

PART III – The Law of Torts

Differences in Occupier's Liability in Northern Ireland

Introduction

Legislation

1. Occupiers Liability (NI) Act 1957 - Occupiers of premises liability to lawful visitors

Occupiers Liability (NI) Order 1987 – Occupiers liability to trespassers

Occupiers' liability – person occupying premises liable for accidents arising due to the state of the premises – statutory duty Occupiers Liability legislation 1957 & 1987

2. Other persons (*builders, quantity surveyors, architects etc*) liable for defects which may cause personal injury or economic loss governed by the tort of negligence and legislation **Defective Premises (NI) Order 1975.**

1. Occupiers Liability

Occupier of premises owes 'the common duty of care' to all lawful visitors, except insofar as he or she is free to and does extend, restrict or modify or exclude that duty by agreement or otherwise.

An 'occupier'

- *Wheat v E Lacon & Co Ltd* [1966] AC 552.
- *Harris v Birkenhead Corporation* [1975] 1 All ER 1001

Visitors – invitees licensees, those entering as of right

- *McGeown v NI Housing Executive* [1994] 3 ALL ER 53.
- *United Zinc & Chemical Co v Britt* [1922] U.S. Supreme Court (Majority judgement)..
- *Jolley v Sutton LBC* [2000] 1 WLR 1082

The common duty of care s.2(2) "the visitor will be reasonably safe in using the premises for the purposes for which he or she is permitted or invited to be there". Includes those who enter as of right.

The visitor who exceeds the permission granted may become a trespasser.

- *Simms v Leigh Rugby Football Club* [1969] 2 All ER 923.
- *Cunningham v Reading FC* [1991] Times LR 153.
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Children will be less careful than adults.

- *Glasgow Corporation v Taylor* [1922] 1 AC 44.
- *Pearson v Coleman Bros* [1948] 2 KB 359
- *Phipps v Rochester Corporation* [1955] 1 All ER 129
- *Titchener v British Railway Board* [1983] 3 All ER 770

- *Roles v Nathan* [1963] 1 WLR 117
- *Kealey v Heard* [1983] 1 WLR 573

Duty to rescuers.

- *Ogwo v Taylor* [1987].

Section 2 (4) entrusting work to contractors

Who is liable occupier or contractor? The contractor provided:-

- a) It was reasonable to entrust the work to a Contractor
- b) The occupier took reasonable steps to ensure contractor was competent
- c) The occupier took reasonable steps to ensure him/herself that the work was properly done.

Exclusion and modification of the duty

Clearly contemplated by the 1957 Act s. 2(4) “any warning must be sufficient to enable the visitor to be reasonably safe”. See Lord Denning’s example in *Roles v Nathan*. Now governed by the Unfair Contract Terms Act (UCTA) 1977 business liability only.

Liability for negligence which causes death or personal cannot be excluded S 2 (1) UCTA. In the case of liability for negligence which causes other types of loss or damage - exclusion is only valid if it is reasonable in all the circumstances – S 2(2) UCTA

In relation to a notice – it should be fair and reasonable to allow reliance on same, having regard to all the circumstances s 11(3) – burden of proving this is on the party seeking to rely on this notice – s 11(5). See *Smith v Bush* [1989] 2 WLR 790. UCTA applied to the disclaimer accompanying the surveyor’s report. The disclaimer did not fulfil the requirement of reasonableness.

Non-business occupiers are not covered by UCTA.

Charity events. S 1 (3) UCTA – charity event not normally business use unless the activities are within the main business purpose s of the occupier.

- *White v Blackmore* [1972] 3 All ER 158

Exclusion and modification of duty continued.....

Voluntary assumption of risk

- *Cotton v Derbyshire Dales DC* [1994] CA.

Contributory negligence s 2(3)

Damage by independent contractors s 2 (4)

- *Haseldine v Daw* [1941] 3 All ER 156.
- *Woodward v Mayor of Hastings* [1945] KB 174. School governors liable for negligent cleaning of steps by school cleaner.

Defences s. 2(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).

Liability to trespassers

This is covered by the **1987 Order** which relates to personal injury only. A duty arises if three conditions are fulfilled:-

The occupier must:

- Be aware of the danger
- Know of the likelihood of trespassers in the vicinity
- And it is reasonable in all the circumstances to afford protection

Some recent cases involving trespassers:-

- *Jolley AP v Sutton London Borough Council* [2000] (HL) 1 WLR 1082.
- *Revill v Newbury* [1996] 1 All ER 291
- *Ratcliff v McConnell Others and Harper Adams College* [1999] 1 WLR 670
- *In Donoghue v Folkestone Properties Ltd* [2003] 2 WLR 1138, 1153
- *Darby v National Trust* [2001] PIQR 372
- *Tomlinson v Congleton BC* [2003] (HL) 2WLR 1138.

The creator of the source of danger may be liable as well as the occupier of land where the danger is situated.

- *Buckland v The Guildford Gaslight & Coke Co* [1948] 2 All ER 1086.

2. Defective Premises (NI) Order 1975

This is a confusing statute which taken along with the common law has caused complications in this area.

Cavalier v Pope [1906] AC 428

Bottomley v Banister [1932] 1KB 458

Ratcliffe v Sandwell MBC [2002] EWCA Civ 06

Lee v Leeds CC [2002]

Section 1 of the legislation places a strict duty of care on builders and developers (all persons involved in the construction process and includes local authorities) to see that building contracts (in connection with a dwelling house) are carried out only in a workmanlike or professional manner with proper materials so that the dwelling is fit for habitation. The liability does not last forever and this is where complications arise.

The National House Builders Registration Scheme (NHBC) is approved under arrangements in the Order. Where an NHBC scheme is in operation it applies rather than the Order.

Builders. Some interesting decisions for consideration.

- *Bottomley v Bannister* [1932] (a common law decision).
- *Dutton v Bognor Regis UDC* [1972]
- *Anns v Merton BC* [1978]
- *Rimmer v Liverpool CC* [1984].

The Limitation (NI) Order 1989

The limitation period begins on completion of the works. The effects of the limitation periods are procedural rather than substantive in that they bar a remedy and do not extinguish the claim itself.

- *Ronex Properties v John Laing Construction* [1983] QB 393, 404

Defective buildings and latent damage. A comparison can be made between the Limitation legislation and the **Latent Damage Act 1986**. There is a distinction between pure economic loss and physical damage.

- *Murphy v Brentwood DC* [1991] 1AC 398
- *Targett v Torfaen Borough Council* [1992] 3 All ER 27.
- For a completely differing view of defective building work see the leading New Zealand case of *Invercargill City Council v Hamlin* [1994] 3 NZLR 513.