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The Landowner's Duty toward Minor Children in Illinois

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NOTES AND COMMENTS

THE LANDOWNER'S DUTY TOWARD MINOR CHILDREN IN ILLINOIS

Many problems accompany the ownership or occupancy of realty, not the least of which are those encountered by landowners in the discharge of their duties toward minor children who are upon the land. In general, landowners are required to exercise different degrees of care toward persons upon their land depending upon whether the person is an invitee, licensee, or trespasser. Thus, when invitees are upon his land, the landowner is required to keep the premises in a reasonably safe condition and to warn invitees of dangerous conditions existing thereon.[1] Similarly, the owner or occupant of land has a duty to refrain from wilfully or wantonly injuring trespassers or licensees on the land (including social guests),[2] and also has the possible additional duty to warn licensees of hidden dangers.[3]

In the case of small children, however, the landowner's duties are not as clear. Generally, no greater duty is imposed on a landowner because the invitee, licensee, or trespasser is a minor.[4] But, this concept has been qualified in Illinois by the development of the "Attractive Nuisance" doctrine which, in effect, makes invitees out of trespassing or licensed children thereby increasing the landowner's duty toward them.

The Landowner's Duty Toward Minor Invitees Prior to 1955

A person becomes an invitee when the owner of land extends an invitation, express or implied, to that person to enter upon the land for a purpose having some connection with the owner's business or pecuniary interests.[5] The test is a conjunctive one, requiring both invitation and benefit; so that the ordinary social guest is merely a licensee. In the case of small children, at least, it usually will be difficult to find any direct business or pecuniary benefit accruing to the landowner by their presence. In the typical case, however, the minor is injured while accompanying an adult, whose presence does have a possible pecuniary benefit. In such cases it is generally found that the accompanying child is an invitee. Thus, in *O'Rourke v. Marshall Field & Company*,[6] a six-year-old minor was injured in a fall from a defective rocking horse. The defendant kept

1 Geraghty v. Burr Oak Lanes, Inc., 5 Ill. 2d 153, 125 N.E.2d 47 (1955).

2 Wolezek v. Public Service Co., 342 Ill. 482, 174 N.E. 577 (1931); Kahn v. James Burton Co., 1 Ill. App. 2d 370, 117 N.E.2d 670 (1st Dist. 1955), *rev'd*, 5 Ill. 2d 614, 126 N.E.2d 836.

3 Bartolucci v. Falleti, 382 Ill. 168, 46 N.E.2d 980 (1943).

4 Wagner v. Kepler, 411 Ill. 368, 104 N.E.2d 227 (1952); McDermott v. Burke, 256 Ill. 401, 100 N.E. 168 (1912).

5 Jones v. 20 North Wacker Drive Building Corporation, 332 Ill. App. 382, 75 N.E.2d 400 (1st Dist. 1947).

6 307 Ill. 197, 138 N.E. 625 (1923).

the horse in a playroom maintained for the use of children of the defendant's customers. The defendant contended that it owed no duty to the child and that there was no invitation, express or implied, extended to the child by the defendant. The court disagreed and held that the child was an invitee under an implied invitation since the child accompanied an adult to the store and the playroom was provided for the use and benefit of the customers' children. The court stated:

> . . . This necessarily implies a general invitation to anyone in the store accompanied by children to make use of the playroom at all proper times. Plaintiff being there by implied invitation, it was the duty of the appellant (defendant) to use reasonable care in providing a reasonably safe place for the plaintiff to play.[7]

In *Wheaton v. Goldblatt Bros.*,[8] a twelve-year-old girl accompanied her mother, who was shopping in the defendant's store. The girl was injured when goods fell on her. The court allowed the girl to recover from the defendant, holding that a child accompanying a customer in a store is in the position of an invitee under an implied invitation, and that the defendant, therefore, had a duty to exercise a reasonable degree of care in her behalf.

