

4-1-2001

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### Recommended Citation

Peter Lopez, *Foreseeable Zone of Risk: An Analysis of Florida's Off-Premises Liability Standard*, 55 U. Miami L. Rev. 397 (2001)  
Available at: <https://repository.law.miami.edu/umlr/vol55/iss3/13>

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# COMMENTS

## Foreseeable Zone of Risk: An Analysis of Florida's Off-Premises Liability Standard

### I. INTRODUCTION

One of the most important questions that a business owner or prospective landowner should ask is: Under what circumstances will I be liable for injuries resulting, directly or indirectly, from my use and enjoyment of this property? Unfortunately, the answer to this question is relatively complex because a landowner may not only be liable for injuries to invitees that occur on his premises, but may also be liable to invitees who are injured off the landowner's premises.

As a general principle of tort law, an owner or possessor of land has a duty to use reasonable efforts not to harm individuals outside his premises.<sup>1</sup> An owner may not intentionally or negligently allow harmful substances or objects from his property to harm individuals outside the owner's premises.<sup>2</sup> Similarly, "the occupier of land owes the invitee the duty to inspect the premises, to discover dangerous conditions, and to remedy them or warn invitees of their existence."<sup>3</sup> The standard in Florida indicates that an owner owes to an employee-invitee or business invitee the duty to:

use reasonable care in maintaining the premises in a reasonably safe condition and to have, given the [invitee] timely notice or warning of latent and concealed perils, "known to the [owner], or which, by the exercise of due care, should have been known to him, and *which were not known [by the invitee], or which by exercise of due care could not have been known to him.*"<sup>4</sup>

While the previously noted standards relating to the duties of land-

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1. See W.PAGE KEATON ET AL., PROSSER AND KEATON ON THE LAW OF TORTS § 57 (1984) [hereinafter PROSSER].

2. See *id.* at 386-87.

3. See KEATON, *supra* note 1, at 419 (noting that typical examples of invitees are store customers; patrons of restaurants, taverns, banks, theaters, beaches, fairs and other places of amusement; and patrons of other businesses open to the public. Moreover, invitees also include drivers calling for or delivering goods purchased or sold, as well as a "large and miscellaneous group of similar persons who are present in the interest of the occupier as well as of their own." *Id.*; J.D. LEE & LINDAHL, MODERN TORT LAW LIABILITY AND LITIGATION 391 (1990). It should be noted that this Comment will focus exclusively on invitees.

4. Hickory House v. Brown, 77 So. 2d 249, 252 (Fla. 1955).

owners are generally accepted and settled, the issue of the duty of care owed by a landowner to an invitee who is subsequently injured either intentionally or inadvertently by a third party, while entirely off the landowner's premises, is far less certain. Some jurisdictions have taken a bright line approach so as to limit liability for landowners in off-premises injury cases,<sup>5</sup> while other jurisdictions have found landowner liability for off-premises injuries in circumstances where specific factors were present.<sup>6</sup>

Florida has adopted the "foreseeable zone of risk" standard, under which the courts will inquire as to whether the landowner has created a foreseeable zone of risk beyond the boundaries of his property. If so, he may be liable for injuries to off-premises invitees.<sup>7</sup> This Comment analyzes this standard and its effectiveness.

In 1991, the Florida Fourth District Court of Appeals addressed the issue of off-premises liability in Florida in the landmark case of *Holiday Inns v. Shelburne*.<sup>8</sup> No other court had previously enumerated factors determinative to finding off-premises liability.<sup>9</sup> In *Shelburne*, the court held that a bar owner could be liable for a patron's injuries resulting from an altercation in an adjacent lot that was not part of the premises and was not owned by the bar.<sup>10</sup> In so holding, this landmark case opened the door for liability to be imposed on a landowner for injuries sustained by invitees while the invitee is off the owner's premises and in an area over which the owner does not, or may not, have explicit or authorized control. More importantly, however, the court enumerated several factors such as control, economic benefit, and foreseeability as determinative in finding that an off-premises duty of care, and a corresponding liability, existed.<sup>11</sup>

Unfortunately, the court did not clarify how those factors should be weighed, whether all of the factors were required, or whether any one factor would be sufficient to impose an off-premises duty of care.<sup>12</sup> As a consequence, subsequent case law has shown that the courts, including

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5. See *Ferreira v. Strack*, 636 A.2d 682 (R.I. 1994).

6. See *Mulraney v. Auletto's Catering*, 680 A.2d 793 (N.J. 1996).

7. *Johnson v. Howard Mark Prods.*, 608 So. 2d 937, 938 (Fla. 2d DCA 1992).

8. 576 So. 2d 322 (Fla. 4th DCA 1991).

9. See Bruce Warner, *Premises Liability in Florida After Holiday Inns, Inc v. Shelburne: Will Florida Extend a Landowner's Duty of Care Beyond the Physical Boundaries of His Property*, 16 NOVA L. REV. 600 (1991). Although *Chateloin v. Flanigan's Enterprises* 423 So. 2d 1002 (Fla. 3d DCA 1982), *Woodford v. City of St. Petersburg*, 84 So.2d 25 (Fla. 1955), and *Marhefka v. Monte Carlo Mgmt. Co.*, 358 So. 2d 1171 (Fla. 3d DCA 1978) had decided the issue, *Shelburne* was the first case in which a court enumerated determinative factors.

10. *Shelburne*, 576 So. 2d at 323-24.

11. *Id.*

12. *Id.*

the court in which *Shelburne* was decided,<sup>13</sup> have abandoned the formalistic application of the factors set out in *Shelburne* in favor of the application of the judicially created “foreseeable zone of risk” standard, despite the fact that this standard has generally led to an increased duty of care to off-premises invitees.<sup>14</sup>

This Comment seeks to accomplish three objectives: 1) to propose that the “foreseeable zone of risk” standard in Florida has supplanted the *Shelburne* factors as the standard for the determination of off-premises duty of care; 2) to analyze the “foreseeable zone of risk” standard and answer the question of when a landowner will owe a duty of care to off-premises invitees and 3) to expostulate the belief that the “foreseeable zone of risk” standard is an effective and equitable standard even though it may lead to an increased duty of care and liability for landowners.

Part II of this Comment traces the development of off-premises liability up to the landmark *Shelburne* case, and analyzes the factors which the court found determinative in finding an off-premises duty of care. Part III analyzes the developments in off-premises liability since the *Shelburne* case. Specifically, this Part analyzes the application of the foreseeable zone of risk standard, which has essentially replaced the formalistic application of the factors set out in *Shelburne*. Part IV compares the foreseeable zone of risk standard of off-premises liability in Florida with the standards in various other jurisdictions. Part V briefly discusses the importance of insurance as it relates to off-premises liability. Finally, Part VI concludes that the “foreseeable zone of risk” standard is a highly effective standard, and perhaps the most equitable standard, by which to analyze off-premises duty of care.

