Nova Law Review

Volume 16, *Issue* 1 1991 *Article* 19

Premises Liability in Florida After Holday Inns, Inc. v. Shelburne; Will Florida Extend a Landowner's Duty of Care Beyond the Physical Boundaries of His Property?

Bruce G. 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?

TABLE OF CONTENTS

I. INTRODUCTION 597
II. THE HISTORICAL RELUCTANCE IN RECOGNIZING OFF-PREMISES LIABILITY 599
III. *SHELBURNE* AND THE FIVE FACTORS 601
A. *Status as an Invitee* 601
B. *Control* 603
C. *Causation* 605
D. *Economic Benefit* 606
E. *Foreseeability* 608
F. *Reconciliation of the Five Factors* 610
IV. *SHELBURNE*'S IMPACT ON FLORIDA BUSINESSES AND THE LAW OF PREMISES LIABILITY 611
A. *Will Florida Be Able to Place a Practical Limitation on Off-Premises Liability After Shelburne?* 611
B. *Will Shelburne Overwhelm Florida Courts With Off- Premises Liability Actions?* 612
C. *Shelburne's Effect on Property Insurance of Florida Businesses* 614
V. CONCLUSION 615

I. INTRODUCTION

On August 28, 1982, Robert Shelburne, Scott Turner, David Rice, and Lisa Fuston drove to the Holiday Inn in Fort Pierce, Florida to go to the Rodeo Bar located inside the hotel.[1] When the group arrived and attempted to park in the hotel's lot, they were instructed by a security

1. Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322, 324 (Fla. 4th Dist. Ct. App. 1991).

guard not to park on the lot, as it was reserved for hotel guests.[2] Instead, the group parked on an adjacent lot owned by Ingram's Fruit Stand. After several hours in the bar, the group left and walked towards their car. As they were approaching the car, a fight broke out on Ingram's lot between members of the group and two individuals, Carter and Bennett. During the fight, Carter shot Turner, Rice, and Shelburne, killing Rice.

After the incident, Shelburne, Turner, and Rice's parents sued Holiday Inns under a negligence theory, and were awarded damages approaching $5,000,000 for the injuries to Shelburne and Turner, and for Rice's death.[3] On appeal, Holiday Inns argued that as a matter of law, their duty of care with respect to patrons ended at the physical boundaries of the hotel's property.[4] However, the Fourth District Court of Appeal disagreed and affirmed the lower court's decision, finding Holiday Inns liable even though the incident did not take place on the hotel's property.[5] This holding represents Florida's recognition of off-premises liability, because *Shelburne* was the first case in Florida in which a landowner was held liable for an injury occurring on adjacent property not owned by the landowner. The Fourth District Court of Appeal utilized various factors to support its decision to hold Holiday Inns liable for the off-premises incident. For instance, the court relied on the fact that the hotel knew its patrons used adjacent lots for parking, and even suggested that patrons park on neighboring lots.[6] Also, the court regarded the hotel as having extended its business activities beyond its legal boundaries by instructing bar patrons to park on adjacent property.[7] In addition, the fact that the hotel was economically benefitting from its rent-free use of the Ingram lot factored into the court's decision to hold the hotel liable.[8] Although the court held Holiday Inns liable for the off-premises incident, the court certified a question to the Florida Supreme Court as to whether an invitor who has extended its business activities beyond the premises owned or leased can be held liable to an invitee who is injured in the extended area.[9]

---

2. *Id.* at 324, 328.
3. *Id.*
4. *Id.* at 328.
5. *Shelburne*, 576 So. 2d at 328.
6. *Id.* at 329.
7. *Shelburne*, 576 So. 2d at 328.
8. *Id.*
9. *See id.* at 337. The certified question read, "[w]hen an invitor has extended its business activities beyond the area actually owned or leased and an invitee is injured in

In order to answer this question, this article examines the current state of off-premises liability in Florida, and discusses how other jurisdictions have approached the off-premises liability issue. Following this discussion, the article focuses on various factors useful in making an accurate prediction of the certified question's final determination by the Florida Supreme Court. The article then discusses the Fourth District's opinion in *Shelburne*, and based on the facts of this decision, applies the five factors to the *Shelburne* case. The final section is reserved for determining the future impact of *Shelburne* on Florida premises liability.

II. THE HISTORICAL RELUCTANCE OF RECOGNIZING OFF-PREMISES LIABILITY

An invitor's duty of care with respect to invitees extends only as far as the scope of the invitor's invitation.[10] Traditionally, most courts have held that the scope of an invitation ends at the physical boundary lines of the invitor's property.[11] One reason why these courts have used boundary lines to govern the scope of liability was that if an injury occurred outside of a landowner's premises, the landowner could not have had the requisite control over the dangerous situation to prevent the injury.[12]

Currently, other jurisdictions such as Louisiana refuse to hold a landowner liable for an off-premises injury unless the landowner created the hazardous condition which caused the injury.[13] Still other courts refuse to recognize off-premises liability due to policy considerations concerning the difficulty in drawing the line as to where such lia-

---

that extended area, can the invitor be liable under a negligence theory?" *Id.*

10. RESTATEMENT (SECOND) OF TORTS § 332 cmt. l (1965).

11. Delvaux v. Langenberg, 387 N.W.2d 751, 762 (Wis. 1986); *see also* Cothern v. LaRocca, 232 So. 2d 473, 478 (La. 1970) ("[O]wner owes only to invitees *upon his premises* the reasonable care providing a safe place for them upon that property.") (emphasis added).

