

**CRIME DOESN'T PAY. NEITHER SHOULD YOU.  
INNKEEPER LIABILITY FOR THIRD PARTY  
CRIMINAL ACTS**

By Brian Cafritz and Chris Bergin



**I. Liability for Third Party Criminal Acts.**

A. General Rule: Absent a “special relationship,” there is no legal duty to protect another person from the criminal or tortious conduct of third persons. Businesses do, however, generally owe some duty of to protect invitees from imminent danger.

Virginia	Maryland	Washington, D.C.	Pennsylvania
“A business owner does not have a duty to take measures to protect an invitee against criminal assault unless he knows [of] . . . an imminent probability of harm to an invitee.” <u>Yuzefovsky v. St. John’s Wood Apts.</u> , 261 Va. 97, 110 S.E.2d 134, 140 (2001).	Landlords and business owners have a duty “to take reasonable security measures to eliminate harm that is foreseeable based on the nature of the known criminal activity on the premises.” <u>Univ. of Md. E. Shore v. Rhaney</u> , 159 Md. App. 44, 858 A.2d 497 (2004).	“[T]he proprietor of a place of public resort is subject to liability . . . for injuries inflicted by the acts of other patrons . . . if the proprietor . . . should have known that such acts were being done or about to be done.” <u>Novak v. Capital Mgmt. &amp; Dev. Corp.</u> , 452 F.3d 902, 912 (DC Ct. App. 2006).	A business owner has a duty “to protect its business invitees from foreseeable criminal activity.” <u>Vann v. Bd. Of Education</u> , 76 Pa. Common. 604, 607 (1983).

B. Innkeeper Liability: A duty to protect another from the criminal or tortious conduct of third persons may arise if a “special relationship” exists between the parties. Restatement (Second) of Torts § 315.

1. **The Innkeeper-Guest Relationship is a “Special Relationship” which gives rise to a heightened duty of care.** See generally Restatement (Second) of Torts § 314A.

Virginia	Maryland	Washington, D.C.	Pennsylvania
Innkeeper has a duty to “to take reasonable precautions to protect his guests against injury caused by the criminal conduct . . . if the danger of injury by such conduct is known to the innkeeper or reasonably foreseeable.” <u>Tabadoa v. Daly Seven, Inc.</u> , 271 Va. 313, 322, 626 S.E.2d 428, 432 (2006).	An innkeeper has “a duty to take affirmative action to protect its [guests] from an assault by a third party if the [innkeeper], in the exercise of due care, knew or should have known that the assault was imminent (foreseeable), well enough in advance of the assault to have prevented it.” <u>Corinaldi v. Columbia Courtyard, Inc.</u> , 162 Md. App. 207, 225, 873 A.2d 483, 493 (2005).	“The innkeeper-guest relationship entails a greater duty of protection. In light of this duty to protect [plaintiff] need not make a heightened showing of foreseeability . . . .” <u>Beckwith v. Interstate Mgmt. Co., LLC</u> , 82 F. Supp. 3d 255, 260 (2015).	“Innkeepers stand in special relationship with their guests and can owe a duty to take precautionary measures against potential criminal acts of third parties where through prior experience or the exercise of reasonable care the innkeeper should reasonably anticipate such conduct.” <u>Bonilla v. Motel 6 Operating L.P.</u> , 2011 U.S. Dist. LEXIS 104445 at *10–11 (W.D. Penn. 2011).

2. Exact legal standards differ between jurisdictions. However, all jurisdictions require that innkeepers (1) take **reasonable precautions** to prevent, (2) **foreseeable harm**.

## **II. Innkeeper Liability for Terrorist Attacks**

- A. Terror Attacks on the Rise:** In 2008, there were approximately 4,787 terrorist attacks worldwide. By 2015, there were 14,806 terrorist attacks worldwide. About 22 terrorist attacks every year occur at hotels.<sup>1</sup>
- B. Example Case # 1: The Las Vegas Shooting—A Possible Safe Harbor Provision for Hotels**
1. On October 1, 2017, a gunman slaughtered 58 people from the window of the Mandala Bay hotel during a concert in the deadliest mass shooting in modern U.S. history. As a result, the hotel owner, MGM Resorts International, is facing **hundreds** of lawsuits.
  2. MGM had hired a security contracting company—Contemporary Services Corp. (“CSC”) to provide security services at the concert. CSC had been approved to operate under the SAFTEY Act, a federal statute which shields certain contractors from liability to incentivize the development of anti-terrorist technologies.
  3. MGM is now arguing that, by hiring a contractor who was approved to operate under the SAFTEY act, MGM should be shielded from liability.<sup>2</sup>
- C. Example Case # 2: An Attack on a Franchisee, may be an Attack on the Franchisor**
1. On September 20, 2008 a truck blew up outside a Marriott Islamabad Hotel in Pakistan—a franchise hotel—killing 56 people and injuring approximately 270 more, including U.S. citizen Albert DiFredrico. DiFredrico’s widow sued the franchisor, Marriott, in Maryland alleging that inadequate security had led to DiFredrico’s death.<sup>3</sup>
  2. On September 2015—nine (9) years later, the case finally resolved when the Federal District Court of Maryland dismissed the case finding that Marriott did not exert sufficient control over the operations to make it responsible for DiFredrico’s death.
  3. Although most terrorist attacks happen abroad, U.S. companies with international brands face increasing risks of litigation.

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<sup>1</sup> Delafontaine, Adrian Hotels as Targets of Jihadist Terror: An Empirical Analysis of the Period from 1970–2016 ZENTRUM FÜR January 2017, available at: [https://ifsh.de/file-ZEUS/pdf/DelafontaineZEUS\\_WP\\_12.pdf](https://ifsh.de/file-ZEUS/pdf/DelafontaineZEUS_WP_12.pdf)

<sup>2</sup> McLaughlin, E. (2018). MGM Resorts denies liability for Las Vegas shooting, asks courts for protection from lawsuits. *CNN* [online] available at <https://www.cnn.com/2018/07/17/us/mgm-lawsuit-victims-las-vegas-shooting-trnd/index.html> [Accessed 7 Sept. 2018].

<sup>3</sup> Fanelli, Cecilia Protecting Hotel Industry Businesses from Liability for Terror Attacks 32 REAL ESTATE FINANCE 4, Spring 2016