LAW 131 EXAM NOTES

Finder's cases summary

Parker v British Airways sets out the general rules on finder's cases

Rights and obligations of a finder:
- Were the goods lost or abandoned?
- Did the finder take care and control? (*Grafstein v Holme and Freeman*)
- Did the finder act with honest intent?
    - Trespass = limited rights
- The finder has an obligation to to make measures to acquaint the object with the true own
    - E.g. hand it in somewhere/leave it somewhere where the true owner would be able to find it

Rights of an occupier can trump the rights of a finder when:
- The goods were found attached or under their land or building (*South Staffordshire Water Co v Sharman*; *Bridges v Hawkesworth*)
- If the object was not attached, the occupier must "manifest intent to control the space and things within it," (*Parker v British Airways*)
    - Some circumstances where manifest intent to control is implied, e.g. bank vaults, private property.

A person can find "for" their employer if:
- The finding occurred during the direct course of their employment (*Steel and Tube v Hopkins*)
- Does not include if the finding is incidental or collateral
    - E.g. if I work for a road-working company and I find something while digging up the road, I have found the item in the direct course of my employment. But if I find something while walking to the shops on my lunch break, this is collateral.

Framework for answer:
- *Parker v British Airways* sets out an overview of the rights and obligations for parties involved in finder's cases.
- The item found must actually be lost or abandoned
- True owner always has the best right
- Next best right goes to finder as long as conditions are met:
    - Care and control (*Grafstein*)
    - Honest intent
    - Obligation to reunite item with true owner
- Rights of occupier trump finder when:
    - Item was found attached to or under land/building (*South Staffordshire Water Co v Sharman; Bridges v Hawkesworth*)
    - Occupier had manifest intent to control
- An employee finds on behalf of their employer if:

Law 131 practice test problem

Dinkum Dairy Ltd (DDL) is a very large indoor dairying operation. High volumes of animal waste from DDL is washed out by high pressure hoses and then runs through a four kilometre pipeline to oxidation ponds where it is treated. The animal waste is highly toxic.
WOW Water Ltd (WWL) is a company that bottles drinking water for local consumption and whose plant is situated two kilometres north of DDL's property. Its water is sourced from an underground stream which runs through a bed of limestone and which originates from hills several kilometres inland from WWL's operation. WWL has the necessary permissions to use this water.
In early 2017, tests of WWL's water indicated high levels of pollution making the water unsafe for drinking. As a result, WWL has been forced to cease production and suffered significant financial loss (estimated to be over $1m). Investigations show that the pollution in the water has been caused by a fracture in DDL's pipeline from the animal waste escaping and entering into the stream supplying WWL. The pollution is likely to last for a long time and normal purity will take at least 10 years to be restored.
There are two causes of the pipe leaking. One is, that the designer of the pipe, Perfect Pipes Ltd (PPL), had used new, untested, material imported from overseas for the pipe which was not strong enough for the highly toxic nature of the animal waste. PPL told DDL that "the material is new and cost effective. Check it from time to time to ensure it is working well". As the pipe had only been in use for one year, DDL did not see any need to test. The other cause is that there had been a once in 50 years' heavy rain fall which had made the soil which the pipe runs through heavier than normal and put pressure on the pipe.

DDL seek your advice. They have been sued by WWL under the principle in Rylands v Fletcher. They want to know if they are liable under that principle. They also want to know if they can sue PPL as a third party under the principle in Donoghue v Stevenson.
Write a well-reasoned legal opinion which analyses the key issues and comes to justified conclusions as to the likely outcomes.

Case summary:
PPL builds pipe for DDL using new and untested material. They warned DDL to check the pipe from time to time to ensure it is working well.
Pipe has been in use 1 year. There is once in 50 years' heavy rainfall. Soil pressure increased on pipe. Pipe leaks toxic animal waste into the soil.
This contaminates the water supply for WWL. WWL cannot continue to use that water supply for at least 10 years. Large financial loss.

To sue under Rylands v Fletcher:

- Things brought onto land
- Things likely to do mischief if they escape
- For your own purposes
- Non natural use
- Escape from area of control (Read v Lyons – bomb case. Plaintiff lost because the bomb (mischievous thing) did not escape from defendant's area of control)
- Foreseeability of damage of relevant type (Cambridge Water Company v Eastern Counties Leather – have to foresee that that type of damage could have occurred)

Defences:

- Obiter – if the defect is NOT hidden, then there is no cause of action if the consumer chooses to take the risk

Jull v Wilson and Horton

- Jull was employed by W and H. Was using a recently repaired forklift to stack some items. The forklift broke and injured him. He sued W and H because they should have ensured that his workplace was safe. W and H brought in the repairer as a joint tort-feasor because the forklift was not adequately repaired.
- Elements of Donoghue v Stevenson
    - Duty of care = yes, employer has a duty to ensure the safety of their employees
    - Breach of this duty = yes, this can be inferred by the damage suffered by Jull
    - Damage caused by the breach = yes, but by bringing in the repairer as a joint tortfeasor, they are saying that some of the damage was as a result of negligence on repairer's part
    - Hidden defect = yes
    - No possibility of intermediate examination = not really, they could have examined it
- Obiter – the repairer tried to claim that they had given a warning. The judges said that simply saying the repair job was temporary was not a clear enough warning to absolve them of liability. A warning must be:
    - Disclose the true nature of the defect
    - Express warning of this danger
    - Suggest a time frame and frequency of inspection
    - Place time limit on use
    - Instruct what to look for when inspecting

Bowen v Paramount Builders

- Pemberton trust sells peat land to McKay. McKay contracts Paramount to build to units. Paramount was told that a sand foundation would be required and they could build like normal. Building inspector suggested a concrete foundation instead, they complied. They built like normal. Cracks start showing in the house. Paramount builds a carport to hide them. McKay sells the house to the Bowens. They do a cursory examination. After a few months, the house starts to sink and show other problems. Bowen sues Paramount for negligence under D v S
- Elements of Donoghue v Stevenson:
    - Duty of care = this case establishes that builders have a duty of care (under the neighbourhood principle from D v S) to subsequent purchasers not to create latent defects which cause or threaten damage to the structure of the building
    - Breach of duty = yes
    - Damage caused by breach = yes
    - Limits on liability:
        - Intermediate inspection likely to reveal defect = yes, the Bowens should have inspected. But as it was a new house, they would not have been looking for such damage. And they probably wouldn't have seen any defect anyway because Paramount hid the signs with the carport.
        - Obiter – defect must be hidden. If the Bowens had known about it and bought the house anyway, then no liability