



THE CHARTERED INSTITUTE OF LOSS ADJUSTERS

WEBSITE PDF: MEMBERS / EDUCATION

DATE: 06.06.2002

STUDY GUIDE PAPER C2 / CASE LAW

CASE LAW COMPENDIUM

ACILA SUBJECTS C1/2/3

THIS CASE LAW SUMMARY HAS BEEN COMPILED TO ASSIST MEMBERS IN PREPARING FOR THE CILA EXAMS. THE CONTENTS SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE.

SECTION 1 – PRINCIPLES OF INSURANCE

- 1.1 INSURABLE INTEREST
- 1.2 DISCLOSURE
INDEMNITY
CONTRIBUTION & SUBROGATION

SECTION 2 – TORT

- 2.1 NEGLIGENCE
- 2.2 NUISANCE
- 2.3 TRESPASS
- 2.4 RYLANDS V FLETCHER
- 2.5 RES IPSA
DUTY AND FORSEEABILITY
ECONOMIC LOSS

SECTION 3 – OTHER

- 3.1 PROXIMATE CAUSE

Cases have been listed in sections to assist students. Some cases may appear under more than one section which serves to illustrate the scope and application of tort.

SECTION 1.1

PRINCIPLES OF INSURANCE – INSURABLE INTEREST

BANK OF SCOTLAND V GUARDIAN R.E.

1995 BUILD INS INT CONT FRAUD EUSJEM

- building burned down- policy noted bank's interest as heritable creditor primo loco - insurers refused indemnity on grounds that principal shareholder in owners party to arson and bank had no independent right of claim under the policy.
- held - in view of nature of banks other noted rights eg policy not to be lapsed without notice - right to recover.

BARRASS V HAMILTON

1994 BUILD LEASE INS CONT LLD TNT INT

- number of units -landlord insured with tenants paying premium - fire through tenants fault spreading to other unit.
- issue whether landlord could recover his uninsured loss on other unit.
- now held inter alia- as landlord not obliged to insure other units or was accepting risk of damage to them since not part of lease to tenant he could proceed against him - proof before ans.

COLONIAL MUTUAL GEN.INS V ANZ BANKING

1995 INS INT CONT ASSIGN

- insurer appealed against decision that second mortgagee was entitled to policy proceeds - memorandum of mortgage provided mortgagee would insure and bank would have power to recover from insurers.
- held on appeal - memorandum of mortgage had assigned policy proceeds to the bank - the notice to the insurer was clear and explicit.

GLENGATE KG PPY LTD V NORWICH UNION

1995 INS INT CON BINT

- property under redevelopment - fire destroyed architects drawings - substantial delay in completion and loss of rental income.
- issue - whether Glengate had an insurable interest in the drawings and could satisfy the material damage proviso.
- held - the drawings were not property in which Glengate had an interest.

HOPWELL PROJ.MAN. V EWBANK PREECE

1997 INS INT CONT CNTR SCNTR

- contract works - firm engaged to provide professional engineering services - damage to works.
- issue whether term 'contractor' or ' subcontractor' included advice given.
- held [QBD] - the definition in the policy envisaged construction works and not advice given - no reason why insurance should have been obtained on behalf of the engineering services.

MITCHELL V SCOTTISH EAGLE INS CO

1996 INS INT

- insurance proposed in name of/by one partner - severe fire damage - action raised against insurer for payment of # 1,007,540
- argued inter alia - no insurable interest where property is partnership property - other interests not disclosed
- held inter alia - the only insurable interest was that of the partnership- non disclosure of other interests.

SECTION 1.2

PRINCIPLES OF INSURANCE - DISCLOSURE

CALLAGHAN V THOMPSON

2000 BROK FIRE DISC LOSS ADJUSTER

contd....and firearms possession*insured argued that that was known prior to payment and Underwriter had waived entitlement to avoid * held [QBD] inter alia-underwriter not precluded-broker was not his but insured's agent for placement of risk-broker in obtaining adjuster's report created a conflict of interest with the insured.

ECONOMIDES V COMMERCIAL UNION

1997 INS DISC

- Held C.A.inter alia - on upholding appeal from the insured - tests to be applied:
honest representation must have some basis - if insurers wanted independent valuation of goods that must be a term of the policy - test for non disclosure is honesty - household insurance cannot be burdened with deemed or constructive knowledge.

GALLOWAY V GUARDIAN ROYAL EXCHANGE

1997 INS CLAIM FRAUD DISCL

- household theft claim - failure to disclose conviction for obtaining benefits by deception.
- held [CA] matter fell within that to be disclosed- policy must be to discourage fraudulent claims- obligations of good faith incumbent and arising during negotiation would continue after creation of the contract.

INSURANCE CORP V ROYAL HOTEL LTD

1997 FIRE INS DISC EST FRAUD

- hotel damaged a number of times - owner produced false invoices in support of business interruption.
- insurers initially brought action on liability - later extended to material non disclosure.
- held - int. alia - materiality issue of prudent underwriting - affirmation a question of choice - moral hazard / avoidance not raised - action estopped.

