

The rule of safety and health law company business partnership essay

[Law](#)



**ASSIGN
BUSTER**

From my understanding occupier liability is the liability for the owner or person that has control and authorized the premises or land that he or she occupied the duty to protect the people who come to their premises or land. These liabilities is identify to pose wrongful act, effect the interest of other person nuisance, and if these liabilities were to breach, the parties are eligible for damages to claims. Then occupier is the person who has the immediate supervision and control and the power of permitting and prohibiting the entry of other person such as tenant, property owners, theme park guest, and the owner of business premises. The premises that owned by a person is included all form of building, land, spaces, vehicles such as houses, apartment and bus which are used for carrying person including structures such as scaffolding, ladders, nails and grandstands. In the occupier liability the duty of care is toward the entrant and it is the person who enter an occupier premises where there were permitted or not. it is identified that every entrant may have specific interest toward the premises. Then these interest are can be distinguish and define according to the occupiers liability which is categorized to several different type of entrants available, which is contractual entrants, invites, licensees, and trespasser. For the first one that is contractual entrant can be known as the person who pay with the money to the occupier in exchange of the occupier permission for occupying the premises and this kind of thing will be form as part of a contract between the entrant and the occupier. The entrant that falls under contractual entrant may possess one of two types of purpose as an entrant which is main purpose and ancillary purpose. For more understanding, contractual entrant usually involve in some sort of contractual agreement

between him and the occupier. For instance, the agreement between hotel guest and owner. The hotel guest pay amount of money to the occupier which is the hotel owner in return, the owner would let the guest or the entrant to occupy the hotel according to term given such as period of occupation. Ancillary refers to a person who has paid to be on the premises for the primary purpose of some activity like for who pay for the use of a toilet. Then the duty of occupier toward the contractual entrant is more strict because the entrant pay to enter the occupier premises and so as the occupier must make sure that the premises is safe from any unusual danger. Next is for the invitee where according to the e-lawresources. co. uk those who have been invited to come onto the land and therefore have express permission to be there. This kind of entrant is for the purpose of bring economic advantage toward the occupier where the entrant is invited for the purpose of doing business. Example like the person who entering a shop or supermarket to buy something where it is for the purpose of bring economic advantage toward the occupier. Then there is legally authorized entrants are only for those enters the premises on the authority of the law such as policeman, fireman or a meter-readers. The duty of occupier toward invitees is not such as strict as contractual entrant as the entrant is expected to look out for their own safety prevents any damage from unusual danger. The occupier carries out this duty by reasonable care in term of to protect the invitees from damages of the unusual danger such in form of notice, lighting and guarding. A sufficient protection is needed must be conducted as part of the duty to the invitees. Notice lighting and guarding for example are in form of warning signage and fence. For example, warning signage and problem

like such as slippery floor. The third is about the licensees where licensee type of entrant have that have the permission to enter the occupier premises. There are three type of licensees where it is entrant as of right, social visitors and an entrant by implied permission. For the entrant as of right it may referred to the something public that people have a right to enter it example like public toilet or library. Then for the social visitor they come to the premises on their own interest and they do not bring any economic advantage toward the occupier example like a friend of the occupier visit him at his premises. Then the permission may be in in express or implied. Entrant by implied permission is for those who enters the premises without any express restriction by the occupier example in a village where the land owner does not say anything or warning toward the people who use his land for the short cut way to the other place. Then if a children come into the premises the duty of the occupier will be more stricted because they cannot be expected to be aware of dangers that may be obvious to adults where the adult can see the damage but not for the children. The licensees will only be apply if it related matter that bring economic advantage toward the occupier. Then for the last entrant that is about trespasser where it is for those who enters premises without any express or implied permission of the occupier. His existence on the premises may not be known to the occupier. As we can see in the cases of British Railways Board v Herrington [1972] where A six year old boy was electrocuted and suffered severe burns when he wandered from a play park onto a live railway line. The railway line was surrounded by a fence however, part of the fence had been pushed down and the gap created had been used

