STATE OF ILLINOIS
RETAIL COMPENDIUM OF LAW

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I. ILLINOIS PREMISES LIABILITY
A. **SLIP AND FALL ON FOREIGN SUBSTANCES**

1. **Legal Standard**

   In order to recover as a result of a fall on a foreign substance, the plaintiff must establish that (1) the substance was placed there by the negligence of the owner or his employees, or (2) the substance was on the premises through acts of third persons. If there is no showing how the substance got there, or if it was through acts of a third party, then liability may be imposed if it appears that (1) the owner or his employees knew of its presence (i.e., actual notice), or (2) the substance was there a length of time so that in the exercise of ordinary care its presence should have been discovered (i.e., constructive notice). Tomczak v. Planetsphere, 315 Ill.App.3d 1033, 735 N.E.2d 662 (1st Dist. 2000) (citing Olinger v. Great Atlantic & Pacific Tea Co., 21 Ill.2d 469, 173 N.E.2d 443 (1961)). No cases specifically offer a reasonable length of time for a substance to be on the floor in order to establish notice. However, if the area was zoned or inspected 10 to 20 minutes earlier and nothing was on the floor, then it is likely that there is no constructive notice to the defendant.

2. **Exception to Actual or Constructive Notice Standard**

   The plaintiff is not required to demonstrate actual or constructive notice if he offers evidence sufficient to support an inference that the defendant’s negligent acts or omissions had produced a condition that caused the injury. See Piper v. Moran’s Enterprises, 121 Ill.App.3d 644, 459 N.E.2d 1382 (1984) (holding that the plaintiff was not required to prove the defendant’s actual or constructive notice because the pallet on which plaintiff stepped on was probably caused by the defendant’s negligence and the issue of the defendant’s negligence was properly submitted to the jury); Mueller v. Phar-Mor, Inc., 336 Ill.App.3d 659, 784 N.E.2d 226 (1st Dist. 2000) (holding that the plaintiff offered evidence sufficient to support an inference that the defendant’s negligent acts or omissions had produced the condition that caused the injury, and no showing of actual or constructive notice was required); Donoho v. O’Connell’s, Inc., 13 Ill. 2d 113, 148 N.E.2d 434 (1958).

   In other words, the plaintiff must offer some further evidence, direct or circumstantial, such as the location of the substance or the business practices of the defendant, from which it can be inferred that it was more likely that the defendant or his servants, rather than a customer, dropped the substance on the premises. See also Reed v. Wal-Mart Stores, Inc., 298 Ill.App.3d 712, 700 N.E.2d 212 (4th Dist. 1998) (holding that the plaintiff had presented strong circumstantial evidence to support the allegation that the store negligently placed a board with rusty nails in the pathway and created the dangerous condition; the board was related to the store’s business, and that store, rather than a customer, placed the board on the floor); Donoho v. O’Connell’s, Inc., 13 Ill.2d 113, 148 N.E.2d 434 (1958); Perminas v. Montgomery Ward & Co., 60 Ill.2d 469, 328 N.E.2d 290 (1975); Wolfe v. Bertrand Bowling Lanes, Inc., 39 Ill.App.3d 919, 351 N.E.2d 313 (2nd Dist. 1976).
3. **Practical Tips**

In virtually every slip and fall case, there is a question of notice. The importance of notice then cannot be overemphasized. Early in your investigation, be sure to explore every possible source of notice evidence such as when the area was last inspected, or zoned.\(^1\) Without notice, there is generally no duty. If the defendant had actual or constructive notice of the substance, do not overlook the fact that what may have established notice to the defendant may also be used to support a claim that the plaintiff should have seen the substance and avoided it. Illinois is a comparative fault state and if it can be shown that the plaintiff was not exercising reasonable care, a jury will reduce the damages awarded by the percentage of plaintiff's contributory negligence.

