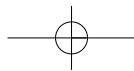
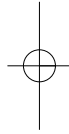
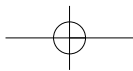
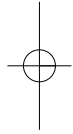
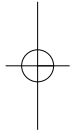


PART 1

Health and Safety Law





1(a)

Legal background

Health and safety law covers many aspects involving people at work, including the civil and criminal liabilities of employers towards their employees and other persons.

The following topics are of particular significance in any consideration of the principal features of health and safety law.

Absolute (strict) liability

Certain duties under health and safety laws are of an absolute or strict nature. These duties are qualified by the terms 'shall' or 'must', such as the absolute duty on employers under the Management of Health and Safety at Work Regulations to undertake a suitable and sufficient risk assessment. Generally no defence is available although, when charged with an absolute offence, it may be possible to submit a plea in mitigation.

All reasonable precautions and all due diligence ('due diligence' defence)

Under certain Regulations, such as the Electricity at Work Regulations and the Control of Substances Hazardous to Health (COSHH) Regulations, an employer charged with an offence may be able to submit the defence that 'he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence'.

To rely on this defence, the employer must establish that, on the balance of probabilities, he has taken *all* precautions that were reasonable and exercised *all* due diligence to ensure that

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these precautions were implemented in order to avoid such a contravention. It is unlikely that an employer could rely on this defence if:

- (a) precautions were available which had not been taken; or
- (b) that he had not provided sufficient information, instruction and training, together with adequate supervision, to ensure that the precautions were effective.

1(a) Legal background

Defences

1(c) Principal regulations

Control of Substances Hazardous to Health Regulations 2002

Chemicals (Hazard Information and Packaging for Supply) Regulations 2002

Pressure Systems Safety Regulations 2000

Approved Codes of Practice

The HSC is empowered to issue and approve Codes of Practice which accompany Regulations, e.g. *Workplace health, safety and welfare*, the Approved Code of Practice (ACOP) accompanying the Workplace (Health, Safety and Welfare) Regulations 1992.

An ACOP has limited legal status. Failure to comply with the recommendations in an ACOP may be used as evidence of failure to comply with a duty under Regulations, unless it can be shown that 'works of an equivalent nature' (which met the requirements but in a different way) had been undertaken.

1(d) Approved Codes of Practice

Breach of statutory duty

In certain circumstances a breach of a statutory duty, which results in injury to a person of a class which the statute was

designed to protect, will give the injured person a civil cause of action. The requirements which have to be satisfied before such a cause of action arises are:

- (a) that the statutory provision, properly construed, was intended to protect an ascertainable class of persons of whom the claimant was one;
- (b) that the provision has been broken;
- (c) that the claimant had suffered damage of a kind against which the provision was designed to give protection; and
- (d) that the damage was caused by the breach.

The claimant must prove his case by the ordinary standard of proof in civil actions. He must show at least that, on a balance of probabilities, the breach of duty caused, or materially contributed to, his injury.

Breaches of many Regulations, in addition to giving rise to criminal liability, also give rise to civil liability within the tort of breach of statutory duty.



1(a) Legal background

Duty of care

Negligence

Burden of proof

This term applies to both criminal cases and civil claims.

Throughout criminal law the burden of proof of guilt that the accused person committed an offence rests with the prosecution, who must prove guilt 'beyond a reasonable doubt'. Section 40 of the HSWA makes the task of the prosecution easier by transferring the burden of proof to the accused. It is incumbent on the accused to show either that it was not 'practicable' or 'reasonably practicable' in the particular case to satisfy the particular duty or requirement. If the accused cannot discharge this duty, the case will be considered proved against him.

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In civil claims, however, the claimant must show this proof of guilt on the part of the defendant 'on the balance of probabilities'.

Case law

Case law, fundamentally, is featured in the decisions of the criminal and civil courts, and based on the doctrine of judicial precedent. These doctrines are to be found in the various Law Reports, such as the All England Reports (AER) and the Industrial Relations Law Reports (IRLR). Case law is a self-endorsing process, perpetuated either by previous binding cases or by the interpretation of legislation.

The following features of a judgement are important:

- (a) the *ratio decidendi* (reason for deciding) – a statement of law based on an examination of the facts and the legal issues surrounding them; this is the most important part of a judgement and contains the actual binding precedent; and
- (b) the *obiter dicta* (words said by the way) – may contain a statement about the law which is not based on the facts of the case under review and which will not, therefore, be part of the decision; this is often held to be of persuasive authority.



