

St Catherine's College – Law Admissions

Section 1 of the (fictional) Occupiers' Liability Act 2018 provides that:

"(1) An occupier of premises owes to all his visitors a duty to take such care as in all the circumstances of the case is reasonable to see that his visitor will be reasonably safe in using the premise for the purposes for which he is invited or permitted by the occupier to be there.

(2) The circumstances relevant for the present purpose include:

(a) 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—

(i) an occupier must be prepared for children to be less careful than adults; and

(ii) 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.

(b) 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

(c) 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.

(3) The duty imposed by sub-section (1) does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor.

(4) Where a visitor suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

In *Wheat v Lacon* [1966] AC 552, Lord Denning stated (at 577-578):

“In the Occupiers' Liability Act, 1957, the word ‘occupier’ is used in the same sense as it was used in the common law cases on occupiers' liability for dangerous premises. It was simply a convenient word to denote a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises. ... [W]herever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an ‘occupier’ and the person coming lawfully there is his ‘visitor’: and the ‘occupier’ is under a duty to his ‘visitor’ to use reasonable care. In order to be an ‘occupier’ it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be ‘occupiers’ and whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.”

Alison is the owner of commercial premises in Oxford which she rents out to her business tenant, Bernard. Bernard operates a sports equipment shop at the premises.

Advise Alison and Bernard in the following circumstances:

1. Charlie, a professional footballer, tears her achilles tendon while testing a treadmill. Her injury rules her out of contention for a place in the 2019 England Women's World Cup squad.
2. Dora, an 8-year old child, is badly injured while playing on a cycling machine. On the machine is a notice added by the manufacturer which states "This equipment is not a toy. Children should be supervised." Dora is dyslexic and cannot read the sign. Eric, Dora's parent, noticed the sign, but left Dora by the machine while he went to look for a pair of golf shoes.
3. Fred, who has come into the shop with the intention of stealing a sports watch, slips on an area of the shopfloor which the cleaning company used by Bernard had left in a dangerously damp state. Alison, visiting the premises to collect the rent, had noticed the condition of the floor but did not tell Bernard (who was busy taking a stock check). Fred breaks his leg. Bernard finds the sports watch in Fred's pocket and calls the police.