Legal Matters®

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What happens if children are hurt on someone else's property?

It's not uncommon for children to wander onto someone else's property because they want to play with something they see there … and to get hurt as a result.

Of course, such children are "trespassing" in a sense, since they don't have a legal right to go onto someone else's property. But younger children usually don't understand about property rights; they just want to play around something interesting, such as an old car, a discarded appliance, or a swimming pool.

And the law is often on the children's side. In fact, in many cases, the law says that landowners have a *legal duty* not to allow hazardous things on their property if a child might see them, wander over, and be injured.

There's even a formal legal name for dangerous things that entice children in this way: "attractive nuisances."

Of course, that's not to say that a homeowner can't have a swimming pool in the backyard or keep an old car in the driveway. But property owners do have to take reasonable precautions to prevent injuries to children, even children whom they didn't invite onto their land.

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When a child is injured because of an "attractive nuisance," his or her family may be able to sue for compensation. And that's true even if the child's family wasn't supervising the child as well as they could have.

Here's a look at some of the most common types of attractive nuisances:

• ***Swimming pools.*** Swimming pools are very appealing to kids on a hot day, and the risk of a small child drowning is considerable. Plus, it's not terribly costly to take steps to

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More doctors are making patients promise not to sue them

In theory, arbitrators are supposed to be neutral, but in practice, it's often the doctor who gets to choose the arbitrator.

A growing number of doctors are requiring patients to agree not to sue them if something goes wrong with their treatment.

These doctors are requiring patients to sign a contract saying that if they accuse the doctor of malpractice, the case will go to arbitration.

Arbitration is a process where a third party decides an issue without a judge or a jury being involved. Arbitration is quicker and cheaper than going to court, and arbitration requirements are fairly common in contracts between big companies. But having doctors force patients to sign arbitration agreements is new.

In theory, arbitrators are supposed to be neutral, but in practice, it's often the doctor who gets to choose the arbitrator or pick the company that will provide the arbitrator. Plus, various rules and rights that help level the playing field in court don't necessarily apply in arbitration.

However, it's not clear that doctor-patient arbitration agreements are always legally valid, so even if you signed one, it might still be possible to have a court decide your claim.

In one recent case, a patient in Florida signed an arbitration agreement before having surgery. The agreement also said that in any malpractice claim, the amount the patient could be awarded for pain and suffering would be capped at $250,000.

After surgery, the patient died from complications caused by the laceration of a vein during the operation. And despite the arbitration agreement, the Florida Supreme Court said the patient's wife could sue in court for malpractice.

According to the court, this particular agreement violated the state's malpractice law because it was too one-sided in favor of the doctor.

Arbitration agreements can come up in many other contexts, too, such as when people sign contracts for nursing home care.

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Popular diabetes drugs may be linked to cancer

Januvia, Byetta and Victoza are drugs that help adults with type 2 diabetes manage the insulin levels in their blood. All three rely on a hormone called "incretin." Last spring, however, a group of academic researchers suggested a link between these incretin-based diabetes drugs and pancreatic cancer.

Nearly 100 federal lawsuits were soon filed across the country against the various manufacturers of these drugs.

Meanwhile, the Food and Drug Administration has been investigating the issue. For the time being, the FDA has recommended that patients continue to take the medications as directed by their health care provider, because it considers the link between the drugs and pancreatic cancer to be unsettled.

However, if you suffer from type 2 diabetes, it's probably a good idea to speak with your own physician about the continued use of incretin-based treatments, given the research findings and the number of users who claim to have been diagnosed with pancreatic cancer after using the drugs.

Heated car seats are blamed for burn injuries

Heated car seats can be wonderful on a winter morning. But over time, seat heaters can stop working properly – and when they do, injury can result.

The National Highway Traffic Safety Administration has received well over 1,000 complaints in the past decade about heated car seats that have caused burns or, in some cases, even caught on fire.

While driver's manuals typically state that heated seats shouldn't reach a temperature above 105 degrees, seat heaters have been known to malfunction and reach temperatures higher than 150 degrees. You should be aware that a temperature of 111 degrees is hot enough to cause a burn, and a 120-degree seat can cause a third-degree burn.

Most car seats do not have a safety mechanism to detect overheating and turn the heater off.

The risk is particularly serious for people with neuropathy and other conditions that cause nerve problems, because they may not be able to feel how hot the seat is until it's too late. Neuropathy can be a side effect of diabetes, liver disease, kidney disease, certain types of cancer, and other conditions.

