

Topic 6: Review

1. Misrepresentation:

Jane buys painting from Harry, thinking that it is by famous Victorian artist. It's fake. Harry told her that painting was by this artist, but he also told her that he did not know much about art and bought because he thought it looked nice. Jane got her own expert to examine painting and only decided to buy after that. Can Jane sue Harry for misrepresentation?

No she cannot. Jane did not rely on Harry's statement, as she had her own assessment done of the painting.

2. Mistake vs. Misrepresentation:

Monday – Alex sells car to rogue, Bob, who pays with stolen cheque. Alex takes cheque because Bob produces false identification.

Tuesday – Bob sells car to Charles, innocent third party, who pays reasonable price for car.

Wednesday – Alex's bank informs him that Bob's cheque has bounced, Alex immediately contacts local police.

Mistake – claim can claim for unilateral mistake, because mistake about identity, e.g. *Lewis v. Averay*, making contract void.

Misrepresentation – fraudulent misrepresentation, making contract voidable. Claim for damages, can't claim for rescission.

3. Illegality:

Paul employed by X. Given contract in which he agreed he would never tell anyone any of the secret processes used by X. Paul considering leaving company, setting up own business using processes.

Contract void at common law unless it is shown to be reasonable.

4. Defective Contracts:

Contract with accountant to help client dodge taxes.

Contract void for illegality, unenforceable.

Contract for the sale of Joe's computer to Jenny, who was falsely told by Joe that it operates Apple software.

Voidable (rescission) for fraudulent misrepresentation.

Contract for barn full of hay which burnt down prior to contract agreed.

Common mistake as to the existence of goods, s.6 of SGA.

Contract for patient to buy doctors car.

Voidable for undue influence, as is a fiduciary relationship.

Topic 7: Law of Contract V – Discharge & Remedies

There are 4 ways contractual obligations may be discharged: performance, agreement, frustration, or breach of a condition. If a contract is breached, injured party may seek remedies for the damage they have suffered.

Performance

Parties to a bilateral contract must fully carry out what they agreed.

Cutter v. Powell (1795): C agreed to serve on ship. He died 2 weeks before end of 2-month journey. Widow not entitled to claim any payment because he had not fully performed what he was contracted to do.

There are some exceptions to this rule:

1. **Severable / divisible contracts:** Ritchie v. Atkinson (1808): Captain agreed to carry cargo of hemp at £5/ton, but only carried half agreed cargo. Held that still entitled to payment, as price expressed per ton.
2. **Substantial performance:** If claimant substantially performed, they can claim, must be close to full performance. Hoenig v. Isaacs (1952) and **Bolton v. Mahadeva (1972)**: First case; decorate flat for £750, defects cost £55, so held that amounted to substantial performance. But in Bolton case, installed heating for £560, but defects cost £179. Held that not amounted to substantial performance.
3. **Acceptance of partial performance:** Other party accepts, but must be freely accepted (voluntarily).
4. **Prevention of performance:** If one party is prevented from fully performing obligations, they may be entitled to quantum meruit payment for work completed (for as much as if deservied). **Manché v. Colburn (1831)**: P agreed to write book, but series cancelled before completion. Held that claimant was entitled to payment for work already carried out.

Agreement

An agreement to abandon a contract must have accord and satisfaction. This is agreement and consideration to end contract. Easy to prove if neither party has performed their obligations.

- Bilateral discharge: if contract still wholly or partially executory, each party is giving up their rights.
- Unilateral discharge: if one party has completely performed and the other party wants to be released from their obligations, they must provide something of value in return.

Health & Safety at Work

Two possible rights of action may arise if an employee is injured at work:

- For breach of statutory duty (CRIMINAL)
- For breach of the common-law duty of care (CIVIL)

Breach of Statutory Duty (CRIMINAL)

Health & Safety at Work Act 1974 imposes general duties on employers and employees. This created the health and safety executive which is an enabling act to allow bodies to pass delegated legislation. Some duties under this act include ensuring safety and welfare as far as is reasonably practicable, ensuring protection for independent contractors, and also contains employee duties.

Common Law Health & Safety (CIVIL)

Implied terms in employment contract requiring employer to take reasonable care of the employee. Employee will bring claim under tort of negligence. Claimant must then act upon and prove the 3-stage test (talked about in tort).

Termination of Employment

There are 3 types of dismissal when employment contract brought to an end by the employer:

1. Wrongful Dismissal:

- a. Where the employee is terminated without the appropriate notice (usually 1 month).
- b. Summary dismissal may be justified in cases of serious gross misconduct.
- c. Remedy usually lost earnings payable during notice period.
- d. Minimum notice periods outlined in **Employment Rights Act (1996)**, 1m-2y: 1 week; 2y-12y: 1 week for every continuous year of employment; 12y+: 12 weeks.

2. Unfair Dismissal:

- a. Statutory claim where employee was dismissed unfairly.
- b. Employee must claim within 3 months, have been employed for at least 2 years and prove that they have been dismissed.
- c. Employer then must then disprove unfairness.

