

# Security Liability & Case Law



**Dr. James F. Pastor, Ph.D., J.D.**

# LIABILITY LIMITATION

- You should consult the legal advisor for your firm or agency before taking police or security actions based on the materials provided and/or the opinions of law expressed in this unit of instruction.
- What is legally permissible varies on the particular circumstances of the situation. This training session is only designed to acquaint the attendee on broad legal/security concepts and procedures. It is not intended to act as policy or procedure for your firm, agency or institution.

# SECURITY LAW

Negligence defined as:

“the failure or omission to do something that a reasonable and prudent person would do, or doing something a reasonable and prudent person would not do.”

# NEGLIGENCE ELEMENTS

## Duty—Breach—Causation—Damages

**Duty is from the legal standard which requires fair and equitable treatment based on the particular industry and the factual circumstances of the case, incident or location.**

**Breach of duty is any conduct, act or omission which falls short of the level required by the standard of care.**

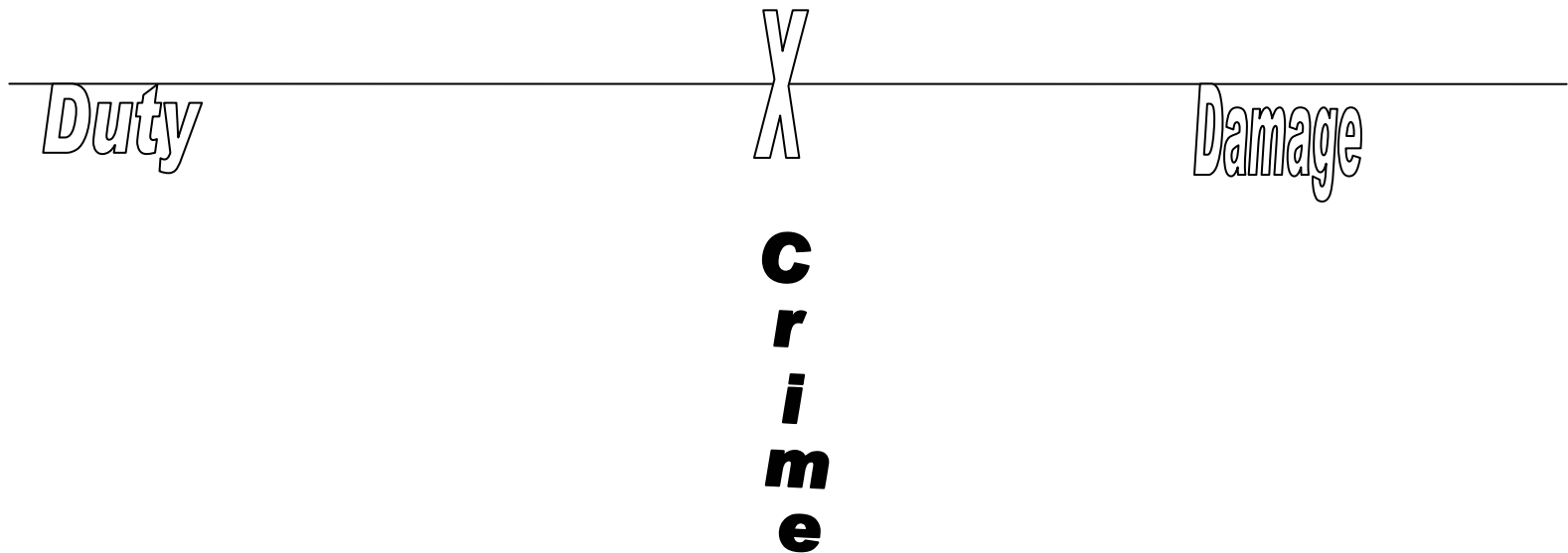
**Causation is the legal connection between the breach and the resultant damages.**

**Damages are the physical or mental injuries, the economic losses, the medical and rehabilitative costs, and the future affects on the individual.**

# SECURITY LAW

- Traditionally no duty to prevent crime.
- Crime was considered a superseding cause that broke the causation connection in a negligence based claim.

