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ROAD SAFETY RISK MANAGEMENT IN MICHIGAN.  
VOLUME II: MICHIGAN ROAD LIABILITY CASES

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## PREFACE

Risk management is a concept and a practice that is relatively new to the field of road safety. Although the systematic analysis of an organization's operations to identify risks and select treatments for them is common in the world of business, it has only recently begun to be undertaken by road authorities. However, as increasing insurance premiums make it more difficult for road authorities to transfer the risk of loss to an insurer, road safety risk management is likely to expand and develop.

The purpose of these two volumes is to provide a background and a starting point for road safety risk management programs in Michigan. Volume I is intended to provide an introduction to risk management theory as it applies to road safety and an introduction to road liability law, as a background for the development of a risk management program. Volume II provides additional legal background in the form of summaries of cases involving road safety in Michigan.

These volumes have been prepared on the premise that the law of road liability plays an essential role in a road safety risk management program. There are three ways in which this is true. First, as a practical matter, a concern about liability is often the impetus for safety decisions. At the same time, a concern about liability can also inhibit the making of safety decisions. Finally, however, legal considerations should be neither a driving nor a restraining force in a risk management program. Rather, they should be a source of information and a guide for decision-making. Lawsuits can inform the road authority of facts or conditions that involve risks of injury to users of the road. The reported court decisions and the statutes also provide guidelines as to what conduct or results are expected of the road authority in dealing with those risks.

The purpose of these volumes, then, is to provide a general

introduction to the law relating to road authorities and their operations. They are not intended to provide legal advice. That can only be done by counsel as specific legal questions arise. It is hoped that the materials in these volumes will acquaint the reader with general principles of road liability law, thereby providing a basis for sound road safety risk management decisions.

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## MICHIGAN ROAD LIABILITY CASES

### INTRODUCTION

#### **Scope of the Collection**

This volume contains summaries of selected Michigan cases on the law of road liability. Cases decided before 1879 (when the predecessor to the current liability law was enacted) are omitted. Cases that do not involve road liability are not included, even when a road authority is a defendant. Cases that stand for principles of law that are no longer valid are also omitted. Since this volume is concerned with road authority liability, issues not related to that (such as procedural questions) are generally not discussed.

On the other hand, even though the state and the county road commissions are not liable for sidewalks, some sidewalk cases contain statements of law that also apply to roads (such as liability for snow and ice). These cases are therefore included in order to present their principles of law (which are the same as in road liability) and to illustrate possible fact situations including pedestrians that a road authority may face. For these reasons the reader should not make the mistake of ignoring the sidewalk cases merely because the state or county road commissions are not responsible for sidewalks.

Some editing of the collection has been done to avoid unnecessary repetition of cases standing for the same principle, but in general the collection tends toward completeness even at the expense of repetition.

#### **Contents of Summaries**

The summaries contain seven major sections under the following headings:

1. **Defect** describes the particular problem with the road as reported in the case.

2. **Accident** describes the events and plaintiff's encounter with the defect that gave rise to the litigation.
3. **Injury** states plaintiff's injury if the case reports it.
4. **Legal Issues** sets forth the legal issues raised in the case and the resolution of the issues made by the court. This section is subdivided into two additional sections: **Negligence** and **Defenses**. In each subsection the specific issue dealt with under the heading is set out. Wherever the court stated the opposing views of the parties, this controversy is stated in the summary. There is one exception, specifically, "No Notice". The issue of whether the road authority had notice of the defect occurs so often that the phrase "No Notice" is used as an abbreviation for the statement "The defendant claimed it did not have notice of the defect—in response plaintiff claimed that the defendant did have notice of the defect".  
Whenever the court commented on an issue without stating the opposing views of the parties, the comment is headed with a "bullet" plus a word or phrase simply categorizing the comment.
5. **Result** states the specific legal disposition of the case.
6. **Comment** contains statements intended to highlight certain aspects of the case that a lay reader might pass over; to correct any misstatement of the law made by the court; and to report any points of the case that do not fit efficiently into the body of the summary.
7. **Citation** states the volume and page references for the full court opinion.

If the court's opinion is unclear or ambiguous, or its treatment of a problem is incomplete, the summary does not attempt to correct the opinion. Nor are conflicts between the cases reconciled. How to apply the law to a given problem is left to the reader in consultation with counsel. Where, however, the law as stated by the court has changed or is plainly wrong, this has been noted in the Comments section of the summary. Only material relevant to road liability in principles of law, facts, or evidence is contained in the summary. All other material

contained in the case has been omitted.

The summaries are arranged chronologically, from more remote to more recent. The reader will thus know that the higher a page number, the more modern the case.

The abbreviation "keep/maintain" is used to refer to the authority's duty under MCLA 691.1402, that is, ". . . to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, . . ."

Each case summary contains a brief notation in the upper right hand corner of the summary indicating the operating area of the road authority whose activities are most likely to be involved in the litigation.

### **Other Materials**

In addition to the case summaries this volume contains the following materials:

1. Three indexes to provide easy access to the case summaries. The first is an index of roadway features and conditions and activities associated with them (e.g., "Bridges, signing of"). The second is an index to legal principles (e.g., "Notice of effect, employee knowledge"). The third index lists cases according to the road authority functional divisions most likely to be involved in the facts of that case.
2. A glossary of legal terms and description of legal procedures. Every effort has been made to eliminate "legalese" and to translate legal phrases into ordinary English. For some concepts, however, no method exists to report accurately the court's statements or handling of a case without using a legal phrase (e.g., summary judgment; question of fact for the jury's decision) or writing a lengthy explanation in the summary itself. These terms and procedures are described in the glossary and accompanying legal materials, which should be used in conjunction with this volume.



## GLOSSARY

This glossary contains commonly used legal terms. Whenever possible, the definitions of those terms relate to road liability law. Words in any definition in **boldface** are defined elsewhere in the glossary.

### **Accelerated judgment**

When a defendant is sued, it may be able to raise certain special defenses. These defenses are listed in one of the rules of general court procedure. The essence of each of them is that even though the plaintiff may have a legitimate grievance, the defendant cannot be sued. Examples of this include: the **statute of limitations** has expired or the court lacks **jurisdiction** over the parties or the subject matter of the case. When accelerated judgment is granted by a judge, the case is terminated and the plaintiff loses without a trial.

### **Admissible/inadmissible**

Evidence offered at a trial may be either admissible or inadmissible. Admissible evidence is evidence that is proper for a jury to hear. Inadmissible evidence should be screened out by the judge, if one of the attorneys raises the proper objection. There are many reasons why evidence might not be admissible. For example, it might be **hearsay**, or irrelevant, or might express an opinion rather than state a fact.

### **Affirm**

When a case is appealed, if the appellate court agrees with the result reached in the trial court, it will affirm its **judgment**.

### **Bar a suit**

A suit is barred when it cannot be brought. This term is usually applied when a suit has merit but there is a special defense to it (such as the expiration of the statute of limitations). When a defendant has such a defense, he will ask for **accelerated judgment**. If the court grants accelerated judgment it will be on the basis that the suit is barred by the special defense. The term can also be applied to any defense that defeats a plaintiff's claim such as payment of a debt, or until recently, **contributory negligence**.

### **Burden of proof**

In a trial, each party is required to prove certain facts. For example, the plaintiff in a lawsuit against a road authority must prove that the road was not reasonably safe. This requires that he establish it was defective by a preponderance of the evidence, which means that it

must be more likely than not that the road was defective. If the evidence is evenly balanced the defendant wins. Preponderance of the evidence may be contrasted with the higher standard of proof in a criminal case, beyond a reasonable doubt.

**Comparative negligence**

See **Contributory negligence**.

**Constructive notice**

The statute creating road authority liability provides that a road authority is not liable unless it "knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair" it. This requirement as the statute says, can be satisfied by actual notice or by constructive notice. Actual notice exists when an employee of the road authority in fact knows of the defect. Constructive notice occurs when the authority should have known of the defect, either because the defect had existed for a sufficient period of time or because its employees had actual knowledge of fact that suggests the need for investigation. In either of these situations, the court will construe that the road authority had the legally required notice.

**Contributory negligence**

When a person is careless in looking after his own safety and that carelessness is a cause of his injury, he is contributorily negligent. Until 1979, the rule in Michigan was that if a person's **negligence** contributed in any way to his injury, he could not collect anything from the defendant even though the defendant's negligence was greater. Under the new rule, called **comparative negligence**, a person's contributory negligence does not **bar** his claim, but merely reduces his damages in proportion to his fault.

**Court of Claims**

One of the oldest rules of law is that a state cannot be sued unless it consents. The state of Michigan consented to be sued for certain types of claims, but required that the claims be brought in a specified court, called the the Court of Claims. In fact the Court of Claims was very much like the circuit courts, except that it heard only

claims against the state and did not have juries. Beginning in 1979, the Court of Claims was abolished as a separate court and its functions were transferred to the Ingham County Circuit Court. The Department of State Highways is sued in the Court of Claims.

### **Circuit court**

The circuit courts are courts of general jurisdiction, which means they handle all claims that are not by statute put within the jurisdiction of other courts. The circuit court's jurisdiction includes all criminal cases where the penalty exceeds one year's imprisonment, all civil cases where the amount claimed exceeds \$10,000, and all claims for special relief (such as injunctions). Circuit courts are generally organized on a single county basis, although in the northern part of the state circuits may include two or more counties.

### **Damage**

In law, the term damage is used to refer to the actual loss (e.g., a broken leg or a broken windshield) suffered because of a legal **injury**. Damage is distinguished from **damages**, which means the money awarded to the injured person in compensation for his damage.

### **Damages**

In law, the term damages refers to the money awarded to a plaintiff to compensate for the **damage** (loss) suffered.

### **Decision**

The actual disposition made of a case by an appellate court is called a decision. The reasons for the decision are expressed in a written **opinion**, and the decision itself is stated at the end of the opinion. The decision of a court will usually do one of three things: **affirm** the lower court, **remand** the case for a new trial, or remand the case for entry of a different **judgment**.

### **Defect**

The road liability statutes require the road authorities to provide reasonably safe roads. These statutes refer to any condition that makes a road not reasonably safe as a defect.

### **Directed verdict**

At the end of a jury trial the judge may believe that the evidence



presented makes it clear that one or the other party is entitled to win. If so, he may direct the jury to reach a certain **verdict**. This power is seldom used, because there is a very strong policy in favor of jury trials.

#### **Dismiss a case**

When a lawsuit is filed, the defendant may ask the judge to grant **accelerated judgment** or **summary judgment** in his favor. If the judge decides to grant either of those, then plaintiff loses his case without a trial. This is known as dismissing a case. Cases can also be dismissed for other reasons such as failure to comply with court rules.

#### **Due process of law**

The federal and state constitutions guarantee the right to due process of law. While the precise meaning of this term has become complex, in essence it requires that trials and hearings be conducted according to a fair procedure (procedural due process) and that laws themselves be fair (substantive due process). The sixty-day **notification** provision of the road liability laws was held invalid as a violation of due process.

#### **Equal protection of the law**

The federal and state constitutions guarantee equal protection of the law. As the term suggests, this requires that laws treat persons in similar circumstances equally. The fact that persons suing the state had more requirements to meet than those suing any other defendant was one basis for the supreme court's decision to hold the sixty-day notification of the road liability statutes unconstitutional.

#### **Expert testimony**

Some evidence presented at a trial is written, but most is oral (testimony). Ordinarily, witnesses are permitted to testify only to facts and may not express their opinion. An expert, however, because of his knowledge in a field beyond that of laymen, can give an opinion. Thus, a doctor can give his opinion as to the cause of death, and an engineer can testify as to the safety of a certain design.

#### **Finding of fact**

Every case is decided by applying the law to the facts. In simple

terms, "finding the facts" in a case answers the question, "What happened?" In a jury trial the jury finds (decides upon) the facts and reaches a **verdict**. If there is no jury the judge finds the facts and states them in writing. Except in rare cases, an appellate court will not question a finding of fact made in trial.

### **Injury**

In law, the term injury in its strict sense, means the invasion of a legal right. Thus, a property owner is injured by the trespass of someone who steps on his land, even if it causes no actual **damage** (loss). In practice, the terms injury and damage are often used interchangeably to mean "loss," with injury referring to persons, and damage to property. The term for the compensation received by a successful plaintiff is **damages**.

### **Judgment**

A judgement is the court's final determination of who won the case. After the trial is over and the jury expresses its **verdict**, the verdict is translated into a judgment, which is usually a statement that the defendant wins or that the defendant loses and must pay a certain amount to the plaintiff. The losing party usually has twenty days to appeal a judgment.

### **Jurisdiction (of a court)**

The term jurisdiction can be roughly translated as power or authority. There are two kinds of jurisdiction a court must have to hear a case. First, it must have jurisdiction over that type of case (e.g., for a **circuit court**, a case involving more than \$10,000). It must also have jurisdiction over the parties (i.e., the defendant must have been properly served with notice of the proceedings).

### **Jurisdiction (of a road authority)**

In general, the term jurisdiction means power or authority. As to road authorities, it refers to those roads that they have the right and the responsibility to maintain. For county road commissions, jurisdiction extends to all county roads within the geographical limits of the county.

### **Jury instructions**

When the parties in a jury trial finish presenting their evidence, the jury weighs the evidence and reaches a **verdict**. In doing this the jury applies the law to the facts of the case. It learns the facts from hearing evidence. It learns the law applicable to the case from the judge's jury instructions.

### **Matter of law**

In a jury trial, it is the judge's function to explain the law to the jury, so that they can decide upon the facts. Occasionally, however, it will happen that the facts make it clear that one party or the other is entitled to win. Usually this happens when all of the facts, even when interpreted in a way most favorable to one party, do not support this claim. Then it is said, for example, that the defendant was (or was not) negligent as a matter of law. The result of this determination by the judge is that the trial ends without a decision by the jury.

### **Negligence**

Negligence is a legal basis for a lawsuit for money **damages**. It can roughly be translated as carelessness. It can be broken down into four elements: 1) a duty to use reasonable care to avoid an unreasonable risk of injury to another; 2) which is breached by the failure to use care; 3) the breach being a proximate cause; 4) of damage (to person or property). Although a road authority's statutory liability is different from negligence in that its duty is to provide roads that are reasonably safe (rather than use reasonable care to do so), the two are quite similar and are often treated by the courts as being the same.

### **Notice**

In the area of road liability, notice refers to the statutory requirement that a road commission know or have reason to know of a defect. A road authority is considered to have notice of a defect if any of its employees knows of it, or if it has existed for more than 30 days. Although notice is sometimes used to mean **notification**, that term refers to the statutory requirement that an injured person notify the road authority of the accident within 120 days.

## **Notification**

Notification refers to the requirement that an injured person notify the appropriate road authority of the time and place of accident, the nature of the defect, and the names of any witnesses, within 120 days of the accident. Until recently, the law provided that any failure to comply with this requirement **barred** the plaintiff's claim. The rule now is that it bars his claim only if the flaw in the notification **prejudices** the defendant. Notification should be contrasted with **notice**, which refers to the road authority's knowledge of a defect in a road.

## **Opinion**

When an appellate court hears a case, it writes an opinion. The opinion states the reasons for the court's **decision**, and expresses the decision itself. Opinions of the court of appeals and the supreme court are regularly reported (printed and bound in book form) for use in deciding later cases.

## **Prejudice**

In law, the term prejudice is used to describe the situation in which a party to a lawsuit is put at an unfair disadvantage. Prejudice can be caused by any number of things, such as an incorrect ruling by a judge in the course of a trial, or some conduct of the opposite party or his counsel. Refusal to supply relevant evidence might prejudice the opposite party. In the area of road liability, the issue of prejudice most often arises when the plaintiff failed in some way to comply with the statutory **notification** requirement.

## **Preponderance of the evidence**

See **Burden of proof**.

## **Presumption**

A presumption is a fact inferred from another fact. For example, the fact that a man is a woman's husband creates a presumption that he is the father of her child. Most presumptions are rebuttable, which means they can be disproved by contrary facts. However, another type of presumption, the conclusive presumption, cannot be rebutted, even if there are contrary facts. In the area of road liability a road

authority is conclusively presumed to have knowledge of any defect that has existed for more than thirty days.

### **Remand**

When an appellate court makes a decision in a case, it either **affirms** or **reverses** the lower court's decision. If it affirms it, nothing more need be done, and the trial court can proceed to enforce its **judgment**. If the appellate court reverses the lower court, it will remand the case with directions either that the trial court hold a new trial or modify its judgment.

### **Subsequent repair**

If a road authority is sued on the basis of an alleged defect in a road, and it makes repairs to the road, the plaintiff would like to be able to use that subsequent repair to show that there was a defect. In order to encourage the making of needed repair, the general rule is that subsequent repairs are not **admissible**. However, there are some significant exceptions to this rule. Subsequent repairs can be used as evidence if the defendant denies ownership, control, or feasibility of taking measures to correct the defect.

### **Summary judgment**

When a defendant is sued, it may believe that the plaintiff does not have a legitimate claim, even if all of the facts the plaintiff alleges are true. For example, a lawsuit that claimed only that the road was slippery because of snow does not state a basis for liability. When this happens, the defendant will ask the court for summary judgment. In considering a request for summary judgment, a judge will treat every one of plaintiff's claims as true, and will interpret those facts favorably to the plaintiff. If, under this test, the defendant is not liable as a **matter of law**, then summary judgment will be granted, and the case will end without a trial.

### **Verdict**

When a jury decides whether the defendant is liable to the plaintiff, and if so the amount of money he should pay, it reaches a verdict. The verdict is therefore a decision based on **findings of fact** (as to what happened) and the application of law (as explained to the jury by

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<u>Lincoln v. City of Detroit,</u> 101 Mich. 245, 59 N.W. 617 (1894).	22
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<u>Lynes v. St. Joseph County Road Commission,</u> 29 Mich. App. 51, 185 N.W. 2d 111 (1970).	119
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DEFECT: Hole in street.

ACCIDENT: Plaintiff's horse stepped into the hole.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** It is defendant's duty to do whatever is required to remedy defects in its streets and the fact that it had only two street commissioners who could not possibly look after every street would not relieve defendant of liabilities for injuries.

- Plaintiff claimed that the fact that similar defects were permitted to continue for a considerable amount of time without attention from defendant's authorities was evidence of defendant's negligence.

**Court said:** Whether similar defects were permitted to continue is of no consequence--the jury is only to be concerned with negligence that results in the injury in the case.

**Defenses**

- Notice

Plaintiff offered evidence showing the hole had been in existence for ten days and defendant responded with evidence showing that persons living in the immediate vicinity had not seen it.

**Court said:** Whether the immediate neighbors had ever seen the hole was of no consequence.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court  
Grand Rapids v. Wyman, 46 Mich. 516, 9 N.W. 833 (1881).

Maint.

DEFECT: Loose planks on bridge.

ACCIDENT: Plaintiff was riding his horse across defendant's bridge; the horse became tangled in loose planks, stumbled and threw the plaintiff.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed that the duty to keep/maintain created liability only in the public officers having responsibility for roads and not in defendant the township itself.

**Court said:** The statutory duty to keep/maintain is imposed upon the road authority itself.

RESULT: Judgment for defendant was reversed and the case was remanded for trial.

COMMENT: Note that prior law made only public road officers responsible for neglect of the roads.

Supreme Court

Burnham v. Byron Township, 46 Mich. 555, 9 N.W. 851 (1881).

Maint., Permits

**DEFECT:** Planks missing from wooden sidewalk--implications of repeated vandalism.

**ACCIDENT:** Plaintiff hurried along the sidewalk at night, stepped in the hole and fell.

**INJURY:** Unspecified.

**LEGAL ISSUES:** **Negligence**

- Duty

**Court said:** Despite any tampering with the walkway by third parties, it was defendant's duty to speedily make necessary repairs and improvements to keep the walkway reasonably safe and fit for travel.

**Defenses**

- No notice and no time to repair

**Court said:** Whether defendant had notice of the defect and an opportunity to repair it was a question of fact for the jury's decision.

The jury could have found notice from the following facts:

- The walk was admitted to be in generally bad condition.
- There was evidence of disrepair for several weeks prior to the accident.
- A plank was missing from the walk a day or two before the accident.
- The walk had holes in it several times prior to plaintiff's fall.
- The street commissioner lived in plain sight of the walk.

**RESULT:** Directed verdict for defendant was reversed and the case was remanded for a new trial.

**COMMENT:** ● Note that damage caused by third parties does not relieve

defendant of its liability for failing to repair the damage.

- The court used especially strong language to discuss the defect here—"treacherous," "bad," "vicious."

Supreme Court

Dotton v. Albion Common Council, 50 Mich. 129, 15 N.W. 46 (1883).

Maint.

DEFECT: Ridge of ice on sidewalk caused by the trampling of snow, melting and freezing.

ACCIDENT: Plaintiff, a pedestrian, slipped and fell.

INJURY: Broken arm.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed defendant had a duty to remove snow and ice ridges.

**Court said:** The obligation to provide reasonably safe streets and sidewalks does not impose a duty to remove snow and ice ridges caused by pedestrian traffic. To do so would impose an unreasonable burden on the public authorities.

RESULT: Judgment for plaintiff was reversed, and judgment was entered for defendant.

COMMENT: ● This case appears to be the first to apply the statutory language—reasonably safe—to a snow and ice situation.

- The court observed that whether there was a duty to remove snow and ice could depend on whether it was the local custom to do so.

Supreme Court

McKellar v. City of Detroit, 57 Mich. 158, 23 N.W. 621 (1885).

Eng., Maint., Traffic

**DEFECT:** Wooden bridge with loose planks.

**ACCIDENT:** Plaintiff's horse stepped on the loose planks, became entangled in them, threw the wagon against the guardrail, which collapsed causing the horse, buggy, and plaintiff to fall down an embankment into the stream.

