Learning objectives:

- Overview of general duties owed by “Occupier” of “Premises” and what those terms actually mean
- Case study: fact sensitive nature of decisions on “Occupier” and “Premises”
- Analysis of recent case-law explaining nature of duty in specific scenarios
- Application of principles in inclement weather

Some context – the duties out there

- **Contract**
  - Commercial dealings (including tenancy agreements)
  - Privity
  - Employer/Employee (as enhanced by regulatory framework)
- **Tort**
  - General duty of care to anyone sufficiently proximate and foreseeably at risk if I act negligently
- **"Occupation"**
  - Safety of "visitors" (lawful or otherwise) OLA 1957 and 1984
  - If you **control** "premises" you have a responsibility for people who come on to them.

Basic Principles - OLA ’57 duty

- Owed to the “lawful visitor”
- “State of the premises”
- Very widely drafted, vague language, open to interpretation…but designed to enshrine previous common law!
- Case law heavy, fact sensitive, +++judicial interpretation

Define “premises”?

- **Includes**
  - Land
  - Buildings

- **So far so good but what else?**

- “…any fixed or moveable structure including
  - Vessel
  - **Vehicle**
  - Aircraft (s1(3) OLA’57)

Premises also taken to include…

But what about this?

“Premises” Case Study – The Bouncy Castle

- Heaton Park (owned and managed by MCC)
- Easter bank holiday 2016
- Inflatable bouncy castle (a big one)
- Owned and designed by “Mr Boddington”
- Operated by “Potters Pink Palace Ltd” (PPP)

- High winds are forecast…

- Any potential liabilities?

The reality…

Furmedge (d) v Chester le Street DC ("Dreamspace V") [QBD 2011]

- July 2006
- 50m x 50m x 5m inflatable structure ("Installation Art")
- Previous issues with instability in high winds
- Breaks free from tethers and sails into the air
- Two people inside it tragically killed and others injured
- Chester le Street admit failure to adequately risk assess
- Brouhaha Limited (operators) held to be *occupiers*…

Who is an Occupier?

- No statutory definition
- Common law requirement: CONTROL
- **Not** linked to **ownership** of freehold or vessel/structure

What is the “occupier duty” (OLA ‘57)?

- “…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 purpose for which he is invited or permitted by the occupier to be there.” (Common Duty of Care s2 OLA 1957)

- Avoid creating dangers

- **Take steps to protect** Visitors from (real) dangers that they have not themselves created

What about when it snows…?

The myths

- You aren’t allowed to clear snow and ice from the pavement outside your premises;
- If you clear the snow on your driveway and someone falls then you will be liable;
- It is illegal to drive with snow on the roof of your car;
- Santa clause does not exist;

The realities:

- Employers and Occupiers owe duties of care to protect safety of individuals at work or visiting Premises

- Employer duty - W(HSW)Reg 12:
  - Keep floors in workplace free from substances causing slip hazard
  - CoP makes specific reference to winter weather
  - Minimise risk from ice and snow
  - Steps may include
    - Gritting
    - Snow clearing
    - Closure of some routes (esp. outside stairs, ladders and roof walkways)

- Employer duty – PPE reg 4: General duty to provide suitable PPE

The realities continued:

- Specific guidance from HSE:
  - Assess the risk
  - Put a system in place to manage it
  - Take ACTION!
    - Monitor temperatures
    - Gain an indication of areas most likely to be affected by ice
    - Take action if freezing temperatures forecast
      - Gritting
      - Diverting pedestrians
      - Covering walkways

The realities…

- Ouch!

Occupier cases - McCondichie v Mains Medical Centre (2003 CoS)

- Patient leaving surgery slips and falls in practice car park
- Weather cold (Feb 2000) – ice had formed on the ground
- Some snow fallen previous day
- Alleged breach of
  - OLA (Scotland) 1960 – similar provision to OLA ’57
  - Workplace (Health Safety and Welfare) Regs 1992
- Defendant had taken steps:
  - Accessed Local Authority grit bin
  - Mixture of salt and grit
  - Spread grit in areas of carpark between parking bays
  - Spreading completed before 9.05am

Occupier cases - McCondichie v Mains Medical Centre cont'd

- Judgment (Court of Session)
  - Use of grit from LA bin was "reasonable way of treating car park"
  - Perfectly acceptable system
  - GPs had been reasonably thorough in their efforts
  - Spread grit and salt in general area where Claimant fell
  - Fact of C's fall NOT indicate lack of thoroughness
  - Spreading of grit ***reduces the risk*** of a fall
  - Does ***no***t ***guarantee*** that no one will slip
  - Reasonable system
  - Properly implemented
  - No breach of OLA