\(^1\) The defendant’s lack of notice is often coupled with proof of a reasonable inspection. If the defendant can establish that a reasonable inspection occurred within a relatively short time before the accident, and that nothing was found on the floor, the plaintiff will have a difficult time proving negligence. Furthermore, it is also important to explore evidence in the record as to the length of time the substance was on the floor prior to the fall. If there is no evidence that shows the length of time the substance was on the floor or no evidence that anyone had observed it on the floor for any length of time prior to the fall, these facts may be sufficient to support a motion for summary judgment.
B. **OPEN & OBVIOUS CONDITIONS**

1. **Legal Standard**

A landowner does not have a duty to warn or protect against open and obvious defects.

2. **Exception to Open and Obvious Defect Rule**

There is an exception to the open and obvious defect rule in certain circumstances when the customer was reasonably “distracted” prior to encountering the open and obvious condition. See *Ward v. Kmart Corp.*, 136 Ill. 2d 232, 554 N.E.2d 223 (1990); *Diebert v. Bauer Brothers Construction Company*, 141 Ill. 2d 430, 566 N.E.2d 239 (1990).

The decision in *Ward* marked a dramatic change in Illinois case law and has prevented defendants from obtaining summary judgment or a directed verdict on what had previously been viewed as cases with no liability. Under *Ward*, defendants need to argue the plaintiff's contributory negligence is more than 50% and that will bar plaintiff's recovery.

Since *Ward*, Illinois courts have carved out a couple of caveats to the open and obvious distraction exception. First, when the plaintiff fails to notice an open and obvious condition because of his own inattention (not because of being distracted or being momentarily forgetful), the storekeeper owes no duty to the plaintiff. See *Richardson v. Vaughn*, 251 Ill. App. 3d 403, 622 N.E.2d 53 (2nd Dist. 1993)). Second, in a case where the plaintiff was distracted by plaintiff’s own independent acts for which the defendant had no responsibility, the distraction exception does not apply and summary judgment in favor of the defendant is appropriate. See *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 830 N.E. 2d 722 (1st Dist. 2005)) below.
C. SNOW AND ICE

1. Natural Accumulation vs. Unnatural Accumulation

A retailer has no duty to remove a natural accumulation of ice and snow in Illinois. Therefore, if a customer falls on snow which was not shoveled, there is no liability. Frederick v. Professional Truck Driver Training School, 328 Ill.App.3d 472, 765 N.E.2d 1143 (1st Dist. 2002); Bakeman v. Sears, Roebuck & Co., 16 Ill.App.3d 1065, 307 N.E.2d 449 (1974). To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. Frederick, 328 Ill.App.3d 472, 765 N.E.2d 1143 (1st Dist. 2002). In absence of such a showing, summary judgment for the defendant is appropriate. Shoemaker v. Rush-Presbyterian-St. Luke’s Medical Center, 187 Ill.App.3d 1040, 543 N.E.2d 1014 (1st Dist. 1989).

Liability may be incurred when snow or ice is not produced or accumulated from natural causes, but as a result of artificial causes or in any unnatural way, or by the defendant’s own use of the area and the defendant’s creation of the condition. Fitzsimons v. National Tea Co., 29 Ill.App.2d 306, 173 N.E.2d 534 (2nd Dist. 1961). A finding of an unnatural or aggravated condition must be based upon an identifiable cause of the ice formation. Gilberg v. Toys “R” Us, Inc., 126 Ill. App. 3d 554, 467 N.E.2d 947 (1st Dist. 1984). Further, the creation of the condition must also have been there long enough to charge the responsible party with notice and knowledge of the dangerous condition. Fitzsimons, 29 Ill.App.2d 306, 173 N.E.2d 534 (2nd Dist. 1961).

a. Examples of “Natural Accumulation” of Snow and Ice:

