Substantive Law Summary Sheets

A-Level Law Paper 2 Revision Pack

1.	Negligence
2.	Psychiatric Injury
3.	Economic Loss
4.	Vicarious Liability
5.	Occupiers' Liability
6.	Nuisance
7.	Rylands v Fletcher

Comprehensive, engaging summaries covering all key areas of Substantive Law to support A-Level Law Paper 2 understanding and exam confidence.

Neighbour Principal: Donoghue v Stevenson "you must take reasonable care to avoid acts or omissions which you can reasonable foresee would be likely to injure your neighbour, who is defined as a person closely and directly affected by your actions"

Caparo - 3 Stage Test

- 1. Reasonably Foreseeable
 - Objectively, D's actions must be able to cause loss/damage to C (Kent v Griffiths)
- 2. Proximity
 - Must be a connection between D & C, through Time, Space, or Relationship (Bourhill v Young)
- 3. Fair, Just and Reasonable
 - Public Policy Test, the courts are reluctant to impose a duty of public authorities, and must not open the floodgates to litigation, however the police do not have blanket immunity. (Hill v Chief Constable of South Yorkshire)
- Established Categories:
 - Doctor-Patient (Sidaway) (Nurses (Barnett))
 - Road Users (Mitchell)
 - Transport Operators (Silverlink)
 - Custodian-Prisoner (Ellis)
 - Teacher-Pupil (Camarthenshire CC v Lewis/ X(Minors) v Bedfordshire CC)

HOWEVER: Where there is an established duty of care, it is unnecessary and inappropriate to use Caparo (Robinson v Chief Constable of West **Yorkshire Police**)

Once a duty of care has been established, the claimant must satisfy the court that the defendant broke that duty by failing to reach the standard of care required. The Courts ask two questions.

- 1. What standard do we expect of the Defendant?
- Reasonable Man Test (Blyth v Birmingham Waterworks Co.)
 - "The Reasonable Man is the ordinary person performing the particular task: he is expected to perform it reasonably competently," this is an objective test.

Certain D's are held to different standards however rather than being held to the standard of reasonable man.

Professional Defendant Medical Professional

Bolam v Friern Hospital

If D is a professional. the standard of care will change to that of the reasonably competent professional

Montgomery v Lanarkshire Health **Board** If D is a medical

professional, and there are risks to a procedure. vou have to explain the risks to the patient.

Children

Mullin v Richards If D is a child, the standard of care will change to that of a reasonable child of the same age.

Learners

Nettleship v Weston

If D is an inexperienced learner, that is not taken into account, he is judged against a qualified individual completing the task.

3. Cause of Damage ◆

There are two elements: Causation and Remoteness of Damage

- 1. Factual Causation
- "But For" Test (Barnett v Chelsea)
 - "But for the defendant's negligence would the injury or damage have occurred?"

Intervening Acts:

Nature: Carslogie 3rd Party: Knightley Acts of Claimant result in damage: McKew

Summary Sheet - Negligence A-Level Law

Negligence:

To establish a claim for personal injury and/or damage to property the claimant must prove: the defendant owed the claimant a duty of care, breached that duty, which itself the breach caused some loss or damage to the claimant

Egg Shell Rule - (Smith v Leech Brain)

- If the type of damage is reasonably foreseeable, but it is much more serious because of something unusual about the claimant, or the property then the defendant is liable, and as such the damage is not too remote.

2. Has the defendant fallen below the standard expected?

Char

Social Utility

That which is considered reasonable varies case to case due to circumstances. The courts therefore consider risk factors, in order to decide if D behaved responsibly

Age must be obvious

Bolton v Stone

The ↑ the risk, the ↑ we expect D to prevent risk but you cannot guard against unknown risks (Roe v Minister of Health)

Latimer v AEC

D only has to take reasonable precautions (cost & convenience), no need to take excessive measures

Paris v Stepney BC

If there is something known about C that makes it easier for them to suffer, we expect D to do more to prevent risk.