Occupier Cases – Bourne v Wilson Leisure (2015)

- The facts:
  - C = visitor to a holiday camp
  - Slipped on icy path as he was returning to his accommodation from an event at the venue
  - Sudden change in the weather
  - Camp workmen were gritting the paths BUT hadn't followed prescribed system; gritting had been delayed;
  - Offer to grit his path if he could wait for a few minutes to finish the path they were doing
  - C chose to walk on and slipped

Bourne v Wilson Leisure cont'd (2015)

- Defendant argued:
  - Steps had been taken
  - Any earlier attempt to grit would have been futile (earlier rain would have washed grit away)
  - Change in weather from heavy rain to snow prompted application of grit

- Held:
  - No breach of OLA – reasonably practicable measures deployed
  - C had taken chosen most convenient path rather than waiting

But who protects the gritters?

- McKeown v Inverclyde Council (2013)
  - C = School caretaker tasked with gritting school grounds Nov 2010
  - Salted school paths and playgrounds from 7am
  - Worked his way around the school & stairs leading to fire escapes
  - After 9am began focussing on other areas of school – staff carpark etc
  - At morning break C's "attention drawn to a fire escape staircase"
  - Slipped and fell on staircase
  - Claim predominantly based on W(HS&W) Regs 1992 (safe traffic route r12)
  - Secondary case – PPE Regs r4 – provision of safety footwear (metal grips)

McKeown continued:

- Judgment for the Claimant:
  - Ice present on top step
  - Had not been kept free from substance likely to cause slip
  - D in breach unless not reasonably practicable to keep ice-free
  - D had reasonable system for prioritising areas
  - System **not** properly **implemented** – existed on paper only
  - C was using “his own system”
  - No instruction or training by D
  - Potential then for gritting of certain parts to be inadequate
  - Time constraints and pressure to grit before 9am
  - Excused C’s failure to adequately grit that part of staircase on which he fell.

Remote workplaces and allocating resources:

- Burrows v Northumbrian Water (2014)
  - Long serving employee tasked with adjusting valves and making emergency visits to remote unmanned sites at reservoirs
  - Slips and falls on “black ice” on concrete access-road to reservoir
  - Steps the employer took:
    - Ford Ranger 4X4
    - All terrain tyres
    - Salt box present beside gate to remote access road
    - “Spikeys” available (but only worn when administered by a rescuer)

Remote workplaces continued:

- Conclusions on Appeal (by C) to High Court
  - Unmanned reservoir
  - Light amount of traffic but planned and unplanned visits
  - Not practical for D to keep whole of access road clear at all times
  - Only way of keeping road clear was by someone accessing it
  - Other staff would have to attend access road more frequently just to keep it clear for C's infrequent visits!
  - Keeping C safe in this way would **expose others to greater risk**
  - No "safety gain" in requiring that approach
  - **Other measures** taken by D were all that was **reasonably practicable**
  - No breach of duty

Employer cases: Kennedy v Cordia LLP (Supreme Court 2016)

- C = “care worker” regularly visiting infirm residents in own homes
- Long running inclement weather, ice and regular snow for weeks
- Pavements and footpaths/driveways heavily laden with ice and snow
- Inadequate risk assessments (2005 and 2010)
  - Risk of slipping and serious injury v likely
  - No consideration of individual protective measures
  - Advice re “appropriate footwear” too generic
  - No specification of what might be appropriate
  - Anti-slipping attachments available at modest cost
  - Risk of slipping not controlled by “other means”
- C was “at work” while travelling between homes of “clients”
- Active duty on employer to inquire into risk-reduction when on notice

The Practical Answers: Occupiers

- Identify outdoor areas
  - used by pedestrians
  - most likely to be affected by ice/snow
- Identify thoroughfares most likely to be used on a given day
- Monitor the temperature
- Take preventative measures where freezing/snow forecast
- Apply procedures preventing ice/snow (gritting/shovelling)
- Keep pedestrians off slippery or untreated surfaces (warnings and even “no entry, untreated path” signs)
- Strategic deployment of resources – focus on greatest risk
- Be realistic – *elderly home owner v commercial outlet trading for profit*

The Practical Answers: Employers

- Risk assess
  - Does “work” take staff outside on a regular basis
  - Might they be required to cross paths/roadways affected by ice and snow?
  - Is there a history of issues (slips an trips) in inclement weather?
- Consider safe system
  - Individual protection through dedicated use of PPE
  - Other means of protection (system for clearing snow and gritting)
- Systems only as good as their application/enforcement
- Document your processes; save time when a claim lands
- Monitor and review outcomes

Any Questions?