- The mere removal of snow which leaves a natural ice formation underneath is not itself negligent. Timmons v. Turski, 103 Ill.App.3d 36, 430 N.E.2d 1135 (5th Dist. 1980); McCann v. Bethesda Hospital, 80 Ill.App.3d 544, 400 N.E.2d 16 (5th Dist. 1979); Erasmus v. CHA, 86 Ill.App.3d 142, 407 N.E.2d 1031 (1st Dist. 1980). Shoveling then does not create liability unless the shoveling was performed negligently.
- The mere spreading of salt, causing the ice to melt, which later refreezes, is not the kind of act which aggravates a natural accumulation leading to liability. Lewis v. W.F. Smith & Co., 71 Ill.App.3d 1032, 390 N.E.2d 39 (1st Dist. 1979).
- Refrozen ice and ruts on sidewalks caused by pedestrians or parking lots caused by automobiles in parking lots are natural accumulations and as a result are not actionable. Harkins v. System Parking, Inc, 186 Ill.App.3d 869, 542 N.E.2d 921 (1st Dist. 1989).

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b. Examples of “Unnatural Accumulation” of Snow and Ice:

- A mound of snow created by a municipality’s snow-removal efforts is properly considered an unnatural accumulation. *Ziencina v. County of Cook*, 188 Ill.2d 1, 719 N.E.2d 739 (1999).
- Falling ice that could have resulted from protrusions on a building that were defectively designed could result in an unnatural accumulation of ice to form, thereby creating a hazardous condition for pedestrians. *Bloom v. Bistro Restaurant, Ltd. Partnership*, 304 Ill.App.3d 707, 710 N.E.2d 121 (1st Dist. 1999); see also *Clauson v. Lake Forest Improvement Trust*, 1 Ill.App. 3d 1041, 275 N.E.2d 441 (2nd Dist. 1971) (holding that a property owner may be held liable for a plaintiff’s injuries if the accumulation of ice or snow becomes unnatural due to the design and construction of the premises). An example of this is when there is a defective gutter which causes ice to accumulate.
- Illinois courts have consistently imposed a duty upon property owners to provide reasonably safe means of ingress to and egress from their places of business and have explained that this duty may not be abrogated by the presence of a natural accumulation of ice, snow, or water. See *Richter v. Burton Investment Properties, Inc.*, 240 Ill.App.3d 998, 608 N.E.2d 1254 (2nd Dist. 1993) (when a property owner prescribes a means of ingress and egress, it has a duty to illuminate properly and give adequate warning of a known, dangerous condition, or it must repair the condition); *Branson v. R&L Investment, Inc.*, 196 Ill.App.3d 1088, 554 N.E.2d 624 (1st Dist. 1990); *Kittle v. Liss*, 108 Ill.App.3d 922, 439 N.E.2d 972 (3rd Dist. 1982). See also *Raffen v. International Contractors, Inc.*, 349 Ill.App.3d 229, 811 N.E.2d 229 (2nd Dist. 2004) (a property owner who piles snow at the edge of a frontage road has a duty to be sure that drivers have a clear view as they enter an adjoining highway since property owners routinely enter and exit their own property, and thus, they are in the best position to observe potential hazards and effectively eliminate them).

2. Slopes Causing the “Unnatural Accumulation”

- If a sloped surface causes an unnatural accumulation of ice, the defendant may be responsible for the resultant injury. *McCann v. Bethesda Hospital*, 80 Ill. App.3d 544, 400 N.E.2d 16 (1st Dist. 1979); *Fitzsimons v. National Tea Co.*, 29 Ill.App.2d 306, 173 N.E.2d 534 (2nd Dist. 1961). However, no liability will be imposed simply because the plaintiff fell on an inclined surface covered with a natural accumulation of ice or snow. *Smalling v. LaSalle National Bank*, 104 Ill.App.3d 894, 433 N.E.2d 713 (4th Dist. 1982). In order to find that the design of a sloping surface created an unnatural accumulation of ice, the plaintiff must present evidence of the dangerous nature of the slope, that the slope was the proximate cause of the plaintiff's injuries, and that the landowner had notice of the defect. Where such evidence is produced, the issue of whether the slope was a dangerous condition which created an unnatural accumulation of ice is a question of fact for the jury to decide. *McCann v. Bethesda Hospital*, 80 Ill.App.3d 544, 400 N.E.2d 16 (1st Dist. 1979).
The Illinois courts have not defined a precise mathematical formula to determine whether a sloping grade is reasonable or hazardous under changing climatic conditions. Tracy v. Village of Lombard, 116 Ill. App. 3d 563, 451 N.E.2d 992 (2nd Dist. 1983). Instead, per Tracy, there is no mathematical standard and each case is decided on its own facts.

