

Terms of A Contract

- **Expressed Terms** - these are terms expressed in writing. However, in most contracts, it is not possible to write absolutely everything down. To be practical in business, parties need to be able to take some things for granted.
- **Implied Terms** - Implied terms are things affecting the validity of a contract that can reasonably be expected to be in effect without being written down.
- **Conditions**
- **Warranties**

What is a Tort?

- Is the name given in English law to a civil wrong that is not a breach of contract
- Unlike a contract, for a tort to be established, there does not need to be any prior agreement between the people involved, however, the circumstances must be of such that the law will recognize the defendants conduct as an actionable wrong

Tortious Actions

Common torts include:

- negligence
- Nuisance (for example, trespass to land)
- trespass to the person (including assault, battery, and false imprisonment)
- defamation of character (slander and libel)
- **In maritime law, examples of torts are grounding, stranding, pollution, collision (unit 9 will look on marine pollution in details)**

Remoteness of Damage and Duty of Care

In order to understand this principle we have to consider two expressions **reasonable foreseeability** and **reasonable care**.

Case—*Polemis vs. Furness* (1921):

- In this case the servants of the charterers of a ship were unloading cargo from its hold and during the course of the operations they carelessly allowed a plank to drop into that area. There was a quantity of explosive vapour in the hold and an explosion occurred because a metal binding on the plank struck a metal fitting of the ship and caused a spark. Fire arose from this and the vessel was destroyed.
- The charterers were held liable for the loss of the ship even though as the court agreed a reasonable man would not have foreseen the catastrophic consequence of a minor piece of carelessness.
- The test laid down by the courts in this case was that if a reasonable man would have foreseen *any* damage to the plaintiff as likely to result from his act, he was liable for *all* the direct consequences suffered by the plaintiff, whether these were reasonably foreseeable or not.

Nuisance

Nuisance is that branch of law most closely concerned with protection of the environment. Typical nuisance actions concern pollution by oil or noxious fumes, interference with leisure activities, offensive smells from premises used for keeping animals, and noise from industrial installations. Other areas of nuisance include obstruction of the highway or access thereto, and the protection of private rights to the enjoyment of land. Statutes that are designed to control nuisance include Acts such as the Jamaican Act against night noises.

Public and Private nuisance

Nuisance is divided into public and private, although the same conduct may give rise to both. A public nuisance is a crime, while a private nuisance is a tort.

- **A public nuisance** is one that materially affects the reasonable convenience of life of a class of people who come within the neighbourhood or sphere of its operation. The question of whether the number of persons affected is sufficient to constitute a class, is one of fact in every case. Public nuisance include carrying on an offensive trade, keeping a disorderly house, selling food unfit for human consumption; and obstructing public highways.
- **A private nuisance** may be described as unlawful interference with a person's use or enjoyment of land or some right over or in connection with it.

Offences of Strict Liability

Under strict liability, a person may be found liable for damaging occurrences even though they have not been negligent.

- **Example case – Rylands vs. Fletcher (1865)**
- In this case, the defendants wished to construct a reservoir on their land for use in conjunction with their mill. They employed independent contractors who were admittedly incompetent to do the work. When the reservoir was filled, due to negligence of the contractors, water flowed through mine shafts on the defendants' land. These appeared to have been filled with earth, but were in fact connected with the mines owned by and underneath the land of the plaintiff (who was the defendants' neighbour). There was no direct negligence on the part of the defendants. The plaintiff brought an action in respect of the damage suffered as a result of the flooding of his mine. He succeeded.
- The court held that any person who, for his own purposes, brings, collects, and keeps anything likely to do mischief, he must keep it in at his peril. If he does not and it escapes, he is *prima facie* answerable for the damage that is a natural consequence of its escape. He can excuse himself only by showing that the escape was owing to the plaintiff's default or an act of God.

What May be Considered as Mens Rea

The following mental attitudes or states may be considered intention at law:

- recklessness
- negligence
- blameless inadvertence
- transferred malice.

Mistake of the Law

Ignorance of the law is no excuse when a crime is committed. However, mistaken views of law may negate (cancel out) *mens rea*.

Example 7:

- In *Roberts vs. Inverness Local Authority* (1889), D was acquitted of moving a cow from one district to another without a licence because he believed (incorrectly) the two districts had been amalgamated into one.