THE LAW REFORM COMMISSION

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

(LRC 46-1994)

REPORT

ON

OCCUPIERS' LIABILITY

IRELAND
The Law Reform Commission
Ardilaun Centre, 111 St Stephen's Green, Dublin 2

THE LAW REFORM COMMISSION

The Law Reform Commission was established by section 3 of the *Law Reform Commission Act, 1975* on 20th October, 1975. It is an independent body consisting of a President and four other members appointed by the Government.

The Commissioners at present are:

The Hon. Anthony J. Hederman, former Judge of the Supreme Court, President;
John F. Buckley, Esq., B.A., LL.B., Solicitor;
William R. Duncan, Esq., M.A., F.T.C.D., Barrister-at-Law, Professor of Law and Jurisprudence, University of Dublin, Trinity College;
Ms. Maureen Gaffney, B.A., M.A. (Univ. of Chicago), Senior Lecturer in Psychology, University of Dublin, Trinity College;
Simon P. O'Leary, Esq., B.A., Barrister-at-Law.

The Commission's programme of law reform, prepared in consultation with the Attorney General, was approved by the Government and copies were laid before both Houses of the Oireachtas on 4th January, 1977. The Commission has formulated and submitted to the Taoiseach or the Attorney General forty five Reports containing proposals for the reform of the law. It has also published eleven Working Papers, eight Consultation Papers and Annual Reports. Details will be found on pp.44-48.

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NOTE

This Report was submitted on 29 April 1994 to the Attorney General, Mr. Harold A. Whelehan, S.C., under section 4(2)(c) of the *Law Reform Commission Act, 1975*. It embodies the results of an examination of and research in relation to the law relating to Occupiers' Liability which was carried out by the Commission at his request, together with the proposals for reform which the Commission were requested to formulate.

While these proposals are being considered in the relevant Government Departments the Attorney General has requested the Commission to make them available to the public, in the form of this Report, at this stage so as to enable informed comments or suggestions to be made by persons or bodies with special knowledge of the subject.

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CHAPTER 1: INTRODUCTION

1.1 On 20th March 1992, the Attorney General requested the Commission to undertake an examination of and conduct research in relation to the law relating to occupiers' liability. In June 1993 the Commission published a Consultation Paper on the topic which contained an examination of the present law, a comparative study of the law in other jurisdictions and our provisional proposals for reform. The Commission invited comments on these proposals from any interested groups or persons. Informative and helpful submissions were received and a list of those who sent them is to be found in Appendix A. On 19th November 1993, the Commission held a Seminar on the subject, attended by many interested persons, most of whom represented groups having a concern in the area. A list of those who attended is to be found in Appendix B.

1.2 In the present Report, the Commission having considered the submissions received and the views expressed, sets out its final recommendations on the subject.

Our General Approach

1.3 This Report is written on the assumption that the reader will have read or have available our Consultation Paper. We will not repeat, except to the limited extent necessary, our analysis of the law and the arguments.

1.4 Understandably, as, for example, was the situation with our Report on Civil Defamation, the submissions we received and heard were somewhat one-sided in interest as they came, in the main, from occupiers and organisations of adult recreational users, each having an interest in a low level of occupier's liability. Representations were not received from child recreational users or their parents or from potential non-recreational trespassers of any age. Despite this,

we have tried to represent and set out each interest as fairly as possible.

CHAPTER 2: CLASSIFICATION OF ENTRANT: LIABILITY

2.1 Putting the matter simply, it can be said that there are at present four types of entrant upon lands or premises with a different degree of occupier's liability towards each type:

(a) Contractual entrants

A contractual entrant is a person who enters premises in pursuance of a contract between himself or herself and (normally) the occupier. Although some cases have been decided on general negligence principles, the general rule is that the rights of the contractual entrant are to be found by reference to the contract. In the absence of express terms, there is an implied term on the part of the occupier that reasonable care has been taken to make the premises safe for the contemplated purposes.

(b) Invitees

An invitee is a person, e.g. a customer in a shop, who comes onto premises with the owner's express or implied consent, in circumstances that involve a material benefit for the occupier.

The occupier must take reasonable care to prevent injury to the invitee arising from unusual dangers about which the occupier knew or ought to have known.

(c) Licensees

A licensee is a person, e.g. a guest at a party or visitor to a public park, permitted by the occupier to be on premises in circumstances where the

visit *does not materially benefit the occupier.* That permission can range very widely: it embraces cases where the *licensee* derives a clear benefit at the expense of the occupier as, for example, where a householder permits a stranger to make a telephone call without charge as well as cases where there is a mutuality of benefit - as, for example, in the case of a social guest at a party.

The occupier's duty to the licensee is to *warn* the licensee of concealed dangers of which the occupier actually knows.

(d) Trespassers

A trespasser is one who goes on land without invitation of any sort and whose presence is either unknown to the occupier or, if known, is undesired.

Under the former law, an occupier was liable to a trespasser only where he or she intentionally injured the trespasser or acted in reckless disregard of the presence of the trespasser.

2.2 This aspect of the law has evolved through various decisions of the Supreme Court towards a more general occupier's liability in negligence towards all entrants differing in accordance with degrees of proximity.

Statutory Duties On Occupiers

2.3 The provisions of the *Safety, Health and Welfare at Work Act, 1989* should, directly or indirectly, make lands and premises safer for entrants. Although "work" is undefined, "place of work" is defined in s.2(1) as including "any place, land or other location, at, in, upon or near which, work is carried on whether occasionally or otherwise". Section 6 of the Act, is a "General Duties" section which makes it an offence for an employer not to ensure, as far as is reasonably practicable, the safety, health and welfare at work of employees. The duty extends, *inter alia*, to the design, the provision and the maintenance of the place of work, in a condition that is safe and of safe means of access to and egress from such place.

2.4 Section 7 requires an employer or a self employed person to conduct an undertaking in such a way as to ensure, so far as is reasonably practicable, that he or she and other persons, not being employees, are not exposed to risks to their safety or health.

2.5 Section 9 provides for a corresponding duty on employees to take reasonable care for their own safety.

2.6 Section 60 provides that nothing in the Act shall be construed as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by or under sections 6 to 11.

Problems

2.7 This development of the law has given rise to concern in three areas in particular:

(a) Liability to trespassers

Occupiers perceive the shift to a negligence/proximity standard as importing a new liability towards trespassers.

(b) Liability to recreational users

The explosion in recreational use of land, particularly for hill-walking, has given rise to concern among occupiers of land used for recreational purposes such as farmers, Coillte, the Office of Public Works and other authorities responsible for parks, about the extent of their liability to recreational users. Such concern arises whatever the category of entrant, invitee, licensee or trespasser.

(c) Liability to children

The Commission notes that the law relating to occupiers's liability has developed almost exclusively in cases relating to children or young persons and in a way which provides preferential treatment for children.

Provisional Recommendations

2.8 We provisionally recommended that:

> "Legislation should provide for two classes of entrant on lands or premises namely, visitors and trespassers.";

and that:

> "The term "visitor" should be defined as:
>
> (i) an entrant as of right, or
> (ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract, or
> (iii) any other person whose presence on premises is lawful, or
> (iv) a person whose presence on premises becomes unlawful after his entry on those premises and who is taking reasonable steps to leave those premises.
>
> Any other entrant should be classified as a trespasser."

We further provisionally recommended that:

> "There should be a common duty of care to all visitors.";

and that:

> "There should be a provision to the effect that the circumstances relevant in determining whether the occupier has discharged his duty of care include the degree of care that would ordinarily be looked for in such a visitor, so that (for example) in proper cases an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so. The legislation should also provide that, 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 the circumstances it was enough to enable that visitor to be reasonably safe."

2.9 The above definitions of visitor and trespasser remain the preferred definitions of a majority of the Commission. The President and Commissioner Buckley would recommend that there be a third category of entrant and that entrants falling under the definition of visitors above should be divided between permitted entrants, to be defined below, and visitors.

2.10 The provisional recommendations were generally welcomed and a majority of the Commission *recommends their adoption.*

Should All Entrants Be Owed A Duty Of Care In Negligence?

2.11 We addressed this question in the Consultation Paper in paragraphs 4.24 to 4.29. We identified several arguments in favour of making negligence the sole test for all entrants. A universally applicable negligence criterion would be capable of delivering justice without the obstacle of technical rules which are capable of throwing up anomalies; *least complicated,* because the test is a straightforward one capable of application regardless of the factual complexities; and *most honest*, because it has no need to resort to legal fictions such as that of implied licence. We also pointed out that the proposal that the negligence criterion should embrace trespassers as well as other entrants is not identical with the proposition that every occupier should owe every trespasser a duty of care. On the contrary, by no means all trespassers would be likely to be held in a sufficiently proximate relationship with the occupier, to warrant the imposition of a duty of care on the occupier.

2.12 As against this option, we identified as the principal practical objection the concern that occupiers would be so intimidated by this level of liability that they would seek to prevent socially desirable access to their lands and we

provisionally recommended the duty of an occupier towards a trespasser should be a duty not to injure the trespasser intentionally or to act with gross negligence towards him or her.

