

Premises Liability: a Summary of Texas Law

AN OVERVIEW

Injuries in stores happen on a daily basis because stores can sometimes be dangerous places. Injuries also happen in parking garages, parking lots, restaurants, apartment buildings, elevators, escalators, grocery stores, and private residences. There are hundreds, if not thousands of ways people get injured in such places. The one constant, however, is that they all come under the umbrella of premises liability law.

Imagine that you are trying on a pair of pants in a department store dressing room, and the door falls off its hinges and crashes on top of you, causing you severe injury. Or, imagine that you are taking a shower in the handicap room of your hotel and the shower bench suddenly collapses, throwing you to the floor and breaking your wrist. Or, that you are in a home improvement store and an employee is cutting a piece of lumber for another customer. As you walk by, a piece of lumber flies off the saw and strikes you in the head. Or, that you step in a hole in a parking lot and break your leg.

Although every one of these cases is different, they all involve the duty owed to the public by a business operator or a property owner. Some other examples of **premises liability cases** include:

Injuries in retail stores - e.g., tripping over a pallet or slipping on water from a leaky display case; being hit by falling merchandise; injury through the negligent acts of a store employee

Injuries in apartment complexes - e.g., broken stairs; malfunctioning equipment; swimming pool accidents; falling gates; falling balconies; faulty railings

Injuries in office buildings - e.g., faulty flooring; holes in the parking lot

Injuries in hotels - e. g., unsafe shower stalls; faulty security measures leading to sexual assault or murder

Injuries in parking lots or public grounds - e. g., poorly designed car stops causing tripping incidents; uncovered drain holes; broken manhole covers; poorly designed walkways; unmarked drop-offs on a sidewalk

Injuries in a residence - e.g., falling through a rotten board on a porch; trampoline injuries; faulty steps or railings; swimming pool injuries.

In my 29 years as an **attorney**, I have handled variations of all of the above and more. My clients have suffered injuries including broken bones, torn tendons (shoulders, knees), closed head injuries (subdural hematomas, hemangiomas), ruptured spleens, Reflex Sympathetic Dystrophy (also known as RSD or complex regional pain syndrome), herniated discs, and muscle sprains. Usually, when my client walks through my door for the initial interview, there is no question there has been an injury. The only question is whether the store can be held responsible. To that end, I have written this summary of Texas premises liability law. I hope you find the information useful as it applies to you.

EXPLANATION OF YOUR RIGHTS AND THE DUTIES OWED TO YOU

You Must First Determine the Injured Person's Legal Status on the Property

In determining whether you have a valid case, you first need to determine your status on the property. Texas premises liability law recognizes three different classes of people who enter upon property:

1. **Trespasser** - enters property with no legal authority and without permission nor invitation. The property owner's duty of care with regard to a trespasser is only to avoid causing injury by intentional or willful conduct.
2. **Licensee** - enters property with the owner's permission (either express or implied) but not by invitation. An example would be a gas company employee who enters the premises to read the gas meter. The owner's duty of care with regard to a licensee is a duty not to cause injury by willful or wanton conduct or by gross negligence. He must warn the licensee of hidden dangers that are known to him but the owner must have actual knowledge of these dangers.
3. **Invitee** - This is the status of my typical client. An invitee is one who enters the property with the owner's knowledge or consent and does so for the purpose for which the premises are held open to the public or for a purpose connected with the business of the owner that results in or may result in their mutual benefit. In other words, an invitee is typically a customer, tenant, or user of the facility. The owner of the premises in such a case must use ordinary care to make the premises reasonably safe for the use of the invitee. He need not have actual knowledge that a dangerous condition exists on his premises. It is sufficient for the plaintiff to show that a reasonable owner would have had knowledge of such a condition. As you can see, an invitee is owed the highest legal standard of care.

**Please note that the term "owner" as used above can mean the owner, anyone in control of the property/business, or any employee.*

GETTING STARTED - PROTECTING YOUR RIGHTS

Unsafe premises can cause common injuries such as whiplash or back and neck strains, but they can also cause tragic injuries or death. Immediate medical attention is necessary not only for your safety, but also to document your complaints of pain. For example, if your knee hurts but you do not seek medical attention, you have no proof that your knee hurt as a result of stepping in the hole in the parking lot. If, after putting up with the pain for two months, you finally see a doctor and he determines you need surgery, the adjuster can question why you did not seek medical attention until sixty days after the incident. Could it be you injured yourself in some other accident that happened later? If, on the other hand, the injury is not obvious but you suspect you may be hurt, it is always a good idea to go to your physician for an examination. Internal injuries can be life-threatening, and in this case, it is better to be safe than sorry.

