

The legal system and construction law general essay

Law



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1. There are a number of sources and institutions that make up The English Legal System that help to create and develop laws in England and Wales. In this assignment I will use examples to show how these sources and institutions work to create laws. Laws are created by the English Legal System, which is made up of various sources and institutions. These sources and institutions work together to help create and develop the law and are made up of the countries leaders and members of parliament. The law making institutions that contribute to the English Legal System are: The Courts (The Judiciary)ParliamentGovernmentThe European UnionThe Council of Europe - ECHRThe sources that also contribute to the English Legal System: Case LawEquityActs of ParliamentDelegated LegislationStatutory InterpretationEU LawECHRThe sources and institutions that create law do so by combining the rules of Parliament, the Government and the EU. The Courts (or the Judiciary) are judges that stand as law makers; they do this in 2 ways. The first is developing common law, which in this context refers to the procedural rules and substantive law that have been created by the judiciary, through decisions they have made from previous cases. The development of common law dates back to 1066, where the principle of 'stare decisis' was constructed, meaning 'let the decision stand' and by 1250 a common law throughout the country was produced. The second way that judges make laws is by the interpretation of acts of parliament, for example Parliament makes laws in the form of statutes, and even though Parliament has created the law it is still the judge's role to interpret that law. Acts of Parliament/Statutes have now replaced case law as the dominant law, as Parliament rules as supreme law maker within the English Law System, being

made up of the 3 ruling institutions the House of Commons, the House of Lords and the Monarch. These Acts, although rarely used, are a way of solving disagreement between the Commons and the Lords. A bill is a law that has not been put into place yet, and is usually a proposal for a new law or to change an existing law. Bills are established and given to either the House of Commons or House of Lords for examining, discussion and amendment. After both Houses have reviewed the content of the Bill and agreed that it is suitable it is presented to the Monarch for Royal Assent (approval). Once all these stages are complete the bill will become an Act of Parliament and is now a law. Delegated Legislation is a term used when Parliament bestows its law making powers to the Government (the Executive), allowing them to make judgements and create laws. Delegated Legislation permits the Government to apply changes to a law without the need to try and push for a completely new Act. The original act, or the primary legislation, would have conditions that allow the altering of the law in the future, to certain degrees. The changes that can be made to the law range from such things as the changing of the level of a fine, to more important law making decisions such as applying an Act with a broad framework to serve a more complex purpose, this changing of content may only be added through delegated legislation. Types of delegated legislation include statutory instrument (SI's), with approximately 3000 statutory instruments given out each year they are a large percentage of delegated legislation. Around 75% of SI's are not actually actively put before Parliament and just become law by predetermining the date that they will be enforced. The EU (formerly the ECC before becoming the aforementioned EU in 2001)

has its very own legal system, making laws for the UK and giving it a great impact on the English Law System. The three main sources of EU law are: Primary Law, Secondary Law, and Supplementary Law. The EU are made up of 27 member states and have with the law being applied by the courts of the member states, there are 27 members which are called commissioners, they are appointed every 5 years by the European Parliament. The Commission has a big role in drafting in new laws and also making sure the member states uphold EU legislation by investigating breach in the law. The judicial part of the EU consists of three main courts: The Court of Justice, The General Court, and The European Union Civil Service Tribunal.

The Court Of Justice

This court mainly deals with cases opened by member states or the institutions and also cases that have been referred to the Court of Justice by courts of member states.

The General Court

Dealing with cases mainly taken by individuals and companies, the General Court takes these cases directly before the EU's courts.

The European Union Civil Service Tribunal

This tribunal passes judgment on clashes between the European Union and the Europeans Civil Service. 2. The tort of negligence is an area of law that deals with harm caused by carelessness that causes harm or unintentional harm, negligence is when a person/people fail to exercise the care that a sensible person would in the same circumstances. For example a case that refers to the tort of negligence may have a scenario where a claimant will

state that a defendant has behaved in a careless (negligent) manner, which has caused them some sort of loss or injury. Historically, negligence suits have always been examined in stages or elements, although different common law jurisdictions may have differences in the classification of the elements, the main stages of a negligence case are: Duty of Care, Breach of Duty, Causation/Remoteness, Damages. An important factor when filing a negligence claim is that the plaintiff must prove each stage of his claim to be successful, if not the entire tort claim is lost. For example if a particular case has five elements, each of them needs to be proved. If the plaintiff only proves four of them the case is lost and they have not succeeded in making out the claim.

