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Peter Cane Prize for Legal Reasoning by an Aspiring Lawyer 2017

The Occupiers' Liability Act 1957

The Occupier's Liability Act (OLA) came into force on the 1st of January 1957 after a recommendation by The Law Committee. The full name of the Act shows that it is persons or goods who legally come onto the property who are protected by the Act (*An Act to amend the law of England and Wales as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there*). The basis of an occupiers' liability regarding this Act is based around fault. Therefore, the occupier is only liable in tort if the damage to goods or person was incurred due to their negligence, or by reckless conduct. Prior to the passing of the bill, visitors to properties were classified on different levels, and the occupier of the property owed them a duty of care that corresponded to the assigned classification[1]. However, the 1957 Act established that the occupier of the property owed an equivalent duty to all lawful visitors to the relevant property, thus removing the need for classifications.

The immediate question that arises when dealing with the Act is what constitutes 'occupation' regarding liability, particularly if the person who is in "control of the premises"[2] does not live on the premises and does not own the premises. The Act itself does not exactingly define who the occupier is, but instead states that a person must be considered the occupier if they would be regarded so under common law. In cases such as *Wheat v Lacon* it has been established that there can be more than one occupier of a premises and that both occupiers would be liable if they were to fail in their respective duties of care[3]. Moreover, in *Harris v Birkenhead* it was also held that one only had to have legal not physical control of the property to be considered the occupier. Section 1 (3) of the Act maintains that the obligations of the occupier extend further than fixed structures, and include: "any vessel, vehicle, or aircraft"[4] on a property that could cause injury.

Although the Act imposes an onerous duty on the occupier regarding lawful visitors to premises, the 1957 Act does not extend protection to trespassers, or persons executing a public or private right of way such as in *Holden v White*. Since the passing of the OLA in 1957, another Act of the same name was passed in 1984, in which the principal focus was to establish an occupiers' liability regarding persons other than his visitors.

Section 2 - 'Extent of occupiers' ordinary duty'

Section 2 of the Act regards the extent of an occupiers' ordinary duty regarding their visitor's safety. The most important aspect of this provision lies in the duty of care that an occupier

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[1] Bermingham. V, Tort Law: Directions, Oxford University Press, p.153.
[2] Section 1(2) Occupiers' Liability Act 1957.
[3] Text regarding the case of *Wheat v Lacon.* http://www.bailii.org/cgibin/format.cgi?doc=/uk/cases/UKHL/1966/1.html&query=(wheat)+AND+(v)+AND+(lacon)
[4] Section 1(3a) Occupier's Liability Act 1957.

owes to all his lawful visitors. Those to whom occupier owes the common duty of care include: Invitees – S. 1(2). Licensees – S.1(2). Those who enter to pursue a contract – S.5(1) – For example paying guests at a theatre. Those entering in exercising a right conferred by law – S. 2(6) – Such as an electrician coming to read a meter[5]. Any visitor who does not fall within these categories is considered a non-lawful visitor and does not benefit from the protection of the Act, and thus the occupier does not owe them a common duty of care.

Section 2 focuses almost exclusively on establishing when a common duty of care is owed, and if one is owed, what will constitute 'reasonable care' regarding the conduct of an occupier towards a visitor. The common duty of care itself is defined thus: "*'The common duty of care is 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*"[6]. Essentially, the occupier must take reasonable care to ensure that the visitor would be reasonably safe while on the premises. The existence of the duty of care was originally established by Lord Atkin's 'neighbour test' within his ruling on the infamous case of *Donoghue v Stephenson* (although a liability case it still bears relevance) where he stated that "*You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour"*[7]. As the Act imposes a duty of care on the occupier in this sense the neighbour test is not required, although it is useful when summarising what constitutes a duty of care. The definition for the duty in the Act is ambiguous as the duty of care varies in accordance to the visitor, for instance a more onerous duty is owed to children than to adults.

Section 2(1)

Within Section 2(1) it is stated that the occupier is *"free to and does extend, restrict, modify or exclude his duty to visitor or visitors by agreement or otherwise"*. Therefore, an occupier is legally allowed to alter his duty of care in any way that he sees fit, but ambiguity arises when one considers how the occupier might alter his duty of care, as well as the definitions of the listed alterations that an occupier can make to change the level of his duty of care. The Oxford English Dictionary (OED) states that to 'extend' or 'restrict' something, is to increase and decrease it in size respectively. It states that to 'modify' something is to make minor or partial changes to it, while in relevant terms to 'exclude' something is to fail to include an aspect of it. The definitions show that although an occupier is unable to completely remove the duty of care, he is free to (minorly) alter his duty.

