



DRUCES
SINCE 1767

Common standards of contractors and technical advisor's liability

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Introduction

- The common law and by this I am referring primarily to English Law the principles of standard to be expected of a contractor of a professional advisor start with contractual and tortious rights rather than the Civil Code.
- In this talk I will take you through an overview of the basic common law principles
- This will be followed by an initial review of the statutory framework in the UK which changes the common law standards for specific purposes
- To conclude I will be looking at the Building Safety Act 2022 which was brought in following the Grenfell Fire but has changed the basis on which the common law normally works.

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Common Law



The English common law is a system of law that has developed over many hundreds of years. It is itself a subject that would take many hours of a student life as an undergraduate.

For present purpose it is enough to talk about understand that the standards expected from a contractor and technical advisors are based either in tort, as the underlying layer of the common law and then contractual liability

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Common Law – What is the standard expected

The starting point for any review of the standard for contractors and technical advisors is to review the contractual liability and if there is no contract or if the contract is missing something then we look at the law of tort.

Tort also gives us the base on which to build the standard of care which is then introduced into contracts and then tightened up as part of the contract.

Easier to establish liability arising out of breach of contract

Claim in tort may need to be brought where there is no contract, the contractual limitation period has expired or a contract party is involved or is uninsured. Different time periods for contract and tort.

Claim in tort can also be brought alongside breach of contract claim

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Tortious liability



The defendant owed a duty of care to the claimant

The defendant breached the duty owed to the claimant – at common law means failure to exercise reasonable care (The standard of care of the hypothetical “reasonable person”). Burden of proof – Claimant has to prove on balance of probabilities that the defendant has not taken reasonable care.

The defendant’s breach of duty caused the claimant to suffer loss

The loss caused by the defendant’s breach of duty is recoverable (consider pure economic loss)

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Common Law – Contractual liability

Contractual liability:

- Freedom to bargain (unlike civil law jurisdictions – codified)
- Obligation to exercise care and skill in contract – freely negotiated
- Contract rather than civil code – higher level, example clauses differing from common law
- JCT Contract –
 - o Design work – liabilities and limitation; includes liability under the Defective Premises Act 1972
 - o Contractor's liability – personal injury or death
 - o Contractor's liability – loss, injury or damage to property
 - o Loss or damage to existing structures or their contents
 - o Insurance (contractor's insurance of his liability / contractor's insurance of liability of Employer)

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Common Law – Statutory liability

Supply of Goods and Services Act 1982

Part 1 applies to contracts for the transfer of goods – where property in goods is transferred in the course of business - implied condition that the goods supplied are of satisfactory quality

Part 2 applies to contracts for the supply of services, including construction contracts and consultants' appointments.

- Section 13 implies a term about care and skill – in a [relevant contract for the supply of a service] where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.” This can be limited but must pass the UCTA reasonableness test (see below).

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Common Law – Statutory liability 2

Supply of Goods and Services Act 1982

Case law –

Trebor Bassett Holdings Ltd and the Cadbury UK Partnership v ADT Fire and Security plc [2012] EWCA Civ 1158, 144 Con LR 1 – the Defendant had entered into a contract with Cadbury to design, supply, install and commission a fire suppression system. Judge found that “*the Defendant was obliged to take reasonable skill and care in designing this system. I have already said that I consider this design obligation to be central... I have concluded that the Defendant failed to comply with this design obligation.*”

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Common Law – Statutory liability - Defective Premises Act 1972

- impose duties on a person taking on work “in connection with the provision of a dwelling” or “in relation to any party of a relevant building” (amended by Building Safety Act 2022)
- Section 1 – duty to build dwellings properly – case law nuanced as to whether strict liability imposed – “A person taking on work for or in connection with the provision of a dwelling ... owes a duty ... to see that the work which he takes on is done in a workmanlike, or as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.”
- cannot be contracted out of (Section 6(3) – “Any term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of any of the provisions of this Act, or any liability arising by virtue of any such provision, shall be void.”)

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Common Law – Statutory liability - Building Safety Act 2022

Overview of the Building Safety Act 2022 (BSA)

Context of the BSA. Grenfell Fire and issues with cladding.

Change in limitation periods under the Limitation Act 1980 and use of the Defective Premises Act 2022

Change in the law extending for claims going back from 14 February 2022 – 30 years

Going forward new limitation period of 15 years.

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Questions?





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