**`The Tort of Negligence**

**Duty of Care:**

Duty of care was established by applying the ‘Neighbour Test’

“Persons who are so closely and directly affected by my act I ought reasonably to have them in my contemplation” (Donoghue v Stevenson)

Established duties of care:

Manufacturer / Consumer

Road user / Other road users

Professional / Client

Employer / Employee

Doctor / Patient

New duty of care circumstances are established using a 3 stage test (Caparo v Dickman):

1. Is it reasonably foreseeable to D that their negligence will cause damage to C? (Kent v Griffiths)
2. Is there a relationship of sufficient proximity between D and C?

* Space (Bourhill v Young)
* Time
* Relation (McLoughin v O’brein)

1. Is it fair, just and reasonable to impose a duty of care onto D? (MPC v Reeves)

* Controlling the floodgates of litigation
* Promoting it safely
* It’s considered what is best for society as a whole (H v CCYW)

Omissions will only suffice if there was a legal duty to act (Barnes v HCC)

**Breach of Duty:**

To breach a duty of care D must be negligent; to be negligent D must act in a way unlike the reasonable man (Blyth v Birmingham WW)

The reasonable man will consider the weakness of others (Hayley v London EB) – Egg Shell Rule

D is measured against the standards of the reasonable man (Nettleship v Weston)

Exceptions:

1. Children and Disabled people: Measured against reasonable people like them (Mullins v Richard)
2. Professionals: Being a professional has implications of higher standards; they will be compared to the reasonable person in that industry (Philps v Whitely)

When evaluating if D’s negligence amounts to a breach of duty the court will look at 4 risk factors:

1. Likelihood of Injury: The precautions D takes must match the likelihood of someone receiving the injury

* High risk – Hayley v London EB
* Low risk – Bolton v Stone
* No known risk – Roe v MOH

1. Seriousness of Consequence: The more serious the consequences the higher the duty (Paris v SBC)
2. Value of Conduct: If D’s actions were saving a socially useful purpose the court will “balance the means against the risk” (Watt v HCC)
3. Cost of Precautions: D isn’t expected to take expensive precautions and guard from the risk reasonably, even if injury isn’t prevented (Latimer v AEC)

**Causation:**

The chain of causation links D’s negligence to the damage suffered by C; the chain must remain unbroken to establish liability

1. Factual Causation: The ‘But For’ test; ‘But For’ D’s negligence would C’s damage still occurred? (Barnet v Chelsea Hospital)
2. Legal Causation: D is only liable for damage that was foreseeable and isn’t remote (Wagon Mound)

* Exceptions:
* If the general type of damage is foreseeable the precise form it occurs in irrelevant (Bradford v Robinson)
* If foreseeable damage occurs in a remote unforeseeable way there is still liability (Hughs v Lord Advocate)
* If some damage is foreseeable, C can claim for the full extent of the damage (Smith v Leech Brain)

1. Intervening Acts: Acts that break the chain of causation:

* Natural events (Carslogie v Norwegian Govt.)
* Act by a 3rd party:
  + Criminal (Lamb)
  + Negligence (Knightly v Jones)
* Act by C (McKew v Holland Haven and Cobbits)
* An instinctive act will not break the chain of causation (Scott v Shepard)

1. Egg Shell Personality: D must take their C as they find them (Smith v Leech Brain)

**Defences:**

Contributory Negligence:

Law Reform (Contributory Negligence) Act 1945

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss and
* is partly to blame (Brannons v Airtours)
* made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

Consent:

Volenti Non Fit Injuria

Complete defence – No damages will be awarded

Essential elements:

* Knows the risk of injury
* Voluntarily decides to take the risk
* Expressly/Impliedly agrees to waive any claims in respect of such inury

Can be voluntary if they have no knowledge of the risk (Murray v Harringay Arean)

Mere knowledge of the risk doesn’t amount to consent (Smith v Baker), full knowledge is required (Morris v Murray)

**Personal Injury (Damages)**

Damages seek to put C back into the position they were in before the negligence occurred

**Special Damages:**

Out of pocket expenses from the date of the injury to the date of the trial

Include:

* Loss of wages
* Medical Expenses
* Travel Expenses

C can claim damages for any damage to property; the court will award the cost of repair and replacing the property – unless it exceeds the property’s value, in which case the value will be paid

**General Damages:**

C’s losses in the future

Includes:

* Pain, Suffering and Loss of Amenity
  + actual injury (Judicial Studies Board has laid down an injury/compensation framework)
  + physical and mental suffering (JSB factors include time in hospital and the type of injury)
  + Reduction in Quality of Life (Ability to look after oneself and complete hobbies)
* Future Medical Care and Personal Assistance – any future care required
* Loss of Future Earnings
  + C’s net annual loss (multiplicand) x (years left – deduction for capital use) = damages for future loss of earnings
  + Courts make decision based on evidence
  + Awarded as a structured settlement to C to avoid added benefits of interest

