

Supplementary legal materials

Foundation stage legal research

SAM (Occupiers Liability Scenario)

1.	Limitation Act 1980	Pages 2 - 11
2.	Occupiers Liability Act 1957	Pages 12 - 16
3.	Jolley v. Sutton London Borough Council [2000]	Pages 17 - 20
4.	Wheat v. E. Lacon and Company Limited [1966]	Pages 21 - 23
5.	Construction News Article	Pages 24 - 25

(Extracted and modified documents accessed 5.10.20)



Limitation Act 1980

1980 CHAPTER 58

An Act to consolidate the Limitation Acts 1939 to 1980.

[13th November 1980]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1. Time limits under Part I subject to extension or exclusion under Part II.**
- 2. Time limit for actions founded on tort.**
[3.-10. Not Reproduced.]
- 11. Special time limit for actions in respect of personal injuries.**
[11A. Not Reproduced.]
- 12. Special time limit for actions under Fatal Accidents legislation.**
[13. Not Reproduced.]
- 14. Definition of date of knowledge for purposes of sections 11 and 12.**
- 14A. Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual.**
[14B.-27C. Not Reproduced.]
- 28. Extension of limitation period in case of disability.**
- 28A. Extension for cases where the limitation period is the period under section 14A(4)(b).**
[29.-37. Not Reproduced]
- 38. Interpretation.**
[39.-40. Not Reproduced.]
- 41. Short title, commencement and extent.**

Part I Ordinary Time Limits for Different Classes of Action
Time limits under Part I subject to extension or exclusion under Part II

1. Time limits under Part I subject to extension or exclusion under Part II.

- (1) This Part of this Act gives the ordinary time limits for bringing actions of the various classes mentioned in the following provisions of this Part.
- (2) The ordinary time limits given in this Part of this Act are subject to extension or exclusion in accordance with the provisions of Part II of this Act.

2. Time limit for actions founded on tort.

An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.

[Sections 3.-10. Not Replicated]

11. Special time limit for actions in respect of personal injuries.

- (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

[F5(1A) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.]

- (2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

- (3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.

- (4) Except where subsection (5) below applies, the period applicable is three years from—

- (a) the date on which the cause of action accrued; or
(b) the date of knowledge (if later) of the person injured.

- (5) If the person injured dies before the expiration of the period mentioned in subsection (4) above, the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 1 of the **M3**Law Reform (Miscellaneous Provisions) Act 1934 shall be three years from—

- (a) the date of death; or
(b) the date of the personal representative's knowledge; whichever is the later.

- (6) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land; and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

- (7) If there is more than one personal representative, and their dates of knowledge are different, subsection (5)(b) above shall be read as referring to the earliest of those dates.

Textual Amendments

F5 S. 11(1A) inserted (16.6.1997) by 1997 c. 40, s.6; S.I. 1997/1498, art.2

Marginal Citations

M3 1934 c. 41(122:3)

[Section 11A. Not Replicated]**12. Special time limit for actions under Fatal Accidents legislation.**

(1) An action under the **M7**Fatal Accidents Act 1976 shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury (whether because of a time limit in this Act or in any other Act, or for any other reason).Where any such action by the injured person would have been barred by the time limit in section 11 [**F7** or 11A] of this Act, no account shall be taken of the possibility of that time limit being overridden under section 33 of this Act.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action under the Fatal Accidents Act 1976, but no such action shall be brought after the expiration of three years from—

(a) the date of death; or

(b) the date of knowledge of the person for whose benefit the action is brought; whichever is the later.

(3) An action under the Fatal Accidents Act 1976 shall be one to which sections 28, 33[**F8**, 33A][**F9**, 33B] and 35 of this Act apply, and the application to any such action of the time limit under subsection (2) above shall be subject to section 39; but otherwise Parts II and III of this Act shall not apply to any such action.

Textual Amendments

F7 Words inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), Sch. 1 para. 2

F8 Words in s. 12(3) inserted (with application in accordance with regs. 3, 4 of the amending S.I.) by Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), regs. 2, 24

F9 Words in s. 12(3) inserted (9.7.2015) by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (S.I. 2015/1392), regs. 1(2), 4(2) (with reg. 1(3))

Marginal Citations

M7 1976 c. 30(122:3)

13.**14. Definition of date of knowledge for purposes of sections 11 and 12.**

(1) [**F10**Subject to subsection (1A) below,] in sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

(a) that the injury in question was significant; and

(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and

(c) the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant; and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

[F11(1A)] In section 11A of this Act and in section 12 of this Act so far as that section applies to an action by virtue of section 6(1)(a) of the Consumer Protection Act 1987 (death caused by defective product) references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

(a) such facts about the damage caused by the defect as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment; and

(b) that the damage was wholly or partly attributable to the facts and circumstances alleged to constitute the defect; and

(c) the identity of the defendant; but, in determining the date on which a person first had such knowledge there shall be disregarded both the extent (if any) of that person's knowledge on any date of whether particular facts or circumstances would or would not, as a matter of law, constitute a defect and, in a case relating to loss of or damage to property, any knowledge which that person had on a date on which he had no right of action by virtue of Part I of that Act in respect of the loss or damage.]

