LIABILITY OF THE UNIVERSITY AS
LANDLORD OR INVITOR:
A NEW VIEW BY THE COURTS OF UNIVERSITY DUTY
TO RESIDENT STUDENTS
NEW LIABILITY EXPOSURE PRESENTED BY ATM’S

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I. Campus Crime Statistics

A. Crime as a basis for tort liability.

B. Elements of negligence.

II. Duty


B. Duty is not sacrosanct, but depends on considerations of policy. See Prosser, Law of Torts (4th ed. 1971) Sec 53 at p. 325.

C. Considerations in fixing duty
   - foreseeability of harm
   - degree of certainty of injury
   - closeness of connection of defendant's and plaintiff's injury
   - more blame attached to defendant's conduct
   - policy of preventing future harm
   - extent of the burden to defendant
   - consequences to community of imposing duty to exercise care with resultant liability for breach.
III. Exceptions to the general rule.

A. Restatement of Torts (Second), Sec. 314. Generally no duty to protect another from criminal acts of third persons.

B. Business Invitee, Restatement of Torts (Second), Sec 344. Liability of invitor for intentional harmful acts of third persons where invitor fails to exercise reasonable care to (1) discover such acts are being done or are likely to be done or (2) give a warning to allow invitee to avoid harm or to protect invitee against it. See Bearman v. Notre Dame, 453 N.E.2d 1196 (Ind.App. 3rd Dist. 1983) in which couple attending football game are invitees to whom University owes a duty to take reasonable precautions to protect against injury caused by intoxicated patrons. Also Schultz v. Gould Academy, 332 A.2d 368 (Me. 1975) where a student was raped in resident hall and it was held that student was an invitee to whom academy owed a duty to take reasonable measures for her safety in light of circumstances. Compare Figueroa v. Evangelical Covenant Church, 879 F.2d 1427 where permission to use college parking lot does not create invitee status. "Licensee" only owed duty to refrain from wantonly or willfully causing injury. See Light v. Ohio University, 502 N.E.2d 611 (Ohio 1986).

IV. Invitor's Duty

A. When duty is triggered. Relative knowledge of landowner and invitee is significant as are other considerations of policy. See Popp v. Cash Station, Inc., 613 N.E. 2d 1150 (Ill.App. 1 Dist. 1992) where no duty found to exist where bank had no unique knowledge of ATM robberies. Policy issues involved in fixing duty. Berdeaux v. City National Bank of Birmingham, 424 So.2d 594 (Ala. 1982). Contrast Kentucky Fried Chicken of California, Inc. v. Superior Court of L.A. County, 64 L.W. 2382 (Dec. 19, 1995) where restaurant held to a duty to avoid unreasonable risk of harm to invitees when armed robber asked for cash.


La.App., 405 So.2d 1125.


E. Concept and importance of foreseeability.

V. The Landlord/Tenant Relationship in college/university housing—Does the legal concept of a duty created by a "special relationship" apply to this relationship?

A. Restatement (Second) Torts, Sec. 314A lists examples of special relations which give rise to a duty to aid or protect, e.g. a common carrier toward its passengers, an innkeeper toward his/her guests. In Johnson v. State of Washington, 894 P.2d 1366 (Wash.App. Div. 1 1995) there is discussion of the concept of a "special relationship" between the plaintiff, a student who was abducted near her dormitory late at night and raped. However the court concludes that there is no special duty of care which her state university owes to her merely because she is a student. Rather, the court states that the plaintiff is entitled to the status of an invitee because of her status as an on campus student resident.


C. Duty to provide adequate security. Delaney v. University of Houston, 835 S.W.2d 56 (S.Ct. Tex. 1992) continues to be a significant case which considers the issue of physical plant conditions which create unsafe environments for student residents. In Delaney a significant security issue was the insufficiency of locks in the plaintiff’s residence hall.

D. Duty to protect. Nero v. Kansas State University, 861 P.2d 768 (S.Ct. Kan. 1993) continues to be a troubling case because of its fact pattern. A male student accused of a prior sexual assault on campus was reassigned to reside in a coed residence hall. He later sexually assaulted the plaintiff. See also a landlord tenant case not involving a college or university, Kline v. 1500 Massachusetts Avenue Apartment Corporation, 439 F.2d 477 (1970) for a discussion of the duty
of a landlord to provide appropriate protection to tenants who were being subjected to crimes against their persons and their property.


Foreseeability important since it may negate intervening criminal acts of third persons [see *Restatement of Torts* (Second) Sec. 448 and *Rieser v. District of Columbia*, 563 F.2d 462 (D.C.Cir. 1977) and meets condition of Sec. 344 to "discover that such acts...are likely to be done." Also "the risk reasonably to be perceived defines the duty to be obeyed." *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).

F. Adjacent property, e.g. entrances.


H. Standards for protection.

VI. Contract as sources of landlord responsibility. Promises of a safe environment can create a contractual obligation. Allegations of misrepresentation are combined with allegations that promises of safety were breached. However, proving a contractual obligation has been difficult, e.g. *Savannah College of Art & Design v. Roe*, 409 S.E.2d 848 (Ga. 1991).

VII. Potential Criminal Liability — e.g. misprision of felony under some state laws.

VIII. Potential Plaintiffs

A. Students
   1. Residents
   2. Non-residents

B. Employees (remember workers compensation claims).
C. Hybrid—student workers.

D. Visitors, e.g. consider the difference between a ticket purchasing visitor and an occasional user of the library.

IX. Potential Co-Defendants

A. Employees—The employer needs to know whether there is a contractual or statutory obligation to provide defense. Also know the scope of insurance coverage. Consider the advisability of personal as well as institutional insurance.

B. Students

X. Defenses

A. Tort Claim

1. lack of duty owed to student of other claimant.
2. if there is a duty, it was not breached, e.g. no failure to protect.
3. sovereign immunity for public universities and colleges.
4. charitable immunity for private institutions.
5. claimant’s negligence.
6. claimant’s assumption of the risk.

B. Contract Claim

1. the contractual relationship asserted does not exist.
2. the contract was not breached.

Law clerk, Sherry Pugh Viar, was helpful in the preparation of this outline.