

## Occupiers' Liability

Occupiers' liability is the law that governs the liability of occupiers for injuries and/or risk posed by the state of their land or premises (Payne, 1958, p.359). Premises in general, are considered as buildings together with driveways and fire escapes; An occupier must take reasonable care to make sure that people who enter these areas are safe (Horsey and Rackley, 2019, p.320). Since this legislation is a modified statute of the common law of negligence, an occupier of premises will face liability if his/her failure to take reasonable care (to keep entrants safe on his premises) leads to an injury suffered by those entering their premises (Horsey and Rackley, 2019, p.320). Moreover, an occupier's duty differ in respect of each classification of persons such as lawful visitors and unlawful visitors (commonly trespassers) and the duty is governed by two statutory provisions which are Occupiers' Liability Act 1957 (for lawful visitors) and Occupiers' Liability Act 1984 (for non visitors) (Bank, 2013). In response to the harshness of the common law, both acts were created due to the Law Reform Committee's recommendation in order to develop the extent to which liability can be imposed on an occupier, and these statutory principles will be observed in this essay as well as case laws that have been determined by judges in a manner to reduce the amount of claims that are brought in this area of tort (Bailey, 2011, p.3).

The Law Reform Committee simplified the scope of the duty that an occupier owed to his invitees and licensees (which depended on the way the entrants came onto the premises), by proposing that that same common duty of care should apply to all his/her lawful visitors in respect of injuries suffered by the state of the premises under S.2(1) of the Occupiers' Liability Act 1957 (Odgers, 1957, p.39). Importantly, a person

must be an occupier of premises in order to be liable under S.1(2) of the Occupiers' Liability Act 1957, and the test to determine who is an occupier was interpreted in the '*Wheat v Lacon & Co Ltd*' (1966) by the House of Lords. In this case, the House of Lords made it clear that an occupier is anyone who has 'sufficient control' over the premises (may not be entire control) (Hwang, 1968, p.69) and this definition is mainly determined by case law other than the act itself (Horsey and Rackley, 2019, p.323). The court in '*Wheat v Lacon & Co Ltd*' (1966) also demonstrated that an occupier could still be liable for injuries suffered on their premises despite never physically occupying the premises, like the corporation in '*Harris v Birkenhead Corporation*' (1975), who was liable for not securing their premises after their tenant had left (three months ago), which led to a four old girl to suffer injuries. However, no claim can arise against a landlord under the 1957 act, if they have leased out premises to a tenant and they subsequently suffer injuries due to the state of the premises, since the tenant will be considered as having sufficient control over the premises (these typical situations are governed by the Defective Premises Act 1972) (Bowett, 1956, p.175). Premises under S.1(3) of the 1957 act, is applicable to land or buildings but also extends to fixed and moveable structures including vessels, vehicles or aircrafts; If a visitor suffers injuries outside of the premises, then the occupier can not be sued (Odgers, 1957, p.176). Similarly, occupiers are protected against cases in which the visitor's act or omission caused their injury instead of the state of the premises, and the case of '*Ferguson v Welsh*' (1987) proves this point. Furthermore, a person who the occupier has not invited or given permission (or implied permission) to enter or use the premises, can not claim any damages in respect of S.1(2) of the 1957 Act (Dimond, 2002, p.1125). However, to

limit liability, if a visitor have been invited or given permission to enter or use the premises, the occupier have the right to moderate their duty by limiting the scope of their permission (or reverse it), and a lawful visitor could become a trespasser if they exceed what they have been given permission to do or go beyond where they are allowed on the premises under S.1(2) (Horsey and Rackley, 2019, p.325). The common duty of care owed to lawful visitors is described in the act as 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' under S.2(2) (Payne,1958, p.236). To clarify, the term 'reasonably safe' applies only for the purposes in which the visitor has been invited for and so the degree of care varies (and can be discharged) between special visitors such as: children, persons in the exercise of a calling, and independent contractors (Odgers, 1957, p.40).