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Textual Amendments

F10 Words inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), Sch. 1 para. 3

F11 S. 14(1A) inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), Sch. 1 para. 3

[F1214A. Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual.]

(1) This section applies to any action for damages for negligence, other than one to which section 11 of this Act applies, where the starting date for reckoning the period of limitation under subsection (4)(b) below falls after the date on which the cause of action accrued.

(2) Section 2 of this Act shall not apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) below.

(4) That period is either—

(a) six years from the date on which the cause of action accrued; or

(b) three years from the starting date as defined by subsection (5) below, if that period expires later than the period mentioned in paragraph (a) above.

(5) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (4)(b) above is the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action.

(6) In subsection (5) above “the knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge both—

(a) of the material facts about the damage in respect of which damages are claimed; and

(b) of the other facts relevant to the current action mentioned in subsection (8) below.

(7) For the purposes of subsection (6)(a) above, the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(8) The other facts referred to in subsection (6)(b) above are—

(a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and

(b) the identity of the defendant; and

(c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(9) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (5) above.

(10) For the purposes of this section a person’s knowledge includes knowledge which he might reasonably have been expected to acquire—

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.】

Textual Amendments

F12 Ss. 14A, 14B inserted with saving by Latent Damage Act 1986 (c. 37, SIF 79), ss. 1, 4(1)(2)

[Sections 14B.- 27C. Not Replicated]

Part II Extension or Exclusion of Ordinary Time Limits

28. Extension of limitation period in case of disability.

(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired.

(2) This section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims.

(3) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.

(4) No action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims.

F40 [(4A) If the action is one to which section 4A of this Act applies, subsection (1) above shall have effect—

(a) in the case of an action for libel or slander, as if for the words from “at any time” to “occurred)” there were substituted the words “by him at any time before the expiration of one year from the date on which he ceased to be under a disability”; and

(b) in the case of an action for slander of title, slander of goods or other malicious falsehood, as if for the words “six years” there were substituted the words “one year”.]

(5) If the action is one to which section 10 of this Act applies, subsection (1) above shall have effect as if for the words “six years” there were substituted the words “two years”.

(6) If the action is one to which section 11 or 12(2) of this Act applies, subsection (1) above shall have effect as if for the words “six years” there were substituted the words “three years”.

[F41(7) If the action is one to which section 11A of this Act applies or one by virtue of section 6(1)(a) of the **M10**Consumer Protection Act 1987 (death caused by defective product), subsection (1) above—

(a) shall not apply to the time limit prescribed by subsection (3) of the said section 11A or to that time limit as applied by virtue of section 12(1) of this Act; and

(b) in relation to any other time limit prescribed by this Act shall have effect as if for the words “six years” there were substituted the words “three years”.]

Textual Amendments

F40 S. 28(4A) (which was inserted by 1985 c. 61, ss. 57(3), 69(5), Sch. 9 para. 14) substituted (4.9.1996) by 1996 c. 31, ss. 5(3)(6), 19 (with s. 20(2))

F41 S. 28(7) inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), Sch. 1 para. 4

Modifications etc. (not altering text)

C1 S. 28 excluded by Latent Damage Act 1986 (c. 37, SIF 79), ss. 3(3), 4

C2 S. 28(1) extended with modification by Merchant Shipping (Liner Conferences) Act 1982 (c. 37, SIF 111), s. 8(2)(a)

Marginal Citations

M10 1987 c. 43(109:1)

[F42 28A. Extension for cases where the limitation period is the period under section 14A(4)(b).

(1) Subject to subsection (2) below, if in the case of any action for which a period of limitation is prescribed by section 14A of this Act—

(a) the period applicable in accordance with subsection (4) of that section is the period mentioned in paragraph (b) of that subsection;

(b) on the date which is for the purposes of that section the starting date for reckoning that period the person by reference to whose knowledge that date fell to be determined under subsection (5) of that section was under a disability; and

(c) section 28 of this Act does not apply to the action;

the action may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period mentioned above has expired.

(2) An action may not be brought by virtue of subsection (1) above after the end of the period of limitation prescribed by section 14B of this Act.]

