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Torts - Condition and Use of Buildings - Storekeeper's Liability for the Actions of a Crowd

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ship,[12] joint adventure,[13] and principles of equity [14] as the bases for their decisions.

The modern trend also permits the putative wife to recover on an implied contract for services rendered during the supposed coverture.[15] This view has been rejected in Massachusetts [16] but has been generally accepted in other jurisdictions. A few jurisdictions have resolved the problem by statutory enactment of a form of alimony.[17] Indications are, however, that the courts will go no farther in granting relief to a putative wife than dividing property jointly accumulated, awarding compensation for services rendered or affording relief in the form of statutory alimony.[18] The instant case seems well founded on modern precedent. While it may be argued that this doctrine is in derogation of the common law, the adoption of that body of law does not preclude modification to meet local conditions.[19]

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TORTS — CONDITION AND USE OF BUILDINGS — STOREKEEPER'S LIABILITY FOR THE ACTIONS OF A CROWD. Plaintiff went to the defendant's store in response to the advertisement of a sale. A large crowd was awaiting the opening of the store. When the doors were finally opened, the crowd surged forward and pushed the plaintiff into a showcase, injuring her. The plaintiff sued, charging that the defendant knew the dangerous propensity of the crowd, yet delayed the opening so that photographers could get pictures of the crowd of customers. Negligence was charged in (1) failure to police the premises, (2) failure to open the door at the advertised hour, (3) failure to rope off the entrance, and (4) failure to police the entrance to prevent the crowd's pushing and shoving. It was *held*, that the pleadings stated a cause of action.

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12. Fung Dai Kim Ah Leong v. Lau Ah Leong, 27 F.2d 582 (9th Cir.), *cert. denied*, 278 U.S. 636 (1928) (admitted that technically no partnership, trust, agreement, express or implied contract existed, but allowed a division of property on the basis of unjust enrichment); Krauter v. Krauter, 79 Okla. 30, 190 Pac. 1088 (1920); Werner v. Werner, 59 Kan. 399, 53 Pac. 127 (1898): "The court has the same power to make equitable divisions of the property so accmumulated as it would have in case of the dissolution of a business partnership."

13. Beuck v. Howe, 71 S.D. 288, 23 N.W.2d 744 (1946) (recovery denied on ground that evidence did not warrant the conclusion that defendant contributed substantially to acquisition of the property): Bracken v. Bracken, 52 S.D. 252, 217 N.W. 192 (1927).

14. King v. Jackson, 196 Okla. 327, 164 P.2d 974 (1946); Sclamberg v. Sclamberg, 220 Ind. 209, 41 N.E.2d 801 (1942) (incestuous marriage, valid under Russian law; held, equity has power to grant relief in such circumstances).

15. Cases cited note 7, *supra*.

16. Cooper v. Cooper, 147 Mass. 370, 17 N.E. 892 (1888).

17. Stapleburg v. Stapleburg, 77 Conn. 31, 58 Atl. 233 (1904) (alimony awarded under statute permitting the court upon declaring a marriage void to award alimony as it might have done in a divorce proceeding if the parties were married); Barber v. Barber, 74 Iowa 301, 37 N.W. 381 (1888) (statute permitting court to decree compensation as in case of divorce if contract entered into in good faith); Vanvalley v. Vanvalley, 19 Ohio St. 588 (1869).

18. Ft. Worth & R. G. Ry. Co. v. Robertson, 131 S.W. 400 (Tex Civ. App. 1910) (reversing a decision permitting a putative wife to recover for injuries to deceased husband which did not cause his death, holding that to permit recovery would extend to a putative wife all the rights of a valid marriage); Woods v. Hardware Mut. Casualty Co., 141 S.W.2d 972 (Tex.Civ.App. 1940) (putative wife not allowed to claim workman's compensation.)