2.13 We have had time to reconsider this recommendation in the light of the comments and submissions we received. There do not appear to be many reported cases in which what might be called an "undeserving" trespasser was awarded compensation against a rural - or, indeed, urban occupier. The negligence test has applied in clear terms to trespassers since the decisions in *Purtill* [1968] I.R. 205 and *McNamara* [1975] I.R. 1. The experience of over a generation seems to us a reasonably long one in which to form an assessment of how the law operates. It can fairly be said there are not grounds for asserting or believing that a negligence test relative to all entrants on rural land is likely to operate unjustly. As against that, as we noted in para. 4.38 of the Consultation Paper, a judge of the Supreme Court, in *Mullen v Quinnsworth Ltd., t/a Crazy Prices (No. 1)* [1990] I.R. 59, has already canvassed the possibility of imposing "absolute" liability on the proprietors of large supermarkets.

2.14 In a submission to the Commission, Professor Bryan McMahon has criticised the approach in the Commission's Consultation Paper as follows:

> "The subject of this consultation has been referred to the Commission by the Attorney General and it is clear that the matter is being placed high on the political agenda because of pressure in recent years from the farming lobby and especially from the I.F.A.
>
> ... Although *McNamara* was concerned only with trespassers, the question of its impact on invitees and licensees was never satisfactorily addressed by the Courts subsequently and accordingly a certain amount of confusion still prevails in this regard even to this day.
>
> In recent times farmers became apprehensive, because many feared that the law as stated in *McNamara* now encourages all entrants to sue landowners whenever they suffer injuries on another person's land. It is claimed that this results in high insurance premiums for the occupiers and the adoption by occupiers of what effectively may be called 'defensive ownership'. Farmers say they do not like having to assume this inhospitable attitude but the current state of the law forces them to adopt this stance.
>
> This attitude in turn threatens the innocent activities of hill climbers, ramblers, tourists, huntsmen, fishermen and others.
>
> Farmers' fears in this regard, although no doubt real, are the result of a misperception. After all, the law only requires them to take reasonable care. It requires no more of them as occupiers than it demands of them as drivers or employers. Moreover, the law of occupiers is not confined to farmers only; it extends to all occupiers of

premises, including ordinary householders and landlords. Finally, that trespassers would not inevitably recover under the *McNamara* rule can clearly be seen from such cases as *O'Keeffe v Irish Motor Inns* [1978] I.R. 85 and *Keane v E.S.B.* [1981] I.R. 44.

... It is this reviewer's view ... that the [Commission's] proposal for reform in relation to trespassers is misconceived and is a lobby driven response to a misperception of the law as it affects farmers. Having had the courage to advance the law in *McNamara* in 1972, the Supreme Court failed in its obligations to clarify any uncertainties which *McNamara* left in its wake and this uncertainty may have encouraged farmers' fears in the matter.

The extension of farmers' exposure since *McNamara*, however, is marginal and surely is a matter which can be handled by liability insurance. Insurance companies have shown no reluctance to extend cover in such cases and, from that we know, at modest premiums.

The Law Reform Commission's arguments against the reasonable care standard for trespassers as formulated in *McNamara* is a general argument which highlights the weaknesses of the reasonable care standard as such. It is an argument which might easily be made also against reasonable care as a standard for road traffic accidents, employer liability claims and the law of negligence in general. Moreover, it seems strange and inconsistent that the Law Reform Commission, having on a general level refused to recommend it in the case of trespassers, should now have no hesitation in recommending the very same standard, with all its weaknesses, for lawful visitors.

Furthermore the proposals go against the modern trend in tort liability, the most recent examples of which are to be found in the Animals Act 1985, which, in removing the rule in *Searle v Wallbank,* also adopts reasonable care as a standard where cattle escape on to the highway. In the *Control of Dogs Act, 1986,* strict liability also features strongly and in the case of dogs injuring trespassers, reasonable care is the standard preferred by the Oireachtas in that instance (Section 21(3)). It would appear that the Oireachtas in recent years has not lost faith in the negligence calculus. Furthermore, in the *Liability for Defective Products Act 1991,* the law furthers the policy which imposes strict liability wherever loss distribution can be achieved through price or insurance mechanisms."[1]

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1 This submission is taken from a review (published in I.L.S.I. Gazette, November 1993) a copy of which we received from Professor McMahon, Solicitor, Ignatius Houlihan & Sons, Ennis. Professor McMahon expressed surprise that we had not in the Consultation Paper, made any reference to the 1974 Report of the Law Reform Advisory Committee on Occupiers' Liability. That Report contained a Consultation Paper which Professor McMahon had prepared. We have not referred to the report because we considered that it had largely been overtaken by subsequent developments, including the *McNamara* decision, in the succeeding two decades but we are happy to do so now. Its reference number is Prl. 4403; it has been out of print for some years but is available, of course, in law libraries.

2.15 The Commission would not argue against a reasonable care standard where all to whom it is applied are in the same legal situation. We have recommended it for visitors. Drivers are not going to be physically excluded from roads because of uninsured driving. The inescapable fact is that recreational entrants, unlike motorists, *can* be excluded and farmers, not having confidence in the protection afforded by the reasonable care standard, *will* exclude them. Occupiers have rights and are already exercising them. We repeat what we said in para. 4.9 of the Consultation Paper:

> "Perceptions of their legal position by would-be defendants have a social importance which does not depend on their accuracy. If occupiers *believe* that the present law imposes too high a burden on them relative to trespassers, they will be disposed to act in ways that have significant social consequences, some of which are likely to be detrimental. Occupiers may actively seek to prevent a range of persons from coming onto their property, where formerly what may have been technical trespassers were tolerated. One thinks here of the minor, generally harmless, incursions of walkers and picnickers in rural areas. If farmers are to turn their fields into fortresses and to treat as enemies all entrants who have not been invited onto their property, the community - and especially those coming from urban areas - will greatly suffer. To argue that this suffering is ultimately needless because it is based on an inflated apprehension of legal liability is beside the point."

2.16 Our consultations have satisfied us that taking out extra insurance does not provide an easy solution for occupiers. In addition it would appear that insurers are disposed to settle and increase premiums rather than fight.

2.17 *We have come to the conclusion that it is prudent for us to recommend that the negligence criterion should not apply to all entrants and we so recommend.* Rightly or wrongly, the perception of rural occupiers and their insurers as to their potential liability has led them to take steps in reducing access to their property.

If Trespassers Are To Be Entitled To A Limited Duty Only, What Should That Duty Be?

2.18 Having rejected the option that all entrants should be owed a duty of care in negligence, we now must consider what that limited duty should be. *In the Consultation Paper, as has been mentioned, we provisionally recommended that the duty of an occupier towards a trespasser (over 15 years of age) should be a duty not to injure the trespasser intentionally or to act with gross negligence towards the trespasser.* It may be useful to quote here what we stated in paragraphs 4.74 to 4.76 of the Consultation Paper in relation to the requirement of gross negligence:

> "The perceived advantage of this test is that it would ensure that the occupier was not held to an unduly onerous and unrealistic standard of care. Any temptation to make a generous finding of liability would be

moderated, if not entirely thwarted, by the requirement that the occupier's negligence be gross.

The notion of *grossness* of negligence might be criticised for its uncertain quality. The term 'gross negligence' has been stigmatised as being no more than 'negligence with a vituperative element'. This may be somewhat harsh but it does capture its elastic quality.

Perhaps the proper reply to this concern is that it would be mistaken to become too greatly exercised by the seemingly emotive and uncertain character of the term. The attribution of *negligence* involves the court in making a value judgment that the defendant ought not to have behaved as he did. The attribution of *gross negligence* involves the same process so that such a judgement will be made only in more serious cases".

After further reflection on our provisional recommendation we adhere to it and we recommend its adoption.

CHAPTER 3: RECREATIONAL USE

3.1 The main fear of occupiers is that they will become liable to trespassers in negligence. In the Consultation Paper, we proposed that occupiers should only be liable to trespassers for *gross* negligence. As most recreational users would be trespassers *vis-à-vis* a particular occupier and as occupiers could make specific agreements limiting their liability with other recreational entrants, we were satisfied that this would solve any problems which might arise. Unfortunately, this is not the case.

3.2 It may be instructive to quote from some of the submissions received.

3.3 Those representing recreational users of land such as campers, walkers and persons engaged in hunting, shooting or fishing - were concerned in the main to ensure continuing access to the land and were generally happy not to press for a significant duty of care on occupiers relative to such use.

3.4 Thus, for example, the National Coarse Fishing Federation of Ireland, in its submissions, urged the Commission to recommend a reduction in the legal liability which landowners owe to trespassers. It proposed that persons going on the lands of another for recreational user such as angling, without the specific permission of that other person, should be regarded as trespassers in respect of whom the landowner should merely be required to avoid injuring them intentionally.

3.5 The submission from the Mountaineering Council of Ireland was similar:

> "We strongly suggest that the welfare of walkers/recreational users must be their own personal responsibility when venturing upon privately owned property. No landowner or farmer should, in our view, be held responsible in law for an accident befalling a recreational user of

privately owned property. An exception to this rule should be made in any case where a deliberate trap has been set up by a landowner and a deliberate intent to harm can be proved."

