Legal Matters®

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You may have a good slip-and-fall case

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Many people who are injured in a slip-and-fall don't know their rights. Often they'll simply think it was their own fault and therefore they have no case. In a lot of instances this may be true. But if you've been hurt in a fall, it's still a good idea to consult with a lawyer. That's because it may be easier to get compensated than you realize — even if you've encountered an "open and obvious" danger.

Take for example a recent case in New York City. A theatergoer named John Sada slipped and fell on a wet staircase during intermission, then sued the theater for his injuries.

The theater owners argued that they couldn't be held accountable because they'd been maintaining the theater responsibly and had no realistic opportunity to discover the hazard and address it in time to prevent the injury. To back up their argument, the owners even presented evidence of their maintenance schedule.

However, a New York judge concluded that the case could proceed to trial. According to the judge, evidence of the maintenance schedule wasn't enough to show the owners weren't negligent (unreasonably careless). For that, they would have had to show they stuck to the schedule on the day of the accident. Sada also presented evidence that he told an usher about the water on the stairs before he left for intermission, 15 minutes before his fall occurred. While you might think this would hurt his case — after all, he knew of the hazard well before he decided to navigate it, making it an "open and obvious danger" — the court felt he showed enough to be able to bring a claim against the owners. It remains to be seen what will ultimately happen at trial.

In another case, this one from Massachusetts, a woman who tripped and fell while encountering a supposedly obvious hazard got a significant recovery at trial.

In that case, Pamela Matckie was working as a volunteer chef at a food festival being held in Gillette Stadium, home of the New England

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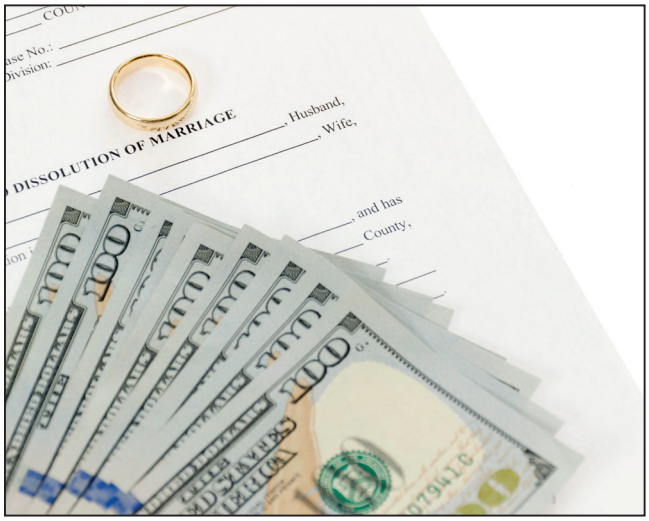
Undoing your divorce: What happens when you have regrets?

A lot of times after a divorce agreement is finalized spouses may have misgivings. Not necessarily about being divorced, but about the divorce agreement itself. Hindsight is 20/20, and they might feel they got a raw deal and could have walked away with a lot more. So if you're unhappy with your divorce agreement, can you undo it?



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That's a complicated question and generally the answer is "No." Courts like to enforce judgments and won't revisit them lightly.

Still, there are a few situations where a court may decide to give a divorce judgment a second look.

For example, courts do not look kindly upon one spouse plotting to hide assets. So let's say you got what you feel is a lousy alimony award or property division. Then it comes to light that in addition to his regular job your ex-husband was making money on the side in some sort of business venture he never told you or your lawyer about, and he squirreled it away somewhere that he figured nobody would ever get to. As long as this isn't the type of thing that you should have been able to discover during the divorce proceeding, it could be grounds for the judge to re-open the agreement and award you more.

Courts also don't like it when one party lies. So if your ex made any fraudulent misrepresentations during the divorce proceeding in order to convince you to agree to the terms of the settlement and you didn't find this out until later, that could be another situation where the courts might "undo" the divorce and revisit its terms.

Finally, a divorce agreement is a contract. And like any contract, it can potentially be undone if the terms are "unconscionable." That means they need to be so completely unfair and there has to have been such a huge imbalance of bargaining power between the spouses that it "shocks the conscience" of the court. This is very rare, but in those few instances a divorce judge may decide not to enforce its terms.

If you think you fall into one of these categories, you should definitely talk to a lawyer. These situations are rare, but they do arise on occasion. And if you're in such a situation, you want to act as quickly as possible to preserve whatever rights you might have.

GENERAL BRIEFS

Real estate owners need a will

Anyone who owns real estate needs to have a will that indicates what should happen to the property if he or she suddenly passes away.

You might assume you know who would inherit your house, but without a written will the inheritance would be decided by state-law rules that might not be exactly what you'd expect.

Even if the house ultimately goes to the person you want, the lack of a will might mean that ownership remains in legal limbo for an extended period of time. This can create unnecessary complications when it comes to paying property taxes and arranging for continued utilities and insurance coverage. If you have a mortgage, it can create even bigger headaches.

Having a will also prevents family disputes. For instance, if you live in your house with one of your children, the child might assume that he or she will get the house. But other siblings might legally inherit a share, and demand that it be sold.

