

# Duty of care essay



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Duty of Care: GELERAL Week 2:: Seminar 2 This concept is based on three proof of elements, its ingredients are – A legal Duty of D towards the C to exercise care in such conduct of D as falls within the scope of the duty, Breach of that Duty means failure to come up to the standard required by law & Consequential damage to C which can be attributed to D's conduct.

Duty of Care General: Duty is the primary control device which allows the courts to keep liability for negligence within what they regard as acceptable limits and the controversies which have centered around the criteria for the exercise of a duty reflect differences of opinion as to the proper ambit of liability for negligence. Before *Donoghue v Stevenson*, there was no liability for negligence in a case where there is no special relationship between parties. Because in Case of Assault or Battery or Defamation where someone has some certain restrictions that the D must not do by the law.

But in a case of Pure negligence it was uncertain, so the court used to impose duties only where D & C had some kind of relations such as relation with a Doctor to his patient or a Lawyer to his client and so on. In this sense the *Stevenson* case was unique because in that case X bought Beer for his friend from a Shop and while drinking that his friend Y found that there was a snail and Y became seriously ill. The question to the court was as there was no relation existed between the Manufacturer and Y how they could impose a duty in such a situation.

Furthermore because of the principle of Privity Y could not sue the Shop hence she had no contractual relations with the shop. However the House of Lords by majority discovered that there was a duty. And how it worked we

come know from the dicta of Lord Atkin. His Lordship stated that, manufacturers has a duty because Y was neighbor by law of the manufacturer, and everyone has duty by law toward their neighbors not to harm them. Court said one must not injured or make any harm of his neighbor.

Then explained how they were neighbours that, the Neighbour Principle states that you have a duty of care to ensure that you take reasonable care to avoid acts or omissions which you can reasonably foresee would injure your neighbour. The explanation of neighbor given by Lord Atkins is someone who is closely and directly affected by your actions which you could reasonably foresee would cause them injury, and thus they are neighbours. But this was only one scenario; debate was to find a general principle.

A general principle is that can be used in any case where court need to impose a duty. But it is said that courts do not decide academic issues but the disputes between the parties. Here now we will follow the development of this aspect of law by a series of cases. In Home Office v Dorset Yacht, Lord Reid had suggested that the time had come to regard the neighbor principle laid down in Stevenson as applicable in all cases where there is no justification or valid explanation for its exclusion.

This suggestion was taken by HoL in Anns v Merton London Borough, Lord Wilberforce said the matter should be approached in two stages , 1st whether there was sufficient degree of proximity of relationship or neighbourhood that it should be in D's reasonable contemplation that his

carelessness may cause harm to the C. 2ndly it is necessary to consider whether there are any other consideration which which ought to negative or reduce the duty. Commentary on ANNS: it is really appreciable that Lord Wilberforce was doing his job to create a precedent and a declaration of a general principle.

But what he did can be criticized in many ways. He did not gave any exact definition of the proximity, if proximity simply means closeness then how much closeness is required, because someone is that much close to another that much they actually far away. The second point can be made here what he did at the second stage was simply cannot be a pragmatic of any general principle, as he then left the law on the hand of the day of the Judge. This case was criticized in many later cases: candlewood v Mitsui O. S. K ; Peabody Donation Fund v Parkinson Ltd.

In a decision of Privy Council , Yuen Kun Yeu v AG of Hong Kong, court interpreted the 1st stage of Anns that, proximity of relationship means that there has to be some special relationship and the relationship depends on the reasonable contemplation of the D that his carelessness may harm the C. What happened in this case, X Company gained their license from the D and cheated C, lots of people lost their money. Here court pointed that there was no special relation between C and D, there was no proximity and thus no Duty.

However, it may be said that it is also a policy decision because, the class of people was so large, if court granted a claim then there would be a flood gate of new claims. Then Comes the case Caparo Industries plc v Dickman: F

Company, manufacturers of electrical equipments, was the target of a takeover by Caparo Industries plc. F was not doing well. At this Point Caparo was buying shares of F company the accounts was checked by Dickman. Caparo reached a shareholding of 29.9% of the company, at which point it made a general offer for the remaining shares, as the City Code's rules on takeovers required.