3. Voluntary Removal of Snow and Ice

It is well settled in Illinois that a property owner has no duty to remove a natural accumulation of snow and ice from his property. A voluntary undertaking to remove snow and ice, however, may be the basis of liability only if the removal is performed negligently and results in an unnatural accumulation of snow or ice that caused injury to a plaintiff. See Russell v. The Village of Lake Villa, 335 Ill. App. 3d 990, 782 N.E.2d 906 (2nd Dist. 2002) (plaintiff slipped and fell on patch of ice; the Court held that a question of fact was raised as to whether the accumulation of ice was an unnatural condition when the village employees plowed the parking lot and piled the snow on the curbing in the vicinity where the plaintiff fell and photographs further depicted the piled snow).

In addition, a property owner has no duty to remove snow merely because he has done so voluntarily in the past. Liability arises only if the removal is performed negligently and results in an unnatural accumulation of snow or ice. See Chisolm v. Stephens, 47 Ill.App.3d 999, 365 N.E.2d 80 (1st Dist. 1977) (landlord’s 15-year custom of clearing sidewalks of snow held not to have raised a legal duty to clear sidewalk on the day of plaintiff’s fall). Along the same lines, the gratuitous performance of removing snow and spreading salt does not alone create a continuing duty to perform those tasks. Ordman v. Dacon Management Corp., 261 Ill.App.3d 275, 633 N.E.2d 1307 (3rd Dist. 1994) (“mere reliance by a party upon defendants’ gratuitous performance in the past, without more, is insufficient to impose any duty thereafter”).

4. Third Party Snow-Removal Contracts

There are a number of cases involving contracts that involve third party snow removal contractors. A defendant snow removal contractor owes a duty to the plaintiff if it had a contractual obligation to remove snow and failed to do so. Eichler v. Plitt Theaters, Inc., 167 Ill.App.3d 685, 521 N.E.2d 1196 (2nd Dist. 1988) (holding that the defendant parking lot owner who contracted to remove snow owed a duty to the plaintiff who suffered injuries after falling on snow that had not been plowed). Furthermore, a third party snow-removal company has a duty not to negligently remove snow by creating or aggravating an unnatural accumulation of snow or ice. E.g., Madeo v. Tri-Land Properties Inc., 239 Ill.App.3d 288, 606 N.E.2d 701 (2nd Dist. 1992): (snow-removal contractor could be liable to grocery store customer who fell in adjacent parking lot for either creating an unnatural accumulation of ice or
snow or for aggravating a natural accumulation of ice or snow). In snow removal contract cases, the injured person does not have to be a party to the contract, as long as he or she is a foreseeable user of the premises. Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill.App.3d 640, 411 N.E.2d 1168 (1st Dist. 1980).

5. **Inadequate Illumination**

- Illinois courts have consistently imposed a duty upon property owners to provide reasonably safe means of ingress to and egress from their places of business and have explained that this duty is not relieved by the fact that there was a natural accumulation of ice, snow, or water. See Richter v. Burton Investment Properties, Inc., 240 Ill.App.3d 998, 608 N.E.2d 1254 (2nd Dist. 1993) (when a property owner prescribes a means of ingress and egress, it has a duty to illuminate properly and give adequate warning of a known, dangerous condition, or it must repair the condition); Kittle v. Liss, 108 Ill.App.3d 922, 439 N.E.2d 972 (3rd Dist. 1982).

