Who’s The Occupier, Who is The Visitor, The Common Duty of Care, Under The Occupier’s Liability Act (1957) Section 2, The Standard of Care (1. Was it met e.g. warnings, 2. If visitors were children was extra care taken, 3. Did visitor take care for himself), Was Damage Foreseeable, Did visitor consent to risk.

For Example: Ratcliffe vs McConnell (1999) the plaintiff, been drinking (but not drunk) jumped into a swimming pool marked with warning signs, suffering serious injuries after hitting the bottom. Court of Appeal held that because of the circumstances (jumping in the pool after seeing the warnings) he should have known the risks and, by acting, had accepted the risk.

Example in sport: Simms vs Leigh Rugby Football Club Ltd (1969) the court of appeal discussed obiter the ways in which an occupier could discharge the common duty of care towards the claimant rugby league player. The claimant claimed to have broken his leg by colliding with a concrete fencing post and that, in breach of s.2 (2) OLA (1957), this was too close to the edge of the pitch. He claimed that it was obvious that when rugby players were tackled into touch their momentum could carry them several metres beyond the touchline and that there should, therefore, be a much greater distance between the playing area and the fencing.

The court noted that the distance between touchline and the post was 2.2m; this was some 8cm beyond the recommended minimum distance required by the relevant bye-laws of the Rugby Football League, the sport’s NGB. As the governing body thought that this was a sufficient distance to make the players safe, and the defendant had complied with this requirement and there was no evidence to suggest that injuries of this kind were occurring because this distance was too short, the common duty of care was discharged.

Examples:

Elliot vs Saunderson where two players went into a tackle 50/50 and one player got injured and the injured player sued the other player. And Condon & Basi (1985) 50/50 challenge in an attempt to tackle him whilst playing in an amateur football match. Tackle was described as reckless and dangerous and broke the claimant’s right leg. Court of Appeal held that despite the lack of previous authority on the point, a duty of care was owed by those taking part in competitive sport to their co-participants and which was objectively defined according to all the relevant circumstances. If a player fell below the standard of the care reasonably to be expected of those taking part in the game and then he would be liable to anyone injured as a consequence of his actions. At trial the duty of care was clear and there was a clear breach of the expected standards of play by the defendant because he had injured the claimant by an act of serious and dangerous foul play that lead to harm being caused.

R vs Barnes (2004) towards the end of a football match, the victim, a forward, gained control of the ball and ran towards his opponent’s goal, shot and scored. After the ball had been kicked by the victim, the defendant tackled him from behind and caused serious injury to the victim’s right ankle and fibula. After making the challenge, the defendant was heard to say something to the effect of ‘Have that’ to the victim. And it was seen that the degree of force and intent in the tackle and the injury that was sustained as a result of the tackle.

Sport negligence case:

Caldwell vs Maguire (2001) this case relates two professional jockeys competing in a race. In the final straight the defendant was one first and second, moved towards the inside barrier, causing the third-placed horse to move in front of and to cause the fourth-placed horse ridden by the claimant. The claimant was seriously injured as a result of being unseated from his horse. The defendants were found guilty of careless riding by the stewards and banned for three days.

The court of appeal held 5 points:

1. Each contestant in a lawful sporting contest – owes a duty of care to each and every other contestant.
2. That duty is to exercise in the course of the contest all care that is objectively reasonable in the prevailing circumstances for the avoidance of infliction of injury to each and every other contestant.
3. The prevailing circumstances are such properly to set out in the contest and include its object, the demand inevitably made upon its a contestants, its inherent dangers (if any), its rules, conventions and customs, and the standards, skills and performance reasonably to be expected of a contestant.
4. It claimed in the basis that the interference that had occurred was a commonly occurring inherent risk of professional horse racing that did not fall below the standard of riding expected of a professional jockey.
5. Given the nature of such prevailing circumstances the threshold for liability is in practice inevitably high; the proof of a breach of duty will not flow from proof of no more than an error of judgement or from mere proof of a momentary lapse in skill (and thus care) respectively when subject to the stresses of [competition]. Such are no more than incidents inherent in the nature of the sport.

In practice it may therefore be difficult to prove any such breach of duty absent proof of conduct that in point of fact amounts to reckless disregard for the fellow contestant’s safety; I emphasise the distinction between the expression of legal principle and the practicalities of the evidential burden.

Cunningham vs Reading Football Club Ltd (1992) Case involved claimant, a police officer on duty at a professional football match that was injured by a piece of concrete being thrown at him by one of the spectators. It could be argued that the claimant was not injured by the state of the premises but by the activity that was occurring on them; in this case, an outbreak of crowd violence. However this case was approached on the basis that the premises taken as a whole were not reasonably safe for the police to carry out their duties effectively.

The court took into account that spectator disorder of this specific kind was reasonably foreseeable because pieces of concrete had been thrown by fans at the defendant’s stadium on a previous occasion four months earlier. The club’s awareness of this danger, especially in the light of assurances given by it to the Football Association that measures would be taken to correct this problem, and that this failure to take any such action meant that the stadium was not reasonably safe for the purposes for which the claimant had been invited into it. Once the defendant is aware of the specific danger, it must take specific steps to negate it or be held in breach of duty.