1(a) Legal background

Civil and criminal liability
Judicial precedent

Child

A person under compulsory school leaving age and under 16 years.



1(c) Principal regulations

Management of Health and Safety at Work Regulations
1999

Civil and criminal liability

Breaches of health and safety law by employers and others can incur both criminal and civil liability.

Civil liability

Civil liability refers to the 'penalty' that can be imposed by a civil court, e.g. County Court, High Court, Court of Appeal (Civil Division) and the House of Lords.

A civil action generally involves a claim of negligence or breach of statutory duty by a claimant against a defendant. In such actions the claimant sues the defendant for a remedy that is beneficial to the claimant. In most cases, this remedy takes the form of damages, a form of financial compensation. In many cases, the claimant will agree to settle out of court.

Civil cases are decided on 'the balance of probabilities'.

Criminal liability

A crime is an offence against the State. Criminal liability refers to the duties and responsibilities of:

- (a) employers;
- (b) occupiers and controllers of premises;
- (c) manufacturers, designers and suppliers of articles and substances for use at work; and
- (d) employees,

under, principally, the HSWA, and regulations made under the HSWA, and to the penalties that can be imposed by the criminal courts, namely fines and imprisonment. The criminal courts involved are the Magistrates Courts, which handle the bulk of cases, the Crown Court, the Court of Appeal (Criminal Division) and the House of Lords.

Criminal law is based on a system of enforcement by the HSE, local authorities and fire authorities. A person charged with

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an offence is innocent until proved guilty 'beyond reasonable doubt'.



1(a) Legal background

Courts and tribunals

Duty of care

Negligence



1(b) The principal statutes

Health and Safety at Work etc. Act 1974



3(a) Tables and figures

Legal routes following an accident at work

Common law and statute law

Common law is the unwritten law in that it is not written down in Statutes and Regulations. It is, fundamentally, the body of accumulated case law (see separate entry) which is based on the decisions of the courts over many years, whereby precedents (see 'Judicial precedent') are established. It is of universal application and record in the various Law Reports. It is applicable to the decisions made by courts at their own level and in directions from superior courts.

Statute law, on the other hand, is the written law produced as a result of the parliamentary process. Statutes supersede all other forms of law and only Parliament can make, modify, revoke or amend statutes.

A statute may give the Minister or Secretary of State power to produce subordinate or delegated legislation, which generally takes the form of Regulations, e.g. the Control of Substances Hazardous to Health Regulations made under the HSWA.



1(a) Legal background

Civil and criminal liability







3(a) Tables and figures

Legal routes following an accident at work


Contractor

A person engaged to perform a certain task without direction from the person employing him, and implies a certain degree of independence from that person. The basic test of whether a person is an independent contractor is one of control over the undertaking of the work specified in the contract.

-  **1(c) Principal regulations**
 - Construction (Design and Management) Regulations 1994*
 - Construction (Health, Safety and Welfare) Regulations 1996*
-  **1(d) Approved Codes of Practice**
 - Managing construction for health and safety*
-  **1(e) HSE guidance notes**
 - Fire safety in construction: guidance for clients, designers and those managing and carrying out construction work involving significant risks*
 - Health and safety in construction*
 - Health and safety in excavations*
 - Health and safety in roof work*
 - Managing contractors*
 - The safe use of vehicles on construction sites*
-  **Appendix B: Documentation and record keeping requirements**

Contributory negligence

Where a person suffers damage, as the result partly through his own fault and partly through the fault of another person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable will be reduced to such extent as a court considers just and equitable having regard to the claimant's share in the responsibility for the damage.

-  **1(a) Legal background**
 - Duty of care*
 - Negligence*

Controlling mind (*mens rea*)



1(a) Legal background

Corporate liability

Corporate liability

Corporate liability refers to the liability of all those directing an undertaking, that is, the corporate body.

A corporate body, for example, the Board of Directors, chief executive, managing director, etc. of an organisation, may be liable for most criminal offences, providing a fine is specified for the offence, the offence is committed by a 'controlling mind', such as a managing director or chief executive, and is committed in the course of his corporate duties.

Under the HSWA, directors, managers, company secretaries and similar officers of the body corporate have both general and specific duties. Breaches of these duties can result in individuals being prosecuted.

