WHOSE RESPONSIBILITY IS IT TO SHOVEL? WHAT IF I DON'T?

By K. C. Ahrens, Esq.

With the abundance of snow and ice in Minnesota this year and every year, it can be difficult for many to navigate sidewalks safely. Just who is obligated to keep the sidewalks clear and safe for travel? As with many areas of the law, the answer depends on a variety of factors.

Sidewalks Owned By The City Or Municipality

If the sidewalk is owned by a city or municipality, it is the responsibility of the city or municipality to keep the sidewalks clear of snow and ice. Thus, for example, if your business abuts a city sidewalk, you are not liable to pedestrians for injuries caused by stumbling or slipping on sidewalks which have become slippery and dangerous from natural accumulations of snow or ice or where dangerous conditions are created from the normal flow of pedestrian and/or traffic flow. In fact, even where the city or municipality has a snow removal law, such as an ordinance, a business owner is not civilly liable to pedestrians for violating the ordinance. Of course, a business may still be fined by the city for failing to remove the snow or ice.

An exception to the general rule mentioned above exists if the sidewalk becomes slippery and dangerous from artificial accumulations of snow and ice created by the business owner. The rationale for this exception is based upon the fact that the business or property owner caused or contributed to the dangerous condition of the sidewalk and failed to take appropriate action to eliminate the danger. In these situations, a business or property owner whose property abuts a city sidewalk may be liable to pedestrians. Typical examples include ice forming on a sidewalk due to thawing and refreezing conditions caused by water run-off from a downspout, sign, awning, or roof line.

Under Minnesota law, a business owner is obligated to use reasonable care so as to not expose people to an unreasonable risk of harm. Potential liability will focus on the business or property owner's knowledge of the dangerous condition, as well as the owner's actions under the circumstances. Thus, for example, if a business or property owner is aware that thawing and refreezing occurs on an abutting city sidewalk due to water run-off from a downspout or roof line, but takes no action to alleviate and/or warn pedestrians of the condition, liability may result. Typically, factors to be considered in determining whether the business or property owner exercised reasonable care include the foreseeability or possibility of harm, whether an inspection was conducted (or should have been conducted), and the opportunity and ease of repair, correction and/or warning. In the examples set forth above, a business or property owner will help avoid potential liability if routine and frequent inspections of the property are conducted and immediate action is taken to alleviate a dangerous condition. Immediate action may include something as simple and inexpensive as having salt, sand or ice melt readily available, as well as placing cones, warning signs and/or barricades around the sidewalk.

Sidewalks Abutting A Homeowner's Property

Like a business owner, homeowners are obligated to use reasonable care under the circumstances so as to avoid exposing people to an unreasonable risk of harm with respect to the condition of their property. Unlike a business whose property abuts a city owned sidewalk, a homeowner may be liable to others for injuries caused by stumbling or slipping on sidewalks which have become slippery and dangerous as the result of both natural and artificial accumulations of snow or ice. Liability will focus on the homeowner's knowledge of the dangerous condition, as well as his or her actions under the circumstances.

Under Minnesota law, absent "extraordinary circumstances," a homeowner may wait until the end of a storm before removing snow and ice from the sidewalk. Although a homeowner may wait until a storm has ended before removing snow and ice, a homeowner will escape liability only if the hazardous condition did not pre-exist the storm. The pre-existence of the hazardous condition falls within the so called "extraordinary circumstances" exception to the general rule stated above. Typically, in these situations, the key issue for determination is whether the hazardous accumulation of snow or ice existed before the storm occurred. Thus, for example, if someone slips and falls due to compacted and uneven snow resulting from the homeowner's failure to shovel from a previous snowfall, the homeowner may be liable to the injured person. To avoid potential liability, therefore, it is always best to shovel promptly following a snowfall.