KAUSAR V EAGLE STAR INSURANCE

1996 INS DISCL

- clause in policy required holder to notify any increase in risk - failure to inform insurer that tenant had threatened to damage the property - believed broken window not insured had been broken by tenants - insurer repudiated * held on dismissing the insurers appeal C.A. - cover only ineffective i insured peril involved and for insured peril change to be extreme.

O&R JEWELLERS LTD V TERRY

1999 PROF NEGL INS DISCL THEFT

- theft from jewellers premises -director of had conviction and conditions regarding keys not met
^a issue brokers liability.
- held - broker in breach of duty to warn of need to disclose convictions and the importance of meeting the policy conditions regarding keeping of the safe keys - damages assessed on basis ' as if the policy had been effective'.

OMEGA TRUST CO V WRIGHT SON & PEPPER

1997 PROF NEGL SURV DUTY DISC VAL STAT UNFAIR CONTRACT TERMS ACT 1997

- issue whether valuers had duty to undisclosed lender [a bank] and whether disclaimer was effective.
- held CA - purchase by a domestic or commercial interest to be distinguished - latter able to look after themselves and in a position to obtain own valuation - disclaimer neither unfair nor unreasonable.

SIMNER V NEW INDIA ASS.

1994 CONT DISCL INS

- held - no obligation on their part of a potential insured to enquire into matters outside his knowledge in order to comply with duty to disclose.

ST.PAUL FIRE & MAR V MCCONNELL

1994 CONSTN INS CONT DISCL NOND

- CAR Ins - risk presented as piled foundations but spread foundations used om architects recommendation- later subsidence.
- insurer argued misrepresentation and nondisclosure.
- held - question whether prudent insurer would view as increase in risk - as decision to use spread foundations taken prior to proposal misrepresentation and non-disclosure.

TRANSTHENE PACKAGING CO. V ROYAL INS

1995 INS FIRE FRAUD DISCL

- insured reported fire - claim submitted by consultant for damage to plant and loss of profit - no disclosure however plant not working properly and possible action against manufacturers - suspected arson by managing director - inflated claim -insurer repudiated.
- held - repudiation not justified but judgement in favour of insurer claim was tainted with fraud.

SECTION 1.3

PRINCIPLES OF INSURANCE - INDEMNITY

BANK OF SCOTLAND V GUARDIAN R.E.

1995 BUILD INS INT CONT FRAUD EUSJEM

- building burned down- policy noted bank's interest as heritable creditor primo loco - insurers refused indemnity on grounds that principal shareholder in owners party to arson and bank had no independent right of claim under the policy.
- held - in view of nature of banks other noted rights eg policy not to be lapsed without notice - right to recover.

CITIBANK NA V EXCESS INSURANCE CO.LTD

1998 INS IND SUBGN

- parties liable for fire-judgement for £2.5m plus costs - party had cover for £ 2m but insurer withheld sum to meet costs and paid £1.68m.
- issue-inter alia-whether costs should be taken into account-meaning of indemnity *held[QBD] insurer had chosen to defend action and policy limit did not relate to cost of defence only to liability of their insured.

LONSDALE & THOMPSON V BLACK ARROW

1992 INS IND LLD TNT LEASE PROP STAT

** FIRE PREVENTION METROPOLIS ACT 1774

- premises leased for 25yrs with covenant to insure for reinstatement value and insurance monies to be applied-lessee paid premium by way of rent but not coassured-notice served under Act-sale without loss.
- held i/a-insurers liable to pay in view of terms of lease-contract to indemnify cannot refuse even if indemnity elsewhere.

SPRUNG V ROYAL INSURANCE [UK] LTD

1996 INS CLAIM

- profitable business wrecked by vandals.
- business insured but insurers initially refused indemnity - finally paid 3 years later - insured unable to continue or sell the business - claim for damages* held CA - liability of insurers was to pay monies and arose when loss incurred - liability was by way of payment of damages - no cause of action for late payment - only interest.

SECTION 1.4

PRINCIPLES OF INSURANCE – CONTRIBUTION AND SUBROGATION

AMEC CIVIL ENGINEERING V CHESHIRE C.C.

1999 CNSTN CONT ICE IND SUBGN

- AMC joint contractors - works delayed-all parties agreed to accelerated programme - joint contractor insured against additional costs and insurers paid £ 576,344* issue: whether contractors claim against the employer should be reduced by insurers settlement * held [QBD] employers compensation to contractor not double payment- contractor would have to repay the insurer.

BIRSE CONSTRUCTION V HAISTE LTD

BIRSE CONSTRUCTION V HAISTE LTD

1995 ENG PROF NEGL CNSTN CNTBN DEFECT

- defect in reservoir in construction- contractor subsequently built second reservoir in lieu.
- issue - whether engineers retained by employer and contractor respectively were liable in like manner to the contractor and former should contribute.
- held - damage sustained by the employer was physical but contractors loss was financial.