But once it had control, Caparo found that F's accounts were in an even worse state than had been revealed by the directors or the auditors. It sued Dickman for negligence in preparing the accounts and sought to recover its losses. This was the difference in value between the company as it had and what it would have had if the accounts had been accurate. In CoA the court said that Dickman owed a duty of care to the Claimant 1 means Caparo the Existing share holders but not the others of the city who bought new shares. They innovated a three stage principle here, 1st is there any precedent there similar to that case? and if not, then is there any similar case as present scenario that court can by analogy give a decision? And 3rd if it is an unique then court will examine three elements here, 1) was it in D's reasonable contemplation what he was doing may cause harm to the defendant? 2) Was there sufficient proximity of relationship between the D and C? and 3) Will it be fair, just and reasonable to impose a duty on the D? Here Court found that as Dickman knew the existing shareholders there was a sufficiently proximity of relationship, and court thought it was just fair and reasonable to impose a duty.

However when this case reached to the House of Lords Lord Bridge kept the principle same innovated by CoA but at the same time he interpreted it in a

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different way. He pointed out that as Caparo already had the shares of F they were bound to face the loss even if Dickman had not done the nonfeasance, and thus there was no proximity of relationship. Commentary: 1st of all the new share holders were denied to recover their damage because court did not found any proximity of relationship between the parties.

However, again it is a policy matter, the class of new shareholders was so large, and if court wanted they could have said that if the Auditor did not announced no people would have bought that share and Auditor mislead the New Shareholder, and thus they might have found proximity of relationship. On the 2nd point- In a same case with same view of principles courts decided two distinct decisions. It is very clear that if HoL wanted to find the proximity they could have easily but as they changed their mind and it was their discretion they refused find any proximity between C1 and Dickman.

However, what the Caparo set out is basically the most modern approach to the structure of Duty of Care. But still in some way it is vague as 1st two point overlaps to eachother and the 3rd is totally at the discretion of the Judge of the day. So it is questionable whether law remain uncertain or we already have a general principle.

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Duty of Care: POLICIES & OMISSION Week 2:: Seminar 2 Before we proceed to examine more about Duty of Care, it will be helpful to consider the way in which this concept is used by the courts. Duty of care can be broken down into two questions: the first one which is general and determined as a matter of law and policy; followed by one which is specific and fact-based. 1st is this a case of the type to which the law of negligence is applicable? 2nd, Was it foreseeable that this claimant would be harmed by the defendant's act? Comparing two significant negligence cases will illustrate what is meant by Question 1 and will introduce the important concept of policy. In *Rondel v Worsley* (1969), the House of Lords confirmed that the barrister does not owe a duty of care in negligence to his clients in respect of his conduct of their case in court. This so-called 'immunity' was gradually extended over the years to include other matters closely connected to the preparation of the court case and, as solicitors gained rights of audience, to include all advocates. Among the unanimous Law Lords' justifications for upholding the immunity were as follows: the advocate's overriding duty lies not to his client but to the court; to permit actions in negligence might result in the effective retrial of a number of cases ('collateral attacks') with a consequential impact on confidence in the administration of justice; there is a 'cab-rank rule' whereby the barrister is not at liberty to pick and choose which cases are accepted and, lastly, that the advocate must exercise his skill with complete independence, rather than in fear of a negligence claim.

Thirty years later the issue of advocates' immunity came before the House of Lords for reconsideration in *Arthur JS Hall v Simons* (2000). In view of the possibility that it might be decided to overrule their previous decision in

Rondel, seven judges rather than the usual five considered the case. This time, the consensus on the matter was different. In closely argued and detailed speeches, the Law Lords reflected on the changes over the years in both professional culture and attitudes towards entitlements to remedies for wrongs and concluded that the advocates' immunity from liability for the conduct of a court case must be abolished.

Lord Browne-Wilkinson reasoned as follows: First . . . , given the changes in society and in the law that have taken place since the decision in *Rondel v Worsley* . . . , it is appropriate to review the public policy decision that advocates enjoy immunity from liability for the negligent conduct of a case in court. Second, that the propriety of maintaining such immunity depends upon the balance between, on the one hand, the normal right of an individual to be compensated for a legal wrong done to him and, on the other, the advantages which accrue to the public interest from such immunity.

