

MOTEL

CANCY



Anapol Schwartz | Attorneys at Law

HOSPITALITY LAW

SECURITY AND PREMISE LIABILITY

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HOSPITALITY LAW

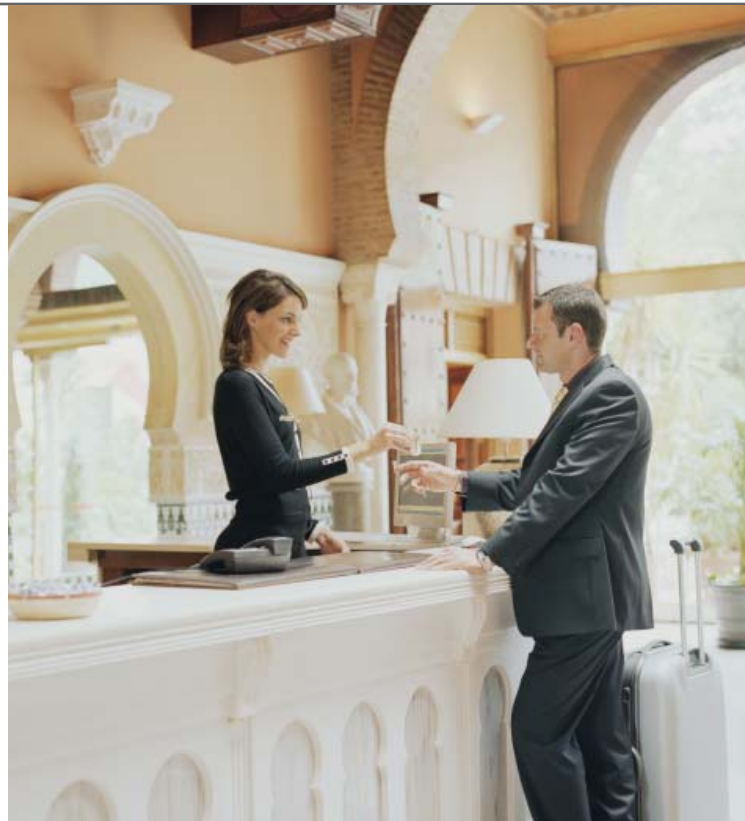
In certain circumstances, victims of violent crime, in the context of hospitality, have civil recourse for injuries beyond the Criminal Justice System.

Legal Theories

1. Duty to People on Premises (invitee, licensee, trespasser)
2. Liability for Criminal Acts of Employees
3. Contract (landlord/tenant)
4. Statutory (e.g., 24 P.S. 1-111 Background checks of prospective employees)
5. Voluntary Assumption of Duty

POTENTIAL HOSPITALITY DEFENDANTS

- Hotels
- Resorts
- Shopping Centers
- Retail Stores
- Cleaning Service Businesses
- Bar/Restaurant





Summary Data

Description	Most Recent Year	Center City East	Philadelphia
All Serious (Part 1) Incidents excl. Homicide and Rape	2006	3,573	90,889
All Serious (Part 1) Incidents against Persons (Robbery, Agg. Assault)	2006	458	20,835
All Serious (Part 1) Property Incidents (Burgl,Theft,Auto Theft)	2006	3,115	70,054
Robberies (300 series)	2006	312	10,607
Robberies w/ Guns	2006	81	5,117
Robberies NO Guns	2006	231	5,490
Agg Assaults (400 series)	2006	146	10,228
Agg Assault w/ Guns	2006	10	3,401
Agg Assault NO Guns	2006	136	6,827
Burglaries (500 series)	2006	243	11,144
Residential Burglaries	2006	147	8,516
Commercial Burglaries	2006	96	2,628
All Thefts (600 series)	2006	2,632	38,643
Theft from Auto	2006	550	13,945
Purse Snatchings (611,621,631)	2006	27	507
Pick Pockets (610,620,630)	2006	104	483
Retail Theft (612,622,632)	2006	756	6,204
Stolen/Recovered Vehicles (700 series)	2006	240	20,267
Stolen Vehicles	2006	158	11,220
Recovered Vehicles	2006	82	9,047
Other Assaults (800 series)	2006	701	26,517
Other Assaults at Schools	2006	6	1,919