## II. *SHELburne*: OFF-PREMISES LIABILITY BEGINS

Although the *Shelburne* case was the first case in which a Florida court held a landowner liable for injuries to off-premises invitees and had delineated factors for such a finding, the Third District Court of Appeals had actually addressed the subject on a previous occasion.<sup>15</sup> In *Chateloin v. Flanigan's Enterprises*,<sup>16</sup> a bar patron was shot by another patron several miles away from the bar and a considerable amount of time after they had left the establishment.<sup>17</sup> There, the court held that where the injury is “too remote as to time and place” the owner would

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13. See *Gunlock v. Gill Hotels Co.*, 622 So. 2d 163 (Fla. 4th DCA 1993).

14. See *Johnson v. Howard Mack Prods.*, 608 So. 2d 973, 938, (Fla. 2nd DCA 1992) (calling for a case-specific standard of care requiring protection of invitees on nearby property).

15. See *Warner*, *supra* note 9, at 600.

16. 423 So. 2d 1002 (Fla. 3d DCA 1982).

17. *Id.*

not be liable.<sup>18</sup> Although the court in that case did not find the owner liable, the wording of the decision left the door open for the possibility that if an injury is not too remote in time and place, the owner may be found liable for injuries to patrons which occur off-premises.

Nine years later, the Fourth District Court of Appeals was confronted with that very issue in *Holiday Inns v. Shelburne*.<sup>19</sup> In that case, the plaintiffs were shot and injured within a short period of time after leaving the establishment.<sup>20</sup> All of the parties involved had been drinking at the bar and as they left to get their cars in an adjacent parking lot, a fight broke out resulting in serious injury and a death.<sup>21</sup> At trial, evidence was introduced which indicated that one of the bar's employees had directed one of the patrons later injured to park on the adjacent lot, where as many as forty to fifty percent of the bar patrons parked.<sup>22</sup> Fights occurred with regularity at or near the bar, and evidence showed that there were three to four fights a night on the weekends.<sup>23</sup>

In its rationale, the court was quick to point out that this case was readily distinguishable from *Chateloin*, because the injuries in *Shelburne* occurred only a few feet from the bar, and within only a few minutes of the patrons having exited the bar.<sup>24</sup> By making this distinction, the court paved the way for the imposition of off-premises liability upon the landowner.

Next, the court applied an Indiana case, *Ember v. B.F.D.*<sup>25</sup> In that case, the court found a tavern owner liable for injuries to its patrons beyond the tavern's property lines, under certain circumstances.<sup>26</sup> The court in *Shelburne* analyzed a number of factors or circumstances that have been used by different courts in assessing liability for off-premises injuries to justify finding that the landowner owes a duty of care to off-premises invitees.<sup>27</sup>

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18. *Id.*

19. 576 So. 2d 322 (Fla. 4th DCA 1991).

20. *Id.* at 324.

21. *Id.*

22. *Id.*

23. *Id.* at 328.

24. *Id.*

25. 490 N.E.2d 764 (Ind. Ct. App. 1986).

26. *See id.* at 771-72.

27. *See Warner, supra* note 9, at 600-01 (it should be noted that Mr. Warner's article was written prior to the development of the foreseeable zone of risk standard. Therefore, it does not discuss or analyze that standard. Nonetheless, his article provides insight into the analysis of the *Shelburne* case as well as to some factors used by other jurisdictions to find off-premises liability); *see generally* James T.R. Jones, *Trains, Trucks, and Shrubs: Vision-Blocking Natural Vegetation and a Landowner's Duty to Those Off-Premises* 39 VILL. L. REV. 1263 (1994); George Bair South, *The Duty to Protect Customers from Criminal Acts Occurring off The Premises: The Watering Down of the "Prior Similar Acts Rule,"* 19 HOFSTRA L. REV. 1271 (1991).

One such factor is where the landowner exercises control over the off-premises area where the injury occurs.<sup>28</sup> “Generally, an occupier of land is deemed to have control only over the area which he possesses. However, when a landowner treats his neighbor’s property as an integral part of his own, he is conceivably exercising control over the adjoining land.”<sup>29</sup>

In *Shelburne*, this factor was somewhat determinative since a security guard employed by the bar instructed the injured party to park in an adjacent lot because the bar did not have adequate parking.<sup>30</sup> Moreover, evidence at trial indicated that the bar routinely directed individuals to park in adjacent lots. In fact, as many as forty to fifty percent of the bar patrons were required to park off-premises.<sup>31</sup> Finally, evidence showed that the bar had actually even installed lighting in another lot adjacent to the bar.<sup>32</sup> Because the bar had actively directed numerous individuals to park in the various lots and made several physical changes to the lots, the court reasoned that bar was effectively in control of the parking lots.<sup>33</sup> Another factor used by the court is whether the landowner derives an economic benefit from the off-premises property.<sup>34</sup> In fact, “courts often utilize this factor in making a policy argument in favor of extending liability to include adjacent property.”<sup>35</sup>

In *Shelburne*, this factor also lent support to the court’s assessment of liability on the bar. The facts indicated that the bar had a capacity of 240 people, but that the bar would often admit as many as 270 to 300 people with fifty to seventy-five people waiting outside,<sup>36</sup> many of whom, as noted above, were required to park in adjacent lots.<sup>37</sup> The court noted that because the bar was fully aware that numerous cars parked in other lots,<sup>38</sup> and because a jury could have found that the bar was “in effect, utilizing the adjacent parking lots rent free for their own business purposes,”<sup>39</sup> liability was justified under the circumstances

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28. *Shelburne*, 576 So. 2d at 324.

29. See Warner, *supra* note 9, at 603.

30. *Shelburne*, 576 So. 2d at 328.

31. *Id.*

32. *Id.* (The lot in which the injuries were incurred was on the east side of the bar, while the lot in which the lights were installed was on the west side. While the west lot was owned by the state, this establishes a history of the bar exercising control over areas which it did not own.).

33. *Id.* at 328-29.

34. See Warner, *supra* note 9, at 606.

35. *Id.*

36. *Shelburne*, 576 So. 2d at 328.

37. *Id.*

38. The court emphatically noted that not only did the bar know that those individuals were parking in the lot, but that the bar had actively directed them to park there. In other words, the bar was intentionally deriving a benefit from those lots. *Id.* at 329.

