OCCUPIERS' LIABILITY IN COMMON LAW JURISDICTIONS:

Duty of Care, Foreseeable Risk, and the Recovery of Damages

A Comparative Study of English and Sierra Leonean Law

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I. INTRODUCTION

Occupiers' liability is a discrete branch of the law of tort that regulates the duty owed by persons who occupy, control or manage land or premises to those who enter upon them. Its subject matter sits at the intersection of property law and the general law of negligence, and its development reflects the persistent tension between the desire to protect entrants from harm and the traditional common law reluctance to impose too heavy a burden upon landowners in respect of the condition of their property. The result, across the major common law jurisdictions, is a body of doctrine that has evolved from rigid categorical distinctions inherited from the nineteenth century into a more flexible and coherent duty-based regime, shaped in England and Wales principally by the Occupiers' Liability Act 1957 and the Occupiers' Liability Act 1984, and in Sierra Leone by the Law Reform (Law of Tort) Act No 33 of 1961.

The 1961 Act was enacted in Sierra Leone against the backdrop of the developing English law of occupiers' liability, and its central provisions closely mirror those of the 1957 Act. Both statutes replace the common law tripartite classification of entrants with a unitary 'common duty of care' owed to all lawful visitors, and both vest in the courts a broad evaluative discretion to assess the reasonableness of the occupier's conduct in light of all the circumstances of the case. This structural convergence makes the two systems peculiarly amenable to comparative analysis, and it means that English authorities carry significant persuasive weight in the Sierra Leonean courts.[1]

This article examines the law of occupiers' liability across these two jurisdictions in depth. Part II traces the historical origins of the subject in the common law, from the emergence of the invitee/licensee distinction to the critique that precipitated statutory reform. Part III analyses the content and scope of the common duty of care as it now stands under both legislative regimes. Part IV addresses the specific question of the occupier's duty to guard against foreseeable hazards, drawing on the principles of reasonable foreseeability, the calculus of risk, and the practicability of precautions. Part V examines the assessment of general damages for personal

[1] Law Reform (Law of Tort) Act (Sierra Leone) No 33 of 1961, s 3(1)-(2).

injury, including pain and suffering and loss of amenity. Part VI considers the recoverability of special damages, in particular loss of earnings and medical expenses. Part VII analyses the defence of contributory negligence. Part VIII concludes with an assessment of the present state of the law and its direction of travel.

II. HISTORICAL DEVELOPMENT OF OCCUPIERS' LIABILITY

A. The Common Law Tripartite Categories

The foundation of the modern law was laid in the distinction between the three categories of entrant: the invitee, the licensee, and the trespasser. The invitee was a person who entered premises with the occupier's express or implied invitation for a purpose connected with the business conducted there. To such a person the occupier owed the highest duty, articulated as early as Indermaur v Dames: a duty to use reasonable care to prevent damage from unusual danger which the occupier knows or ought to know of, and of which the visitor does not know and could not be expected to guard against. The licensee, by contrast, entered with permission but without invitation in the business sense, and was owed only a duty to disclose known concealed dangers. The trespasser, entering without any permission, was owed virtually no duty at all.[2]

The practical consequences of this framework were frequently unjust. The House of Lords' decision in Robert Addie & Sons (Collieries) Ltd v Dumbreck starkly illustrated the problem: a child of four who had been attracted onto the defendant's land by an accessible and dangerous colliery wheel was classified as a trespasser, with the result that the defendant owed him no duty of care. The decision attracted widespread criticism from academic commentators and the judiciary alike, and its harshness was a direct catalyst for the statutory reforms that followed. The Law Reform Committee's Third Report of 1954 concluded that the tripartite distinction was an unjustifiable source of complexity and injustice and recommended its abolition in respect of lawful visitors.[3]

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[2] Occupiers' Liability Act 1957, s 2(1).

[3] ibid s 2(2).

