

## Problem skills: Example of poor approach to IRAC

This is an example of poor use of IRAC. Rather than breaking the answer down into a series of issues and dealing with each on an individual basis, this answer deals with all the issues, all the rules, all the application and then reaches a composite conclusion. This does not demonstrate the problem-solving skills that are required.

### Poor Example

This problem is concerned with Brian's liability under the tort of Occupiers' Liability for injuries sustained by Gladys, Camilla and Betty. Each of the elements of Occupiers' Liability have to be established in relation to each claimant for Brian to face liability.

The Occupiers' Liability Act 1957 provides that an occupier of premises has a duty to protect visitors to the premises from suffering harm or sustaining injury whilst on the premises. This liability can be avoided if the occupier displays an adequate warning sign. The statute does not provide a definition of occupier or visitor. An occupier has been defined in *Wheat v. E Lacon & Co Ltd* [1966] 1 All ER 582 as a person who exercises an element of control over premises. This might be the owner of the land, a tenant or someone who is otherwise in charge of the land as it has been said to cover both the person who has legal control over premises and the person who has physical control over the premises: *Harris v. Birkenhead Corporation* [1976] 1 All ER 341. Premises are defined in section 51 of the Occupiers' Liability Act 1957 to include any land and buildings as well as any fixed or moveable structure including a vessel, vehicle or aircraft. The Occupiers' Liability Act 1957 does not define visitors but case law has considered this to be people with express and implied permission to enter premises. If a person is not a visitor, they may still be covered as the Occupiers' Liability Act 1984 provides that an occupier is under a duty to ensure that trespassers do not come to harm on his premises. A person may be a lawful visitor to start with but become a trespasser by doing something that they are not supposed to do on the premises: in *The Calgarth* [1927] P 93 it was said that you do not give a person permission to slide down your banisters just because you have given him permission to enter your house.

Section 2(2) of the Occupiers' Liability Act 1957 imposes a duty on the occupier of premises '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 he was invited or permitted by the occupier to be there'. This is not a consistent standard of care as the law has recognized that children need a greater level of protection and skilled visitors may have a greater ability to appreciate risks than the occupier of the land so it is unreasonable to expect the occupier to protect them against all the risks associated with their skill. In relation to child visitors, section 2(3)(a) of the Occupiers' Liability Act 1957 states that children are less careful so occupiers may need to do more to protect them from harm although case law has recognized that this responsibility must be shared between the occupier and the parents. In *Phipps v. Rochester Corporation* [1955] 1 QB 450, a five-year old was injured when playing unsupervised on council land and it was held that the council was entitled to assume that parents hold primary responsibility for the safety of their children and will not allow children to play unsupervised in a dangerous area.

The Occupiers' Liability Act 1957 provides that an occupier who has given visitors sufficient warning of a danger to enable them to be safe will not be liable. This is outlined in section 2(4)(a) of the Act:

Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe.

Gladys was a visitor to premises owned by Brian and has suffered harm by being bitten by a horse. There was a sign advising visitors not to feed the horses and telling visitors to mind their fingers. Gladys did not bother to read the sign but should have done so and has been warned of the danger and the occupier, Brian, will not be liable.

Camilla is a child so Brian has a greater duty towards her. Children do climb on things but the machinery was roped off so Camilla should not have crossed the boundary. Gladys left Camilla unsupervised while she had a cup of tea and it would be reasonable for Brian to expect that a five year old would not be left to wander about without supervision from a family member so he may not be liable.

Betty has been scalded by an exploding urn. Brian had the urn installed by a carpenter not an electrician which was probably not a good idea but which may have been because Brian wanted to save money. Brian has a duty towards visitors but Betty is an employee so it is not clear whether she would be regarded as a visitor as she is there as part of her job. If Betty is a visitor, Brian will have a duty towards her.

In conclusion, Brian is probably not liable in relation to Gladys as there was a notice warning of the danger. He is probably not liable in relation to Camilla as he could reasonably expect her to be supervised and not climb on the machinery. He may be liable for Betty but only if she is a visitor.

### Comment

Have a look at this answer to the question that was used as an example in Chapter 12. It demonstrates a poor approach to the use of IRAC as a problem-solving technique that bundles all the issues together in one paragraph, provides an abstract account of the law in the paragraphs that follow and then deals with the application in a series of short sections towards the end. What problems can you see with this strategy?

Problems with this approach to IRAC:

- The issues are not framed with sufficient detail. They are clustered together in an introductory paragraph that does little more than name the parties and the potential basis for liability. It would have been better to have taken a little more detail from each in order to give a clearer picture of the issue. For example: Gladys has been bitten by a horse on her visit to a farmyard activity centre run by Brian which may give rise to a claim under Occupiers' Liability.