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prevent harm, such as a security fence or locked gate.

In one recent case, a Georgia court held homeowners responsible when a two-year-old boy drowned in their pool, even though the boy's parents acknowledged that he wasn't invited onto the property. The court noted that the pool had a "playground-style" slide and was close to an elementary school, and said the homeowners should have taken this into account and installed a fence.

Of course, the law requires *reasonable* safety measures, not complete perfection. If a property owner takes reasonable steps to prevent harm and a child somehow sneaks in anyway, the owner likely won't be responsible.

On the other hand, many cities and towns have specific safety code provisions that require certain precautions. Even if property owners take what they consider reasonable steps to reduce risk, they could still be held accountable if they didn't follow all the legal requirements.

• ***Play structures.*** Swing sets, slides, synthetic "rock walls," rope ladders, trampolines and treehouses can all be attractive nuisances under the right conditions, and owners need to take appropriate steps to keep out children who are too young to appreciate the risks.

For example, one court on the East Coast found a homeowner responsible for injuries to a child who rode a scooter onto a skateboard ramp at another family's home. The court said the homeowner was careless in leaving a scooter right next to the ramp, since the owner should have known that this would attract other children, creating a dangerous situation.

It's also worth noting that trampoline accidents have become so common and foreseeable that some insurance companies won't even insure a home if there's an outdoor trampoline on the property.

• ***Construction sites and farms.*** What preschooler doesn't like to pretend he's Bob the Builder or Old McDonald? Farms and construction sites are an obvious lure to children, and dangers can be posed by construction equipment, unfinished upper floors, tractors, silos, and abandoned machinery. Farmers and builders may well have a duty to install adequate fencing.

• ***Liquor and gun cabinets.*** Even teenagers can be the victim of attractive nuisances, if the attractions are items such as guns, liquor, power tools, etc. Homeowners should take reasonable steps to keep these items out of the hands of unsupervised minors.

Gun owners can be responsible for accidental injuries caused by a young person they didn't invite into their home, and parents in some cases have been held liable for drunk driving accidents caused by their children's friends.

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Here's another reason injured people should act quickly

You might be familiar with "statutes of limitations," which say that you have to file a lawsuit within a certain time period after you suffer an injury, or else lose your rights.

But you might not know that some states also have a "statute of repose." This is a law that usually applies where someone is injured by a product, and it says that any lawsuits have to be brought within a certain period of time after the product is first sold – *regardless* of when the injury occurs.

If a state has a 10-year statute of repose, then any lawsuits over a defective product must be brought within 10 years after the date of the first purchase.

So suppose you bought a used car today that was first sold in 2002. If the car had a defect that caused you an injury, but there was a 10-year statute of repose, you'd be unable to sue the manufacturer at all.

Some states have statutes of repose for medical malpractice cases. For example, if a doctor botched a procedure, but the complications didn't show up until many years later, you might be unable to be compensated.

That's why it's so important to consult a lawyer as soon as you've suffered an injury. Even if a statute of limitations says you have a year or more before you lose the right to file a lawsuit, a statute of repose might expire within months, weeks or even days.

It's also a good idea to keep records of purchase dates for major products, such as automobiles, appliances, power tools, play structures and swimming pool drains. That way, if something goes wrong, you'll have information you might need in order to preserve your rights.

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Stores must be careful, even if customers aren't

Generally, a store has a legal duty to provide a safe shopping environment. And while customers should always be careful, sometimes a store has to make sure that the premises are safe even for customers who are momentarily distracted. After all, customers expect to be paying attention to the merchandise – not to hazards in the aisles.

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For example, a Nevada man was hurt when he stumbled and fell over a wooden pallet that a Costco worker had left in a store aisle. He sought to hold Costco responsible, claiming that the store was careless in leaving the pallet there.

Costco argued in court that the pallet on the floor was "obvious," and the man should simply have been more careful.

But the Nevada Supreme Court disagreed, and said the fact that the pallet was clearly visible didn't relieve Costco of its duty to maintain a safe premises. A jury should decide whether Costco lived up to this duty.

Similarly, a 64-year-old Virginia woman was knocked to the floor of a Food Lion supermarket when her cart collided with a dolly being pushed by an employee. The tubs of merchandise on the dolly were apparently stacked so high that the employee couldn't see over them.

The woman suffered a head injury that resulted in permanent brain damage.

Food Lion argued at trial that the accident was the woman's own fault because she wasn't paying attention. But a jury found otherwise, and issued a sizeable verdict in the woman's favor.