



PREMISES LIABILITY



Basic Legal Principles Re Premises Liability (Slip And Fall, Trip And Fall, Construction Accident, Dog Bite, etc.)

The term "premises liability" refers to the liability of certain persons for injuries and damages to others arising from the ownership or possession of real property. In California, premises liability is based on general principles of negligence and is controlled both by statute and case law.

As in any other negligence action, the injured person must establish the following: (1) the existence of a duty on the part of the defendant to use due care; (2) a breach of this legal duty; and (3) the breach as the proximate or legal cause of the resulting injury.

Premises liability actions have traditionally involved "slip and fall" or "trip and fall" causes of action. Premises liability is not, however, limited to such causes of action and includes, among other things, construction accidents, dog bite cases, and injuries caused by the negligent or willful conduct of third persons on the premises involved.

In determining who is liable in a premises liability action, the crucial elements are ownership, possession, and control of the premises. The person who owns, possesses, or controls the premises is the one responsible for any injuries arising from a condition of the premises.

Without the crucial element of control over the subject premises, no duty to exercise reasonable care to prevent injury on the property can be found.

In determining whether the possessor of land owes a duty to the injured victim, a court must balance a number of considerations; the major ones are:

- the foreseeability of harm to the plaintiff;
- the degree of certainty that the plaintiff suffered injury;
- the closeness of the connection between the defendant's conduct and the injury suffered;
- the moral blame attached to the defendant's conduct;
- the policy of preventing future harm;
- the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach; and

- the availability, cost, and prevalence of insurance for the risk involved.

An owner or possessor of premises is under a duty to others by virtue of that possession or ownership to act reasonably to keep the premises safe and prevent persons from being injured. A greater degree of care is generally owed to children because of their lack of capacity to appreciate risks and to avoid danger.

If there are any latent or concealed perils on the land, the possessor is under a duty to exercise ordinary care either to make the condition reasonably safe for those coming onto the land or to give such persons a warning adequate to enable them to avoid the harm. Indeed, where the occupier of land is aware of a concealed condition involving, in the absence of precautions, an unreasonable risk of harm to those coming in contact with it, and is aware that a person on the premises is about to come in contact with it, the trier of fact can reasonably conclude that a failure to warn or to repair the condition constitutes negligence.

A store owner exercises ordinary care to prevent injury to patrons by making reasonable inspections of the portions of the premises open to patrons, and the care required is commensurate with the risks involved. If the owner operates a self-service grocery store, where customers are invited to inspect, remove, and replace goods on shelves, the exercise of ordinary care may require the owner to take greater precautions and make more frequent inspections than would otherwise be needed to safeguard against the possibility that a customer may create a dangerous condition by disarranging the merchandise and creating potentially hazardous conditions.

A possessor's duty is not limited to keeping the physical property in a safe condition. The premises alone may involve no dangers, but the condition may be unsafe because of the activity taking place on the premises. In such a case, the possessor must exercise due care to ensure that such activities do not harm persons coming onto the premises.

In addition to the duties relating to the condition of the premises and the conduct of activities on the premises, a possessor of land is, under certain circumstances, under a duty to control the conduct of third persons coming onto the premises. An owner of land has a duty to take affirmative action to control the wrongful acts of third persons that threaten invitees where the owner has reasonable cause to anticipate such acts and the probability of injury resulting from such acts. This duty is based on the special relationship between the landowner and the invitee and the general duty to exercise reasonable care in the management of one's property.

A duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated. Foreseeability is a crucial factor in determining the existence of such a duty. Moreover, foreseeability, when analyzed to determine the existence or scope of a duty, is a question of law to be decided by the court. With regard to the question of the scope of a landlord's duty to provide protection from foreseeable third party crime, the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed.

General Procedural Outline:

No two cases are alike and procedures vary with the nature and complexity of the legal and evidentiary issues involved. The following is a very general outline of the stages of a civil action.

Complaint Filing

Every case begins with the filing and service of a Summons and Complaint. The Complaint will contain one or more "causes of action" such as "Breach of Contract" or "Fraud".

Service Of Complaint

After the Summons and Complaint have been filed with the court, they must be properly served on the defendant(s). If the defendant(s) will accept service, he/she may sign an Acknowledgment of Service." Otherwise the documents will have to be formally served.

Response To Complaint

The Defendant(s) have 30 days from the date of service of the Summons and Complaint to serve on the Plaintiff(s) either an Answer to the Complaint or a pleading challenging the sufficiency of the the Complaint. Responses challenging the sufficiency of the Complaint include a motion called a "Demurrer" and a "Motion To Strike"

Hearing Of Challenges To Sufficiency Of Complaint (If Applicable)

If the defendant(s) decide to file a demurrer or motion to strike, these motions must be heard and ruled upon before the matter may proceed. This can take up to 2 months. If such motion is sustained and the court grants leave to amend the Complaint, a new complaint must be drafted and served and the process starts over. Sometimes a second demurrer or motion will be filed causing more delays.

Discovery

Once the Complaint and Answer have been filed both parties commence "discovery" procedures by which the evidence necessary to prosecute both sides of the case. Depending on the nature and complexity of the case, one or more of the following discovery devices may be used by the parties:

- Interrogatories: Written questions which must be answered under oath.
- Request For Production Of Documents: Demands for production of documents by the parties involved.
- Requests For Admission: Requiring the parties to say which allegations they affirm and which they deny.
- Deposition: The parties may be required to appear in the opposing attorney's office to answer questions under oath in front of a court reporter. Depositions can also be taken from 3rd parties.
- Subpoena Documents From Third Party: Documents may be subpoenaed from 3rd parties such as banks and employers.

Discovery Motions (If Applicable)

If a party fails or refuses to comply with discovery requests, it may be necessary for the party propounding the discovery to make a motion in court to compel responses. If the court grants the motion, further responses will be made. If those responses are still inadequate, another motion may be made and the court can sanction (fine) the resisting party. In extreme cases the court can even terminate the action in favor of the moving party.

Trial Setting:

Throughout the case the court will set a series of Case Management Conferences to be attended by attorneys for all parties. These hearings are designed to determine whether the case is ready for trial. When the court feels that a case is ready for trial, it will set the date for trial and make orders concerning completion of discovery and final preparation for trial.

Settlement Negotiations:

Settlement negotiations may proceed throughout the trial. Often the court will require the parties to try a mediation of the issues or will set a "Mandatory Settlement Conference" (MSC) before the trial date. Settlement negotiations general become more intense as the trial date approaches.

Trial:

The vast majority of cases settle before trial. However if the parties cannot settle the case, the only way to resolve the issues is by way of trial.

- Gene Kinsey

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