

Premises Liability: UNDERSTANDING THE TRIVIAL DEFECT DOCTRINE AND DETERMINING WHEN TO REPAIR A WALKWAY

By

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Anyone who owns or manages property, regardless of whether it is residential, commercial or industrial, can be faced with potential liability for injuries to persons who fall on their property. A slip and falls and a trip and falls are a frequent occurrence in today's society, and sometimes the injuries can be severe. One of the most common injury producing events is when a person trips and falls on a defect in a walkway that is part of the property. Thus, the question becomes: when does such a defect present a legal obligation on the property owner to repair the condition?

In California, a property owner has a duty to repair a condition on its property that is considered to be dangerous. A condition is dangerous when it creates a substantial risk of injury when the property is used with due care in a manner that is reasonably foreseeable. Conversely, a condition is not dangerous if the risk created by the condition is of such a minor, trivial or insignificant nature, in view of all the circumstances, that no reasonable person would conclude the condition creates a substantial risk of injury when such property is used with due care.

The latter description, which is essentially a guideline for the conclusion that a defect in the property is not dangerous, is essentially known as the Trivial Defect Doctrine and can be used by the property owner to escape liability should a claim or suit be initiated by the person who was injured.

The Trivial Defect Doctrine can also be used by a property owner (or management company) to determine when a condition on the property is in need of repair. There are a number of factors that a court will examine in determining whether to impose liability on the property owner, the most significant of which is the size of the defect. A number of California appellate decisions have discussed these factors, and the concept in general.

California Case Law

The trivial defect doctrine is not an affirmative defense. It is an aspect of a landowner's duty which a plaintiff must plead and prove. *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 567; *Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927. The doctrine permits a court to determine



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whether a defect is trivial as a matter of law, rather than submitting the question to a jury. *Stathoulis* at p. 567. The law imposes no duty on a landowner including a public entity to repair trivial defects, or to maintain [its property] in an absolutely perfect condition. *Stathoulis* at p. 566, citing *Ursino v. Big Boy Restaurants* (1987) 192 Cal.App.3d 394, 398-399. It is well settled that a property owner is not liable for damages caused by a minor, trivial or insignificant defect in property. *Cadam v. Somerset Gardens Townhouse HOA* (2012) 200 Cal.App.4th 383, 388; *Caloroso* at p. 927. Some defects are bound to exist even in the exercise of reasonable care in the maintenance of property and cannot reasonably be expected to cause accidents. *Stathoulis* at p. 566. Where reasonable minds can reach only one conclusion - that there was no substantial risk of injury - the issue is a trivial defect as a matter of law. There, the Court of Appeal upheld the Trial Court's granting of defendant's Motion for Judgment Notwithstanding the Verdict (JNOV), after Plaintiff received a judgment in her favor in the amount of \$1,336,197 for the injuries and damages she sustained when she tripped and fell on a sidewalk crack. The Court concluded that Aminor defects, such as the crack in the walkway inevitably occur, and the continued existence of such cracks without warning or repair is not unreasonable. *Cadam* at p. 389. Thus, the defendant was not liable as a matter of law, even though the defendant had actual notice of the condition.

Similarly, in *Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, Mrs. Caloroso tripped over a crack in a walkway in front of Hathaway's home. The crack, measured along the edge, measured up to 0.4 inches, or 7/16 of an inch. The Trial Court granted Hathaway's Motion for Summary Judgment, which was upheld on appeal. The Court of Appeal, in rendering its decision, held that it is impossible to maintain heavily traveled surfaces in perfect condition, and the defendant's failure to repair the crack was not unreasonable. Thus, despite their contentions regarding various aggravating conditions, the Calorosos failed to demonstrate that there was any triable issue of material fact as to whether Hathaway owed them a duty to warn of the danger or repair the walkway.

Indeed, in the absence of any significant aggravating factors, several decisions have found height differentials of up to one and one-half inches trivial as a matter of law. However, the court's are more

reluctant to find that a defect is trivial once the vertical displacement exceeds one inch. Although size alone is just one of several factors, it is the most important factor. Other factors include the nature and quality of the defect (i.e. whether it is irregularly shaped or has broken pieces and/or jagged edges), whether there is any debris, grease or water concealing the defect, or whether the accident occurred at night in an unlighted area or some other condition obstructed a pedestrian's view of the defect. Additional factors include plaintiff's knowledge of the area and whether the defect has caused other accidents. *Ursino v. Big Boy Restaurants* (1987) 192 Cal.App.3d 394, 399; *Barone v. City of San Jose* (1978) 79 Cal.App.3d 284, 290-291.

To Repair or Not to Repair

The initial inquiry is almost always the size of the defect. Once a crack or joint reaches or exceeds one inch, prudence dictates that it should be repaired. Walkways should also been kept free and clear of foreign substances, particularly ones that are slippery, as well as dirt and debris that might increase the risk associated with the underlying condition. Lighting conditions should also be evaluated.

Whether or not the condition has caused a prior injury is a significant consideration. Once someone has fallen and been injured as a result of a defect that may have been considered trivial at the time, may no longer be trivial since it has now resulted in an injury. Thus, the property owner may now have a repair obligation, in order to avoid future accidents, as liability is much more likely to be imposed due to knowledge of a prior accident.

Any defect or condition that borders on being dangerous should be repaired. If a condition is such that it cannot reasonably be repaired, then appropriate warnings should be given. Courts will evaluate each condition on a case by case basis, so if a property owner is going to use the Trivial Defect Doctrine in an attempt to avoid liability, all of the circumstances surrounding the defect which favor the property owner should be well documented. Keep in mind that these principles involve not only walkways, but could also be applied to decks, parking lots, ramps and even unpaved areas such as dirt or grass pathways - essentially any places were foot traffic can be expected.