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Soco v₂: Legal Pocket on Liabilities and Standard of Care for Tourism Industry During Pandemic Covid-19

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Abstract

COVID-19 has unquestionably had a negative influence on the Malaysian industry, including tourism. Players in the tourism industry who provide spaces for recreational and leisure activities have not only uncertainties about how to handle activities in their facilities during the epidemic without breaking the law, but also about how to stay afloat and avoid being dissolved owing to financial losses. Under the law, a person who has a sufficient degree of control over a premise is considered an occupier and bears a duty of care to protect the safety of visitors to his premises. As a result, any industry player in charge of a recreational or leisure facility is clearly required to take reasonable safeguards and appropriate precautions before reopening the business. The objective of this product is to create awareness among tourism industry players of the standard of care to be observed by visitors during the operation of their business while adhering to the standard operating procedures (SOPs) provided by the government. The product's novelty can be found in the legal framework's construction, in which it eradicates the difficulty in learning and understanding the laws. The product can steer the reader to comprehend the concept of duty of care as outlined by common law. It can be used as a reference for tourism players in handling their business operations as it integrates the standard of care to be observed by the industry in accordance with the types of visitors of the said premise with the standard of operating procedures ordained by the government. In addition, the simplification of the law makes it easy to understand for non-legal background readers.

Keywords: Liabilities, Standard of Care, Legal Pocket, Tourism, Covid-19

Introduction

The COVID-19 pandemic has changed people's lifestyles and disrupted their daily lives all over the world. In their daily activities, everyone must follow the standard operating procedures (SOPs). The same is true for industry and corporations. They must ensure that all SOPs are in order and exercise extreme caution when managing their business. This is to ensure that

everyone who visits their premises is safe while also limiting the spread of COVID-19 (www.imf.org, 2021).

According to Dato' Sri Nancy Shukri, Malaysia's Minister of Tourism, Arts, and Culture, the OECD's (2020) prediction that international tourism would drop by around 80% in 2020 due to the COVID-19 pandemic became a reality when the Malaysian tourism industry lost RM45 billion during the Movement Control Order (MCO) (Bernama, 2020). This statistic demonstrates that the COVID-19 pandemic has had a significant impact on the tourism industry. Furthermore, because the tourism industry serves as an umbrella and backbone for several small businesses, it is clear that the tourism-related industry is also struggling. Tourism is regarded as one of the most important industries for all countries around the world because it contributes to national income. In Malaysia, the tourism industry contributes 15.9 percent of Malaysia's GDP, or RM220.4 billion, making it the country's third-largest contributor (Domestic Tourism Survey 2019 by State, 2020).

In an effort to revitalize the tourism industry, the Malaysian Ministry of Tourism focused on domestic tourists and promoting the country as a safe vacation destination when the Malaysian government announced the reopening of the economy and resumed industry activity (Jr, 2020). However, since the COVID-19 outbreak has impacted the entire tourism ecosystem, the reopening will necessitate a collaborative effort from industry players.

Product Description

The Standard of Care Framework During the Standard of Care Framework for Occupier During Pandemic COVID-19 (SOCO v.2) is designed utilizing the legal framework as a design tool with the goal of conveying the intricate understanding of law relevant to the occupier's duty of care and legal obligation. The legal framework is used because the information can be imparted in a systematic flow using pictures and narration to allow readers to better grasp the law. Aside from the legal framework, an infographic is used to clarify the different types of entrants identified by law, as well as the various types of standards of care that must be observed by tourism players as occupiers of the said premises.

The product aims to educate tourism industry players on the legal liabilities they face in simple terms and with a captivating image. The framework's systematic flow of legal information demonstrates the product's novelty. This is because learners are presumably able to appreciate the provisions of laws and legal principles underlying relevant cases when learning and reading laws, and then apply them to relevant legal issues. Unfortunately, few laymen understand the legal principles at work in the case. Therefore, SOCO v.2 provides a platform for readers to understand legal principles in a simple and straightforward manner. SOCO v.2 is the first unified framework that combines the common law standard of care with the Ministry of Health's most recent Standard Operating Procedures to serve as a reference for the tourism industry in managing their business. The product is pertinent because it simplifies the legal information that tourist players must follow while restarting their businesses during pandemics. Since the legal knowledge is easily digestible, the product is a powerful tool for understanding private law. Furthermore, the product can assist the parties in following proper legal procedure in order to avoid future litigation. In terms of commercialization, the product has significant potential to be used as legal assistance for tourism businesses operating during this once-in-a-lifetime event. This framework is easily sold since it is in the form of an e-brochure that contains up-to-date legal information about the duty of care for visitors to

business premises as well as the standard operating procedures that must be followed to avoid litigation during the pandemic.

