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#### **EXPERT TESTIMONY - THE KEY TO UNLOCKING JUSTICE IN PREMISES LIABILITY CASES**

<https://calbizjournal.com/expert-testimony-the-key-to-unlocking-justice-in-premises-liability-cases/>



Personal injury cases arise when a person (referred to in legal terms as the claimant or plaintiff) has suffered injury in an accident and believes it was caused by someone else's negligence. Insurance companies defending these cases often allege that the claimant contributed in some way to the accident occurring, which typically constitutes contributory negligence). While the aim of this article is to deliver a clearer understanding of premises liability for property owners, California law states that a duty of care on property owners will be imposed, requiring them to maintain reasonably safe premises whether it impacts the general public or is the result of a construction accident.

Premises liability is a straightforward concept: landowners, lessors, and occupiers are responsible for maintaining their property in a safe condition and preventing harm to others. Premises liability lawsuits can arise from an array of circumstances including a slip and fall by an individual, a construction site accident, or an accident that occurs on a residential or commercial property.

Premises liability cases hinge on the concept of negligence. To establish liability, an injured individual must demonstrate that the property owner failed to exercise reasonable care in managing their property, resulting in harm. From the intricate wiring standards outlined in safety legislation of California Building Code, Title 24, Part 2 (California Building Code (CBC), Part 3 (California Electrical Code), NFPA 70, and National Electrical Code (NEC), as well as, the Americans with Disabilities Act (ADA).

One of the most cited regulatory agencies regarding premises liability lawsuits in construction accidents in California is the Division of Occupational Safety and Health of California (DOSH, but more commonly known as Cal/OSHA), which was established by the Government of California via the California Occupational Safety & Health Act of 1973. Its laws protect tenants, visitors and construction workers but also define the legal obligations of landlords and businesses. Cal/OSHA Compliance is crucial, as violations can lead to severe consequences, including hefty fines and lawsuits.

#### **Forensic Analysis and Expert Testimony – The Key to Successful Cases**

An [expert witness](#) is indispensable in building a compelling case, whether retained by the claimant or defendant. The investigative process demands meticulous forensic analysis. Experts in architecture, engineering, and real estate development are often called upon to provide technical opinions. These experts assess property conditions against safety standards, identify forensic evidence, and determine if improper modifications were made or existing conditions violate safety regulations. Their testimony, grounded in code violations, forms the bedrock of a

strong case. Understanding premises liability and the potential consequences of negligence is crucial for both property owners and visitors. By taking proactive steps, individuals can help mitigate risks and protect themselves from harm.

### **Understanding the Legal Framework of Premises Liability**

Building a winning premises liability case hinges on establishing specific elements. In California, these elements are outlined in [Civil Jury Instruction 1000](#). Let me break it down...

First, the injured person (they) must prove the property owner (he/she) was responsible for the location – through ownership, lease, occupancy, or control. Second, they need to show the owner was negligent in maintaining the property. This means the owner failed to take reasonable care to keep it safe. Third, the injured person must have suffered harm. Finally, they must demonstrate the owner's negligence directly caused the injury. These four elements form the foundation of a successful premises liability case in California.

### **The Price of Neglect: A Case Study**

A harrowing incident unfolded when a patron at a second-story restaurant slipped and fell down a poorly lit staircase, suffering severe injuries that included a broken arm and fractured vertebrae. The victim's expert witness, accompanied by a forensic photographer, meticulously examined the accident scene and uncovered a litany of safety violations.

Their investigation revealed that the staircase was a ticking time bomb, violating numerous provisions of the California Building Code (CBC) and the Americans with Disabilities Act (ADA). Inadequate lighting, missing signage, hazardous floor materials, insufficient handrails, and inadequate landing transitions were just a few of the glaring safety deficiencies.

Despite the overwhelming evidence, the insurance company representing the restaurant attempted a desperate defense, claiming the 50-year-old building was exempt or "grandfathered" from modern safety standards. However, the forensic evidence was irrefutable, ultimately leading to a significant settlement in mediation.

