The Staircase

Studies of Hazards, Falls, and Safer Design

The title-level DOI for this work is:
doi:10.7551/mitpress/6434.001.0001

8 Liability and Stairway Accidents

The evil that people do lives after them, and so it is with negligent design, construction, and maintenance. Long after a building has been built, an architect, builder, or owner of the premises could face a lawsuit for negligence resulting from an accident. Recent nationwide rumblings about tort reform have highlighted that we are, by any standard, a litigious society. One branch of personal injury cases refers to slip and fall cases. This has become a substantial element within the law of torts. A significant number of those injured in stairway falls find their way to competent legal counsel. Accordingly, it may be useful to have at least an introduction to the law of negligence and other jurisprudential concepts that relate to stairway design.

8.1 Negligence

A person who is guilty of negligence through action or inaction may be liable at law to the injured party for damages. The idea of negligence embraces four factors: (1) a legal duty owed to another, (2) breach of that duty, (3) injury, and (4) injury proximately caused by breach of the duty. It is the responsibility of the injured party, the plaintiff, to show that negligence and injury have occurred and that these four factors were present.

Those who design, build, or maintain stairs have a duty to adhere to the standards of their professions to ensure that the finished product is not defective. Thus, use of the stairway should not present an unreasonable risk of harm to the user. Philo and Rine (1977, 12–18) define risk as "probability of injury in percentages." A hazard is "a condition or changing set of circumstances which presents an injury potential." Danger, they state, is "the unreasonable or unacceptable combination of hazard and risk. Any risk of serious injury or death is unreasonable or unacceptable if reasonable accident prevention methods could eliminate it." Therefore, one who designs or constructs a stairway must exercise a corresponding duty of care in the design and construction. Similarly, the owner or occupier of premises has a duty to maintain the stairway and approaches to the stairway in a safe condition. However, the liability of the owner or occupier of a building can be rather complicated because of certain peculiarities of British common law still adhered to by many states. Accordingly, the extent of the duty owed may depend on the classification of the injured person as a licensee, invitee, or trespasser.

Some of the duties owed by an architect, builder, or owner are set out in statutes, ordinances, building and fire codes, and the like that specify standards of design, construction, and maintenance procedures. Statutes and safety codes provide standards that if deviated from may be prima facie evidence of defect. For example, many building and fire codes have a requirement for adequate lighting. The person in control of the structure has a duty to ensure that lights are kept in usable condition; however, if the code does not speak to issues of lighting, the owner or persons in control are nevertheless under a common law duty to see that passageways and stairways are reasonably fit for the use intended. If reasonable fitness and safety require the use of lights, then notions of ordinary care require that the duty be complied with. In addition to requirements for lighting, handrails, and the like, building codes deal with many other facets of design, construction, and maintenance of stairways. The content of these codes varies widely among the different jurisdictions. In every case, however, these codes should be considered as minimum standards. Achieving some lesser measure may afford a basis for liability.

The mere occurrence of an accident is insufficient to impose a finding of fault. The predicate for liability is that the accident occurred because the defendant breached some duty owed to plaintiff. For example, if one fails to provide a handrail as required by a local building code or other standard of professional practice, it may be relatively easy to show that the standard of ordinary care (duty) has been compromised. However, compliance with codes or other safety regulations does not always insulate one from liability or accusations of negligence. It is possible to comply with each and every applicable law or code and still be found negligent. Ordinary care or standards of professional practice may impose a duty or responsibility higher than those set by applicable codes. For example, at the board of inquiry into the sinking of the *Titanic,* the ship's owners testified that, although there were not enough lifeboats for the passengers and crew, they had broken

no laws; they had conformed to the standards. In such a situation, mere compliance with a code may prove an imperfect shield against a suit.

8.3 Proximate Cause

Was a defect in the stairway responsible for the plaintiff's injury? Did the plaintiff trip and fall because of a loose carpet, or did plaintiff merely fail to watch where he or she was going? Although the answers to such questions are usually supplied by a jury, the plaintiff bears the burden of proof of causation by showing that, but for the unsafe condition or defect, the accident would not have taken place.

Quite commonly, the plaintiff will recall little of the fall or accident and can only guess at how the accident occurred. In such situations, an expert witness is often brought in to establish causation.