In a recent Appellate Court case in the Second District,[9] the defendant owned a building operated as a club for the benefit of its members, their wives and children. The plaintiff was the 3½-year-old daughter of a member, and accompanied her parents to the defendant's club. The court found that she was on the premises in the capacity of an invitee since she was with her parents who were invitees. Recovery was denied to the plaintiff for injuries she sustained in falling on a hot radiator, since the defendant had kept the premises in a reasonably safe condition. The court stated the rule as follows:

> She (plaintiff) was an invitee and defendant owed to the plaintiff the duty is owed to all invitees and that was to have its premises in a reasonably safe condition. Due care in any case is the care usually exercised by men of ordinary prudence in like cases and under like circumstances. This is the standard by which the conduct of those charged with negligence is measured.[10]

These cases serve to illustrate that the duty of care owed by a landowner to a minor invitee prior to 1955 was the same as that owed to adults, namely to use reasonable care to keep the premises in a safe condition. A child was considered to be an invitee if he accompanied his parents on the landowner's premises and the parents were invitees. This classification existed even though in the absence of the parent's presence, the child would otherwise have been a licensee or trespasser.

7 *Id.* at 199, 138 N.E. at 626.
8 295 Ill. App. 618, 15 N.E.2d 64 (1st Dist. 1938).
9 Dargie v. East End Bolders Club, 346 Ill. App. 480, 105 N.E.2d 537 (2d Dist. 1952).
10 *Id.* at 492, 105 N.E.2d at 542.

THE LANDOWNER'S DUTY TOWARD MINOR TRESPASSERS AND LICENSEES PRIOR TO 1955

A person is a trespasser when he enters upon the land or premises of another without permission or an express or implied invitation.[11] A person who has permission to enter the premises of another or who is a social guest is considered a licensee.[12] The duty owed by an occupier or owner of land to licensees and trespassers is the same for both and is considerably less than the duty owed to invitees. There is no duty to see that the premises are safe for their use.[13] The only duty is to refrain from wilfully or wantonly injuring such trespassers or licensees once their presence in a place of danger has been discovered or should reasonably have been anticipated.[14]

That the same rule generally applies to minor licensees or trespassers is aptly illustrated in *Jones v. Schmidt*.[15] In the *Jones* case, the plaintiff was five years old and a neighbor of the defendant. On the day of the injury it was raining and the plaintiff was ready to leave for school. The defendant had backed her car out of the garage to her own doorway to pick up her own child and invited the plaintiff to ride to school. The defendant, however, told the plaintiff not to cross the yard because it was full of puddles, but to go through the house to be picked up at the front sidewalk. The defendant then backed up the car, looking to the rear, and hit the plaintiff who had disregarded the plaintiff's instructions and had come across the yard. The court found that the plaintiff had lost her status as an invitee by departing from the place to which the invitation applied, and that the plaintiff then became a mere trespasser or licensee. Since the plaintiff was not an invitee, the court held that the defendant did not owe her a duty of due care. Inasmuch as the complaint did not charge the defendant with wilful and wanton misconduct, the defendant did not breach her duty to the plaintiff as a licensee or trespasser. The rule was stated by the court to be:

> The general rule is that no different or higher duty exists with respect to an infant trespasser than would exist in the case of an adult trespasser, so that ordinarily there is no duty toward an infant trespasser except to refrain from wilful or wanton injury. . . . A similar statement pertains to infant licensees.[16]

Although the *Jones* case clearly states the general rule, the attractive nuisance doctrine has been applied in Illinois in order to allow recovery for injuries sustained by minor children who are licensees or trespassers. This doctrine imposes an additional duty upon a landowner, who places or maintains on his premises a dangerous object which is attractive to

11 Checkley v. Illinois Cent. R.R., 257 Ill. 491, 100 N.E. 942 (1913).
12 Milauskis v. Terminal Railroad Ass'n, 286 Ill. 547, 122 N.E. 78 (1919).
13 Marcovitz v. Hergenrether, 302 Ill. 162, 134 N.E. 85 (1922).
14 Briney v. Illinois Cent. Ry., 401 Ill. 181, 81 N.E.2d 866 (1948).
15 349 Ill. App. 336, 110 N.E.2d 688 (4th Dist. 1953).
16 *Id.* at 339, 110 N.E.2d at 690.

