

Occupiers are always liable for accidents that occur on their property. Discuss the extent to which the above statement is correct.

Occupiers are not always liable for accidents that occur on their property. This essay will examine the extent to which occupiers are liable for accidents, by defining what an occupier is, what a trespasser is and the legal relationship between the two. What visitors are and the protections in place for children along with the concept of risk acceptance and how all this aligns to encourage the occupier to take reasonable precautions for others safety.

The legal definition of an occupier is stated as someone that must exercise a duty of care in respect to lawful visitors on their property (Coote, N and others 2023). The main 2 acts that dictate the laws around occupiers within the United Kingdom are the Occupiers Liability act 1957 and 1984 (Pittaway, D 2023). The main goal of these acts as previously stated is to ensure that the occupier of said premise will take all reasonable actions to ensure visitors will be reasonably safe on the premises. The scope of these protections was broadened after the introduction of the occupiers liability act 1984, to include people other than visitors such as trespassers. When attempting to draft a case under the Occupiers liability act 1984 the claimant needs to prove two aspects. The first being that the defender is the occupier of the premises in question, and secondly there was a breach in the duty of care owed to the claimant.

Moving on, the focus will be shifted to what makes an occupier liable. To begin there are two main factors that must be true for the defendant to be liable (Pittaway, D 2023). First being a standard of care. In short this relates to how safe a premises is in regard to visitors. For standard of care, what is expected is highly dependent on the situation and the type of visitors in question. An example of this can be seen in the case *Fairchild v Glenhaven Funeral Services Ltd* and other appeals 4(2002), the facts of this case is that workers developed a disease due to exposure to asbestos. It was ruled that *'there was no scope to impose any duty of care at common law on the occupiers of premises where the employees went to do their work ... that there was no duty on a mere occupier who had engaged competent contractors to find out about risks which might imperil the contractors '*. This case shows the importance of 'standard of care' and how it affects liability. This is due to the occupier enlisting the aid of high skilled individuals, their actions that endangered themselves shielded the occupier from liability. If they weren't high skilled individuals, and were laymen the standard of care would have been breached. Secondly in regard to occupier liability the focus should be on the type of trespasser in question. As expressed through common law child trespassers have a higher duty of care, but you must also consider the reasoning for trespassing such as if it is malicious, or just straying off a public footpath. An example of this can be found here *'December 2015, gas distributor National Grid was fined £2*

million after pleading guilty to breaching s 3(1) of the HSWA 1974 in relation to the death of schoolboy Robbie Williamson records incorrectly showed the pipe was buried within the bridge rather than exposed on the outside. As a result, the crossing had not been subject to inspection and had no access prevention measures fitted (Coote, N and others 2023). This was bad as firstly it due to it being a minor which means the duty of care is higher and secondly, the occupier not properly checking the record led to negligence which caused harm. On the other hand in the case *Donoghue v Folkestone Properties Ltd* (2003), The defendant was found not liable for damages after an appeal. The judge stated *'the defendant had had no reason to believe that the claimant or anyone else would be swimming in the harbour in mid-winter in the middle of the night, the defendant had owed no duty to'*. This means it fits into the reasonability aspect of liability and in regard to trespassers, the occupier of this case was not incorrect in assuming that people would go swimming at midnight during the winter. Overall when it comes to liability, when looking at case law and the application of the occupiers liability act 1957 and 1984, liability is heavily dependent on the facts of the case, and the reasonability of actions.

To further elaborate on this the next focus will be on trespassers and their role in this. To begin with trespassers are uninvited guests on premises, due to this comes a lesser duty to safeguard them from harm (LexisNexis Butterworths 2022). A trespasser is anyone who enters land without the consent of the owner and continues to reside there. The first case will focus on the importance of duty of care even if the trespasser is acting with bad intentions. In the case *Revill v Newbery* (1996) the defendant was sleeping in his allotment and was awoken to noise outside. His response was to fire a shotgun through the door, which resulted in harming the plaintiff. Due to Section 1 of the occupiers liability act 1984 a duty was placed upon him as the occupier of the premises. The main point of this case was the negligence conducted by the defendant that resulted in harm to the trespasser. The judge stated simply *'fact that the plaintiff was engaged in criminal activities upon the premises when he suffered injury as a result of the defendant's negligence was not sufficient of itself to debar him from claiming damages for those injury'* this case is an example of the care that must be upheld as an occupier, and actions taken should be reasonable rather than aggressive.

