

Tort Law: Negligence

Case 14:
Parking Lot
Attack

Nivens v. 7-11 Hoagy's Corner

Duty of Care of Business Owners Against Criminal Attacks on Their Customers

OBJECTIVE

To understand what a business owner's duty of care is to his/her customers (otherwise known as "business invitees") to protect the customers from criminal attacks.

TOPICS COVERED

- Negligence
- Business Invitee
- Duty of Care for Criminal Acts of Third Persons
- Special Relationship Exception to the Duty of Care for Criminal Acts of Third Persons
- Foreseeable Act

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Nivens v. 7-11 Hoagy's Corner

Duty of Care of Business Owners Against Criminal Attacks on Their Customers

BACKGROUND

- The Plaintiff, Ken Nivens, was attacked by a group of youths in the parking lot of a 7-11 after he refused to buy them beer.
- Nivens alleged that 7-11 was responsible for his injuries. He argued that the employees knew or should have known that the teenagers frequently gathered in the parking lot and solicited the customers to buy them beer and that this combination of teenagers and drinking could cause someone to get hurt.
- 7-11 responded that Nivens' injuries were the result of a random criminal attack which was impossible to foresee.

BEFORE YOU BEGIN

What is negligence?

Negligence is the breach of a duty of care by a Defendant which is the cause of injuries to another person whom the Defendant has an obligation to protect from harm.

What is a business invitee?

A business invitee is a person who is invited to enter or remain on land for the purpose of conducting business with the occupier of the premises—for example, a customer in a retail store.

What is the general duty of care to protect another from criminal acts?

In general, a person does not owe a duty of care to protect another from criminal acts of third parties.

What is a "Special Relationship" exception to duty of care to protect another from criminal acts?

A person has a duty to protect another from the criminal acts of third persons when a special relationship is present. A special relationship exists between a business and its invitees. The business has a duty to take reasonable steps to prevent its invitees from foreseeable criminal acts of third parties.

What is a foreseeable act?

Foreseeable acts are acts about which the business owner knows about or has reason to know.

ISSUE BEFORE THE COURT

Whether a business owes a duty to business invitees to protect them against criminal acts by third persons on the business premises.

THE FACTS

On December 26, at about 10 pm, the Plaintiff, Ken Nivens, parked his car in the parking lot in front of a 7-11 store called Hoagy's Corner. He had been a customer of 7-11 for several years. As he approached the store entrance, Nivens noticed a group of teenagers. One of the teens, Robert Figueroa, asked Nivens to buy beer. When Nivens refused, some of the youths called him names and Figueroa grabbed him from behind. Nivens was hit and kicked in the head, neck, shoulders, and ribs. Nivens sued 7-11 for damages for his resulting injuries.

Nivens testified that for the last six years, between 10 and 100 young people would gather in the parking lot of the 7-11 store. Figueroa confirmed this and added that he and his friends would often solicit 7-11 customers to buy beer for them. A 7-11 employee testified that the teenagers would fight among themselves in the 7-11 parking lot, but they rarely bothered customers.

The investigating officer, Deputy Sheriff Barnhill, acknowledged on the stand that while loitering by teens (lingering or hanging around a public place or business) usually included drinking alcohol and taking illegal drugs resulting in fights or assaults, he did not recall any instance of violence at the store other than the one in which Nivens was involved.

The store presented evidence that it took adequate precautions to prevent assaults on customers. 7-11 required every store to post a sign stating "no soliciting, no loitering, and no loud music."

In addition, 7-11 had an explicit policy requiring clerks to ask persons drinking on the premises to dispose of any alcohol or leave. Clerks were to watch for loiterers and tell them to leave. If they did not leave, clerks were to call the police. These policies were also written in two separate employee manuals.

7-11 is the world's largest convenience store chain with more than 39,500 stores in 16 countries.

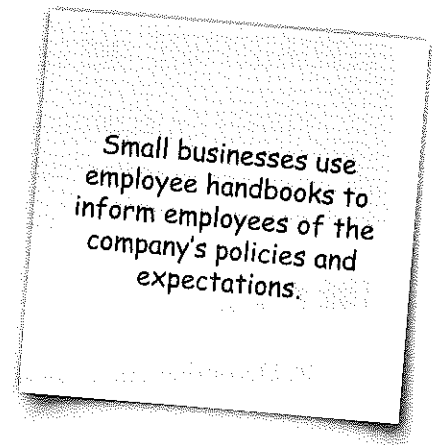
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7-11 called a longtime customer, John Shaddock, as a witness. He had no recollection of any acts of violence at the store. In fact, Shaddock stated customers had to be well-behaved or they would be asked to leave.

7-11 employee, Kathleen Anderson, testified that the majority of teens and young adults who came to the store did not cause trouble and were well-behaved. For the entire year preceding the incident, she never observed any fights or altercations between customers and the teens in the parking lot and no customer complaints had been received.

Plaintiff Nivens sued the Defendant for money damages for his injuries claiming that the Defendant was negligent in failing to provide adequate security at the 7-11 store.

Defendant, 7-11, argued that because there was no evidence of prior violence toward customers, the criminal act was unforeseeable—it did not know and had no reason to know that a criminal act would occur.



Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Nivens v. 7-11 Hoagy's Corner, 133 Wash.2d 192, 943 P.2d 286, (Wash. 1997).

Supreme Court of Washington

October 1, 1997. Amended opinion written by the Honorable Justice Phillip Talmadge.

You Be the Judge!

Review the Case

After reading Nivens v. 7-11 Hoagy's Corner, answer the following:

1. Identify the Plaintiff(s) in the case.

2. Identify the Defendant(s) in the case.

3. Is the Plaintiff seeking money for his injuries?

4. Describe the injuries to Nivens.

5. Although Nivens was attacked by a "group" of youths, only one testified at trial. What was his name and summarize his testimony?

6. Did 7-11 have any signs posted at the store that are important to deciding this case? If yes, what did the sign(s) state?

7. Who is John Shadduck? What did he testify to with respect to any history of violence?

NAME _____

DATE _____

Review the Case (continued)

8. Who is Kathleen Anderson, and what did she testify?

9. What was 7-11's policy regarding drinking alcohol on the store's premises?

10. What were 7-11 employees required to do if they discovered drinking of alcohol on the premises?

11. BONUS: What could 7-11 have done to prevent this attack?

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Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did the Defendant, 7-11, owe a duty of care to the Plaintiff, Ken Nivens? What specifically was the duty that was owed?

2. If there was a duty of care, was it breached?

3. Was the teen's attack on Nivens a foreseeable consequence? Explain.

4. Was the failure to adequately protect Nivens from the criminal acts of the teens the cause of the injury to the Plaintiff? Explain.

5. How was the Plaintiff injured?

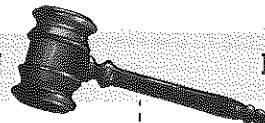
NAME _____

DATE _____

You Be the Judge

Having reviewed the case and considered the questions involved, decide the case for either the **Plaintiff** or the **Defendant**:

Decision for the Plaintiff



Decision for the Defendant

Ken Nivens

7-11 Hoagy's Corner

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