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## Lessor's Liability for Injuries to Tenant's Guests

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## RECENT CASES

## LESSOR'S LIABILITY FOR INJURIES TO TENANT'S GUESTS

Plaintiff sustained injuries as a result of plaster falling from the ceiling of a public tavern and sought to recover damages as a patron against the landlord of the building. At the trial, a verdict for \$20,000 was rendered in favor of the plaintiff. Defendant's motion for judgment in accordance with her motion for a directed verdict was sustained and plaintiff appealed. *Held*, reversed, the rule making the lessor liable for injuries sustained by the lessee's invitees in a public or semi-public place due to defective conditions existing at the time of the lease is inapplicable. This rule contemplates assembly of a "large" number of persons at the same time either upon one or several occasions or continuously for the period of the lease and is not applicable to ordinary commercial establishments. *Warner v. Fry*, 228 S.W. (2d) 729 (Mo. 1950).

Generally, the lessor of property is not liable to the lessee or to anyone on the property at the latter's invitation for defective conditions existing at the time of the lease.<sup>1</sup> An exception has arisen where the lease contemplates the admission of the public. Before making the lease, the lessor has an affirmative duty to use reasonable care to see that the premises are in good repair and preclude any unreasonable risk of harm to the public.<sup>2</sup> Liability has been extended to many different situations including public piers,<sup>3</sup> amusement parks,<sup>4</sup> grandstands,<sup>5</sup> and buildings used for exhibition of horse training,<sup>6</sup> all of which contemplate the assemblage of a large group of people. The rule has been restricted and liability denied in some cases of ordinary business establishments on the grounds that the use intended is not of a public nature but is incidental to the selling of goods.<sup>7</sup> Others have said that such public use contemplates a "large" as compared to a "small" group on the premises and have imposed liability on the basis that the use is sufficiently public to invest patrons with a status of invitees of the landlord and charge the latter with a duty of care arising out of this relationship.<sup>8</sup> These tests have been found to be unsatisfactory and impractical to apply by many who fail to see any distinction in law depending on the number of persons entering the premises.<sup>9</sup> Liability has been ex-

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1. Prosser, Torts, Sec. 81 (1941).

2. *Swords v. Edgar*, 59 N.Y. 28, 17 Am. Rep. 295 (1874); *Albert v. State*, 66 Md. 325, 7 A. 697 (1887); 84 U. Penn. L. Rev. 467.

3. *Swords v. Edgar*, supra; *Albert v. State*, supra; *Joyce v. Martin*, 15 R. I. 558, 10 A. 620 (1887).

4. *Junkerman v. Tilyou Realty Co.*, 213 N.Y. 404, 108 N.E. 190 (1915); *Larson v. Calder's Park Co.*, 54 Utah 325, 180 Pac. 599 (1919).

5. *Tulsa Entertainment Co. v. Greenlees*, 85 Okla. 113, 205 Pac. 179 (1922).

6. *Oxford v. Leathe*, 165 Mass. 254, 43 N.E. 92 (1896).

7. See Note 123 A.L.R. 870, 871.

8. *LaFreda v. Woodward*, 125 N.J. L. 489, 15 A.(2d) 798.

9. *Webel v. Yale University*, 125 Conn. 515, 7 A.(2d) 215; See Note 123 A.L.R. 863 (1939); Prosser, Torts, supra; See Note 130 A.L.R. 1275, 1276; See Note 32 Am. Jur. 668.

tended to a grocery store,<sup>10</sup> a hotel,<sup>11</sup> a boarding house,<sup>12</sup> and a doctor's office.<sup>13</sup> In recent years, liability has been found in cases of a beer parlor and recreation hall,<sup>14</sup> beauty shop,<sup>15</sup> office building,<sup>16</sup> and business building.<sup>17</sup> Since the landlord's liability for injuries to lessee's invitees was extended to small shops in 1939,<sup>18</sup> a majority of the state courts who have had occasion to pass on the question have followed this rule.<sup>19</sup>

It might be contended that the exception could easily swallow the rule and that it places unlimited liability on the landlord of premises used for other than private purposes, but several practical limitations have been placed on the rule. The landlord is only liable for defective conditions which exist at the time of the lease<sup>20</sup> and his responsibility only extends to those parts of the premises that are thrown open to the public. Also, he is only liable for those uses contemplated by the lease.<sup>21</sup>

Wyoming has not decided this issue, but recent cases in surrounding states show a trend toward the more liberal view.<sup>22</sup>

GEORGE H. ROLLINS.

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THE OBLIGATION OF THE INSURER TO DEFEND ALL SUITS BROUGHT  
AGAINST THE INSURED

The Hardware Mutual Casualty Company sued the executors of A. R. Shantz for a declaratory judgment to determine the rights of the parties under a policy of public liability or indemnity insurance issued to the decedent by the company. The suit was dismissed for lack of federal jurisdiction. At the time of this suit there was pending in the state court an action against the executors of Shantz. They had made demands on

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10. *Turner v. Kent*, 134 Kan. 574, 7 P.(2d) 513; *Senner v. Danewolf*, 139 Ore. 93, 6 P.(2d) 240 (1932).
  11. *Colorado Mortgage & Investment Co. v. Giacomini*, 55 Colo. 540, 136 Pac. 1039 (1913).
  12. *Stenberg v. Willcox*, 96 Tenn. 163, 33 S.W. 917 (1896); See Note 34 L.R.A. 615.
  13. *Gilligan v. Blakesley*, 93 Colo. 370, 26 P.(2d) 808 (1933).
  14. *Nelson v. Hokuf*, 140 Nebr. 290, 299 N.W. 472 (1941).
  15. *Wood v. Prudential Ins. Co. of America*, 212 Minn. 551, 4 N.W.(2d) 617 (1942).
  16. *Holm v. Investment & Securities Co.*, 195 Wash. 52, 79 P.(2d) 708 (1938); *McCarthy v. Maxon*, 134 Conn. 170, 55 A.(2d) 912 (1947).
  17. *Blumberg v. M. & T. Inc.*, — Calif. —, 209 P.(2d) 1 (1949).
  18. *Webel v. Yale University*, supra; 24 Minn. L. Rev. 283, 284.
  19. *Olin v. Honstead*, 60 Idaho 211, 91 P.(2d) 380 (1939); *Nelson v. Hokuf*, supra; *Wood v. Prudential Ins. Co. of America*, supra; *Fletcher v. Sunel*, 19 Wash. 596, 143 P.(2d) 538 (1943); *McCarthy v. Maxon*, supra; *Blumberg v. M. & T. Inc.*, supra.
  20. See Note 123 A.L.R. 870, 872.
  21. *Prosser, Torts*, supra.
  22. *Olin v. Honstead*, supra; *Nelson v. Hokuf*, supra; *Blumberg v. M. & T. Inc.*, supra; *Fletcher v. Sunel*, supra.