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## Torts—Duty of Property Owner to Licensee

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## COURT OF APPEALS, 1957 TERM

question of defendant's negligence.<sup>54</sup> (Violation of a statute, however, may in itself give rise to liability, either "a liability created by a statute or a liability for negligence for which the statute creates a new standard or norm", the latter known as negligence per se.<sup>55</sup>) The Court stated this rule but also spoke of the ordinance as imposing an "absolute duty", and its refusal to allow the defendant any notice of the defective lighting seems inconsistent with a mere evidence-of-negligence effect of the ordinance. Previous decisions have considered notice, actual or constructive, essential to liability in cases involving violation of an ordinance<sup>56</sup> and even a statute.<sup>57</sup> Thus the present case seems to involve a departure from the New York rule that violation of an ordinance may be only evidence of negligence.

### Duty of Property Owner to Licensee

A social guest, who is on another's premises pursuant to an invitation, is not in law an invitee but rather a licensee to whom the possessor owes no duty of inspection and affirmative care to make the premises safe for his visit.<sup>58</sup> The same rule applies where the social guest is an infant.<sup>59</sup> There is an obligation, however, on the part of the possessor, to disclose to the licensee any concealed dangerous defects.<sup>60</sup>

The above principles were again approved by the Court of Appeals in *Krause v. Alper*,<sup>61</sup> which was a suit by the father of a boy who was injured while playing basketball with the defendants' son on the defendants' premises. Since the wooden doorstep, over which the infant had tripped, was in plain sight, there was no "hidden pitfall" which could have imposed the duty of disclosure on the defendants.

### Duty of Employer to Provide Safe Premises for Employees

In *Zucchelli v. City Construction Co.*<sup>62</sup> thirteen injured employees of the R. E. Carrick Co. (subcontractor) brought an action against the 981 Madison

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54. *Teller v. Prospect Heights Hospital*, 280 N.Y. 456, 21 N.E.2d 504 (1939); *Carlock v. Westchester Lighting Co.*, 268 N.Y. 345, 197 N.E. 306 (1935); *Fluker v. Ziegele Brewing Co.*, 201 N.Y. 40, 93 N.E. 1112 (1911). *But see* *Silverman v. Konig*, 170 N.Y. Supp. 368 (Sup.Ct. 1918).

55. *Schmidt v. Merchant's Despatch Trans. Co.*, 270 N.Y. 287, 303, 200 N.E. 804, 829 (1936). See also *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920).

56. *Carlock v. Westchester Lighting Co.*, *supra* note 54; cf. 1 SHEARMAN AND REDFIELD, NEGLIGENCE §21 (rev. ed. 1941).

57. *Altz v. Leiberson*, 233 N.Y. 16, 134 N.E. 703 (1922); *Schaeffer v. Caldwell*, 273 App. Div. 263, 78 N.Y.S.2d 652 (4th Dep't 1948).

58. *Wilder v. Ayers*, 2 A.D.2d 354, 156 N.Y.S.2d 85 (1st Dep't 1956), *aff'd* 3 N.Y.2d 725, 163 N.Y.S.2d 966 (1957); PROSSER, TORTS §77 (2d ed., 1955).

59. *Droge v. Czarniechi*, 285 App. Div. 1052, 139 N.Y.S.2d 314 (2d Dep't 1955), *aff'd* 2 N.Y.2d 897, 161 N.Y.S.2d 149 (1957).

60. *Bernal v. Baptist Fresh Air Home Society*, 275 App. Div. 88, 96, 87 N.Y.S.2d 458, 465 (1st Dep't 1949), *aff'd* 300 N.Y. 486, 88 N.E. 2d 720 (1949).

61. 4 N.Y.2d 518, 176 N.Y.S.2d 349 (1958).

62. 4 N.Y.2d 52, 172 N.Y.S.2d 139 (1958).