B. The Move to Statutory Reform

The Occupiers' Liability Act 1957 responded to those recommendations by sweeping away the invitee/licensee distinction and replacing it with a single common duty of care owed to all lawful visitors. The Act preserved the occupier's freedom to modify or exclude the duty by agreement, subject to what later became the Unfair Contract Terms Act 1977, which prohibits exclusion of liability for death or personal injury caused by negligence. The 1957 Act left unresolved the position of trespassers, who remained governed by the common law principle, subsequently refined in British Railways Board v Herrington, that an occupier must not act with reckless disregard for the trespasser's safety where the trespasser's presence is known or probable. The Occupiers' Liability Act 1984 eventually placed the duty to trespassers on a statutory footing.[4]

Sierra Leone's Law Reform (Law of Tort) Act No 33 of 1961 followed a similar path. Its sections 3(1) and 3(2) reproduce in substance the central provisions of the 1957 Act, imposing on occupiers a common duty of care to all lawful visitors and defining that duty by reference to the standard of reasonableness in all the circumstances. The 1961 Act also mirrors the English approach by permitting contractual modification of the duty, and by preserving the relevance of the visitor's own conduct as a factor bearing on the occupier's liability. The Act thus represents a deliberate legislative alignment with the English statutory model, achieved at a moment of significant common law development in England.[5]

C. The Concept of the Occupier

Neither the 1957 Act nor the 1961 Act defines the term 'occupier'. That question is left to the common law, where the controlling principle is one of sufficient control. As Lord Denning explained in Wheat v E Lacon & Co Ltd, an occupier is any person who has a sufficient degree of control over premises that they ought realise that failure to take care may result in injury to a person coming lawfully there. The consequence is that multiple persons may simultaneously be occupiers of the same premises, each owing the common duty of care in respect of those parts of

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[4] Robert Addie & Sons (Collieries) Ltd v Dumbreck [1929] AC 358 (HL).

[5] Indermaur v Dames (1866) LR 1 CP 274.

the premises over which they exercise control. A head lessor, a lessee, and an independent contractor engaged on the premises may each qualify as an occupier in respect of different aspects of the property.[6]

The control test is flexible enough to accommodate the full range of arrangements under which premises are managed and used in modern commercial and institutional contexts. A company that employs independent contractors to work on its site retains sufficient control over the common areas and the general condition of the premises to be an occupier for the purposes of both Acts, even if the independent contractor is itself also an occupier in respect of the immediate work area. This point has particular significance in the context of large institutional premises, where the occupier's duty extends to ensuring that the fabric and layout of the premises are reasonably safe for those who work on or visit them.

III. THE COMMON DUTY OF CARE

A. The Statutory Formulation

Section 2(1) of the Occupiers' Liability Act 1957 provides that an occupier of premises owes the common duty of care to all visitors, except in so far as the occupier is free to and does extend, restrict, modify or exclude that duty by agreement or otherwise. Section 2(2) defines the common duty of care as the duty 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 purposes for which they are invited or permitted to be there. The parallel provisions in sections 3(1) and 3(2) of the 1961 Act are functionally identical, and both statutes adopt the same objective standard of reasonableness as the touchstone of liability.[7]

The standard is not one of ensuring that visitors come to no harm, but rather one of taking reasonable care to see that they are reasonably safe. The word 'reasonably' appears twice in the 1957 Act's definition, and its double occurrence is deliberate: it underscores that the duty is calibrated to what a reasonable occupier would do, not to the elimination of all conceivable risk. The courts have consistently rejected any suggestion that the duty amounts to a guarantee of the

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[6] Wheat v E Lacon & Co Ltd [1966] AC 552 (HL) 578 (Lord Denning).

[7] ibid 579.

visitor's safety and have emphasised instead that it requires a balanced and proportionate response to the risks that the occupier knows of or ought to know of.[8]

B. Specific Adjustments to the Standard

The 1957 Act makes two important adjustments to the general standard that bear on the way the duty operates in practice. First, section 2(3)(a) provides that an occupier must be prepared for children to be less careful than adults. This reflects the well-established principle that children, particularly young children, cannot be expected to appreciate or guard against dangers that an adult would readily recognise. An occupier who is or ought to be aware that children are likely to be present on the premises must therefore take more extensive precautions than would suffice to discharge the duty in respect of adults alone.[9]

