



TEACHING TORT: YOUR PLACE OR MINE?

The relationship between occupiers' liability, nuisance and Rylands v Fletcher

THE OVERLAP BETWEEN THE 3 TORTS

- ③ When moving on to a new area I refer back where possible to show the overlap between the torts
- ③ Using cases or scenarios to illustrate what students should ask themselves when looking at exam questions, e.g., **where** did the tort occur?
- ③ Hence the title '**Your place or mine?**'

YOUR PLACE OR MINE?

In a public place?

- Consider negligence if personal harm, nuisance if interference with enjoyment (may need both as in Bolton v Stone).
- Consider OLA if on e.g., council land

On someone's private property?

- Consider 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?

- Consider Rylands and/or nuisance.
- Ask how often it occurred as a guide for which is most appropriate

WORKSHEETS AND STUFF

- ◎ Most of the worksheets included here can be done
 - ❖ on paper (in class or for homework)
 - ❖ on an interactive whiteboard
 - ❖ projected onto an ordinary whiteboard
 - ❖ on PowerPoint
- ◎ *N.B. these sheets are produced courtesy of Hodder*

CASE STUDIES

- ③ The first case study (**WS1**) shows the overlap between occupiers' liability and negligence, which students are - hopefully – already comfortable with. Many other cases do this, (e.g., **Jolley**) so you can pick one you know and do some easy questions as an intro to a new area
- ③ For **WS1** the answers are in the text so can be done as hard copy or on the board as the next slide shows, or highlighted by students on the board as seen in the second one

WS1: 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.
- ⊙ Why was his claim under OLA 1957 rejected?
 - ⊙ **Because the injury was caused by his activity and not the state of the premises**
- ⊙ What was the alternative claim?
 - ⊙ **In negligence**
- ⊙ What did the first court decide?
 - ⊙ **That the club had breached its duty of care in negligence**
- ⊙ What did the CA decide and why?
 - ⊙ **That the duty did not extend to protecting people from risks which were obvious. The claim failed because the risks here were obvious, as was the fact that the mats might not always prevent such injury.**



ANSWERS HIGHLIGHTED OR UNDERLINED

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.

OTHER WORKSHEETS

- ③ **WS2** is just an example of a 'gaps' sheet
- ③ **WS3** shows students how the 1984 Act applies, and that the usual factors for breach are applied in the same way as for negligence
- ③ OLA revision sheet (**WS4**) is used for getting students to look for hints in scenarios. Students are asked what the phrases suggest as regards which Act should be used if someone is hurt, and to note any particular points and cases which should be considered.

OLA 1957 AND 1984

REVISION SHEET

- ❖ 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

- Answers to follow on slides, in class the students would discuss in groups and then write them on the board – or just discuss in groups and answer in turn

JACK EMPLOYED A LOCAL CONTRACTOR TO CLEAN UP AFTER AN OIL SPILL

- ⊙ OLA 1957
- ⊙ Specifically the duty for independent contractors 2 (4)(b)
- ⊙ Jack won't be liable if he acted reasonably in entrusting the work to them
- ⊙ However, if they did not do it properly he may be liable based on **Woodward v Mayor of Hastings** as it would be easy to check and not a specialist activity

THE ELECTRICIAN FELL THROUGH A ROTTEN FLOORBOARD

- ⊙ OLA 1957
- ⊙ Specifically the duty to professionals 2 (3)(b)
- ⊙ The occupier can expect the electrician to guard against risks incidental to his or her trade (**Roles v Nathan**), but the rotten floorboards are outside the area of an electrician's expertise

JON WAS HAVING A FIREWORK PARTY AND JANE CLIMBED OVER THE WALL TO WATCH

- ❖ OLA 1984
- ❖ Jane is not a visitor
- ❖ However the fireworks may be an allurement so any indication of Jane's age will be important in deciding if Jon is liable, **Glasgow Corporation v Taylor/Jolley**

