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Occupiers Liability – The Tomlinson Legacy and what it means today

7 October 2015

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Learning Objectives...

- An explanation of the Occupiers Liability Acts and how they work using case examples:
 - Understand the law
 - Understand the cases
 - How the law works in practice

Tomlinson v Congleton Borough Council & Others



Tomlinson v Congleton Borough Council & Others



OLAs 1957 & 1984

- They set out duties owed by occupiers of premises to their visitors (1957 Act) and non visitors (1984 Act).
- It only applies to:
 - Dangers arising from the state of the premises or things done or omitted to be done on them (Section 1 of both Acts)
 - Visitor or Trespasser
 - Breach of Duty
 - Causation

In Tomlinson...

- There was nothing wrong with the state of the premises
- The claimant was a trespasser – there were signs prohibiting swimming
- ... the duty would not have required them to take steps to prevent Mr Tomlinson from diving or warning him against dangers that were perfectly obvious

- Why should the Council be discouraged by the law of tort from providing facilities for young men and young women to enjoy themselves?
- Of course there is some risk of accidents arising out of the *joie de vivre* of the young but that is no reason to impose a grey and dull safety regime upon everyone (Lord Scott)

The Compensation Act 2006

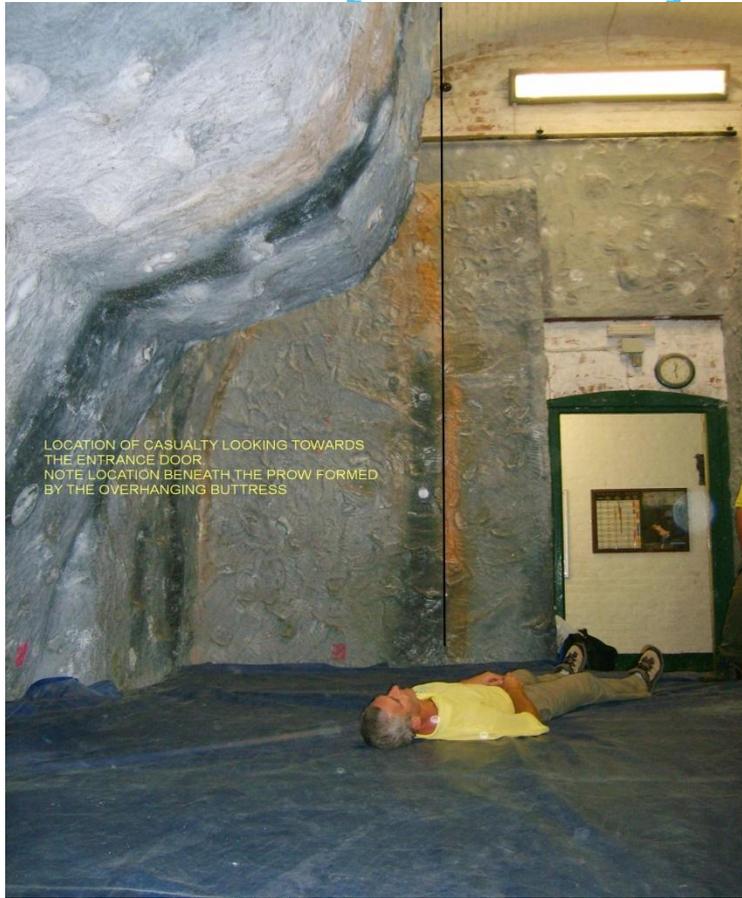
- Section 1
 - in considering a claim for negligence or breach of statutory duty the court can consider whether the imposition of a duty might discourage desirable activities taking place

- Uren v Corporate Leisure 2013 EWHC353
- Humphreys v AEGIS DSL 2014 QBD

Trespassers on Roofs

- Young v Kent County Council [2005] EWHC1342
- Keown v Coventry NHS Trust [2006] EWCA39
- Buckett v Staffordshire 13 April 2015 QBD Stoke – Judge Main QC

Poppleton v Trustees of Portsmouth YAC 2008 [EWCA646]