**Medical Negligence**

Carelessness on the part of a medically qualified practitioner

**Duty of Care:**

Duty of care was established by applying the ‘Neighbour Test’

“Persons who are so closely and directly affected by my act I ought reasonably to have them in my contemplation” (Donoghue v Stevenson)

Established duty of care between doctors and patients as they assume responsibility for them and its reasonably foreseeable that a failure to exercise reasonable care could lead to potential injury

It is reasonably foreseeable a doctors negligence will harm a patient, they are close in proximity and it is fair just and reasonable to impose a duty of care (Caparo v Dickman)

They are liable for what they do and what they don’t do

Not under a duty to assist someone they come across needing help, unless the person has come to casualty to receive help (Barnett v Chelsea Hospital)

**Breach of Duty:**

To breach a duty of care D must be negligent; to be negligent D must act in a way unlike the reasonable practitioner in their area, this includes junior practitioners

The standard of care is in relation to the reasonable practical and technological standards at the time of the negligence (Roe v MOH)

Bolam v Friern Hospital:

* As long as someone reasonable in the profession would of followed D’s course of action then D is not negligent, no matter how small the minority
* Doctor’s can escape liability if they can prove they complied with the generally accepted practice within the profession

Bolitho v Hackney Health:

* Court decides whether the generally accepted practice has a logical and reasonable basis
  + Theoretically possible for the entire profession to be found negligent; though practically doing so is unlikely
* Weighed up risks and benefits of other possible treatments to come to a reasonable decision

Res Ipsa Loquiter:

* Used when C can’t prove negligence because they had little idea of what was going on (Mohan v Osborne)
* The thing that caused the damage was under D’s control
* Would only have happened with negligence
* Tests suggest negligence occurred (Scott v London Dock)

**Causation:**

The chain of causation links D’s negligence to the damage suffered by C; the chain must remain unbroken to establish liability

‘But For’ Test: ‘But For’ D’s negligence C wouldn’t have suffered their loss (Barnett v Chelsea Hospital)

Multiple Causes: On the balance probability it is more likely than not that a particular D’s negligence caused the loss (Whilser v Essex Health)

Injury must be reasonable foreseeable – can’t be too remote (Wagon Mound)

Loss of Chance: Medical negligence increases risk of damage where there was already a risk because of the nature of the medical condition (Gregg v Scott)

Failure to Inform: Doctor has a duty to inform the patients of any risks (Chester Atshor)

**Psychiatric Damage**

More widely known as nervous shock

Psychiatric damage is “the sudden appreciate by sight or sound of a horrifying even which violently agitates the mind” (Alcock)

The harm must be a recognised psychiatric illness

Excludes grief, emotional stress and ordinary shock

They must have been involved in, or witnessed, a sudden shocking event (Sion)

**Duty of Care:**

Only owed to primary or secondary victims of the event

Court is willing to allow other claims to appropriate circumstances

Primary Victims:

Someone who is injured, or fears injury, and suffers psychiatric harm as a result

1. Involved directly in the accident:
   * They must be in the danger zone so that they must have feared for their own safety (Dulieu v White)
   * Some harm, either physical or psychiatric, must have been reasonably foreseeable (Page v Smith)
     + Egg Shell Personality works, D must take their victims as they find them (Page v Smith)
   * This fear can grow as the risk greatens (Donachie v CC Greater Manchester)
2. A rescuer:
   * Must be engaged in rescue activities (White v CCS)
   * They must have feared for their own safety (White v CCS)
   * They must have been in physical danger (Chadwick v British Rail Board)

Secondary Victims:

Someone who was not in personal physical danger but who witnessed the accident or its immediate aftermath

They must satisfy 4 controls:

1. Alcock test:
   1. C must have had a close tie of love and affection with a victim; these include: parents, children and spouses.

* Judges may find a the same ties of love and affection in different people depending on the nature of the relationship
* No duty to bystanders (Bourhil v Young)

1. C must be close to the accident in space and time; either present at the scene of the accident or present at its immediate aftermath

* Immediate aftermath has no clear definition so can be interpreted in different ways (McLoughin v O’brein)

1. C must perceive the accident with their own unaided senses of sight, touch and hearing
2. Caused by a sudden shock:
   * Injury must be caused by a sudden “assault on the senses”
   * A single sudden event opposed to a gradual realisation of shock (Sion)
   * One event can be seen to lead to another which is inevitably lead to the next and leading to damage and can therefore amount to a sudden shock (Walters v NG NHS)
3. Reasonable fortitude:
   * Psychiatric damage was reasonably foreseeable and a person of reasonable fortitude would have suffered the injury
   * Egg Shell Personality only applies if a person of reasonable fortitude would have suffered some harm
4. Primary Victims Owe no Duty to a Secondary Victim:
   * An individual does not owe a duty to anyone to look after him (Greatorex v Greatorex)

Other ‘Appropriate’ Circumstances:

C mistakenly believes they were the cause and suffers psychiatric harm as a resul t(Dooley v Cammel Laird)

