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1. Create a scenario where your fictional business might be sued by a customer who is injured on the business premises. Also assume that a trespasser suffers a similar injury. With reference to the Occupiers’ Liability Act, analyze whether the customer is likely to succeed and why. Contrast that finding with the likely consequence if a trespasser, who is injured, sues. Create a written prediction applying the legislation to your scenario.

1.1 Fact on the Occupiers’ Liability Act, 1973 [1]
The Occupiers’ Liability Act (the Act) has changed the law in two important respects. Apart from the special provisions of the statute dealing with children and trespassers, it abolishes the distinction between invitees and licensees. It also abolishes the common law principle that once a person is lawfully on the premises he is under no obligation to stay in certain parts of them, and in the event that he goes into unsafe parts, he is only subject to being held to be contributory negligent. The new statute provides in s. 5 that the occupier owes a duty to every visitor to see that he will be reasonably safe in using the premises “for the purposes for which he is invited or permitted” to be there. This, in my opinion, is an important change. The Stein case, supra, is of no help to me since this latter provision does not appear in the British Columbia statute.
1.2. Customer scenario case (Smith v. Le Petit, 2018)
Description, analysis, support and decision

1. John Smith (the plaintiff) fell downstairs to the basement in Le Petit (the defendant).
2. Mr. Smith was a very well know customer at Le Petit, and the Le Petit personnel at that moment knew the Mr. Smith partial disability. Ten years before, Mr. Smith has lost the 40% of his vision; he has not any problem to conduct himself in the common life, neither impediment to work nor take responsibilities and care from him.
3. Mr. Smith was a usual customer at Le Petit. He knows very well the restaurant.
4. Le Petit has started reparations in its installations, mainly in the bathroom area. Signal were put everywhere to show the new and transitory bathroom area.
5. Mr. Smith, as usual, stands up of his table previous to start the dinner and went to the bathroom area that he knew. Because of his repetitive action and disability, he didn’t realize the advertisement of the new location and entered to the old bathroom area opening two sequential doors.
6. The new installations required a level that it was not be there before. From this area there was a steep set of steps to the low level (basement). Transitory building modifications allow going to the basement (store level).
7. The stairwell was not lighted; it was dark (due to the night and the two doors facilities). This low level was used by the staff only, and customers never went down.
8. There was no gate, chain, sign or anything else at the stairs to warn anyone of their presence. The light in the basement was only turned on when a member of the staff went down into it and located in the main stair for going to basement.
9. Formerly this action would have been brought by the Mr. Smith as an invitee upon the premises stated it as follows [3]: “And, with respect to such a visitor at least, we consider it settled law that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know”.
10. In The Act, 1973 [1], we can read:
   “1. In this Act,  
   “(a) ‘common duty of care’ means the duty of care of an occupier of premises to his visitors provided in section 5;  
   “(b) ‘entrant as of right’ means a person who is empowered or permitted by law to enter premises without the permission of the occupier of those premises;  
   “(c) ‘occupier’ means  
   “(i) a person who is in physical possession of premises, or  
   “(ii) a person who has responsibility for, and control over, the condition of the premises, the activities conducted on those premises and the persons allowed to enter those premises,” and for the purposes of this Act, there may be more than one occupier of the same premises;  
   “(e) ‘visitor’ means:  
   “(i) an entrant as of right, or  
   “(ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract, or  
   “(iii) any other person whose presence on premises is lawful, or
“(iv) a person whose presence on premises becomes unlawful after his entry on those premises and who is taking reasonable steps to leave those premises…

“5. An occupier of premises owes a duty to every visitor on his premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there or is permitted by law to be there.

“6. The common duty of care applies in relation to:
   “(a) the condition of the premises,
   “(b) activities on the premises, and
   “(c) the conduct of third parties on the premises.

“7. An occupier is not under obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor as his…

“15. (1) Where the occupier does not discharge the common duty of care to a visitor and the visitor suffers damage partly as a result of the fault of the occupier and partly as a result of his own fault, The Contributory Negligence Act applies.”

11. Mr. Smith was an “invitee” under the common law and had a right to be there and he was a “visitor” under The Act.

12. In [5] we can read:
   “The occupier of a store owes a duty to his customers to have his premises reasonably safe for the use that is to be made of them. He does not guarantee the safety of customers nor is he obliged to keep his premises in such a condition that no one can possibly get hurt. The obligation under which one rests towards another to whom he stands in the fullest relation of duty is only to keep him reasonably, not perfectly, safe”.
   “Every normal adult person is obliged to take due care for his own safety and protection. Apparently the plaintiff did not see the railing which guarded the opening to the basement on three sides. Had she looked she could not help but see it. Had she seen it, it would serve as a warning to her not to step within the space confined and guarded in this manner. I do not think she exercised due care under the circumstances.”

13. In the present case, the lock of the store door was a reasonably sufficient to enable the defendant, using reasonable care, to safely use that portion of the store in which the defendant was conducted reparations. In addition, the defendant failed to advertise the presence of the stairs and to provide a secure system that allow the plaintiff exercises reasonable care for him.

14. Mr. Smith didn’t have the real opportunity to exercise reasonable care for his own safety.

15. The advertisement in the restaurant was relatively well installed, but they failed to advise people with a diminished vision.

