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Businesses and other property owners sometimes have a legal duty to protect people from dangers that are nearby.

### Landowner responsible for hazard on someone else's property

The Elephant Rock Beach Club is a private club in Massachusetts. It's named after Elephant Rock, a natural formation about 250 feet offshore.

Many members swim out to the rock. One day a guest swam out to the rock, dove off it, and injured herself on a dangerous part of the rock that was submerged just under the water. She sued the club for not warning of the danger.

The club claimed that it couldn't be held responsible for the accident because it didn't own the rock. The rock was beyond its property line, in waters owned by the state.



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But a federal court said that the club had effectively taken control of the rock, because it had established rules prohibiting small children from using it, and because lifeguards often whistled people away from it on days when there were difficult swimming conditions.

Although the rock wasn't on the club's property, the court said landowners sometimes have a legal duty to prevent people from being hurt on a neighboring property. For instance, it pointed to an earlier case where a city was sued for not putting up a fence between a city-owned playground and a railroad track.

page 2

Cruise line sued for medical negligence onboard ship

Children's Motrin linked to rare but terrible disease

Stadium owner can be sued for fight in men's room

Parents may be liable for child's posts on Facebook

page 3

Nursing homes may be overprescribing antipsychotic drugs

page 4

Landowner responsible for hazard on someone else's property

# Legal Matters®

Consumer Safety  
summer 2015

## Parents, party hosts and others might be responsible for guests' drinking

If you or someone you know has been injured by a drunk driver, you might know that you may be able to sue the driver for damages. You might also know that if the driver had been drinking at a bar, and the bar kept serving the person even though it should have known he or she was drunk, the bar might be liable, too.

But what if the driver was drinking at a party, or in someone else's home?

In some cases, a private person who carelessly provides alcohol to a driver who later injures someone can be held responsible for the harm.

This is important to know, because it might result in the injured person having an additional source of compensation if the driver's auto insurance doesn't fully cover the loss.

The most common situation in which a private person could be held responsible is if he or she gave alcohol to someone who was under the legal drinking age. Every state in the country makes it illegal to provide alcohol to minors, and most states also have laws that in



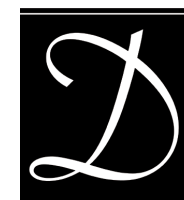
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some way make people financially responsible for the harm if they break this law.

For instance, if parents let young people drink in their home, the parents might be responsible if a minor gets drunk and later injures someone in a car crash. Some parents have the attitude that young people will

drink anyway, and they would rather provide the alcohol themselves so the young people can drink in a controlled environment. But regardless of whether this is a wise attitude or not, it won't necessarily prevent legal liability if the parents break the law and someone

continued on page 3



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## CONSUMER SAFETY BRIEFS

### Cruise line sued for medical negligence onboard ship

A cruise line may be held responsible in court if a passenger receives poor medical care onboard, according to a federal appeals court in Atlanta.



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The case was brought by the family of Pasquale Vaglio, an elderly man who banged his head while on a Royal Caribbean ship docked in Bermuda. The family claimed that the onboard medical staff refused to provide treatment until they

obtained credit card information, and were so careless in the treatment they did provide that Pasquale died when his life could easily have been saved.

Back in 1988, another federal appeals court had ruled that a cruise line wasn't legally responsible for the actions of a ship's doctor or nurse. A passenger could still sue the individual medical provider, of course – but the doctor or nurse might be based in another country and be hard to track down, or might not have enough assets or insurance to provide full compensation.

But in Pasquale's case, the court said the old rule needed to be changed because cruise lines have evolved tremendously since 1988.

Back then, many ships didn't have any onboard doctors or medical facilities. Today, however, cruise ships are more like floating cities, and lines such as Royal Caribbean often boast of their state-of-the-art medical care. The court said it would be wrong to let cruise lines brag in this way and then take no responsibility when things go wrong.

### Children's Motrin linked to rare but terrible disease

Children's Motrin has been linked to a rare but serious disease called toxic epidermal necrosis, or TEN, a potentially life-threatening condition.

In one case, three-year-old Brianna Maya developed a chest rash a day after her mother gave her Children's Motrin. Her doctor had instructed her to alternate Motrin, whose active ingredient is ibuprofen, with Tylenol, which uses acetaminophen.

Brianna's symptoms got worse – the rash turned into severe blisters all over her body – and she was airlifted to a hospital. She was diagnosed with TEN and was hospitalized for a month. Brianna is now blind, has scarred lungs,

and will never be able to have sex or deliver a child.

Brianna's mother sued the maker of Motrin, and a Philadelphia jury found that the company had failed to warn users of the risk of TEN.

It appears that the label for prescription Motrin had contained a warning about TEN, but the warning wasn't included on the over-the-counter version.

