

THOMPSON  
COE

# Premises Liability



## A Closer Look

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# The Premises Liability Claim

## Who Is Owed A Duty?

1. Invitee
2. Licensee
3. Trespasser



# The Premises Liability Claim

1. An **invitee** is one who enters onto the premises of another with the possessor's express or implied knowledge and for the parties' mutual benefit.





# The Premises Liability Claim

## Elements of Invitee Claim:

- Condition posed an unreasonable risk of harm
- D had actual or constructive knowledge of the condition;
- D failed to adequately warn or make condition safe; and
- Failure proximately caused P's injuries

# The Premises Liability Claim

2. A **licensee** is someone who is privileged to enter or remain on land only by virtue of the possessor's consent



# The Premises Liability Claim

## Elements of Licensee Claim:

- Condition posed an unreasonable risk of harm
- D had actual knowledge of the condition
- P did not have actual knowledge of the condition
- D failed to adequately warn or make condition safe; and
- Failure proximately caused P's injuries

# The Premises Liability Claim

3. A **trespasser** is a person who enters upon another's property without any right, lawful authority, or invitation and not by permission, license, or in the performance of any duty to the owner.



# The Premises Liability Claim

## Elements of Trespasser Claim:

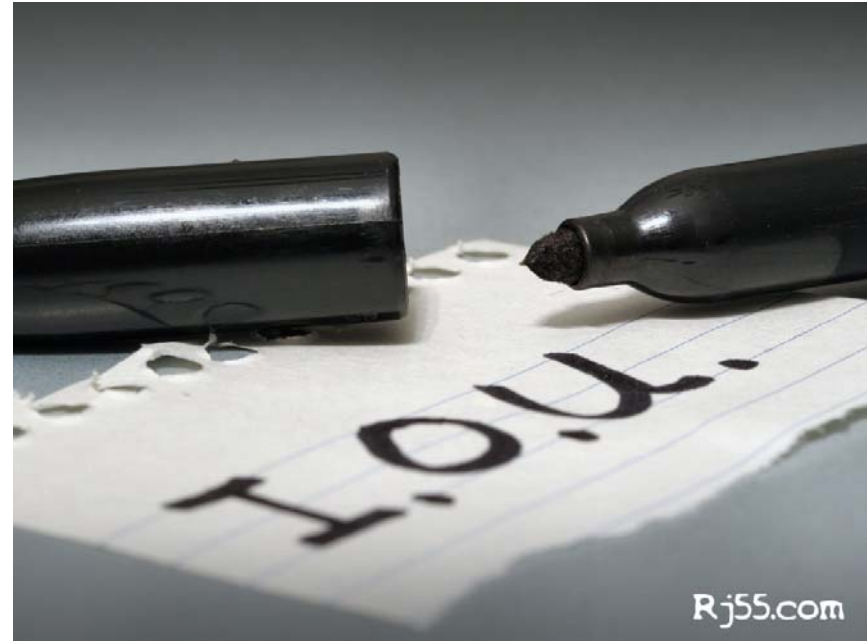
- Condition posed an unreasonable risk of harm
- D acted willfully, wantonly, or by gross negligence
- D's actions proximately caused P's injuries



# The Premises Liability Claim

## Who Owes A Duty?

1. Owners and Possessors
2. Lessors
3. Governmental Units



# The Premises Liability Claim

## 1. Owners and Possessors

Must own, possess or control property at the time of the injury.

*Lefmark Management Co. v. Old* (Tex. 1997).



# The Premises Liability Claim

## 2. Lessors

A contractual right of re-entry is not synonymous with reservation of control over a portion of the leased premises.

*Daitch v. Mid-America Apartment Communities* (Tex.App.—Dallas 2008).



# The Premises Liability Claim

## 3. Governmental Units

- Generally enjoy sovereign immunity
- When immunity is waived, the duty owed depends on whether condition is a premises defect or special defect





# The Premises Liability Claim

## Recreational Use Statute

The duty owed to a claimant injured on state-owned recreational land is the same as that owed to a trespasser.

