Personal Injury:

NEGLIGENCE

Injury to another through one's failure to exercise ordinary care. A common example of a claim for injury due to the negligence of another person is injury caused by a motor vehicle accident. Civil Code Section 1714(a) states in relevant part:

"Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or persons, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself."

Thus, in California negligence claims have a basis in statute as well as under common law.

PREMISES LIABILITY

Premises liability claims are a type of negligence claim arising under the duty of a land owner set forth in Civil Code Section 1714(a) to exercise ordinary care in the management of his property to avoid creating an unreasonable risk of harm to others. The existence of a dangerous condition on private property can lead to tort liability for the owner of such property, whether the condition was caused by everyday wear and tear, the owner (for example, by leaving dangerous materials lying about, such as oil, tools, and leaves; see e.g.:
Lee v. Ashizawa
(1964) 60 Cal.2d 862 (defendant allowed oil to run from his property onto public sidewalk)), a third party (for example, when a third party leaves materials lying on defendant's property or damages the property, and the owner knows about it by fails to warn or make the condition safe), natural conditions (such as tree roots lifting up a section of the front walk, driveway, or adjoining public sidewalk; see
Sprecher v. Adamson Companies
(1981) 30 Cal.3d 358 (departing from common law rule which imposed no duty on landowner)), or an "act of God." (for example, slippery ice on a walkway or adjoining public sidewalk; see e.g.:
Schreiber v. Revlon Prods. Corp.
(1958) 5 A.D.2d 207, 171 N.Y.S.2d 122 (plaintiff slipped on icy sidewalk and adjoining landowner held liable).)

However, when the condition was not created by the owner's own willful or negligent acts liability will only be imposed if he had actual or constructive knowledge of the dangerous condition. Constructive knowledge will be implied if the condition existed for such a period of time that the landowner, in the exercise of reasonable care, would have discovered the existence of the condition in the maintenance of his property.

The general rule regarding liability of a private party landowner under Civil Code Section 1714 has been aptly discussed in the landmark case of
Rowland v. Christian
(1968) 69 Cal.2d 108, and its progeny.
Rowland
held that the proper test to be applied is whether the owner of the property acted as a

"reasonable person" in view of the probability of injury to others. Thus, the owner is under a duty to warn or guard against foreseeable risks of harm, with the exception of obvious dangers which the landowner may assume are obvious to those on the property thought the ordinary use of their senses. (
Beauchamp v. Los Gatos Golf Course
(1969) 273 Cal.App.2d 20, 27 (plaintiff who slipped and fell at golf club alleged that landowner was negligent for not having rubber mats on pathways).)

However, the landowner is not (at least as of this point in time) an insurer of the safety of his property, and those on the property are expected to exercise reasonable care. (Beauchamp, supra at 31-32;
Danieley v. Gold Mine Ski Associates
(1990) 218 Cal.App.3d 111, 121 (skier lost control of her skis and ran into a tree at the edge of the ski run - held to be an obvious danger).)

The proper inquiry is not whether a particular plaintiff's injury was reasonably foreseeable in light of the circumstances, but whether certain conduct or conditions are more generally likely to result in harm. (Edwards v. California Sports (1988) 206 Cal.App.2d 1284, 1287-88 (intoxicated patron at sporting event tried to climb fence, fell and was injured).) Foreseeability of injury from certain conduct, in general, is a question of law for the court. (
Ballard v. Uribe
(1986) 41 Cal.3d 564.) Thus, the court of appeal in
Edwards
, supra, stated: "There is a limit as to how far society should go by way of direct governmental regulation of commercial and private activity, or indirect regulation thereof through the tort system, in order to protect individuals from their own stupidity, carelessness, daring or self-destructive impulses." (Id. at 1288)

Aside from the fact that a landowner is not liable for injuries caused by "open and obvious conditions" and just plain stupidity of those on his property, a landowner is also not liable for injuries caused by "trivial" defects. Such "dangerous" conditions include minor cracks, chips, uneven surfaces, and raised concrete slabs in walkways, paths, and steps. Thus, in Ursino v. Bob's Big Boy Restaurants
(1987) 192 Cal.App.3d 394, 397, the court held that a the owner of a restaurant was not liable when an invitee tripped and fell on a 3/4 inch rise between two concrete slabs in the walkway to the restaurant. The court followed a public entity case,
Fielder v. City of Glendale
(1977) 71 Cal.App.3d 719, 734, and held that 3/4 of an inch was a "trivial defect" for which there could be no liability on the part of the landowner. This fits well with the notion that a landowner is not an insurer of the safety of those using his property, otherwise landowners would have a duty to make their property super safe and eliminate all possible irregularities.

