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Landlord's Duty to Remove Snow and Ice

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approach. This case dealt with a coal purification process in which scraps of slate and rock were placed in huge dumps called culm banks. Often these piles ignited through spontaneous combustion and gave off sulphur dioxide gas, but on one occasion hydrogen sulfide was given off. This caused discoloration of the paint on the plaintiff's house. The court denied liability, ruling that the invasion of the plaintiff's land was not intentional and that even if it were, it certainly was not unreasonable.

The *Restatement* Rule has also incorporated the principle of ultrahazardous activity,²⁰ an uncommon activity involving a risk of serious harm which cannot be eliminated by the use of utmost care.

A certain degree of criticism can be leveled at both approaches. The absolute nuisance approach, though simple in form, may be too rigid to permit any elasticity in its application. The *Restatement* approach, while an attempt to clear up the confusion of existing case law, has combined various rules thus making recovery even more difficult although obvious damage has resulted.

Nuisance is a term often resorted to in an effort to impose liability in furtherance of policy considerations when the value of private property rights are weighed against the danger often caused by industry and the profits made from causing this danger.³⁰ But courts following the reasoning adopted in the principal case have departed from this categorization of nuisance. The *Restatement* view has left a substantially damaged individual without remedy. In a day when there is a growing concern for pure air and when highly developed industry no longer needs fostering by the courts, it may be in the best interest of society to adopt universally the rule of absolute nuisance.

CHARLES MATTHEW BERGER

LANDLORD'S DUTY TO REMOVE SNOW AND ICE

Natural accumulations of snow and ice create dangerous conditions for apartment tenants using common areas under control of the landlord. Whether a landlord of a multiple-unit dwelling has a duty to remove such accumulations from the common areas, such as sidewalks, over which he has retained control, is not well settled.

The Supreme Court of Appeals of Virginia was presented with

²⁰RESTATEMENT OF TORTS § 520 (1939).

³⁰1 HARPER & JAMES, TORTS § 1.24, at 69 (1956).

this question for the first time in *Langhorne Road Apartments, Inc. v. Bisson*.¹ Frederick J. Bisson, a tenant in the Langhorne Road Apartments, sustained serious back injuries when he slipped and fell on snow and ice which had accumulated on a sidewalk maintained and controlled by defendant Langhorne Road Apartments. A snowstorm ending the morning of the day of the accident had caused an accumulation of approximately four inches. Bisson contended that the defendant was under a duty to use reasonable care to remove the snow and ice from the private sidewalk within a reasonable time after the storm had ceased. Langhorne maintained that it was under no such duty in absence of an express or implied agreement to do so. The court upheld Bisson's contention and affirmed the trial court verdict awarding \$15,000 in damages to Bisson for injuries sustained in his fall.

At common law, when a landlord leases parts of the premises to individual tenants, as in an apartment building, he necessarily retains control over the areas of common use and must use reasonable care to keep these areas in a reasonably safe condition.² This duty arises because areas of common use are part of the estate reserved by the landlord for the use and benefit of all the tenants.³ However, Massa-

¹207 Va. 474, 150 S.E.2d 540 (1966).