children, to take reasonable precautions to prevent the children from playing with it or to protect them from injury by it, whether they be licensees or trespassers.[17]

The basic elements of the attractive nuisance doctrine as it existed in Illinois prior to 1955 were listed by the Appellate Court in *Kahn v. James Burton Company*.[18] These elements were: (1) the person against whom the doctrine is asserted must have had possession or control over both the premises and the object which caused the injury; (2) the object must have been dangerous per se and likely to cause injury to anyone coming in contact with it; (3) the object must have been attractive and alluring to children incapable of understanding the danger; (4) the object must have been exposed and easily accessible; and (5) the person in control or possession must have foreseen that children would come in contact with the object. Thus if a trespassing child was injured by an object which met with the first four elements and the owner or occupant of the premises could have foreseen that children would come into contact with the object, an implied invitation for the child to enter the premises was created. He then was treated as an invitee insofar as the owner's duty toward his safety was concerned.

Two qualifications to the attractive nuisance doctrine existed which limited its application to a considerable extent. They were: (1) the child must have been injured by the object which attracted him onto the premises;[19] and (2) the attracting object must have been visible from a public way or street[20] or from a place where he had a right to be or from a place where children are in the habit of congregating.[21]

In *Seymour v. Union Stock Yards Company*,[22] a minor plaintiff was injured by a train running on tracks adjacent to a large pile of clay to which many children were attracted. The neighborhood was heavily populated and the area in which the clay was located was not fenced. Even so the court denied recovery to the plaintiff, and held that while the clay was attractive, it was not inherently dangerous. Similar results were reached in *Matijevich v. Dolese and Shepard Company*[23] and *McDermott v. Burke*.[24]

17 Wolezek v. Public Service Co., 342 Ill. 482, 174 N.E. 577 (1931).

18 1 Ill. App. 2d 370, 117 N.E.2d 670, *rev'd*, 5 Ill. 2d 614, 126 N.E.2d 836 (1st Dist. 1955).

19 Seymour v. Union Stock Yards Co., 224 Ill. 579, 79 N.E. 950 (1906).

20 Commonwealth Elec. Co. v. Melville, 210 Ill. 70, 70 N.E. 1052 (1904); Wolezek v. Public Service Co., *supra* note 17.

21 Dabrowski v. Illinois Cent. Ry. Co., 303 Ill. App. 31, 24 N.E.2d 382 (1940); Harrison v. City of Chicago, 308 Ill. App. 263, 31 N.E.2d 359 (1st Dist. 1941); Rokiki v. Polish Nat'l Alliance of United States, 314 Ill. App. 380, 41 N.E.2d 300 (1st Dist. 1942).

22 Seymour v. Union Stock Yards Co., *supra* note 19.

23 261 Ill. App. 498 (1st Dist. 1931). The plaintiff was attracted by a shallow pool on the defendant's land and was injured by dynamite caps he found one-half mile from the pool.

24 256 Ill. 401, 100 N.E. 168 (1912). A sand pile attracted a minor child, who was injured by a hoisting rope on the premises.

In *Favaro v. Jacobucci*,[25] the Court denied recovery based on the attractive nuisance doctrine since the plaintiff was injured by a machine found only after he entered the defendant's store. The machine was not visible from the street. Similarly, recovery has been denied when the attractive instrument injuring the minor plaintiff was found only after a trespass onto the defendant's land.[26] Since the reason that recovery has been allowed when the dangerous object is visible from the street is that the irresistible attractiveness of the object amounts to an implied invitation to the child to enter upon the property,[27] it is relatively clear why recovery has been denied in cases in which the object causing the injury did not attract the child onto the property.

An exception to the rule that the attractive object must be visible from the street has been made in situations where children habitually come on the premises with the owner's knowledge.[28] In such cases, the children are considered to have the consent of or an implied invitation from the owner and are treated as invitees.

