

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

QUESTION 1

To what extent is taking an action under the Consumer Protection Act 1987 an improvement on taking an action in the tort of negligence?

Answer:

- If a person suffers a loss as a consequence of a defective product, they may sue in the tort of negligence for breach of a common law duty or they may take action under the Consumer Protection Act 1987 for breach of a statutory duty.
- The problem for a claimant consumer, taking action under the tort of negligence for a defective product, is that the claimant will have to prove on the balance of probabilities, that the defendant breached the duty of care and the claimant suffered loss or damage as a result. The defendant must owe a duty of care to the claimant.
- The Consumer Protection Act 1987 came into force on 1 March 1988 and applies to damage caused by defective goods circulated after that date.
- The protection provided by the Act does not replace the common law protection given through the Tort of Negligence but it provides an additional statutory remedy.
- The Act does not cover private individuals who are not acting in the course of a business.
- The Act places strict liability for defective products on a number of possible defendants - manufacturer, own brander, importer from outside EU (note on leaving the EU the definition of importer may be amended) and supplier.
- The claimant must prove the product was defective and damage was suffered as a result but the claimant does not have to prove the defendant was at fault.

QUESTION 2

With reference to liability in the torts of trespass, private nuisance, and the rule in *Rylands v Fletcher*, explain the extent to which occupiers of land should ensure that the state of their property, and activities which take place on their property, do not interfere with the use and enjoyment of neighbouring properties.

Answer:

- 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.
- Private nuisance is the unlawful interference with someone's use or enjoyment of their land. The interference must be unreasonable. It only protects the ordinary and reasonable use of the claimant's land.

- The Rule in *Ryland v Fletcher* states that 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. The House of Lords confirmed the continued existence of Rule in *Rylands v Fletcher* in *Transco v Stockport MBC* (2004)

QUESTION 3

Wayne decides to hold a party to celebrate England winning the World Cup. John, who has not been invited, enters via the back door and on seeing Wayne coming towards him, goes through a small door marked 'Dangerous Steps'. The door opens inwards and John falls down the steps into a cellar. He smashes his Rolex watch and breaks his wrist. Ric, aged four, wanders off from his parents, goes outside and falls into the swimming pool and drowns. Alex trips over badly laid flooring and falls into a bucket of bleach and seriously burns his hands and clothing. George decides to leave the party by climbing over the garden wall rather than using the door. He does not realize there is a 10-foot drop on the other side of the wall and breaks both his legs.

Explain to Wayne the duties and standard of care owed by an occupier of premises and advise him of any claims John, Ric, Alex, and George may have under the Occupiers' Liabilities Acts 1957 and 1984.

Answer:

- Liability of occupiers to visitors is governed by the Occupiers Liability Act 1957. The 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.
- An occupier's liability to trespassers is governed by the Occupiers Liability Act 1984. The duty of an occupier to trespassers is only to take reasonable steps to prevent them being harmed.
- John is a trespasser the 1984 Act only covers liability for death or personal injury and does not cover damage to goods and therefore as a trespasser, John will not be able to claim for damage to his watch and will only be able to claim for his injury if reasonable steps had not been taken to prevent him being harmed. The warning notice on the door should be enough. *Tomlinson v Congleton* (2003).
- Ric is a visitor, a person who enters property with the express or implied permission of the occupier. Wayne owes a duty of care in respect of personal injury and damage to goods. The standard of care depends on the circumstances, some visitors, such as children, can be expected to be more vulnerable than others and a higher duty of care will be owed to them, *B v JJB Sports* (2006), *Bourne Leisure Ltd v Marsden* (2009).
- Alex should be able to claim for injury and damage to his clothing. The duty of care imposed on occupiers for visitors is to ensure they are reasonably safe and the occupier can take into account the behaviour that would reasonably be expected of a visitor.
- George exited the premises via the wall and Wayne may not be liable for his injuries because George behaved in a foolish way *Clare v Perry* (2005).

QUESTION 4

Sam enters a competition run by his local newspaper, the Surrey Times. He wins second prize, an 'Excel washing machine', which has been manufactured by Excel Appliances Ltd. Sam used the machine for nine washes successfully but, while his tenth wash is on, the machine bursts into flames. Sam managed to put the fire out but the machine is beyond repair, and Sam's designer clothes worth £700 which were in the machine have been burnt, his mobile phone (provided by his employer) which was lying on top of the machine is damaged, and due to smoke damage Sam's kitchen needs redecorating. Advise Sam.

Answer:

- Action may be taken in the tort of negligence, or under the Consumer Protection Act 1987 for breach of a statutory duty.
- To take action in negligence Sam will have to show that Excel owed him a duty of care (established as Excel is a manufacturer), breached the duty of care - this might be difficult to establish - and he suffered damages as a result of the breach.
- The Consumer Protection Act 1987 places strict liability for defective products obtained from a producer (including manufacturer) acting in the course of business. It includes products received as prizes.
- The products covered by the Act encompass a wide range of goods and will include a washing machine.
- The claimant must establish on the balance of probabilities that the defective product wholly or partly caused the damage he suffered. If the Sam can show this, Excel will be liable despite the fact they were not careless in any way unless they can prove that they have one of the defences set out in section 4 of the Act.
- A claimant can recover compensation for death or personal injury and damage to 'other' property over £275. The property must ordinarily have been intended for private use and intended by the claimant to be used for private use. Compensation is not recoverable for damage to the product itself.
- The washing machine caused damage to Sam's clothes, his business mobile phone and his kitchen. Sam will be able to claim for damage to his clothes and his kitchen over £275 but not for the mobile phone.