3.6 The Irish Creamery Milk Suppliers Association, in its comments on the Consultation Paper, considered that the two classes of entrants should be restricted to those who are invited and those who are non-invited. An invited entrant would be one who has been requested by the occupier to enter the premises:

> "The request to enter can be either actual or implied, as for example, by way of notice offering on-premises facilities available for use.
>
> (i) Persons who are entrants as of right are non-invited unless they have been offered an invitation.
> (ii) If there is an expressed or implied contract requiring the person's presence on the premises then that person is invited.
> (iii) Any other person whose presence may be lawful, but who is without an invitation, is non-invited.
> (iv) A person whose presence on the premises becomes lawful does not automatically become an invited person. Any person who is not invited should be classified as "non-invited"."

3.7 The Association proposed that there should be a common duty of care to all invited persons but that all others - "non-invited persons" - should be treated as trespassers.

3.8 The Irish Farmers' Association, in its response to the Consultation Paper, welcomed the Commission's provisional recommendation that the number of categories should be reduced to two, namely, visitors and trespassers. It pointed out, however, some drawbacks which it considered were associated with an approach based on classifying various entrants to property into two or more categories:

> "Firstly, where there is an existing relationship between an entrant and a property owner there may be a reluctance on the part of the entrant or the landowner to reclassify individuals as trespassers in order to limit the duty of care owed.
>
> Secondly, with the categorical approach there will be a danger that a trespasser might be elevated to a visitor as a result of a judicial decision in a particular case which could form a precedent for other cases."

3.9 The Irish Farmers' Association went on to argue in favour of the adoption of aspects of American legislation relating to recreational use which would strictly limit the liability of farmers and other occupiers.

3.10 The Commission received comments on the Consultation Paper from Mr

Charlie McGreevy, T.D., Minister for Tourism and Trade. The Minister noted that "the farmers are, of course, central to the tourism element of this issue, and further development of the tourist products in question will rely to a large extent on their continued goodwill." He went on to state:

> "The I.F.A. has proposed the introduction of a recreational user category which would strictly limit the liability of farmers/occupiers. While I appreciate the Commission's reasoning in proposing a reduction to two classes of entrants, I believe the I.F.A.'s suggestion is worthy of consideration. Many recreational users are engaged in activities which are, in themselves, dangerous and there is an argument that in some cases, at least, such entrants should voluntarily accept the risks associated with going on to the land. This principle could also apply to State lands, e.g. forests, National Parks, etc where entrants may be engaged in activities such as climbing, mountain biking, etc. A distinction between these and entrants engaged in more passive pursuits seems reasonable."

3.11 Many farmers are themselves recreational users. These farmers and many more farmers again who are not recreational users traditionally welcome hunts, gun clubs, fishermen and hill climbers onto their lands either specifically, in a general way or in a spirit of happy tolerance. A majority of the Commission is satisfied that it would be an unreasonable imposition on these farmers if the law made it necessary for them to re-classify such entrants as trespassers or to enter into specific agreements with them.

3.12 This objection was mirrored by some recreational users who, while quite happy to be confined to trespassers rights, did not wish eternally and inevitably to be confined to the trespasser category unless they entered into specific agreements with every landowner.

3.13 These criticisms were constructively made and, as we have seen, those who made them shared the Commission's anxiety to reduce the number of categories of entrant.

Agreement

3.14 *Bearing in mind these considerations, the Commission has decided to depart from its provisional recommendations concerning liability towards recreational users and is agreed upon and therefore recommends the following:*

(a) *The only duty owed to a trespasser should be not to injure the trespasser intentionally and not to act with gross negligence towards the trespasser.*

(b) *Where a person is a visitor and does not take part in any recreational use activity while on the property, he or she is owed a duty of care in negligence.*

(c) *Being agreed on the need for a recreational use exception to the above general principles of liability, where such exception applies, the occupier's duty should be not to injure the recreational user intentionally or to act with gross negligence towards him/her.*

(d) *Where the occupier is paid for recreational use, liability would be that applying to visitors, in the absence of express terms to the contrary.*

3.15 It is important, and hopefully helpful, first to define terms. It would be inadvisable to attempt all-embracing definitions of recreational use of the lands to be used. The Commission will confine itself to outlining in a general way to the Attorney General the considerations that should inform the preparation of the heads of legislation in the sponsoring department and to remarking that the law will have to be carefully 'tuned' to accommodate the appropriate activity on the appropriate lands.

Lands

3.16 (a) Places, like playgrounds, exclusively dedicated to outdoor recreational activity should be included.

(b) Apart from places covered at (a), the relevant lands would generally be agricultural, pastoral or used in horticulture.

(c) Parks, national or otherwise, forest-parks, forests, mountains, hills, rock, marshes, slob-lands, islands, lakes, ponds, rivers, streams, reservoirs, beaches, piers and the foreshore should be included.

(d) Historical, archaeological or scientific sites, national monuments should be included.

3.17 Put simply and obviously, the lands to be designated should, if possible, be those normally used in outdoor recreational activity.

Use

3.18 (a) The recreational activity covered should be outdoor activity.

(b) There would be no charge for engaging in such activity.

(c) Sports should be included.

(d) As walking would have to be covered, it would be difficult to specify and segregate "harmless" recreational activity.

3.19 The list of outdoor recreational pursuits is endless and even if no

particular activity were specified, we are satisfied a Court would have no difficulty in deciding whether or not a particular activity was recreational.

Different Approaches

3.20 While we are agreed as above, it has not been possible to reach unanimity on the scope of the recreational use exception. Commissioners would create the exception in different ways. Commissioner Duncan would argue that the principal purpose of the recreational use exception is to encourage occupiers of land to permit use of their lands, without fear of undue liability, for recreational activities by persons, such as walkers, in circumstances where the occupier gains no particular advantage, social or economic, in giving such permission. It should not be used to relieve the occupier of the usual duty to take reasonable care in respect of visitors invited onto the land as personal or paying guests. The occupier should be required to take reasonable care to prevent injury to the visiting relative invited to a family picnic, the schoolfriend invited to play with the occupier's child, or the business associate invited for the weekend to engage in outdoor pursuits. It is accepted by all that the paying guest should be owed this duty of care: it would be a sad reflection on modern priorities that a guest invited out of friendship, or familial affection should be owed a lesser duty.

3.21 Commissioner Duncan accepts that the concept of a "personally invited guest" would give rise to some definitional problems. He would say that these are lessened if it is appreciated that, in essence, the recreational use exception is designed to allow a lower standard of care in respect of entrants whose presence confers no particular economic or social advantage on the occupier. This type of exception is not unknown in recreational user legislation. For example, under the Californian Civil Code the recreational user exception does not apply to persons who are expressly invited rather than merely permitted to come upon premises by the landowner.

3.22 The President and Commissioner Buckley are unable to accept the definition of visitor recommended in para. 2.7 above as it is too broad in their view and fails to distinguish between invitees and permitted entrants, the latter having no mutuality of interest with the occupier. They would accordingly create a third category of entrant, "the permitted entrant", defined as a person entering on property with the tacit or explicit consent of the occupier for recreational or other purposes who would attract the same liability as a trespasser. The other purposes could include, for example, use of the occupier's land for a short-cut home. A person *invited* onto the occupier's lands for any purpose, including an exclusively recreational purpose, would be a visitor, always attracting liability for negligence.

3.23 While this approach is very close to Commissioner Duncan's, based as it is on a distinction between invitation and permission, the other Commissioners are of the opinion that the difficulty of defining "personally invited guest" is insurmountable, e.g. what is "personal"; could any member of the occupier's

family issue the invitation?

3.24 As regards the scope of the recreational use exception, the President and Commissioner Buckley consider that there are some types of recreational activities which characteristically require a significant area of land of a certain kind on which they are to take place. These include such activities as hill walking, pony trekking and mountain trekking. The property on which they may suitably be performed should either be dedicated to such recreational use, for example, forest parks, or be lands particularly suited for the activities in question. Ordinary negligence should be the standard of negligence owed to a permitted entrant as defined in paragraph 3.25 in respect of farm buildings and farmyards. Any lesser standard would be fundamentally contrary to public policy relating to the protection of bodily integrity which is incorporated in the *Safety, Health and Welfare at Work Act, 1989.*

3.25 The majority would not make this exception for farm buildings and farmyards. A farmer's liability should not *increase* when a recreational user strays from the fields into the farmyard.

3.26 Commissioners Gaffney and O'Leary would adhere to the definitions of visitor and trespasser in the Consultation Paper. They would base the recreational use exception on the actual use of the land rather than the category of entrant. The voluntary assumption of risk is intrinsic to participation in any outdoor sport or recreational activity. Recreational users are quite content to look after themselves and have occupier's liability in their regard confined to gross negligence. This should be so whether or not they are actually invited onto the occupier's lands. Occupiers and users will frequently be members of the same recreational grouping and will wish to be free to invite or be invited without variation in liability.

3.27 These Commissioners would avoid creating a third category of entrant as this would inevitably lead to definitional boundary problems, e.g. between the angling club member fishing by the invitation or with the explicit consent of the fellow member. A slip of the tongue at the Annual General Meeting of the angling club could lead to a change in liability.

3.28 Commissioners Gaffney and O'Leary would, therefore, recommend that the occupier's liability should be based on the use to which the lands are put by visitors, permitted or invited. Thus, liability would change e.g. if a visitor invited for drinks went horse-riding, and would change again when the activity had concluded. When a visitor pays an occupier, the visitor may pay under the contract, *inter alia*, for an increase in the occupier's liability.

