

Law School Tutors Lecture Series



Sport and the Law

LECTURE EIGHT : SPORT, TORT, PLAYERS AND SPECTATORS

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SPORT, TORT, PLAYERS AND SPECTATORS

CONDITIONS OF THE SPORTS PREMISES

The Duties of employer and employee : Local authority employees may be required to maintain equipment or premises or to provide supervision. Local authorities are required to observe health and safety considerations. See **Clark v Bethan Green Corporation**.¹ ; **Fowles v Bedfordshire County Council**.² Sports halls, changing rooms of gyms can be defective in their condition. **Gillmore v London County Council**.³ Since this case there is now obviously the duty of care owed under the **Occupiers Liability Act 1957** to consider.

Question: Discuss the duty of care owed under the **Occupiers Liability Act 1957**. Give some examples in this context.

Question: what particular duties or burdens does the law impose on local authorities with regards to their premises? Give some specific examples.

THE BRADFORD AND HILLSBOROUGH INCIDENTS : Liability for spectator safety

Introduction : Two high profile disasters have taken place at British sporting venues during the past 15 years. First, there was the Bradford fire disaster in 1985 where 56 people were killed when an ancient wooden grandstand burst in to flames. Then on the 15th April 1989, arguably the worst tragedy in the history of British football took place at Hillsborough Stadium, the home of Sheffield Wednesday Football Club. Nine-five Liverpool fans were crushed to death on the terraces of the Leppings Lane End of the Stadium during the course of the match between Liverpool and Nottingham Forest.

The Government of the day responded by appointing Lord Justice Taylor to: *“enquire in to the events at Sheffield Wednesday Football ground on 15th April and to make recommendations about the needs to crowd control and safety at sports events”*

Background to the issue : Bradford and Hillsborough were not the only disasters this century. In 1946 33 spectators were crushed to death at Bolton Wanderer’s ground, Burnden Park; the Moelwyn-Hughes Report followed. In 1972 66 supporters died at Ibrox Park in Glasgow when fans tried to return to the ground on an exit stairway. Lord Wheatley conducted an enquiry in to this disaster and this led to the introduction of the first Safety at sports Ground Act. The Popplewell Inquiry followed the Bradford fire disaster; it recommended the public authorities should more rigorously pursue their statutory obligations, that there should be adequate safety exists and the police should be properly trained in safety procedures. Taylor was the 9th Government Report commissioned on this subject.

Crowd control had become a prominent issue with worries over hooliganism. The police had met this challenge through the use of high profiling policing. Segregation of supporters, and tragically through the use of high perimeter fencing and the penning of fans. Really, this had little effect on the well-behaved fans and caused a breakdown in communications between fans, the police and football authorities.

Moore,⁴ observes that claims by spectators at common law have not fared well against sports events organisers unless a mass disaster has been involved. **Wilks v Cheltenham Home Guard Motorcycle and Light Car Club**.⁵ Spectators were injured at a motor-cycle scrambling event. They sued the organisers. A Court of Appeal found that the accident could not really be explained and thus there was no negligence.

¹ **Clark v Bethan Green Corporation** (1939) 55 TLR 519

² **Fowles v Bedfordshire County Council** 17 May 1995

³ **Gillmore v London County Council** [1938] 4 ALL ER 331

⁴ *Sports Law and Litigation*, Moore, page 55

⁵ **Wilks v Cheltenham Home Guard Motorcycle and Light Car Club** [1971] 1 WLR 668

THIRD PARTY INJURIES

What of persons are injured by the sport, who were nothing to do with the activity in question, but were just nearby? The most famous case of all is **Bolton v Stone**.⁶

The claimant was struck by a cricket ball as she stood in a road near to the cricket ground. The club claimed that this was only an occasional event (6 times in 28 years) and no one had been injured. The House of Lords said that the risk of injury was so slim that the defendants were justified in not taking the extra precautions of erecting a higher fence.

In **Miller v Jackson**,⁷ the court refused to grant an injunction against a cricket club despite a finding of negligence and nuisance because of their balls. The Judges believed that the interests of the wider community should take precedence over those of the property.

Shelfer v City of London Electric Lighting,⁸ states that you cannot obtain your sport to the detriment of those around you (Miller seemed to say otherwise). The fact that the person against whom a finding has been made could be said to be providing some kind of public benefit is not sufficient to persuade a court to refuse to grant an injunction.