C feels personally responsible for harm caused and suffered psychiatric harm as a result (W v Essex CC)

C and D have a legal link before the negligence in that they had a contract (Altia v British Gas)

**Breach of Duty:**

To breach a duty of care D must be negligent; to be negligent D must act in a way unlike the reasonable man (Blyth v Birmingham WW)

The reasonable man will consider the weakness of others (Hayley v London EB) – Egg Shell Rule

D is measured against the standards of the reasonable man (Nettleship v Weston)

When evaluating if D’s negligence amounts to a breach of duty the court will look at 4 risk factors:

1. Likelihood of Injury: The precautions D takes must match the likelihood of someone receiving the injury

* High risk – Hayley v London EB
* Low risk – Bolton v Stone
* No known risk – Roe v MOH

1. Seriousness of Consequence: The more serious the consequences the higher the duty (Paris v SBC)
2. Value of Conduct: If D’s actions were saving a socially useful purpose the court will “balance the means against the risk” (Watt v HCC)
3. Cost of Precautions: D isn’t expected to take expensive precautions and guard from the risk reasonably, even if injury isn’t prevented (Latimer v AEC)

**Causation:**

There must be a causal link between D’s negligence and C suffering nervous shock (Caslascione v Dixon)

There must be a more than trifling connection (Cato)

**Economic Loss**

Economic loss is damage to the wallet

C is less well off than they would have been if the negligence had not occurred

The general rule is that consequential loss is recoverable whereas pure loss isn’t (Muirhead v Tank Specialists)

Consequential Economic Loss:

C suffers a money loss because they suffered an item of physical loss

Economic loss is a consequence of the physical loss (Spartan Steel v Martin)

Pure Economic Loss:

Standalone economic loss – no physical loss

C suffers a money loss but no physical loss (Cattle v Stockton Waterworks)

**Exceptions:**

Negligent Misstatement:

D makes a statement to someone to whom he owes a duty of care but, due to his negligence, the statement is inaccurate to causes C a reasonably foreseeable pure economic loss

Comes in any form that conveys information to the C (Hedley Byrne v Heller)

D only owes duty of care to someone with whom he has a special relationship:

* D possess a skill or expertise that C requires (Lennon v MPC)
* D voluntarily assumes responsibility for their statements:
  + They are prepared for C to rely on the advice (Hedley Byrne v Heller)
  + D need not give advice or he can give a disclaimer
* D must, or should, know the identity of the person/people who will rely on the statement when making it (Caparo v Dickman)
* D must know what their statement will be used for (Caparo v Dickman)
* It must have been reasonable for C to rely on the misstatement, and they did so (Smith v Bush)
  + Liability has extended to include social settings (Chaudhry v Proshaker)

Providing Services:

D has negligently carried out services

There needs to be a special relationship based on D assuming responsibility to perform that professional service (Henderson v Marrett)

Job References:

Employer owes a duty of care to his employee when preparing a reference for a potential future employer (Spring v Guardian Assurance)

Employee needs to prove that they would have got the job if the reference had been correct

Beneficiaries of a Will:

When assets are left to someone else, the intended beneficiary can sue the solicitor (White v Jones)

**Breach:**

To breach a duty of care D must be negligent; to be negligent D must act in a way unlike the reasonable man

“Omission to do something which a reasonable man would do, or doing something a reasonable man wouldn’t do” (Blyth v Birmingham WW)

Being a professional has implications of higher standards; they will be compared to the reasonable person in that industry (Philps v Whitely)

**Product Liability**

**Duty of Care:**

Duty of care was established by applying the ‘Neighbour Test’

“Persons who are so closely and directly affected by my act I ought reasonably to have them in my contemplation” (Donoghue v Stevenson)

Established duty of care between manufacturers and consumers

It is reasonably foreseeable a manufactures negligence will harm a consumer, they are close in proximity and it is fair just and reasonable to impose a duty of care (Caparo v Dickman)

Further examination or preparation by any intermediate person isn’t required

Claimant:

Duty of cared is owed to the ultimate consumer of a defective good (Donoghue v Stevenson), expanded to cover any person who buys, uses or is affected by the defective good (Stennett v Hancock)

Defendant:

Duty of care is owed by the manufacturer of goods (Donoghue v Stevenson)

Duty expanded to cover anyone who is involved in supply goods or whose actions might reasonably affect the consumer, owes the duty of care (Stennett v Hancock)

A retailer is liable if they were aware of problems and should of researched it further as the reasonable retailer would (Fisher v Harrolds)

Duty of care exists in respect of all types of goods and packaging it comes in

**Breach of Duty:**

To breach a duty of care D must be negligent; to be negligent D must act in a way unlike the reasonable man

Reasonable Person Test:

* Faulty Manufacturing Process
  + Defect occurs because of a lack of care in the manufacturing
  + It’s clear from the facts that the process contained negligence (Grant v Australian Knitting)
* Intermediate Examination:
  + D should have taken reasonable steps to protect any 3rd party who might get affected by the goods (Donoghue v Stevenson)
  + Failing to guard against people on the grounds they had no reason to believe a 3rd party would check the goods isn’t sufficient (Griffiths v Arch Engineering)
* Instructions or Warnings:
  + Manufacturers should give proper, clear instructions for use and an appropriate warning; failing to do so is negligence (Fisher v Harrolds)
  + If a manufacturer informs a retailer to check, but they fail to do so; the manufacturer has no liability and the retailer does (Kubech v Hollands)
* Likelihood of injury (Bolton v Stone); Seriousness of consequence (Paris v SBC); Social value of conduct (Watt v HCC) and the Cost of precautions (Latimer v AEC)

Res Ipsa Loquiter:

* Used when C can’t prove negligence because they have little idea of what happens (Grant v Australian Knitting Mill)
* The thing causing damage was under D’s control
* Would only have happened with negligence
* Tests suggest negligence occurred (Carroll v Fearon)

**Causation:**

Factors considered: (Evans v Triple Safety Glass)

* Time elapse between purchase and accident
* Strain applied in installation
* Something other than the defect
* Multiple causes
  + On the balance of probability it’s more likely than not that a particular D’s negligence caused the loss (Whilser v Essex Health)

**Damages:**

Cannot receive value of defective good as itself as this is pure economic loss (Muirhead v Tank Specialists)

Can only claim for damage to “other property” and personal injury

Can claim for damage and injury caused by defective goods (Muirhead v Tanks Specialists)

Components:

* Can claim for cost of damage to the product the component is part of, but not the component itself (Aswan Engineering v Lupdine)
  + Unless the component is made by the same firm then it may be treated as part of the same product

Packaging: Contents of a container is “other property” in the container is defective (Aswan Engineering v Lupdine)

**Defences:**

Contributory Negligence (Law Reform (Contributory Negligence) Act 1945)

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss
* C is partly to blame (Brannons v Airtours)
* C’s action made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

Consent:

Volenti Non Fit Injuria

Complete defence – No damages will be awarded

Essential elements:

* Knows the risk of injury
* Voluntarily decides to take the risk
* Expressly/Impliedly agrees to waive any claims in respect of such inury

Can be voluntary if they have no knowledge of the risk (Murray v Harringay Arean)

Mere knowledge of the risk doesn’t amount to consent (Smith v Baker); full knowledge is required (Morris v Murray)

Scientific knowledge at the time could not have indentified the defect (Roe v MOH)

**Consumer Protection Act 1987**

An alternative to negligence, C can claim under The Consumer Protection Act 1987

Operates with strict liability, there is no need to prove negligence (Abouzaid v Mothercare)

C suffers damage which is caused wholly or partly by a defective product

**Defendant:**

1. Producer (2(2)(a)):
   1. Person who manufacturers the product (Bogle v McDonalds)
   2. Person who won or abstracted the substance
   3. Person who carried out a process which gave the product one of its essential characteristics
2. Claims to be the producer (2(2)(b)): Uses name or trademark on the product
3. Person who imported in into the EU to supply in their firm (2(2)(c))
4. Supplier who fails to identify another D (2(3))

If there is more than one person, each is liable for the full amount and the court will need to proportion liability between them (2(5))

**Product:**

“Any goods”, including components, raw materials, buildings, substances, crops and manufactured goods (1(2))

Blood and organs are products if being transferred (A v National Blood)

Defect:

Safety of the product is not such as persons are generally entitled to expect in the circumstances (Richardson v LRC)

Factors considered by court (3(2)):

* Marketing of the product (a)
* Instructions provided with goods (Worsley v Tambrands)
* Reasonable expectations as to how the product is used (b)
* Time of supply
* Consumers reasonable care of their own safety (Bogle v McDonalds)

Doesn’t cover products which are faulty but which do not cause any damage or injury – harm must be caused

**Damages:**

Process must begin within 3 years of C becoming aware of the defect

Can be claimed:

* Death or Personal injury
* Damage to property over £275

Can’t be claimed:

* Damage to property under £275
* Damage to defective product or items supplied with it
* Damage to any goods being used other than for personal use

**Defences:**

Development Risk Defence: D can show that the state of scientific and technical knowledge at the time of the supply of that product was not advanced enough to allow a producer of goods of that type to discover the defect (4(1)(e)) (Abouzoid v Mothercare)

Compliance with The Law: Defect was due to law requiring the product to be made that way (4(1)(a))

Non-Supply of the Product: D didn’t supply the product (4(1)(b))

Supply was Non-Commercial: Goods supplied without the view of profit (4(1)(c))

Defect Didn’t Exist When Goods Were Circulated: The defect only came into existence after goods were supplied (4(1)(f))

Subsequent Products: If component supplied is attached to larger product and then breaks (4(1)(d))

Contributory Negligence:

(Law Reform (Contributory Negligence) Act 1945) (6(4))

