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Premises Liability After Rowland: How California's Multi-Factor Duty Analysis Plays in 2026

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Rowland v. Christian was decided by the California Supreme Court in 1968.

California premises liability is negligence liability. The possessor of land owes the general duty of ordinary care codified in Civil Code section 1714, and courts depart from that duty only when the factors identified in *Rowland v. Christian* justify a categorical exception. This memorandum traces how the California Supreme Court has refined that framework, through its August 2026 decision in the *Gilead Tenofovir Cases*, and how notice and obvious-danger rules operate once a duty exists.

I. Question Presented

How do California courts decide whether a possessor of land owed a duty of care to an injured person, and what must the plaintiff prove once a duty is established?

II. Short Answer

Duty is the default. A court recognizes an exception only where the *Rowland* factors, evaluated for a category of cases rather than the particular facts, clearly support one. Where the claim is that the defendant failed to protect the plaintiff from a third party, the plaintiff must first show a special relationship or comparable circumstance; *Rowland* then determines whether that duty should be limited. Once duty exists, the plaintiff must prove breach, usually through actual or constructive notice of the dangerous condition. An obvious danger often discharges the duty to warn, but not always the duty to remedy.

III. Governing Law

A. Section 1714 and *Rowland*

Civil Code section 1714, subdivision (a), provides that "[e]veryone is responsible" for injury caused by "want of ordinary care or skill in the management of his or her property or person." In *Rowland v. Christian* (1968) 69 Cal.2d 108, the Supreme Court held that a departure from that principle requires balancing several considerations. "[T]he major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Id.* at p. 113.) The court rejected the trespasser, licensee, and invitee classifications as determinative. The test is "whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others," and the plaintiff's status "may . . . have some bearing on the question of liability," but "is not determinative." (*Id.* at p. 119.)

B. *Cabral*: Categorical Analysis

In *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, the court held that, absent a statutory exception, courts should create one "only where 'clearly supported by public policy.'" It also held that "the Rowland factors are evaluated at a relatively broad level of factual generality." The court's task "is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct," but whether "the category of negligent conduct at issue" is sufficiently likely to cause the kind of harm alleged. Case-specific foreseeability belongs to the jury, on breach.

C. *Kesner*, *Brown*, and *Kuciemba*

Kesner v. Superior Court (2016) 1 Cal.5th 1132 held that employers and premises owners who use asbestos owe a duty to prevent take-home exposure, but that the duty "extends only to members of a worker's household." (*Id.* at p. 1140.) The case illustrates how *Rowland* can confine a duty to a defined class of plaintiffs rather than deny it outright.

Brown v. USA Taekwondo (2021) 11 Cal.5th 204 addressed duties to protect against third-party harm. It established "a two-step inquiry": first, whether "a special relationship between the parties or some other set of circumstances" gives rise to an affirmative duty to protect; second, whether the *Rowland* factors "counsel limiting that duty." The court stated that *Rowland* "was not designed as a freestanding means of establishing duty."

Kuciemba v. Victory Woodworks, Inc. (2023) 14 Cal.5th 993 held that an employer's alleged creation of a risk of COVID-19 transmission fell within the section 1714 default rule, so no special relationship was required. It nonetheless held that "employers do not owe a tort-based duty to nonemployees to prevent the spread of COVID-19." Although transmission to household members was foreseeable, the burden on employers and society required an exception.

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IV. Analysis

A. The 2026 Application: *Gilead Tenofovir Cases*

On August 3, 2026, the Supreme Court decided *Gilead Tenofovir Cases* (Aug. 3, 2026, S283862). Plaintiffs alleged that a manufacturer unreasonably delayed bringing a safer alternative drug to market. The court held that, "even assuming drug manufacturers owe a broader duty of care apart from their duty to design, manufacture, and market nondefective drugs, the Rowland factors compel an exception to such a duty." In weighing foreseeability, the majority faulted the dissent for ignoring the "intervening decisions and conduct," such as clinical trial results and FDA approval, that determined whether harm would occur. The case is not a premises case. It is, however, the court's most recent application of *Rowland*, and its foreseeability discussion gave weight to decisions by third parties that stood between the defendant's conduct and the harm. Chief Justice Guerrero and Justice Kruger filed concurring opinions; Justice Evans dissented.

B. Reading the Line of Cases Together

Three questions now structure a duty dispute in a premises case. First, did the possessor's own conduct or management of the property create the risk? If so, section 1714 supplies the duty, as in *Kesner* and *Kuciemba*. Second, if the claim is a failure to protect against a third party, such as an assault on the property, is there a special relationship or comparable circumstance under *Brown*? Third, do the *Rowland* factors, framed for the category of conduct under *Cabral*, clearly justify an exception or a limitation? *Kesner* limited the duty; *Kuciemba* and *Gilead* eliminated it; *Cabral* declined to create an exception.

C. Breach: Notice and Inspection

Ortega v. Kmart Corp. (2001) 26 Cal.4th 1200 governs the proof of breach in condition cases. A store owner "is not an insurer of the safety of its patrons," but owes a duty to keep the premises reasonably safe. (*Id.* at p. 1205.) The owner "exercises ordinary care by making reasonable inspections." (*Ibid.*) "The plaintiff need not show actual knowledge where evidence suggests that the dangerous condition was present for a sufficient period of time to charge the owner with constructive knowledge of its existence." (*Id.* at p. 1206.) The court held that a plaintiff may prove the condition existed for an unreasonable time by circumstantial evidence, including evidence that the area was not inspected within a reasonable period before the accident. (*Id.* at p. 1210.)

D. Obvious Dangers

Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659 restated the rule, quoting earlier authority: "if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition." The rule has a limit. "[I]t is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger." Obviousness therefore answers the duty to warn but may leave a duty to remedy.

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V. Practical Considerations

- **Frame the duty question categorically.** Under *Cabral*, argue duty at the level of the type of conduct, and reserve case-specific foreseeability for breach.
- **Identify the source of duty first.** A third-party-harm claim must satisfy *Brown*'s first step before *Rowland* is reached.
- **Anticipate a limitation, not only a denial.** *Kesner* shows that a court may recognize a duty only as to a defined class of plaintiffs.
- **Develop inspection evidence early.** Under *Ortega*, sweep logs, inspection intervals, and staffing records can establish constructive notice.
- **Prove necessity when the danger was obvious.** Evidence that the plaintiff had to encounter the hazard supports a duty to remedy under *Kinsman*.
- **Note *Gilead*'s context.** Its foreseeability analysis arose in a product case. Its application to premises cases has not been tested in the authorities reviewed here.

VI. Authorities Cited

- Civ. Code, § 1714, subd. (a)
- *Gilead Tenofovir Cases* (Aug. 3, 2026, S283862) ___ Cal.5th ___
- *Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal.5th 993
- *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204
- *Kesner v. Superior Court* (2016) 1 Cal.5th 1132
- *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764
- *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659
- *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200
- *Rowland v. Christian* (1968) 69 Cal.2d 108

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