12. Rodriguez v. Detroit Sportsmen's Congress, 406 N.W.2d 207, 210 (Mich. Ct. App. 1987); *see also* Orthmann v. Apple River Campground, Inc., 757 F.2d 909, 914 (7th Cir. 1985).

13. George v. Western Auto Supply Co., 527 So. 2d 428, 430 (La. Ct. App. 1988) (store owner not liable for a slippery sidewalk because he did not create the hazard); *see* Udy v. Calvary Corp., 780 P.2d 1055, 1058 (Ariz. Ct. App. 1989) (landowner held liable for the death of a boy hit by a truck after running into the street, because the accident was caused by the landowner's failure to erect a fence around his property).

bility should end.[14]

Prior to *Shelburne*, the only Florida case dealing with an incident which occurred off the invitor's premises was *Chateloin v. Flanigan's Enterprises*.[15] In *Chateloin*, a patron of a bar was shot by another patron.[16] However, the shooting took place several miles from the bar and "a considerable time" after the patrons had left the bar.[17] The Third District Court of Appeal refused to hold the bar owner liable, because the shooting was "too remote as to time and place."[18]

Although the facts in *Chateloin* did not warrant the imposition of off-premises liability on the bar owner, *Chateloin* conceivably set the stage for Florida's recognition of off-premises liability in *Shelburne*. The majority in *Shelburne* distinguished *Chateloin* , because the shooting on Ingram's lot took place next door to the hotel and "only minutes after the individuals crossed the property line,"[19] as opposed to the "considerable" period of time which had elapsed in *Chateloin*. Thus, by distinguishing *Chateloin*, the *Shelburne* court was implicitly saying that although the facts in *Chateloin* did not warrant the imposition of off-premises liability, the facts in the instant case do give rise to off-premises liability.

Although most jurisdictions today do not adhere to a general rule holding landowners liable for off-premises incidents,[20] the current trend

---

14. *E.g.*, *Rodriguez*, 406 N.W.2d at 210; *see* Mostert v. C.B.L. & Assoc., 741 P.2d 1090, 1099 (Wyo. 1987) (movie theater was not liable for failing to warn patrons about flash flooding of streets surrounding the theater property). The policy consideration behind the court's decision in *Mostert* was the concern that extending liability would stretch the landowner's duty too far, because it would be difficult to place a limitation on off-premises liability. 741 P.2d at 1099.

15. 423 So. 2d 1002 (Fla. 3d Dist. Ct. App. 1982).

16. *Id.*

17. *Id.*

18. *Id.* at 1002. Unfortunately, the court did not elaborate on the accident as to the invitee's distance from the premises, or how long after the invitee left the premises did the incident occur. If these facts were given, it would have been easier to formulate a standard for off-premises liability as to time and distance constraints. For example, if the injury occurred several miles from the invitor's premises, it seems reasonable to conclude that the invitor should not be held liable for such a distant injury. Similarly, if the incident occurred hours after the invitee left the bar, then it would have been difficult for the injured party to prove the proximate causation element needed to recover under negligence.

19. Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322, 328 (Fla. 4th Dist. Ct. App. 1991) (construing Chateloin v Flanigan's Enters., 423 So. 2d 1002 (Fla. 3d Dist. Ct. App. 1982)).

20. *E.g.*, Delvaux v. Langenberg, 387 N.W.2d 751, 761 (Wis. 1986) (tavern

is that courts will hold a landowner liable for off-premises injuries when certain factors are present. These factors are: whether an invitee still had invitee status at the time of the injury;[21] whether the landowner had control over the adjacent premises where the injury occurred;[22] whether the activities of the landowner were the legal cause of the injury on the adjacent property;[23] whether the landowner benefitted economically from the adjacent property;[24] and whether the injury was foreseeable, regardless of where the injury occurred.[25] These five factors have been used singularly and in various combinations by courts in finding landowners liable for off-premises injuries, and are the common denominator as to when such liability will apply.[26]

III. *SHELBURNE* AND THE FIVE FACTORS

A. *Status as an Invitee*

Premises liability in Florida, as well as most other jurisdictions, has traditionally been dependent upon the entrant's status as an invitee.[27] A business invitee is defined as anyone who enters the land for a purpose connected with the business;[28] a possessor of land owes a duty

---

owner owes no duty to invitees beyond his business premises).

21. Maynard v. Walker, 345 P.2d 478, 480 (Cal. Ct. App. 1959).

22. Orthmann v. Apple River Campground, 757 F.2d 909, 914 (7th Cir. 1985) ("[W]hoever controls the land is responsible for its safety."); Gordon v. Schultz Savo Stores, Inc., 196 N.W.2d 633, 635 (Wis. 1972) (same); *Rodriguez*, 406 N.W.2d at 210 (same).

23. Holley v. Mt. Zion Terrace Apartments, Inc., 382 So. 2d 98, 101 (Fla. 3d Dist. Ct. App. 1980); George v. Western Auto Supply Co., 527 So. 2d 428, 430 (La. Ct. App. 1988).

24. Ember v. B.F.D., Inc., 490 N.E.2d 764, 773 (Ind. Ct. App. 1986).

25. Piedalue v. Clinton Elementary Sch. Dist. No. 32, 692 P.2d 20, 23 (Mont. 1984); *see* Stevens v. Jefferson, 436 So. 2d 33, 34 (Fla. 1983).

