

Premises Liability - California

Under general principles of premises liability in California, a proprietor, i.e. - commercial landlord, is not an insurer of the safety of its patrons, business invitees, but rather owes patrons a duty to exercise **reasonable care** in keeping the premises **reasonably safe**. Moore v. Wal-Mart Stores, Inc., 111 Cal. App. 4th 472, 476, 3 Cal. Rptr. 3d 813 (2003) quoting Ortega v. K-Mart Corp., 26 Cal. 4th 1200, 1205, 114 Cal. Rptr. 2d 470 (2001). The care required is commensurate with the risk involved and ordinary care is exercised when the proprietor makes reasonable inspections of the premises open to customers. Id. Thus, at a store in which customers are invited to “inspect, remove and replace goods on shelves,” the exercise of ordinary care may require greater precautions, including more frequent inspections. Id. Ultimately, the proprietor must act with the same care as a **reasonably prudent person** under the same circumstances. Id.

In order to establish liability on the proprietor, under California law, the key factor is the proprietor’s **actual or constructive knowledge** of the dangerous condition. Id. Without such knowledge, the proprietor is not liable. As noted, however, actual notice of the defective condition is not required. This is the case when the evidence presented suggests that the dangerous condition was “present for a sufficient period of time to charge the owner with constructive knowledge of its existence.” Id. at 477. In either respect, it is the plaintiff’s burden, and not the proprietor’s, to show that the owner had notice of the defect “in sufficient time to correct it.” Id. at 476. This can be demonstrated by a showing that the site of the defect/accident had not been inspected within a **reasonable period of time**. Id. at 477.

Of note is the fact that California is not a “mode-of-operation” state. Id. at 478. That is, the plaintiff is not relieved of the duty to prove notice if the proprietor can reasonably anticipate that hazardous conditions regularly arise, i.e. - looking at the business’s choice of a particular mode of operation and not the events surrounding the plaintiff’s accident. Id. This has been soundly rejected by the California Supreme Court. Id. at 478-79.

It is important to keep in mind that, under California law, the business invitee can prove the premises liability case by presenting evidence that shows a proprietor knew or should have known of the defective condition within a reasonable amount of time prior to the accident. This is important as it tends to prove that the owner was aware of the defect, but failed to remedy the hazardous condition. Each case is determined by its own facts and one must look at the surrounding circumstances of the defect. This includes the nature of the condition and factors which can be used to argue the defect existed for a sufficient amount of time that a reasonable person would have warned of the condition and/or made the premises clear of the defect.