Watt v Hertfordshire CC

If D is acting to prevent greater harm, (for the good of society) then the standard of care is lowered.

2. Remoteness of Damage I------

- Remoteness of Damage Test (Wagon Mound (No.1))
 - "The Damage must be reasonably foreseeable and not too remote"

Bradford v Robinson Rentals

As long as some related type of damage is foreseeable, then the damage will not be too remote

Foreseeable Damagin unforeseen way

If there are multiple causes of the injury or damage, insert Wilsher v Essex Health

Authority, "where if there are more than one possible cause, the C must show that

D's actions were more likely to be the cause."

Hughes v Lord Advocate

As long as damage is foreseeable it does not matter that it happened in an unforeseen way.

of Risk

Foreseeability of Type of Damage (injury/loss)

Psychiatric Injury ←

The courts have adopted a restrictive approach as to when a duty of care is owed in claims for Psychiatric Injury

1. Recognised Psychiatric Condition

- The claim must involve an actual **recognised psychiatric condition** capable of resulting from the shock of the incident and recognised as having **long term effects** e.g., PTSD
 - (Reilly v Merseyside Regional Health Authority) Mere distress, grief or fright are seen as normal, but "physical symptoms of fear and panic such as sweating and breathing difficulties are not sufficient"
- However the court did accept C was suffering from Psychiatric Injury although it was argued their condition was no more than profound grief. (Tredget v Bexley Health Authority)

2. Categories of Shock Victims

 Adopting Lord Oliver's classification in Alcock v Chief Constable of South Yorkshire, shock victims fall into 2 broad categories

Primary Victims

Unwilling Participants in the events causing shock

Secondary Victims

Unwilling Passive Witnesses in the events causing shock

Cases

Those put in reasonable fear for their own lives

Dulieu v White & Sons

Rescuers engaged in rescue activites, fearing for their safety

Chadwick v British Transport

Commission

Those ho believe they are (but aren't) the involuntary cause of another's death or injury

Dooley v Cammell Laird & Co

Alcock Criteria

- . Must have a close tie of love and affection with a primary victim
- Demonstrate physical proximity in time and space to the accident
- Perceive the accident or aftermath with own unaided senses
- 4. Foreseeable in a person of reasonable fortitude

- Presumed for Spouses, and children. A bystander is not suitable (Bourhill v Young)
- Present at the scene within 2 hrs.
 (McLoughlin v O'Brian), Specific to facts of case
- 3. Excludes where victim's knowledge is only from 3rd party e.g, media

- Paul v Royal Wolverhampton removed the requirement for sudden shock

Economic Loss

The courts have adopted a restrictive approach as to when a duty of care is owed in claims for Economic Loss

Financial Loss resulting from negligently inflicted injury to the person or to property is ordinarily recoverable however sometimes financial loss is caused without there being any injury or damage through negligently given advice, in these circumstances the loss is only recoverable in limited situations. (Spartan Steel)

Ratio of Hedley Byrne & Co Ltd v Heller & Partners Ltd

- HoL held that in appropriate circumstances, a duty could arise in relation to the negligent provision of advice or information. Further guidelines were put in place to support this decision.
- 1. There must be a Special Relationship based on a Special Skill or Expertise
- The relationship, where the party giving advice was in the business of giving that area of advice. (You must receive advice on something the other will be presumed to understand/have expertise in)
- Business or professional relationships might in general give rise to the duty if the C is genuinely seeking professional advice. (Howard Marine & Dredging Co Ltd v Ogden & Sons Ltd)
- Purely Social Relationships should not normally give rise to a duty of care, but, has done when it has been established that carefully considered advice was being sought from a party with some expertise. (Chaudhry v Prabhakar)
- Common relationships are where valuers or accountants provide advice. Such as a building society surveyor, (cost of repairs cost more than property), (Yianni v Edin Evans & Sons)
 - The Mere fact that C paid for advice is not sufficient to give rise to a duty. (West Bromwich Albion FC v El-Safty)
 - The Party giving advice is a specialist in the field, or holds themselves out as possessing a comparable skill and competence. However an insurance company would not be liable for giving investment advice (Mutual Life & Citizens Assurance v Evatt)
- 2. Voluntary Assumed Responsibility for Giving the Advice
- The individual must offer the advice willingly, and assume the responsibility for giving the advice. (Henderson v Merrett Syndicates Ltd)
- 3. Knowledge of Reliance on Advice
- "It was necessary to show that the D knew that his statement would be communicated to the C and that C would be very likely to rely on it" (Lord Bridge)
- 4. Reasonable Reliance on the Advice
 - 1. There is to be no liability unless C relied on D's given advice
 - 2. If reliance is foreseeable it will be reasonable (Caparo)
 - 3. It will not be foreseeable reliance if C belongs to a group of potential claimants that is too large. (Goodwill v British Pregnancy Advisory Service)
- 5. Relied on the Advice to their Detriment
 - C must have lost money