26. *See, e.g., Ember*, 490 N.E.2d at 772-73 (the court used the invitee status factor in addition to the economic benefit and foreseeability factors); Udy v. Calvary Corp., 780 P.2d 1055, 1058-59 (Ariz. Ct. App. 1989) (court used both the causation and foreseeability factors).

27. Concrete Constr., Inc. v. Petterson, 216 So. 2d 221, 222 (Fla. 1968) (status as either invitee or trespasser determines whether the party will be able to recover for negligence); W. PAGE KEATON ET AL., PROSSER AND KEATON ON THE LAW OF TORTS § 62 (1984). This article focuses on invitor/invitee law, thus the classifications of licensee and trespasser will not be discussed.

28. RESTATEMENT (SECOND) OF TORTS § 332 (1965).

to exercise reasonable care for the safety of business invitees.[29] Using this definition, it is clear that the *Shelburne* group consisted of business invitees while they were in the bar, since they entered the hotel's property to patronize the bar. But did they lose their status as invitees when they were walking back to their car by crossing the boundary line between the hotel's parking lot and Ingram's Fruit Stand?

The general rule is that an invitor's duty of care normally extends only to the boundaries of its premises.[30] Hence, under this rule, the *Shelburne* individuals would cease to be invitees once they crossed onto Ingram's lot. However, courts have recognized that there are certain situations in which a person retains invitee status even when that person leaves the premises owned by the invitor.[31] One situation where a person retains his invitee status is when the landowner knows his invitees regularly use an adjacent lot for parking.[32]

For example, the Indiana case of *Ember v. B.F.D., Inc.*[33] is similar to *Shelburne* in that a tavern owner failed to provide sufficient parking for his patrons, and knew that patrons customarily used an adjacent lot for parking.[34] The *Ember* court held that because the tavern owner knew its patrons used the adjacent lot, the owner had impliedly extended his business activities beyond the premises owned.[35] As a result, the tavern was held liable to a patron assaulted on the adjacent lot, because the court determined that the patron was still an invitee.[36]

Similarly, in *Shelburne*, the Fort Pierce Holiday Inn had a practice of requesting bar patrons to park off the premises in order to preserve the limited number of parking spaces for hotel guests.[37] The hotel had extended its business activities to include the use of Ingram's property. Under this theory, the Shelburne individuals continued to be invitees of the hotel when the incident on Ingram's lot occurred. Therefore, the Fort Pierce Holiday Inn owed a duty of reasonable care to these people.

---

29. Casby v. Flint, 520 So. 2d 281, 282 (Fla. 1988) (There is a "duty of reasonable care owed to the invitee."); RESTATEMENT (SECOND) OF TORTS § 332 cmt. l (1965).

30. *E.g.*, *Ember*, 490 N.E.2d at 772.

31. *E.g.*, *id.*

32. *Id.*

33. *Id.* at 764.

34. *Id.*

35. *Ember*, 490 N.E.2d at 764.

36. *Id.*

37. Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322, 328 (Fla. 4th Dist. Ct. App. 1991).

In addition to the extension of business activities theory, Florida courts have also extended the scope of invitee status to include means of ingress to and egress from the invitor's property.[38] This would include approaches to the property which the invitee would be reasonably expected to use to get to the invitor's place of business.[39] Similarly, other jurisdictions have held that a patron does not lose his status as an invitee by using a means of ingress or egress which the invitor has told him to use, or which he has been led to believe is the appropriate means of reaching the invitor's property.[40]

Applying this logic, because the Fort Pierce Holiday Inn had a practice of instructing bar patrons to park on adjacent lots, such as Ingram's, the *Shelburne* individuals remained invitees for the purpose of using Ingram's lot as a means of ingress to and egress from the Rodeo Bar. Thus, Holiday Inn's duty of care to Shelburne and the rest of his group did not end when they stepped off the hotel's property.

B. *Control*

Control is a prerequisite to liability of the landowner, regardless of where the injury occurred.[41] Generally, an occupier of land is deemed to have control only over the area which he possesses.[42] 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.[43] This

---

38. Shields v. Food Fair Stores, Inc., 106 So. 2d 90, 92 (Fla. 3d Dist. Ct. App. 1958), *cert. denied*, 109 So. 2d 168 (1959).

39. *Id.* In *Shields*, a supermarket was held liable for the appellant's injuries sustained when he fell off his motorcycle at an entrance to the store's parking lot. *Id.* at 90. The accident was caused by potholes in the entrance. *Id.* Even though the supermarket did not legally own the entrance to its store, the court held that the store should have maintained the entrances to its parking lot, because patrons must use the entrances as a means of approach. *Id.* at 92.