Third, that in relation to claims for immunity for an advocate in civil proceedings, such balance no longer shows sufficient public benefit as to justify the maintenance of the immunity of the advocate. Lord Browne-Wilkinson mentions the word policy. This can be defined as the non-legal considerations; perhaps economic, social, or ethical, which a judge may employ in deciding the outcome of a case. Policy plays a significant part in the law of negligence, particularly in relation to duty of care. When deciding whether a given situation is one in which there should be a duty of care, the judge may be estimating whether an affirmative decision would bring a flood of further similar claims which could overwhelm the courts or devalue legal



credibility. This is often referred to as the Woodgate issue. Closely related to this is the potential impact which a decision might have on the insurance industry in the future and it includes calculations about where it is most economically efficient for loss to lie. Recently judges have begun voicing concerns about the impact of negligence liability on socially beneficial activities such as school trips.

Policy may also include reference to other options available to the client for obtaining redress. McLachlin J in the Canadian Supreme Court described policy as meaning ‘pragmatic’ considerations (*Norsk Pacific Steamship Co Ltd v Canadian National Railway Co* (1992) as demonstrated in *Hall v Simons*, in recent years judges have become more open about expressing their views on policy matters and this transparency has let us know more about what lies behind their conclusions on the issue of duty of care.

One problem with the influence of policy considerations, however, is that it involves a degree of guesswork. How much detailed evidence would need to be presented to the court before it was possible to estimate accurately a decision’s likely future effect on, say, accident prevention? Thus we see that declarations of policy can be subjectively based, with judges differing on interpretations of what may be little more than informed guesswork. (Case diary: development)

*Donoghue v Stevenson* : By Scots and English law alike the manufacturer of an article of food, medicine or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to

the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health: So held, by Lord Atkin, Lord Thankerton and Lord Macmillan; Lord Buckmaster and Lord Tomlin dissenting.

Caparo Industries v Dickman [1990] 1 All ER 568, HL Foreseeability and proximity Bourhill v Young [1942] 2 All ER 396, HL The appellant, on Oct. 11, 1938, was a passenger on a tramcar. She alighted from the tramcar some 50ft. from the junction of the road along which the car was travelling and a cross road. After alighting from the car she passed along its near side, round the front, and then to the entrance to the (driver's platform on the off-side.

Here, with the help of the driver, she placed her heavy creel upon her back. At the same time a motor cyclist passed between the near side of the tramcar and the footway and, not having seen a motor car turning into the cross road by reason of his view being obscured by the tramcar, he collided with the car, was thrown off his motorcycle, fell on his head and was killed. The appellant saw nothing of the accident but merely heard the noise of the impact of the two vehicles.

After the body of the motor cyclist had been removed, she approached the spot and saw blood on the roadway. The injuries alleged to have been sustained by the appellant were that she wrenched and injured her back by being startled by the noise of the collision and that she was thrown into a state of terror and sustained a severe shock to her nervous system, though there was no reasonable fear of immediate bodily injury to her. She was

about 8 months pregnant at the time and gave birth to a still-born child on Nov. 18, 1938.

The driver of the motor-cycle was admittedly negligent as against the driver of the motor car, but the question was whether he owed any duty to the appellant in that he ought, as a reasonable man, to have contemplated the likelihood of injury to her in the circumstances. : HELD : the question to be decided was one of liability and not one of remoteness of damage. In the circumstances of this case the motor cyclist owed no duty to the appellant since he could not be held to have reasonably foreseen the likelihood that the appellant, placed as she was, could be affected by his negligent act.

ACTS AND OMISSIONS *Smith v Littlewoods Organisation Ltd* [1987] 1 All ER 710, HL The respondents purchased a cinema with a view to demolishing it and replacing it with a supermarket. They took possession on 31 May 1976, closed the cinema and employed contractors to make site investigations and do some preliminary work on foundations, but from about the end of the third week in June the cinema remained empty and unattended by the respondents or any of their employees. By the beginning of July the main building of the cinema was no longer lockfast and was being regularly entered by unauthorised persons.

