

## CHAPTER 16

# STANDARD OF CARE FRAMEWORK FOR OCCUPIER DURING PANDEMIC COVID-19 (SOCO V.3): REVIVING TOURISM THROUGH UNDERSTANDING LAW

Suria Fadhillah Md Pauzi, Mohamad Sahizam Musa, Shamsinar Rahman,  
Mohd Azim Zainal, Ida Rosnita Ismail

Universiti Teknologi MARA Pahang, Malaysia, Universiti Kebangsaan Malaysia,  
Malaysia

*shamsinar512@uitm.edu.my*

### ABSTRACT

The tourism industry has been impacted hard by the Covid-19 outbreak and the measures put in place to stop it spreading. Countries including Malaysia are turning to build recovery strategies in an immediate effort to support the tourism sector. Restructuring the tourist sector by creating green bubble and restoring visitor's trust on safety in travel and tourism are among measures taking by the government in tourism recovery plan. The main objective of this product is to impart legal knowledge and awareness in tourism industry players pertaining to their obligations and liabilities in managing the influx of visitors. The novelty of this product stems from its unified legal framework, which minimises the difficulty of learning and interpreting the laws by combining the legal standard of care with the government's most recent Standard Operating Procedures. In addition, infographics on types of visitors as recognised by law and different legal obligation to be adhered by the tourism players are integrated in SOCO v.3 to give an insight to the concerned parties pertaining to the legal liabilities provided by tort law while a checklist is offered for the parties to systematically evaluate and assess their observance to relevant rules and regulations. This unified framework can be used as a reference for tourism businesses to run their operations and avoid future lawsuits. This framework is easily marketed because it comes in the form of an e-brochure that contains up-to-date legal information on current issues during Covid-19, which is a once-in-a-lifetime event. In term of benefit, SOCO V.3 provides pertinent legal information in preparing the tourism players to a soft opening while supporting tourism to survive in a new norm. Besides that, it encourages sustainable tourism by

restoring visitor's confidence through adherence to laws, regulations, and standard operating procedure by the tourism players.

**Key Words:** Standard of care, occupier, Legal framework, pandemic Covid-19, tourism industry

## 1. INTRODUCTION

Tourism industry is very important to one country as tourism generates foreign exchange, create job opportunities to local communities, the openings of many businesses such as small business that produce local products to attract tourist and indirectly support local development (OECD, 2020b)(World Travel and Tourism Council (WTTC), 2021). Hence it is vital for every country to encourage the reopening of the tourism sector especially for local tourism to ensure all the above-mentioned benefits are in position.

The Coronavirus Disease 2019 (Covid-19) crisis has had an impact on the entire tourism ecosystem and reopening and restoring sites will necessitate a coordinated effort among industry players (OECD, 2020b). To rescue the economy from pandemic and to stimulate local economic growth, many governments around the world allowed the company and industries to re-open their business but with new strategies to suit the new norm. The reopening of tourism industry requires not only government effort in restructuring the tourism sector, but also great cooperation among industry players such as the businesses, employees, visitors and customers, suppliers, and all other stakeholders.

Standard of Care Framework for Occupier During Pandemic Covid-19 (SOCO v.3) is developed to support the tourism industry in reinstating the confidence in visitor toward tourism's player. SOCO v.3 contains rich presentation for subject-matter of innovation namely types of entrants, the duty and standard of care of an occupier towards the entrant. A legal framework is used as a design tool because it suits the objective of the product in imparting the complex knowledge of law pertaining duty of care and legal obligation of an occupier. The legal information is conveyed in systematic flow using pictures and narration. In addition, infographics and a checklist are provided for for the parties to systematically evaluate and assess their observance to relevant rules and regulations. The objective of this product is to impart legal knowledge and facilitate readers to better understand the law and regulation pertaining to tourism industry during soft opening of the tourism sector. In addition, it aims to facilitate the users on observance of standard of care by providing checklist on legal duties to be adhered by respective parties.