40. *See, e.g.*, Johnston v. De La Guerra Properties, 170 P.2d 5, 7 (Cal. 1946) (restaurant owner held liable for an injury on an adjacent walkway leading up to the restaurant because the owner knew that many patrons used the walkway to approach the restaurant). The California Supreme Court determined that the injured patron was entitled to the protection of an invitee because she was led to believe that the walkway was an appropriate means of reaching the restaurant. *Id.*

41. Rodriguez v. Detroit Sportsmen's Congress, 406 N.W.2d 207, 210 (Mich. Ct. App. 1987).

42. *E.g., id.*

43. Orthmann v. Apple River Campground, Inc., 757 F.2d 909, 915 (7th Cir. 1985).

control may allow an invitee to recover from a landowner for an injury occurring on adjacent property.[44]

In *Johnston v. De La Guerra Properties*,[45] control over the adjoining land formed the basis of off-premises liability. A restaurant owner, in *Johnston*, had made arrangements with the service station next door to allow restaurant patrons to park on the gas station's lot.[46] However, after this arrangement had been terminated restaurant patrons continued to use the gas station's lot for parking. When a restaurant patron sued for an injury sustained on the adjacent lot, the California Supreme Court found the restaurant liable for the patron's injury, because the restaurant owner knew his patrons were still using the adjacent lot.[47] Thus, the restaurant was exercising control over the gas station's lot and was responsible for the injury occurring on that lot.[48]

On the other hand, adjacent lots may be used by the public in general and not exclusively by patrons of an invitor. This situation acts as a shield to protect the invitor from liability for patrons injured on the adjacent lot, since the invitor is not considered to have the requisite control over an adjacent public lot.[49] For example, in *Gordon v. Schultz Savo Stores, Inc.*,[50] a grocery store was held not liable to a patron for an injury which occurred in the parking lot in front of the store.[51] The Wisconsin Supreme Court reasoned that the parking lot was used by the public in general.[52] Therefore, because the grocer had little direct contact with the lot, he did not have the level of control over the public lot needed to hold him responsible for the injury.[53] Similarly, in *La Fleur v. Astrodome-Astrohall Stadium Corp.*[54] the owners of the Houston Astrodome were not liable for an assault on a patron which

---

44. *Id.*

45. 170 P.2d 5 (Cal. 1946).

46. *Id.* at 7.

47. *Id.*

48. *Id.* Even though the parking arrangement made between the restaurant and service station had ended, the restaurant continued to control the use of the service station's lot in the evenings when the station was closed. *Id.*

49. *See, e.g.*, Gordon v. Shultz Savo Stores, Inc., 196 N.W.2d 633, 636 (Wis. 1972); La Fleur v. Astrodome-Astrohall Stadium Corp., 751 S.W.2d 563, 566 (Tex. Ct. App. 1988).

50. 196 N.W.2d 633 (Wis. 1972).

51. *Id.* at 636.

52. *Id.*

53. *Id.*

54. 751 S.W.2d 563 (Tex. Ct. App. 1988).

occurred on an adjacent public street corner.[55] In both of these cases, the corporations had no control over the public property adjacent to their own property where the injuries occurred. As a result, neither company was held liable for the off-premises injury.

However, in *Shelburne*, patrons of the Rodeo Bar were the exclusive users of Ingram's lot when the incident occurred, since the fruit stand was closed for vacation.[56] On this basis, the "public lot" defense would not work in *Shelburne*, as applied in *Gordon* and *La Fleur*. Also, Holiday Inns was using Ingram's property as an integral part of its own, because the hotel regularly "suggested" to bar patrons that they use adjacent lots, including Ingram's lot, for parking.[57] Thus, the Fort Pierce Holiday Inn was exercising dominion and control over the Ingram lot by treating the lot as if it belonged to the hotel. Under the control factor, the plaintiffs' recovery against Holiday Inns was justified, regardless of the fact that the shooting occurred outside the hotel's boundaries.

C. *Causation*

Traditionally, courts are more inclined to attach off- premises liability when the injury was caused by a negligent landowner.[58] For example, in *Udy v. Calvary Corp.*,[59] a child was hit by a truck when he ran out into a street.[60] The Arizona Appellate Court determined that the accident was caused by the apartment complex's failure to provide a fence around its property.[61] As a result, the apartment complex owner was held liable for the off-premises injury because the injury was caused by an act of negligence on the part of the apartment complex in failing to provide a fence.[62]

An owner was also held liable in the Florida case of *Holley v. Mt.*

---

55. *Id.* at 566.

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

57. *Id.* at 329.

58. Udy v. Calvary Corp., 780 P.2d 1055, 1059 (Ariz. Ct. App. 1989); *see* Holley v. Mt. Zion Terrace Apartments, Inc., 782 So. 2d 98, 101 (Fla. 3d Dist. Ct. App. 1980) (landlord liable because inadequate security caused the murder of a tenant inside a unit).

59. 780 P.2d 1055 (Ariz. Ct. App. 1989).

60. *Id.* at 1058.

61. *Id.*

62. *Id.* at 1062.

Zion Terrace Apartments, Inc.,[63] when a woman was raped and murdered inside her apartment.[64] Normally, a landlord does not owe a tenant any duty of care inside an apartment unit because the landlord lacks the requisite control over the unit.[65] The Third District Court of Appeal, however, determined that the incident inside the apartment unit was caused by the landlord's failure to provide adequate security for the common areas over which the landlord had control.[66] As a result, the apartment complex was held liable, even though the incident technically occurred off its premises because the attack took place inside a unit.[67]

In *Shelburne*, the legal cause of the harm stemmed from the fact that the security guard "suggested" to bar patrons that they park next door.[68] This created a duty on the part of the Fort Pierce Holiday Inn to provide additional security to patrol neighboring lots used by the hotel's patrons. Thus, Holiday Inns' failure to hire an additional security guard was the legal cause of the shooting, since the shooting may not have occurred if an extra security guard was there to break up the fight. The Fourth District Court in *Shelburne* noted that the jury considered the issue of whether inadequate security was the legal cause of the shooting,[69] thus making it evident that the causation factor played a role in *Shelburne* as well.