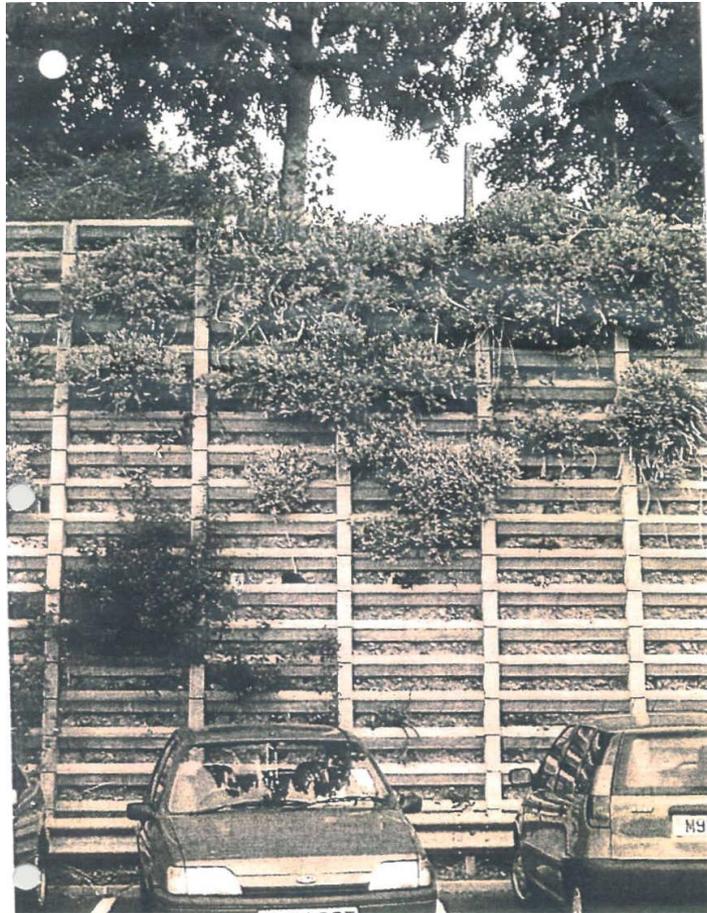
- Bouldering
- First instance – 75/25
- awareness of the safety mat might create a false sense of security

- Adults who choose to engage in physical activities which obviously give rise to a degree of unavoidable risk may find that they have no means of recompense if the risk materialises so that they are injured.

Drops and Walls...



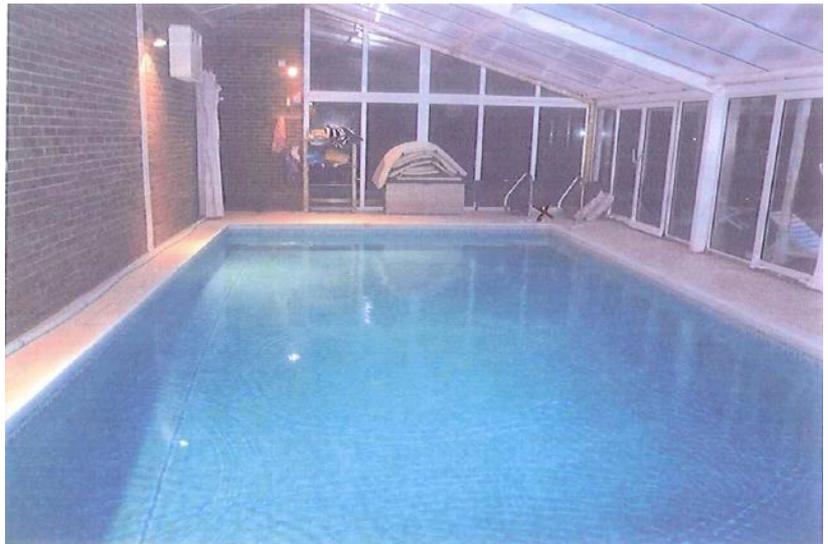
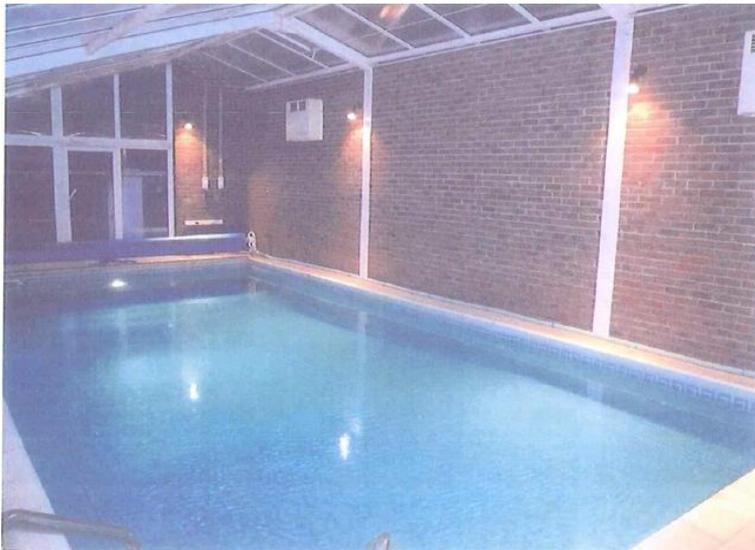
Harvey v Plymouth City Council 2010 EWCA 860