**INJURY:** Unspecified.

**LEGAL**

**ISSUES: Defenses**

- Defendant claimed it was impossible for an ordinarily gentle horse to be frightened by a hole in the bridge that is said to have entangled plaintiff's horse.

**Court said:** Whether the loose planking and holes associated with it were sufficient to frighten an ordinarily gentle horse was clearly a question of fact for the jury's decision.

- Notice

Defendant objected to plaintiff's providing evidence of other horses being frightened by the loose planking prior to plaintiff's accident.

**Court said:** This evidence was admissible to show defendant's prior knowledge of the problem with the bridge.

**RESULT:** Judgment for plaintiff in the amount of \$725 was affirmed.

**COMMENT:** The court noted that after the injury to plaintiff an entirely new bridge was built at the site obliterating all evidence of the accident at the time it occurred.

Supreme Court

Smith v. Sherwood Township, 62 Mich. 159, 28 N.W. 806 (1886).



DEFECT: Partly submerged road.

ACCIDENT: Horse and buggy went off submerged embankment into deep water.

INJURY: Property damage.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff's driver was contributorily negligent in driving on a road that he could not see because it was submerged.

**Court said:** Defendant is not excused merely because plaintiff voluntarily incurs a danger caused by defendant's negligence. If defendant's act induces plaintiff to incur the danger or causes plaintiff to incur some other danger to escape from peril, plaintiff's actions are not contributorily negligent.

RESULT: Summary judgment for defendant was reversed and a new trial was ordered.

COMMENT: N/A

Supreme Court

Harris v. Clinton Township, 64 Mich. 447, 31 N.W. 425 (1887).

Eng., Permits, Traffic

**DEFECT:** Dirt road thirty-five feet wide—no guardrail on embankment adjacent to river.

**ACCIDENT:** Horse went down bank into river.

**INJURY:** Death of rider.

**LEGAL  
ISSUES:** **Negligence**

- Proximate cause

**Court said:** Since there is some evidence in the case from which it could be inferred that defendant's neglect of the road in failing to erect a guardrail was the proximate cause of plaintiff's injury, the question was one for the jury's decision.

**Defenses**

- Contributory negligence

**Court said:** Since there was some evidence from which the jury could infer that the plaintiff was not contributorily negligent, the question was one for the jury's decision.

**RESULT:** Judgment for defendant was reversed and a new trial was ordered.

**COMMENT:** The defendant in this case was a private company with a franchise to operate a road. The statute under which it operated required it to erect a guardrail along the edge of a road where the road was adjacent to the river. Defendant had failed to erect such a guardrail.

Supreme Court

Carver v. Detroit and Saline Plank-Road Company, 69 Mich. 616, 25 N.W. 183 (1885), affirmed 61 Mich. 584, 28 N.W. 721 (1886).

Maint., Permits

DEFECT: Pile of sand covering approximately half of the street adjacent to building in the process of construction.

ACCIDENT: Plaintiff drove her carriage down the street at night, collided with the pile of sand, thus overturning the vehicle.

INJURY: Said to be serious.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed its duty to keep/maintain did not require it to remove obstructions placed in the highways by third parties.

**Court said:** Defendant's statutory duty to keep/maintain requires it to do all that is necessary to achieve that result including the placement of signals, other warnings, or other safeguards--otherwise defendant may close the street to travel. Whether defendant is liable to plaintiff in this case is a question for the jury's decision.

RESULT: Directed verdict for defendant was reversed and a new trial was ordered.

COMMENT: N/A

Supreme Court  
Joslyn v. City of Detroit, 74 Mich. 458, 42 N.W. 50 (1889).

Eng., Maint.

DEFECT: Wooden bridge with rotten stringers.

ACCIDENT: Plaintiff drove his "traction engine" over the bridge, which gave way beneath him letting the engine fall into a creek.

INJURY: Property damage only.

LEGAL

ISSUES: **Defenses**

- No notice. Defendant claimed that only actual notice of the specific defect would suffice.

**Court said:** The general duty of defendant is to exercise through its officers reasonable supervision of its roads and bridges and keep them reasonably safe for public travel.

In discharging this duty defendant's officers may not ignore the dictates of common sense or the lessons of ordinary experience, and refuse to see or refuse to heed what others see and understand.

In this case there was evidence showing that the defective condition of the bridge in question had been reported to defendant's authorities previously. If in the exercise of reasonable care these authorities had inspected the bridge they could have found the defect in question.

Whenever a person had knowledge sufficient to indicate the need for further investigation and he does not do so he will be charged with the responsibility for knowing those things that further investigation would have revealed. This type of notice is sufficient for a highway liability claim, and actual notice of the specific defect need not be proven.

Whether defendant had notice of the defect was a question of fact for the jury's decision.

RESULT: Judgment for plaintiff in the amount of \$500 was affirmed.

COMMENT: N/A

Supreme Court

Moore v. Kenockee Township, 75 Mich. 332, 42 N.W. 944 (1889).

Maint., Permits

DEFECT: Hole in wooden crosswalk caused by broken plank.

ACCIDENT: Plaintiff stepped in hole in crosswalk and fell.

INJURY: Wrenched back and spinal injuries—said to be severe.

LEGAL  
ISSUES:

**Defenses**

- No notice

**Court said:** Actual notice to defendant can be shown by knowledge presented to any official or officer having responsibility for the road.

Individual knowledge of officers or agents with responsibility for street repair is the knowledge of their agency.

Notice of general disrepair of crosswalks, as opposed to the particular defect in question, is not knowledge or notice of the defect.

RESULT: Judgment for plaintiff was reversed and new trial was ordered.

COMMENT: ● Reasons for reversal unrelated to principles of road liability—improperly admitted evidence.

- Some modern holdings temper this court's requirement of notice of the particular defect in question by permitting notice of like defects in the immediate vicinity, or notice of underlying structural defects giving rise to the particular defect.

Supreme Court

Dundas v. City of Lansing, 75 Mich. 499, 42 N.W. 1011 (1889).

Eng., Maint., Traffic

**DEFECT:** Dirt on road with steep embankments and no guardrail--snow and ice on the road.

**ACCIDENT:** Plaintiff was a member of a group that drove over the road in a horse-drawn wagon at night. The rear wheels of the wagon slid over the edge of the embankment and plaintiff tried to push the rear of the wagon back onto the road--the wagon continued slipping, throwing plaintiff down the embankment where he struck his head.

**INJURY:** Death.

**LEGAL  
ISSUES:** **Negligence**

- Plaintiff claimed that defendant had a duty to install railings or guardrails at the site to prevent vehicles from falling off the edge of the road.

**Court said:** Defendant's duty is to keep/maintain and whether the absence of railings at the site amounted to neglect of that duty was a question of fact for the jury's decision.

If the roadway required guardrails to make it reasonably safe then it became defendant's duty to erect them.

Defendant is not required to build a highway in a particular place, but having done so and invited the public to travel over it, it must follow its statutory duty or close the road to public travel.

- Proximate cause

**Court said:** It appears that the lack of guardrails at the site was a direct cause of plaintiff's injury.

**Defenses**

- Notice

**Court said:** While defendant had received no complaint about the road, it appears that defendant's officers including the overseer of highways lived close to the place and frequently traveled over it--therefore defendant must be held to have had notice of the defective condition.

- Defendant claimed that the weather conditions required the use of sleighs only, rather than the wheeled vehicle involved.

**Court said:** The evidence indicated that snow had melted and bare places appeared and that wheeled vehicles could be more easily drawn.

- Defendant claimed that the wagon involved was defective by being unwieldy and unmanageable.

**Court said:** Whether this was so was a question of fact for the jury's decision.

- Defendant claimed that plaintiff was contributorily negligent in leaving the wagon and attempting to push it back onto the road.

**Court said:** If it was the negligence of defendant in failing to repair the highway that created the difficulty with the wagon, then no negligence can be imputed to plaintiff who tried to look after the safety of the group as he did.

Whether plaintiff's behavior was proper under the circumstances was a question of fact for the jury's decision.

- Defendant claimed that it should have been permitted to prove that similar embankments lacked railings by the customary standards used with respect to such embankments.

**Court said:** Whether other road authorities maintain unsafe roads or fail to install railings where they are required has no bearing on defendant's duty to keep/maintain.

**RESULT:** Judgment for plaintiff in the amount of \$2,500 was affirmed.

**COMMENT:** N/A

Supreme Court

Malloy v. Township of Walker, 77 Mich. 448, 43 N.W. 1012 (1889).

Eng., Maint.

**DEFECT:** Stump close to traveled portion of the road.

**ACCIDENT:** Plaintiff's wagon struck the stump at night—plaintiff thrown from it.

**INJURY:** Unspecified injury to shoulder and arm—said to be serious.

**LEGAL**

**ISSUES:** **Defenses**

- Defendant claimed that the location of the stump was a defect in the construction of the road and is not covered by the liability statute.

**Court said:** Construction and repair defects are covered by the liability statute.

**Negligence**

- Duty

**Court said:** Defendant must take account of the nighttime requirements of travelers on the road.

How much of the roadway is required to be used for safe travel depends upon the travel necessities of any given case and defendant must take these necessities into account.

**RESULT:** Judgment for plaintiff in the amount of \$500 was affirmed.

**COMMENT:** N/A

Supreme Court

Sebert v. City of Alpena, 78 Mich. 165, 43 N.W. 1098 (1889).



Maint., Traffic

DEFECT: Gullies and ruts in the surface of the road--no guardrails--a log cast down an adjacent embankment by a previous traveler.

ACCIDENT: Plaintiff drove his horse and buggy over the road--horse shied at the log and horse, buggy, and plaintiff fell down the adjacent embankment.

INJURY: Broken arm.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed that the proximate cause of the accident was the horse's being frightened by the log--in response plaintiff claimed that the proximate cause of the accident was the absence of guardrails by the embankment.

**Court said:** Defendant is liable for the condition of the road only, not for the presence of objects beside the road that could frighten the horses. If the absence of guardrails makes the road unsafe for public travel, then defendant may be liable. Since the instructions of the court on this issue of proximate cause are unclear the judgment must be reversed.

RESULT: Judgment for plaintiff was reversed and a new trial was ordered.

COMMENT: N/A

Supreme Court

Beall v. Township of Athens, 81 Mich. 536, 45 N.W. 1014 (1890).

Maint., Permits

**DEFECT:** Hole in crosswalk.

**ACCIDENT:** Plaintiff stepped over the hole onto a loose plank, which broke under her, causing her to fall.

**INJURY:** Unspecified.

**LEGAL**

**ISSUES: Defenses**

- **Notice**

**Court said:** Knowledge of defendant's alderman and street commissioner who knew of holes in the walkway prior to plaintiff's fall could be considered by the jury as evidence from which it could find notice.

Knowledge of the holes, however, is not knowledge of the weakened plank--knowledge of one defect (broken plank) cannot be inferred from neglect to repair another (hole).

- **Crosswalk had originally been built by a private person.**

**Court said:** Once the crosswalk was in place, it became included in the defendant's duty to keep/maintain--defendant cannot avoid liability by permitting an adjacent property owner to put down a sidewalk.

**RESULT:** Judgment for plaintiff was reversed and a new trial was ordered.

**COMMENT:** Modern cases tend to be less rigorous in denying that notice of one defect may be inferred from the presence of others.

Supreme Court

Fuller v. Mayor of Jackson, 82 Mich. 480, 46 N.W. 721 (1890).

Maint., Permits

DEFECT: Hole in wooden sidewalk.

ACCIDENT: Plaintiff stepped in the hole and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that its lack of funds and supporting staff as well as its relatively brief existence as a corporate entity should excuse its failure to repair and improve the sidewalk system.

**Court said:** Defendant's duty to keep/maintain is an imperative one and its neglect to raise adequate funding or provide proper staffing will not excuse it from liability.

- Defendant claimed that since many of the sidewalks were installed and built by private citizens it should not be liable for defects in such sidewalks.

**Court said:** Defendant has adequate legal authority to compel and charge for proper maintenance and construction of sidewalks and cannot escape liability because it did not build the walk or direct its construction.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: ● The court permitted plaintiff to use evidence of subsequent repair to show the location of the alleged defect and to use evidence of injury to other people on account of the defect to show the nature and prior existence of the defect.

- The court noted that evidence of the existence and nature of the defect might also tend to show constructive notice of the defect to the defendant and that accidents resulting in serious injury might take on sufficient publicity to show actual notice to the defendant.

Supreme Court

Lombar v. Village of East Tawas, 86 Mich. 14, 48 N.W. 947 (1891).

**DEFECT:** Log partially buried in the center of a dirt road.

**ACCIDENT:** Plaintiff drove his wagon up the road, struck the end of the log, and was thrown from wagon.

**INJURY:** Broken leg—said to be permanent disability.

**LEGAL**

**ISSUES: Negligence**

- Defendant tried to ask a witness whether he had heard of or known about other people injured at the site prior to plaintiff's accident.

**Court said:** This evidence was not admissible.

- Several witnesses were asked for their opinion whether the road was dangerous at the site of the accident.

**Court said:** Witnesses may testify as to the conditions they observed but their opinions are not admissible as it is for the jury to determine whether the road was reasonably safe.

- Defendant asked a witness about plaintiff's driving habits.

**Court said:** Plaintiff's behavior at the time of the accident is what matters, not his general behavior.

- Defendant asked a witness about plaintiff's drinking habits.

**Court said:** While plaintiff's sobriety at the time of the accident might be important, one cannot assume that one who drinks often is always drunk or always in a condition that excludes possibility of using due care.

- Plaintiff had a former overseer of highways testify that he cut off the raised end of the log some time after the plaintiff's accident.

**Court said:** In the absence of instructions by the trial court guarding the jury against the use of such testimony as an admission of defendant's negligence, it was not proper to admit this evidence.

**RESULT:** Judgment for plaintiff was reversed and a new trial ordered.

COMMENT: The case is largely concerned with evidentiary points.

Supreme Court

Langworthy v. Township of Green, 88 Mich. 207, 50 N.W. 130 (1891).

## Permits

DEFECT: Large excavation adjacent to alley.

ACCIDENT: Plaintiff walked down the alley and fell into the excavation.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that the road in question was not a "public highway" and hence that its duty to keep/maintain did not include defects by the alley.

**Court said:** The alley in question is a public alley such that adjacent property owners may not interfere with its use, but it is not a highway within the meaning of the statute.

RESULT: Directed verdict for defendant was affirmed.

COMMENT: Note that the modern statute expressly excludes alleys.

Supreme Court

Face v. City of Ionia, 90 Mich. 104, 51 N.W. 184 (1892).

Maint.

**DEFECT:** Bridge over creek under dirt road--water would undermine the edge of the road causing holes to appear at some places and leaving other places with only a thin layer of soil on the surface.

**ACCIDENT:** Plaintiff rode his horse over the road--horse either stepped in one of the existing holes and threw the rider or broke through the surface and threw the rider--location of accident in relation to bridge in dispute.

**INJURY:** Unspecified--said to be severe.

**LEGAL**

**ISSUES:** **Negligence**

- The trial court instructed the jury that if the horse broke through a new hole, the jury could infer from the existing holes that a defect existed and that defendant could be liable for failure to repair it.

**Court said:** Defendant does not have a duty to test the entire length of its roadways, and if there was nothing appearing at the portion of the road where plaintiff's horse fell to indicate that it was undermined, then defendant could not be liable.

Since it was clear that defendant knew of the existing holes and had placed a warning pole in one of them, if the horse fell at this point, defendant would be liable.

Since the erroneous instruction prejudiced defendant's case, the judgment must be reversed.

**RESULT:** Judgment for plaintiff was reversed and a new trial was ordered.

**COMMENT:** A modern appeals court would be more likely to leave to the jury the determination of defendant's liability for a latent defect--if the other elements of negligence were proven, defendant probably would be liable for failure to repair such defect.

Supreme Court

Wakeham v. Township of St. Clair, 91 Mich. 15, 51 N.W. 696 (1892).

DEFECT: Unspecified: "The highway was in very bad condition."

ACCIDENT: Plaintiff was thrown from horse-drawn cart.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed plaintiff was contributorily negligent because he knew the road was in very bad condition and drove over it at an improper speed.

**Court said:** The testimony as to the condition of the road and plaintiff's speed was not conclusive, so the question of contributory negligence was for the jury to decide.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: The judge permitted evidence of previous accidents to show notice of the defect.

Supreme Court

Coreoran v. City of Detroit, 95 Mich. 84, 54 N.W. 692 (1893).



Maint.

DEFECT: Ice on sidewalk, formed by water backup in catch basin.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Defect

**Court said:** The catch basin was not defective. The flow of water from a road is natural, and the resulting accumulation of ice on a sidewalk was a natural accumulation.

RESULT: Directed verdict for defendant was affirmed.

COMMENT: N/A

Supreme Court

Kannenberg v. City of Alpena, 96 Mich. 53, 55 N.W. 614 (1893).

**DEFECT:** Excavation in street for purpose of laying water pipes.

**ACCIDENT:** Plaintiff riding in a horse-drawn buggy approached the excavation; the horse shied, and plaintiff was thrown from the buggy.

**INJURY:** Death.

**LEGAL ISSUES:** **Negligence**

- Plaintiff claimed defendant had a duty to erect railings or barriers around the excavation.

**Court said:** Defendant does not have such a duty except at night when, by the placing of barriers and lights, it can give warning of dangerous hazards.

Neither duty nor custom require that the street be closed or that barriers be erected along the excavation; therefore, there is no liability.

**RESULT:** Directed verdict for defendant was affirmed.

- COMMENT:**
- The court noted that several witnesses gave testimony that plaintiff's horse appeared to be out of control and going rather fast as it approached the excavations.
  - Note that a modern court would be more likely to permit a jury to determine whether the absence of guardrails breached the duty to keep/maintain.
  - The statement that barricades are required only at night is of doubtful validity in light of the conditions existing today.

Supreme Court  
O'Rourke v. City of Monroe, 98 Mich. 520, 57 N.W. 738 (1894).

Maint.

**DEFECT:** Manhole cover in street--support for manhole worn away at edge.

**ACCIDENT:** Plaintiff stepped on the manhole cover, which tipped up, dropping him into the manhole.

**INJURY:** Unspecified.

**LEGAL ISSUES:** **Negligence**

- Defendant claimed that its duty to keep/maintain its streets in a condition suitable for pedestrians involved only crosswalks and not nearby manhole covers.

**Court said:** While defendant is not required to construct a smooth surface for travel over all of its street and may give special attention to established crosswalks, it is not unusual for pedestrians to cross at points other than crosswalks and to pass over manhole covers. Therefore, whether the manhole in question made the street unsafe was a question of fact for the jury's decision.

**Defenses**

- Contributory negligence

**Court said:** Since a road authority need not keep the space covered by a manhole in as smooth a condition as a sidewalk, it was misleading for the trial judge to instruct the jury that defendant had such a duty. Pedestrians using the street at such a point must take proper account of the unevenness of the surface and since the evidence in this case indicated that plaintiff was under the influence of liquor and paid no attention to where he was going the question of plaintiff's contributory negligence should have been left for the jury's decision.

**RESULT:** Judgment for plaintiff was reversed and a new trial was ordered.

**COMMENT:** N/A

Supreme Court  
Lincoln v. City of Detroit, 101 Mich. 245, 59 N.W. 617 (1894).

Maint.

DEFECT: A ridge of ice formed on a sidewalk by the tramping, freezing, and melting of snow.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed that defendant was negligent in permitting the accumulation of snow and ice on the sidewalk.

**Court said:** The city is not liable for an accumulation of snow and ice that is made uneven by pedestrian traffic.

RESULT: Judgment for defendant was affirmed.

COMMENT: N/A

Supreme Court  
Rolf v. City of Greenville, 102 Mich. 544, 61 N.W. 3 (1894).

Maint.

DEFECT: Accumulation on street of snow and ice shoveled from streetcar tracks and adjacent sidewalks.

ACCIDENT: Cutter overturned.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the city was liable for the accumulation of snow and ice.

**Court said:** The city is not liable for natural accumulations. It is liable when an accumulation is put in the street by the city or by its express authority. The need to clear paths through the snow requires that it be piled along the sides of streets. It would be unjust to hold the city liable when the weather changes such accumulations to ice.

RESULT: Judgment for defendant was affirmed.

COMMENT: N/A

Supreme Court

Hutchinson v. City of Ypsilanti, 103 Mich. 12, 61 N.W.2d 279 (1894).

Eng., Traffic

**DEFECT:** Absence of guardrails on a road running across a dam with a spillway by the road.

**ACCIDENT:** Plaintiff drove her buggy over the road and the horse became frightened at the sound of the rushing water. The horse led the buggy down a nearby embankment and plaintiff was forced to jump from the buggy.

**INJURY:** Unspecified—said to be serious.

**LEGAL  
ISSUES:** **Negligence**

- Defendant claimed that the proximate cause of the accident was plaintiff's horse, not the absence of guardrails.

**Court said:** Whether guardrails were required at this location in order to make the road reasonably safe was a question of fact for the jury's decision.

**RESULT:** Directed verdict for defendant was reversed and a new trial ordered.

**COMMENT:** N/A

Supreme Court  
Ross v. Ionia Township, 104 Mich. 320, 62 N.W. 401 (1895).

**DEFECT:** Gutter 7 to 12 inches wide, and 5 to 7 inches deep separating wooden sidewalk from curb--wooden cover for gutter absent.

**ACCIDENT:** Plaintiff stepped into the gutter and fell.

**INJURY:** Unspecified.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed that the provision of wooden covers for curb areas adjacent to crosswalks was part of the integral plan of the drainage system for the city, and that the city was not liable for defects in such a plan.