### **A Shocking Construction Site Accident: The Privette Doctrine**

A routine tenant improvement renovation project in a 30-year-old office building turned into a horrifying accident when a worker was electrocuted while on the job. The victim's legal team assembled a team of experts, including property management consultants, electrical engineers, construction professionals, medical injury practitioners, demolition contractors, accident reconstruction teams, and industrial safety specialists, to unravel the circumstances surrounding this tragic incident.

Through meticulous forensic analysis, the expert witness team uncovered a web of safety violations that led to the electrocution. A detailed analysis of legislation and standards under Title 24, Part 3 (California Electrical Code); NFPA 70; National Electrical Code (NEC); and Cal/OSHA) was instrumental to this investigation, revealing that the project was plagued by negligence at every level, from the property owner to the subcontractor. Violations of electrical

and building codes, failure to follow safety protocols or supervise non-certified electricians, and a lack of proper permits painted a picture of a dangerous work environment. In addition, video and other reconstruction methods were used to create a step-by-step analysis of the accident scene before through the electrocution. Letters, text, emails, witness testimony and other communications between the owner, the property manager, contractors and others were also factored into this in-depth evaluation.

The defendants, including the property owner, property management company and general contractor, successfully deflected blame using the [Privette Doctrine](#), that generally protects entities that hire independent contractors from liability for injuries sustained by employees of the independent contractor while working on a project unless they have directly caused the harm. *Privette v. Superior Court* (1993) 5 Cal.4th 689. The victim's legal team contended that the defendants' negligence and the failure to warn them of hidden dangerous conditions had created a hazardous environment that directly led to the accident.

The California Court of Appeals ultimately ruled in favor of the property owner, management company and general contractor under Privette, finding that the Privette Doctrine shielded the three parties from liability. In this case it was established that it was the duty of the 3<sup>rd</sup> party electrical contractor to comply with Title 24, Part 3 (California Electrical Code); NFPA 70; National Electrical Code (NEC); and Cal/OSHA. The court stated in the ruling that the defendants only retained control over noncontract work, thus the code violations, failure to obtain permits and other violations did not affect the project's safety measures. Most importantly, the defendants delegated control over tenant improvements to the sub-contractor before the litigant's injury occurred.

This tragic incident serves as a stark reminder of the consequences of neglecting safety protocols on construction sites. Property owners, managers, contractors and subcontractors must prioritize safety measures to prevent such devastating accidents from happening again.

## **In Summary**

Understanding the legal framework of premises liability is crucial for both property owners and individuals who may be injured on another's property. By recognizing the elements necessary to prove negligence and the potential consequences of failing to maintain safe premises, individuals can take proactive steps to protect themselves and prevent future accidents.

The cases presented in this article, which I have personally been involved with as an expert witness, underscore the importance of prioritizing safety, conducting regular inspections, and addressing identified hazards promptly to mitigate the risk of premises liability claims.

Expert witnesses play a pivotal role in premises liability cases, providing the court with specialized knowledge and expertise. To select a qualified expert, consider their qualifications, experience, and reputation. Look for an expert with a strong track record in your specific area of law and who has testified in similar cases. Ensure they have the necessary credentials to establish their credibility, and evaluate their communication skills to effectively explain complex concepts to the judge and jury. Finally, research their reputation and do your due diligence to gauge their credibility and effectiveness in the courtroom.

## **About the Author**

Dr. Dick Bridy's extensive experience in the commercial real estate industry, spanning over four decades, makes him a highly qualified expert witness. As an investor, developer, asset manager, lender, syndicator, and Realtor, he possesses a deep understanding of the industry's intricacies.

Dr. Bridy leads a team of seasoned professionals with complementary expertise in real estate ownership and construction disciplines, including architecture, engineering, scheduling, and construction management. His profound knowledge of California's building codes and safety regulations, outlined in Title 24 of the California Building Code (CBC), Part 3 (California Electrical Code), NFPA 70, and National Electrical Code (NEC), as well as, the Americans with Disabilities Act (ADA) and Occupational Safety and Health Administration (OSHA) and other relevant legislation, positions him as a valuable asset in personal injury cases.

When legal issues arise, such as on-site injuries or contract disputes, DBI offers comprehensive support throughout the legal process. From pre-litigation consultation to expert testimony, Dr. Bridy and his team provide invaluable insights and analysis.