

Title	The Law Relating to Tripping, Slipping and Occupiers' Liability	
Level	4	
Credit value	7	
Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the scope of the liability under the Highways Act 1980	1.1 Define what a highway is	1.1 A highway is a way over which there exists a public right of passage for all subjects and at all seasons, to pass freely without let or hindrance: <i>ex parte Lewis (1888)</i> ; 'Highway' may include roads, footpaths, pavements, public paths etc
	1.2 Evaluate the duty to maintain the highway	1.2 S 41(1) of the Highways Act 1980: definition of Highway Authority. Duty arises in relation to the highway itself and to things which may have become part of the highway: relevant case law e.g. <i>Thomas v Warwickshire County Council (2011)</i> ; duty extends to both surface of highway and structure; relevant case law e.g. <i>Burnside v. Emmerson (1968)</i> , <i>The Department of Transport, Environment and the Regions v. Mott Macdonald Ltd. (2006)</i> ; duty does not extend to transient risks and things lying on the surface of the highway: relevant case law e.g. <i>Goodes v. East Sussex County Council (2000)</i> , <i>Haydon v. Kent (1978)</i> Q.B. 343 (CA), <i>Valentine v. Transport for London (and another) (2010)</i> , <i>Ali v. The City of Bradford (2010)</i> Duty in relation to ice and snow: s41(A) HA 1980: "In particular, a highway authority are under a duty to ensure, so far as is

		<p>reasonably practicable, that safe passage along a highway is not endangered by snow or ice.”; relevant case law</p> <p>Recognising that claim may also be brought at common law and pleaded in negligence; relevant principles at common law</p>
<p>2 Understand the test for breach of the obligation to maintain under the Highways Act 1980</p>	<p>2.1 Describe the test posed by Section 41 HA 1980</p>	<p>2.1 s41 HA 1980 provides that the highway authority is under a duty to maintain the highway; s 58 (1) HA 1980 provides the highway authority may avoid liability by demonstrating that the highway was “not dangerous for traffic”; <i>Mills v. Barnsley MBC (1992)</i> sets out what a Claimant must establish in order to demonstrate breach of s41 duty: the highway was in such a condition that danger from its use might reasonably have been anticipated in the ordinary course of human affairs; the dangerous condition was caused by a failure to maintain; and the injury resulted from that failure. Other relevant case law e.g. <i>Meggs v Liverpool (1968)</i>, <i>Little v. Liverpool Corporation (1968)</i>; <i>James v Preseli Pembrokeshire District Council (1993)</i>; transient dangers e.g. <i>Judith Valentine v (1) Transport for London (2) Hounslow LBC (2010)</i>; impact of contributory negligence e.g. <i>John Thomas v Warwickshire County Council (2011)</i></p>

	2.2 Explain what evidence is required to establish a breach of duty under section 41 HA 1980	2.2 Photographs, measurements, statements (claimant, witnesses, people with knowledge of condition), medical records, inspection records; see also Pre-Action Protocol for Personal Injury Claims standard disclosure lists e.g. maintenance records including records of independent contractors; minutes of Highway Authority meetings where maintenance or repair policy has been discussed or decided; records of complaints; records of other accidents.
	2.3 Apply the law relating to maintaining the highways to a given situation	2.3 Application of law relating to maintaining the highways to a complex scenario
	2.4 Evaluate the section 58 HA 1980 defence	2.4 Onus upon highway authority to show that it had used reasonable care that is such care as was reasonably required to secure that...the highway...was not dangerous for traffic s58(1). Factors to be considered (s58(2): character of highway and nature of traffic; different assessment for different types of highway; warnings; likelihood of danger; appropriate standard of maintenance; reasonable state of repair; actual and constructive knowledge; questions of inspection; delay; relevant case law: e.g. <i>Day v Suffolk County Council (2007)</i> ; <i>Rogers v National Assembly of Wales (2004)</i> ; allocation of resources e.g. <i>Wilkinson v City of York (2011)</i> ; defendant can also as appropriate rely upon Law Reform (Contributory Negligence) Act 1945; awareness of purpose and status of Dept of Transport's <i>Well-maintained Highways - Code of Practice for Maintenance Management</i> ,

