

PARKING LOT VEHICLE THEFT OR BREAK-INS



ARE *GYMS* OR *APARTMENTS* LIABLE ?

ANSWER: MAYBE...

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Houston, Texas – Feb2023
iNo!® Informed – I know; Decision – I No!
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A pro bono project

FOR TEXAS ATTORNEYS – MCLE CREDIT

- Course Title: “Parking Lot Vehicle Theft or Break-Ins – Whose Liability?”
- Course No.: 174177734
- Provide name / bar number
 - 1.5 hours credit

DISCLAIMER



- COURTESY (COMMUNITY SERVICE, FREE OF CHARGE) CONSUMER AWARENESS
- NOT OFFERING OF LEGAL ADVICE / OPINION
- NOT SEEKING TO BE ANY ONE'S LAWYER
- READER CONSULT WITH THEIR OWN ATTORNEY
- OR DIY...



MISSION..



RIGHTS AND REMEDIES

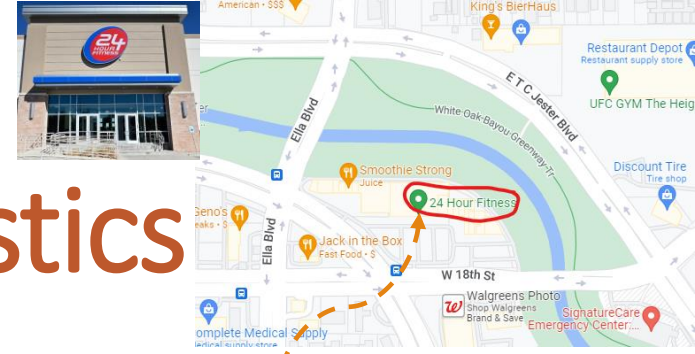
SELF-HELP

OR

ATTORNEY HELP

OR DO NOTHING – OUT-OF-POCKET EXPENSE





Houston Police Dept. Crime Statistics

3 MONTHS – JAN/MAR 2022 – 18th STREET

Incident	RMSOccurrenceD	RMSOccurrenceH	NIBRSCL	NIBRSDescription	OffenseCod	Beat	Premise	StreetNo	StreetName	StreetTy	Suf	City	ZIPCode	MapLongit	MapLatit
262	1312722	0	240	Motor vehicle theft	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
263	3158122	22	23F	Theft from motor vehicle	1	2A60	Restaurant	1802	18TH	ST	W	HOUSTON	77008	-95.431767	29.801632
264	3598122	4	23H	All other larceny	1	2A60	Bank, Savings & Loan	1550	18TH	ST	W	HOUSTON	77008	-95.427627	29.801658
265	3598122	4	290	Destruction, damage, vandalism	1	2A60	Bank, Savings & Loan	1550	18TH	ST	W	HOUSTON	77008	-95.427627	29.801658
266	5355022	6	120	Robbery	1	2A60	Restaurant	1806	18TH	ST	W	HOUSTON	77008	-95.431865	29.801639
267	7853522	18	23G	Theft of motor vehicle parts or accessory	1	2A60	Residence, Home (Includes Apartment)	2502	18TH	ST	W	HOUSTON	77008	-95.443642	29.801561
268	9903622	9	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	1513	18TH	ST	W	HOUSTON	77008	-95.4269	29.801646
269	11431922	17	26A	False pretenses, swindle	1	2A60	Specialty Store	2514	18TH	ST	W	HOUSTON	77008	-95.443849	29.801563
270	11790322	13	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	718	18TH	ST	W	HOUSTON	77008	-95.410917	29.801752
271	12094022	23	240	Motor vehicle theft	1	2A60	Rental Storage Facility	2100	18TH	ST	W	HOUSTON	77008	-95.436688	29.801611
272	13221422	15	100	Kidnapping, abduction	1	2A60	Residence, Home (Includes Apartment)	908	18TH	ST	W	HOUSTON	77008	-95.414605	29.801724
273	13836022	1	290	Destruction, damage, vandalism	1	2A60	Residence, Home (Includes Apartment)	2510	18TH	ST	W	HOUSTON	77008	-95.443778	29.801562
274	15149422	18	90Z	All other offenses	1	2A30	Highway, Road, Street, Alley	700	18TH	ST	W	HOUSTON	77008	-95.41011	29.801756
275	15149422	18	90D	Driving under the influence	1	2A30	Highway, Road, Street, Alley	700	18TH	ST	W	HOUSTON	77008	-95.41011	29.801756
276	15437822	10	23F	Theft from motor vehicle	1	2A30	Parking Lot, Garage	718	18TH	ST	W	HOUSTON	77008	-95.410917	29.801752
277	16366622	23	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	2302	18TH	ST	W	HOUSTON	77008	-95.44015	29.801588
278	17948222	9	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	1805	18TH	ST	W	HOUSTON	77008	-95.431832	29.801623
279	19989222	19	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
280	19944322	5	220	Burglary, Breaking and Entering	1	2A60	Residence, Home (Includes Apartment)	2426	18TH	ST	W	HOUSTON	77008	-95.442286	29.801579
281	21453722	23	23G	Theft of motor vehicle parts or accessory	1	2A60	Residence, Home (Includes Apartment)	2525	18TH	ST	W	HOUSTON	77008	-95.444022	29.801548
282	21524222	10	90D	Driving under the influence	1	2A60	Highway, Road, Street, Alley	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
283	22148322	14	23H	All other larceny	1	2A30	Construction Site	600	18TH	ST	W	HOUSTON	77008	-95.40799	29.801792
284	22869022	1	120	Robbery	1	3B10	Highway, Road, Street, Alley	4401	18TH	ST	W	HOUSTON	77092	-95.452928	29.801523
285	23484522	19	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
286	23484522	19	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
287	23241222	20	290	Destruction, damage, vandalism	1	2A30	Highway, Road, Street, Alley	600	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
288	23376022	21	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
289	23510122	10	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
290	24122722	4	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	1802	18TH	ST	W	HOUSTON	77008	-95.4318	29.80164
291	24193622	16	23F	Theft from motor vehicle	1	2A60	Parking Lot, Garage	1513	18TH	ST	W	HOUSTON	77008	-95.4269	29.801646
292	38446622	8	250	Counterfeiting, forgery	1	2A60	Commercial, Office Building	2150	18TH	ST	W	HOUSTON	77008	-95.437345	29.801611
293	26263222	9	90D	Driving under the influence	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
294	28378822	15	13B	Simple assault	1	3B10	School-Elementary/Secondary	4400	18TH	ST	W	HOUSTON	77092	-95.452928	29.801539
295	28492922	21	13C	Intimidation	1	2A60	Convenience Store	2000	18TH	ST	W	HOUSTON	77008	-95.435208	29.801621
296	29625922	17	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	1161	18TH	ST	W	HOUSTON	77008	-95.419343	29.801684
297	30483322	4	23C	Shoplifting	1	2A60	Convenience Store	2000	18TH	ST	W	HOUSTON	77008	-95.435208	29.801621
298	31811722	19	13B	Simple assault	1	3B10	Parking Lot, Garage	4401	18TH	ST	W	HOUSTON	77092	-95.452049	29.801536
299	32084722	9	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	935	18TH	ST	W	HOUSTON	77008	-95.415154	29.801706
300	33547722	7	23G	Theft of motor vehicle parts or accessory	1	2A60	Other, Unknown	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
301	33765322	19	90D	Driving under the influence	1	2A60	Highway, Road, Street, Alley	1598	18TH	ST	W	HOUSTON	77008	-95.427091	29.801645
302	34462722	5	220	Burglary, Breaking and Entering	1	2A60	Specialty Store	1523	18TH	ST	W	HOUSTON	77008	-95.436585	29.801603
303	35626922	13	26A	False pretenses, swindle	1	2A60	Rental Storage Facility	2100	18TH	ST	W	HOUSTON	77008	-95.426822	29.801655
304	35678922	15	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	1513	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
305	38266522	22	23G	Theft of motor vehicle parts or accessory	1	2A60	Parking Lot, Garage	2727	18TH	ST	W	HOUSTON	77008	-95.410917	29.801752
306	36967422	10	23F	Theft from motor vehicle	1	2A30	Restaurant	718	18TH	ST	W	HOUSTON	77008	-95.410917	29.801752
307	37222922	22	13C	Intimidation	1	2A60	Residence, Home (Includes Apartment)	2518	18TH	ST	W	HOUSTON	77008	-95.443918	29.801563
308	40293222	7	13B	Simple assault	1	2A60	Residence, Home (Includes Apartment)	2330	18TH	ST	W	HOUSTON	77008	-95.440623	29.801586
309	45791822	10	23H	All other larceny	1	2A60	Residence, Home (Includes Apartment)	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
310	41425422	3	23C	Shoplifting	1	2A60	Service, Gas Station	2000	18TH	ST	W	HOUSTON	77008	-95.435208	29.801621
311	42616722	13	13C	Intimidation	1	2A60	Drug Store, Doctors Office, Hospital	2150	18TH	ST	W	HOUSTON	77008	-95.437345	29.801611
312	45238022	12	23F	Theft from motor vehicle	1	2A30	Parking Lot, Garage	335	18TH	ST	W	HOUSTON	77008	-95.402146	29.801877
313	45947622	18	220	Burglary, Breaking and Entering	1	2A60	Residence, Home (Includes Apartment)	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
314	45947622	18	290	Destruction, damage, vandalism	1	2A60	Residence, Home (Includes Apartment)	2727	18TH	ST	W	HOUSTON	77008	-95.446662	29.801556
315	47239922	11	23F	Theft from motor vehicle	1	2A60	Other, Unknown	1513	18TH	ST	W	HOUSTON	77008	-95.4269	29.801646
316	47324022	16	120	Robbery	1	2A60	Service, Gas Station	1622	18TH	ST	W	HOUSTON	77008	-95.429016	29.801656

