St. Mary's Law Journal

Volume 6 | Number 2 Article 11

6-1-1974

An Owner or Occupier of Land Is Not Liable to Invitees Injured during the Owner's Resistance to Criminal Demands.

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Recommended Citation

Dan Ray Waller, *An Owner or Occupier of Land Is Not Liable to Invitees Injured during the Owner's Resistance to Criminal Demands.*, 6 St. Mary's L.J. (1974).

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prerogative of balance-striking accorded the courts by Congress in its reluctance to regulate the activities of agricultural labor.

Jeffrey D. Lavenhar

TORTS—Forseeability Of Criminal Acts—An Owner Or Occupier Of Land Is Not Liable To Invitees Injured During The Owner's Resistance To Criminal Demands.

Boyd v. Racine Currency Exchange, 306 N.E.2d 39 (Ill. 1973).

The plaintiff's husband, John Boyd, entered the Racine Currency Exchange to transact business. A short time later a robber walked in, placed a pistol to Boyd's head, and instructed a teller in the exchange either to give him the money or to open the cage door or he would kill Boyd. Instead of complying with the demands, the teller dropped to the floor behind a bulletproof partition, and the robber shot and killed Boyd. The plaintiff brought a wrongful death action against the currency exchange and its teller-employee, alleging several acts of negligence committed by both. One ground alleged was that the defendants, when they resisted the robber's demands, had breached a duty owed to Boyd, a business invitee, to exercise reasonable care for his safety. The plaintiff also alleged that the defendants were negligent in withholding the money from the robber at all costs, even to the extent of endangering the lives of the customers. Another count alleged the negligence of the currency exchange in that it failed to prevent customers from being exposed to an unreasonable risk of harm. The circuit court dismissed the complaint for failure to state a cause of action, but the appellate court reversed and remanded. The defendants appealed to the Illinois Supreme Court. Held—*Reversed.* An owner or occupier of land is not liable to invitees injured during the owner's resistance to criminal demands since the owner has no duty to anticipate and take precautions against the criminal actions of third parties.[1]

question of injunctions to be obtained by private employers and on the provisions making labor organizations subject to the Antitrust laws.

Bodine Produce, Inc. v. UFWOC, 494 F.2d 541, 554 n.41, *quoting* 93 CONG. REC. 6540 (1948) (remarks of Representative Hartley).

1. Boyd v. Racine Currency Exch., Inc., 306 N.E.2d 39, 40-41 (Ill. 1973); *see* Neering v. Illinois Cent. R.R., 50 N.E.2d 497 (Ill. 1943); Otto v. Phillips, 299 S.W.2d 100 (Ky. 1956); Noonan v. Sheridan, 18 S.W.2d 976 (Ky. 1929); Burgess v. Chicopee Sav. Bank, 145 N.E.2d 688 (Mass. 1957); W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 33, at 173-76 (4th ed. 1971).

It is generally recognized that the owner or occupier of land has an affirmative duty to exercise reasonable care for the protection of his invitees.[2] The owner is under an obligation not to expose an invitee to an unreasonable risk of harm, and to take precautions to protect the invitee from dangers which are reasonably foreseeable.[3] In addition, the owner is not liable to any invitee for injuries resulting from a danger which the owner could not have anticipated or discovered by the exercise of reasonable care.[4] Owners and occupiers are not insurers of the safety of invitees, and are not liable for injuries to invitees caused by the actions of third persons unless such actions should have reasonably been anticipated.[5] Intentional or negligent actions of criminals or third parties are regarded as unforeseeable and the owner or occupier is generally not required to anticipate them.[6] When the occupier should reasonably know that there is a probability that a malicious or criminal act will occur, a duty arises for him to take protective measures for the benefit of others against such action.[7]

One particular problem confronting the courts is that of determining when a landowner has a duty to take precautionary measures to protect invitees

2. Great Atl. & Pac. Tea Co. v. Custin, 13 N.E.2d 542, 544 (Ind. 1938); *accord*, Robertson Bros. Dept. Store, Inc. v. Stanley, 90 N.E.2d 809, 811 (Ind. 1950); *see* Hedglin v. Church of St. Paul, 158 N.W.2d 269, 272 (Minn. 1968); Sinn v. Farmer's Deposit Sav. Bank, 150 A. 163, 164 (Pa. 1930); RESTATEMENT (SECOND) OF TORTS § 314A (1965). *See generally* Prosser, *Business Visitors and Invitees*, 26 MINN. L. REV. 573 (1942).

3. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 61, at 385 (4th ed. 1971).

4. *See* Silvestro v. Walz, 51 N.E.2d 629 (Ind. 1943), where the owner should have been aware of an improperly lighted stair entrance; Philpot v. Brooklyn Nat. League Baseball Club, Inc., 100 N.E.2d 164 (N.Y. 1951), where the owner should have anticipated injuries to invitees from the nature of business. *See also* Cutroneo v. F.W. Woolworth Co., 315 A.2d 56 (R.I. 1974); Dallas Ry. & Terminal Co. v. Black, 152 Tex. 343, 257 S.W.2d 416 (1953).

5. *See* Neering v. Illinois Cent. Ry., 50 N.E.2d 497 (Ill. 1943), where the defendant could have foreseen harm to passengers as a result of loitering vagrants; O'Herron v. Gray, 47 N.E. 429 (Mass. 1897), where a cashier's stealing certificates of stock could have not been reasonably anticipated.

6. *See* Lorang v. Heinz, 248 N.E.2d 785 (Ill. Ct. App. 1969), where the defendant left his keys in the car, and a thief stole it and collided with the plaintiff; Burrows v. Klunk, 17 A. 378 (Md. 1889); Burgess v. Chicopee Sav. Bank, 145 N.E.2d 688 (Mass. 1957); Sira v. Wabash Ry., 21 S.W. 905 (Mo. 1893); Houston & T.C.R.R. v. Phillio, 96 Tex. 18, 69 S.W. 994 (1902), where the railroad company was held to owe no duty to an invitee to protect him from assault by a third person in the defendant's depot.

7. RESTATEMENT (SECOND) OF TORTS § 448 (1965), reads:

> Intentional Tortious Or Criminal Acts Done Under Opportunity Afforded By Actor's Negligence—The act of a third person in committing an intentional tort or crime is a superceding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.

against the intentional criminal actions of third parties. A duty may arise either before a criminal action has taken place or afterwards, depending on whether the action was foreseeable. In fact, the primary factor considered before imposing such a duty is that of foreseeability; liability of the landowner for injuries to invitees occasioned by criminal acts of third parties is generally denied unless the invitee can prove that the landowner should have foreseen such actions and protected against them.[8] In *Burgess v. Chicopee Savings Bank*,[9] a bank customer was injured during a robbery. The court stated that liability for injuries to invitees arose only where the landowner was negligent in not anticipating possible harm and safeguarding against it.[10] Recovery was denied because, given the short time involved, the bank could have done nothing to prevent the injury.[11]

Foreseeability, as an element of the duty to protect against criminal actions of third parties, poses a definitional problem for the courts. A landowner, through particular acts or omissions, may cause a certain injury to an invitee to be foreseeable, even when it is caused by an intentional criminal act of a third party.[12] In that instance, the fact that the criminal act was unforeseeable prior to the landowner's negligence no longer controls. The owner's actions make injury to the invitee foreseeable, and the fact that the injury is brought about by the criminal act only serves to connect the owner's negligence to the injury. A store owner who hires a helper with known violent propensities would certainly be liable to an invitee injured by the helper. The owner's knowledgeable hiring of such a helper made a possible injury to an invitee foreseeable.

Foreseeability alone may not lead to the imposition of a duty.[13] Other factors are often considered in determining whether the possibility of criminal actions should have been guarded against by the landowner. The Illinois Supreme Court in *Lance v. Senior*[14] held that "the likelihood of injury, the magnitude of the burden of guarding against it and the con-

8. *See* Liberty Nat. Life Ins. Co. v. Weldon, 100 So. 2d 696 (Ala. 1958); Mancha v. Field Museum of Natural History, 283 N.E.2d 899 (Ill. Ct. App. 1972); Austin v. Schmedes, 154 Tex. 416, 279 S.W.2d 326 (1955). *See generally* Annot., 10 A.L.R. 3d 619 (1966); Annot., 78 A.L.R. 471 (1932).

9. 145 N.E.2d 688 (Mass. 1957).

10. *Id.* at 690.

11. *Id.* at 690; *see* McFadden v. Bancroft Hotel Corp., 46 N.E.2d 573 (Mass. 1943).

