

Table of Contents

Introduction	1
Chapter 1. Premises Classification of Visitors	5
A. Adult Trespassers.....	6
B. Children.....	7
C. Licensees.....	9
D. Invitees.....	11
• Practice Tip – Establishing the Client’s Status.....	13
Chapter 2. Burden of Proof—Elements of a Slip-and-Fall Case	15
• Practice Tip – Client Interview, Investigation and Case Evaluation.....	19
A. Created-Danger vs. Foreign-Substance Burden of Proof.....	20
B. The Hazardous Condition and Defendant’s Negligence.....	23
• Case Note – Store Safety Manual Provided Evidence of Hazardous Condition.....	27
C. Expert Testimony.....	27
• Case Note – Experts Not Used in Grounding Rod Case.....	31
• Case Note – Multiple Experts Used in Parking Lot Case.....	32
D. Photographs.....	32
• Practice Tip – Photographs of the Scene – Discovery.....	34
• Case Notes – Illustrations That Early Photographs Can be Crucial.....	34
Chapter 3. Duties Owed to Invitees	37
A. Duty and Foreseeability.....	37
• Practice Tip – Determining Actionable Conduct.....	40

Table of Contents

B. Duty of Reasonable Care—Presumption of No Defects.....	41
• Practice Tip – Client “Was Not Looking” or “Not Paying Attention”	44
C. Duty to Inspect and to Warn or Remedy.....	44
• Case Note – Revolving Doors Required Regular Inspections.....	47
D. Voluntary Undertaking.....	47
• Practice Tip – Beware of Inspection Logs.....	49
E. Latent or Hidden Dangers.....	50
F. Open-and-Obvious Dangers—Duty to Anticipate Harm.....	50
(1) Application of <i>Callander’s</i> Modified Rule.....	53
(2) The Distraction Exception.....	56
• Case Note – Shopper’s Distraction and Forgetfulness.....	62
(3) Natural Conditions; Reasonable Alternatives.....	62
G. Parties Owing Duties to Invitees.....	65
(1) Parties in Control.....	65
(2) Parties with Superior Knowledge.....	67
(3) Contractors’ Liability after Completion and Acceptance; Indemnity.....	70
• Practice Tip – Identifying Potential Defendants.....	72
• Case Notes – Parties in Control; Multiple Defendants.....	72
H. Nondelegable Duties.....	73
Chapter 4. Duties of Storekeepers.....	77
A. Foreign Substances.....	77
B. Storekeepers’ No Duty-to-Prevent Rule.....	80
• Practice Tip – Varying Duties and Burdens of Proof.....	83
Chapter 5. Notice of the Hazard.....	85
A. Actual and Constructive Notice.....	88

Table of Contents

B. Recurrent or Continuous Conditions.....	90
• Practice Tip – Discovery Related to Notice.....	95
Chapter 6. Landlord and Tenant.....	97
A. Common-Law Rule.....	97
B. Exceptions to Common-Law Rule.....	99
C. South Carolina Residential Landlord and Tenant Act.....	101
Chapter 7. Standards of Care—Defining Duty.....	105
A. Negligence Per Se.....	106
• Case Note – Regulation Required Security Screens on Windows.....	108
B. Safety Codes and Industry Standards	109
• Case Note – City Design Standard Requiring Pedestrian Walkway Violated.....	112
C. Policies and Procedures.....	112
• Case Notes – Cases Where Policies Constituted Evidence of Negligence.....	114
D. Contracts.....	114
• Case Notes – Contracts Creating Standards of Care.....	115
E. Statutes and Regulations.....	116
(1) Accessibility Act.....	117
(2) Occupational Safety and Health Act (OSHA).....	118
• Practice Tip – Admissibility of OSHA Standards.....	118
(3) Americans with Disabilities Act (ADA).....	119
Chapter 8. Immunities and Limitations on Recovery.....	121
A. Charitable and Sovereign Immunity.....	121
B. South Carolina Tort Claims Act.....	122
• Case Note – Multiple Governmental Entities Sued Under TCA.....	126
C. South Carolina Recreational Use Statute.....	127

Table of Contents

D. Workers' Compensation.....128

- Case Note – Suit Filed After Workers' Compensation Claim Denied; Estoppel.....130

Chapter 9. Comparative Negligence and Assumption of Risk.....133

- Practice Tip – Slip & Fall Comparative Fault Factors – Checklist.....139
- A. Modified No-Duty-to-Warn Rule and Comparative Negligence.....141
- B. Step-in-the-Dark Rule.....145

Chapter 10. Slip-and-Fall Cases Involving Specific Types of Hazards.....147

- A. Parking Lots, Roads, and Sidewalks.....147
- B. Municipal Streets and Sidewalks.....150
- C. Slick or Wet Floors.....153
 - (1) Waxing and Cleaning.....154
 - (2) Rainy-day Cases.....156
 - (3) Oily Substances.....161
 - (4) Food Substances.....162
- D. Unleveled Surfaces.....163
- E. Stairs.....167

APPENDICES.....169

- A. Slip & Fall Resources.....171**
- B. Regulations and Standards for Fall Protection and Pedestrian Safety.....177**
- C. Slip & Fall Comparative Fault Factors – Checklist.....193**

D. Sample Complaints & Answer.....197

Complaints

(1) Complaint (parking lot case – trip over curb).....197

(2) Complaint (trip in pothole at USC-B parking lot; SCTCA).....204

(3) Complaint (grounding rod case – trip walking on sidewalk).....209

Answer

(4) Answer & Third-Party Complaint (grounding rod case).....214

E. Sample Discovery Documents (parking lot case).....229

(5) Interrogatories to Defendant.....229

(6) Requests for Production to Defendant.....239

(7) Requests for Admissions to Defendant.....245

(8) Interrogatories Served with Requests for Admissions.....250

(9) Rule 30(b)(6) Deposition Notice to Organization with Exhibit “A”.....252

F. Trial Documents (grounding rod case).....257

(10)Plaintiff’s Pretrial Brief.....257

(11) Motion *in Limine*.....278

(12)Plaintiff’s Request for Additional Voir Dire.....281

G. Memoranda of Law.....285

(13)Memorandum of Law in Support of Motion for Summary Judgment by Intervening Plaintiff (grounding rod case).....285

(14)Plaintiff’s Memorandum of Law Opposing Summary Judgment (exterior stairway case; multiple parties).....317

Table of Contents

H. Sample Experts' Reports.....	333
(15) Architect's Report (parking lot case).....	333
(16) Safety Engineer's Report (parking lot case).....	342
(17) Engineer's Affidavit & Report (for summary judgment motion in exterior stairway case) with Exhibit "A"	352
(18) Safety Engineer's Report (exterior stairway case).....	356
 Table of South Carolina Cases.....	 361