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LANDOWNER 101: LIABILITY FOR INJURIES ON PROPERTY

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Land ownership is a phenomenal way to build wealth. As noted by David Greene in Forbes Magazine, November 27, 2018, land ownership can provide cash flow, appreciation, tax advantages, leverage and a hedge against inflation. Historically, owners of land enjoyed considerable latitude in maintaining their property, hazards and all, with liability tending to be the exception rather than the rule. See, e.g. Palmquist v. Mercer (1954) 43 Cal.2d 92, 102, Oettinger v. Stewart (1944) 24 Cal.2d 133, 137.

One downside to land ownership is the potential for liability.[1] Understanding how California law looks at a landowner's duty of care, and acting accordingly, can minimize legal liability even where an injury occurs.

With the landmark case of Rowland v. Christian, 69 Cal.2d 110 (1968), landowner liability under California law no longer rested on the status of the injured person as invitee or trespasser, but instead on a balance of considerations: the foreseeability of harm, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between defendant's conduct and the injury, moral blame, the policy of preventing future harm, the burden and consequence of imposing a duty, and the availability of insurance. Ordinary principles of negligence, as described in Section 1714 of the Civil Code were applied to property owners and all injured persons: "everyone is responsible for an injury caused to another by his want of ordinary care of skill in the management of his property."

Most landlords genuinely do their best to maintain a safe property, in compliance with applicable codes and regulations. A landowner has an affirmative duty to exercise ordinary care to keep the premises reasonably safe. Ortega v. K-Mart Corp. (2001) 26 Cal.4th 1200, 1205. An owner is liable for harm caused by a dangerous condition, where the owner had actual or constructive knowledge. Ortega, supra, Moore v. Wal-Mart Stores, Inc. (2003) 111 Cal.App.4th 472, 477. Where the owner created the condition, notice will be found. Hatfield v. Levy Bros. (1941) 18 Cal.2d 798, 806, See CACI 1003, 1012.

But what if the injury is caused not by a criminal? Landowners typically deny responsibility for the actions of third parties they could not control, even when the crime occurs on their property. But having no recourse against the wrongdoer, an injured party must seek the deep pockets of the landowner. In such cases, the scope of a landowner's duty of care, as defined by foreseeability, is a matter of law for the court. (Kentucky Fried Chicken of California, Inc. v. Superior Court (1997) 14 Cal.4th 814, Weirum v. RKO General, Inc. (1975) 15 Cal.3d 40, 46; Ann M., infra.)

[1] Averting personal liability through careful titling and adequate insurance is beyond the scope of this note, but recommended nonetheless.

Landowners have long had a duty to take affirmative action to control the foreseeable wrongful acts of third persons, which threaten invitees on the property, where the owner has reasonable cause to anticipate their actions. (Taylor v. Centennial Bowl, Inc. (1966) 65 Cal.2d 114.) Pre-Rowland, this duty was premised on the "special relationship" between the landowner and the invitee. (Taylor, supra; see Rest.2d Torts, Section 314A, 315.)

In Isaacs v. Huntington Memorial Hospital, 38 Cal.3d 112 (1985), a doctor was assaulted and shot in an unattended hospital parking lot. Chief Justice Rose Bird rejected the traditional requirement of "prior similar incidents" as a predicate for duty, in favor of a "totality of circumstances" approach, holding that the absence of prior crimes did not negate the existence of a duty of care. Evidence of prior similar incidents was "helpful" but "not required." (38 Cal.3d at 135.) Finding other factors of the foreseeability balance more important, such as encouraging landowners to take adequate measures to protect people on dangerous premises, and prevent future harm, the Court found a duty of care, and opined that questions of foreseeability are better left to the jury. At least two prior appellate decisions supported a finding of foreseeability based on the property characteristics alone. Cohen v. Southland Corp. (1984) 157 Cal.App.3d 130 [all-night convenience store]; Gomez v. Ticor (1983) 145 Cal.App.3d 622 [parking garage]. Still, claims based on "abstract negligence" unconnected to the injury were rejected. (Noble v. Los Angeles Dodgers, Inc. (1985) 168 Cal.App.3d 912.

More recent California decisions acknowledge that, as a general proposition, crime happens, and landowners are not insurers of safety. In Ann M. v. Pacific Plaza Shopping Center, 6 Cal.4th 666 (1993), the Court observed that random, violent crime was endemic in today's society (at p. 678) and ruled that a landowner had a duty of care to control wrongful acts of third parties only where the specific criminal conduct could be reasonably anticipated. (6 Cal.4th at 676-79.) Similarly, general knowledge of the possibility of violence was deemed insufficient to sustain a bar's duty of care for a parking lot fight, presumably among patrons. (Williams v. Fremont Corners, Inc. (2019) 37 Cal.App.5th 654.)

Without notice of prior similar crimes, and few comparable crimes in the area, the landowners were relieved of liability for a criminal sexual assault in the dark underground parking lot of an office building. (Sharon P. v. Arman, Ltd. (1999) 21 Cal.4th 1181.) In so holding, the Court analyzed the policy considerations listed in *Isaacs, supra*, and stressed that imposing a duty [to hire security guards] would be so costly as to affect the profitability of the operation, liability would require businesses to close, and open the door to "virtually limitless litigation." See Kaufman, When Crime Pays: Business Landlords' Duty to Protect Customers from Criminal Acts Committed on the Premises (1990) 31 S. Tex. L. Rev. 89, 112-113, cited with approval in Sharon P., supra, at 1194.

In general, current cases comport with the general rule that a person has no duty to come to the aid of another, unless he has created the peril or has a special relationship that gives rise to a duty to act. Carlsen v. Koivumaki (2014) 227 Cal.App.4th 879, 893, citing Williams v. State of California (1983) 34 Cal.3d 18, 23. A "special relationship" will be found for certain landowners, particularly those in a retail setting, who have a relationship with their patrons. Hotels, for example, have a special duty to ensure the safety of hotel guests. Howard v. Omni Hotels Management Corp. (2012) 213 Cal.App.4th 403, 431; see also Lawrence v. La Jolla Beach & Tennis Club, Inc. (2014) 231 Cal.App.4th 11, 27. Similarly, bar proprietors have a heightened duty of care to protect patrons from harmful conduct of another than can be reasonably anticipated. Delgado v. Trax Bar & Grill (2005) 36 Cal.4th 224, 245 (reaffirming the sliding-scale balancing formula of Isaacs, supra); see also CACI 1005.

The defense of landowner liability cases frequently starts with the argument that the injury-producing incident was not foreseeable, or not reasonably anticipated. Where injuries were inflicted by criminal actors, however, the absence of prior similar acts can provide a defense, particularly where the remaining considerations outlined in the Isaacs case weigh in the landowner's favor.