## 2. LITERATURE REVIEW

Law encompasses every sphere of life in a community and country. Therefore, legal knowledge is indispensable for every individual as it is very helpful to tackle and understand legal issues which revolve around us in our daily life. Unfortunately, understanding legal provisions among general public proves to be a challenge in achieving the desired level of legal knowledge. According to Gibbons (1999), the law is written in legal jargon, which is a

highly technical language that might have multiple meanings in different contexts. As a result, the author said that it is difficult for non-lawyers to interpret and understand it. Similarly, while Charrow, Crandall, and Charrow (2015) acknowledged that legal language has its own lexical peculiarity, they also maintained that society has a right to a more understandable legal language. Therefore, simplifying the highly technical legal language is deemed necessary. For instance, the integrated texts and visuals make it possible to deliver information to readers in an appealing manner (Scott et al., 2016). The infographic's appealing features make it a great tool for delivering legal information. It enables users to quickly read and absorb key information without having to go through lengthy paragraphs. Although infographics have been employed in a variety of fields, including healthcare, their effectiveness in the legal field has yet to be discovered.

### 3. METHODOLOGY

Table 3 List of Selected Case to Review from Website

No.	Case Title	Year	Volume	Source	Page
1.	Stampark Place Sdn Bhd v. Liu Li (f) [2017] 1 LNS 320	2017	1	LNS (Legal Network Series), Current Law Journal	320

Table 2 List of Selected Case to Review from Books

No.	Case Title	Year	Volume	Source	Page
1.	Harris v. Birkenhead Corporation	1976	1	All ER (All England Report), Book; Law of Torts in Malaysia	341
2.	MacLenan v. Segar	1917	2	KB (King Bench) Book; Nathan on Negligence	328
3.	Sutton v Bootle Corporation	1947	1	All ER (All England Report), Book; Nathan on Negligence	92
4.	Wheat v Lacon & Co. Ltd	1966	1	All ER (All England Report), Book; Law of Torts in Malaysia	582

This paper used a legal methodology known as doctrinal method. This paper employs library-based research method, which the primary sources and online databases

as secondary sources used statutes, regulations and decided cases. This method is used because it involves reading and interpreting the laws, statutes and decisions of courts. This study reviews the cases taken from English Common Law and Malaysian Law. For this study, cases were chosen based on the keywords **\*standard of care\*** which lead to the discussion on the standard of care on the occupier. The searching process for cases was done using two different sources; the first website search is Current Law Journal (1 case, Table 1). The second source referred to is from the books; the Law of Torts in Malaysia 3<sup>rd</sup> Edition and the Book Nathan of Negligence and the Book Law of Tort in Malaysia 3<sup>rd</sup> Edition (4 cases, Table 2).

#### 4. DISCUSSION

It is common knowledge that the occupier has a duty of care to visitors to his premises. As a result, an entrant who is injured as a result of the occupier's negligence in failing to offer a safe premise or failing to follow standard procedures in managing his business may be subject to civil action. An occupier is defined as someone who has a sufficient level of control over a property but does not need to have complete control over it (*Wheat v. Lacon & Co. Ltd* [1966] 1 All ER 582, HL). Therefore, even though he does not have physical control of the premises, if he has the authority to grant or deny permission to someone to enter, he is regarded as an occupier (*Harris v. Birkenhead Corporation* [1976] 1 WLR 279, [1976] 1 All ER 341, CA). In Malaysia, an occupier's duty of care is founded on common law principles.

According to the common law, the standard of care required by law differs in accordance to types of entrants to the premise. Contractual entrants, invitees, licensees, and trespassers are among them. However, for the purposes of constructing the legal framework, the standard of care to be observed by an occupier will be focused on only three types of legal entrants: contractual entrants, invitees, and licensees. For contractual entrance, an occupier must exercise care and skill in ensuring the premise is safe for the occupancy of main purpose entrants (*MacLenan v. Segar*, 1917). On the other hand, an invitee is someone who entering the premise with the consent of the occupier and provides the occupier with economic benefit. For this type of entrant, the law requires "the occupier to warn and apply reasonable care for any probable and unusual danger of which the occupier knew or should have known that could cause injury to the invitee" (*Stampark Place Sdn Bhd v. Liu LI(f)*, 2017). For the third category of entrant name **licensee**, the occupier's standard of care is to not to expose the licensee to a dangerous condition and to warn him about the danger that is truly known to the occupier (*Sutton v. Bootle Corporation*, 1947). In this regard, the occupier's duty of care to a licensee is slightly lesser than the occupier's duty of care to a contractual entrant and an invitee.

