

Case study OLA 1957

In **Poppleton v Trustees of the Portsmouth Youth Activities Committee 2008**, a man fell and was badly injured while at an indoor climbing premises. He claimed under both the OLA 1957 and in negligence. The court rejected his claim under s 2 OLA as the injury was not due to the state of the premises. The harm was caused by his activity on the premises, rather than the premises themselves. In relation to negligence the court held that even though mats were provided these did not necessarily protect participants. They had not done what was reasonable to make climbing safe and so had breached their duty. The CA reversed the decision and held that the club did not have a duty to protect people from risks which were obvious, and which occurred in an activity which had been undertaken voluntarily. The risk of injury while climbing was obvious, it was also obvious that matting might not always prevent such injury.



1. Why was his claim under OLA 1957 rejected?
2. What was the alternative claim?
3. What did the first court decide?
4. What did the CA decide and why?

The Occupiers Liability Act 1957: add the main points and cases to the boxes

Who is a lawful visitor?

Who is the Occupier?

What are 'premises'?

What is the extent of the Occupier's duty? S2(2)

What is the extent of the Occupier's duty to children? S2(3) a

What is the extent of the Occupier's duty TO professionals? S2(3) b

What is the extent of the Occupier's duty FOR independent Contractors? S2(4)

Warnings

Defences

Case study OLA 1984

Note how the 1984 Act was applied in Tomlinson v Congleton BC

An 18 year old dived into a lake and was injured. There were notices prohibiting swimming and at first instance the judge found the risks to be obvious and known to the claimant and so dismissed his claim. The CA reversed the decision. Applying the 1984 Act they found the occupiers to be aware of the fact that people could be in the vicinity of a risk that they might reasonably be expected to offer some protection against s 1 (3). The House of Lords then reversed the CA's decision, allowing the appeal. Lord Hobhouse noted that:

“the degree of risk is central to the assessment of what reasonably should be expected of the occupier and what would be a reasonable response to the existence of that degree of risk. The response should be appropriate and proportionate to both the degree of risk and the seriousness of the outcome at risk. If the risk of serious injury is so slight and remote that it is highly unlikely ever to materialise, it may well be that it is not reasonable to expect the occupier to take any steps to protect anyone against it. The law does not require disproportionate or unreasonable responses”.

It was also noted that even if a duty had been owed it would not extend to warning trespassers of 'obvious' risks.

1. What are the 3 points to consider under the 1984 Act?
2. When may a warning not be necessary?
3. What factors does Lord Hobhouse mention, expressly or by implication?
4. Do you think the CA or the HL was right in Tomlinson? Think about how far the courts have to balance the conflicting interests of the occupier and the injured person in such cases.
5. Would your answer be the same if the claimants were children?

OLA 1957 and 1984 Revision

Look for clues in exam scenarios to point you in the right direction. There is usually a hint on what particular points need addressing. In regard to the application of either Act, what do these phrases suggest to you? Add which Act should be used and any particular points you should consider if someone is injured.

Jack employed a local contractor to clean up after an oil spill

The electrician fell through a rotten floorboard

Jon was having a firework party and Jane climbed over the wall to watch

A 6-year-old girl dived into the water at the local beach and hit her head on a submerged log

The roofer's ladder was unstable and he fell off

There was a burnt out car on the council's land

Nuisance case scenario

A woman was annoyed by loud chanting, shouting, wailing, clapping and various other noises which she could hear emanating from a nearby synagogue. She brought a claim in nuisance and argued that it was interfering with her enjoyment of her land. On the other side of the argument, the synagogue had planning permission and the services were to an extent a public benefit, that of providing religious worship.



Define nuisance, then, using cases in support, explain what factors the court may take into account. Go on to apply them to these facts. Conclude as to whether you think she will win her case or not.



Case study on Transco

In **Transco Plc v Stockport BC 2004** the HL restated the law on **Rylands**.

