LIABILITY OF LANDOWNERS AND SECURITY GUARDS

SECURITY GUARDS AND SPECIAL RELATIONSHIPS: A security guard is in a special relationship with the customers of the business that hires such a guard, imposing an obligation on the guard to act affirmatively to protect customers while on the premises, and is liable to an injured customer when the guard fails to act reasonably and that failure causes injury. ***Trujillo v. G.A. Enterprises, Inc.*** (1995) 36 Cal.App.4th 1105.

ISSUE OF FACT: Whether a security guard has acted reasonably under the circumstances and whether the guard's acts were a substantial factor in causing the plaintiff's injuries, are questions of fact to be resolved by trial, not summary judgment. ***Trujillo v. G.A. Enterprises, Inc***. (1995) 36 Cal.App.4th 1105.

HIGH DEGREE OF FORESEEABILITY PRIOR TO DUTY TO HIRE SECURITY GUARDS: A high degree of foreseeability is required in order to find that the scope of a landowner's duty of care includes the hiring of security guards, and the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises. ***Claxton v. Atlantic Richfield Co.*** (2003) 108 Cal.App.4th 327. While there may be circumstances where the hiring of security guards will be required to satisfy a landowner's duty of care, the monetary costs of security guards is not insignificant, and the burden is rarely minimal. ***Ann M. v. Pacific Plaza Shopping Center*** (1993) 6 C4th 666, 670.

EVEN IF GUARDS HIRED FORESEEABILITY IS STILL AN ISSUE: When a proprietor voluntarily has employed one or more guards and properly is found to owe a duty to patrons, foreseeability remains relevant to the factfinder's determination of breach and causation. ***Delgado v. Trax Bar & Grill*** (2005) 36 Cal.4th 224, 250 [overruling ***Mata v. Mata*** (2003) 105 Cal.App.4th 1121.

REQUIRES NOTICE OF PRIOR SIMILAR ACTS OF VIOLENCE – NOT IDENTICAL ACTS: The test is is prior "similar" incidents, not prior *identical* incidents. ***Claxton v. Atlantic Richfield Co.*** (2003) 108 Cal.App.4th 327, 339.

HIRING OF PART TIME GUARDS DOES NOT EMBRACE DUTY FOR FULL TIME GUARDS: Even where a property owner/nightclub owner, hires security guards for the weekend, that does not embrace a duty to do so during weekdays. ***Lopez v. Baca*** (2002) 98 Cal.App.4th 1008.

LIABILITY WHERE GUARD DOES NOT ACT AS A REASONABLE SECURITY GUARD: Just as a business may be liable for its failure to take reasonable precautions to protect its customers, a security guard hired by the business should be liable to an injured customer where the guard fails to act as would a reasonable security guard under similar circumstances and that failure causes the customer's injury. ***Marois v. Royal Investigation & Patrol, Inc.*** (1984) 162 Cal.App.3d 193.

DUTY OF SECURITY GUARD NO GREATER THAN THAT OF PROPERTY OWNER: However, a security company hired to protect business premises owes no greater duty toward the patrons of that business than is owed by the business owner under relevant principles of premises liability law. ***Balard v. Bassman Event Security, Inc.*** (1989) 210 Cal.App.3d 243.

BREACH OF WARRANTY OF HABITABILITY: Failure to provide residential tenant security may breach the implied warranty of habitability, giving injured tenants a defense to an unlawful detainer for nonpayment of rent or a cause of action for damages. [See ***Secretary of Housing & Urban Develop. v. Layfield*** (1978) 88 CA3d Supp. 28, 30].

LANDOWNER MAY BE LIABLE FOR NEGLIGENT HIRING OF GUARD: A business may be liable for failing to hire a competent security guard; having assumed the duty to protect patrons while on the premises of a business establishment, the proprietor of a business will be liable if a guard acts unreasonably. The employer of a security guard may be liable for the guard's assaults if the employer negligently hired the guard or negligently placed him in a position to commit foreseeable harmful acts. ***Hawkins v. Wilton*** (2006) 144 Cal.App.4th 936, 943-944 [Liability against landowner who knew "guard" was a drug-addled convicted felon whom landlord allowed to carry and brandish loaded firearms during the course and scope of employment, and who ignored repeated reports of his drug use].

NEGLIGENT UNDERTAKING DOCTRINE: A volunteer who, having no initial duty to do so, undertakes to provide protective services to another, will be found to have a duty to exercise due care in the performance of that undertaking if one of two conditions is met: either (a) the volunteer's failure to exercise such care increases the risk of harm to the other person, or (b) the other person reasonably relies upon the volunteer's undertaking and suffers injury as a result." (***Delgado v. Trax Bar & Grill*** (2005) 36 Cal.4th 224, 249). When the actor has undertaken to render services for the protection of a third person, the negligent undertaking doctrine may also apply. ***Mukthar v. Latin American Security Service*** (2006) 139 Cal.App.4th 284, 289 [MSJ reversed; Security guard was supposed to be standing by the door but at the time of the incident there was no guard and no explanation for his absence. Patron, trying to steal merchandise punched employee in face. Issue of fact as to whether incident avoided had guard been present].

