status is that of a licensee."[109] The court explained that the landlord did not breach a duty because there was "no evidence of any willful or wanton negligence" and no indication that the landlord "increased any hazard to the minor plaintiff."[110] The court went on to justify its decision by noting that the landlord had no knowledge of the minor-guest's presence on the property.[111]

Andrews followed similar logic. *Andrews* involved a guest of a tenant who was injured in the swimming pool of an apartment complex.[112] The court held that "[w]hen a person enters upon the premises of another solely and exclusively in pursuit of his own pleasure, as did [the plaintiff] in the instant case, he is a licensee."[113] Because the court found no evidence that the landlord "was willfully or wantonly negligent in the operation and maintenance of the . . . swimming pool," which is the type of conduct from which a landowner must refrain to avoid liability to a licensee, the court affirmed the judgment for the defendant.[114]

North Carolina forged a new path in its premises liability jurisprudence, however, when the North Carolina Supreme Court decided *Nelson v. Freeland*.[115]

---

102. *Id.*
103. *Id.*
104. *Id.* (quoting Hohnerlein v. Thomas, 367 S.E.2d 95 (Ga. Ct. App. 1988)) (emphasis added).
105. *Id.*
106. 351 S.E.2d 821 (N.C. Ct. App. 1987).
107. 239 S.E.2d 630 (N.C. Ct. App. 1977).
108. *Street*, 351 S.E.2d at 822.
109. *Id.* at 823.
110. *Id.*
111. *Id.*
112. *Andrews*, 239 S.E.2d at 631.
113. *Id.* at 632.
114. *Id.*
115. 507 S.E.2d 882 (N.C. 1998).

Nelson abandoned the distinction between licensees and invitees and deemed both categories worthy of reasonable care from the landowner.[116] *Nelson*, which this Note discusses at length in Part VI.B, effectively gave both tenants and their guests invitee status vis-à-vis the landowner.

V. RATIONALE OF SOUTH CAROLINA'S TREATMENT OF GUESTS OF INVITEES AND TENANTS

A. Guests of Club Members—Paying for the Right to Bring Guests

As discussed above, Vogt, the guest of a club member, was injured at the club's swimming pool.[117] Initially, deeming Vogt an invitee might appear justified. However, as the South Carolina Court of Appeals held in *Vogt*, a guest is not an invitee because "'he does not enter for a purpose directly or indirectly connected with the business dealings of the possessor.'"[118] Thus, the court seemed to suggest that guest fees, a source of revenue for the club, are not "directly or indirectly connected with the business dealings" of the club. Even if the established policy of generating club revenue through guest fees does not relate to the business dealings of the club, by deeming club members invitees, the court implied that membership fees are sufficiently connected with the club's business dealings to warrant the higher duty of care owed to a fee-paying member. Thus, if paying membership fees makes the member an invitee vis-à-vis the club owner, determining exactly what privileges the fee-paying member is entitled to by payment of that fee seems logical.

The club owner in *Vogt*, and club owners in general, could not reasonably assert ignorance that guests of members would inevitably use its facilities. Club owners typically think that members will be inclined to bring guests to the club. Indeed, members likely consider the right to bring guests to the club in making a decision to join the club in the first place; this right adds to the value of the membership and may be the member's sole reason for joining. For example, a businessman may join a golf club solely to take clients golfing. In essence, the businessman is paying for the right to bring guests to the club. Thus, the right to bring guests to the club is likely a factor club owners take into account when they set member-initiation fees.

Club policies dictating how members may bring guests onto the premises, such as the policy of the club in *Vogt* which limited the number of times guests could visit the club and charged a fee for guests to enter the club, are evidence that a club owner knows guests are present and expects guests to enter. If an owner has these expectations and a member has paid a fee for the right to bring guests to the club, the owner has received an economic benefit from the guest's entry.

