

## Has Occupiers' Liability Become Too Favourable Towards Claimants?

### Essay Question

The law of occupiers' liability increasingly prioritises the protection of visitors over the rights of landowners. Critically evaluate whether modern occupiers' liability has become too favourable towards claimants.

### Overview

Occupiers' liability seeks to balance two competing interests: protecting individuals who enter premises while respecting an occupier's freedom to use property without excessive legal burdens. This essay critically evaluates whether the Occupiers' Liability Acts have shifted that balance too far in favour of claimants.

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### Main Issues to Critically Analyse

#### 1. Purpose of Occupiers' Liability

Explain:

- Duty of care.
  - Reasonable safety.
  - Distinction between lawful visitors and trespassers.
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#### 2. Expansion of Occupiers' Duties

Critically discuss:

- Broader interpretation of "occupier."
- Increased protection for vulnerable visitors.
- Child visitors.
- Independent contractors.

Cases:

- *Wheat v Lacon*
  - *Roles v Nathan*
  - *Phipps v Rochester Corporation*
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#### 3. Liability Towards Trespassers

Analyse the impact of the Occupiers' Liability Act 1984.

Questions include:

- Has liability towards trespassers expanded excessively?
- Are landowners expected to protect people breaking the law?

Cases:

- *British Railways Board v Herrington*
  - *Tomlinson v Congleton Borough Council*
  - *Ratcliff v McConnell*
  - *Keown v Coventry Healthcare NHS Trust*
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#### **4. Public Policy Considerations**

Evaluate:

Arguments favouring claimants:

- Public safety.
- Fair compensation.
- Preventable accidents.
- Protection of children.

Arguments favouring occupiers:

- Personal responsibility.
  - Excessive litigation.
  - Financial burden.
  - Chilling effect on public recreation.
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#### **5. Judicial Approach**

Critically assess whether courts have restored balance.

Discuss:

- Judicial reluctance to impose liability.
  - Emphasis on common sense.
  - Growing importance of personal responsibility.
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## Possible Conclusion

A strong essay would conclude that while the statutory framework appears claimant-friendly, judicial decisions—particularly those involving obvious risks or trespassers—have increasingly emphasised personal responsibility. Modern occupiers' liability therefore reflects a more balanced approach than critics often suggest, although uncertainty remains regarding the scope of duties owed to vulnerable visitors.

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## Key Authorities

### Legislation

- Occupiers' Liability Act 1957
- Occupiers' Liability Act 1984

### Cases

- *Wheat v Lacon & Co Ltd* [1966]
- *Roles v Nathan* [1963]
- *Phipps v Rochester Corporation* [1955]
- *British Railways Board v Herrington* [1972]
- *Tomlinson v Congleton Borough Council* [2003]
- *Ratcliff v McConnell* [1999]
- *Keown v Coventry Healthcare NHS Trust* [2006]

### Academic Sources

- Winfield and Jolowicz on Tort
- Lunney & Oliphant, *Tort Law*
- Giliker, *Tort*
- Law Commission reports on occupiers' liability