One of the most common inquiries made to personal injury attorneys concerns the liability of property owners to people who trip or fall on the premises and sustain injuries.

A common misconception is that the property owner is automatically responsible for the injured person's medical bills if they are hurt on the property.

Many property owners carry liability insurance that provides for "premises medical payments" coverage. This is a limited amount of insurance, usually less than $5,000.00, that will pay for the injured person's medical bills, but not in excess of the insurance limits. It is paid without regard to fault or legal liability, and will not cover damages for loss of earnings or non-economic damages such as pain and suffering.

Property owners are not required by law to carry liability insurance, much less premises medical payment coverage.

In order to hold a property owner legally responsible for a patron's injury on the premises, the plaintiff has the burden of proof to establish the following: (1) that there was a dangerous condition of the premises; (2) that it was a cause of injury to the plaintiff; (3) that the property owner had actual or constructive notice of the condition; and (4) the nature and extent of the injury.

In order to understand the significance of these elements in further detail, it is important to classify the types of dangerous conditions by subject category.

1. The foreign substance case: This is something on a floor that does not belong there, and is perhaps the source of most slip and fall incidents.

Water, vomitus, pebbles, produce and nearly every other sort of object imaginable can find themselves on a floor surface, just waiting to cause an unwary patron a humbling lesson in gravity.

While most reasonable minds would agree that such unforeseen foreign objects on a floor are potentially dangerous conditions of the premises, these are the most difficult types of slip and fall cases for a plaintiff to establish liability on.

This is because of the requirement of "notice". The plaintiff (and not the defendant) must prove that the property owner either knew that the substance was there, or should have known given all the circumstances.

Actual notice is usually hard to prove. If the foreign substance is produced by something under the direct control of the owner, like water leaking from a cooler or an incomplete mopping job by a store employee who doesn't set up any warning signs, then proving actual notice or knowledge of the condition proves easier.

Without evidence of actual notice, the hapless customer can only argue constructive notice.
This may be done by proving that proper or more frequent inspections (known as "sweep schedules") would have timely located the substance so that it could be cleaned up, or by the very nature of the substance itself (i.e. large amounts of water puddling at an entrance door on a rainy day).

Notice issues provide the plaintiff the most daunting obstacle in the slip and fall case, and the property owner's first line of defense.

2. The defect in construction case: Slip and fall incidents commonly occur on door thresholds, stairs, porches, ramps, curbs and other elevated surfaces.

All of these devices and structural components are subject to regulated standards under the California Building Code (CBC) for height, width, and other structural dimensions and components.

If the structure in question is not up to code and is the cause of the patron's injury, then actual notice does not usually become an issue as the property owner is already under a legal duty to ensure that their property meets all legally required standards for safety in construction.

Failure to abide by a standardized safety regulation can constitute negligence per se, which will create a presumption of negligence against the property owner that he or she will be put to the burden of trying to explain away.

Moreover, lack of compliance with CBC or other construction industry accepted standards may indicate liability not just on the property owner, but also to the developer and contractor who created and built the structure to begin with.

3. The negligent employee case: An employer is always legally responsible for an injury caused another due to the negligence of the employer's help.

Therefore, if an employee does not exercise due care in the scope of the employment and thereby causes an injury to a patron, the employer/property owner may be held liable.

The negligence of the employee need not be directed solely at the particular patron who is injured, nor need the particular employee necessarily be identified.

In other words, any maintenance or inspection of the premises that is inadequate and thereby exposes a patron to injury is a potentially liable situation for a property owner.

Moreover, the property owner usually cannot delegate maintenance or inspection duties to an outside service or independent contractor (i.e., the janitorial service or contract security company) and thereby avoid responsibility. The law imposes a non-delegable duty on a property owner to inspect and maintain their own business premises.

The Element of Causation: This is the connecting link between the occurrence of the fall and the injury.

The burden of proof is upon the injured patron to prove that any resulting injury was in fact caused by the negligent condition of the premises.
This can become complicated when the patron suffers from a prior history of similar injuries or physical conditions, or where a formerly benign or asymptomatic condition is triggered by the fall into becoming an acute or chronic condition.

Clients should always be candid with their attorneys regarding their health and injury history when they are making a claim. There are usually reasonable explanations to put a past problem into perspective, but when the past problem is concealed or forgotten by the client, then later attempts at explanation may be perceived as less than forthright.

**The Element of Damages:** Damages fall into three different and distinct categories:

1. **Economic Damages:** These are damages that are capable of arithmetical ascertainment, such as past or projected medical expenses, and past or projected loss of wages or earning capacity.

   The plaintiff has the burden to mitigate their losses, and to prove that any medical expenses are "reasonable and necessary".

   Defendants and their insurance carriers routinely contend that the plaintiff's medical treatment is unreasonable or unnecessary, that medical charges are inflated or do not relate to the claimed injury, or that the loss of earnings is speculative or related to factors other than the claimed injury.

   One of the primary reasons for this attack by the defense is that economic damages are usually considered to be the barometer of the value of any non-economic damages, such as pain, suffering and inconvenience. For example, if a person's medical bills are nominal, then his pain and suffering should be, arguably, not significant.

2. **Non-economic damages:** These are damages for the human aspect of an injury, such as pain, suffering, embarrassment or inconvenience.

   There is no formula or law to calculate such a loss, other than the judicial caveat to the trier of fact that they be reasonable and be fixed without passion or prejudice.

   If the injury is anything but trivial, the amount of non-economic damages is best calculated by an experienced personal injury attorney, taking into account the liability probabilities of the case, the age and appearance of the plaintiff, the amount of reasonable economic damages, the nature of the injury, and the attorney's experience with what a jury is likely to do.

3. **Punitive Damages:** These are damages to punish a defendant for malice, oppression or fraud.

   The plaintiff must prove by "clear and convincing", and not just a preponderance of the evidence, that the defendant engaged in "despicable conduct" before these types of damages can be awarded.

   As a practical matter, punitive damages are rarely sought in a slip and fall case, and furthermore are rarely granted even when they are sought.
In conclusion: Slip and fall cases present among the most daunting bodily injury cases that a claimant can find themselves in. The assistance of an experienced and capable attorney is the most effective method to resolve the matter.

Inherent in every slip and fall case is the standard defense line: "If you had been watching where you were going, you would not have fallen."

Don't be a victim twice.