D. *Economic Benefit*

The "economic benefit" factor receives a great deal of attention, and is heavily weighed in opinions holding a landowner liable for off-premises injuries.[70] Courts often utilize this factor in making a policy argument in favor of extending liability to include adjacent property.[71]

---

63. 382 So. 2d 98 (Fla. 3d Dist. Ct. App. 1980).

64. *Id.* at 99.

65. *E.g.*, *id.* at 101.

66. *Id.*

67. *Id.* at 102.

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

69. *Id.* ("The jury in the instant case also properly determined the issue of whether the appellants' alleged breach of duty on its premises was a legal cause of the shooting off its premises.").

70. *See, e.g.*, Ember v. B.F.D., Inc., 490 N.E.2d 764, 773 (Ind. Ct. App. 1986); Davis v. Pecorino, 350 A.2d 51, 55 (N.J. 1975). This is evidenced by the fact that the economic benefit factor is discussed in depth by courts utilizing this factor in holding landowners liable for off-premises injuries.

71. *Ember*, 490 N.E.2d at 773; *see Davis*, 350 A.2d at 54 (One gaining "com-

Such an argument was used in the Indiana case of *Ember v. B.F.D., Inc.*[72]

In *Ember*, a bar patron was assaulted in an adjacent parking lot used regularly by bar patrons.[73] The court, in holding the tavern liable for the off-premises injury, concluded that if a business invitor was not held liable for off-premises injuries which occur on adjacent property providing economic benefit to the invitor, then "a business invitor could invade the public streets for its economic benefit while simultaneously absolving itself from liability otherwise imposed just a few feet away under identical circumstances."[74] Likewise, if a business invitor is deriving a commercial benefit from its special use of adjacent property, then the invitor is deemed to be in the best position to prevent injury to patrons who venture onto the adjacent land.[75]

On the other hand, other courts argue that the derivation of an economic benefit alone should not be enough to impose liability on an invitor.[76] For example, the Illinois Appellate Court in *Brunsfeld v. Mineola Hotel and Restaurant, Inc.* reasoned:

> If we were to hold that places of business which benefit economically from the existence of a publicly-owned recreational facility in close proximity to their premises are liable for the off-premises actions of their customers . . . then, to protect themselves, they would be forced to . . . place appropriate warning signs, and to monitor and control the actions of all who used those public facilities. We do not believe that the law does or should impose such a

---

mercial benefit" from his use of adjacent land "is in the best position to be aware of and guard against any dangerous condition caused by this use.").

72. 490 N.E.2d 764 (Ind. Ct. App. 1986).

73. *Id.* at 766.

74. *Id.* at 773. The term "economic benefit" or its equivalent is used by most courts in off-premises liability cases to refer to a situation where a landowner is using his neighbor's property for his own gain, without having to pay rent. *See, e.g.*, Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322, 329 (Fla. 4th Dist. Ct. App. 1991) (the hotel was using the adjacent property "rent free for their own business purposes"); *cf.* Brunsfeld v. Mineola Hotel & Restaurant, Inc., 456 N.E.2d 361, 366 (Ill. App. Ct. 1983) (race track did not benefit economically from an adjacent lake).

75. *Davis*, 350 A.2d at 54-55. In *Davis*, a woman was injured when she fell on a snow-covered public sidewalk in front of a service station. *Id.* at 52. The court determined that even though the sidewalk was public, the service station's owner was liable because the hazard was caused by his special use of the sidewalk as cars drove in and out of the station, which packed the snow on the sidewalk. *Id.* at 53, 55.

76. *See, e.g., Brunsfeld*, 456 N.E.2d at 366.

heavy burden upon such places of business.[77]

However, the Fourth District Court of Appeal in *Shelburne* did not accept this reasoning. The court found that the Fort Pierce Holiday Inn was directly benefiting from its use of the Ingram lot because the hotel was using the lot "rent free for their own business purposes."[78] Accordingly, the court utilized the economic benefit factor in holding Holiday Inns liable for the injury on the neighboring lot.[79]

E. *Foreseeability*

Foreseeability is the key factor in determining whether an invitor should be liable for an off-premises injury.[80] Rather than limiting liability to strictly on-premises injuries, courts are now beginning to use foreseeability as the standard for finding an owner liable for injuries occurring off the owner's premises.[81]

Courts utilize the foreseeability factor in a variety of ways. One common variation of foreseeability used in cases dealing with actions of third parties is the "prior similar acts" rule.[82] Under the prior similar acts rule, an attack on a patron by a third party is only considered foreseeable if the premises has a history of prior similar acts.[83]

This rule has been adopted by Florida courts, as they often look to whether the premises had a history of problems similar to whatever

---

77. *Id. Brunsfeld* involved a snowmobile operator who was injured while operating his snowmobile on a frozen lake adjacent to the Mineola Hotel & Restaurant. *Id.* at 363.

78. Holiday Inns, Inc. v. Shelburne, 576 So. 2d 322, 329 (Fla. 4th Dist. Ct. App. 1991).

79. *Id.*

80. *See* Piedalue v. Clinton Elementary Sch. Dist. No. 32, 692 P.2d 20, 23 (Mont. 1984); Udy v. Calvary, 780 P.2d 1055, 1059 (Ariz. Ct. App. 1989). As with the economic benefit factor, the foreseeability factor's utility to courts is evidenced by the fact that foreseeability receives more attention than any other factor in opinions holding landowners liable for off-premises injuries.

