

Name: [redacted] Membership no: [redacted]

1. Competency: 3 Learning Outcome: 3.3

Provide clear legal advice to client/service user

2. Evidence provided:

Advice to client.

3. Outline how the evidence demonstrates you meet the outcome

Advice, options and next steps: The letter provided relates to an accident which occurred on a static caravan site. My insurer client's policy holder let the caravan out for holidays. A guest staying in the caravan slipped on the steps to the caravan and sustained injury. My insurer client asked me to provide an advice in relation to the potential liabilities that may attach to the policy holder.

Legal advice provided: I advised the client of the relevant law that would apply (the Occupiers Liability Act 1957) and the position of all the relevant parties under the Act.

4. Reflection and evaluation (what you learnt from the activity you undertook to meet the outcome). Note: you may want to complete this section at a later date once you have had time to reflect on your practice and experience.

Clients rely on the legal advice provided to them, so it is essential that the legal advice provided is accurate and complete to enable them to make a decision.

5. Completion date: 18.06.13

6. Signed (applicant)

[redacted signature]

Date:

10/10/13

7. Signed (supervisor)

[redacted signature]

Date:

26/9/13

Your ref: [redacted]
Our ref: [redacted]

[redacted]

Solicitors

A I [redacted]
[redacted]
[redacted]
[redacted]

[redacted]
[redacted]

[redacted]
[redacted]

[redacted]

18 June 2013

Dear Sirs

Mrs J [redacted] A [redacted] v Mrs S [redacted] R [redacted] t/a L [redacted] H [redacted] C [redacted]
Your Insured : Mrs S [redacted] R [redacted] t/a L [redacted] H [redacted] C [redacted]
Accident Date : [redacted]

Summary of Instructions

This is an advice on the likely liabilities, if any, which will attach to the policy holder under the of the Occupiers Liability Act 1957 or any other statutory or common law provisions in relation to the claim for personal injury sustained by the claimant in the above accident.

Relevant Parties

The policy holder, Mrs S [redacted] R [redacted], is the owner of an [redacted] static caravan which located on a pitch known as [redacted] 29' at L [redacted] H [redacted]. The owner of the caravan site is V [redacted] H [redacted] P [redacted]. The claimant is a Mrs J [redacted] A [redacted] who rented the caravan [redacted] 29 from the policy holder for the period [redacted] to [redacted] via L [redacted] H [redacted] C [redacted], which is the name of the policy holders' caravan letting business.

Accident Circumstances and Allegations of Negligence

The claimant was staying in the policy holder's caravan when she attempted to leave the caravan and slipped on the steps leading from the door. The claimant fell and sustained a fracture to her left foot and an injury to her groin.

The claimant makes the following allegations of negligence against the policy holder:

1. Failed adequately or at all to examine, inspect, repair or maintain the said premises / steps which were defective and dangerous;
2. Permitted or suffered the said steps to be or to remain defective and dangerous;
3. Failed in time or at all until after the claimant's accident to repair the said steps;
4. Failed to install a handrail on the said steps;
5. Failed by means of an anti-slip covering or otherwise howsoever to cover the flight of steps with some structure on which it was safe to walk;
6. Exposed the claimant to a danger or trap and a foreseeable risk of injury;
7. Failed to take any or adequate care for the safety of the claimant;
8. Failed to maintain or repair the structure or exterior for the premises or at all;
9. Failed to keep the claimant safe from personal injury.

Policy Holder's Liability

The Policy Holder as an Occupier

The claim is brought under the Occupiers Liability Act 1957. Occupiers Liability Act 1957 imposes an obligation on occupiers rather than land owners. The question of whether a particular person is an occupier is a question of fact and depends on the degree of control exercised. The test applied is one of 'occupational control' and there may be more than one occupier of the same premises. The caravan at [REDACTED] 29 is occupied by the policy holder under a licence agreement dated [REDACTED]. Mrs R [REDACTED]'s position as licensee will be sufficient to satisfy the court that she was the occupier and the fact that she did not physically occupy the site is irrelevant following *Harris v Birkenhead Corp* [1976] 1 WLR 279.