²Lord v. Lencshire House, Ltd., 272 F.2d 557 (D.C. Cir. 1959); Mudd v. Gray, 200 Ala. 92, 75 So. 468 (1917); McDonell v. American Trust Co., 130 Cal. App. 2d 296, 279 P.2d 138 (Dist. Ct. App. 1955); VanSchaack & Co. v. Perkins, 129 Colo. 567, 272 P.2d 269 (1954); Torre v. DeReazo, 143 Conn. 302, 122 A.2d 25 (1956); Grochowsky v. Stewart, 53 Del. 330, 169 A.2d 14 (1961); Shiroma v. Itano, 10 Ill. App. 2d 428, 135 N.E.2d 123 (1956); Bostian v. Jewell, 254 Iowa 1289, 121 N.W.2d 141 (1963); Trimble v. Spears, 182 Kan. 406, 320 P.2d 1029 (1958); Mackey v. Allen, 396 S.W.2d 55 (Ky. 1965); Horr v. Jones, 157 Me. 1, 170 A.2d 144 (1961); Elmar Gardens, Inc. v. Odell, 277 Md. 454, 177 A.2d 263 (1962); Strong v. Sheveland, 249 Minn. 59, 81 N.W.2d 247 (1957); Turnipseed v. McGee, 236 Miss. 159, 109 So. 2d 551 (1959); Feld v. Frankel, 351 S.W.2d 755 (Mo. 1961); Lake v. Emigh, 121 Mont. 87, 190 P.2d 550 (1948); Schwab v. Allou Corp., 177 Neb. 342, 128 N.W.2d 835 (1964); Ahearn v. Roux, 96 N.H. 71, 69 A.2d 701 (1949); Doud v. Housing Authority, 75 N.J. Super. 340, 183 A.2d 149 (1962); Benjamin v. Jonathan Woodner Co., 22 App. Div. 2d 68, 253 N.Y.S.2d 649 (1964); Reese v. Piedmont, Inc., 240 N.C. 391, 82 S.E.2d 365 ((1954); McCullagh v. Fortune, 76 N.D. 669, 38 N.W.2d 771 (1949); Sidle v. Humphrey, 8 Ohio App. 2d 25, 220 N.E.2d 678 (1966); Staples v. Baty, 206 Okla. 288, 242 P.2d 705 (1952); Pritchard v. Terrill, 189 Ore. 662, 222 P.2d 652 (1950); Lemmon v. Bufalino, 204 Pa. Super. 481, 205 A.2d 680 (1964); Reek v. Lutz, 90 R.I. 340, 158 A.2d 145 (1960); West v. Hanley, 73 S.D. 540, 45 N.W.2d 455 (1950); Grizzell v. Foxx, 48 Tenn. App. 462, 348 S.W.2d 815 (1960); Renfro Drug Co. v. Lewis, 149 Tex. 507, 235 S.W.2d 609 (1950); Wilson v. Woodruff, 65 Utah 118, 235 Pac. 368 (1925); Beaulac v. Robie, 92 Vt. 27, 102 Atl. 88 (1917); Williamson v. Wellman, 156 Va. 417, 158 S.E. 777 (1931); Feigenbaum v. Brink, 66 Wash. 2d 125, 401 P.2d 642 (1965); Marsh v. Riley, 118 W.Va. 52, 188 S.E. 748 (1936).

³Schedler v. Wagner, 37 Wash. 2d 612, 225 P.2d 213 (1950), *rev'd on other grounds*, 230 P.2d 600 (1951).

chusetts⁴ and perhaps a few other states⁵ interpret the landlord's common-law duty narrowly and require him only to "use reasonable care to keep common areas in as good condition as that in which they were or appeared to be at the time of the creation of the tenancy."⁶

The question whether either the broad or the narrow interpretation of the landlord's duty as to areas of common use includes a duty to remove natural accumulations of snow and ice from such areas has given rise to three different views. For convenience, these views are referred to as: (1) the Massachusetts Rule, (2) the New York Rule, and (3) the Connecticut Rule.

Under the Massachusetts Rule, the landlord has no duty to remove natural accumulations of snow and ice from common areas unless there is an express or implied agreement to do so.⁷ This rule has been unwaveringly adhered to by Massachusetts,⁸ although its exact basis is unclear. *Woods v. Naumkeag Steam Cotton Co.*,⁹ which established the rule in Massachusetts, fails to state any reasons for its adoption, and subsequent cases have tended to follow the rule blindly. Nevertheless, the Massachusetts Rule is followed in a minority of the states.¹⁰ A few of these states have attempted to justify the rule by saying that snow and ice are "transitory" dangers arising from purely "natural" causes and to impose a duty on the landlord to remove them would subject him to an unreasonable burden of vigilance and care in

⁴*Regan v. Nelson*, 345 Mass. 678, 189 N.E.2d 516 (1963); *Sordillo v. Fradkin*, 282 Mass. 255, 184 N.E. 666 (1933); *Baum v. Ahlborn*, 210 Mass. 336, 96 N.E. 671 (1911).

