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Legal Matters

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The most dangerous area in your neighborhood could be a parking lot



Most people don't realize it, but parking lots are among the most dangerous places in America. An extraordinary number of accidents, injuries and crimes occur each year in parking lots and parking garages.

For this reason, the law imposes a duty on parking lot owners to protect their customers, with proper lighting, maintenance, signs and security. A parking lot owner can be held liable in court to someone who was injured or harmed if the lot wasn't made properly safe.

Here's a look at some of the dangers of parking lots, and some of the reasons that parking lot owners may be held responsible for them.

Auto accidents. One out of every five automobile accidents in the U.S. occurs in a parking garage or parking lot, according to the National Highway Traffic Safety Administration.

Many of these are low-speed fender-benders, but even a low-speed crash can cause significant soft tissue injuries to drivers and passengers. And an accident with a pedestrian can result in very serious harm.

A common cause of these accidents is low visibility along with confusing signage, such as stop, turn and yield signs. This is especially a problem in parking garages. A garage owner can be held responsible for an accident if it was caused in part by poor design, poor lighting, or unclear directions.

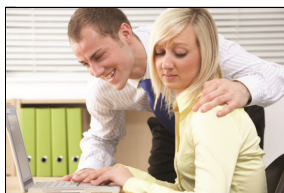
In large outdoor lots, an owner might be liable for not installing speed bumps or other safety features.

Falls. Many people slip and fall in parking lots each year. A parking lot often encompasses a large area,

Companies must stop harassment by non-employees

Everyone knows that a business can be sued if an employee is harassed because of race, sex, religion, etc., and the company doesn't take appropriate action. But did you know that a business can sometimes be sued even if the harasser doesn't work for the company?

That's right – businesses have a legal duty to protect their workers from harassment by third parties they come into contact with in the course of their work, including clients, customers, contractors, vendors, security guards, maintenance workers, caterers and others.



Of course, a company has no direct control over these people's actions, and it can't simply "fire" someone who doesn't work for it. But an employer still has to investigate the situation and take reasonable steps to stop the harassment to the extent possible.

In North Carolina, a black saleswoman for a tile company claimed she had been subjected to a barrage of racial and sexual abuse by a sales representative for a major client. She said her boss acknowledged that the sales rep was a "pig," but did nothing to help. She was allowed to sue the company for not taking steps to keep the sales rep away from her.

In Hawaii, an employee at a medical clinic claimed she was subjected to verbal harassment and threats of violence by a male patient. The clinic rejected her requests to change the patient's treatment schedule so she wouldn't have to work with him, and then fired her when she went ahead and changed his schedule anyway.

A federal court allowed the woman to sue, saying the clinic had an obligation to keep its employees from facing a "hostile work environment," even if the problem was caused by a patient.

It's important to note that, under the law, a company can't simply "solve" the problem by putting the employee in a worse position. For example, it can't demote someone so that he or she no longer has to

Here's yet another danger of 'do-it-yourself' wills

Some people try to save money by writing their own will using a pre-printed form or an online program, without consulting an attorney. But the potential consequences of using a homemade will can be far worse than the cost of doing it the right way in the first place.

For instance, a Florida woman named Ann Aldrich wrote her will on something called an "E-Z Legal Form." She listed her assets – including a house, a car, and a bank account – and said that they should go to her sister. She also said that if her sister died first, they should go to her brother.

Her sister did die first. As it turned out, her sister bequeathed Ann more than \$120,000 and some real estate. But Ann's "E-Z" will didn't say what should happen to this additional property that she inherited after the will was written.

When Ann died, her brother went to court and argued that he should get all of Ann's property, including the sister's inheritance. But Ann's nieces complained that this wasn't fair, and that they should inherit part of the sister's assets too.

The case went all the way to the Florida Supreme Court – which sided with the nieces. The court said that since Ann never said what should happen to the additional property, it should be divided up among the various family members exactly as if she hadn't written a will at all.

One of the Florida Supreme Court justices described the case as "a cautionary tale of the potential dangers of utilizing pre-printed forms and drafting a will without legal assistance."

Parents are sued for child's posts on Facebook

and every inch of it needs to be maintained carefully because customers walk over every part of it. Plus, parking lot owners know that patrons will often be distracted because they're with small children or they're carrying groceries or other large purchases.

A parking lot owner can be held liable if a fall was caused by broken pavement, potholes, crumbling curbs, or ice and snow. In an enclosed parking garage, an owner has a duty to repair broken stairwell bannisters, burnt-out light fixtures, and other problems that could lead to a fall.

Crime. Parking lots and garages attract criminals. An enormous number of crimes are committed in parking areas each year, ranging from car thefts and break-ins to purse-snatchings, muggings, assaults, carjackings, and rape. Parking lot owners have a duty to try to prevent these crimes, and can be sued if they don't.