81. *See, e.g.*, Mostert v. C.B.L. & Assoc., 741 P.2d 1090, 1096 (Wyo. 1987); *Piedalue*, 692 P.2d at 23 (unnecessary that owner control the adjacent property if the hazard "created a foreseeable risk of harm to business invitees . . . ."); *Udy*, 780 P.2d at 1059 ("foreseeability of harm" is the governing standard once a duty is established); Bach v. State, 730 P.2d 854, 857 (Ariz. Ct. App. 1986).

82. Gregory A. Eiesland, *Attacks in Parking Lots: Driving Home Liability of Owners*, 23 TRIAL 108, 108 (Sept. 1990).

83. *Id.*

activity caused the injury at hand.[84] However, to date, Florida has only used the prior similar acts rule in determining whether a landowner is liable for an on-premises injury.[85] For example, in *Stevens v. Jefferson*, which involved an on-premises shooting at a bar, the Florida Supreme Court held for the plaintiff because the plaintiff proved the shooting was foreseeable by demonstrating that the bar "was a rough place with a history of fights and gunplay . . . ."[86]

The Fourth District Court of Appeal in *Shelburne* was the first Florida court to use the prior similar acts rule to find a landowner liable for an off-premises injury.[87] In fact, the court went even further by allowing evidence of prior dissimilar acts as well.[88] The court argued that it would be against Florida's public policy to limit evidence of foreseeability to only prior similar acts.[89] In fact, the Fourth District Court allowed as evidence fifty-eight similar and dissimilar criminal acts committed at the Rodeo Bar prior to the shooting.[90]

Another variation of the foreseeability factor used extensively in jurisdictions throughout the country in off-premises liability cases is whether the invitor knew its invitees were using the adjacent property at the time of the off-premises injury.[91] As previously discussed, an invitor's knowledge of patron use of an adjacent property may extend a patron's status as an invitee to include the use of neighboring property.[92] But in addition, an invitor's knowledge is important in determining whether the off-premises injury was foreseeable. For example, in *Margrabe v. Graves*,[93] the First District Court of Appeal reasoned that a business invitor cannot be held liable for an injury on an adjacent lot where the invitor had no reason to believe that his patrons would use

---

84. Allen v. Babrab, Inc., 438 So. 2d 356, 357 (Fla. 1983); Stevens v. Jefferson, 436 So. 2d 33, 35 (Fla. 1983).

85. *Stevens*, 436 So. 2d at 35.

86. *Id.*

87. *Shelburne*, 576 So. 2d at 325.

88. *Id.* at 331.

89. *Id.* A rule limiting evidence to only prior *similar* acts would be against public policy because such a rule would "contravene the policy of preventing future harm . . . . Surely, a landowner should not get one free assault before he can be held liable for criminal acts which occur on his property." *Id.*

90. *Id.*

91. Ember v. B.F.D., Inc., 490 N.E.2d 764, 772 (Ind. Ct. App. 1986); *see* Cothern v. LaRocca, 232 So. 2d 473, 478 (La. 1970); 52 C.J.S. *Landlord and Tenant* § 442 (1968).

92. *Ember*, 490 N.E. 2d at 772.

93. 97 So. 2d 498 (Fla. 1st Dist. Ct. App. 1957).

the adjacent lot for parking.[94]

However, in *Shelburne*, even though it was disputed at trial as to whether the security guard told Shelburne's group to park on Ingram's lot, it cannot be disputed that the Fort Pierce Holiday Inn had knowledge that the Ingram lot was being used by its bar patrons, since the hotel required bar patrons to park on the lots adjacent to the hotel.[95] In fact the *Shelburne* court noted this on several occasions in its opinion,[96] and this knowledge gave rise to liability on the part of Holiday Inns.

In addition, the *Shelburne* court could also have addressed the issue of foreseeability of patrons using adjacent lots by utilizing the rule of implied invitation.[97] Under this reasoning, if an invitor impliedly extends an invitation to its invitees to use an adjacent premises, then the invitor is deemed to have knowledge of use of the adjacent premises by its invitees.[98] For example, in *Shelburne*, even if the hotel did not expressly invite bar patrons to park on Ingram's lot, the Fort Pierce Holiday Inn impliedly extended to bar patrons an invitation to park on the Ingram lot, because the hotel required bar patrons to park off the premises.[99] However, by telling patrons to park off hotel property, the Fort Pierce Holiday Inn was implying that patrons should park on any of the lots adjacent to the hotel, including the Ingram lot. Thus, under the implied invitation rule, Holiday Inns would be deemed to have the knowledge of its patrons' use of the Ingram lot since it was foreseeable that patrons might park on Ingram's lot. In sum, whichever approach to foreseeability is used, the shooting on the Ingram lot was properly labeled by the court as foreseeable.

F. *Reconciliation of the Five Factors*

In allowing the cause of action giving rise to off-premises liability, the Fourth District Court in *Shelburne* utilized the five factors previously discussed. The Florida Supreme Court should use these factors in

---

94. *Id.* at 499. The landowner did not know the invitees were using the adjacent property. Therefore he was not liable for an injury to an invitee when she fell in a sunken driveway on the neighboring lot, since this injury was unforeseeable. *Id.*

95. *Shelburne*, 576 So. 2d at 328-29.