Debris began to accumulate outside the cinema and on two occasions attempts to start fires inside and adjacent to the cinema had been observed by a passer-by but neither the respondents nor the police were informed. On 5 July a fire was started in the cinema which seriously damaged two adjoining properties, one of which had to be demolished. The appellants, the

owners of the affected properties, claimed damages against the respondents on the ground that the damage to their properties had been caused by the respondents' negligence.

The judge found the claims established and awarded the appellants damages. An appeal by the respondents was allowed by the Court of Session. The appellants appealed to the House of Lords, contending that it was reasonably foreseeable that if the cinema was left unsecured children would be attracted to the building, would gain entry and would cause damage which, it was reasonably foreseeable, would include damage by fire which, it was reasonably foreseeable, would in turn spread to and damage adjoining properties.

Held – The appeal would be dismissed for the following reasons (i) (Per Lord Keith, Lord Brandon, Lord Griffiths and Lord Mackay) The respondents were under a general duty to exercise reasonable care to ensure that the condition of the premises they occupied was not a source of danger to neighbouring property.

Whether that general duty encompassed a specific duty to prevent damage from fire resulting from vandalism in the respondents' premises depended on whether a reasonable person in the position of the respondents would foresee that if he took no action to keep the premises lockfast in the comparatively short time before the premises were demolished they would be set on fire with consequent risk to the neighbouring properties.

On the facts and given particularly that the respondents had not known of the vandalism in the area or of the previous attempts to start fires, the

events which occurred were not reasonably foreseeable by the respondents and they accordingly owed no such specific duty to the appellants.

Furthermore (per Lord Mackay), where the injury or damage was caused by an independent human agency the requirement that the injury or damage had to be the probable consequence of the tortfeasor's own act or omission before there could be liability referred not to a consequence determined according to the balance of probabilities but to a real risk of injury or damage, in the sense of the injury or damage being a highly likely consequence of the act or omission rather than a mere possibility.

The more unpredictable the conduct in question, the less easy it was to affirm that any particular result from it was probable and, unless the court could be satisfied that the result of the human action was highly probable or very likely, it might have to conclude that all the reasonable man could say was that it was no more than a mere possibility; *P Perl (Exporters) Ltd v Camden London BC* [1983] 3 All ER 161 explained; *Hay (or Bourhill) v Young* [1942] 2 All ER 396, *Smith v Leurs* (1945) 70 CLR 256, *Lamb v Camden London Borough* [1981] 2 All ER 408 and *King v Liverpool City Council* [1986] 3 All ER 544 considered. [www.lawteacher.co.uk](http://www.lawteacher.co.uk) Asif Tufal (2) (Per Lord Goff, Lord Keith concurring) There was no general duty at common law to prevent persons from harming others by their deliberate wrongdoing, however foreseeable such harm might be if a defendant did not take steps to prevent it.

Accordingly, liability in negligence for such harm caused by third parties could only be made out in special circumstances, namely (a) where a special

relationship existed between the plaintiff and the defendant, (b) where a source of danger was negligently created by the defendant and it was reasonably foreseeable that third parties might interfere and cause damage by sparking off the danger and (c) where the defendant had knowledge or means of knowledge that a third party had created or was creating a risk of danger on his property and he failed to take reasonable steps to abate it.

On the facts, no such special circumstances were present, and accordingly the respondents owed no duty of care to the appellants; *Stansbie v Troman* [1948] 1 All ER 599, *Haynes v G Harwood & Son* [1934] All ER Rep 103, *Goldman v Hargrave* [1966] 2 All ER 989 and *Thomas Graham & Co Ltd v Church of Scotland General Trustees* 1982 SLT (Sh Ct) 26 considered; *Squires v Perth and Kinross DC* 1986 SLT 30 disapproved.

*Undertaking Barrett v Ministry of Defence* [1995] 3 All ER 87, CA The plaintiff was the widow and executrix of the deceased, a naval airman who died after becoming so drunk one night at the naval base where he was serving that he passed out into a coma and became asphyxiated on his own vomit.

Following the deceased's death, his commanding officer was charged with, and pleaded guilty to, a breach of art 1810 of the Queen's Regulations for the Royal Navy 1967, under which it was the 'particular duty of all officers ... actively to discourage drunkenness ... by naval personnel' and in the event of alcohol abuse, to take appropriate action to prevent any likely breaches of discipline, possible injury or fatality, including medical assistance if ... available'.

