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Legal Matters®

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 a 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



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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 high-traffic 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, and every inch of it needs to be maintained carefully because

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Do you have a legal obligation to help someone in danger?

People often wonder if they have a legal obligation to step in and help someone who is in danger or who has been injured.

In general, the answer is no. There's no legal requirement to be a "Good Samaritan."

However, there are a number of exceptions to this rule. One says that people may have an obligation to assist someone if they helped create the danger in the first place.

In one recent case, two college students, Sarah and Zachary, agreed to give a third student named Jason a ride home after a night of drinking and partying. On the way, Sarah and Zachary took Jason to a cliff overlooking the Sacramento River, where they sat drinking rum and watching the sunrise.

Jason, who was quite drunk, accidentally slipped and fell off the cliff.

Sarah and Zachary didn't call 911 right away because they were afraid they'd get in trouble. Instead, they spent an hour trying to find Jason, and then apparently hatched a plan to tell people he had committed suicide.

Jason survived, however – although he was injured in the fall. He later sued Sarah for making his injuries worse by failing to promptly call for help.

A court ruled that Sarah could be sued. Although people don't generally have an obligation to call 911 if someone has been hurt, the court said this case was different because Sarah had helped create the danger in the first place – by taking an obviously drunk person to the edge of a cliff.

Insurance companies are required to deal fairly with you

If you're injured or harmed due to an accident, you'll very often have to deal with your own or someone else's insurance company. This can be an obstacle, because insurance companies would generally prefer not to pay any more in compensation than they absolutely have to.

But what you might not know is that, in general, insurance companies have a legal obligation to act

in "good faith." This means that they're legally required to investigate, evaluate, and process your claim fairly. If it's clear that you've been harmed and someone else is at fault, or that the accident is covered by the policy, the company has a legal duty to offer you a fair settlement.

Of course, insurance companies have their own definition of "fair," which is why you need a good lawyer on your side to negotiate

with them. But in extreme cases, if an insurance company completely stonewalls in a way that's totally unreasonable, the company itself can be sued for acting in "bad faith."

In a recent California case, a man suffered extensive injuries in a car crash with a driver who had no insurance. The man asked his own insurance company to pay the \$250,000 limit under his "uninsured motorist" coverage. He also promptly provided his insurer with all his medical records.

Nonetheless, the insurer totally ignored him for five months. The company then demanded that the claim go to arbitration, under a part of the policy that said that if a dispute can't be resolved, it has to be arbitrated.

The man sued the insurance company for acting in bad faith, and the California Court of Appeal allowed the suit.

The court said that while the insurance policy allowed for genuine disputes to go to arbitration, it didn't allow the company to simply demand arbitration without investigating, evaluating and attempting to fairly resolve the claim, as a means of stonewalling and delaying payment of a fair settlement.

In another recent California case, an insurance company sent an adjuster on an inspection after a tree fell and damaged a policyholder's house and car. The adjuster allegedly made demeaning comments to the homeowner and lied about the scope of coverage under the policy.

The same court said the adjuster could be sued personally for misrepresenting the coverage, describing the adjuster's alleged conduct as "appalling."



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

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customers walk over every part of it, sometimes carrying large purchases or other distracting items.

A parking lot owner can be held liable if a fall was caused by broken pavement, potholes, or crumbling curbs. 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.

Ice and snow can also be a problem. Not only do they have to be plowed and removed to prevent falls, but owners must make sure that the removal process itself is safe. For instance, in a recent case in Vermont, a snowplow driver accidentally dislodged a storm drain. A vendor was injured when he fell into the drain, and the Vermont Supreme Court said the parking lot owner could be held liable.

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.

While parking lot owners can't prevent all crimes, they have a duty to make their premises reasonably safe. This can include adequate lighting, closed-circuit cameras, 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 measures to make

the premises safe. But an owner might also have a greater duty if the lot:

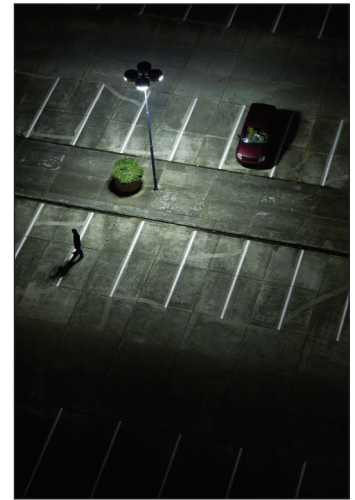
- is typically used at night (for instance, it serves a restaurant rather than an office building);
- is located near a busy highway (providing a convenient escape route); or
- has an automated payment system rather than paid attendants who can keep an eye on things.

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 in a lawsuit 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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Trucking company sued for heart attack after car crash

Eighty-five-year-old Adbulla Kassem was driving home from a family dinner in Dearborn, Michigan, when he rear-ended a tractor-trailer. It was a minor, low-speed crash and it didn't cause any direct physical injuries. Nevertheless, after the accident Kassem suffered a sudden cardiac arrhythmia and died.

Kassem's family sued the trucking company, and the Michigan Court of Appeals allowed the suit.

The court first said the trucker could be responsible for the accident because it was a dark and rainy night and the truck driver had failed

to place the trailer's rear bumper in the "down" position, which prevented Kassem from seeing the truck's taillights until it was too late to avoid the crash.

The court then said there was medical and scientific evidence that Kassem's heart attack was directly caused by severe fright from the collision, which resulted in a sudden surge of blood pressure and adrenalin. In other words, the trucker could be held liable for causing an accident that literally scared an elderly man to death.

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Gynecological surgery device linked to cancer

A cutting-edge piece of medical technology designed to make common gynecological surgeries safer may have the tragic side effect of spreading a dangerous cancer from the patient's uterus to other parts of the body.

"Laparoscopic power morcellators" are bladed tools used in hysterectomies and fibroid removals.

The U.S. Food and Drug Administration has issued an advisory about the devices, and has discouraged doctors and hospitals from using them while it evaluates the risk further.

Roughly one out of every 350 women having gynecological

surgery has a "uterine sarcoma" – a tumor that's a type of cancer. During surgeries with the device, it appears that a doctor can unknowingly spread

Discussing alternative techniques with your doctor might be a good idea.

the cancerous tissue throughout the body, quickly elevating the cancer from stage 1 to stage 4 and increasing the risk of death.

If you or a loved one is a candidate for a fibroid removal or a hysterectomy, it might be a good idea to discuss the possibility of alternative surgical techniques with your gynecologist. This is especially important because nobody has identified a reliable way of detecting this particular cancer prior to surgery.



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