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FRANK FELGENTRÄGER

THE LAW OF TORTS

Das folgende Skript ist als Mitschrift im Rahmen der Fachfremdsprachenausbildung (FFA) zur Englischen Rechtssprache an der Universität Bielefeld entstanden. Es erhebt keinen Anspruch auf Vollständigkeit, sondern soll als Anregung dienen, was zur Prüfung über das englische Deliktsrecht gelernt werden kann.

THE LAW OF TORTS

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A. General Information on Torts

- “tort”: derived from latin word “tortus” which means “wrong”
- in English law tort refers to **civil wrongs** only
 - i.e. “trespass over s.o.’s property is only a civil wrong
 - not criminal!

I. Definition

- definition of “tort”:
 - two parts:
 - part a)
 - the province of tort is to allocate responsibility for injurious conduct (said by Lord Denning)
 - part b)
 - tortious liability arises from the breach of a duty primarily fixed by law, such duty is towards persons generally and its breach is redressible (actionable) by an action for unliquidated damages (no set amount – court considers amount)
 - PONS (Dictionary):
 - a civil wrong done by one person to another and entitling the victim to claim damages *Delikt*
 - “where one party suffers harm done by another, an action in tort arises”
- object of legal proceedings in tort: **compensation** (or reparation)
 - money (damages)

II. Legal Wrong – Loss/Injury

1. General Rule

- usually:
 - if there is a civil wrong, there is a loss and an action in tort
- but two variations:
 - *damnum sine injuria*
 - *injuria sine damno*

2. Damnum Sine Injuria

- there are also some instances where, although damage has been caused, there is no action at law
 - “**damnum sine injuria**” (harm without legal wrong)
 - i.e.:
 - legitimate business competition does not entitle to an action in tort even where its effect is **to ruin** another
 - bakery opens next to another bakery

3. Injuria Sine Damno

- there are also examples where a legal wrong exists but a loss or injury **has not occurred**
 - “**injuria sine damno**” (legal wrong without harm)
 - i.e.:

- if a person walks on another person's land he may not cause any damage, but he will still be liable

III. Actionable “per se”

- certain torts, i.e. trespass, are **actionable without proof of damage** they are said to be actionable **per se**
- certain torts, however, are **not actionable “per se”**
 - here you have to prove an actual loss or damage
 - i.e.:
 - negligence
 - you have to show:
 - injury/loss and also
 - that the plaintiff's legal right has been infringed (*broken*) by the defendant

IV. Ill/Innocent Motive

1. Bradford Corporation v. Pickles (1895)

- case: “**Bradford Corporation v. Pickles” (1895)**
 - Mr. Pickles wanted Bradford Corporation to buy his land at his own (high) price
 - Pickles dug a hole in his ground which stopped the water flow to the Corporation's water supply
 - Corporation applied for an injunction
 - **Court:**
 - injunction (-) (no injunction would lie) b/c Mr. Pickles had the **right to do so**
 - **it does not matter** that his **motive was ill**

-
- (by the way) the reverse also applies:
 - a good/innocent motive does not make committing a tort right
-

2. Wilkinson v. Downton (1897)

- another case to the same subject: “**Wilkinson v. Downton” (1897)**
 - defendant told the plaintiff, as a “practical joke”, that her husband had asked him to tell her that he was lying with both legs broken following a serious accident
 - this statement was untrue
 - the plaintiff believed the statement and suffered nervous shock and a number of physical consequences
 - **Court:**
 - action in tort (+)
 - it is not relevant that the false statement was meant as a joke

B. General Defences in Tort

- to be put forward by a defendant that he is not liable for the tort he has been claimed to have committed

I. Volenti non Fit Injuria

- no injury can be done to a **willing person**
 - this does not apply to criminal cases!
- i.e.:
 - **voluntary sports**
 - rule does not only apply for active persons, but also for spectators
 - it is your risk that you could be hit by a car watching a car race

II. Mistake

- **general rule:**
 - a mistake about law or about the situation (facts) you are in is not a defence in tort
- **exceptions** (only to mistakes about facts, not law!):
 - mistake which is **reasonable** may be a defence
 - i.e.:
 - a policeman who investigates finds reasonable grounds to suspect s.o. and arrests him
 - no action for false imprisonment, b/c reasonable grounds (+)
- reasonable:
 - what is reasonable, is based on the conduct of the ordinary man