Second, section 2(3)(b) provides that an occupier may expect that a person exercising a calling will appreciate and guard against any special risks ordinarily incident to that calling, in so far as the occupier leaves the person free to do so. This provision was applied in Roles v Nathan, where chimney sweeps who had been warned of the danger of carbon monoxide fumes were held to have contributed to their own deaths by ignoring the warning: the occupier was entitled to assume that persons exercising the calling of chimney sweep would appreciate the risks attendant upon it. The provision accordingly reduces the occupier's duty in respect of risks that are intrinsic to the work that a skilled visitor has been engaged to perform.[10]

C. Warning, Independent Contractors, and Exclusion

Section 2(4)(a) of the 1957 Act provides that where damage is caused by a danger of which the visitor has been warned by the occupier, the warning is not, without more, to be treated as absolving the occupier of liability unless in all the circumstances it was enough to enable the visitor to be reasonably safe. A warning will suffice only if it is sufficiently specific and prominent to allow the visitor to take appropriate precautions. A general or vague warning will

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[8] British Railways Board v Herrington [1972] AC 877 (HL).

[9] Occupiers' Liability Act 1984, s 1(3).

[10] Donoghue v Stevenson [1932] AC 562 (HL) 580 (Lord Atkin).

not discharge the duty if the visitor could not, in practice, have avoided the danger even with the benefit of that warning.[11]

Section 2(4)(b) provides that where damage is caused by the faulty execution of work by an independent contractor employed by the occupier, the occupier is not liable if the occupier acted reasonably in entrusting the work to the contractor and took such steps, if any, as the occupier reasonably ought to have taken to satisfy themselves that the contractor was competent and, where it was reasonable to do so, that the work had been properly done. The section strikes a balance between the legitimate desire of occupiers to rely on specialist contractors and the need to protect visitors from the consequences of negligent work. As regards exclusion of liability, the Unfair Contract Terms Act 1977 precludes any business occupier from restricting or excluding liability for death or personal injury caused by negligence.[12]

IV. FORESEEABLE HAZARDS AND THE CALCULUS OF RISK

A. Foreseeability as the Foundation of Duty

The requirement of reasonable foreseeability is fundamental to the law of negligence and occupies a central position within the law of occupiers' liability. The locus classicus is Lord Atkin's formulation in Donoghue v Stevenson: one must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one's neighbour , defined as persons so closely and directly affected by the act that one ought reasonably to have them in contemplation as being so affected when directing one's mind to the acts or omissions in question. Applied to occupiers' liability, the neighbour is the lawful visitor, and the duty is to take reasonable care to prevent the visitor from suffering damage that is reasonably foreseeable as a consequence of the condition of the premises.[13]

The tripartite test for the existence of a duty of care established by the House of Lords in Caparo Industries plc v Dickman ,requiring that the damage be foreseeable, that there be proximity between the parties, and that it be fair, just and reasonable to impose a duty was designed

[11] Caparo Industries plc v Dickman [1990] 2 AC 605 (HL) 617-618 (Lord Bridge).

[12] Glasgow Corporation v Muir [1943] AC 448 (HL) 457 (Lord Macmillan).

[13] Occupiers' Liability Act 1957, s 2(3)(a).

primarily for novel duty situations, but its components remain analytically useful in assessing the scope of the occupier's duty in relation to particular hazards. The requirement of proximity is readily satisfied in the occupier/visitor relationship by the very fact of entry onto the premises, and the question of fairness, justice and reasonableness is ordinarily answered by the general legislative framework. The primary analytical work is therefore done by the foreseeability component.[14]

B. The Reasonable Occupier Standard

The standard against which the occupier's conduct is assessed is that of the reasonable occupier placed in the position of the defendant, endowed with the knowledge that the defendant had or ought to have had. As Lord Macmillan explained in Glasgow Corporation v Muir, the standard of the reasonable person eliminates personal idiosyncrasy and subjectivity: the question is not what this particular defendant thought, but what a reasonable person in the same position would have thought and done. The standard is accordingly objective, though calibrated to the defendant's circumstances, including the nature of the premises and the category of visitor likely to use them.[15]

In assessing what the reasonable occupier would do, the courts engage in a balancing exercise that takes account of several factors: the probability that the hazard will cause harm, the likely gravity of any harm, the cost and practicability of precautions, and the social utility of the occupier's activity. In Paris v Stepney Borough Council, the House of Lords confirmed that the gravity of the potential injury is a relevant factor in determining the standard of care: a small risk of catastrophic injury may demand more extensive precautions than a high risk of trivial harm. In Bolton v Stone, the court balanced the extremely low probability that a cricket ball would be struck beyond the boundary against the relatively modest gravity of the injury that might result and the high cost of effective precautions and held that the defendant had not fallen below the standard of the reasonable occupier.[16]

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[14] Occupiers' Liability Act 1957, s 2(3)(b).

