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| **Topic**: Negligence | **Definition**: the failure to take proper care which results in injury, damage or loss |  |
| **Duty of care:** Arises from common law  | **Breach of duty:** | **Damage:**  Common law rules apply also to liability under **OLA s** |
| Developed through legal precedent (***Donoghue v Stevenson* 1932)****Duty is** to take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.**DOC owed to** ‘Neighbours ‘Anyone you ought reasonably to have in mind as being affected by your act or omission.Test developed further in ***Caparo*** consider Caparo test where new duty under consideration**Three-part** test:* Was damage or harm reasonably foreseeable?

e.g. *Kent v Griffiths* (2000) *Topp v London Bus* * Is there a sufficiently proximate (close) relationship between C and D

e.g. *Bourhill v Young* (1943), *McLoughlin v O’Brien* (1982)* It is fair, just and reasonable to impose a duty?

e.g. *Hill v Chief Constable of West Yorkshire/Robinson v West Yorkshire Police*All three parts have to be satisfied in order for the test to be satisfied. Policy reasons to impose/ restrict DOC?  | C must prove the duty of care has been broken.Objective standard used- the **‘reasonable person’:** an ordinary person in the street or doing the same task as the case involves. *Blyth v Birmingham Waterworks (1856*)Considerations when assessing the standard expected of the ‘reasonable person’ include:* **Characteristics of D**
* **Professionals** are judged by the standard of the profession as a whole

e.g. *Bolam v Friern Barnet Hospital* (1957)* **Amateurs** judged by standard of average amateur eg *Wells v Cooper*
* **Learners** are judged at the standard of the competent, more experienced person e.g. *Nettleship v Weston* (1971)
* **Children** and young people are judged by their age e.g. *Mullins v Richards* (1998)
* **Special characteristics of C- known vulnerability**

e.g. *Paris v Stepney* *Borough Council* (1951), *Walker v Nottingham* (1995)* **Risk Factors**
* Size of the risk- the higher the likelihood of injury, the greater the precautions that need to be taken to prevent injury.

*Eg Bolton v Stone , Haley v LEC* (1965)- * The degree of **potential** harm - the greater the care that need to be taken to prevent injury.
* Were the risks known about at the time of the accident?- no= no breach eg Roe v Min of Health
* Is there a public benefit to taking the risk?- emergency= greater risks and so lower standard of care

e.g. *Watt v Hertfordshire County Council* (1954)*Day v High Performance Sports (2003***Precautions -**Have all appropriate / proportionate precautions been taken?- risk involved is balanced against the cost and feasibility of taking precautions to eliminate risk ***eg Latimer*** | C must prove the harm was caused by the breach of duty.**Factual causation:** the idea that the BOD has caused the injury or damage being claimed.Uses the ‘but for’ test.e.g. *Barnett v Chelsea and Kensington Hospital* (1969)**Legal causation:** the decision that the injury or damage suffered was a reasonably foreseeable consequence of the original negligent act of omission.**Remoteness of damage:** D is liable for the injury or damage that is reasonably foreseeable.Established in *The Wagon Mound* (1961)Also applies if type of injury/ damage is foreseeable, even if specific events were not.e.g. *Hughes v Lord Advocate* (1963),**Break in chain-**Consider if novus actus interveniens breaks chain. Must be unforeseeable eg *Reeves v MPC*The ‘**thin skull**’ rule applies to unknown / unforeseeable vulnerability of C e.g. *Smith v Leech Brain and Co* (1962\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***Res ipsa loquitor:***the thing speaks for itself. When the burden of proof shifts from C to D.Some cases C show exactly what happened to him e.g. a swab is left in a patient after an operation but can plead res ipsa if C can show:* D was in control of the situation which caused the injury
* Accident would not have happened unless someone was negligent
* There is no other explanation for the injury

Burden of proof then moves to D who must prove he was not negligent. e.g. *Scott v London and St Katherine Docks* (1865) |

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| TOPIC : Occupiers Liability Act 1957 |
| **Duty of care:** Owed by **Occupiers** of **premises** to **visitors** – the common duty- s 2 (1) and 2(2)Nature of 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 thereOccupier liable for **personal injury or damage to property** The duty is in respect of danger arising from the **state of the premises** rather than the activity done by C s 1(1) ’ *eg Poppleton v Trustees of the Portsmouth Youth Activities Committee 2000* |
| **Occupiers:*** No statutory definitions of ‘occupier’.
* D can be **but** does not have to be the owner or tenant of premises
* Matter of control over premises *Wheat v Lacon & Co. Ltd* (1966) and *Harris v Birkenhead Corporation* (1976)
* Decision on who controls premises may be influenced by insurance policy holder= who can meet the claim
* There is not always someone to claim against e.g. *Bailey v Ames* (1999)

**Premises:*** No full statutory definition of premises
* s1(3)(a) refers to occupiers’ a person having occupation or control of any ‘fixed or moveable structure, including any vessel, vehicle and aircraft.’