**Court said:** Breaches of the duty to keep/maintain under the municipal liability statute can arise from flagrant construction defects as well as a neglect to repair. In this case the evidence showed that the gutters were often left uncovered when the "plan" contemplated that they should be covered. Therefore, it cannot be said as a matter of law that the sidewalk was safe for travel and whether defendant breached its duty was a question of fact for jury's decision.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:** Note that modern law makes road authority liable for defects in an original plan as well as for negligence in construction and repair, and does not require that defects be "flagrant."

Supreme Court  
Schrader v. City of Port Huron, 106 Mich. 173, 63 N.W. 964 (1895).

Maint.

DEFECT: Accumulation of ice on a sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff was contributorily negligent in walking on a sidewalk she knew was dangerous.

**Court said:** It was daytime and plaintiff saw the ice before stepping on it, and could have avoided it. Therefore, she was contributorily negligent at a matter of law.

RESULT: Judgment for defendant was affirmed.

COMMENT: A modern court would be more likely to allow a jury to decide whether the plaintiff was contributorily negligent.

Supreme Court

Black v. City of Manistee, 107 Mich. 60, 64 N.W. 868 (1895).



Maint.

DEFECT: Accumulation of ice on sidewalk from water runoff from adjacent houses.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** Accumulations of ice on sidewalks caused by the natural flow of water from adjacent lands are natural accumulations and the city is not liable for them.

RESULT: Directed verdict for defendant was affirmed.

COMMENT: N/A

Supreme Court  
Gavett v. City of Jackson, 109 Mich. 408, 67 N.W. 517 (1896).

Maint.

DEFECT: Wooden sidewalk with loose planks and rotten stringers.

ACCIDENT: Plaintiff walked over the sidewalk, tripped on the loose planks, and fell.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed that since it had recently repaved the sidewalk prior to plaintiff's injury, not enough time had passed after the repair to make defendant negligent.

**Court said:** If this is true, defendant has a complete defense. Since plaintiff had contrary evidence on the point, the question was one for the jury's decision.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: The court permitted plaintiff to use evidence of previous accidents to prove notice.

Supreme Court  
Storrs v. City of Grand Rapids, 110 Mich. 483, 68 N.W. 258 (1896).

Maint.

DEFECT: Loose board in wooden sidewalk.

ACCIDENT: Board flew up and tripped plaintiff who fell.

INJURY: Broken kneecap—great injury to spine and head.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff neglected her condition and thus was contributorily negligent.

**Court said:** Testimony at trial that plaintiff was anxious to return to work rather than seek medical treatment because she had funeral expenses for her mother and other obligations to meet was prejudicial to defendant. Evidence showing the poverty of a plaintiff tends to arouse the sympathy of the jury, and is not relevant.

RESULT: Judgment for plaintiff in the amount of \$1,600 was reversed and a new trial was ordered.

COMMENT: Case turns largely on evidentiary rules, rather than principles of road liability.

Supreme Court

Burleson v. Village of Reading, 110 Mich. 512, 68 N.W. 294 (1896).

Eng.

DEFECT: Sidewalk over wooden bridge—question of defective material.

ACCIDENT: Plaintiff walked over sidewalk, which collapsed and fell into a river.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- No notice

**Court said:** There was sufficient evidence regarding the condition of the bridge to permit the jury to decide whether defendant had notice of the decayed condition of the timbers supporting the bridge and whether the defendant should have made further inquiries concerning the condition of the bridge.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court

Snyder v. City of Albion, 113 Mich. 275, 71 N.W. 475 (1897).

DEFECT: Washout on a dirt road—wagon forced to go to the edge of the road, which was undermined, to avoid the washout.

ACCIDENT: Plaintiff drove his wagon around the washout, which collapsed under him, tipping the wagon and its load onto the plaintiff.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- The trial court instructed the jury that the liability statute is to be construed "reasonably," taking into consideration that defendant performs its duties by means of public officers.

**Court said:** That defendant performs its duties through public officers is irrelevant—the statute creates the duty to keep the roads reasonably safe and it does not matter that the defendant acted "reasonably."

- The trial court had instructed the jury that it was to determine whether, in the exercise of reasonable care, defendant should have known about the defect.

**Court said:** Plaintiff need not prove that the township failed to undertake an investigation that would have informed it of the existence of the defect. Plaintiff only need show that the defect existed before the required statutory time.

RESULT: Judgment for defendant was reversed.

COMMENT: N/A

Supreme Court

Handy v. Meridian Township, 114 Mich. 454, 72 N.W. 251 (1897).

Maint.

DEFECT: Snow and ice on an inclined sidewalk.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** All sidewalks have inclines. A city is not liable if they are made unsafe by the natural accumulation of ice and snow.

RESULT: Judgment for defendant was affirmed.

COMMENT: N/A

Supreme Court  
Wesley v. City of Detroit, 117 Mich. 658, 76 N.W. 104 (1898).

DEFECT: Plank missing from bridge floor.

ACCIDENT: Plank missing from floor of bridge--plaintiff stepped into hole in the dark and fell into a river.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant had a duty to inspect its bridges and for failure to undertake inspection alone defendant should be liable.

**Court said:** There is no duty to inspect apart from knowledge that would lead a reasonable person to make further investigations.

**Defense**

- No notice

**Court said:** When a person knows certain facts that would lead a reasonable person to make additional investigation and he fails to do so, he will be charged with the responsibility for knowing those things that his additional investigation would have revealed. This is constructive notice. In this case there is no evidence that the defendant had any knowledge that should have made it suspicious enough to undertake further investigation.

RESULT: Judgment for plaintiff was reversed and a new trial was ordered.

COMMENT: Case contains extensive discussion of early precedents establishing the principle of constructive notice in a road liability setting. Although modern statutes and other aspects of law are different from those contained in the case, the principles of constructive notice stated here continue to be the law.

Supreme Court

Thomas v. City of Flint, 123 Mich. 10, 81 N.W. 936 (1900).

Eng., Traffic

**DEFECT:** Drawbridge opened to permit a boat to pass. A chain was normally stretched across the opening, but on the night of the accident, it was broken.

**ACCIDENT:** Plaintiff rode his bicycle into the opening and fell into the river below.

**INJURY:** Death.

**LEGAL ISSUES:** **Defenses**

- Defendant claimed that plaintiff was contributorily negligent in that he was aware of the dangerous condition of the bridge and rode carelessly into the opening.

**Court said:** Evidence that plaintiff had, on prior occasions, ridden against a chain guarding this and similar bridges, could be admitted to show that plaintiff knew the kind of barrier that was in place. The trial court carefully instructed the jury that it could not consider the evidence as proof of plaintiff's carelessness on the night of the accident. In the absence of evidence that the jury disregarded the instructions of the court, the case will not be reversed.

**RESULT:** Judgment for defendant was affirmed.

**COMMENT:** The case is largely concerned with questions of evidence and proper jury instructions.

Supreme Court  
Benedict v. City of Port Huron, 124 Mich. 600, 83 N.W. 614 (1900).



Maint.

DEFECT: Accumulation of ice on a sidewalk in a depression that arrested the normal flow of water. Water from normal runoff and from a leaking tank had accumulated and frozen.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the defendant was negligent in permitting the water to accumulate.

**Court said:** The defendant city was liable if the depression caused the formation of ice in unusual quantities, and if the city had permitted the leaking from the tank to continue for a long time. Whether this occurred was a question of fact for the jury.

RESULT: Directed verdict for defendant was reversed.

COMMENT: N/A

Supreme Court  
Navarre v. City of Benton Harbor, 126 Mich. 618, 86 N.W. 138 (1901).

**DEFECT:** Culvert running under paved road—six inch drop from the top of the culvert to the roadbed.

**ACCIDENT:** Plaintiff, a child of eleven years, drove a team of horses over the road and apparently was shaken from the wagon when it abruptly dropped at the edge of the culvert.

**INJURY:** Death.

**LEGAL**

**ISSUES: Defenses**

- Defendant claimed that plaintiff's father was contributorily negligent in that he noticed the drop earlier in the day and failed to warn the boy about it.

**Court said:** Plaintiff's obligation is to use ordinary care when going over the road and on proof of showing such ordinary care, father's forgetfulness is not contributory negligence.

**RESULT:** Judgment for plaintiff in the amount of \$800 was affirmed.

**COMMENT:** N/A

Supreme Court

Miller v. Meade Township, 128 Mich. 98, 87 N.W. 131 (1901).

DEFECT: Corduroy road in generally poor condition.

ACCIDENT: Plaintiff drove his team over the road; a horse broke through a rotten piece of the road and was injured.

INJURY: Property damage only.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that plaintiff was contributorily negligent for driving over the road when he knew that it was in poor condition.

**Court said:** While it is true that plaintiff was aware that the road was in poor condition, he also knew that it was in constant use by other people. The test is whether no person in the exercise of ordinary prudence would attempt to pass over the highway and if not, it is not negligence as a matter of law for plaintiff to attempt to pass over a highway known to be defective.

RESULT: Judgment for plaintiff in the amount of \$300 was affirmed.

COMMENT: N/A

Supreme Court

McTiver v. Township of Grant, 131 Mich. 456, 91 N.W. 736 (1902).

DEFECT: Washout on a dirt road crossing a ravine.

ACCIDENT: Plaintiff drove her horse and buggy across the road. when the horse approached the washout it shied toward the edge of the road, which collapsed tumbling plaintiff, buggy, and horse down the adjacent embankment.

INJURY: Permanent disability.

LEGAL  
ISSUES: **Defenses**

- Notice

**Court said:** The washout in question had existed each spring and fall for at least two years and defendant's officers therefore must have known of it before plaintiff's injury. Therefore, the question of defendant's negligence was properly submitted for the jury's decision.

- Defendant claimed that plaintiff was contributorily negligent as a matter of law.

**Court said:** Plaintiff's testimony that she was admiring the scenery in the ravine, failed to see the washout until the horse shied, and knew that the horse often shied at various items including washouts indicates that she was not using due care under the circumstances of a narrow road with a readily observable washout. Plaintiff is required to show some care under the circumstances for her own safety, and no care is shown in this case. Therefore, the plaintiff is contributorily negligent as a matter of law.

RESULT: Judgment for plaintiff was reversed and a new trial was ordered.

COMMENT: Note that a modern appeals court would be less likely to reverse a jury's finding regarding plaintiff's contributory negligence.

Supreme Court  
Tracey v. South Haven Township, 132 Mich. 492, 93 N.W. 1065 (1903).

Maint., Permits

DEFECT: Ice on sidewalk due to water flowing from an adjacent property.

ACCIDENT: Plaintiff slipped on the ice and fell.

INJURY: Unknown.

LEGAL

ISSUES: **Defenses**

- No notice

**Court said:** The fact that the ice had been on the sidewalk for four days does not justify a finding that the defendant had notice without proof that the accumulation of ice was "notorious."

The jury could not infer notice from the fact that the president of the city council lived opposite the site in question, that two patrolmen frequently met on the street in question, and that the city clerk passed over the site the day before the accident—knowledge of highway officers would amount to notice, but none of these persons is such an officer with the possible exception of the president of the council, and as to him there is no evidence that he knew of the ice.

RESULT: Directed verdict for the defendant was affirmed.

COMMENT: N/A

Supreme Court

Corey v. City of Ann Arbor, 134 Mich. 376, 96 N.W. 477 (1903).

Maint., Permits

DEFECT: Stones placed in street during construction of a building.

ACCIDENT: Plaintiff's wagon went down the street, struck the stones, and plaintiff was thrown from the wagon.

INJURY: Unknown.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed it had no duty to remove obstructions from its streets.

**Court said:** Defendant's duty to keep/maintain includes the removal of obstructions.

Defendant would be liable for obstructions that it permits to be placed in the street (such as permitting a house to be moved down the street) as well as for obstructions that it did not license.

**Defenses**

- Notice

**Court said:** Defendant's liability for failure to remove obstructions depends upon its knowledge of the obstruction and a reasonable time within which to remove it, since the superintendent of defendant's streets had observed the stones in question and directed contractors to remove stones from a nearby sidewalk, and since the mayor lived on an adjacent lot and passed the stones daily there was actual notice of this obstruction in this case.

RESULT: Directed verdict for defendant was reversed and a new trial was ordered.

COMMENT: Case contains considerable discussion of early precedents and statutes discussing the duty to keep/maintain, and is a thorough presentation of the basic principles of road liability.

Supreme Court

McEvoy v. City of Sault Ste. Marie, 136 Mich. 172, 98 N.W. 1006 (1904).

DEFECT: Hole in surface of dirt road.

ACCIDENT: Plaintiff was thrown from the seat of a wagon when the front wheels dropped into the hole.

INJURY: Unknown.

LEGAL  
ISSUES: **Defenses**

- No notice

**Court said:** It is plaintiff's obligation to prove notice to defendant of the alleged defect--here the only evidence of notice was defendant's failure to call the overseer of highways to the witness stand--plaintiff's attorney argued that the overseer was not called because he would have testified that he knew of the dangerous condition of road. The comments of plaintiff's attorney in this connection were improper and the jury would not have been entitled to infer notice from the failure to call the overseer as a witness.

The length of time the hole existed and the extent of its notoriety were questions of fact for the jury's decision.

- Contributory negligence

**Court said:** Whether plaintiff was contributorily negligent was a question of fact for the jury's decision.

RESULT: Judgment for plaintiff was reversed and a new trial was ordered.

COMMENT: N/A

Supreme Court  
Cavanaugh v. Riverside Township, 136 Mich. 660, 99 N.W. 876 (1904).

DEFECT: Abandoned trolley car line—tracks in place, but covered with cinders—vehicle wheels would sink into adjacent ground in wet weather.

ACCIDENT: Plaintiff drove a wagon to this spot and while crossing the tracks was thrown from the wagon.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed no negligence.

**Court said:** Since it appears that the abandoned track was dangerous in wet weather, the rails should have been taken up when the use of the track ceased--if the track had been in use, its connection with a main track could easily have been seen and persons would have taken care to approach it at right angles. The failure to take up the tracks is negligence as a matter of law.

#### **Defenses**

- Notice

**Court said:** Since this condition had existed for two and one-half years defendant is presumed as a matter of law to have noticed it.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court  
Cutcher v. City of Detroit, 139 Mich. 186, 102 N.W. 629 (1905).



Eng., Maint.

DEFECT: Loose plank in wooden sidewalk--defective and decayed stringers.

ACCIDENT: Plaintiff walked over the loose plank, which flew up and struck him.

INJURY: Death.

LEGAL  
ISSUES: **Defenses**

- No notice

**Court said:** The condition of the sidewalk was called to the attention of the village street commissioner by a member of the common council shortly before this accident and the street commissioner and repairman subsequently walked over the entire block but failed to find the defect.

While defendant does not have a duty to inspect in all circumstances, when put on actual notice of a potential defect, there is a duty to inspect, and to carry out that inspection with due care.

It is not a sufficient discharge of this duty to make a casual inspection.

RESULT: Judgment for plaintiff affirmed.

COMMENT: N/A

Supreme Court

Hunter v. Village of Ithaca, 141 Mich. 539, 105 N.W. 9 (1905).

Eng.

**DEFECT:** Street excavation--trolley car rails in the center of the street--boards laid over the rails as a temporary crosswalk to assist pedestrians.

**ACCIDENT:** Plaintiff walked over the boards, one of which flew up and tripped her.

**INJURY:** Unspecified injury to knee--said to be severe and permanent.

**LEGAL  
ISSUES:** **Defenses**

- No notice

**Court said:** The construction, while done by defendant's contractor, was entirely under the supervision and control of defendant, and the evidence indicated that the crosswalk in question had been in place for about ten days.

- Defendant claimed plaintiff was contributorily negligent in that she testified she was not looking at the board ahead of her, which flew up and tripped her.

**Court said:** Plaintiff was not walking on the loose board at the time it tripped her, and whether her failure to observe it amounted to contributory negligence was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff in the amount of \$1,500 was affirmed.

**COMMENT:** The court permitted witnesses to give their observations, made one or two days after the accident in question, of the crosswalk with its loose boards and found such testimony not "too remote."

Supreme Court  
Barker v. City of Kalamazoo, 146 Mich. 257, 109 N.W. 427 (1906).

Maint., Permits

**DEFECT:** Repairs being made to building fronting on sidewalk--debris piled nearby--gratings removed from opening in sidewalk--opening covered intermittently with boards.

**ACCIDENT:** At night plaintiff walked over the sidewalk, and stepped in one of the openings.

**INJURY:** Said to be serious injury to leg.

**LEGAL  
ISSUES:**

**Negligence**

- Defendant claimed that since the defect in question was the responsibility of the adjacent property owner it was not included within defendant's duty to keep/maintain.

**Court said:** Defendant is not relieved of its duty to keep/maintain if its streets are made unsafe by the acts of third persons.

**Defenses**

- Defendant claimed that the statutory notification was defective for lack of specification of details concerning the injury and medical expenses associated with it.

**Court said:** The notification provided to the defendant was sufficiently precise.

- Notice

**Court said:** Evidence showing that the grating had been removed for two to five weeks, that light boards covering the grating were frequently removed, that the mayor, policeman, and alderman all had knowledge of the situation, and that the street commissioner worked in a nearby alley for nearly three weeks was sufficient to permit the jury to decide whether defendant had notice.

**RESULT:** Judgment for plaintiff was affirmed.

COMMENT: The court noted that arguments by plaintiff's attorneys tending to contrast the financial situation of the plaintiff and the defendant were improper but not so influential to the jury that the case should be reversed.

Supreme Court

Davis v. City of Adrian, 147 Mich. 300, 110 N.W. 1084 (1907).

Eng., Maint., Traffic

**DEFECT:** Road over culvert—said to be too narrow and poorly drained, thus causing washouts by the edge of the road—no barriers or railings present.

**ACCIDENT:** Plaintiff rode his bicycle over the culvert and at the edge of the road lost control and was thrown down an embankment.

**INJURY:** Unspecified.

**LEGAL**

**ISSUES: Defenses**

- Defendant claimed that the cause of the accident was plaintiff's losing control of his bicycle and not the narrowness of the road, the rutting at the edge, or the absence of any barriers.

**Court said:** It is clear from plaintiff's own evidence that the only cause of the accident was plaintiff's losing control of the bicycle and not any defect in the road.

**RESULT:** Directed verdict for defendant was affirmed.

**COMMENT:** A modern appeals court would be more likely to view the issue of whether a road defect was the cause of plaintiff's injury as a question of fact for the jury's decision.

Supreme Court

Briggs v. Pine River Township, 150 Mich. 381, 114 N.W. 221 (1907).

Maint., Permits, Traffic

**DEFECT:** Planking over a culvert under the highway was removed. No warning lights or barriers were placed--bags of cement placed close by the road by the highway department.

**ACCIDENT:** Plaintiff drove his horse past the bags. The bags apparently frightened the horse, which broke into a run and the buggy went into the hole created by the absence of planking and was overturned.

**INJURY:** Unspecified.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed that the plaintiff was contributorily negligent as a matter of law.

**Court said:** Since defendant was responsible for the placing of the cement and for the planks missing from the culvert, whether plaintiff's handling of the horse amounted to contributory negligence was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:** N/A

Supreme Court  
Judd v. Caledonia Township, 150 Mich. 480, 114 N.W. 346 (1907).

Maint.

DEFECT: Ridge of ice on street at crossing with sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that the city was negligent in digging a drainage trench through snow and ice, and throwing the removed snow and ice across the walk.

**Court said:** The city is liable if its employee did put snow and ice in the walk. Whether he did so was a question of fact for the jury's decision.

RESULT: Directed verdict for defendant city was reversed and the case was remanded for a new trial.

COMMENT: N/A

Supreme Court

Bowen v. City of Detroit, 150 Mich. 546, 114 N.W. 344 (1907).

Eng., Maint.

DEFECT: Accumulation of ice in excavation for sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed the defendant was negligent in permitting the accumulation of ice in the uncompleted sidewalk.

**Court said:** An uncompleted sidewalk is not necessarily defective. The sidewalk was less likely to accumulate water in this condition than if it had been completed.

RESULT: Judgment for defendant was affirmed.

COMMENT: N/A

Supreme Court

Pringle v. City of Detroit, 152 Mich. 445, 116 N.W. 362 (1908).



Maint.

DEFECT: Accumulation of ice and snow shoveled from railroad tracks onto street caused a driver of a team of horses to lose control of them when thrown from the sleigh.

ACCIDENT: Plaintiff was run down by runaway team.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the accident was caused by defendant's failure to remove the accumulation.

**Court said:** The city is not liable for natural accumulations of ice and snow, but whether an accumulation caused by shoveling snow from the railroad tracks was unnatural was at least a question for the jury's decision.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: The case does not state whether the snow was shovelled by city employees.

Supreme Court  
Johnson v. City of Marquette, 154 Mich. 50, 117 N.W. 658 (1908).

**DEFECT:** Street excavated for new pavement--planks laid to assist pedestrians crossing.

**ACCIDENT:** Plaintiff crossed planks over street excavation, slipped, and fell.

**INJURY:** Unspecified injury to foot.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed any negligence present is the responsibility of the defendant's contractor, not the defendant.

**Court said:** Defendant retained supervisory control of the work and cannot be relieved from liability by turning the street over to a contractor.

- No notice.

**Court said:** Testimony at trial showed that the planks in question had been in place for some time and had been placed and handled by the road crews making notice a question of fact for the jury's decision.

- Defendant claimed plaintiff was contributorily negligent as a matter of law.

**Court said:** Plaintiff's contributory negligence was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff was reversed and the case was remanded for a new trial.