### Stadium owner can be sued for fight in men's room

A man who was injured by a fellow hockey fan in a drunken fight in a restroom at a Boston Bruins game can sue the stadium owner and its security company, a judge recently ruled.

John Foley was apparently trying to defuse an argument between a friend of his and another man when the fan approached, screaming and swearing, and injured Foley.

Foley sued, claiming that if stadium security had been properly trained and staffed, it could have intervened in time to prevent his injuries. The stadium owner argued that this wasn't true, and that it was impossible to fully guarantee everyone's safety throughout the arena.

The judge observed that hockey is a violent sport with a history of attracting intoxicated fans, which means the stadium owner could have foreseen that there might be incidents like this one. The judge said it should be up to a jury to decide whether the stadium's security measures were adequate under the circumstances.

### Parents may be liable for child's posts on Facebook

Parents may be held liable in court for damages for things their children post on Facebook, according to a recent decision from the Georgia Court of Appeals.

Seventh-grader Dustin Ahearn created a fake Facebook page for a classmate, Alexandria Boston. The page used a "fat face" app to make the girl look obese, and included posts suggesting that she used drugs, was racist and promiscuous, and had mental health problems.

Alexandria's parents complained to the school, which suspended Dustin for two days and told his parents. Dustin's parents punished him, but they neglected to make him take down the site, which remained online for almost a year until Alexandria's parents sued them.

The court said that Dustin's parents couldn't be held liable for the fact that Dustin created the site in the first place, because he did it without their knowledge. However, once they knew about the site, they may have had a legal duty to supervise Dustin's Internet use, including making him take the site down, the court said.

## Nursing homes may be overprescribing antipsychotic drugs

More than 300,000 nursing home residents across the country are receiving antipsychotic medications, according to a federal study.

These drugs are typically used to treat schizophrenia and bipolar disorder. But a large number of nursing homes are prescribing them for residents with Alzheimer's disease or dementia. These patients can experience anxiety and aggression, and nursing homes sometimes prescribe them in order to calm the patient down.

The problem is that when these drugs are prescribed inappropriately, they can increase the risk of heart failure, infections, and other serious health problems.

Antipsychotic drugs have *not* been approved by the Food and Drug Administration to treat demen-

tia. In addition, federal law prohibits using drugs simply to restrain nursing home residents, and requires nursing homes to get the consent of the resident or his or her personal representative before prescribing antipsychotics.

Some nursing homes have been known to seek "consent" by casually mentioning to family members that they plan to give the resident "something to calm them down," without fully explaining the seriousness of the drugs involved.

If you have a loved one in a nursing home, it's a good idea to keep close tabs on the medications being prescribed, and if you have any questions, seek a second opinion from a doctor who's not associated with the nursing home.



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## Parents, others might be responsible for guests' drinking

*continued from page 1*  
ends up getting hurt.

There have been cases where parents have been held liable even though they didn't serve the alcohol – and weren't even at home – but they had alcohol on the premises and should have known that young people were likely to "party" with it while they were away.

Parents aren't the only ones who can be sued. Other people who organize a party or act as a social host may be responsible for underage drinking. And in addition to drunk driving, parents and social hosts may be responsible for other types of harm that can result from being drunk, such as falls and other accidents.

Of course, if hosts make other types of intoxicants available to young people, that can also lead to liability. The growing prevalence of medical marijuana means that people who use it need to take care not to let minors have access to it.

And in some states, the law says that a social host may be responsible if an *adult* guest gets drunk and later injures someone. If the host controls the liquor supply and should realize that allowing the guest to continue drinking creates a danger to the community, the host may be legally responsible for the consequences of allowing the person to drink.

All these types of claims may be covered by the host's homeowner's insurance policy – so it may be possible for a victim to be fairly compensated with-

out bringing a lawsuit that bankrupts the host.

If you or someone you know has been injured by a drunk driver or in another situation involving alcohol, it's always good to talk to an attorney, because it's not always clear who may be responsible until an attorney has investigated all the facts.

For instance, in one recent case a 20-year-old California girl threw a party at her parents' vacation home while they were away. One of the guests got drunk, drove off, and struck another guest.

Under California law, businesses can be sued for selling alcohol to a drunk minor, but a minor can't be sued for giving alcohol to another minor.

However, it turned out that the 20-year-old had asked a friend to stand by the gate and collect \$3 to \$5 from each guest to help pay for the booze. The California Supreme Court said that this turned the party into "a pop-up nightclub that required a cover charge for entry," and thus the girl could be legally responsible as a careless *seller* of alcohol.

This case is significant because it's very common for guests at informal college and high-school parties to be asked to pony up a few dollars each to help pay for drinks.



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