

E362

NJLaws E362 1. Liability for Snow and Ice Fall Downs 2. DWI Alcotest Result Thrown Out Where State Police Did Not Use Approved Digital Temperature Measuring Device. 3. Should I Cancel My Life Insurance because of the New Tax Law?

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.

More Info At:

2. DWI Alcotest Result Thrown Out Where State Police did not use Approved Digital Temperature Measuring Device. *State v. Holland*, Law Div. - Monmouth Co. (English, J.S.C.)

Defendant was charged with driving while intoxicated and filed a motion to suppress the results of the Alcotest. The issue is whether the State's production of a certificate of a digital temperature probe manufactured by Control Company, Inc. contrary to the requirement in *State v. Chun*, which explicitly provides that the State shall produce a Draeger Safety, Ertco-Hart Digital Temperature Measuring System Report of Calibration, NIST traceability, renders the results of the Alcotest unreliable and, thus, inadmissible. The court found no evidence in the record

below to show that the digital temperature probe manufactured by Control Company is the same or similar to the Ertco-Hart digital temperature probe manufactured by Draeger Safety. The court found that the dictates of *Chun* were not satisfied. The results of defendant's Alcotest readings are suppressed and her municipal court conviction is vacated.

Source: dailybriefing@njsba-njldailybriefing.com
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3. Should I Cancel My Life Insurance because of the New Tax Law?

By Thomas D. Begley, III

In December 2010, Congress and President Obama passed legislation, which, in part, significantly altered the federal estate tax. For the next two years, there is a federal estate tax exemption of \$5,000,000 per person. With a proper post-mortem election, a couple can preserve \$10,000,000 without any pre-

mortem planning. Of course, with proper planning, this \$10,000,000 objective can be attained as well.

In light of this great expansion of the federal estate tax exemption, many individuals are understandably questioning whether or not they need to maintain current levels of life insurance. For some individuals, it may no longer be necessary for life insurance to be maintained. However, for the vast majority of individuals, they should keep their life insurance policies intact.

There are a variety of uses for life insurance. The three primary uses are as follows. First, it is an excellent vehicle to provide for a family in which there are young children and in which a surviving spouse may have limited income. In this situation, maintenance of life insurance is necessary to ensure that a surviving spouse and/or minor children are financially secure. Second, life insurance

provides an excellent source of liquidity. Many estates are comprised of assets, which are predominantly illiquid or inadvisable to liquidate. Such estates are those, which include real property, which may take some time to sell, and retirement plans, which generate significant income taxes if liquidated at rates quicker than required for minimum distributions. Third, life insurance can minimize or avoid death taxes. These include not only the federal estate tax, but various state estate and inheritance taxes as well.

When you are reviewing your estate plan with respect to these tax law changes, please feel free to contact us for assistance. We are happy to help.

Source: Tom Begley, III Begley Law Group, 509 South Lenola Road, Building 7, Moorestown, NJ 08057.

Tom Begley is a speaker at the Annual Nuts & Bolts of Elder Law program in April.

Congratulations South Brunswick HS wrestling team- District Champs

Editorial Assistance provided by Susan Rosti, Esq. Ms. Rosti earned her law degree from Pace University School of Law and is licensed in New Jersey and New York. Ms. Rosti currently is Of Counsel Attorney at Kenneth Vercammen and Associates, P.C.