LIABILITY OF TEXAS MUNICIPALITIES UNDER TORTS FOR
CONSTRUCTION, MAINTENANCE AND REPAIR
OF STREETS AND SIDEWALKS

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CHAPTER I

INTRODUCTION

Statement of Problem

The purpose of this study is to make a survey of the liability of municipal corporations in Texas for the construction, repair, and maintenance of their streets and sidewalks, and for injuries sustained by the traveling public through defects in same.

Source of Data

Source of data was primarily reported court cases involving these questions. Texas statutes and constitutional provisions were also examined.

Method of Procedure

The study was divided into five parts. Chapter I presents the purpose of the study, source of data, and method of procedure. Chapter II considers the nature of defects or obstructions in the streets or sidewalks. Attention is given in Chapter III to the liability of the city in construction and repair of streets. Chapter IV deals with the conditions of sidewalks, footways and crosswalks wherein a city is liable. The conclusions gained from the study are given in Chapter V.
CHAPTER II

DEFECTS OR OBSTRUCTIONS IN STREETS

Liability of the municipality

In the development of municipal government in Texas one of the most important aspects has been the question of the city's responsibility for the construction and maintenance of its streets in order to provide for the safety of the traveling public. Under State laws a municipal corporation is charged with the duty of maintaining its streets in a reasonably safe condition for public use, and is liable for injuries sustained through defects or obstructions in streets.

A city's liability for injuries sustained on account of defects or obstructions in its streets while the public is exercising reasonable precautions stems directly from the State laws of Texas. Article 361 [96] 1 of the statutory laws of Texas authorizes the incorporation of any city containing 1,000 inhabitants or over, and Article 419 [1016] 2 declares that such a city shall have exclusive control over its

1W. W. Herron, Seyles' Annotated Civil Statutes of Texas, Article 361 [96].

2Ibid., Article 419 [1016].
streets. Article 597 1133 ³ relates to towns or villages containing more than 500 and less than 10,000 inhabitants, and Article 594 1146 ⁴ provided that the board of aldermen of such towns shall have exclusive control over the streets within their corporate limits. The validity of these laws has been upheld by the courts. In the case of City of Haskell v. Barker,⁵ the court held that whether a city was incorporated under Article 381 261 or Article 579 1133 it would have control over streets and sidewalks within its limits, and would be liable for negligence with respect thereto.

A number of court decisions in Texas have outlined the degree of liability for which a city is responsible in the care required as to the condition of its streets. In the case of Baker v. City of Waco,⁶ the court ruled the keeping of streets free from dangerous obstruction and in a reasonably safe condition for travel is a "corporate" or proprietary duty as respects liability of a municipality, but the control of traffic along, over and across such streets is a "governmental function." In the case of Smith v. City of Dallas⁷ the following explanation was given of

³Ibid., Article 579 [1133].
⁴Ibid., Article 594 [1146].
"proprietary" and "governmental" functions:

"Governmental" are distinguished from "proprietary functions" of municipality, in that purpose of act done in a governmental function must be essentially public, such as purposes pertaining to administration of general laws made to enforce general policy of state, while powers classed as "proprietary" are such as are voluntarily assumed, such as powers intended for private advantage and benefit of locality and its inhabitants.

In the case of the City of Fort Worth v. George, the courts then ruled that a city is responsible for damages incurred in performance of its "corporate or proprietary functions." This ruling was also given in the case of Fall v. Thompson:

Municipality is liable in damages to individuals for injuries resulting from its negligence only while acting as corporation through its agents.

A municipal corporation is liable for negligent failure to keep streets in repair. However, a city is only bound to exercise reasonable care to keep its streets safe for careful travelers, and its liability depends on what is reasonable under all surrounding circumstances, especially climatic conditions. A municipal corporation is bound, then, to take reasonable and ordinary care to keep its

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streets reasonably safe for public travel, and it is negligent if the injured party was at the time of the injury exercising reasonable care. In the case of the City of Uvalde v. Stovall, the court held that city with power to control streets was liable for injuries from defects.

In the case of Patterson v. City of Austin the court ruled that a city will be liable for injuries resulting from defects existing with its knowledge in a public street, though it has delegated its control over such a street to a contractor. In other words, the city is still responsible for the care of a public street regardless of whether it possesses control over this street or not.

