

The downturn in the economy has meant that there are an increasing number of premises which landlords are struggling to let and so remain empty, or which are derelict because of difficulties in securing funding for development. Such premises can be vulnerable to squatters, vandals or arsonists, whose actions can have serious consequences for neighbouring property owners.

In addition, the past few months have seen the rise of the “Occupy” movement in several cities, where protesters take over buildings or open spaces, sometimes leaving the owners at a loss as to how to react. Even if damage is not intentionally caused, conscientious property owners will be concerned with their potential liability, which might arise when they do not have control of their buildings.

How can liability arise?

A property owner owes a duty of care to ensure that he does not do anything which would reasonably foreseeably cause another (“a neighbour”) loss or damage. There is also an associated responsibility for landowners not to leave their premises in a state of disrepair which might cause visitors (even trespassers) to suffer injury. Where it is not the property owner but others occupying the property, special case must be taken.

Two legal principles

In English law there is a very limited legal duty on ordinary people to intervene to stop an unfortunate event happening. This is illustrated by reference in the House of Lords case of *Home Office v Dorset Yacht Co Ltd* [1970], to the parable of the Good Samaritan. Referring to the Biblical description (in Luke 10:30) of the behaviour of the priest and the Levite, who passed by on the other side when seeing a victim of a crime, as likely to cause damage to the health of the victim, Lord Diplock noted that “the priest and Levite would have incurred no civil liability in English law”.

Associated with this is the very limited burden that the law will place upon one person (“person A”) for the acts of another person (“person B”) if person B cause loss or damage to person C. There are established exceptions to the general rule: a company can be liable for the acts of an employee which are carried out in the course of employment; or person A might be liable for the acts of person B where there is a special relationship between them.

Such a situation is illustrated by the facts of the *Dorset Yacht Co* case, in which borstal boys were under the supervision of three officers on Brownsea Island near Poole. One night when (in breach of their instructions) the officers all went to sleep,



What's the damage?

When will a property owner be liable for damage caused by others on its property? By Paul Greatholder

leaving the boys to their own devices, they escaped, and stole and damaged a boat owned by a third party. The third party sued the Home Office for damages in relation to the associated costs. The House of Lords held that the boys were sufficiently under the control of the officers, and that the damage was sufficiently foreseeable, to make the Home Office liable.

In 2011, the principle of liability for the acts of others was re-visited in the case of *Everett and another v Comojo (UK) Ltd*. The Court of Appeal held that a nightclub could be held liable for acts of violence carried out by one guest on another, and by extension a property owner could be liable for the behaviour of third parties. The court supported the view that a “threefold test” should be applied, allowing a court to consider: (a) the relationship between the parties; (b) the foreseeability of the injury caused; and (c) whether overall it was fair just and reasonable to impose that liability.

Liability for vacant buildings

In *Smith and others v Littlewoods Organisation Ltd and another* [1987] 1 All ER 710 (which was cited in *Everett*), the House of Lords had an opportunity to review the law surrounding a landowner’s liability for the unauthorised acts of squatters and vandals.

Littlewoods had bought the freehold of an old cinema building which it intended to demolish for redevelopment. The former owner stripped out the building and for a few days the property remained vacant. Those living locally noticed that youths were breaking into the building and causing damage, and on at least two occasions minor fires were started.

A large fire was then started in the cinema (it was assumed by the trespassing youths) which destroyed the building and damaged a nearby cafe and church. The church and cafe owner sued Littlewoods in damages for negligence, saying that it



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should have taken more effective steps to prevent the youths accessing the cinema, and that in failing to do so it was reasonably foreseeable that a fire might be started and the consequential damage caused.

The House of Lords found for Littlewoods. It held that whereas there was a general duty of care owed by one property owner to another, it would not lay down guidelines as to when that duty would apply in relation to the acts of a third party, such as an unauthorised occupier. Each case would need to be looked at on its facts, and the factors which the House of Lords found relevant in the Littlewoods case were:

- Littlewoods lacked knowledge of the break-ins, or the earlier fires.
- There was a lack of a “history” of fire-raising in the area.
- None of the neighbours had thought that the risk of a major fire was great enough to warrant informing Littlewoods.

- It was accepted on behalf of the church and cafe owner that the only action which Littlewoods could have taken, which would have effectively prevented the fire, would have been to place a 24-hour guard in or at the premises, and that was held by the House in context not a reasonable thing to expect a property owner to do.

- Littlewoods had only owned the property for a short period of time.

- The property was not inherently dangerous.

This case emphasised the correct test to apply, which is whether a particular act or omission by a property owner means that the intervention of third parties and consequential damage suffered by neighbours was “highly likely” in the circumstances.

A landowner’s duty of care today

The Court of Appeal in *Everett* noted that the court’s interpretation of a duty of care had moved on in the years since the

Key points

- A landowner has a general duty of care to his neighbours
- A landowner will not generally be liable for the acts of a third party on his land unless there are special reasons for displacing that general rule
- The owner of property next to vacant property, who is concerned about trespassers or damage, should confirm his concerns to the owner of the vacant land, perhaps notify the police, but most importantly put in place their own arrangements to secure the property

Littlewoods judgment, that is by reference to the “threefold test”. Although it did not need to say so, it seems clear that even under this new test the House of Lords in *Littlewoods* would still have reached the same decision.

It also appears that post-*Littlewoods* case law has not changed the position that a landowner’s duty of care will not become greater simply because his neighbour’s use of his property might be more likely to attract third-party trespassers. The House of Lords in *Littlewoods* disapproved a lower court decision in a case called *Squires v Perth and Kinross DC*, which suggested that contractors for a property owner should, when working on their client’s vacant property, have taken extra care because it was adjacent to a jewellers shop. In *Squires* a thief broke into the jewellers, which he accessed through the vacant property. Lord Goff in *Littlewoods* emphasised that extra care should be taken by the jewellers themselves in that situation.

There are other situations where a property owner can be liable for the acts of third parties on their land. Landlords might be liable to tenants to take positive action to remove or prevent nuisances, whether or not directly caused by the landlord; for example, obstructions which prevent the use by a tenant of a communal car-park.

A landlord who has invited third parties onto his land, who then cause a nuisance which affects neighbours, might be deemed to have adopted the nuisance if it continues unabated, or if the landlord does not take enforcement action when it can. And, finally, where the trespassers are minors, then a landlord might need to demonstrate a greater degree of responsibility than if adults were involved, particularly if the landowner was aware of the risk. This would particularly be the case where the property was, for whatever reason, more likely to attract trespassers, or was inherently less safe.

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