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Entrevia v. Hood: Back to Loescher v. Parr

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Entrevia v. Hood: Back to *Loescher v. Parr*

Andrea Entrevia received injuries when the rear steps of a farmhouse owned by A. E. Hood collapsed as she descended them. The farmhouse, which had no electricity, was remotely located, unoccupied, surrounded by a fence, and posted with "no trespassing" signs. Entrevia had entered Hood's property with neither Hood's permission nor his knowledge. Entrevia sued Hood in strict liability under Louisiana Civil Code articles 2317 and 2322 for her injuries. After considering relevant moral, economic, and social circumstances, the Louisiana Supreme Court held that Hood was not strictly liable because Entrevia failed to prove that the defective steps posed an unreasonable risk of harm to others. *Entrevia v. Hood*, 427 So. 2d 1146 (La. 1983).

Louisiana Civil Code articles 2315 through 2324 provide the scheme for delictual liability in Louisiana. The major principle is set out in article 2315, which provides: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." Articles 2316 through 2324 expand on the notion of fault and indicate circumstances under which one may be liable for his own acts or the act of persons or things for which he is responsible.[1] Originally, the courts defined *fault* under article 2315 as negligence.[2] Reasoning that article 2315 modified article 2317, the supreme court required proof of negligence for recovery under article 2317.[3]

Loescher v. Parr[4] was the first case in which the Louisiana Supreme Court held that proof of negligence is not required for recovery under Civil Code article 2317.[5] The court in *Loescher*, after reviewing similar French Civil Code articles and other Louisiana Civil Code articles which the court held established a strict liability standard, imposed liability on

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1. Loescher v. Parr, 324 So. 2d 441 (La. 1975).

2. *See, e.g.*, Lyons v. Jahncke Serv., 125 So. 2d 619, 627 (La. App. 1st Cir. 1960); *See also* Barham, *A Renaissance of the Civilian Tradition in Louisiana*, 33 LA. L. REV. 357, 384 (1973). Later in Langlois v. Allied Chemical Corp., 258 La. 1067, 249 So. 2d 133 (1971), the supreme court held that fault under 2315 was not limited to negligence.

3. Cartwright v. Firemen's Ins. Co., 254 La. 330, 338, 223 So. 2d 822, 825 (1969). The court in *Cartwright* noted that it had previously held that article 2321 must be read in conjunction with article 2315 so as to require proof of negligence of an animal owner for recovery for injuries caused by his animal. *See* Tripani v. Meraux, 184 La. 66, 74, 165 So. 453, 455-56 (1936).

4. 324 So. 2d 441 (La. 1975). For developments in strict liability leading up to *Loescher*, see Tunc, *Louisiana Tort Law at the Crossroads*, 48 TUL. L. REV. 1111, 1112-15 (1974).

5. Article 2317 provides: "We are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody. This, however, is to be understood with the following modifications."

the owner of a tree which was ninety percent rotten on the inside, but which appeared sound on the outside, for damages resulting when the tree fell on a neighbor's Cadillac.[6] Liability resulted because the plaintiff proved that the thing (a tree) was in the defendant's custody, that a defect (an unreasonable risk of harm) was present in the tree, and that damage resulted through this defect.[7] The owner could not escape liability from his "legal fault in maintaining the defective tree and in preventing its vice from causing injury, unless he proved that the damage was caused by the fault of the victim, by the fault of a third person, or by an irresistible force."[8]

The court in *Loescher* reasoned that including the fault of a custodian of a thing for damage resulting from its defect without regard to the custodian's due care under Civil Code article 2317 is consistent with the scheme of fault set out by companion code articles.[9] In summarizing

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6. 324 So. 2d at 449. The court in *Loescher* noted that French Civil Code articles 1382-1386 from which article 2317 was an almost verbatim translation imposed a similar liability on the guardian of a thing, without proof of personal fault on his part. The court also noted that it had previously applied the concept of "legal fault without personal negligence" under Civil Code articles 2318, 2320, 2321, and 2322. The court particularly noted recent decisions such as Turner v. Bucher, 308 So. 2d 270 (La. 1975), and Holland v. Buckley, 305 So. 2d 113 (La. 1974) which, upon an examination of the codal scheme of liability, imposed strict liability under articles 2318 and 2321, respectively. Under the theory of these cases the plaintiff need not prove that the custodian of the dog or child was negligent (*i.e.*, failed to use reasonable care); neither could the defendant escape liability by offering evidence of his due care.

