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LEGAL TOPIC: OCCUPIER'S LIABILITY

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INTRODUCTION

In Trinidad, Occupiers Liability is governed by Common Law. There is a duty on the Occupier of a premises to exercise reasonable care to prevent damage to visitors on his premises. This duty is not an absolute one, that is, the occupier is not under an absolute duty to prevent any and all damage to someone on his premises. Once he exercises reasonable care and does all that is necessary, then he has satisfied his duty.

A visitor to a premises may be entitled to compensation, depending on the circumstances of the case, for any damage which he may have suffered while on the Occupier's premises due to any dangers which were unknown to the visitor. Very common examples of this are like if you slip and fall on water on the floor of a supermarket or other businessplace, where there is no warning sign or Notice warning of the slip and fall danger. Other examples will be like at a public outdoor event at a venue, where there may be open trenches or jutting exposed pieces of wire or iron which pose dangers to patrons, then the owner or the premises along with possibly the Promoter of the event can be held liable for any damage to Patrons from such obvious dangers.

WHO IS AN OCCUPIER?

Wheat v Lacon [1966] AC 552 states that an Occupier is anyone who exercises a sufficient degree of control over the premises. *"The foundation of Occupier's Liability is occupational control, that is to say, control associated with and arising from presence in and use of or activity in the premises……*

> *Whenever a person has a sufficient degree of control over premises that he ought to realise that any failure to use care may result in injury to a person coming lawfully there, then he is an "occupier" and the person coming lawfully there is his visitor: and the "occupier" is under a duty to his "visitor" to use reasonable care."*

This definition was further expanded on in the local Trinidad & tobago case of ***Aaron Jairam v Trincan Oil Limited and ors. CV2010-04153:***

> *"In practice anyone is likely to be regarded as an occupier for these purposes if he has sufficient degree of control over premises to be able to ensure their safety and to appreciate that a failure on his part to use care may result in injury to a person coming on them. The Defendant need not have entire control; he need not have exclusive control. Equally there may be more than one occupier of the same premises under a duty of care dependent on his degree of control."*

Therefore, an Occupier is anyone who is responsible for the state of a premises or any person who has sufficient control over the premises. This may sometimes include tenants of a premises. To be considered an occupier, one does not need to have exclusive occupation of the premises, once the person has some degree of control associated with the premises.

DUTY OF CARE OWED TO VISITORS

In Trinidad and Tobago, the duty of care which the occupier owes to the person on his premises depends on the category that the person belongs to, whether as an **invitee, licensee or a trespasser** onto the premises. It is therefore necessary to distinguish between these three categories.

In the T&T case of ***David Sinanan and Dilmatie Sinann v Maniram Maharaj and High Clear Stud Farm CV2008-00556*** Hamilton L.J. in the case of ***Latham v R. Johnsons & Nephew Ltd. [1913] 1 KB 398*** was quoted. In that case the duties owed by the occupiers of land to trespassers, licensees and invitees were discussed:

> *"Where a question arises, not between parties who are both present in the exercise of equal rights inter se, but between parties of whom one is the owner or occupier of the place and the other, the party injured, is not there as of right, but must justify his presence there if he can, the law has long recognised three categories of obligation. In these the duty of the owner or occupier to use care, if it exists at all, is graduated distinctly, though never very definitely measured. ....Contractual obligations of course stand apart.* ***The lowest is the duty towards the trespasser. More care, though not much, is owed to a licensee—more again to an invitee.*** *The latter term is reserved for those who are invited into the premises by the owner or occupier for some purpose of business or of material interest. Those who are invited as guest, whether for benevolence or for social reasons, are not in law invitees but licensees. The law does not take account of the worldly advantage which the host may remotely have in view. .....**The owner of the property is under a duty not injure the trespasser wilfully;** "not to do a wilful act in reckless disregard of ordinary humanity towards him"; but otherwise a man "trespasses at his own risk." ... The rule as to licensees too is that they must take the premises as they find them apart from concealed sources of danger; where dangers are obvious they run the risk of them."*

Invitees:

An invitee is any person who enters onto the occupier's premises with his express or implied consent. This is usually where there is some material benefit to the occupier.

An Occupier does not have a duty to prevent all damage to an invitee, but the Occupier must use reasonable care to prevent damage to the invitee from any unusual dangers which the occupier knows of or ought to know about, and which the invitee did not know of or which they could not have been aware. Where an unusual danger exists on the premises, the Occupier must take adequate steps to bring to the attention of the invitee and prevent harm to the invitee from these unusual dangers.