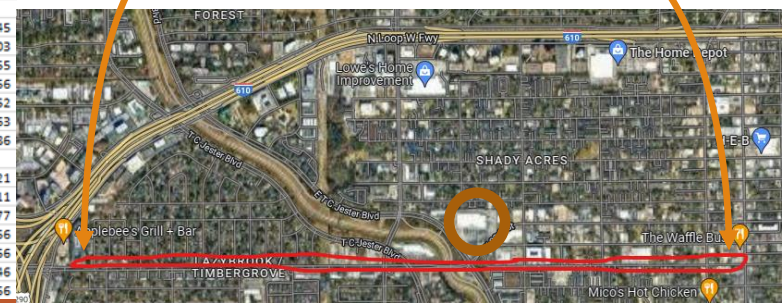
24-Hour Fitness
1513 W 18th
Houston, Tx

4 Auto Events (daylight)

WHAT WAS REPORTED?
(700-2700 W. 18th)
(610-N to SHEPHERD)

19 Auto Events (yellow)

UNREPORTED???
Reporting Hassle Factor



PARKING LOT VEHICLE CRIME... EVER HAPPEN TO YOU?...

Vickie Victim



a tenant

Victor Victim



a gym member

Park their cars



in provided parking lots

Vickie's car



stolen!!

Victor's car



broken into!!

Lose



personal property?

Discovered thief



could act defensively!!!!

PARKING LOT VEHICLE CRIME... FIRST LINE OF DEFENSE...



“ SO SORRY, BUT NOT OUR PROBLEM...”

“ NOT RESPONSIBLE FOR CRIMES ON THE PARKING LOT... ”

“ POSTED SIGNS READ NOT RESPONSIBLE FOR CRIMES... ”



LIABILITY “*GENERAL*” RULE...

A person or business does

NOT

have a duty to protect others from
third-party criminal acts...

“WHOA BUCKY!” ... EXCEPTIONS!!!...



FIRST THINGS FIRST...*NOTICE*

ASAP – *WRITTEN* NOTICE – PARKING LOT ‘MANAGER’

**DATE – TIME – LOCATION – VEHICLE ID – WHAT HAPPENED – PROPERTY DAMAGE – PICTURES?
(GOOD)**

**COPY CORPORATE HEADQUARTERS / PARKING LOT MANAGER / WHO CONTROLS LOT?
LEGAL / CUSTOMER CARE DEPARTMENTS (CERTIFIED MAIL?)
(BETTER!)**

**PROVIDE NOTICE OTHER CRIME INFORMATION – POLICE DEPT. REPORTS / NEWS
(BEST!!)**

**FILE POLICE REPORT – PROVIDE INCIDENT NUMBER
(BEST IN CLASS!!!)**



IMMEDIATE SELF - HELP...



Comprehensive car insurance policy – may cover some/all of loss (- deductible)

**Personal Property (laptop, tools, phone) not covered by auto insurance...BUT
May be covered by home, renters, condo insurance (- deductible)**

RARE: Gym/Apt may have liability insurance

If personal injury (assault)

Recover expenses (counseling, medical, loss of income)

Texas Attorney General Crime Victims' Compensation (CVC) Programme

(<https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program>)

DUTY...A BIG DEAL... EXCEPTIONS START!...



An owner, lessee or occupier of land –
in control of the parking lot...
have a (reasonable) duty (an obligation)
to keep the premises (parking lot)
in a safe condition
[especially for *invitees*].

Redinger v. Living, Inc., 689 S.W.2d 415, 417 (Tex. 1985)



... IMPORTANT QUESTION ...

HAS GYM OR APARTMENT
PROVIDED ENOUGH REASONABLE PARKING LOT (UNDER ITS CONTROL)
SECURITY MEASURES ...

THAT PREVENTS OR SUBSTANTIALLY REDUCES
THE RISK OF VEHICLE THEFT/BREAK-IN CRIMINAL ACTIVITY ...

FOR THE SAFETY OF ITS INVITEES
(MEMBER / TENANT / GUESTS)?

HAVE THEY DONE ENOUGH !!! ???

WHAT IS ENOUGH?