Next will be focusing on the concept of protecting trespassers from harm that is brought by their own actions. Following on from this is the case *Ratcliff v McConne* (1999) in this case a 19 year old student trespasses into a pool at night. The pool in question was closed for the winter and was filtered to half of its typical depth. At first the defendant occupier was found at fault however through an appeal they were found to have not been at fault. What changed the outcome of this case was the fact the Plaintiff knew the risks yet continued on. The judge stated *'in any event, the plaintiff was plainly aware of the risk and willingly accepted it; and that, accordingly, the defendants were*

under no duty to the plaintiff this concept of risk awareness is important in regard to liability. As shown here, the plaintiff knowing and understanding in inevitable harm will prevent the occupier in having any liability in the resulting accident.

The final aspect of trespassers is the concept of allurement and the reasonable potentiality of harm. As previously mentioned there are different types of trespassing which will result in more or less liability on an occupier. If it is as simple as getting lost on a public footpath this will result in a higher duty of care than intentionally trespassing. In the case *Higgs v Foster* (2004) the claim put forth was dismissed as the occupier had no reasonable grounds to believe a trespasser would enter their premises. Even though the grounds were easy to enter that in and of itself was not conclusive, *'nothing in the nature of an allurement which could have attracted someone to relevant area'* furthermore there was no natural route into the premises. What this is stating is that if an occupier has no reason to expect someone would enter their premises for any reason whatsoever their duty of care would be lower. Overall in regard to trespassers can Occupiers be found liable for their accidents. The answer to that is yes. However as shown here the duty of care is lower for them.

Next this will be viewing what a visitor is and the liability in regard to children. A visitor is under the protection of the Occupier Liability act 1957 while conducting their business on the premises. If a visitor acts in any way outside of the welcomed capacity the protections granted by the 1957 act will cease and they will be deemed an unlawful visitor. Just like with trespassers, the protections granted change depending on who the visitor is. An example of this being that children will be granted more protections than a skilled adult (Wilson, A 2023). When it comes to children, the standard of care is higher than it is for adults. However that doesn't always mean that the occupiers will be liable for accidents that occur unto them. For example , despite the occupiers being liable, even if a child does come to harm they may not receive the full amount if the claimant is found to be the agent of their own harm. In the case *Young v Kent* (2005) the 12 year old autistic child was injured after falling through the roof of a school building. What makes this interesting is that the courts ruled that the authority had been in breach of the 1984 Occupiers liability act. However, despite that the claimant was also partly at fault *'The claimant was as much to blame as the authority and accordingly the damages to be awarded to him would be reduced by 50%'*. Following on from this in the case *Keown v Coventry Healthcare NHS Trust* (2006), the case was overturned through an appeal. Within this case an 11 year old child was playing in a fire escape and ended up falling sustaining a brain injury along with over physical injuries. The appeal was granted due to the fact that under section 1 (1) (A) of the occupiers liability act 1984 *'whether any duty is owed by a person as occupier of premises to persons other than his visitors in respect of any risk of their*

suffering injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them' it was deemed the fire escape in and of itself presented no danger. However the actions of the claimant added the dangerous element which resulted in the accident. Overall the point of this is to show how even with the higher standard of care given to minors, that does not inherently make an occupier liable for accidents.

Moving on an important defense that can be used to negate liability and has been mentioned in this previously in this essay, is the concept of accepting risks. A practical example of this can be found in *Simms v Leigh Rugby Football Club Ltd* (1969). This is a simple case in which a minor most likely broke their leg in a tackle. Under section 2 (1) of the occupiers liability act 1957 this would not have proven liable as the damages that occurred to the claimant were foreseeable and probable. Furthermore under S2 (5) of the occupiers liability act 1984 the defendant can't be seen as liable, as the claimant is willingly playing rugby therefore consented to the fact that this type of potential damage could occur, 'since a broken leg in a tackle was one of the accepted risks in playing rugby football, the defendant was not liable'. Following on from another case with similar aspects in *Evans v Kosmar* (2008) displays the importance of risk acceptance and how it negates liability for the occupier.

One final aspect I would like to touch on before the conclusion is the idea of reform for the occupier liability act 1957 and 1984 is reform. As previously mentioned the 1984 was a reform of the 1957 act and was used to broaden protection by the law. One worrying aspect of our current Occupier liability act in general is the fear of legal abuse. Or a better term would be 'compensation culture' as aptly coined in the work by Jesse elvin (2004). In a way this fear can already be seen in some ways. As seen in previously mentioned cases such as *Simms v Leigh Rugby Football Club Ltd* (1969) and *Higgs v Foster* (2004) an argument could be made for the legal compensation to be used as an incitement to make unnecessary claims. To conclude this is just one idea for reform that could dissuade unnecessary claims.

In conclusion, Occupiers are not always liable for accidents that occur on their premises. As shown through the cases provided the protections contained with the occupier liability acts 1957 and 1984 can be used to protect the occupier as well as the claimant. All the occupier needs to do to avoid liability is act in a reasonable manner and take obvious precautions to maintain safety.

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