Offences by bodies corporate (Sec 37(1))

Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



1(a) Legal background

Controlling mind (mens rea)



1(b) The principal statutes

Health and Safety at Work etc. Act 1974

Courts and tribunals

There are two distinct systems whereby the courts deal with criminal offences and civil actions respectively. Some courts have both criminal and civil jurisdiction, however.

Criminal Courts

The Magistrates Courts (or Courts of Summary Jurisdiction) in England and Wales, and the Sheriff Court in Scotland, are the courts of first instance for all criminal offences. Lay Justices of the Peace (JPs) determine and sentence for the majority of the less serious offences. They also hold preliminary examinations into other offences to ascertain whether the prosecution can show a prima facie case on which the accused may be committed for trial at a higher court. The Sheriff Court performs a parallel function in Scotland, although procedures differ from those of the Magistrates Courts.

Serious indictable criminal charges and cases where the accused has the right to trial before a jury are heard on indictment in the Crown Court before a judge and jury. This court is empowered to impose unlimited fines and/or a maximum of two years imprisonment for health and safety-related offences. The Crown Court also hears appeals from the Magistrates Courts.

Civil Courts

County Courts operate on an area basis and deal in the first instance with a wide range of civil matters, such as claims for negligence. They are limited, however, in the remedies that can be applied. Cases are generally heard before a circuit judge or registrar, the latter having limited jurisdiction. A County Court judge can award compensation up to £50 000.

More important civil matters, because of the sums involved or legal complexity, will start in the High Court of Justice

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before a High Court judge. The High Court has three divisions:

(a) Queen's Bench – deals with contracts and torts; claims in excess of that within the County Court's power. The Queen's Bench Division hears appeals on matters of law:

- (i) from Magistrates Courts and from the Crown Court on a procedure called 'case stated'; and
- (ii) from some tribunals, for example the finding of an employment tribunal on an enforcement notice under the HSWA;

It also has some supervisory functions over the lower courts and tribunals if they exceed their powers or fail to undertake their functions properly.

- (b) Chancery – deals with matters relating to, for example, land, wills, bankruptcy, partnerships and companies;
- (c) Family – deals with matters involving, for example, adoption of children, marital property and disputes.

The High Court, the Crown Court and the Court of Appeal are known as the Supreme Court of Judicature.

The Court of Appeal

The Court of Appeal has two divisions:

- (a) the Civil Division, which hears appeals from the County courts and the High Court; and
- (b) the Criminal Division, which hears appeals from the Crown Court.

The House of Lords

The Law Lords deal with matters of law only, following appeal from the Court of Appeal and, in restricted circumstances, from the High Court.

The European Court of Justice

This is the supreme law court whose decisions on the interpretation of European Community law are sacrosanct. These decisions

are enforceable through the network of courts and tribunals in all Member States. The ECJ has jurisdiction in the following areas:

- (a) Preliminary Ruling Jurisdiction – this enables the court to hear cases referred by the national courts of Member States in matters relating to the interpretation and application of Community law.
- (b) Plenary Jurisdiction – this gives the court the right to award damages for unlawful acts committed by Community institutions.
- (c) Contentious Jurisdiction – this gives the court the right to hear actions between Member States and Community institutions.

Cases can only be brought before the ECJ by organisations or individuals representing organisations.

The ECJ may also give advisory opinion to the Council of Ministers and the European Commission on legal matters.

Employment tribunals

Employment tribunals deal with many employment matters, including industrial relations issues and cases involving unfair dismissal, equal pay and sex discrimination.

Each tribunal consists of a legally qualified chairman appointed by the Lord Chancellor and two lay members, one representing employers and one from a trade union, selected from panels maintained by the Department of Employment following nominations from employers' organisations and trade unions.

When all three members of a tribunal are sitting, the majority view prevails.

Employment tribunals deal with the following health and safety-related issues:

- (a) appeals against Improvement and Prohibition Notices served by the enforcement agencies;
- (b) time off for the training of safety representatives;

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- (c) failure of an employer to pay safety representatives for time off for undertaking their functions and for training;
- (d) failure of an employer to make a medical suspension payment; and
- (e) dismissal, actual or constructive, following a breach of health and safety law, regulation and/or term of employment contract.

Employment appeals tribunals, presided over by a judge, hear appeals on points of law from employment tribunals.