frequently as a short cut to the park. The defendant was aware of the gap in the fence which had been present for several months, but had failed to do anything about it. Under existing authority of *Addie v Dumbreck* no duty of care was owed to trespassers. However, the House of Lords departed from their previous decision using the 1966 Practice Statement and held that the defendant railway company did owe a duty of common humanity to trespassers. Then the house of lord say that There is considerably more need than there used to be for occupiers to take reasonable steps with a view to deterring persons, especially children, from trespassing in places that are dangerous for them. In my opinion the *Addie v. Dumbreck* formulation of the duty of occupier to trespasser is plainly inadequate for modern conditions, and its rigid and restrictive character has impeded the proper development of the common law in this field. It has become an anomaly and should be discarded." The occupier duty towards a trespasser entrant is extremely limited although it exists for certain condition required by law. If the premises may bring harm and even death to the trespasser, in knowing the existence of trespasser, the occupier are obligated to take specific measure in term of preventing and warn toward the potential danger. Such as warning signage of dangers, and higher fence. However the duty of occupier on children trespasser may be greater where that a children trespasser would not be treat as particular as common trespasser as they are immature and minor. After we all know about all the type of entrant in occupier liability we related it with the scenario and based on it i identified there are existence of occupier. The occupier that liable is for the Demoloni Housing Development because they have the right to control and permission to enter the building

site. Then The company does not have a duty of care toward all kind of entrant in the construction side because as we can see in the scenario that there was no fence around the building, no warning sign and the public had the access toward the stall. What i can interpreted in this scenario is that the coffee stall is a licensee ran but he maybe can become a implied licensees so the people who come the his stall to buy a coffee is likely to become the trespassers because the company only know about the stall but the does not know who the people that come to the stall. So under occupier liability the company is will be liable. Next one is we will be relate the vicarious liability with the scenario but first let we take a look what is about the vicarious liability. According to the wikipedia. org Vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency - respondeat superior - the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the " right, ability or duty to control" the activities of a violator. So it basically the thing about the employer and employee where one of the parties will be liable. But in order to establish this liability there are requirement that need to fulfil first where there must be a wrongful tortious act, there must be special relationship between employee and employer and the tort must occur within the course of employment. First they must be a wrongful tortuous act such as negligence where example like the employee of company a is sleeping while he is driving the van when he sent the item to the supplier and he got into an accident. Then for the second one is that there must be a special relationship where for the first test is about control test. This test has been conducted based from the case of Short v

Henderson. In this case the court looks whether the putative employer had the power of selection of his employee, the right to control the method of doing their work, and the right of suspension and dismissal. The court held that if this condition is to be met, the worker will receive wage or other remuneration. Hence based on this court rule it defines the in control test to identify relationship of employer and employee which the employer has the power of selection of the employee, the employer has the power in determining the salary, they also have the right to control the method of work. The employer also has the power to terminate the employee. If these criteria meet with the employer the employer/employee relationship exists. However this is still insufficient to define their relationship, as not enough to determine the employee and employer in current situation. Then by the situation they apply other tests that are organizational tests where it is to determine whether the worker is part of the organization or not. The third test is about multiple tests where it is whether there is an agreement between employer and employees where the employer pays for money and the employee is bound with the employer's instructions. Lastly, in contracts of service are also terms that such as all the conditions in the agreement are consistent. Based on this test now we can assure that the Demoloni Housing Development and the worker in this case can be assumed to possess an employer and employee relationship. So based on the scenario where a few workers from the company were hacking walls in preparation for plastering an object fell over a man and hit him and he died from the injuries. So whether the worker is liable or their employer we look at tests like multiple tests where obviously there is a contract between them where the company pays them

money to do work and the worker is obliged to the instruction of the company and bring economic advantage to them. So under the vicarious liability the company will be liable. But sometimes the employer will be not liable if the worker itself doing the negligence and the example of what thing that worker do that they will be liable is like doing something that unauthorised like the case based on the Bayley v. Manchester, Sheffield and Lincolnshire Railway. Which stated that A railway porter saw a man of whom he thought he would go onto the wrong train and pulled him off the train without asking him. The man was injured and missed his train. The court held that the porter acted as an employee but did so in a negligent way. Hence the course of employment as doing something is not permitted in doing something that is permitted by the worker. Next is about the worker is acting for his own benefit where example like the delivery worker use the transport give to him to make a taxi for the purpose of getting money. Then for the third is about where the worker is acting against the employer example like the worker smoke in the dangerous place like oil station where the employer already stated the place is not for smoking. So by doing all of this thing the worker itself will be liable and the employer will be not liable.