...A CHECKLIST... DEPENDS... no one size fits all



Expert security reports – What to do to stop parking lot crime?

Effective security cameras?

Fences / gates?

Effective lighting?

SECURITY GUARDS?

Bulletin board newsletter:

Parking lot safety?

Vehicle criminal activity on the lot (adjacent areas)?

Access to parking lot crime statistics (local police department)?

Steps to take if vehicle theft / break-in?

Vehicle crime compensation fund? (A pipe dream?... maybe).

Has Gym landlord (lot controller) been notified of crime events (known or should have known)?





EXCEPTIONS...

- Negligence** (conduct) (vehicle collisions)
- Premises Liability** (condition) (banana peel slip and fall)
- Breach of Implied Warranty of Habitability** (safe apartment)
- Breach of 'Service' Contract** (parking service)
 - Deceptive Trade Practice Act Claim?** (consumer claim)
- Breach of Bailment** (valet parking)



EXCEPTION IMPORTANT INGREDIENTS...

(THE RECIPE...)

INVITEE
CONTROL
FORESEEABLE
UNREASONABLE
DUTY
HEALTH-SAFETY
CONTRACT



- Was Victim an 'invitee'?
- Who 'controls' the parking lot?
- Did Gym/Apartment know or have reason to know of parking lot vehicle crimes being
 - Foreseeable? And
 - Unreasonable?
- Does Gym/Apartment have a duty to invitees to protect them from parking lot vehicle crimes?
- Does insufficient security in a parking lot materially affect the physical health or safety of a tenant?
- Is there a contract that affects liability?
 - Does Lease contain terms/conditions about parking lot?
- BUZZ WORDS: *INVITEE, CONTROL, FORESEEABLE, UNREASONABLE, DUTY, HEALTH-SAFETY, CONTRACT*



WHO IS AN 'INVITEE'?...

A person

On the premises (parking lot)

At the express / implied invitation of the possessor (in control) of the premises and that person is

A member of the public for a purpose for which the premises are held open to the public OR

For a purpose connected with the business of the possessor that does or may result in their mutual benefit.

A TENANT OR GYM MEMBER IS AN INVITEE.

- Others with lesser rights:
 - Licensee (door-to-door salesperson)
 - Trespasser

WHAT IS 'CONTROL'?...



Control means...

The possession, directly or indirectly, of ...

The management, policies, security of [parking lot] premises ...reasonable protection of invitee's safety.

['Look out for': 'big hole'; 'construction']

Apartment owner usually controls the parking lot.

Gym: (ummmmm??)...

- (1) Under control of Gym, OR**
- (2) Under control of Gym landlord (shopping center) OR**
- (3) Gym / landlord shared control**

MORE ABOUT CONTROL...



- Gym: claims
 - Not in 'control' of the lot; Landlord is; OR
 - Gym is parking lot agent of their Landlord
- BUT**: Control is DETERMINED BY THE FACTS!!!
- Who has control? (independent or shared)...
 - Who is responsible for operating security cameras, reviewing tapes, reporting criminal incidents to the police?
 - Who is responsible for maintenance, repair of security equipment, setting security policy?
 - If notice of criminal event, is the member referred to the Landlord?
 - Has Gym kept their Landlord aware of knowledge about criminal activity on the parking lot?
 - Who investigates and keeps records of parking lot criminal incidents?
 - Has the Gym ever retained a security advisor to assess parking lot safety?
 - Does the Gym deal directly with relevant law enforcement officials regarding investigation of a parking lot criminal act or do they defer that action to the its Landlord?
 - Does the Gym actively assesses security requirements for the parking lot?



IS THERE A 'DUTY'?

- ❑ Duty is ...
 - ❑ Legal obligation to conform to a particular standard of conduct toward another;
 - ❑ YA' GOTTA DO SOMETHING ABOUT IT!!!
 - ❑ A question of law for the judge;
 - ❑ Judge takes into account:
 - 1) How BIG is the danger (Risk); (car door ding vs criminal act)
 - 2) Foreseeability of the Risk (a BIG deal);
 - 3) Likelihood of harm; AND
 - 4) Factors 1-3 weighed against
 - Invitee's need for protection and
 - Burden on defendant (Gym/Apartment – the 24/7 security guard thing).

C.J. Doe v. Boys Clubs of Greater Dallas, Inc., 868 S.W.2d 942, 948 (Tex. App.--Amarillo 1994), aff'd, 907 S.W.2d 472 (Tex. 1995). *Greater Houston Transp. Co.v Phillips*, 801 S.W.2d 523, 525 (Tex. 1990); *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)).



KNOWLEDGE OF CRIME?...Texas Law...

- ❑ The person/entity who controls the parking lot
 - ❑ has a duty to use ordinary care
 - ❑ to protect invitees from criminal acts of third parties
 - ❑ **“IF”** they know or have reason to know of a (1) foreseeable and (2) unreasonable risk of harm to its invitees.

Foreseeable... 5 factors ...

- ❑ Proximity : prior crimes have occurred on the property or in its immediate vicinity;
- ❑ Recency: recent criminal events;
- ❑ Frequency: how often;
- ❑ Similarity: previous crimes similar to vehicle crimes;
- ❑ Publicity: extent of publicity (awareness) of crimes whether [one in control] knew or should have known of a foreseeable danger (actual knowledge; reports; access to crime statistics; news; industry newsletters)

Unreasonable...2 SIDED TEST:

- ❑ INVITEE: risk and likelihood of injury/damage... balanced against
- ❑ PARKING LOT CONTROLLER (GYM/APARTMENT) DUTY: how big a burden to provide reasonable security (...24/7 security guards may be too much...)

If the one in control could easily prevent or reduce likelihood of harm, unreasonable not to exercise ordinary care to reduce the risk.

Injury/Damage includes:

- ❑ Theft of vehicle ... Damage to vehicle ... Personal injury



IS INVITEE'S SAFETY AT RISK?

- ❑ A real concern ... natural consequence...
 - ❑ If Invitee unexpectedly discovers a criminal in the act of stealing or breaking into the Invitee's parked vehicle,
 - ❑ Criminal has the capacity to act defensively, and
 - ❑ Could cause (foreseeable?) personal injury to the Invitee
 - ❑ The one who controls the parking lot, knows or has reason to know of this possible criminal consequence,
 - ❑ Especially when they know of repeated vehicle theft or break-in events (more foreseeability).

...MORE THAN A FENDER BENDER...

NEGLIGENCE EXCEPTION...



Negligence:

Failure to do (or not do) that which a person of ordinary prudence would have done (or not done) under the same or similar circumstances (a reasonableness test)

Must prove...

Duty owed by defendant (gym/landlord/apartment) to invitee;

Proof: Gym/Apartment/Landlord duty to invitees to keep parking lots under their control in a safe condition;

Breach of that duty;

Proof: Gym/Apartment failed to have reasonable security systems in place to prevent or reduce the risk of the criminal act; did not act reasonably under the circumstances

Proximate cause of invitee's injuries/damages by such breach (link between breach and harm);

Damages/Injury

Proof: Invitee suffered damages/injury: stolen vehicle, break-in damage; personal injury

WHAT ARE DAMAGES?

