

Occupiers' Liability

Occupiers' liability concerns the liability of an **occupier** of land for the claimant's injury, loss or damage to property suffered while on the occupier's **premises**. It is a fairly recent tort and found in two Acts of Parliament, which cover liability for harm caused on someone's property.

1. **The Occupiers' Liability Act 1957.** This provides that an occupier of property owes a duty of care to lawful visitors to ensure their safety. If the duty is breached then visitors are entitled to compensation. Under s.1(2) this not only covers people expressly invited but also those who may have implied consent or a right to be on the property.

This covers liability for death, personal injury and damage to property.

2. **The Occupiers' Liability Act 1984.** This provides that an occupier of property owes a duty of care to someone not lawfully on the occupier's property to ensure their safety. Usually this will mean **trespassers** but the Act refers to **non- visitors** as there are additional persons covered under this Act. This covers liability for death and personal injury. Is it fair damage to property is excluded?

There is an overlap between occupiers' liability and negligence. However in occupiers' liability the loss or injury has occurred because of the 'state of the premises'. So if loss or damage has occurred for other reasons then a claim would be under negligence.

The Occupiers' Liability Act 1957

Who is an occupier? (potential defendants)

Potential defendants are the same under either Act : occupiers of premises. There is no statutory definition under the Act and s.1(2) of the 1957 Act simply states that the rules apply in 'in consequence of a person's **occupation** or **control** of premises ...'. The test has been established in common law.

Someone with sufficient degree of control over the premises

Wheat v E.Lacon &Co Ltd

Lord Denning described the occupier as a person who had 'a sufficient degree of control over the premises'. Was there just one occupier? Was C successful? **In this case the manager of a pub was given the right to rent out rooms in his private quarters even though he had no ownership rights in the premises. A paying guest fell on an unlit staircase and died. The House of Lords decided that both the manager and his employers could be occupiers under the Act so there could be more than one occupier of the premises**

Harris v Birkenhead Corporation

What factor influences the court in deciding who is in control of the premises? **A 4-year-old child was injured in an empty house. The local council had served a compulsory purchase order on the house, but they had not boarded it up or made it secure**

as they had not yet taken possession. It was decided they were in occupation as they were effectively in control of the premises

Bailey v Armes Was this fair?

The defendants lived in a flat above a supermarket. They allowed their son to play on the flat roof above their flat but forbade him to take anyone else there. The supermarket knew nothing of the use of the roof. The boy took his friend onto the roof and was injured when he fell from the roof. The Court of Appeal decided that neither the supermarket nor the defendants were occupiers as they did not have sufficient control over the roof

Premises

Both Acts are also relatively silent on the meaning of premises. **S1(3)(a)** of the 1957 Act states a person having occupation or control of any 'fixed or moveable structure, including any vessel, vehicle and aircraft ...'

In **Wheeler v Copas 1981** what was defined as premises?

List what has been included as premises.

- **A ship in dry dock**
- **A vehicle**
- **A lift and even**
- **A ladder**

The fact that a ladder is included does that give premises a wide or narrow definition?
wider

Lawful Visitors (Adults)

Under **s.1(2)** this includes:

- Invitees – persons who have been invited to enter and have expressed permission to be there
- Licensees – persons who may have express or implied permission to be on the land for a particular period e.g. postman
- Those with contractual permission – e.g. a person who has bought an entry ticket for an event
- Those given a statutory right of entry such as meter readers and a police constable exercising a warrant

Duty of an occupier

Under **s.2(2)** an occupier must 'take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited to be there'.

1. A distinction must be made between dangers arising from activities on premises and dangers arising from the state of the premises. Under occupiers' liability the duty arises under the second situation.
2. The occupier only has to do what is reasonable - **objective**

Laverton v Kiapasha Takeaway Supreme.

Does an occupier have to make premises completely safe?

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The D's owed a small takeaway shop. The fitted slip resistant tiles and used a mop to clean the floor if it had been raining. When the claimant went to the shop it was very busy and it had been raining. She slipped and broke her ankle. The Court of Appeal decided that the shop owners had taken reasonable care to ensure their customers safety. They were not liable as they did not have to make the shop completely safe **Dean and Chapter of Rochester Cathedral v Debell**

In order to be liable the premises must pose a real risk of danger. Does this cover tripping and falling over? Has this created a low or high test? What was the court concerned about when setting this test? Is this fair?