1(c) Principal regulations

Safety Representatives and Safety Committees Regulations 1977



3(a) Tables and figures

Legal routes following an accident at work

Damages

Civil liability may result in an award of damages for injury, disease or death at work in circumstances disclosing a breach of common law and/or statutory duty on the part of an employer/occupier of premises and arising out of and in the course of employment.

General damages relate to losses incurred after the hearing of an action, namely actual and probable loss of future earnings following an accident.

Special damages relate to quantifiable losses incurred before the hearing of the case, and consist mainly of medical expenses and loss of earnings.

In the case of fatal injury, compensation for death negligently caused is payable under the Fatal Accidents Act 1976, and a fixed lump sum is payable under the Administration of Justice Act 1982 in respect of bereavement.


-  **1(a) Legal background**
Contributory negligence
Duty of care
Negligence

Defences

Civil actions

Where presented with a civil claim based on negligence or breach of statutory duty, a defendant may deny liability on the following grounds:

- (a) that the duty alleged to have been breached was never owed to the claimant in the first place;
- (b) that the nature of the duty was different from that pleaded by the defendant – that the duty was complied with;
- (c) that the breach of duty did not lead to the injury, damage or loss in question;
- (d) that the claimant was partly to blame i.e. was guilty to contributory negligence, which resulted in injury damage or loss.

-  **1(a) Legal background**
Duty of care
Contributory negligence
Negligence
Res ipsa loquitur
Volente non fit injuria

Criminal charges

Where charged with an offence under the HSWA or any of the relevant statutory provisions, a defendant may submit a defence on the basis that he had taken all 'practicable' or 'reasonably practicable' measures to comply with the requirement.

In other cases, Regulations such as the Pressure Systems Safety Regulations 2000, provide the defence of having taken all

reasonably precautions and exercised all due diligence to prevent the commission of an offence.



1(a) Legal background

All reasonable precautions and all due diligence

Burden of proof

Duties (hierarchy of)



1(b) The principal statutes

Health and Safety at Work etc. Act 1974



1(c) Principal regulations

Control of Substances Hazardous to Health Regulations 2002

Chemicals (Hazard Information and Packaging for Supply)

Regulations 2002

Pressure Systems Safety Regulations 2000

Delegated legislation

A statute may delegate to the Minister or Secretary of State power to make specific and detailed legislation on requirements covered in the statute. Delegated or subordinate legislation is exercised through Statutory Instruments (Sis) and generally takes the form of Regulations, such as the Provision and Use of Work Equipment Regulations and the Control of Substances Hazardous to Health (COSHH) Regulations. Many Regulations are now introduced to meet the requirements of various European Directives.



1(b) The principal statutes

Health and Safety at Work etc. Act 1974



1(c) Principal regulations

Regulations made under the Health and Safety at Work etc.

Act 1974

Disclosure of information

Section 28 of the HSWA requires that no person shall disclose any information obtained by him or her as a result of the exercise of

any power conferred by Sections 14 or 20 (including, in particular, any information with respect to any trade secret obtained by him or her in any premises entered by him or her by virtue of any such power) except:

- (a) for the purpose of his functions;
- (b) for the purpose of any legal proceedings, investigation or inquiry, for the purpose of a report of any such proceedings or inquiry or of a special report made by virtue of Section 14; or
- (c) with the relevant consent.

Information must not normally be disclosed except with the consent of the person providing it. Disclosure may be made in certain cases:

- (a) for the purpose of any legal proceedings, investigation or inquiry held at the request of the HSC;
- (b) with the relevant consent;
- (c) for providing employees or their representatives with health and safety-related information.



1(b) The principal statutes

Health and Safety at Work etc. Act 1974

Due diligence



1(a) Legal background

*All reasonable precautions and all due diligence
Defences*

Duties (hierarchy of)

Duties on employers and others under health and safety law may be absolute or strict, or qualified by the terms 'so far as is practicable' or 'so far as is reasonably practicable'.

Absolute requirements

Where risk of death, injury or disease is inevitable if health and safety requirements are not complied with, a statutory duty may well be strict or absolute. An example of an absolute duty is to be found in Regulation 5(1) of the Provision and Use of Work Equipment Regulations which states:

Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is to be used or provided.

Absolute duties are qualified by the term 'shall' or 'must' and there is little or no defence available when charged with such an offence.