An interesting situation exists when the "trip and fall" occurs on a public sidewalk adjoining a private landowner's property. Who in this case has the duty to repair or maintain the path in question? Streets and Highways Code Section 5610 imposes a duty on owners of abutting property to maintain and repair sidewalks. However, it has been held that Section 5610 does

not create a tort duty owed by a landowner to third parties (or to a public entity) to maintain and repair sidewalks, but merely allocates the cost of such repairs between the entity and the private landowner. (Williams v. Foster (1989) 216 Cal.App.3d 510; S chaefer v. Lenaham (1944) 63 Cal.App.2d 324 (interpreting Section 31 of the Improvement Act of 1911, the precursor to Section 5610).) Nevertheless if the sidewalk defect was somehow attributable to the abutting property owner he could be liable under Civil Code Section 1714(a). The interplay between the abutting private landowner and the public entity is complicated and is well explained in a law reivew article, *California Sidewalks: A Comprehensive Scheme For Determining Municipal And Abutter Liabilities* 31 Santa Clara L.Rev. 463 (1991).

ASSAULT & BATTERY

An "assault" is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact.

A "battery" is the application of force to another resulting in harmful or offensive contact.

Both "assault" and "battery" are torts (i.e. personal wrongs against another) for which one can sue to recover damages, and are civil claims rather than the analogous criminal charges under Penal Code Sections 240 and 242.

DEFAMATION (SLANDER and LIBEL)

Defamation includes both slander and libel.

"Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civil Code Section 45)

"Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which: 1. Charges any person with crime, or with having been indicted, convicted, or punished for crime; 2. Imputes in him the present existence of an infectious, contagious, or loathsome disease; 3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits; 4. Imputes to him impotence or want of chastity; or 5. Which, by natural consequence, causes actual damage." (Civil Code Section 46)

Priviliged publications or broadcasts are defined in Civil Code Section 47, and include legal proceedings, legislative proceedings, and to a limited scope communications to interested

persons made without malice. (
Civil Code
Section 47(c).)

MALICIOUS PROSECUTION

To establish a cause of action for malicious prosecution a plaintiff must plead and prove that: (1) the prior action was commenced by or at the direction of the defendant and was pursued to a legal termination in his favor; (2) the prior action was brought without probable cause; (3) the prior action was initiated with malice; (4) damages suffered by the plaintiff. (Sheldon Appel Co. v. Albert & Oliker
(1989) 47 Cal.3d 863, 871;
Bertero v. National Gen. Corp.
(1974) 13 Cal.3d 43, 50;
Maxon v. Security Ins. Co.
(1963) 214 Cal.App.2d 603, 613.)

STRICT LIABILITY: DOG BITES

The owner of a dog is strictly liable at law for any damages suffered by a person who is bitten by the dog in a public place, or while lawfuly in a private place. (Civil Code Section 3342) Contrary to popular belief there is no "one free bite" rule.

STRICT LIABILITY: ULTRAHAZARDOUS ACTIVITIES

The doctrine of strict liability for "ultrahazardous" activities was first enunciated in California by the California Supreme Court in Luthringer v. Moore (1948) 31 Cal.2d 489. The principle, as defined by the Luthringer Court is as follows:

"An activity is ultra-hazardous if it (a) necessarily involves a risk of serious harm to the person, land or chattles of others which cannot be eliminated by the exercise of the utmost case and (b) is not a matter of common usage. An activity is a matter of common usage if it is customarily carried on by the great mass of mankind or by many people in the community. * * * The important factor is that certain activities under certain conditions may be so hazardous to the public generally, and of such relative infrequent occurrence, that it may well call for strict liability as the best public policy." (pp. 498-99)

The determination of whether an activity is ultrahazardous is a question of law for the court to decide. (Luthringer v. Moore, supra at 496; Smith v. Lockheed Propulsion Co. (1967) 247 Cal.App.2d 774, 785;
Edwards v. Post Transportation Company
(1991) 228 Cal.App.3d 980, 982.) In utilizing the doctrine of ultrahazardous activities the court in
Luthringer v. Moore
, supra, relied on the Restatement of Torts, Second Edition, Section 520. The Restatement sets forth the following six factors which are to be considered:

"(a) The existence of a high degree of risk of some harm to the person, land or chattles of others; (b) liklihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of

common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes." (Rest.2d Torts Section 520)

CRIMINAL ACTS OF THIRD PARTIES ON PRIVATE PROPERTY

At common law a landowner was not liable for the criminal acts of third parties. This rule was modified by case law creating a duty on the landowner to protect against such criminal acts. However, absent a "special relationship" there was no duty to take affirmative action to protect another for the criminal conduct of a third party. Once such a special relationship is established such criminal acts must be foreseeable to impose a duty on the landowner.

