

Robson v Hallett (1967)

- A police sergeant exits D's property and gets punched
- Two police constables enter a fight follows
- Held that police officers had implied license to enter

Entry in order to communicate

Police and Criminal Evidence Act (PACE) grants the police the right to enter premises with a warrant

Jolley v Sutton LBC (2001)

- Old, rotten, abandoned boat, which was not dangerous if not taken away by the council
- Two teenage boys went there to play on it and repair it
- One suffered a spinal injury
- Council was liable and owned a duty of care as it was interesting for children to go there, and therefore this was implied permission

Doctrine of allurement

Lowery v Walker (1911)

- D knew trespassing occurred on his field (had been occurring for many years; D hadn't prevented that from happening), so he put a wild horse there
- C was injured by this horse when using a short cut across D's premises
- D was aware the horse was dangerous and was liable
- Whilst C didn't have express permission to be on the land, a license was implied through the repeated trespass and D's acquiescence

Repeated visitors

Pearson v Coleman Bros (1948)

- A child visiting the circus passed the lion's running, where it was mauled to death
- Circus was liable in negligence = child was an invitee and it was assumed it would not follow warnings

Limits as to an area

If lawful visitors breach any of the following limits, then they become trespassers

Visitor to a museum, who lingers after closing

Limits as to time

Tomlinson v Congleton BC (2004)

- D ignored warning not to swim in a quarry, which was to be turned into a lake
- Council had no liability to C
- Risk arose from C's own actions, who voluntarily engaged in this risk

Limits as to purpose

Someone who enters premises without an invitation and either whose presence is unknown to the occupier, or, if known, is objected to by the occupier in some actual practical fashion e.g. sign, a locked gate or a verbal warning

Who is considered a lawful visitor?

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Occupiers' Liability Act 1957

Covers only lawful visitors

Who is considered a trespasser?

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C must show that a duty of care exists and D has Breached that duty, which caused damage, i.e. **negligence must be established first**

The occupier should act only with **reasonable care** and he should ensure that his visitor is **reasonably safe**

An occupier of premises owes a duty of care to all his lawful visitors [s.2(1)]

An adult visitor is owed duty of care; take such care in all circumstances so that it is reasonable to see that the visitor will be reasonably safe in using the premises for when he is invited to be there [s.2(2)]

Wheat v Lacon (1966)

- Manager of a public house and landlord responsible for D's death after he fell from some steep and narrow stairs with short handrail

Possible to have more than one occupier

Definition created through common law = this is **a person in control of the premises (or the relevant part of them) to such an extent that is carelessness could lead to a visitor suffering loss**

Invitees, licensees

Visitors suffering loss

Those who enter pursuant to a contract

Implied license in common law where there is a repeated trespass and the occupier takes no preventative action

Hose entering an exercising statutory right

Harris v Birkenhead Corporation (1976)

- C was 4 years old when she wandered off from a children's play park with her friend, went into an abandoned house, which was due for demolition; house had not been secured and the door was open
- C sustained serious injury when she fell from a window;
- The house had been subject to a compulsory purchase order by the council; house had been owned by a private landlord and the tenant was offered alternative accommodation by the council; tenant informed the council that she did not want to take up the offer of accommodation and made her own arrangements and left the property
- Council served 14 days notice on the owner of their intention to take possession of the property, but never actually took physical possession at the expiry of the 14 days
- Council had the legal right to take possession to secure the property, actual physical occupation was not required to incur liability as an occupier => liable

Someone, who has control of premises

No occupier at times => no claims for C

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Who is an occupier?

Bailey v Armes (1999)

- Supermarket had a flat on top of it; supermarket's roof was wide and long; people could come through the flat's window onto the supermarket's roof
- Some children played on the roof; a boy fell off the roof
- Parents weren't there
- Parents and supermarket didn't know about it
- Couldn't prove who the occupier was

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What are considered premises?

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Anything can be a premise, including a ladder, a boat, a school, a shop, a tent and a post box; s.3(1)(a) includes any fixed or movable structure, e.g. a shed, a bridge/scaffolding, vessels, vehicles and aircrafts

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When does D owe a duty of care and to whom?

Proof of 3-stage negligence

s.2(1) = an occupier owes a duty of care to all his lawful visitors

s.2(2) = taking such care for adult visitors in the circumstances so they can be reasonably safe on the premises for the purpose of being invited there
=> reasonable care = reasonable safety

Visitors must be kept safe, not premises

Laverton v Kiapasha Takeaway Supreme (2002)

- D was drunk and slipped on a shop's wet floor
- Normally, the floor was mopped 6-7 times, but there were 30 people in it + shop had slip-resistant tiles
- D wasn't guilty as they had taken reasonable measures as they'd done all that was reasonably possible

s.2.(2) = duty owed; reasonable circumstances to see that the reasonable safety of the adult is ensured; not completely safe, only reasonably

7 Common duty of care to lawful adult visitors

Dean and Chapter of Rochester Cathedral v Debell (2016)

- Mr Debell tripped over a raised piece of concrete; shoulder injury and hernia
- Rochester Cathedral not liable as a risk is only reasonably foreseeable only when there is a real source of danger; tripping is an everyday occurrence

Glasgow Corporation v Taylor (1922)

- C (appellant) owned public gardens where various plants and shrubs grew
- A 7-year-old boy ate some poisonous berries and died; no fence or warnings
- C was liable; aware of the poisonous berries and that children were entitled to go onto the land

Further precautions to protect a child

Phipps v Rochester Corporation (1955)

- 2 unaccompanied young children; one of them was fell into a trench and got injured
- D not liable as an occupier is entitled to assume that prudent parents would not allow their children to go unaccompanied to unsafe places

Appropriate precautions, but parents must take of their children too

s.2(3)(a) = an occupier must be prepared for children to be less careful than others

8 Duty of care to children

No liability if damage is not foreseeable (if an allurement exists)

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10 Duty of care to independent contractors

- 1) Reasonable for an occupier to give contractor work [Haseldine v Daws (1941)]
- 2) Contractor hired was competent to carry out work [Bottomly v Todmorden Cricket Club (2003)]
- 3) Occupier checked to see if work had been properly done [Woodward v Mayor of Hastings (1945)]

9 Duty of care to workmen

s.2(3)(b) = protect special visitors against risks within own premises

Roles v Nathan (1963)

- Chimney sweepers died of carbon dioxide poisoning while unblocking D's chimney
- D was not liable as Cs were experts

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Proof of causation and remoteness of damage: D's actions caused the loss and any loss is not too remote a consequence of the negligence

Factual: [Barnett v Chelsea and Kensington HMC (1968)] [McGhee v NCB (1972)]
[Wilsher v EEHA (19870)] = check the details of all cases in the 'Negligence' file in 'Learning materials'

Legal (not too remote): [The Wagon Mound (1961)] [Hughes v Lrod Advocate (1964)]

Egg shell rule: [Smith v Leech Brain and Co Ltd (1961)]

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Discharge of a duty: occupier needs to show same standard of care as for ordinary negligence;
would the average competent occupier have acted in the same way in the same or similar circumstances? (test)

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Damages are the remedy for OL

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Defences to OL

Consent

Contributory negligence

Exclusion clauses s.2(1) = exclusion of liability

s.2(1) Unfair Contract Terms Act 1977 = s.65 does not remove responsibility for personal injury or death from negligence

Rae v Mars (1990)

- Where danger is extreme/unusual, it is not enough there to be a warning for it; a barrier or an additional notice should be placed

Warning notices = express/implied reasonable warnings, e.g. fence or locked door/ warning or danger sign [Rae v Mars]