Textual Amendments

F42 S. 28A inserted with saving by Latent Damage Act 1986 (c. 37, SIF 79), ss. 2(1), 4(1)(2)

[Sections 29.- 37. Not Replicated]

38. Interpretation.

(1) In this Act, unless the context otherwise requires—

- “action” includes any proceeding in a court of law, including an ecclesiastical court **[F61** (and see subsection (11) below)];
- “land” includes corporeal hereditaments, tithes and rent-charges and any legal or equitable estate or interest therein **F62**. . . but except as provided above in this definition does not include any incorporeal hereditament;

- “personal estate” and “personal property” do not include chattels real;
- “personal injuries” includes any disease and any impairment of a person’s physical or mental condition, and “injury” and cognate expressions shall be construed accordingly;
- “rent” includes a rentcharge and a rents service;
- “rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a rent service or interest on a mortgage on land;
- “settled land”, “statutory owner” and “tenant for life” have the same meanings respectively as in the **M20** Settled Land Act 1925;
- “trust” and “trustee” have the same meanings respectively as in the **M21** Trustee Act 1925; and
- **F63**. . .

(2) For the purposes of this Act a person shall be treated as under a disability while he is an infant, or **[F64]** lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings].

(3) **F65**.

(4) **F65**.

(5) Subject to subsection (6) below, a person shall be treated as claiming through another person if he became entitled by, through, under, or by the act of that other person to the right claimed, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be treated as claiming through the person so entitled.

(6) A person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be treated as claiming through the appointor.

(7) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of **F66**... tithes, to distrain for arrears of **F66**... tithe, and references to the bringing of such an action shall include references to the making of such an entry or distress.

(8) References in this Act to the possession of land shall, in the case of tithes and rentcharges, be construed as references to the receipt of the tithe or rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rent charges, be construed as references to the date of the last receipt of rent.

(9) References in Part II of this Act to a right of action shall include references to—

- (a) a cause of action;
- (b) a right to receive money secured by a mortgage or charge on any property;
- (c) a right to recover proceeds of the sale of land; and
- (d) a right to receive a share or interest in the personal estate of a deceased person.

(10) References in Part II to the date of the accrual of a right of action shall be construed—

- (a) in the case of an action upon a judgment, as references to the date on which the judgment became enforceable; and
- (b) in the case of an action to recover arrears of **F66**... interest, or damages in respect of arrears of **F66**... interest, as references to the date on which the **F66**... interest became due.

[F67 (11) References in this Act to an action do not include any method of recovery of a sum recoverable under—

- (a) Part 3 of the Social Security Administration Act 1992,
 - (b) section 127(c) of the Social Security Contributions and Benefits Act 1992, or
 - (c) Part 1 of the Tax Credits Act 2002,
- other than a proceeding in a court of law.]

Textual Amendments

F61 Words in s. 38(1) inserted (with effect in accordance with s. 108(4) of the commencing Act) by Welfare Reform Act 2012 (c. 5), ss. 108(2), 150(1)(c)

F62 Words in the definition of "land" repealed (1.1.1997) by 1996 c. 47, s. 25(2), Sch. 4 (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, art. 2

F63 Definition of "trust for sale" repealed (1.1.1997) by 1996 c. 47, s. 25(2), Sch. 4 (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, art. 2

F64 Words in s. 38(2) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1), 68(1), Sch. 6 para. 25(a) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)

F65 S. 38(3)(4) repealed (1.10.2007) by The Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68(1), Sch. 6 para. 25(b), Sch. 7 (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)

F66 Words in s. 38 omitted (6.4.2014) by virtue of Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 37, Sch. 23 Pt. 4 (with s. 89); S.I. 2014/768, art. 2(1)(b) F7S. 38(11) inserted (with effect in accordance with s. 108(4) of the commencing Act) by Welfare Reform Act 2012 (c. 5), ss. 108(3), 150(1)(c)

Marginal Citations

M20 1925 c. 18(98:3)

M21 1925 c. 19(98:4)

41. Short title, commencement and extent.

- (1) This Act may be cited as the Limitation Act 1980.
- (2) This Act, except section 35, shall come into force on 1st May 1981.
- (3) Section 35 of this Act shall come into force on 1st May 1981 to the extent (if any) that the section substituted for section 28 of the **M23**Limitation Act 1939 by section 8 of the **M24**Limitation Amendment Act 1980 is in force immediately before that date; but otherwise section 35 shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint, and different days may be appointed for different purposes of that section (including its application in relation to different courts or proceedings).
- (4) The repeal by this Act of section 14(1) of the **M25**Limitation Act 1963 and the corresponding saving in paragraph 2 of Schedule 2 to this Act shall extend to Northern Ireland, but otherwise this Act does not extend to Scotland or to Northern Ireland.

