

Answers to practical exercises

Chapter 15: Answering problem questions

Page 353-354: Identifying the relevant facts

Instructions

It is a good idea to practice with some simple examples to gain confidence in identifying the relevant facts. Have a look back at the farmyard activity centre scenario (pp. 345-346) and pick out the facts that satisfy the following requirements.

Question

1. If the definition of 'premises' includes land and buildings, what facts suggest that the injuries sustained by Gladys, Camilla and Betty occurred on premises?

Answer

Land and buildings:

- Gladys is in the stable yard when she is bitten by Clopper, the temperamental stallion. Stables are buildings and the yard is land.
- Camilla is injured by the exhibition of machinery. It is not clear whether the exhibition is in a building or out of doors but it will be one or the other so is either land or a building.
- Betty is in the cafeteria when she is injured, which is a building.

Question

2. To fall within the provisions of the Occupiers' Liability Act 1957, the person who is harmed must be a lawful visitor to the premises, *i.e.* someone with express or implied permission from the occupier to be on the premises or someone whose presence is known to the occupier. What facts suggest that Gladys, Camilla and Betty fall within the meaning of visitors?

Answer

Visitors:

- It is likely that Gladys and Camilla have express permission to be on the premises. The centre is clearly open to visitors as there are signs offering advice to visitors, an exhibition and a cafeteria. These factors suggest that the premises are open to visitors.
- Betty is an employee so will have permission to be on the premises. She could not carry out her work in the cafeteria unless she was permitted to enter the premises.

Question

3. An occupier will not be liable for a visitor's injury if he has given sufficient warning to enable the visitor to be reasonably safe. Are there any facts that suggest that any of those who have been injured have been given a warning and, if so, was it sufficient to enable them to be reasonably safe?

Answer

Warnings:

- Gladys has been bitten by a horse after feeding him an apple. There are signs that prohibit the feeding of horses. These specify that this is because a person feeding the horses may get bitten. This is a specific warning so should be sufficient to allow a visitor to be reasonably safe.
- Camilla has been injured climbing on machinery in an exhibition. It was roped off but this was to protect the machinery from the visitors rather than to protect the visitors from sustaining injury on the machinery. There is nothing to suggest that there was a warning sign that drew attention to the sharp blades of the machinery.
- Betty has been injured when the urn exploded due to faulty wiring. Presumably, there was no warning given that this might occur. Even if Betty is issued the safety guidelines as part of her job involves dealing with boiling water, this would not include advice that the urn might explode so there is no warning here.

Question

4. An occupier may have to take additional measures to protect children from harm, especially if there are allurements on the premises but the law strives to seek a balance between the duty of an occupier and the responsibility of parents for the safety of their children. In this scenario, what might act as an allurement to a child, what measures has Brian taken to protect against this and what factors might suggest some element of parental responsibility?

Answer

The machinery is likely to be an allurement if it looks interesting to a seven year old and provides something to climb on and explore. Brian has roped the machinery off but this was not to protect visitors from the dangers of climbing on the machinery so it looks as if he has taken no precautions in this respect at all. However, it is not unreasonable to expect parents to keep children under control particularly around things that carry potential danger like farm machinery particularly as it is fenced off.

Further Example

Have a look at the following problem question that can also be found in *Legal Skills* (pp. 347-348) and identify the facts that satisfy the legal requirements of the offences that have been committed.

Matt is short of money and hopes to borrow £500 from his brother, Luke. In order to get into Luke's good books, Matt decides to take him a bottle of whisky that he plans to steal from the local supermarket. Once inside the supermarket, Matt loses his nerve and leaves without going near the alcohol aisle. Instead, he goes into a department store and uses his credit card to buy Luke an expensive sweater knowing that he is over his credit limit. Luke is thrilled with the sweater but refuses to lend Matt any money. Matt punches Luke in the face causing a cut which requires stitches. Luke sets fire to the sweater and leaves it burning on Matt's doorstep the next day. Discuss the criminal liability of the parties.

Question

1. Section 9(1)(a) burglary requires that the defendant has entered a building or part of a building as a trespasser with the intention to steal, cause serious harm or commit criminal damage. Find the facts that satisfy the following elements in relation to the supermarket.

Answer

Building	The supermarket is a building
Entry	Matt has gone into the supermarket as he is walking down the aisles.
Trespass	Matt is a trespasser as the implied permission to enter granted by the supermarket to honest customers does not extend to those who enter with dishonest intentions.
Intention to steal	Matt goes in with the aim of taking a bottle of whisky thus satisfying the ulterior intent.

Question

2. Section 20 of the Offences against the Person Act 1861 provides that a person is guilty of an offence if they intentionally or recklessly cause a wound or inflict grievous bodily harm. A wound is defined a break in the continuity of the skin. Find the facts that satisfy the following elements of the offence in relation to Matt's attack on Luke.

Answer

Wound	Luke has a cut which requires stitches.
Intention to cause the wound	Matt punches Luke in the face deliberately.

Question

3. The *actus reus* of criminal damage is satisfied if the defendant has destroyed or damaged property belonging to another. Find the following elements in relation to the sweater.

Answer

Damage or destruction	Luke has set fire to the sweater rendering it unfit to wear.
Property	The sweater is personal property.
Belonging to another	The sweater belongs to Luke so it is not property belonging to another.