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## Premises Liability: Against Landowner/Homeowner

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### A. [19.1] Cause of Action

Action for damages arising out of injuries caused by an unreasonably dangerous condition on the landowner's/homeowner's property.

### B. [19.2] What Law Controls

In a premises liability case, a key legal consideration is that of duty. The question of whether a duty is owed by a landowner can be addressed through both common-law and statutory analysis.

A common-law duty imposed on a landowner to act reasonably for the protection of the plaintiff will be determined through analysis of the following factors:

1. the foreseeability that the defendant's conduct will result in injury;
2. the likelihood of injury;
3. the magnitude of the burden of guarding against it; and
4. the consequences of placing that burden on the defendant.

*See Lance v. Senior*, 36 Ill.2d 516, 224 N.E.2d 231 (1967); *Zimmermann v. Netemeyer*, 122 Ill.App.3d 1042, 462 N.E.2d 502, 78 Ill.Dec. 383 (5th Dist. 1984).

A statutory duty is imposed pursuant to the Premises Liability Act, 740 ILCS 130/1, *et seq.*, which states that the duty owed by an owner or occupier of land to an entrant on the property "is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." 740 ILCS 130/2.

**C. [19.3] Elements**

For a claim based on the Premises Liability Act, the plaintiff must plead and prove the following propositions:

1. There was a condition of the defendant's property that presented an unreasonable risk of harm to persons on the premises.
2. The defendant knew or in the exercise of ordinary care should have known that the condition of his or her property involved an unreasonable risk of harm to persons on the premises.
3. The defendant should have anticipated that persons on the premises would not discover or realize the danger, or would otherwise fail to protect themselves against it.
4. The defendant acted or failed to act in one or more of the ways that, in so acting or failing to act, the defendant was negligent.
5. The plaintiff was injured.
6. The condition of the defendant's property was a proximate cause of the injury to the plaintiff.

See Illinois Pattern Jury Instructions — Civil No. 120.09 (I.P.I. — Civil).

For an action based on simple negligence, the plaintiff must plead and prove the following:

1. The defendant acted or failed to act in one of the ways claimed by the plaintiff and, in so acting or failing to act, the defendant was negligent.
2. The plaintiff was injured.
3. Negligence of the defendant was a proximate cause of the injury to the plaintiff.

See I.P.I. — Civil No. 21.02; *Reed v. Wal-Mart Stores, Inc.*, 298 Ill.App.3d 712, 700 N.E.2d 212, 233 Ill.Dec. 111 (4th Dist. 1998).

**D. [19.4] Relevant Standard Jury Instructions**

The Illinois Pattern Jury Instructions that deal specifically with landowner/homeowner actions are found at I.P.I. — Civil Nos. 120.01 through 120.11.

The burden of proof instruction for a premises liability case in which the issues involve the plaintiff's deliberate encounter with an open and obvious defect on the defendant's premises is found at I.P.I. — Civil No. 120.09.

The burden of proof instruction for a premises liability action based in simple negligence is found at I.P.I. — Civil No. 21.02. For cases involving comparative fault, use I.P.I. — Civil No. B21.02.

#### E. [19.5] Statute of Limitations

There is no specific statute of limitations that applies to a premises liability action against a landowner/homeowner. In an action against a private landowner, there is ordinarily a two-year statute of limitations that begins to run on the day the cause of action accrues. 735 ILCS 5/13-202. If the landowner is a local public entity, the action must be filed within one year of the date the action accrued. 745 ILCS 10/8-101. In the event that the wrongful conduct giving rise to the cause of action arose out of the construction of or an improvement to real property, the statute of limitations is four years from the date the plaintiff knew or should have known of the conduct. 735 ILCS 5/13-214. These statutes of limitation are tolled for minors or persons under legal disability. 735 ILCS 5/13-211.

#### F. [19.6] Parties

**Proper plaintiff.** One who was injured, or the legal representative of one who was injured, as a result of a condition on the property of the landowner (homeowner).

**Proper defendant.** The landowner or homeowner who is in possession or control of the premises in which the plaintiff was injured. In the case of a land trust, the proper party defendant is the beneficial owner of the land on which the plaintiff was injured. The trust company that serves as a naked legal titleholder will be dismissed upon identification of the beneficiaries of the trust. *Just Pants v. Bank of Ravenswood*, 136 Ill.App.3d 543, 483 N.E.2d 331, 91 Ill.Dec. 49 (1st Dist. 1985).

