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## Landlord's Liability for Ice and Snow

Michael R. Gareau\*

THE RELATION OF LANDLORD AND TENANT creates rights and liabilities for each. The landlord who rents a part of his premises and retains a portion thereof which is used in common by all of the tenants is deemed to have retained control of such portion and a duty is imposed upon him to keep it in a reasonably safe condition.<sup>1</sup> Since the landlord has the obligation to keep the common ways in a reasonably safe condition, the question arises whether or not this obligation is imposed upon a landlord where the common areas are rendered unsafe due to accumulations of ice or snow.

Under the common law, it is generally held that a landlord has no duty to his tenants to remove natural accumulations of ice or snow from the common areas and passageways over which he has retained control.<sup>2</sup> Thus, the landlord will not be held liable if a tenant sustains injury due to a fall on a common sidewalk or stairway on which the landlord has permitted ice or snow to accumulate in a jurisdiction still following the common law.<sup>3</sup>

The common law rule is prevalent in jurisdictions where, in the absence of a contract to the contrary, the landlord is merely required to maintain the retained portion of the leased premises in the condition in which it was, or appeared to be, at the time the lease agreement was entered into.<sup>4</sup> If, however, the landlord obligates himself either by contract or by assumption of the duty to remove natural accumulations of ice or snow, most jurisdictions impose upon the landlord the duty to remove such ice or snow. If the landlord fails to do so and a tenant, or one in privity with a tenant, is injured, the landlord will be held liable.<sup>5</sup>

### Unnatural Accumulations

Although the courts are generally divided on the question of a landlord's liability for natural accumulations of ice or snow, the same is not true of a landlord's liability for unnatural accumulations of ice and snow. Courts throughout the United States are in general agreement that

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<sup>1</sup> 26 A. L. R. 2d 613 (1952).

<sup>2</sup> 52 C. J. S. Landlord and Tenant § 417(d).

<sup>3</sup> Decisions, Torts—Landlord and Tenant—Liability for Failure to Remove or Render Safe Ice and Snow on Common Passageways and Approaches, 41 Columbia L. Rev. 349 (1941).

<sup>4</sup> 52 C. J. S., *op. cit. supra* n. 2.

<sup>5</sup> 32 Am. Jur. Landlord and Tenant, § 700 (1940).

where a latent defect in the premises causes an unnatural accumulation of ice or snow upon the common ways and the landlord had knowledge or should have had knowledge of such defects and failed to cure them, liability will be imposed upon the landlord if injury results because of his failure to maintain the premises in a reasonably safe condition.<sup>6</sup>

Most cases dealing with a landlord's liability for unnatural accumulations of ice or snow on the common ways concern the negligent maintenance of roofs and gutters. The usual case involves a situation where snow or rain falls from the roof onto the common way and it is permitted to freeze, thus creating a dangerous condition. Where a plaintiff charges that the defendant was negligent due to failure to repair, the plaintiff must establish that the defendant had actual or constructive notice of the existing defects and that the defect was the proximate cause of the injury.<sup>7</sup> The court in *Bailey v. Golburgh*<sup>8</sup> held that where the plaintiff tenant had resided in the defendant's apartment house for more than two years, the premises having been allowed to fall into disrepair during that time as evidenced by a leak in the roof which permitted water to fall onto the porch and steps causing ice to form, and the plaintiff was injured because the defendant failed to cure that defect, it was not error for the lower court to refuse to grant a directed verdict in favor of the defendant. The court found that the evidence was properly submitted to the jury for determination of negligence.

