Framing your premises case as a "special relationship"

Special relationships in premises-liability cases, especially between hotels and their guests

By Marcelis Morris

It is axiomatic that the basic law of negligence requires that each individual regulate his or her conduct to prevent causing foreseeable harm to others. (See Judicial Council of California Civil Jury Instructions (2016 edition), CACI No. 401.) This basic tenet does not compel you to take affirmative measures to identify hazardous conditions to warn an unsuspecting passerby; does not demand that you protect others from foreseeable harm threatened by third parties; and does not require you to correct a dangerous condition merely because you uncovered its existence.

Sure, common decency might oblige you to intervene to protect others from harm – if you can do so with minimal effort or risk to your own wellbeing – but the fundamental law of negligence simply does not demand it. If you did not create the hazard, then the law generally does not expect you to do anything about it, no matter how heart wrenching the potential injury.

Special relationships

Recently the California Court of Appeal, citing the Supreme Court of California, put it this way: "As a rule, one has no duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some [special] relationship between them which gives rise to a duty to act." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 893, *citing Williams v. State of California* (1983) 34 Cal.3d 18, 23.) The court in *Carlsen* described an important exception to the general rule above – special relationships.

When you receive a call from a potential client injured at a premises, of course you must evaluate the client's damages, but as you evaluate theories of liability do not forget to consider where the injury occurred may reveal a special relationship. A "special relationship" gives rise to a defendant's duty to take **affirmative steps to protect** your client.

The Court of Appeal recently outlined the nature of a special relationship this way: "Typically, in a special relationship, the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare. A defendant who is found to have a 'special relationship' with another may owe an affirmative duty to protect the other person from foreseeable harm, or to come to the aid of another in the face of ongoing harm or medical emergency." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 893; see also, CACI No. 400, Sources of Authority.)

There are some fact patterns where a special relationship is readily identified: parent and child; common carriers and passengers; and schools and minor students. However, less often mentioned is the special relationship between a hotel (i.e., innkeeper) and its guests, which in turn imposes a duty upon the defendant hotel to aid, protect, and/or warn. In *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 431, the court explained that "[h]otel proprietors have a special relationship with their guests that gives rise to a duty to protect them against unreasonable risk of physical harm." This is significant because it should completely reshape how you examine and approach your premises liability case. Instead of a case about a hotel's failure to prevent causing your client harm, it becomes a case about a hotel that has failed to intervene to protect your client from foreseeable harms.

The hotel's duty

The scope of a hotel proprietor's duty to protect one with whom it has a special relationship was further defined in *Lawrence v. La Jolla Beach & Tennis Club, Inc*. (2014) 231 Cal.App.4th 11, 27, which explains that a hotel proprietor must even take care to consider the age and maturity of its guests and evaluate whether the premises, though safe enough for an adult, presents any reasonably avoidable dangers to the child guest. This holding represents the rule that a hotel proprietor is expected not only to anticipate hazards related to the physical condition of the premises, but must also anticipate any particular characteristics of their guests which might cause its premises to be more dangerous (e.g., immature children, disabled adults, intoxicated patrons), and to take affirmative action to protect those guests from harm.

A "special relationship" and the resulting "duty to protect" that is owed by a hotel proprietor is an opportunity to utilize the heightened obligations of the defendant to frame your case from the outset. Beginning with how you draft your complaint to your first round of depositions, you should attempt to frame your case in the context of (1) the duty to take affirmative steps to discover hazardous conditions, (2) the duty to take affirmative steps to protect hotel guests, (3) the duty to know what is knowable about the potential hazards and potential guests, and (4) the vulnerability and dependency of hotel guests.

Sure, if you have the "smoking gun" evidence that the hotel owner or managers failed to act in the face of actual knowledge of a hazardous condition, definitely focus your energy there. More commonly, premises-liability cases depend upon discovering direct and circumstantial evidence that reveals what the defendant *should* have known and what they *should* have done in response.

It is very easy to become bogged down in the feud to prove that the defendant should have known of the hazard, and the defense's corresponding effort to show the opposite. Although this is a fight that needs to be engaged, one that must be aggressively litigated, it can be a tool of the defense to draw you away from the big picture of your case and create confusion as you endlessly meet and confer and file motions to compel discovery. Reserving time to incorporate the special relationship between your client and the defendant into your overall strategy can be particularly effective.

Vulnerable plaintiffs

In some cases, the vulnerability of the plaintiff is conspicuous and naturally a cornerstone of framing your case. For example, in a case involving a minor who is abused while in the care of a school district, the vulnerability of the plaintiff is glaring and it is instinctive to approach the case with this in mind. But, with a little work, special relationships can be revealed in many cases. There are numerous situations where a special relationship may exist or be created. In fact, any list of relationships is not exhaustive. Absent any statute or case defining a special relationship, you may still argue that one was created "if the conduct of one who is to be charged with the duty brings him into a human relationship with another where social policy requires that either affirmative action or precaution be taken on his part to avoid harm, then a duty to act or to take the precaution should be imposed by law. (*Draper Mortuary v. Superior Court* (1982) 135 Cal.App.3d 533, 537 [finding a special relationship between mortuary and plaintiff mourner where wife's body was assaulted by an intruder].)