III. Necessity

- very rare defence
- only applies when defendant was **compelled by circumstances** to prevent further evil
- case: “**Leigh v. Gladstones**” (1909)
 - a suffragette (woman fighting for women’s rights *Frauenrechtlerin*) went on hunger-strike in prison
 - she was forced-fed by the guards
 - she sued for assault and battery
 - **Court:**
 - defence of necessity (+)
 - b/c death is greater evil than assault and battery

IV. Inevitable Accident

- you take all reasonable pre-cautions, but could not avoid committing the tort
- case: “**Stanley v. Powell**” (1891)
 - during a shooting for birds a bullet bounced off a tree and hit s.o. in his eye
 - Powell liable for trespass (to Stanley’s body)?
 - **Court:**
 - this was an act of God
 - Stanley could not prove negligence
 - anything which occurs in the course of nature and what you cannot avoid: defence of **inevitable accident**

V. Statutory Authority

- you have the authority by statute to commit the tort
- two types:
 - absolute authority
 - conditional authority
- case: “**Vaughan v. Taff Railway Company**” (1860)
 - railway company was authorized by statute to run a railway which traversed the plaintiff’s land
 - sparks from the engine set fire to the plaintiff’s woods
 - **Court:**
 - railway company was not liable
 - it had taken all known care to prevent emission of sparks
 - the running of trains was **statutorily authorized**
- case: “**Metropolitan District Asylum Board v. Hill**” (1881)
 - a hospital authority (appellants) were empowered by statute to build a hospital for contagious diseases
 - the hospital was built in a residential district
 - caused danger of infection to people living nearby
 - **Court:**
 - the building of the hospital was a nuisance
 - the statute gave the hospital authority to build such hospitals, but did not sanction the erection in places where this would constitute danger
 - injunction was granted
 - the statutory authority was **conditional**

VI. Self-Defence

- person may use reasonable force to defend himself (or any other person) against unlawful force
- case: “**R. v. Martin**” (2000)
 - Martin = householder
 - in the past often burglars attacked his house
 - when he was burgled again, he shot the burglars – one 16-year-old boy died
 - **Court:**
 - there were other defences
 - the force was **not reasonable**

C. Negligence

- **most important** and **most common** tort
- plaintiff has the burden of proving three things:
 - 1) defendant owed a duty of care
 - 2) breach of this duty
 - 3) damage done to the plaintiff

I. Duty of Care

- negligence only causes action if there is duty of care
 - when does duty of care arise?
 - i.e.:

- traffic
- doctors towards patients
- employer towards employee – safe system of work
- case: “**Donoghue v. Stevenson**” (1932)
 - a friend of the plaintiff:
 - bought from a retailer a bottle of ginger-beer manufactured by the defendant
 - plaintiff:
 - drank from the bottle and
 - became ill from drinking
 - bottle:
 - contained the decomposed remains of a snail
 - was opaque (*undurchsichtig*) so that the substance could not have been seen and was not discovered until the plaintiff was refilling her glass
 - consumer:
 - sued the manufacturer in **negligence**
 - **court** (House of Lords, Lord Atkin):
 - the manufacturer was liable to the consumer in **negligence**
 - manufacturer not liable for contractual damages b/c there was no contract between plaintiff and manufacturer (her friend bought the bottle)
- def. of “**duty of care**” (from the decision above):
 - ...you must take care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour
 - “**neighbour**”:
 - ...persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are in question
- duties recognized in law:
 - lawyers towards their clients
 - transportation companies
 - schools
 - police to the general public but not to an individual
 - police cannot be liable for individual losses by solving a crime
- **standard of care:**
 - standard of the ordinary prudent man
 - that care which a reasonable man would use or show in the circumstances of the particular case
 - the degree or amount of care is not the same as the standard:
 - where serious consequences may follow the amount and degree has to be **higher**
 - **key question:**
 - “What is **reasonable in the circumstances** of the case, having regard to the **particular profession** or occupation?”
- case: „**Condon v. Basi**” (1985)
 - during a football match the defendant recklessly (*rücksichtslos*) tackled the plaintiff