# CRIME AS SUPERSEDING CAUSE



# DUTY

Courts typically consider duty of care based on three broad factors:

1. Circumstances at facility or location,
2. Terms of the contract (if any),
3. Expectations of the “special relationship” between the parties (if any)

# DUTY BASED ON CIRCUMSTANCES

- Foreseeability is the key!
- Includes what the owner or business actually knew, as well as what it reasonably should have known.
- This includes the duty to anticipate the risk of harmful acts or crimes by third persons.

# FORESEEABILITY

Foreseeability is based past experience and future probabilities, including:

1. Crime rates & prior similar crimes
2. Customary security measures (location based)
3. Statutory Violations (Repair or maintain building)
4. Nature of the business
5. Area or neighborhood where the business located
6. Standard security methods (industry based)
7. Hours of business operation for the business
8. Specific complaints about crime, misconduct or suspicious behavior at the location
9. Expert advise from police or security personnel

*Victoria B. ROMAGUERA v. PICCADILLY  
CAFETERIAS, INC. and ABC Insurance Co.,  
648 So.2d 1000*

**Restaurant patron who was shot by unknown assailant in parking lot brought negligence action against restaurant for failing to provide parking lot security. Jury verdict awarded patron over \$750,000.**

**Security expert performed lighting tests in the parking area and determined that the area in which the shooting occurred registered .5 and .7 foot candles, well below the two to five foot-candle-power he stated is required. Expert concluded the lighting was inadequate and was an additional cause for security concern, because insufficient lighting invites crime.**

# *Betsy SEIBERT v. VIC REGNIER BUILDERS,* 856 P.2d 1332

**Ms. Seibert brought action alleging business was negligent in not providing security for its patrons when the assault upon her was foreseeable.**

**Specifically, she alleged that past criminal activity in the parking areas plus the nature of the underground parking area, including dim lighting by virtue of numerous burned-out fluorescent tubes, the defendant owed a duty to her as a business invitee to provide security. In addition, the shopping center had no security for its patrons--no warning signs, video surveillance, or security guards.**

**The plaintiff offered expert testimony that the lighting was inadequate, and had appropriate security measures been in place, the attack upon her would probably not have occurred.**

# *VAUGHN v. GRANITE CITY STEEL DIVISION OF NATIONAL STEEL CORPORATION*

217 Ill.App.3d 46

**Employee's estate brought wrongful death action against employer after employee was fatally shot in parking lot.**

**Plaintiff asserted the defendant breached its duty to provide protection in one or more of the following ways:**

- (1) by failing to furnish proper security lighting in the parking lot,**
- (2) by failing to provide a sufficient security force to protect the decedent from harm while he was using the parking lot,**
- (3) by failing to take sufficient steps to deny access to persons not authorized or invited to be on the parking lot (such as fencing, CTTV, and access controls).**

*Patricia TENNEY v.*  
*ATLANTIC ASSOCIATES*  
594 N.W.2d 11

**Tenant brought negligence action against landlord for damages sustained when she was raped by a stranger in her apartment.**

**Expert noted the following factors could reasonably be expected to lead to third-party crimes:**

- (1) failure to conduct background check of employees,**
- (2) failure to control access to keys,**
- (3) failure to maintain written policies with regard to keys, and**
- (4) failure to maintain written policies or communicate policies to employees regarding security.**

*Curtis CLAXTON v. ATLANTIC RICHFIELD  
COMPANY, 108 Cal.App.4th 327*

**Customer, who was stabbed by assailant at gas station, presented evidence of reasonably foreseeable risk of violent criminal assaults due to fact that:**

**(1) Another customer and employee were robbed at station,**

**(2) gang members repeatedly assaulted customers and forcibly took their change, and**

**(3) gang altercation occurred at station.**

# QUESTIONS



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