

# Occupiers' Liability Act 1984

As in *British Railways Board v Herrington*.

## Duty of occupier to persons other than his visitors.

Most obviously trespassers, but also includes ramblers by virtue of s 1(4) of the OLA 1957. Defined negatively—'non-visitors'.

1. —(1) The rules enacted by this section shall have effect, in place of the rules of the common law, to determine—

(a) whether any duty is owed by a person as occupier of premises to persons other than his visitors in respect of any risk of their suffering injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them; and

(b) if so, what that duty is.

As with the 1957 Act, the risk of injury must be due to the state of the premises rather than as a result of an activity on them (*Revill v Newberry*).

(2) For the purposes of this section, the persons who are to be treated respectively as an occupier of any premises (which, for those purposes, include any fixed or movable structure) and as his visitors are—

(a) any person who owes in relation to the premises the duty referred to in section 2 of the Occupiers' Liability Act 1957 (the common duty of care), and

(b) those who are his visitors for the purposes of that duty.

(3) An occupier of premises owes a duty to another (not being his visitor) in respect of any such risk as is referred to in subsection (1) above if—

(a) he is aware of the danger or has reasonable grounds to believe that it exists;

(b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in that vicinity or not); and

(c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.

(4) Where, by virtue of this section, an occupier of premises owes a duty to another in respect of such a risk, the duty is to take such care as is reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned.

This section establishes the scope of the Act.

An occupier's duty under the 1984 Act has to be established (s 1(3)) (cf s 2(1) of the OLA 1957).

The 'content' of the duty.

Same wide definition of 'premises' as the OLA 1957 (s 1(3)).

Definition of an occupier.

The requirements of this section must be met to establish the existence of a duty.

This section establishes the content of the duty.





(5) Any duty owed by virtue of this section in respect of a risk may, in an appropriate case, be discharged by taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk.

Warnings: simply has to be given (cf s 4(a) of OLA 1957).

Application of defence of consent or voluntarily assuming the risk (see section 10.2).

(6) No duty is owed by virtue of this section to any person in respect of risks willingly accepted as his by that person (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).

(6A) At any time when the right conferred by section 2(1) of the Countryside and Rights of Way Act 2000 is exercisable in relation to land which is access land for the purposes of Part I of that Act, an occupier of the land owes (subject to subsection (6C) below) no duty by virtue of this section to any person in respect of

This section details certain circumstances where an occupier's duty is restricted in relation to ramblers.

(a) a risk resulting from the existence of any natural feature of the landscape, or any river, stream, ditch or pond whether or not a natural feature, or

(b) a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile.

(6B) For the purposes of subsection (6A) above, any plant, shrub or tree, of whatever origin, is to be regarded as a natural feature of the landscape.

(6C) Subsection (6A) does not prevent an occupier from owing a duty by virtue of this section in respect of any risk where the danger concerned is due to anything done by the occupier—

(a) with the intention of creating that risk, or

(b) being reckless as to whether that risk is created.

Incorporation of common law principle of 'common humanity' (*British Railways Board v Herrington*).

An occupier does not owe a duty to people using the highway (Highways Act 1980, s 1(8)).

(7) No duty is owed by virtue of this section to persons using the highway, and this section does not affect any duty owed to such persons.

(8) Where a person owes a duty by virtue of this section, he does not, by reason of any breach of the duty, incur any liability in respect of any loss of or damage to property.

An occupier does not owe a duty in relation to property damage (cf s 1(3)(b) OLA 1957).

(9) In this section—

“highway” means any part of a highway other than a ferry or waterway;

“injury” means anything resulting in death or personal injury, including any disease and any impairment of physical or mental condition; and

“movable structure” includes any vessel, vehicle or aircraft.