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Content Sampler

Causes of Action, Defences and Remedies
Proof of Facts

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Begin case and trial preparation with a better starting point

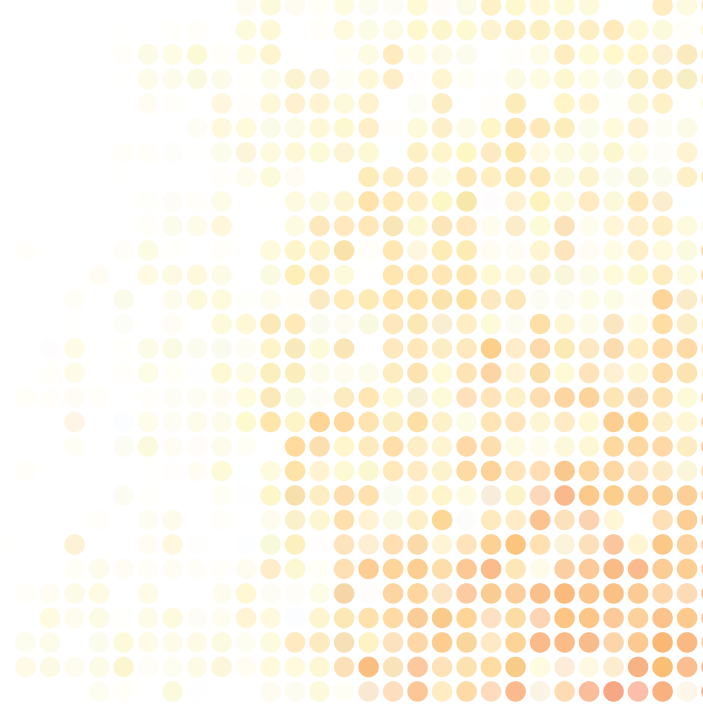
From the general to the specific

Take for example assessing a case where Occupier's Liability is a consideration.

Causes of Action, Defences and Remedies provides comprehensive materials on the general law of occupier's liability. **Proof of Facts** offers materials for specific fact scenarios in which occupier's liability may occur - Inadequate Protection of Spectator at Sporting Event – Proof of Negligent Operation of Boxing Gymnasium, Martial Arts School or Establishment; and – Landlord's Liability for Injury by Tenant's Dog.

From strategy to trial

Causes of Action, Defences and Remedies aides in the determination of whether to commence an action involving occupier's liability and includes guidance in the discovery process, pleadings, as well as factum writing. **Proof of Facts** also aides in the determination of whether to commence an action involving occupier's liability within the fact scenario and provides direction for proving the elements of occupier's liability through sample testimony including questions and answers.