To what degree is the city responsible for an obstruction in streets or sidewalks? This question was raised in the case of Sterling v. Community Natural Gas Company. In this case a gas main had been left above the sidewalk, and the question to be decided was: Is a city responsible for a gas main above the ground between the sidewalk and the street? The court ruled that a city must keep its sidewalks and streets in a reasonably safe condition for public use, but it is not required to keep its sidewalks and streets in an absolutely safe condition nor to foresee extraordinary

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dangers. A municipality is guilty of negligence for defects or obstructions in streets or sidewalks and is liable only when a reasonably prudent person would not have permitted such an obstruction to continue in said street. The words "ordinary care" and "reasonably safe" will vary in cases depending upon the circumstances under which they are used. The rule which applies to municipalities in keeping streets in a reasonably safe condition applies also to the gas companies, since the pipe lines of a gas company may consti-
tute obstructions of any kind in the streets.

City charters have sometimes been written with a view of escaping liability on the part of the city for defects or obstructions in streets or sidewalks. In the case of Dallas, one section of the city's charter gave the city complete control of its sidewalks and provided that the cost of construction and keeping them in repair should be borne by the property owners in such manner as the council should provide. In another section of the charter, a method of enforcing the construction of walks was described. Notice to the property owners was to be given, either by person or publication, and if payment was not made, assessment might be levied against the property, and this, in turn, might be sold to satisfy the lien. If for any reason, the city was unable to compel the owner to "construct and repair" a sidewalk by fixing a lien on the property, the city would not be liable for any defect therein. The court held, in
the case of City of Dallas v. Linty,\textsuperscript{15} that neither the
d method of procedure of the section nor its exemption was
meant to apply to the repair of minor defects in the side-
walks, and

\ldots Therefore, conceding that the section should be
referred to the taxing power, and that the method
authorized was on that account unconstitutional and
unenforceable, and the exemption clause would not
release the city from liability for injuries result-
ing from failure of the city to repair a hole in the
walk.

It is clear from this case, and from others previously
described that the State of Texas intends to hold municipali-
ties liable for injuries sustained by the traveling public
from defects or obstructions on the streets or sidewalks,
provided that the city has not taken reasonable care to
maintain and repair its streets in a reasonably safe con-
dition, and that the injured party had been exercising
reasonable precautions in traveling.

Unsafe Conditions Caused by City

A city is liable for unsafe conditions caused by it.
One of these "unsafe conditions" has been defined in the
case of Ranle v. Naugle.\textsuperscript{16} In this instance, the court
held that unguarded and unlighted holes in sidewalks caused
by removal of stumps constituted a defect and made travel

1902).

dangerous. In the case of City of Sherman v. Williams,\(^\text{17}\) the court ruled that a city incorporated under the general laws is liable for an injury occasioned by a defective sidewalk or street. In the case of Gonzales v. City of Galveston\(^\text{18}\) the court held that a city is guilty of negligence in permitting a pile of lumber to remain in the street and it was a "concurrent proximate cause of the injury of the plaintiff and she was guilty of no contributory negligence" and was entitled to damages. A city is liable for personal injuries caused by broken glass lying with piles of other refuse in the street.\(^\text{19}\) In the case of City of Weatherford v. Lowery\(^\text{20}\) a city employee left a scraper at the side of the road with its bright side exposed. A traveler's horse became frightened at the scraper, ran away, and injured him. The court ruled that this was an unsafe condition caused by the city and that the man was entitled to damages.

Notice of Condition of Streets

Before a city is liable for a defect or obstruction

\(^{17}\) City of Sherman v. Williams, 14 S. W. 130, 77 (Tex. Civ. App. 1890).


of a street or sidewalk, it must have had some notification that the defect or obstruction was there. In the case of City of Galveston v. Barbour,\textsuperscript{21} in 1884, the court held that a municipal corporation is liable for an injury by a defect or construction in a public street only when the corporation has had notice of the defect and is guilty of some neglect of duty. Again in 1929 the same attitude was evidenced in the case of Reegan v. City of Galveston\textsuperscript{22} when the error was dismissed. The court held that a municipality is not liable for defective streets unless it causes the defective conditions or negligently failed to remedy the defect after proper notice.

The municipality must not only have received notice of the defect or obstruction in the street before it is liable for damage but there must be notification to the municipality after an injury occurs before the city is liable for damage. Some city charters prescribe the method of notification and some do not.

