

James Polk – AISOL Tort Law Midterm 2022

Though Peter may or may not have been about to become a patron of Dell's after using the restroom, Dell's being open to the public makes Peter a Public Invitee and the Waitress directing Peter to the restroom is an indication that Peter was not trespassing by attempting to use the restroom. It is an argument that Dell's might want to make about Peter's entrance into the restroom though. Since he had not decided to purchase any food and to eat at the establishment, he was not that day a patron. It is likely to be a successful argument because he asked the waiter where the bathroom was. Any argument about him having been a patron in the past also does not make him a patron yet on the day in question. I am not of the opinion that Peter was trespassing. If Peter were trespassing, it is the type of trespass that is likely to occur and so therefore Dell's still has a duty to maintain safe conditions in the area where trespassing is likely to occur, which is concurrently a place where it would be reckless for them not to maintain safe conditions due to the use of the restrooms by their de facto patrons.

There is highly likely premises liability on the part of Dell's due to a burnt-out bulb causing there to be zero lighting. There may also be premises liability for the placement of the toilet itself being away from the light of the door, though this is a lesser element of the unsafe conditions found in the restroom. Dell's has a duty of due care to provide a bathroom in safe condition for the public invitees who end up walking into the restroom. Dell's breached their duty of due care by not maintaining the lighting in the restroom and therefore they are very likely to be adjudicated as having caused the damage incurred by Peter due to his fall in the restroom. A better defense than any other defense on Dell's side of the arguments is the fact that, though Peter could not see the toilet, he walked into the darkness and ended up

falling which could have been avoided by choosing not to walk into the darkness.

The botulism incident from the mushrooms is a much more serious situation, one for which I believe there to be almost invariably liability on the part of Dell's. Though it is not necessarily the case that Dell's was the cause of the botulism suffered on the part of John, it is highly likely that if a can of the improperly prepared mushroom batch in question about which the manufacturer had already warned Dell's was in fact used in the preparation of John's mushroom containing food, then Dell's will have a very hard time defending themselves and arguing that they did not cause the botulism. It might be difficult to show any evidence of the empty cans of the acme mushrooms which were served specifically to John. Acme having offered to replace the mushrooms leaves Dell's without any excuse at all, let alone a good excuse for having served dangerous mushrooms to customers.

Carl seems like he should have somehow known of the general possibility that Dell's had a guard dog. I don't imagine that a dog chained near a garbage bin to ward off trespassers is necessarily an unsafe condition in and of itself and might not make Dell's necessarily liable, but I think this because it seems like a case where a general liability insurance policy and a workman's compensation insurance policy would step in and make a settlement before a case like this went to trial. This is sort of a sidestep of the issue, but not exactly. I am dealing with the fact that the dog itself did not do any direct damage and there would be arguments about whether Carl had another option to avoid being bitten other than climbing the fence. The dog was chained and properly inside of the fence.