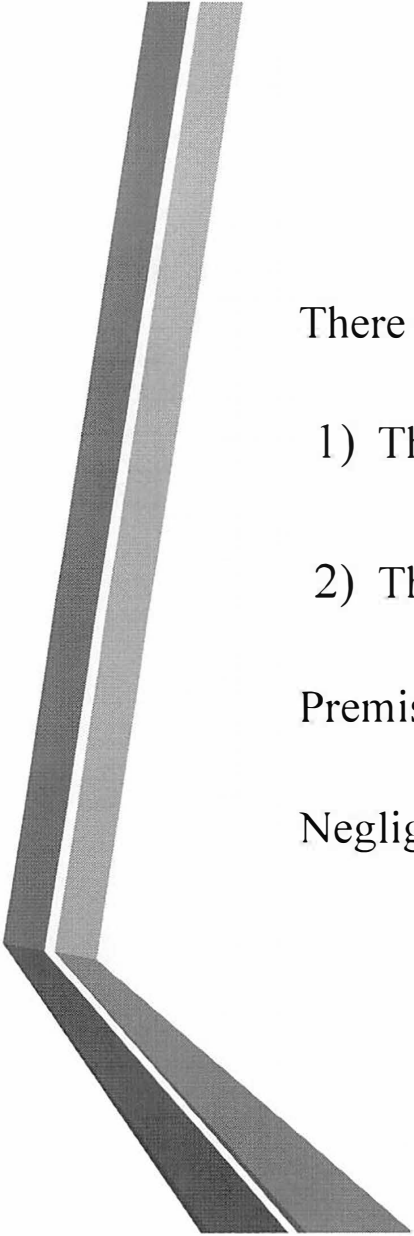




WHAT TO EXPECT TODAY

This class will cover The What, The Why and The When of the following;

- The two types of Premises Liability
- Help you learn who is an invitee, licensee and trespasser and distinguish the difference between these.
- Attractive Nuisance
- Negligence when used with respect to the conduct of a child



Premises Defect vs. Negligent Activity

There are two types of Premises Liability Cases:

- 1) Those arising from a **premises defect** (dangerous condition), and
- 2) Those arising from a **negligent activity** on the premises.

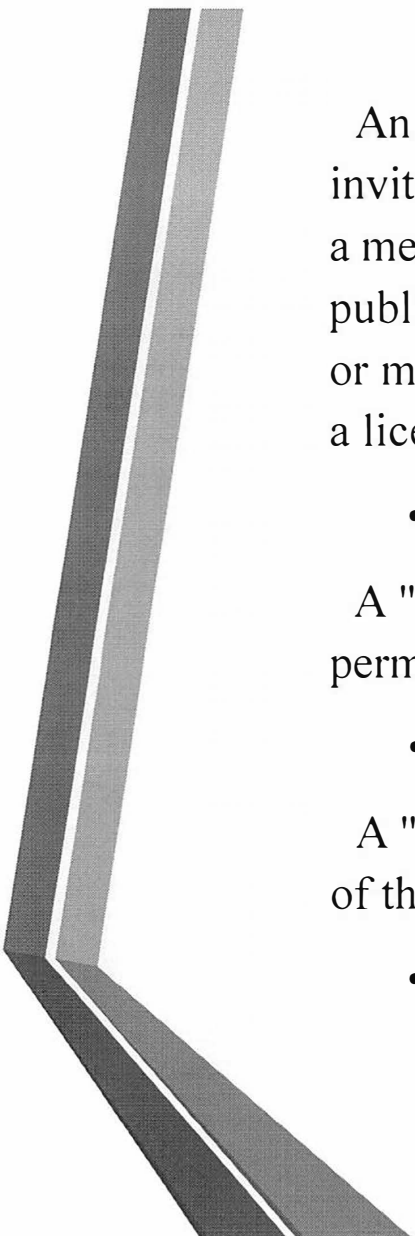
Premises defect (dangerous condition) unreasonable risk of harm.

Negligent activity = general negligence



Negligence activity - Legal definitions

1. **“NEGLIGENCE”** means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances. **Elements:** Duty; Breach of Duty; Proximate Cause; Damages
2. **“ORDINARY CARE”** means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.



An "**Invitee**" is a person who is on the premises at the express or implied invitation of the possessor of the premises and who has entered thereon either as a member of the public for a purpose for which the premises are held open to the public or for the purpose connected with the business of the possessor that does or may result in their mutual economic benefit. One who is an invitee cannot be a licensee at the same time.

- Example: Customer

A "**Licensee**" is a person on the premises of another with the express or implied permission of the possessor but without an express or implied invitation.

- Example: Salesman

A "**Trespasser**" is a person who enters on property of another without consent of the owner, express or implied.

