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Liability of Landlord for Personal Injury Due to Inadequate or Lack of Lighting in Common Areas

COMMENT

LIABILITY OF LANDLORD FOR PERSONAL INJURY DUE TO INADEQUATE OR LACK OF LIGHTING IN COMMON AREAS

When a landlord leases a part of the premises to individual tenants, as in an apartment building, he necessarily retains control over areas used in common and must exercise ordinary care to keep these areas in a reasonably safe condition.[1] This duty arises because common areas are part of the estate reserved by the landlord for the use and benefit of all the tenants.[2] The responsibility of the lessor extends to the lessee, members of the lessee's family, and all persons on the premises at the invitation of the lessee, whether the invitation be express or implied.[3] The lessor's obligation extends to hallways,[4] stairs,[5] elevators,[6] ap-

[1] Tissue v. Volta, 254 F.2d 88 (D.C. Cir. 1957); Harris v. Joffe, 28 Cal. 2d 418, 170 P.2d 454 (1946); Mertz v. Krueger, 58 So. 2d 160 (Fla. 1952); Mason v. Lieberman, 349 Mass. 321, 208 N.E.2d 222 (1965); Graeber v. Anderson, 237 Minn. 20, 53 N.W.2d 642 (1952); Bluestein v. Scoparino, 277 App. Div. 534, 100 N.Y.S.2d 577 (1950); Bowser v. Artman, 363 Pa. 388, 69 A.2d 836 (1949); Paytan v. Rowland, 208 Va. 24, 155 S.E.2d 36 (1967); Miller v. Hancock, [1893] 2 Q.B. 177.

This principle is sometimes denominated as the "common use rule." Fitzpatrick v. Ford, 372 S.W.2d 844 (Mo. 1963).

It has been held that the doctrine that the landlord is "deemed to be in control" applies also to the space between floors of an apartment house. Fleischer v. Dworsky, 90 Misc. 628, 153 N.Y.S. 951 (Sup. Ct. 1915).

[2] *See* United Shoe Mach. Corp. v. Paine, 26 F.2d 594 (1st Cir. 1928); Reiman v. Moore, 42 Cal. App. 2d 130, 108 P.2d 452 (1940); Pickford v. Abramson, 84 N.H. 446, 152 A. 317 (1930); Wool v. Larner, 112 Vt. 431, 26 A.2d 89 (1942); Schedler v. Wagner, 37 Wash. 2d 612, 225 P.2d 213 (1950).

[3] *See, e.g.*, Coupe v. Platt, 172 Mass. 458, 52 N.E. 526 (1899).

[4] *See, e.g.*, Temple v. Congress Square Garage, Inc., 145 Me. 274, 75 A.2d 459 (1950).

[5] *See* Dixon v. Wootton, 307 Ky. 338, 210 S.W.2d 967 (1948); Chalfen v. Kraft, 324 Mass. 1, 84 N.E.2d 454 (1949); Ross v. Belzer, 199 Md. 187, 85 A.2d 799 (1952); West v. Hanley, 73 S.D. 540, 45 N.W.2d 455 (1950); Andrews v. McCutcheon, 17 Wash. 2d 340, 135 P.2d 459 (1943).

[6] *See* Lee v. Jerome Realty, Inc., 338 Mass. 150, 154 N.E.2d 126 (1958); Swenson v. Slawik, 236 Minn. 403, 53 N.W.2d 107 (1952); Bosze v. Metropolitan Life Ins. Co., 1 N.J. 5, 61 A.2d 499 (1948); Carter v. United Novelty & Premium Co., 389 Pa. 198, 132 A.2d 202 (1957).

proaches and entrances,[7] yards,[8] basements,[9] bathrooms,[10] common rooms,[11] porches,[12] the roof of the building,[13] and any other parts of the premises maintained for the benefit of the lessee within the purposes of the lease.[14] However, the landlord is not liable for injuries not reasonably anticipated,[15] or as a result of conditions not discoverable by reasonable inspection,[16] or those created by a tenant or third party.[17]

A landlord of rented premises is not required under common law principles to maintain adequate lighting in those portions of his premises over which he has retained control for the common use of his tenants,[18] and he is not, in such instances, liable for personal injuries

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[7] *See* Trimble v. Spears, 182 Kan. 406, 320 P.2d 1029 (1958); Siegel v. Detroit City Ice & Fuel Co., 324 Mich. 205, 36 N.W.2d 719 (1949); Lunde v. Citizens Nat'l Bank, 213 Minn. 278, 6 N.W.2d 809 (1942); Ross v. Heberling, 92 Ohio App. 148, 109 N.E.2d 586 (1952); Arnold v. Walters, 203 Okla. 503, 224 P.2d 261 (1950).