3.29 These Commissioners would have no difficulty in principle in accepting a reduced level of liability in respect of other non-recreational entrants, falling under the proposed definition of permitted entrant, but not at the price of creating a further category of entrant. Such entrants would be few and easily

identifiable if specifically permitted to enter and specific arrangements could be made with them.

3.30 Every approach to this problem carries its own difficulties but *the Commission is unanimous in recommending that there should be a recreational use exception in the legislation.* The Commission differs only on how the exception should be made and on certain exceptions to the exception.

CHAPTER 4: CHILDREN

Should Child Trespassers Be Owed The Lower Duty Recommended For Trespassers And Recreational User?

4.1 Our approach in the Consultation Paper (to be found in paras. 4.11 to 4.14 and paras. 4.119 to 4.121) can be summarised as follows:

(i) The child trespasser has led to reform of the law throughout the world. Courts on both sides of the Irish Sea have abolished old distinctions and standards in order to pay the child damages.

(ii) The courts have looked benevolently on injured child-plaintiffs, particularly where the defendant appears to be a mark for damages, or insured. A law imposing a somewhat more stringent duty on occupiers to child trespassers than to adult trespassers would withstand constitutional challenge under Article 40.1. The reason is clear: children have a natural propensity towards incaution; they tend not to heed warnings (assuming that they have the capacity or inclination to read them carefully); they tend, moreover, to be attracted by dangerous machinery, and to overestimate their ability to avoid injury. When approaching the question of children's own negligence and contributory negligence, the law is fully conscious of these realities.

(iii) The notion of implied licence enabled courts, often by a fictitious ascription of permission, to elevate the status of a deserving trespasser -often a child - to that of licensee, with the practical result that liability would be imposed on the occupier.

(iv) While some would say that in the context of occupiers' liability the law has traditionally shown wisdom, others would say that the development of the law has left occupiers at children's mercy.

4.2 We considered it unrealistic to try to strengthen the defences of the occupier against the child plaintiff and considered it best to make special provision for child trespass while shoring up the legal, as distinct from the physical, defences against adult trespass. This approach culminated in the following provisional recommendation:

> "An exception for child trespassers, on the lines of the Alberta legislation, should be made as follows:
>
> (1) Where an occupier knows or has reason to know
>
> (a) that a child trespasser is on his premises, and
>
> (b) that the condition of, or activities on, the premises create a danger of death or serious bodily harm to that child,
>
> the occupier owes a duty to that child to take such care as in all the circumstances of the case is reasonable to see that the child will be reasonably safe from that danger.
>
> (2) In determining whether the duty of care under subsection (1) has been discharged consideration shall be given to
>
> (a) the age of the child,
>
> (b) the ability of the child to appreciate the danger and
>
> (c) the burden on the occupier of eliminating the danger or protecting the child from the danger as compared to the risk of danger to the child.
>
> (3) For the purposes of (1), the occupier has reason to know that a child trespasser is on his premises if he has knowledge of facts from which a reasonable person would infer that a child is present or that a child's presence is so foreseeable that the occupier should conduct himself on the assumption that a child is present.
>
> (4) For the purposes of this legislation, a child means a person under 15."

4.3 Our recommendations in relation to child trespassers provoked considerable comment. The Irish Farmers' Association unreservedly rejected the proposal that a special duty of care should be owed to child trespassers. It stated:

> "Farmers, due to the nature of the activities taking place on farms and

the special attractions to children that exist on farms are uniquely vulnerable to personal injury claims arising from injury to child trespassers. The danger to children on farms is only too apparent to farm families as unfortunately farmers and their children have suffered as a result of accidents with machinery, livestock, etc. The increased awareness within farm families of the dangers on farms and the implementation of Health and Safety Authority regulations in this regard have resulted in a dramatic fall in the number and severity of injuries occurring on farms. However, while the children of farmers may be aware of the dangers, child trespassers will not be aware of the same dangers. Furthermore, if these recommendations are enacted, farmers whose lands are adjacent to towns or villages will be placed in an impossible position.

The I.F.A. views the Commission's recommendations in this regard as totally unacceptable in so far as farmer/occupier cannot be asked to act as guardian angels in respect of individuals trespassing on their land, children or not.

The question must be asked as to where the responsibility for the welfare of children lies? In circumstances in which a child cannot be found negligent by reason of age and/or infirmity why should any person other than their parent or guardian be held responsible? Any other child who the Courts are satisfied can be guilty of contributory negligence must be aware of the normal dangers occurring on any farm and, accordingly, should be responsible for their own actions ... thus giving rise to the liability on the farmer/occupier.

These two basic principles exist in the present state of the law and it would be invidious if access to the countryside were to be restricted because of potential liability to farmers/occupiers. Therefore, in this context the I.F.A. proposes a special immunity to be granted to farmers/occupiers in respect of any liability they may have to child trespassers."

4.4 The Irish Creamery Milk Suppliers Association was of the same view. It stated starkly in relation to our recommendations as to child trespassers:

> "Not acceptable. We require that all non-invited persons be in the same category without exception. Occupiers should not be made the guardians of other people's children. There should not be an onus on occupiers to determine the age of persons on their properties in order to become aware of what care they owe them."

4.5 In similar vein, the Mountaineering Council of Ireland expressed the view that any provision in law to hold landowners responsible for the welfare of children venturing onto private property was unnecessary and would prove unworkable:

"The welfare of children is clearly the duty of parents/guardians, and when children pass beyond the stage of dependence they become individuals directly responsible for their own welfare. In no case - unless a deliberate intent to harm can be proved - should this parental or personal responsibility be passed on to the landowner in law."

4.6 An Taisce, in its submissions, argued as follows:

"The actions of children are unpredictable. In our opinion the liability of the occupier should be no greater than his/her liability to older people. Liability should fall upon carers, and not on the occupier, except in the defined circumstances [where an occupier benefits in monetary terms from the occupier's presence or where the occupier is guilty of gross negligence in relation to areas where the occupier might reasonably expect users]. The carers would normally be the parents, but the charge could be delegated to teachers, scout or guide leaders or similar. The occupier could be the carer, where the delegation to him/her is clear, as for instance where payment is received for use of a children's adventure centre."

4.7 The comments of Cospoir (the National Sports Council) are also of relevance:

"We consider there is a particular duty on [the] legislature to achieve the proper balance regarding children. All other benefits of any changes in the law could be put at nought if the *perception* continues that occupiers will continue to be an 'easy touch' for insurance claims for accidents involving children. We are conscious that even with the possible adoption of different duties in respect of recreational users ..., a child might be treated differently by the Courts. However, the onus should be lifted from the occupier to the greatest extent consistent with the Constitution, and, if there are serious difficulties in pursuing this course, consideration should be given to amending the offending provisions of the Constitution.

Whatever provision is made for child trespassers, we consider that a duty of care should be imposed on parents accompanying the child or permitting the child to trespass. The Long Distance Walking Routes Committee fails to see why any serious obligation should be imposed on a landowner in respect of children who are unknown to him without some corresponding duty or obligation being imposed on the person responsible for the child's welfare. This duty should include (but not be limited to) ensuring that children brought by them on to land are kept from any danger obvious to the adult but not obvious to the child, There should also be a duty to ensure children accompanying them do not enter land unless under their supervision and care.

An occupier in defence of an action should be able to adduce lack of

care by parents as contributory negligence.

'Parent' should be defined to include guardian, accompanying adult, person *in loco parentis,* etc.

The Long Distance Walking Routes Committee see no merit in the suggestion of 15 years being the *cut off* age. They state:

> "We would strongly recommend that it be reduced to the lowest possible age and can see no reason why it cannot be brought down to 10 at least. We are aware that, under present law, cases have been successfully defended involving children between 10 and 15." "

4.8 The Association for Adventure Sports submitted that:

"The primary responsibility for children should rest with the parent or other responsible adult acting *in loco parentis* until such time as they are old enough to look after themselves and can reasonably recognise danger."

4.9 The Irish Insurance Federation in its submission stated:

"Insurers are aware of the concern of occupiers of land that they should be protected against what they see as undue duties owed to unlawful entrants, and their consequent opposition to an exception being made for child trespassers. Whilst having some sympathy with this view, I.I.F. members understand the reasons which led the Commission to propose an exception for child trespassers. Nevertheless, we have some reservations as to whether the age limit for definition of child trespasser should be as high as 15. It does not seem unreasonable to attribute to teenagers an understanding of the concept of private property equivalent to that of adults. It appears to us that implementation of the Commission's recommendations on child trespassers would actually increase the potential liability of occupiers. In practice at present it is possible to defend 'allurement' cases where the child trespasser is over 10 years of age. The recommendation would revive this possibility where the plaintiff is between 10 and 15 years of age.

We would suggest that some further consideration be given to the age limit if the child trespasser exception is pursued."