Modifications etc. (not altering text)

C1 Power of appointment conferred by s.41(3) fully exercised:1.5.1981 appointed by S.I. 1981/588, art.2

Marginal Citations

M23 1939 c. 21

M24 1980 c. 24(79)

M25 1963 c. 47



Occupiers' Liability Act 1957

1957 CHAPTER 31 5 and 6 Eliz 2

An Act to amend the law of England and Wales as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there, to make provision as to the operation in relation to the Crown of laws made by the Parliament of Northern Ireland for similar purposes or otherwise amending the law of tort, and for purposes connected therewith.

[6th June 1957]

Table of contents

- 1. Preliminary**
- 2. Extent of occupier's ordinary duty**
- 3. Effect of contract on occupier's liability to third party.**
- 4..**
- 5. Implied term in contracts.**
- 6. Application to Crown.**
- 7. Powers of Parliament of Northern Ireland.**
- 8. Short title, etc.**

1. Preliminary

(1) The rules enacted by the two next following sections shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them.

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (subject to subsection (4) of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

(a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft; and

(b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

[F1(4) A person entering any premises in exercise of rights conferred by virtue of—

(a) section 2(1) of the Countryside and Rights of Way Act 2000, or

(b) an access agreement or order under the National Parks and Access to the Countryside Act 1949, is not, for the purposes of this Act, a visitor of the occupier of the premises.]'

Textual Amendments

F1 S.1(4) substituted (19.9.2004 for E., 28.5.2005 for W.) by Countryside and Rights of Way Act 2000 (c. 37), ss. 13(1), 103(3) (with s. 43); S.I. 2004/2173, art. 2(1)(c); S.I. 2005/423, art. 2(c)

2. Extent of occupier's ordinary duty

(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) 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 by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

(a) an occupier must be prepared for children to be less careful than adults; and

(b) 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.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

(a) 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; and

(b) where damage 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 is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

3. Effect of contract on occupier's liability to third party.

(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

(3) In this section “stranger to the contract” means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Act, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

4. F2

Textual Amendments

F2 s.4 repealed by Defective Premises Act 1972 (c. 35), s. 6(4)

5. Implied term in contracts.

(1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care.

(2) The foregoing subsection shall apply to fixed and moveable structures as it applies to premises.

(3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by or by virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the commencement of this Act.

6. Application to Crown.

This Act shall bind the Crown, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the **M1**Crown Proceedings Act 1947, and that Act and in particular section two of it shall apply in relation to duties under sections two to four of this Act as statutory duties.

Marginal Citations

M1 1947 c. 44.

7. Powers of Parliament of Northern Ireland.

The limitation imposed by paragraph (1) of section four of the **M2**Government of Ireland Act 1920, precluding the Parliament of Northern Ireland from making laws in respect of the Crown or property of the Crown (including foreshore vested in the Crown) shall not extend to prevent that Parliament from amending the law of tort, or enacting provisions similar to section five of this Act, so as to bind the Crown in common with private persons; but as regards the Crown's liability in tort, no such amendments shall bind the Crown further than the Crown is made liable in tort under the law of Northern Ireland by Orders in Council under section fifty-three of the **M3**Crown Proceedings Act 1947.

Marginal Citations

M2 1920 c. 67.

M3 1947 c. 44.

8, Short title, etc.

(1) This Act may be cited as the Occupiers' Liability Act 1957.

(2) This Act shall not extend to Scotland, nor to Northern Ireland except in so far as it extends the powers of the Parliament of Northern Ireland.

(3) This Act shall come into force on the first day of January, nineteen hundred and fifty-eight.

Jolley v. Sutton London Borough Council [2000] UKHL 31 (18 May 2000)

HOUSE OF LORDS

Lord Browne-Wilkinson Lord Mackay of Clashfern Lord Steyn Lord Hoffmann
Lord Hobhouse of Woodborough

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT

IN THE CAUSE

JOLLEY (A.P.)

(APPELLANTS)

v.

SUTTON LONDON BOROUGH COUNCIL

(RESPONDENTS)

ON 18 MAY 2000

LORD STEYN : (Added: with whom Lord Browne-Wilkinson Lord Mackay of Clashfern Lord Hoffmann and Lord Hobhouse of Woodborough agree)

[Added Paragraph Numbering]

My Lords,

1. On 8 April 1990, in the grounds of a block of council flats owned and occupied by the London Borough of Sutton, Justin Jolley, then a schoolboy aged 14, sustained serious spinal injuries in an accident. It arose when a small abandoned cabin cruiser, which had been left lying in the grounds of the block of flats, fell on Justin as he lay underneath it while attempting to repair and paint it. As a result he is now a paraplegic. He claimed damages in tort from the council. At trial the claim was primarily based on a breach of the Occupiers' Liability Acts 1957 and 1984. After a seven day trial in 1998 Mr. Geoffrey Brice, Q.C., a Deputy High Court Judge, gave judgment for Justin but reduced the damages by 25 per cent. by virtue of a finding of contributory negligence. The judge awarded damages in the sum of £621,710, together with interest: *Jolley v. London Borough of Sutton* [1998] 1 Lloyd's Rep. 433. The council appealed. The Court of Appeal unanimously reversed the judge's conclusions on the merits and entered judgment for the council: *Jolley v. Sutton L.B.C.* [1998] 1 WLR 1546.