Though club guests undoubtedly receive a large benefit by entering the premises of private clubs, that benefit should not mask the benefits simultaneously accruing to the club owner. "An *invitee* is one who enters the premises with the

116. *Id.* at 892.
117. *See* Part III.A.
118. Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 510, 593 S.E.2d 617, 620 (Ct. App. 2004) (quoting RESTATEMENT (SECOND) OF TORTS § 330 cmt. h(3) (1965)).

consent of the possessor for some purpose of real benefit or interest to the possessor or *for the mutual benefit of both.*"[119] Stated otherwise, an invitee's entry relates to the owner's business or some other activity the owner conducts on the land and bestows a benefit to both the owner and the invitee. An admission fee provides an economic incentive for the owner to provide access to guests and also financially benefits the owner. At the least, both parties in *Vogt* benefitted.

B. Guests of Tenants

1. Control of the Premises Determines Duty

If the guest of a tenant sustains an injury on a part of the leased premises under the control of the landlord, the *Restatement (Second) of Property* states:

> A landlord who leases a part of his property and retains in his own control any other part the tenant is entitled to use as appurtenant to the part leased to him, is subject to liability to his tenant *and others lawfully upon the leased property with the consent of the tenant* or a subtenant for physical harm caused by a dangerous condition upon that part of the leased property retained in the landlord's control, if the landlord by the exercise of reasonable care could have: (1) discovered the condition and the unreasonable risk involved therein; and (2) made the condition safe.[120]

The plaintiff in *Goode* was lawfully on the leased premises in a common area controlled by the landlord that the inviting tenant was allowed to use when he was injured.[121] Although Goode was injured by a third party instead of a condition of the property,[122] the *Restatement*'s rationale of equal treatment of tenants and others lawfully on the premises—including tenants' guests—still applies. Due to the landlord's control of common areas, both tenants and their guests are not as readily able to take certain safety precautions to protect themselves from harm; they are dependent on the landlord for protection. Thus, regardless of the cause of the harm, requiring landowners to exercise the same duty of care as to both guests and tenants is logical.

---

119. 62 AM. JUR. 2D *Premises Liability* § 90 (2005) (emphasis added).

120. RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 17.3 (1977) (emphasis added). The comment to the rule provides examples of places that would be covered by the rule, such as "the hall, stairs, elevators and other approaches to the part of the property leased to the tenant [as well as] other parts of the leased property to the use of which by the express or implied terms of the lease the tenant is entitled." *Id.* § 17.3 cmt. a; *see* Landry v. Hilton Head Plantation Prop. Owners Ass'n, 317 S.C. 200, 204, 452 S.E.2d 619, 621 (Ct. App. 1994).

121. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 440–42, 494 S.E.2d 827, 830–31 (Ct. App. 1997).

122. *Id.* at 442, 494 S.E.2d at 831. The United States District Court for the District of South Carolina, applying South Carolina law, has limited a landlord's duty to maintain common areas. The landlord only has a duty to protect tenants from injuries resulting from conditions of the premises themselves. Cramer v. Balcor Prop. Mgmt, Inc., 848 F.Supp. 1222, 1225 (D.S.C. 1994); Cooke v. Allstate Mgmt. Corp., 741 F.Supp. 1205, 1211 (D.S.C. 1990).

2. The Right to Enter

The *Goode* court also indicated that the injured guest was a licensee because the tenant, as opposed to the landlord, gave him permission to be on the property.[123] According to the *Restatement (Second) of Torts*, the privilege of the visitor is not based upon consent of the lessor, "but upon the fact that he is entitled to enter by the right of the lessee, who is entitled under his lease to use the [common area] not only for himself, but also for the purpose of receiving any persons whom he chooses to admit."[124] Moreover, common areas are generally "provided not only for the use of the lessee but also for the use of such persons as the lessee chooses to receive."[125]

