

LIABILITY FOR LAND AND PREMISES

OCCUPIERS' LIABILITY ACT 1957

Scope of the Act

The Act applies not only to land and buildings but also to fixed and moveable structures, including any vessel, vehicle or aircraft (s1(3)(a)).

Occupiers

The occupier is any person who has a sufficient degree of control over premises. See:

- *Wheat v Lacon* [1966] 1 All ER 582 – landlord and tenant of pub both owed duty of care to guest injured on stairs. However, no breach on the facts
- *Harris v Birkenhead Corp* [1976] 1 All ER 341 – council was the occupier of a compulsorily purchased house, which was no longer resided in by previous owner.

Visitors

The occupier owes a duty of care to all lawful visitors (s1(2)). Relevant cases include:

- *Greenlagh v BRB* [1969] 2 All ER 114 – no liability for injury to P on bridge built under statute for owners and occupiers of land adjoining railway. Nor was P a visitor.
- *Stone v Taffe* [1974] 3 All ER 1016 – duty owed to visitor who did not know that the licensee who managed a pub had exceeded permission to use it after 10.30pm.
- *McGeown v NI Housing Executive* [1994] 3 All ER 53 – no liability on occupier to maintain a public right of way.

Common duty of care

The common duty of care is a duty to 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 purposes for which he is invited or permitted to be there (s2(2)).

- *Simms v Leigh RFC* [1969] 2 All ER 923 – P injured by hitting concrete wall surrounding rugby field. D not liable as injury foreseeable but so improbable that it was not necessary to guard against it. D also accepted risk of playing on field complying with bye-laws.
- *Cunningham v Reading FC* [1991] Times LR 153 – D liable to police injured by concrete loosened from terraces. D neglected to take precautions against clearly foreseeable acts of violent supporters.

Children

An occupier must be prepared for children to be less careful than adults (s2(3)(a)). Therefore, if an occupier admits children to the premises the child visitor must be reasonably safe. See:

- *Glasgow Corp v Taylor* [1922] 1 AC 44 – 7 year old died after eating poisonous berries in park. D knew of the berries but took no precautions against children. Held: good cause of action to proceed to trial.
- *Pearson v Coleman Bros* [1948] 2 KB 359 – 7 year old girl left circus tent to find toilet; walked past lions cage in separate zoo enclosure and mauled. D liable as the prohibited area had not been adequately marked off.
- *Phipps v Rochester Corp* [1955] 1 All ER 129 – D not liable to boy aged 5 who fell into trench while walking across open ground with his sister aged 7. No breach of duty as reasonable parents will not permit young children to be sent into danger without protection.
- *Titchener v BRB* [1983] 3 All ER 770 – no duty owed to 15 year old walking across a railway line at night, hit by train. P knew of the line, dangers involved and the need to look out for trains.
- *Jolley v Sutton LBC* [2000] 3 All ER 409 – D liable to boy injured repairing boat abandoned on council land. D knew of boat and that it was a danger.

Common calling

An occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so (s2(3)(b)). For example:

- *Roles v Nathan* [1963] 2 All ER 908 – two chimney sweeps warned about danger of cleaning flue while boiler switched on. Killed by toxic fumes. Warning discharged the duty owed.
- *Salmon v Seafarer Restaurant* [1983] 3 All ER 729 – occupier owed same duty of care to fireman attending premises to extinguish a fire, as he owed to other visitors under s2 but the fireman was expected to exercise the skill of an ordinary fireman. D liable.
- *Ogwo v Taylor* [1987] 3 All ER 961 – fireman injured after houseowner started fire negligently. P sued in negligence. HL approved *Salmon*. D liable.

