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Introductory Statement

The following is intended as a general overview of certain key principles involved in Maryland premises liability law. This manual is intended to provide the reader with a practical overview of the Maryland law concerning the legal issues that commonly arise in premises liability cases. This material is not intended to be an exhaustive study. Most cases are fact specific. I would encourage the reader to please call my office for a review of any specific factual scenario for which they have a question.

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PREMISES LIABILITY

I. LIABILITY OF STORE OWNER - OVERVIEW OF DUTY/BREACH

A. Negligence - Elements

To recover against a store, a plaintiff must prove:

1. Store owed a duty to plaintiff;
2. Store breached that duty;
3. Breached duty caused the accident;
4. Damages to plaintiff were a direct and proximate result of the accident.

Simply stated, the store had knowledge, or should have known, that a dangerous condition (e.g., one drop of water on the floor, one small box left unattended, an icy sidewalk) existed before the customer slipped/tripped and fell.

B. Law - Plaintiff Must Prove:

1. That the store owner knew or should have known of a dangerous condition in the store; **AND**
2. That plaintiff would not be expected to discover the condition; **AND**
3. If 1 and 2, then store owner has a duty to ***warn or correct***.

“Notice” falls under prong 1: Proving a store employee “knew or should have known” (Actual or Constructive Notice).

C. Actual Notice vs. Constructive Notice

1. **Actual Notice**
 - a. **Personal Knowledge** - employee of store sees condition or is informed of condition.
 - b. **Employee Creates the Condition** - employee of store creates condition; it does not matter whether employee of store personally realizes that he/she has created the condition (e.g., employee hoses down parcel pick-up area in winter, and, after going back into store, water freezes on the sidewalk).

Examples of Actual Notice:

- an employee mopping a floor and leaving it wet;
- an employee waxing a floor and leaving it too slippery;
- an employee hosing down the parcel pickup area;
- an employee dropping a breakable item while stocking a shelf;
- an employee dropping lettuce on the floor while restocking a salad bar;
- an employee observes water on the floor or is informed by a customer of a spill.

- c. **Once any employee of the store has notice, the store as a whole has been “put on notice.” The store then has a duty to either warn its customers or correct the condition.**

2. **Constructive Notice**

- a. Plaintiff has to prove that the condition remained on the floor for a **long enough period of time that the employee knew or should have known that the condition existed.**
- b. Reasonable amount of time depends on the condition (e.g., one grape versus one gallon of grape juice).
- c. Plaintiff has a duty to put on **affirmative evidence**, without the benefit of speculation or guesswork, as to the length of time the defective condition existed on the store premises (“time on the floor evidence”).

D. Duty to Warn or Correct

Once an employee of the store has either actual or constructive notice of the defective condition, then he/she must respond by either warning the customers (e.g., posting wet floor signs) or correcting the condition (e.g., mop the floor).

E. Cases that Fall Within the Exception

1. Highly waxed floors (actual notice)
2. Malfunctioning electronic doors (maintenance records)
3. Falling merchandise (*res ipsa loquitur*)
4. Ice and Snow
5. Employee statements
6. Wet floor signs posted before fall (jury issue)

II. LEGAL DEFENSES

Under Maryland law, if a defendant is able to prove that the plaintiff was either contributorily negligent or assumed the risk of his/her injuries, the plaintiff's claim is completely barred, regardless of the primary negligence of the landowner/storekeeper. There is no comparative negligence in Maryland.

A. Contributory Negligence

The failure to observe ordinary care for one's own safety. It is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances.

B. Assumption of the Risk

In order for the plaintiff to have assumed the risk of his injuries, the defendant must demonstrate that the plaintiff had full knowledge of the dangerous condition, that the plaintiff appreciated that risk, and then voluntarily exposed himself to the unreasonable risk.

C. Contributory Negligence vs. Assumption of the Risk

Under a theory of contributory negligence, plaintiff's own action is considered a proximate cause of the accident. Under the assumption of the risk theory, plaintiff abandons his/her right to recover because of a voluntary exposure to a known risk.

III. ADDITIONAL LEGAL ISSUES

A. Ice/Snow

Store is permitted to wait until a storm has ended, and a reasonable time thereafter, to remove ice and snow from its sidewalks or parking lots. However, store should take steps to make its sidewalks and parking lots safe prior to

opening for business after an overnight storm. Maryland does not have a “natural accumulation” law.

B. Children

A child is not to be held to the same standard or degree of care that an adult would have used. A child under the age of five cannot be contributorily negligent or assume the risk of his/her injuries. If a child is five or older, the jury is instructed to compare the child’s actions to that of ordinary and prudent children of the same or similar age, intelligence, and experience under the same circumstances.

C. Sealed Container

When a seller of a product is not the manufacturer of the product, and the seller receives the product in a closed or sealed container (e.g., can or box), the seller has no duty to discover the defect or danger of the product.

D. Falling Object

Same notice inquiry as Slip/Fall Cases. If object falls from a height above the reach of an average person, *res ipsa loquitur* would apply, and there would be a presumption of negligence.

E. Shopping Cart

There are three types of cases that generally fall under this category:

1. Personal injury of child;
2. Property damage to vehicle;
3. Cart pusher cases.

The first two generally fall under the simple notice provision. Under the third, the focus of the defense is on the contributory negligence or assumption of risk of the plaintiff.

F. Third Party Criminal Activity

Maryland law generally holds that a property owner does not have an affirmative duty to protect an invitee from torts or crimes committed by a third party (e.g., customer abducted, raped, robbed and/or killed on premises) unless the property owner has knowledge of the same or similar crimes being committed previously on the very same premises. If a property owner has knowledge of the same or

similar crime, it only has a duty to take reasonable steps to make the premises reasonably safe - not prevent the actual crime.

