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# The Law of Premises Liability As Applied to North Carolina Libraries<sup>1</sup>

by Thomas Steele

**T**he literature of librarianship and the law, while not extensive, is dominated by articles on malpractice, unauthorized practice, censorship, and copyright.<sup>2</sup> Yet, there are more complaints filed against libraries for personal injuries than for any of the above actions except for employment relations lawsuits. This article will focus upon actions against libraries and librarians for injuries sustained on premises of North Carolina libraries. While more common than malpractice and copyright actions, personal injury cases against libraries in North Carolina are rare for reasons other than relative safety of library premises.

The liability of librarians and libraries for injuries sustained in the library is not as clear-cut as might appear at first glance. The normal rules of negligence law do not necessarily apply because of the peculiar traditional general legal rules involving the liability of landowners and land possessors and because some libraries and librarians are shielded by the doctrine of sovereign immunity and by North Carolina statutory law. An interesting and probably fallacious hypothesis is that libraries are not sued because they are like "mom, flag, and apple pie" or because they are not "deep pockets" or are "judgment proof"—that is, libraries do not have adequate funds to pay a large money judgment.

The liability exposure of libraries and librarians to persons injured on the premises is determined by several factors: the type of library, the type of injured party, and the manner in which the injury was caused. In North Carolina, municipal and county libraries are shielded partially from liability by the doctrine of sovereign immunity.<sup>3</sup> State libraries, including those at state-supported academic institutions, may

be sued under the North Carolina Tort Claims Act.<sup>4</sup> Libraries which operate as parts of for-profit businesses, corporate libraries, and law firm libraries generally fall under the rules of premises liability that have been developed over the past two centuries in North Carolina or have been developed elsewhere and adopted in North Carolina. The liability of libraries of charitable and educational organizations—museums, charity hospitals, private academic libraries—was once deflected by the doctrine of charitable immunity, but that has been removed. They now face the same level of liability as corporate libraries.

Under the arcane rules of premises liability, the reason for the individual's presence on the library's premises may have more to do with the likelihood of his being able to recover damages for his injuries than anything else. Three classes or statuses of users are recognized: trespassers, licensees, and invitees. Recovery may also be denied or limited if the library and its staff exercised reasonable care in keeping the premises safe. Recovery may also depend upon whether the condition deemed to cause the injury is so obvious that any reasonable person would know to avoid the danger or upon whether the danger was hidden. Finally, the condition must have caused the injury.

All of the above assumes that the injury was caused by negligence. Users of libraries can also be injured intentionally

by library personnel. For example, a member of the library staff might assault a particularly troublesome patron. The author has found no such case, but can easily imagine its occurrence.

This article will explore the types of injuries that have occurred in libraries in North Carolina and nationally, as well as the most common kinds of injuries suffered by individuals on various premises. Then, the author will discuss the law of premises liability in North Carolina. Next, the article will explore immunities that shield certain types of libraries. Finally, it will conclude with some suggestions for minimizing the risk of injury to library staff and users.

*... the reason for the individual's presence on the library's premises may have more to do with the likelihood of his being able to recover damages for his injuries than anything else.*

## *Types and Causes of Injuries Sustained In Libraries*

Nationwide, the most frequent injuries sustained by library users are those involving a slip and fall. Generally, the most common causes of those injuries are improperly constructed or maintained stairs or steps,<sup>5</sup> foreign substances (usually liquid) on the floor,<sup>6</sup> and objects on floors and stairs.<sup>7</sup> Library users are also often injured by falling on sidewalks just outside

libraries<sup>8</sup> and in entryways.<sup>9</sup> These falls are usually caused by icy pavement,<sup>10</sup> the defective design or construction of the walkway, or improper maintenance of the surface. Children have become injured on fences.<sup>11</sup> Construction workers and policemen have fallen through roofs and skylights.<sup>12</sup> Users have also been injured by assailants who attacked them in the library.<sup>13</sup> Library users have also been injured by defective elevator doors.<sup>14</sup> Con-

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struction activities, including falling scaffolding, have caused other injuries.<sup>15</sup> In the only North Carolina case involving a library, *Siebold v. Kinston-Lenoir County Public Library*, the injury was caused by a slip and fall on "entrance stairs."