39. *Id.*

because the bar had derived a substantial economic benefit from the use of the lots.<sup>40</sup>

The final factor the *Shelburne* court used in determining off-premises liability is when the off-premises injury to an invitee is foreseeable to the landowner.<sup>41</sup> The *Shelburne* court noted that, in order to impose liability on a tavern owner for injuries to patrons caused by third parties, the risk of harm beyond his own premises must be reasonably foreseeable.<sup>42</sup> The court added, however, that “a tavern owner’s actual or constructive knowledge, based on past experience, that there is a likelihood of disorderly conduct by third persons in general which may endanger the safety of his patrons” is also sufficient to establish foreseeability.<sup>43</sup> Considering the facts, the court noted that “the conflicting evidence of the Rodeo Bar’s inadequate security and fifty-eight police incident reports of problems at the Rodeo Bar, including crimes against persons within the past eighteen months, provided a basis for a finding of foreseeability.”<sup>44</sup> Moreover, the court noted that “[f]ights occurred ‘all the time,’ and on weekends there were three or four fights every night.”<sup>45</sup> As the court notes “[c]learly, the fifty-eight offense reports pertaining to prior criminal incidents at the Rodeo Bar are evidence of appellants’ knowledge of ‘a likelihood of disorderly conduct by third persons in general which may endanger the safety of his patrons.’”<sup>46</sup>

The *Shelburne* court found that the owner of the bar owed a duty of care to its patrons while they were on the adjacent lot. In reaching this conclusion, the court weighed all of the factors or circumstances and debated the public policy implications related to this decision.<sup>47</sup> *Shel-*

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40. *Id.*

41. *Id.* In his article, Mr. Warner identifies two other factors which were used at the time that the *Shelburne* decision was made: causation and status. See Warner, *supra* note 9, at 601-06. Although Mr. Warner provides a very thorough analysis of those two factors in his article, the present Comment assumes the invitee status and because the causation factor was not discussed in any detail by the *Shelburne* court, it is likewise not discussed in this Comment.

42. *Shelburne*, 576 So. 2d at 325; *Davis v. Johnson*, 288 So. 2d 554 (Fla. 2d DCA 1974) (holding that a landowner can be held liable for injuries inflicted by trespassers upon persons outside his premises if he had reason to anticipate that the trespasser would engage in the conduct which caused the injury and thereafter had a reasonable opportunity to prevent or control such conduct). Note, however, that the trespasser in *Davis* left a gate open, allowing a cow to escape and collide with a motorcycle passenger. *Id.* at 554-55. Because of this, *Davis* does not directly apply to *Shelburne*, but serves as an example of how foreseeability has been applied previously.

43. *Shelburne*, 576 So. 2d at 326.

44. *Id.* at 326-27. It is not clear from the opinion whether the incidents occurred exclusively on premises or if some of the incidents occurred off-premises.

45. *Id.* at 328.

46. *Id.* at 331. Although the court does not explicitly state that such an incident was inevitable, the court uses strong language to the effect that the shooting which occurred on the night in question was likely, and certainly foreseeable.

47. See generally Warner, *supra* note 9.

*burne*, however, did not establish a clearly defined standard for imposing off-premises liability.<sup>48</sup> Although the court noted factors which could be determinative of whether or not an off-premises duty of care exists, the court did not provide any guidance to subsequent courts considering off-premises liability. While the factors of control, economic benefit, and foreseeability were considered in *Shelburne*, the court failed to indicate whether all of the factors needed to be present, or whether any one factor could be sufficient to find that the landowner owed an off-premises duty of care.

Consequently, the *Shelburne* decision merely indicates that a landowner owes a duty of care to those invitees that a landowner directs to park in a certain area or act in a certain way, for his own economic benefit, and the resulting injury is foreseeable. Unfortunately, this does not serve as a readily effective standard for subsequent cases. Subsequent case law shows that the courts have essentially abandoned the *Shelburne* analysis and have adopted a more coherent standard for imposing an off-premises duty of care. Generally known as the "foreseeable zone of risk" standard, this standard has expanded a landowner's duty of care in relation to off-premises invitees. In doing so, however, it has created a more functional and flexible standard whereby the landowner will be better equipped to determine whether he owes a duty of care to off-premises invitees.

### III. OFF-PREMISES LIABILITY DEVELOPMENTS SINCE SHELBURNE; THE ADOPTION OF THE FORESEEABLE ZONE OF RISK STANDARD OVER THE SHELBURNE STANDARD.

After the *Shelburne* decision, Florida courts have abandoned<sup>49</sup> *Shelburne's* formalistic application of the factors and have created a much more workable and flexible standard. Known as the *foreseeable zone of risk* standard, this new standard is equitable to both landowners and injured off-premises invitees. Furthermore, the courts have become increasingly more willing to find that a landowner owes a duty of care to invitees who are off-premises.<sup>50</sup>

Under the new standard, the courts have generally found that a landowner owes a duty of care to an off-premises invitee when the land-

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48. See *Johnson v. Howard Mark Prods.*, 608 So. 2d 937, 938 (Fla. 2d DCA 1992). *Johnson* does not explicitly make this assertion. However, the *Johnson* court indicated that because there are "occasions" where off-premises liability may be justified, a case-specific standard is required. *Id.*

49. While the formalistic application of the factors has been abandoned, a judge may still not consider such factors as control, foreseeability, and economic benefit, when determining whether the landowner has extended his foreseeable zone of risk.

50. See generally *Johnson v. Howard Mark Prods.*, 608 So. 2d 937 (Fla. 2d DCA 1992).



owner has extended a *foreseeable zone of risk* beyond his own premises.<sup>51</sup> Moreover, the courts have employed three ways in which a landowner may extend his foreseeable zone of risk beyond his own premises: 1) the landowner creates a dangerous condition where it is foreseeable that an invitee may be injured off-premises;<sup>52</sup> 2) the landowner fails to properly maintain the area of ingress or egress to his property;<sup>53</sup> or 3) the landowner assumes a duty to protect invitees while they are off-premises.<sup>54</sup>

### A. *Creation of a Dangerous Condition*

One of the first cases, involving the *foreseeable zone of risk* was *McCain v. Florida Power Corp.*<sup>55</sup> Thomas McCain was injured while operating a mechanical trencher when the blade struck an underground electrical cable owned by Florida Power Corporation.<sup>56</sup> McCain was operating the machinery in an area which the Florida Power Corporation had marked as a "safe" area.<sup>57</sup> In its analysis, the Florida Supreme Court stated that "the duty element of negligence focuses on whether the defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others."<sup>58</sup> The court further added that "Florida, like other jurisdictions, recognizes that a legal duty will arise whenever a human endeavor creates a generalized and foreseeable risk of harming others."<sup>59</sup>

The court continued its analysis and stated that duty may arise from four sources: 1) legislative enactments; 2) judicial interpretations of legislative enactments or administrative regulations; 3) other judicial precedent; and 4) a duty arising from the general facts of the case.<sup>60</sup> The Florida Supreme Court determined that *McCain* dealt with the last category, duty arising from the general facts of the case, because the duty arose due to a foreseeable zone of risk arising from the acts of the defendant. The court further noted that "[w]here a defendant's conduct cre-

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51. *Id.* at 938.