4.10 Finally in this context we may note the comments of Mr Charlie McCreevy, T.D., Minister for Tourism and Trade:

"The I.F.A. are proposing that a special immunity be granted to farmers/occupiers in respect of any liability they may have to child trespassers. In the light of the Commission's detailed assessment of this

issue, the I.F.A.'s proposal would prove unacceptable or, indeed counter-productive. Nevertheless, this appears to be the key issue in so far as the I.F.A. is concerned, given the dangers associated with farms and the tendency of child trespassers to disregard such dangers. The problem is particularly acute in areas adjacent to towns and obviously extends beyond the tourism area. The implications for tourism are, however, serious. I would, therefore, suggest a tightening up of responsibility on to the child or parent or guardian as appropriate."

4.11 These submissions reveal legitimate concerns, but are, perhaps, affected in some instances by a degree of misunderstanding of the relevant legal principles.

4.12 Parents and others in control of children fall under a duty of care as to their welfare. A parent who carelessly permits a child to wander from home to a neighbouring (or, indeed, far-off) property where the child sustains injuries will be held liable in negligence (whether concurrent or otherwise) to that child for those injuries. The occupier of the property where the child sustains those injuries will be liable in negligence only where the occupier acted negligently, and only where the child's presence on the property was so foreseeable that the occupier ought to have conducted himself or herself on the assumption that the child was on the premises.

4.13 The law in relation to occupiers' liability operates no differently than it does in relation to other types of negligence and other torts. Some of the comments we received suggest that those who made them may not have been entirely familiar with the provisions as to concurrent wrongdoers contained in the *Civil Liability Act, 1961.* It is not the case that a child trespasser is obliged to sue *either* the occupier *or* the child trespasser's parent (or parents). It is perfectly possible that liability may be *shared* among the occupier and the parents who are characterised as concurrent wrongdoers. A concurrent wrongdoer who has been obliged to pay damages to the plaintiff in excess of his or her percentage of the total sum due to the plaintiff may sue the other concurrent wrongdoers for the balance, in proportion to their respective shares of liability. The possibility that the impecuniosity of one concurrent wrongdoer will fall on another concurrent wrongdoer is a general feature of the present law of torts.

4.14 However, it can safely be said that few of the parents of those child-trespassers injured in a rural environment who are concurrent wrongdoers, would be a mark for a large award of damages. We can understand that the ability to join a parent is cold comfort to occupiers.

4.15 The Commission is divided on this question. We are united in a wish to be benevolent and caring towards the young. A majority of us, however, does not wish this disposition to thwart the development and encouragement of recreational activity for and by young and old alike. Occupiers such as Coillte, find themselves in a very difficult situation. They are responsible for all State-owned commercial forests and ancillary lands. The forests attract and embrace

an enormous range of recreational activity. Coillte wish to encourage as much access to and through forests as is consistent with the proper harvesting of their trees. Felled and fallen trees and tree-stumps are a notorious source of danger to the unwary and if Coillte have to exercise a reasonable care standard towards child users, their exposure to claims could be such as would lead them to consider denying access to forests. This is already a reality for Coillte.

4.16 Whether or not the rural occupier's perception of the future development of the law is correct, or based on sufficient evidence, it is already affecting his or her behaviour. The courts can at least be said to *tend* to give preferential treatment to children. Is it unreasonable for farmers to fear that they will be perceived in turn as a mark for damages? Their power to exclude is a reality and is being exercised. Their power to fight is diverted by insurance companies who settle. Fear of liability has led and will lead to land being fenced whether the anticipated entrant is a child or an adult recreational user. If occupiers are incorrect in their perceptions, legislating as the majority will propose can only be criticised as being unnecessary. There is no shortage of precedent for legislating "for the avoidance of doubt" and so doing could have significant, beneficial consequences.

4.17 The desire to impose a degree of unsought trusteeship on occupiers in respect of other people's children competes with the desire to open up as much of the countryside as is reasonably possible to recreational use, *including use by children.* An Taisce, who have no particular occupier's interest, are surely correct, in the view of the majority, when they suggest that the principal liability should fall on carers and not on occupiers.

4.18 In view of the above, *a majority of the Commission wish to depart from the provisional recommendation and to recommend that no special exemption be made for trespass or recreational use by children.*

Constitutional Considerations

4.19 The majority would argue that whether the relevant standard of care in a case involving a child is in negligence or in gross negligence, the court could never be prevented from taking the capacity of the plaintiff into account in its findings. The capacity of the plaintiff could be highly relevant to considerations of proximity and foreseeability in individual cases. It cannot be contended that any child plaintiff has a constitutional right to *insist* on a standard of care in ordinary negligence *over and above* the constitutional right based on the child's capacity.

4.20 In the context of the liability of minors *for* the tort of trespass, the Commission has already said that:

> "It must be the obligation of the law to establish a criterion of responsibility for children which fully harmonises with their capacity, no more and no less." (Report on the Liability in Tort of Minors and the

Liability of Parents for Damage Caused by Minors, LRC 17-1985, p.64).

4.21 If, as a matter of policy, the legislature were to decide that recreational users who were children, or indeed, child trespassers, should always be compensated under the negligence standard, in the view of the majority, this additional burden should not be borne by the occupier.

4.22 The President and Commissioner Buckley are of the view that the majority analysis of the constitutional considerations understates the protection afforded to a child's constitutional right to bodily integrity. It is not sufficient for the courts to have regard to a child's relative lack of capacity while exposing that child to a reduced standard of care appropriate only to adult entrants. The common law, reinforced by the Constitution, imposes a wide ranging duty of care on occupiers in regard to children in circumstances where, quite understandably, no duty of care arises in regard to adults. It is essential that this distinction be respected in the formulation of the recreational use exception.

4.23 Indeed there are important constitutional considerations weighing against the validity of a legislative measure which sought to remove compensation from a child trespasser for negligently caused injury. One has only to think of such aspects of the existing law as criminal and contractual liability, as well as liability in tort, to realise that the law constantly differentiates between adults and children, both in terms of framing the liability of children and in terms of prescribing duties towards children. It does so because of the differences in capacity, physical, intellectual and moral, between children and adults.

4.24 A child's constitutional right to bodily integrity and health, for example, are protected by the law of negligence against unjust attack. Legislation cannot curtail these rights on the basis of a supposed consistency of treatment with adults who are better able to appreciate danger and to protect themselves. In their view, the proper approach for the legislation to take is to require occupiers of premises to take due care in relation to children who enter their premises. This is what the law has in practical effect required for many years and what the Supreme Court expressly laid down in the decision of *Purtill v Athlone Urban District Council* [1968] I.R. 205 twenty six years ago. No occupier can legitimately complain at having to compensate a child trespasser for the occupier's own negligence. Section 7 of the *Safety, Health and Welfare at Work Act, 1989 imposes criminal obligations to this effect and confers protection ranging beyond employees.* The President and Mr Buckley would, therefore, recommend an exception for child trespassers on the lines of the Alberta legislation as referred to in paragraph 4.2 of this Report, but for the purpose of this legislation a child should mean a person under 12.

CHAPTER 5: MISCELLANEOUS

Playgrounds

5.1 A topic that gave us considerable difficulty was the liability of occupiers of places, such as playgrounds, *dedicated exclusively to recreational activity.* Should such occupiers be liable in negligence for injury sustained? Such occupiers are inundated with claims for every sort of accident. Ponds and trees will always be potential sources of danger. The nature of the activities promoted in an adventure playground will inevitably lead to injury from time to time. A reasonable analogy would be with participation in contact sports. There must be a voluntary assumption of risk involved.

5.2 *Subject to the following exception regarding facilities, the Commission recommends that the gross negligence standard of occupiers' liability should also apply to entrants to exclusively recreational areas into which entrance is free of charge.*

5.3 *However, occupiers of such areas should be liable in (ordinary) negligence for failure to maintain in safe condition facilities, such as playground equipment, specially constructed for use by the public in such areas.*

5.4 *For the avoidance of doubt, it should also be provided that on lands not exclusively dedicated to recreation, the provision of stiles, gates, footbridges or other facilities should not import any change or increase in the occupier's liability.* This common-sense suggestion was made by the Irish Ramblers Club.

National Monuments

5.5 In the Consultation Paper, para. 4.124, we stated that, unless a right of way already exists, an occupier should have no special or extra duty towards persons entering land to view a national monument. We noted that the occupier

is perfectly entitled to deny access to the monuments. We added:

> "Whether he does so or not, entrants other than lawful visitors to his lands would be trespassers and he would only be liable for gross negligence towards them together with the special duty towards readily foreseeable child-trespassers. If the State wishes to encourage access to national monuments, it should do so by making special arrangements with the occupier e.g. by providing or paying for insurance cover. Once visitors are allowed, the monument and access to it must be made reasonably safe for visitors."

5.6 We took the view that no special legislation was required in the light of the other provisional recommendations we made in the Consultation Paper.