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3 See also Crane v. Triangle Plaza, Inc., 228 Ill.App.3d 325, 330, 591 N.E.2d 936, 169 Ill. Dec. 432 (2nd Dist. 1992) (duty of snow-removal contractor to customer of parking lot was to perform snow removal in a non-negligent fashion; to show breach plaintiffs had to show that contractor caused an unnatural accumulation of ice); McCarthy v. Hiddenlake Condominium Ass'n, 186 Ill.App. 3d 752, 758, 542 N.E.2d 868, 134 Ill. Dec. 522 (1st Dist. 1989) (snow-removal contractor could be liable to condominium resident for defective plowing creating unnatural accumulation where condominium association contracted for snow plowing).
D. TRACKED-IN MOISTURE

1. Legal Standard

Under Illinois law, a landowner is not liable for injuries to a plaintiff resulting from the natural accumulation of ice, snow or water that is tracked inside a building from the outside. Wilson v. Gorski’s Food Fair, 196 Ill.App.3d 612, 554 N.E.2d 412 (1st Dist. 1990); Lohan v. Walgreen’s, 140 Ill.App.3d 171, 488 N.E.2d 679 (1st Dist. 1986). Tracked-in water is a natural accumulation for which a landowner is not liable.

Therefore, if a customer falls on the wet floor just inside the front entrance of the Circle K on a rainy day, there is no liability on Circle K for the customer's injuries.

2. CASE LAW:

a. Tracked-In Moisture
The plaintiff was injured after slipping on water that had melted from pipes that were brought in from outside by an independent contractor retained by the defendant.

The court granted summary judgment in favor of the defendant, finding that the water was a continuation of a natural accumulation.

b. Tracked-in Moisture and a Saturated Safety Mat
There was snow in the parking lot outside of the defendant’s store, the floor of the vestibule was wet, and a rug inside the interior door became saturated. The plaintiff slipped after taking a few steps off the rug and sustained injuries.

The court granted summary judgment in favor of the defendant. The court held that the defendant did not have any liability for the plaintiff’s injuries as a result of the natural accumulation of water that was tracked-in the store regardless of evidence of a saturated mat. The Court found no duty to provide mats or to change mats that became saturated from use.

*In addition, there is no duty to provide mats on a rainy or wet day.

c. No Duty to Continuously Remove Tracked-in Moisture.
The plaintiff slipped and fell in the vestibule of a common entranceway to the defendant’s store. The plaintiff alleged that the defendant was negligent in permitting water to remain on the floor and in failing to warn the plaintiff of the condition of the floor.

The lower court granted summary judgment favor of the defendant. On appeal, the Appellate Court held that the defendant had no duty to continue the voluntary undertaking of laying down additional safety mats in the vestibule entrance way when
the floor was wet from tracked-in rainwater. The Appellate Court also held that there is no liability even where the owner may be charged with knowledge that the accumulation caused a dangerous condition. There is no duty to continuously remove moisture tracked-in due to a natural accumulation by snow or water from the outside.
E. DE MINIMIS DEFECTS

1. Legal Standard

In Illinois, the *de minimis* rule bars actions against municipalities or occupiers of land (including retailers) for minor defects in sidewalks, because the court has held that there is no duty owed to prevent *de minimis* defects. See *Siegel v. Village of Wilmette*, 324 Ill. App. 3d 903, 756 N.E.2d 316 (Ill. App. 1st 2001).

