

Negligence and Product Liability

Duty of care: a person undertaking an activity or course of behaviour owes a duty not to harm any person reasonably expected to be caused loss/damage as a result.

Neighbour principle: formulated in *Donoghue v Stevenson*, indicating that the defendant owes a duty of care to persons with sufficient proximity to him or her.

Reasonably foreseeable: limits the scope of duty of care as this is owed only when it is reasonable to anticipate damage to the claimant.

Proximity: a sufficiently close relationship must exist between claimant and defendant at the time the dangerous behaviour occurred for a duty of care to exist.

Pure economic loss: loss of money alone, not arising from personal injury to the claimant or damage to other property.

Defective: goods dangerous physically to person/property

Types of Law

	Civil	Criminal
Purpose	Govern formal and informal relationships	Regulate anti-social behaviour (between government and individual)
Procedure	Claimant proves defendant liable	Police make decision to prosecute
Penalties	Damages to rectify wrong	Protect society and penalties may deprive freedom
Standard	On a balance of probabilities- if more likely liable	Guilty beyond reasonable doubt

Contract essentials

- Offer
- Acceptance
- Consideration
- Intention

Offer

Type	
Bilateral	Most common - Promise in return for a promise
Unilateral	Promise in return for specified act e.g. return lost property

Define offer

A **clear statement** of terms on which the offeror is prepared to do business with the offeree

Offer must include:

- Clearly stated terms
- An intention to do business
- Communication of that intention

Must do of Consideration

- Not be in past
- Move from the promisee
- Be sufficient
- part payment of Debt is insufficient

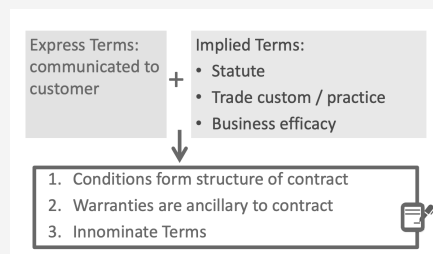
Acceptance

- Non conditional
- Communicated to offeror
- Mirror image of offer terms

New Laws

Statutory	Common
Parliament has legal right to make laws and delegate	Created by courts i nreaction to cases
Byelaw- created by local authorities	Have to follow Primary legislation
Statutory - relevant minister	Interpative of Primary or Delegated
Orders in council- Queen	Creative powers

Terms of a contract



3 Levels of contracts

Warranties- extras that don't break the whole purpose of contract - not essential for contract to exist like the Conditions

Conditions form structure of contract-

Innominate Terms-

4 Defective contracts

Misrepresentation-fraudulent, careless and innocent

Mistake- error made in contract

Duress and Undue- Threat of force or influence

Illegality- Cannot create contract which is illegal

Consideration Types

Executory Promise to be carried out at a later date

Executed Promise in return for specified act

Intention

Assump- **Social** agreements **do not** intend to be legally bound
tions

Parties to a **business** agreement **intend to be legally**
bound

Negligence vs Product Liability

Negligence	Product Liability
Duty	Liability for defective products
Breach of Duty	
Suffered Harm	
Causation of harm was not remote	

Defence of Negligence

Breaking the chain	Intervening event that caused the chain of causation to be broken
Contributory negligence	Negligence of victims
Consent to Negligence	Claimant voluntarily agrees to undertake legal risk

Breach of Duty

Bolam Test	Eggshell skull
Assessing appropriate standard of care - if met deemed not negligent	Claimant has particular weakness - suffer greater injury defendant will be liable to full injuries

Product Liability

Claimant relieved of need to prove intent or carelessness, only has to prove causal link

Economic Loss

Held	Directly consequential loss
Pure economic	Loss of profit or potential profit