The Position of the Caravan under the Act

By virtue of s.1(3)(a), the Act applies not only to land and buildings but also extends to fixed and movable structures. The policy holder's static caravan will therefore be included under the act.

The Claimant as a Lawful Visitor

The Occupiers Liability Act 1957 imposes a common duty of care on occupiers to lawful visitors. S.1(2) Occupiers Liability Act 1957 states that lawful visitors to whom occupiers owe the common duty of care for the purposes of the Act are those who have been invited to come onto the land and therefore have express permission to be there. Pursuant to s.5(1) Occupiers Liability Act 1957, this will include those who enter under the terms of a contract. As the claimant was a paying guest for the purposes of a holiday she will fall within this bracket.

Duty of Care

The common duty of care is set out in s.2(2) Occupiers Liability Act 1957, which states:

S.2(2) - "The common duty of care is 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."

The standard of care therefore varies according to the circumstances. It is noted that the steps fitted to the policy holder's caravan are the standard steps provided by Caravan Accessory Supplies. It is the claimant's case, however, that the steps were not inherently defective but had become so due to the anti-slip tread wearing down. It is also noted that the policy holder has subsequently fitted a handrail following a complaint from an elderly guest that the steps were too steep. There is no record of inspection of the steps to ensure that the non-slip covering was not worn or damaged. It is therefore likely that a court will find that fitting a handrail and ensuring that the anti-slip tread was in good repair are reasonable steps for an occupier to take and therefore failure to take these measures will be regarded as a breach of duty under the Act.

Defences

Under s.2(5) OLA 1957 the defence of *volenti non fit injuria* is available to occupiers, meaning that the common duty of care does not impose an obligation on occupiers in respect of risks willingly accepted by the visitor. The question of whether the risk was willingly accepted is decided by the common law principles, however there is nothing in relation to the index accident which suggests that the risk posed by the steps was outside the occupiers' common duty nor that it was willingly accepted by the claimant.

Damages may be reduced under the Law Reform (Contributory Negligence) Act 1945 where the visitor fails to take reasonable care for their own safety. Based on the facts available, there are no allegations of negligence that can be made against the claimant and a court is unlikely to consider that she in any way contributed to the accident.

S. 2(1) OLA 1957 allows an occupier to extend, restrict, exclude or modify his duty to visitors in so far as he is free to do so. The standard terms of hire on the [REDACTED] which are the conditions under which the claimant agreed to hire the caravan, include an exclusion clause which states:

5. The owners are relieved from liability from any personal injury or loss of any valuables or belongings.

The Unfair Contract Terms Act 1977 (UCTA) specifically prohibits the exclusion of liability for negligence. "Negligence" has a special definition in UCTA. Under Section 1(a), it means "the breach ... of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract" or "the breach ... of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty)" or "the breach ... of the common duty of care imposed by the Occupiers' Liability Act 1957".

Under Section 2(1), UCTA will apply to contract clauses and notices which attempt to exclude liability for death or personal injury resulting from negligence. This Section renders the particular clause void, regardless of the status of the parties. This provision of UCTA will apply irrespective of whether the person seeking to dispute the validity of the clause or notice was aware of it, or gave his or her express agreement to it.

Park Owner's Liability

V [redacted] H [redacted] P [redacted] will be considered to be responsible only for the parts not demised by them, on the grounds that they are regarded as being sufficiently in control of them to impose on them a duty of care to all persons coming lawfully on to the premises. As the steps in question are part of the structure of the caravan at [redacted] 29, it is likely that a court will find that the licensee and not the owner was the person who had control over them following *Wheat v E Lacon & Co Ltd* [1966] AC 552.

Summary

The policy holder will be found to owe a duty of care to the claimant and it is likely that the policy hold will have been found to have breached that duty of care in not taking reasonable measures to maintain the steps in a condition so not to leave visitors exposed to a foreseeable risk of injury. None of the statutory defences will be available and so full liability is likely to attach to the policy holder.

If the writer can be of any further assistance please contact [redacted] on the number above.

Yours faithfully

[redacted] LLP

[redacted]