⁵See *Rosenberg v. Chapman Nat'l Bank*, 126 Me. 403, 139 Atl. 82 (1927); *McGinnis v. Keyton*, 135 Wash. 588, 238 Pac. 631 (1925). *But see* *Thompson v. Frankus*, 151 Me. 54, 115 A.2d 718 (1955). Wisconsin once followed this position, see *Dowling v. Nuebling*, 97 Wis. 350, 72 N.W. 871 (1897), but later abandoned it by judicial decision, *Inglehardt v. Mueller*, 156 Wis. 609, 146 N.W. 808 (1914), and by statute, *Wis. STAT. ANN. § 101.06* (1965).

⁶*Regan v. Nelson*, 345 Mass. 678, 189 N.E.2d 516, 518 (1963).

⁷*Woods v. Naumkeag Steam Cotton Co.*, 134 Mass. 357 (1883).

⁸*Cairns v. Giumentaro*, 339 Mass. 675, 162 N.E.2d 61 (1959); *Carey v. Malley*, 327 Mass. 189, 97 N.E.2d 645 (1951); *McNeil v. Home Sav. Bank*, 313 Mass. 664, 48 N.E.2d 695 (1943); *Bell v. Siegel*, 242 Mass. 380, 136 N.E. 109 (1922).

⁹134 Mass. 357 (1883).

¹⁰*Cronin v. Brownlie*, 348 Ill. App. 448, 109 N.E.2d 352 (1952); *Purcell v. English*, 86 Ind. 34 (1882); *Rosenburg v. Chapman Nat'l Bank*, 126 Me. 403, 139 Atl. 82 (1927); *Burke v. O'Neil*, 192 Minn. 492, 257 N.W. 81 (1934); *Root v. Henry*, 395 S.W.2d 280 (Mo. App. 1965); *Turnoff v. Richman*, 76 Ohio App. 83, 61 N.E.2d 486 (1944); *Pomfret v. Fletcher*, 208 A.2d 743 (R.I. 1965); *Schedler v. Wagner*, 37 Wash. 2d 612, 225 P.2d 213 (1950), *rev'd on other grounds*, 230 P.2d 600 (1951); *Holcomb v. Szymczyk*, 186 Wis. 99, 202 N.W. 188 (1925). *But see* *Durkin v. Lewitz*, 3 Ill. App. 2d 481, 123 N.E.2d 151 (1954); *Sidle v. Humphrey*, 8 Ohio App. 2d 25, 220 N.E.2d 678 (1966); *Oswald v. Jeraj*, 140 Ohio App. 676, 67 N.E.2d 779 (1946).

geographical areas where snow is common.¹¹ The rule has also been explained as a consequence of following Massachusetts' narrow interpretation of the landlord's common-law duty with respect to common areas over which he has maintained control.¹² However, while these states continue to follow the Massachusetts snow and ice rule, they have either liberalized¹³ or abandoned¹⁴ the narrow interpretation of a landlord's common-law duty as applied to other situations. The remaining states which clearly follow the Massachusetts snow and ice rule have always followed the majority rule requiring the landlord to use reasonable care to keep common areas in reasonably safe condition.¹⁵ These courts usually support their position by merely stating that the Massachusetts Rule is the proper one for their jurisdiction.¹⁶ It appears that none of the states following the Massachusetts snow and ice rule adopt the apparent premise behind the rule: that a tenant impliedly assumes any unsafe condition not specifically provided against by his lease.¹⁷ Thus, the only basis for the rule with any support in states other than Massachusetts is a policy against placing too great a burden on a landlord.¹⁸ Both bases for the Massachusetts

¹¹*Purcell v. English*, 86 Ind. 34, 43 (1882); *Schwab v. Allou Corp.*, 177 Neb. 342, 128 N.W.2d 835, 839 (1960).

¹²*Durkin v. Lewitz*, 3 Ill. App. 2d 481, 123 N.E.2d 151 (1954).

¹³*Horr v. James*, 156 Me. 1, 170 A.2d 144 (1961); *Thompson v. Frankus*, 151 Me. 54, 115 A.2d 718 (1955). In *Miller v. Hopper*, 119 Me. 529, 112 Atl. 256, 257 (1921), speaking of the strict common-law interpretations, the court said: "As applied to the plan of construction, the position is sound. . . . But the application of this doctrine to repairs made necessary by wear, breaking, or decay is opposed to the great weight of authority. We conceive the true rule to be that the owner must exercise due care to keep in reasonably safe repair stairways and passageways which remain under his control."