A 6-YEAR-OLD GIRL DIVED INTO THE WATER AT THE LOCAL BEACH AND HIT HER HEAD ON A SUBMERGED LOG

- ◎ OLA 1957
- ◎ The council will be the occupier as they would be in control of the beach (**Wheat v Lacon/Jolley**)
- ◎ They should be prepared for children to be less careful s 2(3)(a)
- ◎ Here the child is young and it can be argued that a parent or other adult should be supervising her, **Phipps v Rochester Corporation**
- ◎ It could go either way, you may need to look for other clues such as that the council knew there were submerged logs after a recent storm. This would show they had not taken enough care in these circumstances

THE ROOFER'S LADDER WAS UNSTABLE AND HE FELL OFF

- ⊙ OLA 1957
- ⊙ Specifically the duty to professionals² (3)(b)
- ⊙ Here the ladder can be said to be incidental to the roofer's trade so the occupier is unlikely to be liable, **General Cleaning Contractors v Christmas**

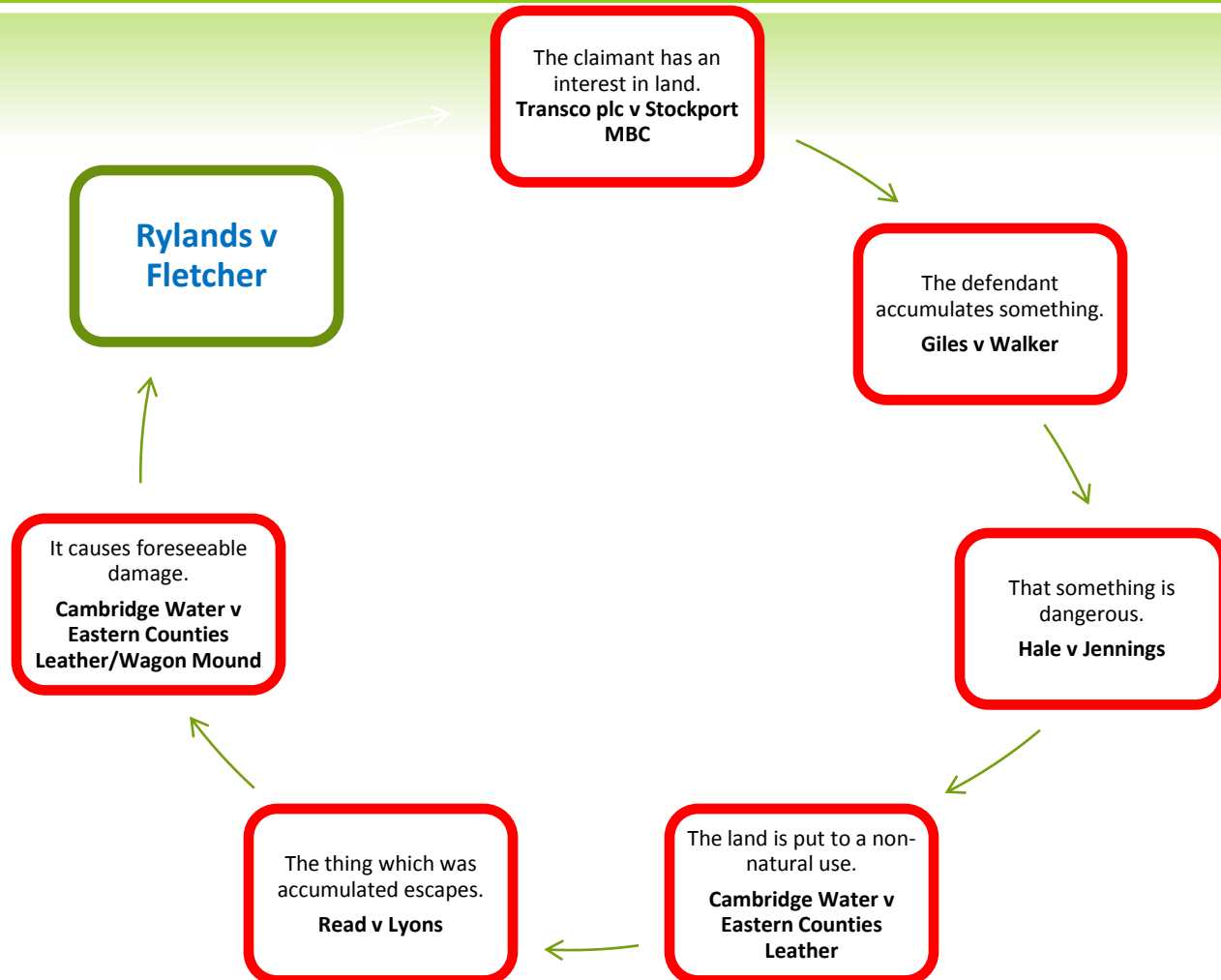
THERE WAS A BURNT OUT CAR ON THE COUNCIL'S LAND

- ❖ OLA 1957 or 1984
- ❖ Depending on whether the visitor has a right to be there
- ❖ **Jolley v Sutton LBC** can be used in support of a duty being owed by the council
- ❖ But again the age may be relevant. There is less likely to be a duty to an adult

NUISANCE AND RYLANDS V FLETCHER

- ① Nuisance scenario (**WS5**) was an actual case for students to apply the law to
- ① **WS5a** covers nuisance and Rylands
- ① **WS6 Transco** case study is good to use for Rylands as the HL restated a lot of the law and clarified (arguably!) a couple of issues
 - ❖ That C needs a proprietary interest in land
 - ❖ That Rylands does not apply to personal injury
- ① I added the **LMS** case as it is very similar to **Mason**

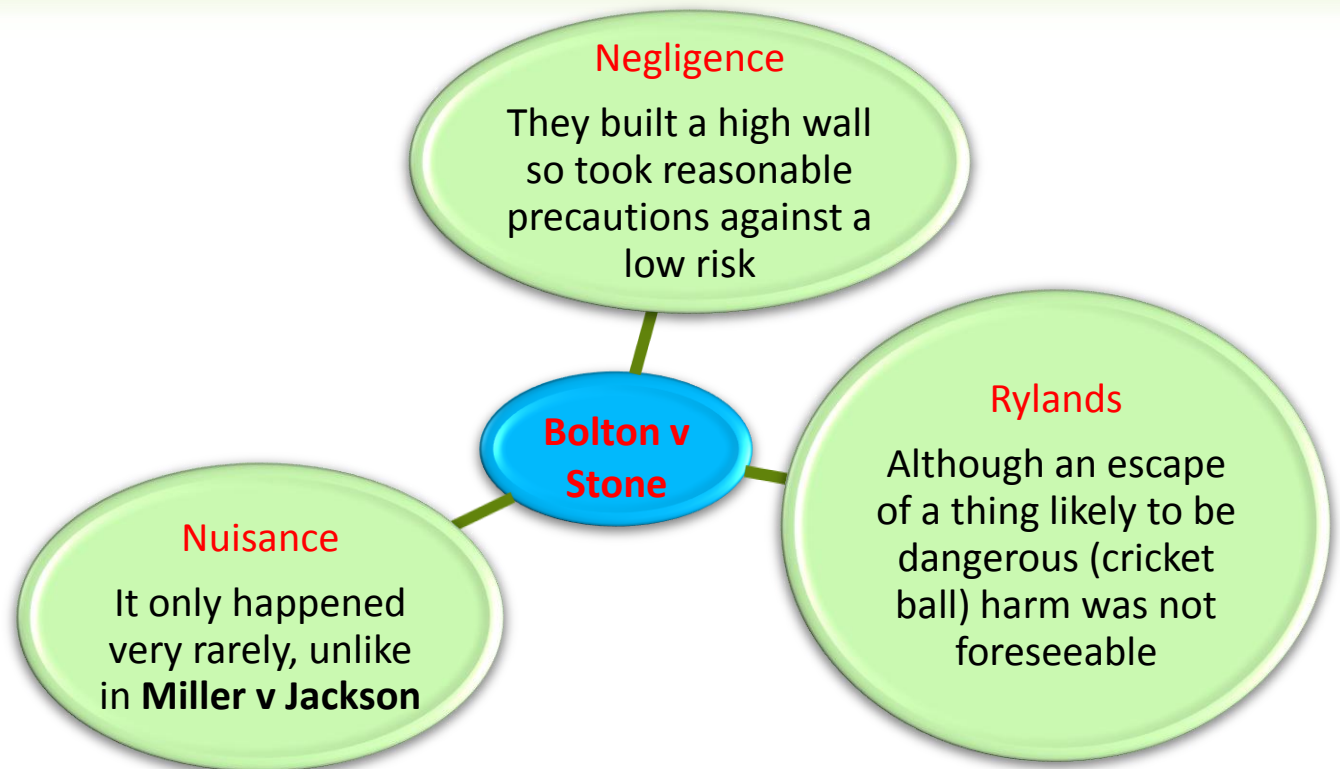
EXAMPLE DIAGRAM (RYLANDS)