3. A Tenant's Guests Are a Landlord's Business

The *Goode* court further justified its decision to deem the tenant's guest a licensee by stating that the guest's presence in the common area was for the guest's own benefit and completely unrelated to the business dealings of the landlord.[126] However, if the terms of the lease allow the lessee to permit third persons to enter the common areas, "[i]t is the lessor's business . . . to afford his lessee facilities for receiving all persons whom he chooses to admit for any legitimate purpose."[127] Thus, "a person who, as between himself and the lessee, is a licensee [or invitee,] enters the land on a matter directly connected with the business of the lessor."[128] Included in a lessee's rent is the right to invite guests to the premises; a landlord undoubtedly accounts for his tenant's right to receive guests in determining the rental amount—just as a club owner likely does in setting membership fees. The lessor therefore receives an economic benefit from the guest's entry. Consequently, the guest should be "entitled to expect that the lessor will exercise reasonable care to discover and remedy any condition which makes his acceptance of the lessee's [invitation] dangerous to him."[129] A rule otherwise would allow lessors of land to escape liability solely because the person injured in the common area happened to be a guest and not a tenant. Treating tenants and their guests the same with regard to the duty owed by the landowner would prevent lawful visitors who are injured on the premises from going uncompensated.

C. Avoiding Inconsistent Decisions

Allowing guests to stand in the shoes of invitees and tenants, and thereby receive the same standard of care vis-à-vis the landowner, would bring consistency and predictability to South Carolina premises liability jurisprudence, which in turn would allow courts to avoid undesirable results. As *Vogt* and *Goode* illustrate, the current state of South Carolina law can create dilemmas for courts and leave injured

123. *Goode*, 329 S.C. at 441–42, 494 S.E.2d at 831.
124. RESTATEMENT (SECOND) OF TORTS § 360 cmt. c (1965).
125. *Id.* § 360 cmt. e.
126. *Goode*, 329 S.C. at 441–42, 494 S.E.2d at 831.
127. RESTATEMENT (SECOND) OF TORTS § 360 cmt. f (1965).
128. *Id.*
129. *Id.*

parties uncompensated. Embedded in this idea of consistency is economic benefit to the landowner. Various scenarios exist in which even an indirect economic benefit to landowners warrants an entrant's classification as an invitee.

In *Parker v. Stevenson Oil Co.*[130] a thirteen-year-old boy entered the premises of a filling station to use the vending machines and the bathroom.[131] While on the filling station premises, he fell into an unguarded grease pit.[132] The South Carolina Supreme Court held that either of the injured party's purposes for entering the premises entitled him to invitee status: "[The landowner's] relationship to and duty toward one who enters with intent to make a purchase, like that of conventional storekeeper to customer, is, unambiguously, that of occupant to invitee."[133] Further, "[t]he personal nature of the mission which engaged plaintiff at the time of his injury is not inconsistent with invitee status because an invitation to enter business premises includes an invitation to use toilet facilities maintained by the occupant for the convenience of customers."[134] The plaintiff's use of the bathroom would not have directly benefitted the landowner financially; a landowner provides those facilities merely as a convenience to both customers and potential customers, signifying an acknowledgment that some entrants may enter the land solely to use the bathroom facilities. Thus, an indirect economic benefit, like that received by a landowner when a club member or tenant invites a guest onto his premises, is sufficient to command classification of an entrant as an invitee.

In *Hoover v. Broome*,[135] the plaintiff stopped at a service station to ask for directions, and when he followed an employee inside, he fell into a grease pit and was injured.[136] The South Carolina Court of Appeals rejected the trial court's determination that the plaintiff was a licensee as a matter of law and held that the plaintiff's status was a jury question.[137] The court noted that "[p]eople stop at service stations for a variety of reasons," some of which, like asking for directions, do not necessarily financially benefit the landowner.[138] "The fact that [the landowner] did not receive an economic benefit from [the entrant's] visit does not automatically relieve [the landowner] from the duty to take reasonable care to protect members of the public from dangerous conditions."[139] The indirect benefit the landowner received in *Hoover*, the entrant becoming a potential customer, was enough to allow a jury to determine the entrant's status. The court's language and reference to *Parker* suggest that on remand, the trial court could properly find the plaintiff was an invitee.

Allowing entrants who provide landowners with indirect economic benefits to enjoy invitee status condenses the court's inquiry into the entrant's purpose for being on the land. It also leads to greater consistency in decisions by eliminating the need to meticulously examine the degree to which the landowner benefitted.

