© 2014 Law Offices of Bill Ford All rights reserved.

Connecticut Insurance Department
Continuing Education Program

PREMISES LIABILITY

AN OVERVIEW OF THE COMMON LAW LEGAL ISSUES INVOLVED IN ON-SITE PREMISES LIABILITY CASES AGAINST AN OWNER/LANDLORD OF PROPERTY BROUGHT BY TENANTS/ GUESTS/INVITEES BASED ON ALLEGATIONS OF DANGEROUS CONDITIONS ON THE PROPERTY

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

I. ELEMENTS OF A COMMON LAW PREMISES LIABILITY CASE BASED ON ALLEGATIONS OF A DANGEROUS CONDITION ON THE PROPERTY BY A TENANT/GUEST/INVITEE AGAINST AN OWNER/LANDLORD OF PROPERTY

- **Premises liability stems from the law of negligence and constitutes the body of law that sets the guidelines involving duties owed by an owner or occupier of real estate to protect entrants from injury because of dangerous conditions and defects.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

A landlord owes a duty to its tenants to exercise reasonable care in light of all the circumstances.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

A landlord's common-law duty to provide reasonably safe premises cannot be delegated to an independent contractor.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

Must be a possessor of the property for liability to attach.

- **A "possessor" is defined in part as "a person who is in occupation of the land with intent to control it."**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

A landlord's duties and liabilities to persons on the leased premises by the consent of the tenant are the same as those owed to the tenant.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

With respect to the common areas of an apartment complex, a tenant has the same legal rights as an invitee.

- **A common area is an area used by more than one tenant.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Premises liability law imposes a duty on landlords to maintain the leased premises in a safe, and sanitary condition.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

A landlord is not its tenant's principal, and is not liable for its tenant's torts.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

The elements of a premises liability cause of action are:

(1) the owner/operator had actual or constructive knowledge of some condition on the premises,

(2) the condition posed an unreasonable risk of harm,

(3) the owner/operator did not exercise reasonable care to reduce or eliminate the risk of harm, and

(4) the owner/operator's failure to use such care proximately caused the plaintiff's injuries.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

A. ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF A DANGEROUS CONDITION ON THE PREMISES

- **The basis of a landowner's liability for an entrant's injury is its superior knowledge of an unreasonable risk of harm. Thus, in order to impose liability on the landowner for an entrant's injury from a dangerous condition, the landowner must have had actual or constructive notice of the condition.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Actual knowledge is actual awareness of the condition, and in the case of a corporate landowner it is the actual awareness of some corporate officer or agent.

Constructive notice is chargeable only where the hazard has existed for a sufficient length of time to allow the vigilant owner the opportunity to discover and remedy the situation.

- **To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit the landowner or its employees to discover and remedy it.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

B. THE CONDITION POSED AN UNREASONABLE RISK OF HARM

- **The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

C. THE LANDLORD/OWNER DID NOT EXERCISE REASONALBE CARE TO REDUCE OR ELIMINATE THE RISK OF HARM

- **A landlord's duty is not to insure the safety of tenants but only to exercise reasonable care.**

- **What is "reasonable care" for landlords: Generally, it is the use ordinary care or skill in the management of the property.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

D. THE OWNER'S FAILURE TO USE SUCH CARE CAUSED THE PLAINTIFF'S INJURIES

- **Causation Definition:**

  The cause and effect relationship between an act or omission and damages alleged in a tort or personal injury action.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Comparative fault

- **Plaintiff has done something that contributed to the cause of her injuries.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Preexisting Conditions

- **The Plaintiff has previously injured that part of his or her body she claims was injured in the accident.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Superseding Causation

- Here, a defendant may argue that an intervening cause broke the link between the defendant's behavior and the plaintiff's injury.
- The intervening cause must occur between the defendant's negligent act and the plaintiff's injury, and it must have caused injury to the plaintiff.
- To relieve the defendant of liability, the intervening or superseding cause must be unforeseeable in most cases.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

E. DAMAGES

General Damages

- Pain, suffering and emotional distress

Special Damages

- Medical expenses
- Wage loss
- Property damage
- Out of pocket expenses

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

II. INVESTIGATION OF AN ON-SITE PREMISES LIABILITY CASE BASED ON THE ELEMENTS THAT THE TENANT/GUEST/INVITEE MUST PROVE IN ORDER TO PREVAIL

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

A. WHO QUESTIONS

- **Who was injured? Were there any witnesses?**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Who is the Plaintiff and what is the Plaintiff's background:

- **Tenant – lease agreement, does the tenant live with anyone else**
- **Age of the plaintiff**
- **How long has the plaintiff lived at the property**
- **Where does the plaintiff work, how long**
- **Disabilities – eyes, movement, etc.**
- **Prior personal injury litigation**
- **Insurance claims**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Witnesses: Determine and interview all witnesses who saw the incident just prior to, or immediately after, the incident occurred.

