

When does a Newport Beach store owner become liable for personal injuries sustained on his property? Is liability absolute, or is there a standard that determines when liability is going to be imposed. Should a store owner be responsible for a clumsy patron? Is it equitable to hold a store owner responsible for the negligent or intentional acts of third parties? This brief narrative will hopefully shed some light on these complex and oftentimes troublesome issues.

A “**store owner** exercises ordinary care by making reasonable inspections of the portions of the premises open to customers, and the care required is commensurate with the risks involved.” Ortega v. Kmart Corp. (Cal. 2001) 114 Cal.Rptr.2d 470, 474 – 475. The Court in Ortega was in essence stating that the amount of care a store owner needs to exercise is determinative of the risk involved. A preliminary and rudimentary analysis of this would lead to the conclusion that the care a gun shop owner needs to take would be greater than the care a candy shop owner needs to take, as the risk involved in the day-to-day operations of the two shops is significantly varied.

However, every scenario is different, and individuals of different minds could quarrel tirelessly as to the amount of care owed in different shops, selling different goods. The courts have therefore set a basic theory to be followed in these premise liability cases: “[T]he owner must use the care required of a reasonably prudent person acting under the same circumstances.” Id. The question of what a reasonably prudent person would do becomes a question for the jury, leading once again to the quarrelsome debate of whether a store owner is, or is not liable.

The theory established above is based on the notion that an “**owner is not the insurer of the visitor's personal safety** .”

Ortega at 475. The owner's actual or constructive knowledge of a dangerous condition on his/her premise is the key to establishing a store owner's liability. Although “the owner's lack of knowledge is not a defense, to impose liability for injuries suffered by an invitee due to a defective condition of the premises, the owner or occupier must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises.” Ortega at 475.

Proving actual knowledge would involve putting forth evidence that the store owner actually knew of a dangerous condition but failed to act as a reasonably prudent person would. The courts have “held that where the plaintiff relies on the failure to correct a dangerous condition to prove the owner's negligence, the plaintiff has the burden of showing that the owner had notice of the defect in sufficient time to correct it.” Id. For example, a store owner walks past spilled milk in his shop. Instead of taking immediate precautionary measures, the shop owner goes to speak with another customer about a purchase. During that time, someone slips on the spilled milk. It is all too likely that a jury would hold that the shop owner did not act as a reasonably prudent person would. After all, it was his shop; he had notice of the spilled milk, and failed to take any measures to prevent an accident from happening.

What is more interesting in premise liability cases is when an injured person has to show

constructive notice to prove liability. A plaintiff “need not show actual knowledge where evidence suggests that the dangerous condition was present for a sufficient period of time to charge the owner with constructive knowledge of its existence.” Id. The courts have held that knowledge may be shown by circumstantial evidence. Whether a “dangerous condition has existed long enough for a **reasonably prudent person** to have discovered it is a question of fact for the jury, and the cases do not impose exact time limitations.” Id. As such, each incident is viewed through a different lens. After all, if someone spills milk in a huge grocery store, and 10 seconds later an accident occurs wherein the shop owner did not know of the spilled milk, it is likely that a jury will hold the shop owner not liable for the damages suffered. If on the other hand, the milk was spilled for over 4 hours, had started to smell, it is likely that the owner will be held liable by a jury for the injuries suffered by the patron.

In the end, a shop owner’s liability for accidents that occur on his property turns on facts. Whether actual knowledge was present, or constructive knowledge can be imputed, and whether the precautions taken to prevent the accident were reasonable, are all questions for the jury. Disputes often lead to resolutions in mediation, and as such, it is in your best interest to be represented by an **Orange County law firm** such as Crimson Law Group that is well aware of the legal implications in play, whether you are an injured patron or an Orange County shop owner.

[Crimson Law Group's](#) practice encompasses many fields of the law including: Personal Injury, Medical Malpractice, Business Litigation, Bankruptcy, Workers’ Compensation, Real Estate Litigation, Civil Rights Litigation, Entertainment Law, Transactional Law, Family Law (focusing on Child Custody and Divorce issues), Employment Law, and Criminal Defense (focusing on DUI representation). Particularly, Crimson Law Group’s Newport Beach personal injury practice is becoming well known throughout Orange County for its aggressive representation and no-budge attitude.

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What is more interesting in premise liability cases is when an injured person has to show constructive notice to prove liability. A plaintiff "need not show actual knowledge where evidence suggests that the dangerous condition was present for a sufficient period of time to charge the owner with constructive knowledge of its existence." *Id.* The courts have held that knowledge may be shown by circumstantial evidence. Whether a "dangerous condition has existed long enough for a reasonably prudent person to have discovered it is a question of fact for the jury, and the cases do not impose exact time limitations."

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