52. *Id.* These cases do not deal with previously noted situations in which the landowner releases toxic chemicals from his property to adjacent property. Nor do they involve similar cases where the landowner causes harm from his own premises which injures individuals off-premises. In those cases something created or owned by the landowner escaped his premises and directly caused injury to off-premises individuals. See generally PROSSER, *supra* note 1, at 387.

53. *Gutierrez v. Dade County Sch. Bd.*, 604 So. 2d 852, 853 (Fla. 3d DCA 1992).

54. *Union Park Mem'l Chapel v. Hutt*, 670 So. 2d 64, 66-67 (Fla. 1996).

55. 593 So. 2d 500 (Fla. 1992).

56. *Id.* at 501.

57. *Id.*

58. *Id.* at 502.

59. *Id.* at 503.

60. *Id.*

ates a foreseeable zone of risk, the law generally will recognize a duty placed upon defendant to either lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses."<sup>61</sup>

Although *McCain* did not deal directly with off-premises liability, it served as a pronouncement by the Florida Supreme Court that an individual may owe a duty of care whenever facts of the specific case indicate that the individual created a foreseeable zone of risk to another party.<sup>62</sup> By making the standard case specific and failing to limit or qualify the foreseeable zone of risk, the *McCain* Court allowed for the possibility of the *foreseeable zone of risk* extending to certain off-premises areas.

A mere eleven months later, that possibility became a reality when Florida's Second District Court of Appeal was confronted with that very issue in *Johnson v. Howard Mark Productions, Inc.*<sup>63</sup> In *Johnson*, the personal representative for the estate of Jason Johnson appealed a summary judgment entered in favor of Howard Mark Productions, Inc.<sup>64</sup> The facts alleged in the complaint were that an automobile struck and killed Johnson on June 4, 1988, while Johnson attempted to cross U.S. Highway 41 in Bradenton, Florida, to patronize a nightclub owned by the defendant.<sup>65</sup> Johnson and several others parked on the opposite side of the highway because, as the complaint alleged, the nightclub had "woefully insufficient" parking.<sup>66</sup> The complaint did not allege, nor do the facts indicate, that the defendant directed or instructed Johnson or the others to park across the highway.<sup>67</sup> However, it was alleged, that the inadequate parking was a dangerous condition of which the defendant knew or should have known.<sup>68</sup>

In its analysis the court noted that "although a landowner is most commonly liable for injuries that occur on the property, there are occasions when a landowner may be liable for a dangerous condition that results in injury off the premises."<sup>69</sup> The court then added that:

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61. *Id.* at 503. The court went on to find that the power company had the ability to foresee a zone of risk. *Id.* at 504. "By its very nature, power generating equipment creates a zone of risk that encompasses all persons who foreseeably may come in contact with that equipment." *Id.* The court held that a reasonable jury could have found the power company owed a duty of care to *McCain*. *Id.*

62. *Id.* at 503-04.

63. 608 So. 2d 937 (Fla. 2d DCA 1992).

64. *See id.* at 938.

65. *Id.*

66. *Id.*

67. *Id.* Note that in *Shelburne* the patrons were specifically instructed to park in the adjacent lot. *See* *Holiday Inns v. Shelburne*, 576 So. 2d 322, 324 (Fla. 4th DCA 1991).

68. *See Johnson*, 608 So. 2d at 938.

69. *Id.*

the general standard of care which the common law places on all landowners to protect invitees under a wide spectrum of circumstances can authorize a case-specific standard of care requiring protection of invitees on nearby property if the landowner's foreseeable zone of risk extends beyond the boundaries of its property.<sup>70</sup>

In doing so, the *Johnson* court reversed an order for summary judgment in favor of the landowner and held that general issues of material fact existed as to whether the landowner had extended his foreseeable zone of risk.<sup>71</sup>

This decision is representative of the movement by state courts in Florida to abandon the formalistic application of the factors set out in *Shelburne*. While the *Johnson* court cited *Shelburne* for the proposition that a landowner could owe an off-premises duty of care,<sup>72</sup> the court chose not to apply all of the factors listed in *Shelburne*. Instead, *Johnson* held that the allegations that the land owner failed to provide adequate parking and invitees would have to cross a dangerous highway were sufficient to preclude summary judgment in favor of the landowner.<sup>73</sup>

Even though the facts in *Johnson* were not as compelling as those in *Shelburne*, the *Johnson* court found genuine issues of material fact as to whether the landowner had extended his foreseeable zone of risk.<sup>74</sup> Under the *Johnson* analysis, the circumstances under which a landowner will owe a duty of care to off-premises invitees in Florida may have increased.<sup>75</sup> More importantly, by applying the foreseeable zone of risk analysis, the *Johnson* court has abandoned a formalistic application of

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70. *Id.*

71. *Id.* at 939. The court added that, in order to prevail on a motion for summary judgment, the movant must show unequivocally that there was not negligence, or that the plaintiff's negligence was sole proximate cause of injury. Although it could be asserted in *Johnson* that Johnson's act of crossing the highway was the sole proximate cause of his injury, that argument would not have been readily applicable in this case because of the 1988 decision reached by the Florida Supreme Court in *Cosby v. Flint*, 520 So. 2d 281 (Fla. 1988) (which held that although generally a possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, a possessor would be liable if he should anticipate the harm). Applying this rationale to *Johnson*, despite the obvious dangers of crossing the highway, if it were shown that the landowner knew or should have known that individuals were crossing the highway to get to his premises, his liability would not be eliminated.

72. See *Johnson*, 608 So. 2d at 938.

73. *Id.* at 939.

74. *Id.* at 938.