**COMMENT:** Reasons for reversal unrelated to principles of road liability--inflammatory and prejudicial statements by plaintiff's attorney.

Supreme Court  
Hughes v. City of Detroit, 161 Mich. 283, 126 N.W. 214 (1910).

DEFECT: Unguarded ditch.

ACCIDENT: Plaintiff, a pedestrian, fell into ditch at night.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the defendant was negligent in failing to erect a barrier to the ditch.

**Court said:** Whether the duty to make the highway reasonably safe required that a barrier be erected was a question of fact for the jury.

**Defenses**

- Defendant claimed that the plaintiff was negligent in continuing to walk when she had lost her bearings due to a blinding flash of lightning.

**Court said:** If plaintiff had become confused and continued blindly on she was negligent. Whether she had done so was a question of fact for the jury.

RESULT: Judgment for plaintiff was reversed and the case was remanded for a new trial.

COMMENT: N/A

Supreme Court  
Hunt v. Douglass Township, 165 Mich. 187, 130 N.W. 648 (1911).

Maint., Traffic

DEFECT: Absence of guardrail along a road under repair.

ACCIDENT: Horse-drawn cart slipped off road.

INJURY: Serious injury to back—permanent disability.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to erect guardrails.

**Court said:** As long as a road is open to travel, the duty to make it reasonably safe still applies, even though it is under repair. Whether guardrails were required was a question of fact for the jury.

RESULT: Judgment for plaintiff in the amount of \$375 was affirmed.

COMMENT: N/A

Supreme Court

Speck v. Bruce Township, 166 Mich. 550, 132 N.W. 114 (1911).

Maint.

**DEFECT:** Ridge of snow left on sidewalk by plowing. The ridge was covered with ice formed by runoff from adjacent building.

**ACCIDENT:** Plaintiff slipped on the ice and fell.

**INJURY:** Broken leg.

**LEGAL**

**ISSUES:** **Negligence**

- Plaintiff claimed that defendant was negligent in allowing the ridge of snow to remain.

**Court said:** The city is liable when it causes accumulations, not when a ridge is formed by removal of snow.

- Plaintiff claimed that defendant was negligent in permitting ice to form on the ridge.

**Court said:** The city was not responsible for the water coming onto the sidewalk and therefore was not negligent in failing to prevent the formation of ice.

**RESULT:** Judgment for plaintiff in the amount of \$700 was reversed and the case was remanded for entry of judgment for defendant.

**COMMENT:** N/A

Supreme Court

Jefferson v. City of Sault Ste. Marie, 166 Mich. 340, 130 N.W. 610 (1911).

Maint.

**DEFECT:** Washout at bottom of a dirt road going downhill--travelers required to use one side of the road to avoid the washout.

**ACCIDENT:** Plaintiff drove his team over this section of the road early in the day and then checked the site for possible problems returning at night in the dark later that day. Upon returning at night plaintiff's wagon slipped into the washout severely injuring plaintiff's horse.

**INJURY:** Property damage only.

**LEGAL  
ISSUES:**

**Defenses**

- Defendant claimed that plaintiff was contributorily negligent as a matter of law in driving over a road he knew was unsafe.

**Court said:** Whether plaintiff was contributorily negligent was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:** N/A

Supreme Court

Highland v. Garfield Township, 168 Mich. 538, 134 N.W. 971 (1912).

Eng., Maint., Traffic

DEFECT: Absence of guardrail on narrow, highly crowned road; snow and ice on the road.

ACCIDENT: Horse-drawn sleigh slid off road, struck culvert, and overturned.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed that defendant was negligent in constructing a narrow, crowned road with no guardrail.

**Court said:** Although the defendant is not liable for natural accumulations of snow and ice, if a road is so constructed that it is safe only when free of snow and ice, defendant has failed to provide a reasonably safe road. Whether the road in this case was reasonably safe was a question of fact for the jury.

RESULT: Directed verdict for defendant was reversed and the case was remanded for a new trial.

COMMENT: N/A

Supreme Court

Stanton v. Webster Township, 170 Mich. 428, 136 N.W. 421 (1912).

Eng., Maint., Traffic

DEFECT: Absence of guardrail; icy road.

ACCIDENT: Horse and sleigh slid off road.

INJURY: Property damage.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that defendant was negligent in failing to put a guardrail beside the road.

**Court said:** Whether a guardrail was necessary to make the road reasonably safe was a question of fact for the jury to decide.

**Defenses**

- Defendant claimed the icy condition of the road, rather than the lack of a guardrail, was the cause of the accident.

**Court said:** If the accident was caused by the icy condition, defendant was not liable. Whether it was the ice or the lack of a guardrail that caused the accident was a question of fact for the jury to decide.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court

Lubbers v. Manlius Township, 172 Mich. 387, 137 N.W. 804 (1912).



Eng., Traffic

**DEFECT:** Dirt highway--fill between two hills--roadway of varying widths with adjacent embankments--snow on the road, snow and sleet falling.

**ACCIDENT:** Plaintiff was driving a wagon with a load of poles across the fill. Apparently the wagon went down the embankment, tipping its load onto plaintiff. It also appeared that some time after the accident and during the storm plaintiff killed himself by cutting his wrist.

**INJURY:** Death.

**LEGAL ISSUES:** **Negligence**

- Plaintiff claimed that defendant had specific duties to make road approaches straight and level, to make particular embankments level and of a safe width, and to guard the sides of a fill with barriers, guardrails or other structures.

**Court said:** Defendant has no such specific duties, although its failure to do these things are factors that a jury can consider as breach of its duty to keep/maintain.

Defendant is not required to keep its highways absolutely safe for travel, and it is for the jury to decide whether a road is reasonably safe.

**RESULT:** Judgment for plaintiff was reversed and a new trial was ordered.

**COMMENT:** Case turns largely on questions of proper jury instructions.

Supreme Court  
Lamb v. Clam Lake Township, 175 Mich. 77, 140 N.W. 1009 (1913).

Eng., Traffic

**DEFECT:** Fill on dirt road--bushes on one edge of road, hill on the other.

**ACCIDENT:** Plaintiff drove his farm machinery over the fill—a separator trailing behind became skewed and toppled over the hill.

**INJURY:** Property damage only.

**LEGAL  
ISSUES:**

**Negligence**

- Proximate cause

**Court said:** This accident occurred because plaintiff failed to take precautions necessary to keep his separator properly behind his "engine."

- Duty

**Court said:** Ordinary care may sometimes require the construction of a railing by the sides of embankments but not where the only highway problem is a fill since this condition is very widespread throughout the state and to base liability on a failure to guard it would impose an improper burden on municipalities.

**Defenses**

- No notice

**Court said:** Since many people had driven farm machinery over this area without mishap, and since no defect was visible either before or after the accident apart from the fill itself, there is no evidence of notice.

- Contributory negligence

**Court said:** The only negligence shown in the case is plaintiff's failure to be alert to his trailing separator.

**RESULT:** Judgment for plaintiff in the amount of \$100 was reversed and a new trial was ordered.

COMMENT: A modern appeals court would be more likely to view these matters as questions of fact for the jury's decision.

Supreme Court

Canfield v. Township of Gun Plains, 175 Mich. 379, 141 N.W. 634 (1913).

Maint.

DEFECT: Ridge of ice and snow on sidewalk, formed by runoff from adjacent land.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to provide drainage for the runoff.

**Court said:** The flow of water from melted snow is a natural flow and the city is not required to provide drainage for it. Such a requirement would place an unwarranted burden on municipalities.

RESULT: Judgment for plaintiff was reversed and the case was remanded for entry of judgment for defendant.

COMMENT: N/A

Supreme Court  
Mayo v. Village of Baraga, 178 Mich. 171, 144 N.W. 517 (1913).

DEFECT: Narrow step on wooden sidewalk.

ACCIDENT: Plaintiff fell.

INJURY: Broken leg.

LEGAL

ISSUES: **Defense**

- Defendant claimed the sidewalk was not within its jurisdiction.

**Court said:** The county is not responsible for maintenance of sidewalks on county roads.

RESULT: Judgment for defendant was affirmed.

COMMENT: Modern law continues to exclude sidewalks from a road commission's responsibility.

Supreme Court

Ferguson v. Muskegon County, 181 Mich. 335, 148 N.W. 212 (1914).

Eng., Traffic

DEFECT: Absence of guardrail on road.

ACCIDENT: Horse-drawn wagon left road.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to erect a guardrail along the side of the road.

**Court said:** As a matter of law, the duty to maintain a reasonably safe road does not require that a guardrail be erected along a road that is 14 feet wide, with no danger for 30 feet beyond the edge of the road.

- Proximate cause

**Court said:** The shying of plaintiff's horse, not the absence of a guardrail, was clearly the proximate cause of this accident. Defendant is not alleged to have caused the shying.

RESULT: Judgment for plaintiff was reversed and judgment for defendant will be entered.

COMMENT: Court engages in extensive reweighing of the evidence. A modern appeals court would be more likely to leave such matters to the jury.

Supreme Court  
Irwin v. Byron Township, 183 Mich. 345, 149 N.W. 980 (1914).

Eng., Maint., Permits, Traffic

**DEFECT:** Sand and other material piled near the site of a recently constructed bridge--railings guarded both sides of the bridge but not the approach to the bridge.

**ACCIDENT:** Plaintiff drove his horse and buggy up the approach where the horse became frightened by the material piled to the side and forced the buggy down an adjacent embankment.

**INJURY:** Unspecified.

**LEGAL**

**ISSUES: Negligence**

- Plaintiff tried to have testimony admitted showing an accident involving another team of horses becoming frightened by the presence of this material before plaintiff's accident, but the trial court refused to admit this testimony.

**Court said:** This testimony was properly excluded because the circumstances of the one accident (a team of horses one of which was admittedly wild) were quite different from plaintiff's circumstances (a single horse that was admittedly gentle).

- Plaintiff sought to admit testimony of another accident involving horses becoming frightened at the sight but was unable to state whether this accident happened before or after plaintiff's accident.

**Court said:** Since this evidence could be of an accident after plaintiff's accident, it cannot be admitted.

- Plaintiff claimed that defendant was negligent in leaving the material where it was rather than removing it.

**Court said:** It was for the jury to decide whether it was negligent for defendant to leave this material close to the highway where it might frighten otherwise gentle horses.

**RESULT:** Judgment for defendant was affirmed.

**COMMENT:** N/A

Supreme Court

Boos v. Northfield Township, 186 Mich. 386, 152 N.W. 1042 (1915).

Eng., Maint., Traffic

DEFECT: Absence of lights or barricades in front of low bridge and shallow excavation on road.

ACCIDENT: Car struck excavation.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Contributory negligence

**Court said:** The driver knew the road was being worked on, but did not know there was an excavation behind the low ridge of dirt. Whether he was negligent in approaching this area at a speed of six or seven mph was a question of fact for the jury to decide.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court

Loose v. Deerfield Township, 187 Mich. 206, 153 N.W. 913 (1915).



Eng., Traffic

DEFECT: Drawbridge opened to permit boat to pass through with warning lights in place and operating, but a mechanical gate, which normally lowered across the road, failed to do so.

ACCIDENT: Plaintiff, a passenger in a vehicle, was killed when the vehicle drove into the opening on the bridge and fell into the river below.

INJURY: Death.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that plaintiff was contributorily negligent by ignoring the warning lights and other devices--plaintiff claimed that the absence of the gate was an invitation to cross the bridge because it was safe.

**Court said:** Whether plaintiff was contributorily negligent was a question of fact for the jury's decision.

- No notice

**Court said:** Defendant's theory that the accident was due to a defective mechanism in the bridge gate and that defendant had no notice of this defect as the bridge had operated properly just prior to this accident is a reasonable theory and should have been submitted to the jury.

It was improper for the judge to exclude evidence proving these points.

RESULT: Judgment for plaintiff in the amount of \$400 was reversed and a new trial ordered.

COMMENT: N/A

Supreme Court

Beach v. City of St. Joseph, 192 Mich. 296, 158 N.W. 1045 (1916).

DEFECT: Large depression at the edge of a wooden bridge where the planks joined the road.

ACCIDENT: Plaintiff drove his wagon loaded with lumber and shingles over the bridge. When the wagon jolted down at the edge the plaintiff was thrown from the wagon and subsequently kicked by his horses.

INJURY: Broken knee—permanent crippling.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff was contributorily negligent for sitting on a loose pack of shingles and for failing to see the depression at the edge of the bridge.

**Court said:** Whether plaintiff was contributorily negligent was a question of fact for the jury's decision.

RESULT: Judgment for plaintiff in the amount of \$1,500 was affirmed.

COMMENT: N/A

Supreme Court

Pool v. Montague Township, 194 Mich. 476, 160 N.W. 549 (1916).

Maint.

DEFECT: Large hole in road—snow on the roadway—sharp dispute as to the location of the hole.

ACCIDENT: The plaintiff drove his sleigh across the hole. Sleigh tipped over, throwing plaintiff and passengers out.

INJURY: Severe injury to back and hip.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed plaintiff had failed to provide the 60-day notification.

**Court said:** Such notification does not apply to a claim against townships.

- Defendant claimed that plaintiff was contributorily negligent as a matter of law since plaintiff knew about the existence of the hole, had driven over it earlier in the morning, and had been warned by his passenger to be alert for it the night of the accident.

**Court said:** Whether plaintiff was contributorily negligent under the circumstance was a question of fact for the jury's decision.

RESULT: Judgment for plaintiff in the amount of \$5,000 was affirmed.

COMMENT: N/A

Supreme Court

McIntyre v. Grant Township, 206 Mich. 228, 172 N.W. 564 (1919).

Maint.

**DEFECT:** Washouts at the edge of a dirt road running down an embankment.

**ACCIDENT:** Plaintiff was riding atop a large hay wagon. The load shifted on encountering the washout and plaintiff was thrown down the embankment.

**INJURY:** Broken leg and injuries to spine resulting in permanent disability.

**LEGAL  
ISSUES:**

**Negligence**

- Defendant claimed that the proximate cause of the accident was the poor loading of the straw and not any problem with the condition of the road and in fact denied that there was any hole at the site of the accident.

**Court said:** Both parties presented evidence supporting their different points of view on the condition of the road and the cause of the accident. Therefore, these were questions of fact for the jury's decision.

**Defenses**

- Defendant claimed that plaintiff was contributorily negligent as a matter of law for riding on top of a load of slippery straw.

**Court said:** Highways are made for use by farmers as well as others and it cannot be said that one should not ride upon a load of straw without assuming all risk of accident because of a defective highway.

**RESULT:** Judgment for plaintiff in the amount of \$850 was affirmed.

**COMMENT:** The case is largely concerned with issues of proper jury instructions.

Supreme Court

Vinton v. Plainfield Township, 208 Mich. 179, 175 N.W. 403 (1919).

Maint., Permits

**DEFECT:** A large private quarry excavated across a road; the road was legally closed, but substantial barriers were not erected to close it physically.

**ACCIDENT:** Plaintiff, a passenger in a vehicle, drove over the edge of the excavation.

**INJURY:** Death.

**LEGAL ISSUES:** **Negligence**

- Duty

**Court said:** Defendant unquestionably had a duty to effectively close the road and prevent public travel on it after it permitted the entire road to be excavated.

**Defenses**

- Defendant claimed that plaintiff was contributorily negligent by drinking just prior to this accident, by failing to see the approaching cliff even though it was still light outside, and by ignoring the signs of quarry work being done in the area.

**Court said:** The evidence on these points was conflicting and whether they amount to contributory negligence was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff in the amount of \$2,500 was affirmed.

**COMMENT:** N/A

Supreme Court  
Jewell v. Rogers Township, 208 Mich. 318, 175 N.W. 151 (1919).

Maint.

DEFECT: Washout or gully running across an unpaved road.

ACCIDENT: Plaintiff's horse shied at the washout or gully and threw plaintiff out of the buggy.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed that the proximate cause of the accident was the horse's becoming frightened by the noise of a nearby cement mixer rather than by any defect in the road.

**Court said:** Several township officials inspected the road at regular intervals and several nearby residents indicated that the washout was present at the site. Therefore, whether defendant had notice of the defect was a question of fact for the jury's decision.

Defendant claimed that there was no washout or gully at the place of the accident--in response plaintiff claimed that there was a washout or gully at the place of the accident.

**Court said:** This conflict in the testimony is a question for the jury's decision.

RESULT: Judgment for plaintiff in the amount of \$2,500 was affirmed.

COMMENT: N/A

Supreme Court  
Burns v. Van Buren Township, 218 Mich. 40, 187 N.W. 276 (1922).

Maint., Traffic

DEFECT: Unlighted barricade across road where bridge was out.

ACCIDENT: Car struck barricade at night; plaintiff was thrown from car.

INJURY: Unspecified—serious.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to mark the barricade.

**Court said:** When a road detours to a temporary bridge, the road is closed at the point of detour within the meaning of the statute requiring that a barricade closing a road be marked with red lights. Failure to use those lights was negligence.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: The rule today is that failure to comply with a statute is not automatically negligence, but creates a presumption that the road authority was negligent.

Supreme Court

Jones v. Brookfield Township, 221 Mich. 235, 190 N.W. 733 (1922).

Maint., Traffic

DEFECT: Ruts across a dirt road guarded by a decayed guardrail.

ACCIDENT: Plaintiff lost control of his vehicle at the ruts, crashed through the guardrail, and rolled down a hill.

INJURY: Said to be serious.

LEGAL  
ISSUES:

**Negligence**

- Subsequent repairs

**Court said:** Photographs showing a much improved guardrail erected at the site after the accident were not admissible without a jury instruction guarding against the use of the testimony as an admission of defendant's negligence.

- Absence of accidents

**Court said:** Evidence of the lack of prior accidents is not admissible to show absence of negligence.

**Defenses**

- No notice

**Court said:** Evidence showing the condition of the highway for several months before the accident was admissible to show that township officials should have known of the defect.

RESULT: Judgment for plaintiff in the amount of \$1,500 was reversed and a new trial was ordered.

COMMENT: ● The court observed that the defendant cannot construct a dangerous and unsafe road and shield itself behind its power to adopt a plan and method of building. Modern law makes road authorities liable for negligent design.

- Case turns largely on evidentiary rules rather than on principles of road liability.

Supreme Court

La Due v. Lebanon Township, 222 Mich. 301, 192 N.W. 636 (1923).



Eng., Maint., Traffic

DEFECT: Insufficient barrier to swing bridge--sleet and freezing rain falling.

ACCIDENT: Plaintiff, unable to stop on icy road, drove into river at night.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to erect a barrier strong enough to stop a car, failing to provide adequate lighting, and permitting ice to accumulate.

**Court said:** It would be "manifestly absurd" to require a barrier strong enough to stop a car.

The ordinary street lighting was sufficient, and plaintiff knew the swing bridge was there.

The city was not required to guard against sleet or freezing rain making the road slippery.

RESULT: Directed verdict for defendant was affirmed.

COMMENT: N/A

Supreme Court

Gerrie v. City of Port Huron, 226 Mich. 630, 198 N.W. 236 (1924).

Eng., Traffic

DEFECT: Absence of barrier, flooded road.

ACCIDENT: Horse and buggy went into flooded creek.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in building a creek culvert with insufficient capacity for spring floods.

**Court said:** Defendant is not liable for unusual flooding, but is liable if it causes flooding and is liable for failing to build a culvert capable of handling ordinary seasonal flooding.

Defendant must take notice of the repeated flow of water and note whether the flood is caused by the bridge acting as a dam for an ordinary accumulation of water.

What constitutes an unusual flood is a question of fact for the jury's decision.

- Plaintiff claimed defendant was negligent in failing to install barriers along the road over the culvert.

**Court said:** Whether the duty to provide reasonably safe roads required the installation of barriers was a question of fact for the jury.

RESULT: Judgment for defendant was reversed and the case was remanded for new trial.

COMMENT: N/A

Supreme Court  
Fidler v. Lafayette Township, 226 Mich. 635, 198 N.W. 262 (1924).

Eng., Traffic

DEFECT: Absence of guardrail on embankment.

ACCIDENT: Horse-drawn farm wagon, being driven in the rain at night, on an unfamiliar road, slid off road and down embankment.

INJURY: Unspecified—said to be severe.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that the failure to install a guardrail along embankment was negligent.

**Court said:** The defendant was required to keep the road reasonably safe and fit for public travel. Whether defendant was negligent in failing to erect a barrier was a question for the jury.

**Defense**

- Defendant claimed plaintiff was contributorily negligent.

**Court said:** Plaintiff had a right to assume the highway was in a reasonably safe condition, and was paying close attention to the road.

Whether plaintiff was negligent was a question of fact for jury to decide in all the circumstances.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: N/A

Supreme Court

Carpenter v. Bloomingdale Township, 227 Mich. 355, 198 N.W. 912 (1924).

Eng., Maint., Traffic

DEFECT: Absence of guardrail along road on fill; erosion of bank, leaving ruts and gullies in surface.

ACCIDENT: Car left road.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant was negligent in failing to erect a guardrail along the road on the fill.

**Court said:** Whether the road was reasonably safe without a guardrail was a question of fact for the jury.

**Defenses**

- Defendant's engineer testified that the road was built according to the usual plans and customs employed in such work.

**Court said:** The question was not what the custom was, but whether the road was reasonably safe.

- Defendant claimed plaintiff's husband (deceased) was negligent in seizing and jerking the wheel of the car on encountering ruts on the road.

**Court said:** Whether this act made defendant guilty of contributory negligence was a question of fact for the jury's decision.

RESULT: Judgment for defendant was affirmed.

COMMENT: N/A

Court of Appeals  
Mazzolini v. Kalamazoo County, 228 Mich. 59, 199 N.W. 648 (1924).

