LECTURE NOTES ON EMPLOYERS LIABILITY

TEXTBOOKS:


Winfield & Jolowicz, p272-6

Commonwealth Caribbean Tort Law, Kodilinye, Gilbert p.140-148 and 353-357

INTRODUCTION

An employer can be found liable to his employees, or a third party, for injuries suffered during the course of their employment caused by the negligent act of one employee, or arising from his own negligence.


The employer has a duty to take care to prevent, so far as it is possible, harm or injury to his employees. This duty is established in both common law and by statute. The duty is non-delegable and while he can assign the task of performing this duty to another, he cannot assign the responsibility for the manner in which the task is performed.

COMMON LAW DUTIES

See Davie v New Merton Board Mills Ltd. [1959] All ER 346

United Estates Ltd. v Durrant (1992) 29 JLR 3 468

Courage Construction Ltd. v Royal Bank Trust Co (Jamaica) Ltd. (1992)

Pumps and Irrigation Ltd. v Pusey (1995) 32 JLR 326
a) The duty to maintain a competent staff of men
b) The duty to maintain adequate plan and equipment
c) The duty to maintain a safe place of work
d) The duty to ensure a safe system of work with effective supervision

**The Duty To Maintain Competent Staff**

*Smith v Crossley Bros (1951) 95 SJ 655*
*Waters v MPC (2000) 27 July*
*Refil v Rayside Concrete Works Ltd. (1981) 16 Barb LR 193 (High Court, Barbados)*
*Hudson v Ridge Manufacturing Co. Ltd. [1957] 2 QB 848*

**The Duty to Maintain Adequate Plant and Equipment**

*Toronto Power Co v Paskwan [1915] AC 734*
*Parkinson v Lyle Shipping Co [1964] 2 Lloyd's Rep 79*
*Leach v British Oxygen Co (1965) Current Law Year Book 2725*
*Morris v Point Lisas Steel Products Ltd.*
*Baker v. James Bros. [1921] 2 K. B. 675; 37 T. L. R. 591*
*Fanton v. Denville. [1932] 2 K. B. 309*
*United Estates Ltd. v Durrant (1992) 29 JLR 3 468*

**The duty to Maintain a Safe Place of Work**

*Cook v Square D Ltd [1992] ICR 262*
*Reid v Mobil.,.;e Welding and Engineering Works Ltd. (2007) Supreme Court, Jamaica, (Unreported)*
*Cranston v Mars Auto Parts Ltd. (2005) Supreme Court, Jamaica*
*Alcan Jamaica Ltd. v Nicholson (1986) 23 JLR, Court of Appeal Jamaica*
*Henry-Angus v AG (1994)*
*Levesley v Thomas Firth and John Brown Ltd. [1953]*
*Watson v Arawak Cement Co. Ltd. (1998) High Court Barbados, Unreported*

**The duty to ensure a Safe System of Work and Adequate Supervision**

*Petch v Customs and Excise Commissioners [1993] ICR 789*
*Baker v T. Clarke Ltd [1992] PIQR 262, 267*
*Rozario v The Post Office [1997] PIQR P15*
*Speed v Thomas Swift and Co. Ltd. [1943] KB 557*
*Legall v Skinner Drilling Contractors Ltd. (1993)*
*Bish v Leathercraft Ltd. (1975) 24 WIR 351*
*Hurdle v Allied Metals Ltd. (1974) 9 Barb. LR 1*
*Golfar v. Cogging and Griffith (Liverpool), Ltd. [1945] A. C. 197.*
STATUTORY DUTIES

A breach of statutory duty is separate cause of action from an action founded in negligence. The employer comes under a duty to both provide a safe working environment as well as to provide employees with such safety equipment that are necessary to prevent harm or injury, particularly when the employee is operating “a dangerous machinery”.

In order for the employer to be found liable, the injured employee has the burden of proving that his injury resulted from the employers breach of a statutory duty. Specifically, that;
  i) the action which resulted in the damage or injury is one which is regulated by statute
  ii) that he comes within the class of persons the statute aims to protect
  iii) that he damage suffered is of a kind that the statute was implemented to protect against.

See:
Gorris v Scott (1874) LR 9 EX 125
Close v Steel Co. of Wales Ltd. (1962) AC 367
Donaghey v Boulton and Paul Ltd. [1968] AC 1

Whether the machine or part to be fenced in fact dangerous?

See:
Mitchell v North British Rubber Co. [1945] SC (J) 69
Henry v Superior Plastics Ltd. (2002) Supreme Court, Jamaica, (Unreported)
Refil v Rayside Concrete Works Ltd. (1981) 16 Barb LR 193 (High Court, Barbados)
Walker v Clarke (1959) 1 WIR 143

DEFENCES

Volenti Non Fit Injuria
Smith v Baker [1891] AC 325
Baker v James Bros [1921] 2 KB 674
Wheeler v New Merton Board Mills [1933] 2 KB 669

Contributory Negligence
Flower v Ebbw Vale Steel Iron & Coal Ltd [1936] AC 206, 214