

What liability to (injured) visitors?

IOSH talk 15 May 2019

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Sources of law

- Common law/statute
- Statutes cover:
 - Criminal
 - civil matters
- Civil liability (party sued, injury) can arise from
 - Contract,
 - tort

What liability to (injured) visitors?



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*Open Day visitor
2018*

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Some areas of difficulty:

- Temporary structures
- Events
- Trespassers

Occupiers Liability Act 1957

S.2(2) - '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.'

Two special types of visitor:

S.2(3)(a) - an occupier must be prepared for children to be less careful than adults

S.2(3)(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

Occupiers Liability Act 1957

| Visitors? | But not... |
|------------------------------|---------------------------------|
| Invitees | Invitees that exceed permission |
| Licensees | Trespassers |
| Entered by contract | Users of a right of way |
| Can enter by right under law | |
| Implied License | |

What injury/damage is covered?

- Death, injury & damage to property

Occupiers Liability Act 1957

Discharging the duty

- By warnings and warning signs
- Provided it is sufficient for the visitor to keep safe
- No need to warn of obvious risks.

Defences:

- Volenti non fit injuria!
- Contributory negligence
- Exclusion of liability (subject to UCTA 1977)

Occupiers Liability Act 1957

The Act applies to

- land and buildings
- fixed and movable structures, including any vessel, vehicle

What about (say) building work on the site?

- No liability for injury by independent contractors...
- Provided the occupier acted reasonably in all the circumstances in entrusting the work to the independent contractor and took reasonable steps to satisfy himself that the work carried out was properly done and the contractor was competent.
 - Gwilliam v West Herts Hospital NHS Trust (2003) – Splat!



125 Old Broad St, London.

See: *125 OBS (Nominees1) & Anor v Lend Lease Construction (Europe) Ltd & Anor* [2017] EWHC 25

Occupiers Liability Act 1984

Liability to trespassers

An occupier owes a duty to another (not being his visitor) if:

- (a) He is aware of a the danger or has reasonable grounds to believe that it exists
- (b) He knows or has reasonable grounds to believe the other is in the vicinity of the danger or may come into the vicinity of the danger
- (c) The risk is one in which in all the circumstances of the case, he may reasonably be expected to offer the other some protection

Standard of care

The duty is to take such care as is reasonable in all the circumstances of the case to see that the other does not suffer injury on the premises by reason of the danger concerned. **S.1(4) OLA 1984**

Occupiers Liability Act 1984

Duty may be discharged by giving a warning or discouraging others from taking the risk

- Tomlinson v Congleton (2003)

But what of the user experience?

BBC | 

NEWS

Deaf mum sues Little Mix promoter in sign language row

Legal action

Under the Equality Act 2010, any organisation supplying a service to the public is under a duty to make reasonable adjustments to ensure that a disabled person's experience is as close as possible to that of someone without a disability.

With just days to go before the concert, and no interpreter in place, Sally took an unprecedented legal step.

She decided to instruct lawyers to apply for a court injunction to force LHG Live to provide a British Sign Language interpreter.

It worked. Hours before the hearing was due to take place, LHG Live agreed.

<http://www.bbc.co.uk/news/education-42776454>



Equality Act 2010

Summary of the Act :

- Part 2: Equality: Key concepts
- Part 3: Services and public functions
- Part 4: Premises
 - was Design Disability Act
 - Protects you when renting property
- Part 5: Work
- Part 6: Education
- Part 7: Associations
 - Single sex golf club?

s 4, the protected characteristics are:

- (a) age,
- (b) disability,
- (c) gender reassignment,
- (d) marriage and civil partnership,
- (e) pregnancy and maternity,
- (f) race,
- (g) religion or belief,
- (h) sex, and
- (i) sexual orientation

Some exceptions are allowed:

e.g. single sex schools, faith schools...

Equality Act 2010

s29 Provision of services, etc.

- (1) A person (a “service-provider”) concerned with the **provision of a service to the public** or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
- (2) A service-provider (A) **must not**, in providing the service, **discriminate** against a person (B)—
- (a) as to the terms on which A provides the service to B;
 - (b) by terminating the provision of the service to B;
 - (c) **by subjecting B to any other detriment.**
- (7) A duty to make **reasonable adjustments** applies to—
- (a) a service-provider

s39 Employees and applicants

- (1) An employer (A) must not discriminate against a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) **as to the terms on which A offers B employment;**
 - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)—
- (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B **access, to opportunities for promotion**, transfer or training or for receiving any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer

Terms agreed with Licensee?

Is it a license at all?

London College of Business v Tareem (2018)

It may be a lease if:

- Exclusive possession? Right of re-entry
- Rent agreed
- Term agreed

So ... it's a tenancy, and

the Landlord & Tenant Act 1954 applies

Conclusions

- Occupiers owe a duty of care to visitors and trespassers
- Liability? What terms were agreed? What warning signs were in place?
- Your contractors – insurance cover in place?
- Equal (visiting) opportunities for all – duty to make adjustments