Water had escaped from the council's water system and threatened to damage C's property. The HL restated that there must be an escape of something likely to cause mischief and a non-natural use of land. The HL held that natural meant ordinary use, which in this case it was, so the council was not liable. Also there must be a likelihood of danger if the thing escaped, i.e., damage must be foreseeable. Another point made *obiter* in the case was that a claim for personal injury was outside the rule, because it did not relate to a right in land. So the essentials are:

- ❖ D must have brought on something likely to do mischief
- ❖ There must be an escape
- ❖ The use of the land must be non-natural
- ❖ The damage must be foreseeable

In **LMS International Ltd v Styrene Packaging & Insulation Ltd 2005**, the court approved **Transco** and restated these criteria. In this case a fire spread from a factory to neighbouring land. Flammable material was stored near to machinery which was known to get very hot. The circumstances in which the material was stored made it non-natural use. Also it was foreseeable that it could catch fire. On these facts D was liable.

1. In which 1913 case did water escape, which was also said to be 'natural' use?

2. In which 1967 case did the court say the circumstances, such as how something was stored, were relevant in deciding on non-natural use?

3. In relation to 'likely to cause mischief', in which 1938 case did the court say the risk of harm was foreseeable?

4. What circumstances led to the storage of material in LMS International Ltd being held to be non-natural?

Nuisance, escape of dangerous things and vicarious liability revision

What do these phrases suggest to you? Add which tort is most appropriate and any particularly relevant cases.

Sue turned her stereo up loud every night in retaliation as she was so fed up with the continuous noise from

A tree fell over in Tom's garden during a storm. He left it lying there and it

Andrew was having a firework party, and a firework landed in the next garden and

Tony is employed as a driver. Against the orders of his employer he gives someone a lift and ...

Theo stored several gallons of petrol in his garden shed, next to machinery which was known to get very hot, and

Cambridge Water Co Ltd v Eastern Counties Leather plc 1994

This case is worth knowing well as it is relevant to Rylands v Fletcher, nuisance and negligence. It is also relevant to the concepts of fault and judicial creativity.

Particular issues seen here include:

Foreseeability of harm/damage

Strict liability

Fault

Economic loss

Development of the law and the respective roles of judges and Parliament

Read the case and answer the following Questions

1. What type of loss occurred here and why is the type of loss important?
2. Blackburn J in Rylands believed himself to be stating existing law rather than creating new law. Do you agree?
3. What case does the test for remoteness of damage come from?
4. What has escaped here?
5. If liability is strict why is foreseeability of harm at issue here?
6. What does Spicer v Smee add in relation to bringing a case like this in nuisance rather than under Rylands?
7. Do you feel judges should go further in regulating ultra-hazardous activities? Why/Why not

The sort of questions you should ask yourself when looking at a scenario

The question	The answer	Which tort?
What type of injury?	<p>physical harm</p> <p>psychiatric harm</p> <p>economic harm</p>	<p>negligence - Donoghue/Caparo rules. OLA - duty under statute</p> <p>negligence - McLoughlin/Alcock rules</p> <p>negligence - Caparo ++</p>
Where did the tort occur?	In a public place	<p>negligence if physical harm, nuisance if interference with enjoyment</p> <p>may need both as in Bolton v Stone</p> <p>OLA if on e.g., council land</p>
	on private property	OLA – then ask if the claimant is a visitor or a trespasser to decide which Act is most appropriate
Has something left someone's property	yes	Rylands/nuisance – then ask how often it has occurred
Supplementary questions		
Is the claimant a child?	yes	<p>OLA/negligence - more care needed</p> <p>OLA - allurement may bring a child trespasser within the 1957 Act (Jolley)</p>
Is someone else involved?	<p>yes, an independent contractor</p> <p>yes, an employee</p>	<p>OLA – occupier is liable if care was not taken in selection or checking the work</p> <p>negligence - the contractor can also be liable</p> <p>both would be primary liability</p> <p>consider vicarious liability</p>

Comparison of the torts

A brief recap of the similarities & differences between the torts of Rylands v Fletcher, nuisance and negligence

Requirements	<u>Rylands</u>	<u>Nuisance</u>	<u>Negligence</u>
Level of fault	No need to show fault	Unreasonableness (as regards the interference)	Didn't reach the standard of the reasonable person
Foreseeability of harm	Wagon Mound test per Cambridge Water	Wagon Mound test per Cambridge Water	Wagon Mound test
Ownership of Land	D owns land C (probably) needs to own land - Transco	C owns land – Hunter D need not	Neither C nor D need own land
Use of land	Non-natural	Unreasonable interference	Not needed
Defences	Contributory negligence & consent + statutory authority act of God act of a stranger common benefit	Contributory negligence & consent + prescription statutory authority act of God act of a stranger	Contributory negligence & consent