...7. The leading judgment in the Court of Appeal was given by Lord Woolf M.R. He cited extensively from the decision in the Privy Council in *Overseas Tank (U.K.) Limited v. Morts Docks and Engineering Company Limited (The Wagon Mound)* [1961] AC 388 ("The Wagon Mound No. 1") and *Hughes v. Lord Advocate* [1963] AC 837. Lord Woolf M.R. then explained his reasons for disagreeing with the judge, [1998] 1 WLR 1546, 1553H-1554E:

... "Even making full allowance for the unpredictability of children's behaviour, I am driven to conclude that it was not reasonably foreseeable that an accident could occur as a result of the boys deciding to work under a propped up boat. Nor could any reasonably similar accident have been foreseen. Ironically the state of the boat was so poor that it made it less likely that it would be repairable or that boys would embark on doing the necessary repairs. The photographs of the boat and the evidence of Mr. Hall indicate that it was a fairly heavy structure. It would be by no means easy for the boat to be moved or raised. In deciding whether the accident was foreseeable it is important not only to consider the precise accident which occurred but the class of accident."

8. Roch L.J. at p. 1555 agreed with the reasons of Lord Woolf M.R. and in a separate judgment held that "Had the boat been sound then no reason for its removal would have existed." Judge L.J. observed, at p. 1556A:

"If a result of its unsafe condition a child had been injured while doing so the subsequent claim for damages would have succeeded. Whether it would have succeeded on the basis of an injury resulting from the mere presence of the boat - as opposed to its unsafe condition - is a separate question which does not arise for decision."

...13. The difficulty facing counsel for the borough, was that the Court of Appeal never squarely addressed the question whether the judge's critical finding was open to him on the evidence. For my part the judge's reasons for that finding are convincing in the context of teenage boys attracted by an obviously abandoned boat. And I do not regard what they did as so very different from normal play. The judge's observation that play can take the form of mimicking adult behaviour is a perceptive one. It is true, of course, that one is not dealing with a challenge to an issue of primary fact. The issue whether an accident of the particular type was reasonably foreseeable is technically a secondary fact but perhaps it is more illuminating to call it an informed opinion by the judge in the light of all the circumstances of the case. In my view it was an opinion which is justified by the particular circumstances of the case. Counsel has not persuaded me that the judge's view was wrong. And I would hold that the Court of Appeal was not entitled to disturb the judge's findings of fact.

...16. Secondly, Lord Woolf M.R. made an observation casting doubt on part of Lord Reid's speech in *Hughes v. Lord Advocate* [1963] AC 837. The defendants left a manhole uncovered and protected only by a tent and paraffin lamp. A child climbed down the hole. When he came out he kicked over one of the lamps. It fell into the hole and caused an explosion. The child was burned. The Court of Session held that there was no liability. The House of Lords reversed the decision of the Court of Session. In the present case Lord Woolf M.R., [1998] 1 WLR 1546, 1551H-1552C cited the following parts of the speech of Lord Reid, at pp. 845 and 847:

"So we have (first) a duty owed by the workmen, (secondly) the fact that if they had done as they ought to have done there would have been no accident, and (thirdly) the fact that the injuries suffered by the appellant, though perhaps different in degree, did not differ in kind from injuries which might have resulted from an accident of a foreseeable nature. *The ground on which this case has been decided against the appellant is that the accident was of an unforeseeable type. Of course, the pursuer has to prove that the defender's fault caused the accident and there could be a case where the intrusion of a new and unexpected factor could be regarded as the cause of the accident rather than the fault of the defender. But that is not this case. The cause of this accident was a known source of danger, the lamp, but it behaved in an unpredictable way*" [Emphasis supplied by Lord Woolf M.R.]

"This accident was caused by a known source of danger, but caused in a way which could not have been foreseen and in my judgment, that affords no defence."

17. Lord Woolf M.R. observed that he had difficulty in reconciling these remarks with the approach in *The Wagon Mound (No. 1)* [1961] AC 388. It is true that in *The Wagon Mound (No. 1)* Viscount Simonds at one stage observed, at p. 425E:

"If, as admittedly it is, B's liability (culpability) depends on the reasonable foreseeability of the consequent damage, how is that to be determined except by the foreseeability of the damage which in fact happened - the damage in suit?"