12. *See* State v. Sims, 46 S.E.2d 90 (W. Va. 1947), where a jail allowed a convict with known violent propensities to leave with a knife. RESTATEMENT (SECOND) OF TORTS § 302B (1965) takes the following position:

> Risk of Intentional Or Criminal Conduct—An act or omission may be negligent if the actor realizes or should realize that it inolves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

13. Lance v. Senior, 224 N.E.2d 231, 233 (Ill. 1967).

14. *Id.* at 233.

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sequences of placing that burden upon the defendant, must also be taken into account."[15] Other factors include the nature of the surrounding circumstances,[16] past experiences of the landowner,[17] the place and character of the business,[18] and the existence of a special relationship between the injured party and the defendant.[19] Where a causal connection between the landowner's negligence and the subsequent injury is lacking, especially in the case of an intervening criminal act, the courts appraise these factors to determine whether the injury should have been foreseen by the landowner as a consequence of his negligent act or omission. Since criminal acts are not usually foreseeable, the courts are forced to examine each case on its own merits in order to determine if a specific act should have been foreseen, and if a duty to protect against it attached to the landowner.

When the landowner is confronted with a criminal action he had no reason to foresee, the question arises as to whether he has a duty to defend his invitees against the action or its possible consequences. *The Restatement of Torts* states that the landowner "is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur."[20] The reasoning behind that comment suggests that once any owner is put on notice as to the occurrence or likely occurrence of a criminal act on his premises, there immediately arises a duty requiring him to take reasonable protective measures to guard against possible harm to his invitees.[21] The unforeseeability of the particular criminal act causing an injury would have no effect on the duty of the landowner.[22]

When the willful criminal act of a third party which causes injury to an invitee occurs after a landowner's negligence, the courts usually find that the act could not have been foreseen by the landowner, and the causal connection between the landowner's negligence and the resulting injury is broken.[23] But where it is the negligence of the landowner which exposes the

15. *Id.* at 233; *accord* Boehne v. Elgin Packing Co., 289 N.E.2d 283 (Ill. Ct. App. 1972); Wall v. Gavock, 267 N.E.2d 765 (Ill. Ct. App. 1971); Kay v. Ludwick, 230 N.E.2d 494 (Ill. Ct. App. 1967).

16. *See* Whitehead v. Stringer, 180 P. 486, 488 (Wash. 1919), where the defendant prevented the plaintiff from moving his property to a safer locale after learning that the present place was unsafe.

17. RESTATEMENT (SECOND) OF TORTS § 344, comment f at 225 (1965).

18. *Id.* comment f at 225-26.

19. *See* St. Louis-San Francisco Ry. v. Mills, 271 U.S. 344 (1926) (employer-employee); Goldberg v. Housing Authority, 186 A.2d 291 (N.J. 1962) (landlord-tenant); Toone v. Adams, 137 S.E.2d 132 (N.C. 1964) (suit by an umpire against a team manager).

20. RESTATEMENT (SECOND) OF TORTS § 344, comment f at 225 (1965).

21. *Id.* comment f at 225-26.

22. *See* Metropolitan Coal Co. v. Johnson, 265 F.2d 173, 181 n.5 (1st Cir. 1959).

23. *See* Waston v. Kentucky & Ind. Bridge & Ry. Co., 126 S.W. 146 (Ky. 1910); Popovich v. Pechkurow, 145 N.E.2d 550 (Ohio Ct. App. 1956), where a tavern owner

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invitee to the intentional criminal act which causes the injury, the causal connection between the negligence and the injury is established, and liability will rest on the landowner.[24]

When the landowner's negligence is not the direct cause of the injury to the invitee, but the injury can be traced back to a sequence of actions initiated by the landowner, the invitee has the burden of proving that such negligence resulted in the release of other forces from which a causal connection to the injury can be established.[25] In *Helms v. Harris*,[26] it was held that an owner might be liable for an invitee's injuries caused by the owner's resistance to a robbery if the owner "realize[d] that such acts create an unreasonable risk of causing harm to innocent third parties . . . ."[27] The owner, under some circumstances, is justified in committing acts in defense of his property, but only to the extent that the acts do not unreasonably endanger the lives of others.[28] This reasoning suggests that the mere initiation of actions by the landowner which lead to injuries will be sufficient to provide the causal connection resulting in the landowner's liability if the actions create an unreasonable risk of danger to invitees.[29]