Literature Review

During the pandemic, the tourism industry was reopened. The industry players are practically proactive in implementing new operating standards and protocols that seek to protect workers, restore travellers' confidence, ensure social distancing, and implement the necessary cleaning and hygiene standards. In the United States, the travel industry has provided detailed guidance for travel-related businesses to help keep their customers and employees safe as the country emerges from the COVID-19 pandemic since May 4, 2020, known as "Safe Travels," a new global protocol to restart tourism (OECD, 2020).

Meanwhile, in Malaysia, according to Suria et al (2021), after Recovery Plan Phase 4-Hotel Accommodation Premises was implemented, Langkawi became the first travel bubble pilot project and targeted 400,000 visitors by the end of 2021. The Malaysian government has taken preventive action and practically used a Standard Operating Procedure (SOP) suggested by the National Security Council (MKN). Only visitors who had received two doses of vaccination were permitted to enter the Langkawi Travel Bubble. Unfortunately, on October 4, 2021, Langkawi witnessed 59 people who tested positive for COVID-19, including local staff and close relatives. According to Kedah Health Director Dr. Othman Warijo, the outbreak began in one of the hotel employees' homes due to a failure to comply Standard Operating Procedure (SOP), and the virus spread to the other of the hotel staff. Although the government guarantees that the outbreak will not have an impact on the Langkawi Travel Bubble project, the standard of care should become one of the most important issues to be addressed by the government, particularly by involving occupants and visitors as invitees during the tourism sector's reopening.

Methodology

The doctrinal methodology is adopted in this paper as it traces legal precedents and critically analyses case-relevant case law, statutes, and other legal sources. This paper also employs a library-based research method in which the primary sources and online databases as secondary sources are used to analyze statutes, regulations, and decided cases (Mohamad Sahizam et. al., 2021). For this study, cases were chosen based on the keywords *occupier liability*, *standard of care*, and *duty of care* which prompted a discussion about the standard of care in the tourism industry.

Discussion & Recommendations

Doctrine of Negligence and Duty of Care

Negligence is defined by Baron Alderson as "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or to do something which a prudent and reasonable man would not do" (Blyth v. Birmingham Waterworks Co. (1856) 11 Ex 781). In other words, negligence occurs when a person fails to fulfill a duty of care owed to another person and the other person suffers harm as a result of the breach (Loghelly Iron & Coal v. M'Mullan [1934] AC). In the 19th century, the law recognized that negligence could only be claimed by those who were privy to the contract. As a result, if the defendant and the claimant have no contractual relationship, the defendant owes no duty to the claimant (Winterbottom v. Wright (1842) 152 ER 402). The position of

the law, however, was altered in 1932 by the House of Lords' decision in the case of *Donoghue vs. Stevenson* (1932) AC 562,580. With the introduction of the neighbor principle, Lord Atkin laid the groundwork for a new position in negligence doctrine in *Donoghue v. Stevenson* (1932) AC 562,580. Under this new principle, a person owes a duty of care to those who are in close proximity to him, to take reasonable care that the person is not harmed by his action or omission. He must take reasonable precautions to avoid actions or omissions that he knows or should know will cause suffering or injury to those who are closely related, proximate, or directly affected by their action or omission (*Donoghue vs. Stevenson* (1932) AC 562,580). Similarly, in *Grant v. Australian Knitting Mills* (1935) UKPC 62, the Privy Council allowed a claimant's negligence claim against a manufacturer, despite the fact that the claimant and the manufacturer had no contractual privity, and thus the manufacturer was held accountable. The House of Lords further stated in *Caparo Industries PLC v. Dickman* [1990] UKHL 2 that, in addition to the harm having to be foreseeable by the defendant, the duty of care arises when the parties' relationship is so close that he can see harm can be inflicted due to his action; therefore, it is just and fair for the court to impose such a duty of care on him.

The general principle provides for several elements to be fulfilled before a negligence action can be taken by the plaintiff, namely: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of duty; (3) the breach produced the damage; and (4) the damage is a foreseeable and not too distant consequence of the breach (*Bank Bumiputra Malaysia Bhd v Emas Bestari Sdn Bhd* [2014] 2 MLJ 49). In these circumstances, the defendant can anticipate that his careless action will cause damage to the plaintiff to whom he owed a duty of care due to their proximity, and thus he failed to conform to the standard of care set by the law, resulting in the plaintiff suffering damages as a result of his neglect.