BT V JAMES THOMSON & SONS [ENG] LTD

1998 CNSTN CNTR SCNTR SUBGN

- BT contracted to provide insurance against perils and that subcontractors nominated by the architect should benefit - BT sought recovery from subcontractor - objection on grounds inter alia double insurance.
- held [HL] that the contract specified only 'nominated subcontractors' reinforced the existence of a duty of care on the part of the subcontractor.

CITIBANK NA V EXCESS INSURANCE CO.LTD

1998 INS IND SUBGN

- parties liable for fire-judgement for £2.5m plus costs - party had cover for £ 2m but insurer withheld sum to meet costs and paid £1.68m.
- ^a issue-inter alia-whether costs should be taken into account-meaning of indemnity *held[QBD] insurer had chosen to defend action and policy limit did not relate to cost of defence only to liability of their insured.

ENGLAND V GUARDIAN INSURANCE LTD

1999 INS SUBGN

- claim for damage to dwelling by piling on adjacent property repudiated by insurer-insured sued insurer and third parties-third party paid £102,000 into Court and GI settled by paying like sum
- third party subsequently found liable for £126,000 with £40,000 costs for another third party who was not liable.
- held[QBD] GI through subrogation had a lien on monies paid into Court.

GEN.ACCDT. V CHIEF CONSTABLE OF GLOS.

1997 AUTHY POLICE DUTY THEFT INS SUBGN CLAIM

- GA brought action under subrogated rights - stolen caravan traced but not taken into police possession - GA had notified police of their interest- caravan later went missing: held - inter alia - police did not owe GA duty of care as no proximity or special relationship - GA could have recovered caravan direct - 90% contributory negligence.

PENDENNIS SHIPYARD V MAGRATHEA

1997 INS SUBGN

held: where insurers assumed the defence of an action to which they were not party, conducting it for their own benefit, the Court would ordinarily exercise its discretion under The Supreme Court Act 1981 to order the insurers to pay the plaintiff's costs if the defence failed.

SECTION 2.1

TORT – NEGLIGENCE

ALCOCK V WRAITH

1993 CNTR NEGL NUIS TRES REAL

contractor engaged on reroofing work - overlap with adjoining property - moisture penetration due to works held - notwithstanding general rule that employer is not liable for torts of an independent contractor there is an exception where there is special risk by nature of the work and with exercise of right of intrusion duty could not be delegated to the independent contractor.

BIRSE CONSTRUCTION V HAISTE LTD

1995 ENG PROF NEGL CNSTN CNTBN DEFECT

- defect in reservoir in construction- contractor subsequently built second reservoir in lieu.
- issue - whether engineers retained by employer and contractor respectively were liable in like manner to the contractor and former should contribute.
- held - damage sustained by the employer was physical but contractors loss was financial.

BOLLOM & CO.LTD V BYAS MOSLEY & CO.LTD

1999 BROKER PROF NEGL DAM

- yard alarm not switched on after a number of false alarms - fire caused damage £ 8M - insurer repudiated but settled for £5M - insured sued broker for difference.
- held [QBD] inter alia: if insured had been made aware of need to keep alarm in operation they would have done so - also the underinsurance was the result of the broker's negligence/failure to explain.

CAPITAL & COUNTIES V HAMPSHIRE C.C.

CAPITAL & COUNTIES V HAMPSHIRE CC

MAR 1996 FIRE AUTHY NEGL DUTY

- fire officer decided to turn off sprinkler in belief it did not serve that part of the building.
- issue - whether on grounds of public policy the brigade should be immune.
- held on appeal QBD - different considerations applied to brigade than to police - inter alia brigade had exclusive control of the situation and it was reasonable that brigade owed duty.

CHURCH OF JESUS CHRIST V WEST YORKS FI

CHURCH OF JESUS CHRIST V WEST YORKS FIRE CDC

FEB 1996 FIRE AUTHY NEGL DUTY STAT

FIRE SERVICES ACT 1947

- alleged that brigades failure to ensure adequate water supply led to destruction of premises.
- held on appeal QBD - Act conferred no private right of action - damage was foreseeable and there was proximity of relationship but it was not fair or reasonable to impose a common law duty of care - contrary to public policy.

DUFF V HIGHLANDS AND ISLANDS FIRE BOARD

1995 FIRE AUTHY DUTY NEGL

- chimney fire restarted after brigade had left - dwelling destroyed
- issue whether fire authority liable.
- held - there is a statutory duty on firefighters and damages for breach of that duty embraced all losses resulting from negligence.
- however action failed for lack of proof of negligence.

EE CALEDONIA V ORBIT VALVE CO.

1993 CONT CNTR NEGL STRICT

- indemnity clause-accident due to negligence and breach of statutory duty-no express words re consequences of negligence.
- held i/a-principle no one relieved of consequences of own negligence without express wording-where there are concurrent causes of an event each cause is a cause of the consequent event.