The charter of the city of Dallas, Articles 14 and 11, requires a written notice of injury as a condition precedent to a suit against the city for an injury. The court in the


case of Shows v. City of Dallas held that the article was valid. The Fort Worth charter, Section 159, specified:

Before the City of Fort Worth shall be liable for any damages of any kind, such person or some one in his behalf shall give the City Council notice in writing of such injury within thirty days after the same shall have been received, stating in such a notice how and when the injury occurred and the extent thereof.24

The validity of this section of the Fort Worth charter was upheld in the case of City of Fort Worth v. Shero.25 These different court decisions indicate that the Legislature of Texas can limit municipal tort liability. For this reason, city charters seek to guarantee the city against undue charges by requiring notice to be given of injuries.

Where evidence is presented showing that a city has defectively filled a sewer ditch from which a hole in the street resulted, and that the city had filled other holes along the ditch and near the one in question, it is indicated by inference that the city must have had knowledge of the existence of such a defect. In the case of City of Waco v. Witt the court ruled that notice may exist or be implied where a defect has existed so long that a municipality, by

25Ibid.
the exercise of ordinary care, should have discovered it.

A Court of Civil Appeals\textsuperscript{27} in 1901 held that if a city places in the street a dangerous obstruction, no notice of the existence of the obstruction need be proved to render the city liable to anyone injured by it. If the obstruction was dangerous, and if the city was guilty of placing it in a street, or permitting it to remain there, the city was liable for damages for any injury sustained, provided the injured party was exercising reasonable precautions in the meantime.

In the case of\textit{City of Dallas v. Moore},\textsuperscript{28} evidence was presented to show that prior to an accident, men working on the street were notified of the defective condition, and that someone telephoned the city hall that the street was in such condition. The court held that this evidence indicated that the city must have had, or could have had with reasonable diligence, notice of the defect.

In the digging of ditches, the city ordinances provide that obstructions shall be guarded with barriers and provided with danger signals. When the city gives consent to the digging of a ditch in its streets, the city's consent will only be implied to the doing of the work in a legal manner. If the city has not verbally or orally given its consent to


the digging of the ditch, the knowledge on the part of city officials that the ditch is being dug implies the city's consent, and no notice otherwise is required. In the case of *City of Corsicana v. Tobin* the court ruled that "the city is not a joint tortfeasor in a failure to guard a ditch."

In an instance where evidence is presented that other persons, previous to an accident due to a defective street had been injured because of the same defect, this evidence is admissible and shows due notice to the city; in other words, such evidence may be used instead of the proof that notice had been given concerning the defect. Where testimony is presented showing that the streets were among those most traveled and intersect a block from the public square, the testimony may be used in lieu of notification to the city of a defect at this intersection. The existence for two months of a dangerous depression in the street, caused by the caving in of a sewer, was held to be sufficient notice to the city of the defect.


CHAPTER III

CONSTRUCTION OR REPAIRS OF STREETS AND SIDEWALKS

Reasonable Care to Maintain Streets and Sidewalks

The courts of Texas have held that a municipality is charged with the duty of exercising ordinary care to so construct and maintain its public highways as to render them reasonably safe for ordinary travel. A breach of this duty imposes legal liability for all damages which are thereby proximately caused. The definition of "proximate cause" given by the court is as follows:

... efficient and moving cause, without which the injuries in question would not have occurred; that is an act becomes the proximate cause of an injury when such injury is the natural and probable consequence of the act in question and ought reasonably to have been foreseen by a person in the exercise of ordinary care, in the light of attendant circumstances.

When the charter of a city gives it control of the streets, sidewalks and sewers, the city can not avoid responsibility for a neglected condition of the street. It must

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2 Ibid.
construct and maintain these in a reasonably safe manner or it is liable to any person injured by such defect. In the case of Klein v. City of Dallas,\(^4\) the court ruled that the plaintiff was injured because of a defective sidewalk. In this case the city was held liable for damages.