Municipalities do not have a duty to maintain all sidewalks in perfect condition at all times. *Gillock v. City of Springfield*, 268 Ill. App. 3d 455, 457, 206 Ill. Dec. 63, 644 N.E.2d 831 (1994). A municipality has no duty to repair a sidewalk defect unless a reasonably prudent person should anticipate danger to persons walking on the sidewalk. *Arvidson v. City of Elmhurst*, 11 Ill. 2d 601, 604, 145 N.E.2d 105 (1957). Therefore, *de minimis* or slight defects frequently found in traversed areas are not actionable, as a matter of law. *Arvidson*, 11 Ill. 2d at 604. There is no bright line test or mathematical formula to determine whether a sidewalk defect is *de minimis* or too minor to be actionable. *Harris v. Old Kent Bank*, 315 Ill. App. 3d 894, 735 N.E.2d 758, 249 Ill.Dec.154 (2000). Thus, each case must be determined on its own facts. *Hartung v. Maple Investment & Development Corp.*, 243 Ill. App. 3d 811, 814, 612 N.E.2d 885, 184 (1993).

2. Exception to the De Minimus Rule

There is an exception to the *de minimus rule* when the sidewalk containing the defect was the only means of ingress and egress to the defendant’s premises and the economic burden to repair the defect would not have been great. See *Harris v. Old Kent Bank*, 315 Ill. App. 3d 894 (Ill. App. Ct. 2000).

3. CASE LAW:

   a. De Minimus Rule


      The plaintiff tripped on a raised sidewalk near a store in a strip mall owned by the defendant. The plaintiff testified that it was a clear evening, but still light outside, when she tripped on a raised part of the sidewalk. She had used the sidewalk in question at least five times prior to falling. Although she did not examine the sidewalk after the accident, she took photos of the sidewalk in question and estimated that there was a one-half-inch to three-fourths-of-an-inch difference in the elevation between two slabs of the sidewalk area where the plaintiff fell.

      The court granted summary judgment in favor of the defendant, holding that the sidewalk defects were minimal in nature, and that due to the nature of the defect, as a matter of law, the defect could not be the basis of a negligence claim. The Appellate Court affirmed and the court also held that, the defect could have been easily avoided by the plaintiff, and therefore, the court refused to require the defendant to maintain perfect sidewalks at all times.

   b. No De Minimus Defect

       *Arvidson v. City of Elmhurst*, 11 Ill. 2d 601, 145 N.E.2d 105 (1957)

      The plaintiff parked her car adjacent to the curb. She got out of the car, walked to the parking meter at the front of the car, deposited some coins in the meter, turned
around, took about three steps on the sidewalk, covering about 1 1/2 slabs of concrete, and then stepped with her right foot in such a manner that her heel was on one slab and the sole of her shoe was on the adjoining slab, which was on a lower level. As a result, her ankle turned, and she fell and fractured her left ankle. She was wearing shoes with Cuban heels, and a strap and buckle on the side. The difference in height between the adjoining slabs of sidewalk was about 2 inches. On Appeal, the Appellate Court entered judgment notwithstanding the verdict in favor of the defendant finding that the defendant was not negligent as a matter of law. The plaintiff then filed an appeal to the Supreme Court.

The Illinois Supreme Court found that the defective slab of concrete could reasonably be seen as it was abutted by a busy street. The area was also traveled by pedestrians to the stores. Moreover, the circumstances of the accident, whereby plaintiff stepped with her heel on the higher slab, and her sole on the lower slab, thereby causing her to lose her balance, were also within reasonable contemplation. Under these circumstances, the Supreme Court held that it cannot be found that all reasonable minds would agree that the 2-inch variation and the height of the adjoining slabs of the sidewalk near the curb was so slight a defect that no danger to pedestrians could reasonably be foreseen. As a result, the Supreme Court reversed the Appellate Court and reinstated the jury verdict for the plaintiff.

c. An Exception to the De Minimus Rule

Harris v. Old Kent Bank, 315 Ill. App. 3d 894, 735 N.E.2d 758 (2nd Dist. 2000)

The plaintiff exited defendant's banking facility after transacting business. The plaintiff walked towards her car, which was parked in the first parking space nearest to the entrance of the bank. While walking toward her car, the plaintiff caught her foot on one of the slabs of the sidewalk that was higher than an adjoining slab. The plaintiff lost her balance and fell forward to the sidewalk. The distance from the top plane of the lower slab to the top plane of the higher slab was three-fourths of an inch. Unlike the facts in Hartung (see above), the sidewalk containing the defect was the only means of ingress and egress to the defendant’s premises.

