#### DCPI 682/2010

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 682 OF 2010

BETWEEN

LEUNG CHEUK HIN Plaintiff

and

THE HONG KONG POLYTECHNIC UNIVERSITY Defendant

(香港理工大學)

##### Before: Deputy District Judge K. Lo in Court

Dates of Hearing: 13, 14 and 16 June 2011

Date of Delivery of Judgment: 19 August 2011

## JUDGMENT

**Background**

1. The Plaintiff, a former student of the Defendant, sued the Defendant for loss and damage suffered by him as a result of a slip and fall in the towelling area in the male changing room of the Defendant’s Sports Centre in the afternoon of 26 May 2007.
2. The parties had previously agreed quantum in this case at $200,000.
3. The only outstanding issue to be resolved by the Court is liability.

**Issues**

1. Parties agree that the key issues in the present dispute are namely:-
2. Did Plaintiff slip and fall as he alleged?
3. Was the accident caused by the negligence of Defendant?
4. Whether Plaintiff should be held contributory negligent?
5. *Did Plaintiff slip and fall as he alleged?*
6. It is agreed that at the material times, the Plaintiff, then a student of the Defendant, was a lawful visitor of the changing room together with his friend Lam Chi Yuen (“Lam”) when he allegedly met his slip and fall.
7. According to the Plaintiff, he had his swimming goggles after he entered the male changing room and was heading for the shower area. He said when he reached the towelling area situated just before the shower area, and before he was able to step on the anti-slip mat, he slipped and fell. He said there was just one anti-slip mat placed immediately adjoining the shower area with the rest of the towelling area not covered with anti-slip mat. Plaintiff described the width of the said anti-slip mat was about 2 feet, though he was not able to tell the length of the said mat.
8. He agreed that the floor of the towelling area was covered with anti-slip tiles.
9. Plaintiff said he had already walked with small steps, slowly and carefully, watching the steps as he walked but he still slipped when he was on his third step inside the towelling area. He said he believed he slipped on some water on the floor.
10. Plaintiff admitted that he had been to the changing room many times in the past whilst he was a student there. On those occasions, he noticed most of the towelling area was covered with anti-slip mats. He said it was different on the date of accident. He also agreed that along the path in the changing room heading towards the towelling area, the floor was covered with anti-slip mats, the same for the locker area.
11. He also agreed that at different locations on the wall of the male changing room, there were warning signs asking people to beware of slippery floor.
12. Plaintiff said on the day in question, he did not notice any yellow sign placed on the floor warning people of slippery floor.
13. In fact, one odd month after the accident and before the Plaintiff informed the Defendant of the accident, Plaintiff had taken photos of the changing room. The photos are shown in P. 113 - P. 115 of the Trial Bundle. These photos show that most of the towelling area was covered with anti-slip mats and that, as said, there were warnings sign on the wall. Further, these photos show there were also yellow sign placed on the floor warning people to take heed of the slippery floor.
14. Plaintiff said as a result of the accident, his right elbow and right buttock landed on the ground and was injured. Plaintiff said after the fall, he proceeded to have a shower. Then, he told his friend Lam of the accident and pointed to him the place where he slipped earlier. Later Lam brought him to a Chinese bonesetter for treatment.
15. Plaintiff said immediately after the accident, as he thought the injury was not severe and he had no intention to sue the Defendant, he did not report the accident to the staff at the reception counter just outside the changing room. He also admitted not having told Lam or any staff of the Defendant about the water on the floor or the unusual absence of anti-slip mats in the towelling area. He said he only first thought of bringing an action against the Defendant in early July 2007.
16. Plaintiff’s friend Lam said when he was in the changing room, Plaintiff told him of the earlier accident and pointed to him at a distance the place where he allegedly slipped. Lam said he just had a brief glance at a distance of the alleged accident spot. He did not go over and look.
17. During cross-examination, Lam said that according to his recollection, the spot where Plaintiff said he slipped was not covered with anti-slip mat. Lam however could not tell whether the rest of the towelling area was covered with anti-slip mats. He said he could not remember at all.
18. The Defendant has no witness to the alleged accident. The only evidence therefore comes from the Plaintiff and Lam.
19. The two orthopaedic experts who had examined the Plaintiff agreed that the injures of the Plaintiff is consistent with the mechanism/mode of accident described by him.
20. I find in the circumstances that the Plaintiff did slip on some water on a spot not covered with anti-slip mat in the towelling area, the floor of which was fitted with anti-slip floor tiles.