- broke his leg
 - defendant:
 - was sent off by the referee
 - **court:**
 - defendant was liable in negligence
 - the foul tackle fell **below the standard of care** which is reasonably expected in any match
- case: “**McLoughlin v. O’Brian**” (1983)
 - defendant:
 - drove in a negligent way
 - accident happened b/c of the negligence
 - one child dead, rest of the plaintiff’s (mother) family injured
 - **court:**
 - defendant was liable
 - defendant owed duty of care
 - accident was foreseeable
- case: “**Yachuk v. Oliver Blais Co.**” (1949)
 - boy (nine years):
 - lied to a garage attendant, asked him to give him a tin of petrol for his mother’s car
 - but he used it to play (light some timber)
 - caused an explosion
 - boy injured
 - **court:**
 - defendant was liable
 - garage attendant was negligent, he owed great duty of care b/c the oil is very dangerous and the person he gave it to was a child
- case: “**Smith & Others v. Littlewood Organisation Ltd.**” (1987)
 - Vandals started fire in the defendant’s empty building which damaged near property
 - **court:**
 - occupier’s duty **did not** extend to preventing **deliberate acts** of third party vandals in these circumstances

II. Negligent Misstatement

- when a statement is made negligently with no intention that the recipient acts upon it
- but if the persons acts upon it with losses the negligent person may be liable
- case: “**Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.**” (1964)
 - plaintiffs:
 - contacted bankers (defendants) b/c of references of a company (of credit-worthiness)
 - H & B:
 - gave a positive report
 - the report was headed by: “No responsibility!”
 - but afterwards the company got bankrupt
 - **court:**
 - bankers would have been liable if they had not expressly excluded liability in the contract

- where in a sphere in which a person is so placed that others could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, a person takes it on himself to give information or advice to be passed on to, another, who, as he knows or should know, will place reliance on it, then a duty of care will arise (per Lord Morris)
- case: “**Caparo Ind. v. Dickmann**” (1990)
 - **court:**
 - the auditors (*Rechnungs-/Abschlussprüfer*) did not owe a duty of care in negligence to either a shareholder or a potential shareholder
- barristers are only partly liable for negligent misstatements

III. Contributory Negligence

- Contributory Negligence Act (1945)
- ...where any person suffers damage **partly** as a result of their **own fault** and partly of the fault of any other person, a claim for damages shall not be inadmissible (*unzulässig*) b/c you are partly responsible
 - **but:**
 - damages shall be **reduced** to such an extent as the court thinks just and equitable having regard to the claimant's in responsibility

D. Defamation

... the publication of a statement which exposes a person to hatred, ridicule or contempt or causes a person to be shunned or avoided by right-thinking members of society generally. (dictionary: *Rufmord*)

- false statement about a person to his/her discredit
- defamation is a **tort** and may be a libel or a slander
- two classes of defamation:
 - libel
 - slander (mit „a“ wie father!)
- **libel:** (person who libels: “libeller”)
 - a statement made in **permanent** form
 - dictionary: a written and published or broadcast statement in a permanent form which damages s.o.'s character
- **slander:**
 - a statement made in **impermanent** form
 - dictionary: untrue spoken statement which damages s.o.'s character
Verleumdung, üble Nachrede
 - quickly passes
 - i.e.: speech, gesture
 - action in court: “**slander action**“

I. Libel

- ... a statement made in permanent form
 - i.e.:
 - written or printed

- effigy (dictionary: *Bildnis; to hang/burn s.o. in effigy = jmdn. in effigie hängen/verbrennen*)
 - statue
 - caricature – cartoon
 - film
 - broadcasting in general – TV, radio
- in a trial it is a question of **fact, (not law)**
 - **jury** decides upon it, not the judge!
 - plaintiff must prove four things:
 - 1) statement was defamatory
 - 2) statement actually referred to the plaintiff
 - 3) statement was published
 - 4) damage was suffered

1. Defamatory Statement

- statement can be an **innuendo** (Andeutung, Anspielung)
 - s.th. is said which has a double meaning
 - “hidden meaning”
 - “implications”
 - at first it looks innocent, but than it turns out to be defamatory
 - by reason of unique/peculiar circumstances
 - case: “**Cassidy v. Daily Mirror Newspapers Ltd.**” (1929)
 - defendant published photograph of a man and a woman
 - underneath it said: “Mr. C and Ms. B whose engagement has been announced”
 - in fact Mr. C was already **married** with Mrs. C
 - Mrs. C took defendant to court for libel
 - b/c words suggested by **innuendo** that she lived immorally together with Mr. C
 - **court:**
 - Mrs. C succeeds
 - damages (+)
 - although defendant has acted **innocently**

