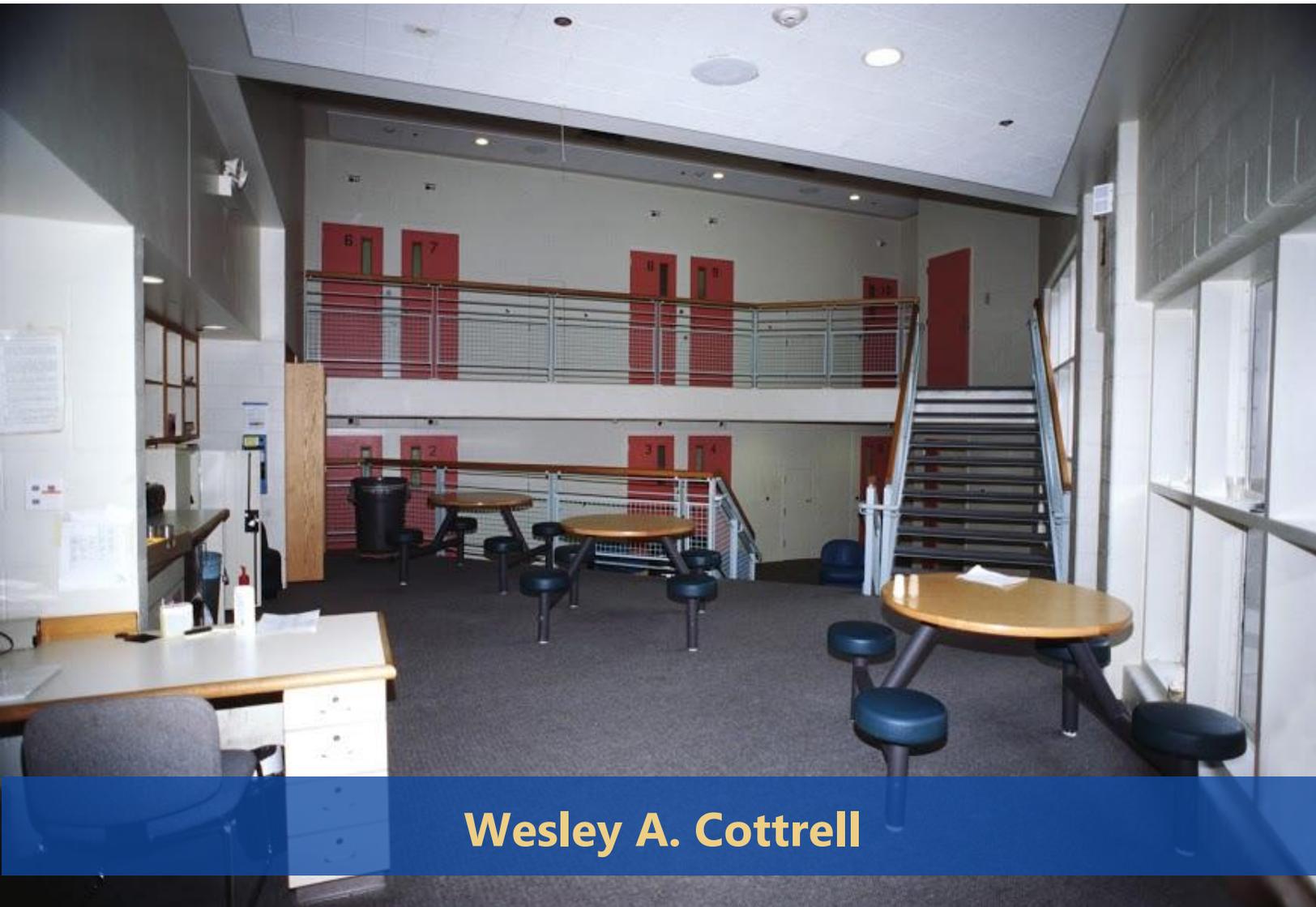


GOVERNMENT IMMUNITY FROM ARKANSAS PREMISES LIABILITY

“When someone slips and falls on something wet left on a restaurant floor, they can sue the restaurant to recover for their injuries.”



