
IFS4101 - LEGAL ASPECTS OF INFORMATION SECURITY

AY2021/2022, SEMESTER 2, WEEK 5



CASE LAW RECAP



CASE ANALYSIS SEMINAR (LANGRIDGE V. LEVY)

- Plaintiff proposed: [7] *Wherever a duty is imposed on a person by contract or otherwise, and that duty is violated, any one who is injured by the violation of it may have a remedy against the wrongdoer.*
- Court:
 - [5] *this action cannot be supported upon the warranty as a contract, for there is no privity in that respect between the plaintiff and the defendant*
 - [7] *We are not prepared to rest the case upon one of the grounds on which the learned counsel for the plaintiff sought ... [ergo, no thanks to the concept of negligence]*
 - [8] *There is a false representation made by the defendant, with a view that the plaintiff should use the instrument in a dangerous way, and, unless the representation had been made, the dangerous act would never have been done.*
 - [10] *there is fraud, and damage, the result of that fraud, not from an act remote and consequential, but one contemplated by the defendant at the time as one of its results, the party guilty of fraud is responsible to the party injured.*

CASE ANALYSIS SEMINAR (LONGMEAD V. HOLLIDAY)

- Plaintiff proposed: [8] : There ought to be an implied warranty that dangerous articles sold should be fit for use and a merchant should exercise reasonable care to ensure that the articles are fit for use.
- Court:
 - [4] Citing *Langridge v. Levy* to support the proposition that '[t]here is no doubt, that if the defendant had been guilty of a fraudulent representation that the lamp was fit and proper to be used, knowing that it was not, and intending it to be used by the plaintiff's wife or any particular individual, the wife (joining her husband for conformity) or that individual would have had an action for the deceit.'
 - [4] Found no fraud: "fraud being negatived in this case, the action cannot be maintained."
 - [5] Gives examples of other cases where 'besides those of fraud, in which a third person, though not a party to the contract, may sue for the damage sustained if it be broken.' Cases all involved the direct treatment of the non-contracting person by the defendant, even though the contract for services / purchase of goods, would have been signed by someone else.
 - [7] Announces that "it may be the same when anyone delivers to another without notice an instrument in its nature dangerous, or under particular circumstances, as a loaded gun which he himself loaded, and that other person to whom it is delivered is injured ... But it would be going much too far to say, that so much care is required in the ordinary intercourse of life between one individual and another, that, if a machine not in its nature dangerous, – a carriage for instance, – but which might become so by a latent defect entirely unknown, although discoverable by the exercise of ordinary care, should be lent or given by one person, even by the person who manufactured it, to another, the former should be answerable to the latter for a subsequent damage accruing by the use of it."
 - [9] There was no contract with the wife. And there was no other misfeasance, since there was no indication that the defendant committed fraud due to the absence of intent. There was no duty on the defendant to conduct safety checks on the products either. Hence, defendant prevailed.

CASE ANALYSIS SEMINAR (GEORGE V. SKIVINGTON)

- Plaintiff proposed: [1] Defendant manufacturer should have a duty not to act unskillfully or negligently in making products and not to cause injury to the users of the defendant's product.
- Court:
 - [2] Warranty is irrelevant. The key question is, “*whether the defendant, a chemist ... knowing of the purpose, for which it was bought, is liable in an action on the case for unskillfulness and negligence in the manufacture of it whereby the person who used it was injured.*” [3] *And I think that, quite apart from any question of warranty, express or implied, there was a duty on the defendant, the vendor, to use ordinary care in compounding this wash for the hair. Unquestionably there was such a duty towards the purchaser, and it extends, in my judgment to the person for whose use the vendor knew the compound was purchased.*”
 - [7] Pigott B. limited the general principle to the situations where there was no reason for the defendant to know the purpose of the intended use (i.e., defendant should be held liable only if she knew the intended use and user).
 - [9] Cleasy B. proclaimed case was exact like *Langridge v. Levy*, all one had to do was substitute fraud for negligence. In essence, he pronounced that the *Langridge* case held that a trader has a duty of to provide safe goods to the buyers even if the goods weren't inherently dangerous (like the gun in *Langridge*).
 - [10] Cleasy B. argued the key question is whether the allegations are sufficient to raise a duty of due and ordinary care towards the female plaintiff. Since the defendant was the only one who knew about the ingredients, advertised it to meet a particular quality, and the product failed to meet the quality standards, and knew the purpose for which the product was purchased, the defendant was under an obligation to exercise due and ordinary care towards the female plaintiff, and there was negligence from which injury arose.

CASE ANALYSIS SEMINAR (HEAVEN V. PENDER)

- Plaintiff proposed: Defendant owed the plaintiff a duty of care to supply a safe platform.
- Court:
 - [3] Duty of care can arise not only under a contract but also based on the circumstance. Gave examples.
 - [6] Appeals to common sense to justify the reason for the existence of duty of care beyond contractual right.
 - [9] *The proposition which these recognized cases suggest, and which is, therefore, to be deduced from the, is that whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.*
 - Contrast with [13] which outlines the cases where the rule should not apply.
 - Contrast the dissenting opinion by Cotton L.J., who would prefer to limit the duty of care to dangerous instruments.