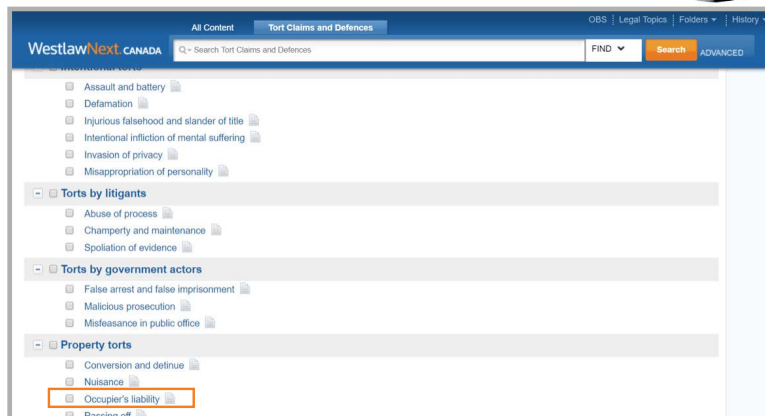
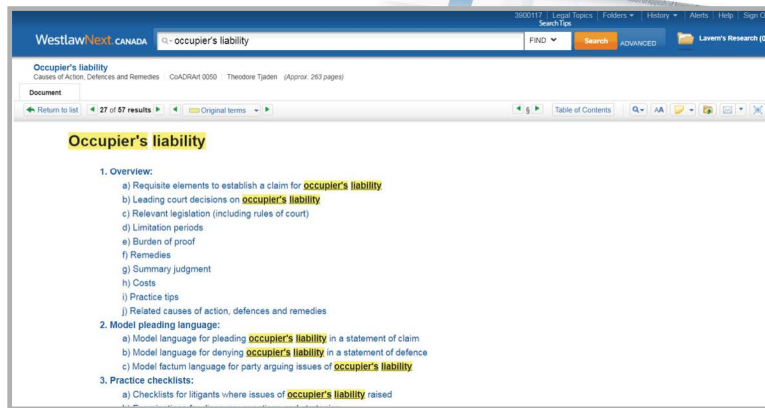
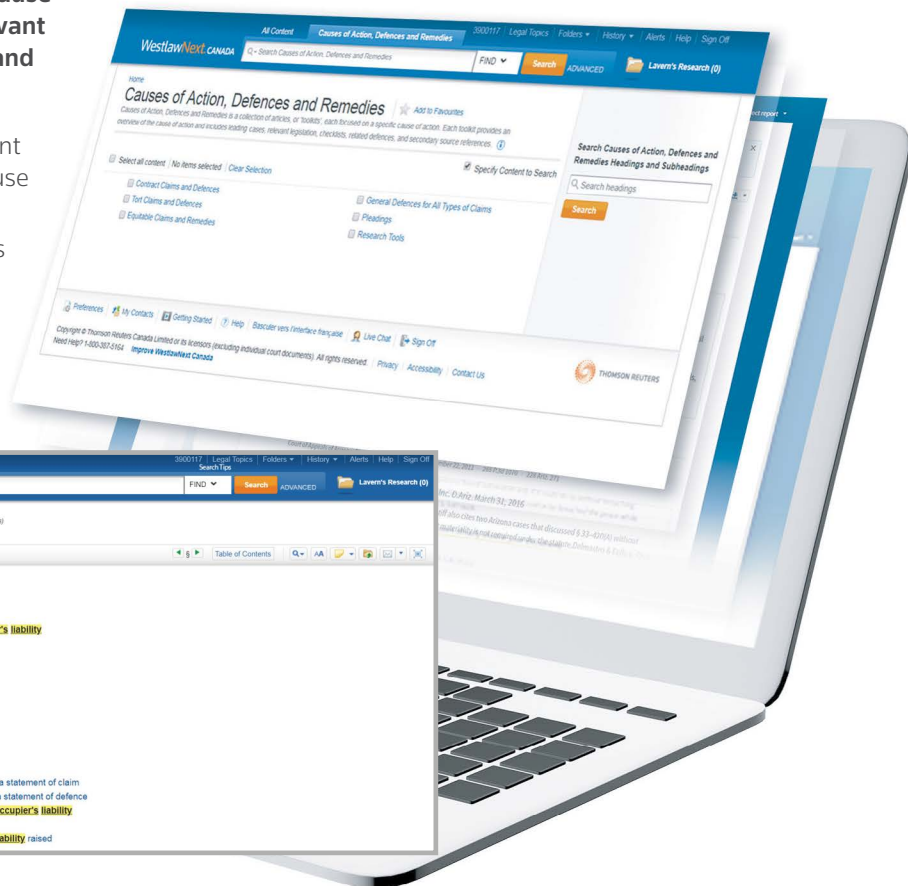
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Causes of Action, Defences, and Remedies

Causes of Action, Defences and Remedies is a collection of articles, or 'toolkits', each focused on a specific cause of action. Each toolkit provides an overview of the cause of action and includes leading cases, relevant legislation, checklists, related defences, and secondary source references.

- Confidently and quickly identify all relevant case law and elements of a particular cause of action from across all Canadian courts
- Plot case strategy from both perspectives
- Draft pleadings that are more focused, precise, succinct, and thorough—and plan examinations for discovery and at trial more efficiently



Excerpt from Causes of Action, Defences and Remedies article **Occupier's Liability**

1. OVERVIEW

- a) Requisite elements to establish a claim for occupier's liability
- b) Leading court decisions on occupier's liability
- c) Relevant legislation (including rules of court)
- d) Limitation periods
- e) Burden of proof
- f) Remedies
- g) Summary judgment
- h) Costs
- i) Practice tips
- j) Related causes of action, defences, and remedies

2. MODEL PLEADING LANGUAGE

- a) Model language for pleading occupier's liability in a statement of claim
- b) Model language for denying occupier's liability in a statement of defence
- c) Model factum language for party arguing issues of occupier's liability

3. PRACTICE CHECKLISTS

- a) Checklists for litigants where issues of occupier's liability raised
- b) Examinations for discovery questions and strategies

4. RESEARCH REFERENCES

- a) Books
- b) Articles
- c) Canadian Encyclopedic Digest (CED)
- d) WestlawNext Canada Legal Memoranda
- e) Canadian Abridgment case digests

1. OVERVIEW

a) Requisite elements to establish a claim for occupier's liability

Occupier's liability is an area of law of negligence concerning the duty owed by a person having control over premises such that he should realize that any failure to take care may result in injury to a person coming lawfully onto the premises: Daphne Dukelow, *The Dictionary of Canadian Law*, 4th ed. (Toronto: Carswell, 2011), at 872.

