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TORTS — LANDLORD AND TENANT — LIABILITY OF LANDLORD TO INVITEE OF TENANT — Plaintiff was a customer of a beauty shop; upon leaving the ladies' room connected with the shop, she fell at the entrance. The floor of the ladies' room was some seven inches higher than the floor of the shop, the door extending down to the level of the shop floor. This structural defect existed at the time of the lease, and there was no covenant to repair. Plaintiff sues defendant landlord, basing her claim in nuisance. *Held*, defendant landlord may be liable on negligence principles, since where a landlord leases premises on which he knows or should know that there are conditions likely to cause injury to persons entering upon the premises, and the purpose of the lease involves the entry of persons as patrons of the tenant, he is liable if he knows or should know that the tenant cannot reasonably be expected to remedy or guard against injury therefrom. *Webel v. Yale University*, 125 Conn. 515, 7 A. (2d) 215 (1939).

The decision in this case seems to go farther than any previous case in denying that the number of persons involved in entry to the premises as patrons of the lessee should have any bearing upon the liability of the lessor. There has developed in some jurisdictions an exception to the general rule that a landlord owes no greater duty to the invitee coming upon the land in the right of the tenant than that which is owed the tenant; ¹ under this exception the landlord may be liable where the land is leased for so-called public or semi-public use.²

¹ Bohlen, "Landlord and Tenant," 35 HARV. L. REV. 633 at 638 (1922), reprinted in BOHLEN, STUDIES IN THE LAW OF TORTS 202 at 208 (1926); 1 TIF-FANY, LANDLORD AND TENANT 556, 649, 652 (1912); Eldredge, "Landlord's Liability for Disrepair," 84 UNIV. PA. L. REV. 467 at 472 (1936); 16 R. C. L. 1034 et seq. (1917); 34 L. R. A. (N. S.) 798 (1911); 39 L. R. A. (N. S.) 378 (1912); L. R. A. 1916D 1224; L. R. A. 1916F 1081, 1140.

² 2 TORTS RESTATEMENT, § 359 (1934); Harkrider, "Tort Liability of a Landlord," 26 MICH. L. REV. 260 at 288 (1928): "The courts have not attempted to lay

The "pier cases" formed the basis for this exception, and liability was imposed on a nuisance concept by drawing an analogy between a pier and a highway.⁸ This "fictional nuisance"⁴ doctrine once having been created, it was difficult to refuse to extend it to situations where the customer of the tenant was attempting to recover for injuries received upon the premises; the difficulty in restricting this doctrine has imposed liability upon the lessor of a hotel,⁵ a boarding house,⁶ a shop,⁷ and even an office leased to a doctor.⁸ In all but one of these cases the plaintiff was a member of the public, injured in that part of the premises given this quasi-public character.⁹ From these cases one would imply that the "nuisance fiction" has been carried to extremes, and that the duty concept adopted by this court is a more judicious approach. The reasoning behind this concept suggests that where it is foreseeable that the public will use the premises the duty will exist, whether or not the user is by a large or small number.¹⁰ As has been pointed out by eminent authority, there does seem to be more reason to impose liability where there is user by a large number of persons.¹¹

down any hard and fast rule as to what is a public or *quasi* public purpose. . . . By the great weight of authority, the mere fact that the premises are leased for some commercial purpose does not impose upon the landlord the duty of making the premises safe for such members of the public as are induced to go thereon by reason of the nature of the business."

⁸ *Swords v. Edgar*, 59 N. Y. 28 (1874); *Albert v. State*, 66 Md. 325, 7 A. 697 (1887); *Joyce v. Martin*, 15 R. I. 558, 10 A. 620 (1887).

⁴ See WORDS AND PHRASES, "Nuisance"; *Jackson v. Public Service Co.*, 86 N. H. 81 at 86, 163 A. 504 (1932); I TIFFANY, LANDLORD AND TENANT 681 (1912); *Burdick v. Cheadle*, 26 Ohio St. 393 at 396-397 (1875): "The liability of the defendant, Cheadle, existed only in favor of persons standing strictly upon their rights as strangers to the property, and as to whom it was the duty of the defendant to remove or repair the structures. The duty here referred to does not arise upon the contract of lease, but is one which the law imposes upon the owners of property, and is expressed in the maxim, '*sic utere tuo ut alienum non laedas.*' . . . But the plaintiff was not a stranger, standing strictly upon his rights as such. Indeed, the noxious fixtures complained of did not amount to a nuisance at all in the legal sense of the term. They were not erected or maintained in violation of any right of the public, or any member of the public. They were unsafe, it is true, but did not tend to endanger the person or property of strangers to the premises. They were unsafe to persons and things which might be for the time being in the storeroom; but no person or thing could rightfully be there, except by the permission and upon the request of the lessee." See also, 110 A. L. R. 756 (1937).

⁵ *Colorado Mtg. & Inv. Co. v. Giacomini*, 55 Colo. 540, 136 P. 1039 (1913); *Copley v. Balle*, 9 Kan. App. 465, 60 P. 656 (1900).

⁶ *Stenberg v. Willcox*, 96 Tenn. 163, 33 S. W. 917 (1896).

⁷ *Turner v. Kent*, 134 Kan. 574, 7 P. (2d) 513 (1932); *Senner v. Danewolf*, 139 Ore. 93, 293 P. 599, 6 P. (2d) 240 (1932).

⁸ *Gilligan v. Blakesley*, 93 Colo. 370, 26 P. (2d) 808 (1933).

⁹ Bohlen, "Fifty Years of Torts," 50 HARV. L. REV. 725 at 743 (1937).

¹⁰ Principal case, 7 A. (2d) 215 at 218.

¹¹ Bohlen, "Fifty Years of Torts," 50 HARV. L. REV. 725 at 742 (1937). The author points out that if the liability of the landlord were to depend on the number of persons who could be expected to frequent the premises, there would be difficulty in determining at what number the duty would arise. It is wise merely as an administrative

The principal case limits the application of this rule in that liability shall not arise unless the lessor has reason to believe that the tenant will not guard against or remedy the defect. Falling within this rule, then, is that class of cases in which there are latent defects in the premises, or the lessor restricts against structural changes, or where there are conditions, such as the limited duration of the lease, which would make the safety of the building depend mainly on the landlord. Moreover, by placing the liability of the lessor on a negligence basis the court escapes the difficulties of applying the nuisance concept already extended to cases which do not fall within the strict classification of a public or private nuisance. Though one New York decision points to liability in the case of a lessor of a shop, the principal case goes farther in imposing liability on the lessor than any prior decision using the negligence concept.¹² It would seem that the exception to the rule of nonliability of lessors to invitees of the tenant was about to swallow the rule itself, but such is not the tendency, for one of the "nuisance doctrine" states has already placed important limitations on the rule in that state.¹³ Though the present case, in denying that the number of persons should have any bearing on the landlord's liability, directly conflicts with the *Torts Restatement*,¹⁴ it would seem that if liability should be imposed under facts similar to those in the present case, it should be done by the use of the negligence concept adopted by this court.

expedient to regard the fact that the premises are held open to the public as conclusive evidence that many persons will be attracted to them.

¹² *Warner v. Lucey*, 207 App. Div. 241, 201 N. Y. S. 658 (1923), *affd.* 238 N. Y. 638, 144 N. E. 924 (1924).

¹³ *Boyd v. McCarty*, 142 Tenn. 670, 222 S. W. 528 (1920); *Smith v. Tucker*, 151 Tenn. 347, 270 S. W. 66 (1925).

¹⁴ Sec. 359, entitled "Where land leased for purpose involving admission of numerous persons" (*italics added*).