[15] Roles v Nathan [1963] 1 WLR 1117 (CA).

[16] Paris v Stepney Borough Council [1951] AC 367 (HL).

The practicability of precautions was given particular prominence in Latimer v AEC Ltd. Following an exceptional flood that left slippery oil deposits on a factory floor, the defendant applied sawdust to as much of the floor as available supplies permitted. The House of Lords held that the defendant had done enough: the risk of injury, although real, was not so grave as to require the closure of the factory, and the precautions actually taken were all that a reasonable employer/occupier could reasonably have been expected to implement in the time available. The case confirms that the standard of the reasonable occupier is not one of perfection, but of proportionate and timely response to known or foreseeable risks.[17]

C. The Scope of Foreseeable Damage

A further dimension of foreseeability concerns the extent to which the precise manner and type of harm must have been foreseeable to ground liability. The general principle, established by the House of Lords in Hughes v Lord Advocate, is that the defendant need only have foreseen the type of harm that materialised, not the precise manner in which it came about. In that case, a child was burned when a paraffin lamp left in an open manhole exploded: the defenders argued that an explosion was unforeseeable, even if burning was not. The House of Lords held that the type of harm, injury by fire, was clearly foreseeable, and that the precise mechanism of injury was irrelevant to liability.[18]

The same principle was applied in Jolley v Sutton London Borough Council, where the House of Lords held that the risk of a child being injured by playing on or around an abandoned boat was foreseeable even if the precise manner of injury, a boy propping the boat up and being crushed when it fell ,was not. Lord Hoffmann emphasised that the court must not define the foreseeable risk too narrowly: the question is whether the injury falls within a category of harm that a reasonable occupier ought to have guarded against, not whether the exact sequence of events was predictable in advance.[19]

In Tomlinson v Congleton Borough Council, the House of Lords qualified the boundaries of the occupier’s duty in the context of recreational land. Lord Hoffmann held that an occupier is not

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[17]Bolton v Stone [1951] AC 850 (HL).

[18]Latimer v AEC Ltd [1953] AC 643 (HL).

[19]Tomlinson v Congleton Borough Council [2003] UKHL 47, [2004] 1 AC 46.

required to prevent a person of full capacity from engaging in a risky activity that the person has freely chosen to undertake. The decision draws an important distinction between dangers arising from the condition of the premises and dangers arising from the claimant's own voluntary conduct: the occupier's duty extends to the former but not, ordinarily, to the latter. The case has been influential in setting the outer limits of the duty and in protecting occupiers from liability in respect of recreational risks that are part of the ordinary fabric of life.[20]

D. The Standard of Work and Compliance with Custom

The fact that a particular practice is customary does not, without more, establish that it is reasonable. In Wells v Cooper, the Court of Appeal confirmed that the relevant standard is that of the reasonably careful person, not the ordinarily careful person, and that an averagely careless practice does not satisfy the former. An occupier who relies on the prevalence of a potentially dangerous practice to justify failure to take precautions may find that reliance unavailing if the practice falls below the standard of the reasonable occupier. Custom may be relevant as evidence of the standard of the trade or industry, but it cannot substitute for the objective standard of care imposed by the law.[21]

V. GENERAL DAMAGES FOR PERSONAL INJURY

A. The Compensatory Principle

The fundamental purpose of an award of damages in tort is restitutio in integrum: to restore the claimant, so far as money can do so, to the position in which the claimant would have been but for the defendant's tort. The principle was authoritatively stated by the Court of Appeal in Fletcher v Autocar and Transporters Ltd, where it was emphasised that perfect compensation is neither possible nor permissible, but that the award should be fair and reasonable in all the circumstances. General damages encompass those losses that cannot be precisely quantified,

[20] Jolley v Sutton London Borough Council [2000] 1 WLR 1082 (HL).