This position was returned to in the case of **Kennaway v Thompson**.⁹ The plaintiff moved to a private house next to a lake where power board racing took place. After this move, the racing increased in frequency. The court granted the plaintiff an injunction on the grounds that the public interest should not prevail over the private interests of someone affected by a continuing nuisance.

However, the pro-sporting position was once again asserted in the case of **Lacey v Parker and Boyle**,¹⁰ where the judge refused to grant a mandatory injunction to erect a high fence in front of the plaintiff's home in order to stop cricket balls flying over. The judge commented that plaintiff should have expected this to happen.

ACTS OF PARLIAMENT AND SPORTS FACILITIES

The Safety of Sports Grounds Act 1975

(This Act was amended by the Fire Safety and Safety of places of sport Act 1987)

Act applied to any sports ground with a capacity of more than 10,000 spectators in most cases. These grounds require a certificate from the Secretary of State for the Home Office.

Sporting Events (Control of Alcohol etc) Act 1985

(As amended by s40 of the Public Order Act 1986. Act makes it an offence to carry alcohol on public transport to and from a game, possess alcohol inside the sports ground, to be drunk on such vehicles and to carry articles which are intended to cause a flare, smoke or gas e.g. fireworks.

Attorney-General's Reference.¹¹ Two spectators at a match at Cardiff Arms Park let off a marine distress rocket which landed in the crowd and killed a man. They were sentenced to three years imprisonment for manslaughter.

Fire Safety and Safety of Places of Sport Act 1987

Act requires that grounds which contain a stand capable of holding at least 500 people require a fire safety certificate. Local Authorities operate as enforcement agencies.

Football (Offences) Act 1991

Deals with disorderly conduct of football fans. Deals with specific foot-balling antics: Fans :-

1. Cannot throw missiles at or towards the playing area.
2. Take part in indecent or racist chants.

⁶ **Bolton v Stone** [1951] AC 650

⁷ **Miller v Jackson** [1977] QB 966

⁸ **Shelfer v City of London Electric Lighting** [1985] 1 Ch 287

⁹ **Kennaway v Thompson** [1981] QB 88

¹⁰ **Lacey v Parker and Boyle** (1994)

¹¹ **Attorney-General's Reference** (Nos 26 and 27 of 1994) (1995)

3. Invade the pitch.

Related Acts of Parliament

Occupiers Liability Act 1957 – organiser of events will owe a statutory duty of care to ensure the safety of their visitors.

Public Order Act 1986 – spectators can face prosecution for public order offences e.g. protesting.

Criminal Justice and Public Order Act 1994

The Football Spectators Act 1989¹²

The Act is divided as follows:

Part One- The Domestic Game

Part two – Restrictions on Overseas Travel.

The Act created the Football Licensing Authority, which deals with the issuing of licences to allow spectators to watch football. Licences can also:

- Include conditions on seating
- Ensure that Local Authorities are implementing their powers under the Safety of Sports Grounds Act 1975
- Act as an “honest broker” between clubs, local authorities and government.
- In particular, the Act introduced the idea of football supporter identity cards but this did not go down very well with the fans.

The consequences of Hillsborough

Moore,¹³ pointed out that there were four classes of claimant:

- a) estates and dependants of those who died
- b) those injured at the ground but survived
- c) relatives of those who died and who actually witnessed the events inside the ground or else on TV
- d) members of the police and rescue services who were on duty that day.

PHYSICAL INJURY OF SURVIVORS : ESTATE OF DECEASED

Moore reports that most of these claims were settled out of court but the following case was not: **Hicks v Chief Constable of South Yorkshire Police.**¹⁴ Ratio- damages not recoverable for pain and suffering attributable to the time it took the girls to die.

PHYSCHIATRIC DAMAGE SUFFERED BY RELATIVES

Question: what is nervous shock?

Question: what do you think the courts fear could happen in this area if they were not so strict with their definition?

Alcock v Chief Constable of South Yorkshire.¹⁵ Facts- 96 people were crushed to death while attending a football game at the home ground of Sheffield Wed. Game between Liverpool and Nottingham Forest. Was shown live on TV. People at home and those situated in other parts of the ground became very distressed. They could not find their loved ones. Mr Alcock took 8 hours to find the body of his brother. Sued the police for nervous shock.