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

B. WHAT, WHERE QUESTIONS

- **Exactly what happened and where did it happen on the premises?**
  - **Accident scene photographs**
  - **Incident Reports**
  - **Was lighting an issue**
  - **What were the weather conditions like**
  - **Description of the scene of the accident from witnesses and employees**
  - **Design plans – design defect immunity for governmental entities**
  - **Time and date of the accident**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

C. WHY, HOW QUESTION

- **Why did the accident occur and how did it occur?**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Issues to consider for why/how questions:

- **General description of the injury**
- **Where was the plaintiff just prior to the accident**
- **Who was she with**
- **Intoxicated**
- **On any type of medication**
- **Mechanics of the injury**
- **What was the plaintiff wearing at the time of the incident, carrying**
- **Where was she going at the time of the accident**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

D. NOTICE, KNOWLEDGE, HOW LONG QUESTIONS

- **Did or should the Landlord have had notice of the condition that caused the injury? Is there a way to determine how long the condition had been on the premises before the accident occurred?**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Issues to consider for notice questions:

- Were regular inspections performed at the property
- Was regular maintenance performed at the property
- Who was in charge of management of the property
- Was the condition created by an employee or contractor of the landlord
- Prior litigation concerning the condition
- Reports from tenants or third persons concerning the condition
- If reports, how long after the report did the accident occur
- Statements by anyone concerning the condition
- Construction at the property
- Cleaning schedule/logs
- Obviousness of the condition
- Would the condition be discovered by inspections

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

E. INJURY QUESTIONS

- **What type of injury did the plaintiff sustain – minor, major, debilitating**
- **Broken bones**
- **Brain trauma**
- **Fractures**
- **Spinal cord injuries**
- **Soft tissue**
- **Emotional distress- severe, preexisting**
- **Hospitalization**
- **Future medical treatment**
- **Emergency response records**
- **Medical records**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

F. PROTECTING THE WORK PRODUCT PRIVILEGE

- **What is “work product” - Work product refers to the writings, notes, memoranda, reports on conversations with the client or witness, research and confidential materials that reflect an attorney's impressions, conclusions, opinions, or legal research or theories.**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

III. MULTI-JURISDICTIONAL CASE EXAMPLES AND FINDINGS BASED ON THE COMMON LAW ELEMENTS OF AN ON-SITE PREMISES LIABILITY CASE

A. CASES INVOLVING THE ISSUE OF NOTICE OR KNOWLEDGE OF THE DANGEROUS CONDITION

B. CASES INVOLVING DUTY/CAUSATION/REASONABLE CARE/RISK OF HARM

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

A. CASES INVOLVING THE ISSUE OF NOTICE OR KNOWLEDGE OF THE DANGEROUS CONDITION

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Lulay v. South Side Trust & Savings Bank of Peoria, **4 Ill.App.3d 483, 280 N.E.2d 802 (3d Dist. 1972) [If a defect could be discovered by a reasonable inspection, the person who is in control can be held to have constructive knowledge.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

***Ford v. Southern Hills Medical Center, LLC*, 2011 WL 6171790 (Nev. 2011) [The plaintiff provided no evidence that a Nevada hospital had constructive notice of a clear liquid on the floor of its emergency department near the sliding exit doors, on which she slipped and fell. The applicable standard to prove constructive notice is a virtually continuous condition, such as had been demonstrated in a case where spills occurred 30 or 40 times a day and the floor had to be swept several times an hour.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

***Wynn v. Luck*, 106 So. 3d 111 (La. Ct. App. 2d Cir. 2012) [On a claim brought by a tenant's visitors against a landlord, for injuries sustained when sheetrock fell from a ceiling, the landlord had constructive knowledge of the defective ceiling, as required for it to be answerable for the injuries sustained.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Juliana UCCELLO v. Rex A. LAUDENSLAYER (1975) 44 Cal.App.3d 504 [Tenant's invitee brought action against tenant and landlord to recover for personal injuries sustained when tenant's dog attacked invitee. The Superior Court, Stanislaus County, Frank S. Pierson, J., rendered a judgment of nonsuit in favor of landlord, and invitee appealed. The Court of Appeal, Franson, J., held that a landlord who knows of vicious propensities of animal kept by tenants on leased property and who can abate harboring of animal on premises by terminating tenancy owes duty of care to tenant's invitee of tenant; and that complaint stated cause of action against landlord.]