¹⁴See *Fiengenbaum v. Brink*, 66 Wash. 2d 125, 401 P.2d 642 (1965); *Inglehardt v. Mueller*, 156 Wis. 609, 146 N.W. 808 (1914).

¹⁵*Tippecanoe Loan & Trust Co. v. Jester*, 180 Ind. 357, 101 N.E. 915 (1913); *Sherman v. Bobrecker*, 322 S.W.2d 898 (Mo. 1959); *Reek v. Lutz*, 90 R.I. 340, 158 A.2d 145 (1960).

¹⁶*Woodley v. Bush*, 272 S.W.2d 833 (Mo. App. 1954); *Pomfret v. Fletcher*, 208 A.2d 743 (R.I. 1965).

¹⁷See *O'Malley v. Twenty-Five Associates*, 178 Mass. 555, 60 N.E. 387, 388 (1901), "No doubt when the lessor retains control, he owes a duty, and in some cases . . . the duty has been spoken of . . . as a duty to keep the article or place reasonably safe. But the tenant must take things as he finds them There is no implied undertaking or duty . . . to make things better than they are."

¹⁸See *Purcell v. English*, 86 Ind. 34, 43 (1882), "If any other rule is adopted, then the owner is charged with the duty of watching steps leading to every part of the premises, and of keeping them free from all temporary obstructions; for, let it once be granted that the landlord is liable for obstructions or defects not permanent and not growing out of the character of the structure, it will be impossible to draw any line, and he must be held accountable for all obstructions and defects, no matter how transient their character."

snow and ice rule, the policy consideration and the strict concept of a landlord's duty, are subject to the criticism that they are outdated. The emergence of modern apartment houses has created situations vastly different from the rural-type dwellings existing at the time these bases were developed; therefore, these bases are not particularly applicable to situations involving today's modern multiple-unit dwellings.¹⁹

Under the New York Rule a landlord has no duty to remove natural accumulations of snow and ice,²⁰ unless the ice has formed into ridges and hummocks.²¹ The courts reasoned that the duty of a landlord of a multiple-unit dwelling to keep common areas under his control free from snow and ice is like that of a municipal corporation in its care of sidewalks or that of a railroad company in its care of train platforms.²² Therefore, in New York a landlord is charged only with a duty to remove snow and ice which constitutes an obstacle to travel and is something more than slipperiness, such as ridges or hummocks.²³ Although this rule is difficult to apply and was originally laid down by a lower court,²⁴ New York strictly adhered to it,²⁵ until a recent case²⁶ held that a landlord's failure to keep paths clear of snow and ice was a violation of the New York Multiple Dwelling Law.²⁷

¹⁹See *Langley Park Apartments, Inc. v. Lund*, 234 Md. 402, 199 A.2d 620, 623 (1964): "In any one unit are apt to be the very young and the very old, non-working residents who seldom venture far beyond the apartment complex. They, and all others lawfully using the common walkways, must be provided with reasonably safe approaches to and from their apartments and the public streets. To expect these tenants to assume the duty of maintaining the common walks would be impractical. Aside from the problem of assigning areas of responsibility, the average tenant is ill equipped to perform the task of snow removal. It is not feasible to expect that he has and can store the necessary implements and other equipment required to keep the walks clear."

²⁰*Little v. Writh*, 6 Misc. 301, 26 N.Y. Supp. 1110 (N.Y.C. Super. Ct. 1893).

²¹*Van Slyke v. Fivey*, 266 App. Div. 889, 42 N.Y.S.2d 625 (1943); *Harkin v. Crumie*, 20 Misc. 568, 46 N.Y. Supp. 453 (1897); see *Gibson v. Prudential Ins. Co. of America*, 258 App. Div. 740, 15 N.Y.S.2d 100 (1939); *Dwyer v. Woollard*, 205 App. Div. 546, 199 N.Y.S. App. 840 (1923); *Valentine v. State*, 197 Misc. 972, 95 N.Y.S.2d 827 (Ct. Cl.), *aff'd*, 272 App. Div. 1069, 100 N.Y.S.2d 567 (1950).