7. 324 So. 2d at 449.

8. *Id.*

9. *Id.* at 449; *see supra* note 6. Civil Code article 2318 provides: "The father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. The same responsibility attaches to the tutors of minors." Civil Code article 2320 provides:

> Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.
>
> Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence.
>
> In the above cases, responsibility only attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it.

Civil Code article 2321 provides:

> The owner of an animal is answerable for the damage he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from his responsibility, by abandoning him to the person who has sustained the injury; except where the master has turned loose a dangerous or noxious animal, for then he must pay for all the harm done, without being allowed to make the abandonment.

Civil Code article 2322 provides: "The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice in its original construction."

the principles of legal fault underlying Civil Code articles 2318, 2320, 2321, and 2322 and extending these principles to Civil Code article 2317, the court explained the theory of strict liability and the policy upon which an imposition of strict liability under article 2317 is based. According to this theory of liability, a person legally responsible under the code articles, such as the custodian of a thing, is liable for harm resulting from a defect of the thing which creates an unreasonable risk of harm to others, even in the absence of any proof of negligence or inattention on the defendant's part.[10] The liability arises from the custodian's legal relationship with the thing, and his fault is "based upon his failure to prevent the person or thing for whom he is responsible from causing such unreasonable risk of injury to others."[11] The policy behind this imposition of liability is that the person recognized as the risk-creator, rather than an innocent victim, should bear the loss resulting from the risk-creator's failure to prevent an unreasonable risk of harm.[12]

Thus, because of the policy and theory underlying article 2317, the plaintiff must prove only that the thing was in the defendant's custody, that it had a defect, and that the damage resulted from this defect. He need not prove negligence or inattention on the defendant's part, as it is the unreasonable risk created by the thing, not the defendant's due care in maintaining the thing, which should be considered.

The Louisiana Supreme Court in *Hunt v. City Stores*[13] reiterated the *Loescher* theory of strict liability in finding that an escalator, which injured a small boy whose tennis shoe was caught in the escalator's side panel, presented an unreasonable risk of harm. The court noted that, although a finding of unreasonableness is traditionally necessary to a determination of negligence, it is also necessary for a determination of strict liability under Civil Code article 2317.[14] *Hunt* thus indicated that a balancing of the magnitude of risk against the utility of a thing is appropriate in a strict liability case.[15] However, *Hunt* did not change the plaintiff's

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10. 324 So. 2d at 446. The court noted that under these articles the jurisprudence has established that

> the injured person must prove the vice (i.e., unreasonable risk of injury to another) in the person or thing whose act causes the damage, and that the damage resulted from this vice. Once this is proved, the owner or guardian responsible for the person or thing can escape liability only if he shows the harm was caused by the fault of the victim, by the fault of a third person, or by an irresistible force.

Id. at 446-47.

11. *Id.* at 446.

12. *Id.*; *see* Tate, *The Interpretation of Written Rule of Law*, 27 LA. B.J. 79, 82, 85 (1979) (writing that the *Loescher* decision is based on policy reasons which the court took into implicit consideration but did not articulate in its decision).

13. 387 So. 2d 585 (La. 1980).

14. *Id.* at 588.

15. *Id.* The court in *Hunt* distinguished between the strict liability and negligence theories of liability by explaining that the "inability of a defendant to know or prevent the risk

burden of proof or the defendant's available defenses because under the *Loescher* standard, as *Hunt* recognized, the plaintiff must prove the unreasonable risk of harm created by the thing but not the unreasonableness of the defendant's conduct in maintaining it.[16]

The theory of fault underlying Civil Code article 2317 and the policy behind it thus support the basic evidentiary distinction between strict liability and negligence set out in *Loescher* and maintained in *Hunt*. This evidentiary distinction is important because, in the adversary litigation process, "[t]he increasing or diminishing of the defendant's or the plaintiff's burden of proof often has more effect on the compensation of a given injury than does the statement of the legal theory itself."[17]