Ratio : Foreseeability – close ties of love and affection. Restricted to particular relationships where it can be presumed. Other relationships to be looked at closely.

¹² This Act was introduced by the then Minister for Sport, Colin Moynihan.

¹³ Sports Law and Litigation, Moore at page 81

¹⁴ **Hicks v Chief Constable of South Yorkshire Police** [1992] 2 ALL ER 65, HL, [1992] 1 ALL ER 690

¹⁵ **Alcock v Chief Constable of South Yorkshire** [1992] 1 AC 310

Proximity – how did they come to be afflicted by these events? Where were they? How long did it take them to reach the scene? Had to witness the scenes with their own unaided senses or come under the immediate aftermath principle. Mere communication not sufficient.

CLAIMS BY RESCUERS

Question- why do you think the law encourages such claims?

Question – is this class restricted to rescuers?

Chadwick v British Railways Board.¹⁶ Small person asked to crawl in to railway carriages to administer first aid. Became ill afterwards. Allowed to claim for nervous shock.

Frost v Chief Constable of South Yorkshire Police.¹⁷ 14 police officers had been at the Leppings Lane end of the ground or else helped out at the pitch side. They had all sustained post-traumatic stress disorder. Their employers denied any duty to them. 4 police officers succeeded in their claim because they had become ill as a result of helping the victims of the disaster. Three were classed as rescuers, the fourth had been exposed to horrific events (look up).

This allowed members of the rescue services to launch claims for nervous shock in cases where relatives could not. This caused a great deal of criticism from people who said that the police should expect to witness such events. However, the court took the view that their employers still owed them a duty of care and it was their employer's negligence, which was responsible for this situation.

The Taylor Report

The report discussed and criticised the following issues:

- Leadership of football in Britain
 - Poor facilities
 - Old grounds
 - The lack of consultation between officials and fans
 - The behaviour of players
 - Alcohol as a possible cause of disorder
 - The attitude of newspapers and television
 - The effects of hooliganism and segregation on the general experiences of football spectators
- Lord Justice Taylor then went on to make a total of 76 recommendations designed to improve the state of football in Britain. The most important of these are:
- The gradual replacement of terraces with seated areas in all grounds by the end of the century, with all First and Second Division stadia being all-seater by the start of the 1994-5 Season and all Third and Fourth Division by 1999-2000.
 - Setting up an Advisory Football Design Council to advise on ground safety and construction and to commission research into this area.
 - That no perimeter fencing should have spikes on the top or be more than 2.2 metres tall.
 - Making ticket touting a criminal offence.
 - Introducing new laws to deal with a number of offences inside football grounds, such as racist chanting and taunting.
 - Sending older offenders to Attendance Centres and using new electronic tagging devices for convicted hooligans.

Conclusion

Liability of sporting organisers seems to be limited in general, one off situations as regards common law. It is the spectacular disasters which have attracted the attention of the Government and the courts.

¹⁶ **Chadwick v British Railways Board** [1967] 1 WLR 912 :

¹⁷ **Frost v Chief Constable of South Yorkshire Police and others** (1996) The Times, 6 November :

Workshop

- 1 Outline the approach of the judges regarding the liability of sporting organisers in torts for the following:
 - a) personal injuries to spectators at sporting events.
 - b) Nuisance actions.Can any consistent, reasonable line be ascertained from these decisions?
- 2 Outline the statutes which maintain public order and safety at sporting events. Evaluate their effectiveness.
3. Does a law which allows police officers to recover but which fails to compensate the loved ones of those who died have any place in a fair and just society? (Moore p85)
4. Consider the following statement:

"There is no panacea which will achieve total safety and cure all problems of behaviour and crowd control. But I am satisfied that seating does more to achieve those objectives than any other measure." (Taylor 1990)

Negligence and Occupier's Liability

By C.H.Spurin

Definition : The legal duty owed by an occupier of premises to persons coming onto those premises.

The principal sources of law are the **Occupiers Liability Act 1957** and the **Occupiers Liability Act 1984** – (O.L.A. 1957 & O.L.A. 1984). Occupiers liability can be divided into 3 separate heads 1) Liability for lawful visitors; 2) Liability for unlawful visitors and 3) Liability of non-occupiers to entrants.

