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WHILE NIGHT TIME and its accompanying darkness provide the opportunity to many for the pleasures of a midnight stroll, gazing at the stars, and the like, night time also provides others with the opportunity to commit crimes, utilizing the cover of darkness as their ally. One survey has shown that twelve times as many crimes of violence are committed during the night as in the day.[1] According to F.B.I. Director J. Edgar Hoover, "It is axiomatic that darkness is an ally to crime. The thief, the arsonist, the rapist, the peeping Tom and all other perverse individuals often depend on darkness to cloak their misdeeds and conceal their identities." [2]

This paper will discuss the impact of lighting upon crime and crime prevention; and propose that there be recognized a general common law duty upon landowners to exercise reasonable care to maintain the means of ingress and egress to their property, over which they retain control, adequately lighted; and be liable for personal injuries due to inadequate lighting. For the purposes of this paper, distinctions among the various classes of entrants upon land, *i.e.*, trespassers, licensees, invitees, etc., will not be considered as material. In part it is beyond the scope of this paper, and in part it is due to the recent trend toward abolishing rigid concepts of arbitrary classifications as to the duties of landowners to such entrants upon land.[3]

At first glance the relation between the concept of lighting as an instrument of crime prevention and the duty of a landowner to light may seem quite remote. However, it is not proposed here that a landowner be held responsible from criminal assaults by third parties or

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1 Don Murray, How Bright Lights Reduce Crime, *Coronet*, Feb. 1960 at 30. The following are symptomatic of the percentage of violent crimes which occur at *night* in our cities:

> Fort Wayne, Ind.—90% of the robberies
> Salt Lake City, Utah—96% of the aggravated assaults
> Minneapolis, Minn.—92% of the burglaries.

2 Nancy Berla, The Impact of Street Lighting On Crime and Traffic Accidents, The Library of Congress Legislative Reference Service, HV 6251 (1965), quoted from A Brighter Las Vegas, Las Vegas *Sun* (January 10, 1965).

3 See Rowland v. Christian, 69 Cal. 2d 108, 70 Cal. Rptr. 97, 443 P. 2d 561 (1968); Taylor v. New Jersey Highway Authority, 22 N.J. 454, 126 A. 2d 313 (1956); Mile High Fence Co. v. Radovich, 474 P. 2d 796 (Colo. App. 1970). *See also* Comments, Torts—Occupier of Land Held to Owe Duty of Ordinary Care to all Entrants—"Invitee," "Licensee," and "Trespasser" Distinctions Abolished, 44 N.Y.U. L. Rev. 426 (1969).

various other crimes facilitated by inadequate lighting, inside or outside his premises, although the idea may have some foundation.[4]

It is proposed that the common law recognize a duty of landowners to adequately light exterior steps, sidewalks and passages on and around their premises during the night time to prevent personal injuries which result from the non-existence or inadequacy of lighting. The recognition of this duty will not only prevent the all too often trips, falls and spills due to darkness, but will also directly benefit individuals and society as a whole by providing increased protection from and substantial reduction of the incidence of assaults, robberies, rapes and other crimes predominantly committed under the cover of darkness.[5]

Landowner's (Non-) Duty to Light

Although there is a general common law duty imposed upon a landowner for the exercise of reasonable care to maintain common areas of his premises retained under his control in a reasonably safe condition consistent with the use thereof, ordinarily this duty has not been held to apply to the furnishing of lights.[6] It is the general rule, accepted in a majority of jurisdictions, that a landowner has no common duty artificially to light such common areas over which he has retained control for the use of tenants and others; therefore he is usually not liable for personal injuries caused by the condition of absence or inadequate lighting.[7]

The cases on this subject, especially the early cases, have recognized no distinction between areas inside or outside the particular premises, and apply the same law and rationale equally in both situations. The general common law rule, however, has become riddled with various exceptions by the common law itself and, statutes and ordinances,[8] which have left its current effect unclear.

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[4] *Torts, Landlord, Tenant Relations, Landlord Has Duty To Take Reasonable Precautions To Protect His Tenants Against Criminal Acts of Third Parties*, 45 N.Y.U. L. Rev. 943 (1970).

[5] Consult your daily newspaper for crime details.