These evidentiary considerations made the Louisiana Supreme Court's decision in *Kent v. Gulf States Utilities Co.*[18] disconcerting because the decision marked a change in the plaintiff's burden of proof, or at least the defendant's available defenses, in a strict liability action under article 2317. The court in *Kent* decided that in a strict liability case under article 2317, "the *standard for determining liability* is to presume the owner's knowledge of the risk presented by the thing under his control and then to determine the reasonableness (according to traditional notions of blameworthiness) of the owner's conduct, in the light of that presumed knowledge."[19] The only distinction between strict liability and negligence under the court's analysis is that in strict liability the plaintiff need not prove that the custodian knew or should have known of the risk involved.[20] Under this standard, the court found that article 2317 was not helpful in determining whether Gulf States Utilities Co. (Gulf States) should be liable to Kent, who was electrocuted when the long metal-handled rake he was using on a construction site came into contact with Gulf States' power lines, because Gulf States already knew of the risk presented to a person working near those lines with a grounded object.[21]

The court, having found that Gulf States already knew of the risk, decided that its liability as custodian of a thing depended upon the reasonableness of its conduct in protecting others from this risk of harm. The court recognized that this is basically the same determination as that made in a negligence case and examined the defendant's conduct to deter-

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is not a defense in a strict liability case but precludes a finding of negligence." *Id.* For discussion that this is not the only distinction, see *supra* text accompanying notes 38-43.

16. Crawford, *Developments in the Law, 1981-1982—Torts*, 43 LA. L. REV. 607, 608 (1982); Comment, *Does Louisiana Really Have Strict Liability Under Civil Code Articles 2317, 2318, and 2321?*, 40 LA. L. REV. 207, 219 (1979).

17. Crawford, *supra* note 16, at 609.

18. 418 So. 2d 493 (La. 1982).

19. *Id.* at 497.

20. *Id.*

21. *Id.* at 498.

mine whether Gulf States took "reasonable steps" to prevent this particular risk of harm.[22] Taking into account the unusual combination of circumstances which led up to the accident, the court decided that Gulf States took reasonable steps because it met minimum clearance standards, insulated its lines by isolation, attended meetings concerning the construction, and moved its poles to accommodate the construction.[23] The court termed the reasonableness of Gulf States' conduct as the "bottom line" in resolving the issue of Gulf States' liability.[24]

If the "bottom line" for determining liability once knowledge is presumed or found is the reasonableness of the defendant's conduct, *Kent* seems to have made a marked departure from the theory of liability under article 2317 as set out in *Loescher*, which had done away with any requirement that the plaintiff prove that the defendant acted unreasonably.[25] The result of this departure from *Loescher* was an increase in the plaintiff's burden of proof or at least in the defendant's available defenses.

The court again addressed the problem of the plaintiff's burden of proof in the instant case[26] and reestablished the *Loescher* standard. In *Entrevia*, the supreme court agreed with the trial court, which found that flaws in the steps which collapsed did not amount to an unreasonable risk of injury to others, and reversed the court of appeal which had awarded damages solely because the plaintiff proved the steps caused her injuries.[27] After reviewing the *Loescher* summary of principles of legal fault underlying Civil Code articles 2317 and 2322 and quoting at length the essential language of *Loescher*, the court concluded that, in order to recover under these articles, the plaintiff must prove that "the building or its appurtenances posed an unreasonable risk of injury to others, and that his damage occurred through this risk."[28]

Before applying the unreasonable risk of harm criterion to the facts of the case, the court explained that it is not a criterion to be mechanically applied,[29] but rather is a concept used to symbolize the Civil Code judicial process.[30] The court recognized that, although strict liability under article

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22. *Id.* at 498-99.
23. *Id.* at 499.
24. *Id.*
25. *Loescher*, 324 So. 2d at 446. Professor Crawford stated:

> It is not clear from the [*Kent*] opinion whether the defendant's failure to use care is an element of the plaintiff's burden of proof in making a prima facie case, or whether the defendant's failure to use care is presumed, allowing the defendant to make out a defense by proving due care.