2. Statement Referred to the Plaintiff

- but he does not need to be the person who was **intended** to be referred to
 - therefore it is possible to be defamed by accident
 - i.e.: if two persons have the same name
- the question to be asked: “would a reasonably minded person who knew the plaintiff connect the statement with him?”
- it follows that a group/class of persons cannot be defamed
 - b/c no one has been identified **personally**
- case: “**Newstead v. Express Newspaper Ltd.**” (1940)
 - defendant published report of a court trial and conviction of bigamy of s.o. called Harold Newstead
 - but there was also another man with the same name who lived in the same area

- **court:**
 - plaintiff is entitled to damages

3. Statement was Published

- publication: making known in writing or orally/other form s.th. to s.o. other than the plaintiff
 - i.e.:
 - postcard sent through the post (+)
 - a letter in envelope (-)
 - A tells B orally (-)
- a **repetition** of a defamatory statement is a “fresh” (new) publication
 - therefore each of these persons are individually liable:
 - author
 - printer
 - publisher of a statement
 - “only” **repetition** is **not a defence**
- case: “**Vize Telly v. Mudie’s Select Library**” (1900)
 - a book contained a libel
 - defendants (librarians) had copies of that book in library
 - but: they did not know of the libel in the book and
 - no negligence (it was no fault of their own that they did not hear that the publisher of the book wanted it to be returned b/c of the libel)
 - **court:**
 - nevertheless the librarians are liable
 - b/c they passed the book on (to the lenders)

II. Defences to Defamation

- five defences

1. Justification

- if statement was **substantially** true
 - some details even may be untrue!
 - i.e.: A = right, B = right, C = false
 - still statement is substantially true
- if (+), then plaintiff cannot have suffered damage (**no damage!**)
- in practice justification is only **rarely pleaded** (b/c if you fail it looks like you insisted on being right although you were wrong – substantial damages!)

2. Fair Comment

- a fair comment on a matter of public interest
 - judges decide in each case what such a matter is
 - **generally** matters to do with:
 - government
 - police
 - works of art
 - books, plays, TV etc.
 - not: private lives of people
- statement/remark published has to (be):

- honest
 - relevant to the matter of public interest
 - free from malice or improper motive
 - consist of opinion or comment (**not a statement of fact**)
- if there is **any proof** of spite (malice, hate etc.), defence cannot apply

3. Privilege

- protects defamatory statements from action at law on the grounds of public policy
- two types of privilege:

a) Absolute Privilege

- b/c here it is so important for our democratic way of life that no action can be taken
 - i.e. statements made:
 - in Parliament
 - in judicial proceedings
 - in communications between solicitor – client

b) Qualified Privilege

- means that the statement is qualified to the extent that the statement in question was made without malice and with an honest belief in its truth of what you say
 - i.e.:
 - legal or moral duty to inform s.o. about s.o.
 - new employer wants to know s.th. about you from your last employer
 - reports of judicial proceedings (in newspaper)
 - reports of parliamentary proceedings
 - letters of complaint to proper person (police, Parliament)
 - so important for democracy...

4. Apology

- statutory defence – under **Libel Act 1843**
- requirements:
 - no malice (or **no gross negligence**)
 - full apology was published at earliest opportunity
 - compensation has been paid into court (as token of sincerity)
- very **rarely** used
 - b/c it is a “yes-or-nothing” defence
 - **no other defence** can be set up if the statutory apology under this Act is relied on

5. Offer of Amends

- statutory defence – under **Defamation Act 1952**
- similar to (4.)
- requirements:
 - words have to have been published innocently and

- there has to have been reasonable care beforehand and
- either:
 - defendant did not intend to publish them in relation to plaintiff or
 - defendant did not know about circumstances by which words which were apparently innocent might be understood to be defamatory of the plaintiff
- no payment of money has to be made
 - but defendant has to:
 - publish **correction** and **apology**
 - take reasonable steps to notify persons to whom copies (of i.e. articles) were distributed that words used were alleged to be defamatory
- if offer is accepted:
 - no further proceedings can be taken
- if offer is rejected:
 - defendant must prove that words were published innocently and offer of amends was made as soon as practical after possibility of defamation came to his knowledge