[8] *See generally* Lake v. Emigh, 121 Mont. 87, 190 P.2d 550 (1948); Hussey v. Long Dock R.R., 100 N.J.L. 380, 126 A. 314 (Ct. Err. & App. 1924); Reek v. Lutz, 90 R.I. 340, 158 A.2d 145 (1960); *cf.* Rosmo v. Amherst Holding Co., 235 Minn. 320, 50 N.W.2d 698 (1951) (alleyway).

[9] *See* Wright & Taylor, Inc. v. Smith, 315 S.W.2d 624 (Ky. 1958); McNab v. Wallin, 133 Minn. 370, 158 N.W. 623 (1916).

[10] *See* Iverson v. Quam, 226 Minn. 290, 32 N.W.2d 596 (1948); Lennox v. White, 133 W. Va. 1, 54 S.E.2d 8 (1949).

[11] *See, e.g.,* Primus v. Bellevue Apartments, 241 Iowa 1055, 44 N.W.2d 347 (1950).

[12] *See* Klahr v. Kostopoulos, 138 Conn. 653, 88 A.2d 332 (1952); Hinthorn v. Benfer, 90 Kan. 731, 136 P. 247 (1913).

[13] *See* Madison Ave., Inc. v. Allied Bedding Mfg. Co., 209 Md. 399, 121 A.2d 203 (1956); Graeber v. Anderson, 237 Minn. 20, 53 N.W.2d 642 (1952); Hunkins v. Amoskeag Mfg. Co., 86 N.H. 356, 169 A. 3 (1933); Whellkin Coat Co. v. Long Branch Trust Co., 121 N.J.L. 106, 1 A.2d 394 (Sup. Ct. 1938).

[14] *See* Stupka v. Scheidel, 244 Iowa 442, 56 N.W.2d 874 (1953); Sezzin v. Stark, 187 Md. 241, 49 A.2d 742 (1946); Rowe v. Ayer & Williams, Inc., 86 N.H. 127, 164 A. 761 (1933); Baldwin v. McEldowney, 324 Pa. 399, 188 A. 154 (1936).

[15] *See* American Fire & Cas. Co. v. Jackson, 187 F.2d 379 (5th Cir. 1951); Security Bldg. Co. v. Lewis, 127 Colo. 139, 255 P.2d 405 (1953); Anderson v. Reeder, 42 Wash. 2d 45, 253 P.2d 423 (1953). *See generally* Mallard v. Waldman, 340 Mass. 288, 163 N.E.2d 658 (1960); Tair v. Rock Inv. Co., 139 Ohio St. 629, 41 N.E.2d 867 (1942).

[16] *See, e.g.,* C. W. Simpson Co. v. Langley, 131 F.2d 869 (D.C. Cir. 1942); Fernandes v. Medeiros, 325 Mass. 293, 90 N.E.2d 9 (1950); Revell v. Deegan, 192 Va. 428, 65 S.E.2d 543 (1951).

[17] *See, e.g.,* Hunter v. Goldstein, 267 Mass. 183, 166 N.E. 577 (1929); Aldrich v. Lane, 126 App. Div. 427, 110 N.Y.S. 897 (1908).

[18] *See* Carter v Carolina Realty Co., 223 N.C. 188, 25 S.E.2d 553 (1943); Gleason v. Boehm, 58 N.J.L. 475, 34 A. 886 (Sup. Ct. 1896); Flanagan v. Rosoff, 260 App. Div. 776, 23 N.Y.S.2d 980 (1940); McKinley v. Niederst, 118 Ohio St. 334, 160 N.E. 850

sustained as a result of unlighted passageways,[19] stairways,[20] or approaches.[21] However, he must furnish illumination if the passageways are constructed in such a manner as to present special danger[22] or inherent pitfalls.[23]

Many jurisdictions which do not recognize a common law duty on the landlord to illuminate common areas have, in cases involving injury to persons using such areas, recognized that a duty could be found where the landlord expressly or impliedly assumed the obligation of furnishing lights.[24] Those jurisdictions reason, however, that once the obligation is assumed, it may be abandoned by giving reasonable notice of the intention to discontinue the illumination.[25]

(1928). *See generally* Busby v. Silverman, 82 Cal. App. 2d 393, 186 P.2d 442 (1947); Steel v. Lifland, 265 Mass. 233, 163 N.E. 898 (1928).