'Practicable' requirements

A duty qualified by the term 'so far as is practicable' implies that if in the light of current knowledge or invention, or in the light of the current state of the art, it is feasible to comply with the requirement then, irrespective of cost or sacrifice involved, such a requirement must be complied with. [*Schwab v Fass H & son (1946) 175 LT 345*]

'Practicable' means more than physically possible and implies a higher duty of care than a duty qualified by 'so far as is reasonably practicable'.

'Reasonably practicable' requirements

'Reasonably practicable' is a narrower term than 'physically possible' (i.e. 'practicable') and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk is placed in the other. If it can be shown that there is a gross disproportion between these two factors, i.e. the risk being insignificant in relation to the sacrifice, then a defendant discharges the onus upon himself. [*Edwards v National Coal Board (1949) 1 AER 743*]

Most duties under the HSWA are qualified by the term 'so far as is reasonably practicable'.



1(b) The principal statutes

Health and Safety at Work etc. Act 1974



1(c) Principal regulations

Construction (Design and Management) Regulations 1994

Control of Substances Hazardous to Health Regulations 2002

Management of Health and Safety at Work Regulations 1999

Manual Handling Operations Regulations 1992

Provision and Use of Work Equipment Regulations 1998

Duty holders

A term used in certain Regulations, such as the Electricity at Work Regulations and the Construction (Design and Management) Regulations, specifying classes of person on whom duties are imposed, such as employers, self-employed persons, clients and contractors.



1(c) Principal regulations

Construction (Design and Management) Regulations 1994

Electricity at Work Regulations 1989

Duty of care

The common duty of care between one person and another, such as an employer and employee, occupier of premises and visitor, or the manufacturer of a product and the user of that product, is a key principle of common law. Fundamentally, everyone owes a duty to everyone else to take reasonable care so as not to cause them foreseeable injury.

The effect of this requirement is that if an employer knows of a risk to the health and safety of his employees, or ought, in the light of knowledge current at that time, to have known of the existence of such a risk, he will be liable if an employee is injured

or suffers death as a result of that risk, or if the employer failed to take reasonable care to avoid the risk arising.



1(a) Legal background

Common law and statute law
Contributory negligence
Negligence

Employers' duties (common law)

The duties of an employer under the common law were established in general terms in *Wilson's & Clyde Coal Co. Ltd. v English (1938) AC 57 2 AER 68*. Under the common law all employers must provide and maintain:

- (a) a safe place of work with safe means of access to and egress from same;
- (b) safe appliances and equipment and plant for doing the work;
- (c) a safe system for doing the work; and
- (d) competent and safety-conscious personnel.



1(a) Legal background

Case law
Common law and statute law
Contributory negligence
Duty of care
Negligence

Employers' liability

Employers are vicariously liable for the actions of their employees. This liability must be insured against under the Employers' Liability (Compulsory Insurance) Act 1969. Employers cannot contract out of this liability as such practices are prohibited by

the Law Reform (Personal Injuries) Act 1948 and the Unfair Contract Terms Act 1977.

 **1(a) Legal background**

Vicarious liability

 **1(b) The principal statutes**

Health and Safety at Work etc. Act 1974

Unfair Contract Terms Act 1977

Enforcement arrangements – powers of inspectors

Enforcement authorities, such as the HSE, appoint inspectors who have specific powers under the HSWA. These powers are specified in section 20 of the HSWA thus:

- (a) to enter premises at any reasonable time and, where obstruction is anticipated, to enlist the support of a police officer;
- (b) on entering premises:
 - (i) to take with him any person duly authorised by his enforcing authority; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may be necessary;
- (d) to direct that premises or any part of such premises, or anything therein, shall remain undisturbed for so long as is reasonably necessary for the purposes of examination or investigation;
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purposes of any examination or investigation;
- (f) to take samples of any articles or substances found in any premises, and of the atmosphere in or in the vicinity of such premises;
- (g) where it appears to him that any article or substance has caused or is likely to cause danger to health or safety, to

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- cause it to be dismantled or subjected to any process or test;
- (h) to take possession of any article or substance and to detain same for so long as is necessary:
 - (i) to examine same;
 - (ii) to ensure it is not tampered with before his examination is completed; and
 - (iii) to ensure it is available for use as evidence in any proceedings for an offence under the relevant statutory provisions;
 - (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation to answer such questions as the inspector thinks fit and to sign a declaration of truth of his answers;
 - (j) to require the production of, inspect and take copies of, any entry in:
 - (i) any books or documents which by virtue of the relevant statutory provisions are required to be kept; and
 - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation;
 - (k) to require any person to afford him such facilities and assistance with respect to any matter or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section; and
 - (l) any other power which is necessary for the purpose of carrying into effect the relevant statutory provisions.

