

PREMISES LIABILITY IN INDIANA

STATUTE OF LIMITATIONS

Personal Injury – 2 years
Real Property – 6 years
Contract – 10 years (in writing) & 6 years (not in writing)

JURISDICTION

Small Claims: claims not exceeding \$6000
General Jurisdiction: all civil and criminal cases & appellate jurisdiction over city and town courts

PREMISES LIABILITY – DUTY TO CUSTOMER (NEGLIGENCE)

General:

- Premises Owner owes a customer the duty to exercise reasonable care to protect the customer from foreseeable dangers on the premises; however, there is no duty to insure a customer's safety while on the premises.

Defect/Notice (Actual or constructive)

- Premises Owner will be held liable if he had actual knowledge or the condition existed for such a length of time and under such circumstances that it would have been discovered in time to have prevented injury.

Inclement Weather/Moist Tracking

- A Premises Owner has a duty to remove ice and snow that has been tracked onto the premises when the Premises Owner either knew or should have known of its existence.

Falling Objects:

- A Premises owner can be held liable if he failed to exercise reasonable care and that failure caused the injury.

Snow & Ice:

- A Premises Owner's general duty to maintain the premises in a reasonably safe condition applies to the removal of natural accumulations of snow and ice.

- There is no liability for injuries that arise from a Premises Owner's attempted removal of natural accumulations of ice and snow; however, liability will arise if the actions increase the risk of harm posed by the natural accumulations.

Duty to Maintain:

- A Premises Owner has a duty to maintain its premises in a reasonably safe condition and to reasonably inspect.

DEFENSES

Open & Obvious:

- The patron's knowledge of a potential hazard is not a factor in assessing whether a duty exists, but is taken into consideration in determining whether such duty was breached.



Assumption of the Risk:

- Under the Comparative Fault Act, if plaintiff's conduct satisfies statutory definition of "fault," his damages will be reduced by his proportion of fault. Further, the plaintiff will be barred from recovery if his fault is greater than that of the Premises Owner.

INTENTIONAL TORTS

False Imprisonment:

- The unlawful restraint upon one's freedom of movement, locomotion or action, or the deprivation of the liberty of another without his or her consent

Shopkeeper's Privilege, IC 5-33-6-2(a)(1)-(5):

- An owner or agent of a store who has probable cause to believe that a theft has occurred, or is occurring on or about the store, and who has probable cause to believe that a specific person has committed or is committing the theft may detain the individual in a reasonable manner for a reasonable period of time.

DAMAGES

Caps:

- In an action for the wrongful death of an adult without dependents, damages may not exceed \$300,000.

Collateral Source:

- Evidence that Plaintiff's expenses have been paid by a third party is admissible except for: 1) payments of life insurance or other death benefits, 2) insurance benefits for which the plaintiff or members of the plaintiff's family have paid for directly, or 3) payments made by a subdivision of the State or the United States.

Medical Expenses:

- Plaintiff is entitled to recover damages for past and future medical expenses that were both 'reasonable' and 'necessary'.

Lost Earnings:

- Plaintiff is entitled to recover all past and future financial losses suffered as a result of an inability to perform one's usual occupation.

EMPLOYEE CLAIMS

Worker's Compensation Act:

- The Worker's Compensation Act provides the exclusive rights and remedy for accidental, employment-related death or personal injury to employees.

Occupational Disease Act:

- The Occupational Diseases Act provides the exclusive remedy for disablement or death from occupational disease to a covered employee arising out of, and in the course of, employment.

PREMISES SECURITY/PARKING LOTS – CRIMINAL ACTS OF A THIRD PARTY

- Premises owners owe a duty to their patrons to use reasonable care to protect them from injury caused by other patrons and guests on their premises, including providing adequate staff to police and control disorderly conduct.
- This duty only extends to harm from the conduct of third persons that, under the facts of a particular case, is reasonably foreseeable to the proprietor.

JOINT LIABILITY

Comparative Negligence:

- A defendant is liable only to the degree he is responsible for the plaintiff's injury. However, if the plaintiff's fault is greater than 50%, he is barred from any and all recovery.

Contributory Negligence of Minor:

- Children under the age of 7 are incapable of contributory negligence.
- Rebuttable presumption that children between the ages of 7 and 14 are presumed to be incapable of contributory negligence.
- Children over the age of 14 are chargeable with exercising the standard of care of an adult, absent special circumstances.

Joint and Several Liability:

- There is no joint and several liability in negligence actions. Each defendant is only responsible for his share of liability.
- Joint and several liability may be available in intentional tort claims.

Contribution/Indemnity:

- There is no right to contribution among joint tortfeasors. A secondarily liable defendant can recover against the primarily liable defendant.

Subsequent Action:

- A tortfeasor can join co-responsible parties to the underlying action or seek indemnification from a party that is primarily liable.

NON-ECONOMIC DAMAGES

- A plaintiff can recover damages for anguish, anxiety, and other suffering, both physical and mental, which naturally flow from a physical injury.

WRONGFUL DEATH

- The Wrongful Death Act requires suit to be brought by the personal representative of the decedent within two years of the death.

PREJUDGMENT INTEREST

- The court has discretion to award prejudgment interest if certain statutory prerequisites are met. The rate set by the court may not be less than 6% or more than 10% per year.

OFFER OF JUDGMENT

- If the plaintiff does not accept an offer of judgment within 10 days it is automatically withdrawn. If the judgment finally obtained is not more favorable than the offer, the plaintiff must pay the costs incurred after the making of the offer; however, the "costs" that can be recovered are fairly limited.

PUNITIVE DAMAGES

- Punitive damages can be awarded when personal injury is inflicted through gross negligence or willful and wanton misconduct or the wrongful act is accompanied by malice, oppression, or fraud.

ADR

- A presiding judge may order any civil proceeding or selected issues in such proceedings referred to mediation or nonbinding arbitration. The proceeding is governed by the Rules for Alternative Dispute Resolution.

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