The mere presence of a usable electric fixture in such premises does not impose on the landlord the duty of maintaining the lights. Triggiani v. Olive Oil Soap Co., 1 N.J. Super. 55, 62 A.2d 153 (Super. Ct. 1948).

The landlord is under no common law duty to light the entryway in an office building after business hours. Rice v. Goodspeed Real Estate Co., 254 Mich. 49, 235 N.W. 814 (1931).

[19] *See, e.g.*, White v. Thacker, 89 Ga. App. 656, 80 S.E.2d 699 (1954); Barber v. Kellogg, 111 S.W.2d 201 (Mo. 1937).

[20] *See, e.g.*, Miller-DuPont, Inc. v. Service, 120 Colo. 131, 208 P.2d 87 (1949); Thompson v. Franckus, 150 Me. 196, 107 A.2d 485 (1954); Flanagan v. Rosoff, 260 App. Div. 776, 23 N.Y.S.2d 980 (1940).

[21] *See, e.g.*, Srochi v. Hightower, 57 Ga. App. 322, 195 S.E. 323 (1938); Rodde v. Noland, 281 Mass. 493, 183 N.E. 741 (1933); Gordon v. Stone, 219 App. Div. 201, 219 N.Y.S. 553 (1927).

[22] *See* Tremblay v. Donnelly, 103 N.H. 498, 175 A.2d 391 (1961); Muller v. Menken, 5 Misc. 444, 26 N.Y.S. 801 (Super. Ct. 1893). *See also* Petera v. Railway Exch. Bldg., 42 S.W.2d 947 (Mo. 1931); Carpenter v Scheifele, 134 Misc. 637, 236 N.Y.S. 299 (Sup. Ct. 1929); Hilsenbeck v. Guhring, 131 N.Y. 674, 30 N.E. 580 (1892).

[23] *See generally* O'Neil v. Noe, 301 Ky. 472, 192 S.W.2d 366 (1946); Thompson v. Franckus, 150 Me. 196, 107 A.2d 485 (1954); Borduk v. Guerrieri, 23 Misc. 2d 520, 198 N.Y.S.2d 837 (Sup. Ct. 1960); McGinnis v. Keylon, 135 Wash. 588, 238 P. 631 (1925).

[24] *See* Phillips v. Ray-Jean, Inc., 83 Ga. App. 38, 65 S.E.2d 617 (1951); Fenno v. Roberts, 327 Mass. 305, 98 N.E.2d 611 (1951); Reinagel v. Walnut Residence Co., 239 Mo. App. 701, 194 S.W.2d 229 (1946); Pitaresi v. Appello, 17 N.J. Super. 278, 85 A.2d 829 (County Ct. 1952); Rietzel v. Cary, 66 R.I. 418, 19 A.2d 760 (1941); Agosta v. Granite City Real Estate Co., 116 Vt. 526, 80 A.2d 534 (1951).

Where an owner of a tenement building agreed that each tenant should light his own hallway, he did not impliedly assume the obligation to light the hallways. Brodsky v. Fine, 263 Mass. 51, 160 N.E. 335 (1928).

[25] *See* Steele v. Lifland, 265 Mass. 233, 163 N.E. 898 (1928); Triggiani v. Olive Oil Soap Co., 12 N.J. Super. 227, 79 A.2d 471 (Super. Ct. 1951); Lyons v. Lich, 145 Ore. 606, 28 P.2d 872 (1934).

In contrast, the statutes and ordinances of other jurisdictions place on the landlord the duty to light common passageways, stairways and approaches during particular hours,[26] or require that lights be provided in common areas of multiple dwelling houses.[27] This statutory duty imposed on the landlord is not satisfied by the mere maintenance of a light controlled by the tenant,[28] and the landlord is liable for personal injuries sustained as a result of his failure to comply with regulations requiring him to light common areas.[29]

The remaining jurisdictions impose a responsibility on the landlord, independent of contract or statute, to illuminate common areas as a part of his general duty[30] to use reasonable care to keep those segments of the premises under his control in a safe condition.[31] These decisions indicate that liability for injuries to a tenant or other claiming under him should not depend on the portion of the building or premises

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[26] *See, e.g.*, Harris v. Joffe, 28 Cal. 2d 418, 170 P.2d 454 (1946); Maitz v. Lulewicz, 133 Conn. 355, 51 A.2d 595 (1947); Demeter v. Rosenberg, 114 N.J.L. 55, 175 A. 621 (Sup. Ct. 1934).

