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ministrator. Upon the murderer's death, the whole of the property would devolve to the victim's administrator or heirs. The result here is essentially that achieved by impressing a constructive trust on the property (at least where the decedent's expectancy exceeded the survivor's), but the rationale again seems less convincing.

It is obvious from the foregoing that appropriate legislation is needed to create order out of the chaoic state in which the law finds itself when cases such as the *National City Bank of Evansville v. Bledsoe* arise. A model act sufficiently inclusive to cover most situations of this nature has been suggested.[33] However, in jurisdictions which have not passed on the question, the absence of such legislation should not be fatal to the cause of the victim's estate. The court in *Vesey v. Vesey*[34] summed up what appears to be the better approach when it said, after recognizing the desirability of statutory coverage:

> " . [B]ut until the legislature acts, this court can, by imposing a constructive trust, prevent the repugnant result that one joint owner . . . may take the whole . by right of survivorship after feloniously causing the death of the other joint owner."[35]

The justice in this position seems irresistible. It is a solution which obviates the harsh consequence flowing from the formalistic approach in the principal case and revitalizes a legal maxim, familiar to even the most uninitiated layman, that crime does not (or at least should not) pay.

Leo Andrade

TORTS: EXTENSION OF STANDARD OF REASONABLE CARE AS APPLIED TO STORE OWNERS

Snow has fallen for 25 to 30 minutes. A woman leaves a bus, walks a block and a half over wet sidewalks; as she enters a store she slips on the wet terrazzo surface of the entrance and is injured. She says she noticed the surface was wet, but had no thought of its being slick. She was wearing pumps with 3½ inch heels, the tips of which were worn so that the nails came into contact with the ground.

On these facts, should the court allow the question of the store owner's negligence to go to the jury? The Supreme Court of Utah answered this question in the affirmative in *De Weese v. J. C. Penney Company.*[1]

Few personal injury situations result in as many lawsuits as those in which an invitee slips on the floor of a store or other business house. A large store or business house has resources substantial enough to make it an attractive defendant in an injury suit. Although the store's liability should be based solely on negligence or other wrong, the wealth of the defendant, often known to the jury, creates a danger difficult to guard against. As a safeguard, a trial court, before it will let a jury pass upon a defendant's liability, must determine that upon the facts stated a reasonable man could find a basis for imposing such liability.[2] An Ohio court emphasized the necessity for this rule in *J C. Penney Co., Inc. v. Robison:*[3] "under our law it is just as pernicious to submit a case to a jury and permit the jury to

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[33] Wade, note 29 *supra. Compare* CALIF. PROBATE CODE § 258. This section, as drafted, does not appear to adequately cover the problem under discussion.

[34] 237 Minn. 295, 54 N.W.2d 385 (1952).

[35] 237 Minn. at 302, 54 N.W.2d at 389.

[1] 5 Utah 2d 116, 297 P.2d 898 (1956).

[2] 65 C.J.S., *Negligence,* § 251 (1950).

[3] J. C. Penney Co., Inc. v. Robison, 128 Ohio St. 626, 193 N.E. 401 (1934).

speculate with the rights of citizens when no question for the jury is involved, as it is to deny to a citizen his trial by jury when he has the right." A trial judge must decide, then, which fact situations, as a matter of law, entitle the jury to pass upon the defendant's liability. He looks, of course, to the numerous decisions which have fashioned the case law on this point.

There are, it is believed, no decisions that a jury question is involved where nothing more appears than that the plaintiff slipped on a *dry* surface of wood, terrazzo, marble or other commonly used material. And with few exceptions, one of which is the subject of this note,[4] the courts deny that a jury question is presented where persons have fallen on floors made slippery by the presence of water deposited by storm.[5] This denial is summarized in *65 C.J.S., Negligence, § 81:* "The fact that water, slush and mud are tracked in on the floor of premises because of weather conditions outside does not ordinarily create an actionable situation, although the floor is thereby rendered slippery."

In *S. S. Kresge Co. v. Fader*[6] it is stated that store owners "are not insurers against all forms of accidents . . . Everyone knows that the hallways . . . are tracked all over by the wet feet of people coming from the wet sidewalks, and are therefore rendered more slippery than they otherwise would be . . ." In *Lander v. Sears Roebuck and Co.*,[7] a directed verdict for the defendants was upheld because there was no evidence that the floor on which plaintiff fell was more slippery than floors generally under the prevailing weather conditions. A glance at other decisions quickly shows that, while almost unanimously denying that a jury question exists, the courts give varying reasons: the danger is as perceptible to the injured invitee as to the owner;[8] the customer has assumed the risk;[9] a reasonable person is charged with knowledge that a wet floor is more slippery than a dry one;[10] the customer may have tracked into the store the very moisture which cause her to slip and fall.[11]

If but one factor is added, however, to increase the hazard to the customer, a great majority of the courts hold that a jury question exists.[12] In the following situations the jury was allowed to consider the liability of the owner: a surface insufficiently lighted;[13] an inherent tendency of the floor to become excessively slippery when wet, the tendency being unknown to the plaintiff;[14] dampness caused by the act of the defendant or his servant.[15] Also generally held to present a jury question, are those situations in which oil, food or other slick substance has been deposited on the floor.[16] In such cases, because of the greater likelihood of non-discovery of the peril by the customer, the jury is permitted to consider

[4] Clark v. Lansburgh & Br., 75 App. D.C., 339, 127 F.2d 331 (1942). This decision is in accord with the principal case, although not cited therein.

[5] Annot., 118 A.L.R. 425 (1939).

[6] 116 Ohio St. 718, 158 N.E. 174 (1927).

[7] 141 Me. 422, 44 A. 2d 886 (1945).

[8] Touhy v. Owl Drug Co., 6 Cal. App. 2d 64, 44 P.2d 405 (1935).

[9] Dahnke v. Hunt, 55 Ohio App. 44, 8 N.E. 2d 838 (1936).

[10] Neuber v. Royal Realty Co., 86 Cal. App. 2d 596, 195 P.2d 501 (1948).

[11] Neil v. Bank of America, 102 A.C.A. 179, 104 P.2d 107 (1940).

[12] 118 A.L.R. 425 (1939).

[13] Chittum v. Joseph, 10 Ill. App. 2d 491, 135 N.E. 2d 120 (1956).

[14] Erickson v. Walgreen Drug Co., 120 Utah 31, 232 P.2d 210 (1951).

[15] Hechler v. McDonnell, 42 Cal. App. 2d 515, 109 P.2d 426 (1941).

[16] See note 5 *supra*.