Maint.

DEFECT: Cap on water outlet in sidewalk--cement around the cap depressed, leaving cap protruding above the surface.

ACCIDENT: Plaintiff caught her foot on the cap and fell.

INJURY: Broken leg.

LEGAL  
ISSUES: Defenses

● Notice

**Court said:** Plaintiff must prove constructive or actual notice unless the defect existed for thirty days. If the defect existed for thirty days, notice is conclusively presumed.

Since all of the evidence in this case tended to show that the defect had existed for more than thirty days, and defendant's only response was to deny the existence of a defect at all, plaintiff was not required to prove actual or constructive notice. Since the trial judge instructed the jury that plaintiff was required to prove actual or constructive notice in the facts of this case, the instruction was erroneous and requires reversal.

RESULT: Judgment for defendant was reversed and a new trial was ordered.

COMMENT: N/A

Supreme Court  
Wilkinson v. City of Grand Rapids, 228 Mich. 120, 199 N.W. 600 (1924).

Eng., Traffic

DEFECT: Absence of guardrails on a road over a fill.

ACCIDENT: Plaintiff, driving at night, ran off the embankment of the highway.

INJURY: Death.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed defendant had a duty to erect fences or guardrails or display signals or lights warning of the dangerous condition of the road.

**Court said:** Whether guardrails or danger signals were necessary to discharge the duty to keep/maintain was a question of fact for the jury's decision.

RESULT: Judgment for defendant was affirmed.

- COMMENT:
- Defendant was permitted to introduce evidence showing that at the time of the accident the road was a state trunk line highway; that it was subsequently taken over by the road commission; and at the time of the accident was being rebuilt and improved by the state. The plaintiff objected to this evidence. The court noted that since the trial court had clearly instructed the jury that the road commission would be liable for breach of the duty to keep/maintain, admission of this evidence was acceptable. The court did not directly discuss the implication of this evidence on jurisdiction over the road.
  - The court noted that there was evidence that the plaintiff's vehicle traveled some distance beyond the defect in question before going over the embankment.

Supreme Court

White v. Livingston County, 229 Mich. 153, 200 N.W. 973 (1924).

Maint.

**DEFECT:** Horse-drawn snowplow went over a wooden sidewalk and the horses' hooves broke through hard-packed snow made by pedestrians previously traveling over the walk, thus leaving a series of holes six to twelve inches deep.

**ACCIDENT:** Plaintiff walked over the sidewalk in an area of poor lighting, stepped in one of the holes and fell.

**INJURY:** Broken leg; plaintiff was also pregnant, feared damage to her unborn child, but none occurred.

**LEGAL  
ISSUES:**

**Defenses**

- Defendant claimed that the notification provided to the city council was deficient in not precisely naming the place of the accident, the nature of the defect, and the names of witnesses.

**Court said:** Since defendant made use of notification to investigate the claim and decided to refuse the claim, it cannot now complain that the notification was legally defective.

- No notice

**Court said:** When as here the dangerous condition is created by defendant's own agents in the course of their work, defendant's liability is not based on notice and failure to repair but upon the creation of the dangerous condition.

**RESULT:** Judgment for plaintiff was reversed and a new trial was ordered.

**COMMENT:** ● Note that modern law requires the plaintiff always to prove notice, even when the defendant created the defect.

- The case was reversed for reasons unrelated to principles of road liability—improper jury instructions on the issue of mental anguish concerning possible miscarriage.

Supreme Court

Nevala v. City of Ironwood, 232 Mich. 316, 205 N.W. 93 (1925).

Maint.

DEFECT: Accumulation of ice in a depression in sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that the depression made the sidewalk unsafe.

**Court said:** The city was not liable for a depression in the sidewalk. Neither was it liable for the natural accumulation of ice in the depression.

RESULT: Judgment for the plaintiff was reversed and the case was remanded for entry of judgment for defendant.

COMMENT: N/A

Supreme Court

Hopson v. City of Detroit, 235 Mich. 248, 209 N.W. 161 (1926).



Eng., Traffic

DEFECT: Dirt road--ten to eleven feet wide with a sloping sand embankment and no guardrails.

ACCIDENT: Plaintiff drove his horse and buggy over the road; the horse shied and horse, buggy, and plaintiff slid down the side of the hill.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Duty

**Court said:** Defendant does not have an absolute duty to place guardrails nor can it be said that the traveled portion of the road was too narrow. To base liability upon a failure to guard a road of this type would impose upon defendant a greater duty than the statute imposes.

RESULT: Judgment for the defendant was affirmed.

COMMENT: Note that a modern court is more likely to permit a jury to consider as negligence defendant's failure to widen a road or to install railings or barriers.

Supreme Court

Vose v. Richland Township, 242 Mich. 46, 217 N.W. 784 (1928).

**DEFECT:** Planks laid over wet cement either as a temporary crosswalk during street construction or as a temporary landing for streetcar passengers; nail projecting through a plank.

**ACCIDENT:** Plaintiff stepped on the nail.

**INJURY:** Unspecified.

**LEGAL ISSUES:** **Defenses**

- No notice

**Court said:** Considering the inconspicuous character of the alleged defect and that the plank had been put in place not more than forty-eight hours before the accident, there was not sufficient time for defendant to be charged with constructive notice of the unsafe condition, nor was there any proof of actual notice.

**RESULT:** Directed verdict for defendant was affirmed.

**COMMENT:** The case also discusses whether the planks in question were placed by the defendant city or by the railroad company. The court concludes that for a jury to decide this matter would be merely conjecture. Modern cases would hold a defendant liable for neglecting to repair or remove defects placed by third parties.

Supreme Court  
Moblo v. City of Lansing, 243 Mich. 465, 220 N.W. 890 (1928).

Maint.

**DEFECT:** Wire cable strung to prevent pedestrian access to grass area between sidewalk and street; cable sagged adjacent to sidewalk; light snowfall made the cable nearly invisible.

**ACCIDENT:** Plaintiff stepped from sidewalk onto grass area, tripped on the cable, and fell.

**INJURY:** Unknown—said to be severe.

**LEGAL  
ISSUES:** **Negligence**

- Duty

**Court said:** Defendant's duty to keep/maintain includes keeping the entire highway (including sidewalks) safe and fit for travel including removing obstructions.

Defendant cannot confine citizens to a "traffic groove" but must anticipate their departure from established walkways and must maintain a reasonably safe and convenient condition where people can be expected to go.

The statutory duty to keep/maintain the physical highway does not relieve defendant of liability for defects outside of the roadbed itself.

Defendant has the right to guard its grass areas but may not employ dangerous instrumentalities to do so.

Whether the sagging cable in this case was a reasonable guard for the grass area or was a dangerous trap for pedestrians, and whether the condition of the wire breached defendant's duty to keep/maintain was a question of fact for the jury's decision.

**RESULT:** Dismissal of plaintiff's complaint was reversed and the case was remanded.

**COMMENT:** N/A

Supreme Court  
Jablonski v. City of Bay City, 248 Mich. 306, 226 N.W. 865 (1929).

Maint., Permits, Traffic

**DEFECT:** Large drain excavation in street preceded by a section of minor road repairs--excavation not guarded by lights or barricade but just ahead of the excavation was a barricade was placed by defendant's contractor as required by its permit from defendant road commission.

**ACCIDENT:** While the weather was wet and dark plaintiff came through the area of minor street repair and while avoiding a piece of construction machinery, ran into the large drain excavation.

**INJURY:** One death and several other injuries.

**LEGAL  
ISSUES:**

**Defenses**

- Defendants claimed that the barrier was sturdy, visible, and as a matter of law sufficient to keep motorists from driving into the excavation. Plaintiff claimed that the barricade was inadequate.

**Court said:** The adequacy of the barricade was a question of fact for the jury's decision.

- Defendants claimed that plaintiff was contributorily negligent as a matter of law in that he did not keep a proper lookout for the excavation.

**Court said:** In considering plaintiff's contributory negligence one must keep in mind that the repairs preceding the excavation were minor in nature, had similar barricades, and lacked warning lights. Therefore, plaintiff could easily have assumed that the barricade ahead of the drain marked a similarly minor road repair area.

Plaintiff has no duty to anticipate an unguarded and unlighted excavation. Therefore, whether plaintiff was contributorily negligent was a question of fact for the jury's decision.

- No jurisdiction (defendant city)

**Court said:** Jurisdiction over this road was transferred to the road commission, which issued the permit for the excavation as done by the contractor. Therefore, defendant city does not have jurisdiction and cannot be liable to the plaintiff.

RESULT: Judgment for plaintiff affirmed as to defendant contractor (Mercier) and reversed as to defendant city.

COMMENT: N/A

Supreme Court

Martin v. J.A. Mercier Company, and City of Lincoln Park, 255 Mich. 587, 238 N.W. 181 (1931).

**DEFECT:** Depression on unpaved street about eight to twelve inches deep and five to six feet long.

**ACCIDENT:** Plaintiff was a passenger in a taxi cab, and was injured when the cab struck the depression.

**INJURY:** Said to be serious.

**LEGAL  
ISSUES:**

**Defenses**

- Defendant city claimed that the street in question was in no worse condition than a country road.

**Court said:** The fact that a country road may not be kept in reasonable repair does not excuse defendant for its neglect to keep its streets in reasonable repair.

- Defendant claimed plaintiff was contributorily negligent since she was familiar with the bumpy condition of the street and said only to the taxi driver that "it was rough."

**Court said:** Whether her neglect to give the driver more warning was contributory negligence was a question of fact for the jury's decision.

**RESULT:** Judgment for plaintiff in the amount of \$9,000 was affirmed.

**COMMENT:** N/A

Supreme Court

Parker v. Kettinger, and City of Monroe, 257 Mich. 385, 241 N.W. 226 (1932).

Eng., Maint.

DEFECT: Bump at edge of bridge where it joined the road.

ACCIDENT: Plaintiff drove over the bump, was thrown to the floor, lost control of the vehicle, and crashed through a guardrail into the river.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- The trial court directed a verdict in favor of the defendant because plaintiff was driving at a speed that made it impossible to stop within the assured cleared distance ahead and could not see objects ahead of him.

**Court said:** Plaintiff's theory of the case is that the accident was caused by the bump at the edge of the bridge, and plaintiff's ability either to see the bump or to stop within a certain distance is irrelevant to the cause of the accident as alleged.

In addition, the rule requiring a driver to be able to stop within the assured cleared distance ahead applies only to objects in the road other than the road itself.

RESULT: Directed verdict for defendant was reversed and a new trial ordered.

COMMENT: N/A

Supreme Court

Marek v. City of Alpena, 258 Mich. 637, 242 N.W. 793 (1932).

Maint., Traffic

DEFECT: Traffic light pole in the middle of an intersection.

ACCIDENT: Car struck pole after sliding on icy pavement.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant breached its duty to keep/maintain by placing the pole in the center of the street.

**Court said:** The city is not liable for the ice on the street. Posts are commonly used at intersections and are conspicuous, so it is not negligence to use them.

RESULT: The jury returned a verdict for the plaintiff in the amount of \$5,250, which the judge refused to accept and on appeal he was affirmed.

COMMENT: A modern appeals court would be more likely to reinstate a jury verdict.

Supreme Court  
Clark v. Village of Chelsea, 269 Mich. 422, 257 N.W. 728 (1934).



Traffic

DEFECT: Trolley car safety island in center of street--red light warning of its presence out, but other street lights functioning.

ACCIDENT: Collision between vehicle and trolley car safety island.

INJURY: Driver and passengers seriously injured.

LEGAL  
ISSUES:

**Notice**

- Plaintiff claimed that testimony of one witness that the light was out, of another witness that it "seemed" to have been out the previous night, and of a city policeman that the light was out just prior to accident was sufficient to prove notice.

**Court said:** Notice to policeman was not notice to the city as the policeman was not a highway officer responsible for the condition.

Despite evidence showing notice, there was not reasonable time to repair the defect.

RESULT: Judgment for the defendant was affirmed.

COMMENT: Court engages in extensive weighing of the parties' evidence. A modern appeals court would be less likely to redetermine findings of fact.

Supreme Court  
Jones v. City of Lansing, 273 Mich. 623, 263 N.W. 757 (1935).

Maint.

DEFECT: Upheaval in sidewalk due to roots of nearby tree; accumulation of ice and snow.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Broken leg.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the defendant was negligent in failing to repair the sidewalk.

**Court said:** Defendant is not liable if the injury was caused solely by ice and snow.

Defendant is liable for failure to repair the sidewalk and its negligence is apparent.

**Defenses**

- Defendant claimed plaintiff was contributorily negligent.

**Court said:** Plaintiff knew of the defect, was aware of it at the time, and was not prevented from walking around it. Therefore, she was contributorily negligent as a matter of law.

RESULT: Judgment for defendant was affirmed.

COMMENT: A modern court would be more likely to leave the question of contributory negligence to the jury.

Supreme Court  
Johnson v. City of Pontiac, 276 Mich. 103, 267 N.W. 795 (1936).

## Permits

**DEFECT:** Drain excavation across highway—sharp depression where part of the drain was being built.

**ACCIDENT:** Plaintiff encountered the depression, lost control of his car, and drove into a ditch.

**INJURY:** Severe partial paralysis.

**LEGAL ISSUES:** **Negligence**

- Plaintiff claimed that defendant had failed to properly supervise the construction area or to provide adequate warnings of the dangerous condition of the highway.

**Court said:** Defendant's contractor had placed flags but there were removed at the day of this accident and defendant's contractor employed a patrolman to observe the condition of the road and protect the public. In addition, many witnesses testified to the bumpy nature of the construction area. Therefore, there was evidence from which the jury could find that the road was out of repair and that defendant had notice of the problem and an opportunity to correct it.

### **Defenses**

- Defendant claimed that plaintiff was contributorily negligent by driving at an excessive speed.

**Court said:** While some witnesses estimated plaintiff's speed at 60 to 80 mph, other witnesses estimated it at 40 mph. Therefore, it was for the jury to decide whether plaintiff was speeding and, if so, whether the speeding amounted to contributory negligence.

**RESULT:** Judgment for plaintiff in the amount of \$20,583.20 was affirmed.

**COMMENT:** N/A

Supreme Court

Lang v. Ingham County, 277 Mich. 345, 269 N.W. 197 (1936).

Eng., Maint.

**DEFECT:** Water main leaking water onto road—water froze, forming a barrier of ice one to two feet high.

**ACCIDENT:** Plaintiff collided with the barrier.

**INJURY:** Death.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed that plaintiff was contributorily negligent by attempting to travel over the road and not heeding lights along the side of the road indicating dangerous conditions.

**Court said:** Since the lights to the side of the road were not intended to warn of the ice barrier across the road, it should not be assumed that plaintiff was to take them as a warning about the barrier. In addition, even if the plaintiff knew about the the generally dangerous condition of the road, he was still entitled to drive over it using due care. Therefore, whether plaintiff was contributorily negligent under these circumstances is a question of fact for the jury's decision.

**RESULT:** The jury returned a verdict in the amount of \$8,000 in favor of plaintiff but the trial court directed a verdict in favor of defendant. The supreme court reversed the direction of the trial court and reinstated the original verdict.

**COMMENT:** The court noted that defendant knew of the ice barrier on the road and had ample time to remedy the problem but did not do so; nor did defendant close the road.

Supreme Court  
Brown v. Oakland County, 279 Mich. 55, 271 N.W. 550 (1937).

## Traffic

**DEFECT:** T-intersection—three wooden posts marking end of the road; dispute as to whether central post was in place at the time of the accident.

**ACCIDENT:** Plaintiff was a passenger in a vehicle that approached the T-intersection at night. Vehicle drove straight ahead into a ditch.

**INJURY:** Said to be severe.

**LEGAL  
ISSUES:**

### **Negligence**

- Plaintiff claimed that the center post was missing and that its absence was a breach of defendant's duty to keep/maintain. In response, defendant claimed the post was not missing.

**Court said:** Whether the post was missing was a question of fact for the jury's decision.

Since the trial court found the central post to be missing it follows that defendant failed to discharge its duty. The two remaining posts could easily have been taken to mark hazards by the side of the road if the road continued, rather than indicating the end of the road.

- Defendant denied that it had a duty to keep guardrails erected and maintained.

**Court said:** Defendant admitted this duty in its answer to plaintiff's complaint and cannot raise the question on appeal.

### **Defenses**

- Defendant claimed that plaintiff's contributory negligence was the sole proximate cause of the accident.

**Court said:** Evidence presented did not indicate the plaintiff was behaving improperly, and therefore, whether plaintiff was contributorily negligent was a question of fact for the jury's decision. From the following evidence the jury could infer that plaintiff was not contributorily negligent.

- The posts were not clearly visible at night.
- Plaintiff's speed was between 25 and 30 mph.

- An open field lay behind the end of the road, and plaintiff's headlights would not have revealed any obstacle indicating that the road came to an end.
- Although plaintiff was somewhat familiar with the area, he was unfamiliar with the particular intersection.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: Case presents considerable measurement detail of the roadway in question.

Supreme Court

Maxson v. Bay County, 290 Mich. 86, 287 N.W. 389 (1939).

Maint., Traffic

DEFECT: Utility pole rotted at the base.

ACCIDENT: Thirteen-year-old boy crossed the street by the pole, which fell on him.

INJURY: Death.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that its pole was part of its street lighting system and that it was immune from liability for this function. In response, plaintiff claimed that the defective pole was a highway defect included within defendant's duty to keep/maintain.

**Court said:** The pole adjacent to the street is like any nearby obstruction and included within defendant's duty to keep/maintain because defects in such structures render the highway unsafe.

- Defendant claimed that the verdict was excessive.

**Court said:** Since the verdict is within a reasonable range and supported by some evidence it will not be disturbed on appeal.

RESULT: Judgment for plaintiff in the amount of \$2,864.95 was affirmed.

COMMENT: The court observed that the pole in question had been in place for twenty years and there was no record of its ever having been inspected prior to this accident.

Supreme Court

Rufner v. Traverse City, 296 Mich. 204, 295 N.W. 620 (1941).

Maint.

DEFECT: Tree in median at the point where the road divided.

ACCIDENT: Plaintiff struck tree.

INJURY: Unspecified.

LEGAL

ISSUES: **Defense**

- Defendant claimed plaintiff was contributorily negligent in failing to see the tree.

**Court said:** Plaintiff's failure to make proper observation was contributory negligence as a matter of law and the proximate cause of the accident.

RESULT: Directed verdict for defendant was affirmed.

COMMENT: A modern court would be more likely to let the jury decide whether the plaintiff was contributorily negligent.

Supreme Court

Burke v. Washtenaw County, 301 Mich. 666, 4 N.W.2d 50 (1942).



DEFECT: An uncovered catch basin.

ACCIDENT: Plaintiff, a pedestrian, fell into the basin.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff had not complied with the 60-day notification requirement, by failing to notify the county clerk, and therefore suit was barred.

**Court said:** The requirement is mandatory, and presenting the claim to the Board of Road Commissioners rather than the county clerk was not sufficient.

RESULT: Dismissal of plaintiff's complaint was affirmed.

COMMENT: Note that 60-day notification provision has been replaced with a 120-day provision, and that failure to provide it will not bar a suit unless defendant is actually prejudiced.

Supreme Court

Braun v. Wayne County, 303 Mich. 454, 6 N.W.2d 744 (1942).

DEFECT: Tree protruding halfway into shoulder adjacent to paved road.

ACCIDENT: Plaintiff lost control of vehicle and collided with the tree.

INJURY: Death.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that the shoulder and the tree were not on the portion of the highway designed for vehicular travel and therefore not included within its duty to keep/maintain.

**Court said:** While the shoulder is designed for vehicular travel of some sort it is not on the portion of the road included within defendant's duty to keep/maintain and for failing to remove a tree adjacent to or on the shoulder, therefore, defendant cannot be liable.

RESULT: Judgment for plaintiff was reversed.

COMMENT: Note that modern cases state that the shoulder of the road is on the improved portion of the highway designed for vehicular travel and is therefore subject to defendant's duty to keep/maintain.

Supreme Court

Goodrich v. Kalamazoo County, 304 Mich. 442, 8 N.W.2d 130 (1943).

Maint.

DEFECT: Large log or tree limb on road.

ACCIDENT: Car struck log or limb at night.

INJURY: Death.

LEGAL  
ISSUES: Defenses

- Defendant claimed that it did not have notice of the defect.

**Court said:** The limb, 14 to 20 inches in diameter, had been on the road within one and 1/2 miles of a village, for more than two days. These facts are sufficient to make defendant's negligence a question of fact for the jury.

- Defendant claimed that the driver was negligent in failing to see the tree limb.

**Court said:** Whether the driver was negligent was a question of fact for the jury.

RESULT: Judgment for defendant was reversed and the case was remanded for new trial.

COMMENT: N/A

Supreme Court  
Holland v. Allegan County, 316 Mich. 134, 25 N.W. 140 (1946).

Maint.

DEFECT: Manhole cover protruding from surface of unpaved public alley.

ACCIDENT: Plaintiff, a passenger in a car, drove over the manhole and from the resulting collision was thrown from the seat.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Defendant claimed that its duty to keep/maintain did not include public alleys.

**Court said:** Since defendant's city charter required maintenance of alleys and since defendant had undertaken the upkeep and maintenance of these alleys for some time and had maintained them for use as public alleys, defendant's duty to keep/maintain includes such public alleys.

RESULT: Judgment for plaintiff in the amount of \$2,500 was affirmed.

COMMENT: Note that the present statute specifically excludes alleys from the duty to keep/maintain.

Supreme Court

Pyman v. City of Grand Rapids, 327 Mich. 543, 42 N.W.2d 739 (1950).