Wesley A. Cottrell

When someone slips and falls on something wet left on a restaurant floor, they can sue the restaurant to recover for their injuries. This is known as a premises liability claim. However, if the property on which you are injured belongs to the government, the legal process for obtaining compensation is much more complicated.



How the Typical Premises Liability Case Works

A general premises liability claim is very similar to a negligence claim. In order to succeed, you are required to prove the elements of duty, breach, causation and damages. The same is true in premises liability cases. More specifically,

you must establish that the property owner owed a particular duty to individuals on the property.

The Duty of Care Owed in Premises Liability Cases

With premises cases, that duty is to exercise reasonable care in keeping the



premises safe and eliminating known dangerous conditions on the property. When that does not happen, the law considers it a breach of duty. In a premises liability case, it is also necessary to show that the injury you suffered was foreseeable. Once

you prove that this breach caused your injuries, you have proven your case, for the most part.

The Reason for Being on the Property Determines the Duty Owed

Liability, regardless of who the property owner is, depends on why the injured person was on the property. The reason for being on the property establishes the relationship between the injured party and the property owner. In turn, this relationship determines the degree of care owed to the individual at the time of the injury.

Three general categories of visitors are recognized: business invitee, social guest, and trespasser. Business invitees are owed the highest degree of care, followed by social licensees or guests. Trespassers are owed the lowest degree of care, as they do not have permission to be on the property without permission.



How are Lawsuits Against Government Entities Different?

While you can file a lawsuit against a government entity for injuries occurring on government property, the procedure is more specific and there are very important time limitations that must be met. For instance, Many states require that personal injury claims against the government be filed within 30 days after the accident. There is also the additional requirement that a notice of your claim be submitted to the appropriate governmental entity. This must be done before you can file a lawsuit against the government in court.

What is Government Immunity?



Despite complying with all of the procedural requirements, your claim against the government still may not succeed. Many government entities are immune from certain types of claims, including premises

liability claims. Generally speaking, government officials are immune when planning or discretionary decisions are involved.

Government Immunity for Planning Decisions



There are several states that make government officials immune for injuries to individuals, which are caused by the government's planning decisions. Consider, for instance, when a new staircase is installed in a city hall building.

If someone falls on those stairs, because they are too narrow, the city may be immune from suit for those injuries. When the city's planning decision is the cause of the injuries, immunity will likely apply. On the other hand, if a city employee used the wrong building materials, causing the staircase to collapse and injure someone, the city should not be immune from a lawsuit.

Government Immunity for Discretionary Decisions

When government employees make discretionary decisions as a part of their employment duties, they are often immune for any injury caused by those decisions. So, any claim based on an act or omission of a government official, who exercised due care in complying with a relevant statute or regulation, will usually be dismissed. Put another way, if the official is following the rules, then they are typically immune from those actions.

Also, the government will not be held liable if the claim is based on the performance of a discretionary function, regardless of whether that discretion was abused. An important exception, however, is when a government employee acts with malice or improper purpose.

If you have questions regarding premises liability, or any other personal injury concerns, call the Cottrell Law Office at (800) 364-8305.

About the Author



Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

Memberships and Associations:

National Organization of Social Security Representatives
Benton County Bar Association
Arkansas Bar Association
The Missouri Bar
Kansas Bar Association
Oklahoma Bar Association
Arkansas Trial Lawyers Association
American Association of Justice

COTTRELL LAW OFFICE

Rogers Office
117 South 2nd St
Rogers, AR 72756
Phone: (800) 364-8305
Secondary phone: (479) 631-6464

Joplin Office
2001 Empire Ave
Joplin, MO 64804
Phone: (800) 364-8305
Secondary phone: (417) 782-4004