

Occupiers' Liability Act 1957

Preliminary

1.— (1) The rules enacted by the two next following sections shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them.

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (subject to subsection (4) of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

(a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft; and

(b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.



See discussion in **section 11.2.1** relating to the distinction between so-called 'activity' duties and 'occupancy' duties.

Definition of a visitor as someone invited onto, or given permission to be on, premises. Remember this permission can be revoked and/or restricted under s 2(1).

Very broad definition of premises.

Puts the common law to one side; see s 1(2) in relation to definitions of who is an occupier and visitor.

Definition of an occupier as someone who has control of the premises; see *Wheat v Macaron* [1966].

The common law is incorporated into the Act—'licensees' and 'invitees' are combined into a single category 'lawful visitor'. Contractors are incorporated by s 5.

e.g. the shopper's suede jacket in the examples at the beginning of the chapter—even if it belonged to someone else.

See s 1(6) of the OLA 1984.

Note restrictions under s 2(1) and (2) of the Unfair Contract Terms Act 1977 (UCTA) in relation to business premises.

It is the *visitor* rather than the premises, which must be reasonably safe.

Definition of the common duty of care—effectively the common law duty in tort of negligence—see further Lord Denning's description of it in *Wheat v Macfarlane*, as 'a particular instance of the general duty of care which each man owes to his "neighbour"' (at 578).

i.e. a professional, or skilled, visitor. See e.g. *Roles v Nathan* [1963].

A warning does not automatically absolve an occupier from liability. It must enable the visitor to be reasonably safe in order to discharge the occupier's duty of care. Note also here the difference between a warning notice and a notice seeking to exclude or limit liability (s 2(1))—the former seeks to discharge an occupier's duty while the latter seeks to prevent it from arising in the first place.

- (4) A person entering any premises in exercise of rights conferred by virtue of—
- (a) section 2(1) of the Countryside and Rights of Way Act 2000, or
 - (b) an access agreement or order under the National Parks and Access to the Countryside Act 1949, is not, for the purposes of this Act, a visitor of the occupier of the premises.

Extent of occupier's ordinary duty

2. —(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is 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.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

Section 1 establishes when a duty is owed, this section establishes the standard of care.

e.g. the rules and regulations made and published under statutory authority—such as certain conditions in relation to rail travel—which are not 'agreed to' by the visitor.

Takes into account the fact that visitors ought to be responsible for their own safety, to an extent, and allows for the defence of contributory negligence.

See e.g. *Jolley v Sutton* [2000].

i.e. the standard of care necessary in order to discharge (or not breach) the duty.

This section is somewhat vague—it is likely that the courts will extend this beyond its strict reading and was applied 'by analogy' by the majority of the Court of Appeal in *Gwilliam* [2002].

i.e. met the standard of care expected of them.



e.g. the police entering with a warrant or employees of public utilities (gas and electricity) entering to read the meter enter the premises 'as of right' and as such are 'lawful visitors' even if the occupier may object to their presence.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

This statutory defence is effectively the same as the common law defence of *volenti* (see *Geary v Wetherspoons plc* [2011]).