Because the heart of the attractive nuisance doctrine is that the child must be injured by a dangerous object which lured him onto the defendant's property, it is understandable that a major issue which arises in numerous cases is whether or not the attracting object is dangerous per se. In that regard the courts have considered each attracting object on its own merits in the particular situation of each case, giving rise to determinations that seem arbitrary in many instances. For example, objects which have been found not to constitute attractive nuisances include a pile of clay,[29] a barrel of hot tar,[30] an ordinary railroad tank car,[31] a motor vehicle in ordinary use,[32] and an open body of water.[33] On the other hand, an abandoned car,[34] dismantled truck,[35] and a body of water with objects floating on its surface[36] have been held to be attractive nuisances. As a consequence, if a new object is involved, the prior cases decided under the doctrine of attractive nuisance afford no more than a very general and sometimes vague guideline at best.

The Change in the Attractive Nuisance Doctrine in Illinois

From the foregoing discussion, it is evident that the attractive nuisance doctrine was a clumsy and difficult tool to use in many situations. When it

25 239 Ill. App. 583 (1916).
26 McDermott v. Burke, 256 Ill. 401, 100 N.E. 168 (1912).
27 *Ibid.*
28 Moore v. North Chicago Refiners and Smelters, 346 Ill. App. 530, 105 N.E.2d 553 (2d Dist. 1952); Ramsey v. Tuthill, 295 Ill. 395, 129 N.E. 127 (1920).
29 McDermott v. Burke, *supra* note 26.
30 Szymczak v. Schillinger Bros. Co., 197 Ill. App. 585 (1st Dist. 1916).
31 Rodgers v. Beach, 288 Ill. App. 462, 6 N.E.2d 244 (3d Dist. 1937).
32 Schlatter v. Peoria, 309 Ill. App. 636, 33 N.E.2d 730 (2d Dist. 1941).
33 Wood v. Consumers Co., 334 Ill. App. 530, 79 N.E.2d 826 (2d Dist. 1948).
34 Shapiro v. Chicago, 308 Ill. App. 613, 32 N.E.2d 338 (1st Dist. 1941).
35 Featherstone v. Freeding, 349 Ill. App. 359, 110 N.E.2d 535 (1st Dist. 1953).
36 Pekin v. McMahon, 154 Ill. 141, 39 N.E. 484 (1895).

was applied strictly, no recovery was allowed for injuries sustained when the object causing the injuries did not attract the child onto the property. This result was obtained even though the child was attracted onto the property by another object of a type not generally classified as an "attractive nuisance." Another problem is that what is attractive to one child may not be attractive to another, so that no arbitrary classification of objects as "attractive" or "non-attractive" is possible.

In 1955 the case of *Kahn v. James Burton Company*[37] was decided, and substantially altered the attractive nuisance doctrine in Illinois. In the *Kahn* case, a house was being built by a contractor on land belonging to the defendant owners. When the contractor was ready to begin the carpentry work, a lumber company delivered the lumber to the site. No one else was present when this delivery was made. The lumber was stacked in accordance with the custom of the trade, with the pieces to be used first being placed on top. This resulted in the boards on top being larger than those on the bottom, and the stack was not braced in any way. On prior occasions several children had played on a mound of dirt on the lot and the contractor had knowledge of this fact. The plaintiff, an eleven-year-old boy, had not previously visited the site, however, and his first visit took place after the delivery of the lumber. He climbed up on the stack of boards and was injured when the stack collapsed and fell on him. The Appellate Court held for the defendants (contractor, lumber company), using the attractive nuisance theory.

On appeal, the Supreme Court of Illinois reversed the Appellate Court, holding that the duty of care to be exercised to make the premises safe for children is that established by the rules of ordinary negligence, with the attractability of the object merely being a factor in determining the foreseeability of harm. The rule was stated by the court as follows:

> It is generally true . . . that an owner or one in possession and control of premises is under no duty to keep them in any particular state or condition to promote the safety of trespassers who come upon them without any invitation, either express or implied. It is also established that infants, as a general rule, have no greater rights to go upon the land of others than adults, and that their minority, of itself, imposes no duty upon the occupier of land to expect them or prepare for their safety. It is recognized, however, that an exception exists where the owner or person in possession knows, or should know, that young children habitually frequent the vicinity of a defective structure or dangerous agency existing on the land, which is likely to cause injury to them because they, by reason of their immaturity, are incapable of appreciating the risk involved, and where the expense or inconvenience of remedying the condition is slight compared to the risk to the children. In such cases there is a duty upon the owner or other person in posses-

