
BUSINESS ORIGINAL September 30, 2019

# Hotel Liability: Who Is at Fault on the Property? Part II

**By Gary Deel, Ph.D., JD**

*Faculty Director, School of Business, American Public University*

*This is the second of two articles on hotel liability and why such cases are difficult to adjudicate.*

In the previous article, we examined the differences among invitees, licensees and trespassers in the context of hotel operations. We also looked at how the duty of care on the part of a hotel differs among the three categories of individuals, and how that hotel may or may not be subject to liability for certain incidents.

We ended with the example of a hotel invitee who slipped and fell on a water spill in the lobby. We said that the hotel may be liable for her damages, but not definitively. The reason we can't yet be sure is we need more facts before we can assess liability in this kind of situation.

Specifically, we don't know the source of the water spill. We don't know what efforts, if any, the hotel made to inspect the premises for hazards. We also don't know how long after the water spilled that the woman slipped and fell. Those details are essential to determining liability.

## Hotels Generally Cannot Avoid Liability when the Hazard Is Exclusively within Its Control

First, a hotel generally cannot avoid liability when the cause of the hazard is exclusively within its control, even if management neither knew about it nor had reason to know about it.

Suppose, for example, a pipe in the hotel lobby ceiling begins to leak, causing water to spill on the floor, and causing the woman to slip and fall. The hotel might attempt to defend itself by saying it had no reason to know that the pipe would leak. But a legal doctrine known as *res ipsa loquitur* (Latin for "the thing speaks for itself") will require that the hotel take responsibility because the pipe was the hotel's alone to control; also because properly maintained pipes are not in the habit of spontaneously and inexplicably leaking.

But even if the source of the hazard wasn't something within the hotel's control, it cannot escape liability for incidents resulting from property hazards about which it was unaware (i.e. without actual notice) if its inspection standards were insufficient or unreasonable.

The law will impute what is called "constructive notice." Essentially this means that, although the hotel may not have actually known about a hazard, it should have known. If hotel management had inspected the premises in a reasonable way, it would have known about the leak. Therefore, the standards for manner and frequency of inspections should be tailored to ensure a reasonably safe environment for guests.

Suppose the hotel inspects its floors every hour, and the inspection consists of an employee viewing the hotel lobby through a CCTV security camera feed in a back office. Is this a reasonable method of inspection? Probably not.

Spills, particularly of clear liquids, are not easily detectable by security cameras, which tend to be positioned at high and wide vantage points for maximum coverage. Also, security cameras generally do not provide great resolution or detail.

Suppose the hotel does inspect its floors manually on foot, but only once weekly on Fridays. Is this a reasonable interval for floor inspection? Again, probably not. In most hotels, traffic moves through their lobbies constantly on a daily basis, so there should be more frequent inspections than once per week.

Suppose the hotel requires a security officer or housekeeping employee to walk through the lobby at least once every 30 minutes or so to check for hazards such as obstructions or slippery surfaces. Is this reasonable?

Different jurisdictions have different precedents concerning what standard of care is and is not. Attorneys argue endlessly about the nuances of these expectations. But this example certainly approaches something more closely approximating reasonableness.

## What Is a Reasonably Safe Environment?

What does it mean to provide a “reasonably safe” environment? Hotels have varying levels of duty to look after the safety of their guests and visitors. But they are not the guarantors of their safety, nor should they be. It would be absurd to expect that hotels would assume responsibility for any and every conceivable harm that a visitor might encounter while on their property. So again, what is reasonable?

Suppose in our slip and fall example, we learn (from an investigation after the fact) that the spill was caused by another guest who walked through the lobby just minutes before the woman who fell. The guest accidentally dropped his water bottle, and then simply picked it up and walked away without reporting the spill to anyone.

Under these circumstances, in order for the hotel to ensure that it could (and would) identify such hazards in time to prevent guest injuries, the hotel would have to inspect its floors at least every two minutes or so. Is that reasonable? Of course not.

Let us change the facts. Suppose the water ended up on the floor an hour or more before the woman slipped and fell. However, instead of there being a large amount of spilled water, imagine there was merely a drop or two of condensation that fell from the guest’s ice cold water bottle as he traversed the lobby. The drops would be nearly impossible to detect, even for someone diligently inspecting for hazards.

But the woman who fell was wearing stiletto heels — which from a stability standpoint tend to have very low coefficients of friction — and she just happened to step on the exact spot where the drops were, causing her to fall. Should the hotel be required to surveil its floors with flashlights and magnifying glasses to ensure that even the smallest droplets of water are promptly spotted and removed? Again, obviously not.

## A Reasonably Safe Environment Depends upon Different Factors

So once more we return to the question. What is reasonable? As with most legal questions, the answer is “it depends.” In the context of floor inspections, it depends on how many visitors pass through an area over time. More people would mean more opportunities for hazards to occur and cause harm.

It depends on the circumstances of the floor. Marble and hardwood floors carry a much higher risk of slips and falls than carpets.

It depends on the circumstances of the visitors. Guests wearing sneakers with good grip soles are less likely to fall than guests wearing smooth or less stable footwear.

It depends on the weather. When it is raining, water is far more likely to create a slip-and-fall hazard on indoor floors.

It depends also on the nature of the area in question. For example, if the floor is in a bar or nightclub, people are likely to be consuming alcohol and perhaps are less stable on their feet.

In short, it depends on myriad factors.

Generally, a good rule of thumb for hotels and other establishments open to the public is to thoroughly inspect the floors at least once every 30 minutes. Walking the floors is a must. Even better would be to dry mop floors frequently to ensure that any liquids are removed, even liquid spots too small or transparent to see with the naked eye. The frequency of inspections can and should increase whenever the circumstances require, such as during heavy rains over an extended period of time.

Floor inspection policies should be put in writing, and all employees should be required to read and sign off on these policies. This eliminates any doubt as to whether or not the hotel has addressed the matter.

Another good idea is to use written records for floor inspections to show when, where and who conducted the inspections, similar to the inspection data found in public access elevators. But remember, if such records are to serve any legal benefit, they must be kept properly and regularly; otherwise, they could be used against a hotel to show that its policy was not properly followed.

## To Avoid Liability, Never Leave a Hazard Unattended, Not Even for a Second

Once a hazard is identified, it should never be left unattended, not even for a second. If an employee witnesses the creation of a hazard, as in the case of the water spill, or an incident stemming from the hazard, that employee should take immediate action.

At a minimum, he or she should immediately go to the site of the hazard or obstruction and call for assistance. This way, the employee can 1) help anyone who might be injured, 2) warn other passersby of the hazard to ensure that no one else is harmed, and 3) coordinate cleanup of the spill or removal of the obstruction.

Remember, the moment an employee knows about a hazard, the hotel has actual notice. So there are no excuses for an injury to occur from that point on.

Attorneys can review case law and precedents to determine whether any informal rules have been established for different environments and different dynamics. But generally, hotels should be looking for and warning of hazards to protect their guests because hotel owners genuinely care about those with whom they do business, not simply because they don’t want to be sued.

If hotels and other public access properties embrace this philosophy sincerely, they will likely take those measures that are reasonable to ensure the safety of their patrons. And the absence of litigation will be a happy by-product.

## About the Author

*Dr. Gary Deel is a Faculty Director with the School of Business at American Public University. He holds a JD in Law and a Ph.D. in Hospitality/Business Management. He teaches human resources and employment law classes for American Public University, the University of Central Florida, Colorado State University and others.*