



## When Can a Shop Be Sued for Damages If a Customer Falls?

"... it is by now long established in our law that the owner or other person or entity in control of a shopping mall has a legal duty to take reasonable steps to ensure that its premises are 'reasonably safe' for those members of the public who might frequent them ... What such steps may be will depend on the circumstances." (Extract from judgment below)

The Festive Season is once more upon us, cueing shops, shopping centres and malls packed with ever-growing crowds of shoppers.

What happens if you fall while shopping and hurt yourself? Our law reports are full of cases where shops are sued for damages following "slips" and "trips", and a recent High Court case confirms once again that as a general rule shops and malls are liable to keep their visitors from harm.

### A broken elbow from a slip on a wet mall floor

- A shopper visited a mall to draw money from an ATM on a rainy day. Rain carried into the mall by other shoppers on their rain jackets, umbrellas and shoes had left the floor wet and slippery, and she saw a yellow 'wet floor' warning sign on the tiled floor.

- 14 metres from the mall entrance her feet suddenly gave way from under her and she fell, extending her right arm to break her fall and shield the baby she was carrying. She was left with a fractured elbow.

- She successfully sued both the mall's owner and its management company for damages, a "Full Bench" of the High Court ordering the two companies to pay "jointly and severally" whatever damages she can prove.

- "Thus, in summary" held the Court, "the owner or person or entity in control of a mall will only potentially be liable for harm or danger which would have been foreseeable to the hypothetical reasonable man in its position, and is obliged to take no more than reasonable steps to guard against such harm occurring ... Whether the steps that were taken in a particular case are to be regarded as reasonable or not depends upon a consideration of all the facts and circumstances, and merely because harm which was foreseeable did eventuate does not mean that the steps which were taken to avoid it were necessarily unreasonable. Ultimately the inquiry involves a value judgement on the part of the Court."

- The Court found that the "legal duty to take reasonable steps to safeguard the [shopper] from harm that day ... was one which fell primarily and squarely" on the owner and its management company.

- It rejected the defence raised that the mall's cleaning contractors were the liable party with the comment "It would be a startling state of affairs if independent cleaning contractors in shopping malls who are only contracted to keep floors clean became saddled with a duty to safeguard those who frequent the mall premises, and became liable to them on this basis in the event that they failed to comply with their contractual cleaning duties."

### What about "enter at your own risk" disclaimer notices?

Another defence raised was that there were "enter entirely at your own risk" type disclaimer notices "prominently displayed" at all entrances to the mall. The shopper denied having noticed any such notices either on the day in question or on previous visits to the mall, and the Court found that the mall owner and manager had failed to prove that -

1. Such a notice was displayed at the time, and
2. The shopper had read and accepted the terms of the notice "or at the very least that they had taken 'reasonably sufficient' steps to ensure that the notice would come to her attention in the ordinary course".

### The bottom line for shop and mall owners

Take all reasonable steps to keep your visitors from harm, and ensure that you have adequate and prominent disclaimer notices displayed at all times. Keep these notices updated - one of the mall owner's problems in this case was that the disclaimer notices were old and still in the name of a previous owner.

### The bottom line for shoppers

As this judgment shows, you have to jump through a number of loops to establish a claim. Besides, shops and malls by their very nature present dangers to the unwary - spillages, items dropped on the floor, wet and slippery surfaces and the like are common and if you don't keep your eyes open and your wits about you, you run the risk of a court holding you fully or partially liable for your own misfortune. In that event it could dismiss your claim or at most only award you part of your damages on the basis of your "contributory negligence".

Worse, you could have no claim at all if a court finds you bound by an "enter at your own risk" disclaimer sign.

**So - enjoy your Festive Season shopping, but Safety First!**

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