(PERSONAL INJURY, PROPERTY DAMAGE)



- ❑ Texas Civil Practice and Remedies Code (cause of action Damages):
 - ❑ Includes: *Economic, Exemplary, Compensatory, Future, Noneconomic damages and future loss of earnings.*
 - ❑ Both harm or injury to a person or property.

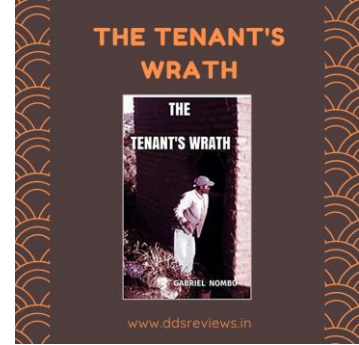


PREMISES LIABILITY EXCEPTION...

- ❑ One in control of a parking lot ...
 - ❑ Has actual or constructive knowledge of any *condition* on the premises that poses an unreasonable risk of harm to invitees (such as foreseeability and unreasonableness of criminal conduct associated with vehicle theft or break-in) ...
 - ❑ Has a duty to take reasonable action to reduce or eliminate that risk.
- ❑ Must prove...
 - ❑ Duty owed to invitee;
 - ❑ Proof: Controller of parking lot has a *duty* to use ordinary care to protect invitees (reduce or eliminate unreasonable risk of harm) from criminal acts of third parties if
 - ❑ they know or have reason to know of a
 - (1) foreseeable event (proximity, recency, frequency, similarity, publicity factors) and
 - (2) unreasonable risk of harm to the invitee
 - ❑ Unreasonableness 2 sided test (1) the risk and likelihood of harm to invitee ... as well as (2) burden on Gym(landlord)/Apartment
 - ❑ Breach of that duty;
 - ❑ Proof: Gym(Landlord)/Apartment knew or had reason to know of vehicle theft or break-in incidences on their parking lot and failed to provide reasonable security systems in place to prevent or reduce the risk of the criminal act to occur and acted unreasonably under the circumstances
 - ❑ Proximate cause of invitee's damages (link between breach and harm);
 - ❑ Damages
 - ❑ Proof: Invitee suffered losses: stolen vehicle, break-in damage, personal injury.



BREACH OF IMPLIED WARRANTY OF HABITABILITY CLAIM ? (Texas Property Code)



- ❑ **A landlord has a duty to timely remedy apartment conditions if, materially affects the physical health or safety of tenant.**
 - ❑ Providing a safe parking lot free from vehicle theft or break-in events is a condition if not maintained, can materially affect the physical health and safety of a tenant (safety matters whether a leaky sewer pipe or possible criminal assault).
 - ❑ Failure to remedy can result in unsafe and unhealthy condition should the tenant unexpectedly stumble upon a criminal in the act of theft or break-in who reacts defensively and causes harm to the tenant.

- ❑ **Prove:**
 - ❑ Invitee is a tenant; Gave written notice to Apartment of unsafe condition (risk of vehicle theft/break-in in the parking lot and tenant health and safety materially at risk); Request (demand) for Apartment to install relevant security systems; Tenant is current on rent.
 - ❑ Apartment failed to timely remedy concerns: Tenant may..
 - (1) pay for requested security and deduct cost from rent (self help);
 - (2) terminate the lease without penalty (constructive eviction, non-habitable condition, self help); or
 - (3) apply to a court for:
 - A court order directing the landlord to take reasonable steps to repair the condition (better security)
 - A court order that reduces the tenant's rent according to the decreased rental value resulting from the condition
 - A judgment for one month's rent plus \$500
 - A judgment for the amount of the tenant's actual damages
 - Court costs and attorneys' fees excluding those relating to recoveries for personal injury
 - Judgment can't exceed \$10,000

BREACH OF CONTRACT EXCEPTION... Maybe???



- Does Gym Membership Contract or Apartment Lease contain terms and conditions governing the parking lot (parking lot use rules)?
- Gym Membership Contract and Apartment Leases type of 'service' contracts.
- Is there a breach of 'service' contract?
 - Who controls the parking lot?
 - May be more applicable to Apartment Leases than Gym Membership Contracts
- Per Texas Deceptive Trade Practice (more next slide)
 - "Services" means work, labor, or service purchased or leased for use (gym exercise service, Apartment living space service)...



DECEPTIVE TRADE PRACTICE EXCEPTION?

- ❑ **Must prove:** Invitee is a consumer and party to a service contract, the gym/apartment engaged in false, misleading or deceptive act and the acts were a producing cause of the consumer's damages.
- ❑ **Laundry list of possible claims...Gym/Apartment...**
 - ❑ Represented that ... services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have ...
 - ❑ *(claims of safe parking spaces, no warning not to park in parking lot because it is unsafe to do so)*
 - ❑ Represented that ... services are of a particular standard, quality, or grade, ... if they are of another ...
 - ❑ *(i.e. not providing safe parking spaces, no warning not to park in parking lot because it is unsafe to do so);*
 - ❑ Advertised ... services with intent not to sell them as advertised ...
 - ❑ *(i.e., knew of vehicle related criminal activity risk in the parking lot and did not advertise that risk to its invitees);*
 - ❑ Failed to disclose information concerning ... services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed...
 - ❑ *(failure to disclose history of vehicle theft or break-ins associated with the parking lot which tenant or member is expected to use and induced invitee to use the parking lot associated with gym or apartment)*
 - ❑ Others?

BAILMENT EXCEPTION?...



- ❑ **Bailment:**
 - ❑ **Delivery (actual or constructive) of a vehicle (personal property) by Invitee – ‘Bailor’ in trust,**
 - ❑ **To Gym/Apartment – ‘Bailee’ For the execution of a special purpose (parking),**
 - ❑ **Beneficial to either /or both**
 - (1) Bailor-Invitee (a place to park associated with use of gym or apartment) or
 - (2) Bailee-lot controller (receipt of a parking fee or equivalent in the nature of rental or gym membership fees, or parking made available to entice members/tenants to use the gym/apartment), and
 - ❑ **Upon contract, express or implied, to carry out such object (permitted parking), redeliver the vehicle to the Bailor-Invitee in same condition as delivered.**
- ❑ **Claims for breaches of bailment: (1) breach of contract or (2) negligence.**
 - ❑ **Bailee-lot controller (1) breached its duties under the contract or (2) was negligent,**
 - ❑ **Not returning Bailor’s-Invitee’s vehicle in the same condition it delivered.**
- ❑ **The Bailee-lot controller is held to a standard of conduct to a reasonable degree of care.**

STATUTE OF LIMITATIONS... A DEFENSE



- ❑ A law that prevents someone from starting a lawsuit after a certain period of time has passed.
 - ❑ 2 year period for personal injury
 - ❑ 4 year period for most others

- ❑ Timely file a suit before passage of Statute of Limitations – else can't bring a lawsuit.

ATTORNEY'S FEES...WHO PAYS?