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss
* Outcomes:
* C is partly to blame (Brannons v Airtours)
* C’s action made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

**Occupiers Liability Act 1957**

**Lawful Visitor:**

An occupier owes a duty of care to an lawful visitor (OLA 1957)

A lawful visitor is someone who enters a premise is with expressed or implied permission

Expressed Permission:

State permission by the occupier to enter the premises

Implied Permission:

1. Repeat Visits: If the occupier knows, or should, that people repeatedly visit their land and they don’t stop them then permission can be implied (Lowery v Walker)
2. Allurement: A child will not be a trespasser if they wander on to the land to investigate (Jolley v Sutton)
3. To communicate: Permission to walk up front path to the front door to communicate with the occupier (Robson v Hallet)
   * Doesn’t extend beyond front door
   * If asked to leave they must do so in a reasonable time via a reasonable route
4. Statutory Power: Meter Reader, Postman, Fireman, Police with warrant (Carrying out a duty)

**Duty of Care:**

An occupier of a premises owes a duty of care to all his lawful visitors (2(1))

“To take reasonable care that the visitor will be reasonably safe” (2(2))

Occupier:

An occupier is any person who has control of the premises to such an extent that their carelessness could lead to a visitor suffering a loss (1(3)(b))

A premises can have more than one occupier, the duties of each may vary according to the degree of control (Wheat v Lacon)

Premises:

“Any fixed or moveable structure” (1(3)(a)) as well as land and buildings

**Breach of Duty:**

An occupier breaches their duty of care under the Act if they haven’t taken all reasonable to care to make sure legal visitors will be safe

Unreasonable is acting in a way the reasonable man wouldn’t or acting not acting in a way they would

When evaluating if D’s negligence amounts to a breach of duty the court will look at 4 risk factors:

1. Likelihood of Injury: The precautions D takes must match the likelihood of someone receiving the injury

* High risk – Hayley v London EB
* Low risk – Bolton v Stone
* No known risk – Roe v MOH

1. Seriousness of Consequence: The more serious the consequences the higher the duty (Paris v SBC)
2. Value of Conduct: If D’s actions were saving a socially useful purpose the court will “balance the means against the risk” (Watt v HCC)
3. Cost of Precautions: D isn’t expected to take expensive precautions and guard from the risk reasonably, even if injury isn’t prevented (Latimer v AEC)

Exceptions:

Children:

* Children are allured by danger (Jolley v Sutton)
* Occupiers must be prepared for children to be less careful than adults (2(3(a))
* Occupier is entitled to expect parents to take appropriate care of young children (Phipps v Rochester)

Specialist’s doing their job:

* Occupiers may expect a specialist to be aware and protect themselves against the risks of their profession (1(3)(b)
* Occupier may take fewer precautions as the professional should know what they are doing (Roles v Nathan)

Warning Signs:

An occupier may be able to discharge duty by providing reasonable and sufficient warnings (2(4)(a))

Duty is to keep the visitors safe, not the actual premises

Any notices or warnings must be clear and explain the damage to be valid (Woolins v British Celanese)

Risks that are obvious don’t require warning signs (Staples v West Dorset)

**Causation:**

The chain of causation links D’s negligence to the damage suffered by C; the chain must remain unbroken to establish liability

1. Factual Causation: The ‘But For’ test; ‘But For’ D’s failure to take reasonable care would C’s damage still occurred? (McWilliams v Arrol)
2. Legal Causation: D is only liable for damage that isn’t remote (Wagon Mound)

* Exceptions:
* If the general type of damage is foreseeable the precise form it occurs in irrelevant (Bradford v Robinson)
* If foreseeable damage occurs in a remote unforeseeable way there is still liability (Hughs v Lord Advocate)
* If some damage is foreseeable, C can claim for the full extent of the damage (Smith v Leech Brain)

1. Intervening Acts: Acts that break the chain of causation:

* Natural events (Carslogie v Norwegian Govt.)
* Act by a 3rd party (Scott v Shepard)
* Act by C (McKew v Holland Haven and Cobbits)

1. Egg Shell Personality: D must take their C as they find them (Smith v Leech Brain)

**Defences:**

Independent Contractors (2(4)(b)):

An occupier will not be liable if the premises is dangerous because of work done by an outside independent contractor if the work is outside the reasonable means knowledge and can’t be checked by the occupier (Haseldine v Daw) (Woodward v Hastings)

Contributory Negligence (2(3)):

(Law Reform (Contributory Negligence) Act 1945)

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss
* Outcomes:
* C is partly to blame (Brannons v Airtours)
* C’s action made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

Consent (2(5))::

Volenti Non Fit Injuria

Complete defence – No damages will be awarded

Essential elements:

* Knows the risk of injury
* Voluntarily decides to take the risk
* Expressly/Impliedly agrees to waive any claims in respect of such inury

Can be voluntary if they have no knowledge of the risk (Murray v Harringay Arean)

Mere knowledge of the risk doesn’t amount to consent (Smith v Baker); full knowledge is required (Morris v Murray)