Various courts have considered the practical effects of imposing a duty on the landowner to guard against criminal actions and demands of third parties for the protection of the public as invitees.[30] In *Genovay v. Fox*,[31] the court attempted to reconcile the conflicting interests between injured invitees and the owner of a bowling alley which was robbed. In a well-reasoned opinion, the court held:

> The value of human life and of the interest of the individual in freedom from serious bodily injury weigh sufficiently heavily in the judicial scales to preclude a determination as a matter of law that they may be disregarded simply because the defendant's activity serves to frustrate the successful accomplishment of a felonious act and to save his property from loss.[32]

While recognizing that exemption from such a duty "may be advanced as

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was not liable for the shooting of one customer by another. *See generally* Eldredge, *Culpable Intervention as Superceding Cause*, 86 U. PA. L. REV. 121 (1937).

24. *See* Atlantic Greyhound Corp. v. McDonald, 125 F.2d 849 (4th Cir. 1942); Hines v. Garrett, 108 S.E. 690 (Va. 1921); Jefferson Hospital, Inc. v. Van Lear, 41 S.E.2d 441 (Va. Ct. App. 1947).

25. *See* Milton Bradley Co. v. Cooper, 53 S.E.2d 761 (Ga. Ct. App. 1946).

26. 281 S.W.2d 770 (Tex. Civ. App.—Fort Worth 1955, writ ref'd n.r.e.).

27. *Id.* at 772.

28. *Id.* at 772. The court specifically stated that the owner was justified in committing acts in defense of property or self-defense.

29. *Id.*

30. *See* Yingst v. Pratt, 220 N.E.2d 276 (Ind. Ct. App. 1966); Helms v. Harris, 281 S.W.2d 770 (Tex. Civ. App.—Fort Worth 1955, writ ref'd n.r.e.).

31. 143 A.2d 229 (N.J. Super. Ct. 1958), *rev'd on other grounds*, 149 A.2d 212 (N.J. 1959).

32. *Id.* at 239-40.

justification in terms of social utility the protection of the defendant's property from robbery and the vindication of society's interest in the frustration of crime,"[33] the court found that these considerations did not overshadow the considerations to be given to the protection of human life.

As the social value of a protected interest builds, the risks justified by such protection should decline in importance. When the public places more emphasis on the protection of property, the risks to life incurred for that purpose occupy less space in the public interest. An election must therefore be made between two divergent philosophies, one involving the preservation of property with a possible forfeiture of life, and the other requiring the conversation of life at all costs. Only a few courts have decided whether the landowner may make that election when confronted with criminal demands and the duty to use reasonable care for the safety of his invitees.[34] The arguments against placing an affirmative duty on the landowner to use care to protect his invitees during a criminal attack are primarily concerned with the effect of such a duty on future criminal activities.[35] For example, such a duty might encourage the taking of hostages where the criminal is assured that his demands will be met.[36] An increase in robberies and further subjection of invitees to intensified risks of harm could very well be produced by imposing the duty. But because courts have traditionally favored plaintiffs injured as a result of defendants' acts or omissions, the failure to impose a duty would undeniably present a conflict between different legal authorities and viewpoints.

The Illinois Supreme Court in *Boyd v. Racine Currency Exchange*[37] had to decide whether or not the defendants were under a duty to accede to the demands of a criminal where the probable result of their refusal was the death of the plaintiff's husband. In holding that the duty could not be imposed on a landowner, the court, citing *Lance v. Senior*,[38] relied primarily on the principle that foreseeability of possible harm to others should not be the sole criterion influencing the imposition of a duty. Although the court noted a number of cases from both its own and other jurisdictions,[39] it distinguished those decisions from the facts and issues presented in *Boyd*. In considering other Illinois decisions in which it was indicated that an occupier

33. *Id.* at 239.

34. *See* Schubowsky v. Hearn Food Store, Inc., 247 So. 2d 484 (Fla. Ct. App. 1971); Yingst v. Pratt, 220 N.E.2d 276 (Ind. Ct. App. 1966); Rawson v. Massachusetts Operating Co., Inc., 105 N.E.2d 220 (Mass. 1952); Helms v. Harris, 281 S.W.2d 770 (Tex. Civ. App.—Fort Worth 1955, writ ref'd n.r.e.).

35. Boyd v. Racine Currency Exch., Inc., 306 N.E.2d 39, 42 (Ill. 1973).

36. *Id.* at 42.

37. 306 N.E.2d 39 (Ill. 1973).