Summary Sheet

Psychiatric Injury + Economic Loss

A-Level Law

Rule 2a ←

Wrongdoer must have employee status or a relationship akin to employment, but not as an independent contractor

Employees usually work under a Contract of Service rather than Independent Contractors who work under a Contract for Service, although this distinction is not complete, it is a useful guideline which courts use to determine employee status alongside a selection of the 4 tests below.

Employee Status Tests

"An employee is n employee is a worker who is told what to do and how to do it"

Problems:

It does not deal well with professionals who aren't told how to do their jobs.

However "some degree of control over work will be an essential ingredient of a contract of employment" (Dragonfly

Control Test

Consultancy Ltd v HMRC)

worker who is closely involved with the main business of the employer"

"An employee is a

Problems:

It is not always clear who is integral with running a business.

Integration Test

"Does the employer have a common mission or purpose with the worker, so that the essential purpose of the worker's activities further the employer's objective" (Child Welfare Society 2012)

Common Mission Test

Rule 1 🗸

Wrongdoer must have committed a Tort

Rule 2a & 2b !?

2a) Wrongdoer must have employee status. 2b) or a sufficient relationship, not as an independent contractor

Rule 3 !?

Wrongdoer must have committed tort during course of employment.

Summary Sheet Vicarious Liability

A-Level Law

Vicarious Liability (goes after tort in exam q's):

This is when someone is liable for a tort committed by another. There

should be some sort of legal relationship between the two and the tort

must be connected to that relationship.

Vicarious Liability is a form of strict liability, as the employer is liable for the actions of employees even when the employer is at fault in no way.

So, an employer can be liable for a tort committed by employees during

employment and business partners who can be liable for each other's

torts.

Wrongdoer must have committed the tort during the course of employment, or the scope of employment, or where the relationship was 'akin to employment', there was a close connection between that relationship and the wrongdoer's tort.

→ Rule 3

Salmond Test

Reasons for VL:

Protects C

Protects Employees

Improves Safety

Standards

- An employee's wrongdoings is in the course of employment where it consists of either:
 - 1. a wrongful (usually criminal) act authorised by the employer or,
 - 2. An act, while authorised, was carried out in an improper or unauthorised way

Authorised Acts:

Employer will be liable for acts which are authorised

Even if impliedly authorised, an employer can be liable for a criminal act if the employee was acting in the interests of on the employer.

(Poland v Parr)

Authorised Acts carried out in an Unauthorised Way:

Even if prohibited by the employer, the employer was liable when employees raced buses and C was injured, even though they were told not to race. (Limpus v London General Omnibus Co)

Liable even if the employee is doing the work negligently.