(‘American Rule’: Parties pay for their own legal fees...no matter who wins)



- ❑ Vehicle crime parking lot cases often not large, a challenge for attorneys to accept a case.
- ❑ Three types of fees...
 - ❑ Client pays an hourly rate;
 - ❑ Contingency fee, paid from successful suit award...
 - ❑ risk of success and amount of recovery affects attorney agreeing to such fee;
 - ❑ Defendant pays: a Statute permits the award of reasonable attorney's fees from the losing defendant.
 - ❑ Improves chances of an attorney taking a case (similar to Class Action lawsuits – small award to victims but pay-check for attorneys paid by Defendant).
- ❑ Types of cases attorney's fees are not awarded by statute: Negligence, Premises Liability
- ❑ Types of cases attorney's fees could be awarded by statute: Breach of Contract; Breach of Implied Warranty of Habitability (Tenant/Landlord Law); Deceptive Trade Practice Act; Bailment Contract

ATTORNEY'S FEES...CONT'D



- ❑ Texas Statutory Right To Award of Attorney Fees..
 - ❑ Claim based on oral or written contract (bailment contract)
 - ❑ Deceptive Trade Practice: Winning consumer awarded court costs and reasonable and necessary attorneys' fees.
 - ❑ Attorney's fee can be awarded if landlord failed to timely repair or remedy a condition of habitability that affects the safety and health of a tenant (knows or has reason to know of condition).
 - ❑ No fees allowed for personal injury claim or criminal act.
 - ❑ BUT: Arguably:
 - ❑ Safety and health of a tenant and their property (their vehicle) is at risk (no difference leaky sewer viral attack on tenant or vehicle related criminal assault attack)
 - ❑ If tenant unexpectedly encounters a criminal in the act of stealing or breaking into the tenant's vehicle
 - ❑ And its foreseeable that such criminal acts can happen and that the criminal can act defensively and cause safety related harm to the tenant?
 - ❑ The claim is not about the criminal act or personal injury itself, but about the 'CIRCUMSTANCE' that the Apartment not providing a safe and healthy parking lot environment for the benefit of tenants (freedom from personal harm from criminals – a matter of safety- foreseeability).

PRO SE ATTORNEY'S FEES...



- ❑ CAN A PRO SE SELF-HELP (REPRESENTING YOURSELF) INVITEE WHO IS ALSO A LICENSED ATTORNEY, RECOVERY 'ATTORNEY FEES' AS PART OF THE JUDGMENT IN TEXAS? Yes...
- ❑ Recovery of attorney fees permitted for a pro se plaintiff if
 - ❑ The plaintiff is also a licensed attorney and
 - ❑ Likened the decision to the same circumstance where an in-house attorney representing their corporate employer, is entitled to recovery of attorney fees since that attorney was distracted from spending their time on other (corporate) business.
 - ❑ Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469 (Tex. 2019); Beckstrom D.O. v. Gilmore, 886 S.W.2d 845 (Eastland Tex. App. 1994) and Pullman v. Brill, Brooks, Powell & Yount, 766 S.W.2d 527, 530 (Tex.App.--Houston [14th Dist.] 1988, no writ)...", (Tesoro Petroleum Corporation v. Coastal Refining & Marketing, Inc., 754 S.W.2d 764, 766 (Tex.App.--Houston [1st Dist.] 1988, writ den'd)



WHAT ABOUT POSTED NO LIABILITY SIGNS?

- ❑ Are such self-serving signs enforceable? Maybe Yes...Maybe No...
 - ❑ Violate the Constitution or statutes or public policy?
 - ❑ Is there a big difference in bargaining power between the invitee and the entity that controls the parking lot [as a matter of public policy].
 - ❑ Big difference: No reasonable parking alternative (park in the next door paid commercial parking lot instead of the apartment lot is probably not a reasonable option, living elsewhere might be)
 - ❑ Parking lots are governed by the law of Bailment (delivery of vehicle in trust, to be redelivered in same condition received)
 - ❑ A parking lot owner owes the duty of ordinary care to protect the invitee's automobile from theft or damage.
 - ❑ Liability can be (1) greater if valet parking and keys surrendered to attendant, or (2) less if self parks and keeps keys
 - ❑ Bailment liability could be limited by posting third party criminal act no liability signs, provided (1) the invitee is fully aware of the sign and (2) they have a realistic alternative to park elsewhere – even so lot owner must still act reasonable
 - ❑ If lot owner knows or has reason to know of foreseeable and unreasonable vehicle criminal acts on the lot, then duty of reasonable conduct will require use of reasonable security measures. **HOW MUCH IS ENOUGH?**
 - ❑ Limited liability signage provisions are strictly interpreted AGAINST the lot owner. Allright, Inc., v. Eledge, Jr., 515 S.W.2d 266 (Tex. 1974).

COLOUR OF SUCCESS...



PRIMARY:

- PARKING LOT SECURITY IMPROVES...

EXTRA:

- SUCCESSFUL LEGAL CLAIM - RECOVERY OF LOSSES

RESOURCES FOR FURTHER REVIEW...



- Information paper (28 pages), with detail and court judgment cites.
- Sample Tenant Letter To Apartment (Unsafe Condition)
- Sample Incident Notice / Demand Letter
- Justice Court
 - Example Plaintiff's Original Petition (for a self-help 'pro se' Plaintiff)
 - Example Plaintiff's Judgment (jury or judge trial)
 - Example Discovery (Level 1): Interrogatories; Request for Admissions; Request for Production
 - Example jury charge

VEHICLE THEFT OR BREAK-IN
PARKING LOT LIABILITY – (TEXAS)
ARE APARTMENT AND GYM OWNERS LIABLE?
COULD BE...

THIS COURTESY PRO BONO INFORMATION NOTE IS NOT INTENDED TO REPRESENT THE OFFERING OF LEGAL ADVICE NOR A LEGAL OPINION ON THE SUBJECTS DISCUSSED, NOR SOLICITATION FOR LEGAL REPRESENTATION NOR CREATION OF AN ATTORNEY-CLIENT RELATIONSHIP AND THE READER IS ADVISED TO CONSULT WITH THEIR OWN ATTORNEY REGARDING THE INFORMATION PROVIDED HEREIN AND SEEK THEIR COUNSELING AS TO THE READERS INTERESTS

BOTTOM LINE:

When a landowner or possessor of land [gym, apartment, and/or their landlord] has actual or constructive knowledge of any condition on the premises [parking lot under their control] that possess

INTERMISSION...



Larry D. Killion, P.E., J.D. (Texas)

iNo!® Informed: I know; Decision: I No!