		e.g. <i>AC(1) DC(2) TR(3) v Devon County Council (2012)</i> .
	2.5 Advise on whether the section 58 HA 1980 defence is established on the facts of a given case	2.5 Application of section 58 HA 1980 defence to a complex scenario
3 Understand the scope of the liability of a statutory undertaker concerning the highway	3.1 Analyse the steps required in bringing a claim against a statutory undertaker in respect of work done to the highway	3.1 The duty of care required of a statutory undertaker: <i>Brett v Lewisham LBC (1999)</i> ; use of the New Roads and Streets Act 1991 to support a claim; dealing with cases of concurrent liability
	3.2 Apply knowledge of the scope of the liability of a statutory undertaker concerning the highway to a given situation	3.2 Application to a complex scenario
4 Understand the basis on which a claim for a supermarket slip or trip will succeed	4.1 Analyse the duty of supermarket as an occupier of premises	4.1 Potential liability to lawful visitors under the Occupiers' Liability Act 1957; potential liability to trespassers under Occupiers' Liability Act 1984
	4.2 Explain the basis for the rule in <i>Ward v Tesco (1976)</i> and how it assists the claimant	4.2 Facts of <i>Ward v Tesco Stores Ltd (1976)(CA)</i> ; principles of law employed in judgment in <i>Ward v Tesco Stores Ltd</i> : (a) basic principles of liability arising in common law negligence (duty, breach, harm); (b) doctrine of <i>res ipsa loquitur</i> (the thing speaks for itself) and requirements for its use: rule of evidence which transfers burden of proof to the Defendant; facts of accident must give rise to inference (rebuttable presumption) of negligence/mismanagement by the Defendant; facts must be clear and unambiguous: (i) the Defendant had control of the thing that caused the damage and (ii) the accident would not

		<p>have happened in the ordinary course of things without negligence on the part of the Defendant; Defendant may then attempt to disprove negligence (i.e. rebut the presumption raised) see <i>e.g. Dawkins v Carnival plc (2011)</i>; see also <i>Piccolo v Larkstock Ltd (t/a Chiltern Flowers), Chiltern Railway Co Ltd</i></p>
	4.3 Explain what arguments may be run by a defendant	<p>4.3 Arguments that:</p> <ul style="list-style-type: none"> - the defendant did not cause the accident - there was a proper system in place - the system was operated by competent staff - the accident would have happened anyway - the Claimant was contributorily negligent <p>see Law Reform (Contributory Negligence) Act 1945.</p>
	4.4 Apply a knowledge of the law relating to a supermarket trip or slip to a given situation	4.4 Application of the law relating to a supermarket trip or slip to a complex scenario
5 Understand the key features of the Occupiers' Liability Acts (OLA) 1957 and 1984	5.1 Explain the statutory provisions	<p>5.1 Occupiers' Liability Act 1957 - framework of rules in place of the rules of the common law (s1(1); claim can still be pleaded with reference to common law as additional allegations. Statutory duty is owed by 'occupiers' of premises: s1(2) OLA 1957, common law test for occupier: <i>Wheat v Lacon (1966)</i>; meaning and scope of control; duty determined by nature of occupation; there may be more than one occupier, e.g. <i>Fisher v CHT (1966)</i>. The meaning of 'premises': s1 (3) OLA 1957; relevant case law e.g., <i>Bunker v Charles Brand (1969)</i>, <i>Wheeler v Copas</i></p>

