

## Chapter 5

# *Premises Liability*

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## ***§500 Elements of Plaintiff's Cause of Action***

Premises liability is liability that attaches for injuries caused by the dangerous condition of property owned or maintained by another. The basic concepts discussed in this chapter apply to all owners or occupiers of real property, including public entities. When specialized rules, such as governmental immunity, apply to public entity defendants, special sections are devoted to these issues. See § 564.

The liability that attaches in premises liability cases, and particularly slip and fall cases, is essentially negligence liability. This means that the plaintiff must establish that the defendant owed a duty of care, that the defendant's conduct fell below the standard required by law, and that this breach was the legal cause

of actual damage. In short, the plaintiff must prove each of the traditional elements of negligence in order to prevail.

The existence of legal duties in premises liability cases is greatly affected by the plaintiff's status upon the premises. Most states differentiate between trespassers, licensees, and invitees, with different legal duties flowing from the determination of plaintiff's status. The plaintiff must be prepared to plead and prove his status upon the premises, and many of the interrogatories set forth in this chapter are directed to the facts, witnesses, and documents bearing on the status issue.

Once it is shown that the defendant owed the plaintiff a legal duty of due care, the issue becomes whether the defendant's conduct fell below the standard required by law. The required standard of care is again dependent upon the plaintiff's status, with the minimal obligations owed to a trespasser giving way to heightened standards of care as the plaintiff's status improves from licensee to invitee. It is probably now the law that the defendant must warn any known plaintiff of obvious dangers and, at least in cases involving invitees, there is an affirmative duty of inspection. Several of the interrogatories in this chapter inquire as to the facts necessary for you to determine whether the defendant failed to comply with these different standards and thereby breached his or her duty of due care owed to the plaintiff.

Regardless of the plaintiff's status, the defendant will ordinarily not be liable for injuries caused by conditions about which he or she had no knowledge, since the defendant has simply not acted unreasonably with regard to the condition. In many slip and fall cases it is plain that a dangerous condition existed, but the defendant contends that the condition was of such recent origin that he or she had not yet discovered it or had time to rectify it. Several of the interrogatories set forth in this chapter seek to discover relevant facts regarding defendant's knowledge and the timing thereof. Since that knowledge may be acquired by actual observation, from the statements of third parties, and even from prior accidents, give careful consideration to interrogatory selection to insure that any source of knowledge is explored.

Bear in mind that a defendant with no knowledge of a defective condition may still be liable if a reasonable inspection would have disclosed the condition or if the nature of the premises themselves create a foreseeable risk of harm. This chapter contains additional interrogatories relating to the means by which the premises were inspected, any policies or protocols regarding inspection programs, and any other aspects of the premises or the business conducted thereon from which notice of dangerousness could be inferred. Further, the chapter contains interrogatories which inquire as to the nature, extent, and sufficiency of any warnings transmitted by a defendant to plaintiff.

If the defendant has breached a legally recognized duty the plaintiff is entitled to recovery if the breach is the legal cause of actual damages. Plaintiff must discover all the facts, witnesses, and documents pertaining to the cause of the injury, and this chapter contains interrogatories designed for that purpose. Finally, the damage interrogatories set forth in §§ 310 and 320 should be adapted to discover all pertinent contentions and data regarding recoverable damages.

Traditional negligence defenses apply to premises liability cases, and the following pages set forth interrogatories relating to comparative and contributory negligence as well as assumption of the risk. In addition, certain recurring defensive allegations are explored with specific interrogatories, such as plaintiff's consumption of alcohol or drugs, and claims that an admitted defect was "obvious."

## **§510 Definitions**

In preparing your responses to the interrogatories set forth herein, the following definitions should control unless indicated otherwise by the context:

The "**SUBJECT PREMISES**" means the premises identified in plaintiff's complaint as the geographic location of the subject **INCIDENT**.

For other definitions, see § 102.

## §520 Occurrence Interrogatories

### §521 Knowledge of Incident

These interrogatories are designed to elicit the basic facts about the occurrence. The answers should reveal the defendant's contentions about the events which caused the injury. They will also disclose the existence of any written incident reports. It is critical that you discover any such incident report, as these will usually reveal what is known to the defendant and identify additional witnesses to the event for subsequent deposition.

1. Please state whether **YOU** are aware of an **INCIDENT** which occurred on or about \_\_\_\_\_, 19\_\_\_\_, upon the **SUBJECT PREMISES**.
2. If your answer to interrogatory number 1 was yes, please set forth your understanding of the facts and circumstances which allegedly caused the incident.
3. If your answer to interrogatory number 1 was yes, please further set forth the time of day that the **INCIDENT** occurred.
4. If your answer to interrogatory number 1 was yes, please further set forth whether there existed, as of the date of the **INCIDENT**, a procedure under which such events were reported to **YOU**.
5. If your answer to interrogatory number 4 was yes, please further set forth whether a report relating to the **INCIDENT** was in fact prepared by any **PERSON**.
6. Please **IDENTIFY** the present **CUSTODIAN** of any report relating to the **INCIDENT**.

### §522 Details of Occurrence

The first purpose of these interrogatories is to reveal the defendant's contentions regarding how the injury occurred. If the fact of injury is undisputed, the answers will also reveal defendant's claims of contributory or third party negligence. They will also disclose any facts or writings supporting these contentions. It is especially important that you learn whether the defendant believes that a third party was concurrently negligent, so that you can ensure that all appropriate defendants are joined in the action. This may also control apportionment of liability where apportionment is required.

1. Please set forth your understanding as to how the plaintiff was injured while occupying the **SUBJECT PREMISES**.
2. Please state whether **YOU** contend that any contributory negligence on the part of the plaintiff contributed to the happening of the **INCIDENT**.\*
3. Please state whether **YOU** contend that contributory negligence on the part of any third party contributed to the happening of the **INCIDENT**.\*
4. Please state whether **YOU** contend that any defect in any product (whether or not the defect resulted from a cause for which this answering defendant would be legally responsible) contributed to the happening of the **INCIDENT**.\*

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\*For interrogatories directed to the facts, witnesses and writings upon which the responding party's contention, denial or refusal to admit is based, see §§ 256.1 and 256.2.