The Appellate Court reversed summary judgment that was granted in the defendant’s favor by the trial court judge.

The Appellate Court found that it was not unreasonable to presume that a patron exiting the premises might be reviewing the receipts of her transactions, looking for her car keys, or looking toward her car and, therefore, would not discover the sidewalk defect. Consequently, the Court held that the risk of harm was reasonably foreseeable. The Court considered the fact that this was not a situation similar to that of a municipality or shopping center where the burden of repairing all defects on miles or hundreds of thousands of square feet would be substantial. Here, the economic burden to defendant to repair the defect in the two slabs of concrete would not have been great. Moreover, the court pointed to the fact that the amount of sidewalk to be monitored and maintained was small.
F. **THIRD-PARTY CRIMINAL ASSAULTS**

As a general rule in Illinois, there is no duty to protect against a criminal attack by third persons. *N.W. v. Amalgamated Trust & Savings Bank*, 196 Ill.App.3d 1066, 1071 (1st Dist. 1990). However, where the plaintiff and the defendant stand in a special relationship such as a possessor or landowner-invitee, master-servant, carrier-passenger, innkeeper-guest, or voluntary custodian-protectee, a duty arises to protect against reasonably foreseeable criminal activity. The relationship between a retailer and its customer is a special relationship where liability may be possible. *Petersen v. U.S. Reduction Co.*, 267 Ill.App.3d 775, 641 N.E.2d 845 (1st Dist. 1994); *Ono v. Chicago Park District*, 235 Ill.App.3d 383, 601 N.E.2d 1172 (1st Dist. 1992). The special relationship alone will not impose a duty upon a landowner to protect lawful entrants from the criminal acts of third parties. Before a duty to protect will be imposed, it must be shown that the criminal attack was reasonably foreseeable. *Hills v. Bridgeview Little League Ass’n*, 195 Ill.2d 210, 745 N.E.2d 1166 (2000).

In determining where criminal activity is reasonably foreseeable, Illinois courts have generally looked to (1) prior criminal incidents and (2) a defendant’s notice of such incidents. *Id.* In defining the exception, courts have stated that a duty to protect arises if there is knowledge of previous criminal incidents or special circumstances which would charge one with knowledge of the dangers and a duty to anticipate it. *Mancha v. Field Museum of Natural History*, 5 Ill.App.3d 699 (1st Dist. 1972). There must be sufficient facts to put a defendant on notice that an intervening criminal act is likely to occur. *Mazzone v. Chicago and North Western Transp. Co.*, 226 Ill.App.3d 56, 589 N.E.2d 632 (1st Dist. 1992).

*As a result, when you investigate and then evaluate these types of cases, you should check on the crime rate in the area, the incidents reported to the store, and whether outside security was hired by the store and/or the mall/landlord. If security is provided, then the security needs to be adequate or there can be liability for providing inadequate security.*
G NEGLIGENT SPOLIATION OF EVIDENCE

1. Legal Standard

Under Illinois law, the Supreme Court refuses to recognize an independent tort of spoliation; therefore, an action for spoliation of evidence can only be alleged under existing theories of negligence. To prevail on a claim for negligent spoliation of evidence, the plaintiff has the burden of proving each and every element of a negligence action. Boyd v. Travelers Insurance Co., 652 N.E.2d 267, 270 (Ill. 1995).

In other words, the plaintiff must plead the following elements to state a cause of action for negligent spoliation of evidence: 1) the existence of a duty owed by the defendant to the plaintiff; 2) breach of that duty; 3) an injury proximately caused by that breach; and 4) damages. Id.

