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A s t u t e l a w y e r s w i t h b u s i n e s s a c u m e n

ARE YOUR PREMISES DANGEROUS? SLIP AND TRIP LIABILITY 17 NOVEMBER 2011

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Introduction

1. Increase in claims against property owners
2. Modern trend – awareness of rights
3. Personal injury lawyers need new sources of work
4. Claims can be large – several R100K and up



General Principles

1. Duty of care/not to act negligently

- Each person responsible for own safety
- Property owners
 - duty to ensure property is safe [steps, undulations, light]
 - no negligence e.g. reasonable care [clean, maintain]
- Shop owners
 - Public invited in
 - Public invited to view goods
 - Public entitled to assume floor is safe and clean



General Principles (continued)

2. Contributory negligence

- Degree of negligence of Ptf/Def to be considered
- Depends on the circumstances of each case

3. Principal not liable for negligence of independent sub-contractor

- Property owner retains overall responsibility

4. Disclaimers/Exclusions of liability

- Leases
- Disclaimer signs



Kruger v Coetzee

For the purposes of liability negligence arises if -

- (a) a reasonable person in the position of the defendant
 - (i) would foresee the possibility of harm; and
 - (ii) take reasonable steps to avoid it.
 - (b) The defendant failed to take such steps.
- Steps regarded as reasonable depend on the circumstances of each case



Probst v Pick 'n Pay Retailers (Pty) Ltd

Facts

- Shopper slipped and fell in cooking oil
- Injured her left knee, ankle and foot
- She sued Pick 'n Pay



Probst v Pick 'n Pay (continued)

Steps taken by Pick 'n Pay

- Cleaning sub-contracted to Ellis Cleaners
- Shop cleaned between 6am and 9am
- 2 cleaners on duty at all times in fruit 'n veg section
- No cleaners on the trading floor (where shopper fell) during trading hours
- But every member of staff instructed to keep look out and to page cleaner if spillage on floor



Probst v Pick 'n Pay (continued)

Judgment

- Pick 'n Pay liable
- System insufficient
- Steps taken by Pick 'n Pay not reasonable
- Although Pick 'n Pay employed sub-contractors, it remained liable for negligence
- Shopper not contributorily negligent – entitled to expect floor is safe



Probst v Pick 'n Pay (continued)

Duty of shop owner

- To take reasonable steps to ensure that during trading hours the shop is reasonably safe
- What is reasonable?
 - Must every spillage be discovered and cleaned as soon as it occurs? No
 - Reasonable = a system in which spillages will be discovered reasonably promptly



Lindsay v Checkers Supermarket

Facts

- Shopper slipped and fell on oily substance
- She injured herself
- She sued Checkers



Lindsay v Checkers (continued)

Steps taken by Checkers

- Store covered 15000m² area with 22 aisles
- 1 cleaner was on duty in the store
- Other six staff members (not cleaners) had duty to keep cleaner informed of any spillages



Lindsay v Checkers (continued)

Judgment

- Checkers liable
- Steps taken inadequate
- Impossible for so few staff to keep such a large store clean



Lindsay v Checkers (continued)

Duty of shop owner

- To take reasonable steps to keep shop reasonably clean
- What is reasonable?
- Highlight certain danger areas: fruit `n veg, cooking oil, frozen food, milk
- Station cleaners in each of these sections



Monteoli v Woolworths

Facts

- There were three green beans near a large brick pillar at the entrance of Woolworths food hall
- Shopper slipped and fell on a green bean
- Sustained injuries
- She sued Woolworths



Monteoli v Woolworths (continued)

Steps taken by Woolworths

- Cleaning sub-contracted Specialised Cleaning
- Semi-glazed tiles – no polish
- 1 cleaner full time in food market; the other 70% in food market and 30% in rest of store
- Duty of cleaners to constantly roam food hall and clean
- Back-up system in place: coloured lights to alert staff to spillages



Monteoli v Woolworths (continued)