[6] Restatement (2d) of Torts §§ 343, 360, 361 (1965); James, Tort Liability of Occupiers of Land, 63 Yale L. J. 144 & 605 (1953). *See generally* Prosser, Law of Torts, ch. 11, Owners and Occupiers of Land (3d ed. 1964).

N.B.: This paper will not consider as pertinent the distinction between Landlord and Landowner, and the terms will be used interchangeably, also see *supra*, n. 3.

[7] Muller v. Minken, 5 Misc. 444, 26 N.Y.S. 801 (1893); Capen v. Hall, 21 R.I. 364, 43 A. 847 (1899); McKinley v. Niederst, 118 Ohio St. 334, 160 N.E. 850 (1928); Gleason v. Boehm, 58 N.J.L. 475, 34 A. 886 (1896); Blaufail v. Drooker, 251 Mass. 201, 146 N.E. 242 (1925); Hawes v. Chase, 84 N.H. 170, 147 A. 748 (1928).

[8] The statutes and ordinances, in effect in most jurisdictions today, are usually in the form of city ordinances, building codes, multiple dwelling laws, etc., and are subject to frequent amendment and revision. The particular statute or ordinance should be referred to for specific information.

A few courts, squarely confronting the issue, found the general rule unsuitable to the practical needs of the day and attempted to reject it,[9] while others rejected it completely.[10] Many courts recognized a duty to light as an exception to the general rule where certain areas are dangerous if not lighted due to various types of defects or unusual construction.[11] These usually are the courts which in theory at least adhered to the general rule, not ordinarily imposing a duty to light. It is also recognized that the duty to provide light may be expressly or impliedly assumed. Here liability is based upon negligent breach of the assumed duty.[12] However, even where the obligation has been undertaken, it may be terminated.[13] Yet another, and possibly the most effective, chipping away of the general common law rule has been through legislation.[14] However, the effect of noncompliance with the particular statute or ordinance is not always clear.[15]

Through use of one or more of the exceptions to the general rule, it would seem that most jurisdictions today place a duty upon landowners adequately to light common interior passages and stairways and impose liability for negligent breach. Of course, the plaintiff usually has to show the lack of contributory negligence on his part. This is usually most difficult in cases of this nature. Where a court is unwilling to recognize a duty on the part of the landlord and/or finds contributory negligence, the reasoning usually is similar to that first used in *Capen v. Hall,*

> If a person sees fit to poke around in a strange and unlighted hallway, and comes in contact with some object or falls downstairs, and is injured, he has little ground of complaint, as ordinary prudence would dictate greater precaution.[16]

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[9] Sherman v. Alexander & Sons, 108 S.W. 2d 616 (Mo. App. 1937); *but see* Barber v. Kellogg, 123 S.W. 2d 100 (Mo. App. 1938).

[10] Smeriglio v. Connecticut Savings Bank, 129 Conn. 461, 29 A. 2d 443 (1942); Kay v. Cain, 81 App. D.C. 24, 154 F. 2d 305 (1946); Lambert v. Jones, 339 Mo. 667, 98 S.W. 2d 752 (1936) public building.

[11] Marwedel v. Cook, 154 Mass. 235, 28 N.E. 140 (1891); McCabe v. Mackay, 253 N.Y. 440, 171 N.E. 699 (1930); Rietzel v. Cary, 66 R.I. 418, 19 A. 2d 760 (1941), aff. 67 R.I. 101, 21 A. 2d 5 (1941); Wool v. Larner, 112 Vt. 431, 26 A. 2d 89 (1942).

[12] Gallagher v. Murphy, 221 Mass. 363, 108 N.E. 1081 (1915); Coan v. Adams, 332 Mass. 654, 127 N.E. 2d 198 (1955); Weinel v. Hesse, 174 S.W. 2d 903 (Mo. App. 1943); Leech v. Atlantic Delicatessen Co., 104 N.J.L. 381, 140 A. 423 (1928); Lunde v. Northwestern Mut. Sav. & Loan Assn., 59 N.D. 575, 231 N.W. 609 (1930); Tremblay v. Donnelly, 103 N.H. 498, 175 A. 2d 391 (1961).

[13] Triggiani v. Olive Oil Soap Co., 12 N.J. Super. 227, 79 A. 2d 471 (1951).