Dangerous airbags are still being installed in new cars

Millions of cars in the U.S. have been equipped with airbags made by the Takata Corporation. As you may know, some of these airbags have deployed improperly, exploding and sending shards of shrapnel into passenger compartments. The National Highway Traffic Safety Administration has linked these airbags to at least 10 deaths and more than 100 injuries, and launched one of the largest safety recalls in U.S. history.

What you might not know is that at least four car companies — Fiat Chrysler, Mitsubishi, Toyota and Volkswagen — are still installing these airbags in certain new cars.

You may have a better slip-and-fall case than you think

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Patriots. She tripped on warped plywood placed around the perimeter of the field and shattered her left arm bone.

Matckie, who had graduated from the renowned Le Cordon Bleu cooking school, suffered permanent damage and could no longer pursue her dream of working as a professional chef. She sought to hold several parties accountable: the stadium's owners, its developers, the security and event staffing company that handled the festival and the stadium owner's insurer.

All the defendants pointed fingers at each other before pointing out that Matckie and other volunteers could have simply avoided walking on the plywood boards, which they characterized as an "open and obvious danger."

A jury, however, disagreed and awarded substantial damages to the estate of Matckie, who had passed away a few weeks before the trial.

Finally, in another Massachusetts case the highest court in the state expanded what's known as the "mode of operation" doctrine in a way that could make it easier for slip-and-fall victims to recover, even where the hazard is arguably open and obvious.

Generally, when an injury victim sues a storekeeper over a slip-and-fall, the victim has to show that the owner had some kind of notice of the condition that caused the accident.

But under the mode of operation rule — which is recognized in a number of states — a storekeeper's negligence is almost implied if there's a "substantial risk of injury" inherent in how he or she runs the business. So if, say, a grocery store customer slips and falls on a piece of fruit in a self-serve produce aisle, the customer doesn't have to show the shopkeeper knew or should have known of the condition. Instead, in order to avoid responsibility the shopkeeper has to show it did everything a reasonable shopkeeper in the same situation would have done.

Initially, Massachusetts only applied this rule to cases that involved "spillage and breakage" of items intended to be sold on the premises or carried about the store.

But more recently, the state's highest court ruled that under the mode of operation rule a woman who broke her leg slipping on a spilled drink on a dance floor could sue the nightclub where the accident took place. And even more recently, the court gave the go-ahead for a woman to sue a gardening store after she fell on a small stone that had migrated from a landscaped gravel area onto a concrete walkway.

Of course the results in any personal-injury case depend on the specific circumstances. But if you have suffered an injury in a fall, it's very important to talk to an attorney instead of assuming you have no recourse. Like the victims in these cases, you very well might.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

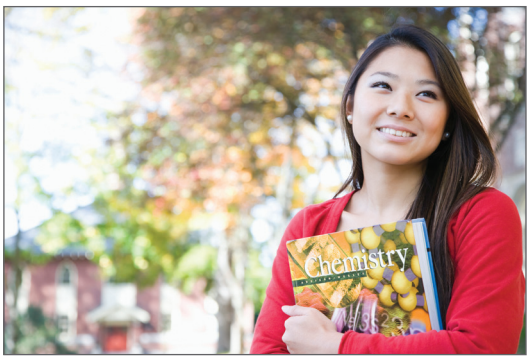
Technically, this isn't illegal, although any vehicles using these airbags must be recalled by the end of 2018.

In addition, the manufacturers don't legally have to tell buyers that their new cars contain defective parts that will soon have to be replaced.

But if you're buying a new car, it would be wise to ask whether the airbags have a dangerous track record and are going to be subject to a recall.

Get a HIPAA release for your college-age child

If you have a child who is away at college, you should be aware that the federal medical privacy rules apply to him or her. Once your child turns 18, the federal HIPAA law says that you can no longer have access your child's medical information without his or her consent.



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That's a problem, because if there's an emergency and your child isn't able to provide consent, you might not be able to access the information you need to make important medical decisions. In fact, it might not even be clear that you have the legal right to make such decisions.

It only takes a few minutes for your child to sign a HIPAA release form and a form saying that you can act as a health care agent. It's easy to do, and it could be very important in an emergency.

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Estate planning may be harder for couples without children

You might think that estate planning would be easy when couples don't have children. In fact, it can sometimes be more difficult — and also more important.

Couples with children generally agree about passing on their assets to their kids, and can rely on their offspring to serve as caregivers and executors. It might not be so easy for other couples.

For instance, suppose Mike and Helen write a will leaving their assets to each other. If Mike dies first, Helen will inherit everything. When Helen dies, who will get Mike's assets? Helen could make a new will, but if she doesn't, all of Mike's assets will go to Helen's relatives according to state law.

But what about Mike's relatives? They would be left with nothing. And the same is true for Helen's relatives if she happened to die first.

Of course, Mike and Helen could agree that the surviving spouse will sign a new will that's fair to both families. But what if the surviving spouse gets remarried, or has a falling out with the in-laws, or dies shortly afterward, or is elderly and simply doesn't get around to it?

A better approach might be for Mike and Helen's will to say that if one dies, his or her assets will go into a trust. The trust can benefit the surviving spouse during his or her lifetime, and then go to the other spouse's family. That solves the problem.

Another issue is who will serve as power of attorney or health care proxy. If Mike and Helen name each other, and one dies, who will be listed as the alternate for the surviving spouse? If there are no children in the picture, this requires very careful consideration.