Judgment

- Woolworths not liable
- No evidence that cleaning system failed



City of Salisbury v King

Facts

- Shopper slipped on vegetable matter in a vegetable market
- She fell and injured herself
- She sued the market



City of Salisbury v King (continued)

Judgment

- Shop owner not negligent
- No matter what precautions were taken, in a vegetable market, vegetable matter would always find its way to the floor
- The mere presence of vegetable matter on the floor doesn't mean the shop owner was negligent



City of Salisbury v King (continued)

Judgment (continued)

- Shop owner must have reasonable opportunity to clean mess – no evidence that shop owner had opportunity
- Possible that vegetable matter fell from another shopper's basket just before Plaintiff slipped and fell



Toplass v Shoprite Holdings

Facts

- Shopper slipped and fell on a slippery substance
- Sued Shoprite for damages



Toplass v Shoprite Holdings (continued)

Steps taken by Shoprite

- Cleaning sub-contracted to Mr Clean
- Shop cleaned between 7am and 9am
- High risk areas identified
- Cleaners rotated and patrolled shop, concentrating on high risk areas



Toplass v Shoprite Holdings (continued)

Steps taken by Shoprite continued

- Management also walked the floor and checked on cleaners
- If a spillage was found the area was secured till it could be cleaned
- Management met with Mr Clean to address shortcomings



Toplass v Shoprite Holdings(continued)

Judgment

- Shoprite liable
- System commendable but was it properly implemented?
- Evidence was that it was not properly implemented (it took a long time to clean the mess, communication between staff inadequate, occurrence book showed many incidents)
- Shopper not contributorily negligent



Toplass v Shoprite Holdings (continued)

Duty of shop owner

- To have a proper system in place to deal promptly with spillages
- A supermarket owner can't guarantee a shopper's safety
- Not required that a spillage is cleaned immediately
- But the time a spillage is left unattended is a relevant factor



Roets v Main Market

Facts

- Shopper was buying food from fast-food section of supermarket
- She fell on a slippery surface on the floor
- She hurt her left foot, right knee and head



Roets v Main Market (continued)

Steps taken by shop owner

- Employed several employees to clean up spillages
- Other members of staff also instructed to keep look-out
- Instructions to clean spills within 15 – 10 minutes
- Supervisor saw customer spilling soup
- She realised the danger and went to the back of the store to call the cleaner (took about 25 seconds)
- While she was doing so, Plaintiff slipped and fell



Roets v Main Market (continued)

Judgment

- Shop owner liable
- There were five other staff members at the service counter and many customers milling around
- The shop owner knew of the danger and should have warned shoppers
- Shopper not negligent – drops not visible



Roets v Main Market (continued)

Duty of shop owner

- To take reasonable steps to ensure that during trading hours the shop is reasonably safe
- The shop owner knew about the danger and should have taken reasonable and prompt action
- Reasonable steps =
 - Audibly and repeatedly warn customers about the spillage
 - Post a member of staff at the potentially dangerous spot while supervisor went to call cleaner



Rossouw v Fruit 'n Veg

Facts

- Plaintiff slipped on a “verlepde” spinach leaf as she was walking out of Fruit 'n Veg City on a busy Saturday morning
- Her evidence:
 - It had been lying there for a long time (but she didn't see it when she was going in)
 - There were many people going in and out of the store
 - There were two Fruit 'n Veg employees at the exit – they did nothing



Rossouw v Fruit 'n Veg (continued)

Fruit 'n Veg

- Strict cleaning regimen in place, inside and outside
- Two trolley jocks stationed at the exit at all times
- Trolley jocks helped people with parcels and kept area clean



Conclusion

1. Each case depends on the facts – investigate properly
2. Lessons learned:
 - Take reasonable steps
 - Keep shop reasonably safe
 - Have a system in place
 - Ensure system is properly implemented
 - Identify high risk areas – put steps in place
 - Independent subcontractors are liable but the owner retains overall responsibility
 - Disclaimers have to be specific and acceptance must be proved



DISCUSSION

QUESTIONS

THANK YOU

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