75. It should be noted that in each case, the plaintiff continues to bear the burden of pleading sufficient ultimate facts to demonstrate all elements: the foreseeable zone of risk, the duty of the landowner, and the breach of that duty. In *Short v. Lakeside Cmty. Church*, 700 So. 2d 772 (Fla. 2d DCA 1997), a child was struck by a car while crossing the street adjacent to a church operated school where she attended. *Id.* at 773. The court noted that the plaintiff had not plead sufficient facts to establish a foreseeable zone of risk. *Id.* Thus, in the absence of a pleading that the

the factors set out in *Shelburne* in favor of a more workable and flexible standard to determine the landowner's foreseeable zone of risk. Under this new flexible standard, courts will now simply ask the question, "has the owner extended his foreseeable zone of risk, by creating a dangerous condition such that he owes a duty of care to off-premises invitees?" This standard has already been applied in subsequent cases throughout Florida.

Perhaps no case is more indicative of the abandonment of the application of the *Shelburne* factors than *Gunlock v. Gill Hotels Co.*,<sup>76</sup> because this case was from the same court which decided *Shelburne*. In *Gunlock*, a plaintiff brought an action against a hotel for the death of an invitee struck and killed by a car while he crossed a highway to get from one part of the hotel to another.<sup>77</sup>

The Fourth District Court of Appeal could have cited *Shelburne*, its own precedent, and applied the factors set out in that case. However, the *Gunlock* court did not do so. Instead it cited *Johnson* and noted:

[g]enerally, where a landowner creates a *foreseeable zone of risk*, a landowner has a duty either to lessen the risk or take sufficient precautions to protect invitees from the harm the risk poses. Thus, a landowner may be required to protect invitees on nearby property if a landowner's foreseeable zone of risk extends beyond the boundaries of its property.<sup>78</sup>

In *Gunlock*, the court found that where an invitee must cross a certain dangerous area in order to get from one side of the premises to another, the landowner will have created a dangerous condition and extended his foreseeable zone of risk beyond his own premises.<sup>79</sup> The *Gunlock* court continued and held that as a result of the extension of the foreseeable zone of risk, the landowner's hotel had a duty to "provide its guests with reasonably safe passage across the highway."<sup>80</sup>

One notable point is that in order to extend the foreseeable zone of risk, the condition created by the landowner must be dangerous. Therefore, failure to provide adequate parking or requiring an invitee to cross a certain area in order to get from one portion of the premises to another, does not, by itself create a dangerous condition. However, as seen in the

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landowner created the dangerous condition, such as failing to provide parking or causing the invitee to cross a highway, there is generally no duty.

76. 622 So. 2d 163 (Fla. 4th DCA 1993).

77. See *id.* at 163-64. Although the plaintiff did not drink in the hotel bar, he was visibly intoxicated when he left it in an attempt to reach his hotel room, which was located across the highway. *Id.* at 164.

78. *Id.* (emphasis added) (citations omitted).

79. *Id.*

80. *Id.*

previous cases, courts have found that dangerous conditions may exist when the two factors are combined.<sup>81</sup>

Moreover, it should be noted that even in those cases where a dangerous condition is found to exist, the landowner is not automatically liable. Thus, in the previous cases no liability would have been found if the landowners had taken necessary precautions to protect invitees and/or to correct the dangerous conditions. In other words, if the landowner complies with his duty of care he would not be liable.

In *Wakefield v. Winterhaven Management, Inc.*<sup>82</sup> the court addressed the issue of off-premises liability as it related to damage to property owned by an invitee.<sup>83</sup> There, the plaintiff attended a car show and checked into a hotel nearby. Upon checking in, a desk clerk told him the motel had hired two security guards for the auto show.<sup>84</sup> At the car show, the plaintiff traded his Corvette for another valued at approximately \$30,000-\$50,000. Upon his return to the hotel, the plaintiff parked in a white lined parking space twenty feet from his hotel room door. The parking space was not on the actual premises of the hotel.<sup>85</sup> The evidence demonstrated that the hotel knew that guests parked in those spots, and that guests were never told not to park there.

The court cited *Shelburne* for the proposition that a landowner could be liable for injuries to invitees which occur off-premises and asserted that where a landowner uses an adjacent premises for its own business purposes, the landowner owes a duty of care to invitees and their property on those adjacent premises.<sup>86</sup> The court concluded that there was a genuine issue of material fact as to whether the hotel had reason to know that its patrons routinely parked on the adjacent property.<sup>87</sup>

Again, this case is representative of the court's movement away from the application of the factors in *Shelburne*. Although the *Wakefield* court cited *Shelburne* it did not mention any of the factors set forth

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81. In almost every inadequate parking case, a dangerous condition is only found to exist where the invitee is forced to cross a dangerous highway, or park in an adjacent lot wherein known dangers exist. No court has said that mere inadequate parking is a dangerous condition. See *Short v. Lakeside Cmty. Church*, 700 So. 2d 772 (Fla. 2d DCA 1997) (finding that inadequate parking alone is not a dangerous condition).

82. 685 So. 2d 1348 (Fla. 2d DCA 1996).

83. The previously noted cases all involved personal injury to the invitee which occurred off-premises. This case deals with injury or damage to property owned by an invitee which occurs off-premises.

84. *Wakefield*, 685 So. 2d at 1348.

85. *Id.* at 1349. The space was shown to be approximately seven feet from the actual hotel. In fact, it was so close to the hotel bar that guests as well as delivery persons routinely parked there. *Id.*

86. *Id.* at 1349.

87. *Id.*

therein, despite the fact that many of those factors may have existed. For example, there was evidence that the motel may have exercised control over the lot by painting lines for the parking spaces, that the motel derived an economic benefit from patrons parking in that lot, and that injury was foreseeable.<sup>88</sup>

Even though those factors may have existed in *Wakefield*, the court did not base its decision on their presence. Instead, the court reversed summary judgment on the grounds that there was a genuine issue of material fact as to whether the landowner was aware that its patrons routinely parked in the parking spaces.<sup>89</sup> The court further noted that if the hotel had reason to know that its guests parked in that area it had a duty to warn them that the parking lot was not hotel property and that they would be parking there at their own risk.<sup>90</sup>

This case does not apply the rigid factors set forth in *Shelburne*. Instead, it applies a *foreseeable zone of risk* analysis which asserts that a landowner may create a dangerous condition when the landowner is aware that its invitees are parking off-premises in a dangerous area and the landowner fails to provide any notice of that fact to his invitees.<sup>91</sup>

The aforementioned cases show that Florida courts have abandoned the explicit application of the factors set forth in *Shelburne*, and created an expansive, but effective and predictable standard to determine off-premises duty of care. The current standard in Florida is that the landowner may owe an off-premises duty of care where the landowner's foreseeable zone of risk extends beyond his own premises.

