

### Question 1:

The legal issue to consider is whether Tiger Rugby Club (TRC) might be held responsible for Ted's injuries according to the principles of tort law, specifically negligence. Negligence encompasses four key elements: duty of care, breach of duty, causation, and harm or damages. TRC's potential liability must be assessed within these parameters.

Initially, individuals or organizations in control of premises, such as TRC, bear a duty of care towards those who come onto their property. This obligation is governed by the Occupiers' Liability Act 1957 for authorized visitors and the Occupiers' Liability Act 1984 for individuals who enter without permission, also known as trespassers. In this case, as Ted was not participating in any formal event and had entered the grounds without consent, he would be classified as a trespasser. Thus, reference is made to the Occupiers' Liability Act 1984. This legislation places an obligation of care on the occupier towards trespassers. This duty comes into play if the occupier is cognizant of the hazard or has valid reasons to acknowledge its existence, if the occupier recognizes or has justifiable reasons to presume that the trespasser is near the danger, and if, in all situations, it would be reasonably anticipated for the occupier to offer some form of safeguard against the risk.

The second element of negligence concerns whether the occupier failed to take reasonable actions to prevent injuries arising from known hazards. In this situation, it might be asserted that TRC did not meet this obligation. Even though TRC may not have been aware of the specific presence of the pile of glass, their awareness of the children trespassing does indicate that TRC should have taken steps to ensure the safety of the premises, or at least provide warnings about potential hazards.

The third aspect of establishing a negligence claim involves demonstrating that the violation of the duty of care directly resulted in the injury, a concept referred to as 'causation'. This requires a distinct connection between the breach committed by the defendant and the

injury suffered by the plaintiff. Essentially, the injury should be a reasonably predictable outcome of the defendant's action or lack of action. In the given scenario, if it can be verified that the severe cut on Ted's leg was a direct consequence of the broken glass bottles on TRC's property, then the causation element of the negligence claim would likely be fulfilled. It is crucial to prove that Ted's injury would not have occurred in the absence of the broken glass bottles, hence showing a clear cause-and-effect relationship.

Lastly, to establish a claim in negligence, the plaintiff must demonstrate that he experienced actual harm or damage as a direct result of the defendant's breach. This is not limited to physical harm; it can also include psychological harm or financial loss. However, the harm must not be too remote; it must be a reasonably foreseeable result of the defendant's breach. In Ted's case, he sustained a severe cut to his leg. This physical injury constitutes clear evidence of actual harm. This harm is a direct consequence of TRC's alleged breach of duty, i.e., their failure to ensure the safety of their premises, particularly knowing that children were trespassing and playing on the grounds. Thus, the fourth and final element of a negligence claim – damages – appears to be demonstrably present in this case. Therefore, if all the elements of negligence are proven, TRC may be held liable for the harm caused to Ted.

As such, it is plausible that TRC may be held liable under tort law for Ted's injuries due to a failure to meet their duty of care as per Occupiers' Liability Act 1984. This situation is somewhat reminiscent of the case *British Railways Board v Herrington* [1972] AC 877, where the House of Lords held a railway company liable when a child was injured on the railway line, even though the child was technically trespassing.

However, the court would also consider whether Ted's own actions contributed to his injury (contributory negligence), given he was aware that he was not allowed to play on the training ground. Under the Law Reform (Contributory Negligence) Act 1945, if Ted's actions are found to have materially contributed to his injury, any damages awarded could be reduced.

Given these circumstances, TRC should prepare for potential litigation and consider its defense strategy, including potentially raising the issue of contributory negligence. Regardless, it would be wise for TRC to review its safety practices to prevent similar incidents in the future.

### References

Owen, D. (2007). The five elements of negligence. *Hofstra Law Review*, 35(4).

Posner, R. A. (1972). A theory of negligence. *The Journal of Legal Studies*, 1(1), 29–96.