- As all the issues are listed in the first paragraph, there is no framework in place to discuss the position of each party individually. As such, the outline of the law does not give any indication of which principles are applicable to which party.
- There is a lengthy and abstract account of the law. This is a problem as it does not demonstrate any particular skills other than the ability to summarise a relevant chapter from a textbook.
- A further problem with an amalgamated account of the law is that it can lead the writer to detach from the issues raised by the question and either to include material that is not raised by the facts or omit relevant material. In this example, there needed to be a discussion of liability for work carried out by an independent contractor as this is relevant to Betty's claim. There is far too much detail on the meaning of 'occupier' and 'premises' as these are straightforward in this example. Of course, problems such as the omission of relevant material and the inclusion of too much detail can arise whatever approach is taken to problem solving but it is easier to lose sight of what is relevant when embarking on such a lengthy account of the law as is necessitated by dealing with all the relevant legal principles in one lump like this.
- The application is not strong. As it is detached from the statement of the issue and the explanation of the law, it is not easy for the writer to remember what the point of emphasis was supposed to be. If you look at the paragraph dealing with Gladys, you will see that it states that she did not bother to read the sign whereas the facts actually state that she had left her glasses in the car. Sometimes facts such as this can make an immense difference to the liability of the parties so it is essential to be accurate and complete when dealing with the facts. This is much harder when this approach to answering the question is taken as the writer has not had cause to look back to the facts of the problem because they have just been occupied with providing an account of the law which did not necessitate reference to the facts.
- The application also suffers as some issues are concluded without any reference to the legal principles that were outlined. It is stated that Gladys was a visitor without any mention of the presence of express or implied permission that was discussed in the section outlining the law. Equally, although there was mention of a visitor who exceeds permission becoming a trespasser in the law section, this is not applied in relation to Diane who may have become a trespasser by entering an area that has been roped off.
- The conclusion is not as powerful or precise as it would have been if each party had been dealt with separately and IRAC used effectively to explore all the legal issues.
- Finally, this answer does not really demonstrate the skills that are important in problem-solving, *i.e.* the ability to identify a question, state the relevant law and then amalgamate this to provide an answer to the question. This is an essential skill for a lawyer so the use of an approach to problem-solving that does not practice and develop this skill is a real missed opportunity.

*Compare this weak answer with the more effective answer provided below.*

### Improved Example

Gladys, Camilla and Betty have all sustained injuries at the farmyard activity centre run by Brian thus he may be face liability under the Occupiers' Liability Act 1957 if the claimants are lawful visitors or the Occupiers' Liability Act 1984 if they are trespassers.

All the injuries were sustained at the farmyard activity centre which is likely to fall within the definition of premises provided in section 51 of the Occupiers' Liability Act 1957 as this includes land and building. Brian runs the centre which suggests that he exercises sufficient control over the premises to be regarded as the occupier: *Wheat v. E Lacon & Co Ltd* [1966] 1 All ER 582. As the occupier of premises, Brian will owe a general duty under section 2(2) '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 he was invited or permitted by the occupier to be there'.

Gladys fed an apple to a horse despite the presence of signs warning her not to do so and has been bitten by a stallion. She seems to be a visitor to the centre who has either express or implied permission to enter. Brian's liability towards Gladys depends upon whether he has provided a sufficient warning of the risk of being bitten to enable her to keep herself safe from this risk: section 2(4). There are signs which warn visitors not to feed the horses and these avert to the risk of being bitten; if the signs merely stated 'please do not feed the horses' this could be taken to refer to the horse's health and diet rather than the risk of being bitten but there is a specific mention of biting in the notices thus there is a clear warning of a particular risk. The sign that warns that stallions are particularly volatile is missing but this additional warning would have been unnecessary if Gladys had taken heed of the clear warning in the other signs. The fact that she has not read the signs because she has forgotten her glasses is not relevant as Gladys has seen that there is a sign so she should take steps to ensure that she is aware of what it says. This does not necessarily mean she has to fetch her glasses as she could ask someone else to read it for her. Her granddaughter is seven years old so it is not unreasonable to expect that she could read the sign if requested to do so. As such, it seems that Brian has a reasonable basis upon which to argue that he has provided a sufficient warning of the risk to avoid liability for Gladys' injury.

### Comment

Although this is not a complete answer to the question, it does provide a demonstration of a more effective use of IRAC as a technique to deal with problem questions. Can you see how the paragraph above divides into issue, rule, application and conclusion? Note in particular the use of specific facts from the question to explore whether the requirements of the law are satisfied.