---

130. 245 S.C. 275, 140 S.E.2d 177 (1965).
131. *Id.* at 279–80, 140 S.E.2d at 178–79.
132. *Id.*
133. *Id.* at 281, 140 S.E.2d at 179.
134. *Id.* at 281–82, 140 S.E.2d at 180.
135. 324 S.C. 531, 479 S.E.2d 62 (Ct. App. 1996).
136. *Id.* at 533–34, 479 S.E.2d at 64.
137. *Id.* at 537–38, 479 S.E.2d at 66.
138. *Id.* at 536, 479 S.E.2d at 65.
139. *Id.*

Analyzing *Vogt* and *Goode* in light of *Parker* and *Hoover* indicates that even if the connection between the entrants' presence and the landowners' benefit was considered tenuous, both Vogt and Goode would warrant invitee status.

VI. A NEW PATH—ENTITLE GUESTS OF INVITEES AND TENANTS TO THE PROTECTION THEY DESERVE

A. One Option—Address the Guest Issue and Adopt the General Rule

South Carolina courts will inevitably have the opportunity to conform to the general rule on the narrow issue of the duty of care owed by landowners to the guests of invitees (club members) and of tenants who are injured on premises in the landowners' control. Given the logic of the Court of Appeals decisions in *Vogt* and *Goode*, juxtaposed with case law from other jurisdictions that directly contradicts those decisions, the South Carolina Supreme Court would be wise to set a new precedent that treats guests of club members on club grounds and guests of tenants in common areas the same as the inviting members and tenants respectively. With regard to the duty owed by landowners, allowing guests to stand in the shoes of those that invited them to the premises would bring South Carolina in line with the prevailing view on the issue.

The basis for this change is largely financial. In both scenarios, a landowner must use reasonable care to maintain the premises such that the landowner's own invitees and tenants will not suffer injury thereon; the consequence of failing to maintain the land in this fashion is potential exposure to liability. A landowner undoubtedly incurs costs to make the premises safe. The landowner's maintenance costs do not increase, however, by allowing guests to stand in the shoes of those who invited them onto the premises. There is no greater level of safety to which the landowner must bring the land, or greater amount of care the landowner must use, to accommodate guests. Rather, the landowner need only continue maintaining the land in the same manner that already protects against liability from his invitees—by using reasonable care.

For South Carolina to directly entitle guests to invitee status, a case factually similar to *Vogt* or *Goode* must come before the court. Herein lies the limitation of this solution. Though raising the standard of care in specific instances, such as a landowner's duty to guests, may satisfy the next injured guest to come along, other options are available to the court. Abandoning or amending the common law entrant categories—and the associated varying standards of care—would accommodate an even greater class of lawful entrants and make for a simpler solution to the problem.

B. Another Option—Abandon/Amend the Common Law Categories

Recent jurisprudence around the country may present a straightforward solution to South Carolina's premises liability law dilemma. Many states have abandoned the tri-partite common law entrant classifications as the method for determining a landowner's duty of care to entrants injured on the premises; instead they have opted for a traditional negligence standard based upon reasonable or ordinary

care.[140] Still, other jurisdictions have taken a smaller step away from the common law by abolishing only the distinctions between the licensee and invitee categories—incidentally eliminating the social guest category as well.[141] A majority of jurisdictions, including South Carolina, continue to adhere to the common law approach; however, the change in course of some states is evidence of a trend of courts and legislatures around the country, expressing concern about the welfare of—and lack of care owed to—entrants classified as licensees.

Proponents of the common law approach offer several arguments for continued adherence to the tri-partite entrant classifications, but these arguments serve only to perpetuate problems. The first argument against reform is a concern about jury abuse—that plaintiff-oriented juries would impose unreasonable burdens upon defendant landowners.[142] This argument fails to take into account that juries have correctly applied negligence principles in other areas of tort law without imposing unreasonable burdens upon defendants.[143] Further, many modern jurors are landowners themselves and are unwilling to place upon another landowner a burden they would be unwilling to accept themselves.[144] Second, proponents argue that landowners would be forced to bear additional precautionary costs, such as insurance.[145] This argument does not acknowledge the fact that all jurisdictions that have abandoned the common law approach have expressly held that the negligence standard will not "make the landowner an absolute insurer against all injuries suffered on his property."[146] Finally, proponents argue that retaining the common law scheme "is necessary to ensure predictability in the law."[147] However, some courts opting for change have recognized "that the trichotomy and its accompanying exceptions and subclassifications [such as a landlord having control over a common