Searchable Crime Database

By Philadelphia Neighborhood

<http://cml.upenn.edu/crimebase/cbsProfileRequest.asp>

Business owners are not insurers of safety for guests. Standard is reasonable care under the circumstances. Crime statistics create constructive notice to business owners. Ignorance is not a defense

Negligence Concept

Property Owners are required to maintain reasonably safe premises

Fluid Concept

Amount of security necessary proportionate to current risk of crime. As crime increases - so should security

SOURCES OF LIABILITY

Duty

Duty largely defined by status of Plaintiff
Business Invitee Defined
§332 Restatement Torts
Enters the land for a purpose connected with the business owner

Duty - Business Invitee

Pennsylvania adopts Restatement §343
A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) fails to exercise reasonable care to protect them against the danger.

Property owners owe the highest degree of care to invitees to make sure they are safe from dangers on their property.





LICENSEE DEFINED

§332 Restatement Torts

Licensee enters the land as member of the public for a purpose which the land is open to the public.

Duty to Licensee

Restatement (Second) of Torts § 342

A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,

- (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
- (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
- (c) the licensees do not know or have reason to know of the condition and the risk involved.

A property owner is only required to take reasonable care to protect licensees from any known hazards on the property, and does not have a duty to inspect for and discover unknown dangers, as he/she does with invitees.

Free No-Obligation Consultation

[Please contact us for a free no-obligation consultation.](#) The more information that you can provide, the more helpful it will be. You are under no obligation to continue. Any information you provide will be held in the strictest of confidence.

If you have questions, please call us toll-free at **1-866-735-2792**.



TRESPASSER DEFINED

The Restatement of Torts §329

(Second) defines a trespasser as a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise.

Duty to Trespasser

To refrain from wanton / willful negligence or misconduct.

SOURCES OF LIABILITY

- Contract (landlord tenant)
- Special relationship (college student/university hospital/patient)
- Voluntary assumption by Defendant to provide security

NEGLIGENT SUPERVISION

- Property Owner fails to properly supervise employee
- In turn employee fails to perform security function
- Security Guard on unauthorized break - Plaintiff assaulted in parking lot

NEGLIGENT HIRING

- Business fails to exercise reasonable care in selection & hiring
- Inadequate pre-screening to avoid unsuitable employee for the position

RESTATEMENT (SECOND) OF TORTS, §302(B)

- An act or omission may be negligent if the actor realizes or should have realized that it involves an unreasonable risk of harm to another - the conduct of the other, or a third person which is intended to cause harm, even though such conduct is criminal
- Employer can be liable for injuries caused by employees

Restatement §302(b)Comment(e) IMPOSES LIABILITY WHERE:

The actor has brought into contact with the other person whom actor knows or should know to be likely to commit intentional misconduct, where a peculiar opportunity for temptation for such misconduct exists

Former Employee

Coath v. Jones 277 Pa.Super. 479, 419 A.2d1249 (1980) held:

- An employer may be negligent if he knew or should have known that his employee had a propensity for violence; and
- Such employment might create a situation where the violence would harm a third person



Background Checks

Should be performed where an employee has unsupervised access to vulnerable people:

- Children, employees in schools
- Elderly persons, employees in nursing homes – assaultive nursing aides
- Disabled persons, employees of hospitals, psychiatric hospitals
- Private homes, cleaning staff employees, service repair employees



BREACH OF DUTY

Failure to Respond

- Typical bar fight case
- Failure to remove intoxicated/belligerent person from bar

Foreseeability

- Property Owner is not an insurer of safety
- Property Owners usually not liable for events not reasonably foreseen
- Prior similar crime
- Need evidence of prior similar crimes to crime perpetrated on Plaintiffs

TOTALITY OF CIRCUMSTANCES

Analyze foreseeability by looking at many factors including:

- Similar crimes
- Crimes in adjacent area
- Crimes in similar establishments (hotels, clubs) – Defendant should be aware of crime trends affecting their business



Expert Testimony

PA generally does not require

Hotel case: Ovitsky v. Ramada Inn, 2004

- Pa.Super 41 846 A.2d 124:

Jury capable of deciding whether hotel took reasonable steps to provide safety

Conclusion

- Security cases can be complex
- Requires imposing liability on business for intentional criminal acts of third person
- Cases need to be properly evaluated regarding duty owed by Business/Property Owner to Plaintiff
- Whether any breach occurred
- Whether that breach is causally related to
- Plaintiff's damage

