

## Liability for fire fact sheet

There are a number of potential causes of action that can arise following a fire, these will very much depend on the individual circumstances of the fire and loss that has occurred. When a fire results in property damage, common causes of action include claims for breach of contract and/or claims in negligence. Claims in contract and negligence can be complex and the legal issues to be debated substantial. It is therefore important to consider the key principles from the outset. Set out below are some of these key principles:

- **Is there any contractual claim?** Was the fire perhaps caused by some form of breach of contract such as by a contractor who had been retained to complete work at the property and such work then caused or contributed to the fire. Query whether there had been any failure by a party to complete works with reasonable care and skill which then resulted in the fire. It will need to be established that the breach of contract caused the fire and therefore thought is needed as to what evidence will be required to establish such a breach of contract.
- If a valid contractual claim does not exist, or in addition to a contractual claim, a tortious claim in negligence may also be pursued.
- **Is there a claim in negligence?** Firstly, the burden of proof would be on a claimant to demonstrate that the fire arose as a result of a defendant's negligence. In order to establish a claim in negligence, a claimant needs to demonstrate that a duty of care was owed, that that duty of care was breached and that as a result of that breach it caused the damage to occur. Causation can be difficult to establish following a fire. A claimant will need to prove that but for the defendant's negligence i.e carelessness that the claimant would not have suffered any loss. In addition, a claimant must show that the damage was reasonably foreseeable and not too remote.

### Liability for the spread of fire

- When a fire spreads to a neighboring property or land and has caused damage, there are special considerations which must be given to liability because a number of potential causes of action can arise.

### Claim in nuisance

- There are two types of common law nuisance, these are: public nuisance and private nuisance. Most applicable in this context is private nuisance, which relates to causing a substantial and unreasonable interference with the use or enjoyment of someone else's land

### Rylands v Fletcher Rule

- Particularly relevant to consider in relation to claims relating to fire spread is the rule from the case of Rylands and Fletcher.<sup>1</sup> This rule provides that any person who keeps a dangerous thing on their land, that would not naturally be there, and it subsequently escapes causing damage to neighbouring property may be held strictly liable for that damage.
- Strict liability means that you do not have to prove fault. Therefore, to establish strict liability the claimant does not have to prove negligence by the defendant, they simply need to prove that the tort occurred and the defendant was responsible. There are therefore limited defences available to any prospective defendant in this situation; it would be no defence to show, for example, that all reasonable precautions were taken to avoid damage from the spread of a fire.
- Previously the rule in Rylands and Fletcher had been interpreted broadly however following the 2012 Court of Appeal decision in Stannard and Gore,<sup>2</sup> the rule is now limited to situations where fire itself is brought onto an occupier's land, in the course of non-natural

<sup>1</sup> Rylands v Fletcher (1868) LR 3 HL 330

<sup>2</sup> Stannard v Gore [2012] EWCA Civ 1248

# CLYDE&CO

use, and that fire escapes causing damage to neighbouring property.

- In practice this limits the scope of the rule to situations where a fire has been deliberately or negligently started by an occupier in a dangerous situation. Because of this reduced application, achieving a successful recovery under Rylands is more limited in claims relating to fire damage, however it is important to be aware that a tortious claim could still be pursued.

## Accidental Fires

- Where a fire has been started accidentally there is generally no tortious cause of action due to the protection afforded under the Fire Prevention (Metropolis) Act 1774. However, when a fire has been caused intentionally, by negligence or nuisance it will not be treated as accidental and may not be covered under this statute.

## Liability for trespasser/arson

- Generally speaking, an occupier will not be liable for the escape of fire caused by a trespasser or stranger on their land. However, there are situations where liability of an occupier could arise. An occupier may be liable for the escape of fire caused by an arsonist if it is established there was a foreseeable risk that a fire may occur and spread to neighbouring property. In such instances a duty of care arises, and if an occupier fails to take reasonable steps to prevent damage occurring to a neighbouring property, then they could be liable under a claim in tort.

- Early preservation of evidence – This is key in pursuing a recovery or defending a claim. Consider appointing an appropriate expert so physical evidence can be inspected and retained to minimise the risk of losing the opportunity to inspect the scene of the fire. It is also good practice to obtain other sources of evidence about the fire, such as, witness evidence, CCTV footage and fire or smoke alarm data.
- Causation – take steps early to determine what the possible causes of the fire might be as this will enable you to determine your potential recovery targets or assess liability risks. will inform the stance you take next in terms of assessing the loss and any potential recovery targets.
- Causes of Action – consider the potential causes of action, whether you are looking to pursue some form of subrogated recovery to recuperate outlay or if you are defending a liability action.
- The spread of fire - be aware of the strict liability rule - Although the Rylands rule is more limited in scope relating to fire damage claims, it remains a potential avenue for bringing a claim without having to prove negligence. This could be of assistance in a scenario, for example, where all evidence has been destroyed by the fire. Therefore, consideration should be given on a case by case basis as to whether the rule may apply and caution should be taken by occupiers to ensure activities involving a fire on their land do not damage neighbouring property.

---

If you have any questions, please email us:



**Lauren Penton**

Senior Associate, London

+44 20 7876 6196

[lauren.penton@clydeco.com](mailto:lauren.penton@clydeco.com)



**Ruth Fletcher**

Associate, London

+44 20 7876 6226

[ruth.fletcher@clydeco.com](mailto:ruth.fletcher@clydeco.com)