Likewise, a New Jersey court in *Skupienski v. Maly*<sup>9</sup> held that it was a question for the jury to determine whether a metal canopy over a doorway was improperly constructed where such canopy had no gutter and as a result water was permitted to drip onto a common sidewalk, causing a dangerous condition in the form of ice which caused plaintiff to fall and sustain injury. In *Van Slyke v. Fivey*,<sup>10</sup> the plaintiff slipped and fell on an icy walk on the leased premises. The evidence presented indicated that water was permitted to run off the roof and to freeze on the walk. This condition had been permitted to exist for almost two months. The sidewalk in question was the only means of entrance and exit. The facts presented made out a prima facie case of negligence on the part of the defendant. However, similar evidence in *Morse v. Houghton* failed to support a verdict for the plaintiff where the issues were negligence and contributory negligence.<sup>11</sup>

The problem of a landlord's liability when a contractor is involved

<sup>6</sup> 52 C. J. S., *op. cit. supra* n. 2; 26 A. L. R. 2d 620 (1952).

<sup>7</sup> 26 A. L. R. 626 2d (1952).

<sup>8</sup> 320 Mass. 309, 69 N. E. 2d 457 (1946).

<sup>9</sup> 27 N. J. 240, 142 A. 2d 220 (1958); also see *Durkin v. Lewitz*, 3 Ill. App. 2d 481, 123 N. E. 2d 151 (1954).

<sup>10</sup> 266 App. Div. 889, 42 N. Y. S. 2d 625 (1943).

<sup>11</sup> 158 Iowa 279, 136 N. W. 675 (1912), 26 A. L. R. 2d 627 (1952).

was raised in *Secor v. Levine*.<sup>12</sup> Here a contractor negligently repaired the gutters and as a result water fell on the sidewalk and formed a coating of ice. The work of the contractor was accepted by the landlord five months prior to the time when the plaintiff was injured. The court determined that the landlord had control of the premises and that he could not look to the contractor to reimburse him for a judgment obtained by the tenant. In a similar case, a Colorado court held that a landlord has a non-delegable duty to keep his premises in a reasonably safe condition and such duty cannot be delegated to a third party contractor.<sup>13</sup>

### Natural Accumulations

In the various jurisdictions in the United States which are affected by snow and ice conditions, there have emerged two divergent views as to a landlord's liability to his tenants for natural accumulations of ice and snow on the common ways of the leased premises.<sup>14</sup> The common law rule, often referred to as the "Massachusetts Rule," is opposed to the more recent concept, often referred to as the "Modern Rule" or the "Connecticut Rule."<sup>15</sup>

The Massachusetts Rule was first announced in *Woods v. Naumkeag Steam Cotton Co.*<sup>16</sup> The plaintiff tenant slipped and fell while walking on a common stairway and sustained an injury. The court, in denying that liability for the injuries sustained by the plaintiff was imputed to the defendant landlord, reasoned that in the event the common passage way became ice or snow covered, the tenant was as equally well suited to determine the condition as was the landlord. The court also stated that it was the duty of the tenant to remove natural accumulations of ice and snow when such conditions materialized. The Massachusetts Rule remains the law in Massachusetts today.<sup>17</sup>

The Connecticut Rule was first expounded in *Reardon v. Shimelman*,<sup>18</sup> and the court expressly rejected the Massachusetts Rule. The court reasoned that when a landlord retains control over the common approaches he must exercise reasonable care to keep these approaches safe for his tenants and others who desire to visit such tenants. The court also pointed out that a landlord is under a duty to keep the common ways in a reasonably safe condition and could see no reason for not applying this standard of care to the perils resulting from natural accumulations of ice and snow.

<sup>12</sup> 273 App. Div. 899, 77 N. Y. S. 2d 226 (1948).

<sup>13</sup> *Frazier v. Edwards*, 117 Colo. 502, 190 P. 2d 126 (1948).

<sup>14</sup> Decisions, *op. cit. supra* n. 3.

<sup>15</sup> *Langley Park Apartments, Sec. H., Inc. v. Lund*, 234 Md. 402, 199 A. 2d 620 (1964).

<sup>16</sup> 134 Mass. 357, 45 Am. Rep. 344 (1883).

<sup>17</sup> *Smolesky v. Kotter*, 270 Mass. 32, 169 N. E. 486 (1930); *Spack v. Longwood Apartments, Inc.*, 338 Mass. 518, 155 N. E. 2d 873 (1959).