- Example: Poacher



Del Lago Partners v. Smith

307 SW3rd 762 Tex Sup Ct. 2010 (Supreme Court affirmed a \$1.48 million award)

1) Duty of “Invitee”

2) No duty to protect Invitee from criminal acts except there is duty to protect if occupier knows or reason to anticipate criminal conduct is occurring or is about to occur!

3) Partial facts:

A) 40 Fraternity Reunion members joined at Bar by 15 members of a Wedding Party

B) 90 minutes of cursing, name calling, hand gestures, pushing & shoving, yelling.

Guess what happened next..?

4) Difference between negligent activity and dangerous condition

A) Negligent activity = General negligence

B) Dangerous condition + premises defect = premises liability

5) Parker vs. Highland Park 565 SW2d 512 Tex sup Ct 1978

Invitee's knowledge of dangerous condition does not relieve occupier of duty!

Pattern Jury Charge (PJC) 66.4 Premises Liability – Plaintiff is Invitee

Example: Customer

Question

Did the negligence, if any, of those named below proximately caused the [injury] [occurrence] in question?

With respect to the condition of the premises, Don Davis was negligent if –

1. The condition posed an unreasonable risk of harm, and
2. Don Davis knew or reasonably should have known of the danger, and
3. Don Davis failed to exercise ordinary care to protect Paul Payne from the danger, by both failing to adequately warn Paul Payne of the condition and failing to make that condition reasonably safe.

“Ordinary care,” when used with respect to the conduct of Don Davis as an owner or occupier of a premises, means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

Answer “Yes” or “No” for each of the following:

1. Don Davis
2. Paul Payne
3. Sam Settlor
4. Responsible Ray

PJC. 66.5 Premises Liability – Plaintiff is Licensee

Example: Salesman

Question

Did the negligence, if any, of those named below proximately caused the [injury] [occurrence] in question? With respect to the condition of the premises, Don Davis was negligent if –

1. The condition posed an unreasonable risk of harm, and
2. Don Davis had actual knowledge of the danger, and
3. Paul Payne did not have actual knowledge of the danger, and
4. Don Davis failed to exercise ordinary care to protect Paul Payne from the danger, by both failing to adequately warn Paul Payne of the condition and failing to make that condition reasonably safe.

“Ordinary care,” when used with respect to the conduct of Don Davis as an owner or occupier of a premises, means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

Answer “Yes” or “No” for each of the following:

1. Don Davis
2. Paul Payne
3. Sam Settlor
4. Responsible Ray
5. Connie Contributor



PJC. 66.9 Premises Liability – Plaintiff is Trespasser

Example: Poacher

Question

Did the negligence, if any, of those named below proximately caused the [injury] [occurrence] in question?

Was Don Davis's gross negligence with respect to the condition of the if –

1. The condition posed an unreasonable risk of harm, and
2. Don Davis both failed to adequately warn Paul Payne of the danger and failed to make that condition reasonably safe, and
3. Don Davis's conduct was an act or omission –
 - a. which, when viewed objectively from the standpoint of Don Davis at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
 - b. of which Don Davis had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

PJC. 66.10 Premises Liability – Attractive Nuisance

Example: Oil Derrick

Question 1

On the occasion in question, did Don Davis know or should have known that children were likely to be present on or about the oil derrick?

Answer “Yes” or “No”

Answer:

If you answered “Yes” to Question 1, then answer Question 2. Otherwise, do not answer Question 2.

Question 2

Did the negligence, if any, of those named below proximately caused the [injury] [occurrence] in question?

With respect to the condition of the premises, Don Davis was negligent if –

1. the condition posed an unreasonable risk of harm, and
2. Don Davis knew or reasonably should have known of the danger, and
3. Don Davis failed to exercise ordinary care to protect Paul Payne from the danger, by both failing to adequately warn Paul Payne of the condition and failing to make that condition reasonably safe.

“Ordinary care,” when used with respect to the conduct of Don Davis as an owner or occupier of a premises, means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

Answer “Yes” or “No” for each of the following:

1. Don Davis
2. Paul Payne
3. Sam Settlor
4. Responsible Ray
5. Connie Contributor



PJC 65.3 Child's Degree of Care – Standard Age 5 to 15

1. **“NEGLIGENCE”** when used with respect to the conduct of a child, means failing to do that which an ordinarily prudent child of the same age, experience, intelligence, and capacity would have done under the same or similar circumstances or doing that which such a child would not have done under the same or similar circumstances.
2. **“ORDINARY CARE”** when used with respect to the conduct of a child, means that degree of care that an ordinarily prudent child of the same age, experience, intelligence, and capacity would have used under the same or similar circumstance!