The landlord's duty to one rightfully on the premises is to exercise reasonable care to comply with the statute. Liability for such injuries is based on evidence that the landlord has been actively negligent in causing the absence of lights or passively negligent in failing to supply lights or to correct their failure after having actual or constructive notice thereof. Busby v. Silverman, 82 Cal. App. 2d 393, 186 P.2d 442 (1947).

[27] *See* Reider v. Whitebrook Realty Corp., 23 App. Div. 2d 691, 257 N.Y.S.2d 635 (1965).

The term "light," as used in the statute requiring the owner of a tenement or lodging house to keep a light burning in the hallway between certain hours, means an artificial light, such as is furnished by a lamp, a jet of illuminated gas, or some form of apparatus employed to illuminate buildings by means of electricity. Bretsch v. Plate, 82 App. Div. 399, 81 N.Y.S. 868 (1903).

[28] *See, e.g.*, Gibson v. Hoppman, 108 Conn. 401, 143 A. 635 (1928).

[29] *See generally* Rio v. Rio, 22 Conn. Supp. 181, 164 A.2d 546 (Super. Ct. 1960); Webb v. Betta, 7 N.J. Super. 60, 71 A.2d 897 (Super. Ct. 1950); Salomon v. Timpson Place Constr. Corp., 166 Misc. 506, 2 N.Y.S.2d 718 (City Ct. 1938).

This duty imposed on the landlord by statute requires him to exercise reasonable care and diligence. Roth v. Protos, 120 N.J.L. 502, 1 A.2d 10 (Sup. Ct. 1938).

The courts have neither the power, privilege, nor the right to expand the landlord's duty to maintain lighting in stairways and public halls of his building beyond the period prescribed by statute. Adamo v. De-Mar Realty Corp., 207 Misc. 262, 137 N.Y.S.2d 281 (Sup. Ct. 1954).

[30] *See* Kay v. Cain, 154 F.2d 305 (D.C. Cir. 1946); Smeriglio v. Connecticut Sav. Bank, 129 Conn. 461, 29 A.2d 443 (1942); Beitch v. Mishkin, 184 Pa. Super. 120, 132 A.2d 703 (1957).

[31] *See* Panama Canal Co. v. Wagner, 234 F.2d 163 (5th Cir. 1956); Kay v. Cain, 154 F.2d 305 (D.C. Cir. 1946); Wade v. Yale Univ., 129 Conn. 615, 30 A.2d 545 (1943).

where the defective condition exists, but on the fact that the landlord has retained control over the common area.[32]

When a person rightfully on the premises discovers a common area in darkness, he may assume the risk or become contributorily negligent in dealing with it. It is generally recognized that proceeding in the dark requires greater care than doing so in the light.[33] However, this rule is consistent with the general proposition that one is required to exercise ordinary care,[34] reasonable care,[35] or prudence[36] under the circumstances for his own safety.

Several jurisdictions have set forth special rules as to proceeding in darkness constituting contributory negligence. Some courts have observed that it is contributory negligence per se.[37] Generally, however, proceeding in a dark area is not inherently negligent,[38] and the issue is

[32] *See* Kay v. Cain, 154 F.2d 305 (D.C. Cir. 1946); Hariston v. Washington Housing Corp., 45 A.2d 287 (D.C. App. 1946); Iverson v. Quam, 226 Minn. 290, 32 N.W.2d 596 (1948); Hoss v. Nestor B. & L. Ass'n, 164 Pa. Super. 77, 63 A.2d 435 (1949). *See generally* Phillips v. Capital Inv. & Guar. Co., 32 A.2d 249 (D.C. App. 1942); Sodekson v. Lynch, 298 Mass. 72, 9 N.E.2d 372 (1937).