The case of ***Indermaur v Dames (1866) LR 1 CP 274,*** which has been discussed in recent law in our local T&T case of ***Taxyna Dunbar v Dr. Joao Havelange Centre of Excellence CV 02329-2016*** states:

> *"the invitee 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."*

In ***Taxyna Dunbar v Dr. Joao Havelange Centre of Excellence (supra)***, the case of ***Indermaur v Dames (supra)*** was further quoted. To be considered an invitee and to be treated as such, a person must have entered the premises *"upon business which concerns the occupier, and upon his invitation, express or implied."* If the person fails to establish this, then a lesser duty of care would be owed to them by the Occupier. For example, a customer in a supermarket or a member of the public who visits a space which invites members of the public, such as a zoo or nature reserve, would be considered as invitees once the enter the premises as lawful visitors.

Unusual Danger:

To be considered as an unusual danger, the alleged danger should be something which the invitee did not know of, nor could the invitee have been aware of same. What constitutes "unusual danger" was discussed in the following cases:

In ***Ana Carolina Barry Laso and Yanik Quesnel v Tobago House of Assembly, Pigeon Point Heritage Park Limited and the Attorney General of Trinidad and Tobago CV2008-02722:*** damage was caused to the Claimants from a motor boat being driven close to shore on Pigeon Point Heritage Park, where the Claimants were bathing in the adjacent waters. The risk of injury from boats was not considered as a danger usually faced by sea-bathers while bathing in close proximity to shore, and thus constituted an unusual danger. It was found that the Defendants in that matter, as occupiers of the premises, should have warned bathers of the presence of boats traversing the adjacent water in Pigeon Point Beach by way of the erection of signs, and this was the action that a reasonable person in their situation would have taken to guard against the foreseeable risk of injury that existed. It was further stated that the Occupiers should have also demarcated a safe area for bathing with the presence of ropes or buoys to discharge the duty of care which they owed to bathers.

In the local case of ***Rhonda De Leon v the Port Authority of Trinidad and Tobago and Port of Spain Infrastructure Company Limited CV2016-00612*** the Claimant sought compensation after she fell down a staircase situate in the Defendants' building. A report conducted by a Senior Inspector at the Occupational Safety and Health Agency was used as evidence and it was found that the staircase in that case was in breach of safety standards required for staircases. Based on this report it was found that the Second Defendant failed in their duty to take reasonable care to safeguard the Claimant from unusual dangers by having a defective staircase.

In the local case of ***Betty James v The Attorney General of Trinidad and Tobago CV2010-05009:*** The Claimant's case established that there was negligence by the Defendant in not having a handrail on a flight of stairs which were descended by the Claimant, as the absence of a handrail on that flight of stairs constituted an unusual danger. So the Defendant was held liable for Damage to the Claimant.

Kirpalani's Ltd. v Wilma Hoyte Civ App 77 of 1977: the alleged danger was a cleaning substance on the floor, which caused the floor of the premises to become slippery and dangerous to customers. In that case is was stated that it was incumbent on the Claimant to show:

i. That the substance on the floor caused her to slip
ii. That the substance on the floor constituted an unusual danger and
iii. That the defendants knew it to be dangerous

In that case it was held that it had not been proved that the substance was an unusual danger, as it was not proved that it had rendered the premises unsafe or caused the Claimant to fall. The substance itself was not deemed to be inherently slippery, such as other items such as oil, yoghurt or cream.

Conversely, in ***Harripersad v Mini Max Ltd (1978) HCA 654 of 1973*** it was determined that water dripping from an air conditioner which had collected on a floor made of terrazzo tiles, which were known to have a very smooth surface, constituted as an unusual danger and the Defendant in those cases was held liable.

It can be inferred that in cases of Occupier's Liability, an invitee must prove:

(1) That something on the Occupier's premises cause injury to the Claimant;
(2) That the thing that caused the Claimant's accident constituted an unusual danger; and
(3) That the Occupier knew or ought to have known that it was dangerous.
(4) As a result of this dangerous thing, the Claimant suffered Loss and Damage.

Licensees:

A licensee is a person permitted by the occupier to be on the premises where the visit does not materially benefit the occupier. For example, this may a non-paying member of a privately run club, or a guest or Family Member on the Occupier's premises. The occupier's only duty to such persons is to warn them of concealed or hidden dangers or traps known to the occupier.