In British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, and Prince Edward Island, occupier's liability is governed by legislation. Under section 3(1) of the Ontario Occupiers' Liability Act, R.S.O. 1990, c. O.2, for example, an occupier of premises owes a duty to "take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises".

In the remaining common-law jurisdictions, occupier's liability will be governed by common law principles, described by the Newfoundland Court of Appeal as "archaic, cumbersome, and often unfair": *Stacey v. Anglican Churches of Canada (Diocesan Synod of Eastern Newfoundland & Labrador)* (1999), 1999 CarswellNfld 278, 182 Nfld. & P.E.I.R. 1, 47 C.C.L.T. (2d) 153, 554 A.P.R. 1 (Nfld. C.A.), at para. 28... [..]

2. MODEL PLEADING LANGUAGE

a) Model language for pleading occupier's liability in a statement of claim

Set out in this section is model language for pleading occupier's liability in a statement of claim or notice of civil claim.

For model language to plead defences to claims of occupier's liability, see section 2(b). *Rules for pleading tort claims*.

For rules of court governing the pleading of tort claims in a statement of claim or notice of civil claim (including pleading occupier's liability), see section 1(c)(ii) regarding the need to:

- Plead the effect of a document or the purport of a conversation, including the actual words used, if material
- Plead particulars of any allegations of fraud, misrepresentation, breach of trust, malice, or intent
- Plead the amount of general damages, except for those jurisdictions where doing so is not allowed

The model pleading language that follows assumes you already have the appropriate form of statement of claim or other pleading and have set out the required style of cause and any preliminary averments and other causes of action as required by the particular situation. Included with the model language below are headings in bolded text, something that is recommended for each major cause of action or defence being raised in your pleading as a means of providing "signposts" or visual clues for your reader. [..]

3. PRACTICE CHECKLISTS

a) Checklists for litigants where issues of occupier's liability raised

For litigation checklists more generally, including the need for client verification and clearing conflicts of interests, retainer agreements, tickler systems (to avoid missing potential limitation periods), and other issues of civil procedure, see the following litigation checklists on *Litigator*:

- Alberta Civil Litigation Checklists
- British Columbia Civil Litigation Checklists
- Manitoba Civil Litigation Checklists
- Gannage's Ontario Civil Litigation Checklists
- Saskatchewan Civil Litigation Checklists

Otherwise, for checklists specific to occupier's liability claims, consider adapting the foregoing litigation checklists at the various stages of the lawsuit [...]

4. RESEARCH REFERENCES

a) Books

Set out below are books that provide commentary on occupier's liability, organized into the following categories:

- (i) Tort law books
- (ii) Municipal law books
- (iii) Law reform commission reports
- (iv) Books from the United Kingdom, the United States, and Australia [...]

b) Articles

The following articles provide a good overview on occupier's liability, organized into the following two broad categories:

- (i) Articles on occupier's liability more generally
- (ii) Articles on commercial and social host liability [...]

c) WestlawNext Canada Legal Memoranda

WestlawNext Canada Legal Memoranda on the topic of occupier's liability are found under the following main heading:

- TOR.XVI.8: Torts—Negligence—Occupiers' liability [...]

d) Canadian Abridgment case digests

Cases dealing with occupier's liability are digested under the following main classification scheme in the *Canadian Abridgment*:

- TOR.XVI.8: Torts—Negligence—Occupiers' liability [...]

Proof of Facts collection

Quickly gather the evidence that matters, prepare for questioning witnesses more efficiently and save time on drafting examination and cross-examination questions

WestlawNext Canada's Proof of Facts helps you hone in on exactly what you need to prove in order to win your case. It consists of a collection of detailed articles which identify the facts essential to winning a case and suggests strategies for how to prove them.