Eng., Permits, Traffic

DEFECT: Stop sign removed and not replaced by contractor at intersection.

ACCIDENT: Plaintiff drove into the intersection and collided with defendant.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed that testimony concerning the practices in Ottawa County for the removal and replacement of stop signs should not have been admitted.

**Court said:** Such evidence should not have been admitted because custom cannot change the statutory duty relating to signs. However, the error was not prejudicial to plaintiff.

RESULT: The jury returned a verdict for defendant but the trial judge granted a new trial. The supreme court, however, reinstated the original verdict in favor of defendant.

COMMENT: ● Note that there is no public road authority involved in the case although the contractor was retained by the Ottawa County Road Commission. The absence of the road commission as a party to the lawsuit is not explained in the case.

- The case is largely concerned with evidentiary points unrelated to road liability.

Supreme Court

Hoag v. Hyzy, 339 Mich. 163, 63 N.W.2d 632 (1954).

**DEFECT:** Cracked and crumbling sidewalk due to underlying tree roots.

**ACCIDENT:** At night plaintiff walked over the sidewalk, tripped on the crumbled portion, and fell.

**INJURY:** Said to be serious—eye injury.

**LEGAL**

**ISSUES:** **Defenses**

- Defendant claimed that plaintiff's notification of injury mentioned only a depression in the sidewalk and her stumbling on account of the depression, while her claim as proven at trial was that the sidewalk defect was a trap that caught her foot. Defendant claimed that this variance between the notification given and the claim proven at trial, meant that the notification given was defective and that, therefore, plaintiff's claim was barred.

**Court said:** This variation is substantial and means that plaintiff's case lacks the necessary starting point required by the notification of injury and that, therefore, the claim is barred.

**RESULT:** The jury returned a verdict for the plaintiff, which the judge refused to accept, and on appeal the judge was affirmed.

- COMMENT:**
- The case illustrates the rare circumstance in modern times in which a trial judge refuses to accept the verdict of the jury and is affirmed on appeal.
  - Note that failure to provide timely or adequate notification of the defect no longer bars plaintiff's suit unless defendant is actually prejudiced.

Supreme Court

Rottschafer v. City of East Grand Rapids, 342 Mich. 43, 69 N.W.2d 193 (1955).

Maint.

DEFECT: Loose and broken cement on sidewalk.

ACCIDENT: Plaintiff stepped on the broken cement and fell.

INJURY: Fractured wrist and other lesser injuries.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that since plaintiff was aware of the broken place on the sidewalk but went over it anyway she was contributorily negligent as a matter of law.

**Court said:** A person's awareness of the existence of a defect is one fact to be taken into consideration by a jury in determining whether the person was guilty of carelessness or negligence.

A person is not precluded from traveling over a highway or sidewalk simply because he knows there is a defect in it.

- Defendant claimed that plaintiff's statutory notification was inadequate.

**Court said:** Identifying the location in front of which the broken portion of sidewalk lay and referring to the sidewalk as "broken" provided sufficient notification of the defect and injury especially when there was no substantial variance between the claim as set forth in the statutory notification and the claims made at trial.

RESULT: Judgment for plaintiff in the amount of \$2,000 was affirmed.

COMMENT: N/A

Supreme Court

Cloutier v. City of Owosso, 343 Mich. 238, 72 N.W.2d 46 (1955).

DEFECT: Unspecified.

ACCIDENT: Head-on collision.

INJURY: Said to be serious.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that the suit was filed after the expiration of the two-year statute of limitations. In response the plaintiff claimed that the suit was controlled by the three-year statute of limitations on general tort lawsuits.

**Court said:** All lawsuits brought against the road authority for breach of the duty to keep/maintain are controlled by the two-year statute of limitations.

RESULT: Dismissal of plaintiff's complaint was affirmed.

COMMENT: Case contains considerable discussion of principles of statutory interpretation.

Supreme Court

Pfaff v. Board of County Road Commissioners of Ogemaw County, 354 Mich. 575, 93 N.W.2d 244 (1958).



Maint., Permits

DEFECT: Clothesline strung across sidewalk.

ACCIDENT: Plaintiff rode his bicycle along the sidewalk and ran into the clothesline.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- No notice

**Court said:** Plaintiff must always prove constructive or actual notice and a reasonable time in which to repair the defect.

Whether defendant had the required notice is a question of fact for the jury's decision.

From the following evidence it would be possible for a jury to conclude that the defendant had notice:

- The clothesline had been strung up on washdays intermittently for eighteen years.
- City police officers had occasionally driven on the street.
- A police officer testified that if he had seen the line he would have ordered the adjacent property owner to remove it.
- Other residents of the area knew that the line was frequently strung on washdays.
- When the line was hung with wash, it was readily visible.

Defendant's claim that to detect the clothesline would require constant police patrol of a sparsely settled area is a fact which the jury can consider in finding notice, but does not mean that as a matter of law there was no notice.

RESULT: The jury returned a verdict in favor of the plaintiff which the trial judge refused to accept and entered judgment in favor of the defendant, but on appeal the trial court was reversed and the original was reinstated.

COMMENT: N/A

Supreme Court  
Burgdorf v. Holme-Shaw, and City of Saginaw, 356 Mich. 45,  
96 N.W.2d 164 (1959).

Traffic

DEFECT: Stop sign knocked down and not replaced by time of accident.

ACCIDENT: Plaintiff's vehicle entered intersection and collided with a bus.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Defendant claimed maintenance of a stop sign is not within the duty to keep/maintain.

**Court said:** Maintenance of a stop sign once installed is within the duty to keep/maintain.

RESULT: Summary judgment for defendant was reversed and remanded for trial.

COMMENT: Note that modern law makes a road authority liable both for the failure to install a needed sign and the failure to maintain it after installation.

Supreme Court

O'Hare v. City of Detroit, 362 Mich. 19, 106 N.W.2d 538 (1960).

DEFECT: Unlighted barricade at road work site, muddy road surface in front of barricade.

ACCIDENT: Motorcyclist, riding in heavy rainstorm at night, went through barricade and struck bulldozer.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed the city was negligent in failing to take action to protect travelers when it knew the flares had gone out, and in leaving dirt on the road.

**Court said:** The city knew that flares tended to go out in rainstorms, and the police officer who discovered that the flares had gone out had railroad flares that would not go out in the rain, but did not use them or take any other action. These facts were sufficient to permit the jury to find that the city was negligent.

Whether the city was negligent in permitting dirt to remain on the road so that it became slippery, was a question of fact for the jury's decision.

#### **Defenses**

- Defendant claimed that the motorcyclist was contributorily negligent.

**Court said:** Since the motorcyclist was killed at the scene, he will be presumed not to have been negligent. He was entitled to assume that the street was reasonably safe. The evidence in this case created a question of fact for the jury.

RESULT: Jury verdict for plaintiff was affirmed.

COMMENT: N/A

Supreme Court  
Rytkonen v. City of Wakefield, 364 Mich. 86, 11 N.W.2d 63 (1961).

DEFECT: Street light pole—unspecified defect causing it to break.

ACCIDENT: Plaintiff, an employee of defendant's contractor, was painting the top of the pole, which broke and threw him to the ground.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that its duty to keep/maintain extended only to travelers along its highways and not to persons such as plaintiff who were employed to work on the highway.

**Court said:** Defendant's duty to keep/maintain extends to any person injured by defendant's breach of that duty.

The statute does not restrict the types of persons to whom the duty is owed, but rather defines the standard by which defendant's duty is to be measured, that is, reasonable repair and reasonably safe and convenient for public travel.

RESULT: Dismissal of plaintiff's case was reversed and the case was remanded for new trial.

COMMENT: N/A

Supreme Court  
Mechay v. City of Detroit, 364 Mich. 576, 111 N.W.2d 820 (1961).

Maint., Permits, Traffic

**DEFECT:** Excavation in street by utility company--fresh cement filled the excavation to between 2 and 6 inches from the surface of the pavement--barricade placed but knocked down shortly before the accident.

**ACCIDENT:** Plaintiff driving a motor scooter ran into the excavated portion of the street.

**INJURY:** Unspecified.

**LEGAL ISSUES:** **Defenses**

- No notice

**Court said:** Even though only ten minutes passed between the knocking down of the barricade and the accident, defendant city had notice of the condition of the road from the time that the excavation was begun.

Testimony at trial indicated that barricades placed during the course of the excavation were frequently knocked down at night.

- Defendant claimed that the barricade in place prior to the time of the accident was sufficient protection as a matter of law.

**Court said:** Whether the barricade was sufficient protection for the excavation was a question of fact for the jury's decision.

- Defendant claimed that plaintiff was contributorily negligent in failing to see the excavated portion of the street before running into it.

**Court said:** Plaintiff was entitled to assume the road was reasonably safe and that a warning would be given if it were not.

Plaintiff was driving between 18 and 20 mph and there is no allegation of this speed being excessive.

Testimony at trial indicated that the street was covered with a large amount of debris for which plaintiff was required to keep a lookout.

Testimony indicated that the street was shady.

Considering the above factors, whether plaintiff's failure to see the excavation before running into it was contributory negligence, was a question of fact for the jury's decision.

RESULT: Judgment for plaintiff in the amount of \$2,500 was affirmed.

COMMENT: N/A

Supreme Court

Walsh v. Consumers Power Company, and City of Saginaw, 365 Mich. 253, 112 N.W.2d 448 (1961).

Maint.

**DEFECT:** Hole approximately thirty-six inches in circumference in a crosswalk on defendant's street.

**ACCIDENT:** Plaintiff crossed the street, stepped in the hole, and fell.

**INJURY:** Unspecified.

**LEGAL**

**ISSUES:** **Negligence**

- No proximate cause

**Court said:** Defendant's argument, that the overwhelming weight of the evidence established that plaintiff's injuries derived from being "kicked violently by an assailant" rather than from a fall on account of the alleged defect, was an issue of credibility to be determined by the trier of fact and will not be disturbed on appeal.

**Defenses**

- No notice

**Court said:** Generally, whether a defect has existed for such a period of time and under such circumstances that the defendant is deemed to have notice of it, is a question of fact for the jury's decision.

In this case, plaintiff's evidence of notice was based on the fact that city employees often used the crosswalk and on an opinion by an expert witness who examined the hole sometime after the accident that the hole had existed for three to six months prior to the date of the accident. This evidence was sufficient to permit the trier of fact to find that defendant had notice.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:** N/A

Supreme Court

Cruz v. City of Saginaw, 370 Mich. 476, 122 N.W.2d 670 (1963).



DEFECT: Unspecified.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that plaintiff's failure to provide the 60-day statutory notification barred plaintiff's suit--in response plaintiff claimed that the lawsuit was based on nuisance, and that the 60-day statutory notification requirement applied only to claims under the highway liability statute.

**Court said:** The 60-day statutory notification is required for all claims for "bodily injury" and plaintiff's failure to provide it bars his suit.

RESULT: Dismissal of plaintiff's complaint was affirmed.

COMMENT: Note that the 60-day notification requirement has been replaced with a 120-day notification requirement, and that plaintiff's failure to provide notification will not bar the suit unless defendant is actually prejudiced.

Supreme Court  
Boike v. City of Flint, 374 Mich. 462, 132 N.W.2d 658 (1965).

Maint.

DEFECT: Large chuckhole in defendant's street.

ACCIDENT: Plaintiff walked across the street at night, stepped in the chuckhole and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed it should be permitted to present evidence of its routine maintenance procedures and difficulties in keeping up its streets.

**Court said:** Evidence of routine procedures is irrelevant. In addition, the evidence that was presented indicated that the hole had been in place for up to six months. Plaintiff's only obligation is to prove notice or establish the existence of the defect for more than 30 days.

RESULT: Judgment for plaintiff in the amount of \$5,000 was affirmed.

COMMENT: N/A

Court of Appeals

Sable v. City of Detroit, 1 Mich. App. 87, 134 N.W.2d 375 (1965).

DEFECT: Broken sidewalk.

ACCIDENT: Elderly woman fell on the sidewalk.

INJURY: Fractured hip and other "serious injury."

LEGAL

ISSUES: **Defenses**

- Defendant claimed plaintiff's statutory notification of defect failed to indicate on which of the four corners of the intersection in question the plaintiff had fallen and that therefore, the notification was insufficient and plaintiff's suit was barred.

**Court said:** The purpose of the statutory notification is not only to permit the defendant to investigate the plaintiff's claim but to confine the plaintiff to a specific point where the injury was to have occurred.

Since plaintiff's notification fails to specify which corner of the intersection was involved, it is insufficient and the suit is barred.

It is unimportant that defendant had no difficulty in finding the defect and making the repairs nor does it matter that defendant was able to repair the alleged defect.

RESULT: Summary judgment for defendant was affirmed.

COMMENT: Note that modern cases hold that substantial compliance with the notification requirement is acceptable; ambiguity in some part of the notification can be corrected by clarity in other parts; and failure to provide the notification at all will bar plaintiff's suit only if defendant is prejudiced.

Court of Appeals

Dempsey v. City of Detroit, 4 Mich. App. 150, 144 N.W.2d 684 (1966).

DEFECT: Illegally parked car on city street.

ACCIDENT: Collision with illegally parked vehicle; plaintiff a passenger.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Duty

**Court said:** Defendant city is liable for injuries caused by its negligent failure to remove obstructions on its road.

**Defenses**

- Plaintiff failed to provide 60-day notification of injury as required by statute.

**Court said:** Plaintiff's failure to provide the written notification bars the suit.

RESULT: Dismissal of plaintiff's suit was affirmed on appeal.

COMMENT: Note that the 60-day statutory notification requirement has been replaced with 120-day statutory notification requirement, and that the present rule is that failure to provide adequate notice will not bar plaintiff's suit unless defendant is actually prejudiced.

Supreme Court

Kowalczyk v. Bailey, and City of St. Clair Shores, 379 Mich. 568, 153 N.W.2d 660 (1967).

Traffic

DEFECT: Unspecified failure of traffic signal controlling intersection of county road and state trunk line.

ACCIDENT: Intersection collision at night.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Defendant city and defendant road commission claimed governmental immunity.

**Court said:** Both defendants are immune from liability for defects on state trunk line highways.

RESULT: Summary judgment for defendants was affirmed.

COMMENT: Although both defendants were immune from suit based on highway liability the court noted that the claim against defendant city, that the failure of city police to remain on the scene after noticing the malfunction of the light and doing nothing to protect or warn the traffic except to notify the road commission, made out a sufficient charge of common law negligence against the city for police inaction.

Supreme Court  
Popielarski v. City of Warren and Macomb County Road Commission, 380 Mich. 651, 158 N.W.2d 491 (1968).

Maint., Traffic

**DEFECT:** Dead-end road—no sign or barrier indicating the end of the road; unspecified obstacle placed at the end of the road by adjacent property owner.

**ACCIDENT:** Plaintiff collided with the obstacle at night.

**INJURY:** Death.

**LEGAL ISSUES:** **Negligence**

- Defendant claimed its duty to keep/maintain did not include an obligation to install guardrails or traffic control devices.

**Court said:** Defendant's duty to keep/maintain goes beyond the preservation of the status quo and defendant has an affirmative duty to design, construct, and keep the road reasonably safe and convenient for public travel.

As part of its duty, defendant is required to provide devices warning of special danger such as the margins of the road or the end of the road.

Whether defendant's failure to provide such devices is a breach of its duty to keep/maintain is a question of fact for the jury's decision.

Since defendant's duty to keep/maintain applies to "flagrant defects," whether the failure to install warning devices or barriers at a terminating road amounts to a "flagrant defect" is also a question of fact for the jury's decision.

A jury would be justified in concluding that a road that abruptly ends without warning had not been constructed or kept in a reasonably safe manner.

**RESULT:** Summary judgment for defendant was reversed and the case was remanded for trial.

**COMMENT:** The rule that a defect must be "flagrant" is no longer valid.

Court of Appeals

Mullins v. County of Wayne, 16 Mich. App. 365, 168 N.W.2d 246 (1969).

Maint.

DEFECT: Accumulation of ice in depression in sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that defendant was negligent in permitting the accumulation of ice to occur in the depression.

**Court said:** If the underlying depression was a defect, then plaintiff may recover for an injury caused by an accumulation of ice in it. Whether it is a defect is a question of fact for the jury's determination.

RESULT: Summary judgment for defendant was reversed and the case was remanded for a new trial.

COMMENT: N/A

Court of Appeals

Pappas v. City of Bay City, 17 Mich. App. 745, 170 N.W.2d 306 (1969).

Maint.

**DEFECT:** Unmarked T-intersection

**ACCIDENT:** Muddy water from chuckhole splashed onto windshield thereby obscuring vision—subsequent collision with tree as plaintiff drove through intersection.

**INJURY:** Multiple fractures and head injury—blindness.

**LEGAL  
ISSUES:** Defenses

- Defendant claimed plaintiff failed to comply with 60-day statutory notification requirement and, therefore, suit is barred.

**Court said:** Sixty-day statutory notification, as applied to a minor incapacitated by the injury, violates constitutional guarantees of due process of law and is therefore void.

**RESULT:** Dismissal of plaintiff's complaint was reversed and the case was remanded for trial.

**COMMENT:** Note that 60-day notification provision has been replaced with 120-day notification provision, which is held constitutional, but which will not bar plaintiff's suit unless defendant is actually prejudiced.

Supreme Court  
Grubaugh v. City of St. Johns, 384 Mich. 165, 180 N.W.2d 778 (1970).



DEFECT: Unspecified--"defective sidewalk" running beside state trunkline highway.

ACCIDENT: Elderly plaintiff slipped and fell.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- No jurisdiction.

**Court said:** Municipalities retained jurisdiction over sidewalks adjacent to state trunkline highways subject to the paramount jurisdiction of the state over the trunkline highway.

- Defendant claimed plaintiff was contributorily negligent as a matter of law.

**Court said:** Whether plaintiff was contributorily negligent is a question of fact for the jury's decision.

- Defendant claimed plaintiff did not comply with requirement of sending notification of injury.

**Court said:** Plaintiff's notification was sufficiently precise, especially where defendant did not have difficulty locating the defect--use of phrase "defective sidewalk" is acceptable as some degree of ambiguity may be clarified by other aspects.

RESULT: Judgment for plaintiff in the amount of \$5,000 affirmed.

COMMENT: Note that state's jurisdiction over the principal roadway did not eliminate municipality's jurisdiction (hence liability) in adjacent structure (sidewalk) subject to local control.

Court of Appeals  
Jones v. City of Ypsilanti, 26 Mich. App. 574, 182 N.W.2d 795 (1970).

Traffic

DEFECT: Improper repair, positioning, reflectorizing of stop sign; failure to erect warning sign in advance of stop sign.

ACCIDENT: Plaintiff failed to stop sign and collided with another vehicle.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** Defendant has a duty to place and maintain stop signs in a manner making travel reasonably safe.

Installation and maintenance of traffic control devices is included in the duty to keep/maintain.

**Defenses**

- Defendant claimed stop signs are not part of the improved portion of the highway designed for vehicular travel.

**Court said:** Devices controlling the flow of traffic are an integral part of the improved portion of the highway and directly relate to the duty to keep/maintain.

RESULT: Summary judgment for defendant was reversed and the case was remanded for new trial.

COMMENT: N/A

Court of Appeals  
Lynes v. St. Joseph County Road Commission, 29 Mich. App. 51,  
185 N.W.2d 111 (1970).

Permit, Traffic

**DEFECT:** Air vent in sidewalk by abandoned police station guarded by a railing along the abandoned building.

**ACCIDENT:** Child played on sidewalk by the vent, sat at its edge, was pushed by another child, and fell into vent.

**INJURY:** Unspecified.

**LEGAL ISSUES:** **Negligence**

- Breach of duty to keep/maintain reasonably safe sidewalks.

**Court said:** Whether vent and its guarding made the sidewalk unsafe and unfit for travel was a question of fact for the jury's decision.

- Proximate cause

**Court said:** Whether the dangerous condition was the cause of the boy's injury was a question of fact for the jury's decision, and the fact that another force (pushing by another child) brought about the harm would not relieve defendant of liability.

**RESULT:** Summary judgment for defendant was reversed and the case was remanded.

**COMMENT:** N/A

Court of Appeals

Hooks v. City of Detroit, 31 Mich. App. 662, 187 N.W.2d 901 (1971).

Eng., Maint.

DEFECT: Shoulder of road six inches lower than the pavement.

ACCIDENT: Plaintiff, traveling at a speed of 60-65 mph, left the pavement and on attempting to return, lost control when wheel struck the six-inch edge of the concrete.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed the shoulder of the road was not on the improved portion of the highway designed for vehicular travel.

**Court said:** Shoulders are designed for vehicular travel, although differently than the paved portion of the highway, and defendant is obligated to maintain them in reasonable repair as adjuncts of the paved portion of the highway.

Whether this duty of reasonable maintenance has been discharged depends on the extent and location of the six-inch height differential, and plaintiff's use of the shoulder. All these are factual matters for the jury's decision.

RESULT: Summary judgment for defendant was reversed and the case was remanded for trial.

COMMENT: N/A

Court of Appeals

Johnson v. State of Michigan, 32 Mich. App. 37, 188 N.W.2d 33 (1971).

DEFECT: Unspecified.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that because 60-day statutory notification was not verified it was, therefore, inadequate and plaintiff's suit was barred.

**Court said:** If the only defect in the statutory notification is lack of verification under oath, the statutory requirements have been met.

RESULT: Accelerated judgment for defendant reversed and remanded for further proceedings.

COMMENT: Note that 60-day statutory notification requirement has been replaced with 120-day statutory notification requirement, and that the present rule is that failure to provide adequate notice will not bar plaintiff's suit unless defendant is actually prejudiced.