[14] Gibson v. Hoppman, 108 Conn. 401, 143 A. 635 (1928); Lengas v. Resnick, 87 N.H. 161, 175 A. 824 (1934); Petrey v. Luizzi, 76 Ohio App. 19, 61 N.E. 2d 158 (1945), however here statute held not applicable to particular premises; Florentine v. Church of Our Lady of Mt. Carmel, 340 F. 2d 239 (2d Cir. 1965).

[15] Early Estates, Inc. v. Housing Board of Review of the City of Providence, 93 R.I. 227, 174 A. 2d 117 (1961).

[16] *Supra* n. 7 at 848. *See also* Hilsenbeck v. Guhring, 131 N.Y. 674, 30 N.E. 580 (1892).

However, there has been little if any recognition by the common law,[17] or the statutes,[18] of a duty to light common exterior sidewalks, paths, passages or other areas.

Recently a few courts have begun to recognize the long overdue need of a duty upon landowners adequately to light areas outside their premises. The Rhode Island Supreme Court, in *Dodge v. Parish of the Church of the Transfiguration*,[19] held that once the church opened its doors to the plaintiff, it owed the plaintiff a duty to maintain its premises in a reasonably safe condition. This included a reasonably safe means of ingress and egress and an obligation by the church to provide adequate illumination of the cement walk which extended from the church doorway to the street.[20]

The plaintiff, a widow in her late fifties, attended a banquet commemorating the seventy-fifth anniversary of the founding of the Church of the Transfiguration with her sister and brother-in-law. The plaintiff was not a member of the church, but her sister who was a member had purchased the tickets for the event, which sold for $2.75 each.[21] Arriving at the church at approximately 5:30 p.m., they attended the banquet held in a hall located in the church.

Accompanied by her sister and brother-in-law, the plaintiff left the church about 8:45 p.m. when the banquet ended and exited through a side door near the rear of the church. A cement walk approximately three feet in width and thirty feet in length, situated on the church premises, extended from the church door to the sidewalk. The only lighting in the area was a lantern-type electric light hung over the doorway. The night was dark and moonless. To the right of the walk was a hip-high hedge running along the entire length of the walk, with leaves and bushes extending slightly over the walk and casting a shadow on the paved surface. Having traveled half the distance of the walk, plaintiff's heel left the cement and became caught in the soil at the bottom of the hedges, causing her to fall and injure her hip.[22]

The court in *Dodge* vacated the trial court's directed verdict for

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[17] Kay v. Cain, *supra* n. 10; Johnston v. De La Guerra Properties, Inc., 28 Cal. 2d 394, 170 P. 2d 5 (1945); Donnally v. Larkin, 327 Mass. 287, 98 N.E. 2d 280 (1951), duty assumed; Tyler v. Vistula Realty Co., 31 Ohio App. 1, 166 N.E. 240 (1929).

[18] Norman v. Shulman, 150 Fla. 142, 7 S. 2d 98 (1942); Sapgat v. Regency Park, Inc., 263 App. Div. 619, 34 N.Y.S. 2d 86 (1942); Statutes and ordinances held not to extend to exterior portions of premises.

[19] 259 A. 2d 843 (1969) [Hereinafter cited as Dodge].

[20] *Id.* at 846.

[21] *Id.* at 844. The Court later, at 846, declared that Rhode Island still recognizes distinctions ". . . in the degree of care owed by a property owner to a trespasser, a social guest or a business invitee," and deemed plaintiff an invitee.

[22] *Id.*

defendant, which was primarily based on the case of *Capen v. Hall,*[23] the established and followed law in Rhode Island for seventy years, and remitted it for a new trial.[24] The court stated that it may have been reasonable when *Capen,* a product of the gaslight era, was decided not to impose a duty upon landlords to illuminate the corridors and entranceways under their control, since at that time it was generally recognized that there were no reliable lighting devices available which for a reasonable expenditure of money and effort would enable a landlord to properly illuminate his property. In fact, at that time it was considered "unreasonable" to place such an "onerous" burden on a property owner.[25]

However, since the advent of Edison's incandescent lamp in 1879 tremendous advances have been made in the field of illumination which ". . . completely negate the concern the court in Capen expressed for the landlord of the late nineteenth century. While the common-law rule that a property owner had no duty to illuminate his property might have had some merit at the turn of the century, we now live in a new era." [26]

