

## SLIPS AND FALLS

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A number of attorneys do not like to take slip and fall cases due to the difficulty in proving merchant liability. A merchant owes a duty to keep its premises in a reasonably safe condition. This duty includes a reasonable effort to keep its store or restaurant free of any hazardous conditions. However, it does not have to guaranty your safety. If you slip and fall in a restaurant or a grocery store, you must prove that the merchant either created the condition or had "constructive notice" of the dangerous condition that caused you to fall.

The time element is very important in proving "constructive notice". In a "constructive notice" case, one must prove that the condition existed for some time before the fall and that the dangerous condition existed should have been discovered if the merchant had used reasonable care. Most merchants have a clean-up schedule where an employee is hired to inspect the premises at regular intervals (i.e. every fifteen minutes). You will notice in some restrooms there is a schedule on the door of the last inspection or cleanup.

If the dangerous condition is created by the merchant, it obviously knew that the situation existed. A dangerous condition or hazard is when a fall results from a foreign substance on the floor or from an otherwise unreasonably slippery condition.

### CASE 1:

Ms. Brun was grocery shopping at one o'clock a.m. She was the only shopper in the grocery store. There were, however, two employees of the store - a cashier and a young man putting up stock. At approximately, 1:30 a.m., Ms. Brun slipped on a grape that was on the floor. The employees helped Ms. Brun up and saw a smashed grape on the floor. They also noticed that Ms. Brun did not have any grapes in her basket. The employees stated that there were no customers in the store for at least one hour prior to Ms. Brun's fall. The last inspection of the area was at 10:00 p.m. Should the grocery store have detected the spill that caused Ms. Brun's fall?

In a different scenario, Ms. Brun went grocery shopping at Noon. There were many customers in the store. The employees of the grocery store would check the aisles every fifteen minutes. The last inspection of the fruit aisle was eight minutes before Ms. Brun's fall. It can be inferred from these facts that a customer shopping in the store caused the grapes to fall. Therefore, the grocery store did not have "constructive notice" because the employees had no time to detect the spill and clean it up.

Ms. Brun would not be able to prove her case.

### CASE 2:

Mr. Clean went to a hardware store to purchase a part for his carpet cleaner. He asked the clerk where to find the part. He followed the clerk down the aisles to the back of the store. On his way to find the part, Mr. Clean stepped on a peg board clip that was in the middle of the aisle. The clip went through his tennis shoe into the ball of his foot. The clerk of the hardware store had begun making a new display on that aisle and had left the clips open on the floor with some

clips scattered on the floor.

In this instance the employee created the dangerous condition on the floor and walked Mr. Clean right into the hazard. Mr. Clean would not have to prove a "time element" or an inspection procedure. Mr. Clean would have to show that the clips presented an unreasonable risk of harm to him.

#### CONCLUSION:

Another question that might be posed is whether Mr. Clean or Ms. Brun should have seen the objects on the floor in their path? Did their negligence contribute to the accident? If the clips were gray on a gray floor Mr. Clean might not have been able to see them. He was also following the clerk and not looking down at his feet. Ms. Brun was shopping and looking at the displays in front of her.

The merchant law is an attempt by the legislature to shield merchants from accidents which were not their fault but the fault of their customers. There are some merchants who carry insurance which covers "Medical Payment Coverage" in an attempt to aid their patrons who suffer a fall no matter who is at fault in these types of accidents.

As always, the outcome of each case will depend upon the specific facts. Call us if you have questions about your case.

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