



Occupiers Liability Act 1984

TREE OWNERSHIP: LEGAL CONSIDERATIONS, LIABILITY & INSURANCE

In the UK, the occupier of a site has a duty of care to take reasonable steps to prevent or minimise the risk of personal injury or damage to property arising from the presence of any tree on the site, or from its breakage or uprooting. This duty is defined in Law, in particular by the Occupier's Liability Act (1957 and 1984) [207, 208] in the case of England and Wales. The earlier Act concerns the duty of care which occupiers have towards their visitors, while the later Act concerns their duty to other persons. How to Avoid Liability:

1. TREE INSPECTIONS

The law says you should inspect trees on your land at least once a year. You should also inspect them immediately if you think trees are dangerous (e.g. after a storm). The purpose of inspections is to determine whether a tree could foreseeably cause harm by virtue of its size and physical condition. Signs that may help to recognise hazardous trees include:

Fungal fruiting bodies at the tree base or on the tree stem may indicate decay.

Soil cracks and heaving ground at the tree base.

Abrupt bends resulting from past pruning may indicate a weakness.

Tight or weak 'V' shaped forks.

Broken branches.

Cankers causing weakness.

Loose bark.

Damaged roots.

Basal/stem/branch cavities will probably indicate decay.

Crown dieback.

Foliage small, sparse or pale.

Tree leaf cover flushes late, or early leaf fall.

The Courts recognise that generally people do not have the expertise to look at symptoms and decide that a tree may be unsafe. It is therefore accepted that the occupier's duty of care to inspect trees can be fulfilled by employing a specialist to do this work. For insurance purposes written records of all such advice, or action taken on trees should be retained.

2. REMEDIAL WORKS

As long as you take reasonable steps to inspect trees and to carry out appropriate remedial action, if an accident does occur you will have a basis for demonstrating that you have not failed in your duty of care. It is very important you can demonstrate that you have a routine proactive survey process in place, if a tree fails and causes damage to a third party.

NO SYSTEM, NO DEFENSE IN COURT.

Before carrying out any work on trees it is advisable to check with the Local Planning Authority to ensure that the trees are not subject to a Tree Preservation Order (T.P.O) or within a Conservation Area. This would prevent any work on trees without the written consent from the Local Planning Authority. Under UK law, an occupier who fails to carry out remedial works to prevent a risk of harm to people or property can be empowered to carry out the work either through a Court Injunction or through a notice served on the occupier by the Local Authority under the Local Government (Miscellaneous Provisions) Act or Highways Act.

3. INSURANCE

Tree owners should ensure that their insurance policy specifically covers them against claims



on persons or property arising from trees. Tree owners should also check with their insurers to ensure that they have adequate insurance that is appropriate to their trees, land and its use.