		<p>(1981). Duty is owed to lawful visitors: express and implied permission to be on land; lawful authority: s2(6) OLA 1957; the limits to permission: s2(2) OLA 1957, relevant case law e.g. <i>The Calgarth (1927)</i>, <i>Gould v McAuliffe (1941)</i>, <i>R v Smith & Jones (1976)</i>, <i>Stone v Taffe (1974)</i>; <i>Geary v JD Wetherspoon (2011)</i>, <i>Clark v Bourne Leisure Ltd (2011)</i>; natural defects see e.g. <i>Cole v Davis-Gilbert & Ors (2007)</i> Relevant factors e.g. purpose of visit, whether child or adult visitor (see s2(3); occupiers' knowledge; lighting; difficulty in removing the danger; expense of removing the danger.</p> <p>Those who do not qualify as visitors under OLA 1957: public and private rights of way, trespassers, persons entering by an access agreement or order: s2 (4) OLA 1957. The content of the occupier's duty: common duty of care: s2 (2) OLA 1957, relevant case law e.g. <i>Ogwo v Taylor (1987)</i>.</p> <p>Special groups under OLA 1957:</p> <p>Children: s2(3)(a) OLA 1957; relevant case law (for example in context of allurements see: <i>Glasgow Corp v Taylor (1922)</i>, <i>Liddle v Yorkshire (North Riding) County Council (1934)</i>, <i>Phipps v Rochester Corp (1955)</i> and <i>Marsden v Bourne Leisure (2009)</i> EWCA Civ671</p> <p>Common calling: s2(3)(b) OLA 1957; relevant case law: e.g. <i>Salmon v Seafarer Restaurants Ltd (1983)</i>, <i>Bird v King Line</i></p>
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		<p>(1970), <i>Roles v Nathan</i> (1963).</p> <p>Discharging duty under the Act: warnings of danger-s2(4)(a): relevant factors: how specific, location of warning, wording and tone, sufficiency, seriousness of risk: see e.g. <i>Maddison Hufton v Somerset CC</i> (2011);</p> <p>Independent contractors: s2(4)(b) OLA 1957; relevant case law e.g. <i>Haseldine v Daw</i> (1941), <i>Woodward v Mayor of Hastings</i> (1945). Section 1 of the Compensation Act 2006;</p> <p>General defences: s2(5) OLA 1957 - willing assumption of risk, that is principle of <i>volenti non fit injuria</i> see e.g. <i>Trustees of the Portsmouth Youth Activities Committee v Poppleton</i> (2008), <i>Grimes v Hawkins</i> (2011); s2(3) OLA 1957 - contributory negligence see <i>Betts v Tokley</i> (2002); s2(1) OLA 1957 – exclusion of liability by way of contract but note implication of s2 Unfair Contract Terms Act 1977 for business occupiers.</p> <p>Occupiers' Liability Act 1984: covers some of those unprotected by OLA 1957: trespassers, those entering under access to countryside agreement or order, users of private or public rights of way;</p> <p>Impact of s1(1) OLA 1984 to determine whether any duty owed and its extent; duty of care arises in relation to occupiers of premises, subject to conditions in s1(3) OLA 1984; focus on state of the premises and awareness of danger (example e.g. see <i>Bucket v Staffordshire</i></p>
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	<p>5.2 Advise on whether a person is within the scope of the Acts on the facts of a given case</p>	<p>5.2 Analyse and apply Occupiers' Liability Acts 1957 and 1984, and relevant case law, and advise (on the facts of the case) on whether a person who has suffered harm falls within the scope of the 1957 or</p>

		1984 Act
6 Understand the scope of the Occupiers' Liability Act 1957 and 1984	6.1 Compare the scope of the application of the Occupiers' Liability Act 1957 and 1984	6.1 Analyse the scope of the application of the Occupiers' Liability Act 1957 and 1984; identify the similarities and differences between the two Acts and distinguish between them and their application by the courts (using relevant case law)
	6.2 Analyse the scope of an occupiers' duty of care	6.2 Analyse the scope of the occupier's duty of care under the Occupiers' Liability Act 1957 and 1984; identify the similarities and differences between the two Acts and distinguish between them; analyse the application of the two Acts by the courts (using relevant case law) when assessing the nature of the duty and whether it has been breached
	6.3 Apply knowledge of the Occupiers' Liability Act 1957 and 1984 to a given situation	6.3 Application of the Occupiers' Liability Acts 1957 and 1984, and relevant case law, to a complex scenario

Additional information about the unit	
Unit aim(s)	Learners will understand the scope of liability under the Highways Act 1980 and the test for breach of employers' liability under the Act. They will also understand the Occupiers' Liability Act 1957 and 1984 and the basis on which a claim for a supermarket trip or slip can succeed.
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically SFJ1B14: Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	Chartered Institute of Legal Executives (CILEx)
Availability for delivery	1 st April 2013