Premises has been held to include houses, offices, buildings, land, a ship in dry dock), vehicles, lifts (*Haseldine v Daw and Son 1941*) and ladders **Visitors**Visitors include:* Invitees- someone who has been invited to enter and has express permission to be there
* Licensees- someone with express or implied permission to be on the land for a particular period
* Those with contractual permission e.g. someone with a ticket for an event
* Those with a lawful right of entry e.g. meter readers, police with a warrant
* Lawful visitors can become trespassers- then 1984 Act applies instead where visitor exceeds permission - *Calgatrth*
* Trespasser may have implied permission through accepted, known, usage e.g*. Lowery v Walker 1911* )

**Children:*** Duty may be owed to child trespasser as may be regarded as a visitor if allurement
* Occupier must guard against allurement (attraction that places child visitors at risk of harm)

e.g. Taylor v *Glasgow Corporation* (1922) |
| **Breach of Duty**  |
| * Did O take such care as is reasonable….See **common law factors** relevant to Negligence (above) Standard of the reasonable occupier.
* S 2(4) consider ***all the circumstances***
* **Special visitors-Children**
* s2 (3) (a)Expect children to be less careful than adults- raises standard of care

 Standard of care will vary with age of child* May be no breach in cases of very young children because of expectation of parental duty of care **but** there is no set rule on age limit

e.g. *Phipps v Rochester Corporation* (1955)* Expect children to do the unexpected

e.g. *Jolley v London Borough of Sutton* (2000)* **Special visitors -Tradesmen** s2(3)(b) Occupier can expect those exercising a calling to appreciate and guard against special risks incidental to their calling (occupational hazards) this has the effect of lowering standard expected of O

e.g. *Roles v Nathan* (1963*)*. This defence only applies where the tradesman visitor is injured by something related to his trade or calling* **Warnings** S 2 (4) (a)will not automatically mean no breach but will do so if in all the circumstances it was enough to keep V reasonably safe**.** No need to warn against obvious risk
* **Torts of independent contractors**: s2(4)(b)
	+ No liability *for* injury / damage caused to C due to an independent contractor’s negligent work provided that :
	+ Was reasonable for the occupier to have entrusted the work to an independent contractor
	+ O took reasonable steps to check contractor competent for the task,
	+ And to check the work properly done (where reasonable to do so ).Occupier took reasonable steps to check work has been carried out properly (where possible)
	+ e.g. *Haseldine v Daw & Son Ltd* (1941) and *Woodward v The Mayor of Hastings* (1945
	+ may need to check insured e.g. *Bottomley v Todmordern Cricket Club* (2003)
* **Consent** of C- S 2 (5) no liability for risks willingly accepted by V

**Damage:**  Damage See Negligence  |

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| TOPIC : Occupiers Liability Act 1984 |
| **Duty of care:** Limited duty owed by **Occupiers** of **premises** to **non visitors** Nature of duty -s1(4) O must take such care as is reasonable in all the circumstances of the case to see that the non Visitor does not suffer ***injury*** (only)on the premises by reason of the danger concerned. |
| **Background of the duty:*** Traditionally occupiers owed trespassers no duty other than not to **recklessly** or **deliberately** inflict injury

e.g. *Addie v Dumbreck* (1929)* HoL changed this law using 1966 Practice Statement: introduced a duty of **‘common humanity’** for occupiers
* *British Rail Board v Herrington* (1972) led to Law Commission reform into this area of law
* 1975 Law Commission report led to the 1984 Act-codified common law rules.
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| * ‘Occupier’, ‘premises’- see meaning as per OLA 1957
* Non visitor includes trespassers- ie those without permission / exceeded permission
* No presumption of duty
* S1 (3) Duty only arises **if** C can show:

(a)O is **aware of the danger** or has reasonable grounds to believe that it exists;(b)O 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(c)the risk is one against which, **in all the circumstances** of the case, he may reasonably be expected to offer the other **some protection*** Occupier will not be liable if he was not aware or had no reason to suspect the danger existed
* Occupier will not owe a duty (or be in breach) if he has no reason to suspect presence of trespassers

e.g. *Higgs v Foster* (2004)* Consider allurement especially with children on issue of ‘in vicinity’- may mean Child has claim as a visitor under OLA ‘57
* Time of day and time of year will be relevant when determining if Non visitor should be reasonably expected in the vicinity

e.g. *Donoghue v Folkestone Properties* (2003)* where risk is obvious he may not be expected to offer any protection and have no duty Tomlinson *v Congleton Borough Council [2003]*
* O will not be in breach where danger arises from the **activity** rather than the premises *Keown v Coventry Healthcare NHS Trust* (2006), Kolasa v Ealing NHS
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| **Breach of Duty**  |
| When deciding if O has failed to take such care as is reasonable consider:* ‘all the circumstances’ including any common law factors (see negligence above)
	+ How aware was O of danger/that others in vicinity
	+ History of visits by trespassers
	+ Proportionate precautions taken/ expected
	+ Policy/ public benefit of premises
	+ How obvious was danger *Tomlinson v Congleton Borough Council* (2003
* **Warnings** s1(5) any duty owed may be discharged if O gives warning of the danger concerned or took steps to discourage persons from incurring the risk eg security/ fencing
* No breach for failure to warn against **obvious dangers** for adult trespassers

e.g.*Ratcliff v McConnell* (1989), *Donoghue v Folkestone Properties* (2003) Baldaccino * **Consent** of C- S 1 (6) no liability for risks willingly accepted by C
* Children -no statutory reference to children but see  *Jolley v London Borough of Sutton* (2000) and Keown
	+ V young children are responsibility of parents

**Damage:**  See Negligence above  |

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| **Topic**: Damages/ Remedies | **What you need to know:*** Understand the principle of the award of compensatory damages in tort
* Understand the principle of mitigation of loss
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| **Definition**: the way in which a court will enforce or satisfy a claim when injury or damage has been suffered and proved.In tort law the remedy will usually be damages or occasionally an injunction. |
| **Compensatory damages** |
| * Damages are the award given by the courts to C for the injuries suffered or damage to property.
* Aim of damages is to place C in the same position as if the tort had not been committed- as far as money can do so.
* This is possible with damage to property but not always possible with severe personal injury.
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| **Pecuniary and non-pecuniary loss:****Pecuniary loss** is of a monetary nature and is loss that can be calculated easily e.g. hiring a car while C’s is being repaired.**Non-pecuniary loss –**is loss that is not of a monetary nature e.g. pain or suffering caused by the accident **or** loss of amenity or change in lifestyle such as not being able to play a sport | **Special damages:*** Amounts that can be specifically calculated up to the date of the trial or settlement (**pecuniary loss**)
* Loss of earnings while recovering from the accident can also be claimed
 | **General damages:*** **Non-pecuniary losses** looking forwards from the trial or settlement date to future needs
* Involves **speculation**

Can include:* An amount for pain and suffering
* Loss of amenity
* Future loss of earning
* Future medical expenses/paying for specialist care
* Adapting a house or car to be suitable for a severely injured person
* Amounts claimed will require evidence to support claim
* Medical evidence will be used to measure the effect of the accident and how long the suffering/injuries will take to heal
* Future loss of earnings and medical expenses will require calculation of annual loss multiplied by number of years of the loss
* C will have to **mitigate or minimise**  the loss e.g. by working part time or at a lower wage if possible- this will be deducted from the award
 | **Lump sums and structured settlements:****Lump sums:*** Pain and suffering and loss of amenity can only award a lump sum
* A one-time-only award
* Could be unfair to C if his condition worsens
* May not take account of inflation e.g. for ongoing medical treatment
* May also be unfair to D if C’s condition improves and medical treatment is no longer required

**Damages Act 1996** allows for structured payments to deal with these problems, especially where catastrophic injuries:* Allows parties who agree a settlement to pay damages periodically instead of in a lump sum
* Usually arranged by D or his insurer
* Also allows parties to agree payments may be made for life or for a specific time period, with regular reassessment to ensure value kept in real terms
* This can protect C if his condition worsens
* May also be fairer to D who will only have to pay while C’s conditions requires it
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