(Century Insurance Ltd v Northern Ireland **Transport Board)**

Even if told not to do specific activity (Rose v Plenty)

Close Connection Test

- Were the acts of the employee's acts so closely connected with their employment that it was fair just and reasonable to hold employers liable? (Lister v Hesley Hall Ltd)
- (Mohamund v WM Morrison Supermarkets PLC) split the test into 2 questions:
 - 1. What functions or "fields of activities" have been entrusted by the employer to the employee? (What was their job?)
 - 2. Was there sufficient connection between the position in which they were employed and their wrongful conduct/tort to make it fair and just for the employer to be held liable? (Was there sufficient connection between the position in which they were employed and their wrongful conduct/tort to make it fair and just for the employer to be held liable? (Was what they did linked to their job?)

Employees

torts, excluding Poland v Parr above

Also where the criminal act is an inherent risk that the employer should guard against, there may be liability, Lister v Hesley Hall Ltd. Including where employers are accused of being responsible for abuses carried out by employees.

Sidenote 2: Employer Liability for Crimes committed by

Generally not Liable for crimes committed by employees that are also

Sidenote 1: Torts committed outside Employment

Not always obvious but employers are not liable if a tort is outside the course of employment in case were the employee was on a "frolic of his own" (Morris v CW Martin & Sons Ltd) & (Hilton v Thomas Burton (Rhodes) Ltd)

An employer is not liable for commuting, but may be liable if working from home and travelling is part of job role. (Smith v Stages)

Economic Reality Test

"Having considered all the facts of the case, the court decides whether the overall picture of a worker is closer to an employee or to an independent contractor. (Ready Mix Concrete v Minister of Pensions)

- 3 Conditions must be met for this test
 - 1. The worker agrees that for remuneration or wage, they perform their skill
 - 2. The worker agrees to be subject to the others' control (employer employee relationship)
 - 3. The other provisions of the contract are consistent with being a Contract of Service.
 - Is there a regular salary or commission? Does the worker pay Income Tax and National Insurance as an employee or selfemployed individual? Independent Contractors are likely to have own premises and equipment. The Court considers this...

Rule 2b

Relationship 'Akin to Employment'

Child Welfare Society (2012) extended the provisions for relationships akin to Employment, using the same tests above, this is particularly relevant for wrongdoers in prison and clergy members party of religious orders.

Cox v MoJ (2016) - "the work of the prisoner in the canteen was clearly part of the venture, enterprise or business of the MoJ in running the prison"

Examples:

Foster Parents & Social Services Dentists & Practices Religious Order Members Prisoner and Prison Operators

Lawful Visitors

Occupiers' Liability Act 1957

·····▶ 3. Visitor

- Duty only applies if the visitor is carrying out activities that are authorised. So, if they stray from authorised acts, they lose 1957 OLA protection (but become a trespasser and 1984 OLA may apply)
- 2. Includes Invitees, e.g., friends, giving a quote for work, licensees (customers), legal right to enter (e.g, police) and using as public or private right of way.

·····▶ 4. Children (if relevant)

- "The occupier must be prepared for children to be less careful than adults..." and as a result the premises must be reasonably safe for a child of that age.
- 2. The Standard for Children is measured subjectively
- 3. Children are unlikely to appreciate risks that adults would and ight even be attracted to the danger.

 Occupiers should guard against any kind of "allurement" which places a child visitor at risk of harm. (Glasgow Corporation v Taylor)
- 4. If Children are under the age of 5/very young, they should be under the supervision of a parent. (Phipps v Rochester Corporation)

······▶ 5. Liability to Professionals/Tradespeople (if relevant)

- Professional Visitors, in relation to activities carried on within their trade, should: "appreciate and guard against any special risks ordinarily incident to it."
 - Occupiers are not liable where tradespeople fail to guard against risks which they should know about. (Roles v Nathan)

······▶ 6. Liability for Independent Contractors (Defence)

- 1. The Occupier will generally be able to avoid liability for loss or injuries suffered by his visitors when the cause of damage is the negligence of an independent contractor hired by the occupier under **S(2)4** requirements
 - S2(4) Requirements
 - It must be reasonable for the occupier to have entrusted the work to the Independent Contractor.