As an expansion of the common duty of care owed to visitors under the 1957 act, children are normally owed a higher duty of care (*'Taylor v Glasgow City Council' (1922)*) as S.2(3)(a) provides that reasonable care involves an occupier to expect children invited onto the premises to be less careful than adults (Horsey and Rackley, 2019, p.329). However, the courts are resistant to holding occupiers liable for injuries suffered by child visitors if they are accompanied by their guardians as seen in *'Phipps v Rochester Corporation' (1955)*, where a young boy (visitor) broke his leg in a trench but the occupier was not held liable. The principle used in assessing breach of duty in *'Phipps v Rochester Corporation' (1955)*, was that occupiers have the right to assume parents will be prudent enough to take reasonable care for their children and if the

occupier can prove one of the following: 1) The dangers posed by the premises would be obvious to a guardian; 2) The trench (premises) was not an allurement to children like 'Jolley v Sutton London Borough Council' (2000) and; 3) He/She could not have anticipated that a child will go unaccompanied near the trench (premises) to play, then there will be no breach of duty (Payne, 1958, p.361). Likewise, in '*Simkiss v Rhondda BC*' (1983), the judges held that the occupier (Borough Council) was under no responsibility to take on a higher standard of care than a reasonable prudent parent after a ten year old injured herself unsupervised by her father (discharging the occupier's duty) next to a steep bank. Unlike children, less is demanded of the occupier to take reasonable care for specialists who are called on to perform their duty on the premises, and so this limits liability (Bank, 2013). The act suggests that an occupier could limit liability by expecting skilled visitors to appreciate or guard against any risk related to their profession under S.2(3)(b), and it provides that they could also discharge their duty by giving a warning (verbally, visually or written) if in all the circumstances it would keep the visitors reasonably safe under S.2(4)(a) (Bank, 2013). In the case of '*Roles v Nathan*' (1963), two chimney sweeps carried on working after being warned by the occupier about the danger from the gas (carbon dioxide) in a coke-fired boiler whilst it was still lit, which led to their death; Limiting liability, the judges held that the occupier could not be held liable because the workers should have guarded against the risk incidental to their calling (the fire) and the occupier duty was discharged as the warning was sufficient to ensure that in all the circumstances the workers were kept reasonably safe. Moreover, under S.2(4)(a) an occupier is not obligated to give warnings about dangers that are obvious as illustrated in '*Staples v West Dorset DC*' (1995), where the

courts held that the claimant was competent enough to assess that algae will be slippery if you step on it and so the occupier did not breach his duty in respect of the claimant's injuries. Similarly, if an occupier fails to warn a claimant about one type of danger and they later suffer injuries due to an 'unrelated danger', then they can not be liable as stated by the judges in *'Darby v National Trust'* (2001) when a claimant protested that if there were warnings about catching weil's disease, then her husband would not have swam in the water and drown. Furthermore, as mentioned under S.2(1), an occupier can limit, exclude or modify their duty to visitors and the law states that this could be done by an effective written notice or putting up a sign (Odgers, 1956, p.154). Warning notices can be used by an occupier to ensure that visitors are kept reasonably safe (which satisfies the duty imposed under the 1957 act), but exclusion notices work to prevent a duty from arising in the first place thus limiting liability (Horsey and Rackely, 2019, p.333). For instance, if an occupier displays signs saying that the premise is "Dangerous...Enter at your own risk", then they will not be held liable if someone enters and suffers injuries because (as also a defence under S.2(5)) the person has accepted the risk themselves as clearly shown in *'Ashdown v Samuel Williams and Sons Ltd'* (1957). Nevertheless, occupiers are also protected against claims in circumstances where the accident arises as a result of negligence (faulty work) from an independent contractor who have been employed by the occupier to do work on the premises under S.2(4)(b) (Payne, 1958, p.366). In *'Haseldine v CA Daw & Sons Ltd'* (1941) and *'Woodward v Mayor of Hastings'* (1945), the courts held that an occupier will not be liable in these circumstances if he used reasonable care in selecting the contractor, took reasonable steps to ensure that the contractor was competent, and lastly, took

reasonable steps to ensure the work was properly done (Odgers, 1958, p.160).

However, if the work is technical (like lift maintenance) as seen in '*Haseldine v CA Daw & Sons Ltd*' (1941), then the occupiers failure to ensure that work is properly done will not make them liable unlike the case of '*Woodward v Mayor of Hastings*' (1945) where the work was less technical (Cleaning snow).