---

140. RUSSELL L. WEAVER ET AL., TORTS CASES, PROBLEMS, AND EXERCISES 485 (2003); Rowland v. Christian, 443 P.2d 561, 564–65 (Cal. 1968) (in bank).

141. *See, e.g.*, CONN. GEN. STAT. ANN. § 52-557a (West 1991) ("The standard of care owed to a social invitee shall be the same as the standard of care owed to a business invitee."); 740 ILL. COMP. STAT. ANN. 130/2 (West 2002) ("The distinction under the common law between invitees and licensees as to the duty owed by an owner or occupier of any premises to such entrants is abolished."); ME. REV. STAT. ANN. tit. 14, § 159 (2003) ("The standards of care for a social invitee shall be the same as that of a business invitee."); Jones v. Hansen, 867 P.2d 303, 310 (Kan. 1994) ("[T]he duty owed by an occupier of land to licensees shall no longer be dependent upon the status of the entrant on the land; the common-law classification and duty arising from the classification of licensees shall no longer be applied."); Mounsey v. Ellard, 297 N.E.2d 43, 51 (Mass. 1973) ("Therefore, we no longer follow the common law distinction between licensees and invitees and, instead, create a common duty of reasonable care which the occupier owes to all lawful visitors."); Poulin v. Colby Coll., 402 A.2d 846, 851 (Me. 1979) ("[W]e limit application of our holding abolishing the distinction between licensees and invitees to this case and those involving injuries occurring on or after January 3, 1973, the date of the injury at issue herein."); Nelson v. Freeland, 507 S.E.2d 882, 892 (N.C. 1998) ("[W]e should eliminate the distinction between licensees and invitees by requiring a standard of reasonable care toward all lawful visitors."); Hudson v. Gaitan, 675 S.W.2d 699, 703 (Tenn. 1984) ("The common law classifications of one injured on land of another as an 'invitee' or licensee' are no longer determinative in this jurisdiction in assessing the duty of care owed by the landowner to the person injured; the duty owed is one of reasonable care under all the attendant circumstances.").

142. *Nelson*, 507 S.E.2d at 888.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Nelson v. Freeland, 507 S.E.2d 882, 888 (N.C. 1998).

area] were more complex and confusing than the negligence standard of reasonableness."[148]

The problems in *Vogt* and *Goode* illustrate the difficulty in retaining the common law categories and courts abandoning the categories assert well-reasoned justifications for doing so. First, courts note that the trichotomy originated when land was the primary basis of wealth in feudal times; concern abounded for a landowners' ability to use and exploit their land as they saw fit, rather than for protecting entrants upon the property from injury.[149] In our modern society, the increased population density means that individuals are more frequently entering onto another's property, and the law should change to accommodate this development.[150] Second, courts condemn the common law approach as confusing, complex, and unpredictable.[151] The common law approach can lead to irrational results because an entrant's status may change "on a whim" and the criteria that determine an entrant's status are often undefinable.[152] Further, landowners may not actually tailor their conduct according to the status of the entrant on their land.[153] Simply asking whether the landowner acted reasonably toward the injured entrant eliminates much of the confusion associated with trying to pigeonhole an entrant into one of the three categories, especially when each category has vastly different consequences and may have further subclassifications.[154] Finally, courts have expressed concern that law in modern times must reflect a humane approach, focusing on caring for the safety of others.[155] Courts have challenged the notion that "'[a] man's life or limb [becomes] less worthy of protection by the law . . . because he has come upon the land of another without permission or with permission but without a business purpose.'"[156] Further, "'the traditional rule confers on an occupier of land a special privilege to be careless which is quite out of keeping with the development of accident law generally.'"[157]

The concerns of courts choosing to abolish the common law approach are apparent in both the *Vogt* and *Goode* decisions from South Carolina. Adoption of the simple negligence approach and the associated standard of reasonable care would render the issues in *Vogt* and *Goode* discussed in this Note moot. Entrants that the common law classifies as licensees would receive a heightened duty of care from landowners under a negligence standard. Appropriately, guests would be on equal footing with the individuals that invited them onto the premises.