96. *Id.* ("[T]he evidence in the present case shows that appellants knew their patrons customarily used adjacent premises for parking in order to patronize the Rodeo Bar.").

97. *See* Cothern v. La Rocca, 232 So. 2d 473, 478 (La. 1970).

98. *Id.*

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

deciding which way to answer the certified question, and should do an analysis similar to the above analysis of these five factors. After looking at these factors, the Florida Supreme Court could only answer the certified question in the affirmative. This makes perfect sense, because the Florida Supreme Court should extend premises liability to include off-premises injuries when an invitor has extended its activities beyond the boundaries of its property.

IV. *SHELBURNE*'S IMPACT ON FLORIDA BUSINESSES AND THE LAW OF PREMISES LIABILITY

A. *Will Florida Be Able to Place a Practical Limitation on Off-Premises Liability After Shelburne?*

Jurisdictions refusing to recognize off-premises liability have often reasoned that it would be difficult to determine which off-premises injuries a landowner should be liable for.[100] Most assuredly, using a physical boundary line as a limitation on liability is a simplified, bright line approach to determining liability. This is why certain jurisdictions still recognize the property line as the extent of premises liability.[101] It is judicially convenient to do so because it provides courts with a simple ascertainable standard. However, as an ever increasing number of courts begin to recognize off-premises liability, a new standard must emerge to limit the extent of off-premises liability. Fortunately, there are several workable options available.[102]

For example, as previously noted, foreseeability has been used effectively by courts as a limitation on off-premises liability in cases recognizing liability for off-premises injuries.[103] In using foreseeability as the limiting factor, the scope of the duty of care is determined by whether the off-premises injury was foreseeable, rather than having the scope of duty governed by the landowner's property line.[104] This is a more fair and reasonable limitation on liability than boundary lines,

---

100. *See, e.g.*, Mostert v. C.B.L. & Assoc., 741 P.2d 1090, 1099 (Wyo. 1987) (refused to recognize off-premises liability because it would be difficult to place a practical limitation on such liability).

101. *See, e.g.*, Delvaux v. Langenberg, 387 N.W.2d 751, 761 (Wis. 1986); Rodriguez v. Detroit Sportsmen's Congress, 406 N.W.2d 207, 210 (Mich. Ct. App. 1987).

102. For a discussion of possible factors which could be used to limit off-premises liability, see *supra* section II of the text.

103. *E.g.*, *Udy*, 780 P.2d at 1059.

104. *Id.*; *see also* Bach v. State, 730 P.2d 854, 857 (Ariz. Ct. App. 1986).

because if an injury was foreseeable, the injured party should be able to recover from a negligent landowner regardless of where the injury occurred, since the landowner breached a duty owed to the invitee.[105]

Causation is another factor that could be used as a new limitation on liability instead of boundary lines. The Third District Court of Appeal in *Holley v. Mt. Zion Terrace Apartments*[106] hinted at the possibility of using causation as the limitation on liability instead of focusing on where the injury occurred. In *Holley*, an apartment owner was held liable for a murder in an apartment unit, because the incident was legally caused by the landlord's failure to provide adequate security to patrol the common areas.[107] Causation in this sense is a more reasonable limitation on liability than physical boundary lines, since a landowner who legally causes an injury to someone should not escape liability simply because the injury did not occur on the landowner's property.[108] Those who cause injuries should be liable for such injuries regardless of the ownership rights in the underlying property where the injury occurred.

B. *Will Shelburne Overwhelm Florida Courts With Off- Premises Liability Actions?*

In decisions that chart new areas of the law, courts are often concerned with whether such decisions will impose extra obligations on the already overburdened judicial system.[109] This is particularly true with the issue of off-premises liability.[110] The concern in recognizing off-premises liability is that it would open up the "floodgates" to substantial numbers of cases involving patrons who suffered off-premises injuries.[111]

---

105. Udy v. Calvary Corp., 780 P.2d 1055 (Ariz. Ct. App. 1989), provides one of the best examples of why boundary lines are an inequitable standard. In *Udy*, a child was killed when he ran into the street and was hit by a truck. *Id.* at 1058. In a jurisdiction which recognized boundary lines as the extent of liability, the landowner would not be liable, even though the accident was entirely caused by his negligent failure to erect a fence around his property.

106. 382 So. 2d 98 (Fla. 3d Dist. Ct. App. 1980).

107. *Id.* at 101.

108. For an illustration of the inequities of using the boundary lines standard, see *supra* note 108.

109. *See* Gates v. Richardson, 719 P.2d 193, 197 (Wyo. 1986); *see also* Mostert v. C.B.L. & Assoc., 741 P.2d 1090, 1104 (Wyo. 1987).

110. *Gates*, 719 P.2d at 197.

111. *See Mostert*, 741 P.2d at 1100 (Thomas, J., concurring in part and dissent-

Shelburne does not necessarily mean that courts will be swamped with off-premises accident claims. The issue of whether *Shelburne* will overburden our court system depends entirely on whether, Florida courts choose a workable standard to use as a practical limitation on off-premises liability. As mentioned before, several options exist which could be used effectively to limit off-premises liability.[112] Florida courts will simply have to set forth which standard will be applied to off-premises cases as a limitation on off-premises liability.[113] The most efficient way to set up a standard in off-premises liability cases is simply for the Florida Supreme Court to determine the standard when it answers the certified question. The Florida Supreme Court could prevent a wave of inconsistent holdings from Florida's lower courts involving cases where invitees suffered off-premises injuries.