The general rule is that the defendant does not have a duty to preserve evidence. Boyd v. Travelers Insurance Co., 652 N.E.2d 267, 270 (Ill. 1995). However, a duty to preserve evidence may arise through an agreement, a contract, a statute or another special circumstance. Id. at 271. A defendant may also voluntarily assume a duty by affirmative conduct. If a duty is established pursuant to any of these foregoing instances, a defendant owes an additional duty of due care to preserve evidence if a reasonable person in the defendant's position should have foreseen that the evidence was material to a potential civil action. Id.

To establish causation, the plaintiff need not show that the loss of critical evidence left her with no evidence to support a claim or defense in the underlying action. Instead, Illinois courts require the plaintiff to simply show that but for the destruction of the evidence, the plaintiff had a reasonable probability of success in the lawsuit. As such, the plaintiff need only demonstrate that the lost evidence made the plaintiff unable to prove the underlying case, which could happen when a critical piece of evidence is lost even if it is not the sole piece of evidence available to her.
A. MAP EXPLANATION

The map of Illinois is categorized by judicial circuits and counties, and each color denotes the political disposition of each county. However, the illustration is not founded on a specific scientific study, publication, research or survey. Instead, the counties are labeled according to our collective experiences practicing law in the respective jurisdictions.

As per the map, DuPage County, an ultra-conservative county, is a suburb of Chicago and generally assembles juries comprised of professionals. Accordingly, DuPage County juries are defense-minded and generally sympathetic to Mac’s. In contrast, Cook, St.Clair, and Madison counties are liberal. Likewise, the Appellate Courts in these jurisdictions are extremely liberal and rarely entertain appeals of plaintiff awards.

Alternatively, the remaining counties embrace conservative to moderate dispositions. Although the vast majority of the state is considered conservative, the majority of lawsuits are filed in liberal jurisdictions.
Cook County—The county of Cook shall be one Judicial Circuit, and the State of Illinois exclusive of the county of Cook, shall be and is divided into judicial circuits as follows:

First Judicial Circuit—The counties of Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union and Williamson.


Third Judicial Circuit—The counties of Bond and Madison.

Fourth Judicial Circuit—The counties of Christian, Clay, Clinton, Effingham, Fayette, Jasper, Marion, Montgomery and Shelby.

Fifth Judicial Circuit—The counties of Clark, Coles, Cumberland, Edgar and Vermillion.

Sixth Judicial Circuit—The counties of Champaign, DeWitt, Douglas, Macon, Moultrie and Piatt.

Seventh Judicial Circuit—The counties of Greene, Jersey, Macoupin, Morgan, Sangamon and Scott.

Eighth Judicial Circuit—The counties of Adams, Brown, Calhoun, Cass, Mason, Menard, Pike and Schuyler.

Ninth Judicial Circuit—The counties of Fulton, Hancock, Henderson, Knox, McDonough and Warren.

Tenth Judicial Circuit—The counties of Marshall, Peoria, Putnam, Stark and Tazewell.

Eleventh Judicial Circuit—The counties of Ford, Livingston, Logan, McLean and Woodford.

Twelfth Judicial Circuit—The county of Will.

Thirteenth Judicial Circuit—The counties of Bureau, Grundy and LaSalle.

Fourteenth Judicial Circuit—The counties of Henry, Mercer, Rock Island and Whiteside.

Fifteenth Judicial Circuit—The counties of Carroll, Jo Daviess, Lee, Ogle and Stephenson.

Sixteenth Judicial Circuit—The counties of DeKalb, Kane and Kendall.

Seventeenth Judicial Circuit—The counties of Boone and Winnebago.

Eighteenth Judicial Circuit—The county of DuPage.

Nineteenth Judicial Circuit—The counties of Lake and McHenry.

Twentieth Judicial Circuit—The counties of Monroe, Perry, Randolph, St. Clair and Washington.

Twenty-first Judicial Circuit—The counties of Iroquois and Kankakee.