*(2) Was the accident caused by the negligence of Defendant?*

1. Mr. C.K. Wong and Mr. S. Chan, counsel for the Plaintiff and the Defendant respectively referred this Court to the case of ***Ward v. Tesco Stores Ltd.*** (1976) 1 WLR 810 where the Plaintiff slipped on some spilled yoghurt in an aisle of a supermarket.
2. Megaw LJ at p. 815, as quoted by Mayo VP in ***Cheung Wai Mei v. The Excelsior Hotel (Hong Kong) Ltd.*** (CACV 38/2000, 22/11/2000) at P. 7 of his judgment, said:-

*“It is for the plaintiff to show that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendants than the absence of fault ….. When the plaintiff has established that, the defendants can still escape from liability. They could escape from liability if they could show that the accident must have happened, or even on balance of probability would have been likely to have happened, even if there had been in existence a proper and adequate system, in relation to the circumstances, to provide for the safety of customers. If the defendants wish to put forward such a case, it is for them to show that, on balance of probability, either by evidence or by inference from the evidence that is given or is not given, this accident would have been at least equally likely to have happened despite a proper system designed to give reasonable protection to customers.”*

1. It is submitted by Mr. Chan, that it is only when Plaintiff manages to establish a prima facie case of “fault” as Mayo VP said in last paragraph of P. 6 that “there has been a degree of negligence on the part of a defendant” before there is the need to consider the adequacy of the system on safety.
2. Mr. Wong, agreed that this legal principle has been applied in ***So Wang Chun v. Rainforce Ltd & Others*** HCPI 64/2006. The case concerns a slip and fall accident which took place in a podium of a commercial complex. Sakhrani J said that:

*“The mere fact of the occurrence of the accident is not sufficient to give rise to a presumption of negligence on the part of the defendant. The burden of proof is on the plaintiff to show on a balance of probabilities that there has occurred an event which is unusual and which, in the absence of explanation, is more consistent with fault on the part of the defendant than the absence of fault. If, and only if, the plaintiff proves that the unusual event is more consistent with fault on the part of the defendant than the absence of fault, the evidential burden then shifts to the defendant to show, on a balance of probabilities, that the accident happened without negligence on its part.”*

1. *Has there been an unusual occurrence which in the absence of explanation is more consistent with fault on the part of the defendant than the absence of fault?*
2. In the present case, the accident site is the towelling area adjacent to the shower area in a changing room.
3. It is undisputed that there are anti-slip tiles on the floor. It is therefore reasonable for any visitor to the changing room, in particular the towelling area adjoining the shower area, to expect there would possibly be spillage of water on the floor.
4. As the Plaintiff pointed out in paragraph 21(1) of his witness statement dated 23 November 2010:-

*“(1) Whenever I walk into the towelling area, I always walk slowly and pay attention to the floor because I know that such area might be wet. This is obvious because people who go in and out of the showers would very likely leave water on the floor as they walk through such area.”*