[33] *See* Skladzien v. W.M. Sutherland Bldg. & Constr. Co., 101 Conn. 340, 125 A. 614 (1924); Johnson v. Goodier, 182 Neb. 172, 153 N.W.2d 445 (1967); Coxey v. Guala, 112 Pa. Super. 460, 171 A. 484 (1934); Presser v. Siesel Constr. Co., 19 Wis. 2d 54, 119 N.W.2d 405 (1963).

[34] *See* Holliday v. Great A. & P. Tea Co., 314 F.2d 682 (4th Cir. 1963); Bridger v. Gresham, 111 Ga. 814, 35 S.E. 677 (1900); Jewell v. Blanchett Inv. Co., 199 Minn. 267, 271 N.W. 461 (1937); Bragg v. Smilowitz, 16 App. Div. 2d 181, 226 N.Y.S.2d 755 (1962).

The Pennsylvania Supreme Court of Appeals has applied the following rules in dark interior stairway cases: (1) where a person proceeds in absolute darkness without reasonable necessity, he is guilty of contributory negligence as a matter of law; and (2) where there is a fairly compelling reason for walking in a place which is dark, but not completley devoid of light, the question of contributory negligence is determined by the jury. Hall v. Glick, 177 Pa. Super. 546, 110 A.2d 836 (1955).

[35] *See* Dunn v. Sammett, 335 Mass. 162, 138 N.E.2d 576 (1956); Selby v. McWilliams Realty Corp., 246 Miss. 568, 151 So. 2d 596 (1963); Bender v. White, 199 Wash. 510, 92 P.2d 268 (1939).

[36] *See* Crowell v. Middletown Sav. Bank, 122 Conn. 362, 189 A. 172 (1937); Eggert v. Mutual Grocery Co., 111 N.J.L. 502, 168 A. 312 (Ct. Err. & App. 1933); Jones v. Moran Bros. Co., 45 Wash. 391, 88 P. 626 (1907).

[37] Whelan v. Van Natta, 382 S.W.2d 205 (Ky. 1964); Brown v. Associated Operating Co., 165 App. Div. 702, 151 N.Y.S. 531 (1915) (unless one is constrained, induced or in an emergency); Chardon Lakes Inn Co. v. Mac Bride, 56 Ohio App. 40, 10 N.E.2d 9 (1937).

[38] *See, e.g.*, Packard v. Kennedy, 4 Ill. App. 2d 177, 124 N.E.2d 55 (1955); Huyink v. Hart Publications, Inc., 212 Minn. 87, 2 N.W.2d 552 (1942); Chardon Lakes Inn Co. v. Mac Bride, 56 Ohio App. 40, 10 N.E.2d 9 (1937).

solely a question of law only when the plaintiff's negligence is so clearly established that reasonable minds can reach no other conclusion.[39] Under the "step in the dark" rule, one is contributorily negligent as a matter of law when, in the absence of an emergency, without first determining where he is going and the obstructions to his safe progress, he proceeds in an unfamiliar situation while the darkness renders the use of eyesight ineffective.[40] Courts have emphasized the plaintiff's familiarity with the place he ventured.[41] It is ordinarily contributory negligence to proceed into a darkened and unfamiliar place,[42] especially where another known course of travel is available.[43] The failure to obtain or turn on a light, or to take other precautions is not necessarily contributory negligence, although under certain circumstances such failure could amount to negligence.[44]

When one proceeds in darkness in the face of hazards he should reasonably expect to encounter, Virginia, in several cases, has held it to be contributory negligence as a matter of law.[45] Thus, when a fe-

[39] *See* Keech v. Clements, 303 Mich. 69, 5 N.W.2d 570 (1942); Walters v. Harris, 250 N.C. 701, 110 S.E.2d 283 (1959).

[40] Rohrbacher v. Gillig, 203 N.Y. 413, 96 N.E. 733 (1911); *see* Maher v. Voss, 48 Del. 45, 98 A.2d 499 (1953); Delaney v. Breeding's Homestead Drug Co., 93 So. 2d 116 (Fla. 1957); Mattox v. Atlanta Enterprises, Inc., 91 Ga. App. 847, 87 S.E.2d 432 (1955); Curet v. Hiern, 95 So. 2d 699 (La. App. 1957); Malmquist v. Leeds, 245 Minn. 130, 71 N.W.2d 863 (1955); Tryba v. Fray, 75 Nev. 288, 339 P.2d 753 (1959).