 (Haseldine v Daw & Son Ltd)
 - The contractor hired must be competent to carry out the task. Demonstrate Expertise.
 - If possible, the occupier must the check the work, (includes checking insurance), the more complex the work, the less reasonable it is to impose this obligation on the occupier. (Woodward v The Mayor of Hastings)
- ····· > 7. Breach of Duty, and Risk Factors (Negligence)
- ·····▶ 8. Causation & Remoteness of Damage Tests (Negligence
- ·····▶ 9. Avoiding Liability
- A warning is ineffective unless: "in all the circumstances it was enough to enable the visitor to be reasonably safe" It will depend on the specific factors of the case, and may not be enough alone. (Rae v Mars (UK) Ltd)
- There must be **exclusion clauses** in the warning notice if necessary

Common
Law Applies
Dual/Multiple
Occupation is possible
Proprietary Interest
not needed

Statutory Duty under 1984 OLA applies only to personal injury or death, not loss of or damage to property \$1(8)

1. Occupier: "an occupier owes the same duty, the common duty of care, to all his visitors except insofar as he is free to do and does extend, restrict, modify or exclude his duty to any visitors by agreement or otherwise." S2(1) OLA 1957

"in occupation and control of premises" S1(2) OLA 1957

Premises: "...take such care as in all the circumstances...is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited...to be there..." S2(2) OLA

"Refers to a person having occupation or control of any fixed or moveable structure, including any vessel, vehicle and aircraft" \$1(3)a OLA 1957

Common
Law Applies
Includes, houses,
buildings, land,
vehicles, lifts &
ladders

Summary Sheet Occupiers' Liability

A-Level Law

Occupiers' Liability:

Occupiers' Liability concerns the liability of an **occupier** of land for the claimants' injury, loss or damage to property suffered while on the occupier's land/**premises**.

Trespassers

Occupiers' Liability Act 1984

3. Persons other than Visitors ◆

- Includes trespassers (uninvited), those who exceed their permission and persons exercising private rights of way.

4. Scope of Duty **◄**···

- S1(3) Occupier owes a duty if:
 - 1. He is **aware of the danger**, or has reasonable grounds to believe that it exists:
 - he knows or has reasonable grounds to believe that the non-visitor is in the vicinity of the danger concerned or that he may come into existence of the risk vicinity of the danger, and;
 - 3. The risk is one against which, in all circumstances of the case, he may reasonably be expected to offer the non-visitor some protection

- Apply if relevant:

- Danger due to the state of the premises if D creates a dangerous situation themselves, no liability (Keown v CoventryHealthcare NHS Trust)
- No Liability if not aware of the danger Since there was a warning sign saying no swimming, the occupier didn't need to know what was under the water as such they weren't aware of the danger. No Liability (Rhind v Astbury Water Park)
- No Liability if we do not believe trespassers to be in the vicinity - the actions of D were so daft the occupier should not be expected to guard against them (Donoghue v Folkestone Properties)

5. Standard Expected (Breach but a bit extra) ◆

- "The duty is to take such care as is reasonable in all the circumstances of the case to see that the non-visitor does not suffer injury on the premises by reason of the danger" (S1(4))
- The ↑ the risk, the ↑ precautions occupiers have to take:
 - The Nature of the Premises
 - The Degree of Danger
 - The Practicality of taking Precautions
 - The Age of the Trespasser

Non-Visitors should take reasonable precautions against obvious dangers.

(Tomlinson)

6. Causation & Remoteness of Damage Tests (Negligence ◄

7. Avoiding Liability **◄**······

- "The occupier may inappropriate circumstances, discharge his duty by taking responsible steps to warn of the danger or to discourage persons from incurring the risk." (S1(5))
 - That which is adequate for an adult might not be adequate for a child! Warnings generally are ineffective in the case of children.
 - Warnings will only be effective when prescribing precise danger in clear terms.

