



### Donoghue v Folkstone Properties (2003)

- C was a professional scuba diver, who after going to the pub, decided to jump from a harbour at night and broke his neck
- Security guards, but no signs
- At the time Mr Donoghue sustained his injury, Folkestone Properties had no reason to believe that he or anyone else would be swimming from the slipway.
- Criteria set out in s.1(3)(b) was not satisfied and no duty of care arose

Time of day and year may be relevant to whether a duty is owed

s.1(3) = occupier owes a duty if  
 -he is aware of the danger or has relationship grounds to believe it exists  
 -he had reasonable knowledge that V was in danger or the vicinity of danger  
 -and there was such a risk in the circumstances that protection had to be offered

### Higgs v Foster (2004)

- Trespasser fell in a mechanic pit
- Mechanic was unaware of danger => not liable as he couldn't guard against it

No liability if no reason to suspect trespassing presence

## 2 When is a duty of care owed to adult trespassers?

No liability if not aware danger existed

### Rhind v Astbury Water Park (2004)

- C dived into a shallow mere that was frequently used by the public to fetch a football despite warning signs
- C suffered injuries as a result of hitting a fibre glass container that was at the bottom of the mere
- Fibre glass container was not visible from the side of the mere or those inspecting above the water, it only became apparent when an underwater inspection was completed
- No liability

### Ratcliff v McConnell (1999)

No liability if danger was obvious

- C went for a swim in a college pool which; climbed over a locked gate into the open-air swimming pool
- Pool had a notice at the entrance which stated the pool would be locked and its use prohibited between the hours of 10pm -6.30am. There was a notice at the shallow end in red on a White background stating 'Shallow end' and a notice at the deep end stating 'Deep end, shallow dive'
- C did not see the signs because there was no light.
- C dived at a shallower point and broke his neck => became permanently paralysed
- Court held C was a trespasser => not entitled to compensation

## Occupiers' Liability Act 1984

Covers trespassers

## 1 Who is considered a trespasser?

A visitor who does not have lawful permission to be on an occupier's land or exceeds their permission to be there

### Addie v Dumbreck (1929)

- D owned View Park Colliery which was situated in a field adjacent to a road
- Fence around the perimeter of the field although there were large gaps in the fence
- Field was frequently used as a short cut to a railway station and children would use it as a playground
- D would often warn people off the land but the attempts were not effective and no real attempt was made to ensure that people did not come onto the land
- A child came on to the land and was killed when he climbed onto a piece of haulage apparatus.
- No duty of care was owed to trespassers to ensure that they were safe when coming onto the land; only duty was not to inflict harm wilfully

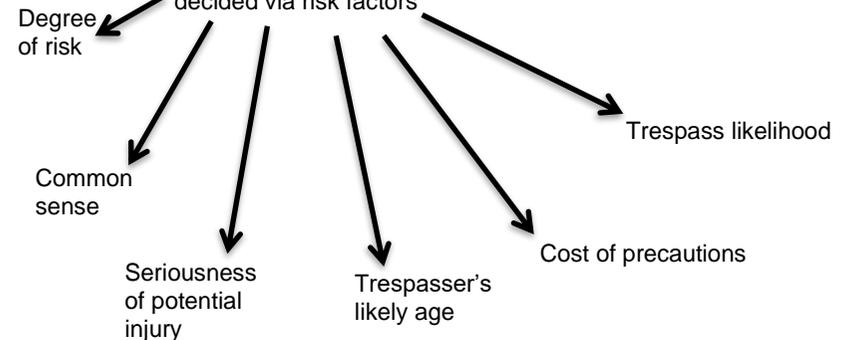
### British Railway Board v Herrington (1972)

- Children were exploring near a railway line
- A 6-year-old child was electrocuted
- Children would be owed a duty of care even if they were trespassing when the owner was aware that trespassing occurred

## 3 When is a duty breached/discharged?

s.1(4) = duty owed is to 'take such care as is reasonable in the circumstances to see that the trespasser is not injured by reason of the danger'; objective test with a subjective meaning

Reasonableness is decided via risk factors

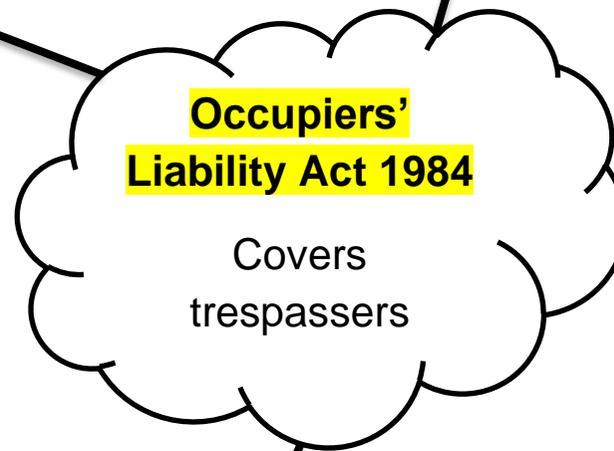


**4** Proof of causation and remoteness of damage: D's actions caused the loss and any loss is not too remote a consequence of the negligence

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)]**



**5** What are the remedies?

Damages for personal injury, bit no damages for property [s.1(8)]

**6** What are the defences?

Contributory negligence

Consent

**Ratcliff v McConnell (1999)**

Spoken or written warning notices; effective for adults; might be effective for children, but it depends on the child's age and understanding

Some rues of adult breach apply to children

**Keown v Coventry Healthcare NHS Trust (2006)**

- Keown was an eleven-year-old child who had been climbing an external fire escape, from the underside, at the defendant's hospital trust when he fell and fractured his arm and suffered a brain injury
- Fire escape was part of the hospital grounds and was used by the public for both access and was a known area where children liked to play
- C was two-thirds responsible
- Court held that if the claimant had been an adult, they would have found in favour of the hospital trust
- The judge found that the claimant understood the risk or the fact that what he was doing was dangerous
- If a person opted to climb the external fire escape improperly, thus creating the danger themselves, the health trust could not be liable

**Westwood v Post Office (1973)**

- C, an adult employee of the Post Office was injured when he entered an unlocked room which had a warning of danger on the outside
- Post Office were not liable; although the door should have been locked in the circumstances the notice was sufficient warning to an adult