##### 4.1 Product Description

Standard of Care Framework for Occupier During Pandemic Covid-19 (SOCO v.3) is developed containing rich presentation for subject-matter of innovation namely the duty and standard of care of an occupier towards the entrant. A legal framework is employed as a design technique because it fits the product's goal of teaching complicated legal knowledge about an occupier's duty of care and legal obligations. The legal material is

presented in a systematic order, with visuals and narration. Because reading laws can be difficult, this product intends to help the reader better comprehend the law by clarifying the numerous types of entrants recognised by law, as well as the various types of standards of care that must be observed by tourism players. In addition, infographics and a checklist are provided for the parties to systematically evaluate and assess their observance to relevant rules and regulations.

#### **4.2 Novelty and Uniqueness**

In learning laws, learners are expected to read judicial opinions, statutes, legal maxims and legal principles which finally exhausts the reader and left him perplexed. The Standard of Care Framework for Occupiers During Pandemic Covid-19 (SOCO) was created to simplify the process of learning and interpreting rules. The product provides a platform for students to understand the complexities of law in a straightforward manner. Thus, the novelty of this product can be noticed in the framework development, which aims to minimise the difficulties of learning and understanding regulations that necessitate a large number of legal documents. This product is unique in that it is the first comprehensive framework that combines the legal standard of care with the most recent SOP decreed by the government to be used as a reference for tourism sectors in operating their businesses. It is a very important reference because it simplifies the legal information that tourist players must follow while restarting their businesses. Besides that, it also offers a checklist enabling the parties to monitor and analyse their compliance with relevant rules and regulations on a regular basis.

#### **4.3 Benefit to Mankind**

The Standard of Care Framework for Occupiers During Pandemic Covid-19 (SOCO v.3) is a valuable resource for tourism operators since it simplifies the legal information that must be followed by all parties involved in reopening the business. It is simple to comprehend, effective, and engaging especially for public who faced difficulty in understanding legal jargon. Furthermore, as it provides clear legal information, it is a powerful to build sustainable tourism in order to restore visitor's confidence while supporting safe return of local tourism. In addition, the product able to support tourism industry to survive and adapt to the new norms by providing checklists that need to be adhered to avoid legal liabilities..

#### **4.4 Potential commercialization**

In terms of commercialization, the product has a lot of potential to be used as legal assistance for tourism businesses as they operate during this once-in-a-lifetime event. This framework is easily sold since it comes in the form of an e-brochure with up-to-date legal information about the duty of care for visitors to business premises and the standard operating procedures that must be followed to avoid lawsuit especially during this unprecedented event.

## 5. CONCLUSION & RECOMMENDATION

The tourism industry has taken a beating not only in Malaysia, but also around the world. Travel restrictions and refusal to travel owing to fear of illness have exacerbated the problem. The impact of Covid-19 on tourism industry must be wisely handled by the government by restructuring and reforming the industry with vigorous cooperation from various parties including private sectors and public at large. Reviving tourism industry not only requires encouragement on domestic travel but also restoring public confidence towards the safety and health on travel and participation in industry's activities. Therefore, to strike a balance between public health and economic recovery, a systematic plan must be adopted by government which to include awareness on specific laws and regulations. SOCO v.3 can be beneficial and convenient tool to recover public confidence by providing simplified legal information in the form of legal framework, engaging infographics and a checklist allowing the parties to regularly evaluate and analyse their compliance with relevant rules and regulations.

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