Crawford, *supra* note 16, at 607 n.4.
26. Entrevia v. Hood, 427 So. 2d 1146 (La. 1983).
27. 413 So. 2d 954 (La. App. 1st Cir. 1982).
28. *Id.* at 1148. *See supra* text accompanying notes 9-10.
29. *Id.* at 1149.
30. *Id.*

2317 is not equivalent to negligence, the judicial process of determining the reasonableness of the risk of harm is the same in negligence and strict liability because in both the judge deciding a particular case must consider questions of social utility much as a legislator does.[31] The court explained that because of these similarities, the court in *Kent* had suggested an approach which presumed knowledge of the risk and then assessed the reasonableness of the owner's conduct. However, the *Entrevia* court concluded that this approach was indirect and totally "unnecessary once the judge understands that the standards or patterns of utility and morality which he must consider in deciding if a risk is unreasonable will be found in the life of the community, in the same way they will be found by the legislator."[32] The court emphasized that it did not mean to suggest that the methods of determining negligence and strict liability are the same in every aspect.[33]

In reaching its conclusion that the steps which collapsed and injured the plaintiff were not unreasonably dangerous, the court addressed relevant moral, social, and economic considerations inherent in the unreasonable risk of harm criterion. The court considered several circumstances: the steps were located in the rear of an old farmhouse on remotely located property and presented no risks other than those typically associated with such buildings; Entrevia's unauthorized entry was both legally and morally reprehensible; owners of such property are not in a position to bear the risks of loss posed by such property and spread them among the community; laws which would require the owner to either destroy or undertake restoration of such property are not economically or socially desirable. In light of these considerations, the court concluded that "the magnitude of the risk posed and the gravity of harm threatened were small in comparison with that of other risks presented by things in our society."[34]

Thus, although the court did invoke a balancing process to determine the reasonableness of the risk, it did not address the reasonableness of the defendant's conduct, nor did it employ the *Kent* presumption of knowledge.[35] The court instead determined the reasonableness of the risk posed by the thing itself in light of relevant policy considerations.[36] Therefore, under the court's analysis in *Entrevia*, like that in *Loescher*, in order to recover in strict liability under article 2317 against the custodian of a thing, the plaintiff must prove that the thing presented an

31. *Id.* at 1149-50.
32. *Id.* at 1150.
33. *Id.*
34. *Id.*
35. For what should happen to *Kent* now, see *infra* text between notes 45-46.
36. *Entrevia*, 427 So. 2d at 1150; *see* Matthews v. Ashland Chemical, 703 F.2d 921, 925 (5th Cir. 1983).

unreasonable risk of injury to others and that damage resulted through this risk. The owner is then responsible unless he can show that the damage resulted from the fault of a third person, the fault of the victim, or an irresistible force.[37]

Entrevia correctly recognized that the determination of unreasonableness of risk is similar in strict liability under article 2317 and in negligence. Additionally, it correctly recognized that the two actions are not identical in all respects.[38] In attempting to explain the difference between the two theories, however, the court made a distinction which may be misleading. The court in *Entrevia* explained: "There is a major distinction between the two theories of recovery which lies in the fact that the inability of the defendant to know or prevent the risk is not a defense in a strict liability case but precludes a finding of negligence."[39] When the court first noted the distinction in *Hunt v. City Stores*,[40] it cited this difference as *the* distinction between the two theories of recovery rather than as a *major* distinction. The *Hunt* opinion thus implied that no other distinctions exist. However, the law review comment[41] cited in *Hunt* as authority for such a proposition made the distinction in regard to the constituent elements of reasonableness, not as an exhaustive comparison of the two theories of recovery. Proposing this distinction as the sole difference between the two theories of recovery, as the *Hunt* court did, is misleading because one might conclude that although inability to know or prevent the risk of harm is not a defense in strict liability, evidence of the defendant's due care in attempting to prevent the risk *is* admissible in defense to a strict liability action as well as to a negligence action. Allowing evidence of due care in defense to a strict liability action would ignore the basic evidentiary character of strict liability.

Since the court in *Entrevia* cited this distinction as a major one, and not as the only one, the court may have recognized that other differences, such as the admissibility of evidence of the defendant's due care, exist between the two theories of recovery. Additionally, the opinion as a whole indicates that the court's noting of this distinction should not be interpreted to allow introduction of evidence of the defendant's due care. *Entrevia* recognized that the defendant's fault under strict liability "is based upon his failure to prevent the person or thing for whom he is responsible from causing such unreasonable risk of injury to others."[42] The defendant's due care in attempting to prevent the risk is thus irrelevant to his

37. *Entrevia*, 427 So. 2d at 1149; *Loescher*, 324 So. 2d at 446-47.

38. 427 So. 2d at 1150.

39. *Id.*

40. 387 So. 2d 585, 588 (La. 1980), *discussed supra* text accompanying notes 13-16.