[37] 1 Ill. App. 2d 370, 117 N.E.2d 670, *rev'd*, 5 Ill. 2d 614, 126 N.E.2d 836 (1st Dist. 1955).

sion and control of the premises to exercise due care to remedy the condition or otherwise protect the children from injury resulting from it. *The element of attraction is significant only insofar as it indicates that the trespass should be anticipated, the true basis of liability being the foreseeability of harm to the child.*[38] (Emphasis added.)

The Landowner's Duty Toward Minors Since the Kahn Decision in 1955

Stated in other words, the rule of the *Kahn* case is that the landowner's duty toward minors is to exercise due care to keep the premises safe based on the foreseeability of harm which might occur if such care were not exercised. Although the *Kahn* case dealt with a trespass situation, the rule stated by the court was not limited to trespass alone. It should be noted that the trial court directed a verdict in favor of the landowner in the *Kahn* case on the grounds that he had no knowledge of the dangerous objects and that control of the premises was in the defendant contractor at the time of plaintiff's injury. The language used by the Supreme Court leaves no doubt, however, that the rule also extends to landowners who are in control of their premises. This has been borne out in the application of the *Kahn* rule to landowners in several Appellate Court decisions, representative of which are: *Skaggs v. Junis,*[39] *Zorn v. Bellrose,*[40] *Halloran v. Belt Ry. Company,*[41] *Runions v. Liberty National Bank,*[42] *Kuhn v. Goedde,*[43] and *Smith v. Springman Lumber Company.*[44]

In the *Skaggs* case, the plaintiff, a sixteen-year-old boy, was injured when he hit a submerged stump while diving into an artificial pond on the defendant's property. The defendant had seen the plaintiff swim in the pond several times; and although the plaintiff did not have express permission to swim there, neither did the defendant ever tell the plaintiff not to swim in the pond. The defendant relied upon the attractive nuisance doctrine that ponds without floating objects on them cannot be an attractive nuisance.[45] Although the facts of the case provide some basis for treating the plaintiff as an invitee, the *Kahn* foreseeability rule was expressly followed in reversing a lower court judgment in favor of the defendant.

In the *Zorn* case, where a six-year-old boy crawled through three fences and some chains at the head of some steps on the defendant's property before falling into the river and drowning, the court applied the *Kahn* rule, but found the defendants not liable since they had exercised more care than the ordinary prudent person.

38 *Id.* at 625, 126 N.E.2d at 841-42.
39 27 Ill. App. 2d 251, 169 N.E.2d 684 (2d Dist. 1960).
40 22 Ill. App. 2d 331, 160 N.E.2d 685 (2d Dist. 1959).
41 25 Ill. App. 2d 114, 166 N.E.2d 98 (1st Dist. 1960).
42 15 Ill. App. 2d 538, 147 N.E.2d 380 (1st Dist. 1957).
43 26 Ill. App. 2d 123, 167 N.E.2d 805 (4th Dist. 1960).
44 41 Ill. App. 2d 403, 191 N.E.2d 256 (4th Dist. 1963).
45 Wood v. Consumers Co., 334 Ill. App. 530, 79 N.E.2d 826 (2d Dist. 1948).

The *Halloran* case has a fact situation similar to that of the *Seymour* case, inasmuch as the defendant maintained unfenced sand piles near a railroad track. Children had to cross the tracks to get to the sand and plaintiff was injured by a train. The court reversed a summary judgment for the defendant, followed the foreseeability rule of the *Kahn* case, and held that even though the sand, per se, was not dangerous, the defendant should have anticipated dangers to children in the vicinity of the sand. The court said:

> We believe the rule (of *Kahn*) may be reasonably applied so as to render Consumers liable for injuries to children, where it is responsible for the creation of the attraction, notwithstanding Consumers *does not own or control the premises on which plaintiff was injured.* It had notice, direct or otherwise, that children habitually came upon its premises to play upon the sand piles. A duty arose to exercise due care for their safety, if they were exposed to danger in the immediate approach to its premises.[46] (Emphasis added.)