RECAP AND COMPARE

- ⊙ During and after teaching the 3 torts I'd use several exercises and case studies showing the overlap, where possible using cases they know
- ⊙ E.g., **Jolley** - they know the case from causation, but it was brought under OLA so shows the overlap between OLA and negligence
- ⊙ Get students to briefly apply the law from each area to a case like this
- ⊙ Here's an example using **Bolton v Stone**

WHY NO LIABILITY?



NOTE ON BOLTON

- ③ *Even though the claims failed in **Bolton** (eventually) the case can still be used as an example, although since Transco it would be unlikely to be brought under the rule in Rylands as she had no interest in land and it was a claim for personal injury*
- ③ The next slide is another exercise to help students recognise hints in scenarios

WHICH TORT DO THESE PHRASES BRING TO MIND?

- ⊙ The **WS7** phrases can be done on a worksheet or on a whiteboard – answers to follow
- ❖ 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
- ❖ Theo stored several gallons of petrol in his garden shed, next to machinery which was known to get very hot, and

ANSWERS

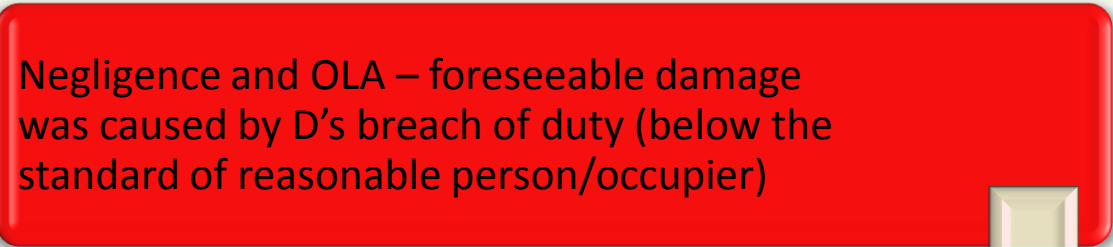
- ⊙ **Nuisance.** The noise is 'continuous'. However, she is the one likely to be found to be unreasonably interfering with someone's enjoyment of land as she acted 'in retaliation', **Christie v Davey**
- ⊙ **Nuisance.** 'He left it lying there' suggests he has 'adopted' the nuisance caused by an act of nature, **Leakey v NT**. Even if 'it' was an isolated incident the tree 'lying there' may be a state of affairs, **Spicer v Smeed**
- ⊙ **Rylands v Fletcher.** A one-off occurrence is unlikely to be a nuisance but it has escaped to 'the next garden' and he will be liable if it caused damage, **Crown River Cruises**. It is foreseeable that a firework can cause damage, **Hale v Jennings/Cambridge Water**
- ⊙ **Rylands v Fletcher.** The way it was stored will be a relevant circumstance in deciding it was non-natural use, **Mason v Levy Auto Parts**

