

A critical examination of the legal consequences that may arise from damage, injury or accidents on someone's property, because of unsafe or hazardous circumstances.

Overview

Premises liability is the liability of a landowner for certain torts that occur on the said person's property. It also includes property or premises under care and custody. This can range from things like "injuries caused by a variety of hazardous conditions, including open excavations, uneven pavement, standing water, crumbling curbs, wet floors, uncleared snow, icy walks, falling objects, inadequate security, insufficient lighting, concealed holes, improperly secured mats, or defects in chairs or benches.

Other examples where such conditions may impose a responsibility on the part of the property owner or a custodian to even those trespassing on their property may include the following:

- Unprotected swimming pools
- Open and unprotected sites
- Fountains, waterfalls, or other artistic statues or monuments
- Construction sites such as excavations, including construction equipment and heavy equipment that can be started without a key
- Trenches and open pits that may be virtually invisible from a walking approach
- Farm equipment on the farm, on dealer lots, or other unsecured areas
- Abandoned refrigerators and freezers
- Abandoned, broken, and neglected vehicles
- Machinery or equipment, such as lawnmowers, gasoline pumps, etc.
- Wells and tunnels
- Natural bodies of water on the premises, such as retaining ponds or nearby creeks



Case Studies

Four year-old girl from Mumbai drowned in a swimming pool of a hotel at Matheran, Raigarh in January 2017.

- She fell into the pool of Spring Wood Heritage around 2pm while playing with two other children.
- Tragedy could have been easily avoided had a lifeguard been in place.

A 13-year-old boy died when he touched a live wire passing through a commercial building at Chennai in early 2017.

- He had stepped out at 9 pm to make photocopies for a school assignment. He approached the shop, but failed to notice live overhead cables close to the building.
- Proper lighting arrangements and safe distance from building to live wire could have helped to avoid the incident.

Engineer slips to death at Hotel, Kashmir in March 2017.

- An Assistant Executive Engineer of Rural Development Department Kishtwar, died after he accidentally slipped from a stairs around 10.30 pm.
- Lighting provision, uses of anti-skid flooring/taping could have helped in avoiding the incident

Safety Tips

Keep the following tips in mind when considering your vulnerability to trespasser risk and attractive nuisance liability.

- Follow central, state, and local laws. There may be local covenants or regulations that govern almost any potential attractive nuisance.
- Seek appropriate legal counsel to examine ways to be aware of and control trespasser and attractive nuisance risk.
- Regularly inspect the property to be aware of any dangerous artificial conditions that may exist.
- Eliminate unnecessary dangerous conditions, where possible.
- Use fencing, locked doors, and gates to restrict access.
- Place signs to warn of the exposure and help limit liability. However, the property owner should not rely on signs completely. Young children are oblivious to danger words such as TRESPASS, HAZARD, WARNING, and some will be unable to read. Consider the likely exposure to those who may be impaired or be unable to negotiate such risk and the extent you warn or protect them.
- Install rescue provisions for open bodies of water, such as flotation devices, rope and a long lightweight pole.
- For outside machinery and equipment, make sure all shields and protective devices are properly in place. Always remove start-up key when equipment is not in use.
- Educate parents of neighborhood children or those mentally disabled or impaired on the dangers of the existing condition and how to avoid them.
- Install alert devices, such as telephones, sirens, or emergency beacons near dangerous conditions.
- Secure dangerous machinery, equipment, or chemicals in locked buildings whenever possible.

Construction Site Exposures

Construction contractors may be hazardedly exposed at job sites where work is being performed. Some key areas to consider when addressing liability exposures at construction sites include the following:

- Document inspections prior to securing the site at the end of each workday:
 - Note changes that may have created new attractive nuisance risks
 - Note condition of site fencing and access points
- Secure tools and materials out of site, in locked boxes, sheds, or containments
- Park heavy equipment in a zero energy state” and lock with no suspended loads or elevated components
- Consider after-hours security when tile nature of the construction work prevents restricting access to the site.
- Consider special provisions for protecting unfenced premises against access.



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