Inspectors may serve two types of notice.

Improvement Notice

If an inspector is of the opinion that a person:

- (a) is contravening one or more of the relevant statutory provisions; or

(b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him an Improvement Notice stating that he is of the opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring the person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period in which an appeal against the notice can be brought under section 24) as may be specified in that notice.




Prohibition Notices

Where an inspector is of the opinion that a work activity involves or will involve a risk of serious personal injury, he may serve a Prohibition Notice on the person in control of that activity.

A Prohibition Notice shall:

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion;
- (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice have been remedied.

A direction given in a Prohibition Notice shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case (deferred Prohibition Notice).

-  **1(b) The principal statutes**
Health and Safety at Work etc. Act 1974
-  **3(a) Tables and figures**
Legal routes following an accident at work
-  **3(b) Forms**
Improvement Notice
Prohibition Notice

Enforcement authorities

The enforcing authorities for the HSWA and other health and safety legislation are:

- (a) the Health and Safety Executive (HSE), which is split into a number of specific inspectorates, e.g. Nuclear Installations, Agriculture, and National Industrial Groups (NIGs);
- (b) local authorities, principally through their environmental health departments; and
- (c) fire authorities, for certain fire-related legislation affecting workplaces.

-  **1(b) The principal statutes**
Health and Safety at Work etc. Act 1974

Guidance notes (HSE)

The HSE produce guidance on a very wide range of matters. Guidance notes are issued in six specific series:

- (a) general safety;
- (b) chemical safety;
- (c) environmental hygiene;
- (d) medical;
- (e) plant and machinery;
- (f) health and safety.

Guidance notes have no legal status and are not, generally, admissible as evidence in criminal proceedings.

Guidance notes are also issued with Regulations e.g. *Personal protective equipment* accompanying the Personal Protective Equipment at Work Regulations 1992.

 **1(e) HSE guidance notes**

Indictable offences

Where there is sufficient evidence, certain offences can, on the decision of a Magistrates Court, be subject to committal proceedings through issue of an indictment, whereby an offender is committed to a Crown Court for trial.

Certain offences triable only on indictment are:

- (a) breaching any of the relevant statutory provisions; and
- (b) acquiring, or attempting to acquire, possessing or using an explosive article or substance.

 **1(a) Legal background**

Burden of proof
Courts and tribunals
Delegated legislation
Duties (hierarchy of)
Enforcement arrangements
Summary offences

 **1(b) The principal statutes**

Health and Safety at Work etc. Act 1974

Judicial precedent

Judicial precedent is defined as 'a decision of a tribunal to which some authority is attached'. A precedent may be authoritative or persuasive.

Authoritative precedents

These are the decisions which judges are bound to follow. There is no choice in the matter. A lower court, for example, is bound by the previous decision of a higher court.

Persuasive precedents

These are decisions which are not binding on a court but to which a judge will attach some importance. For example, decisions given by the superior courts in Commonwealth countries will be treated with respect in the English High Court.



1(a) Legal background

Burden of proof
Case law
Defences

Negligence

'Negligence' is defined as 'careless conduct injuring another'.

In a civil action for negligence, three specific facts must be proved by the claimant:

- (a) a duty of care is owed;
- (b) there has been a breach of that duty; and
- (c) injury, damage and/or loss has been sustained by the claimant as a result of that breach.

[*Lochgelly Iron & Coal Co Ltd v M'Mullen (1934) AC 1*]



1(a) Legal background

Breach of statutory duty
Defences
Duty of care
Contributory negligence
Courts and tribunals
Employers' duties (common law)

Neighbour Principle
Res ipsa loquitur
Torts
Vicarious liability
Volente non fit injuria

Neighbour Principle

This principle was established in *Commissioner for Railways v McDermott (1967) 1 AC 169*. Lord Gardner explained the position with regard to occupation of premises thus:

Occupation of premises is a ground of liability and not a ground of exemption of liability. It is a ground of liability because it gives some control over and knowledge of the state of the premises, and it is natural and right that the occupier should have some degree of responsibility for the safety of persons entering his premises with his permission. There is proximity between the occupier and such persons and they are his neighbours. Thus arises a duty of care.



