

CHAPTER 12 PRODUCT LIABILITY, DEFECTIVE PREMISES, INTERFERENCE WITH LAND, AND DEFENCES

After studying this chapter students should be able to:

DISTINGUISH BETWEEN AN ACTION FOR DEFECTIVE PRODUCTS TAKEN IN THE TORT OF NEGLIGENCE AND AN ACTION UNDER THE CONSUMER PROTECTION ACT 1987

- In the tort of negligence, the claimant must prove the defendant owed a duty of care, the defendant broke the duty of care, and the claimant suffered loss or damage as a result of the breach.
- Under the Consumer Protection Act 1987, the claimant must show a causal link between the defendant's actions and any damage suffered wholly or partly by a defect in a product.

IDENTIFY THE ELEMENTS NECESSARY FOR A CLAIM UNDER THE CONSUMER PROTECTION ACT 1987

- A claim can be brought if a person has been injured or their private property has been damaged by a defective product.
- Liability is on the 'producer' of the defective product.
- The claimant must prove that there was a defect in the product.
- A claimant can recover compensation for death or personal injury and damage to other property valued at over £275.
- Defences are provided by the Act.

EXPLAIN THE LIABILITY OF OCCUPIERS TO VISITORS AND TRESPASSERS

- Under the Occupiers' Liability Act 1957, an occupier must take such care as is reasonable, in all the circumstances of the case, to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there.
- The 1957 Act covers liability for death, personal injury, and property damage.
- Under the Occupiers' Liability Act 1984, an occupier's liability towards trespassers is to take such care as is reasonable in all the circumstances of the case to see that the trespasser does not suffer injury on the premises because of the state of danger of the premises.
- The 1984 Act covers liability for death or personal injury.

OUTLINE LIABILITY FOR TRESPASS TO LAND

- Trespass to land is the direct interference with a person's possession of land without lawful authority.
- The interference must be either by entering or remaining on the land without lawful authority, or placing objects on the land.

DESCRIBE PRIVATE AND PUBLIC NUISANCE

- Private nuisance is the unlawful interference with someone's use or enjoyment of their land.

- Public nuisance is primarily a crime designed to protect certain public rights. However, if a member of the public can show that they have suffered particular damage, over and above that suffered by others, they may be able to sue the defendant in tort.

OUTLINE LIABILITY ESTABLISHED BY *RYLANDS V FLETCHER*

- A person who for his own purposes brings on his land and collects and keeps there anything likely to do harm if it escapes, is liable for all the damage which is the natural consequence of its escape.

EXPLAIN THE DEFENCES OF CONTRIBUTORY NEGLIGENCE, CONSENT, AND ILLEGALITY

- Contributory negligence is a partial defence where a claimant has either contributed to the accident or contributed to the level of injury caused.
- Consent is a complete defence where the claimant freely consents to take the risk involved.
- Illegality is a complete defence. It may be available if the claimant was harmed in the course of committing a criminal offence.

UNDERSTAND THE MEANING AND EXTENT OF VICARIOUS LIABILITY

- Vicarious liability means being liable for the torts of others and it arises because there is a special relationship between the parties.
- An employer is vicariously liable for the torts committed by his employee during the course of his employment.