

E514

1. Liability of Owner of Commercial Property for Defects, Snow and Ice Accumulation and Other Dangerous Conditions in Abutting Sidewalks.

The law imposes upon the owner of commercial or business property the duty to use reasonable care to see to it that the sidewalks abutting the property are reasonably safe for members of the public who are using them. In other words, the law says that the owner of commercial property must exercise reasonable care to see to it that the condition of the abutting sidewalk is reasonably safe and does not subject pedestrians to an unreasonable risk of harm.

The concept of reasonable care requires the owner of commercial property to take action with regard to conditions within a reasonable period of time after the owner becomes aware of the dangerous condition or, in the exercise of reasonable care, should have become aware of it.

If there was a condition of this sidewalk that was dangerous in that it created an unreasonable risk of harm for pedestrians, and if the owner knew of that condition or should have known of it but failed to take such reasonable action to correct or remedy the situation within a reasonable period of time thereafter as a reasonably prudent commercial or business owner would have done under the circumstances, then the owner is negligent.

No one plans on being injured in an accident, whether it is a car accident, fall down or other situation. Speak with a personal injury attorney immediately to retain all your rights. The stores are responsible for the maintenance of their premises, which are used by the public. It is the duty of the store to inspect and keep said premises in a safe condition and free from any and all pitfalls, obstacles or traps that would likely cause injury to persons lawfully thereon.

If the unsafe condition is alleged to be **snow** and ice, *N.J.S.A.*

40:64-12 and any ordinance adopted by the municipality might be charged as a factor, the jury should consider the reasonableness of the time the defendant(s) has (have) waited to remove or reduce a snow or ice condition from the sidewalk.

What actions must the owner of commercial property take with regard to defects / snow / ice accumulation/ dangerous conditions? The action required by the law is action which a reasonably prudent person would take or should have taken in the circumstances present to correct the defect / snow / ice accumulation/ dangerous condition, to repair it/remove it or to take other actions to minimize the danger to pedestrians (for example, to give warning of it) within a reasonable period of time after notice thereof. The test is: did the commercial property owner take the action that a reasonably prudent person who knows or should have known of the condition would have taken in that circumstance? If he/she did, he/she is not negligent. If he/she did not, he/she is negligent.

If you are injured, after seeking medical treatment and advising the store/mall, CALL KENNETH A. VERCAMMEN, ESQ. 732-572-0500 for an Appointment.

If we can't handle the accident case, we may know great attorneys who can, such as for serious medical malpractice, nursing home lawsuits, etc More Info at:

http://www.njlaws.com/fall_down_injuries_on_snow.htm

Recent cases

2. Official misconduct does not apply to EMT State v. Morrison 227 NJ 295 (2016)

A municipality's contracting for emergency medical services through a private, non-profit first-aid squad does not convert the EMTs into public servants because they are not exercising authority of a uniquely governmental nature or performing a function exclusive to government in any traditional sense, regardless of whether there are one or more non-profit providers of publicly funded emergency medical services for the municipality. Morrison did not commit the offense of official misconduct because he was not performing a governmental

function and therefore was not a public servant. The Court affirms the judgment of the Appellate Division and remands for proceedings on the four remaining counts.

3. Victim Statement to police not admissible at trial State in Interest of A.R. 447 NJ Super, 485 (App. Div. 2016)

Appellant, a fourteen-year-old juvenile, was found guilty of sexually touching a seven-year old boy on a bus returning from summer camp. The alleged victim was developmentally comparable to a three-year-old. After getting off the bus, he blurted out to his mother's cousin that appellant had touched him during the ride. Eighteen days later, a detective interviewed the younger child on videotape at the county prosecutor's office. The child repeated the accusation, demonstrating it with anatomical dolls. No eyewitnesses on the bus, including the driver and aide, corroborated the incident.