1) **Liability to lawful visitors.** This is governed by the **Occupiers Liability Act 1957**.

s2(1) **Occupiers Liability Act 1957** provides that an occupier of premises owes a common duty of care to all lawful visitors.

s2(2) **Occupiers Liability Act 1957** defines the common duty of care as 'a duty 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.'

Who is an occupier ? The 1957 Act does not provide a definition of an occupier. However, judicial guidance has been given in the following cases.

Wheat v Lacon.¹⁸ The case held that an occupier is a person who has some degree of **CONTROL** over the premises. The occupier need not necessarily be the owner. It is also possible for there to be more than one occupier at a time. D owned a public house. R was the manager. R was allowed to take paying guests in, in his private accommodation at the upstairs rear of the premises. A fatal accident occurred when a guest fell down the stairs because there was no bulb in the light on the staircase - because an unknown person had stolen it. The estate of the deceased sued the brewery. Held : Both D & R were the occupiers of the premises under the O.L.A. 1957.

A.M.F. v. Magnet Bowling.¹⁹ The claimant installed bowling equipment in an unfinished bowling centre owned by defendant No1, which was being built by defendant No2. Heavy rains caused floods and the claimant's equipment was damaged. Held : Defendant No 1 and Defendant No 2 were both 'occupiers' under the **Occupiers Liability Act 1957**

What are premises ? s1(3)(a) provides that premises include any fixed or movable structure and includes amongst other things vehicles₁ vessels & aircraft, though the list is without limits.

- **Francis v Cockrell** (1870) : Grandstands.
- **Kenny v Electricity Supply Board** (1932) Pylons.
- **Pratt v Richards** (1951) Scaffolding.
- **Woodman v Richardson** Pylons.
- **Wheeler v Copas** : A farmer lent a ladder to a bricklayer he had employed to do some work on his farm. The ladder broke whilst the bricklayer uses it, causing him injuries. Held : The farmer was not in occupation of the ladder once it was lent.

Who are visitors? Visitors are persons lawfully on the premises ie they have the permission of the occupier to be there. This permission can be expressly given by the occupier -gratuitously or under a contract : by statute : or, as is more usual, can be implied from the circumstances

- a) **Invitees** - persons allowed to enter the premises, the purpose of which is in the interest of both the occupier and the invitee, such as a potential customer in a shop, or a private guest.
- b) **Licensees** - persons who have permission to enter the premises - either express or implied for a purpose in which the occupier has no interest – e.g. a next-door neighbour fetching a ball knocked over a fence. **Edwards v Railway Executive**²⁰ - a person claiming implied licence must prove it to the court.
- c) **Contractors** - persons who enter the land by virtue of a contract such as a milkman or a window cleaner.
- d) **Health & safety inspectors** - customs & excise - police - postmen.

¹⁸ **Wheat v Lacon** (1966) A.C. 552.

¹⁹ **A.M.F. v. Magnet Bowling** (1968) 1 WLR 1028.

²⁰ **Edwards v Railway Executive** [1952] AC 737

People exercising public rights of way **Greenhalgh v B.R.B.**²¹ and private rights of way **Holden v White**,²² are covered by the **Occupier's Liability Act 1984** – i.e. there is a duty not to create dangers but no duty to maintain its safety.

Visitors to National Parks and to the Countryside under the **National Parks & Access to the Countryside Act 1949** are not visitors under the **Occupiers Liability Act 1957** but are provided for by the **Occupiers Liability Act 1984**. Note further that the recent ramble's charter imposes duties of care on land owners towards such ramblers.

The Common Duty of Care : s2(2) Occupiers Liability Act 1957: The standard of care to be taken is the same as that in the law of negligence. The occupier must take reasonable care to ensure the safety of his premises.

In deciding what amount of care is reasonable **ALL** the circumstances of the case must be taken into consideration.

- a) s2(3)(a) **Occupiers Liability Act 1957:** an occupier must be prepared for **children** to be less careful than adults. The standard of care owed to children is very high because children are not expected to behave as carefully as adults.

The duty owed to children increases the younger the child is. However, in the case of very young children, the occupier is entitled to assume they will be accompanied by an adult. In **Simkiss v Rhondda B.C.**²³ there was no obligation on the Council which owned a mountain to fence it off and keep children out.