Miscellaneous Responsibilities, Obligations and Thoughts

An owner of property who is responsible for hazardous conditions existing on a sidewalk adjacent to his or her property (*i.e.*, cracks, uneven surfaces, and accumulations of snow and ice) is not necessarily relieved of liability merely by leasing the property to another or hiring someone else to maintain the property. Similarly, a tenant may also be held liable under circumstances where the tenant maintained the dangerous condition created by the owner. Contract documents executed by the parties will assist in determining liability, but may not necessary be the "last word." In these circumstances, control over the premises is typically an essential factor.

In general, homeowners (and business owners) are not liable for harm caused by dangerous conditions that are "known or obvious." Even though a danger may be known or obvious, a landowner may still be obligated to take appropriate action if the owner should anticipate the potential harm despite such knowledge or obviousness. Generally speaking, what constitutes appropriate action or reasonable care under the circumstances depends on the particular facts of the situation.

Premises liability is a vast area of the law with many principles, nuances, and exceptions depending on the situation and relationship between the parties. If you would like to learn more about how you or your business may avoid potential liability, please contact Klay C. (KC) Ahrens, Esq. KC is a partner and trial attorney with Hellmuth & Johnson, PLLC, and serves as Chair of the firm's Insurance Defense Department.

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An Introduction to Dog Law

by Mark E. Rath, Esq.

Minnesota's Dog Bite Statute, Minn. Stat. §347.22, provides:

If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term "owner" includes any person harboring or keeping a dog but the owner shall be primarily liable. The term "dog" includes both male and female of the canine species.

You may be asking yourself, as a dog owner, what this law means to you. Well, although dog owners often consider dogs to be part of the family, the law considers them property. According to the statute, generally speaking, if your dog bites another person, your money may be at risk for the cost of the injuries resulting from the bite.

The Dog Bite Statute makes a dog owner strictly liable for injuries caused by the dog, so long as the dog was not provoked and the victim was acting peaceably in a place where he or she had a lawful right to be. Strict liability creates liability without fault. In other words, subject to certain limitations, if you own a dog that bites another person, you are liable in damages to the bitten individual, period. However, the statute does establish some built in limitations to the applicability of this strict liability for dog owners.

First of all, if your dog is provoked by a person and your dog bites that person, you may be off the hook. Secondly, the person bitten must be "acting peaceably" and in a place where he or she is lawfully entitled to be. In other words, if your dog bites a burglar in your living room at 3 a.m., you are probably not liable. Third, keep in mind that the strict liability of the Dog Bite Statute applies to the "owner" of the dog, which includes persons harboring or keeping the dog. So, if you are dog-sitting your neighbor's dog, keep in mind that you could be considered the "keeper" of that animal, creating potential liability should that dog bite another person.

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H&J ATTORNEYS NAMED TO 2010 MINNESOTA RISING STAR® LIST

Recognized Among top 2.5% Attorneys in State

Hellmuth & Johnson, PLLC announced that Minnesota Law & Politics magazine has named four firm attorneys to the 2010 Minnesota Rising Star® list. The attorneys were recognized in the December 2009 issues of Minnesota Law & Politics, Twin Cities Business and Mpls/St.Paul Magazine.

The attorneys named to the 2010 list are: Matthew J. Franken, Joel A. Hilgendorf, Christopher R. Jones, and Anthony T. Smith.

Representing the top 2.5 percent of attorneys in the state as selected by their peers, the "Rising Star" list recognizes the accomplishments of attorneys who have practiced for 10 or less years and are 40 years of age or younger.

To learn more about the "Rising Stars", we invite you to visit their biographies on our website at www.hjlawfirm.com.

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Please help us welcome the following attorneys:

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Raymond Bonnabeau joins us as a Partner practicing in information technology and eCommerce.

Elizabeth Rein joins us as an Associate practicing in real estate law, construction and litigation.

Susan Anderson joins us as an Associate practicing in estate planning and trust law.

You can learn more about them at www.hjlawfirm.com