

Model Brief: *Kuehn v Pub Zone*

Facts: Customer (Kevin Kuehn - PL) savagely beaten in bathroom of pub (owned by Maria Kerkoulas - D) by members of biker gang (Pagans)

Kerkoulas knew gangs like Pagans prone to attack customers for no reason

Drafted policy: no patron enter pub wearing "colors"

On night Kuehn attacked, several members of Pagans (Rhino, Backdraft, etc) "pushed" way in wearing colors.

Kerkoulas saw this but served them drink anyway

Pagans then pursued Kuehn into bathroom, where they attacked without provocation

Procedural History: Jury in trial found for PL; awarded \$300,000 damages. Judge overruled jury's verdict (J-NOV). NOTE: judge ruled D could not have foreseen attack. If harm not foreseeable, no duty to protect PL (Kuehn) from acts of 3rd party. Kuehn appealed

Issue: Whether a business has a duty to protect a patron from the acts committed by 3rd party if the harm is foreseeable?

Holding: Yes. A business has a duty to protect patrons/customers from the foreseeable acts committed by 3rd parties.

Rule of Law: As a general rule, a business has no duty to protect patrons/customers from the acts committed by 3rd parties, unless those acts are foreseeable.

Analysis: According to the court, "since the possessor [of a business] is not an insurer of the visitor's safety, he 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. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. "

Here, Kerkoulas had no reason to suspect any particular Pagan of violent conduct, BUT she knew gang = violent. So, she had "knowledge." The knowledge was based on personal experience as well as other sources (re: police). Evidence of this knowledge = pub's policy about gang members wearing colors. Knowledge is the basis for foreseeability. Thus, some type of violent acts by Pagans = reasonably foreseeable. In allowing the Pagans to enter with "colors" & by serving drinks, Kerkoulas breached the duty owed to her customers. And, for breaching the duty for foreseeable harm, Pub Zone is liable for damages caused to Kuehn.

Trial court's decision = reversed