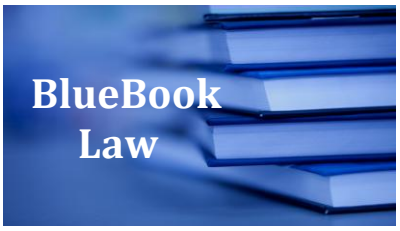

The Role of Contributory Negligence in Virginia's Slip & Fall Cases

The Difficulty in Winning Slip & Fall Cases in Virginia

Question: Why are Slip & Fall cases so difficult to win in Virginia?
Answer: Virginia, along with three other states and Washington, D.C., has adopted a rule of "Contributory Negligence."

What is Contributory Negligence?

Contributory Negligence is a doctrine of Common Law which states that if a person was injured to any extent, due to his or her own bad judgment, reckless behavior, or irresponsibility, that he or she is prohibited from collecting damages from another person who was more at fault for the accident. What this is saying, basically, is that a badly injured person, although even only slightly negligent, cannot win in court against a defendant who was actually much more negligent in causing the accident or in creating the conditions for it. The point being, contribution in anyway, to your own injury—regardless of how minimal—totally bars any type of recovery of damages. Contributory Negligence therefore amounts to a disqualification from any type of compensation**--**even if you are only 1% at fault for your injury. This makes winning your Premises Liability case or Slip & Fall case in Virginia, quite difficult, because if you were distracted answering your cell phone, having an argument with your spouse, rummaging around in your purse for those coupons, or trying to email over a document to your office while hammering out a business deal ….while grabbing a quick lunch, you'll have a hard time proving you didn't in some way contribute to your injury by failing to see the spilt coffee on the floor.

What is a Slip & Fall Lawsuit?

Slip & Fall cases fall under the "umbrella" of Premises Liability. It refers to those situations where someone slips/trips and falls on someone else's property, and is severely injured.

What is Premises Liability?

Premises Liability is a law that generally states, that a business owner or property owner, has a duty to protect those "visiting" his premise or property—legally referred to as "invitees," such as customers or clients--from any form of dangerous conditions existing there. This amounts to either fixing any unsafe/dangerous condition, or warning those visiting the premises, that this dangerous condition exists. This is known as a "duty to warn." A party/defendant will be held liable for injuries caused to another, where the party/defendant had the opportunity to warn the other of an existing hazard and still negligently failed to do so.

Premises liability law governs what happens if someone suffers a personal injury while on someone else's property. [Moving forward, this will also refer to a business or commercial establishment.] Whether or not the property/business owner is liable for a visitor's injury depends on whether the visitor was an **invitee,** a **licensee,** or a **trespasser** on the owner's property when they were injured. A property owner owes a different **duty of care** to each of these three groups.

1.) Invitee: An "invitee" is someone who is on another person's property because they are there to conduct some kind of business or because the property is public property and is made available to the public.
2.) Licensee: A "licensee" is a person who has permission from the property owner to be on the property, but who visits for reasons other than business purposes
3.) Trespasser: A "trespasser" is someone who enters another person's property without the property owner's permission and for the trespasser's own purposes—whatever those may be.

What is a Duty of Care in Virginia?
Virginia Rules for Slip and Fall Cases in Virginia: The Duty of Care

[The Virginia Premises Liability Statute states:] A property owner has a **duty of care** to protect those who enter his property from dangerous conditions, whether his visitors are invitees, licensees**,** or trespassers. If the property owner fails to meet his duty of care, he may be held liable for any injuries his negligence causes. To clarify, premises owners owe their clients/customers, a number of duties. These include:

1. Exercise due care towards those who have been welcomed onto the property or premises;
2. Maintain the premises in a reasonably safe condition;
3. Remove any foreign objects on floors which might contribute to or cause unsafe or dangerous conditions;
4. Warn customers/invitees of any unsafe or dangerous conditions.

In most cases, a property owner is liable for if:

1. The owner knows there is a dangerous condition on the property that poses an unreasonable risk of harm to anyone who encounters it;
2. The owner can't reasonably expect visitors to recognize the existence of danger or how serious the danger is;
3. The owner does not use reasonable care to eliminate the danger or to warn visitors that there is a dangerous condition on the property; and
4. The "Invitee" was unaware of the dangerous condition and the risk it posed.

There is an exception: The "Open and Obvious Danger" doctrine provides an exception to the premises liability rule.

What is the Open & Obvious Danger Doctrine?

The Open and Obvious Danger Doctrine, refers to situations in which a plaintiff acts in a manner that disregards common sense and caution in the face of a "known or obvious" danger. It therefore provides a viable exception to the premises liability rule, for it states that if a condition was open and obvious to a **reasonable person** when the plaintiff was injured, the defendant is not liable for failing to fix the condition or warn the plaintiff; the reason being—the plaintiff could have been aware of and avoided the condition just as easily as the defendant could have warned the plaintiff – therefore, it negates the entire concept of a duty of care.