#### G. [19.7] Special Considerations

Formerly, entrants on land were divided into three categories:

1. invitees (persons invited onto the property by the owner for some reason designed for the pecuniary benefit of the owner);
2. licensees (persons who enter onto the property with permission of the owner, for a purpose other than financial benefit to the owner); and
3. trespassers (persons who go on the premises of another person without express or implied permission).

The Premises Liability Act eliminates the distinction between invitees and licensees:

**The duty owed to such entrants [on property] is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them.**  
740 ILCS 130/2.

In general, a landowner owes no duty to an adult trespasser other than to refrain from willful and wanton conduct. *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill.2d 213, 665 N.E.2d 1260, 216 Ill.Dec. 703 (1996). However, there are exceptions to the willful and wanton standard:

**The trespasser is a child.** See *Kahn v. James Burton Co.*, 5 Ill.2d 614, 126 N.E.2d 836 (1955). For situations in which the trespasser is a minor, a four-part test applies to determine foreseeability:

1. The defendant knew or should have known that children frequented the premises.
2. There was a structure or activity on the premises that was dangerous to children because it presented a risk of harm that children generally are incapable of appreciating.
3. The expense or inconvenience to the defendant in protecting children would be slight in comparison to the risk of harm.
4. The defendant acted or failed to act in one or more of the ways claimed by the plaintiff, and in so acting or failing to act, the defendant was negligent. See I.P.I. — Civil No. 120.10.

**Permissive use.** When there is a habitual acquiescence and tolerance of trespass by the landowner, the landowner will be held to a duty of reasonable care under the circumstances.

**Discovered trespasser.** The landowner will be held to a duty of reasonable care once the trespasser's presence is known.

**Artificial conditions highly dangerous to known trespassers.** See *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 605 N.E.2d 493, 178 Ill.Dec. 699 (1992).

A cause of action filed pursuant to the Premises Liability Act requires proof that the landowner knew or should have known of the condition creating an unreasonable risk of harm to the plaintiff. I.P.I. — Civil No. 120.09. A complaint filed based on simple negligence requires that the conduct of the landowner caused the unreasonably dangerous condition. I.P.I. — Civil No. B21.02. Safe pleading practice requires a two-count complaint — one based on the Premises Liability Act and the other sounding in simple negligence. See *Reed v. Wal-Mart Stores*, 298 Ill.App.3d 712, 700 N.E.2d 212, 233 Ill.Dec. 111 (4th Dist. 1998); Introduction, I.P.I. — Civil No. 120.00 Series.

In Illinois, caselaw relating to the admissibility of documents affecting an interest in property is sparse. Accordingly, Illinois adopted Illinois Rules of Evidence 803(14) and 803(15), which are identical hearsay exceptions to Federal Rules of Evidence 803(14) and 803(15). These rules provide that documents, or statements contained in a document, that establish or affect an interest in property are not excluded by the hearsay rule. Likewise, one notable difference between the Illinois Rules of Evidence and the Federal Rules of Evidence is the relaxation on the 30-year limitation to the admission of statements in an ancient document. Under the Illinois Rules of Evidence, statements made in documents in existence 20 years or more will not be excluded as hearsay. Ill.R.Evid. 803(16). The admissibility of these documents will establish the possession and control of property in determining who is liable for injuries sustained by third persons.

**H. [19.8] Remedies — Special Issues**

Successful plaintiffs in a claim against a homeowner/landowner are entitled to recover all common-law tort damages that are proved. These damages are set forth in I.P.I. — Civil Nos. 30.01 through 35.02.

**I. [19.9] Checklist for Complaint**

1. Jurisdictional facts.
2. Venue.
3. Date, time, and place. Improper identification of the location of the occurrence can be fatal to the cause of action. *Zeh v. Wheeler*, 111 Ill.2d 266, 489 N.E.2d 1342, 95 Ill.Dec. 478 (1986); *Cannon v. Bryant*, 196 Ill.App.3d 891, 143 Ill.Dec. 554, 554 N.E.2d 489 (1st Dist. 1990).
4. Facts indicating ownership, control, or maintenance of the premises by the defendant.
5. Identification of the duty owed.
6. Allegation of actual or constructive notice of the condition by the defendant (for claim based on Premises Liability Act).
7. Allegation of how negligent conduct of the defendant caused the dangerous condition (for common-law negligence claim).
8. Explanation of why the condition was unreasonably dangerous.
9. Allegation of violation of the Premises Liability Act.
10. Description of the manner in which the plaintiff was injured by the dangerous condition.
11. Damages sustained.
12. Request for relief.

