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NEGLIGENCE-LIABILITY OF PUBLIC AMUSEMENT OPERATORS FOR DANGEROUS PREMISES

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NEGLIGENCE—LIABILITY OF PUBLIC AMUSEMENT OPERATORS FOR DANGEROUS PREMISES—While a patron at a dog race track, plaintiff suffered injuries when she slipped on an empty beverage bottle left in the aisle of the grandstand. In an action against the proprietor, a motion for directed verdict in favor of defendant was granted on the theory that plaintiff had failed to show defendant's actual or constructive knowledge of the presence of the bottle; the trial court further stated that if constructive knowledge were relied on, the plaintiff must prove that

the bottle had been in the grandstand long enough for the owners, in the exercise of reasonable care, to have discovered and removed it. *Held*, reversed; while this may be the correct rule with respect to ordinary places of business, it is not applicable in the case of a public amusement park, where many patrons fill the aisles and are permitted to purchase and drink bottled beverages and to set the empty bottles anywhere. The question of whether defendant exercised ordinary care should have been submitted to the jury. *Wells v. Palm Beach Kennel Club*, (Fla. 1948) 35 S. (2d) 720.

The general rule is that the possessor of land is required to use reasonable care to make the premises safe for the business visitor, or to warn him of dangerous conditions or activities creating an unreasonable risk of which the possessor knows or which with reasonable vigilance he could discover.[1] This rule has been universally applied to places of public amusement,[2] and it is settled that there is no liability imposed on the owner of an amusement park for injuries to a patron without showing that the defendant either knew or should have known of the dangerous condition.[3] It is true that the language in numerous opinions seems to support the trial court's theory that, in the absence of proof of actual notice, the plaintiff, to prove constructive notice, must show that the dangerous condition has existed a sufficient length of time for the owners to have discovered and removed it.[4] But a close analysis indicates that the point of emphasis in such cases is that liability is founded on the proprietor's fault in failing to discover and remedy the defect, and that he is not subject to strict accountability for all injuries.[5] He is under a general affirmative obligation to use due care to see that the premises are safe and to guard against all risks which might reasonably be anticipated; thus, he is not exonerated simply because he had no precise knowledge of the defective condition.[6] While the length of time the condition has existed is a very crucial point in the case of a latent defect or one not reasonably to be expected, the require-

[1] PROSSER, TORTS, § 79 (1941); 2 TORTS RESTATEMENT, § 343 (1934).

[2] Chamberlain, "Liability of Proprietor of Place of Public Amusement for Injury to Patron," 21 CAS. AND COM. 718 (1915); Hudson v. Kansas City Baseball Club, 349 Mo. 1215, 164 S.W. (2d) 318 (1942); 142 A.L.R. 858 at 868 (1943); Boucher v. Paramount-Richards Theatres, Inc., (La. App. 1947) 30 S. (2d) 211 (incorrectly relied on by the court in the principal case to support its conclusion that reasonable care as applied to a race track requires a higher degree of diligence than when applied to any other place of business).

[3] Berberet v. Electric Park Amusement Co., 319 Mo. 275, 3 S.W. (2d) 1025 (1928); 61 A.L.R. 1269 at 1289 (1929); Scott v. University of Michigan Athletic Assoc., 152 Mich. 684, 116 N.W. 624 (1908). In Francis v. Cockrell, L.R. 5 Q.B. 184 (1870), earliest case on the subject, the court analogized the position of the owner of a grandstand to that of the operator of a common carrier. This analogy has been brought up in recent cases but refuted by the courts. 1 THOMPSON, NEGLIGENCE, 2d ed., § 996 (1901); Boucher v. Paramount-Richards Theatres, Inc., (La. App. 1947) 30 S. (2d) 211; Phillips v. Butte Jockey Club and Fair Assoc., 46 Mont. 338, 127 P. 1011 (1912).

[4] Dalton v. Hooper, (Tex. Civ. App. 1914) 168 S.W. 84; Hunker v. Warner Bros. Theatres, 115 W.Va. 641, 117 S.E. 629 (1934); Reiher v. Mandernack, 234 Wis. 568, 291 N.W. 758 (1940); Boucher v. Paramount-Richards Theatres, Inc., (La. App. 1947) 30 S. (2d) 211.

[5] Nabson v. Mordall Realty Corp., 257 App. Div. 659, 15 N.Y.S. (2d) 38 (1939).

[6] Redmond v. National Horse Show Assoc., 78 Misc. 383, 138 N.Y.S. 364 (1912).

ment of constructive notice might properly be said to have been fulfilled where large crowds are permitted to drink bottled beverages, purchased on the premises, and to litter the aisles with the containers.[7] The negligence in such a case consists of the failure to take adequate precautions to guard against injury to patrons by reason of the bottles being scattered about.[8] The holding in the principal case seems rational and in accord with the basic theory of the invitor's liability in allowing the jury to find, from circumstances other than the length of time the defect has existed, that the owner should have known of a dangerous condition involving an unreasonable risk to his patrons. It is submitted, however, that no persuasive reason exists for limiting this approach to amusement park cases; considerations of policy and logic justify extending it generally to cases of this class.

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[7] Seligson v. Victory Pool, Inc., 187 Misc. 1067, 66 N.Y.S. (2d) 453 at 453 (1946); "Evidence that people were drinking from and children playing with glass bottles near a swimming pool sustained a verdict against the operator for injuries to a patron who cut her foot on a piece of glass bottle in the pool, notwithstanding absence of proof that other patrons had been in the habit of throwing things into the pool so as to put the operator on notice."

[8] Martin v. Los Angeles Turf Club, 39 Cal. App. (2d) 338, 103 P. (2d) 188 (1940). On the same facts as the principal case, judgment for plaintiff was affirmed; the question of the defendant's knowledge of the presence of the bottle was not raised, nor did there seem to be any evidence as to the length of time it had been there.