Favre v Lucayan Country Clubs Ltd.(1990) described a licensee as *"a person who has permission from the occupier to enter premises."*

The Duty owed to licensees was discussed in ***David Sinanan and Dilmatie Sinann v Maniram Maharaj and High Clear Stud Farm (supra)*** which quoted the case of ***Latham v R. Johnson & Nephew Ltd. [1913] 1 KB 398:***

> *"Now the law as to mere licensees is well settled. The grant of the licence to go on the land creates no right, but merely affords an answer to a charge of trespass: Botch v Smith. It is a mere permission, and those who take it must take it with all chances of meeting with accidents…One who thus uses the waste has no right to complain about an excavation he finds there. He must take the permission with its concomitant conditions, and, as it may be, perils"*

In ***David Sinanan and Dilmatie Sinann v Maniram Maharaj and High Clear Stud Farm (supra),*** the Claimant, a young boy, was considered as a licensee on the Defendant's horse farm. He believed that one of the horses on the farm was playful and approached the horse to pat him and the horse bit off his arm. In that case it was found that as a licensee, he did not have any right to be on the farm and the Defendant would only be liable if it could be proved that there was "something abnormally dangerous" about the horse. Given that the horse did not usually behave in an aggressive manner or posed a danger to members of the public who visited the farm, the Defendant was not found liable to the Claimant in that case.

Therefore, the only duty afforded to licensees on the premises of an Occupier is that the Occupier must warn the licensee of any hidden or concealed dangers which the licensee may not reasonably have known were present.

Trespassers:

Trespassers would include those who enter onto the premises of the occupier without any invitation or permission. The Occupier merely owes a trespasser a common duty of humanity or a duty to act in keeping with common standards of civilized behaviour. An occupier only has to make reasonable endeavours to keep out or chase

off potential or actual trespassers who are likely to be or who are in a dangerous situation.

The classic case on the duty of care owed by occupiers to trespassers is found in the case of ***British Rlys Board v Herington [1972] 1 All ER 749.*** In that case, it was stated that while the occupier of a premises does not owe a duty of care to trespassers, he does owe a duty of "common humanity" or a duty to act "in accordance with common standards of civilized behaviour.' This means:

> *"...if the presence of the trespasser is known to or reasonable to be anticipated by the occupier, then the occupier has a duty to the trespasser, but it is a lower and less onerous duty than the one which the occupier owes to a lawful visitor...it is normally sufficient for the occupier to make reasonable endeavours to keep out or chase off the potential or actual intruder who is likely to be or who is in a dangerous situation. The erection and maintenance of suitable oral warnings, or a practice of chasing away trespassing children, will usually constitute reasonable endeavours for this purpose...If the trespasser, in spite of the occupier's reasonable endeavours to deter him, insists on trespassing or continuing his trespass, he must take the condition of the land and the operations on the land as he finds them, and cannot normally hold the occupier of the land or anyone but himself responsible for injuries resulting from the trespass, which is his own wrongdoing."*

In ***Kirton v Rogers (1972) 19 WIR 191*** the Claimant was an eight year old child who was struck on the forehead by a stone which was expelled from the Occupier's land. Explosives were being used on the premises for the purpose of quarrying. It was held that, assuming the Claimant was a trespasser, the Occupier of the land ought to have anticipated that potential trespassers were likely to be present. The Occupier was under a duty to take reasonable steps to avoid the danger to them, and this duty could only be discharged by posting someone to warn persons to keep out of range until the danger was no longer a threat. Thus the Defendant was held liable.

What would be considered as a reasonable step may vary based on the circumstances of each case. This may be fencing a dangerous area or placing a sign (for example a sign warning of Dangerous dogs on a premises).

Occupier's Liability is a form of negligence. Once it is established that a duty of care was owed to the person on the Occupier's premises, it is then necessary to establish a breach of that duty, and that damage was caused to the person as a direct breach of that duty. For the purpose of establishing what duty was owed to a person entering onto the premises of another, and that a breach of that duty occurred, it is necessary to first determine what category the person would fall into as discussed. It should be noted also that the general defences available for the tort of negligence also apply in cases of Occupier's Liability, such as contributory negligence and *volenti non fit injuria* (where the person knows of the risk and still voluntarily exposes himself to it) apply.

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