1. Leung Chi Keung (“Leung”) worked for Campus Facilities Management Company Ltd. (CFM), a subsidiary of the Defendant, as a cleaning worker. His daily working hours was from 7:30 a.m. to 5:30 p.m. He said he was responsible for cleaning of the said changing room. Every morning when he started work, he would first unroll the anti-slip mats placed at different locations in the changing room. He had a clear recollection of the number of anti-slip mats in the towelling area, he said there were 3 and they were placed as shown in photos on P. 116 and P. 117 of the Trial Bundle, covering most area of the towelling area.
2. He also told the Court the locations of the rolled up anti-slip mats in the morning.
3. He said at around 7:50 a.m. every morning, as one of his first jobs in the morning before he carried out any other cleaning work, he would always unroll the anti-slip mats and put them back into their proper positions.
4. It is not disputed that the anti-slip mats were quite heavy and could not be lifted or moved easily. He also said he was not able to move the mats to other locations and they were always placed in manner as per the photos taken by the Plaintiff (P. 115 of the Trial Bundle). Leung said he actually used his feet to kick in order to unroll them.
5. Leung said after he had finished his cleaning work inside the male changing room, he would sign on the ‘Toilet Cleaning Record’. On the day of the accident, after he finished his first round of cleaning, he put down his signature at 9:05 a.m. He said the ‘Toilet Cleaning Record’ would also be countersigned, and was so countersigned on the day of the accident, by one Mr. Lo of the Facilities Management Office of Defendant (“FMO”).
6. According to Leung, Mr. Lo would inspect the work done by them and after that he also put down his signature.
7. Leung when asked in Court commented that it was impossible that there was only, on the day one small-sized anti-slip mat placed in the towelling area as alleged by the Plaintiff.
8. Leung said he would visit all the areas of the changing room during each visits, including the shower area and the towelling area. He would clear away any rubbish (e.g. shampoo or shower gel packings or empty plastic bottles) inside the shower area, would empty the trash bin and mop any excess water on the ‘edges’ area of the floor not covered by the anti-slip mats at the towelling area and the changing area.
9. Leung testified that the anti-slip mats were all there on each of the 4 occasions (i.e. 9:05 a.m., 10:50 a.m., 2:21 p.m. and 5:08 p.m.). He produced the Toilet Cleaning Record (code V004) (P. 129 of the Trial Bundle).
10. He denied having failed on the date of accident to place all 3 anti-slip mats in the towelling area except for a small anti-slip mat, as alleged by the Plaintiff.
11. Leung said during duty hours, if he was notified that there was water on the floor, keeping it dry.
12. Leung said often, CFM would send recreational assistant to the male changing room for inspection and if he found there was any cleaning problem, he would notify Leung. Leung said on the day, he received no complaint nor was he told that there was wet area that needed his attention.
13. Leung said there were always 2 plastic warning signboards placed on the floor reminding people of wet slippery floor. One would be placed at the male changing room entrance and the other one in the towelling area as in photos on P. 116 of the Trial Bundle. He said there were 3 similar signs on the wall in the changing room, one of which was in towelling area.
14. Leung further told the Court that they have morning briefing session daily with the foreman.
15. Lau Yee Kam (“Lau”), a Grade II Recreational Assistant with CFM said her daily duty hours was from 8 a.m. to 1:30 p.m.
16. Lau produced the inspection record for 26 May 2007 (P. 138 and P. 138A of the Trial Bundle). Lau said both herself and a Mr. Chan Ying Lun (“Chan”) were on morning shift duty that day. Record shows they had inspected the said changing room from 8:00 a.m. to 8:10 a.m., 10:10 a.m. to 10:25 a.m., 12:50 p.m. to 1 p.m. and 3:30 p.m. to 3:45 p.m., total 4 times.
17. Lau said the 1st, 2nd and 4th inspections were done by Chan and she did the 3rd inspection. She said Chan did not tell her that there was wetness in the changing room that need follow up. Lau said on the day, as she had to do the 3rd inspection and it was during opening hours of male changing room, she did not actually enter and check the male changing room as it was not convenient. She said however if she was the one doing the 1st inspection for the day, as the male changing room was not yet open for use, she would enter the male changing room and did the inspection.
18. Lau said, in addition to her supervision, often the Defendant would also send supervisor, inspector and secret customer to the changing room to perform random checks making sure that work was properly done.
19. Lau also confirmed that the floor area leading to the shower area was always covered with anti-slip mats and that she or her colleague, Mr. Chan Ying Lun, would check the condition of the changing rooms in the morning before the sports centre was opened to the users at 8:20 a.m.
20. She said she and other counter staff were required to complete and sign on an ‘Inspection Report’ every day recording their findings after the patrol.
21. According to Lau, the column of ‘Floor’ under the item ‘Changing Room’ would include, amongst others, check whether the anti-slip mats had been placed in their proper positions. If any problem concerning the floor was discovered, Lau said she would notify Leung direct.
22. According to the record, both of them had found everything to be in good order and condition on the day.
23. Under cross-examination, Lau disagreed that even if she had inspected, she would not have noticed if some of the anti-slip mats were in fact taken away for washing during the day. Lau explained as the anti-slip mats nearly cover all the towelling area, it was noticeable if any piece of these mats was missing.
24. Further, Lau said supervisors from the PE Team of the Students Affairs Office of Defendant would also compile an ‘Inspection Random Check Record’ (P. 140 of Trial Bundle) after performing daily random check on inspections made by Lau and other staff employed by CFM.
25. According to the Inspection Random Check Record on the day of the accident, both representatives from the Student Affairs Office i.e. Miss Chan May Ying and Mr. Lam Fat Bo had conducted inspections between 10 a.m. and 12 noon and between 5 p.m. to 7 p.m. and both did not notice any problem during their inspections.
26. Lau said in her few years’ working experience with CFM, most of the towelling area was covered with anti-slip mats and there was no occasion when the anti-slip mats in the towelling area went missing, as now being alleged by the Plaintiff.
27. Lau said further that it would be impossible for the cleaner to take the mat away because there would be no place to store the same.
28. Lee Chi Wing (“Lee”) is and was at the material times the cleaning supervisor of CFM.
29. Lee confirmed the changing room was cleaned by cleaning worker and the recreational assistant would inspect the work done. He said early each morning he patrolled the changing room and he always found the anti-slip mats rolled up and placed inside the changing room.
30. I must say that the defence witnesses have all impressed the Court as reliable witnesses.
31. The dispute of fact in this case is whether the towelling area at the time of accident was only covered with one anti-slip mat as opposed to most area being covered with anti-slip mats the usual condition as admitted by the Plaintiff.
32. The first time Plaintiff made known his allegation of “missing anti-slip mat” is no less than 1 ½ months after the accident.
33. It is submitted by Mr. Chan on behalf of the Defendant that Plaintiff’s allegation is simply incredible and highly unreliable.
34. It is also submitted that little weight, if any, could be attached to the evidence of Lam because when he was told by the Plaintiff of the accident, he did not actually go over to the towelling area and look. He just had a fleeting glance of the towelling area from a distance. He only managed to say that the spot where the Plaintiff allegedly slipped was not covered with anti-slip mat and he was not able to tell whether the rest of the towelling area was covered with anti-slip mats.
35. Defence submitted that it is strange that Plaintiff did not mention the missing anti-slip mat when he told Lam of the accident if he found that to be a reason of his slip and fall. I agree.
36. According to the evidence of the Plaintiff and Lam, the slip should have taken place between 2:30 p.m. to 2:45 p.m. The evidence of Leung that he had inspected the changing room at 2:39 p.m. on the day and that the anti-slip mats was there then is not disputed.
37. Having considered the evidence before this Court, I find, that at the time of accident, most of the towelling area was in fact covered with anti-slip mats, although I agree that the exact location where the Plaintiff slipped was not covered and was probably within the “edge” area.
38. I do not find the mere occurrence of the slip and fall of the Plaintiff due to some water on the anti-slip tile floor of the towelling area (beside the shower area) in the changing room and with all the warning signs and anti-slip mats is by itself an “unusual event, which, in the absence of explanation, is more consistent with fault on the part of the defendant than the absence of fault.”
39. In my view, even if someone had within the few minutes’ interval taken away the mats, which I do not find likely and there was only one piece of anti-slip mat placed in the towelling area on the day, I still maintain the same answer. I do not find a prima face case of “negligence” or “fault” made out. It is therefore not necessary for this Court to consider the adequacy of the system of safety.