The doctrine originated from the common-law notion that landowners do not have a duty to warn or protect invitees from open and obvious dangers because: (1) invitees are, in most circumstances, expected to protect themselves from obvious dangers, and (2) imposing liability for failing to correct obvious dangers unfairly burdens landowners/property/business owners by requiring them to inspect and improve their land. As a result of this original rule, disregarding common sense and willingly confronting of an open and obvious danger prohibited recovery for any injury that may have resulted from someone's own irresponsible actions. Therefore, confronting an open and obvious danger was an absolute bar to recovery.

What are the most Common Causes of Slip and Fall Situations in Virginia?

(1) Due to the defendant's negligence, a dangerous or unsafe condition has been created;
(2) Due to the defendant's negligence, products have been marketed in a way that has made them likely to fall or become loose and dislodged, thereby creating a dangerous condition for customers/clients;
(3) Due to the defendant's negligence, there has been a failure to inspect the premises and discover and correct, within a reasonable period of time, a dangerous condition created by an unknown third party.

If you've got any real chance winning a Slip & Fall case in Virginia, you must have an attorney who knows what they are doing, and have a history of successfully litigating these types of cases. We interviewed Irv Blank, of Paris Blank, as to what is needed to win a Slip & Fall case in Virginia. Irv has been practicing in Virginia since 1967, and is widely respected in the legal community. Many of the Slip & Fall cases he handles are obtained from referrals from other attorneys, as over the years he has acquired a reputation of being a quite a force to be reckoned with. Summarizing his comments, he makes the following points with regard to Slip & Fall cases in Virginia:

Firstly, you have to know what you are up against. It is critical to understand that just because a dangerous or hazardous condition existed, does not mean that you are necessarily entitled to recover damages for an injury that resulted from that condition. In Virginia, contributory negligence and assumption of the risk are often used as defense strategies by defense attorneys as a complete bar to the recovery of any damages, and the negation of any liability to their clients. When contributory negligence and assumption of risk are used as defenses, the burden of proof rests upon the defendant; they must prove is that the plaintiff failed to act as a reasonable person would have acted for his own safety under the circumstances.

Contributory Negligence as a Defense Strategy:

Contributory Negligence is an issue regarding whether the plaintiff failed to act as a reasonable person would have acted for his own safety under the circumstances. The essence of contributory negligence is carelessness. Were you being reckless or inattentive and did you fail to act as a reasonable person would have acted for his own safety under the circumstances? In slip and fall cases, the Supreme Court has maintained that "when a plaintiff knows of the existence of a condition but, without any reasonable excuse, forgets about the condition and falls in, off, or over it, he is guilty of contributory negligence as a matter of law." When a person slips, trips and falls over what is considered to be an open and obvious condition, he is likewise considered to be contributorily negligent as a matter of law.

The fact that a plaintiff was given warning of a dangerous condition prior to a slip and fall weighs in favor of a contributory negligence defense.

What is the Assumption of Risk Doctrine?

The "Assumption of risk", implies adventurousness, audacity, rashness, impudence. It is a subjective assessment as it involves trying to make an [almost impossible] determination as to whether a plaintiff fully understood the nature and extent of a known danger and voluntarily exposed himself to it.

If proven, Contributory Negligence or the Assumption of Risk, are complete bars to recovery in your case.
Irv says that there are 4 things that a plaintiff attorney has to prove in order to win a case for his client.
These are:

1.) <u>Injury</u>: You slipped and fell as a result of a dangerous, existing condition, and you were injured as a result. For example: slipping on a slick spot in the produce aisle and fracturing your wrist.

2.) <u>Prior Knowledge</u>: The Business/Property owner knew of the dangerous condition.
This is the tricky part, for you must be able to prove that the business establishment/commercial property, etc., either knew or should have known about this condition. The legal terminology for this is referred to as either, "Actual Knowledge" or "Constructive Knowledge."

a. Actual Knowledge: you have to prove that the property manager/owner/responsible party unquestionably knew of this condition.
b. Constructive Knowledge: you have to prove that the property manager, etc., should have known about the condition. In order to prove this, you must be able to show or prove **how** the dangerous condition arose and also, **when it arose**. Herein lays ones of the greatest obstacles to winning a Slip & Fall case.

3. <u>Proximate Cause or Primary Cause of the Injury</u>: You need to be able to explain very clearly how you came to fall, what the conditions were and what happened.

4. <u>You need to prove that there was no Contributory Negligence or Assumption of Risk</u>: You did not contribute to your fall in anyway. Basically, you need to show that you were watching where you were going, paying attention to your surroundings, not distracted, or completely oblivious to what was going on around you; that you were not engaging in reckless behavior and that you were acting as a reasonably prudent person would. You also have to show that you, the injured person, are not responsible for causing your own injury and that the danger was not so open and obvious that you should have been able to see it and avoid it. .

Irv focuses his practice on personal injury, motor vehicle accidents, premises liability, malpractice and product liability. He is a member of the Million Dollar Advocates Forum, Past President of the Virginia State Bar Association, and a Fellow of the American College of Trial–one of the most preeminent leading legal organizations in the country. Membership is by invitation only. .

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