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Barber v. Chang **(2007) 151 Cal.App.4th 1456 [California law requires landowners to maintain land in their possession and control in a reasonably safe condition and, in the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Vasquez v. Residential Investments, Inc. **(2004) 118 Cal.App.4th 269 [Facts supported imposition of duty on apartment owners to replace missing pane of glass in murder victim's apartment front door used by murderer to obtain entry; burden on owners of replacing glass was minimal, and degree of foreseeability of criminal intruder was sufficiently high, notwithstanding that owners had no knowledge of murderer's violent propensities, in light of complaints to manager of missing pane, incident involving aborted entry by intruder into this apartment, and reports of assaultive crimes in other apartments in building.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

B. CASES INVOLVING DUTY/CAUSATION/REASONABLE CARE/RISK OF HARM

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

Trivial Defect Cases

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

Kasparian v. AvalonBay Communities (2007) 156 C.A.4th 11, 26, 66 C.R.3d 885 [conflicting evidence whether drain was embedded in walkway of apartment complex in manner required by industry guidelines presented genuine issue of material fact whether drain was "trivial defect" and precluded summary judgment for landlord in premises liability action by tenant who tripped over drain; trivial defect doctrine is not affirmative defense but rather aspect of duty that plaintiff must plead and prove]

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Cadam v. Somerset Gardens Townhouse HOA (2011) 200 C.A.4th 383, 388, 132 C.R.3d 617 [defect in townhome walkway on which tenant fell was trivial; walkway separation was three-fourths to seven-eighths inch in depth and was not jagged, obscured, or slanted, there were no protrusions from separation, no other persons had fallen in that location, and walkway was newly constructed].– trivial defect

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Duty/Causation/Reasonable Care Cases

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

***Blackburn Ltd. Partnership v. Paul*, 438 Md. 100, 90 A.3d 464 (2014) [This case involves the intersection of two distinct principles in our tort jurisprudence. On one hand, Maryland law recognizes that property owners owe no affirmative duty of care to trespassers. On the other hand, settled Maryland precedent acknowledges that, in some instances, the duty of care in a negligence action may arise from statute or regulation. The court's task was to examine this intersection, and clarify the relationship between these two facially divergent principles.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

***Mann v. Northgate Investors, L.L.C.*, 138 Ohio St. 3d 175, 2014-Ohio-455, 5 N.E.3d 594 (2014) [The court found that an Ohio landlord owes to a tenant's guest, properly on the premises, a statutory duty to keep all common areas of the premises in a safe and sanitary condition. A breach of this duty constitutes negligence per se.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Srithong v. Total Investment Co. **[Under "nondelegable duty doctrine," landlord cannot escape liability for failure to maintain property in safe condition by delegating such duty to independent contractor. Statute which abrogated joint and several liability for noneconomic damages did not apply to building owner, whose liability to injured tenant for contractor's negligence was based on nondelegable duty; nondelegable duty doctrine was form of vicarious liability, and thus statute was inapplicable.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

PREMISES LIABILITY

Peterson v. Superior Court **(1995) 10 Cal.4th 1185 [Landlord may not be held strictly liable on basis of products liability for injuries to tenant caused by defect in leased dwelling]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford

Law Offices of Bill Ford

PREMISES LIABILITY

Dick v. Pacific Heights Townhouses (2002) **Not Reported in Cal.Rptr.2d2002 WL 31117253 [Trial court did not err by failing to adjust substantial factor test to accommodate difficulty of proving causation in negligence action brought by tenant against landlord based on tenant's alleged toxic exposure to mold.]**

Course Number: 110523
Course Name: Premises Liability
Provider Number: 104807
Provider Name: Law Offices of Bill Ford