Legal Matters®

Consumer Safety
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Notice is key in injury cases

If you're in a store, a parking lot, a bus station or any other kind of facility, the owner has an obligation to take reasonable steps to keep you safe. That means the owner is expected to regularly inspect the premises for any potentially dangerous conditions on the property that could cause someone to get hurt and to fix them in a reasonable amount of time.

But that doesn't mean the owner will be held responsible for *any* dangerous condition that caused someone's injury. There still has to be *notice*. This means that to hold the property owner accountable, you need to show that the owner knew or should have known about the condition at the time you got hurt and failed to repair it as quickly as a reasonably careful store owner, restaurant operator or any other reasonable person in the owner's shoes would have done.

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A few recent cases shed some light on the issue of notice and demonstrate what is required.

For example, take a case from Rhode Island. A woman who worked at a newsstand that rented space in the Providence Amtrak station had to exit the station to retrieve a bundle of papers on an icy and wet day. As she re-entered the station, she slipped and fell passing through a common area. She sought to hold Amtrak liable for her injuries.

Amtrak tried to get the case thrown out, arguing that it had no notice of the wet spot and thus hadn't had a reasonable amount of time to clean it up before the accident.

But a federal judge disagreed, finding that the plaintiff's testimony that she saw a janitor in the vicinity when she fell was enough to make the case worth bringing before a jury. Additional evidence, including video evidence of a wet mat leading into the station and the woman's testimony that the janitor mopped the floor each morning but she didn't see him mopping that day, appeared to make the judge's decision easier.

In another Rhode Island case, a tenant slipped on a patch of "black ice" in the parking area adjacent to his apartment building while walking to his truck. The fall apparently resulted in a torn rotator cuff, which required surgery. The tenant claimed he needed assistance with

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College settles suit brought by suspended student

SchuminWeb via Wikimedia Commons

It's a terrible idea to post offensive things on social media. For one thing, it could cost you your job. That's because while First Amendment "freedom of speech" protections may shield you from being imprisoned or fined by the government, private companies are still free to decide they don't want someone like you representing them.

It could also cost you friendships, because people might see your posts and decide they want nothing to do with you. It reflects badly on your judgment, and there may come a time where you look back at the things you've posted and cringe.

But what if you're a student at a public university and your school seeks to punish you over your use of social media? That's a more complicated situation, and a recent case from Virginia indicates that you might have some recourse.

In that case, "John Doe," a freshman at Virginia Tech who lived in the dormitory where the first killings in the infamous April 2007 mass shooting took place, started a Facebook group chat discussing the shootings. Another participant changed his name and Doe's name in the group chat to those of the shooters in the 1999 Columbine High School massacre in Colorado.

Doe changed his name back, but also changed the cover photo for the group chat to an internet meme showing a "Grim Reaper" video character superimposed over an image of the Columbine cafeteria with the caption, "Die! Die! Dieee!"

University officials saw a screenshot and ordered Doe to attend a hearing for allegedly violating the school code of conduct. A panel found him responsible and suspended him for the rest of the semester, banned him from student housing for a year and ordered him to attend counseling.

Doe sued Virginia Tech in federal court, claiming the disciplinary proceeding was flawed. Specifically, he argued that he only received four days' notice of the hearing, was never told that he faced suspension and was denied a full opportunity to speak at the hearing. These amounted to violations of his rights to freedom of speech and due process, he claimed.

The case never made it to a jury because the university settled the claim. However, the fact that Virginia Tech settled suggests it believed Doe had a legitimate claim and feared the consequences of letting it go before a jury.

Despite the settlement that this student obtained, court cases can be complicated and dependent on the facts. A different student in a similar situation might not achieve the same result.

Pedestrian hit in parking-lot crosswalk can sue big-box retailer

Store parking lots can be treacherous places. Drivers looking for parking spots might not be paying attention to pedestrians right in front of them, drivers backing out of spots might not see pedestrians approaching, and cars can often back into each other. That's why a lot of us think of parking lots as creating an "open and obvious" danger of being hit.

In a lot of states, if you're hurt by an "open and obvious" danger your recovery may be limited, if you can recover at all. But a recent case from Michigan suggests that those injured in parking lots should get in touch with an attorney.

In that case, 72-year-old Virginia Rawluszki died from injuries after a truck hit her in the parking lot of Menard's, a big-box home-improvement store. Rawluszki was pushing her cart in a crosswalk when she was struck.

Her family filed a premises-liability claim against the Wisconsin-based retail chain, arguing that it should be held responsible for maintaining a dangerous condition on its property.

Menard's tried to have the case thrown out, arguing that it couldn't be held responsible for a dangerous condition that was "open and obvious" — in other words, a condition that someone of ordinary intelligence would immediately recognize as dangerous.