CAMBRIDGE WATER CASE STUDY

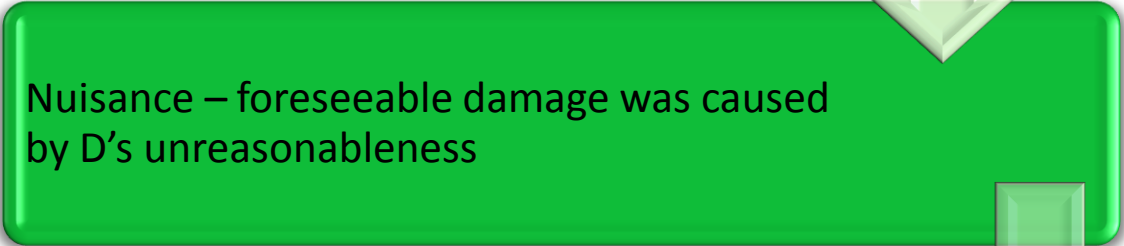
- ③ I use **Cambridge Water v Eastern Counties Leather (WS8)** as a case study as it shows that causation is the same for all 3 torts (**Wagon Mound** test)
- ③ It also covers many different issues so lots more questions can be added relating to concepts such as creativity and fault
- ③ E.g. in both **Transco** and **Cambridge Water** the judges showed reluctance to be creative, suggesting it was for Parliament to act

COMPARISON OF THE TORTS

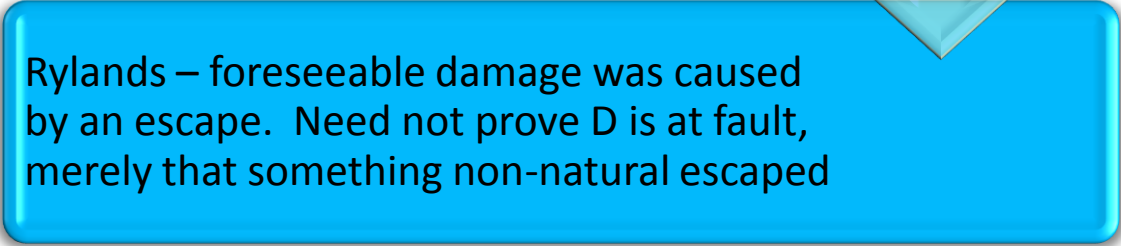
Negligence and OLA – foreseeable damage was caused by D's breach of duty (below the standard of reasonable person/occupier)



Nuisance – foreseeable damage was caused by D's unreasonableness



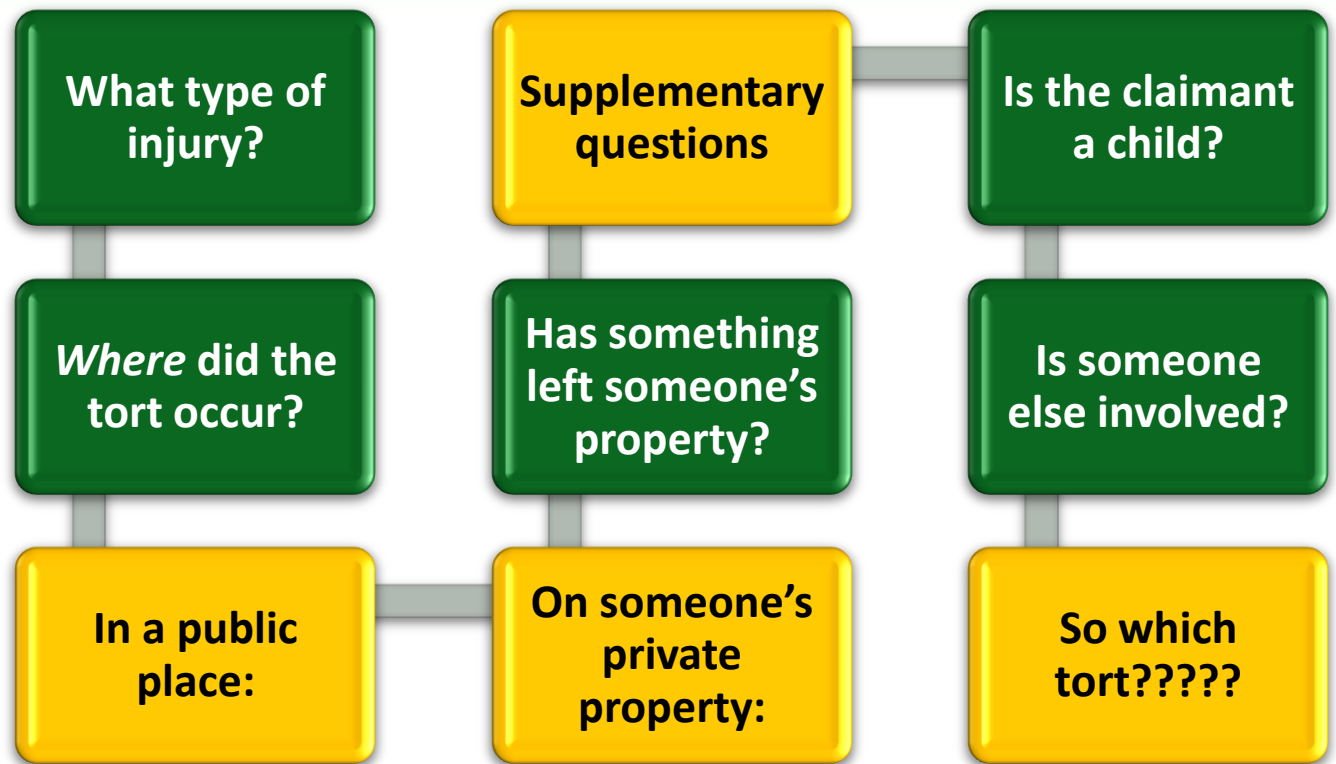
Rylands – foreseeable damage was caused by an escape. Need not prove D is at fault, merely that something non-natural escaped