[41] *See* Robinson v. King, 113 Cal. App. 2d 455, 248 P.2d 477 (1952); Palmer v. Boston Penny Sav. Bank, 301 Mass. 540, 17 N.E.2d 899 (1938); Iverson v. Quam, 226 Minn. 290, 32 N.W.2d 596 (1948). *See generally* Dively v. Penn-Pittsburgh Corp., 332 Pa. 65, 2 A.2d 831 (1938).

[42] *See* Donnelly v. Larkin, 327 Mass. 287, 98 N.E.2d 280 (1951); Panoff v. Anrob Realty Co., 16 App. Div. 2d 774, 228 N.Y.S.2d 329 (1962); Komlo v. Balazick, 169 Pa. Super. 296, 82 A.2d 706 (1951).

[43] *See, e.g.*, Panoff v. Anrob Realty Co., 16 App. Div. 2d 774, 228 N.Y.S.2d 329 (1962).

[44] *See* Burk v. Corrado, 116 Conn. 511, 165 A. 682 (1933); Norman v. Shulman, 150 Fla. 142, 7 So. 98 (1942); Crider v. Duvall, 228 Md. 513, 180 A.2d 693 (1962); Rado v. Zlotnick, 7 N.J. Super. 197, 72 A.2d 533 (Super. Ct. 1950); Yarbrough v. Smith, 66 Wash. 2d 365, 402 P.2d 667 (1965).

[45] Smith v. Wiley-Hall Motors, Inc., 184 Va. 49, 34 S.E.2d 233 (1945); Baker v. Butterworth, 119 Va. 402, 89 S.E. 849 (1916); Reed v. Richmond & Alleghany R.R., 84 Va. 231, 4 S.E. 587 (1887).

An exculpatory clause providing that the lessor would not be liable to the "[t]enant, his family, . . . or invitees for any damages to person or property arising from any cause whatsoever" did not relieve the landlord from liability resulting from his negligence in the maintenance of a common doorway. Taylor v. Virginia Constr. Corp., 209 Va. 76, 161 S.E.2d 732 (1968).

male passenger who alighted from a train, wandered from the waiting room onto the elevated platform, which was unlighted because the lamp was being repaired, and fell, she was held to be contributorily negligent.[46] A guest in a hotel who undertook to go to the lavatory down an unlighted corridor without having requested a light was held to have negligently contributed to her own injury when she fell down a stairway.[47] Similarly, a motorist, who was looking for a restroom in a gasoline station and made no inquiry about its location, was held to be contributorily negligent when he ventured into an unlighted room and fell into a grease pit.[48]

A person is seldom deemed to have "assumed the risk" in proceeding into darkened premises.[49] Generally, knowledge of the peril and an appreciation of the danger are indispensable to an assumption of the risk result.[50]

In *Knight v. Fourth Buckingham Community, Inc.*,[51] the wife of the lessee, on returning to her apartment, encountered darkness in the hall and stairway where the landlord normally maintained illumination. The plaintiff fell and sustained an injury while approaching her dwelling. The court affirmed a demurrer in favor of the lessor and noted that no statute in Virginia required that the landlord maintain artificial lights in areas under his control and "in this jurisdiction the common law prevails." [52]

The rationale of the Virginia Supreme Court of Appeals in *Knight* is inconsistent with its decisions applying the universal requirement that a landlord must exercise reasonable care to maintain that portion of the premises used in common by himself and tenants in a safe condi-

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[46] Reed v. Richmond & Allehany R.R., 84 Va. 231, 4 S.E. 587 (1887).

[47] Baker v. Butterworth, 119 Va. 402, 89 S.E. 849 (1916).

[48] Smith v. Wiley-Hall Motors, Inc., 184 Va. 49, 34 S.E.2d 233 (1945).

[49] *See generally* Rodgers v. Stoller, 284 Ky. 108, 143 S.W.2d 1047 (1940); Heinberg v. Sikora Realty Corp., 110 Misc. 323, 180 N.Y.S. 405 (Sup. Ct. 1920).