Phipps v Rochester Corporation.²⁴ A 5 year old boy was out black-berry picking with his 7 year old sister. They walked across part of a housing estate that was being developed by the defendant. The boy was injured when he fell into a trench the danger of which would have been obvious to an adult. Held : The occupier was not liable Evidence was produced that children frequently went onto the development and the defendant had done nothing to keep them off. Therefore the children were not trespassers but licensees. However, the court found that such a licence was subject to the condition that such a young child would be accompanied by a responsible person. "It is ... (the parents) duty to see that such young children are not allowed to wander about by themselves, or at least to satisfy themselves that the places to which they do allow their children to go unaccompanied are safe for the to go" per Devlin 3.

An occupier is bound to take special care in respect of anything on his premises which would be especially **ATTRACTIVE** or **ALLURING** to children and which contains dangers which children would not appreciate.

Glasgow Corp v Taylor (1922) A bush containing poisonous berries in a public park should be fenced off.

Cooke v Midland G.W.R. of Ireland (1909) : A derelict turntable which children used as a roundabout.

Harris v Birkenhead Corporation (1975) : Derelict houses awaiting demolition should be boarded up to stop children wandering since they might be injured especially if they walked out through upstairs windows.

Creed v John McGeogh & Sons Ltd (1955) builders' vehicles - cement mixers etc.

The courts are more inclined to find that in cases involving children that the occupier has by acquiescence converted the child trespasser into a lawful visitor as in **Phipps v Rochester Corporation**.

- b) s2(3)(b) **Occupiers Liability Act 1957:** an occupier may expect that a person doing his job will appreciate and guard against the ordinary risks of his job.

Roles v Nathan.²⁵ : Two chimney sweeps who were called to clean a boiler and were advised not to clean inside the boiler flue whilst it was alight, disregarded the advice & were subsequently overcome by fumes and died : Held Occupier not in breach of the **Occupiers Liability Act 1957**

²¹ **Greenhalgh v B.R.B.** [1969] 2 Q.B. 286

²² **Holden v White** [1982] 2 Q.B. 679

²³ **Simkiss v Rhondda B.C** [1983] L.G.R. 460

²⁴ **Phipps v Rochester Corporation** (1955) 1 QB 450

²⁵ **Roles v Nathan** (19634) 2 All.E.R. 908.

Howitt v Bagnall.²⁶ Occupiers held not liable when a workman fell from scaffolding as he tried to inspect roof repairs. the scaffolding was not dangerous but the task of inspecting the roof was a risk inherent in the workman's job and one which he (the workman) should have guarded against.

- c) s2(4)(a) **Occupiers Liability Act 1957**: an occupier may be able to discharge the common duty of care by giving an adequate warning of any danger. Any warning must be sufficiently clear and visible.
- d) s2(4)(b) **Occupiers Liability Act 1957**: an occupier will not be liable if the injury results from the faulty work of an independent contractor, provided the occupier took reasonable steps to ensure the contractor was competent and that the work was properly done.

Haseldine v Daw.²⁷ The claimant visited a tenant in a block of flats that belonged to D and was injured when the lift fell to the bottom of the shaft, due to the negligence of a firm of engineers employed by D to repair the lift. Held : D had discharged his duty to P by employing an apparently competent firm to service the lift.

Woodward v Hastings Corporation.²⁸ A pupil was injured when he fell on an icy step which had carelessly been left in a dangerous condition by a school cleaner. The local authority responsible for the school was held liable. even if the cleaner was an independent contractor, the job of cleaning the school was not a specialist task and thus there was a continuing duty of inspection on the occupier's behalf.

The occupier must check that work is carried out properly. The more technical the task the less reasonable it is to expect the occupier to supervise or check a contractor's work. The occupier would have to delegate this supervision to a suitably qualified person.

A.M.F International v Magnet Bowling.²⁹ The defendant was held liable because he had failed to check the contractor's work before allowing independent contractors to enter premises to undertake further work. The Independent Contractor's equipment was damaged by water as a result of the contractor's negligence.

- e) s2(5) **Occupiers Liability Act 1957**: an occupier has the right to plead the defence of *volenti non fit injuria* - consent, in respect of risks willingly accepted by the visitor.