This result is precisely the opposite of that reached by the court in the *Seymour* case in which the attractive nuisance doctrine was applied.

In the *Runions* case, the plaintiff, six years old, was injured in a fall off a garage roof adjacent to a playground maintained by the defendant. A ladder-like arrangement of benches, gates, and walls enabled the plaintiff to reach the roof. In denying the defendant's motion to strike, the court held:

> . . . defendant knew or should have known that children were liable to play and climb the ladder-like arrangement . . . to reach the roofs, and that the roofs, by reason of the lack of protection on one side, created an unreasonable danger to them. It (the complaint) states a factual situation stronger than that set forth in the *Kahn* case.[47]

In the *Kuhn* case, a tractor was left unattended on the landowner's lot by an independent contractor. A child playing on the tractor was injured. Since the landowner had no knowledge of the presence of the tractor, the court decided in his favor, basing its decision on the fact that under the rules or ordinary negligence, there must be either actual or constructive knowledge of the presence of the object causing the injury on the part of the party charged before he can be liable. Thus, the foreseeability rule of *Kahn* was applied.

The defendant landowner in *Smith* stored an oil tank in the yard adjacent to his apartment building. The tank was not defective in any way, and children climbed on it. The defendant had been requested by mothers of the children to remove the tank prior to the time that the minor plaintiff

[46] Halloran v. Belt Ry. Co., 25 Ill. App. 2d 114, 119, 166 N.E.2d 98, 100-01 (1st Dist. 1960).

[47] Runions v. Liberty Nat'l Bank, 15 Ill. App. 2d 538, 542, 147 N.E.2d 380, 382 (1st Dist. 1957).

fell off the tank and was injured. It is difficult to see how the oil tank could have been considered an attractive nuisance under prior Illinois decisions,[48] but plaintiff obtained a judgment against the defendant under the "foreseeability of harm" rule of the *Kahn* case.

Four other cases decided since the *Kahn* case worthy of mention are *Wilinski v. Belmont Builders,*[49] *Kleren v. Bowman,*[50] *Melford v. Guas and Brown Construction Company,*[51] and *Stewart v. DuPlessis.*[52] Those cases are concerned with situations in which the property on which the injury to a minor occurred was in the possession and control of contractors at the time of the accident, with the result that the landowner was held not liable, while the contractors were found liable. In all of these cases the foreseeability rule of *Kahn* was followed.

In *Krantz v. Nichols,*[53] decided in the 4th District shortly after the *Kahn* decision, the foreseeability rule in *Kahn* was not applied in the case of a minor licensee. The plaintiff in the *Krantz* case was five years old and lived on a neighboring farm to that owned by the defendant. The plaintiff was visiting the defendant's farm, and was injured riding on a platform behind the seat of the defendant's tractor. The court held that under the facts, the plaintiff was not an invitee but was a social guest and stated:

> . . . the law is well settled that a social guest is treated as a licensee and not an invitee and therefore must prove wilful and wanton misconduct in order to recover against the possessor of the land . . . that in the absence of a showing of attractive nuisance, the rule is applicable to children.[54]

The decision in the *Krantz* case did not mention the *Kahn* foreseeability of harm rule, which, if it had been applied by the court, probably would have resulted in judgment for the plaintiff instead of for the defendant.