(Houston, Texas)

11235ldk@comcast.net

713 906-9135

RESOURCES ...CONT'D



- Identify the defendant...Who to sue?
- Defendant Legal Entity Name/Contact Detail/Registered Agent To Receive Service of Process/Who to Sue – entity in control of the parking lot.
 - Where To Find Legal Owner:
 - Names in Contracts; County Assumed Name Records (for Harris County, Texas : <https://www.cclerk.hctx.net/applications/websearch/AN.aspx>; Secretary of State Business Entity Records (<https://www.sos.state.tx.us/corp/sosda/index.shtml>))
- Crime Statistics Research:
 - For City of Houston Police Department (https://www.houstontx.gov/police/cs/Monthly_Crime_Data_by_Street_and_Police_Beat.htm).
 - Ask other members/tenants; news media; as other businesses in the vicinity of the parking lot; ask Gym/Apartment Management about theft/break-in history

RESOURCES...CONT'D



☐ Justice of the Peace Local Rules/Contact Details/Venue

☐ Examples: Harris County venue of Justice Courts – a map,

(<https://www.harriscountytexas.gov/Government/Courts/Harris-County-Justice-of-the-Peace-Precincts>); **Contact Details**

Example of Justice Court Precinct 1 Place 1, Judge Eric William Carter,

(<http://www.jp.hctx.net/1-1/judge.htm>)

RESOURCES ...CONT'D



Duty to Keep Property Safe

- Redinger v. Living, Inc., 689 S.W.2d 415 284(Tex. 1985)
- Johnson County Sheriff's Posse, Inc. v. Endsley, 926 S.W.2d 284 (Tex.1996);
- Palermo, 84 S.W.3d 746 (Tex. App. 2002)
- Blancett v. Lagniappe Ventures, Inc., 177 S.W.3d 584, (Tex.App.-Houston [1st Dist.] 2005, no writ)

Foreseeability (of criminal acts)

- Trammell Crow Cent. Texas v. Gutierrez, 267 S.W.3d 9 (Tex. 2008)

Unreasonableness (of criminal act prevention)

- Del Lago Partners Inc v Smith 307 SW3d 762 (Tex 2010)
- UDR Texas Properties LP et al v. Petrie, 517 SW3 98 (Tex. 2017).

Parking Lot No Liability Signage

- Allright, Inc., v. Eledge, Jr., 515 S.W.2d 266 (Tex. 1974).

RESOURCES RELEVANT CITES...CONT'D



Damages

- Texas Civil Practice and Remedies Code (Title 2, Subtitle C, Chapter 41 – Damages)

Landlord/Tenant Law (Implied Warranty of Habitability)

- Texas Property Code, Title 8, Landlord and Tenant Chapter 92, Residential Tenancies

Attorney's Fees

- Rohrmoos Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469 (Tex. 2019)
- Beckstrom D.O. v. Gilmore, 886 S.W.2d 845 (Eastland Tex. App. 1994)
- Pullman v. Brill, Brooks, Powell & Yount, 766 S.W.2d 527, 530 (Tex.App.--Houston [14th Dist.] 1988, no writ)
- Tesoro Petroleum Corporation v. Coastal Refining & Marketing, Inc., 754 S.W.2d 764, 766 (Tex.App.--Houston [1st Dist.] 1988, writ den'd)
- Kay v. Ehrler et al, 499 U.S 432 (US Sup Ct 1991)

RESOURCES RELEVANT CITES...CONT'D



Statute of Limitations

- Texas CIVIL PRACTICE AND REMEDIES CODE, TITLE 2. TRIAL, JUDGMENT, AND APPEAL, SUBTITLE B. TRIAL MATTERS CHAPTER 16. LIMITATIONS
- Cadle Co. v. Wilson*, 136 S.W.3d 345, 350 (Tex. App.- Austin 2004, no pet.)

Liability of Criminal Acts of Third Parties

- Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523 (Tex. 990)
- Exxon Corp. v. Tidwell*, 867 S.W.2d 19, 23 (Tex.1993)
- Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 549 (Tex.1985)
- Haight v. Savoy Apartments*, 814 S.W.2d 849, 853-54 (Tex.App.--Houston [1st Dist.] 1991, writ denied)
- Centeq Realty, Inc. v. Siegler* 899 S.W.2d 195 (Tex. 1995)
- Lefmark Management Company v. Old*, 946 S.W.2d 52 (Tex. 1997)
- Timberwalk Apartments Partners, Inc. v. Cain*, 972 S.W.2d 749 (Tex. 1998)
- Forge v. Brown*, 60 S.W.3 118 (Tex. App.-Austin 1999)

RESOURCES RELEVANT CITES...CONT'D



Negligence

20801, Inc. v. Parker, 249 S.W.3d 392, 398 (Tex. 2008)

Thompson v. Gibson, 298 S.W.2d 97, 105 (Tex. 1957)

Sisters of Charity of the Incarnate Word v. Gobert, 992 S.W.2d 25, 28 (Tex. App.--Houston [1st Dist.] 1997, no pet.)

Rodriguez-Escobar v. Goss, 392 S.W.3d 109, 113 (Tex. 2013)

Duty

C.J. Doe v. Boys Clubs of Greater Dallas, Inc., 868 S.W.2d 942, 948 (Tex. App.--Amarillo 1994), *aff'd*, 907 S.W.2d 472 (Tex. 1995)

Greater Houston Transp. Co. v Phillips, 801 S.W.2d 523, 525 (Tex. 1990)

Breach

Parkway Co. v. Woodruff, 857 S.W.2d 903, 919 (Tex. App.--Houston [1st Dist.] 1993, no writ), *aff'd as modified*, 901 S.W.2d 434 (Tex. 1995)

Cosgrove v. Grimes, 774 S.W.2d 662, 664-65 (Tex. 1989)

RESOURCES RELEVANT CITES...CONT'D



Negligence, cont'd

- Delta Airlines v. Gibson*, 550 S.W.2d 310, 312 (Tex. Civ. App.--El Paso 1977, writ ref'd n.r.e.)
- Skyline Cab Co. v. Bradley*, 325 S.W.2d 176 (Tex. Civ. App.--Houston 1959, writ ref'd n.r.e.)
- Robert R. Walker, Inc. v. Burgdorf*, 244 S.W.2d 506 (Tex. 1951)
- Dallas Ry. & Terminal v. Rogers*, 218 S.W.2d 456, 458 (Tex. 1949)
- Thompson v. Wooten*, 650 S.W.2d 499 (Tex. App.--Houston [14th Dist.] 1983, writ ref'd n.r.e.)
- Proximate Cause
- Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex. 1992)
- McClure v. Allied Stores of Tex., Inc.*, 608 S.W.2d 901, 903 (Tex. 1980)

Bailment

- Presley v. Cooper*, 284 S.W.2d 138, 140-41 (Tex. 1955)
- Elder, Dempster & Co. v. St. Louis Sw. Ry. Co.*, 154 S.W. 975, 987-88 (Tex. 1913).
- Trammell v. Whitlock*, 242 S.W.2d 157 (Tex. 1951).
- Buchanan v. Byrd*, 519 S.W.2d 841, 843 (Tex. 1975).

EXAMPLE NOTICE LETTER OF PARKING LOT VEHICLE BREAK-IN/THEFT; 1ST PAGE

EXAMPLE NOTICE LETTER TO GYM/APARTMENT

VEHICLE THEFT OR BREAK-IN INCIDENT

[Date]

To: Gym/Apartment Manager
Name of Gym/Apartment
Address (same location as parking lot)

Re: Notice of Parking Lot/Garage Criminal Act Upon My Vehicle

My name is () and I am a (member/tenant) of the (gym/apartment).