YOUR PLACE OR MINE?

- ⊙ Back to looking at how 'where' matters when deciding on which tort is most appropriate
- ⊙ Not only where the tort happened, but where the claimant is
- ⊙ **Hunter** confirmed an interest in land is needed for nuisance
- ⊙ **Transco** did the same for **Rylands**
- ⊙ If no interest in land (e.g., the daughter in my scenario in **WS5a**) then it has to be negligence or occupiers' liability

THE SORT OF QUESTIONS TO ASK WHEN LOOKING AT A SCENARIO



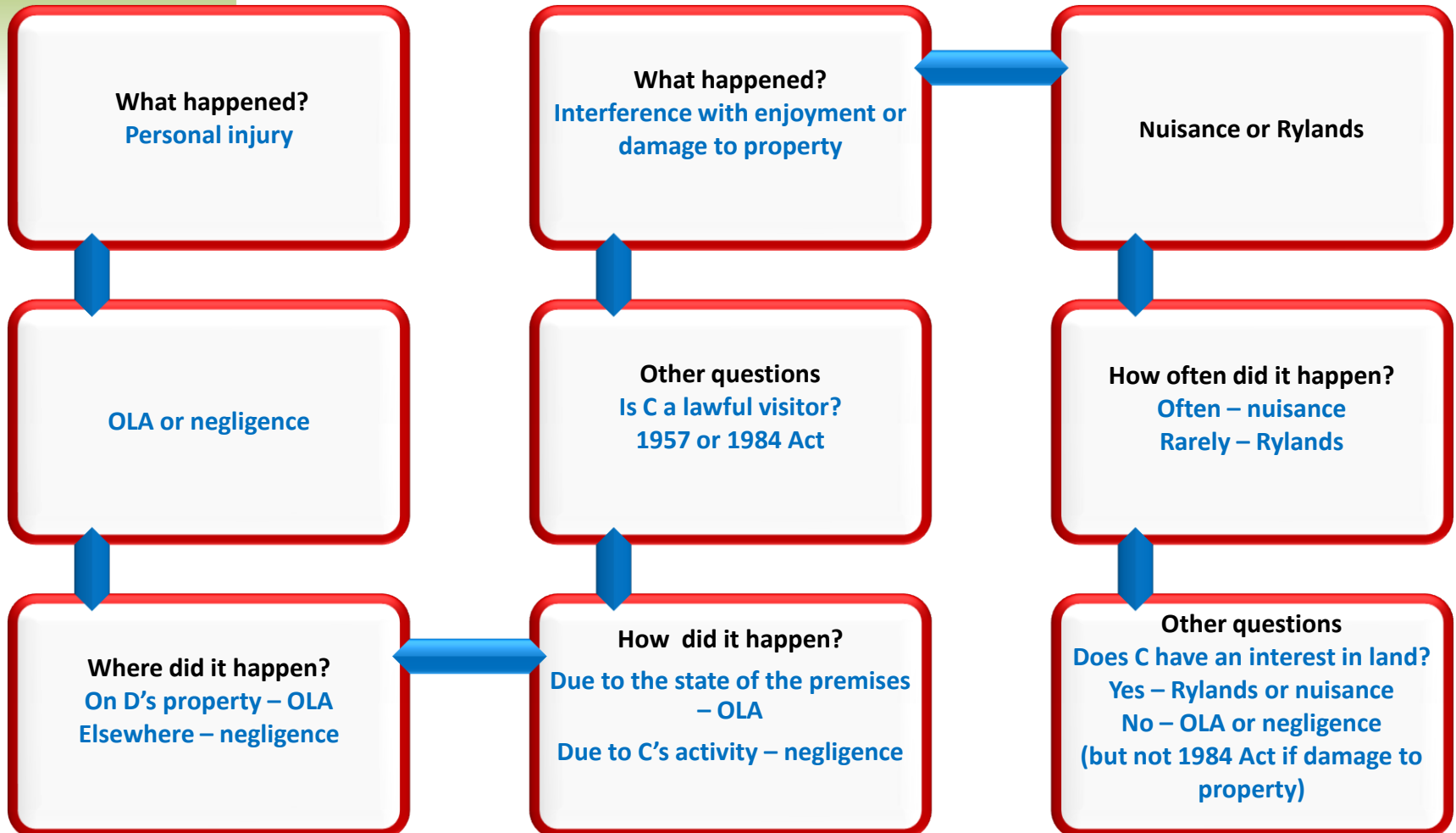
CASES FOR SHOWING THE OVERLAP

- ⊙ Cases brought in nuisance, negligence and **Rylands** – and so show the overlap – include:
 - ⊙ **Cambridge Water**
 - ⊙ **Bolton v Stone**
 - ⊙ **Crown River Cruises Ltd v Kimbolton Fireworks Ltd**
 - ⊙ You can also use a case to show how they *could* overlap e.g., **Read v Lyons**
- ❖ Why was it not **Rylands**?
 - ❖ There was no escape
- ❖ Why would it not be nuisance?
 - ❖ It was a one-off occurrence
- ❖ Could be either **OLA 1957** or negligence

THE DIFFERENCES: YOUR PLACE OR MINE?

- ◎ Get students to look at cases like those (or scenarios) and think about what they need to ask themselves in order to decide which tort is most appropriate (preferably using a case to support their reasoning)
 - Where did the harm occur?
 - How often?
 - Where was the claimant?

WHAT, WHERE AND HOW?



AN EXPLOSION OCCURS AT MY PLACE AND YOU ARE HURT AT ...