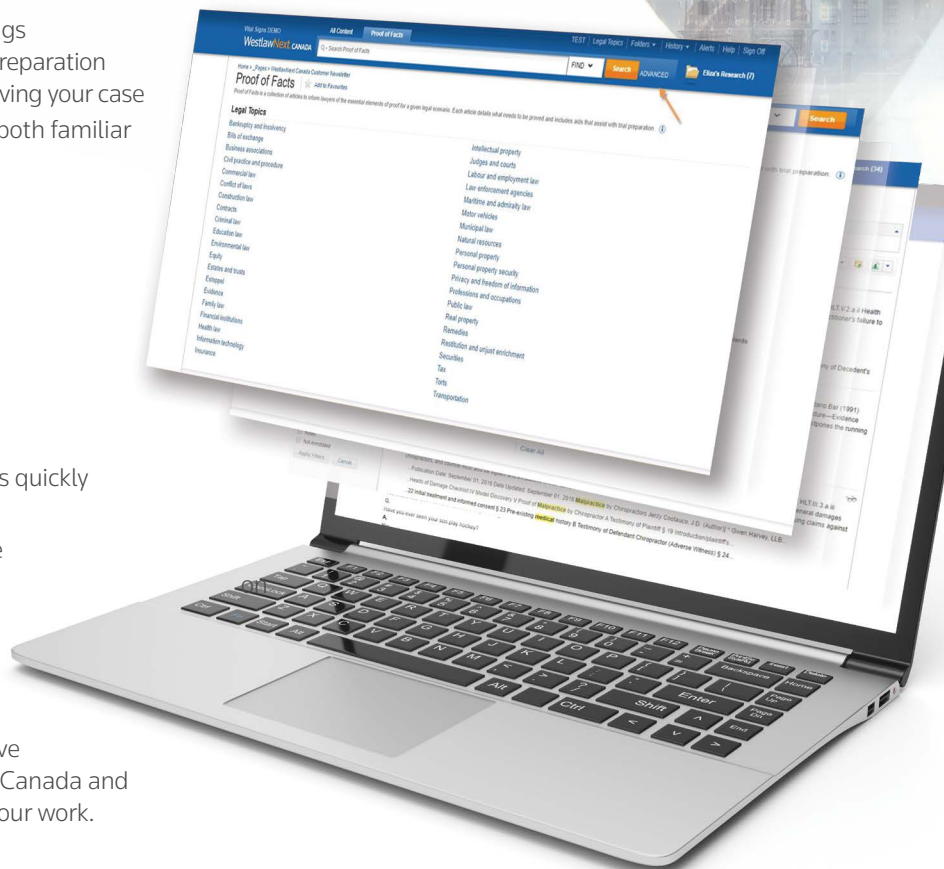
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- Determine what to prove and how to prove it to win your case
- Find relevant sample questions and checklists quickly
- Prepare for questioning witnesses
- Link to supporting case law for easy reference
- Less wasted time drafting examination and cross-examination questions

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For more information, visit www.westlawnextcanada.com/strategic

Excerpt from Proof of Facts article **Liability in the operation of a boxing gymnasium, martial arts centre, fitness centre, or similar establishment**

LEGAL BACKGROUND

1. Introduction
2. The elements of Occupier's Liability
3. Defences to Occupier's Liability Actions
4. Occupier's Liability Cases within the Context of Gyms
5. Additional Litigation Considerations

DAMAGES AND OTHER REMEDIES

6. Damages Generally
7. Checklist for Damages

ELEMENTS OF PROOF

8. General
9. Checklist of Evidence for Occupier's Liability in a Boxing Gymnasium, Martial Arts School or Similar Gym

MODEL DISCOVERY

10. Plaintiff's Examination for Discovery Questions to Defendant Facility Operator
11. Plaintiff's Examination for Discovery Questions to Employee of Boxing Gymnasium or Martial Arts
12. Defendant's Examination for Discovery Questions to Plaintiff
13. Plaintiff's Request for Production of Documents
14. Defendant's Request for Production of Documents

PROOF OF NEGLIGENT OPERATION OF BOXING GYMNASIUM MARTIAL ARTS SCHOOL OR SIMILAR ESTABLISHMENT

- A. Proof of Negligence in Allowing Martial Arts Student to Spar
 15. Testimony of plaintiff
 16. Testimony of expert witness
- B. Proof of Boxer's Contributory Negligence and Assumption of Risk
 17. Testimony of Gymnasium Manager



I. LEGAL BACKGROUND

1. Introduction

LEGAL ISSUE:

This article explores the liability in negligence for owners and operators of various gym facilities, the defences available, and the assessment of damages.

Liability in the **operation** of a **boxing gymnasium, martial arts** centre, fitness centre, or similar **establishment** (“gym” for the purposes of this article) primarily falls under the area of occupier’s liability, which is governed both by statute and common law, depending on the provincial jurisdiction.

Historically at common law, occupier’s liability classified those persons attending property into different categories, with different duties of care for each. Contractual entrants are owed the highest duty of care, followed by invited guests, then licensees, and finally trespassers. The duty of care lessens with each category: Klar, Lewis N. Remedies in Tort. (Toronto: Thomson Reuters, 2018) [*Klar*] at ch. 18.I.1.a, ss. 1. Common law principles have evolved to more closely resemble standard negligence duty of care. Of the provinces and territories in Canada, Saskatchewan still relies on common law occupier’s liability. New Brunswick has abolished occupier’s liability at common law and Newfoundland has modified its common law to mirror occupier’s liability legislation in other provinces: *Klar*, at ch. 18.I.1.a, ss. 2 and 2.1.