Sidenote

Consent = voluntary risk of harm to C.
C must appreciate nature and degree of risk. Complete Defence

(Ratcliff v McConnell)

Volenti: "Occupiers have no liability to a visitor in respect of risks willingly accepted as his by the visitor, if the risk is fully understood" \$2(5)

1. Parties to an Action for Private Nuisance ←

····· The Claimant

- "Anyone who has the use or enjoyment of the land and is affected by the interference may claim. A legal interest in the land includes the owner, occupier, and any holder of a legal or equitable title." (Hunter v Canary Wharf Ltd)

...... The Defendant

- "The creator of the nuisance and the occupier if they adopt, or continue activities of the creator. Also, a landlord if they authorise or approve the activities of a tenant."



2. Indirect Interference



Physical Damage

Loss of Amenity (LoA)

To land, plants and crops growing in the land and to goods stored on the land. But, not personal injury

No physical damage but the claimant's ability to use or enjoy land is restricted by the activities of the defendant

3. Unlawful (Unreasonable) Interference

Private Nuisance balances the interests of neighbours. The activities are unlawful if the impact on the claimant is so unreasonable that they should not be expected to put up with it. Courts use 5 factors to determine this:

1 Locality · 2 Duration · 3 Degree · 4 Sensitivity · 5 Motive

Based on the definition below therefore: a Claimant for Nuisance must show that:

They have a **right** to bring an action and that the person he is suing is capable of being a defendant.

There is an **indirect interference** in the form of either physical damage to the land or a loss of amenity (enjoyment/convenience) in using the land

The interference is sufficiently serious in all circumstances to be unlawful, it is an unreasonable use of the land.

Summary Sheet Private Nuisance

A-Level Law

Private Nuisance:

"An unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it, for a substantial amount of time"

(Winfield & Jolowicz)

1 Locality

"What would be a nuisance in Belgrave Sq would not be so in Bermondsey"

(Sturges v Bridgman)

More is allowed in Industrial Areas Locality is irrelevant if there is physical damage (St Helens Smelting v Tipping)

Can be acceptable activity carried out in wrong area (Laws v Florinplace Ltd)

2 Duration

The more often something happens the more likely it is to be a nuisance. But, even a single incident can amount to a nuisance (Crown River Cruises v Kimbolton)

Temporary Interference can also be a nuisance (De Keyer's Royal Hotel Ltd v Spicer **Bros Ltd)**

3 Degree

The more serious an interference, it is more likely an nuisance. Physical Damage makes it unreasonable. If only LoA, court decides if it materially interferes (Walter v Selfe) (Murdoch v Glacier Metal)

4 Sensitivity

If C uses his property for an extra-sensitive use, he cannot claim, he can't claim where reasonable use would not need protection. You cannot increase the liabilities of your neighbour.

(McKinnon v Walker)

5 Malice

"If D deliberately does something, with no purpose other than to annoy C, it is unlawful, previous actions (maybe not amounting to unlawful interference) become unlawful. (Hollywood Silver Fox Farm v Emmett) & (Christie v Davey)

→ Specific Defences to Nuisance

Statutory Authority

- If nuisance is created by a public body acting under a legislative duty or power, without negligence and with reasonable regard to, and care of the interests of others, an affected person cannot sue for nuisance as it has been authorised by Parliament. (Allen v Gulf Oil)

Prescription

- D's activities become lawful because they have carried them out for the last 20 years without complaint. The time period only begin however when the specific nuisance begins. (Sturges v Bridgman)

Planning Permission

- This can sometimes serve as legal justification for nuisance. Disturbance from a port which received planning permission to expand is expected (Gillingham BC v **Medway Dock Co)**

Volenti non fit iniuria

- Claimant consents to the nuisance

Sidenote:

"Coming to a nuisance" is not a defence. D cannot escape liability due to duration. It is not a defence to say C could have helped themselves.

Remedies for Private Nuisance

Damages

If C is

successful,

D could raise

a defence.

