

## Occupiers' liability annotated problem question

Although usually an occupier will not be liable for the negligence of an independent contractor, the facts here are very similar to those in *Gwilliam* [2002]. In that case it was held that there was a duty to check that the independent contractors had appropriate liability insurance but, on the facts, it had not been breached. Cf *Naylor v Payling* [2004] and *Glaister v Appleby-in-Westmoreland Town Council* [2009].

'Camden Cool', an after-school youth club run by the local authority, is holding an open day to raise funds for the club. One of the main attractions is a large bouncy castle supplied, erected and supervised by Elsinore Castles, a small local company. Joseph and Harry are the first to try it out. They both suffer minor cuts and bruises when the castle breaks free from its moorings and lifts into the air. It later turns out that it had not been appropriately tethered to the ground. Unfortunately, despite assuring Jake, the club's youth worker, when he phoned to book the castle, that they had the necessary documentation, Elsinore's public liability insurance had expired two months before the accident.

It is likely that Joseph and Harry are visitors—however, you need to establish why this is and not just assume it. This means an action will be brought against the local authority under the OLA 1957.

In the chaos that follows, Iris (Joseph's sister) wanders off alone. She is too young to be a member of the club and so doesn't know her way around the buildings. She is seriously injured when she falls down a flight of stairs after going through a door marked 'Private: No Unauthorised Entry'.

Meanwhile Frank and Bill (who are members of the club) have sneaked off to play football. After a particularly poor shot at goal their ball lands on a flat roof. Although they know the roof is 'out of bounds', as everyone is busy at the open day, they decide to climb onto the roof to retrieve it. As they do so one of the skylights breaks. Bill falls through the roof hitting his head hard, causing him to lose his hearing.

Advise the parties of any claims they may have under the Occupiers' Liability Acts 1957 and 1984.

Here you are told that Frank and Bill are members of the club and so should be treated as visitors under the 1957 Act—but an occupier can restrict their duty as has been done here (by making the roof 'out of bounds') and *Tomlinson* [2003] would suggest that when they are on the roof they are trespassers. You therefore need to assess whether the local authority owes them a duty of care by working through the subsections of s 1(3). Remember after doing so you also need to consider issues relating to breach and causation. Finally, it is likely that Bill would be found to be contributorily negligent (see **Chapter 10** and, in particular, the case of *Young v Kent County Council* [2005]).

Note that here you need only to consider a claim under the OLAs. If neither of the Acts is applicable there may also be a claim in negligence—as this is harder to establish you should go to the OLAs first.

It is crucial to establish here whether Iris is a visitor or a non-visitor—the 1957 and 1984 Acts say different things about 'warnings'. If Iris is a trespasser (assuming a duty can be established) all the occupier needs to have done is to take 'reasonable steps' to bring the risk to her attention (the 1984 Act, unlike the 1957 Act, does not make special allowances for children). You should also consider the position if Iris is a visitor, and her position under the 1957 Act.