1(a) Legal background

Duty of care
Employers' duties (common law)
Employers' liability
Negligence
Occupiers' liability

No-fault liability

This term implies there is no requirement to establish fault or intent in that a claimant is automatically compensated for injury, damage or loss by the state or some other organisation. It thus dispenses with or disregards the common law and statutory elements of liability.

Occupiers' liability

People who occupy land and premises, such as private individuals, local authorities, organisations, companies and shop keepers, owe a common duty of care to all persons who may visit their land or premises. Moreover, anyone who is injured whilst visiting or working on land or premises may be in a position to sue the occupier for damages, even though the injured person may not be his employee.

[Lord Gardner in *Commissioner of Railways v McDermott* (1967) 1 AC 169]

The law covering this area of civil law is the Occupiers' Liability Acts 1957 and 1984.

Occupiers' Liability Act 1957

Under the Occupiers' Liability Act (OLA) an occupier owes a common duty of care to all lawful visitors. This common duty of care is defined as 'a duty to 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 purposes for which he is invited or permitted by the occupier to be there'.

Under the OLA, occupiers have a duty to erect notices warning visitors of imminent danger. The display of a warning notice does not, however, absolve an occupier from liability unless, in all the circumstances, it was sufficient to enable the visitor to be reasonably safe.

However, whilst an occupier may have displayed a notice under the provisions of the OLA, the chance of avoiding liability is not permitted as a result of the Unfair Contract Terms Act 1977. This Act states that it is not permissible to exclude liability for death or injury due to negligence by a contract or by a notice displayed in accordance with the OLA.

The OLA 1984 went on to clarify the situation relating to the display of warning notices. Whilst a duty may be discharged by the

display of a warning notice, such a notice must be particularly explicit in terms of stating, firstly, the hazard and, secondly, the precautions necessary on the part of persons exposed to that hazard. Moreover, the requirements outlined in a notice must be actively enforced by the occupier.

Generally, the actual display of a notice, the clarity, legibility and explicitness of a notice, and evidence of clearly reminding people of the message featured in the notice, may count to a certain extent as part of a defence when being sued by a visitor.



1(a) Legal background

Duty of care

Negligence

Neighbour Principle



1(b) The principal statutes

Health and Safety at Work etc. Act 1974

Occupiers' Liability Act 1957

Occupiers' Liability Act 1984

Precedents (see Judicial precedents)

Pre-trial review

A review of a claim in the County Court undertaken by the Registrar with the objective of identifying the key issues of a claim and any points of contention.



1(a) Legal background

Courts and tribunals

Principles of prevention

Schedule 1 of the Management of Health and Safety at Work Regulations specifies the *General principles of prevention* that must be applied where an employer implements any preventive

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and protective measures arising from the risk assessment process.

These principles are:

- (a) avoiding risks;
- (b) evaluating the risks which cannot be avoided;
- (c) combating the risks at source;
- (d) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health;
- (e) adapting to technical progress;
- (f) replacing the dangerous by the non-dangerous or the less dangerous;
- (g) developing an coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- (h) giving collective protective measures priority over individual protective measures; and
- (g) giving appropriate instructions to employees.



1(c) Principal regulations

Management of Health and Safety at Work Regulations 1999

Prosecution

The bringing of a person before a court to answer a charge involving an alleged breach of the law. It is normal for the person charged with an offence to be served with a summons to attend court to answer the charge or charges in question.



1(a) Legal background

*Burden of proof
Courts and tribunals*

Enforcement arrangements
Indictable offences
Summary offences



1(b) The principal statutes

Health and Safety at Work etc. Act 1974

Relevant statutory provisions

The HSWA is an enabling Act comprising, in the main, general duties on specific groups, e.g. employers, manufacturers of articles for use at work. Section 15 of the HSWA enables the Secretary of State for Employment to make Regulations. The HSWA and Regulations are deemed to be 'the relevant statutory provisions'.

Schedule 1 of the HSWA defines 'the relevant statutory provisions' as:

- (a) Part 1 of the HSWA;
- (b) regulations made under Part 1;
- (c) the Acts contained in Schedule 1 of the HSWA e.g. Factories Act 1961; and
- (d) any regulations made under the above Acts.