**J. [19.10] Affirmative Defenses Specific to Cause of Action**

1. The plaintiff was a trespasser on the property.
2. Governmental tort immunity bars the cause of action.
3. The plaintiff was comparatively negligent.

**K. [19.11] Related Actions**

A complaint sounding in premises liability against a landowner or homeowner can be based on simple negligence, the Premises Liability Act, or both. Depending on the nature of the dangerous condition on the property, there might exist a separate tort action against a third party, unrelated to the landowner, for creating the dangerous condition. Investigation into the origin of the dangerous condition could lead to discovery of other claims, such as construction negligence or products liability.

**L. [19.12] Sample Form**

[Caption]

**COMPLAINT AT LAW**

**Plaintiff, \_\_\_\_\_, complaining of Defendant, \_\_\_\_\_, states as follows:**

**COUNT I**

**Personal Injury — Common Law Negligence — [Plaintiff Falls on Torn Carpeting]**

**1. On and prior to [date], Defendant owned, controlled, and maintained the premises located at \_\_\_\_\_, in the City of \_\_\_\_\_, \_\_\_\_\_ County, Illinois.**

**2. At the time and place aforesaid, Defendant had the duty to exercise ordinary care in the maintenance of [his] [her] premises so that the premises would be reasonably safe for persons lawfully on it.**

**3. At the time and place aforesaid, Plaintiff was an invited guest of Defendant.**

**4. At the time and place aforesaid, Plaintiff was [walking along a carpeted hallway leading to a kitchen].**

**5. At the time and place aforesaid, Plaintiff was [caused to fall to the ground].**

**6. At the time and place aforesaid, Defendant was negligent in one or more of the following ways:**

- a. [permitting the carpeting in the hallway to become torn and loose];**
- b. failing to [inspect the carpeting in the hallway when such an inspection would have revealed that the carpet was in an unsafe condition];**
- c. failing to [take any action to repair or replace the torn carpeting prior to guests walking on it];**

- d. **failing to** [warn Plaintiff of the unsafe condition created by the torn loose carpeting in the hallway];
- e. **failing to** [provide adequate lighting in the hallway that would illuminate the dangerous condition caused by the torn carpeting].

7. **As a proximate result of one or more of the foregoing negligent acts or omissions of Defendant, Plaintiff suffered injuries of a personal and pecuniary nature.**

**WHEREFORE, Plaintiff seeks judgment against Defendant in the amount of \$\_\_\_\_\_.**

## COUNT II

**Personal Injury — Premises Liability Act — [Plaintiff Falls on Torn Carpeting]**

1. **On and prior to [date], Defendant owned, controlled, and maintained the premises located at \_\_\_\_\_, in the City of \_\_\_\_\_, \_\_\_\_\_ County, Illinois.**

2. **At the time and place aforesaid, Defendant had the duty to exercise ordinary care in the maintenance of [his] [her] premises so that the premises would be reasonably safe for persons lawfully on it.**

3. **At the time and place aforesaid, Plaintiff was an invited guest of Defendant.**

4. **At the time and place aforesaid, Plaintiff was [walking along a carpeted hallway leading to a kitchen].**

5. **At the time and place aforesaid, Plaintiff was [caused to fall to the ground].**

6. **At the time and place aforesaid, Defendant was in violation of the Premises Liability Act, 740 ILCS 130/1, *et seq.*, in one or more of the following ways:**

- a. [permitting the carpeting in the hallway to be torn and loose such that it posed an unreasonable risk of harm to persons walking on it];
- b. **knowing, or in the exercise of ordinary care failing to know**, [of the unreasonable risk of harm that the torn carpeting posed to persons walking on it];
- c. **permitting** [inadequate lighting to exist in the hallway such that the torn carpeting was not visible to persons walking in the area];
- d. **knowing, or in the exercise of ordinary care failing to know**, [that the lighting in the hallway was inadequate to permit a person to see the dangerous condition in the carpeting]; **and**

- e. **failing to** [warn Plaintiff of the dangerous condition existing in the carpeting in the hallway].

**7. As a proximate result of one or more of the foregoing violations of the Premises Liability Act by Defendant, Plaintiff suffered injuries of a personal and pecuniary nature.**

**WHEREFORE, Plaintiff seeks judgment against Defendant in the amount of \$\_\_\_\_\_.**

\_\_\_\_\_  
**Attorney for Plaintiff**