Another significant case decided after the Supreme Court established the foreseeability rule in *Kahn* is *Stankowitz v. Goldblatt Bros.*[55] The plaintiff was a 2½-year-old girl who accompanied her mother shopping in the defendant's store. As a consequence, the girl was in the position of an invitee at the time.[56] The defendant provided a water cooler for the use of customers and knew that children used the cooler. No step was provided, however, to allow children to reach the water. The plaintiff stepped

48 McDermott v. Burke, 256 Ill. 401, 100 N.E. 168 (1912); Rodgers v. Beach, 288 Ill. App. 462, 6 N.E.2d 244 (3d Dist. 1937).
49 14 Ill. App. 2d 100, 143 N.E.2d 69 (1st Dist. 1957).
50 15 Ill. App. 2d 148, 145 N.E.2d 810 (2d Dist. 1957).
51 17 Ill. App. 2d 497, 151 N.E.2d 128 (1st Dist. 1958).
52 42 Ill. App. 2d 192, 191 N.E.2d 622 (1st Dist. 1963).
53 11 Ill. App. 2d 37, 135 N.E.2d 816 (4th Dist. 1956).
54 *Id.* at 41-2, 135 N.E.2d at 818.
55 43 Ill. App. 2d 173, 193 N.E.2d 97 (1st Dist. 1963).
56 Wheaton v. Goldblatt Bros., 295 Ill. App. 618, 15 N.E.2d 64 (1st Dist. 1938).

on the plug of the cooler, which was in the wall a few inches above the floor. When plaintiff did this, she was burned by bare wires extending from the plug. In allowing recovery by the plaintiff, the court followed the foreseeability rule of the *Kahn* and *Halloran* cases, stating:

> Defendant had notice that children frequently drank from the fountain, which was not equipped with a step or stool. Fair-minded men might believe that defendant, in the exercise of ordinary care, should have reasonably anticipated that small children, in attempting to drink from the fountain would climb upon the machine and its electrical connections and that injuries such as that of plaintiff might "naturally flow as a reasonably probable and foreseeable consequence" of the failure of children to realize the danger involved.[57]

Conclusion

Perhaps the best summary of the present duties of owners and occupiers of land in Illinois is given in the *Illinois Pattern Jury Instructions, Civil,* section 120.04, which states:

> 120.04 Attractive Nuisance—Injury to Trespassing Children
>
> Plaintiff has the burden of proving each of the following propositions:
>
> First: That a condition existed on the (defendant's) premises which the defendant knew, or, in the exercise of ordinary care should have known, involved a reasonably foreseeable risk of harm to children.
>
> Second: That the defendant foresaw, or in the exercise of ordinary care should have foreseen, that children would be likely to trespass on (his) (the) premises.
>
> Third: That the plaintiff was in the exercise of that degree of care which a reasonably careful (minor) (child) of the age, mental capacity and experience of the plaintiff would use under circumstances such as those shown by the evidence.
>
> Fourth: That the expense or inconvenience to the defendant in remedying the condition would be slight in comparison to the risk of harm to children.
>
> Fifth: That the condition was a proximate cause of the injury or damage to the plaintiff.
>
> If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. If, on the other hand, you find from your consideration of all the evidence that any of these propositions was not proved, then your verdict should be for the defendant.[58]

[57] Stankowitz v. Goldblatt Bros., 43 Ill. App. 2d 173, 178, 193 N.E.2d 97, 100 (1st Dist. 1963).

[58] Illinois Pattern Jury Instructions—Civil, Illinois Supreme Court Committee on Jury Instructions, Section 120.04, p. 335 (1961).

The impact of the *Kahn* case on the duty of landowners toward minors in Illinois is twofold. First, it has had the effect of establishing a single rule of law to be applied to injuries received by a minor while on the landowner's property in any capacity, whether it be as a licensee, trespasser, or invitee. As a consequence, it no longer is necessary to draw the sometimes difficult distinction as to what status the minor occupies at the moment of injury. The rule is one of foreseeability of harm in all cases.

The second effect of the *Kahn* decision has been a substantial modification of the attractive nuisance doctrine in Illinois. The attractiveness of objects now is significant only insofar as it indicates to the landowner that children are likely to trespass. It is not necessary, however, under the *Kahn* rule, that the children be attracted by the object which harms them. To find a landowner liable it is sufficient that he has knowledge of such trespasses or that it is foreseeable that such trespasses might take place. The net result is a broadening of the landowner's duty toward trespassing children to the extent that his duty toward a trespassing child is almost as great as it is to an invitee.

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