

Read the Small Print - T & C's Exclusions and Product Liability



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WHAT IS THE DUTY OF CARE OWED

Donoghue v Stevenson

- A manufacturer of products sold in the form intended to reach the ultimate consumer with no reasonable possibility of intermediate examination and knowing that the absence of care in the preparation of putting up of the products will result in injury to consumer life or property, owes a Duty to consumer to take that reasonable care...



DUTY TO WARN



O'byrne v Gloucester 1988

- Plaintiff successfully sued for failure to attach a warning that flannel cotton skirt was highly flammable
- Question of liability of non dangerous defects
- There is not automatic entitlement to sue for compensation where damages arise due to a non dangerous defect

Glencar Exploration Ltd v Mayo CC

- The Court must decide that before imposing a duty of care it must be satisfied that it is reasonable to do so

Liability for Defective Products 1991

- The 1991 Act covers only dangerous defective products. Products which are safe but which fall short of the mark do not fall within the scope.
- Strict Liability

Obligations under Contract

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Sale of Goods Act 1893

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Sale of Goods and Supply of Services Act
1980

Sales of Goods and Supply of Services Act 1980

- Section 10 of the 1980 - applied condition, the contracts for the sale of goods, that are goods of “merchantable quality” where a seller sells in the course of a business.
- Goods must be fit for the purpose or purposes for which the goods of that kind are commonly bought and durable as is reasonable to expect having regard to any description applied to them, the price (if relevant) and all other relevant circumstances.
- If suing on foot of contract this would generally be against the retailer only

Why have T & C

- Clearly sets out each sides' obligations
- Removes room for dispute
- Strengthens your case in the event of litigation
- Parameters set - arbitration v litigation
- Makes life easier for your solicitor

Parameters

- Sale of Goods and Supply of Services Act 1980
- Consumer Credit Act 1995
- Custom and Practise in the Trade
- Terms and Conditions in Contract

Incorporation

- | “..trade under terms and conditions...”
- Notice before contract is concluded
- Can’t seek to retrospectively apply terms
- Not necessary that the conditions were read
- Reasonably sufficient notice

Irish Asphalt Case

- *Had sought to limit damages to the value of the product delivered*
- *Argued T & C's had been incorporated as follows:*
- *by signature:* delivery dockets signed by Elliott Construction's site foreman referred to its terms and conditions.
- *by actual notice:* its terms and conditions were set out on three credit notes provided to Elliott Construction.
- *by reasonable notice:* Elliott Construction's site foreman had reasonable notice of its terms and conditions.
- *by a consistent course of dealing between the parties.*
- *by reference to trade custom.*
- All arguments rejected by Supreme Court

Exclusion of liability
for damage of loss attributable
to resistance,

- On the face of it no liability for damage to plant or crop caused by the resistant organism
- Questions
- What exactly do the manufacturers know about the level of resistance, can you be sure the full information has been given
- How much thought do the manufacturers give to possible resistance to their product in manufacturing and distributing it .

Summary

- Know your rights
- Be aware that economic loss may not be recoverable
- Read the small print.