Although not willing to admit to going as far, the *Dodge* court cited a case decided in the New York Court of Appeals, one year earlier, on the same issue.[27] The plaintiff in *Gallagher,* a sixty-year-old lady, had attended the weekly Monday night meeting of the Senior Sodality of St. Raymond's Roman Catholic Church of East Rockaway. Upon leaving, at about 11:15 p.m., she stepped out into the night and found herself in darkness. The lights which illuminated the exterior of the building and were on when she had arrived, had been turned off. Searching for the handrail on the steps, she lost her footing and fell, injuring herself.[28] The court here confronted the same type common law precedents, formulated in the gaslight era as in *Dodge,* declaring there was no duty to provide artificial light in common hallways and stairways of buildings.[29] The decision in *Gallagher* recognized that the changing of times and society necessitated the common law to keep step. Judge Keating, writing for the court, aptly stated the principle and reasoning:

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[23] *Supra,* n. 7.

[24] See White v. Heffernan, 60 R.I. 363, 198 A. 566 (1938); Reek v. Lutz, 90 R.I. 340, 158 A. 2d 145 (1960); Lawton v. Vadenais, 84 R.I. 116, 122 A. 2d 138 (1956); Rietzel v. Cary, *supra* n. 11; landowner's duty over common areas.

[25] *Supra,* n. 19 at 845.

[26] *Id.* at 846.

[27] Gallagher v. St. Raymond's Roman Catholic Church, 21 N.Y. 2d 554, 289 N.Y.S. 2d 401, 236 N.E. 2d 632 (1968); [Hereinafter cited as Gallagher].

[28] *Id.* at 632.

[29] Muller v. Menken, *supra* n. 7; McCabe v. Mackay, *supra* n. 11; see also Brugher v. Buchtenkirch, 167 N.Y. 153, 60 N.E. 420 (1901), contributory negligence barred recovery.

> . . . whether a society will tolerate a particular course of conduct is, to a large measure, dependent upon the development of society at the particular moment when the courts are called upon to enunciate a proper standard of care. We can conceive of no reason why at the present time the owner of a public building should not be required to light the exterior of his building at those times when it is open to the public. The traditional rule no longer expresses a standard of care which accords with the mores of our society. The public is entitled to a safe and reasonable means to enter and exit from an open public building. In this day and age, this should mean a lit path or stairway to the street. . . . The burden on the owner for taking this simple precaution, in terms of the cost of electricity and maintenance, is slight compared to the injuries or worse that can be avoided.[30]

In October, 1970, in a memorandum opinion citing only the *Gallagher* case, the Appellate Division of the Supreme Court of New York held that the owner of a public building has a duty to light the exterior of the building at those times when it is open to the public and, upon failure to do so, is prima facie guilty of negligence.[31]

The rule that these courts have applied has admittedly concerned public buildings, so to say, but it is questioned whether such distinctions can be maintained in today's modern complex of apartments, co-ops and other commonly frequented buildings. Is one about to enter a building a trespasser until he finds the party he is looking for? Is a building considered a private apartment building and not public building when it has stores and restaurants which cater to residents and public alike?

The Impact of Lighting On Crime

It can be said as a basic proposition that lighting does have a very definite deterrent effect on crime. Although arriving at this conclusion may require little logic or perception, the reported impact of lighting upon crime which has been experienced is significant and quite illuminating.

Gary, Indiana, began installing more than 5,000 new street lights in 1952, placing half of them in previously inadequately lit areas. When the program was completed in 1955, a substantial reduction in crime had resulted. During the two year period 1953 to 1955, assaults decreased by 75 percent and robberies declined by 65 percent.[32] Gary's Police Chief John Foley recognizing the work of the new lighting said,

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[30] *Supra,* n. 27 at 633.

[31] Kaufman v. Congregation of Knesses Israel Sea, 314 N.Y.S. 2d 605 (1970).

[32] Murray, *supra,* n. 1 at 33; of note is that during the same two year period (1953-1955), Gary's population increased 27 percent.