*(b) Did the accident happen or would have been likely to have happened even if there had been in existence a proper and adequate system?*

1. Had the Plaintiff managed to establish a prima facie case (which I do not find) and the burden is shifted to the Defendant to show, on a balance of probability, that the accident happened without negligence on its part, then according to the legal principle in ***Cheung Wai Mei*** and ***So Wang Chan***, we need to consider if there was a proper and adequate system of safety for visitors to the changing room.
2. Leung and Lee both testified that the anti-slip mats were rolled up by the night shift cleaning workers during the night in order to have the floor of the changing rooms washed and unrolled in the morning before the opening hours.
3. It is submitted by counsel for the Defendant, Mr. Chan that there is overwhelmingly clear and strong evidence (both oral and documentary) that the floor of the male changing room including the towelling area was found to be in good order and condition by at least 5 individuals on no less than 8 occasions on the day in question before the accident, namely:-
   1. Leung (9:05 a.m., 10:50 a.m. and 2:21 p.m);
   2. Mr. Lo of the FMO (some time in the morning on 26.5.2007);
   3. Lau (around 1 p.m.);
   4. Chan Ying Lun (around 8:20 a.m. and 10:25 a.m.);
   5. Chan May Ying (11 a.m.);
4. Both the Plaintiff himself and Lam accepted that most of the changing room was usually covered with anti-slip mats and that he had never come across the towelling area as he alleged, whether before or after the date of the accident.
5. It is submitted by the Defendant that if someone happened to remove the mats within the short period of time, that was an unusual occurrence which could not reasonably be prevented.
6. Mr. Chan invited this Court also to consider the case of ***Tedstone v. Bourne Leisure Ltd.*** [2008] EWCA Civ 654 which describes the slip and fall of the Plaintiff in the vicinity of a hotel swimming pool. May LJ said at p. 11:-

