

LIABILITY FOR GOODS

(A) THE NARROW RULE IN DONOGHUE v STEVENSON

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Contractual remedy

The purchaser of goods, which turn out to be defective, will sue in contract for breach of the terms implied by the Sale of Goods Act 1979, or the Supply of Goods and Services Act 1982, which cannot be excluded against a consumer (Unfair Contract Terms Act 1977). However, the doctrine of privity of contract usually prevents third parties from suing on contracts to which they are not privy.

Manufacturers' duty

In *Donoghue v Stevenson* Lord Atkin stated that a manufacturer of products owes a duty to the ultimate consumer to take reasonable care in the preparation of the product. See:

M'Alister (or Donoghue) v Stevenson [1932] AC 562

Distributors of goods may even be held responsible. See:

Watson v Buckley, Osborne, Garrett & Co [1940] 1 All ER 174

Intermediate inspection

Lord Atkin also stated that this duty applies to products which reach the ultimate consumer in the form in which they left the manufacturer, with no reasonable possibility of intermediate examination. See further:

Grant v Australian Knitting Mills [1936] AC 85

There may be a reasonable contemplation of intermediate examination by a third party or the consumer, for example, a hairdresser or consumer warned to test a hair product before use. See:

Holmes v Ashford and others [1950] 2 All ER 76

Kubach v Hollands and another [1937] 3 All ER 907

Causation

The manufacturer will not be liable if the consumer misuses the product:

Aswan Engineering v Lupdine Ltd and another [1987] 1 All ER 135

The claimant must prove that the defective product caused the injury suffered, applying the usual rules of causation. See, for example:

Evans v Triplex Safety Glass Co [1936] 1 All ER 283

Warning

An 'adequate' warning may discharge the manufacturers' duty of care. See in:

Haseldine v CA Daw & Son Ltd [1941] 2 KB 343 (per Goddard LJ at 380)

Hurley v Dyke and others [1979] RTR 265, cf. *Andrews v Hopkinson* [1957] 1 QB 229

Continuing duty

The manufacturer owes a continuing duty in respect of products already in circulation when a defect is discovered. See, for example:

Hobbs (Farms) Ltd v Baxenden Chemical Co [1992] 1 Lloyd's Rep 54, 65
Carroll v Fearon, Bent and Dunlop Ltd [1998] PIQR P146

Type of loss

Applying the usual rules of tort (*Spartan Steel & Alloys v Martin & Co* [1972] 3 All ER 557) the claimant can recover only for:

- personal injury;
- physical damage to property other than the product itself; and
- economic loss consequential to the physical damage.

Pure economic loss cannot be recovered. See, for example:

Muirhead v Industrial Tank Specialities [1985] 3 All ER 705
Murphy v Brentwood District Council [1990] 2 All ER 908

(B) CONSUMER PROTECTION ACT 1987, Part I

INTRODUCTION

The CPA 1987 was passed to enact the European Community Directive on Liability for Defective Products 1985 (85/374/EEC). It applies to damage caused by products which were put into circulation by the producer after 1 March 1988. Section 1(1) states that Part I of the Act:

“shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly”.

The CPA 1987 places strict liability for defective products on a range of possible defendants.

DEFENDANTS

Liability is imposed on the:

- Producer; ‘own brander’; or the importer into the EC, of the product (s2(2)).
- A supplier will become liable if the goods are anonymous and he/she has no record or other means of tracing his/her supplier, or if he/she refuses to identify his supplier (s2(3)).

PRODUCTS

‘Product’ means any ‘goods or electricity’ and includes a product which is comprised in another product whether as a component part or raw materials (s1(2)).

Agricultural products, previously excluded unless they had undergone an industrial process (s2(4)), are now covered by EU Directive 99/34.

Buildings are specifically excluded except where a supply of goods involves incorporating the goods into a building or structure (s46(3)).

DEFECT

The claimant must prove that the damage was caused by a defect in the product. Goods are defective if their safety is not such as 'persons generally are entitled to expect, taking into account all the circumstances' (s3(1)) such as:

- 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 and 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.
- The time when the product was supplied by its producer to another (s3(2)).

A recent case on this issue is:

Richardson v LRC Products [2000] Lloyd's Rep Med 280

DAMAGE

Damage is defined as death, personal injury and damage to any property (including land) (s5). There are certain types of damage which are specifically excluded from the ambit of the Act:

- Damage to the product itself or damage to a product caused by a defective component product which had been supplied with the product (s5(2)).
- Damage to business property, ie property which is not ordinarily intended for private use, occupation or consumption and not intended by the person who suffers the loss or damage mainly for his or her own private use, occupation or consumption (s5(3)).
- Small property damage, ie losses of less than £275 (s5(4)).

Pure economic loss is excluded by the very definition of damage in s5. But what about economic loss consequent upon physical damage?

CAUSATION

The claimant has the burden of proving that the product was defective and that the damage was caused 'wholly or partly' by the defect (s2(1)).

DEFENCES

There are several defences listed in s4 of the CPA 1987:

- The defect in the product was attributable to compliance with a statutory or EEC requirement (s4(1)(a).
- The person proceeded against did not supply the product (s4(1)(b).
- The product was not supplied in the course of a business, or not with a view to profit (s4(1)(c).
- The defect did not exist at the relevant time (s4(1)(d).
- The so-called development risks defence (s4(1)(e), ie that “the state of scientific and technical 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.”

Section 4(1)(e) seems to be wider than the defence in Article 7(e) of the EC Directive. However, the European Court of Justice has concluded that there is no conflict between the two. See:

European Commission v UK (C300/95) [1997] All ER (EC) (1) 481

- The defect was in the subsequent product not the component part (s4(1)(f).
- Contributory negligence is a partial defence (s6(4).

Limitation of actions

The right to bring an action under the CPA 1987 is lost 10 years from the date that the defendant supplied the product (Schedule 1 CPA 1987 and s11A(3) Limitation Act 1980).

The claimant must begin proceedings within three years of becoming aware of the defect, the damage or the identity of the defendant, or if the damage is latent, the date of knowledge of the plaintiff, provided that it is within the 10-year limit (s11A(4) Limitation Act 1980).

In the case of personal injuries there is a discretion vested in the court to override the three-year limitation period (s33 Limitation Act 1980).