41. Comment, *Fault of the Victim: The Limits of Liability Under Civil Code Articles 2317, 2318, and 2321*, 38 LA. L. REV. 995, 1013 (1978).

42. 427 So. 2d at 1148 (quoting *Loescher*, 324 So. 2d at 446).

liability. The supreme court had characterized correctly the defendant's liability in *Jones v. City of Baton Rouge*: "Because the responsibility for preventing the unreasonable risk of injury to others is *unconditional*, the injured party seeking damages under article 2317 need not prove that any particular act or omission on the part of the defendant caused his injuries."[43]

By analyzing the facts of the case as it did, recognizing that the *Kent* approach was both indirect and unnecessary, relying on the *Loescher* summary of strict liability principles, and recognizing that distinctions exist between strict liability and negligence, the court in *Entrevia* returned to strict liability as explained in *Loescher*. It reestablished that the plaintiff's burden of proof under article 2317 does not include a showing of the unreasonableness of the defendant's conduct and that a showing of due care is not admissible as a matter of defense. Since it returned to the *Loescher* burden of proof, *Entrevia* should dispel the confusion engendered by *Kent*. For example, the first circuit in *B. Olinde & Sons, Inc. v. State*[44] cited *Loescher*'s unreasonable risk of harm standard as the standard for liability in an action under article 2317, yet, after reviewing *Kent*, determined that its task was to decide "whether the defendants' actions or lack thereof in attempting to prevent the risk of harm were unreasonable under traditional notions of blameworthiness."[45] *Entrevia* should make clear that the court's task is *not* to determine whether the defendant's *conduct* was reasonable, but is instead to determine whether the *thing* in the defendant's custody presented an unreasonable risk of harm. Perhaps it would have been desirable for the court expressly to overrule *Kent* since attempts to distinguish between strict liability and negligence using the *Kent* presumption have led to confusion.[46] However,

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43. 388 So. 2d 737, 739 (La. 1980) (emphasis added).

44. 421 So. 2d 370 (La. App. 1st Cir. 1982).

45. *Id.* at 375.

46. A comparison of cases decided before and after *Kent* demonstrates that *Kent*'s presumption was more than a semantic change. For example, in Jones v. City of Baton Rouge, 388 So. 2d 737 (La. 1980), which was decided before *Kent*, the plaintiff recovered from the defendant in strict liability because she proved that the catch-basin which caused her injuries was in the defendant's custody and that the catch-basin cover presented an unreasonable risk of harm. The court correctly recognized that the defendant's responsibility to prevent an unreasonable risk of harm is unconditional. *See supra* text accompanying note 43. However, in B. Olinde & Sons, Inc. v. State, 421 So. 2d 370 (La. App. 1st Cir. 1982), which was decided after *Kent*, the court did not address the unreasonableness of the risk of harm posed by the shoulder of a highway under construction. Instead, the court determined that the defendant's conduct was not unreasonable under the circumstances.

Morgan v. Hartford Accident & Indem. Co., 402 So. 2d 640 (La. 1981), which was decided before *Kent*, and Miller v. Broussard, 430 So. 2d 330 (La. App. 3d Cir. 1983), which was decided after *Kent*, addressed the question of whether a step down in a building in the defendant's custody created an unreasonable risk of harm to others. In *Morgan*, the court noted that "[a]n injured party seeking damages under art. 2317 need not prove

Entrevia did indicate that the *Kent* approach was unnecessary and did not address the reasonableness of the defendant's conduct; it may thus be interpreted as repudiating the *Kent* approach.[47]

The court's return to the *Loescher* standard renders the plaintiff's burden of proof in accord with the policy of strict liability that the risk creator, rather than the innocent victim, should bear the loss resulting from the risk creator's failure to prevent an unreasonable risk of harm.[48] This standard is also in accord with the theory of fault of Civil Code article 2317 because it bases the defendant's fault upon his failure to prevent the unreasonable risk of harm posed by the thing in his custody rather than upon the unreasonableness of his conduct.[49] Similarly, it avoids the logical inconsistency of having reasonable conduct create an

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negligence, that is, that any particular act or omission on the part of the defendant caused his injuries." 402 So. 2d at 641 (quoting Shipp v. City of Alexandria, 395 So. 2d 727, 728 (La. 1981)). On the other hand, in *Miller* the court stated:

> We find that the trial judge erred in concluding that the step down presented an unreasonable risk of harm based solely on the above facts [expert's testimony] without considering whether Mr. Broussard took reasonable steps under the circumstances to protect against the risk that a person would be unable to perceive the change in the elevation and fall.