Occupier’s liability legislation exists in British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, and Prince Edward Island. Generally, the legislation is very similar, eliminating the categorization of visitors and setting a common duty of care for all, applying not only to the condition of the property but also to activities on the property as well. Alberta is the only exception with a separate duty of care for trespassers and children. The legislation replaces the common law of occupier’s liability either expressly or impliedly: *Klar*, at ch. 18.I.1.b, ss. 3 and 3.1. [...]

2. The Elements of Occupier’s Liability

To successfully bring an action under occupier’s liability, a plaintiff must prove:

- The defendant was an occupier of the premises where the accident occurred;
- The defendant owed a duty of care to the plaintiff and breached that duty; and
- The plaintiff suffered damages that were caused by the breach of the duty of care.

See *Klar*, at ch. 18.II.1, ss. 6. [...]

WHO IS AN OCCUPIER?

Occupier is defined in all the provincial statutes, with some variation: *Klar*, at ch. 18.II.2.b, ss. 11. A person in physical possession of the premises is always an occupier. A person may also be considered an occupier if:

- They have responsibility for and control over the conditions of the premises;
- They have responsibility for and control over the activities at the premises; and/or
- They have control over who is allowed on the premises [...]

DUTY AND STANDARD OF CARE

The provincial statutes each create a duty of care for occupiers to make sure that those attending on their premises are reasonably safe. The duty is to protect visitors from an unreasonable risk of harm that is foreseeable. It is not a guarantee of safety for everyone in all situations. Again, each provincial statute has subtle differences and should be examined closely: *Klar*, at ch. 18.II.4.b, ss. 76 and 76.1. See for example, *Slaferek v. TCG International Inc.*, 1997 CarswellAlta 859 (A.B.Q.B.), where the court found it was not reasonably foreseeable that a guest attending a private function at a ski chalet, would decide to go on an unauthorized toboggan run. [...]

3. Defences to Occupier's Liability Actions

An occupier may be absolved of liability through the plaintiff's own conduct, through warnings given to users of the facility or through a waiver limiting the duty of care. The plaintiff's own conduct, through voluntary assumption of the risk at common law (*volenti non fit injuria*), can be willing acceptance of the risk through statute or contributory negligence: *Klar*, at ch. 18.III.

Voluntary assumption of risk at common law acts as a complete bar to the plaintiff's claim. It is difficult to prove, however, as the courts have given *volenti* a very narrow application. The defendant must prove the plaintiff willingly assumed both the physical and legal risks involved (i.e. willingly gave up his or her legal rights in the event of injury): *Klar*, at ch. 18.III.1.(a), ss. 85, citing *Dube*.

Willing acceptance of risk through occupier's liability statutes has been held to be a codification of the common law voluntary assumption of risk, without any broadening of the concept: *Klar*, at ch. 18.III.1.(b), ss. 86, citing *Waldick*.

Note that when it comes to activities that involve speed and/or physical contact and are inherently dangerous in nature, such as **boxing**, full contact hockey, ski racing, etc., participants are presumed to have accepted the normal risks involved in that activity. It is only actions that step outside the normal risks that would not be presumed accepted (e.g. violent contact outside the rules, etc.). For a more detailed look at how courts determine what is acceptable conduct within an activity, see 2018POF0209—Sports Injury Participant's Recovery from Another Participant for an Intentional Act.

Where the plaintiff has been **negligent**, the doctrine of contributory negligence allows some of the liability to be apportioned to the plaintiff. This is true both in the common law of occupier's liability and the statutes: *Klar*, at ch. 18.III.1.(c), ss. 87, citing *Waldick*. [...]

4. Occupier's Liability Cases within the Context of Gyms

Occupiers have a statutory duty to take reasonable care that participants are not injured either through the design, construction, or maintenance of sports facilities or the organization of sports activities within the facility. No liability will exist if either the accident could not have been prevented through reasonable precautions or procedures, or the injury was due to risks inherent in the activity itself: *CED, Sports VII.3.(b).(i) at 149 (4th online)*. There are not many cases specifically involving **boxing** facilities or judo **gymnasiums** so cases involving fitness clubs will be reviewed as well. [...]



