

## **Causes of action**

In criminal law, a person cannot be charged unless there is an offence which relates to the conduct he is alleged to have partaken in. A criminal charge can be based on a written law (statute), or on common law. Thus, failing to stop after an accident is a statutory charge, while murder is a common law charge. It is a common law charge because it has never been written into statute that murder is a criminal offence.

A similar principle underlies the concept of a *cause of action* in civil cases. You cannot bring an action against a person unless there is a *cause of action*. A cause of action will exist by virtue of statute, or by common law, or in equity, or sometimes more than one of these. A set of circumstances giving rise to a contractual breach may also form the basis of a cause of action in negligence (see Module 8 of the Civil Litigation course).

## **Acts and omissions**

A cause of action may lie either where the defendant has done something, or where the defendant has failed to do something. The first is an act, the second is an omission. An example of an act would be the case where the driver of a vehicle knocks a pedestrian over. An example of an omission would be where a business owner fails to provide workers with the appropriate safety equipment to carry out their work.

To bring an action, the claimant would need to allege that the act or omission constitutes negligence, nuisance or breach of duty or, in contract cases, breach of contract.

## **Statutory causes of action**

An example of a statutory cause of action is a seller of goods failing to provide goods which are of satisfactory quality. The relevant statute is the Sale of Goods Act (1979), and the particular provision is at section 14(2) of the Act. As is clear from the provision, a supplier of goods implies the above term into the contract, namely that the goods he is selling to the buyer are “of satisfactory quality”. Since the Human Rights Act (1998) came into force, members of the public have had their human rights written into statute and thus, for example, a person may not be discriminated against on the basis of gender, race, religion, sexual orientation, *etc.* These, and several others, are statutory rights.

## **Common law causes of action**

Trespass to land is probably the best known example of a common law cause of action, although under some circumstances a trespass to land can also be prosecuted as a criminal offence. Negligence is also a common law tort, and a common example is personal injury caused by an act of negligence – for example in a road traffic accident. While the criminal charge in such an instance might, for example, be ‘dangerous driving’, the civil cause of action would be negligence.

## **Causes of action in equity**

Many causes of action in equity relate to what we may term the ‘vitiating’ of the individual’s will, by which is meant various ways in which an individual’s intention to do something is impaired by the acts or omissions of another. An example of vitiating the will of another is that of undue influence. In *Huguenin v Baseley* (1807) 14 Ves 273, a widow had been subjected to the influence of a vicar who took charge of her finances and, effectively, proceeded to deprive her of various property rights, ostensibly with her agreement. It was held that the vicar had exerted his influence ‘artfully’ and purely in his own interest, and that such was his hold over the widow that she had not understood the import of his actions or the consequences to herself. Other examples of the will of the claimant being affected by the actions of another include misrepresentation, duress and – indirectly – concealment. Note that misrepresentation can be in equity or under statute or under common law.

## **Summary**

So, to sum up, a cause of action is the legal reason for suing the defendant. A claimant cannot sue without a recognised cause of action. An action may lie in statute, common law or equity, or more than one of these.