Of course, parking lot owners can't prevent all crimes, but they have to act reasonably, which may include providing adequate lighting, closed-circuit cameras, or security personnel, and even making sure that trees and shrubs don't provide convenient cover for lurking criminals.

What security measures are necessary depends on the likelihood of criminal activity. Obviously, if a parking lot is located in a high-crime area or if there have been previous crimes committed there, an owner has a greater duty to take precautions. An owner might also have a greater duty if the lot is commonly used at night.

Fights. With certain types of businesses, such as bars and nightclubs, there's a greater duty to provide security because of the likelihood of violent altercations among patrons.

For instance, a San Francisco Giants fan attended a game against the team's archrival Los Angeles Dodgers at Dodger Stadium. After the game, the man was assaulted and severely injured in the parking lot by a pair of Dodgers fans. A jury ordered the Dodgers to pay millions of dollars, because the team knew there was a history of tension and occasional violence between opposing fans but didn't provide enough security in its parking lot after the game.

In Texas, the family of a college freshman who died after he was attacked by a mob in a McDonald's parking lot was awarded damages against McDonald's. The jury found that there was a history of violent fights in the parking lot, resulting in more than 200 police calls over the previous three years, and McDonald's should have done more to protect its patrons.

Workers' comp. If the company where you work owns a parking lot, and you're injured or assaulted in the lot, this could possibly be covered by workers' compensation, depending on the circumstances.

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deal with certain customers or vendors. Also, it can't retaliate against an employee later for complaining.

Your advance medical directive won't help if no one can find it

An advance medical directive gives instructions on the kind of medical care you'd like to receive if you become unable to express your wishes yourself, and it often designates someone to make medical decisions for you. This document is an important part of a complete estate plan – but it won't be of much value in an emergency if it's tucked away in a safe deposit box or in a file cabinet where no one can easily find it.

It's a good idea to carry a card in your wallet or purse saying that you have such a directive, and telling medical personnel how to access it. For instance, if you routinely carry a cell phone or tablet with you, you could upload it as a file on your device.

There are a growing number of software programs, apps and cloud-based options that offer to store such documents and make them available in an emergency. Also, about a dozen states have established online registries for advance directives.

But the most important step is to have an advance directive in the first place. Most Americans still don't – and that can create very difficult quandaries for loved ones in a crisis.

'Legal' marijuana can still get people into legal trouble

Colorado, Washington and a few other states have now legalized the recreational use of marijuana, and many others have decriminalized it or approved it for medical purposes.

But just because someone is possessing, smoking or growing pot in a place where it won't cause them to go to jail, that doesn't mean there aren't other legal consequences.

For instance, marijuana use can still be a big issue in a child custody case. One court in Colorado stripped a father of custody because he was smoking pot for medical reasons, saying that exposure to the drug at home wasn't in the children's best interest.

In Michigan, child-welfare agents took a girl from the home of her mother and stepfather after the mother's ex-husband reported that the couple were growing pot in their home, even though they were doing so legally for medical use.

Remember, too, that even if marijuana is legal, a business can generally still enforce a "no drugs" policy. A federal appeals court in Cincinnati recently ruled that Wal-Mart could fire a cancer patient who



Parents may be held liable in court for damages for things their children post on Facebook, according to a recent decision from the Georgia Court of Appeals.

Seventh-grader Dustin Ahearn created a fake Facebook page for a classmate, Alexandria Boston. The page used a "fat face" app to make the girl look obese, and included posts suggesting that she used drugs, was racist and promiscuous, and had mental health problems.

Alexandria's parents complained to the school, which suspended Dustin for two days and told his parents. Dustin's parents punished him, but they neglected to make him take down the site, which remained online for almost a year until Alexandria's parents sued them.

The court said that Dustin's parents couldn't be held liable for the fact that Dustin created the site in the first place, because he did it without their knowledge. However, once they knew about the site, they may have had a legal duty to supervise Dustin's Internet use, including making him take the site down, the court said.

Poor expense records cost small business owner \$27,000

Owners of small businesses are notoriously bad at keeping records of business expenses for tax purposes.

The good news is that there's no one right way to keep these records. According to the IRS, you can use any method of tracking expenses you like if it works for you and your business.

However, whatever method you use, you still have to be able to substantiate the time, place, amount, and business purpose of each expense, plus the business relationship of any person you entertained.

Recently the U.S. Tax Court criticized a small businessman for poor tax records and refused to allow him to deduct \$27,759 in expenses.

The businessman used a diary to track his expenses, but the court found that he didn't fully substantiate them. He sometimes used only a person's first name for a business meeting, tracked miles driven but didn't clearly show that they were for a business purpose, deducted personal meals without clarifying their relation to the business, deducted some items for which he was reimbursed, and used travel reservation



failed a drug test even though he had a medical marijuana card.

And the fact that marijuana may have been decriminalized won't get people off the hook if they're caught driving while impaired, or if they negligently injure someone while they're high.

confirmations as substantiation without showing that the items were actually paid for later.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.