<sup>18</sup> 102 Conn. 383, 128 A. 705 (1925).

### Application of Massachusetts Rule

The Massachusetts Rule has been consistently applied in certain jurisdictions throughout the United States. However, it would be misleading to state that the jurisdictions following the common law rule have consistently applied this rule and have not deviated from it. Rather, a cursory review of cases concerning a landlord's liability for natural accumulations of ice and snow would reveal that consistency does not prevail.

In an early New York case wherein a guest of the tenant fell on a sidewalk leading from the street, the court established the rule that a landlord is not liable to his tenant or a guest of a tenant for injury sustained due to a fall on ice which was the result of natural accumulation. However, the court did point out that in cases where the ice is permitted to become rough or uneven so as to constitute an obstruction, then the landlord is deemed liable.<sup>19</sup> New York has not maintained the strict common law rule, as has the state of Massachusetts. The early rule that a landlord is liable for rough or uneven surfaces has been modified even further.<sup>20</sup> This modification includes liability on the part of a landlord to maintain the common ways in a reasonably safe condition. In a recent New York decision, the court went so far as to say that a landlord would not be held liable to his tenant for injury sustained due to natural accumulations of ice or snow until the landlord had a reasonable length of time in which to remove such accumulations.<sup>21</sup>

Ohio first ruled on the liability of a landlord for injury sustained by a tenant due to natural accumulations of ice and snow in 1944.<sup>22</sup> The landlord in this case allowed snow and ice to accumulate for one week prior to the injury. The court in denying liability found that the landlord did not create a greater danger than was created by the work of the natural elements. The court further found that unless the landlord assumes the obligation of snow or ice removal by contract, the tenants must assume the burden of protecting themselves. Later Ohio cases have not adhered to such a strict rule. In the later view, the court has held that where a landlord has assumed the duty of maintaining the common ways and where he retains the tools used to remove snow and ice, these facts may be presented to the jury in determining the liability of the landlord.<sup>23</sup>

In a recent Rhode Island case, the Supreme Court of Rhode Island

<sup>19</sup> *Harkin v. Crumbie*, 20 Misc. 568, 46 N. Y. S. 453 (Sup. Ct. 1897); also see *Dwyer v. Woodland*, 205 App. Div. 546, 199 N. Y. S. 840 (1923).

<sup>20</sup> *Gianpaola v. Paoli*, 129 N. Y. S. 180 (Sup. Ct. 1911), *Albert v. Wachsmann*, 169 N. Y. S. 138 (Sup. Ct. 1918), *Rankin v. Ittner Realty Co.*, 242 N. Y. 339, 151 N. E. 641 (1926).

<sup>21</sup> *Preuschoff v. Wank*, 16 A. D. 2d 690, 227 N. Y. S. 2d 522 (1962).

<sup>22</sup> *Turoff v. Richman*, 76 Ohio App. 83, 61 N. E. 2d 486 (1944).

<sup>23</sup> *Oswald v. Jeraj*, 146 Ohio St. 676, 67 N. E. 2d 779 (1946); *Bowman v. Goldsmith Bros. Co.*, 63 Ohio L. Abs. 428, 109 N. E. 2d 556 (Ct. App. 1952).

adopted the Massachusetts Rule.<sup>24</sup> The plaintiff in this action was a tenant of the defendant landlord. While walking on the common sidewalk of the leased premises, the plaintiff slipped and fell on a patch of ice. The court, in holding the landlord not liable, proclaimed that a landlord is not liable to his tenants for injuries which they sustain due to a fall on the common ways which the landlord permitted to remain covered with ice or snow. The court declared that liability is limited to cases where the landlord has assumed the duty of snow removal as a term of the tenancy. This view was adopted despite an earlier view which imposed upon the landlord the duty of maintaining common passageways in a reasonably safe condition.<sup>25</sup>