18. But this is to take one sentence in the judgment in *The Wagon Mound (No. 1)* out of context. Viscount Simonds was in no way suggesting that the precise *manner* of which the injury occurred nor its *extent* had to be foreseeable. And Lord Reid was saying no more. The speech of Lord Reid in *Hughes v. Lord Advocate* [1963] AC 837 is in harmony with the other judgments. It is not in conflict with *The Wagon Mound (No. 1)*. The scope of the two modifiers - the precise manner in which the injury came about and its extent - is not definitively answered by either *The Wagon Mound (No. 1)* or *Hughes v. Lord Advocate*. It requires determination in the context of an intense focus on the circumstances of each case: see *John Fleming, The Law of Torts*, 9th ed., (1998), pp. 240-243.

19. My Lords, I would restore the wise decision of Mr. Geoffrey Brice, Q.C., the Deputy High Court judge. I would allow the appeal. I would further remit the case to the Court of Appeal to enable it to consider what course it should adopt on any application in regard to the determination of any issue relating to quantum of damages.

LORD HOFFMANN

My Lords,

20. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Steyn and I gratefully adopt his statement of the facts. The issue in this appeal is a very narrow one. The council admits that it was the occupier of the grassed area near the flats where the plaintiff lived, that plaintiff was allowed to play there and that he was accordingly a "visitor" upon its land within the meaning of the Occupiers' Liability Act 1957: see section 1(2). The council therefore owed the plaintiff the "common duty of care" defined in section 2(2) of the Act:

"...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 by the occupier to be there."

21. By way of further explanation, section 1(3) says that the relevant circumstances will include "the degree of care, and want of care, which would ordinarily be looked for in such a visitor" so that, for example, in proper cases: "...an occupier must be prepared for children to be less careful than adults..."

...25. My Lords, although this is in end the question of fact, the courts are not without guidance. "Reasonably foreseeable" is not a fixed point on the scale of probability. As Lord Reid explained in *Overseas Tankship (U.K.) Ltd v. Miller Steamship Co. Pty (The Wagon Mound No. 2)*. [1967] 2 A.C. 617, 642 other factors have to be considered in deciding whether a given probability of injury generates a duty to take steps to eliminate the risk. In that case, the matters which the Privy Council took into account were whether avoiding the risk would have involved the defendant in undue cost or required him to abstain from some otherwise reasonable activity. In *Bolton v. Stone* [1951] AC 850 there was a foreseeable risk that someone might one day be hit by a cricket ball but avoiding this risk would have required the club to incur very large expense or stop playing cricket. The House of Lords decided that the risk was not such that a reasonable man should have taken either of these steps to eliminate it. On the other hand, in *The Wagon Mound No. 2*, the risk was caused by the fact that the

defendant's ship had, without any need or excuse, discharged oil into Sydney Harbour. The risk of the oil catching fire would have been regarded as extremely small. But, said Lord Reid, at p. 642:

"... it does not follow that, no matter what the circumstances may be, it is justifiable to neglect a risk of such a small magnitude. A reasonable man would only neglect such a risk if he had some valid reason for doing so, e.g., that it would involve considerable expense to eliminate the risk. He would weigh the risk against the difficulty of eliminating it."

... 29. In the Court of Appeal, Lord Woolf M.R. observed, at p. 1553, that there seemed to be no case of which counsel were aware "where want of care on the part of a defendant was established but a plaintiff who was a child had failed to succeed because the circumstances of the accident were not foreseeable." I would suggest that this is for a combination of three reasons: first, because a finding or admission of want of care on the part of the defendant establishes that it would have cost the defendant no more trouble to avoid the injury which happened than he should in any case have taken; secondly, because in such circumstances the defendants will be liable for the materialisation of even relatively small risks of a different kind, and thirdly, because it has been repeatedly said in cases about children that their ingenuity in finding unexpected ways of doing mischief to themselves and others should never be underestimated. For these reasons, I think that the judge's broad description of the risk as being that children would "meddle with the boat at the risk of some physical injury" was the correct one to adopt on the facts of this case. The actual injury fell within that description and I would therefore allow the appeal.

HOUSE OF LORDS

WHEAT (A.P.) (Widow and Administratrix of the estate of Walter Wheat

deceased)

v.

E. LACON AND COMPANY LIMITED

Viscount Dilhorne
Lord Denning
Lord Morris of Borth-y-Gest
Lord Pearce
Lord Pearson

[Added Paragraph Numbering]

Viscount Dilhorne

my lords,

1. On the 4th September, 1958, at about 9 p.m., Mr. Wheat, the husband of the Appellant, fell while going down the back stairs of a public house called " The Golfer's Arms " at Great Yarmouth. He was found lying on the floor of the vestibule at the bottom of the stairs and shortly thereafter he died....