In *Lam v. University of Windsor*, 2001 CarswellOnt 690 (Ont. S.C.J.) [*Lam*], the plaintiff was a university student who was rendered a quadriplegic as a result of an injury suffered at judo club practice, running as the University of Windsor Judo Club at the university's recreational facility. Damages had been agreed upon and the trial was held to apportion liability. The trial judge apportioned liability equally between the head of the club (who was normally the instructor), the instructor who was working the night of the injury, and the university as the occupier. The injury occurred as a result of the plaintiff and a newcomer to judo sparring without any supervision. The instructor ended the class, then told the participants they were "on their own" if they wanted to stay. The court heard much evidence of how it is not acceptable to allow students to stay and spar unsupervised, given different skill levels, sizes, etc. The court in *Lam*, at para. 40, found the university had a duty to monitor the activities of the judo club as the occupier of the building: [...]

5. Additional Litigation Considerations

When considering the occupier's liability for **boxing gymnasiums, martial arts** centres and other gyms, the following issues should be considered.

- Is there an occupier's liability statute in the jurisdiction?
- Do the pleadings include all relevant types of damages? Have you provided specific detail with respect to aggravated or punitive damages?
- What is the limitation period?
- Have you named all relevant parties (look at definition of occupier in the legislation);
- If the action lies against the crown have you given proper notice?
- Is there a summary trial process available to you?
- Do you require expert evidence? have you given proper notice for expert evidence? [...]

II. DAMAGES AND OTHER REMEDIES

6. Damages Generally

Normal compensatory damages are available for occupier's liability cases in addition to aggravated and punitive damages.

In *MacLeod v. Bridge Park Ltd.*, 1979 CarswellNS 248 (N.S. S.C.(T.D.)), the plaintiff injured himself by riding his bike on the defendant's wharf after dark. The wharf had several holes in it that were not visible after dark. The plaintiff fell into one of the holes, tearing off the tip of his nose, fracturing his jaw, and fracturing a vertebrae. There was evidence that the streetlights near the wharf were burnt out, making visibility worse. The defendant had not posted any signs of warning. He had put railway ties across the entrance to the wharf from time to time, but they were continually being moved by kids using the wharf at night. It was common knowledge that kids hung out at the wharf. The action was brought under the common law of negligence. The defendant tried to argue the plaintiff was a trespasser and therefore his only standard of care was not to set a trap. The court disagreed with this analysis and found the defendant breached his duty of care. The plaintiff sought punitive damages. [...]

7. Checklist for Damages

The following factors should be considered with respect to damages.

- Do you have **proof** of special damages (medical costs to date, etc.)?
- Do you require expert medical evidence with respect to injuries suffered, future disabilities, medical needs and care?
- Do you require expert evidence with respect to loss of future earnings?
- Do you have evidence of callous disregard of the safety of the public by the defendant that would warrant for punitive damages (e.g. knowing of a dangerous situation and ignoring it)? [...]

III. ELEMENTS OF PROOF

8. General

As noted above, occupier's liability operates mainly by virtue of statute but also by common law in some jurisdictions. The duty to take reasonable care covers both the occupier's premises and any activities run on the premises. Any warnings regarding dangers on the property must be specific, timely and noticeable. Any waiver must be specific and reasonably drawn to the visitor's/participant's attention. If the relationship is contractual, the waiver must be in writing. Contributory negligence is also available. In a **boxing gymnasium**, judo centre or similar venue, participants are deemed to consent to the normal physical contact found in the sport they are participating in. [...]

9. Checklist of Evidence for Occupier's Liability in a Boxing Gymnasium, Martial Arts School or Similar Gym

- Evidence of express consent (any waiver signed by the participants either through gym, league or program registration, game sheets, posted notices, etc.);
- Evidence that the waiver was brought to the attention of the participant (their signature, initials or other correspondence referring to it);
- Evidence of implied consent including evidence of the rules of the particular game or sport, customs within the game or activity, etc. (This could be proven through witness testimony of other players, coaches, officials, league administrators, etc.). See Lam for witness testimony regarding appropriateness of sparring without instructor present;
- Evidence of the actual accident/altercation that occurred (primarily proven through witness testimony, participants, coaches, officials, spectators, etc.) and documents recording game events if applicable (e.g. game sheets and/or suspension reports by officials); [...]

IV. MODEL DISCOVERY

10. Plaintiff's Examination for Discovery Questions to Defendant Facility Operator

The following examination for discovery questions may be directed to the defendant in an action alleging the **negligent operation** of a **boxing gymnasium**, **martial arts school**, or

similar facility. Note that some of the documents may already be produced through the exchange of affidavits of documents. The list provides a generic set of questions. Counsel should adapt the list for his or her specific fact situation.

1. State your full legal name, address, date of birth.
2. Have you been sworn or affirmed to tell the truth in this matter?
3. What is your occupation/ position with the defendant [gym or similar facility]?
4. How long have you been so employed?
5. Will your answers bind the [defendant gym or similar facility]?
6. As of [date of injury to plaintiff], how did the defendant business operate: as a corporation, partnership, sole proprietorship?
7. If a corporation, state the corporate name, the date and place of incorporation, and the address of your principal place of business.