Warnings

Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more, as absolving the occupier from liability, unless in all the circumstances, it was enough to enable the visitor to be reasonably safe (s2(4)(a)). See:

- *Roles v Nathan* [1963] 2 All ER 908 – see above.
- *White v Blackmore* [1972] 3 All ER 158 – notice: “Warning to the public. Motor racing is dangerous ...” effective when competitor killed whilst watching a race from the track.
- *Cotton v Derbyshire Dales DC* (1994) Times LR 20 June – D did not have to warn about dangerous cliffs on a high path. The danger was obvious to visitors.
- *Staples v West Dorset DC* (1995) Times LR 28 April – D did not have to warn about algae which might be slippery.

Independent contractors

Where a danger is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier will not be answerable for the danger if in all the circumstances he acted reasonably in entrusting the work to an independent contractor and took such steps (if any) as he reasonably ought to in order to satisfy himself that the contractor was competent and the work was properly done (s2(4)(b)). See for example:

- *Haseldine v Daw* [1941] 3 All ER 156 – engineers liable to visitor injured by crashing lift in a block of flats. Landlord not liable.
- *Woodward v Mayor of Hastings* [1945] KB 174 – school governors liable for negligent cleaning of steps by school cleaner.

Defences

Section 2(5) provides that while knowledge of danger does not, of itself, deprive the visitor of a remedy, the occupier will not be liable in respect of risks willingly accepted as his by the visitor (*volenti non fit injuria*). Relevant cases include:

- *Bunker v Charles Brand* [1969] 2 All ER 59 – P's knowledge of dangerous machine that he was to modify for the D did not absolve D of liability under s2(4) and (5), when P fell into rollers.
- *Simms v Leigh RFC* [1969] 2 All ER 923 – see above.
- *Burnett v BWB* [1973] 2 All ER 631 – P injured by rope towing a barge he was on, snapping. A warning notice was inapplicable as he was an employee. *Volenti* was no defence as there was no free and voluntary agreement to the risk of injury.

Damages may be reduced, under the Law Reform (Contributory Negligence) Act 1945, where the visitor fails to take reasonable care for his own safety. See:

- *Revill v Newbery* [1996] 1 All ER 291 – a case involving a trespasser who was two-thirds contributorily negligent. See below

Exclusion of liability

The occupier can extend, exclude, restrict or modify the extent of his liability to visitors by agreement or otherwise, insofar as he is free to do so (s2(1)).

Where premises are occupied for business purposes:

- Any attempt to exclude liability for death or personal injury caused by negligence, including breach of the common duty of care under the 1957 Act, is void (Unfair Contract Terms Act 1977, 2(1)).
- Any attempt to exclude liability for property damage will be subject to the reasonableness test (Unfair Contract Terms Act 1977, s2(2)).

OCCUPIERS' LIABILITY ACT 1984

A common duty of care is owed by the occupier of premises (s1(1)(a)).

The duty is owed to persons "other than visitors". This includes trespassers, persons exercising private rights of way and entrants to National Parks.

Section 1(3) provides that a duty will be owed by the occupier if:

- (a) he is aware of the danger or has reasonable grounds to believe that it exists;
- (b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger; and
- (c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.

The duty is to take such care as is reasonable in all the circumstances of the case to see that the non-visitor does not suffer injury on the premises by reason of the danger concerned (s1(4)).

Contrast the following two cases:

- *Revill v Newbury* [1996] 1 All ER 291 – D liable for shooting trespassing burglar through door. A duty of care is owed to trespassers engaged in criminal activities. D used greater violence than was justified in lawful self-defence. However, contributory negligence of two-thirds.

- *Ratcliff v McConnell, Ors and Harper Adams College* [1999] 1 WLR 670 – P dived into shallow end of open-air swimming pool at night, after drinking. The risk of diving into shallow water was obvious to any adult therefore no duty of care to protect the P.

The duty owed under the 1984 Act does not cover damage to property (s1(8)).

The duty can be discharged by taking steps to warn of the danger concerned, or to discourage persons from incurring the risk (s1(5)).

Volenti is a defence (s1(6)).

LIABILITY OF VENDORS AND LESSORS

VENDORS

Liability at common law

Before 1974, a builder was liable for injury caused by negligent work unless he was also vendor in which case he was immune from suit once property had been transferred. The basic rule is *caveat emptor*. This immunity was abolished by s3 of the Defective Premises Act 1972, which came into force on 1 January 1974 (see further, below).

