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# **DUTY OF CARE TOWARDS VISITORS: WHAT KIND OF PRECAUTIONS SHOULD BE TAKEN BY THE BUSINESS OWNER?**

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Do business owners have a responsibility and duty of care to everyone who enters their establishment?

## **1) Duty Of Care**

**Individuals are obligated by law to conform to a standard of reasonable care while committing conduct that could foreseeably cause harm to others.**

## **2) An Occupier**

The business owner may be considered an occupier, and thus owes a duty of care to his visitors.

**The term "occupier" refers to a person or group who has immediate authority and control over a specific location, and who can prevent harm from occurring there. This requires having command over who is allowed on the premises, as well as the condition of the premises and the activities that occur there.**

Therefore, for a party to qualify as an occupier, neither ownership nor actual physical occupation of the premise are required, if the party has control over these features of the premise.

## **3) Premise**

The term 'premises' refers to the area controlled by the occupier.

**All types of land spaces, buildings, constructions such as scaffoldings and barriers, and vehicles used to transport people, such as tractors, are included.**

## **4) Categories of lawful visitors & Standard of Care required by law to be observed by an occupier.**

Standard Of Care

**Degree of prudence and caution required of an individual who is under a duty of care.**

#### 4) Categories of lawful visitors & Standard of Care required by law to be observed by an occupier.

Categories of lawful visitors; Standard of Care

##### **Contractual entrants**

Main purpose entrant: an occupier under an obligation to ensure the place is safe for dwelling of main purpose entrants.

Ancillary purpose entrant: The occupier has a duty to make sure the place is safe for the purpose it is being used for.

Example: resident at a college, hotel guest who has paid money to stay.

##### **Invitee**

Legally authorized entrant  
Business visitors

The occupier is obligated to notify and exercise reasonable care for both types of invitees of any likely and extraordinary hazard of which the occupier knew or ought to have known.

Example: contractors, delivery person, customer at the shopping mall.

##### **Licensee**

A licensor is not responsible for a licensee's injury if the injury was caused by hazards of which the licensor should have been aware. Therefore, the occupier is obligated not to expose the licensee to the hazardous situation and to advise him of the actual danger he is aware of.

Example: guest at the wedding party

Some common circumstances which may lead to you being sued are:

- Poorly maintained infrastructure (steps, lifts, escalators)
- Dangerous design (low railings, steep stairs)
- Lack of warnings about wet or slippery surfaces
- Unsafe worker conditions

**Precautionary Measures to Be Taken by Occupiers/Business Owners:**

Basic measures that should be taken by business owners include ensuring thorough and regular maintenance of the premises; introducing signage or barricade where necessary to caution visitors; and performing checks on the premise's activities for hazards and for compliance with safety requirements.

In the interest of avoiding liability for harm resulting from the carelessness of children, business owners may require that children be attended by parents or adult guardians while on the premise.

Business owners should regularly check and supervise the work of independent contractors for compliance with safety regulations to avoid obvious dangers and breaches of regulation going unnoticed.

Prior to engaging an independent contractor, business owners should ensure that the contractor possesses adequate insurance coverage to meet any negligence liabilities which may arise.

It is possible for occupiers to restrict or exclude their degree of liability for harm occurring on their premises. This is commonly achieved through signage: for example, a sign may state to visitors that the occupier will not take responsibility for any loss of or damage to property occurring on the premise.

However, business owners should obtain legal guidance in establishing liability restrictions, as the validity of such exclusions may vary depending on the type of liability excluded and the way the exclusion is imposed or stated.





## Conclusion

In relation to business owners, particularly those in the tourism industry, when precautions are given high attention, it will reopen doors to visitors in the endemic of Covid -19. Business owners must strictly adhere to government-specified standard operating procedures in ensuring the safety of all involved. This is also to prevent legal repercussions, and therefore, it is imperative that company owners and visitors alike have a thorough understanding of legal rights and responsibilities in case of noncompliance of respective parties.

## References

- [1] Caswell v. Powell Duffryn Associated Collieries Ltd [1939] 3 All ER 722
- [2] Greenhalgh v. British Railways Board [1969] 2 QB 286
- [3] Harris v. Birkenhead Corpn [1976] 1 All ER 341
- [4] Hall v Brooklands Auto-Racing Club [1933] 1 KB 205
- [5] Indermaur v Dames [1866] 1 MLJ 26
- [6] Lau Tin Sye v. Yusuf bin Muhammad [1973] 2 MLJ 186, FC
- [7] MacLenan v.Segar [1917] 2 KB 328
- [8] Ramsay v Appel (1972) 46 ALJR 510
- [9] Robert Addie & Sons (Collieries) Ltd v Dumbreck
- [10] Stampark Place Sdn Bhd v. Liu LI (f) [2017] 1 LNS 320
- [11] Sutton v Bootle Corporation [1947] 1 All ER 92
- [12] Wheat v E Lacon & Co Ltd (1966) AC.552