MOOT COURT



HYPOTHETICAL

- John Brown went to a local chemist, Mixit, and purchased a cough medicine for his 6-year- old son and a dandruff shampoo for his mother. When John Brown asked Mixit for the shampoo, Mixit informed him that he had a new dandruff shampoo which Mixit himself had mixed, and which was guaranteed to cure dandruff within 30 days. Mixit was not informed who was going to use the shampoo.
- When Mixit made the shampoo, he added an acid compound by mistake. As a result, when Brown's mother used the shampoo, it burned her scalp and caused patches of her hair to fall out.
- Before purchasing the cough syrup, Brown told Mixit that he needed a cough medicine that was safe for a 6-year-old boy. Mixit checked the list of ingredients on the label and assured Brown that the medicine was perfectly safe for children. The cough mixture was sold in containers to which Mixit affixed its own brand label.
- However, Mixit did not make the cough mixture. Instead, Mixit bought the cough mixture in bulk from another chemist, Careless. Unknown to Mixit, Careless had neglected to include an ingredient on Careless's own label. When Mixit repackaged the cough mixture into smaller containers, Mixit copied the content of Careless's label onto Mixit's own labels. As a result, Mixit's own label also excluded the ingredient that was missing from Careless's label. This ingredient made the cough syrup very dangerous for consumption by children.
- Mr. Brown's son fell gravely ill and lost his sight as a result of consuming the Mixit cough syrup.
- Mr. Brown wishes to pursue, on behalf of his son (as a minor), redress against Mixit. His mother also wishes to pursue redress against Mixit.

MOOT COURT ASSIGNMENTS

PLAINTIFFS

- Group 1
- Group 2
- Group 5
- Group 8

DEFENDANTS

- Group 3
- Group 6
- Group 4
- Group 7

CRIMINAL JUSTICE SYSTEM




CRIMINAL V. CIVIL SYSTEM: WHAT ARE THE DIFFERENCES?

- **Consequences of breach.**
 - Criminal punishment usually involves taking away someone's freedom vs. civil punishment which is maxed out at monetary compensation (and sometimes taking away limited scope of freedom to operate (e.g., injunctions against stalking))
 - It enters into the official record and cannot be removed until 100 years old or dead.
- **Only the State can be the plaintiff.**
- The criminal justice system has a **different set of objectives:**
 - **Specific and General Deterrence**
 - Incapacitation
 - Rehabilitation
 - Retribution
 - Restitution

CRIMINAL LAW CHARACTERISTICS

- The crime **must be defined**. Moral principle of *Nullum crimen sine lege* ("no crime without law"). A person cannot be punished for an act that was not proscribed by law at the time the person committed the act. It **cannot be ambiguous**.
- A guilty mind must accompany a criminal act:
 - *Actus reus* ("guilty act")
 - The external or physical elements
 - *Mens rea* ("guilty mind")
 - Internal act, fault or mental elements
 - Different levels of culpability will be attached to different "acts" to set the standard that must be met before a crime can be found

ACTUS REUS AND MENS REA

- Why do you think the law has traditionally required the **actus reus** and **mens rea** elements to establish the guilt or innocence of a person?
-  If I do not know about the law or has adopted a mistaken interpretation of the law, is ignorance (or mistake) of the law a good legal defense?
- How are the (i) actus reus and (ii) mens rea of the accused proved in a court?
- What is motive? How is motive related to mens rea, if at all?

TYPES OF WRONGFUL CONDUCT

- *Mala in se* (“evil in itself”) : murder, rape, kidnapping, robbery, theft and arson
- *Mala prohibita* (“wrong because it is prohibited”) : tax evasion, traffic law violation, intellectual property infringement. What about cybercrimes?
- Conduct that **causes harm**
- Conduct that **fails to prevent harm**

WEIGHTINESS OF ITS CONSEQUENCES => JUSTICE IS CRITICAL

The constant and perpetual will to render to each his due.

- Institutes of Justinian 600 CE

- Proportionality – different crimes merit different levels of punishment (contrast with religious concept of sin)
- Impartiality – this was not always the case (cf. Magna Carta and King John)
- Presumption of innocence – this was not always the case historically (cf. Egyptians)
- Process for weighing / evaluation – tied to presumption of innocence and the concept of burden of proof

CRIMINAL LAWS HAVE STRICT PROCEDURAL RULES (JUSTICE)

- Because consequences of criminal punishment is so severe, and the adversary – the State – is so powerful, there is an agreement that the State must follow a **strict set of processes and procedures** to apply the substantive law and rules to enable the enforcement of the substantive law.

WHY CRIMINALIZE? WHAT WOULD YOU DO FOR EACH SCENARIO?

- Scenario I: A broke into V's house and destroyed V's photo of his son.
 - Scenario II: A logged into V's company-issued laptop (physical not cloud device) without V's authorization. He did so using V's password which was written on a post-it note stuck to his monitor. He absolutely deleted V's only digital photo of his son. Ignore digital restoration technology.
 - Scenario III: Same as Scenario II, but V has a copy of the photo stored in the cloud.
 - Scenario IV: Same as Scenario II, but V was an IT administrator implementing company policy and V was not allowed to store personal photos in his office laptop.
- For each scenario, consider:
 1. Should we criminalise?
 2. If so, why?
 3. What is a proportionate punishment?
 4. Let's substitute photo with a bank password. Would the results change?
 5. Let's substitute the photo with the report of V's HIV status. V works in a hospital and if it is known that he has HIV, he would lose his job.

WEEKS 1-5* RECAP

- Motivations behind the law
- Types of laws
 - Classifications of laws by subject matter, nature (e.g., written vs. common), hierarchy (e.g., domestic vs. int'l), type of remedy (e.g., civil vs. criminal), jurisdiction (e.g., by country, different levels of governance), system (e.g., common vs. civil), etc.
- Intellectual Property
- Legal methods and reasoning
 - Different methods applied depending on whether it is written or common law
 - How to extract *ratio decidendi*; distinguish *obiter dictum*; how to extract facts to determine available claims; extract elements of legal claims; apply law to the facts; come to a decision remedies available after applying the laws to the fact of a case
- The Criminal Justice System

*Week 4 no class due to CNY holiday