There are 47 examination for discovery questions in the actual article. To see the full article including the Model Discovery questions, register for a [free trial](#).

11. Plaintiff's Examination for Discovery Questions to Employee of Boxing Gymnasium or Martial Arts

SCHOOL NAMED AS DEFENDANT

The following examination for discovery questions may be directed to an employee named as a codefendant in an action alleging the **negligent operation** of a **boxing gymnasium, martial arts school**, or similar facility. Note that a plaintiff has the right to sue the person who was allegedly **negligent**, regardless of whether the employee was working for someone else or not. It is not an abuse of process to bring a lawsuit against individual defendants for the purpose of obtaining discovery from them, if the plaintiff has pleaded a proper cause of action against those individual defendants: *Sataur v. Starbucks Coffee Canada Inc.*, 2017 ONCA 1017 (Ont. C.A.). These questions provide a generic list and counsel should adapt them according to his or her specific fact situation.

1. State your full legal name, address, date of birth.
2. Have you been sworn or affirmed to tell the truth in this matter?
3. What is your current occupation/ position?
4. If you are no longer employed with the defendant, what dates were you employed and why did you leave the employ of the defendant?
5. What is the name, address, and telephone number of your present employer and for each employer for whom you have worked during the past five years? For each employer state your job title, your immediate supervisor, the dates of employment, and the nature of the work performed. Request an undertaking for employment files if appropriate.
6. State the name and address of each **school** or academic institution you have attended, including the dates attended, degrees received, fields of study, and highest grade or level completed.
7. Describe chronologically and in detail your training and experience in [**boxing** or the **martial arts**]. Identify all prior coaches or instructors and the dates of instruction.

8. Have you ever been certified by any organization as a **[boxing or martial arts instructor]**? If so, state the nature of the certification, the requirements for certification, the date of the certification, and the identity of the certifying organization.
9. What is the highest belt rank you have attained in any of the **martial art**? What are the requirements for that rank, the date on which you attained that rank, and the person or organization which awarded that rank to you? There are 27 questions for this section. To see the full article including the Model Discovery questions, register for a [free trial](#).

12. Defendant's Examination for Discovery Questions to Plaintiff

The following examination for discovery questions may be directed by the defendant to the plaintiff in defense of an action alleging the **negligent operation** of a **boxing gymnasium, martial arts school**, or similar facility.

1. State your full legal name, address, date of birth.
2. Have you been sworn or affirmed to tell the truth in this matter?
3. What is your current occupation?
4. On the date of the incident which is the subject of this action, did you have any conversations with any employees of the defendant? If so, describe in detail the substance of those conversations and the circumstances under which they took place.
5. Prior to the incident which is the subject of this action, had you made any statements or provided any documents to the defendant, or its employees, concerning your overall health, level of fitness, and experience in **[boxing or the martial arts]**? If so, state what information you provided, the date you made the statement or provided the document, and the person to whom you made the statement or provided the document.
6. Have you ever participated as a coach or player in high **school**, college, amateur, or professional athletics? If so, describe the nature of your participating, the team or organization with which you were associated, and the dates of your participation.
7. Prior to the time you began training for **boxing** at [name of defendant **boxing gymnasium**], had you ever trained at any other **boxing gymnasium** or similar facility? If so, state the name and address of each such facility, the dates during which you trained at the facility, and the names of any instructors or coaches who worked with you. There are 84 questions for this section. To see the full article including the Model Discovery questions, register for a [free trial](#).

13. Plaintiff's Request for Production of Documents

Documents in a lawsuit are typically produced and exchanged through affidavits of documents. In Ontario, rule 30.03 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, governs affidavits of documents and rule 30.04 regulates the inspection of documents. The following documents should be requested if not listed on the opponent's affidavit of documents, or can be requested more informally, in the initial phase of a lawsuit by correspondence. Early production of documents may facilitate settlement negotiations.

1. A copy of any membership agreement or similar document signed by the plaintiff.
2. A copy of any other release, waiver, or exculpatory clause signed by the plaintiff.

3. A copy of any brochure or promotional materials given to or available for prospective members at the time the plaintiff first visited your facility or signed a membership agreement.
4. A copy of any medical history or fitness questionnaire given to you by the plaintiff, whether completed or not.
5. A copy of any card, chart, test results, or other document used by the plaintiff and/or you to chart the plaintiff's progress in his study of [boxing or the martial arts].
6. A copy of any written rules, regulations, or standards of conduct provided by you to the plaintiff and which were intended to govern the plaintiff's conduct while receiving instruction or using your facility.
7. A copy of any written rules, regulations, operating procedures, or employee manual promulgated by you and in effect at the time of the incident which is the subject of this action.
8. Copies of any documents evidencing your membership in any trade associations or other organizations related to [boxing or the martial arts]. [...]