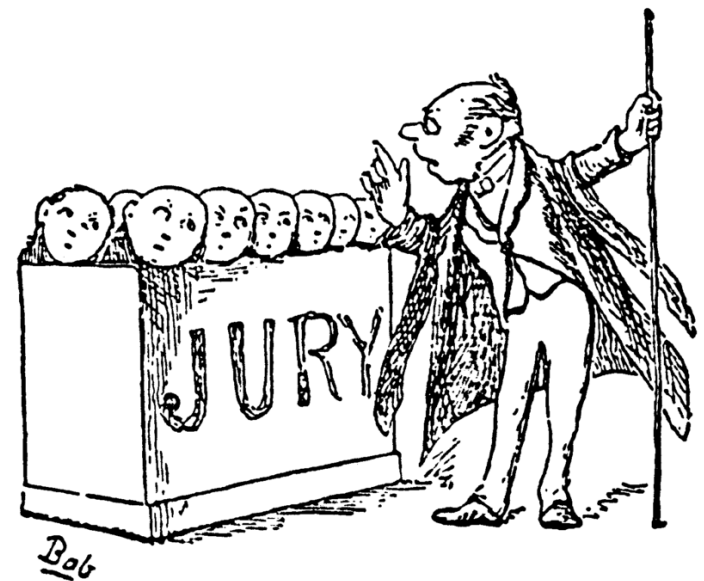
There is no duty owed to protect or warn against the dangers of natural conditions. *City of Waco v. Kirwan* (Tex. 2009).



# Proving a Premises Liability Claim

## General Elements

1. Actual or constructive knowledge of a condition
2. That posed an unreasonable risk of harm
3. D did not exercise reasonable care to reduce or eliminate risk of harm
4. D's failure proximately caused P's damages



# Proving a Premises Liability Claim

**Knowledge of an  
Unreasonable Risk of  
Harm**

*Brookshire Grocery Co.  
v. Taylor* (Tex. 2006)





# Proving a Premises Liability Claim



## Exercise of Reasonable Care

*TXI Operations, LP v. Perry* (Tex. 2009)



# Proving a Premises Liability Claim

**“The morning was clear and hot, the sun brightly shining as the 18-wheeler sand-and-gravel truck lumbered along the rough dirt road from the main highway over to the Dolen sand pit.”**

*TXI Operations, LP v. Perry* (Tex. 2009)

# Third Party Criminal Actors

- As a general rule, there is **no duty** to protect another from the criminal acts of third parties.
- *Exception:* if D knows or has reason to know of an unreasonable and foreseeable risk of harm.

## **Foreseeability Factors**

1. Proximity
2. Recency
3. Frequency
4. Similarity
5. Publicity

# Third Party Criminal Actors

## Duty

*Nixon v. Mr. Property Management Co., Inc.*  
(Tex. 1985)



# Third Party Criminal Actors

## Foreseeability

*Trammell Crow  
Central Texas, Ltd. v.  
Gutierrez* (Tex.  
2008).





# Premises Liability v. Other Theories

## Negligence

A negligence claim arises from activity contemporaneous with the alleged injury, whereas a premises defect claim is based on the property itself being unsafe.

*In re Texas Department of Transportation* (Tex. 2007).

## Res Ipsa Loquitor

Rule of evidence by which negligence may be inferred due to circumstances of case.



# Premises Liability v. Other Theories

## Medical Malpractice

*Marks v. St. Luke's Episcopal Hospital*  
(Tex. 2009).



## Texas Dram Shop

*Parker v. 20801, Inc.*  
(Tex. 2006).



# Practical Considerations: Investigation

1. Get to all evidence early
  - ◇ Security video tapes
  - ◇ Inspection/maintenance logs
  - ◇ Witness interviews
  - ◇ Photographs of evidence
2. Get detailed witness statements and incident reports
3. Instruct insured not to discuss incident or investigation





# Practical Considerations: Public Records

1. Make open Records Requests
  - ◇ 911 Tapes
  - ◇ Police Reports
  - ◇ Medical Examiner Reports
2. Attend criminal proceedings
3. "The internet is your friend"
  - ◇ Social networking sites
  - ◇ News blogs





# Premises Liability: A Closer Look

**Questions or Comments?**



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