

# BTF1010 Notes

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## Chapter 2 - Liability for Defective Products

### Negligence Defined

- Duty?
  - Did the defendant owe a duty to the plaintiff to take reasonable care to avoid the injury that occurred
- Breach?
  - Did the defendant fail to exercise the required standard of care?
- Damage?
  - Were the plaintiffs losses caused by the defendants negligence and were the losses reasonably foreseeable?

### Step 1 - Duty of Care Where Harm to a Person/Economic Loss

- Where the actions of one party (the defendant) cause harm (physical/psychological) to a human person (the plaintiff)
- Duty of Care: You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour
- No matter how negligent you are, you do not owe a duty of care to everyone. So who do you owe duty of care to? "Persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."
- Reasonably Foreseeable: This means that a reasonable person would have foreseen the outcome
- The hypothetical reasonable person sees, hears, thinks clearly, plans ahead, appreciates risks and takes practical steps to minimise likely adverse consequences
- Pure Economic Loss: where the actions of one party (the defendant) cause economic (rather than physical/psychological) harm

### Factors to Consider

- Was the loss reasonably foreseeable?
- Nature of the relationship
- Determinate or Indeterminate class?
- Plaintiff's vulnerability
- Did defendant know of vulnerability
- Did defendant assume risk?

### Step 2 - Breach/Standard of Care

- Even when a plaintiff can prove duty of care was owed to them, it does not always mean the defendant is liable
- A plaintiff must also prove that the defendant failed to exercise a proper standard of care. Did the plaintiff take enough care?

### How much care is required?

- Must take precautions against risk of harm where
- Risk of harm is foreseeable
- Risk is not insignificant
- Plaintiff must show a reasonable person (in the same position) would have acted differently in the same circumstances

## The Balancing Test

probability of  
the harm  
occurring and  
likely  
seriousness of  
the harm



burden (such as  
cost, difficulty,  
inconvenience)  
of taking  
precautions to  
avoid risk of the  
harm

The higher the probability and likely seriousness, the more precautions are required

Applying the balancing test:

- Was a duty of care owed?
- How much care must be taken
- What was the standard of care?
- What precautions would a reasonable person take?

## Step 3 - Damage

- 3 step process
- Causation
- Remoteness
- Amount

Causation

- Plaintiff must prove that the negligent act proved the damage
- Damage must be a direct consequence of negligent act(s) (a question of fact of factual causation)
- Often referred to as the 'But for' test
- Often difficult to resolve

Remoteness

- Plaintiff can't recover all losses resulting from defendant's failure to meet a standard of care
- Losses must not be too remote
- Damage must be direct consequence of the negligent act and must also be reasonably foreseeable
- Would a reasonable person with knowledge and experience expected of a manufacturer/ designer repairer/supplier etc of the product/service have foreseen the damage that occurred?
- Foreseeability is used in all 3 steps of Negligence
  - Duty of care?
  - Standard of care?
  - Damage too remote?

# **BTF1010**

## **Commercial Law**

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Case Summaries from 'Law in Commerce 5th Ed.'

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#### When a person not bound by a document they signed: The document didn't appear to be

**contractual**

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**What are the rules for interpreting exemption clauses?****Negligence rule**

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Thomas National Transport (Melbourne) Pty Ltd v May and Bake (Aus) Pty Ltd p.277 32

**Unenforceable terms in standard form consumer contracts**

## - Advertisements

### Carbolic Smoke Ball Case p.170

- Due to the influenza epidemic, Carbolic Smoke Ball Company (CSBC) offered a 100 pound reward if you used their product and caught the flu
- Emile Carlill did use the product, and did catch the flu, but unlike most people, she survived
- She asked the company for her reward, but they refused
- Emily sued
- The courts held that CBSC was making an offer, because of a few circumstances
  - They offered a reward
  - The publicly announced they deposited 1000 pounds into a bank for the purposes of reward money
  - This made it hard to argue it was purely an invitation to treat, as they had proof of offer

