

The Law of Tort

Tort Lecture 1

MGT388 Lecture 7

Note: IP Law Pre-Test will be online next week



What is a tort?

- “A civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract, or the breach of a trust or other merely equitable obligation” (Salmond)
- Civil – an action brought in civil not criminal law
 - Note: though some torts may also be crimes e.g. OJ Simpson case
- Wrong - a wrongful act leading to legal liability



Different torts (types of civil wrong)

- Nuisance
- Public, Private, *Rylands v Fletcher*, and Statutory nuisance
- Trespass
 - To land; to the person
- The Tort of Defamation
 - Libel; slander
- Deceit, malicious falsehood and passing off
- Negligence



Contract vs Tort

	Contract	Tort
Aim	'a promise which the law will enforce' (Pollock)	'you must not injure your neighbour' (Donoghue v Stevenson, 1932)
How are obligations/duties decided?	Parties to the contract	Standards of behaviour set by the law
Action is brought for	Breach of contract	Breach of duty of care
Who brings the action?	Party to contract (generally)	Person harmed by tort in breach of duty
What is the aim of damages?	To put the wronged party in the position had the contract been successfully performed	To restore the wronged party as far as possible to their original position (i.e. before the tort was committed)
What personal interests does the law seek to protect?	Seeks to protect claimant's economic interests	Seeks to protect claimant from other sorts of harm. As such (generally) cannot claim for purely economic loss



The tort of negligence

“The defendant is liable for all damage caused by his breach of duty to take reasonable care, provided that the damage is not too remote.”

The essential components of negligence:

- 1) A duty of care exists
- 2) There is a breach of that duty
- 3) There is damage/harm done to the claimant
- 4) There is a causal link between that damage and the breach of duty
- 5) The damage must not be too remote

1) Duty of care

- Carelessness alone does not give rise to liability - there must be a relationship by which a duty of care is owed
- A duty of care is legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care in the performance of an act that could foreseeably cause harm to others
 - e.g. duty of care owed by employer not to cause employee physical injury through carelessness
 - e.g. by car driver to other road users; by doctor to patient; by teacher to schoolchild; by university to student; by food producer to consumer; by pub landlord to customer etc.



Duty of Care: The neighbour principle

“The rule that you are to love your neighbour becomes in law: You must not injure your neighbour, and the lawyer’s question “who is my neighbour” receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or which are called in question” - *Donoghue v Stevenson* (1932)



When does a duty of care exist?

- In most cases duty of care established by precedent i.e. a duty of care has been found in previous cases on similar facts
- What about new sets of circumstances?
 - i) If possible consider by analogy to a duty of care found previously
 - ii) otherwise apply the 'Caparo Test':
 - The harm must be reasonably foreseeable as a result of defendant's conduct
 - The parties must be in a relationship of proximity
 - It must be fair, just and reasonable to impose liability



Duty is not owed to the world at large

- Concept of duty of care limits the scope of the law of negligence
 - Significance of public policy here - crushing liability; opening the floodgates; insurance premiums; public bodies
- Harm suffered must have been foreseeable based upon some level of proximity i.e. 'closeness' in terms of the relationship
- Proximity to this particular claimant
 - Yes - *Haley v London Electricity Board*
 - No - *Palsgraf v Long Island Railroad*
- Proximity as regards causing this particular type of harm
 - Special rules apply for *pure economic loss* and *pure psychiatric injury* resulting from the negligence



Duty of care for pure economic loss

- Defin – economic loss not arising from physical injury, death or property damage caused by negligence
- i.e. economic loss arising directly from negligence e.g. failure to receive expected future profit or financial benefit (*Spartan Steel v Martin & Co. Ltd*)
- Will (generally) not find a duty of care exists for pure economic loss.
 - Seen as role of contract law to protect economic interests
 - Undesirable to expose defendants to potential liability for an “indeterminate amount to an indeterminate class”
- BUT exception is negligent misstatement



Pure economic Loss - Negligent misstatement

- Law may find duty of care for pure economic loss where it arises from a negligent misstatement (*Hedley Byrne v Heller*)
- For such a duty to exist:
 - A special relationship of trust and confidence exists between parties
 - The party giving the info/advice has voluntarily assumed the risk
 - The info/advice was relied upon and it was reasonable to do so in the circumstances
- Significant factors:
 - purpose for which the statement was made
 - purpose for which the statement was communicated
 - the relationship between the maker of the statement, the recipient and any intermediary
 - the size of the class of persons to which the defendant belongs
 - state of knowledge of the defendants
 - was it reasonable for the claimant to rely on the statement.



Duty of care for pure psychiatric injury

- Defin – psychiatric (mental) injury which is not accompanied by physical injury
- Can now claim for pure psychiatric injury (PI)
- Must be recognised psychiatric illness e.g. PTSD (not merely grief, anxiety or distress)
- The rules differ depending on whether claimant is:
 - *Primary victim* - suffers PI because something has happened to him/her
 - *Secondary victim* - suffers PI by seeing/hearing something that has happened to somebody else



Duty of care for pure psychiatric injury cont.

- Primary victims
 - Physical injury must be foreseeable i.e. must be in zone of physical danger (*Page v Smith*)
 - Must be related to involvement in accident or immediate aftermath (*Rothwell v Chemical & Insulating Co Ltd*)
- Secondary victims
 - PI must be reasonably foreseeable in a person of 'ordinary fortitude' (*Bourhill v Young*)
 - Must be a 'close tie of love and affection' with the victim
 - Must be proximity to the accident and means by which the PI was caused – in time & space
 - PI must be sustained due to shock – “involves the sudden appreciation by sight or sound of a horrifying event, which violently agitates the mind.” It does not “include PI caused by the accumulation over a period of time of more gradual assaults on the nervous system.” (*Alcock v Chief Constable of South Yorkshire Police*)

