6.0 INTRODUCTION

In this chapter we focus on statutory regimes where the desire to compensate victims has encouraged the legislator to impose strict liability. Here, fault need not be proved. It is important to remember, however, that claimants must still prove the defendant's actions caused their loss, that the loss is recoverable and that there are no defences which obstruct their claim or limit their damages. Under both statutes, contributory negligence is a defence to any claim.

In consumer age , defective product can cause severe injury to the public, but it is often difficult to prove negligence. *If your new coffee table arrives with scratches on the surface, were these caused by the manufacturer, the retailer or the delivery firm? If you take drug X or due to natural causes? Even if you are able to identify drug X as the cause , is it defective or just an acceptable side-effect, but we do not think of them as defective.*

The Animal Act 1971 has a very different history. It modified existing common law provisions, which distinguished between ferae naturae(animals wild by nature) and Mansuetae naturae(tame animals). The Act imposes strict liability on the keepers of animals which are dangerous, or not dangerous but known to be likely to cause harm or injury to another. The keepers of such animals will find themselves liable for injuries caused regardless of the fact that they were not at fault.

6.1 Product Liability: Consumer Protection Act 1987

Prior to the Act, a person injured by a defective product would have to bring an action in negligence and establish that the defendant owed him or her a duty of care, which had been established and caused loss which was not too remote. The classic case is that of Donoghue v Stevenson[1]: the famous snail in the ginger beer bottle. See also *Grant v Australian Knitting Mills Ltd*[2],(underpants containing an excess of sulphite chemicals) and *Mason v Williams & Williams Ltd*[3][1955] (chisel too hard for its purpose).

6.1.1 Problems relating to defective product

Causation has always been a problem. In Donoghue v Stevenson itself, the court emphasized that the manufacturer would only be liable if the court was satisfied that the defect was not due to the

[1] [1932] AC 562

[2] [1936] AC 85
[3] [1955] 1 WLR 549

fault of another party in the supply chain. A reasonable possibility of intermediate examination or interference will lead the court to reject the claim; see *Evans v Triplex Safety Glass Co Ltd[1936] 1 All ER 283* and *Andrews v Hopkinson[1957] 1 QB 229*.

Further , a seller could, subject to the Unfair Contract Terms Act 1977, force a buyer to take responsibility for the safety of the product by making the product ' as seen and with all its faults': Hurley v Dyke[1979] RTR 265 HL

A significant area of concern was, however, design defects. These are difficult to detect, but have potentially very serious consequences as they will affect every product.

It is important to recognize that, despite the statutory regime, the common law of negligence may still be of assistance. The duty at common law extends beyond the producer/consumer relationship to include repairers, fitters, erectors, assemblers and even distributors.

According to the Act the Victim should be able to sue the producer of the product, provided that he or she can prove that the product was defective. It then falls to the producer to raise any defences. Products are defined broadly. They include any goods, electricity, coal, gas, and even agricultural products.

Who is liable

S. 1(2) and s. 2 under the Act, the following are liable:

- Manufacturers
- Own Branders
- Importers of goods

When is a product defective?

The defendant is liable for damages caused wholly or in part by a 'defect' in product. S.3(1) defines a 'defect' as existing when ' the safety of the product is not such as persons generally are entitled to expect'. Section 3(2) instructs the court to take into account all the circumstances of the case including:

(a) The manner in which , and purpose for which , the product has been marketed, the use of any mark in relation to the product and any instructions for, or warning with respect to, doing or refraining from doing anything with or in relation to the product.

(b) What might reasonably be expected to be done with or in relation to the product

(c) The time when the product was supplied by its producer to another.

The leading case is **A v National Blood Authority [2001] 3 All ER 289.** This was a class action brought by over 100 claimants who had been infected with the virus hepatitis C through blood transfusion which has used blood or blood products obtained from infected donors. Although the National Blood Authority had known of the risk of infection from at least the 1970s, it was, at the time, impossible to detect. It was argued that 'persons generally' could not expect 100 % clean blood in view of such undetectable risks. Burton J. rejected this view. The Act imposed strict liability and it was irrelevant that the National Blood Authority had taken all reasonable steps to detect such risks. Patients, having a blood transfusion, were entitled to expect that the blood would be safe and, if it is was not, it was defective.

The Standard/ non-standard distinction

Burton J in A(above) explained that non-standard products (or rogue products) would be more easily be shown to be defective. They were not produced in the way that the defendant intended, which immediately suggested some flaw. In contrast, standard products- that is, products which complied with the manufacturer's intention- would be more difficult to prove to be defective. The court would look at all the factors listed in section 3(1) and (2) to ascertain whether they were in fact defective.

The court found that the blood infected with Hipatitis C was non- standard product- it differed from the standard product of uninfected blood. See also the Court of Appeal in *Abouzaid v Mothercare(UK) Ltd*, (child injured by a buckle on the elastic fastening on back of pushchair).

Warnings

In A, Burton J specifically mentioned that warning could render even non-standard products safe, provided that the warnings were clear and widely known. See *Worsley v Tambrands Ltd.[2000] PIQR p.95*

Defences

It should be noted that strict liability does not mean automatic liability, but simply that the claimant does not have to prove that the defendant has been at fault. The defence of contributory negligence

is available where damage is caused partly by a defect in the product and partly by the fault of the victim.

A defence would exist where:

- 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
- The defect did not exist in the product at the time supplied
- The state of scientific and technical knowledge at the relevant time as 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.

6.2 Liability for Animals: Animals Act 1971

A defendant may be liable in any tort (particularly nuisance or negligence) as the result of the behavior of animals. Owners of animals have a duty of care and may be liable in negligence even if they would not be liable under the Animal Act 1971(see Draper v Hodder [1972] 2 QB 556). One exception to this was an immunity for allowing animals to escape on to the highway and do damage there (see Searle v Wallbank [1947] AC 341, but this was abolished by s.8 of the Animal Act 1971

6.2.1 Liability for Dangerous animals

The Animal 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 the household where a minor under 16 owns or possesses the animal. It is no longer necessary to prove that the keeper was at fault.

The Act draws a basic distinction between animals of dangerous species and animals of non-dangerous species. More will be expected of those who choose to keep dangerous animals.

6.2.2. Dangerous Animals

These are defined in section 6(2) of the act and include animals such as; Tigers, elephants and lions.

As noted in the leading case of Mirvahedy v Henley [2003] 2 AC 491. Cases will generally arise in the context of escapes from circuses or zoos. Section 2(1) provides that the keepers of the dangerous animal will be strictly liable for any damage caused by such animals, subject to the available defences.

6.2.3. Non-Dangerous animals

This is dealt with in section 2(2). This deals with situations where, for example, cats and dogs, etc, get out of control. Section 2(2) sets three condition for liability which must all be satisfied;

(a) The damage is of a kind which the animals, unless restrained , was likely to cause or which, if caused by the animal, was likely to be severe; and
(b) 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
(c) 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 servants or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.

Here (a) and (b) set an objective test; (c) will depend on the keeper's actual knowledge. The damage must be foreseeable, and must be caused by characteristics of the animal which are abnormal in the species or abnormal in view of the animal's usual behavior.