IV. LIABILITY FOR OTHER ACTS ON STORE PREMISES

A. False Arrest and False Imprisonment

1. That the defendant deprived the claimant/plaintiff of liberty without his consent; **AND**
2. That the defendant landowner/storekeeper had no legal justification for imprisoning the claimant/plaintiff; **AND**
3. Absent a privilege, the defendant intentionally confined the claimant/plaintiff without his consent.

B. Assault

1. That the defendant threatened the plaintiff with bodily harm;
2. That the defendant's intent was either of doing the harm or of putting the plaintiff in fear of such harm;
3. That the defendant had the apparent ability to do the harm; **AND**
4. That the plaintiff was in fear of imminent harm.

C. Battery

1. A battery is an intentional touching which is harmful or offensive;
2. A touching includes the intentional putting into motion of anything which touches another person, or the intentional putting into motion of anything which touches something that is connected with, or in contact with, another person;
3. A touching is harmful if it causes physical pain, injury or illness;
4. A touching is offensive if it offends a person's reasonable sense of personal dignity.

D. Malicious Prosecution

Law - A person is responsible for improperly starting or continuing a criminal proceeding who:

1. Directs or requests a prosecution based on information which the person knows is false, or
2. Withholds information which a reasonable person would realize might affect the decision to prosecute, or
3. Gives inaccurate or incomplete information to those who prosecute.

With malice:

A person acts with malice if the person's primary purpose in starting a prosecution is other than bringing an offender to justice. If a prosecution was started without probable cause, then malice may be inferred.

Without probable cause:

In the malicious prosecution context, probable cause is defined as the defendant acting without any reasonable grounds to believe in the plaintiff's guilt. There must be such grounds for belief founded upon the actual knowledge of acts as would influence the mind of a reasonable person.

E. Defamation

Law - Plaintiff Must Prove:

1. The defendant made a defamatory statement that exposes a person to public scorn, hatred, contempt or ridicule, thereby injuring that person's reputation or causing that person emotional distress, to a third person;
2. That the statement was false;
3. That the defendant was legally at fault in making the statement;
4. That the plaintiff thereby suffered harm.

Two Categories of Defamation:

1. Libel is when the defamatory information is disseminated by print, writing, pictures, or signs.
2. Slander is when the defamatory information is spoken.

Other Legal Issues:

1. Defamation can also be caused by acts and/or omissions of an employee (e.g., arresting a person on the sales floor for theft).
2. One who defames another is not liable if that person had a right to make the defamatory statement and/or act. A person has no such right if that person acted with malice (that is, with knowledge of its falsity or reckless disregard for the truth).

F. Intentional Infliction of Emotional Distress

A store employee may be liable to a customer for the tort of intentional infliction of emotional distress if:

1. The store employee's conduct was intentional or reckless;
2. The conduct was *extreme and outrageous*;
3. That the conduct caused emotional distress to the customer; and
4. That the emotional distress was *severe*.

The Maryland Courts have not looked favorably upon this tort. In fact, more often than not, this tort is dismissed as a matter of law.

G. Civil Rights Violations

Often, plaintiffs will include violations of 42 U.S.C. Sections 1981 and 1982, concerning equal rights under the law and property rights of citizens, respectively. In order to sustain a cause of action under Section 1981 and 1982, the plaintiff must establish that the defendant's actions or omissions were motivated by discrimination based on the plaintiff's race, religion, sex, or national origin. If the plaintiff does recover for civil rights violations, a plaintiff is entitled to attorney's fees for the entire cost of litigation, which could be substantial.

H. Negligence

The plaintiff will often file a count for negligence, the doing of something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do, as a catch-all or fall back position. Negligence counts can simply be for the negligent acts of the employees, the negligent hiring of an employee, the negligent supervision of an employee, or the negligent training of an employee.

I. Punitive Damages

Punitive damages are damages that are meant to punish the wrongdoer and to deter the wrongdoer and others from engaging in the same or similar conduct. In Maryland, in order to obtain punitive damages, the plaintiff must prove that the defendant's actions were committed with actual malice (not gross negligence) and must be proven by clear and convincing evidence. Punitive damages are recoverable for false arrest, assault, battery, malicious prosecution and intentional infliction of emotional distress, and civil rights violations.

J. Defenses - Maryland Shopkeeper's Privilege

An agent or employee of the store owner who detains or causes the arrest of any person shall not be held civilly liable for **detention, slander, malicious prosecution, false imprisonment, or false arrest** if, in detaining or in causing the arrest of the person, the agent or employee of the merchant had, at the time of the detention or arrest, **PROBABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTED THE CRIME OF "THEFT."**

Probable cause is defined as:

1. A reasonable ground of suspicion;
2. Based on the totality of the circumstance;
3. From the viewpoint of the store employee; and
4. That would allow a reasonably cautious person to believe that the accused is guilty of the offense.

K. Store Owner's Right to Bar and/or Exclude a Patron from the Store

A store owner has a right, as a matter of law, to exclude any customer from their store for any reason so long as the exclusion is not based on race, religion, age, sex, or national origin. Although a grocery store is open to the public, it is still privately owned and a private institution. If a patron who has been served with a bar notice returns to the premises, they are trespassing as a matter of law and can be arrested.

L. Special Police Officers

A person who is commissioned as a special police officer under Maryland law is charged with the protection and preservation of peace and good order on the property described in the application for his commission. That person has the power to arrest persons who trespass or commit offenses on their property. A special police officer may exercise the powers of a police officer upon the properties of the store so long as he is acting in connection with the care, custody, or protection of his employer's property. When a special police officer is enforcing the criminal law, they are exercising governmental powers which involve state actions.