Court of Appeals  
Reynolds v. Board of County Road Commissioners of Clare County, 34 Mich. App. 460, 191 N.W.2d 503 (1971).

**DEFECT:** Road on bridge over open drain--sidewalk beside the road, partially guarded to prevent pedestrian access to drain terraces.

**ACCIDENT:** Child left walkway of bridge, walked over drain terraces, and fell into the drain.

**INJURY:** Death.

**LEGAL  
ISSUES:** **Negligence**

- Plaintiff claimed defendants had a duty to erect barriers to prevent pedestrian access to the drain terraces.

**Court said:** The duty to keep/maintain includes the erection of railings and barriers.

Both the road commission (which designed the bridge) and the city (which later took control of the bridge) had a continuing obligation to correct any defective design.

Defendants must anticipate pedestrian departure from established walkways and maintain a safe condition where people may reasonably be expected to walk.

Whether the absence of a pedestrian barrier caused the injury was a question of fact for the jury's decision.

#### **Defenses**

- No jurisdiction over the bridge (Road Commission)

**Court said:** Transfer of jurisdiction from road commission to city does not relieve road commission of duty to correct defective design--lapse of time between transfer of jurisdiction and accident is a factor to be considered but does not necessarily break the chain of causation.

- Defendants claimed that in departing from the established walkway plaintiff became a trespasser and, therefore, not included within their duty to keep/maintain.

**Court said:** Since defendants knew or should have known that children used drain terraces as a walkway, it does not matter whether plaintiff was a trespasser.

- No notice

**Court said:** Considerable testimony at trial that pedestrians used the terraces as shortcuts established that defendants knew or should have known of the use of the drain for that purpose.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:**

- Note that transfer of jurisdiction did not relieve road commission of responsibility for an alleged design defect.
- Note that the injured person was a child, eight years of age.

Court of Appeals

Hargis v. City of Dearborn Heights, 34 Mich. App. 594, 192 N.W.2d 44 (1971).

Maint.

DEFECT: Deer crossing road.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Immunity

**Court said:** The doctrine of sovereign immunity protects defendants from suit for failure to keep deer from crossing the highway.

RESULT: Summary judgment for defendant was affirmed.

COMMENT: This is the only case in which the court has used the doctrine of sovereign immunity to avoid liability for a road authority.

Court of Appeals

Hinton v. State of Michigan, 34 Mich. App. 663, 192 N.W.2d 74 (1971).



Maint.

DEFECT: Hole in sidewalk.

ACCIDENT: Plaintiff slipped and fell.

INJURY: Serious and permanent injuries to right ankle and both knees.

LEGAL  
ISSUES:

**Defenses**

- Defendant claimed that statutory notification was not sufficiently specific as to location of defect.

**Court said:** Defendant experienced no difficulty in locating the alleged defect from the notification provided, and has shown no evidence of prejudice on account of any deficiencies in the notification.

It is not necessary to comply literally with the statute. Substantial compliance is sufficient. Neither the failure to specify the nature of the injury nor the failure to provide names of witnesses makes the notification invalid.

The principal purpose of the statutory notification is to permit defendant to investigate the claim while "evidentiary trail" is still fresh and to correct a problem that might cause injury to another person in the future. Inability to correct the problem before a subsequent injury, however, would not necessarily mean that plaintiff's suit should be barred.

RESULT: Summary judgment for defendant was reversed and case was remanded for trial.

COMMENT: The statute requires the injured person to notify the responsible agency, within 120 days, of the injury sustained, the exact location and nature of the defect, and the names of witnesses. Failure to provide this notification, however, will not bar the claim unless the defendant is prejudiced by it.

Court of Appeals

Hussey v. City of Muskegon Heights, 36 Mich. App. 264, 193 N.W.2d 421 (1971).

DEFECT: Three consolidated cases—unspecified.

ACCIDENT: 1. Vehicle swerved out of control and collided with a tree.  
2. Three people injured when car went out of control and overturned a number of times.  
3. Plaintiff and five-year-old child injured when car went out of control, rolled over, and collided with a tree and boulder.

INJURY: Unspecified in all three cases.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that in all three cases the plaintiffs failed to provide the 60-day notification required by statute and that therefore the claims were barred.

**Court said:** The 60-day notification requirement as applied to minors violates constitutional due process guarantees and is therefore void.

As to the other plaintiffs, the 60-day notification provision arbitrarily divides the class of injured persons into the victims of public negligence and the victims of private negligence and allows to the victims of private negligence a longer period of time in which to sue. Therefore, the provision is unconstitutional.

RESULT: Accelerated judgment for defendant was reversed and the cases were remanded for trial.

COMMENT: Note that the 60-day notification requirement has been replaced by a 120-day notification requirement, which is constitutional, and that the present rule is that failure to provide adequate notice will not bar a plaintiff's suit unless the defendant is actually prejudiced.

Supreme Court

Reich v. State Highway Department, 386 Mich. 617, 194 N.W.2d 700 (1972).

Maint.

DEFECT: Stalled car in center lane of street.

ACCIDENT: Police officers came on the scene and after being told their help was not needed, left. Plaintiff came to assist driver of stalled vehicle, positioned his car to face stalled car, and stood between the cars to attach jumper cables. Stalled car hit from behind and pushed forward into plaintiff who was trapped between the two vehicles.

INJURY: Amputation of right leg above the knee.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant city had a duty to remove obstructions such as stalled vehicles from its streets.

**Court said:** Defendant's duty to keep its streets safe and fit for travel includes removing traffic obstructions.

- Breach

**Court said:** Whether the failure of the police officers to assist in removing the traffic obstruction was a breach of defendant's duty is a question of fact for the jury's decision.

RESULT: Summary judgment for defendant city was reversed and the case was remanded.

COMMENT: N/A

Court of Appeals

Harry v. Crabill, and City of Muskegon, 41 Mich. App. 642, 200 N.W.2d 460 (1972); 56 Mich. App. 378, 223 N.W.2d 745 (1974).

Maint.

DEFECT: Tree beside road.

ACCIDENT: Tree fell onto plaintiff's car.

INJURY: Said to be severe.

LEGAL

ISSUES: **Defenses**

- Defendant claimed the tree was not on the improved portion of highway designed for vehicular travel.

**Court said:** Since the tree fell onto the highway and since the point of impact was on the highway, liability occurred on improved portion of highway designed for vehicular travel.

Defendant has an obligation to remove hazards from side of road.

- No notice

**Court said:** Complaints of area residents about potential danger of falling trees is sufficient to permit jury to decide whether there was notice.

RESULT: Summary judgment for defendant reversed and the case was remanded for new trial.

COMMENT: N/A

Court of Appeals

Miller v. Oakland County Road Commission, 43 Mich. App. 215, 204 N.W.2d 141 (1972).

## Traffic

**DEFECT:** Traffic signal controlling intersection; green in all directions.

**ACCIDENT:** Intersectional collision.

**INJURY:** Unspecified for one plaintiff; for second plaintiff: severe brain damage, partial paralysis, vision, locomotion, and speech impairments, severe psychiatric problems.

**LEGAL  
ISSUES:**

### **Negligence**

- Defendant claimed that traffic signals are not included within its duty to keep/maintain.

**Court said:** The duty to keep/maintain includes the maintenance and repair of traffic signals.

- Defendant claimed that a finding that the traffic signal was green in all directions was contrary to the weight of the evidence.

**Court said:** Each party presented evidence on this point. The issue was therefore a question of fact and since there is some evidence to support the finding of the trial court, it will not be disturbed on appeal.

- Damages

**Court said:** While the size of the verdict in this case is "precedent shattering," in view of the plaintiff's lifelong severe problems and in view of the presence of evidence sufficient to support the verdict, it will not be set aside.

### **Defenses**

- Notice

**Court said:** Whether defendant's evidence of periodic maintenance rebutted plaintiff's claim of prior notice was a question of fact.

**RESULT:** Judgment for plaintiff in the amount of \$1,200,000 was affirmed.

**COMMENT:** ● The case reports that defendant introduced the following evidence to rebut the contention that the light was green in all directions:

- The absence of entries in repair records indicating the existence or repair of the claimed condition.
- The physical impossibility of the control device displaying green in all directions.
- Its records showing reasonable periodic maintenance and prompt repair.
- The case reports that plaintiff introduced the following evidence in support of the contention that the light was green in all directions.
  - Prior malfunctions of the same type based on the testimony of several witnesses.
  - Prior reports of the claimed condition by a gas station attendant on the corner to the police and instructions by the police to the gas station attendant to remedy the problem by striking the control box with a rubber mallet.
  - The testimony of a police officer that on the day in question the yellow light flickered and went out completely for several seconds but came on again and functioned properly thereafter.
  - The possibility that a cam might slip and stay in a green position causing a green light in all directions as other lights reach their green position.

Supreme Court

Williams v. Michigan State Highway Department, 44 Mich. App. 51, 205 N.W.2d 200 (1972).

DEFECT: Unspecified failure to keep road in reasonable repair.

ACCIDENT: Unspecified automobile accident.

INJURY: Unspecified—two minor children, ages unknown.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff's use of evidence of subsequent repair of the road in question was improper and that a new trial should be ordered.

**Court said:** Evidence of subsequent repair is generally not admissible to show negligence because it is tantamount to an admission of negligence and prejudices a defendant. Evidence of subsequent repair may be admitted only when there is a clear exception to the general rule.

RESULT: Order by the trial judge vacating a jury verdict for plaintiff and ordering a new trial was affirmed.

COMMENT: Case turns largely on evidentiary rules rather than principles of road liability.

Court of Appeals

Grawey v. Board of Road Commissioners of the County of Genesee, 48 Mich. App. 742, 211 N.W.2d 68 (1973).

Eng., Traffic

DEFECT: Signing at freeway exit ramp said to be improper.

ACCIDENT: Car entering highway via exit ramp collided head-on with plaintiff's car.

INJURY: Multiple deaths.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** Duty to keep/maintain includes signing and warning motorists at points of special danger.

- Plaintiff claimed design of the intersection and improper signing of the exit ramp caused the accident.

**Court said:** Defendant not only complied with requirements of MMUTCD, but added additional signing as well.

Plaintiff's evidence did not show that increased signing would have prevented the car from entering via the exit ramp.

RESULT: Judgment for defendant was affirmed.

COMMENT: Note that defendant not only followed MMUTCD but put up additional signs to account for peculiarities of the ramps.

Court of Appeals  
National Bank of Detroit v. State of Michigan, 51 Mich. App. 415,  
215 N.W.2d 599 (1974).



Maint.

DEFECT: Unspecified defects in the road surface of a state trunkline highway.

ACCIDENT: Unspecified—plaintiff lost control of her vehicle.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- No jurisdiction, even though defendant contracted to maintain the highway on behalf of the state.

**Court said:** The state highway department does not divest itself of jurisdiction by contracting with another agency for maintenance of its highways. The road commission here has not been delegated jurisdiction over the road and, therefore, cannot be liable to the plaintiff.

RESULT: Accelerated judgment for defendant was affirmed.

COMMENT: N/A

Supreme Court

Moyer v. Wayne County Road Commission, 52 Mich. App. 285, 217 N.W.2d 53 (1974).

Traffic

DEFECT: Improper function of traffic light due to malfunction in circuitry connecting the traffic light with adjacent railroad signals.

ACCIDENT: Unspecified automobile accident at intersection of two state trunkline roads and railroad crossing.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- No jurisdiction--even though defendant undertook the maintenance and repair of the traffic light in question.

**Court said:** Since the state had jurisdiction over the roads in question, the statute imposes liability only on the state and the traffic light in question is not within the scope of the city's responsibility and jurisdiction.

RESULT: Summary judgment for defendant was affirmed.

COMMENT: The court noted that if local units of government were not absolved of liability for maintenance on state trunkline highways they would be less likely to undertake it on behalf of the state.

Court of Appeals

Bennett v. City of Lansing, 52 Mich.App. 289, 217 N.W.2d 54 (1974).

Traffic

**DEFECT:** Traffic lights controlling intersection--timing insufficient to permit trucks either to stop or to clear intersection during amber and prior to green showing for opposing traffic.

**ACCIDENT:** Intersection collision between car and truck.

**INJURY:** Death.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed that the timing of light was within the intervals permitted by statute and MMUTCD.

**Court said:** Mere compliance with discretionary limits is not sufficient to discharge the duty to keep/maintain. Defendant must take account of peculiarities of intersections controlled by its devices and in particular must account for the varying distances that different types of vehicles (trucks as well as cars) require in order to stop before entering an intersection or to clear intersection after entrance.

**RESULT:** Judgment for plaintiff was affirmed.

**COMMENT:** Defendant's own witnesses stated that nearly 3,000 trucks per day passed through the intersection and that this traffic was not specifically figured into timing cycles.

Court of Appeals

Fraley v. City of Flint, 54 Mich. App. 570, 221 N.W.2d 394 (1974).

Maint.

DEFECT: Absence of snow fences or other barriers to prevent the accumulation of snow on the highway.

ACCIDENT: Head-on collision.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed that the failure to erect snow fences or other barriers to prevent the accumulation of snow on the highway was negligent design.

**Court said:** Whether defendant's duty to keep the highway in a condition reasonably safe and fit for travel was breached by its failure to erect snow fences, is a question of fact for the jury's decision.

RESULT: Summary judgment for defendant was reversed and the case was remanded.

COMMENT: N/A

Court of Appeals  
Weckler v. Berrien County Road Commission, 55 Mich. App. 7,  
222 N.W.2d 9 (1974).

**DEFECT:** Blunt end guardrail in median of freeway--apparently the original plans for the highway itself or the design specification for the guardrail called for the installation of an extension rail at the blunt end, but the extension rail was not installed.

**ACCIDENT:** Plaintiff's vehicle struck the blunt end of the guardrail, which penetrated the vehicle and partially ejected plaintiff from it.

**INJURY:** Instantaneous death.

**LEGAL ISSUES:** **Negligence**

- Proximate cause

**Court said:** The defendant is not an insurer--the plaintiff must prove that the alleged defect caused his damages.

Considerable expert testimony in this case supported the trial court's conclusion that the defendant's failure to install the extension guardrail caused the plaintiff's injury--on appeal this finding will not be disturbed.

#### **Defenses**

- Defendant claimed that the median was not on the improved portion of the highway designed for vehicular travel.

**Court said:** The median and its devices are on the improved portion of the highway designed for vehicular travel--the median does not "magically" appear but is the defendant's creation; the guardrail was designed to defendant's specification and installed by its contractors--the median, though not designed for use in the same fashion as the principal travel lanes, is like the shoulder and control devices.

The highway is thus the composite of many features all of which make up the improved portion of the highway designed for vehicular travel, and the statute is not to be read as creating liability only for the paved travel lanes.

**RESULT:** Judgment for plaintiff in the amount of \$944,068.35 was affirmed.

COMMENT: Case contains considerable reporting of expert testimony of the problems presented by an exposed blunt end guardrail and the benefits of an extension guardrail in reducing accident severity preventing accidents.

Court of Appeals

Detroit Bank and Trust Company v. State of Michigan, 55 Mich. App. 131, 222 N.W.2d 59 (1974).

DEFECT: S-curve--question of improper design and improper speed posted.

ACCIDENT: Plaintiff lost control of truck on curve and was thrown from it.

INJURY: Death.

LEGAL  
ISSUES: **Negligence**

- Duty

**Court said:** Defective design may lead to a continuing obligation to correct the defect, and liability may be based on negligence in failing to correct the defect. Notice of a defect in design or construction is not required.

**Defenses**

- Statute of Limitations--plaintiff said his claim was founded on nuisance and therefore the three-year statute of limitations should apply, and not the two-year statute of limitations.

**Court said:** The case is not founded on nuisance, therefore the two-year statute of limitations applies.

RESULT: Accelerated judgment for defendant was affirmed. Suit filed after expiration of statute of limitations.

COMMENT: ● Case contains considerable discussion of the law of nuisance.

- Note that modern law requires the plaintiff always to prove notice, even when the defendant created the defect.

Court of Appeals

Stremler v. Michigan Department of State Highways, 58 Mich. App. 620, 228 N.W.2d 492 (1975).

Traffic

**DEFECT:** Guardrail by shoulder of the road leading to a bridge abutment.

**ACCIDENT:** Plaintiff's vehicle blown off the road by a "gust of wind" became "impaled on the guardrail" and crashed into the bridge abutment.

**INJURY:** Two deaths and two "serious injuries."

**LEGAL**

**ISSUES:** **Defenses**

- Defendant claimed that guardrails on the shoulder were not on the improved portion of the highway designed for vehicular travel and that, therefore, defendant was immune from suit.

**Court said:** Guardrails on a shoulder are on the improved portion of the highway designed for vehicular travel and defendant is therefore not immune from suit.

**RESULT:** Summary judgment for defendant was reversed and the case was remanded for further proceedings.

**COMMENT:** The court noted that the jury could find that a guardrail was defective when an automobile striking it would travel down it into a bridge abutment; the court also noted that the jury could find that "wind or some other not unlikely event" could cause an automobile to hit the guardrail. From these two facts the jury could find that the defective guardrail was the proximate cause of the accident.

Court of Appeals

Van Liere v. Michigan State Highway Department, 59 Mich. App. 133, 229 N.W.2d 369 (1975).



DEFECT: Negligent design, construction, and maintenance of intersection.

ACCIDENT: Intersection collision between two vehicles.

INJURY: Death.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that plaintiff's failure to file the statutory notification within the one-year period required by the Court of Claims Act barred the suit.

**Court said:** Highway claims are governed by the two-year statute of limitations in the general highway statute, not by the one-year notice provision in the Court of Claims Act.

RESULT: Accelerated judgment for defendant was reversed and the case was remanded for further proceedings.

COMMENT: N/A

Court of Appeals

Kerkstra v. State of Michigan, 60 Mich. App. 761, 231 N.W.2d 521 (1975), affirmed 398 Mich. 103, 247 N.W.2d 759 (1976).

DEFECT: Guardrail leading off an entrance ramp improperly designed, constructed, installed, and maintained.

ACCIDENT: Vehicle struck the guardrail.

INJURY: Death.

LEGAL  
ISSUES: **Defenses**

- Defendant claimed that this case was controlled by the six-month notification provision of the Court of Claims Act, and since plaintiff had not filed the notification within the required period, the claim was barred.

**Court said:** The case is controlled by the general highway statute, not the Court of Claims Act. The 60-day notification requirement of the general highway statute is unconstitutional, and therefore the claim is subject only to the two-year statute of limitations. Since the claim was filed within the two-year statute of limitations, it is not barred.

RESULT: Accelerated judgment for defendant was reversed and the case was remanded for further proceedings.

COMMENT: Note the 60-day notification requirement of the general highway statute has been replaced by a 120-day notification requirement. The requirement is constitutional but failure to comply with it will not bar plaintiff's suit unless defendant is actually prejudiced.

Court of Appeals

Zimmer v. State of Michigan, 60 Mich. App. 769, 231 N.W.2d 519 (1975).

DEFECT: Unspecified.

ACCIDENT: Unspecified.

INJURY: Unspecified.

LEGAL  
ISSUES: **Defenses**

- Defendant city claimed that plaintiff's suit was filed after the expiration of the two-year statute of limitations and therefore was barred--in response, plaintiff claimed that the two-year statute of limitations for suits against governmental units was a denial of equal protection and due process of law as guaranteed by the Constitution.

**Court said:** For the legislature to require a two-year statute of limitations for suits against governmental units, but require a three-year statute of limitations for suits against other entities, is not a violation of constitutional guarantees of due process and equal protection.

RESULT: Accelerated judgment for defendant was affirmed.

- COMMENT:
- The court noted that the purpose of a statute of limitations is to prevent stale claims and put an end to fear of litigation.
  - The court observed that the purposes of the statutory notification requirements are to provide time to investigate and to appropriate funds for settlement.

Court of Appeals  
Dillon v. Tamminga, and City of Kalamazoo, 64 Mich. App. 301, 236 N.W.2d 716 (1975).

DEFECT: "Defective road maintenance."

ACCIDENT: Automobile collision.

INJURY: Unspecified.

LEGAL

ISSUES: **Defenses**

- Defendant claimed that plaintiff had not complied with the six-month notification provision of Court of Claims Act and that, therefore, the suit was barred. In response, plaintiff claimed that the suit was governed only by the general highway statute, the notification provision of which was unconstitutional, and that therefore, only the two-year statute of limitations controlled the case.

**Court said:** Even though the notification provision of the general highway law is constitutionally defective, plaintiff must still comply with the notification provision of the Court of Claims Act. Failure to comply, however, will bar the suit only if defendant is actually prejudiced.

RESULT: Accelerated judgment for defendant (state) was reversed and the case was remanded for further proceedings.

COMMENT: Note that the case interprets the Court of Claims Act, but otherwise follows the standard principles of road liability.

Court of Appeals

Hanger v. State of Michigan and St. Clair County Road Commission, 64 Mich. App. 572, 236 N.W.2d 148 (1975).

## Traffic

**DEFECT:** Inadequate signalization—absence of traffic light.

**ACCIDENT:** Intersectional collision between two cars--fog and mist obscured visibility—stop sign in place but driver did not stop.

**INJURY:** Death.

**LEGAL**

**ISSUES:** **Defenses**

- Defendant was within the discretion allowed by the MMUTCD in not installing traffic light prior to undertaking careful studies at the location.

**Court said:** One week before accident, defendant's own engineer had determined the inadequacy of signalization at the intersection and had ordered lights installed, but the work order was never carried out. Failure to carry out its own work order clearly makes the defendant negligent.

**RESULT:** Judgment for defendant was reversed and new trial was ordered for damages.

**COMMENT:** ● The case shows the rare circumstance in modern times in which an appellate court overturns the findings of fact made by the trial court.