5.7 Among the submissions we received is that of the Office of Public Works. In relation to National Monuments sites the submission first stigmatises as "incorrect" a passage of the Supreme Court judgment in *Clancy v Commissioners of Public Works* [1991] I.L.R.M. 567, which it identifies as being inconsistent with the O.P.W. officials' "recollection" of the evidence in the case. It goes on to express the belief that the legislation should contain specific reference to National Monuments:

> "The legislation should acknowledge that the liability of the Commissioners of Public Works in relation to the condition of a monument should not be equated with that of a hotel or shop owner (as enunciated in the *Clancy* judgment). The duty of the Commissioners should be limited to unusual dangers of which they had actual knowledge, and against which they could reasonably have guarded. Blocking off large areas of national monuments sites is not a reasonable expectation, but warning notices could be provided. In this regard, it might be noted that the Commissioners of Public Works are owners or guardians of about 800 national monuments. A guide service is provided throughout the year at heavily visited sites e.g. Newgrange, Rock of Cashel, Clonmacnoise and, during the tourist season, at about 30 other sites. An admission charge is payable only at sites with a guide service.
>
> The O.P.W. believes that most accidents at national monuments involving adult visitors are caused by carelessness on the part of the visitors, not by a defect in conservation works. In the case of child visitors, most accidents occur through unsupervised playing, particularly at monuments in urban areas. Given the nature of national monuments (i.e. mostly ruined structures), the O.P.W. can only protect itself against some claims by providing palisade fencing (or an alternative) around the entire sites. A more realistic option is for adult visitors to accept responsibility for their own activities, and parents/guardians to be responsible for children.
>
> The suggestion contained in paragraph 4.124 that the State might

consider paying for insurance cover for landowners is not practical. Survey information indicated that there are about 100,000 monument structures in the country in private ownership. Even if the O.P.W. identified a small selection of these sites where it would be desirable to admit the public, and paid the appropriate insurance premium, the current problem would remain in relation to the other sites. Perhaps it could be suggested that individuals should extend their own household insurance to cover the holder (and family) while trespassing/visiting other properties."

5.8 We note also the submission of the Irish Farmers' Association in the context of National Monuments, that where an obligation is placed on a farmer/occupier to receive visitors on property, "any such visitor should have no right of action against a farmer/occupier in respect of injuries suffered during the course of such a visit. However, if any action arises it would be directed against the statutory body."

5.9 In our proposed definition of recreational use, we include use by those who, without payment, enter premises for the purposes of "viewing or enjoying historical, archaeological, scenic or scientific sites." We consider that this approach adequately meets the situation *and we make no special recommendation for National Monuments in addition.*

The Definition Of "Premises" And The Scope Of Occupiers' Liability

5.10 In the Consultation Paper, paras. 4.128 to 4.131, we addressed the question of how "premises" should be defined in setting the parameters of occupiers' liability. We noted that, at common law, the courts adopted a broad interpretation of the concept so as to apply occupiers' liability to cases involving, for example, boats and ships, trains, street cars, portable derricks, aeroplanes, scaffolding, electricity pylons, platforms, ladders, lifts and motor vehicles. We stated (in para. 4.129):

> "The crucial matter, of course, in relation to these instances of liability, concerns the nature of the complaint that the plaintiff makes; if it is in regard to the *condition* of the particular structure, then it is appropriate to deal with the complaint under the principles of occupiers' liability. If it concerns the negligence of the operator - of a car or train, for example, that is a claim that should be dealt with under ordinary negligence principles. The place for drawing this distinction is in the specification of the duty appropriate to occupiers rather than in the definition of 'premises'."

5.11 We went on to express, at para. 4.130, our preference for and, at para. 4.131, tentatively to recommend a definition of "premises", found in section 1 of Ontario's *Occupiers' Liability Act*:

> "'premises' means lands and structures, or either of them, and includes

(a) water,

(b) ships and vessels,

(c) trailers and portable structures designed or used for residence, business or shelter,

(d) trains, railway cars, vehicles and aircraft, except while in operation."

5.12 We debated whether a distinction could properly be drawn between ships and vessels, to which occupiers' liability would attach in all circumstances, and trains, railway cars, vehicles and aircraft, to which occupiers' liability would not attach while they were in operation. We found that it was not possible to answer this question satisfactorily without addressing the broader question of whether it is in fact appropriate to apply occupiers' liability principles to vehicles, large or small. This in turn required us to consider the question of the scope of occupiers' liability: is it to apply merely to the *static condition* of premises and, if not, what *range of activities* should it embrace?

5.13 *Prima facie*, it would appear to be inappropriate to treat an injury from a spring in a car-seat as raising a question of occupiers's liability; the tort of negligence would seem more appropriate. But if, for example, a child trespasser is in a garage or farmyard and interferes with a vehicle that is out of service, it is not easy to see why the principles of occupiers' liability should *not* apply. The fact that the vehicle is a car or tractor capable of motion is irrelevant to such a situation.

5.14 Of course there will be cases falling between the two extremes of motion, on the one hand, and being out of service, on the other. A milk van may be in progress through an estate but have its engine turned off while milk is being delivered to a particular house. To have occupiers' liability principles start and stop with the turn of an ignition switch seems to us unwise and inappropriate.

5.15 It would be unwise, moreover, to ignore the question of the *physical dimension* of the particular vehicle or class of vehicles. Large liners have with good reason been known for generations as "floating hotels". "Jumbo jets" and other large aircraft share a similar quality.

5.16 As regards the question of the proper *scope* of occupiers' liability, the legislation could range from, at one extreme, limiting this distinctive mode of liability to *static conditions* of premises, such as a well or a step in a state of disrepair, for example, to, at the other extreme, attaching liability not only to static conditions but also to every activity that takes place on the property. There are arguments for and against either of these extremes, as well as in respect of intermediate options.

5.17 In favour of restricting occupiers' liability principles to static conditions,

it may be argued that occupiers' liability is distinctively concerned with the occupation of property and that to extend these principles to activities that take place on property is going too far since such activities may not have any necessary connection with the distinct matter of the occupation of property.

5.18 As against this, it may be argued that it would be wrong to confine occupiers' liability to static conditions, since this would require the court to draw artificial distinctions which would incorporate arbitrary policies. The very notion of "static" conditions is of doubtful foundation. Very few occupiers to-day occupy premises whose state or condition is due exclusively to the forces of nature rather than the hand of humankind. In one sense a broken step is a "static" condition but it is also the product of human carelessness. If an occupier places glass on a wall or puts an electric fence in a hedge, is that a "static" condition or an ongoing active effect of a human act?

5.19 Let us consider what are clearly actions rather than "static" conditions, such as haymaking or silage-spreading. Is there any sound principle that would characterise such activities as unrelated to the principles of occupiers' liability? Can it not be argued that certain activities are so integrally connected with the occupation of property that it would make no sense to subject them to a criterion of liability separate from that of occupiers' liability?

5.20 The resolution of this issue naturally depends on the scope of the occupiers' liability principles which we recommend in this Report. If occupiers' liability principles are, by and large, *less* extensive than general negligence principles, then the effect of a broad scope of occupiers' liability principles is to *reduce* the scope of liability for negligence, unless the legislation is to provide that an occupier is to remain liable, on the basis of general negligence principles, in circumstances where he or she would be liable in negligence apart from consideration of his or her liability on the basis of occupation. If, however, the occupiers' liability principles we recommend are neither more nor less than those of general negligence principles, then obviously it will be a matter of indifference how broadly or narrowly the scope of occupiers' liability may be prescribed by the legislation.

5.21 We have considered the implications of these several options and have come to the following conclusions. *As regards the question of the scope of occupiers' liability, we have decided that it should relate only to "static" conditions on the occupier's property and to such activities as are necessarily concerned with the occupation of property.* In other words, we do not recommend that the distinctive rules relating to occupiers' liability which we recommend in this Report should apply to activities that are not *necessarily* connected with the occupation of property. If an occupier decides to be a zoo keeper or a school proprietor, that should be a matter for him or her to determine in the light of the law of negligence (and other tortious liability). He or she should not be subject to a regime of liability applicable to occupiers in general.

5.22 *We recommend that the definition of "premises" should be as follows:*

"lands and structures or either of them, including

(a) *water*;

(b) *ships and vessels*;

(c) *trailers or portable structure designed or used for residence, business or shelter*;

(d) *trains, railway cars, vehicles and aircraft*."

5.23 We are of the view that the deletion of the words "except while in operation" is appropriate to category (d). Unless the activity in respect of which the plaintiff bases his or her claim is one that is *necessarily concerned* with the occupation of the vehicle in question, it will not be subject to the distinctive rules of occupiers' liability.

The Definition Of "Occupier"

5.24 In the Consultation Paper, para. 4.139, we provisionally recommended that the proposed legislation should provide that the term "occupier" means a person exercising such control over the premises that it is proper to impose on that person a duty of care relative to other persons entering thereon, and that, without prejudice to the generality of that definition, an occupier may, in the circumstances of any particular case, be:

(i) a person who is in physical possession of premises; or
(ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises,

and that, for the purpose of the legislation, there may be more than one occupier of the same premises.

5.25 We have reconsidered this provisional recommendation, which was not controversial. We do not wish to amend it in any way and *recommend its inclusion in the legislation.*

Modification And Exclusion Of Liability

5.26 In the Consultation Paper, we examined the question of the extent to which an occupier should be permitted to modify or exclude liability that would otherwise arise under the legislation. We tentatively recommended a provision modelled on section 4(1) of Manitoba's *Occupiers' Liability Act*. This provision would be on the following lines:

"(1) An occupier may, by express agreement or by express stipulation or notice,

(a) extend or increase the statutory duty of care to entrants; or

(b) restrict, modify or deny that duty ... subject to any prohibition or limitation, imposed by this or any other Act of the legislature against or on the restriction, modification or denial of the duty.