²²*Harkin v. Crumie*, 20 Misc. 568, 46 N.Y. Supp. 453, 455 (1897).

²³*Ibid.*

²⁴*Ibid.*

²⁵See *Klein v. U.S.*, 339 F.2d 512 (2d Cir. 1964); *Van Slyke v. Fivey*, 266 App. Div. 889, 42 N.Y.S.2d 625 (1943); *Dwyer v. Woollard*, 205 App. Div. 546, 199 N.Y.S. App. 840 (1923).

²⁶*Greenstein v. Springfield Corp.*, 22 Misc. 2d 740, 204 N.Y.S.2d 518 (N.Y.C. City Ct. 1960).

²⁷N.Y. MULT. DWELL. § 8 (1) (1954), "The owner shall keep all and every part of a multiple dwelling, the lot on which it is situated, and the roofs, yards, courts,

The Connecticut Rule,²⁸ which is followed by a majority of the states,²⁹ imposes upon a landlord a duty to use reasonable care to see that common areas are kept reasonably safe from the dangers created by accumulations of snow and ice.³⁰ Courts adopting the rule reason that the landlord has a duty to keep common approaches free of defects or dangerous conditions, and the fact that the dangerous condition was created by purely natural causes does not create such a distinction so as to relieve the landlord of this duty.³¹ Just what is necessary to constitute reasonable care under this rule is usually a jury question. However, to impose liability for failure to perform his duty it must be established that the landlord had actual or constructive knowledge of the dangerous condition.³² In *Sheehan v. Sette*,³³ where the steps to the apartment building were wet and slushy at 6:45 A.M., were beginning to freeze at 9:00 A.M., and the tenant slipped and

passages, areas or alleys appurtenant thereto, clean and free from vermin, dirt, filth, garbage or other thing or matter dangerous to life or health." In fact Greenstein v. Springfield Corp., *supra* note 26, seems to place New York within the majority Connecticut Rule, see note 28 *infra* and accompanying text, because the statutory definition of the type of dwellings for which the landlord would be liable for failure to remove snow and ice includes all types of multiple dwellings, see N.Y. MULT. DWELL. § 4 (8) (1954).

²⁸Reardon v. Shimelman, 102 Conn. 383, 128 Atl. 705 (1925).

²⁹C.W. Simpson Co. v. Langley, 131 F.2d 869 (D.C. Cir. 1942); Robinson v. Belmont-Buckingham Holding Co., 94 Colo. 534, 31 P.2d 918 (1934); Reardon v. Shimelman, 102 Conn. 383, 128 Atl. 705 (1925); Young v. Saroukos, 185 A.2d 274 (Super. Ct. 1962), *aff'd*, 189 A.2d 437 (Del. 1963); Fincher v. Fox, 107 Ga. App. 695, 131 S.E.2d 651 (1963); Reuter v. Iowa Trust & Sav. Bank, 244 Iowa 939, 57 N.W.2d 225 (1953); Langley Park Apartments, Inc. v. Lund, 234 Md. 402, 199 A.2d 620 (1964); Strong v. Shefelvland, 249 Minn. 59, 81 N.W.2d 247 (1957); Thompson v. Resnik, 85 N.H. 413, 159 Atl. 355 (1932); Skupienski v. Maly, 27 N.J. 240, 142 A.2d 220 (1958); Sidle v. Humphrey, 8 Ohio App. 2d 25, 220 N.E.2d 678 (1966); Massor v. Yates, 137 Ore. 569, 3 P.2d 784 (1931); Lemmon v. Bufalino, 204 Pa. Super. 481, 205 A.2d 680 (1964); Grizzell v. Foxx, 48 Tenn. App. 462, 348 S.W.2d 815 (1960); see Schwab v. Allou Corp., 177 Neb. 342, 128 N.W.2d 835 (1964). *But see* Burke v. O'Neil, 192 Minn. 492, 257 N.W. 81 (1934); Goodman v. Corn Exch. Nat'l Bank & Trust Co., 331 Pa. 587, 200 Atl. 642 (1938).