Duty of Care & Occupier's Liability

The law on occupier's liability in Malaysia is derived from English Common Law. An occupier is one who has a sufficient degree of control and immediate supervision over certain premises (*Hartwell v Grayson Rollo and Clover Docks Ltd* [1947] KB 917). He can be a single person or several people. All of them have a duty to entrants of the said premise if they retain control over the premise, including means of access (*Shanta a/p Manickam v Bhd & Anor* [2015] 11 MLJ 721). In common law, an entrant or visitor to the premises can be divided into a few categories. They are invitees, contractual entrants, licensees, and trespassers. However, for the purpose of this innovative product, the legal framework only concentrates on the standard of care that needs to be observed by an occupier towards legal visitors, namely invitee, contractual entrant, and licensee.

The law divides contractual entrants into two categories: main purpose entrants and ancillary purpose entrants. For main purpose entrants, the occupier must take special care and skill to ensure that the premise is safe for main purpose entrants to live in (*MacLenan v. Segar*, 1917:2 KB 328). The occupier, on the other hand, has a duty to ensure that the premise is reasonably safe for the ancillary purpose tenant (*Hall v Brooklands Auto-Racing Club*, 1933: 1 KB 205). The quality of care for contractual entrants is higher than for other sorts of entrants since they have paid for the privilege of entering the premises.

An invitee is the second category of an entrant. Someone who enters the premises with the consent of the occupier is referred to as an "invitee." He is also a visitor that comes to the property to assist the occupier financially. They are also divided into two groups: legal visitors

and business visitors (Stampark Place Sdn Bhd v. Liu Li(f) 2017, 1 LNS 320). The occupier is required by law to notify and take reasonable precautions for both categories of entrants in the event of any likely or unexpected hazard that the occupier knows or should have known could cause injury to the invitee. The occupier must take reasonable care to guarantee the safety of the invitee, notably in the case of a concealed and unusual hazard or danger.

For the third category of the entrant, namely the licensee, an occupier is not liable for injury sustained by the licensee if the injury was caused by dangers that the licensor should have known about. This is because a licensee is someone whose presence does not benefit the occupier but to whom the occupier has no objection. The occupier's standard of care is not to expose the licensee to a dangerous condition and to notify him about the danger that is truly known to the occupier (Sutton v Bootle Corporation, 1947: 1 All ER 92). The licensee cannot assume that the occupier has ascertained that his premise is safe from any dangers. Therefore, if the licensee has suffered damage while staying on the premise, an action may be taken against the occupier if it can be proven that a reasonable man would have appreciated the risks of the danger even if the occupier does not appreciate it (Hawkins v Couldson & Purely Urban District Council, 1953: 2 All ER 319). In this regard, the occupier's duty of care towards a licensee is slightly lower compared to the duty of care owed by him towards the contractual entrant and an invitee.