But the trial court refused to dismiss the case and a state court of appeals affirmed. According to the court, Rawluszki's family raised legitimate questions regarding whether Menard's should have taken additional precautions, such putting in warning signs and traffic signals to make the parking lot and its crosswalks less dangerous. The court also said that this was exactly the kind of thing that a jury should get to decide.

The law may differ from state to state, however, so talk to an attorney where you live.

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daily living activities and was out of work for six months. He took his landlord to court, maintaining that the black ice had been there long enough for a reasonably careful landlord to have noticed and taken care of it.

The tenant further claimed that the landlord often plowed snow onto a grassy area above the parking lot, but when temperatures rose above freezing as the day went on, water would run across the parking area and refreeze overnight, causing the black ice.

The landlord argued that he didn't have sufficient notice of the black ice. He said that while the tenant and his wife had complained of ice forming in the parking lot, the tenant never reported the specific patch in question.

But the Rhode Island Supreme Court agreed with the tenant, finding that notice of icy conditions in the parking area in general were enough to hold the landlord accountable and that it would be ridiculous to expect a tenant to have to call the landlord every day to give notice of every new patch of ice.

Meanwhile, a woman in Virginia sought to hold Wal-Mart accountable when an electrical junction box cover fell from the ceiling in one of its stores, landing on her and causing serious injury. The accident was allegedly due to vibrations caused by a roofing company Wal-Mart had hired to fix the store roof. The woman argued that Wal-Mart itself could be held responsible because it had notice of the condition after several other incidents over the previous month where items had fallen from above, hurting shoppers.

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A judge agreed and allowed the case to proceed to trial.

Obviously, the result of any case will depend on its facts and the law of the state where it's being heard. Still, if you get hurt, you should never just assume you have no rights because the person responsible for the condition didn't have notice of it. It's always worth talking to an attorney to see what your rights might actually be.

Hospital liable for mother's postpartum death

Doctors and nurses are dedicated professionals who put long hours into providing the very best care they can, and often in the most trying conditions. That's why most of us are hesitant to blame them when there's a bad outcome.

But while nobody wants to sue the people who have done their very best to treat us, sometimes even the most well-meaning professionals can make mistakes that a reasonable professional in that position wouldn't have made. When that happens, the patient or his or her family has every right to be compensated for the harm.

This happened recently in Minnesota. 30-year-old Nicole Bermingham gave birth to a son in August of 2013. She returned to the hospital three days later, showing up at the ER with pain and a 102-degree fever.

Bermingham never saw a doctor, because the company the hospital contracted with to provide emergency care staffed the ER with a nurse practitioner. Despite "alarmingly low" platelet counts — a sign of sepsis infection — the nurse practitioner diagnosed her with a urinary tract infection and did not tell the on-call OB-GYN about the low platelet count.

15 hours later, Bermingham returned to the ER with more symptoms. This time she saw a doctor, who recognized her condition as sepsis and ordered antibiotics and an emergency hysterectomy. But the treatment didn't come soon enough and she died the next day.

Bermingham's family brought a malpractice suit against the nurse practitioner and the hospital. At trial, an expert physician testified that proper diagnosis and treatment could have saved her life. The hospital conceded it was negligent but argued that this didn't cause her death. Instead, they presented an expert who claimed that she died from flesh-eating bacteria and not as a result of a delay in admission or any other malpractice.

The jury, however, sided with Bermingham's family and handed down a substantial verdict.

Despite the result in this case, med-mal cases are notoriously difficult to win. The evidence can be complicated and juries often sympathize with doctors based on their own positive experiences. But if you think someone in your family has been hurt as a result of a doctor or nurse providing substandard care, talk to an attorney where you live.

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Injured high school football player can hold coaches responsible

High school athletes get hurt all the time. In many, if not most cases, there will be no recourse. That's because the player has probably signed a waiver acknowledging the inherent risks of the sport and agreeing not to hold the school or league accountable. In the case of public high schools, the school and the coaches are school employees and therefore are typically protected from suit by "public immunity," which shields public entities and their employees from responsibility for injuries they cause when they're negligent (in other words, not as careful as they should have been).

But if you or your child is hurt in a high-school sports activity, it's still very important for you to contact a lawyer where you live. Because as a recent case out of Missouri shows, you may have rights you aren't aware of.

That case involved Zachary Elias, a 16-year-old high school football player in the Kansas City area, who broke his ankle when an adult assistant coach, decked out in helmet and pads for a full-contact scrimmage with the students, collided with him on a play.

Elias sued both the assistant coach and the head coach who decided to have the assistant play in the scrimmage against the kids for negligence and assault and battery.

The coaches argued that the negligence claim was barred by public immunity and the assault-and-battery claim was barred by the student's consent to the contact.

A state appeals court agreed with the coaches about public immunity, pointing out that the immunity rule protects public employees for being sued over judgment calls they make in their official capacity. But the court said the assault and battery claim could go forward, because Elias only consented to harm "reasonably inherent" to football and physical contact with his adult coach wasn't part of that.