PROPOSITION 51: Proposition 51 does not apply when liability is based on the respondeat superior doctrine, a nondelegable duty, or other forms of vicarious liability. (See ***Srithong v. Total Investment Co.*** (1994) 23 Cal.App.4th 721, 727–728; ***Rashtian v. BRAC–BH, Inc.*** (1992) 9 Cal.App.4th 1847, 1851.) Proposition 51 applies to actions involving both negligent and intentional tortfeasors. (***Rosh v. Cave Imaging Systems, Inc.*** (1994) 26 Cal.App.4th 1225, 1233–1235 [Court affirms 25% to attacker, 75% to security company]; ***Weidenfeller v. Star & Garter*** (1991) 1 Cal.App.4th 1, 6 [Court affirms 75% to assailant, 20% to landowner, and 5% to plaintiff]. An intentional tortfeasor's liability to the plaintiff is not subject to reduction where the contributory negligence of the plaintiff or a third party contributed to the injuries. ***Thomas v. Duggins Const. Co., Inc.*** (2006) 139 Cal.App.4th 1105, 1112.

"CALL 911": Duty of employees to call "911" when crime was in progress and employees observed attack from large glass window. ***Delgado v. Trax Bar & Grill*** (2005) 36 Cal.4th 224. "[P]lacing a 911 call is a well recognized and generally minimally burdensome method of seeking assistance." (***Morris v. De La Torre*** (2005) 36 Cal.4th 260, 277). Pizza parlor owed no duty to do any more but call "911" after fight broke out and fighters separated. ***Alcarez v. Jacmar Pacific Pizza Corp.*** (2002) 100 Cal.App.4th 1190]. Business owes duty to call "911"/police when patron has medical problem, but no duty to advise that facility had equipment to treat heart attack victim. ***Rotolo v. San Jose Sports Entertainment, LLC*** (2007) 151 Cal.App.4th 307. **NOTE**: Business has a duty to allow a person to use a phone in a public place when business is open where there is an expressed threat of violence/harm. ***Soldano v. O'Daniels*** (1983) 141 Cal.App.3d 443; No similar duty when report of theft or damage to property. ***Stangle v. Fireman's Fund Ins. Co.*** (1988) 198 Cal.App.3d 187.

CAUSATION FOR JURY: "[W]here security guards fail to deter criminal activity, the issue of causation is to be resolved by the trier of fact." (***Rosh v. Cave Imaging Systems, Inc.*** (1994) 26 Cal.App.4th 1225, 1236, fn. 3.) It is up to the jury to decide whether it is reasonably probable that adequate security could have prevented the shooting either by serving as a deterrent or by intervening prior to the shootings. (***Madhani v. Cooper*** (2003) 106 Cal.App.4th 412, 418 [causation in premises liability cause of action to be a jury question].) To establish causation, the plaintiff must prove that increased security measures would have "more likely than not" prevented the attack. (***Sandoval v. Bank of America N.T. & S.A.*** (2002) 94 Cal.App.4th 1378, 1387-1388). **NOTE**: Causation may also be resolved by summary judgment. See: (***Saelzler v. Advanced Group 400*** (2001) 25 Cal.4th 763, 766 – FedEx employee attacked in apartment complex by unknown assailant(s); MSJ for Defendants affirmed).

LIABILITY OF BAR/TAVERN: A duty " 'arises ... when one or more of the following circumstances exists: (1) A tavern keeper allowed a person on the premises who has a known propensity for fighting; (2) the tavern keeper allowed a person to remain on the premises whose conduct had become obstreperous and aggressive to such a degree the tavern keeper knew or ought to have known he endangered others;
(3) the tavern keeper had been warned of danger from an obstreperous patron and failed to take suitable measures for the protection of others; (4) the tavern keeper failed to stop a fight as soon as possible after it started; (5) the tavern keeper failed to provide a staff adequate to police the premises; and (6) the tavern keeper tolerated disorderly conditions [citations].' ***Saatzer v. Smith*** (1981) 122 Cal.App.3d 512, 518; ***Slawinski v. Mocettini*** (1963) 217 Cal.App.2d 192, 196 [No evidence of prior violent conduct nor any threat of future violence on part of patron who got into fight, left premises and returned with gun shooting other patron dead]. See also: ***Delgado v. Trax Bar & Grill*** (2005) 36 Cal.4th 224.