

ASPECTS OF CONTRACT AND NEGLIGENCE FOR BUSINESS



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Lesson 8



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

- LO 2: Understand principles of liability in negligence in business activities

- 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:
 - Explain the nature of liability in negligence

OVERVIEW



“In its 'ordinary' meaning, negligence simply refers to a careless conduct of the defendant as opposed to a wilful conduct. However in tort law, the term negligence is used more commonly in its technical sense to mean the breach of a duty by the defendant consisting of his or her failure to take reasonable care to avoid a reasonably foreseeable harm to another person. A significant section of the law of torts is based on this notion of negligence.”

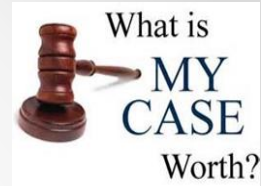
PERSONAL INJURY



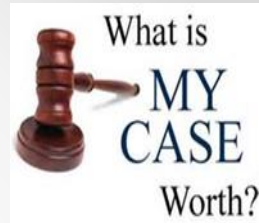
What is
MY
CASE
Worth?

- "Personal injury" cases are legal disputes that arise when one person suffers harm from an accident or injury, and someone else might be legally responsible for that harm. A personal injury case can become formalized through civil court proceedings that seek to find others legally at fault through a court judgment or, as is much more common, such disputes may be resolved through informal settlement before any lawsuit is filed.

PERSONAL INJURY



- Formal "Lawsuit" Unlike criminal cases, which are initiated by the government, a formal personal injury case typically starts when a private individual (the "plaintiff") files a civil "complaint" against another person, business, corporation, or government agency (the "defendant"), alleging that they acted carelessly or irresponsibly in connection with an accident or injury that caused harm. This action is known as "filing a lawsuit". Our discussion on negligence and proof is especially helpful.



PERSONAL INJURY

- Informal Settlement In reality, most disputes over fault for an accident or injury are resolved through informal early settlement, usually among those personally involved in the dispute, their insurers, and attorneys representing both sides. A settlement commonly takes the form of negotiation, followed by a written agreement in which both sides forgo any further action (such as a lawsuit), choosing instead to resolve the matter through payment of an agreeable amount of money.

DAMAGE TO PROPERTY



- Injury can be caused intentionally, due to negligence, or by forces of nature, and still be considered property damage.
- The causes of harm are not always clear. In some cases, the actual damages may be the result of a natural force, such as lightning. It may have been a person's negligence by leaving an item outdoors, however, that created the circumstances for the damages.
- There are also cases where property damage is intentional, but the harm is done without malice. If a child is locked inside of a house and a passerby breaks the window to rescue the child, he is not doing so with mean-spirited intentions. When damage to a property occurs, the owners of the property are generally entitled to compensation. Circumstances involving the causes are typically taken into consideration and sometimes owners are not compensated.

DAMAGE TO PROPERTY



- When owners are entitled, the awarded amount can depend on many factors. These include the costs of repairs, losses incurred because the item is out of use, and sentimental value. Money is not the only means of compensation. If the damaged property cannot be repaired to a favorable condition, it may have to be replaced. In other cases, a person responsible for such harm may be required to perform some action, such as repairing the item.

ECONOMIC LOSS



- Economic loss is “the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold. It is probably easier to consider which losses are economic from an exclusive perspective. From this view, personal injury and damage to other property are not economic losses. All other
- losses are, thus, economic. Economic loss can be divided into two categories: direct and consequential.
- A direct economic loss is defined as: “‘out of pocket’—the
- difference in the value between what is given and received—or ‘loss of bargain’—the difference between the value of what is received and its value as represented. Direct economic loss may also be measured by costs of

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Most importantly, the economic loss doctrine draws a distinction between incidents resulting in only economic loss and those where other losses are present. Where a defective product injures only itself all losses are economic. Conversely, where a defective product causes personal injury or damage to other property, non-economic losses are present.



OCCUPIER LIABILITY

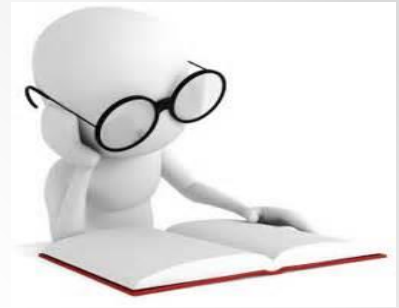
- Occupiers' liability generally refers to the duty owed by land owners to those who come onto their land. However, the duty imposed on land owners can extend beyond simple land ownership and in some instances, the landowners may transfer the duty to others, hence the term occupier rather than owner. The term occupier itself is misleading since physical occupation is not necessary for liability to arise. Occupiers' liability is perhaps a distinct form of negligence in that there must be a duty of care and breach of duty, causing damage. The rules of remoteness apply to occupiers liability in the exact same way that they apply to negligence claims.



OCCUPIER LIABILITY

- Liability can arise on occupiers for omissions since their relationship gives rise to duty to take action to ensure the reasonable safety of visitors. The law relating to occupiers' liability originated in common law but is now contained in two major pieces of legislation:
- Occupiers Liability Act 1957 - which imposes an obligation on occupiers with regard to 'lawful visitors'
- Occupiers Liability Act 1984 - which imposes liability on occupiers with regard to persons other than 'his visitors'.
- Different levels of protection are expected under the two pieces of legislation with a higher level of protection afforded to lawful visitors.

Further readings



- Lawbook Company's Nutshell: Torts by Sam Blay (Sydney: LBC, 1999, 4th ed).
- <http://injury.findlaw.com/>
- What Is Property Damage? By: Felicia Dye
- <http://www.lawteacher.net/>
- THE ECONOMIC LOSS DOCTRINE: ARGUING FOR THE INTERMEDIATE RULE AND TAMING THE TORT-EATING MONSTER By:Gennady A. Gorel*
- <http://www.e-lawresources.co.uk/>