Early California appellate case law on the subject was restrictive, holding that in the absence of prior similar incidents the landowner was not bound to anticipate the criminal activities of third persons. (Totten v. More Oakland Residential Housing, Inc. (1976) 63 Cal.App.3d 538; Riley v. Marcus
(1981) 125 Cal.App.3d 103;
Jubert v. Shalom Realty
(1982) 135 Cal.App.3d Supp. 1.) These cases were disapproved in
Isaacs v. Huntington Memorial Hospital
(1985) 38 Cal.3d 112, 125.

In Isaacs a doctor and his wife were attacked in the hospital's parking lot while they were returning to their car at 10:00 p.m. The doctor was shot and seriously injured by his assailants. Plaintiffs sued alleging that the hospital failed to provide adequate security measures to protect invites and licensees against criminal acts of third persons on its premises. The trial court granted the defendant hospital's motion for nonsuit at the close of plaintiffs' case, on the grounds that plaintiffs failed to prove notice of prior crimes of the same or similar nature. On appeal, the California Supreme Court reversed, holding that a landowner's liability for the criminal acts of third persons on the landowner's property may be established by evidence other than prior similar incidents on those premises. The Court noted that numerous court of appeal decisions had "rigidified the foreseeability concept." The Court concluded: "Foreseeability of harm should ordinarily be determined by a jury. That determination calls for the consideration of what is reasonable in light of all the circumstances. One such circumstance is whether the occurrence of prior similar incidents placed the defendant on notice that its security measures were not adequate to prevent harm to persons who used the defendant's premises. While prior similar incidents are helpful to determine foreseeability, they are not required to establish it. Other circumstances may also place the landowner on notice of a dangerous condition. A rule which limits proof of foreseeability to evidence of prior similar incidents automatically precludes recovery to first-injured victims. Such a rule is inherently unfair and contrary to public policy." (Id. at 135)

Subsequent cases include: Lopez v. McDonald's (1987) 193 Cal.App.3d 495, Thai v. Stang (1989) 214 Cal.App.3d 1264, and
Onciano v. Golden Palace Restaurant
(1990) 219 Cal.App.3d 385. The
Isaacs

decision is the only guiding authority from the California Supreme Court on the subject. It seriously puts into question the continued validity of prior appellate decisions where foreseeability was limited to prior similar incidents. In these days where drive-by shootings and car-jackings are common place events, there is little a landowner can do to guard against such criminal attacks. Additionally, allowing these cases to go to a jury on the issue of foreseeability to determine whether a landowner's security measures were adequate creates the risk that a jury will use hindsight in determining that the crime in question was foreseeable, and award a substantial sum as damages. Certainly the "no duty" and proximate cause approaches can and should be used by the courts in appropriate cases to decide the case as a matter of law. However, what remains is the vast majority of cases like Onciano where the jury will question the landowner's actions in light of his duty to protect against the criminal acts of third parties.

A side note: Obviously, these cases all deal with criminal acts on the premises of the landowner. To date no case has held that the landowner has a duty to prevent or guard against criminal acts on adjacent property. (See Wylie v. Gersch (1987) 191 Cal.App.3d 412, 418-19; Owens v. Kings Supermarket
(1988) 198 Cal.App.3d 379, 384 (defendant Supermarket had no duty to customer who was hit by a motorist on adjacent public street over which defendant had no control);
Donnell v. California Western School of Law
(1988) 200 Cal.App.3d 715 (Plaintiff left defendant's building after dark and was attacked by an unknown assailant on a public sidewalk bordering the building. Plaintiff alleged that by failing to provide parking for its students, defendant forced him to walk through a high-crime area, and that defendant provided neither a warning nor protective measures such as security guards or lights or monitors on the building. The court denied liability, holding that premises liability is based upon ownership, possession or control, and that merely having the power to influence adjoining property does not amount to control under premises liability law.).) Thus, the law in this area of premises liability is open and developing rapidly.