In *Cronin v. Brownlie*,<sup>26</sup> the State of Illinois adopted the Massachusetts Rule over the Connecticut Rule. In this case, the plaintiff sustained injury due to a fall on a sidewalk located on the leased premises. The apartment house in question contained four suites, one of which was occupied by the plaintiff and another by the defendant landlord. The common sidewalk at the time plaintiff was injured was ice covered with a rough and uneven surface. The trial court refused to grant a directed verdict for the defendant. This ruling was reversed on appeal and the court held that a directed verdict for the defendant should have been granted. The court in reaching this conclusion stated,

In our northern climate where ice and snow come frequently and are accepted by all, it appears to us that the rule adopted by the majority of the states finding no liability against the landlord is more reasonable and persuasive than the minority view.<sup>27</sup>

### Application of Connecticut Rule

The common law view respecting the landlord's liability for natural accumulations of ice or snow on the common ways has provided an attractive vehicle for limiting the landlord's liability. However, the traditional concept is giving way to a new view, one which holds a landlord to a greater duty of care in relation to ice and snow removal on the common ways. The "Modern" view is a pragmatic approach to the problem of unsafe walks and stairways rendered so because the landlord has failed to remove ice and snow within a reasonable time after they accumulate. Under the Massachusetts Rule, generally no duty existed; however, the "Modern" view takes into consideration the increase in multiple tenancy and the impracticality of requiring tenants to cure the dangerous conditions themselves.<sup>28</sup>

<sup>24</sup> *Pomfret v. Fletcher*, 208 A. 2d 743 (R. I. Sup. Ct. 1965).

<sup>25</sup> *Lawton v. Vadenais*, 84 R. I. 116, 122 A. 2d 138 (1956).

<sup>26</sup> 348 Ill. App. 448, 109 N. E. 2d 352 (1952).

<sup>27</sup> *Id.* at 356.

<sup>28</sup> 26 A. L. R. 2d 614, 616 (1952); *Decisions*, *supra* n. 3.

Although the Connecticut Rule was established in 1925 by *Reardon v. Shimelman*,<sup>29</sup> adoption of this rule has been a recent development. Several states were early in holding that a landlord who retains a portion of the leased premises owes his tenants a duty to maintain such portions in a reasonably safe condition by removal of natural accumulations of ice and snow. However, adoption of this view has been greatest within the last decade.

The Supreme Court of Colorado in 1934 in the case of *Robinson v. Belmont-Buckingham Holding Co.*<sup>30</sup> held that where the plaintiff sustained injury due to a fall on a common way because of a patch of ice, the landlord was liable for such injury. In this case, the defendant claimed that his duty to make general repairs did not include the obligation of removing ice and snow. The court rejected this argument with the observation that to accept it would put the lives of every city dweller in jeopardy. The same court in a later decision found that it was not improper for a lower court judge to instruct the jury that if the defendant knowingly or due to negligence permitted ice to form on a common sidewalk, then the defendant landlord was liable for the injuries which his tenant sustained because of the icy condition of the walk.<sup>31</sup>

An Iowa court in *Reuter v. Iowa Trust & Sav. Bank*<sup>32</sup> held that a landlord is not an insurer of the safety of his tenants. However, when a landlord has multiple tenancy and he permits his tenants to use certain portions of the premises, the landlord is presumed to have retained control of these portions and owes his tenants a duty to maintain them in a reasonably safe condition. This duty applies to removal of ice and snow which are the result of natural accumulation. The question of a landlord's liability was raised in a New Hampshire case wherein the tenant had previous to the accident taken it upon himself to remove ice and snow from the common ways. The court in *Ahern v. Roux*<sup>33</sup> found that a landlord owes a duty to his tenants to maintain those portions of the premises over which he retained control. This duty includes the removal of ice and snow. And the mere fact that the plaintiff had removed snow in the past was not sufficient enough to exempt the landlord from liability for the injury which plaintiff sustained.

The state of Delaware in 1962 was confronted with the problem as to what rule of law to follow in relation to a landlord's liability for natural accumulations of ice and snow. In the case of *Young v. Saroukos*,<sup>34</sup> the court made a thorough review of the subject and in the last analysis concluded that a landlord who reserves to himself control

<sup>29</sup> *Supra* n. 18.