Please be advised that on () date) at approximately () time), I legally parked my vehicle, a () describe vehicle include VIN) in your parking lot/garage located at the same address for the purpose of (working out in the gym/returning to my leased apartment).

On () date) at approximately () time) I returned to my parked vehicle and then discovered that it had been (stolen/broken into).

I have/will report the incident to the () name of city) police (and was assigned incident number).

The stolen vehicle has yet to be recovered/the stolen vehicle was recovered and damaged/the break-in resulted in damage to my vehicle (choose appropriate remark).

I generally have suffered the following damages to my vehicle ()

(describe damages: loss of vehicle/broken window, lock, body damage, etc.)

I have consulted local published crime statistics report for the parking lot/garage area and that report indicates the parking lot/garage is an active criminal area for crimes to parked vehicles. I trust you are equally aware of such published publicly available information. I understand you have been given notice by others of similar criminal events in the parking lot/garage.

Trust you will co-operate with any law enforcement agency investigating the event.

Sincerely,

Name/phone/email

Attachments: Photos of vehicle damage/Google Map illustrating where parked (circled in red)



EXAMPLE DEMAND LETTERS TO GYM / APARTMENT; 1ST PAGES

EXAMPLE DEMAND LETTERS TO GYM/APARTMENT COMPLEX

REGARDING CLAIM FOR DAMAGES DUE TO VEHICLE THEFT/BREAK-IN OR PERSONAL INJURY

ON A PARKING LOT UNDER THE CONTROL OF THE GYM/APARTMENT:

IF TO A GYM...

Send to resident manager and gym address where parking lot is located (and ideally also to legal department of the corporate headquarters or other executive officer) and to shopping center manager, if applicable. Try and identify who has **control** of the parking lot as they are the responsible party. Send certified mail, return receipt requested.

DATE

Gym corporate legal department

Certified Mail

Via: **Fax Number:**

Via: **Email:**

Gym local manager

Certified Mail

Shopping Center (if applicable)

Local Leasing and Property Management Office

Certified Mail

PROPERTY MANAGER,

Email:

Shopping Center Corporate Landlord (if applicable)

Attn: Legal Department

Certified Mail

Re: Theft of Vehicle or Theft From Motor Vehicle – Forced Entry

Parking Lot Area Utilized by [name of gym]

I am a member of [name of gym].

Request is hereby made that you compensate me for (choose applicable claim)...

IF TO AN APARTMENT...

Send to resident manager and apartment address where parking lot is located (and ideally also to legal department of the corporate headquarters or other executive officer of the legal owner of the apartment). It is presumed the parking lot is under the control of the apartment complex, and unlike a gym that is typically located in a shopping center, not under the control of a shopping center landlord. Try and identify who has **control** of the parking lot as they are the responsible party. Send certified mail, return receipt requested.

DATE

Apartment legal owner corporate legal department

Certified Mail

Via: **Fax Number:**

Via: **Email:**

Apartment local manager

Certified Mail

Re: Theft of Vehicle or Theft From Motor Vehicle – Forced Entry

Parking Lot Area Utilized by [name of apartment]

I am a tenant of [name of apartment] and I am current on my rental payments.

This written notice is given to the apartment of its breach of its duty owed me as a tenant of the apartments implied warranty of habitability under the Texas Property code. That breach is as the result of the failure of the apartment to provide reasonable security and safety measures in the parking lot to prevent the risk of vehicle theft or break-ins and should a tenant stumble upon such event, suffering personal injury from a defensive reactionary criminal that materially affects the physical health and/or safety of me as tenant.

Request is hereby made that you compensate me for (choose applicable claim)...

- Value, in the amount of \$ _____ for my vehicle stolen from and legally parked in your parking lot/
- Damage in the amount of \$ _____ to my vehicle legally parked in your parking lot due to a criminal break-in event on your parking lot/
- Personal injury in the amount of \$ _____ I suffered due to an encounter with criminal break-in/theft act upon my vehicle legally parked in your parking lot

As previously reported to you, on or about (____ date), between the hours of approximately _____ and _____, my _____ (description of car) was broken into/stolen while parked in _____ (name of apartment) parking lot located at

EXAMPLE UNSAFE/UNHEALTHY CONDITION NOTICE LETTER TO APARTMENT; 1ST PAGE

TENANT NOTICE LETTER TO APARTMENT
TO REPAIR/REMEDY UNSAFE/UNHEALTHY CONDITION

TO APARTMENT...

Send to resident apartment manager and obtain a receipt of delivery or send certified mail return receipt.

DATE

Apartment Manager

Certified Mail

Via: **Fax Number:**

Via: **Email:**

Re: Notice To Repair/Remedy A Condition That Affects My Safety/Health

I am a tenant of [name of apartment] and I am current on my rental payments.

This written notice is submitted pursuant to **Texas Property Code, Title 8, Landlord and Tenant Chapter 92, Residential Tenancies (Implied Warranty of Habitability)** and you are requested to timely remedy or repair a condition at the Apartment as provided by the Code, because such condition materially affects my physical health or safety.

The condition of concern is the Apartment's lack of sufficient parking garage installed security systems, otherwise designed to prevent or substantially reduce the risk of my vehicle parked in the Apartment parking garage, which is under your control, being subject to theft or break-in, and my risk associated with my unintentionally stumbling upon such event and a discovered criminal acting defensively potentially causing me personal injury as a result of a criminal assault. Such potential bodily harm risk is an unsafe and unhealthy condition.

You invite me as a tenant (an invitee) to use the apartment parking lot. You know or have reason to know of a history of security risks associated with criminal activity in the parking lot associated with vehicle theft or break-ins and knowledge of a natural consequence, if encountered by a tenant, putting such tenants safety and health at risk due to personal injury caused by a defensive discovered criminal. You have a duty to me as a tenant and as an invitee, to take reasonable actions to prevent such criminal acts to avoid my safety and health being put at risk of harm.

By way of example and not intended to be an all inclusive or the necessary remedy and repair response, some possible remedies/repairs might include:

- Provide parking lot security attendants or guards.
- Install (better) security fencing and/or gates.
- Install more effective security cameras.



EXAMPLE JP COURT PETITION; JUDGMENTS BENCH/JURY TRIAL; 1ST PAGE

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs. §

_____ §

_____ §

Defendant(s) §

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW _____ ("Plaintiff(s)) filing this Plaintiff's Original Petition, **discovery (if any) will be conducted under Level 1**, pursuant to Rule 190.2 of the Texas Rules of Civil Procedure, and for cause of action, would respectfully show:

PARTIES

1. Plaintiff(s) is/are an [individual] residing in _____ County, Texas.

2. Defendant, _____ is a (corporation, limited liability company, limited liability partnership, sole proprietorship, general partnership, other _____; ~~'strike-through which does not apply'~~), whose usual place of business/parking lot address is: _____

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs. §

_____ §

_____ §

Defendant(s) §

FINAL JUDGMENT FOR PLAINTIFF (BENCH TRIAL)

On _____, 20____, this case was tried.