Simms v R.L.F.C.³⁰ Held : The claimant, a professional rugby player who was injured when thrown against a wall had accepted the risk of playing on a rugby ground that complied with the bye-laws of the rugby league.

Burnett v B. Waterways Board.³¹ Where the claimant has no real choice about entering premises he cannot be taken to have accepted the risk.

Duties owed to contractual visitors

People entering premises under a contract are subject to the **Occupiers Liability Act 1957**. There are 2 categories of people entering under contract for which the Act provides.

- a) Those entering by virtue of a contract with the occupier eg occupier and building contractor
s5 **Occupiers Liability Act 1957** provides that where there is a contract this must be considered to see whether it governs the occupier's liability to his visitor. If the contract is silent on this then the common duty of care will apply. The provisions of **Unfair Contract Terms Act 1977** apply - liability cannot be excluded for death or personal injury arising out of negligence of the occupier.
- b) Those entering by virtue of a contract with the occupier to which they are not a party eg the occupier has a contract with a building contractor and part of the builder's contract requires an outside engineer to inspect the site. The engineer enters by virtue of the contract - but not as a party to it.
s3 **Occupiers Liability Act 1957** provides that such an entrant is owed a common duty of care by the occupier.

²⁶ **Howitt v Bagnall** (1967) 2 Lloyds Rep 370

²⁷ **Haseldine v Daw** 91941) 2 K.B 343.

²⁸ **Woodward v Hastings Corporation** (1945) K.B 174

²⁹ **A.M.F International v Magnet Bowling** (1968) 1 WLR 1028

³⁰ **Simms v R.L.F.C** (1969) 2 All.E.R. 923

³¹ **Burnett v British Waterways Board** (1973) 2 All.E.R. 631

Occupier's Liability to Unlawful Visitors

This is governed by the **Occupiers Liability Act 1984** which replaced the old common law rules governing the duty of an occupier of premises to persons other than visitors – i.e. trespassers. The occupier must now take such care as is reasonable to see that a trespasser does not suffer injury due to the state of the premises. Occupier and Premises have the same meaning as under the **Occupiers Liability Act 1957**.

Who is a trespasser? : Any person who is on the premises unlawfully i.e. without the express or implied consent of the occupier.

The duty owed to trespassers : The duty prior to the O.L.A. 1984 was that of Common sense and humanity - known as the duty of common humanity. This required all the surrounding circumstances to be considered - eg the seriousness of the danger, the type of trespasser likely to enter and in some cases the resources of the occupier. The major problem for the courts regarding an occupier's liability regarding injuries suffered by trespassers was that of striking a balance between the rights of landowners and the rights of the unlawful visitor who unintentionally trespasses on land and is injured as a result. Should the trespasser be left without a remedy?

Addie v Dunbreck³² - House of Lords : trespassers enter at their own risk – the only duty is not to intentionally or recklessly inflict damage on a trespasser.

B.R.B v Herrington.³³ A six year old injured by an electrified rail whilst trespassing on the defendant's land : gained access through a dilapidated fence caused by trespassers who regularly crossed the line : The defendant knew children had been seen on the land in the past but had not repaired the fence. Held : the defendants were in breach of their duty of care and therefore liable : An occupier who knows or ought to know there are dangers on the premises owes trespassers a duty 'to take such steps as common sense or common humanity would dictate'.

The **Duty of Common Humanity** is narrower than the **Common Duty of Care** under the **Occupiers Liability Act 1957**. The test for discharging the duty of Common Humanity is subjective -taking into account the occupier's knowledge, skill and resources.

sl(4) **Occupiers Liability Act 1984** replaces the duty of Common Humanity with a duty to 'take such care as is reasonable in all the circumstances of the case to ensure that the trespasser is not injured by the state of or anything on the premises.

sl(3) **Occupiers Liability Act 1984**: an occupier owes a duty if

- 1 he is aware of the danger or has reasonable grounds to believe that it exists and
- 2 he knows, or has reasonable grounds to believe, that someone is in (or may come into) the vicinity of the danger; and
- 3 the risk is one against which in all the circumstances of the case he may reasonably be expected to offer some protection to the trespasser.

The **Occupiers Liability Act 1984** does not significantly change the common law position regarding trespassers. All the circumstances of the cases remain relevant, including what the occupier does know and ought to know, both about the existence of the danger and the likelihood of trespassers. It is therefore very unlikely that **Herrington's** case or the other cases below would be decided differently under the Act.