430 So. 2d at 333.

47. Attempts to apply both the *Kent* and the *Entrevia* standards may also end in confusion. *See, e.g.*, Robinson v. Gulf Ins. Co., 434 So. 2d 487 (La. App. 2d Cir. 1983), in which the court cited both *Kent* and *Entrevia* but misstated *Entrevia*'s standard: "Whether the nursing home's liability is founded in strict liability type of fault or in negligence, the legal analysis is similar and concerns the *reasonableness* of the conduct of the nursing home employees in maintaining a reasonable safe place for its patients and visitors." *Id.* at 488. Another example of the confusion resulting from the *Kent* approach is Bridges v. Chemrex Specialty Coatings, 704 F.2d 175 (5th Cir. 1983). The plaintiff, claiming that the defendant had knowledge of the risk (the only distinction between strict liability and negligence under the *Kent* approach), objected to the jury's verdict as inconsistent "because it is impossible under Louisiana law to find for a defendant under a strict liability claim and yet be unable to reach a verdict on the negligence claim." *Id.* at 180. Certainly under the *Kent* approach his argument is sound. It should be impossible for a jury to find no unreasonable risk under strict liability when knowledge is presumed, and be unable to decide on the negligence issue in which inability to know is a defense. The court agreed that this result is inconsistent but explained that any confusion in the law of Louisiana in strict liability was to the injury of the defendant and not the plaintiff, as "[i]t is the defendant who could raise a substantial issue under Louisiana law as to whether it could still be liable under a negligence claim after being exonerated under a strict liability claim." *Id.* at 180. On the other hand, the court in Farr v. Montgomery Ward & Co., 430 So. 2d 1141 (La. App. 1st Cir. 1983) correctly applied *Entrevia*'s standard. Though citing both *Entrevia* and *Kent*, the court approached the problem from the standpoint of the risk presented by the thing itself, not on the basis of the defendant's conduct, and concluded that an uneven surface in a dirt and gravel parking lot which accumulated water posed no unreasonable risk of harm. Another example of a correct application of *Entrevia* is Matthews v. Ashland Chemical, 703 F.2d 921 (5th Cir. 1983). *See supra* note 36 and accompanying text.

48. *Entrevia*, 427 So. 2d at 1148; *Loescher*, 324 So. 2d at 446.

49. *See* cases cited *supra* note 48.

unreasonable risk of harm.[50] Moreover, by requiring that the plaintiff, in order to prevail under article 2317, prove not just a mere defect, but rather a defect which poses an unreasonable risk of harm, *Entrevia* protects the custodian and society since the unreasonable risk of harm criterion requires the consideration of relevant moral, social, and economic circumstances.[51]

Entrevia, therefore, was a necessary and desirable decision. Its possibly misleading statement that the major distinction between strict liability and negligence is that inability to know or prevent a risk is not a defense in strict liability but precludes a finding of negligence is countered by the opinion itself, which did not address the reasonableness of the defendant's conduct. Likewise, its failure expressly to overrule *Kent* should not create confusion, since the court deemed the *Kent* approach indirect and unnecessary. Under *Entrevia*'s own balancing test, the utility of the case far outweighs the few problems present in the decision. *Entrevia* is a useful and important decision because it focuses on the unreasonable risk of harm presented by the thing itself and not on the defendant's conduct. This focus brings the burden of proof back in line with the policy and theory of fault underlying article 2317 strict liability. *Entrevia*, by emphasizing the unreasonable risk of harm criterion as set out in *Loescher*, protects the innocent victim; by emphasizing the balancing test inherent in this criterion, it protects the custodian of the thing from liability for defects which society does not view as unreasonable.

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50. Crawford, *supra* note 16, at 610.

51. 427 So. 2d at 1149-50. The *Loescher* approach does not automatically result in a determination of unreasonableness of risk. *See* Entrevia, 427 So. 2d 1146; Broussard v. Pennsylvania Millers Mut. Ins. Co., 406 So. 2d 574 (La. 1981); Goodlow v. City of Alexandria, 407 So. 2d 1305 (La. App. 3d Cir. 1981).