⊙ My place

- ⊙ OLA or negligence
- ⊙ For OLA students also need to ask if you are lawfully visiting (1957 or 1984 Act)
- ⊙ Not Rylands as no escape from my place (Read v Lyons)

⊙ Your place

- ⊙ Rylands, nuisance or negligence
- ⊙ For Rylands & nuisance you need to have a proprietary right in land (is it '**your** place'?)
- ⊙ For nuisance students need to ask how often it happened
- ⊙ One-off not enough (Bolton v Stone)
- ⊙ Unless a state of affairs (Spicer v Smee)
- ⊙ Not OLA as you are not a visitor to my place

FINAL COMPARISON

- ③ **WS10** can be given without the boxes filled in for revision
- ③ The end – and goodbye from the penguins



- ③ Final recap of ideas for exercises

PowerPoint	To add some visual stimulus Can leave blanks or questions in slides for completion on board Good for diagrams
Quizzes	Can have mixed difficulty if students pick the question numbers themselves (in teams) - and students like them
Case studies or made up scenarios	You can give a sheet with facts and questions or put the questions on a slide and get students to add answers to the board Students enjoy making up scenarios & have fun trying to apply the law
Matching exercises	On cards or projected onto the board To match cases and main principles
Gaps sheet	Sheets with boxes to complete to add the main points and cases for each area Useful for students to keep for revision of the essentials