Similarly, those cases assert that one way in which a landowner may extend his foreseeable zone of risk is where a landowner creates a dangerous condition such that there is a foreseeable risk of injury to off-premises invitees. The owner has a duty to remedy or correct those risks, or he may be subject to off-premises liability. It should be noted that while the explicit application of the factors set forth in *Shelburne* has been abandoned, the courts may generally consider those factors in the analysis of all the generally accepted ways in which a foreseeable zone of risk may be extended off-premises.

### B. *Area of Ingress and Egress*

The second generally accepted way in which a business landowner may extend his foreseeable zone of risk, is by failing to properly main-

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88. *See id.*

89. *Id.*

90. *Id.*

91. *Id.*

tain the areas of ingress and egress of his property. The following cases demonstrate how that standard has been applied in Florida.

In *Dawson v. Ridgley*,<sup>92</sup> a motorcycle passenger sued an automobile driver and shopping center owner for injuries sustained in a motor vehicle accident when an automobile driver exited the shopping center and struck the motorcycle. The automobile driver filed a cross claim against the shopping center owner.<sup>93</sup>

In its analysis of the automobile driver's claim, the court focused on the issue of whether the landowner had negligently constructed the entrance/exit to his shopping center.<sup>94</sup> The court then held that "there is a duty in Florida owed by a landowner to his business invitees to keep his property reasonably safe and to protect such invitees from dangers of which he is or should be aware."<sup>95</sup> Even though the court did not expressly use the term "area of ingress or egress," this case set the precedent that a landowner owes a duty of care to his invitees in his areas of entrance/exit from his property.

In *Gutierrez v. Dade County School Board*,<sup>96</sup> the same court addressed ingress and egress liability. A student was parked in a school parking lot waiting for his girlfriend. The girlfriend entered the car and the two students began to leave. While they were in the driveway, another student approached the car while another individual ran up to the side of the car and put a gun to the driver's head.<sup>97</sup> The driver accelerated and was shot a few feet off of the school's premises.<sup>98</sup> The school board in that case moved for summary judgment on the ground that it did not owe the driver a duty of care because the actual shooting occurred a few feet beyond its property line.<sup>99</sup>

The court noted that "a landowner is under a duty to invitees to maintain his premises in a reasonably safe condition."<sup>100</sup> The court continued: "[t]hat duty extends to the means which the landowner has expressly provided for use by the invitees for ingress and egress."<sup>101</sup>

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92. 554 So. 2d 623 (Fla. 3d DCA 1989).

93. *Id.* at 624. Since this Comment deals with invitees, the claim of the motorcycle passenger is not germane to this analysis. Nonetheless, as related to that claim, the court held that a "landowner has no duty to a passing motorist to maintain his property in such a way that a driver exiting his property has a completely unobstructed view of intersecting traffic, including the passing motorist." *Id.*

94. *Id.*

95. *Id.* at 625.

96. 604 So. 2d 852 (Fla. 3d DCA 1992).

97. *Id.* at 853.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* See also *Garcia v. City of Hialeah*, 550 So. 2d 1158, 1159 (Fla. 3d DCA 1989) (holding that a landowner has a duty of care to invitees to properly maintain the areas of ingress

This case affirmed the principle that a landowner owes a duty to maintain the areas of ingress and egress in a reasonably safe condition, but extended that principle to include any off-premises area which is intended to serve as the area of ingress and egress.<sup>102</sup> In other words, a landowner's foreseeable zone of risk extends to the areas of ingress and egress.

Finally, *Thompson v. Gallo*<sup>103</sup> provides another example of how courts have analyzed the issue of the area of ingress and egress liability. In that case, an individual was attempting to turn into a public parking lot from a very busy street, but collided with another vehicle in the process of turning into the parking lot.<sup>104</sup> Testimony at trial<sup>105</sup> indicated that the entrance and exit were not clearly indicated, and that the vehicle turning into the lot was actually turning into what was the exit of the parking lot.<sup>106</sup> Moreover, expert testimony<sup>107</sup> indicated that the accident was proximately caused by a lack of clear identification of the driveway usage as either an exit or an entrance.<sup>108</sup> In its decision, the court held that [b]usiness property owners have a duty to provide safe ingress and egress to their premises.<sup>109</sup>

Although the previously noted cases all extend a landowner's potential liability beyond his own premises, the standard is clear. A landowner's foreseeable zone of risk extends to any area that he

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and egress by using reasonable efforts to ensure that visibility in the area of ingress and egress was not obstructed).

102. It should be noted, however, that a landowner's liability is not limitless in areas of ingress and egress. See e.g. *Concepcion v. Archdiocese of Miami*, 693 So. 2d 1103 (Fla. 3d DCA 1997). In *Concepcion*, a student was assaulted after school hours by another individual. The court noted the *Gutierrez* decision, but held that a landowner owes no duty of care to invitees for events occurring solely off the landowner's premises and which are wholly unconnected to any activity on the landowner's premises. *Id.* at 1106. In other words, the injury must be rationally related to the invitation.

103. 680 So. 2d 441 (Fla. 1st DCA 1996).

104. *Id.* at 442 (the injuries occurred entirely off-premises on the street).

105. A police officer at the scene testified that the vehicle was entering what was actually the exit. *Id.*

106. *Id.*

107. An expert in accident reconstruction opined that the lack of clear identification of the driveway usage caused a delay in the driver's turn into the lot, which caused the other car to hit that vehicle. *Id.* at 442-43.

108. *Id.*

109. *Id.* at 443 (citing *IRE Florida Income Partners, Ltd. v. Scott*, 381 So. 2d 1114, 1117 (Fla. 1<sup>st</sup> DCA (1979) for the proposition that:

The duty to keep the premises safe for invitees extends to all portions of the premises that are included in the invitation and that are necessary or convenient for the invitee to visit or use in the course of the business for which the invitation was extended . . . "The duty extends to approaches to the premises which are open to invitees in connection with their business on the premises, and which are so located and constituted as to represent an invitation to visit the place of business and to use such means of approach". *Id.*)



expressly provides or utilizes as a means of ingress or egress. Thus, the landowner has a duty to maintain those areas in a reasonably safe condition.

### C. *Assumption of Duty*

The final way in which a landowner exposes himself to off-premises liability is when a landowner gratuitously assumes to undertake a certain action off-premises. The Supreme Court of Florida squarely addressed this issue in a 1996 decision.