A look at injuries occurring on the premises of other public and business operations, however, is helpful to determine what can happen. Generally most injuries have been caused by slips and falls on slippery spots or foreign substances on floors,<sup>16</sup> and worn carpeting or metal strips<sup>17</sup> on stairs and steps.<sup>18</sup> In addition, injuries have included falls from defective chairs,<sup>19</sup> falling objects striking users,<sup>20</sup> or the collapse of tables.<sup>21</sup>

Finally, there are cases involving injuries caused by acts of third parties.<sup>22</sup> In fact, liability for the criminal acts of third parties is an area of increasing concern since libraries can be held to a standard of reasonable knowledge that such acts can occur.

### *Liability for Injuries Occurring on the Premises of North Carolina Libraries*

Injuries on library premises and, in fact, on most premises are only rarely claimed to be the result of an intentional act. Commonly, the injury is claimed to have occurred because of the negligence of those in charge of the premises. Negligence has become the predominant cause of action for accidental injuries in the country, but its elements are misunderstood by laypersons and many lawyers.<sup>23</sup> It consists of four elements: (1) a duty on someone's part to conform to a standard of conduct

in order to protect others from unreasonable risks; (2) a breach of that duty; (3) a causal connection between the breach and injury to another; and (4) actual loss caused by the injury.<sup>24</sup> In most American jurisdictions, the duty owed to someone who comes onto the premises depends upon his or her status as either a trespasser, licensee, or invitee.

The level of duty of care required is tied directly to the nature of the person's business while on the library's premises. For example, if an individual is on the premises without permission, he or she is categorized as a trespasser. The library owes no duty to trespassers other than to refrain from intentionally injuring them.<sup>25</sup> Intentional acts could include such acts as a third party physically attacking

users or setting traps for them.<sup>26</sup> There is one significant exception to this rule. The child trespasser rule states that a property owner may be held liable even though a child is a trespasser if (1) the owner knows that children likely will trespass on the property; (2) if there is a man-made creation on the property that poses serious risk to children that the children could not comprehend; and (3) if the owner failed to use reasonable care in the maintenance of the artificial condition.<sup>27</sup> Water hazards (such as goldfish ponds), construction sites, play equipment, and skylights<sup>28</sup> are the kinds of artificial construction conditions that might be found in or around libraries.

If an individual is on the premises solely for his own benefit and not for that of the landowner, he is called a licensee.<sup>29</sup> The library's duty is not to intentionally or recklessly injure him. Only rarely would library users be defined as being licensees. For example, if a library were located in a non-public area of a corporate headquarters or law firm, customers or clients who wander into the library might be termed licensees. Staff areas of public libraries might also be areas where a library user would be classified as a licensee.

While no case in North Carolina has stated it expressly, case law in other jurisdictions and analogous situations in North Carolina seem to indicate that most library users and employees fall into the class of invitees. Whether library users are

classified as invitees or licensees is very important. Recovery for injuries and thus liability is much more likely if the individual is an invitee. If the area clearly is identified for library employees only, and not an area that is a normal part of the public areas of the building, it is more likely that the individual will be termed a licensee.<sup>30</sup> For example, a patron who leaves a public area to go to a non-public rest room and is injured in the non-public area has been held to be a licensee and not an invitee.<sup>31</sup> However, repairmen,<sup>32</sup> construction workers,<sup>33</sup> and employees<sup>34</sup> have been identified as invitees. Any place that the public is expected to go is considered a public area.<sup>35</sup>

A library owes the highest duty to an invitee. Invitees are those individuals who come onto the property by invitation either express or implied and for the mutual benefit of the library and the individual. The duty is to exercise reasonable care to keep the library premises safe and to warn of non-obvious dangers.<sup>36</sup>

Generally, the library premises must be kept reasonably safe.<sup>37</sup> Keeping the premises reasonably safe includes making reasonable inspections.<sup>38</sup> Compliance with the Building Code in constructing a building is also considered reasonable.<sup>39</sup> Even conditions created by the injured

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party have been held to be actionable if there is a continuing series of acts that would give the landowner notice.<sup>40</sup>

The library has no duty to warn users about obvious dangers, but has a duty to warn about hidden dangers. Displaying merchandise<sup>41</sup> or information<sup>42</sup> in a place that is by an unguarded handrail can divert the attention and obscure an obvious condition. However, uneven pavement,<sup>43</sup> a step,<sup>44</sup> and adjacent areas of tile and linoleum<sup>45</sup> and even a chair in a darkened dance hall<sup>46</sup> have been held so obvious that there is no duty to warn.