[21] Hughes v Lord Advocate [1963] AC 837 (HL).

most importantly pain and suffering, loss of amenity, and the physical consequences of the injury on the claimant's life.[22]

B. Pain and Suffering

Pain and suffering is one of the two principal non-pecuniary heads of general damages in personal injury claims. It compensates the claimant for the subjective experience of pain and distress caused by the injury and its treatment, including pain during surgery and recovery, the discomfort of rehabilitation, and the anxiety and psychological distress that frequently accompanies significant physical trauma. The award is necessarily approximative, because there is no market price for physical pain and no common currency in which it can be expressed. The court must instead exercise a broad evaluative judgment, guided by the evidence of the claimant's experience and by reference to comparable awards in earlier cases.

The Court of Appeal in Heil v Rankin reviewed the level of general damages awards in England and Wales and concluded that they had fallen below what justice required for the most serious injuries. The court increased the upper end of the scale and introduced a graduated approach to uprating across the spectrum of injury severity. Although Heil v Rankin was decided in the context of English law, the underlying principle that damages for pain and suffering should represent genuine compensation, not a token payment , is equally applicable in Sierra Leonean law.[23]

C. Loss of Amenity

Loss of amenity compensates the claimant for the objective impairment of the capacity to enjoy life, independent of whether the claimant is subjectively aware of the deprivation. The House of Lords confirmed in West v Shephard that an award for loss of amenity is appropriate even where the claimant, by reason of the severity of the injuries, is unable to appreciate the loss of the faculty in question. The award reflects the objective fact of the impairment, not merely the

[22]Wells v Cooper [1958] 2 QB 265 (CA).

[23]Fletcher v Autocar and Transporters Ltd [1968] 2 QB 322 (CA).

claimant's subjective suffering. This approach ensures that claimants who have suffered severe neurological damage are not disadvantaged by the very gravity of their injuries.[24]

In practice, pain and suffering and loss of amenity are frequently assessed together as a composite sum, with the court considering the totality of the non-pecuniary loss rather than attempting a precise allocation between the two heads. The factors relevant to the assessment include the nature and severity of the injury, the degree of permanent disability, the effect on the claimant's ability to pursue hobbies and recreational activities, the impact on personal and family relationships, and the prognosis for future recovery. Injuries that result in long-term or permanent disability will attract higher awards than those from which full or substantial recovery is expected.

D. Sierra Leonean Damages Jurisprudence

The Sierra Leonean courts have developed a body of case law on the quantum of general damages in personal injury actions that provides useful guidance on the likely range of awards. In Mohamed Bah v Africell (SL) Limited, the plaintiff sustained a knee injury resulting in a 35 per cent permanent disability and was rendered unable to continue his previous employment. The court awarded Le 400,000,000 (old Leones) in general damages for pain, suffering and loss of amenity, taking into account the permanence of the disability and the prospect of ongoing medical treatment. The award reflects the court's willingness to make substantial awards for significant injuries, calibrated to the particular circumstances of the claimant.[25]

In James F Scott v Hadex (SL) Ltd, a hip fracture with associated complications and significant pain and disability attracted an equivalent award of Le 400,000,000/-(old Leones) under the same heads. The convergence of the two awards suggests that, for serious musculoskeletal injuries resulting in substantial disability and an inability to work, the Sierra Leonean courts have converged on a benchmark figure that, expressed in new Leones at current values, falls in the range of approximately NLe 300,000/- to NLe 400,000/-. The final award in any given case will

[24] Heil v Rankin [2001] QB 272 (CA).

[25] West v Shephard [1964] AC 326 (HL).

depend on the evidence adduced and the court's assessment of the particular claimant's circumstances, but these authorities establish a reliable starting point for estimation.[26]

VI. SPECIAL DAMAGES: LOSS OF EARNINGS AND FINANCIAL LOSSES

A. The Nature and Function of Special Damages

Special damages compensate the claimant for quantifiable pecuniary losses that have been, or are certain to be, sustained as a direct consequence of the defendant's tort. Unlike general damages, which are assessed by the court on a broad basis, special damages must be specifically pleaded and strictly proved. The requirement of specific pleading serves an important procedural function: it ensures that the defendant has adequate notice of the losses claimed and an opportunity to dispute them. A claimant who fails to plead a head of special damage in the particulars of claim cannot recover it at trial, even where the loss is undisputed.