At common law, the position in the light of the House of Lords' decision in *Murphy v Brentwood DC* [1990] 2 All ER 908, is that:

- “In the case of a building, it is right to accept that a careless builder is liable, on the principle of *Donoghue v Stevenson*, where a latent defect results in physical injury to anyone, whether owner, occupier, visitor or passer-by, or to the property of any such person.” (per Lord Keith at p917); but
- There is no liability in tort for defects in the quality of the building (which is regarded as pure economic loss).
- “If a building stands so close to the boundary of the building owner's land that after discovery of the dangerous defect it remains a potential source of injury to persons or property on neighbouring land or on the highway, the building owner ought, in principle, to be entitled to recover in tort from the negligent builder the cost of obviating the danger.” (per Lord Bridge)

This was applied in:

- *Department of the Environment v Thomas Bates* [1990] 2 All ER 943 – low-strength concrete used in construction of building discovered later. The cost of work to strengthen the pillars was not recoverable as it was economic loss. There was no imminent danger to health and safety. The work was done to make the building fit to carry its design load.

Liability under the Defective Premises Act 1972

Section 1 imposes upon persons who undertake work for, or in connection with, the provision of a dwelling a statutory duty to see that the work taken on is done in a workmanlike or professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

A duty is imposed not only on the builder but also on the architect, surveyor and any sub-contractor.

The duty is owed not only to the persons ordering the work but also to every person who then acquires an interest (whether legal or equitable) in the dwelling.

The limitation period is six years and begins to run when the dwelling is completed. However, in actions for negligence, an alternative limitation period of three years is provided by the Latent Damage Act 1986, running from the time when the claimant could reasonably have known about the damage (subject to a ‘long-stop’ of 15 years from the last act of negligence) and specifically providing for subsequent purchasers: s3(1).

The Act does not apply to a dwelling covered by an approved scheme which confers a remedy on the owner. Previously, the National House Building Council insurance scheme, which applies to the majority of new dwellings, was an approved scheme.

LESSORS

A landlord will be an occupier for the purposes of the Occupiers' Liability Acts 1957 and 1984 if he/she (a) grants a licence to occupy but retains control; or (b) lets premises on a tenancy but retains control of common parts of a building in multiple occupation. Where a lessor does not have control, liability is as follows.

Liability at common law

The lessor's position was the same as that of the builder/vendor. The lessor could not be liable for negligence in respect of defects created by him before the grant of the lease. This immunity was also abolished by s3 of the Defective Premises Act 1972, but the range of damages recoverable is restricted by *Murphy v Brentwood*. Relevant cases:

- *Rimmer v Liverpool CC* [1984] 1 All ER 930 – P injured by falling through glass panel in wall of council flat. A landlord does not owe a duty of care but here the landlord built the property and owed a duty of care.
- *Targett v Torfaen BC* [1992] 3 All ER 27 – P injured falling down stairs with a short handrail and inadequate lighting. HL followed *Rimmer*. A landlord responsible for the construction of a house was under a duty to take reasonable care that the house was free from defects likely to cause injury. However, finding of 25% contributory negligence by trial judge.

Liability under the Defective Premises Act 1972

Sections 1 and 3 also apply to lessors.

Further, by s4, where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or damage to their property caused by a defect within the maintenance or repairing obligation.

The duty of care, which covers both personal injury and damage to property, is owed if the landlord knows or ought to have known of the defect: s4(2).

A landlord who has a power to enter and repair is treated as if he were under an obligation to repair for the purposes of s4, except that he will not owe a duty to the tenant in respect of the tenant's breach of a repairing covenant: s4(4).

Liability under the Landlord and Tenant Act 1985

This is not referred to in the ILEx Part II syllabus but for some useful information see *Winfield & Jolowicz*, p324; or *Textbook on Torts*, p295.