In *Union Park Memorial Chapel v. Hutt*<sup>110</sup> a motorist was injured when traveling through a red light as part of a funeral procession. The funeral director voluntarily undertook to organize and lead the funeral procession.<sup>111</sup> The court stated that “[i]t is clearly established that one who undertakes to act, even when under no obligation to do so, thereby becomes obligated to act with reasonable care.”<sup>112</sup>

In so doing, the Florida Supreme Court set an unambiguous standard. Namely, where a landowner undertakes to act off-premises, the landowner will owe a duty of care to invitees such that he faces potential liability for off-premises injuries. He extends his foreseeable zone of risk to those areas in which he assumes a duty to act or perform a certain function, beyond his property boundary.

## IV. OFF-PREMISES LIABILITY IN OTHER JURISDICTIONS

In order to fully appreciate the issue of off-premises liability in Florida, one must compare it to the rule in other jurisdictions. This survey will not only show that some jurisdictions have standards resulting in more or less landowner liability than Florida, but it will also show how Florida’s foreseeable zone of risk analysis is an effective and efficient method of establishing off-premises duty.

### A. *Conservative Application of Off-Premises Liability*

A number of jurisdictions have been reluctant to impose a duty of care upon a landowner extending beyond his own premises. In *Ferreira v. Strack*,<sup>113</sup> the Rhode Island Supreme Court addressed a case that was factually similar to *Johnson*. In *Ferreira*, an intoxicated driver struck church parishioners while they were crossing a public street to reach the parking lot where they had parked their car. The complaint contended that the church owed those parking in the lot a duty to control traffic

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110. 670 So. 2d 64, 65 (Fla. 1996).

111. *Id.* at 69.

112. *Id.* at 66-67.

113. 636 A.2d 682 (R.I. 1994).

because the church knew that a substantial number of parishioners would cross the highway to reach their cars after Mass ended.<sup>114</sup> These claims closely resemble those made in *Johnson*, wherein a duty was found to exist.<sup>115</sup> In its analysis, the *Ferreira* court held that:

[u]nder the doctrine of premises liability a landowner has a duty to exercise reasonable care toward persons reasonably expected to be on his or her premises. The rationale for the imposition of this duty rests firmly on the landowner's possession of the premises and his or her attendant right and obligation to control the premises.<sup>116</sup>

Moreover, the court noted that “[n]either the lack of adequate parking nor the foreseeability that many parishioners would park in the nearby lot requiring them to cross Broadway<sup>117</sup> warrants the imposition of a duty to control traffic on a public highway.”<sup>118</sup> In its rationale the court declared three reasons why such a duty should not be applied:

First, a landowner does not own or possess an abutting public way and therefore has no right to control such a public way. Second, the landowner has no control over the instrumentality causing the injury. Third, the protection of the public while on a public way is a duty allocated to the government, not to private individuals who own land abutting public ways.<sup>119</sup>

This jurisdiction and those with similar precedent have set a bright-line standard which limits liability to those areas that the landowner actually owns or controls.

*Santoleri v. Knightly*,<sup>120</sup> a New York case which is factually similar to *Johnson* and, in some regards, *Shelburne*, represents an example of why a bright-line standard is often ineffective and inequitable. In *Santoleri*, the plaintiffs were attending a funeral in which the parking lot was full. Upon their arrival an employee of the funeral home instructed the plaintiffs to park across the street in a lot which was neither owned nor operated by the funeral home.<sup>121</sup> Despite the inadequate parking and the instructions to park elsewhere, the court held that “the funeral home owed no duty to plaintiffs to exercise due care preventing off-premises

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114. *Id.*; see also *Jacobs v. Anderson Bldg. Co.*, 459 N.W.2d 384, 386 (N.D. 1990) (holding that a landowner does not generally owe a duty beyond that area which he controls).

115. It should be noted however, that in this case, it is unclear whether the church provided parking, and to what degree that parking was adequate.

116. *Ferreira*, 636 A.2d at 685 (citations omitted).

117. Broadway is the name of the highway that the parishioners were required to cross.

118. *Ferreira*, 636 A.2d at 688. The court further noted that there was no duty to protect an individual from injury by a third party on land which is not owned, possessed or controlled by the landowner. *Id.* at 686.

119. *Id.* (citations omitted).

120. 663 N.Y.S.2d 505 (N.Y. Sup. Ct. 1997).

121. *Id.* at 506.

injuries on an adjacent highway it did not own or control."<sup>122</sup>

Those jurisdictions which have attempted to limit a duty of care only to those areas in which the landowner has actual control, possession or ownership have created a bright-line standard which often leads to ineffective and unjust results. Even if the owner puts the invitee in danger, he may not owe a duty of care to the invitee and therefore will not be liable for off-premises injuries.

### B. *Liberal Application of Off-Premises Liability*

While the previously noted cases provide a sample of how certain jurisdictions have been reluctant to extend liability beyond the owner's premise, numerous jurisdictions have applied a more liberal standard so as to avoid inequitable results.

In *Ember v. B.F.D.*<sup>123</sup> a bar patron was assaulted in a parking lot across from a bar, which was often used by patrons.<sup>124</sup> The bar was very well known and there had been previous instances of criminal activity in the areas adjacent to the bar.<sup>125</sup> The court held that "liability is not limited to the area owned or leased, but extends to adjoining areas which harbor a dangerous condition created by the owner's special benefit or use of such areas."<sup>126</sup> The court added that "a duty of reasonable care may be extended beyond the business premises when . . . the invitor knows his invitees customarily use such adjacent premises in connection with the invitation."<sup>127</sup> In so holding, the court essentially adopted a "foreseeable zone of risk" standard, the current standard in Florida.<sup>128</sup>

In *Mulraney v. Auletto's Catering*<sup>129</sup> the New Jersey courts analyzed the issue of off-premises liability as it specifically related to off-premises parking.<sup>130</sup> In *Mulraney*, the invitee arrived at a "Bridal Fair" and in an effort to avoid valet parking, parked her own car in an exterior parking lot. After she parked, however, one of the "Bridal Fair" employees told her that she would have to move her car as that lot was reserved

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122. *Id.* at 508; see also *Southland v. Superior Court*, 250 Cal. Rptr. 57 (Ct. App. 1998) (holding that existence of a business proprietor's duty of care with respect to patrons injured by criminal acts of third persons which occur on property adjacent to business premises, which is neither owned nor possessed by proprietor, depends on the proprietor's actual or apparent control of the adjacent premises).

123. 490 N.E.2d 764 (Ind. Ct. App. 1986).

124. *Id.* at 766.

125. *Id.*

126. *Id.* at 773.

127. *Id.* at 772.

128. Note that although the court does not expressly use the term "foreseeable zone of risk," the court's analysis is comparable. Moreover, as this case was decided in 1986, Indiana adopted its standard several years before Florida did.