16. The plaintiff failed in taking the needed care of him knowing his diminished vision. The plaintiff has contributed not exercising reasonable care for him own safety and is the author in part of his own misfortune.

17. Sections 5, 6, 7 and 15 of the Act support the idea of the fail to reach the duty or care from Le Petit exposing to the plaintiff to damages.

18. The plaintiff is responsible as contributory negligence; he was in fact negligent to the degree of 15 per cent.

19. The plaintiff’s action is admitted with costs if claimed in 85 per cent. This represents special damages for an amount of $2,390 and general damages, including loss of wages, at $7,500.
1.3. **Trespasser scenario case (Htims v. Le Petit, 2018)**

**Description, analysis, support and decision**

1. Mr. Htims entered to Le Petit after the restaurant was closed. He arrived to the restaurant with his friend Mr. John Smith. Mr. Smith knows very well the restaurant, he is a habitual customer. Mr. Htims was the first time that he goes to Le Petit.

2. The main door at Le Petit was closed but not locked. An advertisement of “closed” was put in the door and most of the lights turned off.

3. Mr. Htims, following Mr. Smith instruction, enter to Le Petit and goes to the bathroom area.

4. Events happened in the same way that the previous case.

5. The defendant succeeded to show that the restaurant was closed, which put to the plaintiff in the condition of trespasser.

6. In the present case, the light in the store at the time was not reasonably sufficient to enable the plaintiff, using reasonable care, to safely use that portion of the store in which he was. He was a trespass under the common law. He was not well aware of the presence of the stairs. He didn’t have the opportunity to exercise reasonable care for his own safety.

7. Under s.12 of the Act:
   
   “12 (1) Subject to subsection (2) and to section 13, an occupier does not owe a duty of care to a trespasser on the occupier’s premises.
   
   (2) An occupier is liable to a trespasser for damages for death of or injury to the trespasser that results from the occupier’s wilful or reckless conduct.”

   Le Petit does not owe the duty of care to Mr. Htims.

8. The plaintiff’s action is dismissed with costs if claimed.

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2. **Create a list of steps your business might take (in light of provisions found in the Occupiers’ Liability Act) to minimize the chance of liability arising in the future to parties hurt on your business premises. Indicate what sections of the Occupiers’ Liability Act are relevant to your list of precautions.**

Occupiers’ liability has a bi-univocal relationship with accidents. The approach taken does focus in decrease the risk of accidents by prevention, identification, advertising, education, and finally liability insurance (which it will not be discussed here).

The Act has several categories where Le Petit could apply different strategies for diminishing the chance of liability.

At first point, the duty of care for visitor is one of the higher (e.g.: compared with trespassers no children), so establishing a baseline base on this higher duty it could cover most of the requirements for others. The Act specifically says that it does not apply for employees.

Le Petit owes a duty to every visitor on the occupier’s premises to take such care as in all circumstances of the case is reasonable to see that the visitor will be reasonably safe:
To protect against accident and injury claims, Le Petit needs to take into consideration the overall circumstances, the premises, and do whatever is reasonable to reduce any risks of accident or injury. The world reasonable is according to the Act reasonability interpretation.

For example, Le Petit should have a clear policy of regular checks and clean up of floors and stairs for spillages and make sure its staff is instructed to take action immediately if any are found, so as to minimize the risk of trips or slips.

The policies should be extended to regular inspection for pipes, electricity installation, heating, ventilation, air conditioning, and any installation that could represent a risk for someone.

Le Petit should establish clear policies and demarcation for restricted areas, with pro-active actions to avoid misuse of areas and passive intruders.

Instead that it is not a support as reasonable duty of care, to establish and give to know norms and procedures helps decreasing risks.

There should be written records to show that the policy not only exists, but has been actively followed.

This pro-active actions aim to demonstrate a reasonable duty of care to every visitor as s.5 (Duty of care to visitors), s.6 (when common duty of care applies), s.9 (effect of warning), s.10 (contract not to affect strangers) of the Act mentions.

The play centre should have a similar policy for keeping an eye not only on the structure of the play area itself, but on the behaviour of the children in it and actually doing something about any shortcomings that are highlighted.

This action aims to consider s.6.1 (recreational users) of the Act mentions.

If removing or reducing the risk of injury is not possible, then the occupier should make sure that the nature of the risk is clearly and specifically pointed out to those who come onto the land. It is not enough, for instance, for an occupier to erect a general "Beware" sign, though every case has to be looked at individually.

This action aims to consider s.7 (risks willingly accepted) of the Act mentions.

In case of special visitors or group of people that they could require special attention, an agreement or express notice could be developed.

This pro-active action aims to consider s.8 (variation of duty of care) of the Act mentions.

Develop clear policies for supervision and inspection of independent contractors.

This action aims to consider s.11 (liability of independent contractor) of the Act mentions.

Most of the previous actions overtake the duty of care owe to trespassers. Keeping in mind visitor, Le Petit will overtake the reasonable duty of care to trespassers.

This action aims to consider s.12 (trespassers) of the Act mentions.

Most of the previous actions overtake the duty of care owe child trespassers. Le Petit is a family restaurant where children are welcome and the installation are thoughts and designed for keeping in mind their well-being and security. Keeping in mind child visitor, Le Petit will overtake the reasonable duty of care to child trespassers.

This action aims to consider s.13 (child trespassers) of the Act mentions.
Works Consulted