In maintaining its streets and sidewalks in a reasonably safe condition, a city must of necessity do construction work such as building bridges, grading streets, digging ditches, and other similar work. In all these operations the city must provide safeguards for the safety of the traveling public or be held liable to persons suffering any injury from lack of safeguards. In the case of City of Waco v. Thompson,\(^5\) the court ruled that a city must keep warning signs out where there is construction under way, or be held liable. The language of the court is as follows:

> A city constructing storm sewers, which caused culvert across the lane to be removed, to the knowledge of its agents in charge, had duty of keeping excavation guarded or lighted and was liable to automobile driver who was injured because lantern placed there two or three weeks previously had not been regularly serviced and premises had not been inspected.


The status of a city's operations was concerned in the case of the City of Panhandle v. Byrd. In this instance the court held that a street grader, operating to clean a gutter to protect abutting property from damage from accumulated water, was performing a "municipal" or "corporate" function and not a "governmental". Since the courts had previously held a city liable for damages where the city was engaging in "corporate" activities the city, in this case, was liable for damages caused by the grader. A companion decision was rendered in the case of the City of Wichita Falls v. Mauldin.

A city may not allow a ditch to remain open along a defective sidewalk without a barrier without being held liable for injury to a person injured by such a defect. The court ruled, in the case of City of Galveston v. Posnainsky that in the absence of a statute, the city was liable to one sustaining injuries from falling into the ditch. Excavations in the streets must have warning signs at nights if the city is not to be held liable for injuries to night travelers.

In the case of the *City of Austin v. Schlegal*,\(^{11}\) when defendant was riding a fire truck, court held that a city's duty to keep its streets in a reasonably safe condition is not limited to the protection of travelers in the ordinary mode of traveling, but must extend this protection to those traveling in an unusual or infrequent mode, if he is not thereby guilty of contributory negligence. The city owes the same duty that it owes to those who travel in the usual and ordinary manner. A good example of this style of treatment is illustrated by a case previously mentioned, that of the *City of Fort Worth v. Lapp*\(^ {12}\) at which time the plaintiff sustained injuries by defective street construction when his horse fell.

The fact that a filling station builds driveways across parkways does not relieve the city from responsibility for the proper maintenance and care of this driveway. In the case of *Kling v. City of Austin*\(^ {13}\) the court held that installation of filling station across parkway imposed on the city the same duty to maintain the filling station driveway in a reasonably safe condition as any other portions of


the street.

The liability of the city for street repairs in order to keep the streets reasonably safe does not stop at merely the sidewalks and streets, but extends to the bridge railings as well. In the case of the City of Whitewright v. Taylor,\textsuperscript{14} it was alleged that the plaintiff was injured by falling from a bridge forming part of a public street because of a defective railing that he was leaning against, while conversing with another person. The court held that the plaintiff, by his act, did not 

\textit{per se} forfeit the protection from injury "enjoined on cities to keep their streets in proper repair."

The city, in its construction repairs on the streets and sidewalks, has to use materials of construction and these materials have to be placed on the street in order for them to be used. In the case of Patterson v. City of Austin,\textsuperscript{15} the court made this ruling:

\begin{quote}
The right and duty of a municipal corporation to construct, maintain and repair streets and bridges involve the incidental right, if necessary, to place in the street proper material for the accomplishment of such purposes. But when such material is naturally calculated to frighten horses of ordinary gentleness, and thereby endanger the lives and limbs of the traveling public, it becomes the duty of the municipality either to so place
\end{quote}

\textsuperscript{14} City of Whitewright v. Taylor, 57 S. W. 311 (Tex. Civ. App. 1900).

\textsuperscript{15} Patterson v. City of Austin, 39 S. W. 976, 15 (Tex. Civ. App. 1907).
the material that it cannot be seen by such animals, or to temporarily close the street so as to prevent its use by persons traveling in vehicles or on horseback, and a failure to discharge these duties would justify a finding of negligence.

Rights of Persons Traveling in Emergency Vehicles

A person injured by a negligent failure of a city to repair its streets has a right of action against the city. A number of cases involving this principle have been tried. Several of these cases have originated from people who were injured while riding on emergency vehicles, which have been overturned or otherwise damaged from street defects. Emergency vehicles, according to Stuart A. McCorkle, have the following privileges and responsibilities:

Emergency vehicles are given the right-of-way in all cities, provided they sound an audible signal and are being operated on official business. The statutes ... provide that police and fire patrols, police ambulances, and fire engines have the right of way. Violation of the statutes incurs a penalty of $100.16