It is important to take pictures of the scene as soon as possible to document the condition which caused the injury. Quite often the dangerous condition is quickly repaired or eliminated, and there will be no way to preserve it without photos. It is also important to talk to an attorney early in the case, and certainly before giving a taped statement to an adjuster. If your injuries are serious, an attorney can preserve evidence, guide you through the medical treatment process, hire the appropriate experts, and document your damages for settlement purposes, or for a jury to consider.

Proving up Your Case

In order to prevail on the law, a plaintiff in a premises liability case has to prove (1) that the owner/operator of the premises had actual or constructive knowledge of a condition that posed an unreasonable risk of harm, (2) that the owner/operator did not exercise reasonable care to reduce or to eliminate the risk, (3) and that the owner/operator's failure to use such care caused the plaintiff's injuries. In our pleadings we describe the condition that posed an unreasonable risk of harm, allege that the person in control of the property knew of this dangerous condition or, in the exercise of reasonable care, should have known of the condition, and allege factors which will show that the owner/manager failed to warn of the condition, or failed to isolate the danger, such as by putting up rope, tape, or a barricade. Finally, we describe the plaintiff's injuries.

By far the toughest part of any case is proving that the owner/operator knew or should have known of the existence of the condition. This is especially true when the dangerous condition is a substance that has been spilled on the floor. It is almost impossible to prove that the manager of the store or his employees knew about this condition or that a reasonable person should have known about it. This is much easier to prove, on the other hand, when the dangerous condition involves a leaky refrigerated case that has spilled water on the floor for so long it has left permanent stains on the floor. Or, when the condition involves rusty, wobbly banisters, broken stairs, a broken cover on a floor drain, a broken gate or railing, or an unsafe design.

Unsafe design cases involve such things as car stops in parking lots that are not painted a contrasting color, a side walk that drops off but has no red or yellow line to indicate the drop-off, or a dressing room door where the hinges were placed in such a way they were destined to fail. Many times it is necessary to hire an expert in a negligent design case in order to educate the jury on what a safe design should be in the given application and why the defendant's design in this particular case was dangerous and unsafe. The expert can be a carpenter who will show the jury why, for example, screwing hinges of a door into the edge of a plywood wall instead of the face of the plywood, will eventually cause the screws to back out and the door to fall on a customer. Architects and engineers are also quite often used as experts to testify on what constitutes a safe design.

Parking lots, for example, should have car stops painted a contrasting color and the aisles between the parked cars should be free from obstruction. Sometimes, a parking lot owner tries to save money by designing the lot in such a manner that two cars can use just one stop. This results in every other aisle having an obstruction, just waiting to trip an unsuspecting customer. Quite often, the customer will trip on one car stop and land on another. This can cause injuries such as torn tendons, broken ribs, a ruptured spleen, punctured lung, or other internal injuries.

CONTRIBUTORY NEGLIGENCE - PUTTING IT BACK ON YOU

Texas is a comparative negligence state, which means that the jury will be asked to assess whether each of the parties (Plaintiff and Defendant) was negligent. If they find that both parties

were negligent, they then must **apportion** the negligence. In other words they must assign a percentage of negligence to each party and it must add up to 100%. The amount the jury awards is then reduced by the percentage of negligence the jury attributes to the Plaintiff. For example, if the jury finds the plaintiff was 10% at fault and it awards \$100,000.00, the Plaintiff collects \$90,000.00. If, however, the jury finds the Plaintiff more than 50% negligent, the Plaintiff gets nothing.

With so much at stake, it is easy to understand why the defense always argues that the Plaintiff was largely responsible for her own injury. They will argue that the hole was open and obvious, and if the Plaintiff would have been watching her step, she would have noticed the hole and would have stepped around it. To the defense it is always a case of not watching where you are going.

SUMMARY

Premises liability cases are some of the most difficult cases to make. Simply slipping on spilled water is usually not a sustainable case. Neither is tripping on an uneven sidewalk. (One does not expect outdoor walkways to be as smooth as indoor surfaces, and there is a bigger expectation on the Plaintiff to watch his step). A good rule of thumb as to what makes a good case for the Plaintiff: the more dangerous the condition and the more outrageous the conduct on the part of the Defendant, the better the case. Knowledge of the law, good facts, and hard work on the part of your attorney will usually result in a good outcome. I wish you the best of luck in your case and if you have any questions or wish to comment, please do not hesitate to contact me.

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