(2) No restriction, modification or denial of the statutory duty of care, whether by agreement, stipulation or notice, is valid or binding against any person unless in all the circumstances of the case it is reasonable and, without limiting the circumstances to be considered in any case, in determining the reasonableness of any restriction, modification or denial of the duty, the circumstances to be considered shall include

(a) the relationship between the occupier and the person affected by the restriction, modification or denial;

(b) the injury or damage suffered and the hazard causing it;

(c) the scope of the purported restriction, modification or denial; and

(d) the steps taken to bring the restriction, modification or denial to the attention of the person affected thereby.

(3) Where an occupier restricts, modifies or denies the duty of care, the occupier shall take reasonable steps to bring the restriction, modification or denial to the attention of the person to whom the duty is owed."

5.27 As regards the position of "strangers to the contract" we went on to recommend tentatively that the duty of the occupier under the legislation should not be capable of being restricted or excluded by any contract to which the person to whom the duty is owed is not a party, whether or not the occupier is bound by the contract to permit that person to enter or use the premises. We tentatively recommended that the legislation should *not* contain a provision on the lines of section 3(1) of England's *Occupiers' Liability Act, 1957* which provides that the occupier's duty of care to strangers to the contract:

> "shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty."

5.28 We went on to address the possibility of providing in the legislation that, where the occupier is by contract bound to permit certain strangers to the contract to enter the premises no notice purporting to exclude the occupier's statutory duty to them should be effective. We ultimately came to the conclusion, however, and provisionally recommended, that the better course would be to leave this question to be determined in accordance with the general provision that we had already provisionally proposed regarding the reasonableness of such notices. We took the view that, while it might well be that in *most* cases the court would conclude that a notice relative to such strangers was unreasonable, it seemed wrong for the legislation to insist, in effect, that such a conclusion should be reached in *every* instance.

5.29 *There was general agreement with these recommendations and we adhere to them.*

Voluntary Assumption Of Risk

5.30 We discussed this question in detail in paras 4.146 to 4.188 of the Consultation Paper and will not repeat the discussion here. We provisionally recommended that an occupier should not be under an obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor.

5.31 Contact between the occupier and the recreational user of lands is the exception rather than the rule.

5.32 Section 34 of the *Civil Liability Act, 1961* provides:

> "34.-(1) Where, in an action brought by one person in respect of a wrong committed by any other person, it is proved that the damage suffered by the plaintiff was caused partly by the negligence or want of care of the plaintiff or of one for whose acts he is responsible (in this part called contributory negligence) and partly by the wrong of the defendant, the damages recoverable in respect of the said wrong shall be reduced by such amount as the court thinks just and equitable having regard to the degrees of fault of the plaintiff and defendant: provided that:-
>
> (a) ...
>
> (b) this subsection shall not operate to defeat any defence arising under a contract or the defence that the plaintiff before the act complained of agreed to waive his legal rights in respect of it, whether or not for value; but, subject as aforesaid, the provisions of this subsection shall apply notwithstanding that the

> defendant might, apart from this subsection, have the defence of voluntary assumption of risk."

5.33 As we noted in para. 4.157 of the Consultation Paper,

> "One of the difficulties with the manner in which section 34(1)(b) has been drafted is that a free choice to undertake a particular risk caused by the defendant's negligence must be ignored, and the plaintiff permitted to recover in full, if that choice does not implicate the plaintiff with contributory negligence and there is, in the circumstances of the case, no 'intercourse or communication' between plaintiff and defendant on the issue. The requirement of an agreement between the parties means that a defendant's liability is not affected by the plaintiff's free, but uncommunicated, choice to assume the risk. Of course, the courts may respond to the problem in specific cases by adopting a constricted 'individuated' duty of care to take account of the willingness of the plaintiff to undergo the risk."

5.34 As we also noted in para. 4.160,

> "It seems clear that the notion of voluntary assumption of risk is not generally considered to depend on the 'intercourse or communication' which section 34(1)(b) demands. This explains why the legislation in so many jurisdictions contains a provision dealing with voluntary assumption of risk *in addition* to one relating to contracting out."

5.35 Furthermore, it is questionable whether a provision on the lines of section 34 is appropriate where a different standard of care applies to plaintiff and defendant.

5.36 *A majority of the Commission is in favour of adopting the provisional recommendation as the final one.*

5.37 The President and Commissioner Buckley disagree however with the majority on this point and wish to record the following reasons for their dissent.

5.38 The *Civil Liability Act, 1961* is drafted in such a way as to encompass a wide variety of cases where the threshold of liability of a defendant is higher or lower than that of negligence. It is clear that the defences of contributory negligence and voluntary assumption of risk applied to the law of occupiers' liability between the passage of the 1961 Act and the changes brought about by *Purtill and McNamara* just as they surely continue to do today.

5.39 Equally it is the case that these two defences have application to cases where the defendant is *strictly liable*, without any fault on his or her part. See, for example, the *Animals Act, 1985*. The idea that the defence of voluntary assumption of risk as it has been recast by section 34(1) of the *Civil Liability Act, 1961* should be transformed into a far more lethal instrument simply because "a different standard of care applies to the plaintiff and the defendant" does not find support in the law in this country or in other common law jurisdictions.

5.40 The majority makes no distinction between cases where the defendant occupier owes the entrant a duty of care in negligence and cases where the defendant occupier owes the entrant some lesser duty. Thus, a visitor invited onto the property to confer some economic benefit on the occupier would not be able to call in aid section 34(1)(b). The reason he or she could not do so, apparently, is because the occupier owes a lower standard of care to some other entrant such as trespassers. This would seem hard to justify. If the majority proposal were restricted to cases where the occupier owed a lower standard of care to the entrant, this would not appear to improve matters greatly.

5.41 The defence of voluntary assumption of risk expanded, as the majority wishes, to cases of *uncommunicated* freely chosen exposure to the occupiers' gross negligence, would mean in practice that a grossly negligent occupier who injured a recreational user would very often be relieved of any liability to the recreational user, in spite of his or her gross negligence. Once proof of communication is dispensed with, any recreational user would be in grave danger of being denied any compensation because he or she chose to use the property knowing of the risk that the occupier might be grossly negligent.

Liability For Independent Contractors

5.42 In the Consultation Paper, at para. 4.200, we provisionally recommended that the legislation should contain a provision drafted on the lines of section 6(1) of Ontario's *Occupiers' Liability Act*, to the following effect:

> "Where damage to any person or his property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken."

5.43 We have re-examined this provisional recommendation, which received general support. We adhere to it and *so recommend.*

Occupiers' Liability For Attacks By Dogs

5.44 In the Consultation Paper, at paras. 4.201 to 4.202, we examined the interrelationship between occupiers' liability and civil liability for injuries resulting from attacks by dogs. Under section 21(3) of the *Control of Dogs Act, 1986,* liability for an attack by a dog on a trespasser must be determined only in accordance with negligence principles. We noted, in para. 4.203, that if our provisional proposals were acceptable with their restriction of liability relative to trespassers, it appeared to follow that section 21(3) should be amended to bring the duty which it prescribed into line with the restricted liability envisaged in the Report, namely, a duty not to be guilty of gross negligence. In the light of our recommendation in this Report in regard to recreational users, the amendment would have to incorporate them also. *We so recommend.*

Preservation Of Higher Obligations

5.45 In the Consultation Paper, at para. 4.208, we recommended provisionally the inclusion of a provision, drafted on the lines of section 9 of Ontario's *Occupiers' Liability Act*, as follows:

> "(1) Nothing in this Act relieves an occupier of premises in any particular case from any higher liability or any duty to show a higher standard of care that in that case is incumbent on the occupier by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons including, but without restricting the generality of the foregoing, the obligations of,
>
> (a) innkeepers, subject to the *Innkeepers Act*;
>
> (b) common carriers;
>
> (c) bailees.
>
> (2) Nothing in this Act shall be construed to affect the rights, duties and liabilities resulting from an employer and employee relationship where it exists."

5.46 This recommendation was generally welcomed. Having reconsidered it we adhere to it and *recommend that it be incorporated into the legislation.*

CHAPTER 6: SUMMARY OF RECOMMENDATIONS

1. Legislation should provide for two classes of entrant on lands or premises namely, visitors and trespassers.

2. "Premises" should be defined as meaning lands and structures, or either of them, and includes:

   (a) water;

   (b) ships and vessels;

   (c) trailers and portable structures designed or used for residence, business or shelter;

   (d) trains, railway cars, vehicles and aircrafts.

3. The term "occupier" should be defined as a person exercising such control over the premises that it is proper to impose on that person a duty of care relative to other persons entering thereon. Without prejudice to the generality of that definition, an occupier may, in the circumstances of any particular case, be:

   (i) a person who is in physical possession of premises, or

   (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises.

   For the purpose of the legislation, there may be more than one occupier

of the same premises.

4. The term "visitor" should be defined as:

   (i) an entrant as of right, or

   (ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract, or

   (iii) any other person whose presence on premises is lawful, or

   (iv) a person whose presence on premises becomes unlawful after entry on those premises and who is taking reasonable steps to leave those premises.

5. The term "trespasser" should be defined as:

   "an entrant who is not a visitor."

6. The scope of occupiers' liability prescribed by the legislation should relate only to *static* conditions on the occupier's property and to such activities as are necessarily concerned with the occupation of property.