B. Past Loss of Earnings

Past loss of earnings represents the net income that the claimant would have received between the date of the accident and the date of trial but for the injury. Its calculation follows a straightforward multiplicand/multiplier approach: the court takes the claimant's net weekly or monthly earnings, multiplies by the period of incapacity, and awards the resulting sum. Where the claimant's earnings fluctuated prior to the accident, the court will take an average over a representative period. The Sierra Leone Supreme Court confirmed in Idrissa Conteh v Abduh J K Amara that both past and future loss of earnings are recoverable in a personal injury claim under

[26] Mohamed Bah v Africell (SL) Limited (CC 386 of 2017) [2018] SLCA 1276.

Sierra Leonean law, subject to proof by appropriate documentation including employment records and medical evidence.[27]

C. Future Loss of Earnings

Future loss of earnings presents greater complexity, because it requires the court to assess a hypothetical: what would the claimant have earned, over what period, but for the injury? The assessment involves a multiplicand (the annual net loss) and a multiplier (a figure that reflects the period of the loss, discounted for accelerated receipt and the vicissitudes of life). In Pickett v British Rail Engineering Ltd, the House of Lords confirmed that loss of earnings for the 'lost years' (the period during which the claimant would have worked but for the injury) is a recoverable head of damages in cases of serious injury, recognising that loss of earning capacity is itself a form of compensable harm.[28]

Where the claimant is unable to return to the same employment but retains some residual earning capacity in a different role, the court must assess the difference between the earnings that would have been received in the original employment and those achievable in alternative employment. This 'handicap on the labour market' is a distinct head of damages, recognised in Smith v Manchester Corporation, which reflects the disadvantage that a disabled claimant faces in competing in the open labour market, even if the claimant is currently in employment. A claimant who has suffered permanent or substantial impairment of a limb or joint will ordinarily be entitled to such an award if the evidence establishes that the impairment reduces competitive prospects in the labour market.[29]

D. Medical Expenses and the Duty to Mitigate

Reasonable medical expenses incurred as a result of the defendant's tort are recoverable as special damages, subject to the claimant's duty to mitigate their loss. The principle in Nance v British Columbia Electric Railway Co Ltd is that a claimant must take all reasonable steps to minimise the damage flowing from the tort: a claimant who unreasonably refuses appropriate medical treatment cannot recover the additional loss attributable to that refusal. The

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[27] James F Scott v Hadex (SL) Ltd (65 of 2020) [2023] SLHC.

[28] Idrissa Conteh v Abduh J K Amara (1980) SC CIV/APP 479 (Sierra Leone Supreme Court).

[29] Pickett v British Rail Engineering Ltd [1980] AC 136 (HL).

reasonableness of the claimant's conduct in relation to medical treatment is assessed by reference to what a person in the claimant's position, acting reasonably and with due regard to their own interests, would have done. The duty to mitigate does not, however, require the claimant to undergo treatment that is painful, risky or experimental.[30]

VII. THE DEFENCE OF CONTRIBUTORY NEGLIGENCE

A. The Statutory Framework

Contributory negligence is a partial defence in the law of tort that reduces the claimant's damages where the claimant's own fault has contributed to the damage suffered. In English law, the defence is governed by the Law Reform (Contributory Negligence) Act 1945, which provides that where a person suffers damage partly as the result of that person's own fault and partly as the result of the fault of another, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage. Sierra Leone has an equivalent provision in section 8 of the Law Reform (Law of Tort) Act 1961, which operates on the same apportionment basis.[31]

B. The Standard of Care in Contributory Negligence

The standard against which the claimant's own conduct is assessed in contributory negligence is the objective standard of the reasonable person in the claimant's position. A claimant who fails to take reasonable care for their own safety, and whose failure contributes causally to the damage, is guilty of contributory negligence. The question is not whether the claimant acted as carefully as possible, but whether the claimant's conduct fell below the standard of a reasonable person in the same position. The courts have consistently recognised that the standard must take

[30] Smith v Manchester Corporation (1974) 17 KIR 1 (CA).