Duty of Care

In Tort Law, Duty of Care is defined as a legal obligation that is imposed on an individual, calling for them to adhere to a rational standard of care while performing actions that could harm others. Duty of Care is the first element that must be proved to advance with a negligence suit, with the claimant having to illustrate a duty of care imposed by law that the defendant has violated. Before 1932 there was no generalised Duty of Care in negligence. In 1932 a land mark case in negligence was filed, establishing the Duty of Care element, this case being *Donoghue v. Stevenson* (1932). This case involved the pursuer, Donoghue, drinking a ginger beer that she acquired from a friend. While drinking Donoghue allegedly discovered the remains of a decomposed slug and went on to sue the manufacturer (Stevenson). As there was no relationship of contract, because her friend had paid for the drink, the doctrine of privity put a stop to any direct action being taken

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against the manufacturer. A more recent case, *Caparo v. Dickman*, initiated the 'threefold test' for a duty of care stating that to pose liability harm must: Be reasonably foreseeable There must be a relationship of proximity between the plaintiff and defendant It must be fair, just and reasonable These three statements are generally used as a guideline for the courts to establish a duty of care, although a lot of the principle is still at the discretion of the judiciary.

Breach of Duty

After it is recognized that the defendant owed a duty to the claimant or plaintiff, it must be proved whether or not the duty was breached and must be settled. This stage can be both subjective and objective, for example the defendant that exposes the claimant/plaintiff to a substantial risk of loss knowingly, breaches that duty (subjective). A defendant that does not realise the significant risk of loss to the claimant/plaintiff, that a sensible person in the same situation would have realised (objective), is also in breach of that duty. All members of the community must implement a duty to exercise reasonable care to other people and their properties, meaning it is not limited to professionals or people under written contracts. Someone who engages in an activity that could pose an unreasonable risk to others and their property, which results in harm, is in breach of their duty of care. For example in the case *Bolton v Stone* (1951), Miss Stone was hit on the head by a cricket ball whilst standing outside of her home. Even though she was injured the courts stated that her claim was not legitimate as the danger was not foreseeable. It was established by the House of Lords that a defendant is

not held as negligent if the damages to the claimant/plaintiff were not a reasonably foreseeable outcome of their actions.

Causation/Remoteness

In the English Law System, in the tort of negligence, causation is a legal test of three components: Remoteness Causation Foreseeability In the tort of negligence, causation proves a straight link between the defendants' negligence and the claimant/plaintiff's losses and damages. Therefore, liability in negligence is recognized when a breach of the duty of care takes place by the defendant, leading to the claimant's loss or damage. It is then reasonable that the defendant compensates the claimant for their losses/damages. The simple test to determine causation is the 'but-for' test, where the defendant would only be held liable if the claimant's losses would not have happened 'but for' their negligence. This test of causation requires proof that the defendant was the cause of the damages, but also that the loss or damage to the claimant was not too remote. As well as having to establish that there was a duty of care in place and that there was a breach of duty, remoteness is set in place to ensure that the compensation that will have to be paid out by the defendant is fairly placed. This is a way for the courts to determine and restrict who has the right to a potential claim. The Occupiers Liability Acts of 1957 & 1984 enforce legal obligation and liability on occupiers rather than land owners. Occupier's liability, in general, refers to the duty that is owed by the land owners to those who come onto and occupy their land. Sometimes however, the duty that is imposed onto the land owner may extend beyond simple land ownership and in some cases the land owners can shift the duty onto other people, which is why the term '

occupier' is used instead of 'owner'. Physical occupation is not always needed for liability to arise, which is why the term 'occupier' is somewhat misleading. Occupier's liability is linked distinctly with negligence as there must be a duty of care, breach of duty and damages caused. The rules of remoteness can also apply to occupier's liability in the very same way that they apply to a negligence claim. The laws on occupier's liability originally started in common law, but it is now controlled in two critical pieces of legislation: Occupiers Liability Act 1957 - This imposes a legal obligation on occupiers with regards to 'lawful visitors' Occupiers Liability Act 1984 - This imposes liability onto occupiers with regards to persons other than 'their visitors' Differing levels of security are enforced under both pieces of legislation, with higher levels of protection given to lawful visitors. For example in *Wheat v Lacon* (1966) the claimant and her family had stayed at a public house, The Golfers Arms in Great Yarmouth. Tragically her husband died as a result of falling down some stairs in the pub and hitting his head, the steps were described as steep and narrow with no light bulb in the fitting and a handrail that stopped two steps from the bottom. The claimant brought up an action under the Occupiers Liability Act 1957 against the brewing company that owned the pub, Lacon, as well as against the managers, Mr & Mrs Richardson, who had occupied the pub as licensee's. The Richardson's and Lacon were both occupiers and held in the legislation of the Occupiers Liability Act 1957, meaning they both owed a common duty of care as it is feasible to have more than one occupier. A person can only be an occupier under the Occupiers Liability Act if they sustain occupational control. Although Lacon had contracted a license to the Richardson's, they

retained the right to repair which gave them a sufficient degree of control as there is not a requirement of physical occupation. It was discovered that Lacon did not act in breach of duty as the provision of light bulbs for the staircase is part of the management duties that should be performed daily by the Richardson's, but since the Richardson's were not party to the appeal, the claim failed.