...3. On the 19th August, 1960, Mrs. Wheat, his widow, commenced an action against E. Lacon & Co. Ltd., the Respondents to this appeal, and the owners of the public house; Mr. Richardson, the manager of it, and Mrs. Richardson his wife. She claimed as widow of Mr. Wheat and as his administratrix under the Fatal Accidents Acts, 1846-1908, and the Law Reform (Miscellaneous Provisions) Act, 1934, damages in respect of her husband's death by reason of the negligence and breach of duty of the Defendants.

...31. The Appellant claimed that the Respondents were occupiers of the public house and so owed to Mr. Wheat as a visitor to the public house the duty prescribed by the Occupiers Liability Act, 1957.

...45. In Salmond on Torts (10th Ed.) at p. 469, the following passage appears—

"In dealing with dangerous premises it is necessary to distinguish between the responsibilities of the owner and those of the occupier or possessor. Generally speaking, liability in such cases is based on occupancy or control, not on ownership. The person responsible for the condition of the premises is he who is in actual possession of them for the time being, whether he is the owner or not, for it is he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons."

...47. While it is clearly right that, generally speaking, liability for dangerous premises is based on occupancy or control, not on ownership, it does not necessarily follow that the person in actual occupation of the premises is responsible for their condition.

Lord Denning

my lords,

...68. The case raises this point of law: did the Brewery Company owe any duty to Mr. Wheat to see that the handrail was safe to use or to see that the stairs were properly lighted? That depends on whether the Brewery Company was "an occupier" of the private portion of the "Golfer's Arms," and Mr. Wheat its "visitor" within the Occupiers Liability Act, 1957: for if so, the Brewery Company owed him the "common duty of care".

...71. In the Occupiers' Liability Act, 1957, the word "occupier" is used in the same sense as it was used in the common law cases on occupiers' liability for dangerous premises. It was simply a convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises. Those persons were divided into two categories, invitees and licensees: and a higher duty was owed to invitees than to licensees. But by the year 1956 the distinction between invitees and licensees had been reduced to vanishing point. The duty of the occupier had become simply a duty to take reasonable care to see that the premises were reasonably safe for people coming lawfully on to them: and it made no difference whether they were invitees or licensees, see *Slater v. Clay Bros.* [1956] 2 Q.B. 264 at p. 269.

... 72. Translating this general principle into its particular application to dangerous premises, it becomes simply this: wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an "occupier" and the person coming lawfully there is his "visitor"; and the "occupier" is under a duty to his "visitor" to use reasonable care. In order to be an "occupier" it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be "occupiers". And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.

72. In Salmond on Torts 14th Edition (1965) p. 372, it is said that an "occupier" is "he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons". This definition was adopted by Roxburgh J. in *Hartnell v. Grayson* [1947] K.B. 901 at p. 917, and by Diplock L.J. in the present case [1965] 3 W.L.R. at p. 159. There is no doubt that a person who fulfils that test is an "occupier". He is the person who says "come in"...

73. ... where a landlord let premises by demise to a tenant, he was regarded as parting with all control over them. He did not retain any degree of control, even though he had undertaken to repair the structure. Accordingly, he was held to be under no duty to any person coming lawfully on to the premises, save only to the tenant under the agreement to repair. In *Cavalier v. Pope* [1906] AC 428, it was argued that the premises were under the control of the landlord because of his agreement to repair: but the House of Lords rejected that argument. That case has now been overruled by section 4 of the 1957 Act to the extent therein mentioned.

...75. Thirdly, where an owner did not let premises to a tenant but only licensed a person to occupy them on terms which did not amount to a demise, the owner still having the right to do repairs, he was regarded as being sufficiently in control of the structure to impose on him a duty towards all persons coming lawfully on to the premises. So he was held liable for a visitor who fell on the defective step to the front door in *Hawkins v. Coulsdon and Parley U.D.C.* [1954] 1 Q.B. 319; and to the occupier's wife for the defective ceiling which fell on her in *Greene v. Chelsea Borough Council* 1954 2 Q.B. 127. The extent of the duty was that owed to a licensee, but since the 1957 Act the duty is the common duty of care to see that the structure is reasonably safe.

...77. In the light of these cases, I ask myself whether the Brewery Company had a sufficient degree of control over the premises to put them under a duty to a visitor. Obviously they had complete control over the ground floor and were "occupiers" of it. But I think that they had also sufficient control over the private portion. They had not let it out to Mr. Richardson by a demise. They had only granted him a licence to occupy it, having a right themselves to do repairs. That left them with a residuary degree of control which was equivalent to that retained by the Chelsea Corporation in *Greene's case* [1954] 2 Q.B. 127. They were in my opinion "an occupier" within the 1957 Act. Mr. Richardson, who had a licence to occupy, had also a considerable degree of control. So had Mrs. Richardson, who catered for summer guests. All three of them were, in my opinion, "occupiers" of the private portion of the "Golfer's Arms". There is no difficulty in having more than one occupier at one and the same time, each of whom is under a duty of care to visitors. The Court of Appeal so held in the recent case of *Crockfords Club* (11th November, 1965).

