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THE BALANCING ACT



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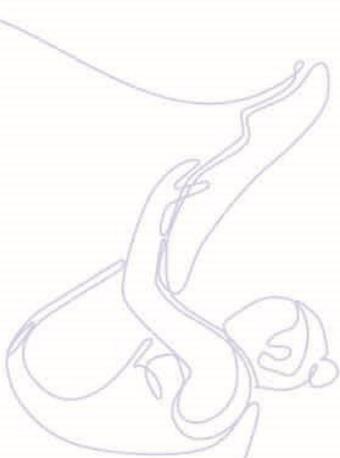


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Duties of care

- *Occupiers' Liability Act 1957*
- Employers common law duty of care
- *Highways Act 1980.*



Occupiers' Liability Act 1957



Section 2(2)

The common duty of care is a duty to take such care as in all the circumstances of the case is **reasonable** to see that the visitor will be **reasonably safe** in using the premises for the purposes for which he is invited or permitted by the occupier to be there.





Employers' duty of care

- Employers must take reasonable care to protect their employees from foreseeable harm. The duty of care cannot be delegated to another person or organisation.
- By virtue of *Section 69* of the *Enterprise and Regulatory Reform Act 2013*, breach of health & safety regulations shall not be actionable.
- But regulations likely to inform the scope of duty. See *Regulation 12(3)* of the *Workplace (Health, Safety and Welfare) Regulations 1992*:
 - ‘... so far as is reasonably practicable, every floor in a workplace and the surface of every traffic route in a workplace shall be kept free from obstructions and from any article or substance which may cause a person to slip, trip or fall.’

Highways Act 1980

- *Section 41(1)* - the authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty of care, subject to subsections (2) and 4), to maintain the highway.
- *Section 41(1A)* - a highway authority is under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.



Highways Act 1980

- *Section 41(1)* - the authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty of care, subject to subsections (2) and 4), to maintain the highway.
- *Section 41(1A)* - a highway authority is under a duty to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.





Pettie v Southampton University Hospitals NHS Trust [2002] 8 WLUK 122

- P slipped on ice in the hospital car park, sustaining a severe injury to her knee. P was employed by S as an administrative worker. S denied liability on the grounds that it had a gritting policy in place and that the car park could not be classed as P's workplace. Further, that it was sufficient for them to grit the roadways between the car park spaces and that gritting the spaces also was not a priority and would not be a waste of resources.
- Held: granting judgment in favour of P with damages to be assessed, that it would not take much longer to grit the spaces with the equipment S had. Given the premises were a busy hospital car park, open to patients and staff, extra care was required. Further, the car park did form part of P's workplace under the *Workplace (Health, Safety and Welfare) Regulations 1992*.



Cook v Swansea City Council [2017]

EWCA Civ 2142

- C had slipped and fallen on ice in an unmanned car park that was owned and operated by the local authority. In bad weather, the local authority did not grit unmanned car parks. At trial, the judge found that the local authority operated a reactive system of gritting them upon receiving a report from a member of the public about a dangerous area. He found that the system was appropriate in the context of the case.
- Held: a balancing exercise was to be carried out when considering that amounted to ‘such case as in all the circumstances of the case is reasonable’ in *section 2*. That exercise involved an assessment of the likelihood that someone might be injured, the seriousness of any injury that might occur, the social value of the activity giving rise to the risk and the cost of preventative measures.

Balancing exercise: relevant factors



- **Likelihood of injury** - the risk of ice in cold weather was an obvious danger and people could be reasonably expected to watch out for it and take care. The car park did not pose a particular risk compared to any of the other local authority car parks.
- **Seriousness of injury that might occur** - injury due to slipping could be trivial or serious.
- **Social value of the activity giving rise to the risk** - the local authority's car park provided 24 hour parking, if unmanned car parks had to be gritted whenever icy conditions were reported, the local authority was likely to have to prohibit the use of all unmanned car parks in periods of adverse weather, to the inconvenience of local residents and visitors.
- **Cost of preventative measures** - the alternative to closing the car parks would be to man them or arrange regular gritting. Such gritting would have to be by hand and would involve significant use of staff and material resources. That would constitute a disproportionate and costly reaction to the risk and would divert from situations where attention was more urgently required.



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Moss v NCP Ltd [2018] 6 WLUK 175

An employee of a car park provider was not entitled to damages after being struck in the chest when a bicycle was thrown at him by a group of men who had been behaving anti-socially in a car park. The employer had not expected the employee to confront the individuals, and he had acted irrationally and contrary to his training. It was not reasonable for the employer to have installed CCTV everywhere in its premises, particularly when it had not been found to be effective in lowering the risk of incidents.



Shepherd v Travelodge Hotels Ltd [2014]

CSOH 162

S had arrived in H's car park by motorcycle between 8:30 and 8:45am where she had stepped in a diesel spill. After departing at 9am and travelling to nearby barracks, S slipped on tarmac causing her to fall and sustain injuries. The fall was caused by diesel on S's footwear. H's manageress (T) had been informed of the spill between 8:15 and 8:30am. Thereafter she contacted *inter alia* H's health & safety department and was advised to close the car park, which has been done sometime after 9am, and arrange for the spill to be cleaned.

Held: it did not matter that the diesel on S's footwear caused an accident at a location other than on H's property. Nevertheless, the claim was dismissed on the basis that H had taken reasonable steps in all the circumstances to address the hazard presented by the diesel spill.



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