

THE LAW OF TORT

'**Tort**' is the French word for 'wrong', used to distinguish civil wrongs from crimes. Tort can be distinguished from contract law where liability is strict. To establish liability for tort, fault must be proved. As part of civil law, the aim is to compensate the injured party, not to punish the wrongdoer. Examples of torts include, breach of statutory duty, conversion, defamation, malfeasance in public office, negligence, nuisance, passing off, trespass.

Liability in Tort: arises from the breach of duty primarily fixed by law - a duty owed towards people generally.

By contrast, liability in Contract is concerned with the enforcement of promises/voluntary obligations assumed by one party at the request of another who is providing some Form of payment, i.e. consideration, for it.

Liability in Tort is primarily based on fault. (The claimant has to prove that the defendant acted intentionally or at least without reasonable care or foresight).

Strict Liability, (no need to prove fault e.g. in Contract law) is a rare occurrence in the law of tort but there are exceptions.

Vicarious Liability: The principle of *vicarious liability* means that one person is responsible for another person's torts, e.g. an employer is vicariously liable for torts carried out by an employee during the course of his/her employment.

Types of Harm: - suffered as a result of tort(s) are most commonly physical and may relate to a person, their land or their goods. However, purely economic loss or pure nervous shock, (previously restricted to actions in contract law), may give rise to liability in tort -see **Hedley Byrne v. Heller [1964] AC 465** and **Alcock v. CC South Yorkshire Police [1992] 1 AC 310**. Personal and business reputation, are also protected by the law of tort.

Quantification of Damages: - to put the victim in the position they would be in if the tort had not occurred.

Remedies: - The most common remedy is **damages** (compensation) but other remedies, i.e. **injunctions** (prohibitory and mandatory) and **self-help**, are also available.

Limitation Period: -various from 3 years upwards and may be extended at discretion of the court - **Limitation Act 1980**

THE TORT OF NEGLIGENCE:

Donoghue v. Stevenson: 1932 AC 362 HL (snail in the ginger beer bottle) **Note:** "tort" means a civil wrong.

Liability in negligence depends on the claimant proving three points:-

- [1] The defendant owed them a **duty of care**.
- [2] The defendant is in **breach** of that duty owed.
- [3] The claimant suffered **damage as a result** of the breach.

What The Case Established:-

[a] **A narrow rule-** a manufacturer may be liable to the ultimate consumer even where there is no contractual liability.

[b] **A broad rule -** "The Neighbour Principle."

Lord Atkin - "neighbours" were defined as "persons so closely and directly affected by my act that I ought to have them in my contemplation as being so affected when I am directing my mind to the acts/omissions called in question.

Proximity? - Lord Atkin stressed that a duty ceased to exist once the product passed out of the control of the manufacturer e.g. where there is an unreasonable time lag before use; third party interference with the product; abuse by the claimant themselves or use by the claimant of a product with a defect of which they should have been aware.

[c] **"The categories of negligence are never closed."** There is no finite list of duty situations. As social, economic and technological changes take place new duty situations arise. Where personal injuries are concerned there is likely to be greater flexibility. Since 1932 liability has arisen in relation to many sorts of goods and services, with the extension of liability from manufacturers to repairers, assemblers, builders and others and some have been placed on a statutory basis.

THE CONCEPT OF DUTY OF CARE

Note: Judges favour pure economic loss as a head of damage in contract *not* in negligence. Where the loss or harm consists of pure economic loss or pure nervous shock there has been greater judicial reluctance to acknowledge a duty. This is true of liability for mere statements compared to acts/omissions. However

Hedley-Byrne v. Heller & Co Ltd: 1963 3 WLR 101 HL (bank reference)

Gave rise to duty of care for negligent statements causing pure economic loss subject to a restricted test of proximity.

Neighbours were restricted in these circumstances to those with whom the defendant was in a "special relationship", giving rise to reasonable reliance by the representee. Such a relationship requires maker with relevant skill or knowledge; voluntary assumption of responsibility by the maker; reasonable reliance on the statement by the recipient.

Caparo v. Dickman: 1990 2 WLR 358 HL (reliance on audited accounts. Auditor's liability? To whom?)

Imposed a more stringent test of liability on than the **Hedley-Byrne** principle so the test for existence of a Duty of Care emerging from **Murphy v. Brentwood**; **Caparo v. Dickman** etc is a three part one:

- [i] Harm must be a "**reasonably foreseeable**" result of the defendant's conduct;
- [ii] A relationship of "**proximity**" must exist between the defendant and the claimant;
- [iii] It must be "**just and reasonable**" to impose the duty. (Public interest is relevant here)

Lord Oliver stated that for a special relationship under the Hedley Byrne principle to exist the defendant must know [not merely foresee, the purpose to which the claimant would put the information; the identity of the claimant as an individual member of an ascertainable class; that the claimant will rely on it without taking further advice.

NOTE: Lord Oliver said that **Smith v. Bush** represented the outer limits of **Hedley Byrne** liability: unlike **Caparo** the defendants were well aware of the identity of the claimant, knew exactly why the advice was required, and that reliance would reasonably be placed on it by an unqualified lay person.