129. 680 A.2d 793 (N.J. 1996).

130. *Id.*

for the valet parking.<sup>131</sup> The invitee moved to an adjacent lot, and was struck by a vehicle while crossing the highway.<sup>132</sup>

The court took an interesting approach to analyzing this problem. It chose not to use the foreseeable zone of risk standard, but instead specifically dealt with the issue of a landowner's duty of care as related to invitees crossing the highway.<sup>133</sup> The court held that a landowner has a duty to provide reasonably safe passage for patrons who must cross a highway to reach its parking lot.<sup>134</sup> The court added that:

a substantial commercial enterprise that owns property immediately adjoining a highway has the ability to illuminate an area where pedestrians are likely to cross and/or to provide warnings of the danger both to motorists and to pedestrians and, if necessary, to hire off duty police officers to control motor vehicular and pedestrian traffic.<sup>135</sup>

The court took a liberal approach to the duty of care as it relates to off-premises invitees, but chose to analyze the problem from a narrow perspective instead of setting a general foreseeable zone of risk standard.

Although these cases only provide a sample of how certain jurisdictions have chosen to analyze the issue of off-premises duty of care, they have shown that the courts will generally take one of three approaches: 1) they will draw a bright-line standard which generally revolves around control of the adjacent premises; 2) they will allow off-premises liability in certain circumstances, without establishing an easily applicable standard; or 3) they will establish a standard such as the foreseeable zone of risk, which dictates a duty whenever a landowner expands his foreseeable zone of risk.

## V. THE ROLE OF INSURANCE IN OFF-PREMISES LIABILITY

The role of insurance must be incorporated into the analysis of whether the foreseeable zone of risk is a more equitable/efficient standard for the determination of off-premises liability than the other previously mentioned standards.

In *Illinois Insurance Exchange v. Scottsdale Insurance*<sup>136</sup> a Florida court analyzed the role of insurance as it relates to off-premises liability. In that case, a bar located in Miami Beach served alcohol to under-aged patrons. These patrons were later attacked by several other under-aged

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131. *Id.* at 794.

132. *Id.*

133. *Id.* at 795.

134. *Id.*

135. *Id.* The court noted that this was especially true where the event was a large function which occurs in isolated situations. *Id.* at 796.

136. 679 So. 2d 355 (Fla. 3d DCA 1996).

individuals, who had also been served at the bar.<sup>137</sup> The injuries occurred entirely off-premises.<sup>138</sup> The question before the court was whether the comprehensive general liability policy or the liquor liability insurance was liable for the injuries. The court held that there were genuine issues of material fact regarding whether the service of alcohol to minors contributed to the claimant's damages.<sup>139</sup> The court further noted that if the negligent service of alcohol was the proximate cause of the injury then the liquor, insurance would be liable. Otherwise, the comprehensive insurance was obligated to pay.<sup>140</sup>

This case is of vital importance because the injuries occurred entirely off-premise. It asserts that a landowner will be able to procure insurance that will cover off-premises injuries to invitees.<sup>141</sup> As such, the foreseeable zone of risk analysis presents a very equitable standard for off-premises liability. Even where the landowner creates a foreseeable zone of risk, and invitees are injured, the landowner may be covered by insurance. The landowner may thus avoid bearing an undue burden for off-premises liability.

## VI. CONCLUSION

Three goals were proposed at the inception of this comment: 1) That the foreseeable zone of risk standard has supplanted the formalistic application of the factors set forth in *Shelburne*; 2) That the foreseeable zone of risk standard can be used to determine when a landowner will owe a duty of care to off-premises invitees, such that he may be liable for off-premises injuries; 3) That the foreseeable zone of risk standard is an effective and equitable standard, despite the fact that it may lead to an increased duty of care and potential liability.

This Comment analyzed the development of a landowner's duty of care beginning with the *Shelburne* case and followed with an analysis of the development of the "foreseeable zone of risk" standard. In so doing, this paper has illustrated the evolution of off-premises duty of care. In *Shelburne*, the court looked at certain circumstances and factors, and held that under those particular circumstances it would be equitable and justifiable to find that the landowner owed an off-premises duty of care.

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137. *Id.* at 356.

138. *Id.*

139. *Id.*

140. *Id.* at 358. Commercial general liability policies insurance apply to bodily injury, property damage, personal injury, advertising injury, and medical expenses arising out of the ownership, maintenance, or use of the premises. *See, eg.,* *Southeast Farms, Inc. v. Auto-Owners Ins. Co.*, 714 So. 2d 509 (Fla. 5th DCA 1998).

141. *See* *Illinois Ins. Exch.*, 679 So. 2d at 358.

Unfortunately, *Shelburne* did not establish a definite and workable standard concerning off-premises liability.

As a result, subsequent courts abandoned *Shelburne* and shifted the focus of analysis to whether the landowner expanded his "foreseeable zone of risk" beyond his own premises. A landowner may do this either by: 1) Creating a dangerous condition; 2) Failing to properly maintain areas of ingress and egress; or 3) Assuming a duty beyond the landowner's premises.

Although that shift in analysis corresponds with an increase in off-premises duty of care cases, it also establishes a workable standard by which landowners can determine whether they owe invitees a duty of care beyond the premises. The landowner must ask himself: 1) have I created a dangerous condition which extends beyond my premises; 2) have I failed to reasonably maintain my areas of ingress or egress; or 3) have I assumed a duty of care beyond my premises? If the landowner can affirmatively answer any of those questions, then the foreseeable zone of risk is extended. The landowner owes a duty of care to his invitees to any area where his foreseeable zone of risk extends.

Florida has adopted a standard that appears to be far more equitable and efficient than other jurisdictions, which either strictly limit liability or focus on such issues as control or ownership. The Florida standard merely requires the landowner to question whether he has endangered his invitees while they are off-premises. If so, then reasonable steps must be taken to protect those invitees. Finally, the availability of insurance will spare the owner the direct expense of liability.

The Florida "foreseeable zone of risk" standard is the most efficient and equitable standard for the determination of off-premises liability because 1) the landowner has a standard by which to determine his duty of care, 2) the invitee will be protected where the owner breaches his duty, and 3) the owner will be protected to some degree by insurance. No one is unjustly damaged or enriched. More importantly, owners and insurers have an incentive to take reasonable precautions to protect their invitees. For the foregoing reasons Florida has properly adopted, and should continue to apply, the *foreseeable zone of risk* standard as opposed to the *Shelburne* and the other available standards.

PETER LOPEZ\*

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\* I would like to thank Professor Craig Montz for his contributions to this article.