

teaching note

Look Before You Leap: The case of the missing elevator floor

Summary of the Case

Injuries that lead to disability and even death have reached peak numbers in the world, including the USA. Occupational incidents part of the most important issues faced in business, especially in the hospitality industry (Song et.al., 2011; Gyekye, 2010). Not only that these accidents cause financial losses for both the company and the implicated employee, but it can also damage the reputation of the implicated businesses. According to the International Labor Organization there are also economic costs involved when the necessary precautions are not taken regarding occupational health and safety. In the United States, hotel workers are almost 40% more likely to be injured on the job. However, up to 98% of these kinds of accidents can be prevented by taking the necessary precautions (Unguren, 2018).

Negligence represents one of the most common types of lawsuits a business may face. But many other issues may evolve from a seemingly straight forward negligence claim. For example, in most states, Worker's Compensation Insurance represents the exclusive remedy for the injured employee. This means the employee cannot sue the employer for negligence. However, if the employer is a tenant and the injured plaintiff (employee) has a smart attorney, certain clauses in the employer's lease may provide the plaintiff with otherwise unavailable means to sue the employer in negligence. It is not uncommon for hotels and other hospitality properties to hire third-party independent contractors to perform services and provide periodic maintenance to specific areas of the property. Occasionally, these contractors make mistakes, their work is careless and sloppy, well below expected and reasonable standards, and sometimes, their carelessness causes terrible accidents with horrific injuries. Hotels and other hospitality businesses need to understand what this means in terms of their own liability and redress.

This case study will focus on a workplace accident involving a back-of-the house hotel employee and a service elevator. The employee fell one story down an elevator shaft and suffered near fatal injuries. The specific facts of the case are very interesting and engaging and provide an excellent platform for a detailed analysis of important hospitality law areas.

Teaching Objectives

Given the complex nature of the hospitality industry this case study aims to shed light on the legal aspect. The aim of the case study is to not only raise awareness of the gravity of legal issues but also the consequences on many different players. By the conclusion of this case study, activities and assessments, the student should be able to describe:

- Negligence
- Worker's Compensation as exclusive remedy and exceptions

- Indemnification/hold harmless clauses
- Non-delegable duties
- Impleader (third-party actions)

Target Audience

The case study is suitable for undergraduate and graduate students in the hospitality and tourism programs. The intention of the case is to develop and understanding of the importance of legal aspects within the industry and the consequences and actions that result when rules and regulations are not followed.

Teaching Approach and Strategy

It is recommended for the case study to be used following a lecture on the topic, therefore two class sections should be allocated. One for discussing the issues from the lecture material and second for understanding and discussing the issue presented in the case study and what would be the appropriate solutions. Students can also participate with similar observations if any.

The first sections can start off with an introductory lesson about the complexity of the hospitality industry when it comes to accidents. Furthermore, the non-delegable duty should be presented when it comes to hiring outside contractors. The worker's compensation benefits should also be presented as well as which maintenance needs to be outsourced and what are the consequences that can come with this practice.

The second section can be dedicated to the discussion of the case study, having asked the students to read the case study in advance. The following question should be touched upon while class discussion: Does your hotel have liability exposure if your employee suffers a catastrophic injury while on the job? Does it matter if you lease your property versus outright ownership? If you do lease your property, what effect would an indemnification/hold harmless clause have if contained in the lease? What is a non-delegable duty, and does it impact your liability? How can a third-party action be used and is it always to your benefit? Is Worker's Compensation your employee's exclusive remedy?

Another discussion possibility with the students is about how they would approach the case if they were the management company, owner of the property, employee, and outsourcing company.

Analysis of Teaching Objectives/Theoretical Concepts

By the conclusion of this case study, activities and assessments, the student should be able to describe:

- Negligence
Definition of negligence should be given (as a breach of duty, however in order to properly understand negligence it needs

to be separated for duty, and therefore negligence is “conduct which involves and unceasingly great risk of causing damage) as well as an example. The example can be from the case study or of personal experience. The negligence needs to be pointed out from the example.

- Worker’s Compensation as exclusive remedy and exceptions
Worker’s Compensations policy should be defined (insurance policy provides coverage for an employer’s two key exposures arising out of injuries sustained by employees. Part One of the policy covers the employer’s statutory liabilities under workers compensation laws, and Part Two of the policy covers liability arising out of employees’ work-related injuries that do not fall under the workers compensation statute” (Irmi, n.a.)). Explain what worker’s compensation covers and why it does not apply in this case (Worker’s Compensation benefits are the only recourse for the injured employee – medical bills, lost wages – no pain and suffering are awarded through Worker’s Compensation. An exception would be if the employer committed an intentional tort against the employee which caused the injury (Turner v. PCR, 2000). Clearly, that was not the case with Jimmy.)
- Indemnification/hold harmless clauses
What is indemnification and what would be the outcome in the presented scenario (Ultimately, Regal will move for summary judgment pursuant to the management contract which will contain an indemnification/hold harmless clause allowing Regal a way out. Indemnification is the portion of an agreement which holds one party accountable to bear the monetary costs. This can be done by reimbursement or directly. This will leave Jimmy suing Sands and Sands suing Lift – all in one action. If Lift is the ultimate culprit here (which appears to be the case), Sands will owe Jimmy damages but will then be eligible for reimbursement (assuming they were smart enough to include an indemnification/hold harmless clause in their contract). The student can also give examples discussed in class or that they are familiar with from a different situation.
- Non-delegable duties
Explain what non-delegable duties are (he non-delegable duty contract also needs to be taken into consideration; the contract under this circumstance states that even though a duty is delegated to an outside contractor it is still the responsibility of the obligator, i.e. the employee, to protect their employees, therefore being liable for the safety of the employee at work even though an external entity is hired). Give examples of some other equipment in a hotel or restaurant would fall under this category.
- Impleader (third-party actions)
Explain what impleader is (Impleader is an action prior to trial when a party joins a third party into a lawsuit because the third

party is liable to an original defendant (Columbia Law Review, 1933)). Students should explain how this situation would unveil in this case (Regal will answer the complaint by impleading (bringing in a new party) Sands into the lawsuit as a third-party defendant. Regal will act as a third-party plaintiff thereby suing Sands, i.e., Jimmy sues Regal who then sues Sands. To take it a step further, once the elevator company is identified through discovery, Sands will then become a third-party plaintiff and sue Lift who will become a third-party defendant).

Additional Readings

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