Task 2 : Describe the rule of safety and health in a construction side

So as we can see in the scenario when the employee conduct of carelessness when an object is fall to the person and cause the death to the person it may resulted from lack of safety management that is focus by the employer to the employee. The company should have analyse whether the safety management in the company suffice to prevent from any potential risk and

threat by the worker. Therefore in this scenario, the development company which is the employer should apply on occupational safety and health management. This can be defined from as following according to businessdictionary. com " Occupational safety and health management is an organized effort and procedure for identifying workplace hazard and reducing accident and exposure to harmful situation and substance" Based on the above definition we can understand that occupational and safety management help a company or an employer to define the existence of threat risk in the operation and how can the threat be escape. In the case the plant should provide enough effort to prevent the accident that cause harm such as the short circuit to ever happen. This accident can be related to the employee misconduct. As to all understanding, accident in workplace should happen fewer than 2 types of circumstances that are dangerous practices and dangerous condition. Dangerous practices are consider to be conduct by the people by doing the activities that violate the rules of work and dangerous condition is the condition which can cause of the accident. So as we can see in the scenario the dangerous practice is when the worker itself do not using a safety net and for the dangerous condition is that the construction side has no fence around the building where it will lead to an accident where the fence is for protection and to prevent people go inside the place. There are three thing need to apply in the safety and health management in the construction side where it is law, policy and rule to prevent it as we can see in OSHA section 15 act 514. For the first one that is low the employer responsibilities toward their worker is that to provide information, instruction, training and supervision and safety and healthy

environment workplace including entrance and exit. Then if the employer failed to do so they will be fined up to RM 50 000 or prison for 2 years or both of it. Then for the employee responsibilities they need to ensure the safety of their self and the other person, cooperate with employer and the other workers, wearing a safety uniform and lastly the need to follow the safety instruction by their employer. If the failed to do so the will be fined up to RM1000 or prison for 3 month or both of it. Then in section 30 it is compulsory for they to form a safety and health management committee at the workplace and if they failed to do so they will be fined up to RM 5000 or prison for 6 month or both of it. Then for the policy the committee should form a member where it consist of a chairman, represent of employer and employee and a secretary. So by doing this kind of committee they function is to use in assist in development of safety and health rule and set of system work. Then for the last is about to prevent the accident happen in the construction side where we can see in the diagram below that show some kind of rule in the side that need to follow in order to prevent accident. Task 3: compare the above tort with strict liability. So in order to compare vicarious liability and occupier liability with the strict liability first we look at what is the strict liability. According to the businessdictionary. com strict liability incurred for causing damage to life, limb, or property by a hazardous activity or a defective product, without having to prove that the defendant was negligent or directly at fault. It arises not from any wrongdoing but from the fact of the activity or product being inherently hazardous or defective. Then the landmark cases for the strict liability is the Ryland v Fletcher where according to the e-lawresources. co. uk The defendant owned a mill and

constructed a reservoir on their land. The reservoir was placed over a disused mine. Water from the reservoir filtered through to the disused mine shafts and then spread to a working mine owned by the claimant causing extensive damage. So the court say that the defendants were strictly liable for the damage caused by a non- natural use of land. There are five element in order to identify whether the land owner is liable or not where for the element is dangerous thing, accumulation or intentional storage, escape, non-natural user and foreseeable damage. For the first element that is dangerous thing where the object " thing" therefore act to be dangerous because there are object which safe properly kept but are dangerous if they escape example like gas, noxious fumes, explosive, fire, electric, water and sewage it will likely to cause damage if the " thing" escape. So in the case of ryland v fletcher the " thing" is considered as the water that being kept in the reservoir is being escaped. Then for the second element is that intentional storage where the object which is purposely keep and collets example like a grenade that in a warehouse is being keep before sell it to other. It will be liable if he or she accumulated the thing then he or she also will be still liable if he has authorise the accumulation and the liability will be on those who has control over the storage. So in the case of ryland v fletcher the intentional storage is considered as the water that being kept in the reservoir. The third element is that escape where it is defined as escape of as thing that is known to cause danger escape from the premises that the defendant have authority to control to other premises that the defendant have power to control. As stated before the thing that caused danger is consider as the substance that will bring damages. Hence if this substance