My principle point is that the approach you use in cases where the special relationship is obvious, with a little work, may be employed in cases you may not have considered previously – namely, the relationship between hotels and their guests. To do this, you need only go back to the *Carlson* case discussed above. The court offered a number of qualities attendant to a special relationship: the plaintiff is particularly vulnerable, the plaintiff is dependent upon the other party, and is dependent upon a defendant that has some control over the plaintiff 's welfare. Thus, the first step in framing your case in terms of the special relationship between innkeeper and guest is to ask "in what ways was my client vulnerable, dependent, and lacking control over his or her own safety and welfare."

Here are just a couple examples in the case of a hotel and its guests. A hotel guest is in a very poor position to identify hazards, let alone correct them if they are discovered. A guest at a hotel is completely dependent upon a hotel to perform adequate inspections to reveal hazardous conditions. Because the hotel owners and managers have the benefit of time and expertise, they are in the best position to identify hazards.

Correspondingly, it is the absence of time and expertise that causes the guest to be vulnerable and dependent. The hotel guest arrives, checks in, and makes his or her way to their assigned room, having no advance opportunity to inspect the room, and likely not having the expertise to do so adequately. Therefore, a hotel guest's safety and wellbeing is left largely in the hands of the hotel and must depend on any inspections performed to identify hazards (especially latent ones) prior to their arrival. Moreover, a hotel guest's vulnerability is heightened by their status as a short-term guest, often only staying for a night or two, and the intimacy of the accommodation as a temporary home.

Moreover, a hotel owner or manager is in a much better position than a hotel guest to identify hazards because, as was noted in *Lawrence v. La Jolla Beach & Tennis Club, Inc.*, "[A]though the duty owed by an innkeeper to its guests is essentially the same as that owed by a landlord to its tenants…the rule which applies to landlords does not always apply to innkeepers. An innkeeper is in direct and continued control of his guest rooms. . . . Because a hotel owner is in 'direct and continued control of his guest rooms' his or her duty with respect to hotel rooms is analogous to the duty of a landlord over common areas for which it has retained control. With respect to common areas and hotel rooms in particular, innkeepers and premises owners are required to perform '*reasonably careful* inspections at *reasonable intervals* to learn of dangers not apparent to the eye.'" (*Rodenberger v. Frederickson* (1952) 111 Cal.App.2d 139, citing *Devens v. Goldberg*, (1948) 33 Cal.2d 173) "As is said in [*Spore v. Washington* (1929) 96 Cal.App. 345, 355]… if he (the landlord) chooses to let the property look after itself, trusting to good fortune to protect those who use the premises he must be prepared to accept the results when this good fortune abates or takes a turn for the worse." (internal quotations omitted) (*Id*.)

From the very start, begin developing themes and theories that incorporate the relative control and dependence between your client and the defendant. Also, incorporate into your depositions the idea that your client has relied upon the defendant to satisfy its legal duty to take affirmative steps for their guests' protection. You can include an entire section of your depositions (if it makes sense, of course) that explores the dependence of your client upon the defendant for their safety. This can be an area of deposition inquiry rife with useful admissions.

For example, it will be challenging for the hotel or property manager to

dispute that: 1) inspections of their property should be conducted to keep guests safe; 2) safety inspections should be performed at the property at regular intervals; 3) inspections of the premises for safety hazards should be performed carefully; 4) hotel guests do not have any opportunity to inspect their hotel room for defects before one is assigned to them; 5) it is reasonable for guests to rely upon hotel management to ensure that adequate safety inspections are performed; 6) hotel management does not expect their guests to inspect their rooms for hazardous conditions; 7) hotel management would not rely solely upon their guests to identify hazardous conditions in their rooms, and 8) if the witness testifies that special training or qualifications are required of employees who perform inspections, the witness should easily admit that he or she does not expect that guests will have that same training or qualifications. Then, in a case where the defendant endlessly blames your client for causing the incident, you can use these admissions to show the jury (instead of just telling them) that the defendant owes a superior duty to protect your client – not the other way around.

Spending time developing the themes and theories in your case is always time well spent; however, when doing so, remember that a special relationship in a premises liability case can help you articulate the amplified duty of defendant to take affirmative action to protect your client. Although the primary focus here is on the implications of the special relationship that exists between a hotel and its guests, the principles discussed here apply with similar force in other cases involving special relationships. As you incorporate these concepts into your cases do not overdo it, but, also, do not forget.


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