However, in the absence of any decision on the Act, these cases are only illustrative and it will still be rather difficult to predict the outcome of many cases. In **White v St. Albans City & District Council**.³⁴ the mere fact of erecting fencing to keep people out was not considered to be enough to indicate a knowledge of the presence of such persons. It would require something more on the facts such as broken fencing to show there were still entrants despite the fencing.

³² **Addie v Dunbreck** (1929) AC 358

³³ **B.R.B v Herrington** (1972) AC 877

³⁴ **White v St. Albans City & District Council** Times 12 March 1990.

Harris v Birkenhead Corporation.³⁵ A 4 year old fell from the upper window of a derelict house the council was about to demolish someone had omitted to have the windows and doors barred up pending demolition the usual practice. Council held liable : The house was a dangerous and tempting place for children a humane and common sensed person would have taken precautions.

Penny v Northampton B.C³⁶ : a trespasser threw an aerosol can into a fire started by children on a council tip : the can burst injuring an 8 year old Held : council not liable.

Panett v McGuiness,³⁷ Demolition contractors lit a fire to burn rubbish on a demolition site : three workmen supervised the fire and kept a lookout for children. A five year old child trespasser fell into the fire while the men were away and was badly burnt : they had chased children away many times before Held Liable - because of a failure to keep a proper lookout.

Defences.

1) **Warnings : s1(5) Occupiers Liability Act 1984** provides that an occupier may discharge his duty by taking reasonable steps to give a warning of the danger concerned, or to discourage persons from incurring the risk.

It would seem that warning notices are more likely to absolve the occupier from liability if the trespasser is an adult. **Westwood v Post Office**³⁸ : The claimant, an adult employee of the P.O. was injured when he entered an unlocked room as a trespasser which had a warning of danger on the door. Although the room should have been locked, the claim failed since a notice of danger was regarded as adequate warning to an adult.

2) **Consent. s1(6) Occupiers Liability Act 1984** : provides that an occupier owes no duty to a trespasser who willingly accepted the risk *volenti non fit injuria*.

Liability of non-occupiers to entrants. The liability of non-occupiers is concerned with the position of a vendor (owner of premises) or lessor (landlord) who creates a danger or defect in his premises and then sells or lets them to a person who subsequently suffers damage from that danger or defect. **The Defective Premises Act 1972** governs this area of liability. The act provides 2 specific duties.

1) **The duty to build dwellings properly.**

s1(1) **Defective Premises Act 1972**: provides that any person who undertakes work for or in connection with the provision of a dwelling owes a duty of care to the person who orders the work and also to any person who subsequently acquires an interest in the dwelling, to see that the work is done in a workmanlike or, as the case may be, professional manner with proper materials. It affects owners, builders, surveyors, architects, sub-contractors and developers who arrange for someone else to do the work. It also provides that a supplier or manufacturer of goods for the purpose of the work, or that a builder provided with a specification, which he works to, are immune from liability under the act.

s1 **Defective Premises Act 1972** is limited in 2 ways.

a) **s2 Defective Premises Act 1972** provides that all dwellings covered by the National House Building scheme are excluded from liability under the Act. In practical terms s1 **Defective Premises Act 1972** will mainly effect conversions and alterations of dwellings by builders outside the scheme. Since the 1988 practice agreement there are no builders covered by the scheme so this section is no longer of any practical significance at least until such time as the Secretary of State approves any new schemes which seems unlikely. **Rimmer v Liverpool C.C.**³⁹ Landlord / builder liable to tenant for dangerous floor boards : but a non builder landlord would not **Cavalier v Pope.**⁴⁰

b) Action is limited by statute to 6 years from completion of the premises. Negligence actions run from the date of damage, which may be long after the building was completed. See also the Latent Damage Act 1986. Defects in timbers, foundations and other parts of buildings rarely become apparent for several

³⁵ **Harris v Birkenhead Corporation** 1 WLR 279

³⁶ **Penny v Northampton B.C** (1974) 72 L.G.R 733

³⁷ **Panett v McGuiness** (1972) 2 QB 599

³⁸ **Westwood v Post Office** (1973) QB 591

³⁹ **Rimmer v Liverpool C.C.** [1985] QB 1

⁴⁰ **Cavalier v Pope** [1906] AC 428.

years : P would be excluded from bringing an action under **The Defective Premises Act 1972** and would have to rely on common law rules in negligence and the Latent Damages Act 1986.