FELTON V GASKILL OSBORNE & CO

1993 SURV NEGL PROF BUILD PROP STAT

**LIMITATION ACT 1980 C58 S14A(4)b

- in 1983 purchaser relied on survey which failed to mention some defects-purchaser aware of some of them but not others revealed in structural survey in 1989.
- held-original survey not so defective as to alert purchaser to obtain another-claims on defects of which he was aware statute barred-others not so.

HAMLIN V EDWIN EVANS

1996 SURV PROF NEGL DAM LIMIT STAT
LIMITATION ACT 1980 S.14A

claim for negligence in relation to dry rot settled - subsequent claim for structural defects - writ issued 8 years post report and 6 years post discovery of rot issue - date from which time runs

* held -[CA] time to run from date rot discovered - claim for damage generally and there can only be one cause of action

KING V HARROW L.B.C. 51/418

1994 AGEN LOCAL NEGL NUIS DRAINAGE

- Council agents for Thames Water Authority - house flooded by sewage six times 1987-92 - insurers refused cover.
- houseowner alleged-council directly or as agents for drainage and watercourses - negligent in failure to maintain - also liable in nuisance.
- held - under Public Health Act 1936 Thames Water were statutory body responsible - delegation no defense.

MARC RICH & CO V BISHOP ROCK MAR

1993 TORT DUTY ECON FOR

- held - test for negligence same whether pure economic loss or damage to property. viz: were parties sufficiently proximate-was damage foreseeable - was it reasonable to impose a duty of care.

Donaghue v Stevenson 1932.

Murphy v Brentwood 1991.

MCQUEEN V GLASGOW GARDEN FVL

1994 TORT NEGL RYLANDS NON NATURAL USE

- spectator injured at firework display-sued convener of the festival.
- held inter alia-convener liable as occupier of the land, using inherently dangerous devices ,and non natural use of the land - device within control and detonation and incident would not have occurred if due care taken and that fault or negligence was established under res ipsa.

MISELL V ESSEX C.C. 51/279

1994 HIGH LOCAL NEGL DUTY
STAT - HIGHWAYS ACT 1980

- authority to maintain highway - failure to clean road adequately - failure to ensure that those responsible cleaned lorries from which mud fell - failure to widen road - failed to reinforce banks- failure to erect warning signs.
- issue - duty of care.
- held - authority in breach of duty of care - road persistently affected by mud from agricultural vehicles - council negligent in failing to ensure vehicles washed AND to erect warning signs.

MTM CONSTRUCTION V WM.REID ENGINEER

1997 CNSTN CNTR SCNTR DUTY NEGL

- welding operation resulted in fire.
- argued the welding was a hazardous operation and subcontractor who engaged the welders responsible.
- held OH - whether welding extra hazardous a question of fact and degree - no authority for imposing liability on an intermediate employer in delict for the negligent acts of a sub-contractor.

NATIONAL RIVERS AUTHORITY V MCALPINE

1994 CONSTN NEGL POLL STAT
WATER RESOURCES ACT 1991

- cement washed into river during works - employees admitted liability.
- argued employees not controlling mind of the company.
- issue whether company liable for acts of junior employees.
- held on appeal - co.liable for acts of employees within course and scope of employment - immaterial whether head office directly involved.

PATERSON V HUMBERSIDE C.C.

1995 LOCAL NEGL NUIS DAM TREES SUBS
STAT HIGHWAYS ACT 1980

- damages claimed against authority for subsidence of dwelling due to drying out of soil of medium shrinkability.
- held - council's advice to property owners demonstrated that risk was foreseeable and council liable in negligence and nuisance - no breach of statutory duty however as trees not planted pursuant to S.96 of the Act .

PRESTON V TORFAEN BOROUGH C

1993 BUILD PROP SURV PROF NEGL ECON

- surveyors inspected site for council before estate built-house subject to cracking due to defective foundations-purchaser sued for economic loss.
- held- surveyors not liable as report was for the council and not seen by purchaser and at the time of the negligent act there was no identifiable complainant.

SANSOM V METCALFE HAMBLETON & CO.

1997 PROF NEGL STAT
CIVIL EVIDENCE ACT 1972 S3

- Held CA - court reluctant to find professional breach of duty of skill and care unless expert evidence adduced from persons in the same profession - a chartered surveyor should not be found liable on the evidence of a structural engineer.

STOREY V CHARLES CHURCH DEVELOPMENT

REPORTED 1996 CONSTN PROP CONT TORT DES DEF ECON SUBS

- inadequate foundations to property resulted in ground heave and need for remedial work* held QBD? OR - inter alia - designer of a building even if the builder owes a duty to the employer at common law/in tort as well as in contract - duties concurrent - normally the same to exercise due skill and care not to cause economic loss

THOMPSON V CLIVE ALEXANDER

1993 CONTR REAL DEF PROF NEGL STAT
DEFECTIVE PREMISES ACT '72 S 1.1.

- contended dwellings defective in design structure and construction.
- issue whether dwellings unfit for occupation when completed.
- held- intention S.1.1. to ensure design and construction of dwelling was such that it was fit for habitation and breach of that standard was cause for action.