The library owes a duty to invitees to reasonably care for the library premises and warn of non-obvious dangers. Even if that duty is not breached, the library may still not be held liable for an injury if the library's actions did not cause the injury.<sup>47</sup> The injured party must prove that the library's failure to fulfill its duty caused the injury.



## Public and Public School Libraries

Statutes and common law limit the liability that exists for personal injuries that are caused by the negligence of county and city public and school library personnel.<sup>48</sup> It has been held that municipalities may not be sued for personal injuries as long as the municipality engages in a proper governmental function<sup>49</sup> as opposed to a proprietary function.<sup>50</sup> The operation of a public library has been held to be a governmental function, and thus the municipality, the library, and the librarians may not be held liable in tort for negligence in maintaining the library.<sup>51</sup> However, this governmental immunity may be waived by the purchase of liability insurance under N.C.G.S. § 160A-485.<sup>52</sup> The city may not waive its immunity for any other reason than the purchase of liability insurance.<sup>53</sup> Although there is no case law, public libraries operated by regional library districts are apparently in the same situation as municipal libraries. Library systems are authorized by statute and are created as cooperative ventures of municipalities and/or counties.<sup>54</sup>

The effect of the statutes and the governmental immunity doctrine has been to limit litigation in this area. No other personal injury case, other than the *Siebold* case, involving a public library has come before either the North Carolina Court of Appeals or the Supreme Court of North Carolina.

Public librarians should not feel that they are immune from lawsuits arising from injuries to library users; however, while there has been no case involving libraries, it is clear that liability may exist for international torts.<sup>55</sup> The governmental immunity doctrine only applies if the employee is engaged in the governmental function. An international act of a library

was committing an infraction of library rules. In this situation, the library employee would have intentionally caused an injury.

## Academic and Other Private Non-Profit Libraries

Until the 1960s charitable institutions—private academic institutions, churches, and charity hospitals—were shielded substantially from liability by the charitable immunity doctrine.<sup>56</sup> However, this is no longer the case. The liability of academic libraries and other non-profit institutions is thus determined by the law of premises liability summarized earlier in the article.

## Libraries of For-Profit Organization

Libraries in corporations, law firms, for-profit medical hospitals, and other for-profit libraries are all subject to the general law governing premises liability in North Carolina. Many such libraries are not in public areas or are not open to the public. Thus, injured individuals other than employees, workmen, and others<sup>57</sup> might be considered to be licensees.

## Libraries Operated by State Agencies and Institutions

Libraries in state agencies and institutions including state college and university libraries are not shielded by the governmental immunity doctrine as are local government libraries. Instead, injuries occurring on these premises are governed by the North Carolina Tort Claims Act.<sup>58</sup> While the general rules governing liability for libraries of non-profit organizations apply, there are two very important conditions. First, the North Carolina Industrial Commission rather than the courts hears such claims.<sup>59</sup> Second, damages are limited to \$100,000. Claims under this act are strictly limited to negligence claims.<sup>60</sup> Claims for intentional torts caused by acts of officers while in the line of duty are not covered.<sup>61</sup>

## Conclusion

Quite apart from the liability of libraries and librarians, all librarians prefer that injuries on library premises be reduced. The best way to do this is to exercise sound

professional judgment when dealing with potentially dangerous conditions. Consultations with safety experts, engineers, and architects, as well as the use of published standard sources<sup>62</sup> should take place during the design phase. An inspection sheet produced after consultation with engineers, building inspectors, fire safety officers, and lawyers is probably the best way to avoid injuries and, coincidentally, to produce documentary evidence of diligence in maintaining library premises (see Appendix). Weekly inspections of library premises with an inspection sheet are recommended. Library managers should follow up with maintenance personnel when problems are noted, to ensure that repairs are properly done; and they should keep a file of all inspection sheets, work orders, and memoranda regarding repairs. Such simple common sense steps do not require legal training, just sound judgment in professionally managing a library.

