

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.

1. Duty of Care

2. Breach of Duty

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	Children	Learners
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, you have to explain the risks to the patient.	Mullin v Richards If D is a child, the standard of care will change to that of a reasonable child of the same age.	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

Summary Sheet - Negligence

A-Level Law

1. Factual Causation

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

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."

Intervening Acts:

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

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. Remoteness of Damage

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

Foreseeability of Type of Damage (injury/loss)

Bradford v Robinson Rentals

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

Foreseeable Damage in unforeseen way

Hughes v Lord Advocate

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

2. Has the defendant fallen below the standard expected?

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

Magnitude of Risk	Special Characteristics
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)	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.
Practical Precautions	Social Utility
Latimer v AEC D only has to take reasonable precautions (cost & convenience), no need to take excessive measures	Watt v Hertfordshire CC If D is acting to prevent greater harm, (for the good of society) then the standard of care is lowered.

Psychiatric Injury ←

→ Economic Loss

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 activities, fearing for their safety

Chadwick v British Transport Commission

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

Dooley v Cammell Laird & Co

Alcock Criteria

1.

Must have a close tie of love and affection with a primary victim
2.

Demonstrate physical proximity in time and space to the accident
3.

Perceive the accident or aftermath with own unaided senses
4.

Foreseeable in a person of reasonable fortitude

1.

Presumed for Spouses, and children. A bystander is not suitable
(Bourhill v Young)
2.

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

Summary Sheet

Psychiatric Injury + Economic Loss

A-Level Law

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.

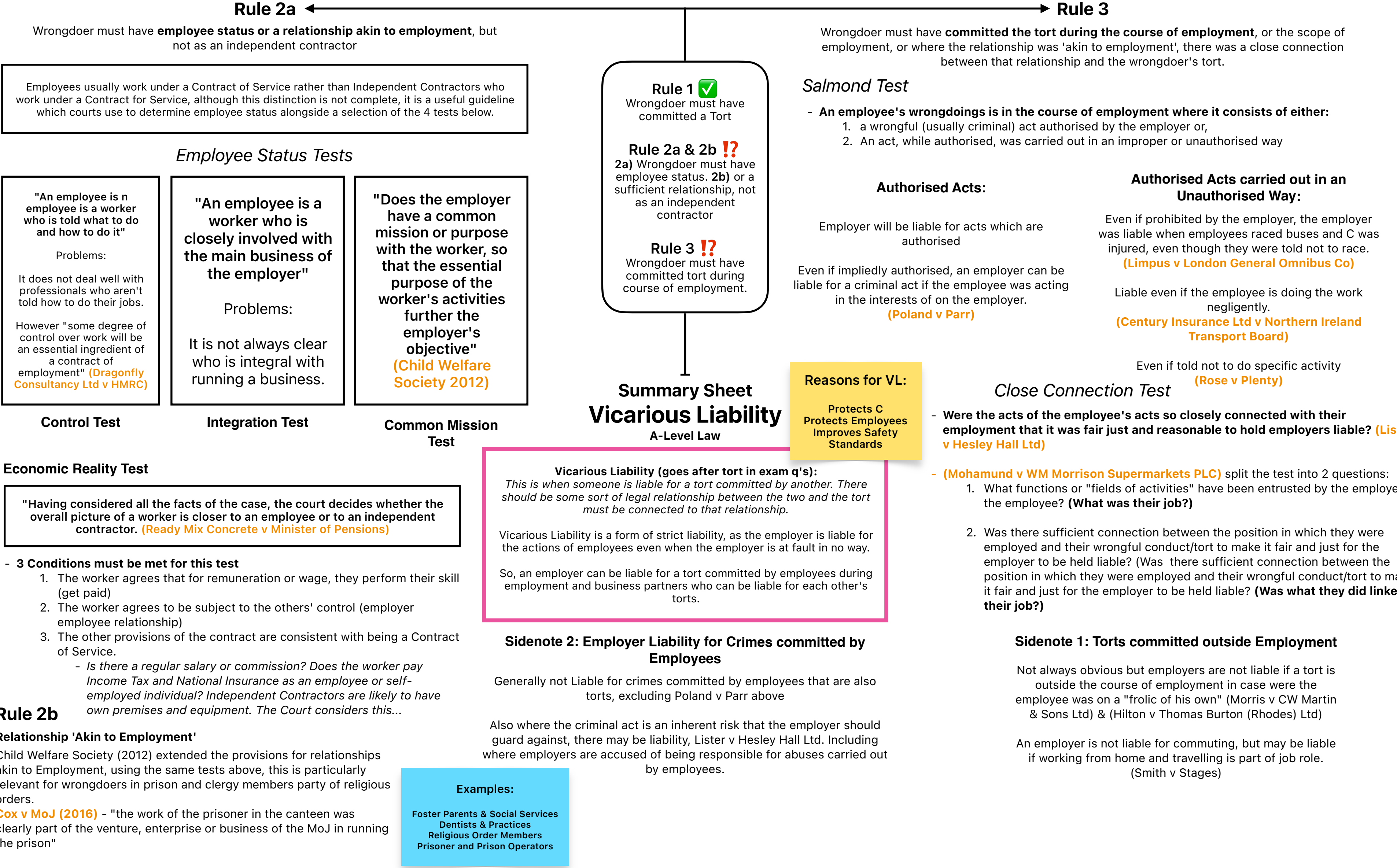
There is to be no liability unless C relied on D's given advice
2.

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



Lawful Visitors

Occupiers' Liability Act 1957

► 3. Visitor

1. 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)*

1. **"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 might 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)**
- "Refers to a person having occupancy or control"

► 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 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

.....► *Defences – Contributory Negligence/Volenti (Defences Booklet)*

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" **S2(5)**

➤ 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;
 2. 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 Coventry Healthcare 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 in appropriate 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.

Volenti is preserved for Trespassers:

Consent = voluntary risk of harm to C.

C must appreciate nature and degree of risk. Complete Defence
(Ratcliff v McConnell)

.....
Sidenote

1. Parties to an Action for Rylands v Fletcher

Specific Defences to 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 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 activities 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)**

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 would 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.

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
 - **(Green v Chelsea Waterworks Company)**



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.

Summary Sheet
Rylands v Fletcher

A-Level Law

Rylands v Fletcher:

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

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

This is a
strict
liability
tort