TUDOR JONES V COLOSSO

1996 INS BROK CONT DUTY EXCL

- a broker has a duty to bring an exclusion to the attention of the insured- exclusion applied to part of works for which completion certificate issued.
- argued contributory negligence in failing to check the policy.
- held [QBD] broker 2/rd's liable - other party 1/3rd.

WESSEX HEALTH AUTHY V HLM DESIGN CL

1994 ARCH ENG PROF NEGL DUTY ECON

- firm engaged as architects and engineers - negligent work alleged.
- issue - whether there was a duty in tort to take reasonable care to prevent economic loss.
- held - notwithstanding a contractual relationship between parties in tort there may be a concurrent duty owed to take reasonable care to prevent economic loss.

SECTION 2.2

TORT – NUISANCE

ALCOCK V WRAITH

1993 CNTR NEGL NUIS TRES REAL

contractor engaged on reroofing work - overlap with adjoining property - moisture penetration due to works held - notwithstanding general rule that employer is not liable for torts of an independent contractor there is an exception where there is special risk by nature of the work and with exercise of right of intrusion duty could not be delegated to the independent contractor.

CARR V HACKNEY LONDON B.C.

1995 AUTHY ENV NUIS STAT DAMP

ENVIRONMENTAL PROTECTION ACT 1990

- council tenants action against authority for statutory nuisance of damp and condensation - council denied entry to install electric heating - tenant wanted gas-fired heating on grounds of cost.
- held - appeal dismissed - if damp recurred council was not liable - defense under Public Health Act 1990.

ELLISON V MINISTRY OF DEFENCE

1996 LAND NUIS FOR RYL PERIL STORM

- severe storm - water released by storm passed over land - obstruction by contractor's works caused flow into gully - damage to neighbour's property.
- claim based on Rylands v Fletcher.
- held QBD - flooding caused by effect of contractor's works - rainwater naturally on MOD land - events leading to escape were not foreseeable - construction works were reasonable use of land.

FUSCO V GEORGIU

1994 EASE LAND TORT DAM NUIS TRES

- neighbour's extension blocked garage windows and its drainage caused dampness and mould 1987/1994.
- held - entitlement to repair cost plus damages for loss of light on basis of diminution of market value- general damages for distress and inconvenience at rate of £ 250 per year.

GARDNER V DAVIS

1998 LAND NUIS EASE

- easement permitted drainage to a septic tank on another's land - sewage escaped onto that other land - damages awarded for nuisance.
- issue - whether easement could be a defense to nuisance.
- appeal dismissed [CA] easement is not intended that sewage could escape at regular intervals without redress - finding of nuisance correct.

GLOBE [ABDN] LTD V NOFS WATER AUTHORITY

2000 AUTHY NUIS ECON

- authority advised works would take 6 weeks - took nine months to renew sewer-owner of public house claimed for economic loss.
- initially held - pure economic loss.
- held on appeal[ExDiv] in case of alleged nuisance a claim for financial loss was not necessarily too remote - case remitted for proof before answer.

HUNTER V CANARY WHARF

1994 NUIS

- interference with TV reception by a person with exclusive possession of a property is capable of amounting to private nuisance and as such actionable.

KING V HARROW L.B.C. 51/418

1994 AGEN LOCAL NEGL NUIS DRAINAGE

- Council agents for Thames Water Authority - house flooded by sewage six times 1987-92 - insurers refused cover.
- houseowner alleged-council directly or as agents for drainage and watercourses.
- negligent in failure to maintain - also liable in nuisance.
- held - under Public Health Act 1936 Thames Water were statutory body responsible - delegation no defense.

LEONARD & LEONARD V GRASBY

1993 NUIS BUILD PROP

- mid terrace dwelling-adjointing property derelict and subject to vandalism and dry rot affecting party wall-damage in kitchen and interference with enjoyment over 18 month period-visitors reluctant to call because of smell and children kept out of kitchen.
- held-general damages for distress £2250 each-special damages £1711.

PATERSON V HUMBERSIDE C.C.

1995 LOCAL NEGL NUIS DAM TREES SUBS

STAT HIGHWAYS ACT 1980

- damages claimed against authority for subsidence of dwelling due to drying out of soil of medium shrinkability.
- held - council's advice to property owners demonstrated that risk was foreseeable and council liable in negligence and nuisance - no breach of statutory duty however as trees not planted pursuant to S.96 of the Act .

R V SHORROCK

1993 NUIS

- farmer let field for weekend-used for party lasting 15 hours-noise and complaint.
- question whether knowledge required - held - actual knowledge not necessary-enough that party knew or should have known or realised the consequences - if so party had constructive knowledge.

TOFF V MCDOWELL

1993 NUIS BUILD PROP LLD

- house converted into 4 flats on long lease-assignment of lease on basement flat-continual noise from above.
- lessor to keep 'main structure' in repair and lessees to keep individual flats in repair-no sound insulation between floors.
- held-'main structure did not include separating floors the responsibility of tenants-ordinary user causing actionable nuisance.