<sup>30</sup> 94 Colo. 534, 31 P. 2d 918 (1934).

<sup>31</sup> *Frazier v. Edwards*, *supra* n. 13.

<sup>32</sup> 244 Iowa 939, 57 N. W. 225 (1953).

<sup>33</sup> 96 N. H. 71, 69 A. 2d 701 (1949).

<sup>34</sup> 185 A. 2d 274 (Del. Super. 1962).

of certain common ways assumes the obligation of rendering them safe and he must remove natural accumulations of snow and ice therefrom. The court, through the words of one of its members, declared, "I unhesitatingly choose the Connecticut Rule and hold it is applicable here."<sup>35</sup>

Although the question of a landlord's liability for failure to remove ice or snow is less apt to present itself in the state of Georgia than many of the northern states, the question was nevertheless raised in *Fincher v. Fox*.<sup>36</sup> Here the defendant landlord claimed that he was not liable for the injury sustained by the plaintiff due to a fall on a snow covered driveway because such condition was brought about due to an Act of God. The Court found that the fact that it was an Act of God did not preclude the court from looking into the question of the landlord's negligence in his failure to act. The test used by the court was whether or not the landlord had knowledge of the condition for a reasonable length of time so as to constitute constructive notice.

In 1964 the state of Maryland adopted the Connecticut Rule and held that a landlord was liable to his tenants for injury sustained due to natural accumulations of ice or snow.<sup>37</sup> The court in its decision said:

—[W]here a landlord leases separate portions of his property to different tenants, and reserves under his control passageways and stairways . . . for common use of all the tenants, he must then exercise ordinary care and diligence to maintain the retained portions in reasonably safe condition.<sup>38</sup>

The court further stated that liability is imposed upon a landlord who knew or should have known of the existence of a dangerous condition resulting from accumulations of ice or snow.<sup>39</sup>

The decision in *Grizzel v. Foxx*<sup>40</sup> provides a good example of the logic and reasoning behind the Connecticut Rule. The court pointed out that the landlord is required to maintain the common ways in a reasonably safe condition and that "To set apart this particular source of danger (ice and snow) is to create a distinction without a sound difference."<sup>41</sup> The court further stated:

We are of the opinion therefore, that the general duty of the landlord to keep common passageways in good repair and in a safe condition includes the duty of removing natural accumulations of snow and ice within a reasonable time and that Tennessee's place is with

<sup>35</sup> *Id.* at 282.

<sup>36</sup> 107 Ga. App. 695, 131 S. E. 2d 651 (1963).

<sup>37</sup> Langley Park Apartments, Sec. H., Inc. v. Lund, *supra* n. 15.

<sup>38</sup> *Id.* at 623.

<sup>39</sup> *Id.*

<sup>40</sup> 48 Tenn. App. 462, 348 S. W. 2d 815 (1960).

<sup>41</sup> *Id.* at 817.

the states that take the more realistic view of the landlord's responsibility.<sup>42</sup>

### Contractual or Assumed Duty

In states where the Massachusetts Rule prevails concerning a landlord's liability for natural accumulations of ice and snow on the common ways, a landlord may assume liability for snow and ice removal either by contract as evidenced by a stipulation in the lease agreement or by implied contract where the landlord actually assumed the obligation of keeping the common ways clear of ice and snow.<sup>43</sup> In a Washington case, the court stated that where a landlord by contract or assumption of duty assumes the obligation of removing ice or snow from the common ways, he must perform this obligation. If he neglects his duty and a tenant is injured, then the landlord will be held liable for negligence due to his failure to maintain the premises in a reasonably safe condition.<sup>44</sup>