Cross reference also, cases such as **Pirelli v Oscar Faber**⁴¹ : **Murphy v Brentwood D.C.**⁴² : **D & F Estates v Church Commissioners.**⁴³

Defective Premises and the Landlord's duty of care.

s4 **Defective Premises Act 1972** provides that lessors of premises have an obligation to a tenant under the tenancy for the maintenance or repair of premises. The landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty of care as is reasonable in all the circumstances to see that they are reasonably safe the duty covers both personal injury and damage to property and is owed if the landlord knows or if he ought in all the circumstances to have known of the defect.

Builders and contractors who are not landlords. A builder or contractor who is not a landowner but carries out construction work in respect of premises owes a duty of care to subsequent occupiers of the premises and to their visitors (and probably to trespassers where their presence is reasonably foreseeable under the Occupier's Liability Act 1984).

Billings v Riden.⁴⁴ Billings were building contractors employed to make alterations to a house. while carrying out this work, Billings failed to take reasonable care to make access to the house safe. Riden, a visitor was injured whilst leaving the house. Held : Billings were liable in negligence : building contractors owe a duty of care to persons they could reasonably foresee would be affect by their work.

Anns v Merton⁴⁵ and **Batty v M.R.L.**⁴⁶ where a builder and a development company were joint owners of land on which they proposed to build houses following an inspection of the land : The builder built the houses, the development company sold the : 3 years after moving in, the plaintiff noticed movement in adjoining land which damaged his back garden. It was discovered that the house was useless due to instability of the sub-soil and a danger to health and safety for occupiers : Held : Builder & developer were in breach of common law duty of care in negligence owed to subsequent purchasers.

Anns v Merton is now overruled by **Murphy v Brentwood** which means that much more importance must be placed on the Defective Premises Act as the sole method of recovering for pure economic loss by home owners.

The Occupier's Liability Act 1957

1 Preliminary

- (1) The rules enacted by the two next following sections shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them.
- (2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (subject to ss4 of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.
- (3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate

⁴¹ **Pirelli v Oscar Faber** [1983] 2 AC 1

⁴² **Murphy v Brentwood D.C.** [1990] 2 All ER 908

⁴³ **D & F Estates v Church Comrs** [1989] AC 177.

⁴⁴ **Billings v Riden** [1958] AC 240

⁴⁵ **Anns v Merton** [1978] AC 728

⁴⁶ **Batty v M.R.L** [1978] QB 554

- (a) the obligations of a person occupying or having control over any fixed or movable structure, including any vessel, vehicle or aircraft, and
 - (b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves visitors.
- (4) A person entering any premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act 1949 is not for the purposes of this Act a visitor of the occupier of those premises.

2 Extent of occupier's ordinary duty.

- (1) An occupier of premises owes the same duty, the common duty of care, to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.
- (2) The common duty of care is a duty 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.
- (3) The circumstances relevant for the present purpose include 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
 - (a) an occupier must be prepared for children to be less careful than adults; and
 - (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, so far as the occupier leaves him free to do so.
- (4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)
 - (a) 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
 - (b) 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 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.
- (5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (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).
- (6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

3 Effect of contract on occupier's liability to third party.

- (1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.
- (2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.
- (3) In this section 'stranger to the contract' means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

- (4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord of the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

5 Implied term in contracts.

- (1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care.
- (2) The foregoing subsection shall apply to fixed and movable structures as it applies to the premises.
- (3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the fire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by or by virtue of any contract of bailment.

The Occupiers Liability Act 1984

1 Duty of occupier to persons other than his visitors.

- (1) The rules enacted by this section shall have effect, in place of the rules of the common law, to determine
- 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
 - if so, what that duty is.
- (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 his visitors are :-
- any person who owes in relation to the premises the duty referred to in s2 O.L.A. 1957 (the common duty of care), and
 - 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 s1 above if
- he is aware of the danger or has reasonable grounds to believe that it exists;
 - 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
 - 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.
- (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.
- (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).
- (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.
- (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.