In respect to the use of such emergency vehicles that of necessity travel at a rapid speed, the city has the responsibility of keeping the streets in such a state as to permit the rapid speed without mishap to riders in such vehicles. The case of City of Austin v. Schlegal dealt with this question. The driver of a fire wagon slowed up in response to the plaintiff's request for a ride; an accident occurred and a suit for damages was instituted. In

ruling on the case the court held that

... a city is liable for injuries to an invitee on a fire hose wagon, caused by the city's negligence in repairing its streets; streets being intended for rapid driving in case of fire.17

A bicycle rider is entitled to the same privileges in the use of city streets as drivers of other vehicles and is entitled to recover for injuries sustained by reason of failure to keep the street safe and convenient for ordinary travel.18 Municipal corporations are to use reasonable skill and diligence in making the streets and sidewalks safe and convenient for travel. Where the roadbed of a street railway is constructed in the streets of a city, the railway company must use the same skill and diligence as to the part of the street occupied by the road. In legal contemplation, the bicycle is to be regarded as a vehicle, in relation to its use on the highway.

Negligence of Individual and of City

In an action for injury on a public street, the plaintiff is presumed to be in exercise of reasonable care and the burden is on the defendant to show the contrary to prove contributory negligence. The physical and mental condition of the plaintiff has some bearing on the liability of the

17Ibid.

city where an injury is sustained at a defective crossing. In the case of City of Austin v. Ritz\textsuperscript{19} evidence was presented to show that the plaintiff, who claimed damages for injuries, was short-sighted and wore spectacles. The court ruled that this evidence was admissible as bearing on his contributory negligence in attempting to cross the defective crossing.

Other court cases have defined the meaning of the term "negligence". The courts have held that the determination of what constituted "negligence" is properly a jury question, where there is no statutory law making such acts negligence. The test as to when a municipal corporation has been negligent was defined in the case of City of Rockwall v. Heath.\textsuperscript{20} The decision follows:

The test as to whether a municipal corporation has been negligent with respect to a defective sidewalk is whether a person of ordinary prudence, knowing of the particular defect would have repaired the same, believing that, if the same was continued, it was likely to produce injury.

The pedestrians' negligence is outlined in the case of City of San Antonio v. Willenstein.\textsuperscript{21} The court held that a pedestrian, injured by a defect in a city sidewalk, is not negligent where she was ignorant of the defect until she sustained the injury.

\textsuperscript{19}City of Austin v. Ritz, 9 S. W. 884 (Tex. Civ. App. 1899).


CHAPTER IV

CONDITIONS OF SIDEWALK, FOOTWALK, AND CROSSWALK

Some methods of travel besides the streets is necessary in any town. People, after all, walk more than they ride, and the streets, because of traffic, do not afford sufficient protection for pedestrians. In order to provide other avenues of travel, cities lay off and construct sidewalks adjacent to the streets. It is necessary for these sidewalks to intersect the streets at intervals, which requires crossways. In a great many instances, conditions require narrow passageways instead of the regulation width sidewalk, and these are termed footways. Sometimes the sidewalks are constructed of concrete or planks, and often they are merely improved "dirt" passageways. Where a concrete sidewalk is laid, curbs usually separate it from the street proper, especially if the street is surfaced.

What liability does the city have in regard to the conditions of the sidewalks, crosswalks, and footways? This question has been debated many times in the courts.

In the case of the City of Waco v. Ballard,\(^1\) the court

ruled that a city is not an insurer of the safety of its sidewalks, but is held only to ordinary care in keeping them safe for the ordinary modes of travel, and is not liable for injuries unless the acts of omission complained of constitute negligence, which is a question for the jury, and must be embodied in the instructions.

No statute is necessary to hold a city liable for personal injuries caused by a defective sidewalk; the court ruled in the case of the City of Galveston v. Barbour that "a city is liable for personal injuries caused by a defective sidewalk without any statute declaring such liability."