In *Oswald v. Jeraj*,<sup>45</sup> the Ohio Supreme Court found that where a landlord had complete possession of the common approaches and for several years had removed natural accumulations of snow and ice therefrom, he had assumed the duty of snow and ice removal. Such facts may be presented to the jury for determination of the landlord's liability. The defendant landlord in *Robinson v. Belmont-Buckingham Holding Co.*<sup>46</sup> was held liable for injuries sustained by the plaintiff due to a fall on a patch of ice. Even though the defendant claimed snow removal was not included within its duty to make general repairs, the court pointed out the facts indicated that the defendant had assumed the obligation in the past and

The fact that the defendant company itself had a broader conception of its duties than this is apparent from the testimony of its president and general manager; that it failed in the exercise of its duty presents another question.<sup>47</sup>

Similarly, in *Massor v. Yates*,<sup>48</sup> the Oregon Supreme Court held that where the landlord had removed snow and ice from the common ways for about twelve days prior to the accident, the tenant was authorized to rely on the landlord's assumption of the obligation of snow and ice removal. The court, however, held that no such duty exists where the landlord gratuitously removes ice and snow from the common ways.

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<sup>42</sup> *Id.*

<sup>43</sup> 26 A. L. R. 2d 624; 52 C. J. S., *op. cit. supra* n. 2.

<sup>44</sup> *Schedler v. Wagner*, 37 Wash. 2d 612, 225 P. 2d 213 (1950).

<sup>45</sup> *Oswald v. Jeraj*, *supra* n. 23; *Turoff v. Richman*, *supra* n. 22.

<sup>46</sup> *Robinson v. Belmont-Buckingham Holding Co.*, *supra* n. 30.

<sup>47</sup> *Id.* at 920.

<sup>48</sup> 137 Ore. 569, 3 P. 2d 784 (1931); also see *Miller v. Berk*, 328 Mass. 393, 104 N. E. 2d 163 (1952).

In a Massachusetts case, the court ruled that it was an error on the part of the lower court to direct a verdict for the landlord where evidence indicated that the landlord had assumed the duty of keeping the steps free of ice and snow.<sup>49</sup> In the case of *Bryans v. Gallagher*,<sup>50</sup> the court held that where an exculpatory clause in a lease agreement releases the landlord from liability for injury on account of physical defects which might exist upon the premises or sidewalks, such clause includes a release of liability for injury sustained due to natural accumulations of ice and snow on the common ways. It is interesting to note that the court refused to comment on the imposition of liability had the clause not been a part of the lease agreement.

### Duty—Reasonable Time

Where a landlord is deemed to have a duty to remove natural accumulations of ice or snow from the common ways either because the particular jurisdiction follows the Connecticut Rule or because the landlord has obligated himself by contract or by assumption of duty, the courts allow the landlord a reasonable length of time after the snow or ice has accumulated in which to remove the same. The facts in each case are the determining factor as to whether or not the landlord acted within a reasonable time.<sup>51</sup>

Thus, the Supreme Court of Connecticut in *Sheehan v. Sette*<sup>52</sup> held that the jury was justified in finding the defendant landlord guilty of negligence when he had 4¾ hours to remove the ice from the apartment house steps. The court pointed out that even if the defendant did not have actual knowledge of the defect the jury was justified in finding that the defect existed long enough to establish constructive notice and there was a reasonable opportunity to remedy the dangerous condition.

In *Werner v. Gimbel Bros. Inc.*<sup>53</sup> the Supreme Court of Wisconsin held that the lower court erred in not permitting the jury to consider whether the defendant landlord had acted within a reasonable time after the landlord's servant arrived at 6:00 A.M. and found the sidewalk slippery and ice covered and did not seek to correct that condition until 10:30 A.M. The court in *Ingalls v. Isensee*<sup>54</sup> found that it was proper

<sup>49</sup> *Hebb v. Gould*, 314 Mass. 10, 49 N. E. 2d 450 (1943); see also *Nash v. Webber*, 204 Mass. 419, 90 N. E. 872 (1910).

<sup>50</sup> 407 Pa. 142, 178 A. 2d 766 (1962).