Excluding Liability:

Occupier may restrict or exclude the duty or care owed (2(1)) (Ashdown v Samuel Willaims)

* Can’t exclude personal injury or death caused by their negligence
* Must be reasonable to exclude liability
* Can exclude recreational uses outside ordinary uses of land
* Can exclude liability for very unlikely events (Bolton v Stone)

Visitor is expected to take reasonable care of themselves (2(3))

**Remedies:**

* Damages for death and Personal Injury
* Damage to property

**Occupiers Liability Act 1984**

It was established to protect innocent people (British Railways v Herington)

**Trespassers:**

An occupier owes a trespasser a duty of care (OLA 1984)

A trespasser is someone who enters the premises without permission or whose presence is unknown or objected by the occupier via sign, gate or verbal warning

Strict liability tort, the motive is irrelevant

Lawful visitors can become trespassers if they go over a limit or restriction:

* Limit to area: Visitors don’t have permission to wander at will through the premises (Pearson v Coleman)
* Limit to time: Visitors who stay for longer than they should
* Limit to purpose: Visitors invited in for a particular purpose but choose to undertake a different activity or do it in an unordinary way (The Carlgrath)

**Duty of Care:**

An occupier of a premises owes a duty to a trespasser to take reasonable care to see that C doesn’t suffer injury (1(4))

* Occupier:
* An occupier is any person who has control of the premises to such an extent that their carelessness could lead to a visitor suffering a loss
* A premises can have more than one occupier, the duties of each may vary according to the degree of control (Wheat v Lacon)
* Premises:
* “Any fixed or moveable structure” (OLA 1957 1(3)(a)) as well as land and buildings

A duty of care exists if 2 tests are passed:

1. The claim must arise out of the dangerous state of the premises opposed to any dangerous activity by C (Kwoen v NHS Trust)
2. If D (1(3)):
   * Knowledge of the danger
   * Knows someone may enter vicinity of the danger
   * The danger is one you’d expect to be guarded against

C must show all 3 conditions exist (Donoghue v Folkstone)

**Breach of Duty:**

Factors considered (Platt v Liverpool CC):

* Likelihood of trespass
* Seriousness of injury
* Cost and practicality of precautions
* Likely age of the trespasser
* Common sense

Occupier shouldn’t have to guard against the irresponsible minority

Can discharge duty via warning signs or discouraging (1(5))

* Any notices or warnings must be clear and explain the damage to be valid (Woolins v British Celanese)

**Defences:**

Contributory Negligence:

Not mentioned in Act, however the judges still accept it

(Law Reform (Contributory Negligence) Act 1945)

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss
* Outcomes:
* C is partly to blame (Brannons v Airtours)
* C’s action made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

Consent (1(6)):

Volenti Non Fit Injuria

Complete defence – No damages will be awarded

Essential elements:

* Knows the risk of injury
* Voluntarily decides to take the risk
* Expressly/Impliedly agrees to waive any claims in respect of such inury

Can be voluntary if they have no knowledge of the risk (Murray v Harringay Arean)

Mere knowledge of the risk doesn’t amount to consent (Smith v Baker)

Consent must be given voluntarily, full knowledge is required (Morris v Murray)

Excluding Liability:

Not mentioned in the act; it is suspected to contain the same limits as 1957 Act

Occupier may restrict or exclude the duty or care owed (2(1)) (Ashdown v Samuel Willaims)

* Can’t exclude personal injury or death caused by their negligence
* Must be reasonable to exclude liability
* Can exclude recreational uses outside ordinary uses of land

**Remedies:**

* Damages for death and Personal Injury
* Can’t recover any damage to property (1(8))

**Private Nuisance**

An unlawful interference for a substantial length of time with a person right to enjoy or use their land in a reasonable way

**Claimant:**

The claimant must be someone who has a legal interest in the affected land (Hunter v Canary Wharf)

The law is in relation to the possible impact the nuisance might have on the value of the land, thus C is the person who’ll suffer financial loss

**Defendant:**

* The creator of the nuisance
* The occupier of the land, if not the creator, can be the D is they adopt or continue the activities of the creator (sedleigh-Denfield v O’Callaghan)
* The landlord who authorises or condones activities of their tenant (Tetley v Whitty)
* A stranger can be liable for a private nuisance he didn’t create, if he adopts or condones the activity

**Interference:**

Physical Damage:

* Covers physical damage to land
* Probably covers goods stored on the land
* Doesn’t include personal injury
* Nuisance need only occur once

Loss of Amenity:

* C’s ability to use or enjoy their land is restricted by D’s activities
* Excessive noise and unpleasant smells

**Unlawfulness:**

Must balance the conflict interests

People have to put up with some disturbance for their right to disturb others, it’s give and take

The test is whether the nuisance interferes with ordinary existence; to decide if the limit is reached the courts look at 6 factors:

1. Locality: A wider range of activities are acceptable in certain areas opposed to others (Halsey v Esso)
   * Locality is irrelevant if physical damage is caused (Helens Smelting v Tipping)
2. Duration: The activity must happen frequently to be considered a nuisance
   * Cases causing physical damage 1 event can amount to a nuisance (Spicer v Smee)
3. Degree of Inference: More serious and worse interferences will more likely be a nuisance; physical damage and loss of enjoyment make an interference worse (Murdoch v Glacier)
4. Sensitivity: C can only claim for something that would interfere with ordinary products (Bridlington Delay v Yorkshire Electricity)
   * C can claim for full extent of damage if it’s reasonable; even if the loss was partly caused by the extra-sensitive use of land (McKinnon v Walker)
5. Social Utility of D’s Conduct: The usefulness to society of D’s actions has bearing as to its reasonableness
   * Won’t usually prevent a clear nuisance, but will have some bearings on remedies rewarded (Dennis v MOD)
6. Malice on D’s part: If D is acting with no purpose other than to annoy C, it can make something not normally a nuisance an unlawful nuisance (Silver Fox Farm v Emmet)

**Defences:**

Statutory Authority:

Nuisance is created by a public body acting under a legislative duty or power

* As long as it is carried out reasonably without negligence the act has been authorised by Parliament (Alla v Gulf Oil)

Also a defence for a public body to show Parliament has created an alternative remedy

Prescription:

Activities become lawful because they have been carried out for the last 20 years

* 20 years start from when C registers the activity as a nuisance

Non-Defences:

* D can’t say that C knew of the activities before they arrived (Sturges v Bridgeman)
* D can’t say that C could of guarded themselves
* Doesn’t matter if D was reasonable care and skill
* D can’t say the nuisance was partly caused by someone else

**Remedies:**

Injunctions:

An order prohibiting or controlling an activity

Courts won’t grant an injunction for trivial matters or if it’s in the public’s interest that the activity carries on (Miller v Jackson)

Can be a complete ban or a compromising control on the activity with set limits (Kennaway v Thompson)

Damages:

A financial compensation award for consequential damage to land, plants, buildings and goods

Loss of amenity of land is equal to the loss in value of the land (Hunter c Canary Wharf)

Any loss must be foreseeable (The Wagon Mound 2)

Abatement:

Self help remedy for C to take reasonable steps to deal with the nuisance themselves

C must be careful not to overstep the reasonable limits themselves

**Public Nuisance**

Something which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects

Can cover a variety of activities:

* Noise and traffic (AG Ontario v Orange Productions)
* Smoke clouds (Holling v Yorkshire Traction)
* Hitting sports balls onto pathways (Castle v Augustine Links)

It must be proved a class of people have been affected by a common injury

**Class of People:**

The nuisance must “materially affect the reasonable comfort and convenience of life of Her Majesty’s Subjects” (AG v PYA)

Should consist of a selection of the public and involve a considerable number of people (AG v PYA)

An individual can claim if they suffered a loss over and beyond that of the rest of the class of person

**Common Injury:**

The common injury is one that affects a right, protection or benefit enjoyed in common by the class of people (R v Rimmington)

It is not a public nuisance if a road/pavement is blocked by a broken down vehicle (Lyons v Gulliver)

**Actions:**

A case can reach court in 3 ways:

1. As a common law crime investigated by the police
2. Attorney General has the power to seek an injunction on behalf of the public
3. As a civil action by a individual who has suffered a special damage above the (Castle v Augustine Links)

**Remedies:**

Injunctions:

An order prohibiting or controlling an activity

Courts won’t grant an injunction for trivial matters or if it’s in the public’s interest that the activity carries on (Miller v Jackson)

Can be a complete ban or a control on the activity with set limits (Kennaway v Thompson)

Damages:

A financial compensation award for consequential damage to land, plants, buildings and goods

Can recover damage for personal injury

Any loss must be foreseeable (The Wagon Mound 2)

**The Rule in Rylands v Fletcher**

D is liable if, on his land, he accumulates a dangerous thing in the course of a non-natural use of that land, and the thing that escapes caused reasonably foreseeable damage (Rylands v Fletcher)

A strict liability tort, there’s no need to prove fault

It is a sub-species of nuisance and therefore a number of rules that apply to private nuisance also apply to Rylands and Fletcher (Transco v Stockport)

**Bringing action:**

To establish liability in Rylands v Fletcher, C needs to prove:

1. C’s legal position: C should have a legal interest in the land affected (Hunter v Canary Wharf)
2. Accumulation: D must voluntarily bring onto his land an accumulation of the substance which escaped, being an artificial accumulation of material (Giles v Walker)
3. A Dangerous Thing: The substance must be dangerous so that it would be likely to do mischief if it escapes
   * This can include a less dangerous item that is stored in bulk (Hale v Jennings)
   * An accumulated substance is something which poses an “exceptional risk” (Transco v Stockport)
4. Non-Natural Use: The use of land should be such that is not common place (Rickards v Lothion) and is “extraordinary and unusual” (Transco v Stockport)
   * Doesn’t mean ‘man made’
   * I fit has a social utility it is more likely to be a natural use (Rickards v Lothian)
5. Escape: C must show that the substance escaped and moved from D’s land on to C’s land (Read v Lyons)
6. Reasonably Foreseeable Damage: Only damage which is reasonably foreseeable is recoverable (Cambridge Water v Eastern Counties Leather)