At a pretrial Rule 104 hearing, the court ruled that both of the child's hearsay statements were sufficiently trustworthy to admit under the "tender years" hearsay exception, N.J.R.E. 803(c)(27). The court then queried the younger child at the start of the trial about his ability to discern and tell the truth. The court twice concluded from the child's troublesome responses that he was not competent to testify under the criteria of N.J.R.E. 601. Nevertheless, the court accepted the child's hearsay statements and trial testimony repeating the accusations, based on the so-called "incompetency proviso" in Rule 803(c)(27), which treats children of tender years as available witnesses even if they are not competent to testify.

The court concluded that the younger child's statements during his recorded interview with the detective were "testimonial" under the Confrontation Clause, as construed by the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny. The objective "primary purpose" of the interview was to elicit and preserve statements from an identified child victim of sexual abuse about wrongful acts for potential use as evidence in a future prosecution. The child's testimonial statements to the detective here are distinguishable from the non-testimonial statements that a young child victim made to her teachers at school in *Ohio v. Clark*, 135 S. Ct. 173 (2015).

Although appellant's counsel attempted to cross-examine the child, that exercise was inadequate to safeguard his confrontation rights, given the child's undisputed incompetency. Hence, the court reversed the admission of the detective's interview and the child's in-court testimony because it violated appellant's constitutional rights. However, as appellant concedes, the child's spontaneous assertion after getting off the bus was not testimonial under the Confrontation Clause and was properly admitted. The court remanded for the trial court to reconsider the proofs in light of the determinations.

4. Next community events

March 23, 2017 **Piscataway Library Kennedy Branch Wills** at 7pm

<https://www.facebook.com/events/403214386687148/>

There are Major changes to NJ Estate Tax & changes to taxes on pensions effective Jan 1, 2017. Also, the new NJ Probate makes a number of substantial changes in Probate and the administration of estates and trusts in New Jersey. A bequest to a church or charity must be made clear and in writing.

Brochures are provided at all Estate Planning seminars on Wills, "Answers to Questions about Probate" and Administration of an Estate, Power of Attorney, Living Wills, Real Estate Sales for Seniors, and Trusts.

3/25/17 Jersey Shore Kilt Run/Walk (Lake Como) 11 am

Great event by JerseyRunner.com & Gio Dr. T-shirt 800-435-0066
<https://www.facebook.com/events/199656503839547/>

Saturday, March 25 **Keyport Saint Patrick's Day Parade** at 1:00 PM.
<https://www.facebook.com/Keyport-St-Patricks-Day-Parade-197482333774820/>

March 25 Edison Elks Installation

- take digital photos to send to Media-

<https://www.facebook.com/events/1410931288981129/>

Keansburg St. Patrick's Day Parade 2017

Sunday, March 26 at 1:30 PM

<https://www.facebook.com/events/1257429277676966/>

March 30 South Plainfield Public Library Wills, Estate Planning & Probate Seminar at 7pm

Catholic Financial Foundations: Protecting your family with insurance and estate planning. April 5, 2017 at 7pm

St. Ambrose Knights of Columbus Council #6424

One Frederick Place, Old Bridge, NJ 08857

You don't have to be wealthy or near death to do some thinking about Estate Planning and possible bequest to the church.

Free but please email if possible to reserve a seat

Mark.Boutros@KOFC.ORG

<https://www.facebook.com/events/1362107457197014/>

Speakers:

Mark Boutros is a Knights of Columbus field agent servicing Catholic families in Central New Jersey. Mark comes from a higher education background and was a professor at Brooklyn College and Kean University and has served in the administration at the City University of New York for over a decade before becoming a field agent with the Knights of Columbus.

Jason Valdez, FIC, SKC, serves as the Knights of Columbus General Agent for Central and Southern New Jersey, and leads an agency servicing 42 councils and 10,000 brother Knights and their families.

Kenneth Vercammen, Esq is a trial attorney in Edison, NJ. He is co-chair of the ABA Probate & Estate Planning Law Committee of the American Bar Association Solo Small Firm Division. He is the author of the ABA book "Wills and Estate Administration". Kenneth is also a Brother Knight and a member of Edison Council 4885.