

Occupiers' Liability

Introduction

In Singapore, following the landmark case of *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd*,¹ the law on occupier's liability has since been subsumed within the general principles governing the law of negligence.² Essentially, this means that occupiers owe a duty of care to their entrants and are obliged to discharge these obligations to prevent harm whilst entrants are on the premises.

Who is an occupier?

An occupier is defined to be a person who has sufficient degree of control over a particular site or building.³ Exclusive physical occupation of the premises is not required. This would mean that MCSTs – companies or individuals appointed to manage an estate – would fall within the definition of an occupier.

The law on Occupier's Liability

The Courts recognise that it is impossible and impractical to hold that occupiers owe a blanket duty of care to all trespassers.

Where a legal entrant is concerned, the law states that occupiers owe a general duty of care to its visitors.⁴ However, things are not as clear cut when an illegal entrant is concerned. The Courts first consideration is whether, on a balance of probabilities, the presence of the entrant was lawful before deciding whether a duty of care should be imposed. This is to be determined by the *Spandeck* Test set out below.

1st step – Reasonable foreseeability

Was the harm to the entrant on the premises foreseeable?

2nd step – Legal proximity

The Courts will consider three forms of proximity:

- (a) Physical proximity – whether the entrant was physically situated on the occupier's property.

¹ *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284.

² *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 at [76], citing the *Spandeck* Test set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] SGCA 37.

³ *Wheat v E Lacon & Co Ltd* [1966] 1 All ER 582 at [578], affirmed in *Wong Jin Fah v L&M Prestressing Pte Ltd and others* [2001] 3 SLR(R) 1 at [21].

⁴ *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284, at [80].

- (b) Circumstantial proximity – whether the occupier had consented to the presence of the entrant on the premises; and the culpability of the entrant.
- (c) Causal proximity – the causal connection between the negligent act and the injury sustained; the extent of control that the occupier had over the condition of the premises; the blameworthiness of both parties; and whether there had been a voluntary assumption of responsibility by the occupier which was relied upon by the entrant to prevent injury.

Ultimately, whether legal proximity is satisfied would depend on the circumstances of each case.⁵ The Courts will consider all the relevant factors by reference to the specific facts that at hand.⁶

3rd step – Policy considerations

Lastly, only upon satisfying the first two steps would the Courts consider whether policy considerations ought to negate the existence of a duty of care imposed on the occupier. As a matter of legal, moral and social policy, the Courts find that the occupier, being in the best position to prevent injury as well as the least cost-avoider, should generally assume this duty of care.⁷ Thus, there must be cogent policy considerations present before the courts would hold that this duty of care is displaced.⁸

Contributory negligence

Contributory negligence is an oft-raised defence to negligence. This defence attributes some degree of fault on the part of the Plaintiff who had suffered an injury, which entails a reduction of the sum recoverable under Section 3 of the Contributory Negligence & Personal Injuries Act.⁹ However, this reduction is at the Court's discretion and only to the extent which it finds to be "just and equitable".¹⁰

Some of the factors considered by the Court in the assessment of liability include:

- (a) the blameworthiness of either parties;¹¹
- (b) the relative importance of the acts of the occupier and entrant in causing the injury;¹²

⁵ See *Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284, at [82].

⁶ See *Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284, at [130].

⁷ See *Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284, at [96].

⁸ See *Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284, at [90].

⁹ Contributory Negligence & Personal Injuries Act (Chapter 54, Rev Ed 2002), s 3.

¹⁰ Contributory Negligence & Personal Injuries Act (Chapter 54, Rev Ed 2002), s 3.

¹¹ *The "Teng He"* [2000] SGCA 53.

Jurong Primewide Pte Ltd v Moh Seng Cranes Pte Ltd [2014] SGCA 6.

¹² *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579.

- (c) the professional relationship between the parties;¹³ and
- (d) the capacity and age of the entrant.¹⁴

Concluding remarks

It is essential that an occupier takes steps to be aware of the possible risks that entrants could encounter whilst on their premises. Property managers in particular should look out for defective conditions of the premises and also ensure that their employers and staff are adequately trained on risk management and prevention.

This would go a long way in ensuring that the premises are hazard free and that the duty of care owed to its visitors is discharged.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to discuss the Law on Occupiers' Liability in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 29 July 2020.

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¹³ *Hotel Royal @ Queens Pte Ltd trading as Hotel Royal @ Queens v J M Pang & Seah (Pte) Ltd* [2014] SGHC 109.

¹⁴ *Ang Eng Lee v Lim Lye Son* [1985 – 1986] SLR(R) 931.