

ASPECTS OF CONTRACT AND NEGLIGENCE FOR BUSINESS



Lecturer: Judith Robb-Walters
Lesson 12



- **ASPECTS OF CONTRACT AND NEGLIGENCE FOR BUSINESS**

- LO 4: Be able to apply principles of liability in negligence in business situations.

- September – November 2014

The Basic Syllabus



- Understand the essential elements of a valid contract in a business context.
- Be able to apply the elements of a contract in business situations.
- Understand principles of liability in negligence in business activities
- Be able to apply principles of liability in negligence in business situations.

LEARNING OBJECTIVES



- At the end of the class, students should be able to:
 - Apply the elements of vicarious liability in given business situations

OVERVIEW



A tort may be defined broadly as a civil wrong involving a breach of duty fixed by the law, such duty being owed to persons generally and its breach being redressable primarily by an action for damages. Monetary damages is the usual remedy for a tort. The other important remedy is the injunction, which is a court order forbidding the defendant from doing or continuing to do a wrongful act. Whether the plaintiff is claiming damages or an injunction, he must first prove that the defendant has committed a recognized tort, for the law of torts does not cover every type of harm caused by one person to another. The mere fact that D's act has caused harm to P does not in itself give P a right to sue D; P must go further and show that D's act was of a type which the law regards as tortious.

Defenses



Whizbang Ltd is a professional firework display organiser with an impeccable safety record. On 5th November 2000 it put on a display in Loutsville. After Whizbang had cleared up and gone, Garry and Larry find a number of 'Mighty Thunderbolt' rockets near to where the fireworks were launched that had not exploded. They decide to light one of the rockets and throw it at each other for 'a laugh'. The firework explodes causing serious burns to each of them.

Advise Whizbang Ltd.

Contributory negligence



In *Fitzgerald v Lane & Patel* 1989 the claimant crossed the road whilst the lights were at red for pedestrians. The first defendant driver collided with him and the claimant was thrown from the bonnet of that car into the road, where he was run over by a car driven by the second defendant. The claimant suffered severe spinal injuries that led to partial paralysis, but it could not be proven which impact caused the paralysis.

Advise the client.

Contributory negligence



- A) ICI v Shatwell 1965
- The facts: The claimant and his brother disregarded safety precautions whilst using detonators, resulting
- in injury to the claimant.
- B) Sayers v Harlow UDC 1958
- The facts: The claimant was injured whilst trying to climb out of a public toilet cubicle that had a defective lock.
- Advise the clients
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Remedies



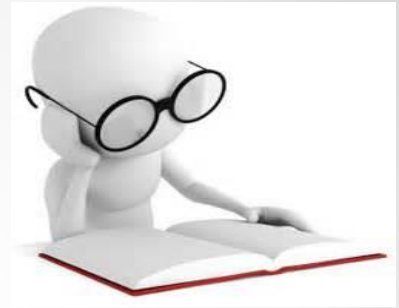
- Describe in outline the remedies which may be available to the injured party in relation to breaches of contract.

Negligence



- Two constables were chasing an armed man who was wanted for various offences, including robbery and possession of firearms. The man ran into the yard of the plaintiff's house, from where he fired a shot at the pursuing constables. The constables returned fire but accidentally shot the plaintiff, who was also in the yard but had not been noticed by the constables.

Further readings



- The law of obligations 4: Formation of contracts I
ACCA BPP F4
- Contract Law - Catherine Elliott and Frances Quinn
- COMMONWEALTH CARIBBEAN TORT LAW - Gilbert
Kodilinye, MA (Oxon), LLM (Lond), Barrister
- Professor of Property Law University of the West
Indies