<sup>51</sup> *Falina v. Hollis Diner, Inc.*, 281 App. Div. 711, 118 N. Y. S. 2d 137 (1952); *Albert v. Wachsmann*, 169 N. Y. S. 138 (Sup. Ct. 1918); *Reuter v. Iowa Trust & Savings Bank*, 244 Iowa 939, 57 N. W. 2d 225 (1953); *Walker v. Memorial Hospital*, 187 Va. 5, 45 S. E. 2d 898 (1948); *Turzay v. Berkowitz*, 125 N. J. L. 61, 14 A. 2d 265 (1940); *Fincher v. Fox*, *supra* n. 36; *Beck v. Shannon and Luchs Co.*, 174 A. 2d 199 (Munic. Ct. D. C. 1961); *Goodman v. Corn Exchange Nat. Bank & Trust Co.*, 331 Pa. 587, 200 A. 642 (1938); *Visaggi v. Frank's Bar & Grill*, 4 N. J. 93, 71 A. 2d 638 (1950).

<sup>52</sup> 130 Conn. 295, 33 A. 2d 327 (1943).

<sup>53</sup> 8 Wis. 2d 491, 99 N. W. 2d 708 (1959).

<sup>54</sup> 170 Ore. 393, 133 P. 2d 614 (1943).

for the lower court to refuse to grant to the defendant landlord a directed verdict where the jury could determine from the facts presented at the trial that the snow had remained on the apartment house steps for over an hour before the plaintiff tenant fell and sustained injury. The court further found that the plaintiff did not have the burden of proving that the defendant had actual knowledge of the condition of the steps at the time the accident occurred. In the case of *Young v. Saroukos*,<sup>55</sup> the court sets out a guide for determining whether or not the landlord has acted within a reasonable time after the snow or ice has accumulated. The court adopted the following rule, quoting earlier decisions from Iowa and Virginia:

The authorities are in substantial accord in support of the rule that a . . . landlord . . . in the absence of unusual circumstances, is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance walk, platform, or steps. The general controlling principle is that changing conditions due to the pending storm render it inexpedient and impracticable to take earlier effective action, and that ordinary care does not require it.<sup>56</sup> (Emphasis supplied.)

### Conclusion

The decisions concerning a landlord's liability for injury sustained by a tenant or other invitee for natural accumulations of ice or snow are a matter of record. A review of the record will not impose the reviewer's opinions upon the decisions which are a part of posterity. However, in retrospect, the wisdom of trends in law can be examined and conclusions drawn from a review.

After having reviewed this aspect of liability concerning a landlord in relation to his tenants and others, I question the wisdom of the common law rule, often labeled the "Massachusetts Rule." Strict adherence to this rule is unrealistic for it fails to take into consideration the increase in apartment living.<sup>57</sup> Invariably, where a tenant occupies a suite in a modern apartment house, he is neither able nor equipped to remove ice or snow from the common ways. It may be true that a landlord of a modern apartment house assumes the obligation of snow and ice removal, but under the common law rule he is far better off if he refrains from snow removal. If he never assumes the obligation and a tenant is injured, he has no liability. This, of course, puts a greater

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<sup>55</sup> *Supra* n. 34.

<sup>56</sup> *Id.* at 282.

<sup>57</sup> See, *Cleveland Press*, February 11, 1966. An article in this edition brought out a study by the housing specialists for Allied Chemical Corporation's Barrett Division. This study revealed that a little more than a decade ago approximately 8% of the nation's families resided in apartment type dwellings. The study further revealed that in 1966 approximately 38% of the families in the United States resided in apartments.

premium on inaction than it does on an affirmative constructive action and the inaction is at the expense of those who are unable to abate the dangerous condition themselves.

The "Connecticut Rule" is not a totally new approach in the concept of a landlord's liability. The only thing that this "Modern" view does is to add, to a landlord's duty of maintaining the common ways in a reasonably safe condition, the obligation of rendering the common ways safe by removal of natural accumulations of ice and snow. This broadened scope of duty does not make the landlord an insurer of his tenants' safety but merely requires him to act within a reasonable time. This view is more realistic and deserves support.