Historically, occupiers owed no duty of care to non visitors (commonly trespassers) as they did to their visitors, but due to the decision in '*British Railways Board v Herrington*' (1972), the courts established that a duty of 'common humanity' should be owed by occupiers to unlawful visitors (Jones, 1984, p.713). This duty of 'common humanity' however, provided no clear test for circumstances in which this duty should be imposed as well as the standard by which this concept should be measured (Jones, 1984, p.713). Therefore, the Law Commission recommended the Occupiers Liability Act 1984, which imposes on occupiers the duty 'to take reasonable care in all the circumstances to see that persons 'other than his visitors' (commonly trespassers) do not suffer injuries as result of danger due to the state of the premises or to things done or omitted to be done on them' under S.1(1) (Horsey and Rackley, 2019, p. 338). Importantly, under S.1(2) of the 1984 act, occupier and premises are defined in the same way as the 1957 act (Jones, 1984, p.714). Furthermore, the case of '*Keown v Coventry National Health NHS Trust*' (2006) clarifies that if the claimant's (or defendant himself) actions or activity caused them injuries rather than the state of the premises, then no duty can be imposed on the occupier under S.1(1) of the 1984 act. Unlike the 1957 act, there are three conditions under S.1(3) of the occupiers liability act 1984 that must be met before an occupier can owe a duty of care to non visitors and these are as

followed: Firstly, he must be aware of the danger or have reasonable grounds to believe it exists (S.1(3)(a)); Secondly, he must know or have reasonable grounds to believe that someone else is in the vicinity of the danger or may come near it (S.1(3)(b)); and thirdly, the danger must be one in which all the circumstances he is reasonably expected to offer protection against (S.1(3)(c)) (Bank, 2013). Moreover, if claimants fall short of establishing that all three provisions exist, then their claim will fail under the 1984 act and so therefore this protects occupiers against unfair claims (Bank, 2013). In the case of *'Tomlinson v Congleton BC'* (2003), it was established indeed that the boy was a visitor at a public park managed by the defendant, but he became a trespasser once he dove into the shallow lake which was forbidden by the occupier and suffered severe injuries; the House of Lords held that the occupier owed no duty to the claimant under S.1(1) of the 1984 act, because the lake was not a risk in which he was reasonably expected to offer protection against, and so failure to prove that the third provision (S.1(3)(c)) existed caused his claim to fail even though the first two were satisfied. In *'Donoghue v Folkestone Properties Ltd'* (2003), failure to establish liability was also demonstrated where the defendant owed no duty to the claimant because he could not have had reasonable grounds to believe that someone would be swimming in the vicinity of the danger (slipway) in mid winter so therefore this is limiting liability (S.1(3)(b)). However, if all three hurdles are present, then the occupier's duty will be to 'take such care as is reasonable in all the circumstances of the case to see that the unlawful visitor does not suffer injury on the premises' as stated under S.1(4) (Jones, 1984, p. 719). Warning or deterring non visitors (commonly trespassers) from entering the premises is enough to discharge the occupiers duty under S.1(5) of the 1984 act

and a crucial difference between this and S.2(4)(a) of the 1957 act, is that all the occupier have to do is bring the danger to claimant's awareness (Horsey and Rackley, 2019, p.345). As an example, in the '*Tomlinson v Congleton BC*' (2003) case, the courts added that the clear signs from which the council used to prohibit swimming (which was ignored by the claimant) were efficient as to discharge their duty under the 1984 act, as a result, it could be inferred that even if the warnings are ignored, the defendant can not be held liable for claimant's injuries. Nevertheless, occupiers will not be held liable in respect of injuries from risks willingly accepted by non visitors as mentioned under S.1(6) of the Occupiers Liability 1984 act (Hopkins, 2002, p.523). The court in '*Ratcliff v McConnell*' (1999), stated that the claimant had known and accepted the risk of diving into a pool without knowing the depth, therefore, it would have been unfair to impose a duty on the occupier in respect of these facts so the claim failed because of S.1(6) of the 1984 act (limiting liability).

In conclusion, the courts and the law make it difficult for somebody to bring a claim against occupiers if they themselves are unlawful visitors (Bank, 2013). Nevertheless, claimants who are successful under the 1984 act, can only claim for death and injury whereas the 1957 act gives compensation for death or injury, damage to property, and consequential economic loss (Bank, 2013). Although both case law and statute play an important role in determining the scope of the occupier's duty, breach and causation are areas that must be established by referring to the usual principle of negligence and often time this is where claims fail under both acts (Horsey and Rackley, 2019, 350).

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