Standard of Operating Procedure and Law on Covid-19

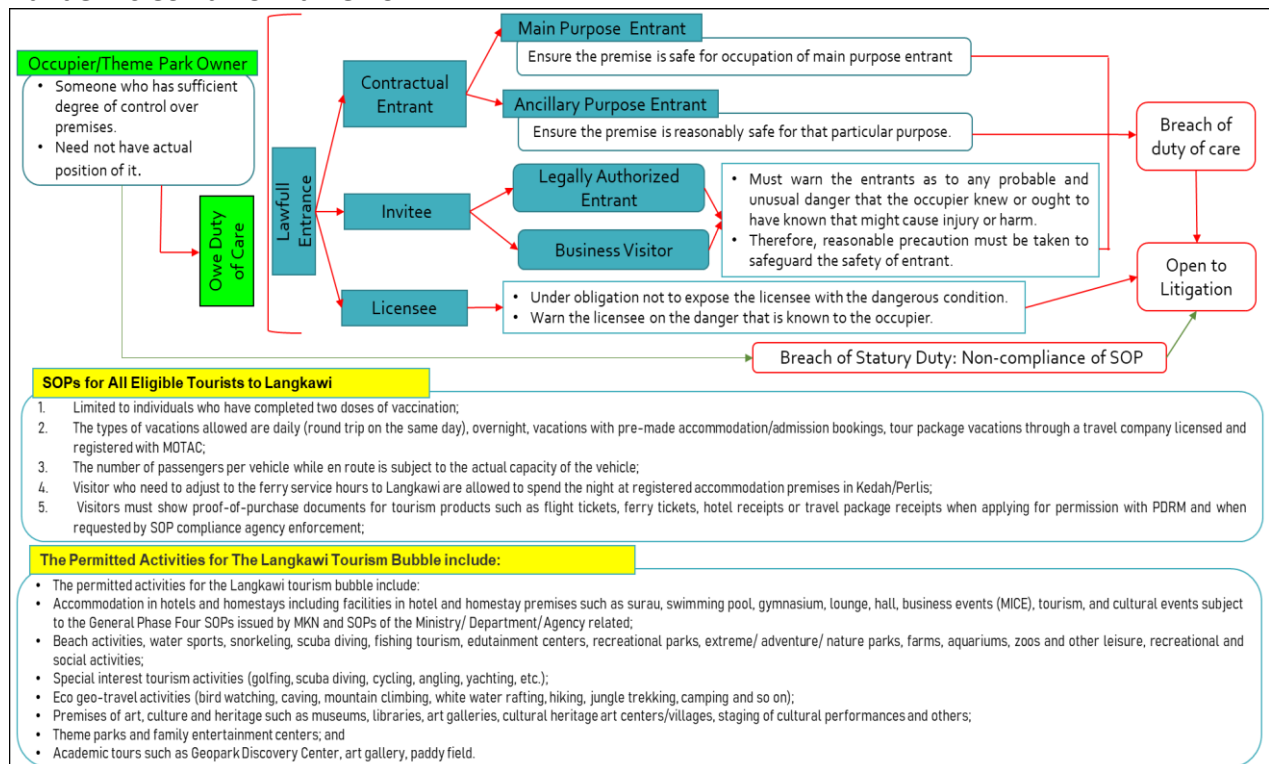
The Malaysian government has followed the procedures set by the World Health Organization and Ministry of Health while adhering to experts' advice in managing the pandemic from widely spreading the country. In addressing the impact and management of the pandemic, the Ministry of Health, the National Security Council, and the Prime Minister's Department have issued guidelines and standard operating procedures to be adhered to in combating the spread of the pandemic. The government has announced a new National Recovery Plan starting from Phase One until Phase 3. Three indicators will be considered before the shift from Phase One to Phase Two. The average daily COVID-19 case count falls below 4,000, the ICU bed occupancy rate must be moderate, and 10% of the population has received both vaccine doses. Among the SOP to be observed during Phase 1 is that only two household representatives are permitted to leave the house to obtain food, medicine, dietary supplements, and other essential necessities within a 10-kilometer radius of their home. Restaurants and eateries are allowed to operate between 6.00 am and 10.00 pm, while for those who have completed the vaccination doses, they have the liberty to dine-in in the restaurant with strict observance of SOP. However, picnic activities are not allowed during this phase (National Recovery Plan, 2021). The Prevention and Control of Infectious Diseases Act 1988 (Act 342) has been used to penalize those who breach the regulations and standard operating procedures as ordained by the Ministry of Health, National Security Council, and Prime Minister's Department. In addition, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 ("the COVID-19 Act"), which was just published on October 23, 2020, allows for temporary measures to mitigate the effects of the COVID-19 pandemic by amending the provisions of 16 statutes.

Recommendation

The tourism industry has been hit hard not only in Malaysia, but all over the world. Travel restrictions and refusals to travel due to infection fear have exacerbated the problem. The

uncertainty of COVID-19 can only be alleviated by the local government and relevant authorities providing clear and transparent information prior to the reopening of the tourism business. For tourism industry to recover, not only should the government encourage domestic travel and adopt policies that strike a balance between public health and economic demands; the tourism industry must also understand and comprehend the standard of care and legal obligations imposed by law. The challenge now is to teach the public and the industry players to be more socially responsible, self-disciplined, and knowledgeable about the regulations and laws that need to be adhered to before the tourism business can be rebuilt.

SOCO V2: Legal Pocket on Liabilities and Standard of Care for Tourism Industry During Pandemic Covid-19 Framework



Conclusion

With the opening of the Malaysian border and the revival of tourism activities, all the players in the industry need to ensure they obey all the SOPs going on for the COVID-19 outbreak. Policymakers should also play a role in limiting the spread of the COVID-19 virus, particularly with the new variant in the neighbouring countries. The government should make it clear to industry participants what the punishment and penalty will be if they do not follow the stated rules, regulations, and SOP. Other than that, governments also need to play a part in instilling the citizens' trust and confidence to take part in economic activities.

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