OLA 1984

- ⊙ What follows (11 slides) is an example of using PowerPoint for teaching, courtesy of Hodder. The CD Rom covers the whole book, this is just an extract from the OLA 1984
- ⊙ It can be split over several lessons depending on time constraints, adding worksheets as and when you feel appropriate
- ⊙ I have reduced the PowerPoint slides very slightly for reasons of time, and only referred to a couple of the CD worksheets here, noted in [blue](#):

OVERVIEW OF THE 1984 ACT

- ⊙ The case of **BRB v Herrington** changed the law and accepted a duty could be owed to a trespasser
- ⊙ The **OLA 1984** followed and provides a limited duty to those other than visitors
- ⊙ It only applies to injury, not damage to property
- ⊙ The duty is in respect of *'injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them'* s 1 (1)

THE DUTY S 1 (3)



KNOWS OF THE DANGER

- ⊙ An occupier is not liable if unaware of the danger and there was no reason to believe it existed
- ⊙ In **Rhind v Astbury Water Park** there was no duty as the occupier could not know that there were objects in the lake
- ⊙ Nor if unaware a trespasser might be present
- ⊙ In **Donoghue v Folkstone Properties** there were no reasonable grounds for believing that he or anyone else would come into the area of the danger at midnight in winter

THE STANDARD OF CARE

- ⊙ The occupier must '*take such care as is reasonable in all the circumstances*' s 1 (4)
- ⊙ The usual factors for breach of duty will apply depending on the circumstances
- ⊙ Can you give 3 examples?
- ⊙ I would then use the Tomlinson case study (WS4), which shows students how the criteria of the 1984 Act apply, and also shows that the usual factors for breach are applied as for negligence



CAUSE OF THE HARM

- ⦿ What were the facts of **Keown v Coventry NHS Trust** and why was there no liability?
- ⦿ So it is important to look at the cause of the harm
- ⦿ If it was the state of the premises that was dangerous, there may be liability under one of the **Occupiers' Liability Acts**
- ⦿ If it was the activity it is unlikely, though there may be a negligence claim
- ⦿ In both cases the standard of care is objective and looks at the degree of risk, practicality of precautions, age of the claimant etc.



WARNINGS S1(5) AND CONSENT S 1(6)

- ⊙ The occupier can avoid liability by warnings (as in the 1957 Act) by taking '*such steps as are reasonable in all the circumstances of the case to give warning of the danger*' **S 1 (5)**
- ⊙ Also, no duty is owed to any person '*in respect of risks willingly accepted*' **s 1(6)**
- ⊙ These overlap because the greater the warning the more likely the risk is seen as '*willingly accepted*', i.e., consented to
- ⊙ What happened in **Ratcliff v McConnell?**



RATCLIFF V McCONNELL

- ⊙ In **Ratcliff v McConnell**, C was injured diving into a swimming pool. It was closed and locked and he knew entry was not allowed, so was a trespasser. There was a warning notice and the court held that he was aware of the risk and had accepted it

EXAM TIP

- ⊙ Look for clues in the scenario such as ‘it had been in a bad state of repair for some time’, ‘they were in the habit of’ or ‘it happened often’. This will indicate the occupier knew of the danger and/or the likely presence of the trespasser
- ⊙ Also look at any age that is mentioned, especially if there are warnings. The younger the trespasser, the more likely the occupier is liable, as any warning would have to be very clear to discharge the duty. A warning may also mean the trespasser is seen as consenting as in **Ratcliffe**

EXAMPLE

- ③ A duty under the 1957 Act only applies for the purpose the visitor is there. If the visitor goes outside this purpose the 1957 Act won't apply, but the 1984 Act may
- ③ Can you think of an example?



MY EXAMPLE

- ⊙ A plumber is called to fix the washing machine
- ⊙ He can claim under the 1957 Act if injured
- ⊙ Unless the risk is one inherent to his trade (a burst water pipe perhaps)
- ⊙ If he goes poking around in the bedroom and falls over a loose floorboard he can't claim under the 1957 Act, as he is a trespasser
- ⊙ He can claim under the 1984 Act, but the occupier can argue that although they knew of the danger, they had no reason to believe anyone would enter the bedroom (S 1 (3))

SUMMARY