"A good street light is as valuable as a good policeman—and a lot cheaper too." [33]

New York City also experienced impressive results in crime prevention through the use of lighting. An experiment was conducted during the months of May, June and July, 1958, by New York City's Bureau of Gas and Electricity. The experiment centered on the city's five most crime ridden precincts and resulted in a 71 percent decrease over the identical period of 1957.[34]

Wherever and whenever lighting has been utilized effectively, results seem to follow. In Austin, Texas, various categories of crime were cut by 90 percent. Denver, Colorado, reported reduction of assault complaints by 33 percent through relighting previously dimly lit streets. Flint, Michigan, cut felonies in the downtown area by 60 percent. In McPherson, Kansas, lighting was used to eliminate residential crime.[35]

In connection with this paper, this writer sent a questionnaire to the chiefs of police in twenty cities across the nation to elicit information, experiences and opinions on the crime prevention aspects of outdoor lighting. Fifty percent of the cities contacted responded and all concurred in the basic concept of outdoor lighting deterring crime. However, specific statistical verification and experiences were scant. Chicago, Illinois, reported that it was successful in greatly reducing "alley type crimes" by lighting certain alleys which were troublesome. It was pointed out that a criminal act usually requires the "desire" coupled with the "opportunity." A well-lighted area helps remove the "opportunity." It is important to observe that the possible effect of lighting of this type merely disperses crime to other poorly lit areas, rather than preventing its occurrence.

In an interview, Inspector Patrick L. Gerity, former Chief of Police, Cleveland, Ohio, explained some of the various means by which lighting aids police.[36] Inspector Gerity said, "Possibly the greatest advantage is increased surveillance, making detection of criminal activity easier." While endorsing as unquestionably sound, the basic theory behind lighting as a crime deterrent, he is quite skeptical about any accurate reduction of its effect into valid statistics.[37] "There are just too many

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[33] *Id.*

[34] Hyman Goldberg, Crimes of Darkness, *Cosmopolitan* at 61 (April, 1959). See also *Wall Street Journal* at 1 (Jan. 6, 1971).

[35] *Supra,* n. 32 at 32. *See also* J. Edgar Hoover, Out of the Darkness, *Street and Highway Lighting* at 5 (December 1970).

[36] Inspector Gerity has had 23 years of police experience and was Chief of Police, Cleveland Police Department, Cleveland, Ohio, 1968-1970.

[37] *See also* Box, Accident and Crime Prevention Experience with Modern Roadway Lighting, *Street & Highway Lighting,* at 19 (Second Quarter 1964), Mr. Box points

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variables which have to be taken into consideration," he said. "Some of these are as basic as the weather, type of patrol vehicles used, events occurring in the city and even the particular platoon on duty. With so many subjective factors which will affect this type of statistic, it is difficult to attribute a reduction in crime rates to any single factor," he added further.

In the last few years several cities have had campaigns to alert citizens as to how they can help prevent crime. The most extensive campaigns were conducted in New York City and Cleveland, Ohio. Their goal was to aim at public awareness through the use of television, radio, newspapers, merchants, schools and civic groups. In New York City's "Operation Safe City," one-fourth of the program was devoted to the "To Stop A Thief . . . Light a Light" phase. After studying New York City's program, Cleveland had its "Turn On A Light—Turn Off A Thief" campaign. Although neither campaign was or can be subjected to statistical analysis of its effectiveness, they evidence an ever-growing concern over the problem of crime and that lighting is one method of effective deterrence.[38]

Conclusion

It is not suggested that lighting is a panacea to eliminate accidents or crime. Accidents will happen, as they say, and crime will probably continue as long as man is on the face of this earth, the longevity of which is questionable. But logic and experience have shown that the incidence of both accidents and crime can be reduced by lighting. It is time to use the technology of modern society for the protection of that society instead of archaic property laws for the protection of landowners.

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out, "In most studies of effect, difficulty is found in the isolation of the lighting role. This difficulty exists because lighting is frequently only ONE of the factors which may be applied to improve an existing condition. For example, lighting for crime reduction is often accompanied by intensified police efforts."

[38] Interview with Mr. James C. Harper, Executive Director, Criminal Justice Coordinating Council. Also see Cleveland *Press*, Editorial (Sept. 28, 1970); Cleveland *Plain Dealer*, Editorial (Oct. 16, 1970).