

## 11.6 The Occupiers' Liability Acts 1957 and 1984—at a glance



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See Table 11.1.

**TABLE 11.1** Summary of the Occupiers' Liability Acts 1957 and 1984

	1957	1984
Type of damage (to claimant)	<i>Property damage and personal injury</i> (as old common law).	<i>Personal injury only</i> (ss 1(1)(a) and 1(4)). Property damage excluded (s 1(8)) but may be covered by common law ( <i>Herrington v British Railways Board</i> [1972]).
'Premises'	Wide definition: 'any fixed or moveable structure' including vehicles (s 1(3)).	As 1957 Act (s 1(2)).
'Occupier'	Person who would have been at common law (s 1(2); <i>Wheat v Lacon</i> ; <i>Harris v Birkenhead Corporation</i> ).	As 1957 Act (s 1(2)(a)).
'Visitor'	All <i>lawful visitors</i> (s 1(2)) including invitees, licensees at common law and contractual visitors (s 5).	All <i>non-visitors</i> (usually trespassers) (s 1(1)(a)). Also, subject to certain restrictions, includes ramblers (exercising a right under s 2(1) of the Countryside and Rights of Way Act 2000). However, it does not cover people using the highway (s 1(7)) or people using other public rights of way (s 1A).
Duty	Occupier owes 'a <i>common duty of care</i> ' to all visitors simply by virtue of the fact that they are visitors (s 2(1)).	Occupier <i>only</i> owes a duty (defined in s 1(4)) if: (1) aware of danger (or has reasonable grounds to believe it exists); and (2) knows (or has reasonable grounds to believe) a non-visitor is (or may be) in vicinity of danger; and (3) the risk is one in all circumstances the occupier may be reasonably expected to protect against (s 1(3)).
Extent of the duty (or standard of care)	A duty to take <i>such care that the visitor is reasonably safe</i> while using the premises for the purposes for which they are invited (s 2(2)). It is the visitor, not premises, who must be reasonably safe; different standards of care apply for different visitors (s 2(3)).	A duty to ' <i>take such care as is reasonable in all the circumstances of the case to see that the [non-visitor] does not suffer injury on the premises</i> ' (s 1(4)).

TABLE 11.1 *Continued*

Discharging duty (or breach)	<p>As <i>ordinary principles of breach</i> (see Chapter 8).</p> <p>The occupier's duty to ensure that the visitor will be reasonably safe while on their premises, not obligation to ensure safety of visitors (<i>Bowen v National Trust</i>).</p> <p>However, this does not mean that the visitor cannot be expected to take reasonable care for their own safety (s 2(3)).</p> <p>Standard of care may vary depending on the identity and expertise of the visitor, in particular:</p> <p>(1) the standard of care expected will be higher in relation to <i>children</i>, who are 'less careful than adults' ((s 2(3) (a)); <i>Jolley</i>);</p> <p>(2) professional visitors can be expected to 'appreciate and guard against special risks' (s 2(3)(b); <i>Roles v Nathan [1963]</i>).</p> <p>May be discharged by taking reasonable steps to give <i>warnings</i> must enable visitor to be 'reasonably safe' (s 2(4)(a); <i>Darby</i>).</p> <p>Generally there will be no liability for harms caused where <i>independent contractors have done faulty work on the premises as long as occupier has acted reasonably in entrusting the work to them</i> (s 2(4)(b)).</p>	<p>As <i>ordinary principles of breach</i> (see Chapter 8).</p> <p>May be discharged by taking reasonable steps to give: a warning of the danger concerned (s 1(5)) (no requirement of reasonable safety); discouragement to persons from incurring the risk (s 1(5)).</p>
Limitations and defences	<p>Occupier can <i>extend, restrict, modify or exclude their duty</i> (so far as they are free to do so) <i>via a notice</i> or contract (s 2(1) (subject to UCTA, s 2)).</p> <p>No duty in relation to <i>risks</i> 'willingly accepted as his' by the visitor (s 2(5)) (<i>Geary v Wetherspoons plc</i>).</p> <p><i>Contributory negligence</i> (implied by s 2(3) although not mentioned in the statute used by courts).</p>	<p>No express provision—but probably as 1957 Act (s 2(1)).</p> <p>No duty in relation to risks 'willingly accepted as his' by the visitor (s 1(6); <i>Ratcliff v McConnell</i>).</p> <p>Contributory negligence (not mentioned in the statute but used by courts).</p>