A dismissal could be an actual dismissal (expressly terminated), when a fixed term contract ends and is not renewed, or constructive dismissal (forced to leave their job unfairly).

A dismissal is only fair in certain circumstances: when the employee has a lack of capability, bad conduct, redundancy, statutory restriction (law) or some other substantial reason.

Certain dismissals are automatically unfair with no qualifying period, e.g. grounds of pregnancy, for carrying out health and safety duties, for being a union representative or for trying to enforce a relevant statutory right.

Strict Liability vs. Fault Liability

- In tort of negligence, liability based on fault: if defendant's behaviour doesn't meet an objective standard.
- For claim under CPA, liability is strict, not based on fault.
- Claimant under CPA must only prove product defective and that they have suffered some harm.
- No need to prove how / why product is defective.

Defences under the CPA (to defendants)

- Defect caused by compliance with UK or EU legislation: unavoidable as they're only complying with the law.
- Product was not supplied in the course of business, e.g. given away or lent means the defendant was not liable.
- Defect did not exist at the relevant time – when product placed on market.

Main defence is the 'state of the art/developments risk' – that technical knowledge at the time was not such that a producer might have been expected to discover it.

Abouzaid v. Mothercare (2001): Claimant (aged 12) was blinded by defendant's product. Elastic flicked in child's eye, and blinded him. Held that Mothercare was held liable even though this damage could not have been reasonably foreseen.

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Topic 10: Law of Tort II

Negligent Misstatement

A negligent misstatement is a claim which arises when one party makes a statement which is considered to be negligent and that the defendant relied upon.

Hedley Byrne v. Heller & Partners (1963): Merchant bankers gave negligent credit reference to claimant, the ad agents claimed against the banker. Held that Heller & Partners were not liable as they had disclaimed liability – BUT this recognised the potential for liability, there could be a duty of care for negligent misstatements.

There can be a duty of care in certain situations – if a special relationship is involved. To constitute a special relationship, must show that:

- The claimant relied on the defendant's skill and judgement.
- The defendant knew, or reasonably should have known, that that claimant was relying on him, and
- It was reasonable in the circumstances for the claimant to rely on the defendant. (Usually a professional relationship where they are advising their client)

Caparo Industries v. Dickman (1990): Defendant auditors reported Fidelity PLC made profit, but had actually made a substantial loss. Claimant used the report as a basis for takeover. Held that the defendant was not liable because their duty of care was owed to shareholders as a whole, not the individual shareholders seeking to increase their shares. Relationship wasn't special enough.

Passing Off

Unregistered trademarks can only be protected by the common-law tort of passing off. The aim is to protect the goodwill of a business, can be committed by:

- Marketing goods under the claimant's trade name.
- Illicitly using the claimant's trade mark or a version of it.
- Imitating the appearance or presentation of the claimant's goods.

United Biscuits UK v. Asda Stores (1997): Asda had an own brand penguin. Held that passing off claim was successful, injunction granted as the products were too similar.

Topic 10: Review

1. Negligent Misstatement (Problem Question):

Margaret, an accountant, is returning home from her office when she bumps into an old friend, Zoe, in the supermarket. During the course of their conversation, Zoe tells Margaret that she has just inherited a large sum of money and is looking for an investment opportunity. Margaret mentions that one of her clients, Wobbly Ltd is looking for financial backing and might make a good investment for Zoe. Margaret remembers that she has a copy of Wobbly's accounts in her bag and gives them to Zoe. After looking at these accounts, Zoe invests £5000 into Wobbly Ltd, but loses everything when Wobbly goes into liquidation four months later. In fact, Margaret has prepared the accounts negligently and they were not an accurate reflection of Wobbly's precarious finances. Advise Zoe.

IRAC RULE:

Issue: Negligent Misstatement claim.

Rules: Is there a special relationship involved? Use *Hedley Byrne v. Heller* rules to decide whether Zoe was relying on the statement? *Caparo Industries v. Dickman*.

Analysis: No special relationship involved, it's not a professional context, is only social.

Conclusion: Margaret unlikely to be held liable for negligent misstatement.

2. Passing Off:

Which of these does NOT amount to passing off?

Copying trademark of a rival product; **Passing off.**

Copying packaging of a rival product; **Passing off.**

Using same cartoon character / brand as rival product; **Passing off.**

Launching new product intended to rival existing product; **Not Passing off.**

3. Vicarious Liability:

Reg is bus driver, and his employer's rules state he must not race other bus drivers. However, he does so and injures Tabitha who is crossing the road.

Is Reg acting in the course of his employment? **Yes.**

Is Reg liable to Tabitha in tort? **Yes.**

Is Reg's employer vicariously liable for his actions? **Yes.**

What difference would it make if Tabitha hadn't looked for traffic before stepping out into the road? **May be able to argue partial defence of contributory negligence.**