## PJC 66.5 Premises Liability—Plaintiff Is Licensee

QUESTION _____

Did the negligence, if any, of those named below proximately cause the [*injury*] [*occurrence*] in question?

With respect to the condition of the premises, *Don Davis* was negligent if—

1. *the condition* posed an unreasonable risk of harm, and
2. *Don Davis* had actual knowledge of the danger, and
3. *Paul Payne* did not have actual knowledge of the danger, and
4. *Don Davis* failed to exercise ordinary care to protect *Paul Payne* from the danger, by both failing to adequately warn *Paul Payne* of *the condition* and failing to make that condition reasonably safe.

"Ordinary care," when used with respect to the conduct of *Don Davis* as an owner or occupier of a premises, means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

Answer "Yes" or "No" for each of the following:

1. *Don Davis* _____
2. *Paul Payne* _____
3. *Sam Settlor* _____
4. *Responsible Ray* _____
5. *Connie Contributor* _____



### COMMENT

**When to use.** PJC 66.5 is a broad-form question that should be appropriate in most premises liability cases in which it is undisputed that the plaintiff was a licensee. *See State v. Williams*, 940 S.W.2d 583, 584–85 (Tex. 1996).

**Warning as inadequate substitute.** In *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 771 n.32 (Tex. 2010), the Texas Supreme Court observed that "in some circumstances no warning can adequately substitute for taking reasonably prudent steps to make the premises safe." The jury charge in *Del Lago* used the PJC language in element 4, and the court noted that "[t]he jury could have construed the charge to mean, and could have made the factual finding, that ordinary care under the circum-