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TORTS - LIABILITY OF LANDLORD FOR INJURY TO PROPERTY OF TENANT'S CUSTOMER

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TORTS — LIABILITY OF LANDLORD FOR INJURY TO PROPERTY OF TENANT'S CUSTOMER — A customer of the tenant sued the landlord for damage, to fur coats left with the tenant in the normal course of his business, from water, due to a leaky condition of the roof of the building which was in the control of landlord. *Held*, that it was the duty of the landlord to exercise reasonable care to keep the roof in reasonable repair not only as regards the safety of persons in the building but also as respects property lawfully there; that this duty was not performed and the damage resulted therefrom. *Whelkin Coat Co. v. Long Beach Trust Co.*, 121 N. J. L. 106, 1 A. (2d) 394 (1938).

It is generally held that a landlord is under a duty to his lessee and all others lawfully on the premises to use reasonable care to maintain in a safe condition those parts of the premises in his control which are intended for the common use of all tenants.[1] That the landlord is liable for personal injuries caused by a breach of this duty is apparently well settled.[2] However, the holding of the principal case that the landlord is liable for injuries to the personal property of third persons which is lawfully on the premises is not so clear. The only case directly supporting this view is one decided by the Alabama court.[3] There an employee of the tenant was allowed to recover for personal property destroyed by a fire caused by the landlord's negligence in permitting wiring under his control to become defective. Even in the absence of precedent, however, it seems only reasonable that the landlord should be liable for injury to the property of third persons which is lawfully present, as well as for personal injuries. An unreasonable risk of harm when this duty is breached is as easily foreseen in the one case as the other. Liability is imposed for personal injuries because the

[1] 1 TIFFANY, LANDLORD AND TENANT, § 89a (1912); HARPER, TORTS, § 103, note 78 (1933); 38 YALE L. J. 397 (1929); 2 TORTS RESTATEMENT, § 361 (1934). But see 36 C. J. 233, note 27 (1924) for cases holding that a landlord has no duty to keep a roof in his control in repair where the defects were obvious at the time of letting.

[2] See supra, note 1. Also Hunkins v. Amoskeag Mfg. Co., 86 N. H. 356, 169 A. 3 (1933).

[3] Pearce v. Sloss-Scheffield Steel & Iron Co., 211 Ala. 639, 101 So. 585 (1924).

landlord is in control [4] and because the safe condition of such premises is essential to the beneficial enjoyment of the leased premises by the tenant.[5] Both reasons apply with equal force where the injury is to property. Numerous cases permit the tenant to recover for damage to his property caused by a breach of the landlord's duty to use reasonable care in keeping that part of the premises in his control in safe condition.[6] What valid reason is there for stopping at this point and not permitting the same right to recover where a third person's property rightfully on the premises is injured?[7] If technical arguments are desired, they are not lacking. One would be that a third person rightfully on the premises has the same rights in respect to this duty against the landlord as the tenant.[8] Thus the third person would have the same rights as the tenant to recover for injury to his property. Or if the third person is an invitee [9] of the tenant he may also be treated as an invitee of the landlord.[10] The landlord would then be liable under his duty to use reasonable care to avoid injury to the property of invitees which is on the premises for purposes within the scope of the invitation.[11] Such legal gymnastics, however, should not be necessary.

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[4] Shindelbeck v. Moon, 32 Ohio St. 264 (1877).

[5] Gleason v. Boehm, 58 N. J. L. 475, 34 A. 886 (1896).

[6] Kuperschmid v. Tauszig, 124 Misc. 548, 208 N. Y. S. 464 (1926) (leaky roof); Strong v. Woodrow Investing Co., 158 N. Y. S. 513 (S. Ct. 1916) (defective heating system in lessor's control); Epstein v. Manning, 163 N. Y. S. 1087 (S. Ct. 1917) (defective roof); and Longbotham v. Takeoka, 115 Ore. 608, 239 P. 105, 43 A. L. R. 1285 at 1292 (1925).

[7] That there is no reason for denying such recovery seems even clearer in view of the fact that the lessor's duty not to lease land with a nuisance or trap extends to injuries to the property of third persons which is lawfully on the premises. Patten v. Bartlett, 111 Me. 409, 89 A. 375 (1914).

[8] 36 C. J. 238, note 20 (1924).

[9] See HARPER, TORTS, § 103 (1933), for what persons are included in the class of invitee.

[10] Gilligan v. Blakesley, 93 Colo. 370, 26 P. (2d) 808 (1933) (patient of lessee physician is invitee of lessor); Fish v. Estate of McCarthy, Inc., 224 App. Div. 160, 229 N. Y. S. 674 (1928).

[11] 45 C. J. 838, note 53 (1928).