Plaintiff appeared in person by attorney: _____

Defendant appeared in person by attorney: _____

No jury was demanded, and a bench trial was conducted. The judge, having heard the evidence and testimony of the parties, **FINDS** that Plaintiff proved the allegations of the petition, and it is therefore **ORDERED** that Plaintiff recover of Defendant:

- the sum of \$ _____.
- plus attorney's fees of \$ _____.
- with interest at the rate of _____% compounded annually, and
- court costs of \$ _____.

the Court Orders Defendant to timely take steps to remedy the unsafe condition, that includes obtaining no later than three months from the date of this Judgment, a third party expert parking lot theft security assessment report assessing the risk of vehicle theft and vehicle break-in in the parking lot and implementing the recommendations of such report within three months of the report date, and to promptly notify Defendant's tenants in writing of the summary findings, conclusions and implementation plans of the security report in regard to improving parking lot safety.

the Court Orders that Plaintiff's rent reduced from \$ _____ per month to \$ _____ per month which reflects the decreased rental value resulting from the unsafe parking lot condition

grants a judgment to Plaintiff for one month's rent of \$ _____ plus \$500

NO. _____

_____ § In the Justice Court of _____ County, Texas

_____ § Precinct _____ Place _____

Plaintiff(s)

vs. §

_____ §

_____ §

Defendant(s) §

JUDGMENT FOR PLAINTIFF (JURY TRIAL)

On _____, 20____, this case was tried.

Plaintiff appeared in person by attorney: _____

Defendant appeared in person by attorney: _____

A jury of qualified citizens of the county was impaneled and sworn. The jury finds as a result of their verdict for Plaintiff and assesses damages in the sum of \$ _____.

It is therefore **ORDERED** that Plaintiff recover of Defendant:

- the sum of \$ _____.
- plus attorney's fees of \$ _____.
- with interest at the rate of _____% compounded annually, and
- court costs of \$ _____.

the Court Orders Defendant to timely take steps to remedy the unsafe condition, that includes obtaining no later than three months from the date of this Judgment, a third party expert parking lot theft security assessment report assessing the risk of vehicle theft and vehicle break-in in the parking lot and implementing the recommendations of such report within three months of the report date, and to promptly notify Defendant's tenants in writing of the summary findings, conclusions and implementation plans of the security report in regard to improving parking lot safety.

the Court Orders that Plaintiff's rent reduced from \$ _____ per month to \$ _____ per month which reflects the decreased rental value resulting from the unsafe parking lot condition

EXAMPLE JP COURT DISCOVERY DOCUMENTS; 1ST PAGE

EXAMPLE DISCOVERY FORMS – LEVEL 1 – TRCP RULE 190.2

- Discovery Period: Ends 180 days after first initial disclosures are due.
- Oral Deposition: Maximum of 20 hours
- Interrogatories: 15 max.
- Request for Admission: 15 max.
- Request for Production: 15 max.



EXAMPLE JP COURT DISCOVERY DOCUMENTS; 1ST PAGE, CONT'D

NO. _____

§ In the Justice Court of _____ County, Texas

§ Precinct _____ Place _____
Plaintiff(s)
vs. §

§

§
Defendant(s)

PLAINTIFF'S FIRST INTERROGATORIES

REQUEST FOR SUPPLEMENTATION APPLICABLE TO DEFENDANTS

These discovery Requests are continuing. In the event that any information or material comes to your attention, possession, custody or control or the attention, possession, custody or control of your associates or your attorneys subsequent to the filing of your response, which material or information is responsive to any First Interrogatory, you are required to furnish said additional information or material to Plaintiff immediately and in accordance with the Rules and in a time frame that will not adversely and unreasonably impact Plaintiff's cause of action and trial of this matter.

GENERAL REQUESTS INSTRUCTIONS APPLICABLE TO DEFENDANTS

1. If any or all documents identified or requested herein are no longer in existence or no longer in your possession, custody, or control because of destruction, loss, or any other reason, identify each and every such document and advise the reason why the document is no longer in existence or no longer in your possession, custody or control.

NO. _____

§ In the Justice Court of _____ County, Texas

§ Precinct _____ Place _____
Plaintiff(s)
vs. §

§

§
Defendant(s)

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

REQUEST FOR SUPPLEMENTATION APPLICABLE TO DEFENDANTS

These discovery Requests are continuing. In the event that any information or material comes to your attention, possession, custody or control or the attention, possession, custody or control of your associates or your attorneys subsequent to the filing of your response, which material or information is responsive to any First Interrogatory, you are required to furnish said additional information or material to Plaintiff immediately and in accordance with the Rules and in a time frame that will not adversely and unreasonably impact Plaintiff's cause of action and trial of this matter.

GENERAL REQUESTS INSTRUCTIONS APPLICABLE TO DEFENDANTS

1. If any or all documents identified or requested herein are no longer in existence or no longer in your possession, custody, or control because of destruction, loss, or any other reason, identify each and

NO. _____

§ In the Justice Court of _____ County, Texas

§ Precinct _____ Place _____
Plaintiff(s)
vs. §

§

§
Defendant(s)

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION

REQUEST FOR SUPPLEMENTATION APPLICABLE TO DEFENDANTS

These discovery Requests are continuing. In the event that any information or material comes to your attention, possession, custody or control or the attention, possession, custody or control of your associates or your attorneys subsequent to the filing of your response, which material or information is responsive to any First Request for Production, you are required to furnish said additional information or material to Plaintiff immediately and in accordance with the Rules and in a time frame that will not adversely and unreasonably impact Plaintiff's cause of action and trial of this matter.

GENERAL REQUESTS INSTRUCTIONS APPLICABLE TO DEFENDANTS

1. If any or all documents identified or requested herein are no longer in existence or no longer in your possession, custody, or control because of destruction, loss, or any other reason, identify each and every such document and advise the reason why the document is no longer in existence or no longer in your possession, custody or control.

JURY CHARGES...some examples

- ❑ If a jury is requested
- ❑ Will need to prepare JURY CHARGES (questions) to the jury for them to answer (including definitions and jury instructions)
- ❑ Forms not provided since there are too many factors affecting what to submit
- ❑ The Court's clerk can assist with preparing jury charges
- ❑ Texas Bar publishes Pattern Jury Charges as a guide.
- ❑ Examples below of definition, instruction, question

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause, unbroken by any new and independent cause, that was a substantial factor in bringing about an [injury] [occurrence], and without which cause such [injury] [occurrence] would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a

JURY INSTRUCTIONS

I. General Instructions

MEMBERS OF THE JURY:

A. Introduction

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing

Proximate Cause

QUESTION

Did the negligence, if any, of those named below proximately cause the [injury] [occurrence] in question?

Answer "Yes" or "No" for each of the following:

1. Don Davis
2. Paul Payne
3. Sam Settlor
4. Responsible Ray
5. Connie Contributor