The city must keep the sidewalks free from such holes "as might reasonably be deemed such as would cause injury to persons while walking along the walks," if it is not to be held liable for personal injuries resulting from same. It does not matter whether the city constructed the sidewalks or not; where a city is given control of its streets, sidewalks, etc., it is bound to repair them, if they become dangerous to the traveling public, irrespective of by whom they are constructed.4

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The city is liable for any injury suffered by a person being injured by stepping into a hole in the sidewalk if it is shown conclusively that the city had failed to keep the sidewalk reasonably safe for persons using it. A number of cases involving plank sidewalks have been tried in the courts. In the case of McKinney v. Brown, the court ruled that where a city permitted a plank sidewalk to remain in bad condition for a number of years, and the pedestrian, while walking along the same, stepped on the end of a plank and was thereby injured, the city was guilty of negligence. Likewise, in the case of the City of Dallas v. Jones, the city was held liable for injuries to a person injured by falling through an unguarded hole in a plank sidewalk. In this instance a hole in the sidewalk was spanned by two twelve-inch planks, laid lengthwise and unguarded. The court held that the city was liable regardless of whether or not the fall was caused by a loosening of the plank of which the city had no notice.

Another case involving an injury from a defective plank sidewalk was that of the City of Belton v. Turner. The city had claimed that it was not liable for the injury, which had resulted from the planks being not nailed or otherwise

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fastened "to the stringers on which they rested," because there was a defect in the plan of construction which did not require the planks to be nailed or otherwise fastened. The court ruled that the city could not escape liability for injuries on these grounds.

The city is liable, too, to a certain degree, for defects or obstructions outside streets or traveled portion. If the defect or obstruction, through proximity to traveled portion, "renders it not improbable injury will result to traveler exercising due care," the city is held liable for any injury resulting from same.

The curb is considered a part of the sidewalk of the city. A decision determining this was handed down in the case of the City of Austin v. Braret. In this case the court ruled that "... city's conduct in constructing curb, to exclude all but pedestrians in space between property line and street line, constituted such area part of sidewalk." In view of this decision, the city, then, would be required to exercise reasonable care to keep the curbs, as well as the sidewalks free from defects likely to injure the traveling public. This decision was also upheld in Laureson v.

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Newton.\textsuperscript{11}

The sidewalk of a city may be nothing more than a dirt roadbed, but it still must be kept free from holes or other defects by the city. In the case of the \textit{City of Fort Worth v. Nelson},\textsuperscript{12} the court ruled that a city is charged with the legal duty to exercise ordinary care to see to it that a place used as public sidewalks is kept in a reasonably safe condition for pedestrians even though the city has never attempted to construct a sidewalk at such a place. The court further stated:

These facts constitute \textit{prima facie} proof that the sidewalk was a public sidewalk of the city and under the supervision and control of its duly constituted officers, and as there was no proof which in any manner tended to show the contrary that the sidewalk where the accident occurred was one of the public sidewalks of the city and that the city was under the legal duty to exercise ordinary care to maintain the same in a reasonably safe condition for public travel.\textsuperscript{13}

\textbf{Liability of Abutting Owners}

The duty for the maintenance of the sidewalks is placed upon the city and not abutting property owners. The sidewalks are part of the street and the duty to exercise ordinary care to maintain them in reasonably safe condition for use of the public rests upon the city and not upon

\begin{flushright}
\textsuperscript{13}Ibid.
\end{flushright}
abutting property owners. However, if an abutting property owner places some obstruction or caused some defect in the sidewalk, he is liable for injuries caused, but ordinarily he is not liable for defects in sidewalks on which his property abuts. The abutting property owner is responsible for defects in sidewalks if he is responsible for the defects.

In the case of a property owner who extends an excavation on his lot into the sidewalk of a public street, without properly guarding the same or taking any means to warn travelers of the danger, he is liable for injury to a passer-by who falls into the pit while exercising reasonable care. In the case of *Melvin v. Kane* the court held that the fact that a city permitted and accepted the construction of a defective driveway did not relieve the abutting property owner from liability for injuries resulting from such defect.

**Notice or Evidence of Injury**

Both the city and individual are required to have and give some kind of notice in case of an accident causing injury from some defect in a sidewalk. The circumstances under which the defect was created, and the injury received

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vary the requirements.

In the case of the City of Henderson v. Fields,\textsuperscript{17} the court held that where a city itself directed the digging of a ditch across a sidewalk, and at the time of an accident it was in practically the same condition as when it was opened, the city could not claim ignorance of the defect. In this instance no written notice was required to the city regarding the defect.

Where the defective condition of the sidewalk is due to an act of the municipality, its contractors, or employees, "no other notice, actual or constructive, is necessary to render municipality liable for damages proximately caused thereby."\textsuperscript{18}

In the case of injury to an individual, notification must be made of personal injuries sustained through defects in sidewalks within thirty days if the city is to be held liable for damages.\textsuperscript{19}

Unsafe Conditions Caused by City

If a city fails to maintain barriers along a street exposed to a river front, it is liable for injuries.