A trespasser injured on site can prosecute

28 AUG 2003 BY [JAMESBELL](#)
LAW

A landowner or occupier of a site is responsible for ensuring the safety of non-employees, trespassers and particularly children. Failure to do so can land them in court, writes James Bell

AS the summer holiday season draws to a close and children go back to school, many contractors will heave a sigh of relief. Each year there is a handful of deaths and several hundred injuries to trespassers on building sites - both children and adults. Even though the injured party was trespassing - perhaps even with criminal intent - the occupier of the site often finds itself in court facing charges. And these can be difficult cases to defend, whether in criminal or civil proceedings.

The criminal law is governed by the Health and Safety at Work Act 1974, while in civil law there are two Occupiers' Liability Acts. The first of these was brought into law in 1957 and requires the occupier of premises to take all reasonable care to ensure the safety of visitors while they are using the premises for the purpose for which they have been permitted or invited to be there.

A further Occupiers' Liability Act, introduced in 1984, extended the duty of care to cover trespassers.

On July 31 2003, the House of Lords considered a claim by an 18-year-old man, John Tomlinson, who brought an action against Congleton Council and Cheshire County Council, owners of a heath and lake on which he had trespassed.

Mr Tomlinson had dived into the shallow lake and suffered a severe head injury as a result. He sued the local authorities and, as he was regarded as a trespasser, brought the action under the Occupiers' Liability Act 1984.

The heath was an area known to be popular with members of the public and the lake had been used for several years by the local community. But signs had been erected all around the lake, some advising that swimming was dangerous and others simply warning: 'No swimming'. Despite this, Mr Tomlinson dived in and received his injury.

In court, Mr Tomlinson's lawyers argued that a sign simply warning that swimming was dangerous and that members of the public should not swim there was not sufficient to absolve the council of any responsibility.

Naturally, the local council defended the action, insisting that Mr Tomlinson was the author of his own misfortune.

The claim proceeded in the High Court and thereafter to the Court of Appeal. Here it was decided Mr Tomlinson was a trespasser but the councils owed a duty of care to him. The appeal court decided it was correct that damages be awarded to Mr Tomlinson, but ordered they should be reduced by two-thirds to reflect his own recklessness.

The local councils took their case to the House of Lords, where it was agreed this was an important matter which went to the heart of the Occupiers' Liability Act.

The House of Lords considered the vast array of case law on this subject and, in one of the most detailed decisions ever given in this area of law, they decided against Mr Tomlinson.

There are some features of this case which have a significance for occupiers generally. In particular, the Lords ruled it was sufficient for the council to erect a sign simply advising visitors to the lake that swimming was dangerous and prohibited.

They also rejected the suggestion the council should have landscaped or fenced off the lake.

Lord Hoffman stated the accident did not arise 'because of the state of the premises. . . but rather because the claimant had chosen to indulge in an activity which is inherently dangerous'. The local councils were not under any duty to protect the reckless minority against obvious dangers.

Trespassers injured on dangerous building sites would be well advised to consider this judgement carefully before bringing a claim. The Tomlinson case suggests the court will take account of the claimant's recklessness.

The councils had been warned of previous near drowning incidents. Having considered a cost benefit analysis of fencing and landscaping, they decided not to take any remedial action.

This judgement will be an indication to landowners and occupiers that they are not required to spend excessive sums of money in fencing or landscaping large parts of open land under their ownership or control. But it should be noted this relates solely to claims by adults.

Contrast this case with the Court of Appeal's decision in *Jolley v Sutton London Borough Council* (2000). This case concerned a 14-year-old boy injured by a small boat which had been abandoned in the grounds of a block of flats owned and occupied by the local authority. The council knew about the boat but failed to remove it.

The boy was playing on and around the boat, which had been propped up on bricks, when it fell on top of him, inflicting severe injuries. The claimant brought an action under the Occupiers' Liability Acts of 1957 and 1984.

The House of Lords found the ingenuity of children in their play made it likely that they would be attracted to the boat and that there would be a risk of serious injury. It therefore found in favour of the claimant and decided the local authority was liable.

The message appears to be that, if something attractive but potentially dangerous is left accessible to children, then the occupier of land will be liable for creating such a danger. In the *Jolley* case, it was clear the council had been aware of the danger for a considerable period of time and had failed to take any responsible action.

These two cases provide valuable instruction for contractors and other occupiers of construction sites. And it should be noted that occupiers of such sites have additional duties under the criminal law - namely the Health and Safety at Work Act 1974 - to ensure the safety of non-employees. Section 3(1) of the Act states: 'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby, are not thereby exposed to risks to their health or safety.'