North Carolina's current approach establishes equal footing between guests and the individuals that invited them by disregarding a distinction between licensees and invitees and deeming both categories worthy of a duty of reasonable care from the landowner. In 1998, the North Carolina Supreme Court decided *Nelson v. Freeland*, which recognized that its "current premises-liability scheme [which mirrored the

148. *Id.* at 888.
149. *Id.* at 888–89.
150. *Id.* at 889.
151. *Id.*
152. *Id.*
153. Nelson v. Freeland, 507 S.E.2d 882, 890 (N.C. 1998).
154. *Id.*
155. *Id.*
156. *Id.* (quoting Rowland v. Christian, 443 P.2d 561, 568 (Cal. 1968) (in bank)).
157. *Id.* (quoting Antoniewicz v. Reszcynski, 236 N.W.2d 1, 8 (Wis. 1975)).

still-existing South Carolina scheme] failed to establish a stable and predictable system of laws."[158] The *Nelson* court noted that the common law trichotomy "has inadequately apprised landowners of their respective duties of care"[159] for over one-hundred years. The court's inability to use the common law scheme to determine with certainty the outcome in a case involving an almost humorously simple injury—a man who tripped over a stick at a friend's house[160]—contributed to the court's landmark decision.

Nelson discussed the ineffectiveness of the common law tri-partite standards of care, the nationwide trend of abandoning the common law scheme, and the policy considerations of such a decision. The court stated that cases using the common law categories to define duties "often involved rationales teetering on the edge of absurdity," and that "to reach a just result" courts often had to resort to "broad or strained reading[s]" of the category definitions.[161] Further, at the time of the court's holding, "eleven jurisdictions ha[d] completely eliminated the common-law distinctions between licensee, invitee, and trespasser."[162] Also, "fourteen [additional] jurisdictions ha[d] repudiated the licensee-invitee distinction while maintaining the limited-duty rule for trespassers."[163]

Influential to the holding in *Nelson* was the United States Supreme Court's decision thirty-nine years earlier in which the Court did not "apply the trichotomy to admiralty law after concluding that it would be inappropriate to hold that a visitor is entitled to a different or lower standard of care simply because he is classified as a 'licensee.'"[164] Rationalizing that the tri-partite categories "bred by the common law ha[d] produced confusion and conflict," the United States Supreme Court criticized the common law approach—perhaps paving the way for various states to begin amending their premises liability law.[165]

VII. CONCLUSION

South Carolina should alter its current approach to premises liability and follow the North Carolina Supreme Court in eliminating the distinction between licensees and invitees and requiring a standard of reasonable care to all lawful visitors. However, South Carolina should retain the trespasser category and the lesser duty owed by the landowner to trespassers due to the wrongfulness of a trespasser's presence on the premises and the decreased foreseeability by the landowner. Adopting such an approach would allow a guest of an invitee or tenant to stand in the shoes of the inviting individual and receive the same duty of care vis-a-vis the landowner, thereby largely rendering the status determination of both entrants moot. The simple negligence approach would also improve judicial economy by eliminating the need to litigate time-consuming questions about the nature of the

158. *Id.* at 883.
159. Nelson v. Freeland, 507 S.E.2d 882, 883 (N.C. 1998).
160. *Id.*
161. *Id.* at 885.
162. *Id.* at 886.
163. *Id.* at 886–87.
164. *Id.* at 886 (citing Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959)).
165. *Kermarec*, 358 U.S. at 631.

guest's presence on the premises. Further, the consistency that would develop due to the absence of tricky status determinations and the greater predictability of a landowner's liability when guests are injured are also significant benefits of adopting a simple negligence approach.

Matthew D. Lincoln