ADDITIONAL REQUESTS IF PLAINTIFF INJURED USING EQUIPMENT

12. With regard to the [describe equipment which caused injury], any receipt, bill of sale, purchase order, bill of lading, or other documents evidencing your purchase or acquisition of said equipment.
13. With regard to the [describe equipment which caused injury], any assembly instructions, manufacturer's manual, promotional materials, or similar documents pertaining to said equipment.
14. With regard to the [describe equipment which caused injury], any instructions for the use of the equipment which were posted on or in the immediate vicinity of the equipment at the time of the plaintiff's injury.

[Practice Note: Where the defendant is a corporation, plaintiff's counsel may also wish to determine whether grounds exist to pierce the corporate veil. In addition to tax returns, this might include seeking copies of the Articles of Incorporation, by-laws, and corporate minutes.]

14. Defendant's Request for Production of Documents

1. A copy of any diary, notebook, or log maintained by you and pertaining to your study of [boxing or the martial arts].
2. A list of each book or article you had read concerning [boxing or the martial arts] prior to the incident which is the subject of this action.
3. Copies of any written evaluations or test results provided to you by the defendant or its employees concerning your progress and skill in [boxing or the martial arts].
4. Copies of any written evaluations or test results provided to you by anyone other than the defendant or its employees concerning your progress and skill in [boxing or the martial arts].

V. PROOF OF NEGLIGENT OPERATION OF BOXING GYMNASIUM MARTIAL ARTS SCHOOL OR SIMILAR ESTABLISHMENT

Following are a selection of the questions and answers from the article. Register for a [free trial](#) to access the full article including the full list of questions and answers.

A. Proof of Negligence in Allowing Martial Arts Student to Spar

15. Testimony of plaintiff

Identity of defendant; existence of teacher/student relationship

[After introduction and identification of witness.]

Q. On [date of injury], were you a student at the [name of martial arts school]?

A. Yes.

Q. On that date, how long had you been studying karate at that school?

A. About five weeks.

Q. Do you know who owns the school?

A. Yes, it's owned by [defendant].

Q. In addition to owning the school, does [defendant] also teach at the school?

A. Yes, he's the head instructor.

Q. Prior to beginning karate lessons at the school, did you sign a contract to receive instruction at the school?

A. My mother signed a contract.

Q. What were the essential terms of that contract?

A. My mother was to pay fifty dollars a month to [defendant] and I would attend group classes on Tuesday and Thursday evenings.

DETAILS OF INCIDENT

Q. Did you attend a class at the school on [date of injury]?

A. Yes. That was a Tuesday, and our class began at 6:00 p.m.

Q. Were you injured during that class?

A. Yes.

Q. Tell the jury what happened.

A. At about 7:30 p.m., [defendant] told everyone to get their sparring gear on and form a large circle. I didn't have any gear, so I just watched other students spar. After three or four matches, [defendant] asked me if I wanted to spar. I said "sure" and borrowed some gloves and shin guards from one of the other students.

- Q.** What happened next?
A. Well, [defendant] looked around the room and motioned for [sparring partner] to come to the center of the room to spar with me.
- Q.** Was [sparring partner] another student in the class?
A. Yes.
- Q.** Then what happened?
A. [Defendant] had us bow to him, then told us to bow to each other and shake hands.
- Q.** Did you do that?
A. Yes.
- Q.** What happened after that?
A. [Defendant] then gave the command to begin fighting. [sparring partner] and I began circling each other slowly. We each threw a few punches and kicks, but we were too far away from each other to make any contact. Suddenly, [sparring partner] let out a loud yell and came at me with a series of front kicks.
- Q.** How did you react?
A. Even though [sparring partner] wasn't really trying to hurt me, his kicks were too fast for me. I tried to back up, but one of his kicks caught me in the chest and sent me back into the mirror on the north wall.
- Q.** What happened then?
A. The mirror shattered as I hit it. I fell to the floor and landed on my back. Pieces of the mirror were everywhere and some big chunks of it came down on top of me.
- Q.** How big was this mirror?
A. That entire wall is covered with mirrors. Each panel is probably four feet wide. They begin at the floor, and I'd say each one is about six feet high.
- Q.** How many of these panels broke as a result of this incident?
A. Two. Injuries; pain and suffering

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