III. Remedies

- damages
- injunction
 - court order to make s.o. stop s.th.
 - can be permanent or temporary (temporary is also good b/c it can help you prepare people that there might be s.th. in the newspaper which is consulting, but not a defamation b/c it is true)

E. Occupiers' Liability

- 1957: Occupiers' Liability Act (1957)
 - classed everybody who entered on to s.o. other's premises (land or property) as "visitors"
 - "visitor": anyone who has express or implied permission to be on the premises
 - i.e.:
 - dinner guests (express)
 - postman (implied)

I. Dangerous Premises

- **s. 2 of OLA (1957):**
 - the occupier of premises has a common law duty of care owed to all visitors except that he is free to extend/restrict/modify/exclude his duty to any visitor by agreement or otherwise
 - s. 2 allows an occupier to contract with a visitor to absolve themselves from liability!
 - i.e.: sign on property: "no liability for accidents happened by swimming"
 - the common law duty of care is a duty to take such care as in all the circumstances of the case is reasonable

- visitors have to be “reasonably safe” in using the premises for the purpose for which they are invited or permitted by the occupier to be there
- in determining whether the occupier of premises has discharged the common duty of care, you have to consider the following:
 - damage caused to a visitor:
 - by a **danger** of which they had been **warned** by the occupier:
 - warning is **no excuse** from liability
 - **unless:** it was **enough** to enable the visitor to be reasonably safe
 - due to the **faulty execution** of any work of construction, maintenance or repair by an independent contractor employed by the occupier:
 - the occupier is **not automatically** responsible for the danger
 - occupier must have acted **reasonably** and **carefully** in entrusting the work to an independent contractor
 - case: “**O’Connor v. Swan & Edgar and Carmichael Contractors**” (1963)
 - plaintiff: was working as a demonstrator in a store
 - part of the ceiling fell, injured her (plaintiff)
 - plaintiff sued:
 - store owners
 - plasterers (independent contractors)
 - **court:**
 - store owners: not liable
 - plasterers: liable of faulty workmanship

- common duty of care also applies to certain visitors who do not have permission
 - i.e.: policeman
- occupier is also not liable for damage by a visitor which he consented to
 - “volenti non fit injuria”
 - i.e.: “play at your own risk” (sign on football field)

II. Trespassers

1. General Rule

- “a person who goes onto the land without any invitation of any sort and whose presence is either unknown to the proprietor (occupier) or if it is known is practically objected to” (i.e.: signs, fences etc.)
 - i.e.: burglars
 - problem: what about people from **political parties** – if they come to talk to you, are they trespassers?
 - if you have a sign expressly excluding them from invitation, then they are trespassers!

- **no duty of care** for occupier owed to trespassers
 - trespasser enters property of another at his own risk

2. Exceptions

- if you know that a trespasser is there, an occupier may not
 - inflict damage on trespasser **recklessly/intentionally**
 - intentionally create danger to injure (i.e.: **traps** for burglars)
 - but these are ok
 - dogs (if you have a sign warning)
 - defensive measures (i.e.: sharp glass in the ground)

III. Children

1. Exceptions to General Rules

- general rules apply, but **exceptions**:

a) Less Careful

- Occupiers must accept that children might be **less careful** compared to adults

b) Written Warning does not Apply

- Occupiers must accept that a **written warning** does not apply (b/c children cannot read)

c) Children = Visitor, if Way not Repaired

- Children may qualify as a visitor if their way to get on premises is not repaired (i.e.: **hole in a fence** let them come through)

d) Special Care if: Allurement (+)

- Occupiers must take special care over what a child may perceive (*wahrnehmen, auffassen*) as an **allurement** (*Verlockung*)
 - i.e.: machinery, attractive plants, hole in fence

2. Cases

a) Allurement

(1) "Glasgow Corporation v. Taylor" (1922)

- child (7 years):
 - picked some attractive, but poisonous, berries (growing on a **public park**)
 - child died
- defendant (corporation – order mixed up b/c appeal!):
 - knew the berries were poisonous
 - knew that children play in park
 - but:
 - corporation had done no effective warning (warning that is understandable of the danger)
- **court**:
 - berries constituted an allurement
 - corporation was liable in an action by the child's parent