escape from the defendant premises, it will consider that the defendant don't have control toward the substance in order it to be safe. In Ryland v Fletcher case. The escape occur as the water from the reservoir that the defendant were supposed to control which is consider as dangerous thing escape to the plaintive mine due to loss of control towards the thing. The fourth element is about non-natural uses of land where it can be understand as the unusual and extra ordinary substance that occur on the defendant land. Compare with However the condition is excluded if the non natural use of land are applicable for the benefit of the community. The example is like a nuclear reactor where as we know that is being use for the benefit of community where it supply a greatly electricity but in some country like malaysia the people or the community consider it is a extraordinary thing and the community here think that the negative side is more than the positive where it can be wrongly use for the war purpose and if the reactor leaking it will be greatly effect to the community. Based on the case of Rylands v Fletcher it can be understand that defendent is consider applied non natural use of land that is building a reservoir. Building reservoir possess the potential of bringing dangerous thing such in this excessive water that cause flood to the plaintive mine. Then for the last element is that foresee ability damage where the of damage can be saw as the defendant would be liable all for the damage that escape as damage if the damage can be proof to be foreseeable. However if the damage is unforeseeable, the defendant would not liable for the damage. For example in the case of Ryland v Fletcher however, the court held that the damage done that cause the flood is unforeseeable as it occur underground and cant be seen. The principle in

Ryland v Fletcher is not applicable for other cases that the potential dangerous thing that escape are foreseeable and the defendant would not take any necessary measure to prevent it hence the defendant will be liable. Then the comparison that I can make with the occupier liability is that occupier liability is defined as person who are liable and possess duty towards the person who enter his or her properties/premises. For strict liability in the other is known as liability that is liable towards the defendant without proof that relate the matter with the defendant conduct. Based on this definition we know the nature of these liability is different. Such as occupier liability exist to an occupier in which responsible for the person who enter the premises. it is rather different with strict liability as the liability arise to a party due to wrongful act to others without the need of proof. Then the range of liability that they need to responsible where for the occupier liability it is depend on the type of the entrant where the trespassers is the less liability when getting punished by the law. Then for the strict liability the range of the liable and punishment is depend on the how much the thing that can affect other people outside his land. Then for the last comparison is between vicarious liability and strict liability where vicarious liability also possess different nature that other liability such as occupier and strict liability possesses. Because vicarious liability is known as situation where someone is held responsible for the actions or omissions of another person . Meaning that vicarious liability as a in certain situation, a person would be liable for another person wrongful act towards the victims. Then in the range of the liability the vicarious liability usually between employer and employee where the relationship both of them may be tested by using test like control,

organizational and mixed test. Then one of the party will be liable with the wrongful act toward the victim where employer will be liable if the employee act is based on the carelessness in performing work that can cause an accident. Then the similarity that is for the both of the tort is that if both is were breach both of it will be liable to pay the damage like compensation. Other similarities is the type of damages. All the liability if breach will lead to the same type of damage which may cause the lost of profit, privacy, safety and health. This is faced by the damages party in the case which is the employee and neighborhood premise owner. Task 4: compare and contract nature of general tortious liability with contractual liability According to the wisegeek. org Tort law is a branch of the law which covers civil wrongs, such as defamation and trespassing, among many other transgressions. Under tort law, if someone suffers a physical, legal, or economic harm, he or she may be entitled to bring suit. If the suit is deemed valid, damages may be awarded to the victim to compensate for his or her troubles. Most tort laws are found in regional, state, and national civil codes, which often spell out limits on damages and the statute of limitations for tort cases. similarity Can claim compensation Under the civil law The injured party is the one who bring the action As we can see above the similarity for both of is that it can claim for compensation if one of them breach the contract or the law. Then it also under the civil law that related to the human and civilise thing. Then same thing is that the injured party or the party that loss from the breach of the contract is the one who bring the cases to the court in order to get compensation for their lost. contrast Consent is not needed Based on consent The duty is fix by law The duty is fix by the parties Duty to person

generallyThe duty toward specific personTo restore the plaintiff he was in before the commission of tortTo compensate the party for what he would have been obtain in the contract has been performed. Then for the contrast the first thing is for the tort the consent is not needed where the people who commit it actually the do not have consent where it mean permission for something to happen or agreement to do something but for contractual both of the party need to be consent or to agree to enter to the contract. Then the duty of the tort is fix by the law where the punishment is being fix by the law of the country and cannot be changed but for the contractual it is fix by the party when they enter to the contract the know what the consequences if they breach of the contract. The for the tort the duty is to person generally where it mean all the people in the country that bind with the law is will be liable but not for the contractual where it only for the specific person where it for the person who enter to the contract. The tort also is for the to restore the plaintiff he was in before the commission of tort example like when the people who affected by the action of the tort he asking for the medical expenses to recover his injured back but for contractual it is to compensate the party for what he would have been obtain in the contract has been performed example like the person who enter to the contract and failed to fulfil it and it make loss to other party so he asking for money that amount for the loss.