7. Except to the extent that it may be varied by the exception to be made for recreational use, there should be a common duty of care to all visitors.

8. There should be a provision to the effect that the circumstances relevant to determining whether the occupier has discharged his or her duty of care include the degree of care that would ordinarily be looked for in such a visitor, so that (for example) in proper cases an occupier may expect that a person, in the exercise of his or her calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves that person free to do so. The legislation should also provide that, where damage is caused to a visitor by a danger of which the visitor has 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 that visitor to be reasonably safe.

9. The duty of an occupier towards a trespasser should be a duty not to injure the trespasser intentionally or to act with gross negligence towards him or her.

10. Provision should be made for a reduction in occupier's liability, to liability for intentional injury or gross negligence only, towards recreational users of land. The Report sets out, in general terms,

definitions of the appropriate lands and of use. It also indicates differences in approach to the scope of the exception. Viewing of National Monuments would be a "recreational use".

11. There should be no special exemption for trespass or recreational use by children.

12. The legislation should contain a provision modelled on section 4(1) of Manitoba's *Occupiers' Liability Act*, on the following lines:

(1) An occupier may, by express agreement or by express stipulation or notice,

(a) extend or increase the statutory duty of care to entrants; or

(b) restrict, modify or deny that duty ... subject to any prohibition or limitation imposed by this or any other Act of the legislature against or on the restriction, modification or denial of the duty.

(2) No restriction, modification or denial of the statutory duty of care, whether by agreement, stipulation or notice, is valid or binding against any person unless in all the circumstances of the case it is reasonable and, without limiting the circumstances to be considered in any case, in determining the reasonableness of any restriction, modification or denial of the duty, the circumstances to be considered shall include:

(a) the relationship between the occupier and the person affected by the restriction, modification or denial;

(b) the injury or damage suffered and the hazard causing it;

(c) the scope of the purported restriction, modification or denial; and

(d) the steps taken to bring the restriction, modification or denial to the attention of the person affected thereby.

(3) Where an occupier restricts, modifies or denies the duty of care, the occupier shall take reasonable steps to bring the restriction, modification or denial to the attention of the person to whom the duty is owed.

13. As regards the position of "strangers to the contract", the duty of the occupier under the legislation should not be capable of being restricted

or excluded by any contract to which the person to whom the duty is owed is not a party, whether or not the occupier is bound by the contract to permit that person to enter or use the premises. Protection of these strangers should not be extended as it was by section 3(1) of England's legislation of 1957.

14. As to the question of the relationship between the proposed incapacity of the occupier to exclude or restrict by contract liability to strangers to the contract and the power to achieve the same goal by notice, this question should be determined in accordance with the general provisions proposed regarding the reasonableness of such notices.

15. The legislation should include a provision on the following lines:

> "Where damage to any person or property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken."

16. The legislation should include a provision, preserving the occupiers' higher obligations, drafted on the following lines:

> "(1) Nothing in this Act relieves an occupier of premises in any particular case from any higher liability or any duty to show a higher standard of care that in that case is incumbent on the occupier by virtue of any enactment or rule of law imposing special liability or standards of care on particular classes of persons including, but without restricting the generality of the foregoing, the obligations of
>
> (a) hotel proprietors;
>
> (b) common carriers;
>
> (c) bailees.
>
> (2) Nothing in this Act shall be construed to affect the rights, duties and liabilities resulting from an employer and employee's relationship where it exists."

17. An occupier should not be under an obligation to discharge the common

duty of care to a visitor in respect of risks willingly accepted by the visitor.

18. Section 21(3) of the *Control of Dogs' Act, 1986* should be amended to bring the duty therein prescribed in line with the restricted liability envisaged in the Report relative to trespassers and recreational users.

19. The gross negligence standard of occupier's liability should in general apply to entrants into exclusively recreational areas into which entrance is free of charge. Occupiers of such areas should, however, be liable in (ordinary) negligence for failure to maintain in safe condition facilities, such as playground equipment, specially constructed for use by the public in such areas.

20. For the avoidance of doubt, it should also be provided that on lands not exclusively dedicated to recreation, the provision of stiles, gates, footbridges or other facilities should not import any change or increase in the occupier's liability.

APPENDIX A

List Of People From Whom Submissions Were Received

An Oige (Irish Youth Hostel Association)
An Taisce
Association for Adventure Sports
Cappanalea (Outdoor Education Centre)
Coillte (Irish Forestry Board)
Cospoir (Long Distance Walking Committee)
Irish Creamery Milk Suppliers Association
Irish Farmers' Association (Dublin and Limerick Branches)
Irish Insurance Federation
Irish Ramblers Club
Michael Collins Associates, Architects
Mountaineering Council of Ireland
National Coarse Fishing Federation of Ireland
Office of Public Works (National Monuments' Division)
Professor Bryan McMahon
United Hunt Club

APPENDIX B

List Of People Who Attended Seminar On Friday, 19th November 1993

Denis Bergin, Insurance Institute of Ireland
Professor William Binchy, Trinity College Dublin
Brian Brogan, Macra na Feirme
Bob Browne, Department of Equality and Law Reform
Gerry Burke, Office of Public Works
David Butler, Irish Farmers' Association (Dublin Branch)
Brian Byrne, Chief State Solicitor's Office
Marie Byrne, Meath County Council
Paul Byrne, Coillte
Michael Carroll, Irish Ramblers Club
Michael Collins, Architect
Nicholas Comyn, United Hunt Club
Donal Dowd, Cappanalea Outdoor Education Centre
Donal Enright, The National Sports Council
Noel Gaughran, University College Dublin
Michael Gowran, Bord Failte
Carmel Harmon, Irish Countrywomen's Association
Michael Heffernan, Irish Farmers' Association (Dublin Branch)
Bill Holohan, Catholic Boys Scouts of Ireland
Mike Kemp, Irish Insurance Federation
Elma Lynch, Incorporated Law Society
Charles Lysaght, Barrister-at-Law
Fionnuala McDonnell, Irish Ramblers Club
Fergal McKnight, Gaelic Athletic Association
Donal Murphy, Irish Creamery Milk Suppliers Association (Limerick)
Sadie Murphy, Irish Countrywomen's Association
Gerry Murray, Office of Public Works
Eoin O'Dell, Trinity College Dublin
Donal O'Neill, Dunlaoire/Rathdrum County Council (Wicklow)
Regina Terry, Department of Equality and Law Reform
Donal Thompson, Irish Farmers Association (Limerick Branch)

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LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (Dec 1976) (Prl. 5984) **[out of print] [photocopy available]** [10p Net]

Working Paper No. 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977) [£ 1.50 Net]

Working Paper No. 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (Nov 1977) **[out of print] [photocopy available]** [£ 1.00 Net]

Working Paper No. 3-1977, Civil Liability for Animals (Nov 1977) [£ 2.50 Net]

First (Annual) Report (1977) (Prl. 6961) [40p Net]

Working Paper No. 4-1978, The Law Relating to Breach of Promise of Marriage (Nov 1978) [£ 1.00 Net]

Working Paper No. 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harbouring of a Spouse (Dec 1978) **[out of print] [photocopy available]** [£ 1.00 Net]

Working Paper No. 6-1979, The Law Relating to Seduction and the Enticement and Harbouring of a Child (Feb 1979) [£ 1.50 Net]

Working Paper No. 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979) [£ 1.00 Net]

Working Paper No. 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (Dec 1979) [£ 1.50 Net]

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First Report on Family Law - Criminal Conversation, Enticement and Harbouring of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1981) (March 1981) [£ 2.00 Net]

Working Paper No. 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (Sep 1981) [£ 1.75 Net]

Fourth (Annual) Report (1981) (Pl. 742) [75p Net]

Report on Civil Liability for Animals (LRC 2-1982) (May 1982) [£ 1.00 Net]

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Fifth (Annual) Report (1982) (Pl. 1795) [75p Net]

Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983) [£ 1.50 Net]

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Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (Dec 1983) [£ 1.50 Net]

Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (Dec 1983) [£ 3.00 Net]

Sixth (Annual) Report (1983) (Pl. 2622) [£ 1.00 Net]

Report on Nullity of Marriage (LRC 9-1984 (Oct 1984) [£ 3.50 Net]

Working Paper No. 11-1984, Recognition of Foreign Divorces and Legal Separations (Oct 1984) [£ 2.00 Net]

Seventh (Annual) Report (1984) (Pl. 3313) [£ 1.00 Net]

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985) [£ 1.00 Net]

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Eighth (Annual) Report (1985) (Pl. 4281) [£ 1.00 Net]

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Consultation Paper on Rape (Dec 1987) [£ 6.00 Net]

Report on the Service of Documents Abroad re Civil Proceedings - the Hague Convention (LRC 22-1987) (Dec 1987) [£ 2.00 Net]

Report on Receiving Stolen Property (LRC 23-1987) (Dec 1987) [£ 7.00 Net]

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Consultation Paper on the Civil Law of Defamation (March 1991) [£20.00 Net]

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Report on The Crime of Libel (LRC 41-1991) (December 1991) [£ 4.00 Net]

Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992) (May 1992) [£ 8.00 Net]

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Consultation Paper on Family Courts (March 1994) [£10.00 Net]