[50] *See* City of Winona v. Botzet, 169 F. 321 (8th Cir. 1909); Brant v. Van Zandt, 77 So. 2d 858 (Fla. 1954); Sodekson v. Lynch, 314 Mass. 161, 49 N.E.2d 901 (1943); Coenen v. Buckman Bldg. Corp., 278 Minn. 193, 153 N.W.2d 329 (1967); Plotkin v. Meeks, 131 Ohio St. 493, 3 N.E.2d 404 (1936); Berry v. Hamman, 203 Va. 596, 125 S.E.2d 851 (1962); Davis v. Sykes, 202 Va. 952, 121 S.E.2d 513 (1961); Kelenic v. Berndt, 185 Wis. 240, 201 N.W. 250 (1924).

[51] 179 Va. 13, 18 S.E.2d 264 (1942).

[52] *Id.* at 16, 18 S.E.2d at 265.

tion.[53] The conceptual analysis used by the Virginia court which established the lessor's duty in regard to hallways,[54] stairways,[55] porches,[56] entrances,[57] frozen plumbing[58] and the occasional presence of ice on an exterior common area,[59] is apropos to the ever-present peril of darkness.

When the landlord has control and possession of areas used in common by occupants of the premises and by others having lawful occasion to be present, there is imposed upon him the duty to maintain the premises in a safe condition, which necessarily implies a duty to furnish artificial illumination. Notwithstanding the fact that the rules as to contributory negligence are applicable, an owner of rented prem-

[53] Taylor v. Virginia Constr. Corp., 209 Va. 76, 161 S.E.2d 732 (1968); Paytan v. Rowland, 208 Va. 24, 155 S.E.2d 36 (1967); Langhorne Road Apts., Inc. v. Bission, 207 Va. 474, 150 S.E.2d 540 (1966); Wagman v. Boccheciampe, 206 Va. 412, 143 S.E.2d 907 (1965); City of Richmond v. Grizzard, 205 Va. 298, 136 S.E.2d 827 (1964); Revell v. Deegan, 192 Va. 428, 65 S.E.2d 543 (1951); Williamson v. Wellman, 156 Va. 417, 158 S.E. 777 (1931); Beriln v. Wall, 122 Va. 425, 95 S.E. 394 (1918).

[54] City of Richmond v. Grizzard, 205 Va. 298, 136 S.E.2d 827 (1964); Berlin v. Wall, 122 Va. 425, 95 S.E. 394 (1918).

[55] Revell v. Deegan, 192 Va. 428, 65 S.E.2d 543 (1951); *see* Wagman v. Boccheciampe, 206 Va. 412, 143 S.E.2d 907 (1965); Oliver v. Cashin, 192 Va. 540, 65 S.E.2d 571 (1951).

In *Wagman* a five-year old child sought recovery for injuries sustained while playing on an outside stairway maintained by the defendants for the common use of their tenants. An expert testified that the stairway was not safe for children's play. However, the court reversed a judgment for the plaintiff holding that a landlord is under a duty to keep those portions of the premises under his control safe for the purpose for which they are intended to be used, and he is under no duty to keep them safe for all purposes for which they might be used. Furthermore, the landlord is under no duty to police the area to prevent children from playing in a known dangerous place or notify the parents of those children.

A provision in the lease stated that "children will not be permitted to play in public halls or on the lawns or entrance steps, or walks of the building." This provision should have resulted in the plaintiff being a trespasser as to the stairway and railing, and the defendants should have been liable for the injury to the infant, assuming the burden of eliminating the danger was minimal as compared with the risk to the child, and also assuming that a five-year old could not realize the risk involved. *See* RESTATEMENT (SECOND) OF TORTS § 339 (1965).

[56] Paytan v. Rowland, 208 Va. 24, 155 S.E.2d 36 (1967).

[57] Taylor v. Virginia Constr. Corp., 209 Va. 76, 161 S.E.2d 732 (1968); Oliver v. Cashin, 192 Va. 540, 65 S.E.2d 571 (1951); Williamson v. Wellman, 156 Va. 417, 158 S.E. 777 (1931).

[58] Jacobs v. Carter, 154 Va. 87, 152 S.E. 332 (1930); Hunter-Smith Co. v. Gibson, 119 Va. 582, 87 S.E. 886 (1916).

[59] Langhorne Road Apts., Inc. v. Bisson, 207 Va. 474, 150 S.E.2d 540 (1966).

ises must be required to light entrance approaches, stairways, and common passages in multiple dwellings after sunset or at any other time when there is an absence of illumination. The proposition effectuated by the Virginia court to support the lessor's responsibility in regard to other dangers should apply with tantamount force to the intermittent hazard of darkness.

E. L. C.