(2) “Cook v. Midland G.W. Railway of Ireland” (1909)

- defendants:
 - kept a turntable on their land near a public road
 - knew that children come on the land and play with the turntable
 - but:
 - defendants took no effective steps to prevent them doing so
- child (4 years):
 - injured himself on the turntable
- **court:**
 - sufficient evidence to find the defendants liable
 - they had acquiesced in (put up with *dulden*) the trespasses by the children
 - the particular child was in the position of a visitor
 - to him the turntable was an allurement

b) “B.R. Board v. Herrington” (1972)

- Herrington (6 years):
 - trespassed through a **defective fence** adjoining an electrified railway line
 - was badly injured
 - sued the Board in **negligence** for **permitting** the fence to be in a bad condition
- Board:
 - knew that previous trespasses had occurred
- **court:**
 - Board was liable
 - an occupier’s liability to a child trespasser depends on what a conscientious, humane man (with his knowledge, skill, and resources) could reasonably have been expected to have done or refrained from (*unterlassen*) doing which would have avoided the accident
 - by the way: a poor person would often be excused where a large organization would not (per Lord Reid)

IV. The Rule in “Rylands v. Fletcher” (1868)**1. The Rule**

(per Blackburn J in the Court of Exchequer Chamber):

a) Requirements

- a person who:
 - brings on his land and
 - collects and
 - keeps there anything
 - likely to do mischief if it escapes,
- must keep it in at his own risk

b) Consequences in Case of “Accident”

- if he does not do so:
 - he is *prima facie* (apparently) answerable (responsible) for all the damage which is the natural consequence of its escape

c) General Information

- rule is one of **strict liability**
 - i.e.: the defendant is liable **independently of wrongful intent or negligence**
- the rule was reconsidered in another case (“Cambridge Water Co. Ltd. v. Eastern Counties Leather plc.” (1994))

-
- rule applies to escapes of:
 - electricity
 - trees (might be poisonous)
 - wire fencing
 - explosives etc.

-
- tort is not actionable per se
 - some damage must be proved to sustain a successful claim

-
- there must be an actual “escape” or leakage from the defendant’s land of the dangerous or harmful thing, and the dangerous thing must **move from the defendant’s land to the plaintiff’s**
 - things “**naturally on land**” include:
 - thistles (*Disteln*)
 - insects
 - rats (unless their numbers increased as a result of defendant’s acts or omissions)
 - rocks (when these crumble and fall naturally, there is no liability on the defendant, though it would be otherwise if the fall were due to negligent quarrying (*Steinbruch bzw. “Steinbruch betreiben” – sozusagen “steinbrüchen”*) or if increased falls resulted from quarrying)
 - liability for these things may, however, be actionable in:
 - **nuisance** or
 - **trespass**
 - **natural usage** includes:
 - the working of mines (digging a mine in the land is natural!)
 - the planting of trees (though if these are poisonous and they escape, the defendant will be liable)
 - **non-natural usage:**
 - the storage of water in quantities and the storage of electricity

d) The “Key Question”

“Did the thing escape and was it a non-natural usage of land?”

2. The Case “Rylands v. Fletcher” (1868)

- defendant:

- employed independent contractors to construct a reservoir on his land and to use the water power for his mill
- contractors:
 - came across some disused mine-shafts and passages filled with earth and marl which communicated with the plaintiff's mine
 - this fact, however, was **unknown** to defendant and contractors
- when reservoir was filled, the water escaped through the shafts and flooded the plaintiff's mine
- **court:**
 - defendant **had not been negligent**
 - nevertheless:
 - defendant was liable (firstly stated by Court of Exchequer, secondly confirmed by House of Lords (appeal))
 - **House of Lord:**
 - restricted the rule to damage due to a non-natural use of the land

3. Defences

a) Act of God

- i.e.: extraordinary rainfall (which could not reasonably have been anticipated)

b) Act of a stranger

- escape is due to the unlawful act of a third party (over whom defendant had **no control**)

c) Default of Plaintiff

- plaintiff's own fault

d) Consent of Plaintiff

- voluntarily consented

e) Statutory authority

- local governments etc.
 - but they cannot escape liability in case of the escape of water from reservoirs (exception that can be found in the Reservoirs Act 1975)

F. Nuisance

G. Trespass