

# Liability cover essential for shopkeepers, property owners

By [Simon Colman](#)

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Comprehensive public liability cover is essential for shopkeepers and property owners, given the rise in mall robberies in the Gauteng province. The Institute for Security Studies (ISS) has warned business owners that they should brace themselves for an increase in the number of robberies in future.



Property owners often underestimate the value of public liability cover, with many businesses buying less than R5,000,000 worth of cover. With crime becoming an increasing problem across the country, paired with an increasingly litigious population, it is imperative for shopkeepers and property owners to review and revise the limit of their liability cover to ensure it is as wide as possible.

Public liability policies cover the defence costs (legal fees) to defend the insured if it is alleged that it is liable for any injuries or damages sustained by customers during a robbery. If the defence is unsuccessful, the damages awarded by the court are covered, though some liability insurers will settle if the prospects of successful defence are poor.

In the case of robberies, South African law still requires there to be negligence on the part of the property owner or shopkeeper in order to hold them liable for any injury to consumers. A robbery does not automatically impute liability onto the property owner/shopkeeper. Some unknown party is actually responsible for perpetrating the crime itself and would of course be criminally and civilly liable for the injuries and damages.

Retailers need to ask themselves if they have done all that they could reasonably be expected to do, in order to keep their customers safe. If they have been negligent in carrying out their duty of care to customers, it is possible that liability could attach. For example, if a security system prevents the exit of customers when a robbery is in progress, one could argue that this puts customers in harm's way.

## Tenants could sue

From a shopping mall tenant perspective, one could argue that the attraction for a retailer to be in a shopping centre, as opposed to being out on the street, is because of the provision of security. This could justify action brought by the tenant retailer against the property owner for not providing adequate security. Similarly, a shopping centre that is repeatedly hit by robberies could see its foot traffic affected, this in turn could lead to a drop in revenue causing retailers to seek recovery from the landlord. If negligence on the part of the property owner can be established and liability is not limited in the lease agreement, property owners may be held liable.

Public liability policies must be written on a broad form basis to cover defence costs against any third party litigation. These broad liability policies can even extend to cover the security companies that are employed to guard the premises.

It is advisable for shopkeepers to have their own policies in place, rather than assuming that they are covered by the overall policy of the shopping mall, as third party attorneys may target the property owner, the shopkeeper and the security company respectively in a suit.

## ABOUT THE AUTHOR

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