1(a) The principal statutes

Health and Safety at Work etc. Act 1974



1(c) Principal regulations

Management of Health and Safety at Work Regulations 1999

Res ipsa loquitur

A term meaning 'the facts speak for themselves' or 'the matter itself speaks', a phrase used in actions for injury occasioned by negligence where no proof is required of negligence beyond the accident itself.



1(a) Legal background

Negligence

Stare decisis

A term meaning 'let the decision stand', implying the need to stick to the decisions of past cases. *Stare decisis* is the basis for the doctrine of binding precedent.

Statement of claim

A statement, outlining the allegations against a defendant, and previously delivered to the defendant prior to civil proceedings.



1(a) Legal background

*Civil and criminal liability
Courts and tribunals*

Statement of health and safety policy

A formal document required to be prepared, and regularly revised, by an employer under the HSWA. The principal features of such a statement are:

- (a) statement of intent, which outlines the organisation's overall philosophy in relation to the management of health and safety, including objectives for ensuring legal compliance;
- (b) details of the organisation, which should include the chain of command, accountability and responsibility for health and safety; and
- (c) the arrangements, which include the procedures and systems for monitoring performance.



1(b) The principal statutes

Health and Safety at Work etc. Act 1974



1(e) HSE guidance

Writing your health and safety policy statement: a guide to preparing a safety policy for a small business

Statutes and Regulations

Statutes (Acts of Parliament) are the principal written laws arising from the parliamentary process. Only Parliament can make, modify, amend or revoke statutes.

A statute frequently gives the Minister of Secretary of State power to make Regulations ('delegated' or 'subordinate' legislation). The majority of Regulations, such as the Provision and Use of Work Equipment Regulations, are based on the requirements of European Directives, and are listed numerically as Statutory Instruments.

 **1(b) The principal statutes**

 **1(c) Principal regulations**

Strict liability (see Absolute liability)

Summary offences

These are offences which may be dealt with in a court of summary jurisdiction, e.g. a Magistrates Court. Such offences are mainly of a minor nature.

 **1(a) Legal background**

Courts and tribunals

 **1(b) The principal statutes**

Health and Safety at Work etc. Act 1974

Temporary employment

Temporary employment arises where an employee of one organisation may be hired out or seconded to another employer to undertake a specific task. The test as to whether an employee has been 'temporarily employed' is based on the 'control test',

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namely the extent of the control the temporary employer can exert in that employee's actual undertaking of the specific task involved.

[Mersey Docks & Harbour Board v Coggins and Griffiths (Liverpool) Ltd (1974) AC1]

Regulation 12 of the Management of Health and Safety at Work Regulations, *Persons working in host employers' or self-employed persons' undertakings*, covers the criminal law requirements of temporary employment.



1(c) Principal regulations

Management of Health and Safety at Work Regulations 1999

Torts

A tort is defined as a 'civil wrong'. The three principal torts are negligence, nuisance and trespass.

The rule of common law is that everyone owes a duty to everyone else to take reasonable care so as not to cause them foreseeable injury. Tortious liability arises from the breach of a duty primarily fixed by the law. Such duty is towards persons generally and its breach is redressible by an action for unliquidated damages.



1(a) Legal background

Breach of statutory duty

Defences

Duty of care

Negligence

Vicarious liability

The doctrine of vicarious liability is based on the fact that if an employee, whilst acting in the course of his employment,

negligently injures another employee, or the employee of a contractor working on the premises, or even a member of the public, the employer, rather than the employee, will be liable for that injury. Vicarious liability rests on the employer simply as a result of the fact that he is the employer and is deemed to have ultimate control over the employee in a 'master and servant' relationship.

The key to liability is that the accident causing the injury, disease or death arises, firstly, *out of* and, secondly, *in the course of*, employment. This does not normally include the time travelling to and from work, although it would apply if the mode of transport was within the employer's control or was provided by the employer or by arrangement with the employer.



1(a) Legal background

Duty of care

Negligence

Volente non fit injuria

This term means 'to one who is willing, no harm is done', more commonly referred to as 'voluntary assumption of risk'. As such it is a complete defence and no damages would be payable to a claimant in respect of a claim for negligence.

However it is a very limited defence based on the employee voluntarily assuming a risk as part of his normal work activities.

[*Smith v Baker & Sons (1891) AC 305*]



1(a) Legal background

Defences

Negligence