*“There will, of course, be water from time to time around a swimming pool and around a Jacuzzi, most often when people get out of the pool or the Jacuzzi and water drips off them. But of course in those circumstances the quantity of water will not be as great as that which Mrs. Goodwin described. Generally speaking, non-slip tiles should be regarded as sufficient for dealing with water of an occasional nature sufficiently dealt with by drainage or removal …..*

*….. Secondly, and importantly, water had been seen not to be there within five minutes before the accident ….. in my judgment on those facts no reasonable system would, on the balance of probabilities, have dealt with this unusual occurrence in the very short time available ….. On the facts of this case, and bearing in mind we are concerned with swimming pool, not the floor of a supermarket, it seems to be that the time period was sufficiently short for the court to reach the opposite conclusion.”*

1. Evidence before this Court clearly showed the cleaning/maintenance works of the changing room were done, inspected and checked by different people. There is clearly in place a reasonably safe and adequate system for visitors of the changing room.
2. As Mayo VP said in the ***Cheung Wai Mei*** case:-

*“What steps would it be necessary to take to obviate this risk. It would appear that it would be necessary for staff to be posted at every entrance to the hotel and for them to be equipped with cleaning utensils capable of removing any liquid detected on either the marble or more likely coconut matting at short notice. To state this proposition in this way is to virtually state that the hotel in the present case had an absolute duty to ensure the safety of the plaintiff. Or to put the matter another way all the plaintiff would have to establish is that she slipped and fell and suffered injury for her to recover damages. This is not the law.”*

The point was echoed by Rogers VP at p. 17 of the same case:-

*“It seems to me that the plaintiff is attempting to put far too high an onus on the defendant not merely to remove any spillages if and when they occur but in terms of stationing people, presumably at all corners of the hotel, at all times, to guard against spillages. The evidence was that there was at least one cleaner on duty that night. In my view that would have been sufficient.”*

1. The ***Cheung Wai Mei*** case was followed in ***So Wang Chun*** case. Sakhrani J. cited Rogers VP’s judgment:-

*“It seems to be me that when Rogers VP said in that case also applies here. The defendants did not have an absolute duty to ensure that the floor was clean at all times. The defendants cannot be expected to have a cleaner or staff stationed at all times in the area outside McDonald’s to watch out for any spillages and to clean it up immediately as it occurs. What the defendants did provide was in my judgment a reasonable system of cleaning the floor of Podium Level 1 including the area outside McDonald’s. I am satisfied that the defendants have taken reasonable care for the safety of visitors to the Plaza including the plaintiff. The plaintiff has in my judgment failed to discharge its burden of showing that the unusual event, in the absence of explanation, was more consistent with fault on the part of the defendants than the absence of fault.”*

1. I do not hesitate to find that the Plaintiff have managed to prove that in the present case, despite a proper and adequate system of safety for its visitors to the changing room, the accident in question did happen or was likely to have happened.
2. I do not find the Defendant liable for the accident.

*(3) Whether Plaintiff should be held contributory negligent?*

1. In view of the above, there is no need for this Court to deal with the issue of contributory negligence on the part of the Plaintiff.
2. It is noted however that the Plaintiff did continue to wear his goggles after he entered the changing room. Surely that must have affected him having a better view of his surroundings which might be a reason contributing to his slip.

**Conclusion**

1. I do not find the claim of the Plaintiff proved and I dismiss his claim.
2. I also make an order nisi that the Plaintiff shall pay the Defendant costs of the Action, with certificate for Counsel, the same to be made absolute within 14 days.
3. Plaintiff’s own cost shall be taxed in accordance with Legal Aid Regulations.

# (K. Lo)

# Deputy District Judge

Mr C. K. Wong instructed by Messrs. Paul C. K. Tang & Chiu for Plaintiff.

Mr Samuel Chan instructed by Messrs. Deacons for Defendant.