## References

1. Readers should also consult D. Logan: *N.C. Tort Practice Manual* (rev. ed. 1990) for broader, more in-depth coverage of premises liability law in North Carolina.
2. Lynch, "Let it be me: A Bibliography on Librarian Malpractice," 16 *Southeastern Law Librarian*, Fall 1990, at 5; see also Steele, "The Liability of Librarians for Negligence," 26 *Public Lib.* 127 (1987).
3. *Siebold v. Kinston-Lenoir County Public Library*, 264 N.C. 360, 141 S.E.2d 519 (1965).
4. *N.C.Gen.Stat.* §§ 143-291-143-300.1 1990.
5. *Siebold*, 264 N.C. 360, 141 S.E.2d 519 (1965).
6. *Lowe v. City of New York*, 110 A.D.2d 825, 488 N.Y.S.2d 621 (1985).
7. *LaMarcov. Brooklyn Public Library*, 256 A.D. 954, 10 N.Y.S.2d 129 (1939).
8. *Rawlings v. Angelo State University*, 648 S.W.2d 430 (Tex Civ. App. 1983).
9. *Siebold*, 264 N.C. 360, 141 S.E.2d 519 (1965).
10. *Plymale v. Sabina Public Library*, No. 870-02-005 (Ohio Ct. App. Dec. 21, 1987) (WESTLAW, States database, OH file).
11. *Roffenbender v. City of New York*, 17 N.Y.2d 754, 217 N.E.2d 38, 270 N.Y.S.2d 214 (1966).
12. *Paz v. City of New York*, 157 A.D.2d 562, 550 N.Y.S.2d 304 (1990).
13. *Oreon v. City of St. Louis Municipal Library District*, 780 S.W.2d 60 (Mo. App. 1989).
14. *Papadopoulou v. Indiana University Board of Trustees*, No. 1P-80-499-C (S.D. Ind. 1981).
15. *Robey v. Keller*, 114 F.2d 790 (4th Cir. 1940).
16. *Duggins v. Colonial Stores, Inc.*, 323 F.2d 117 (4th Cir. 1963); *Register v. Great Atlantic & Pacific Tea Co.*, 235 F.Supp. 847 (E.D.N.C. 1964); *Norris v. Belk's Dept. Store of Dunn, Inc.*, 259 N.C. 359, 130 S.E.2d 537 (1963).
17. *Hedgepeth v. Rose's Stores, Inc.*, 40 N.C.

*Weekly inspections of library premises with an inspection sheet are recommended.*

employee may be *ultra vires*, that is, outside the scope of employment; the library would probably not be held liable, but the employee might be. Examples of this type of conduct might include an assault upon a library user by a circulation clerk or the setting of a trap to catch a library user who

App. 11, 251 S.E.2d 894 (1979).

18. *Southerland v. Kapp*, 59 N.C. App. 94, 295 S.E.2d 602 (1982).

19. *Husketh v. Convenient Systems, Inc.*, 295 N.C. 459, 245 S.E.2d 507 (1978).

20. *Keith v. S.S. Kresge Co.*, 29 N.C.App. 579, 225 S.E.2d 135 (1976).

21. *Aarhus v. Wake Forest Univ.*, 57 N.C. App. 405, 291 S.E.2d 837 (1982).

22. *Munrow v. Daniels*, 321 N.C. 494, 364 S.E.2d 392 (1988).

23. W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser & Keeton on The Law of Torts* at § 28, at 161 (W. Keeton, 5th ed. 1984).

24. *Id.* at § 30, at 164-65.

25. *Dean v. Wilson Construction Co.*, 251 N.C. 581, 111 S.E.2d 827 (1960).

26. See *Katkov. Briney*, 183 N.W.2d 657 (Iowa 1971) where the defendant landowner set a spring-gun trap.

27. *Broadway v. Blythe Industries, Inc.*, 313 N.C. 150, 326 S.E.2d 266 (1985).

28. *Forte v. Dillard Paper Co.*, 35 N.C. App. 340, 241 S.E.2d 394 (1978).

29. *Logan, Id.*

30. *Samuel v. Simmons*, 50 N.C. App. 406, 273 S.E.2d 761 (1981).

