

OCCUPIER'S LIABILITY:
DUTY OF OCCUPIER OF LAND TO TRESPASSER.

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CHAPTER 1

OCCUPIER'S LIABILITY: DUTY OF OCCUPIER OF LAND TO A TRESPASSER.

1.1 INTRODUCTION

1.1.1 Definition of Occupier.

"Occupier" is simply a convenient word for a person who has a sufficient degree of control over premises to put him under a duty of care towards those who lawfully onto the premises.(1) A degree of control is prima facie sufficient if it is such that a defendant ought to realise that a failure on his part to use care may result in injury to a person coming on the premises. In this case the defendant need not have exclusive control.

A person who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons is undoubtedly an occupier, but this test is too narrow. Two or more persons may be occupiers, each under a duty to use care depending on his degree of control.

(1)Wheat v Lacon (1974) 1 WLR 725, 730

Each may be liable to a visitor, with a claim to

contribution from the other.

The "occupier" may be an owner in occupation, a tenant, a licensee, or any person who has the right to possession of the premises and the right to invite or permit others to come on them, such as the concessionaire of space at a fair-ground (2). A corporation necessarily occupies premises by its servants. Any owner may occupy through his servants. The fact may be sufficient to render a contractor liable as occupier, example of part of a ship or other premises (3). The answer in each case depends on particular facts on the case and especially on the nature and extent of the occupation or control in fact enjoyed or exercised by the defendant over the premises. (4)

1.1.2 Definition of Trespasser.

A trespasser can be defined to include any person who happens to enter someone else's land without consent or privilege. Therefore in this situation the occupier can give his consent expressly or impliedly by conduct.

(2) Clerk and Lindsell on TORTS, 1967, p.598.

(3) Prenton v General Steam Navigation Co. Ltd. (1944) 77, LIL Rep 174.

(4) Credd v Mc Geoch & Son Ltd. (1955) 1WLR 100R, 1007.