

Particular Statutory regimes: strict liability

Definition of strict liability:

Strict liability is the imposition of liability on a party without a finding of fault (such as negligence or tortious intent). The plaintiff needs to prove only that the tort happened and that the defendant was responsible. Strict liability is imposed for legal infractions that are **Malum Prohibitum** rather than **Malum in se**, therefore, neither good faith nor the fact that the defendant took all possible precautions are valid defenses. Strict liability often applies to those engaged in hazardous or inherently dangerous ventures.

Characteristics of Strict liability

- The law imputes strict liability to situations it considers to be inherently dangerous.
- It discourages reckless behaviour and needless loss by forcing potential defendants to take every possible precaution.
- It also has the effect of simplifying litigation and allowing the victim to become whole more quickly.

Differences between Strict Liability and absolute liability.

- In absolute liability, a guilty act, or actus reus is required.
- With Strict liability, a guilty act is only required, and no mens rea is needed to be proved.
- In Strict liability situations, although the plaintiff does not have to prove fault, the defendant can raise a defense of absence of fault.

Classic Examples of Strict liability.

- A defendant owns a tiger rehabilitation center. No matter how strong the tiger cages are, if an animal escapes and causes damages and injury, the owner is held liable.
- A contractor hires a demolition sub contractor that lacks proper insurance. If the sub contractor makes a mistake, the contractor is strictly liable for any damage that occurs.

Product Liability: The Consumer Protection Act 1987.

Background

Prior to the act, a victim had to bring a claim for negligence and of course establish that there was a duty of care. See Donaghue v Stevenson (1932) AC 562, Grant v Australian Knitting Mills Ltd (1936) AC 85 , Mason v Williams Ltd (1955) 1 WLR 549

Problems relating to defective products

Causation was the main problem. In leading cases like Donaghue v Stevenson, the courts have maintained that the manufacturer of defective goods will only be liable if it can be satisfied that the defect was not due to the fault of another party in the supply chain. See Evans v Triplex Safety Glass Co Ltd.(1936) 1 All ER 283.

Product liability: Consumer Protection Act 1987.

Further, a seller subject to the Unfair Contract Terms Act 1977, could force a buyer to take the responsibility for the safety of the goods by marking the product 'As seen with all its faults'.

Pressure for reform from pressure groups and the European Commission, eventually brought about the Consumer Protection Act 1987 in the United Kingdom in 1988.

Continued utility of the common law i.e. Donoghue v Stevenson negligence

Despite the statutory reform, the common law of negligence is still in existence. The duty at common law extends beyond the producer/consumer relationship to include repairers, fitters, erectors etc.

The structure of the Consumer Protection Act 1987.

- The victim should be able to sue the producer/manufacturer of the product, provided he/she can prove that it was defective.
- It is then for the defendant to raise a defence, which are listed in sections 4 of the act.
- Products are defined broadly and include any goods, electricity, coal, gas and even agricultural products.
- Buildings and land are not included, though construction materials such as bricks are. Information and software are not included, though printed instructions and embedded software are relevant to the overall safety of the product.

Who is liable under the Act?

- Producers (ss.1(2) and 2(2)(a))
- Persons holding themselves out as producers, for example by selling private label products under their own brand (own branders) (s.2(2)(b))
- Importers into the European Union (EU) for commercial sale. (s.2(2)(c))

Are suppliers liable under the Act?

Suppliers are not generally liable, except under the special provisions of section 2 (3). There can be more than one producer, for example, the manufacturer of a component part and the manufacturer of the whole product. They will be jointly liable: section 2 (5)

Section 2 (3) states that where damage is caused wholly or partly by a defect in a product, any person who supplied the product shall be liable if :

- The person who suffered the damage requests the supplier to identify one or more of the persons to whom section 2(2) applies in relation to the product.
- That request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons
- The supplier fails , within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

When is a product defective?

Section 3 defines a defect as being present when “the safety of the product is not such as persons generally are entitled to expect”. Safety is further defined as to apply to products that are component parts or raw materials in other products, and to risks to property as well as risks of death and personal injury.

The standard of safety that “persons generally are entitled to expect” is to be assessed in relation to all the circumstances, including :

- The manner in which, and purposes for which the product has been marketed.
- Its “get up”
- The use of any mark in relation to the product
- Any instructions for, or warnings with respect to doing or refraining from doing anything with or in relation to the product
- What might reasonably be expected to be done with or in relation to the product, and
- The time when the product was supplied by its producer to another. (But the fact that older products were less safe than newer ones does not , of itself, render the older products defective.

Limitation

Schedule 1 of the Act amends the Limitation Act 1980. Claims under the Act are barred three years after the date when damage occurred or when it came to the knowledge of the claimant. However, no claim can be brought more than 10 years after the date the product was put into circulation.

Defences – sections 4, 6(4) and 6(5)

- The defect is due to compliance with a requirement imposed by law
- The defendant did not at any time supply the product
- The only supply of the product to another by the defendant was not in the course of business, and s.2(2) does not apply to the defendant or applies to him due to things not done with a view to profit
- The defect did not exist in the product at the time supplied
- The state of scientific knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control.
- The defect was in a product in which the product in question was a component, and was wholly due to the design in the subsequent product or due to compliance by the producer of the product with instructions given by the producer of the subsequent product.

Remedies under the act.

This is covered by section 5 of the act, and covers death or personal injury, or any loss or damage to property. It also does not cover pure economic loss.

Property damage is restricted by sections 5(3) and(4) and will not include:

- Property not ordinarily intended for private use, occupation or consumption and not intended to be used for private use, occupation or consumption
- Property damage, which does not exceed £275.

Liability for animals: Animals Act 1971

The Animals Act 1971 imposes, in certain circumstances, strict liability on keepers of animals.

A 'keeper' is defined in section 6(3) as the owner of the animal, someone who has it in his possession or the head of a household where a minor under 16 owns or possesses the animal (see also s.6 (4)). It is no longer necessary to prove that the keeper was at fault.

The Act itself makes a distinction between dangerous animals and non dangerous animals.

Dangerous Animals

These are defined in section 6 (2) of the Act.

'A dangerous species is a species:

- Which is not commonly domesticated in the British Islands; and
- Whose fully grown animals normally have such characteristics that are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe'.

Non-dangerous animals

This is dealt with in section 2(2) of the act, and one is looking at when dogs, cats or even birds get out of control and cause damage. The section sets out three conditions, **which all must be satisfied.**

- The damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
- The likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
- Those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, were known to another keeper of the animal who is a member of that household and under the age of sixteen.

Defences

Defences are listed primarily in section 5 of the Act.

Section 5(1) provides that a person will not be liable under sections 2-4 for any damage which is wholly due to the fault of the person suffering from it. Section 10 further provides for a defence of contributory negligence.

Section 5(2) establishes a defence of voluntary acceptance of risk for section 2 only. Section 5(3) is equally confined to section 2 and provides that a person will not be liable to trespasser on the land, if it is proved that:

- ‘That the animal was not kept there for the protection of persons or;
- (if the animal was kept there for the protection of persons or property) that keeping it there for that purpose was not unreasonable.’