8.4 Injury

While the concept of injury is a simple idea, what the law contemplates in this regard is damage or injury that is legally compensable. A person who has been injured because of negligence has the right to seek damages from the responsible party. Depending on the jurisdiction and the circumstances, damages most often consist of medical expenses, lost wages, and compensation for pain and suffering. Medical expenses and lost wages are sums certain and are described in the law as special damages. An amount for pain and suffering, however, is not capable of calculation by totaling receipts. Accordingly, most jurisdictions continue to leave to the enlightened conscience of fair and impartial jurors the issue of how much to award for pain and suffering.

8.5 Negligent Construction and Design

Specific legal restrictions on stair design and construction have evolved through statutory pronouncements, codes, and the common law. The failure to observe these standards may result in liability. Courts have imposed liability for improper construction or design in many instances. In general, liability may be imposed where stairways or ramps fail to meet customary construction standards. If the defect was the result of negligent design, the user may sue the architect and builder, as well as the owner, as long as suit is filed within the time period set by the particular jurisdiction (statute of limitations).

8.6 Duties of Ownership

The owner or person in control of a stairway must maintain it in a reasonably safe condition. This duty of care may also extend during the construction phase of a stairway. Once a defective condition has been discovered and before the necessary repairs have been made, an adequate warning placed on the premises is generally required.

A common basis for imposing liability on the owner of a premises is negligent maintenance. This may include a variety of defects, such as broken treads, worn carpets, displaced or broken metal strips, foreign substances on the stairway, unusually smooth tread surfaces, or inadequate lighting.

The mere ownership or control of property does not, however, impose a basis for liability without regard to fault. Liability must be predicated on a duty by those in control of the structure to protect those on the premises against an unreasonable risk of injury.

A common basis for claims of negligent maintenance is slippery stairway surfaces and defects in the floor covering of stairs. If the plaintiff claims that he fell down the stairs as a result of either, then the nature, identity, description, and location of the defect must be shown. If the steps were unreasonably slick due to some foreign substance, the person in control of the structure may be held liable for failure to remove the substance after he or she learned or should have learned of the defective condition. The mere fact that steps are slippery does not satisfy the elements essential to plaintiff's case. The person in control of the premises must be found at fault based upon a negligent act of commission or omission. For example, a person who slips on a banana peel left on a stairway by another user of the stairs 10 seconds earlier may have no case against the person charged with maintaining the stair. It is doubtful that one has a duty to inspect a stairway every 10 seconds. If, however, the banana peel has turned black with age because it was discarded on the stairway 10 hours before the fall, then a jury arguably could find a breach of the duty adequately to inspect the premises.

An interesting nuance in this area exists where a slippery condition results from natural causes such as ice and snow. Courts are divided on the duty of the owner or occupier to remove or otherwise guard against natural accumulations of snow and ice. Therefore, the duty owed in this area depends on the law of the state in which the injury occurred.

8.7 Notice

An extremely important element in the concept of ownership liability is notice. The owner or person in control of the premises is held to two kinds of notice: actual notice or knowledge and constructive notice or constructive knowledge (that which can be inferred based on the knowledge or actions of a reasonable person). Notice by inference or constructive notice may be a jury question, with consideration given to the nature and scope of the defective condition, the length and time that the condition has existed, whether other accidents of a similar nature have occurred, and so forth. Constructive notice may usually be established if there is sufficient evidence to show that a reasonable person in control of the premises would have discovered the defect in the exercise of ordinary care. The existence of the constructive notice concept vitiates an "ignorance is bliss" defense and may impose a requirement on owners, landlords, and management companies to inspect properties at reasonable intervals.

If the owners or other people in control learn of a defective condition on the property, they must take action to cure the defect or be held responsible to an injured party. Until the defect can be removed or repaired, the owners may be under a duty to warn the users of the problem. This duty to warn may be satisfied by diverting traffic away from the defect, adequately marking the defect to call attention to it, and then effecting repairs within a reasonable time. The duty to warn may exist even where the defect is in no way the fault of the architect, builder, or owner.

8.8 Plaintiff's Negligence

In addition to the duties owed by those who design, build, and maintain stairways, users of the stairs have a corresponding

duty to act responsibly and to exercise ordinary care for their own safety. Countless negligence claims are defeated by a plaintiff's failure to exercise this duty of ordinary care.

A monetary recovery may be reduced or denied completely depending on the degree of plaintiff's own negligence. For example, courts have denied monetary recovery in cases of defects that were readily apparent to the user. Users are charged with notice of obvious hazards and to that extent are responsible for their own safety. A user is not, however, required to inspect for hidden defects.