WHEELER V SAUNDERS

1995 NUIS

- planning consent to pig farming did not render immunity on the part of the grantee to claim for nuisance to neighbours through inevitable smell.

WINDEVER V LIVERPOOL C.C.

1994 STAT LANDLORD TENANT ACT 1985

LOCAL AUTHY NUIS LEASE PROP SUBS

- tenants complaint about disrepair - main item floors off level due to settlement.
- argued - floors not hazardous - cost of repair not justified.
- held - floors were in disrepair under S.11 of the Act - presence of hazard not criteria - whether in disrepair or not-defect more than a minor nuisance.

SECTION 2.3

TORT – TRESPASS

ALCOCK V WRAITH

1993 CNTR NEGL NUIS TRES REAL

contractor engaged on reroofing work - overlap with adjoining property - moisture penetration due to works held - notwithstanding general rule that employer is not liable for torts of an independent contractor there is an exception where there is special risk by nature of the work and with exercise of right of intrusion duty could not be delegated to the independent contractor

FUSCO V GEORGIU

1994 EASE LAND TORT DAM NUIS TRES

- neighbour's extension blocked garage windows and its drainage caused dampness and mould 1987/1994
- held - entitlement to repair cost plus damages for loss of light on basis of diminution of market value-general damages for distress and inconvenience at rate of £ 250 per year.

SECTION 2.4

TORT – RYLANDS V FLETCHER

ELLISON V MINISTRY OF DEFENCE

1996 LAND NUIS FOR RYL PERIL STORM

- severe storm - water released by storm passed over land - obstruction by contractor's works caused flow into gully - damage to neighbour's property
- claim based on Rylands v Fletcher.
- held QBD - flooding caused by effect of contractor's works - rainwater naturally on MOD land - events leading to escape were not foreseeable – construction works were reasonable use of land.

GRAHAM & GHRAHAM V RECHEM

1996 NEGL RYL FOR ENV POLL

- alleged cattle on farm two miles from Rechem incineration were poisoned by chemical emissions
- issue inter alia - whether incinerator within scope of 'reasonable user ' in Scots law - whether precise knowledge of reaction of emissions at the time necessary
- held QBD - not reasonable user - precise knowledge not necessary in nuisance

MCQUEEN V GLASGOW GARDEN FVL

1994 TORT NEGL RYLANDS NON NATURAL USE

- spectator injured at firework display-sued convener of the festival.
- held inter alia-convener liable as occupier of the land, using inherently dangerous devices, and non natural use of the land - device within control and detonation and incident would not have occurred if due care taken and that fault or negligence was established under res ipsa.

SECTION 2.5

TORT – RES IPSA

MCALLUM V S & D PROPERTIES

2000 BDG LLD TNT RES IPSA

- property subject to repairing lease -stone panel from shopfront fell causing injury*alleged cause poor state of repair with water penetration rotting fixings and res ipsa applicable and not confined to exclusive management and control* held[OH]inter alia-res ipsa did not apply in view of possible explanation and no case against owners who were not in occupation or control or responsible for repair.

MCQUEEN V GLASGOW GARDEN FVL

1994 TORT NEGL RYLANDS NON NATURAL USE

- spectator injured at firework display-sued convener of the festival.
- held inter alia-convener liable as occupier of the land, using inherently dangerous devices, and non natural use of the land - device within control and detonation and incident would not have occurred if due care taken and that fault or negligence was established under res ipsa.

PRITCHARD V CLWYD CC

1993 DUTY HIGH LOCAL RES STAT

** CONTROL OF POLLUTION ACT 1974 C40 S22

- personal injury wading in flooded street-claim against council and highway authority and borough council responsible for sewers.
- held on appeal by DBC-water collecting following rainstorm not itself indicative of breach of duty-res ipsa of no application when a number of parties involved-Act didn't give cause of action.

SECTION 2.6

TORT – DUTY AND FORSEEABILITY

ALEXANDROU V OXFORD

1993 POLICE DUTY THEFT FOR

- premises burgled - alleged police failed to adequately investigate active alarm and message to police station-attended but failed to inspect the rear of premises and concluded alarm false.
- held on appeal-in the absence of a special relationship no liability-contrary to public policy-for liability loss must be foreseeable.

BELLEFILED COMPUTER SERV V TURNER & S

2000 CNSTN CNTR DUTY ECON

- defective construction of compartment wall-building subsequently sold-fire with spread over gap in wall-damage to remainder of building and contents-claim for damage and economic loss.
- issue-extent of liability*held[CA]inter alia-liability for contents only-no liability for structure in absence of contractual relationship-damage to the building pure economic loss.

BURTON V BRITANNIA WILLIS

1993 BAIL DUTY CONT EXCL

- contract for storage of containers-one holding Turkish carpets-exclusion inter alia 'moth infestation'.
- argued-bailee ought to have had carpets cleaned and implied term to return goods in the same condition.
- held-no implied term-moth infestation express exclusion-contract for storage only not inspection-on balance a carpet probably infested on storage.