\textsuperscript{17}City of Henderson v. Fields, 194 S. W. 1003 (Tex. Civ. App. 1917, error refused).


suffered by persons who might have an accident due to this. This is illustrated in the case of City of San Antonio v. Porter. In this instance, a traveler's horse in passing along a street exposed to an unguarded river front, suddenly became unmanageable and backed the vehicle in the river injuring the traveler. The court held that the injury would not have occurred had a suitable barrier been erected and maintained, and that failure to do this was the proximate cause of the injury, for which the city was liable.

In the case of the City of Wichita Falls v. Lipscomb, it was alleged that the city laboring crew had left a meter box unlocked, and that the plaintiff's foot had slipped in walking, and he had fallen into the meter box and been injured thereby. The court held that the city had had notice of the fact that the meter box was unlocked, and that therefore it was liable for unsafe conditions and the plaintiff's claims for damages granted.

It is the duty of the street commissioner to keep the public sidewalks in a reasonably safe condition. If he does not do so, and does not eliminate unsafe conditions, the city is liable, under the general laws for injuries caused by the omission or negligence of its street commissioner to

20City of San Antonio v. Porter, 59 S. W. 928, 24 (1900).

perform his duties in keeping the public sidewalks in a safe condition. A pedestrian, injured in crossing a street in a city, other than a crossing, may recover damages when the injury was caused by the city maintaining a place dangerous to pedestrians only.


CHAPTER V

CONCLUSIONS

In the study of the liability of municipal corporations under street control for injuries sustained, the following conclusions have been reached:

1. A city that has control of its streets is responsible for keeping the streets and sidewalks in a reasonably safe condition for the traveling public.

2. The keeping of streets and sidewalks free from dangerous obstructions and defects is a "proprietary" duty, but the control of traffic over, along, and across such streets is a "government" function. A city is liable for damages incurred only in the performance of its "proprietary" duties.

3. A city that takes reasonable and ordinary care to keep its streets reasonably safe for public travel is not liable for injury to the public if the injured party was not exercising reasonable care.

4. A city is liable for injuries resulting from defects with its knowledge in a public street, though it has delegated such control over such a street to a contractor.

5. Before a city is liable for a defect or obstruction of a street or sidewalk, it must have had some notification
that the defect or obstruction was there and has been guilty of neglect in removing it.

6. If the city place a dangerous obstruction in the street, no notice of the existence of the obstruction need be proved to render the city liable to anyone injured by it.

7. In the digging of ditches, the city is liable for injuries sustained by the traveling public if these ditches are not properly guarded by barriers and lighted lanterns of some kind at night. If the city gives permission for a private owner to dig a ditch, it is not liable for damages if the private party does not legally guard such ditch.

8. The liability of the city for injury to a person attempting to cross a defective crossing is conditioned by the condition of the person so attempting; if his condition so warrants, he may be charged with contributory negligence and the city's liability thus lifted.

9. A city must keep out warning signs where there is construction under way, or be held liable for injuries sustained because of defects.

10. A city is liable for damages caused by street machinery being used in a "municipal" or "corporate" function.

11. A city is liable for injury to a person who is injured by traveling on a defective sidewalk bordering a ditch, where no barrier has been erected by the city.

12. Persons traveling in an unusual manner have the same rights of protection against defects as those traveling
by ordinary means; the city is liable in case these persons are injured because of defects or obstructions on the city streets.

13. A city is responsible for the maintenance and repair of driveways constructed across sidewalks; it is liable for injuries occurring on such due to defects or obstructions in the same manner as it is liable for any other portions of the street.

14. A city is liable for the proper construction, repair and maintenance of bridge railing in the same way that it is responsible for the reasonable care of the streets and sidewalks.

15. A city is liable for injuries caused by a defective sidewalk, where it has been negligent in repairs, regardless of whether the sidewalk is of concrete, gravel, or merely a dirt walk.

16. A city, not the abutting property owner, is liable for defects in the sidewalks, provided the abutting property owner has not caused the defects or obstructions.

17. A city is held liable for unsafe conditions of the streets or sidewalks caused by the city.
BIBLIOGRAPHY