Furthermore, foreseeability is the most effective standard the Florida Supreme Court could choose as the governing standard in off-premises liability cases, because foreseeability provides courts and landowners with a simple ascertainable limitation on liability. A landowner can easily determine his duty of care with respect to adjacent land by asking himself whether it is foreseeable that one of his invitees might come into contact with a hazard on adjacent land which the landowner himself created.[114] In addition, foreseeability could be applied when deciding cases involving an injury that occurred several miles from an in-

---

ing in part). Expressing concern about the majority's recognition of off-premises liability, Justice Thomas argued that a business proprietor will now have to warn invitees of every risk that they might encounter: even danger that is "remote from the place of business and over which the proprietor has no control." *Id*; *see also* Richard E. Wolverton, *Current Trends in Bar-Lounge Liability*, 7 TRIAL AD Q. 17 (1988); David G. Ditto, Comment, *Wyoming Extends the Duty of Owners and Occupiers to Warn Invitees of Dangers Beyond the Premises*, 23 LAND & WATER L. REV. 641 (1988).

The "floodgates" argument is that if a jurisdiction adopts off-premises liability, courts in that jurisdiction would become swamped with all sorts of off-premises cases, including cases where a person was injured perhaps many miles from a landowner's property, or several hours after the injured person left the landowner's premises.

112. For a discussion of these options, see *supra* section III (A) of the text.

113. Although the *Shelburne* court utilized several factors such as foreseeability, economic benefit, and extension of business activity in its decision to recognize off-premises liability, the court never set forth a standard to be used as a limitation to off-premises liability. This is why the task of choosing such a standard will be the responsibility of future Florida courts.

114. Arguably, the creation of the hazardous condition gives rise to its foreseeability. If the landowner created the condition, then notice of such a condition should be imputed on that owner. Thus, the landowner has a duty to warn invitees of the hazardous condition.

vitor's premises, or perhaps several hours after an invitee wandered off an invitor's premises. The likely result would be that injuries occurring several miles from an invitor's premises, or several hours later, are probably unforeseeable and no liability would exist for such injuries.

Thus, the Florida Supreme Court should choose foreseeability as the standard to be used in off-premises liability cases by expressly setting forth this intention when it answers the certified question. By following this course, *Shelburne* would not represent an overburdening of the court system.

C. *Shelburne's Effect on Property Insurance of Florida Businesses*

Perhaps the biggest concern of Florida businesses in light of *Shelburne* is that their premises liability insurance rates will soar since they now have to obtain extended coverage to insure the risk of being held liable for an off-premises injury to a patron. But in reality, it is unlikely that businesses will really feel the impact of higher insurance rates. *Shelburne*'s impact on insurance rates will ultimately be borne by consumers, because economists tell us that the most efficient way for companies to manage increased costs is to pass those additional costs on to consumers in the form of higher prices.[115]

Of course, courts are not blind to this elementary rule of economics.[116] In *Mostert v. C.B.L. & Associates*,[117] Justice Cardine was particularly concerned about the impact of the majority's decision to hold a movie theater liable for an off-premises injury and concluded that:

> When the theater must pay expensive insurance premiums to cover these [off-premises] claims, the money must come from somewhere. The only place it can come from is theater tickets . . . . It is not unreasonable to believe that the price of theater tickets might double or triple if theater owners might be held liable for [off-

115. Perhaps the best example of how increased costs of insurance are passed on to consumers is in the area of medical care, as the extraordinary costs of medical care in this country are a direct reflection on the costs of medical malpractice insurance. *See* Bruce C.N. Greenwald, *Medical Malpractice and Medical Costs in* THE ECONOMICS OF MEDICAL MALPRACTICE (Simon Rottenberg ed., 1978).

116. *See Mostert*, 741 P.2d at 1104-05 (Cardine, J., concurring in part and dissenting in part); Gates v. Richardson, 719 P.2d 193, 197 (Wyo. 1986).

117. 741 P.2d 1090 (Wyo. 1987).

premises] accidents . . . ."[118]

In the case of hotels and taverns, the extra revenue needed to cover the increased costs of property insurance of a place like the Fort Pierce Holiday Inn or the Rodeo Bar would
probably come in the form of higher room rates or more expensive drinks. The most effective way businesses can keep their insurance costs from significantly increasing in light of *Shelburne* is for businesses to examine their property closely and re-evaluate their duty of care. Businesses should ask themselves whether it is foreseeable that patrons will use adjacent property. If the answer is "yes," then that business should make every effort to satisfy its duty of care with respect to adjacent land, because in light of *Shelburne*, liability no longer ends at the property line.

V. CONCLUSION

The Florida Supreme Court should answer the certified question in the affirmative, which means that *Shelburne* should become the precedent case in Florida holding an invitor liable for an off-premises injury as a result of an invitor's extension of its activities to adjacent land. Florida's recognition of off-premises liability in this type of situation is a judicial step in the right direction. *Shelburne* fills a needed gap in the area of premises liability, because people like Turner, Rice, and Shelburne deserve compensation under these circumstances.

Bruce G. Warner

118. *Id.* at 1105 (Cardine, J., concurring in part and dissenting in part).