

**5.72 NEGLIGENCE — PROPRIETOR’S DUTY OF CARE TO PATRONS AGAINST CRIMINAL ACTIVITY OF THIRD PERSONS** (Approved 11/99)

The owner/operator of *[insert type of business entity involved, i.e. store, restaurant, office etc.]* owes a duty of reasonable care to its *[insert word describing people using the premises, i.e. customer, patron, etc.]* to provide a reasonably safe place to *[insert words describing plaintiff’s use of the premises, i.e. shop, conduct business, enter the building, etc.]*. It is a duty to take steps that are reasonable and prudent under all the circumstances for a *[insert word describing people using the premises, i.e. customers, patrons, etc.]* safety. The duty owed requires the owner/operator of a *[insert type of business entity involved, i.e. store, restaurant, office etc.]* to exercise ordinary care to protect *[insert word describing people using the premises, i.e. customers, patrons, etc.]* from potential injury inflicted by individuals that the owner/operator could have reasonably foreseen might be present on the premises.<sup>1</sup> This legal duty of care does not make *[insert type of business entity involved, i.e. stores, restaurants, businesses etc.]* guarantors of a *[insert word describing people using the premises, i.e. customer’s, patron’s, etc.]* safety. However, if criminal activity on the premises is reasonably foreseeable, then the *[insert type of business entity involved, i.e. store, restaurant, office etc.]*

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<sup>1</sup> See *Butler v. Acme Markets, Inc.*, 89 N.J. 270 (1982) stating that whether a business owner breaches a duty is a jury question.

had a duty to take reasonable steps to protect its *[insert word describing people using the premises, i.e. customers, patrons etc.]* from that danger.

When determining whether or not criminal activity on defendant's property was reasonably foreseeable, you may consider the following factors: prior criminal acts that occurred on or around defendant's property even if not as bad as the one committed against the plaintiff; the property's size and location; the absence of adequate security; the architectural design of the building in relation to the area where the crime occurred (for example: the size of the parking lot); the type of business defendant operates; the nature and circumstances of nearby businesses; and the increasing level of crime in the general neighborhood. You, the jury, must look at the totality of the circumstances to decide whether or not the defendant should have reasonably foreseen the danger.<sup>2</sup>

To summarize: if the place or character of the defendant's business, including notice of prior criminal activity in the area, is such that a reasonably prudent *[insert type of business entity involved, i.e. store, restaurant, office, etc.]* would anticipate criminal actions by third persons against a *[insert work describing*

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<sup>2</sup> See *Morris v. Krauszer's Food Stores, Inc.*, 300 N.J. Super. 529 (App. Div.), which adopted the dissenting opinion set forth in *Clohesy v. Food Circus Supermarkets, Inc.*, 293 N.J. Super. 217 (App. Div. 1996). The totality of the circumstances approach best accords with the fundamental purposes of tort law as set forth in *Butler* and exemplified by the "solid and growing national trend of authority." See *Clohesy, supra*, 293 N.J. Super. 243 (dissenting opinion, quoting *Sharp v. W.H. Moore, Inc.*, 118 Idaho 297, 301, 796 P., 506, 510, 2d (Idaho 1990)).

*people using the premises, i.e. customer, patron, etc.],* then defendant had a duty to take reasonable precautions against that danger. A failure to take such measures would constitute negligence.