## - Tenders

### Hughes Aircraft Systems International v Airservices Australia p.172

- The Civil Aviation Authority (CAA) invited Hughes and another company to tender for the contract to supply an advanced air traffic system for Australia.
- The CAA send out request for tenders to both companies, setting out the terms of the tender process
- One of these terms was that CAA would not discuss prices offered by one party with the other
- CAA however, discussed Hughes price with the other company and allowed them to change their tender
- The tender was then awarded to the other company
- Hughes complained that CAA was contractually bound to follow the request for tenders procedure

*Was the request for tenders an offer or an invitation to treat?*

A reasonable person would have concluded that the CAA intended to be bound by the procedures set out in the request for tenders. Therefore the request for tenders was an offer. Once Hughes had submitted a tender, they had entered a contract, and CAA breached that.

### Harvela Investments Ltd v Royal Trust co of Canada Ltd p.173

- Royal Trust owner of shares, engaged in negotiations to sell shares
- Eventually, Royal sought sealed bids from 2 possible buyers
- In calling for bids, Royal advised following bidders 'Any offer made by you is the highest offer received by us we will bind ourselves to accept such an offer'
- Harvela bid 2.175 mil and Outerbridge bid 2.1 mil or 101,000 in excess of any offer higher.
- Seller accepted Outerbridge, Harvela sued for breach of contract

*Was there contract between Harvela and Royal? If so, had Royal breached contract?*

*To succeed, Harvela had to show: 1) Offer was made by seller calling bids 2) Term was to sell to highest bid*

Lord held in circumstances, the seller had made the offer, not bidders. Harvela accepted offer by making highest bid. Outerbridge bid of 101,000 more than any other bidder did not comply with terms offered by tender. Royal was ordered to transfer shares to Harvela



## - Internet Transactions

### Smythe v Thomas

- T & S were registered eBay users
- T listed an aircraft for sale on eBay with a minimum bid price of \$150,000
- The auction was to remain open for 10 days
- S's bid of \$150,000 was successful
- T refused to proceed with the deal, arguing that the listing on eBay was merely an invitation to treat
- S argued that it was an offer which he had accepted by being the successful bidder

Was the listing an offer of merely an invitation to treat? This was critical in determining whether there was a contract. If there was a contract, was specific performance available?

There was a contract between T & S. According to the court, listing the aircraft for sale on eBay's auction site at a minimum price was 'an offer to any bidder who:

- A. bid within the specific time period
- B. made a bid of at least \$150,000
- C. was the highest bidder of those who made bids in accordance with A and B; and
- D. did not qualify or seek to impose a qualification on his bid to which the seller had not previously indicated his willingness to consent.'

As the aircraft was a vintage and unusual item, specific performance was ordered

## Can an offer be revoked before acceptance?

### Routledge v Grant p.177

- Grant offered to buy Routledge house and said he would keep offer open for 6 weeks
- Before expiration of 6 weeks, Routledge accepted, Grant wrote letter to Routledge withdrawing offer
- This caused issues for Routledge as he had brought another house believing his would be sold
- Routledge sued Grant for breach of contract arguing that Grant could not withdraw his offer before the promise 6 weeks expired

Was Grant entitled to withdraw offer even though he promised to keep it open for 6 weeks

Court rejected Routledge case and held that an offeror was entitled to revoke any time before accepted

## Is it necessary to tell the offeree about the revocation?

### Byrne & Co v Van Tienhoven & Co p.177

- 1st October - The offeror in London sent an offer by post to the offeree in New York
- 8th October - No response had been received so offeror sent another letter revoking offer
- 11th October - Original offer letter was received in New York, who immediately sent response
- 20th October - The letter of revocation was received by offeree in New York

If the offer was revoked on the 8th, there was no contract. If contract was not revoked on the 8th, there was a contract. Was the letter of revocation valid?

There was a contract. While the offeror has the right to revoke an offer before it is accepted, revocation is not effective until the original offer has been received by the offeree. The postal rule applies to this case.