- Case contains much specific design data concerning the intersection in question.

Supreme Court

Tuttle v. Department of State Highways, 397 Mich. 44, 243 N.W.2d 244 (1976).

Maint.

DEFECT: Ice on sidewalk, formed by refreezing of melted snow piled beside the sidewalk by property owner.

ACCIDENT: Plaintiff slipped and fell on the ice.

INJURY: Unspecified.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed defendant city was negligent in failing to keep the sidewalk free of ice.

**Court said:** The mere presence of snow and ice is not sufficient. The city is liable only for a defect in the sidewalk itself.

RESULT: Summary judgment for defendants was affirmed.

COMMENT: In this case, the City of Owosso was a co-defendant with the property owner, Brenner.

Court of Appeals  
Woodworth v. Brenner, and City of Owosso, 69 Mich. App. 277,  
244 N.W.2d 446 (1976).

Eng.

**DEFECT:** Negligent design and construction of bridge over state trunkline.

**ACCIDENT:** Vehicle fell from bridge onto highway below.

**INJURY:** Death.

**LEGAL ISSUES:** **Defenses**

- Defendant claimed that the case was required to be filed within one year, under the Court of Claims Act.

**Court said:** Road liability cases are governed by the road liability statute, which allows two years to file suit.

- Defendant claimed plaintiff failed to notify it of the injury within 120 days, and therefore, plaintiff's claim was barred.

**Court said:** Plaintiff's failure to notify the defendant within 120 days will not bar the suit unless defendant is actually prejudiced.

- Court of Appeals had declared the 120-day notification provision unconstitutional.

**Supreme Court said:** The 120-day notification provision is constitutional.

**RESULT:** Accelerated or summary judgment for defendant reversed and remanded for trial.

**COMMENT:** Note that the plaintiff in this case did not provide any notice: instead, she filed suit seventeen months after the accident.

Supreme Court  
Hobbs v. Michigan State Highway Department, 398 Mich. 90,  
247 N.W.2d 754 (1976).

Maint.

**DEFECT:** Chuckhole covered with snow on state road maintained by county under contract with state.

**ACCIDENT:** Plaintiff hit chuckhole, lost control, was struck by another vehicle.

**INJURY:** Death.

**LEGAL  
ISSUES:** **Defenses**

- Defendant claimed it was not liable because the road was under the jurisdiction of the state.

**Court said:** Even though the county was negligent in maintaining the state road, it is not liable when it has no jurisdiction over the road.

**RESULT:** Judgment for defendant was reversed and the case was remanded for new trial.

**COMMENT:** In this case the court did not allow the defense to be raised because the defendant had waited too long to assert it.

Court of Appeals  
Robinson v. Emmet County Road Commission, 72 Mich. App. 623,  
251 N.W.2d 90 (1976).



DEFECT: Flooding on highway; drain inadequate to handle a "not unusual" rainfall.

ACCIDENT: Collision after car lost control on water over road.

INJURY: Death.

LEGAL

ISSUES: **Defenses**

- No notice

**Court said:** Plaintiff must always prove notice of the defect, but for defect in design and construction, notice of specific flooding is not required. Notice of design or construction defect leading to flooding is sufficient.

Notice could be inferred from the knowledge of the Wayne County Road Commission employees on the site since the defendant had contracted with the road commission for maintenance of the highway, and the defendant would be responsible for the knowledge of its contractors even though there was no evidence of actual communication of the prior floodings.

Notice could also be proven by the defendant's possession of rainfall statistics, design plans, and construction records from which it could have determined the adequacy of the drain system.

RESULT: Judgment for defendant was reversed and new trial ordered.

COMMENT: ● Note the influence of defendant's own records on proving notice.

● The court also noted the presence of police and general notoriety of flooding at the site.

● Note that the road commission that maintained the highway was not sued, but that the knowledge of its employees was attributed to the State.

Supreme Court

Peters v. State Highway Department, 400 Mich. 50, 252 N.W.2d 799 (1977).

DEFECT: "Defective condition" of highway.

ACCIDENT: Collision on state trunk line highway.

INJURY: Death.

LEGAL

ISSUES: **Defenses**

- Defendant claimed plaintiff's failure to notify of the injury within 120 days bars the suit.

**Court said:** Failure to comply with the 120-day notification provision will bar the suit only on proof of actual prejudice to defendant. There is no evidence of actual prejudice to defendant in this case.

- Defendant claimed that since the highway liability statute limits claims to "bodily injury," the plaintiff's claim based on the death of her husband and children was not included in the statute.

**Court said:** The statutory term "bodily injury" includes bodily injuries resulting in death.

RESULT: Summary judgment and accelerated judgment for defendant was reversed and case was remanded for further proceedings.

COMMENT: N/A

Court of Appeals

Phelps v. State of Michigan, 75 Mich. App. 442, 254 N.W.2d 923 (1977).

Maint., Traffic

**DEFECT:** Several: intersection between road and railroad--speed limit sign improperly placed; overhead light out; snow on road; trees obscuring view of oncoming train.

**ACCIDENT:** Collision between plaintiff's vehicle and train.

**INJURY:** Child passenger killed; driver suffered severe injuries.

**LEGAL  
ISSUES:**

**Negligence**

- Defendant road commission claimed the trial court erroneously instructed the jury that it could consider the failure to salt or sand roadway as negligence when it was covered only with a natural accumulation of snow.

**Court said:** Evidence of salting and sanding was presented as a defense by the defendant and no objection to the instruction was made at the time of trial. Therefore, defendant road commission cannot complain about the instruction on appeal.

- Plaintiff claimed that the placement of a 45 mph speed sign 280 feet beyond the 1/2 mile maximum established by the MMUTCD, and between the advance warning sign and the railroad, was confusing. Defendant claimed that the violation of the manual was not relevant since the purpose of the MMUTCD requirements was to confirm the speed control.

**Court said:** Violation of the MMUTCD regulation was evidence of negligence. The purpose of the regulation did not matter.

- Defendant road commission and defendant railroad claimed that the evidence concerning the placement of speed limit signs, warning signs, the absence of flashing lights, and visual obstructions, as well as evidence of prior accidents, permitted only conjecture as to the proximate cause of the accident.

**Court said:** This evidence was sufficient to prove proximate cause.

**RESULT:** Judgment for defendant Detroit Edison and judgment for plaintiffs against defendant road commission and defendant railroad all were affirmed.

- COMMENT:
- The railroad crossing in question was protected by a reflectorized crossbuck rather than a flashing light.
  - Defendant Detroit Edison was responsible for the overhead lighting, but the influence of the light being out was not discussed in the case.
  - Plaintiff's car was seen to be skidding as it approached the railroad crossing.
  - Evidence of prior accidents was admitted to show notice of the dangerous nature of the intersection.

Court of Appeals

Martin v. Ann Arbor Railroad, Detroit Edison Company, and Washtenaw County Road Commission, 76 Mich. App. 41, 255 N.W.2d 763 (1977).

Maint.

DEFECT: Unspecified holes, defects, and depressions in the surface of a state trunk line highway.

ACCIDENT: Trailer disengaged from truck, crossed the center line, and crashed into plaintiff's vehicle.

INJURY: Two deaths.

LEGAL  
ISSUES:

**Defenses**

- Defendant argued that highway liability claims are limited to bodily injury and therefore do not include death.

**Court said:** Highway liability claims include claims for bodily injury resulting in death.

- Defendant claimed that plaintiff's suit was controlled by the Wrongful Death Act only.

**Court said:** The purpose of the Wrongful Death Act was to clarify the law regarding lawsuits on behalf of deceased persons and it does not prohibit claims for highway-related deaths. Claims for highway-related deaths are properly brought under the highway liability law.

RESULT: Summary judgment for defendant was reversed and the case was remanded.

COMMENT: N/A

Court of Appeals

Pagano v. State of Michigan, 76 Mich. App. 569, 257 N.W.2d 172 (1977).

Maint.

DEFECT: Fallen tree lying on county road within city limits.

ACCIDENT: Collision between motorcycle and fallen tree—stormy weather.

INJURY: Said to be serious and permanent.

LEGAL

ISSUES: Defenses

- No jurisdiction (defendant city).

**Court said:** County roads, even within a city, remain entirely within the jurisdiction of the county. Plaintiff's argument of "two-tiered" or "layered" jurisdiction involving both the city and county road commission is rejected.

RESULT: ● Directed verdict for defendant city was affirmed.

- Judgment for defendant road commission was reversed.

COMMENT: Judgment for the road commission was reversed for reasons unrelated to issues of road liability--improper jury instructions had been given on the issue of contributory negligence.

Court of Appeals

Summerville v. Board of County Road Commissioners of the County of Kalamazoo and City of Portage, 77 Mich. App. 580, 259 N.W.2d 206 (1977).

**DEFECT:** Railroad crossing--allegations of inadequate signing and failure to enter into "clear vision area agreement" by defendant road commission and defendant railroad.

**ACCIDENT:** Collision between vehicle and train.

**INJURY:** Eight deaths--four children and four adults.

**LEGAL**

**ISSUES: Negligence**

- Defendant railroad claimed that the drivers negligence was the sole proximate cause of the plaintiff's damages.

**Court said:** An examination of the record indicates that the contributory negligence of the driver was a question of fact for the jury's decision.

- Defendant railroad claimed the verdict was excessive.

**Court said:** Since there is some evidence supporting the verdict and since there is no evidence of passion or bias, the verdict is not excessive.

Since the verdict does not shock the judicial conscience, it is not excessive.

- Defendant railroad commission claimed that it had no duty to enter into a "clear vision area agreement" with defendant railroad and therefore it cannot be negligent for failing to do so.

**Court said:** The law provides procedures that road agencies can use to enter into clear vision agreements with railroads, but the procedure does not create an obligation on the part of road agencies to do so.

Defendant's duty to keep/maintain does, however, extend to clear vision areas even though they lie beyond the improved portion of the highway designed for vehicular travel. Clear vision areas, like traffic control devices, are an integral part of the improved portion of the highway.

A jury could consider the failure to enter into a clear vision agreement as negligence.

- Defendant road commission claimed that it had no duty

to install additional protective devices at the site or to reduce the speed limit along the highway since it alone was not authorized by law to do so.

**Court said:** Since the installation and maintenance of traffic control devices are included in defendant's duty to keep/maintain, the jury could consider as negligence its failure to use established procedures in conjunction with other public agencies to improve the signing or reduce the speed limit.

**RESULT:** Judgment for plaintiff in the amount of \$1,250,000 was affirmed.

**COMMENT:** Note that the duty to keep/maintain includes visibility problems that are beyond the improved portion of the highway designed for vehicular travel.

Court of Appeals

Cryderman v. Soo Line Railroad Company and Chippewa County Road Commission, 78 Mich. App. 465, 260 N.W.2d 135 (1977).



DEFECT: Three consolidated cases:

1. Drainage excavation during an unspecified construction project.
2. Depression at the edge of a road.
3. Exposed manhole cover in street.

ACCIDENT: 1. Plaintiff drove his car into the excavation.  
2. Car fell into the depression.  
3. Plaintiff tripped and fell while crossing the street.

INJURY: All three unspecified.

LEGAL  
ISSUES:

**Defenses**

- Two-year statute of limitations expired in all three cases--plaintiffs claim that the two-year statute of limitations for actions against the government violates constitutional guarantees of equal protection when a three-year statute of limitations applies to actions against private persons.

**Court said:** The two-year statute of limitations for suits against public agencies does not violate constitutional guarantees of equal protection.

RESULT: Accelerated judgment for defendant affirmed in all three cases.

COMMENT: ● Case contains considerable discussion of legal principles applicable to constitutional challenges based on equal protection of law.

- Court notes the following advantages to a two-year statute of limitations:
  - Plaintiffs will promptly investigate their claims and promptly commence their suits
  - Promptness is especially important when governments are continually beginning new highway improvement programs

- Government agencies can estimate their financial obligations with some degree of certainty
- The potential liability of road authorities is greater than that forced by private parties, so it is proper that the time period of this exposure be shorter

Supreme Court

Forest v. Parmalee, 402 Mich. 348, 262 N.W.2d 653 (1978).

Maint., Traffic

DEFECT: Unmarked T-intersection.

ACCIDENT: Muddy water from a chuckhole splashed onto windshield, obscuring vision and causing plaintiff to pass through the intersection and strike a tree.

INJURY: Multiple fractures and head injury—blindness.

LEGAL

ISSUES: **Negligence**

- Defendant claimed that evidence showing the absence of accidents should have been admitted.

**Court said:** The absence of accidents cannot be used to show that an intersection was safe.

- Defendant claimed that the MMUTCD should not have been admitted.

**Court said:** The MMUTCD is admissible to show that signs to make a T-intersection more safe were available.

RESULT: Judgment for plaintiff was affirmed.

COMMENT: This case involved an appeal from a retrial following the supreme court's decision, summarized at page 117.

Court of Appeals

Grubaugh v. City of St. Johns, 82 Mich. App. 282, 266 N.W.2d 791 (1978).

Maint.

DEFECT: Snowpile on sidewalk.

ACCIDENT: Plaintiff crossing snowpile slipped and fell against adjacent fence.

INJURY: Broken wrist.

LEGAL  
ISSUES:

**Negligence**

- Plaintiff claimed defendant village had a duty to remove ice and snow from the sidewalk.

**Court said:** The mere presence of ice and snow is not a defect that will give rise to liability.

When the ice and snow are the result of an unnatural accumulation and it presents an "unusual or exceptional interference with travel," the defendant can be held liable for failure to remove it.

The snow and ice accumulation in this case could have resulted from the defendant's plowing operation and thus was an unnatural accumulation that should have been removed in order to keep the walkway "reasonably safe and convenient for public travel."

**Defenses**

- No notice

**Court said:** Evidence in this case showed the snowpile in place two days before plaintiff's accident; defendant's agents plowed the adjacent street, and the sidewalk was along a main thoroughfare. Thus, a jury could infer that the accumulation was present long enough for the city to have known of its existence and to have removed it.

- Defendant claimed the sidewalk was not a public way.

**Court said:** Sidewalk was adjacent to a public highway and was therefore a public way.

- Defendant claims verdict was excessive.

**Court said:** Verdict is not excessive since it does not shock the judicial conscience—plaintiff continues to experience pain

and stiffness in her hand--plaintiff is a deaf mute, and her ability to communicate with sign language is impaired by this injury.

RESULT: Judgment for plaintiff in the amount of \$55,000 affirmed.

COMMENT: The Village of Yale was a codefendant with Master Products, Inc., the property owner.

Court of Appeals

Hampton v. Master Products, Inc., and Village of Yale, 84 Mich. App. 767, 270 N.W.2d 514 (1978).

DEFECT: Uneven section of sidewalk.

ACCIDENT: Plaintiff tripped on sidewalk.

INJURY: Unspecified. Knee injury.

LEGAL

ISSUES: **Defenses**

- No notice

**Court said:** The plaintiff must prove actual notice or after at least some evidence from which a jury could infer that the defect was sufficiently long standing or notorious for the defendant to have known about it. In this case the only evidence of notice offered was photographs of the sidewalk area proving only the defect at the time of the fall. Therefore, there is no evidence of the legally required notice and for the jury to give a verdict for plaintiff was improper.

RESULT: The jury returned a verdict in the amount of \$20,000 for the plaintiff, which the judge refused to accept. The judge entered judgment for the defendant, and on appeal was affirmed.

COMMENT: ● Case illustrates the rare event in modern times of a judge refusing to accept a jury verdict and being upheld on appeal.

- Note that the result is determined by the complete absence of evidence showing notice rather than "some" evidence.

Court of Appeals

Beamon v. City of Highland Park, 85 Mich. App. 242, 271 N.W.2d 187 (1978).

Eng.

DEFECT: Highway median guardrail too low to prevent vehicle from vaulting into opposite lanes.

ACCIDENT: Plaintiff driving somewhat in excess of the posted speed limit, swerved to avoid traffic slowdown, struck curb, vaulted the median and collided with opposing traffic.

INJURY: Unspecified—said to be serious.

LEGAL  
ISSUES:

**Negligence**

- Elements of design and construction defect--trial court and Court of Appeals said that liability for negligent design or construction required proof that the defect in question was "flagrant."

**Court said:** All that is required is that plaintiff show that the defect made the highway not reasonably safe and fit for travel. It is not required that plaintiff show that the defect in design or construction was "flagrant" or "dangerous."

RESULT: Judgment for defendant was reversed and the case was remanded for new trial.

COMMENT: N/A

Supreme Court

Arnold v. State Highway Department, 406 Mich. 235, 277 N.W.2d 627 (1979).

Eng., Maint., Traffic

**DEFECT:** Ice on bridge over state highway--caused by "preferential" icing due to cold weather conditions.

**ACCIDENT:** Plaintiff drove over the bridge, lost control of the car, and crashed.

**INJURY:** Said to be serious--one plaintiff rendered quadriplegic until death thirteen months afterwards.

**LEGAL  
ISSUES:**

**Negligence**

- Defendant claimed that the icing in question was the result of natural weather conditions rather than any defect in the structure itself.

**Court said:** The evidence indicates that:

- it is impossible to predict when this kind of icing will occur
- the icing can occur suddenly and almost instantaneously
- without full time surveillance of the bridge there is no assured method for immediately detecting this condition and defendant cannot be held to so stringent a standard.

Therefore, the trial court's finding that the accident was due to defendant's inadequate methods of handling the icing condition is clearly erroneous.

- Duty

**Court said:** It is clear that defendant's duty includes the placing of warning signs or other safeguards warning of danger. There was conflicting testimony as to whether a "Watch For Ice On Bridge" sign was visible to motorists. Therefore, the trial court's finding that the sign was not visible to motorists is also not clearly erroneous and will be upheld.

**RESULT:** Judgment for plaintiff was affirmed.



COMMENT: Note that defendant could not be found liable for a natural accumulation of ice but could be found liable for not warning about it.

Court of Appeals

Greenleaf v. Department of State Highways and Transportation, 90 Mich. App. 277, 282 N.W.2d 805 (1979).

DEFECT: Narrow refuge lane on freeway.

ACCIDENT: Plaintiff was struck by passing truck as he waked from refuge lane in front of his disabled car into the travelling lane.

INJURY Death.

LEGAL  
ISSUES: **Negligence**

- Plaintiff claimed that the highway was defectively designed in that refuge lane was too narrow.

**Court said:** A 9 1/2 foot wide refuge lane does not amount to negligent design.

**Defenses**

- Defendant claimed, and the trial court found, that the plaintiff was contributorily negligent.

**Court said:** This finding of fact will not be disturbed on appeal.

- Plaintiff claimed that contributory negligence was not a defense because the defendant breached a statutory duty to make the roads safe.

**Court said:** Even though a road authority's duty is expressed in a statute, contributory negligence is still a defense.

RESULT: Judgment for defendant was affirmed.

COMMENT: The court noted that the comparative negligence rule did not apply to this case because it was tried before the Placek decision adopted comparative negligence.

Court of Appeals

Wade v. State of Michigan, 92 Mich. App. 234, 284 N.W.2d 522 (1979).

Maint., Traffic

DEFECT: Ice on bridge on freeway.

ACCIDENT: Plaintiff's car skidded on "preferential ice" on bridge and struck a semi-trailer.

INJURY: Death.

LEGAL

ISSUES: **Negligence**

- Plaintiff claimed that the defendant failed to give adequate warning of preferential icing.

**Court said:** The duty to maintain reasonably safe roads includes the duty to post signs and warn motorists at points of special danger. The "Watch for Ice on Bridge" sign is not adequate, since preferential icing is not visible, the sign is not illuminated, and it gave no instructions as to the appropriate action for the driver to take.

**Defenses**

- Notice

**Court said:** The defendant had notice of the regular possibility of preferential icing based on predictable seasonal conditions.

- The defendant claimed the plaintiff was contributorily negligent.

**Court said:** The defendant should have been allowed to develop this argument at trial.

RESULT: The case was affirmed on all issues except contributory negligence and was remanded for a trial limited to that issue.

COMMENT: N/A

Court of Appeals

Salvati v. Department of State Highways, 92 Mich. App. 252, 285 N.W.2d 326 (1979).

DEFECT: Ice on bridge.

ACCIDENT: Plaintiff's car slid out of control and was hit by another vehicle.

INJURY: One fatality, two "serious" injuries.

LEGAL

ISSUES: **Defenses**

- Defendant State Highway Department claimed that jurisdiction was solely with the county road commission.

**Court said:** There is a genuine issue of fact as to jurisdiction in this case, and it should be decided at trial.

It is possible for both the state and the county to have jurisdiction over the road.

RESULT: Summary judgment for the state was reversed and the case was remanded for trial.

COMMENT: N/A

Court of Appeals

Hiner v. State of Michigan, State Highway Commission, and Macomb County Road Commission, \_\_\_ Mich. App. \_\_\_, \_\_\_ N.W.2d \_\_\_, (1980).

DEFECT: Ice on railroad tracks at intersection with road.

ACCIDENT: Truck became struck and was hit by train.

INJURY: Loss of arm, burns and permanent scarring.

LEGAL

ISSUES: **Defenses**

- Defendant State Highway Department claimed that jurisdiction was solely with the county road commission.

**Court said:** There is a genuine issue of fact as to jurisdiction in this case, and it should be decided at trial.

It is possible for the state to have jurisdiction over the road, concurrent with the county's jurisdiction.

RESULT: Summary judgment for the state was reversed and the case was remanded for trial.

COMMENT: N/A

Court of Appeals

Stricker v. Michigan Department of State Highways and Transportation and Macomb County Road Commission, \_\_\_ Mich. App. \_\_\_, \_\_\_ N.W.2d \_\_\_, (1980).