19. Fung Dai Kim Ah Leon v. Lau Ah Leong, 27 F.2d 582 (9th Cir.), *cert. denied*, 278 U. S. 636 (1928).

Judgement for the plaintiff affirmed. *Lane v. Fair Stores, Inc.*, 243 S.W.2d 683 (Tex. 1951).

Generally a person who enters a store does so at the implied invitation of the storekeeper,[1] and the law imposes upon the storekeeper the duty of maintaining the premises in a reasonably safe condition [2] so as not to expose customers to unreasonable dangers. The storekeeper is under the further duty to warn such business invitees [3] of dangerous conditions on the premises,[4] including all such conditions which he could discover by reasonable care.[5] The courts have made it clear, however, that the storekeeper is not an insurer of the safety of his customers and is liable only for injuries resulting from his negligence.[6] Ordinarily a storekeeper is not liable to a customer for injuries caused by a third person,[7] and the principal case raises the question of a storekeeper's duty to police a crowd and his liability for its actions.

The early cases consistently held that where one caused a crowd to congregate on his premises, which were otherwise in a safe condition, and a member of the crowd was injured through the group's shoving and pushing, the owner of the premises was not liable.[8] It was said that a storekeeper had a right to believe that customers would act properly in regard to others in the store, and therefore was not guilty of any negligence by reason of the

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1. *See* Indermaur v. Dames, L.R. 1 C.P. 274, 286 (1866) (Action by business invitee to recover damages): "The authorities respecting guests and other bare licensees, and those respecting servants and others who consent to incur the risk, being therefore inapplicable, we are to consider the law as to the duty of the occupier of the building with reference to persons resorting thereto in the course of business, upon his invitation, express or implied. The common case is that of a customer in a shop; . . . for whether the customer is actually chaffering at the time or actually buys or not, he is, according to the undoubted course of authority and practice, entitled to the exercise of reasonable care by the occupier to prevent damage from unusual danger of which the occupier knows or ought to know, such as a trap door left open. . . . This protection does not depend on the fact of a contract being entered into in the way of a shopkeeper's business during the stay of the customer, but upon the fact that the customer has come into the shop in pursuance of a tacit invitation given by the shopkeeper, with a view to business that concerns himself. . . . The class to which the customer belongs includes persons who go not as mere volunteers, or licensees, or guests, or servants, or persons whose employment is such that danger may be considered as bargained for, but who go upon business which concerns the occupier, and upon his invitation, express or implied."

2. See Indermaur v. Dames, L.R. 1 C.P. 274 (1866); Krueger v. North American Creameries, 75 N.D. 264, 27 N.W.2d 240 (1947) (Plaintiff, a customer, injured in crash of elevator in Defendant's warehouse).

3. Prosser, Torts, 637 (1941). The author discusses the theories advanced as the basis of the special obligation of an occupier toward a business invitee.

4. *See, e.g.*, Raylass Chain Stores Inc. v. De Jarnette, 163 Va. 938, 178 S.E. 34 (1935) (Defendant violated duty to warn Plaintiff of concealed stairway).

5. See note 1, *supra*.

6. *See, e.g.*, Sears Roebuck and Co. v. Scroggins, 140 F.2d 718, 723 (8th Cir. 1944) (Plaintiff fell over boxes left in store aisle); Sears Roebuck and Co. v. Peterson, 76 F.2d 243, 246 (8th Cir. 1935) (Plaintiff entangled foot in twine left on floor of store).

7. Pippin v. J. Regenstein Co., 58 Ga. App. 819, 199 S.E. 790 (1938) (Child knocked down mirror in Defendant's store, injuring Plaintiff; Defendant held not liable).

8. E.g., F.W. Woolworth and Co. v. Conboy, 170 Fed. 934 (8th Cir. 1909) (Plaintiff shoved down stairway by sale crowd; no recovery); Lord v. Sherer Dry Goods Co., 205 Mass. 1, 90 N.E. 1153 (1910); Hunnwell v. Haskell, 174 Mass. 557, 55 N.E. 320 (1899) (No duty to guard ordinary stairway imposed by presence of crowd in store).

crowd's misconduct.[9] He was under no duty to anticipate violence,[10] or warn of ordinary conditions,[11] merely because his store was crowded. Even an overt act intended to cause movement of the crowd was held not to charge the storekeeper with a duty of anticipating danger.[12] Although these principles have been regarded as long-established, and generally followed, there now appears to be a tendency of the courts to extend the duties and liabilities of the storekeeper in such situations.