31. *B. Cupita v. Carmel Country Club*, 252 N.C. 346, 113 S.E.2d 712 (1960).

32. *Pafford v. J. A. Jones Construction Co.*, 217 N.C. 730, 9 S.E.2d 408 (1940).

33. *Spivey v. Babcock & Wilcox Co.*, 264 N.C. 387, 141 S.E.2d 808 (1965).

34. *Bemont v. Isenhour*, 249 N.C. 106, 105 S.E.2d 431 (1958).

35. *Hicks v. Food Lion*, 94 N.C. App. 85, 379 S.E.2d 677 (1989). Parking lots, entrances and adjacent sidewalks have been held to be included.

36. *Bolkhir v. North Carolina State Univ.*, 321 N.C. 706, 365 S.E.2d 898 (1988); *Lyvere v. Ingles Markets*, 36 N.C. App. 560, 244 S.E.2d 437 (1978).

37. *Bolkhir v. North Carolina State Univ.*, 321 N.C. 706, 365 S.E.2d 898, 45 Educ. L. Repr. 393 (1988).

38. *Grady v. J.C. Penney*, 260 N.C. 745, 133 S.E.2d 678 (1963).

39. *Moon v. Bostian Heights Volunteer Fire Department*, 97 N.C. App. 110, 387 S.E.2d 225 (1990).

40. *Bolkhir*, 321 N.C. 706, 356 S.E.2d 898 (1988).

41. *Thomas v. Dixon*, 88 N.C. App. 337, 363 S.E.2d 209 (1988).

42. *Walker v. County of Randolph County*, 251 N.C. 805, 112 S.E.2d 551 (1960).

43. *Little v. Wilson Oil Corp.*, 249 N.C. 773, 107 S.E.2d 729 (1959); *Evans v. Batten*, 262 N.C. 601, 138 S.E.2d 213 (1964).

44. *Benton v. United Bank Building Company*, 223 N.C. 809, 28 S.E.2d 491 (1944).

45. *Evans v. Batten*, 262 N.C. 601, 138 S.E.2d 213 (1989).

46. *Revis v. Orr*, 234 N.C. 158, 66 S.E.2d 652 (1951).

47. *McGaha v. Smoky Mountain Stages, Inc.*,

263 N.C. 769, 140 S.E.2d 355 (1968).

48. *N.C.Gen. Stat. § 160A-485* (1987) (municipalities); *N.C.Gen. Stat. § 153A-435* (1987) (counties), The first expression of this doctrine is found in *Russell v. Men of Devon*, 100 Eng. Rep. 359 (K.B. 1788).

49. *Siebold v. Kinston-Lenoir County Public Library*, 264 N.C. 360, 141 S.E.2d 519 (1965).

50. *Rich v. City of Goldsboro*, 282 N.C. 383, 192 S.E.2d 824 (1972).

51. *Siebold*, 264 N.C. 360, 141 S.E.2d 519 (1965).

52. *Siebold v. City of Kinston*, 268 N.C. 615, 151 S.E.2d 654 (1966).

53. *N.C.Gen. Stat. § 160A-485* (1989).

54. *N.C.Gen. Stat. § 153A-270* (1987); *N.C.Gen. Stat., §§ 160A-460 - 160A-464* (1987).

55. *Dickerson v. Atlantic Refining Co.*, 201 N.C. 90, 159 S.E. 446 (1931).

56. *Rabon v. Rowan Memorial Hosp.*, 269 N.C. 1, 152 S.E.2d 485 (1967); *N.C.Gen. Stat. § 1-539.9* (1989).

57. *Logan, Id.*

58. *N.C.Gen. Stat. §§ 143-291 - 143-300.1* (1990).

59. *N.C.Gen. Stat. § 143-291* (1990).

60. *North Carolina Tort Practice Handbook* 316 (rev. ed. 1955).

61. *Jenkins v. North Carolina Dep't. of Motor Vehicles*, 244 N.C. 560, 94 S.E.2d 577 (1956).

62. *E. Mason., Mason on Library Buildings* (1980).

APPENDIX A

DATE \_\_\_\_\_

WAKE FOREST UNIVERSITY INSPECTION SHEET

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