A plaintiff who fails to exercise ordinary care for his or her own safety may be deemed contributorily negligent or comparatively negligent depending on the circumstances and the jurisdiction in which suit is brought. If the injuries would not have happened but for the negligence of the plaintiffs, then recovery may be denied completely (contributory negligence). Where, on the other hand, there was negligence by both a plaintiff and the defendant and the negligence occurs at the same time and both contribute to the injury, then recovery may not be barred under the doctrine of comparative negligence. The plaintiff's award is diminished proportionally to his or her degree of fault.

A plaintiff may also be found to have assumed the risk of injury. The doctrine of assumption of risk is not based on notions of plaintiff's own negligence. Rather, it presumes that plaintiff has knowingly and voluntarily assumed the consequences and risk of injury. Consider the case where three steps have rotted at the bottom of a long flight of stairs. The owner of the premises makes arrangements to have the steps repaired but in the interim places a sign at the top of the stair warning people not to use them. The plaintiff sees the sign, disregards it, and is injured when falling through the bottom step. The plaintiff in this situation may be held to have assumed the risk of injury. He or she was aware of the danger and nevertheless proceeded. When plaintiff assumes the risk of injury, recovery may be barred.

8.9 The Expert Witness

Many court cases involve issues that are difficult, if not impossible, for a jury to understand without help. In such cases the services of an expert may be used to educate the jury and the court. Generally architects, engineers, and contractors perform tasks beyond the ordinary understanding of laypersons. Accordingly, it is entirely appropriate for the parties to make use of professionals in the field who offer their opinion, analysis, and testimony. An expert, whether testifying for plaintiff or defendant, breathes life into a case by helping a jury and the court understand the claims and defenses of the parties.

The expert plays several roles in stairway litigation. First, the expert may be used to determine how the accident happened. Sometimes the user has no recollection of the incident or no idea what precipitated the fall. In this situation, the expert may reconstruct the accident based on an examination of the stairway, the nature of the injury, and the position that the victim assumed at the end of the fall. Second, the expert may be used to establish the existence of a defect in design, construction, and/or maintenance. If plaintiff and expert can establish a causal nexus between the fall and injury, then the technical requisites

of the plaintiff's claim have been met. Third, the expert may be asked to render an opinion as to whether extant codes and standards were violated.

While a juror might view a photograph of the accident scene and have some vague notion that the stairway was too steep, the expert can testify that the slope of a stair is properly determined by riser-tread combinations. Where it may be an easy task for a jury to find negligence in a case in which the sixth step of a darkened stairway was missing, it would be more difficult for a juror in another case to grasp that a defect had been built into the stairway because of negligent design.

The type of expert required in any case depends on the issue or issues being litigated. For example, if the plaintiff bases a claim on negligent design in terms of building codes and standards, the services of an independent architect might be utilized. If a stairwell crowded with shoppers collapsed, perhaps the services of a structural engineer might be brought to bear. An illumination engineer could be useful in a case that turned on issues such as the adequacy of lighting. A biomechanical engineer—one who specializes in the aspects of human locomotion—could be useful in determining causation. Human factors specialists are increasingly used to explain how specific features or aspects of a stairwell and its surroundings interplay with human relations, tendencies, and awareness.

8.10 Conclusion

In every negligence case, the plaintiff bears the burden of proof and must establish each of the elements of the case: duty, breach, proximate cause, and damage. The duty owned by the architect, builder, or other person in control of the premises may hinge on the dictates of prudence, statutes, local building ordinances, and building codes.

A plaintiff must show that the defect in the stairs was the proximate cause of the injury sustained. In establishing both the nature of the defect and the way in which the defect caused the accident, the plaintiff may rely on the testimony of an expert witness. In defense of a plaintiff's claim, the defendant may assert the failure of plaintiff to exercise ordinary care for his or her own safety (contributory negligence) and may also offer an expert to show the absence of either defect or causation.

Ultimate issues of negligence, liability, and monetary damages are usually decided by a jury.

Standards of safety and professional practice change. Professional standards that comply with today's notions of due care may prove woefully inadequate by tomorrow's standards. The propriety of design constantly evolves with advances in the science and art of engineering and architecture. While claims of malpractice are no more welcome in the architectural community than in the medical profession, the threat of litigation provides a constant reminder of accountability and the need to be aware of advances in the knowledge base of their professions.

The compensation claims of workers of the industrial age gave rise to occupational and safety regulations. Product liability suits against automobile manufacturers have had no small effect on improving the crashworthiness of cars. Similarly, litigation in the area of premises liability can have a positive effect on the stringency of safety and building codes and the awareness of building professionals to the duties owed the public.