



From the President
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Understanding the *Privette* doctrine in premises and construction cases

HIRING OF INDEPENDENT CONTRACTORS FOLLOWED BY INJURIES ON A JOB SITE WILL LIKELY BRING *PRIVETTE* INTO PLAY

In my column this month I decided to mix things up and address a topic I am often asked about by newer attorneys and even seasoned practitioners handling crossover premises and construction cases: What exactly is the *Privette* doctrine, and when does it apply?

Privette issues arise in a surprising number of personal injury cases, particularly when a plaintiff is injured on property where multiple contractors, subcontractors, or service providers are involved. Understanding when *Privette* applies – and just as importantly when it does not – can determine whether a case survives summary judgment or disappears before reaching a jury.

What is the *Privette* doctrine?

The *Privette* doctrine generally provides that a person or entity who hires an independent contractor is not vicariously liable for injuries sustained by the contractor's employees while performing the contracted work. The doctrine stems from the California Supreme Court's decision in *Privette v. Superior Court* (1993) 5 Cal.4th 689 and a series of California Supreme Court decisions that followed. The Court reasoned that when a hirer delegates work to an independent contractor, responsibility for jobsite safety is typically delegated as well. Because the contractor's employees are protected through the workers' compensation system, the hirer is generally shielded from additional tort liability.

In practice, this doctrine frequently arises in cases involving construction projects, maintenance work, and property improvements – situations where multiple contractors are working simultaneously at the same site. As a result, in such cases, a *Privette* analysis should be one of the first things considered when evaluating liability.

Common *Privette* scenarios

Privette most often appears in cases involving construction sites or maintenance work, where workers employed by subcontractors are injured while performing their assigned tasks. Typical scenarios include a worker falling from scaffolding, a technician injured while servicing rooftop equipment, or a contractor encountering unsafe conditions while performing maintenance on commercial property.

In these scenarios, defendants frequently argue that responsibility for safety was dele-

gated to the contractor performing the work. However, the analysis does not end there. California courts have recognized several important exceptions to the *Privette* doctrine. Understanding these exceptions is critical to keeping a case alive.

Ways to overcome *Privette*

Retained control

One key exception arises when the hirer retains control over the worksite and negligently exercises that control, contributing to the worker's injury. This principle was established in *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198.

Liability may exist where the hirer directs the manner in which work must be performed or otherwise interferes with the contractor's methods. Courts describe this as an affirmative contribution to the unsafe condition. Evidence of retained control can often be found in contracts, safety policies, or communications directing how work should be performed.

Concealed hazard

Another exception applies when a hirer fails to warn a contractor of a concealed hazard on the property that the contractor could not reasonably discover. In *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, the California Supreme Court held that property owners may be liable when they know about hidden dangers but fail to disclose them to workers performing the job. These cases often involve conditions such as hidden structural defects, dangerous rooftop configurations, or other hazards not readily apparent to the contractor's employees.

Unsafe equipment

A hirer may also face liability if it provides unsafe or defective equipment that contributes to the worker's injury. In *McKown v. Wal-Mart Stores, Inc.* (2002) 27 Cal.4th 219, the Court held that a hirer who supplies unsafe equipment to a contractor's employees may be liable when that equipment causes injury. For that reason, discovery should focus on who owned, maintained, and inspected the equipment involved in the incident.

Don't forget the non-hirer defendant

Another often overlooked strategy is identifying defendants who are not part of the hiring chain. *Privette* generally protects

only the hirer of the independent contractor. When another entity contributes to the dangerous condition but did not hire the contractor, *Privette* may not apply. Courts have emphasized that when a defendant is outside the chain of delegation, the core rationale of *Privette* disappears. As illustrated by *Ramirez v. PK I Plaza, Inc.* (2022) 85 Cal.App.5th 252, *Privette* may not apply when the defendant did not hire the contractor or delegate responsibility for the worksite.

Careful investigation of contracts, project documents, and communications can reveal additional responsible parties – particularly on large projects involving multiple related companies or vendors.

Preparing for the inevitable summary judgment motion

Privette issues are frequently decided at the summary judgment stage, making early discovery critical. Plaintiff attorneys should focus on:

- Reviewing contracts governing the project
- Investigating corporate safety policies and retained control
- Identifying equipment ownership and maintenance responsibilities
- Using third-party subpoenas to uncover additional entities involved in the work

Developing this evidence early can make the difference between losing a case on summary judgment and getting the case before a jury.

Final thoughts

The *Privette* doctrine can seem intimidating at first, particularly for attorneys newer to construction or premises liability cases. But understanding the doctrine – and the key exceptions recognized by California courts – can make the difference in how these cases are litigated.

When *Privette* issues arise, early investigation and targeted discovery are essential. Identifying retained control, concealed hazards, unsafe equipment, or non-hirer defendants may ultimately determine whether a case survives summary judgment and reaches a jury.

I hope you learned something new from reading this, and I hope that you'll join us in Palm Springs for our annual seminar or one of our next OCTLA Thursday night MCLEs on April 23 or June 25th! ♦