**Defences:**

Act of a Stranger: D is not liable if the escape is caused by a deliberate and unforeseen act of a stranger (Perry v Kondriets Transport)

Common Good: If the activity is benefiting the wider community it is less likely to receive an injunction

Act of God: A natural event so huge it couldn’t be foreseen or guarded against (Nichols v Marsland)

Statutory Authority: D isn’t liable if the escape occurred during activities authorised by an Act of Parliament; providing there was no negligence (Green v Chelsea WW)

Contributory Negligence:

Not mentioned in Act, however the judges still accept it

(Law Reform (Contributory Negligence) Act 1945)

* C’s behaviour was below the standard of the reasonable person
* C’s behaviour contributed to their loss
* C is partly to blame for the escape
* C’s action made the loss worse (Froom v Butcher)
* Damages rewarded to C will be reduced accordingly

**Remedies:**

Can’t claim for personal injury

C’s damages will be reduced if the damage was worse due to the sensitive nature of his property

**Vicarious Liability**

When the law makes one person liable for a tort committed by another whom share a legal relationship

Employer is liable for any tort committed by one of his employee during the course of employment

**Justification:**

It protects C because the employer is more likely to be able to meet the claim than the employee

It protects the employee and the employer can’t escape liability by forcing his employees to take risks

Improves safety standards as it encourages an employee to take greater responsibilities towards its employee’s

An employer, having been sued, can sue his employee (Civil Liability Act 1978)

**Establishing Vicarious Liability Against An Employee:**

Employee must have committed a tort and C must prove the existence of all the elements of the tort; if the employee could have raised a defence, then the employer can too

C must show the worker has employee status

Employee must commit the tort in the course of employment

**Employee or Independent Contractor:**

A worker is someone who performs service in return for payment, being it an employee or an independent contractor

Employer is vicariously liable for an employee and not for an independent contractor

Control Test:

Independent contractor is only told what to do, employees are also told how to (Walker v Crystal Place FC)

* Doesn’t apply to professionals or highly skilled workers

Integration Test:

A worker who is more involved with the core firm of the employer is more likely to be an employee

* Not always certain who is or isn’t an integral part of a firm

Multiple Test:

A court weight up factors for an employee and an independent contractor and decides what outweighs the other

Factors:

* Paid salary or commission
* Pays income tax and national insurance
* Whether the contract describes them as an employee
* Whether they have the ability to delegate work to another without permission

Independent Contractors (Ready Mix Concrete v MOP):

* More likely to work on their own premises
* Have their own equipment
* Hire and fire own helpers
* Personally affected by his own investment and management decisions

All of these factors must be present:

* Is the employer under some control of the worker and the work being carried out
* Under contract the worker gives personal performance – can’t delegated (Echo v Tanton)
* Mutuality of obligation means the employer is obliged to pay and the work is obliged to work contracted hours (Carmicheal v National Power)

**Course of Employment:**

Authorised Acts:

An employee is acting within the course of employment if he is carrying out an act authorised by his employer, if the act amounts to a tort the employer is vicariously liable (Century Insurance v NI Road Transport)

An employee can also be vicariously liable if the authorisation is implied and the act only benefits the employee (Harvey v RG O’Pell)

Authorised Act in an Unauthorised Way:

An employer is vicariously liable for his employees even if the authorised act was done in an unauthorised or forbidden way (Limpus v London General Omnibus)

Unauthorised Act:

If an employee undertakes an act not part of his job that’s unauthorised then the employer is not vicariously liable (Beard v London General Omnbius)

Activities outside normal hours of work can still hold liability for acts that are closely connected to the course of employment (Suddiman v Smith)

Road Traffic Accidents:

Journeys to and from work are outside the course of employment, journeys during working hours are covered (Smith v Stages)

There are 2 big issues:

1. Unauthorised Lifts: Only covered if the action is authorised (Rose v Plenty), if the action was unauthorised but D was still doing their job the employed is still vicariously liable (Conway v Wimpey)
2. Deviation From a Set Route: Only covered if the driver was still carrying out the central task (Hemphill v Williams), there is no vicarious liability if the worker was on a ‘frolic of his own’ (Storey v Ashton)

**Criminal Offences:**

Employers can be vicariously liable for criminal offences too (Poland v Parr)

Were the acts of the employee so closely connected with his employment that it is fair and just to hold the employer liable (Lister v Helsey Hall)

There is vicarious liability if the act was encouraged (Mattis v Polluck)

No vicarious liability if it was separate from his duties and part of a personal vendetta (AG Virgin Isles v Hartwell)