The claimant was injured when he tripped and fell over in a small lump of concrete protruding about 2 inches from the base of a traffic bollard in the precincts of the Rochester Cathedral. The bollard had previously been slightly damaged by a car. The court of appeal decided that 1) tripping, slipping and falling are everyday occurrences. No occupier of premises like the cathedral could possibly ensure that the roads or the precincts around the building were maintained in a pristine state. Even if they were, accidents would still happen. The obligation of the occupier is to make the land reasonably safe for visitors, not to guarantee their safety. In order to impose liability, there must be something above the risk of injury from minor blemishes and defects which are habitually found on any road or pathway. 2) the risk is reasonably foreseeable only where there is a real source of danger which a reasonable person would recognise as obliging the occupier to take remedial action. A visitor is reasonably safe even if there may be a visible minor defect on the road which carry a foreseeable risk of causing an accident and injury

Edwards v Sutton LBC – was the bridge a danger? Was the claimant successful? The claimant had sustained a serious spinal cord injury when pushing a bicycle over a small ornamental footbridge in a park owned and occupied by the London Borough of Sutton. The bridge was humped and had low parapet side. The claimant lost his balance and fell over the edge into the water below. At first instance, the trial judge found that there was a breach of the Occupiers Liability Act 1957. Although it was found there was no obligation on the Defendant to install new handrails it was held that the Council should have warned visitors as to the foreseeable risk of injury and/or given instructions to take a different route through the park. Contributorily negligence was found against the Claimant to the extent of 40%.

Exceeding Permission

If a lawful visitor exceeds the permission given for example entering a restricted or unauthorised area then they may become a trespasser and will lose the protection of the 1957 Act and the 1984 Act will now apply (see later notes).

Accidents – Cole v Davis Gilbert, The RBL. Why was D not liable? The claimant was injured when she trapped her foot in a hole in a village green where a maypole had been erected in the past. She argued that the owner of the village green had a duty to ensure that the visitors were safe; that the British legion had failed to properly fill the hole after a village fete; and that the local council had failed to adequately maintain the green. She won at first instance but failed in the court of appeal. The court held that since her injury took place nearly 2 years after the maypole had been in place, the duty on the British legion couldn't last that long. Although there was no evidence to support this view, the hole must've been opened by a stranger, and the incident was a pure accident

Occupiers' liability to children

As already seen in negligence children are owed a special duty to care. This also applies here so that the standard of care is subjective i.e. according to the age of the child. S.2(3) states the occupier 'must be prepared for children to be less careful than adults. If an occupier allows a child to enter the premises then the premises must be reasonably safe for a child of that age.'

Glasgow Corporation v Taylor

What may not be an attraction or allurement for an adult can be for a child. Is this rule fair?

A seven-year-old child ate poisonous berries from a shrub in a public park and died. The shrub on which the berries grew were not fenced off in any way. The council were liable to the child's parents. They were aware of the danger and the berries amounted to an allurement to young children

Phipps v Rochester Corporation

Devlin J stated in this case "the responsibility for the safety of little children must rest primarily upon the parents". Is this a fair result compared to Taylor? At what age does responsibility move to the occupier?

A 5-year-old child was playing on open ground owned by the council with his 7-year-old sister. He fell down a trench and was injured. The court decided that the council was not liable as the occupier is entitled to expect that parents should not allow their young children to go to places which are potentially unsafe

Jolley v Sutton LBC

Children can be expected to do the unexpected so their actions are more likely to be foreseeable. Is this test wide/narrow and fair/unfair to an occupier?

This case also illustrates that a defendant can be liable under more than one tort. Two 14-year-old boys found an abandoned boat on land owned by the council and decided to do it up. The boat was in a thoroughly rotten condition and represented a danger. The council had stuck a notice on the boat warning not to touch the boat and that if the owner did not claim the boat within 7 days it would be taken away. The council never took it away. The boys had been working on the boat for 6-7 weeks when one of them suffered severe spinal injuries, resulting in paraplegia, when the boat fell on top of him. The boys had jacked the boat up to work on the underside and the jack went through the rotten wood. The claimant brought an action under the Occupiers Liability Act 1984. The trial judge found for the claimant. The Court of Appeal reversed the decision, holding that whilst it was foreseeable that younger children may play on the boat and suffer an injury by falling through the rotten wood, it was not foreseeable that older boys would try to do the boat up. The claimant appealed. House of Lords held: The claimant's appeal was allowed. The risk was that children would "meddle with the boat at the risk of some physical injury" The actual injury fell within that description.

Occupiers' liability to Professionals /Tradesman

S.2(3)(b) states that 'An occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incidental to it'. Essentially the duty owed to professionals is more limited in that they are expected to take their own precautions against risks, which they should know about or be expected to know about

Compare **Roles v Nathan** to **Ogwo v Taylor** (see under *volenti*). In these 2 cases who had guarded themselves against any special risks? Is it fair that an occupier has this defence?

