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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 there  Occupier 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. |
| * ‘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 |
| **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 | |
| **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. | | | | |
| **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 |