38. 224 N.E.2d 231 (Ill. 1967).

39. Neering v. Illinois Cent. Ry., 50 N.E.2d 497 (Ill. 1943); Hamlin's Wizard Oil Co. v. United States Express Co., 106 N.E. 623 (Ill. 1905); Noll v. Marian, 32 A.2d 18 (Pa. 1943).

should have foreseen the exposure of his invitees to an unreasonable risk of harm by criminal acts,[40] the court distinguished these decisions because they involved the determination of whether precautions could have been taken by the occupier to prevent *future* criminal actions,[41] and in *Boyd* the robbery had already occurred. Such a conclusion would probably not have been reached if the court had considered that the fact situation in *Boyd* actually presented the possibility of a future criminal action, namely the shooting of Boyd by the robber if and when his demands were not met.[42] The defendants should have foreseen the possibility of harm to Boyd if and when certain actions were not taken by them.

Altepeter v. Virgil State Bank[43] was an Illinois case distinguished in *Boyd.* In *Altepeter* it was found that a bank was not negligent in failing to take precautions against future crimes when it had no prior knowledge that they might occur.[44] If such knowledge had been found to exist, the bank would have been liable.[45] In *Boyd,* the crime of robbery had occurred but the subsequent injury to Boyd had not, and it was still within the power of the defendants to foresee and take precautions against it. Although *Altepeter* and *Boyd* can be distinguished on their facts, the principles set forth in *Altepeter* were, nevertheless, applicable in *Boyd.*

In *Moore v. Yearwood,*[46] the Illinois Court of Appeals had found that it was the duty of a property owner to protect invitees from harm from third parties where the danger was so apparent as to put a prudent person on notice as to the possibility of harm.[47] If the view in *Moore* had been adopted by the court in *Boyd,* the defendants would have certainly been held liable for their failure to reasonably protect Boyd when they had been warned by the robber of his intentions.

An owner's liability for the actions of third parties can be based on either of two theories: (a) his negligence in breaching a duty owed the plaintiff, or (b) an intervening and superceding action providing a link between the owner's negligence and the subsequent injury.[48] The court in *Boyd* chose

40. O'Brien v. Colonial Village, Inc., 255 N.E.2d 205 (Ill. Ct. App. 1970); Stelloh v. Cottage, 201 N.E.2d 672 (Ill. Ct. App. 1964).

41. Boyd v. Racine Currency Exch., Inc., 306 N.E.2d 39, 41 (Ill. 1973).

42. *Id.* at 40.

43. 104 N.E.2d 334 (Ill. 1952), involving a customer injured during a bank robbery. The robbers fired a gun and a bullet struck the plaintiff.

44. *Id.* at 342. The court here used the terminology "superior knowledge."

45. *Id.* The court found no facts which led them to believe that the bank should have known beforehand about the robbery.

46. 164 N.E.2d 215 (Ill. Ct. App. 1960), where one patron was assaulted by another in a tavern.

47. *Id.* at 216.

48. *See generally* Tucker v. Collar, 285 P.2d 178 (Ariz. 1955); Fraser v. Chicago, R.I. & P. Ry., 165 P. 831 (Kan. 1917); Lencioni v. Long, 361 P.2d 455 (Mont. 1961). It has been held that an intervening criminal act causing an injury will not necessarily absolve the owner from liability for his own negligence where he should have foreseen

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not to rely heavily on either theory, because doing so would have resulted in a probable decision for the plaintiff. Specifically, the court failed to rely on Illinois precedent upon which a successful application of theory (b) could have been grounded. In *Merlo v. Public Service Co.*[49] it was held that an owner could not escape liability if the intervening act causing injury to a plaintiff could have been foreseen.[50] Had the principles in this case been applied, a different conclusion may have been reached. As far as the injury to Boyd was concerned, the criminal conduct of the robber could have been deemed foreseeable, and the defendants held liable.

The Illinois Supreme Court centered its opinion in *Boyd* on the issue of whether or not the landowner had a duty to not resist *any* criminal demand,[51] and resolved the question without regard to the possibility of a breach of duty owed Boyd or of an intervening act affecting the liability of the defendant. Finding that the owner had no duty to accede to the demands of criminals and not offer resistance, the court reasoned that imposition of such a duty would grant the criminals "additional leverage" with which to enforce their criminal demands.[52] Even where the occupier yielded to the demands, there would be no assurance of minimization of the risk to invitees.[53] The inference was that an even greater risk to invitees would occur if such a duty existed, for the criminals would be induced to place even greater demands on occupiers and landowners.