³⁰102 Conn. 383, 128 Atl. 705 (1925).

³¹Reardon v. Shimelman, 102 Conn. 383, 128 Atl. 705, 706-07 (1925): "Approaching the question from the standpoint of principle, we are wholly unable to justify the Massachusetts rule. The duty of the landlord being to exercise reasonable care to prevent the occurrence of defective or dangerous conditions in the common approaches, the fact that a particular danger arose from the fall of snow or the freezing of ice can afford no ground of distinction. Indeed, the causes which are at work to produce it are no more natural causes than are those which more slowly, bring about the decay of wood or the rusting of iron. To set apart this particular source of danger is to create a distinction without a sound difference."

³²Sheehan v. Sette, 130 Conn. 295, 33 A.2d 327 (1943); Drible v. Village Improvement Co., 123 Conn. 20, 192 Atl. 308 (1937).

³³130 Conn. 295, 33 A.2d 327 (1943).

fell at 11:30 A.M., the landlord was held to constructive notice. The court found the conditions to be such that the landlord in exercise of reasonable supervision should have known of the dangerous condition of the premises.³⁴ On the other hand, constructive notice was not imposed in *Drible v. Village Improvement Co.*³⁵ where the landlord had swept the sidewalk clear the morning of the day of the accident, there had been no new snowfall, and the temperature had not risen above freezing prior to the accident. The court concluded that in light of these conditions the landlord in exercise of reasonable supervision would not necessarily have known of the icy condition caused by people tracking snow upon the steps.

Under the Connecticut Rule a landlord is allowed to wait until a reasonable time after the end of the storm before removing the snow and ice, since changing conditions during the storm render it inexpedient and impractical to take earlier effective action.³⁶ No cases have been found which state what would be a reasonable time for a landlord to wait before removing snow and ice. However, in *Boyle v. Baldowski*,³⁷ where the storm ended at 7:30 A.M. and the tenant slipped and fell on icy stairs leading to the apartment at 10:45 A.M., the court held that three hours and fifteen minutes was an unreasonable time for the landlord to wait before removing the snow and ice.

Having acted within a reasonable time to remove the danger, a landlord still must have performed this act in such a manner as to render the common area reasonably safe. Whether the landlord has made the common area reasonably safe is a jury question. However, the tenant has a right to assume a "workmanlike" effort will be made to keep the area safe,³⁸ and if patches of snow and ice are not removed or rendered harmless the area is not reasonably safe.³⁹

Bisson has added Virginia to the increasing number of jurisdictions which support the Connecticut Rule.⁴⁰ This decision has greatly

³⁴*Ibid.*

³⁵123 Conn. 20, 192 Atl. 308 (1937).

³⁶*Young v. Sarouhous*, 185 A.2d 274 (Super. Ct. 1962), *aff'd*, 189 A.2d 437 (Del. 1963); *Goodman v. Corn Exch. Nat'l Bank*, 331 Pa. 587, 200 Atl. 642 (1938); *Grizzell v. Foxx*, 48 Tenn. App. 462, 348 S.W.2d 815 (1960). *Contra*, *Pessagno v. Euclid Inv. Co.*, 112 F.2d 577 (D.C. Cir. 1940) (must use reasonable care during the storm to remove or render harmless).

³⁷117 N.J.L. 320, 188 Atl. 233 (Sup. Ct. 1936).

³⁸*Robinson v. Belmont-Buckingham Holding Co.*, 94 Colo. 534, 31 P.2d 918 (1934).

³⁹*Robinson v. Belmont-Buckingham Holding Co.*, 94 Colo. 534, 31 P.2d 918 (1934); *Visaggi v. Frank's Bar & Grill*, 4 N.J. 93, 71 A.2d 638 (1950).

⁴⁰This decision was not entirely unexpected in light of Virginia decisions in related areas. See *Wagman v. Boccheciampe*, 206 Va. 412, 143 S.E.2d 907 (1965) (landlord not insurer of tenant's safety); *Revell v. Deegan*, 192 Va. 428, 65 S.E.2d