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Question 2:

The concept of contract frustration in English law permits the termination of a contract when an unexpected incident takes place, making the contractual duties impossible to fulfill or altering the obligation into something substantially different from what the parties had in mind when the contract was formed. This principle was set in motion in the case of Taylor v Caldwell [1863] EWHC QB J1.

For Bold Build Ltd to successfully claim frustration, it must prove that the circumstances were unforeseen and beyond its control, and that they fundamentally changed the nature of the contractual obligations. The fact that Bold Build Ltd had workforce and cash flow issues does not typically meet the threshold of a frustrating event. Such issues are generally considered to be business risks that companies should be able to manage and are thus not seen as unforeseen or outside the company's control. Consequently, it is improbable that Bold Build Ltd's assertion of contract frustration will be successful. This conclusion is supported by the legal precedent established in the case of Davis Contractors Ltd v Fareham UDC [1956] AC 696. According to this ruling, simple hardship, inconvenience, or material loss does not suffice to claim contract frustration.

Pertaining to the liquidated damages clause, it is a significant provision often incorporated into contracts to pre-determine the damages payable by a party should they violate the terms of the contract. In essence, this clause represents an agreement setting a pre-agreed sum, which a party is obligated to pay to the other in the event of a contractual breach. The intent of this clause is to recompense the non-breaching party for losses sustained as a result of the other party's breach; it does not serve to penalise the party in breach.

Particularly in this case, the liquidated damages clause stipulates that, should there be a delay surpassing the agreed-upon completion date, Bold Build Ltd is obliged to pay Sunshine Developments Ltd a sum equating to 1.5% of the total contract price for each week

of delay. The clause infers that for every week that Bold Build Ltd falls behind the refurbishment schedule, Sunshine Developments Ltd is entitled to a pre-established amount, determined as a percentage of the overall contract price. This arrangement presents a clear, unbiased method for determining the damages Sunshine Developments Ltd would be entitled to in case of a contractual breach, promoting consistency and assurance for all parties involved.

Moreover, the clause lays down a cap of £150,000 that can be invoked under the liquidated damages term. This maximum limit restricts Bold Build Ltd's potential liability, offering a shield against excessively large claims and making sure that the reimbursement aligns with the contract's worth and the likely losses due to any delay.

Importantly, this clause's purpose is to make amends for any prospective losses Sunshine Developments Ltd may face, like missed potential rental income, rather than to reprimand Bold Build Ltd. Hence, it should reflect an accurate pre-assessment of the probable losses, as opposed to serving as a punitive measure. If the clause is considered to be punitive, it could be regarded as a penalty clause and may not stand under English law.

The enforceability of these types of clauses is dependent on their portrayal as a genuine pre-estimate of the losses, not as a punitive action. The doctrine against penalties posits that a contractual clause that imposes a party to pay a sum that greatly exceeds the real loss due to a contract breach is unenforceable. The Supreme Court provided a more precise interpretation of the penalty rule in the landmark case of *Cavendish Square Holding BV v Talal El Makdessi* [2015] UKSC 67. The crucial factor to consider is whether the clause constitutes a secondary obligation that imposes a detriment on the contract-violating party that is grossly disproportionate to any valid interest the non-breaching party may have in the enforcement of the main obligation. If the clause is proportional and serves a legitimate business interest, it will be upheld in court.

Given the facts, it appears the liquidated damages clause is likely to be enforceable. The clause is clear, it has a cap, and the amount does not seem to be out of proportion to the potential loss that Sunshine Developments Ltd could suffer due to the delay in refurbishment. Hence, unless Bold Build Ltd can demonstrate that this sum is extravagant and unconscionable in comparison to the greatest conceivable loss at the time of contract formation, Sunshine Developments Ltd can potentially enforce this clause.

### References

- Anderson, A. (1953). Frustration of contract - A rejected doctrine. *DePaul Law Review*, 3(1), 1.
- Smit, H. (1958). Frustration of contract: A comparative attempt at consolidation. *Columbia Law Review*, 58(3), 287. <https://doi.org/10.2307/1119665>