There are various ways for an occupier to alter his duty of care in accordance with Section 2(1). Firstly, an occupier can exclude elements of his duty of care through use of adequate warning signs. However, Section 2(4a) of the Act also states that the use of signs does not prevent the occupier from being liable unless *"in all circumstances it was enough to enable the visitor to be reasonably safe"*[8]. Despite this, the occupier is not required to place signs warning about obvious risks, such as in the case of *Staples v West Dorset District Council*

[5] Occupiers Liability Act 1957 (Sections stated with excerpts).
[6] Section 2(2) Occupiers' Liability Act 1957.
[7] Text regarding the case of *Donohue v Stevenson.* http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1932/100.html&query=(donoghue)+AND+(v)+AND+(stevenson)
[8] Section 2(4a) Occupiers Liability Act 1957.

where the claimant fractured his hip after falling from an algae-covered wall, the Court of Appeal held the council had no duty to warn the claimant of the inherent danger forded by climbing on a sloping, algae- covered wall[9].

An occupier can restrict his duty of care by imposing regulations on where the visitor can go and what they can do via conditions of entry, if a visitor was to ignore these regulations and suffered injury, the occupier would not be liable under the Act as it does not extend protection to invitees who exceed their permission. In relationship to this, Judge Scrutton ruled that *"when you invite a person into your house to use the staircase, you do not invite him to slide down the bannisters, you invite him to use the staircase in the ordinary way in which it is used"*[10].

The occupier can exclude his duty of care regarding risks willingly accepted by the visitor, according to Section 2(5) of the Act. This would be an application of *volenti non fit injuria* which translates as "*to a willing person, injury is not done"*. However, for this to apply the visitor must be fully aware of all potential risks involved in the action. The occupier could also exclude liability in a similar way when referencing Section 2(3b) which refers to the fact that a *"person in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it"*[11]. For example, in *Roles v Nathan* two chimney sweeps died after ignoring warnings regarding the high levels of carbon monoxide in the building, and subsequently died. Their widows brought action against the owner of the property under the OLA of 1957, but the Court of Appeal held the defendant was not liable, as the dangers were 'ordinarily incident' to their calling, and thus they should have taken the equivalent steps to protect themselves[12].

'Reasonably safe'

Within the Act, it is stated that the occupier must ensure that his visitor is "*reasonably safe in using the premises"*[13]. The OED defines "reasonable" as 'proportionate', which when regarding this term is wholly accurate, as the term changes when regarding the premises, and who the visitor is. Generally, to ensure that a visitor is reasonably safe, the occupier must take all measures ordinarily prudent and rational person would take to guarantee the safety of the visitor. An occupier can use several ways to ensure that the visitor is kept reasonably safe, for instance, the use of verbal and written warnings. The task of ensuring that someone is reasonably safe becomes more difficult when the danger posed to the visitor is particularly unusual, as then standard signs and verbal warnings cease to be sufficient, and a physical barrier may need to be erected.

The Act states that "*an occupier must be prepared for children to be less careful that adults"*[14]. This means that the occupier owes a more onerous duty of care to children who come onto the property, which by extension means that the occupier must be prepared to do

[9] Text regarding the case of *Staples v West Dorset District Council.* http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/1995/30.html&query=(staples)+AND+(v)+AND+(west)+AND+(dorset)+AND+(council)
[10] Bermingham. V, Tort Law: Directions, Oxford University Press, p.157.
[11] Section 2(3b) Occupiers' Liability Act 1957.
[12] Text regarding the case of *Roles v Nathan.* http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/1963/6.html&query=(roles)+AND+(v)+AND+(nathan)
[13] Section 2(2) Occupiers' Liability Act 1957.
[14] Section 2(3a) Occupiers' Liability Act 1957.

more to ensure that a child is reasonably safe. In the case of *Taylor v Glasgow Corporation* a child died after eating berries from the plant *atropa belladonna,* while visiting Glasgow Botanical Gardens. The court held that although there were warning signs present, these were not enough to overcome the allurement of the berries to young children and that a physical barrier should have been erected, whereas for an adult the sign would have sufficed[15].

Nevertheless, the duty of care becomes less onerous as a child becomes older, as older children are considered to have a greater appreciation of risks. In the case of *Jolley v Sutton,* a teenage boy suffered irreparable injuries while attempting to restore a damaged boat that the local council had failed to dispose of. Action was brought against the council under Section 2(3a) of the OLA 1957. However, the Court of Appeal found that as a teenager, the appellant would have had a sufficient understanding of the inherent risks of repairing a damaged boat, and thus ruled unanimously in favour of the defendant[16]

Concluding thoughts

Section 2 means that occupiers of properties should understand to whom they owe a duty of care, what form it takes, and how they can ensure than their visitor is reasonably safe when they are on the premises. Ultimately, the occupiers' primary concern must be his guest's welfare when they are on the premises.

Word count including footnotes: 1977.

Word count excluding footnotes: 1851.

[15] Text regarding the case of *Taylor v Glasgow Corporation.* http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1921/1922_SC_HL_1.html&query=(glasgow)+AND+(corporation)+AND+(v)+AND+(taylor)#disp5

[16] Text regarding the case of *Jolley v Sutton*. http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/2000/31.html&query=(Jolley)+AND+(v)+AND+(sutton)