CAPITAL & COUNTIES V HAMPSHIRE C.C.

MAR 1996 FIRE AUTHY NEGL DUTY

- fire officer decided to turn off sprinkler in belief it did not serve that part of the building.
- issue - whether on grounds of public policy the brigade should be immune.
- held on appeal QBD - different considerations applied to brigade than to police - inter alia brigade had exclusive control of the situation and it was reasonable that brigade owed duty.

CHUNG TAK LAM V BRENN T/AS NAMESAKES

1997 LOCAL AUTHY DUTY ENV POLL

STAT TOWN & COUNTRY PLANNING ACTS

Held CA : no private cause of action for breach of statutory duty in relation to planning permission or failure to enforce remedial action resulting from nuisance by a neighbour.

CHURCH OF JESUS CHRIST V WEST YORKS FI

CHURCH OF JESUS CHRIST V WEST YORKS FIRE CDC

FEB 1996 FIRE AUTHY NEGL DUTY STAT

FIRE SERVICES ACT 1947

- alleged that brigades failure to ensure adequate water supply led to destruction of premises
- held on appeal QBD - Act conferred no private right of action - damage was foreseeable and there was proximity of relationship but it was not fair or reasonable to impose a common law duty of care - contrary to public policy.

DUFF V HIGHLANDS AND ISLANDS FIRE BOAR

DUFF V HIGHLANDS AND ISLANDS FIRE BOARD

1995 FIRE AUTHY DUTY NEGL

- chimney fire restarted after brigade had left - dwelling destroyed.
- issue whether fire authority liable.
- held - there is a statutory duty on firefighters and damages for breach of that duty embraced all losses resulting from negligence.
- however action failed for lack of proof of negligence.

G.A. ESTATES V CAVIAPEN

CONTR NEGL DUTY LAND

- building on site - design team - engineers - diversion of stream.
- held - a neighbour at risk has entitlement to recover - foreseeability a major consideration - when a landowner could reasonably foresee works involved risk to neighbours he still be liable if agents were inadequate.

HILL SAMUEL V FREDERICK BRAND PTNRS

HILL SAMUEL V FREDERICK BRAND PTNRS

1994 ARCH ENG PROF DUTY CNSTN

- Architect and Engineer engaged in construction intended for sale - purchaser obtained 'duty of care' letters - on resale defects found in design and construction and offer reduced * held - 'duty of care' letters did not give Hedley Byrne type representation - A and E in breach of obligation to original.

LAM V BRENNAN & TORBAY BC

LAM V BRENNAN & TORBAY BC

1996 LOCAL AUTHY DUTY ENV POLL

- restaurant next to toy factory alleged damage to trade and health through chemical emissions.
- issue - whether local authority owed duty in granting planning permission for the factory.
- held grant of planning permission did not establish a duty of care in relation to use of that permission - further there were other remedies open to plaintiff.

MARC RICH & CO V BISHOP ROCK MAR

1993 TORT DUTY ECON FOR

- held - test for negligence same whether pure economic loss or damage to property.
- viz: were parties sufficiently proximate - was damage foreseeable - was it reasonable to impose a duty of care.

Donaghue v Stevenson 1932

Murphy v Brentwood 1991

PLANT CONSTN PLC V CLIVE ADAMS ASS

2000 CNSTN CNTR DUTY ECON DESIGN

- several contractors on site.
- issue: whether a contractor had a duty to warn of a design fault for which another was responsible - resulting economic loss.
- held inter alia [CA] there was an implied duty to warn and there was a breach of that duty.

SMITH V CARTER

1994 PROF SURV DUTY ECON NOVUS ACTUS

- surveyor failed to mention works carried out without warrant and not complying with regulations - claim made by joint purchaser of which surveyor not aware.
- argued no duty - loss due to failure of solicitors to obtain warrants
- held - duty owed - failure by solicitors not a novus actus - damages by reference to difference in market value.

STOREY V CHARLES CHURCH DEVELOPMENT

REPORTED 1996 CNSTN PROP CONT TORT DES DEF ECON SUBS

- inadequate foundations to property resulted in ground heave and need for remedial work* held QBD - inter alia - designer of a building even if the builder owes a duty to the employer at common law/in tort as well as in contract - duties concurrent - normally the same to exercise due skill and care not to cause economic loss.

STOVE V WISE / NORFOLK CC TP

1994 STAT HIGHWAYS ACT 1980

STOVE V WISE & NORFOLK CC [TP]

HIGH AUTHY DUTY

- danger due to banking belonging to BR - Authority agreed to remove banking with agreement of BR - agreement not reached however before accident.
- held - no duty under the Act to avoid danger to highway users due to something on adjoining land - but may be duty in common law - 30 % to blame.

SWAN V ANDREW MINTO & SON

1998 ANIM DUTY

Held - Sheriff Court

- there was a duty on owners or keepers of all animals [includes cattle] to prevent them from causing damage to third parties ' those owners or keepers could be liable for damages caused by animals straying onto a road where the damage was a reasonable consequence of the animal's presence on the road.