These arguments are, at best, only speculative. Although the court admits that the result of its decision "may appear to be harsh and unjust,"[54] it attempts to counter that remark by stating that the end result is for the future protection of invitees. Its reasoning seems to be insufficient for that conclusion. Contrary to the rationale in *Boyd*, it can be argued that the effect of no duty could be to create more of a risk to the invitee than had previously existed. The absence of a duty could lead to a greater emphasis on the protection of property than on the protection of lives—a proposition which is contrary to a basic purpose of the law. Administrators of institutions such as banks could react to *Boyd* by instructing their personnel to

injury to another as the probable consequence of his action. Toney v. Pope, 110 So. 2d 226, 228 (La. Ct. App. 1959).

The lack of proximate cause will not relieve the owner from liability if the plaintiff can prove that the intervening act should have reasonably been anticipated by the owner. *See* Custodio v. Bauer, 59 Cal. Rptr. 463 (Ct. App. 1967); Comstock v. General Motors Corp., 99 N.W.2d 627 (Mich. 1959); Robertson v. Southwestern Bell Tel. Co., 403 S.W.2d 459 (Tex. Civ. App.—Tyler 1966, no writ).

49. 45 N.E.2d 665 (Ill. 1942).

50. *Id.* at 675.

51. Boyd v. Racine Currency Exch., Inc., 306 N.E.2d 39, 42 (Ill. 1973). The court held that "no duty to accede to criminal demands should be imposed."

52. *Id.* at 42.

53. *Id.* at 42.

54. *Id.* at 42.

safeguard funds regardless of any threats made to invitees by prospective robbers. Such a reaction could only cause an increase in deaths and injuries to invitees.

A compromise view is expressed in the Texas Civil Appeals decision of *Helms v. Harris*.[55] The court there addressed itself to public policy and a duty placed on the landowner to protect invitees, and concluded that excusing harmful acts performed in defense of property had always been in accord with public policy. Such justification was limited, however, to those defensive acts which did not create an unreasonable risk of harm to innocent bystanders.[56] If such a standard had been applied in *Boyd*, the actions of the teller would have been found to have been negligent because of the great risk of harm they created.

Although *Boyd* is a maverick decision, support for it can be found in the case of *Yingst v. Pratt*.[57] In *Yingst*, an invitee was injured when the owner of a tavern chose to resist an attempted armed robbery. The court disagreed with the contention that the owner's conduct was the sole cause of the plaintiff's injuries.[58] The tavern owner was to be held liable for his own negligence only, and his actions to protect his person and property and that of his patrons did not constitute negligence.[59] The decision in *Yingst*, then, seemed to rest on the owner's supreme right to use force, even to the extent of endangering others, to protect his property and prevent an armed robbery from occurring.[60]

In reaching its decision the *Boyd* court neither overruled any precedent nor introduced any to support its position. It presented a basic discussion of appropriate cases without applying any to substantiate its opinions. While the court included a brief discussion of *Genovay v. Fox*,[61] it neither attacked nor accepted the arguments presented in that decision. *Genovay* appears to have been cited only as an example of a contrary position. Although the court could conveniently have found that the defendants' actions did expose the plaintiff's husband to an unreasonable risk of harm, it neither discarded nor affirmed that allegation. Rather, the court presented a discussion of those ideas which it felt ought to be considered in reaching a decision on the issue. This approach ultimately excluded other areas worthy of discussion and possible application.[62]

55. 281 S.W.2d 770 (Tex. Civ. App.—Fort Worth 1955, writ ref'd n.r.e.).

56. *Id.* at 771-72.

57. 220 N.E.2d 276 (Ind. Ct. App. 1966). For a discussion of *Yingst* see generally Note, *Tort Liability of Tavern Owner to His Patrons in Attempt to Resist a Felony—Yingst v. Pratt*, 3 CALIF. W.L. REV. 209 (1967).

58. Yingst v. Pratt, 220 N.E.2d 276, 280 (Ind. Ct. App. 1966).

59. *Id.* at 278.

60. *Id.* at 279.

61. 143 A.2d 229, 242 (N.J. Super. Ct. 1958), *rev'd on other grounds*, 149 A.2d 212 (N.J. 1959).

62. No mention was made of an intervening cause, and no comprehensive discus-