Also, Remedies

are specific in

Nuisance

- Social utility may not stop a nuisance being a nuisance but it can affect the remedy. It may justify awarding damages rather than an injunction. (Fearn v Tate Gallery)
- Compensation for any physical loss, production value and business loss the wagon mound test of remoteness applies (Wagon Mound)

Injunctions (Specific to Nuisance)

- "an order prohibiting will strictly controlling an activity won't be grounded for trivial matters or where it is in the public interest for the activity to continue with defined limits."
- Miller v Jackson (no injunction, benefit to community > inconvenience to C
- Kennaway v Thompson (partial injunction, limiting number of powerboat races.
 - interests of the community > inconvenience to C

Abatement (Specific to Nuisance)

- Right of a claimant to take reasonable steps to deal with any nuisance.
- E.g. chopping off the branches of a tree over handing a boundary but only at the boundary and then returning any branches to the defendant

1. Parties to an Action for Rylands v Fletcher

The Claimant

- "Anyone who has a legal interest in the land includes the owner, occupier, and any holder of a legal or equitable title." (Hunter v Canary Wharf Ltd)



2. Accumulation

- "D must voluntarily bring onto their land an accumulation of the substance which escaped."
- It must be a large amount of material.
- It must be an an accumulation of an artificial substance, however D is not liable if the substance was accumulated naturally." (Giles v Walker)

3. Dangerous Thing



- The substance must be dangerous, and "be likely to do mischief if it escapes".
- The HoL held that the accumulated substance should be something which poses an "exceptional risk" if it escapes (Transco v Stockport MBC)

4. Non-Natural Use

- In (Transco v Stockport MBC) the requirement was as a use of which is "extraordinary and unusual." C failed this standard as supplying water to a block of flats was an ordinary use.
- Water flowing through pipes which leak and cause damage is not an "extraordinary and unusual" use and therefore D is not liable. (Rickards v Lothian)
- Certain activites however always lead to danger which amounts to a non-natural use, even if there is social benefit.
- HoL stated that the bulk storage of chemicals to be used in an industrial process was almost classic example of non natural use (Cambridge Water v Eastern Counties Leather) **Summary Sheet**

5. Escape

- The dangerous thing must escape and the substance must move from the land D controls to the land they do not. (Read v Lyons)

- Fire:

- If an item is brought onto land which then catches fire, and solely the fire damages C's land, there will be no escape and therefore no liability for the purposes of Rylands v Fletcher.
- However, if a fire was started and itself was the sole cause of damage which spread to C's land, then it may be permitted so long as there were no external influences.
- Fire is very rare to prove.

6. Reasonably Foreseeable Damage

- The requirement that only damage which is reasonably foreseeable is recoverable was introduced in (Cambridge Water v Eastern Counties Leather). Their claim failed as it was not reasonably foreseeable that D's activities woud contaminate groundwater a mile away.
- As Rylands v Fletcher is a nuisance only damage to land and goods stored on the land can be recovered, damage elsewhere and personal injury cannot be claimed.

→ Specific Defences to Rylands v Fletcher

Act of a Stranger

- D is not liable if the escape is caused by "the deliberate and unforeseen act of a stranger" (someone over whom D has no control) (Perry v Kendricks Transport Ltd)

Act of God

- An act of god is a natural event so enormous that t cannot be either foreseen or guarded against. If an escape is caused by such an event, D is not liable as there is nothing he could have done to stop it.
- However, D should take reasonable precautions beforehand if reasonable, given the circumstances of the case e.g., In the UK we have large rainstorms, so some flood protections are expected
 - Nichols v Marsland

Statutory Authority

- D is not liable if the escape occurs during activities authorised by an Act of Parliament



Volenti non fit injuria

- No liability if the claimant consents to the thing that is accumulated.

Common Benefit

- No liability on D if when the source of the potential danger is something that is maintained for the benefit of C & D

Fault of C

- D will escape liability if the escape is due to the fault of the claimant.

This is a strict liability tort

Rylands v Fletcher:

Rylands v Fletcher

A-Level Law

"If D accumulates a dangerous thing in the course of a nonnatural use of the land, and the thing escapes and causes reasonably foreseeable damage"

(Rylands v Fletcher) - (complex definition in Blackburn)



