

## Chapter 7: Occupier's Liability Extra Questions

### Question 1

Eleanor is taking a keep fit class at the local gym. Jojo manages the gym under the name Jojo's Gym. Eleanor is using a rowing machine, which is bolted to the floor. Jojo recently had Badjob Ltd in to replace the flooring to a supposedly strong specification. The flooring gives way as Eleanor is using the machine and she is badly cut. Ana, a member of the gym is with her son, Tito, aged 5, who attends Tinytots, a class at the gym for young gymnasts. Whilst Ana is having coffee with a friend, Tito wanders outside the premises and falls from the fire escape, breaking his arm. Brad, who enjoys sport, but cannot afford the fee to join the gym, breaks into the premises at night to use the swimming pool. Brad does not notice the very small sign by the pool reading, 'Do not dive'. He dives into the pool, which is very shallow, and breaks his neck.

Consider the liability for these events.

### Answer guidance

You are not advising a specific party so consider all potential claimants and defendants.

Jojo is the occupier for the purposes of both the 1957 and 1984 OLA Act (*Wheat v Lacon* [1966] AC 522). Eleanor is a lawful visitor so the common duty of care is owed to her. Jojo may be able to move liability to Badjob re the injury to Eleanor if he can establish the elements in s 2 (4) (b). Jojo must be prepared for Tito as a child to be less careful (s.2 (3) (a) but he can expect a parent to monitor young children (*Phipps v Rochester Corp* [1955] 1 QB 450). Not clear there is any hazard here. Brad is a trespasser so OLA 1984 applies. Students should establish under s1 if any duty arises. See *Tomlinson v Congleton Borough Council* [2003] UKHL 47. The warning notice for a lawful visitor would have to be more obvious than for a trespasser to be effective.

### Question 2

Discuss and evaluate the nature and scope of the duty under the Occupiers' Liability Act 1957.

### Answer guidance

The question specifies the Occupiers' Liability Act 1957 so do not talk about the 1984 Act.

Personal injury and/or damage to property may be the subject of a claim. Under s.1(1) the claimant's action is in relation to dangers due to the state of the premises or things done or omitted to be done on them. This is considered to cover just damage due to the state of the premises (*Ogwo v Taylor* [1988] AC 431 - injured fireman) not activities carried out on them, though this latter situation will be covered by a negligence action. Under s 1 (3) (a) the Act applies to land and moveable structures including any vehicle or aircraft.

Under s 1 (2) of the Act a duty is owed to lawful visitors. This includes those invited to be there, or those who have a licence or contractual right to be on the premises or a right conferred by law e.g. fire fighters. Visitors do **not** include those who have a private right of way over land. These are covered by the 1984 Act. Those with a public right of way are not covered by either Act but by common law. A person may be a visitor for part of premises but a trespasser for other parts e.g. entering an area marked 'Staff Only'.

Under s2(2) the Occupier "owes a common duty of care to all lawful visitors to take such care as 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 there." It is the visitor and not the premises which must be safe i.e. it is a duty to take such care as is reasonable to see that a visitor is reasonably safe in using the premises: see *Tomlinson v Congleton Borough Council* [2003] 3 All ER 1122.

Students should detail the relevant sections and discuss each considering whether the law is acceptable e.g. sections regarding children, expert visitors and work entrusted to subcontractors. Some criticism of lack of clarity in 1957 Act - does it cover the state of premises and activities? Should it also detail the liability of parents for their children?

### Question 3

Patricia and her son, Romeo, aged 4, are visiting the home of Oswald, Patricia's friend. Romeo wanders into the kitchen, which Oswald is renovating. The workmen who are carrying out the work have made a hole in the wall, covered by a tarpaulin. Romeo falls into the hole and gashes his leg. Oswald suggests that Patricia and Romeo stay the night. He tells her that she can have the run of the house but must not go down to the cellar. Patricia is curious and later goes down there where she falls through some uneven steps and injures herself. Oswald is concerned about burglars after a recent break in. He puts up a sign saying 'Danger- Keep Out - Vicious Dog'. He places glass bottles on a perimeter fence. Vinny, a burglar, jumps over the fence and is cut badly.

Discuss the liability of Oswald.

### Answer guidance

Identifying occupiers, visitors and trespassers is important, as this tells you what case law and statute applies here.

P and R are lawful visitors and so OLA 1957 applies. The visitors must be reasonably safe for the purposes they are invited there - s1(2),s2(1).

s2(3)(a) applies to R in that O must be prepared for him to be less careful than an adult. Following *Phipps v Rochester Corp* [1955] 1 QB 450, O could argue that his mother should bear some responsibility, although that would seem harsh in view of the nature of the injury unless P was aware of the work in the kitchen. O could also argue that the responsibility lay

with the workmen. He will need to establish under s2(4)(b) that she acted reasonably in entrusting the work of construction repair and maintenance to an independent contractor and has taken reasonable steps to ensure the contractor is responsible and where appropriate has checked the work.

When P goes to the cellar she becomes a trespasser as she has exceeded her permission. The OLA 1984 applies. No duty is owed under s 1(3) unless O is aware she is there, is aware of the danger and it is reasonable to provide some protection. It is likely that no duty will be owed. Case law should be used in support – *Keown v Coventry Healthcare NHS Trust* [2006] 1 WLR 953.

V is a trespasser. It could be argued that because of the break-ins O was aware he was there, he knew of the danger also. The issue will be whether the risk is one he should offer protection from. Clearly the sign would not be enough to allow the trespasser to be safe but it could be that the sign was a deterrent and enough under s 1(5) to prevent liability.

#### Question 4

Critically discuss how far the protection afforded by The Occupiers' Liability Act 1957 differs from that provided by The Occupiers' Liability Act 1984?

#### Answer guidance

Here you need to demonstrate and apply detailed knowledge of both acts.

A visitor is anyone who has express or implied permission from an occupier to enter the premises – rights are governed by OLA 1957. Trespassers are not invited on to the land. The occupier does not know they are there or does not want them there. Rights are governed by OLA 1984. The duty to trespassers under OLA 1984 only arises in certain circumstances. Under s 1(3) these are:

- If the occupier is aware of the danger or has reasonable grounds to believe it exists.
- If the occupier knows or has reasonable grounds to believe that the other is in the vicinity of the danger.
- The risk is one which in all the circumstances of the case, he may reasonably be expected to offer the other some protection.
- *Keown v Coventry Healthcare NHS Trust* [2006] 1 WLR 953 – played on fire escape.
- *Higgs v Foster* [2004] EWCA Civ 843 – fell into uncovered pit.
- *Tomlinson v Congleton Borough Council* [2003] 3 All ER 1122 – dived into lake.
- Scope of Duty - Under s1 (4) the duty is to 'take such care as is reasonable in all the circumstances to see that the trespasser does not suffer injury on the premises by reason of the danger concerned.' Factors which are relevant to both the existence and extent of any duty are the age of the trespasser, the nature of the risk and the knowledge of the occupier of both the entrant and the risk.
- Warnings - Under s 1(5) a warning or discouraging people from entering the premises may be enough to discharge the duty.

The duties are very similar but more restricted and easier to discharge under OLA 1984. OLA 1957 provides that a duty is owed to all lawful visitors that they should be safe. And then gives various provisions regarding that duty. Under OLA 1984 a duty will only be owed where the s 1(3) conditions are met. Warnings and deterrents are more likely to deny liability under the 1984 Act. Students could also argue that there should not be any liability to trespassers.