TUDOR JONES V COLOSSO

1996 INS BROK CONT DUTY EXCL

- a broker has a duty to bring an exclusion to the attention of the insured- exclusion applied to part of works for which completion certificate issued.
- argued contributory negligence in failing to check the policy.
- held [QBD] broker 2/rd's liable - other party 1/3rd.

WESSEX HEALTH AUTHY V HLM DESIGN CL

1994 ARCH ENG PROF NEGL DUTY ECON

- firm engaged as architects and engineers - negligent work alleged.
- issue - whether there was a duty in tort to take reasonable care to prevent economic loss.
- held - notwithstanding a contractual relationship between parties in tort there may be a concurrent duty owed to take reasonable care to prevent economic loss.

SECTION 2.7

ECONOMIC LOSS

BELLEFILED COMPUTER SERV V TURNER & S

2000 CNSTN CNTR DUTY ECON

- defective construction of compartment wall-building subsequently sold-fire with spread over gap in wall-damage to remainder of building and contents-claim for damage and economic loss.
- issue-extent of liability*held[CA]inter alia-liability for contents only-no liability for structure in absence of contractual relationship-damage to the building pure economic loss.

BEOCO V ALFA LAVAL CO

1994 CONT ECON TORT

- initial defect in plant-repair not completed properly by another-claim for loss of profit.
- held-those responsible for initial defect only liable for that loss which would have occurred if the repair had been completed properly.

BIRSE CONSTRUCTION V HAISTE LTD

1995 ENG PROF NEGL CNSTN CNTBN DEFECT

- defect in reservoir in construction- contractor subsequently built second reservoir in lieu.
- issue - whether engineers retained by employer and contractor respectively were liable in like manner to the contractor and former should contribute.
- held - damage sustained by the employer was physical but contractors loss was financial.

OBAGI V STANBOROUGH DEVELOPMENTS

1993 ECON CONT

- breach of contract.
- whether balance of probabilities the test for potential loss of future profit.
- held - damages should reflect prospects-if mere possibility or speculative then that possibility would be discounted and only nominal damages awarded.

PRESTON V TORFAEN BOROUGH C

1993 BUILD PROP SURV PROF NEGL ECON

- surveyors inspected site for council before estate built-house subject to cracking due to defective foundations-purchaser sued for economic loss.
- held- surveyors not liable as report was for the council and not seen by purchaser and at the time of the negligent act there was no identifiable complainant.

SMITH V CARTER

1994 PROF SURV DUTY ECON NOVUS ACTUS

- surveyor failed to mention works carried out without warrant and not complying with regulations - claim made by joint purchaser of which surveyor not aware.
- argued no duty - loss due to failure of solicitors to obtain warrants.
- held - duty owed - failure by solicitors not a novus actus - damages by reference to difference in mkt value.

STOREY V CHARLES CHURCH DEVELOPMENT

STOREY V CHARLES CHURCH DEVELOPMENT

REPORTED 1996 CNSTN PROP CONT TORT DES DEF ECON SUBS

- inadequate foundations to property resulted in ground heave and need for remedial work* held QBD? OR - inter alia - designer of a building even if the builder owes a duty to the employer at common law/in tort as well as in contract - duties concurrent - normally the same to exercise due skill and care not to cause economic loss.

WESSEX HEALTH AUTHY V HLM DESIGN

1994 ARCH ENG PROF NEGL DUTY ECON

- firm engaged as architects and engineers - negligent work alleged issue - whether there was a duty in tort to take reasonable care to prevent economic loss.
- held - notwithstanding a contractual relationship between parties in tort there may be a concurrent duty owed to take reasonable care to prevent economic loss.

SECTION 3.1 PROXIMATE CAUSE

ENVIRONMENT AGENCY V BROCK PLC

1998 ENV POLL WATER PROX STAT

WATER RESOURCES ACT 1991 S 85[1]- 104[3]

- controlled water polluted by leachate from waste tip due to failure of a seal manufactured by a third party.
- held [QBD] - pumping of leachate a positive act without which no loss would have occurred - failure of seal not foreseeable but a normal fact of life- liability therefore existed as there had been a positive act leading to loss.

ROHAN INVESTMENTS V CUNNINGHAM

1998 INS FLOOD PROX PERILS RAIN

- ingress of water 3-4" deep after rainfall- 1/2" in a day.
- argued : ingress amounted to flood.
- held [CA]in household insurance 'flood' to be given ordinary meaning whatever the cause - volume entry was flood - volume a matter of degree and damage and size of property to be taken into account.

WILSON/LACE V EAGLE STAR

1993 INS IND PROX WATER

- factory premises insured bursting etc.. gas boiler converted water to steam for heating at pressure-escape of steam caused damage during repair when bung 'blew'.
- held i/a - no ambiguity re contra preferentum-steam pipe not water apparatus-not within normal meaning of 'bursting ,overflowing ..etc.

©CILA 2002 / STUDY GUIDE PAPER C2.