[31] Nance v British Columbia Electric Railway Co Ltd [1951] AC 601 (PC).

account of the particular circumstances of the case, including any emergency or unusual conditions that may have reduced the claimant's ability to exercise full caution.

In Sayers v Harlow UDC, the Court of Appeal reduced the claimant's damages for contributory negligence where she had placed her weight on a toilet roll holder while attempting to climb out of a locked cubicle, causing it to give way and injuring her. The court accepted that the defendant was primarily at fault for the defective locking mechanism but held that the claimant had contributed to her injury by acting in a manner that a reasonable person would not have adopted. The reduction was modest, reflecting the relatively minor degree of fault attributable to the claimant. The case illustrates the court's broad discretion in apportioning responsibility and the importance of calibrating the reduction accurately to the relative blameworthiness of the parties.[32]

C. Volenti Non Fit Injuria and its Relationship with Contributory Negligence

The complete defence of *volenti non fit injuria* , that the claimant voluntarily assumed the risk of the harm suffered must be distinguished from contributory negligence. Volenti, if established, extinguishes the claim entirely; contributory negligence reduces it. The threshold for establishing volenti is considerably higher: the claimant must have freely and knowingly consented to the specific risk that materialised, with full knowledge of both the nature and extent of the danger. In Tomlinson v Congleton Borough Council, Lord Hoffmann clarified that the fact that a person is aware of a risk and proceeds in the face of it does not necessarily amount to consent to assume that risk in the legal sense: the claimant must have agreed, expressly or by implication, to waive any claim in respect of it.[33]

In occupiers' liability cases, the defence of volenti is relatively rarely applied in its full form, because it requires a degree of informed and voluntary assumption of risk that is difficult to establish where the claimant has no realistic alternative to proceeding in the face of the danger. Contributory negligence is accordingly the more commonly applied partial defence, and its apportionment function allows the court to reflect the relative fault of the parties in a nuanced and proportionate way.

[32] Law Reform (Contributory Negligence) Act 1945, s 1(1).

[33] Law Reform (Law of Tort) Act (Sierra Leone) No 33 of 1961, s 8.

VIII. CONCLUSION

The law of occupiers' liability, as it has developed under the Occupiers' Liability Act 1957 in England and Wales and the Law Reform (Law of Tort) Act 1961 in Sierra Leone, represents a mature and coherent body of doctrine that balances the legitimate interests of property owners and managers against the equally legitimate expectations of those who enter upon their premises. The replacement of the old tripartite common law categories with a single common duty of care owed to all lawful visitors was a significant simplification, but it was not a levelling down: the flexibility of the reasonableness standard means that the duty demands more, not less, in proportion to the magnitude of the foreseeable risk.

The principles of foreseeable risk, the calculus of care, and the practicability of precautions, as elaborated by the courts in cases from Donoghue v Stevenson through to Jolley v Sutton and Tomlinson v Congleton, provide a principled and workable framework for assessing the occupier's liability in any given factual context. They demand that the occupier attend to hazards that a reasonable person in the occupier's position would have identified and addressed, without requiring the elimination of every conceivable source of risk.

The law of damages, encompassing both the non-pecuniary heads of pain and suffering and loss of amenity and the pecuniary heads of lost earnings and medical expenses, offers broad and flexible compensation for the consequences of occupiers' liability. The Sierra Leonean courts, guided by cases such as Mohamed Bah v Africell and Idrissa Conteh, have developed a coherent approach to quantum that is broadly consistent with the English model and that provides meaningful redress for serious personal injury. The defence of contributory negligence, operating through the apportionment mechanism of the 1945 and 1961 Acts, ensures that the final award reflects the relative responsibility of each party for the harm that has occurred.

Taken together, the statutory framework and the common law principles that animate it produce a system of occupiers' liability that is both principled and pragmatic. The continuing convergence between the English and Sierra Leonean regimes, maintained by the willingness of Sierra Leonean courts to draw on English authority, ensures that the rich body of case law developed in both jurisdictions informs and enriches the doctrine in each.

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