

Critically evaluate the level of protection given by both the Occupiers' Liability Act 1957 and 1984. (25)

Issue	OLA 1957 section/case law Analyse whether it gives sufficient protection (fair)	OLA 1984 section/case law Analyse whether it gives sufficient protection (fair)
Definition of occupier	Someone with sufficient degree of control over the premises	Someone with sufficient degree of control over the premises
Definition of premises	Any moveable or fixed structure	Any moveable or fixed structure
Who does it cover?	owner, manager, landlord, local councils	owner, manager, landlord, local councils
What is the duty?	An occupier to do everything that is reasonable to ensure the visitor will be reasonably safe – objective test. 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	The occupier must be aware of the danger and must know, or have reasonable grounds to believe, that the trespasser is in the vicinity of danger. This is a subjective test so if the occupier doesn't have the required knowledge of the existence of the trespasser, he or she will not owe a duty.
Breach of duty – what is the standard?	Measured against the reasonable person	Measured against the reasonable person
Duty 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	The 1984 Act applies in the same way to child trespassers as it does to adults. The occupier will not be liable if the trespasser is injured by an obvious danger. The time of day and year will determine whether the occupier owes a duty of care. Costs involved to an occupier in making the premises safe from obvious dangers. Unknown trespassers are not owed a

	<p>must be reasonably safe for a child of that age.’</p>	<p>duty of care. If the occupier is unaware of the danger or no reason to suspect the danger existed, then there is no liability.</p>
<p>Duty to independent contactors</p>	<p>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.</p> <p>Under S.2(4) three requirements must be satisfied for the occupier not to be liable.</p> <p>A reputable contractor will have their own insurance and so C can still make a claim. >It must be reasonable for the occupier to have given the work to the independent contractor.</p> <p>>The more complicated and specialist the work, the more likely it will be for the occupier to have given the work to a specialist >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</p>	<p>Not applicable. doesn’t exist under this act</p>

	>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	
Covers what type of damage	Damage to property, covers liability for death, personal injury	This covers liability for death and personal injury
Avoiding liability:		
Warning signs	<p>a warning is ineffective unless 'in all the circumstances it was enough to enable the visitor to be reasonably safe'</p> <p>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</p>	<p>Under s.1 (5) an occupier can avoid liability if they have taken "such steps as are reasonable in the circumstances". For adults this would be achieved by the effective use of warnings as in Westwood v The Post Office. However, whether a warning will be sufficient for a child trespasser will depend on 2 factors: age and understanding</p>
Exclusion notices	<p>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't exclude liability for personal injury or death</p>	<p>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't exclude liability for personal injury or death</p>

Contributory negligence	Contributory negligence. The court will determine if C is partly responsible and will reduce compensation appropriately.	Contributory negligence. The court will determine if C is partly responsible and will reduce compensation appropriately. this defence can apply to reduce the damages payable to the claimant by such proportion as the judge thinks appropriate to reflect the claimant's responsibility for their injuries
Consent	Volenti / Consent. If successful, this will remove D's liability for any compensation.	this defence appears to be allowed by the 1984 Act if the trespasser appreciates the nature and degree of the risk, more than just its existence
Remedies	Claim damages Personal injury/death : special and general Property : special	Claim damages Personal injury/death: special and general
Reforms		