R v Nathan – 2 chimney sweeps died after inhaling carbon monoxide fumes while cleaning the chimney of a coke-fired boiler. The sweeps had been warned of the danger. The occupiers were not liable as they could have expected chimney sweeps to be aware of the particular danger

Ogwo v Taylor - The Defendant attempted to burn off paint from the fascia boards beneath the eaves of his house with a blow lamp and in so doing set fire to the premises. The fire brigade was called, and the Claimant, an acting leading fireman, and a colleague entered the house wearing breathing apparatus and the usual fireman's protective clothing and armed with a hose. The two firemen were able, with the aid of a step-ladder, to squeeze through a small hatch to get into the roof space. The heat within the roof space was intense. The Claimant suffered serious burn injuries to his upper body and face from scalding steam which must have penetrated his protective clothing. Held: A duty of care was owed to a professional fireman. There was no requirement that the risk be exceptional. The defence of *volenti* had no application.

Occupiers' liability for the torts of Independent Contractors

Occupiers are not usually liable for harm caused to lawful visitors by independent contractors (workmen) on their property. So if a visitor is injured by a workman's negligent work, the occupier may have a defence and pass liability to the workman. Under S.2(4) three requirements must be satisfied in order for the occupier not to be liable.

A reputable contractor will have their own insurance and so C can still make a claim.

1. It must be reasonable for the occupier to have given the work to the independent contractor. The more complicated and specialist the work, the more likely it will be for the occupier to have given the work to a specialist

Haseldine v Daw and Son Ltd

The claimant was killed when a lift plunged to the bottom of the shaft. The occupier was not liable for negligent repair or maintenance of the lift as this work is a highly specialist activity and it was reasonable to give the work to a specialist firm

2. the contractor hired must be competent to carry out the task. Presumably the occupier should take up references or recommendations or check up with a trade association, if any, to satisfy this requirement. The occupier should check that the contractor is properly insured. If the contractor fails to carry appropriate insurance cover this could be a fair indication that the contractor is not competent

Bottomley v Todmorden Cricket Club

The cricket club hired a stunt team to carry out a 'firework' display. The team chose to use ordinary gun powder, petrol and propane gas rather than traditional fireworks. They also used the claimant, an unpaid amateur with no experience with pyrotechnics for the stunt. The claimant was burnt and broke an arm when the stunt went wrong. The stunt

team had no insurance. The court of appeal decided that the club was liable as it failed to exercise reasonable care to choose safe and competent contractors.

3. The occupier must check the work has been done properly. The more technical and complicated the work is and the less expert the occupier, the more likely that this condition will require to employ an expert

Woodward v The Mayor of Hastings

A child was injured on school steps that were left icy after snow had been cleared off them. The occupiers were liable as they had failed to take reasonable steps to check that the work had been done properly and the danger should have been more obvious to them

Defences to a claim by a lawful visitor

See also notes on defences to a negligence claim as those main principles also apply here:

1. Contributory negligence. The court will determine if C is partly responsible and will reduce compensation appropriately.
2. Volenti / Consent. If successful this will remove D's liability for any compensation.
3. Warning Notices. This is a full defence and the warning can be oral or written. What does s.2(4) state? **a warning is ineffective unless 'in all the circumstances it was enough to enable the visitor to be reasonably safe'**

How is it decided if there was a sufficient warning? **What amounts to a sufficient warning will be a question of fact in each case and will be decided by the judge on the evidence. If the premises have extreme danger or they are unusual, the occupier may be required to erect barriers or additional warnings to keep visitors safe. However, if danger is obvious and the visitor can appreciate it, no additional warning is necessary**

Rae v Marris Ltd – why was the warning ineffective? **This case involved a deep pit inside a dark shed so a warning by itself was insufficient as it could not be seen**

Staples v West Dorset DC – was it fair that a warning was not required? **The danger of wet algae on a high wall should have been obvious and no further warning was required**

4. Exclusion clauses.

Under s.2(1) this allows an occupier 'to restrict, modify or exclude his duty by agreement or otherwise' so that are not liable for injuries to a visitor. This applies to residential (houses) occupiers but whether this would be applicable to a child depends on their age and their ability to understand the effect of the exclusion.

Can traders exclude liability? Explain by reference to s.65 Consumer Rights Act 2015. **'a trader cannot by... a consumer notice exclude or restrict liability for death or personal injury resulting from negligence'**

Remedies

If the occupier is liable the court will award damages to the visitor for any damage to their property and any personal injury. refer to special and general. General is for pain and suffering. If it's damage to property you only claim for special