While there is no duty to supervise a crowd under ordinary conditions,[13] the extension of liability in the latter cases seems to be based upon the premise that there is such a duty to supervise in extraordinary circumstances,[14] and that a crowd can be, in some situations, a contributing instrument of danger which will raise such a duty of supervision.[15] The present view now appears to be that the storekeeper must consider all pertinent circumstances, such as the condition of the premises, and the size and conduct of the crowd, in determining what he should do to protect his patrons.[16] If he fails to use reasonable care in the light of all the circumstances, it would appear reasonable to hold him responsible for the consequences.[17] In other cases considering the damming of a crowd in an entrance way,[18] proximity to glass, late opening, and failure to supervise,[19] recovery has been allowed on the theory that these factors created extraordinary circumstances involving risk of injury to patrons.

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9. *See* F.W. Woolworth and Co. v. Conboy, 170 Fed. 934, 936 (8th Cir. 1909): "The crowd on the present occasion seems to have been somewhat more violent than usual. Still such crowds are often found in large stores at the time of special sales. . . . They are an unavoidable feature of mercantile life in large cities. The defendant . . . had no reason to believe that such a sale . . . would lead to any uncontrolled or violent conduct on the part of customers . . . and was not therefore required to maintain its store in an unusual condition of safety to meet such an emergency. It had no reasonable cause to anticipate such violence, but, on the contrary, had a right to believe that patrons would demean themselves with a proper regard to others using the store."

10. See note 9, *supra.*

11. Hunnewell v. Haskell, 174 Mass. 557, 55 N.E. 320 (1899).

12. Lord v. Sherer Dry Goods Co., 205 Mass. 1, 90 N.E. 1153, 1154 (1910): "It cannot be said however that a merchant is negligent simply because he has his store crowded with customers, or because while the store is crowded he directs their attention to some part where they can get good bargains. That is what the store is for. . . . The stairs were of ordinary construction, and the defendant had the right to assume that under the circumstances there was no reason to anticipate any danger to those upon them."

13. *See* Tuttle v. Kline's Inc., 230 Mo. App. 230, 89 S.W.2d 676, 678 (1935) and cases cited there. (No recovery allowed a plaintiff caught in revolving door by rush of crowd.)

14. Greeley v. Miller's Inc., 111 Conn. 584, 150 Atl. 500 (1930) (Plaintiff recovered where Defendant failed to erect barriers to protect store windows and Plaintiff was injured by glass broken in rush of crowd).

15. *Ibid.*

16. Schwartzman v. Lloyd, 65 App. D.C. 216, 82 F.2d 822 (1936) (Containing an excellent review of the cases).

17. *Id.* at 827: "The public assumes the ordinary risks of ordinary crowds. But if the crowd is held or handled in a manner likely to cause injury, the storekeeper must use due care to guard against it. We think that evidence that the flow of a crowd collected by a defendant has been dammed, whether at a loading platform . . . at a gate . . . or in a store entry areaway between glass windows . . . without precautions . . . without barricades, warnings or guards—is evidence from which reasonable jurymen might properly find that . . . the defendant had invited the public and the plaintiff into danger, without exercising ordinary care to render the premises reasonably safe for the visit. It is not unreasonable to expect that windows pressed against by a crowd will break."

18. Schwartzman v. Lloyd, 65 App. D.C. 216, 82 F.2d 822 (1936); Greeley v. Miller's Inc., 111 Conn. 584, 150 Atl. 500 (1930).

19. Greeley v. Miller's Inc., 111 Conn. 584, 150 Atl. 500 (1930).