- Ward v Ritz Hotels [1992] PIQR315 CA
- Lewis v Six Continents [2005] EWCA 1805
- Driver v Dover Roman Painted House [2014] EWHC1929
- Edwards v Sutton [2014] EWHC4378
- Pollock v Cahill [2015] EWHC2260

Padding Pools and Bouncy Castles...

- Grimes v Hawkins [2011] EWHC2004



Padding Pools and Bouncy Castles...

- Also see *Evans v Kosmar* [2007] EWCA1003
- *Uren v Corporate Leisure Ltd* [2013] EWHC353
- *Risk v Rose Bruford College* [2013] EWHC3869
- *Cockbill v Riley* [2013] EWHC656
- *Perry v Harris* [2008] EWCA987

Occupiers and Contractor's employees

- Hazards associated with/inherent in the property
- Assuming control of the work
- Hazards inherent in the work / failure to appoint reasonably competent contractors

S 2(3)b OLA 1957

“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”

S 2(4)b OLA 1957

“... if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such 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”

Hazards connected with the Property

Intruder Detection and Surveillance Fire and Security Ltd v Robert Fulton [2008] EWCA Civ 1009

- Installation of integrated security systems during home refurbishment work
- Missing balustrade and banisters – unguarded staircase and landing
- Occupier aware of the risk, he warned about it, but did not supervise
- 75/25 – Supervision by others does not absolve of occupiers duty (100% against employer at first instance)

Helen Shearer Evans (Executrix of the Estate of Malcolm Evans, Deceased) v (1) Windsor & Maidenhead Royal Borough Council (2) Charles Wilson Engineers Ltd [2011] EWHC 2096 (QB)

- Fatal injuries when striking overhead pipe whilst reversing a mobile elevated platform
- Inadequate training by employers
- Inadequate warning signs, on entrance side warning tape and “danger” sign re restricted headroom – but nothing on the other side
- Height of vehicles exiting may be greater than on entry
- 50/50

Control of the Work

Tomasz Krysztof v Nadia France Issacs [2010] EWHC 381

- Access to “work area” on garage roof
- Work at Height Regulations 2005 and Construction (Health, Safety and Welfare) Regulations 1996 N/A
- Provision and Use of Work Equipment Regulations 1998 –N/A domestic householders ladder, no duty under PUWER
- Occupier entitled to impose limits on access
- Did not have knowledge or expertise to devise a direct safe work method

Personal Representatives of the Estate of Cyril Biddick (deceased) v Mark Morcom [2014] EWCA Civ 182

- Householder using pole to keep hinged loft hatch closed whilst contractor drilled inside of the hatch
- Offer to assist amounted to adoption of duty of care, householder had put himself proximate to the contractor such that it was foreseeable that hatch might work itself open causing contractor to fall
- “Abandons” post to answer phone
- Two thirds /one third in favour of occupier

Hazards inherent in the work / failing to appoint competent contractors

Jamie Alexander Yates v National Trust [2014] EWHC 222

- C injured because of his activity as a tree surgeon
- S 2 (3)(b) applied
- Working at height duty conditional on control
- Too onerous to extend duty over choice of contractor to the contractor's employees
- Based on previous dealings D entitled to regard employer as competent and safe contractor
- No obligation to ensure that the employer's PL insurance extended to his employees

Any Questions?

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