

THE LAW:

Occupiers of 'premises' ie buildings, boats, open land, vehicles, lifts etc may be liable to visitors and trespassers under the Occupiers Liability Act 1957 and 1984.

OCCUPIERS LIABILITY ACT 1957:

Under the 1957 Act a common duty of care is owed to all ¹**lawful** visitors. The duty is to take such care as in all the circumstances of the case is ²reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he/she is invited or permitted to be there.

WHO IS AN OCCUPIER:

This is generally a question of fact, where the essential test is one of control that is, who has control over the premises. There may be more than one occupier so for example, where a sailing club shares its 'premises' with a dive club, both may be considered to be occupiers.

SAFE PREMISES:

The occupier should ensure that the premises are reasonably safe for the purpose.

If an accident happens, the question of liability will rest on whether the premises were unsafe. The classic test is whether something presents a reasonably foreseeable risk of injury to persons using the premises in the manner in which they may be reasonably foreseen to use them.

This should, in most cases, be a matter of common sense. For example a gaping hole in a pontoon will quite obviously render that part of the premises unsafe.

A Court would have to decide whether a reasonable person would have considered the defect in question presented a real danger. The duty of care is visitor specific, that is, the court must look at the particular visitor in order to ascertain the nature and the scope

¹ Lawful visitors are those invited onto the premises or those with permission to be there.

² 'Reasonable' in its legal context is elastic and thus allows the Judiciary a certain amount of interpretation, according to the facts of the case.

of the duty of care owed. A higher standard of care is owed to children, which will depreciate with their advance in age, parents may retain some degree of responsibility but the Courts are reluctant to place too much reliance on parents where children are in the care of skilled persons. There may also be a higher standard of care for disabled and elderly persons.

ADVICE:

Carry out an annual risk assessment of your premises and keep a written record of it. Any dangers that come to light take immediate precautions to avoid them. Use danger signs, notices, inform your visitors of any risks, slippery surfaces, hot water etc.

In terms of pontoons, slipways, lakes, reservoirs etc, we suggest that you ensure that signs are posted in appropriate places to warn of any dangers, eg shallow water, debris in water, tidal water, boat traffic, PWC area etc....

If there is a known defect, until it can be remedied, section it off and place adequate warning signs around the premises so as to ensure your visitors are safe guarded (we have all seen 'wet surface' signs on supermarket floors).

Wherever possible take out insurance cover against such potential liability.

OCCUPIERS LIABILITY ACT 1984:

The 1984 Act imposes a duty of care to those who are not visitors ie trespassers.

The Act imposes a limited duty of care on occupiers to take reasonable steps to offer protection to trespassers from dangers which should be known to exist on the property.

The duty under the 84 Act is more restricted than the 57 Act, in that it only applies where a danger that the occupier knows of or ought to know of exists and if the occupier knows or ought to know that trespassers are likely to come on the land. The scope of the duty under the 84 Act is limited to personal injury and does not cover property damage.

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000:

The 1984 Act's duty of care is extended to cover those who might be described as ramblers or persons exercising their right of access

over land, the 'right to roam'. The duty under this Act is limited in its scope and does not extend to risks that exist as a result of natural features on land.

DEFENCES:

Warnings - particularly important as they offer a simple inexpensive way to avoid potential liability.

Consent – this involves willingly accepting the risk, such as going sailing on a particularly choppy day, walking down a slippery pontoon.

Sobriety - of the claimant at the time of the accident - if it can be shown that the claimant was drunk at the time of the accident, this will at the very least, amount to a finding of contributory negligence, possibly even a finding of no liability whatsoever.

Exclusion Clauses – by virtue of the Unfair Contract Terms Act 1977, it is not possible for a business to exclude liability for death and/or Personal Injury in negligence under the 1957 Act – this restriction does not apply to the 84 Act, so in theory a business can exclude liability for death/personal injury under the 84 Act, however, a Court is unlikely to look favourably on such a clause.

Exclusion clauses are always construed strictly against the person attempting to rely on them as the Courts do not favour such clauses. Although an exclusion clause may be ineffective as such, it may nevertheless prove to be effective as a warning notice thereby discharging the duty of care by drawing attention to a particular danger.

If you hire independent contractors that turn out to be incompetent you may well be liable for their actions. Conversely if you have acted reasonably in entrusting the work to an independent contractor, having taken all such steps as you ought reasonably to in order to satisfy yourself that the contractor was competent, then your defence to a claim against you may be to blame your competent independent contractor.

Although the Judiciary has been slightly more restrictive in extending the duty of care in recent times, successful cases will still trickle through. However, following the case of ***Tomlinson v Congleton Borough Council 2002*** individual responsibility will be an important factor in future occupiers liability cases.

If you have any queries, questions or comments on the information contained in this leaflet, kindly contact the Legal Department on 0845 3450373 or legal@rya.org.uk.

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