The plaintiff sued the Ministry of Defence claiming damages for herself and the deceased's estate in respect of his death, alleging that the defendant as his employer owed him while he was under its control a duty of care to prevent him becoming so drunk that he caused himself injury or death, and that it was in breach of that duty. At the hearing of the widow's action evidence was adduced of widespread laxity regard to alcohol consumption at the base, if not its actual encouragement, and the failure to take disciplinary action to prevent it.

The judge found that the deceased had been a heavy drinker, that this was widely known, that it was therefore foreseeable that in the particular environment of the naval base with its lax attitude to drinking he would succumb to heavy intoxication, and that in the exceptional circumstances of the case it was just and reasonable to impose on the defendant a duty of care to protect a person of full age and capacity, such as the deceased, from his own weakness.

He further held, comparing the Queen's Regulations and naval standing orders to the Highway Code and safety codes relating to factories, that the defendant was in breach of that duty because it had failed to enforce the standards it set itself in matters of discipline. He further held that the defendant had taken inadequate steps to care for the deceased after he had passed out in that no medical officer had been informed and the supervision of the deceased having been wholly inadequate by the defendant's own standards.

However, the judge found that the deceased was guilty of contributory negligence and reduced the damages by 25%. The defendant appealed contending, inter alia, that the judge was wrong to fix it with a duty of care in the circumstances and that he was wrong to treat the Queen's Regulations and standing orders as setting the standard by which the defendant's fulfilment of that duty of care should be judged. 3 www. lawteacher. co. uk  
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Held -(1) The judge had wrongly equated the Queen's Regulations and standing orders with the Highway Code and safety codes in factories, because the purpose of the regulations and standing orders was to preserve good order and discipline in the navy and to ensure that personnel remained fit for duty and while on duty obeyed commands and when off duty did not misbehave bringing the service into disrepute, and were in no sense intended to lay down standards or to give advice in the exercise of reasonable care for the safety of the men when off duty g in the bars on the base.

The regulations and standing orders could not therefore be directly invoked in determining whether a duty of care was owed to the deceased, and if so whether the defendant was in breach of it. (2) The mere existence of regulatory or other public duties did not of itself create a special relationship imposing a duty to take care in law for the safety of others. The characteristic which distinguished those special relationships was reliance, expressed or implied in the relationship, which the party to whom the duty was owed was entitled to place on the other party to make provision for his safety.



Applying the principles that new duties to take care in law for the safety of others should develop incrementally and by analogy with established categories and according to whether, as well as there being reasonable foreseeability of harm, it was fair, just and reasonable for the law to impose a duty of a given scope upon one party for the benefit of another, there was no reason in the circumstances why it should not be fair, just and reasonable for the law to leave a responsible adult to assume responsibility for his own actions in consuming alcoholic drink.

No one was better placed to judge the amount that he could safely consume or to exercise control in his own interest as well as in the interest of others. To dilute self- responsibility and to blame one adult for another's lack of self-control was neither just nor reasonable. It followed that, until the deceased collapsed, he was in law alone responsible for his condition and the judge's finding that the defendant was liable at that stage would be reversed; *Home Office v Dorset Yacht Co Ltd* [1970] 2 All ER 294 and *Anns v Merton London Borough* [1977] 2 All ER 492 considered. 3) However, once the deceased had collapsed and was no longer capable of looking after himself and the defendant had assumed responsibility for his care, it was accepted by the defendant that the measures taken fell short of the standard reasonably to be expected and its supervision of him was inadequate. To that extent, the defendant was in breach of a duty of care and liable in damages to the plaintiff.

However, since the deceased had by his own behaviour involved the defendant in a situation in which it had to assume responsibility for his care and since the deceased's own fault was a continuing and direct cause of his

death a greater share of the blame should rest upon him. The allowance to be made for the deceased's own contributory negligence would therefore be increased from one quarter to two thirds and the damages awarded to the plaintiff reduced accordingly. To that extent the appeal would be allowed.

Relationship between claimant and defendant *Smoldon v Whitworth* ; Nolan [1997] PIQR P133, CA

The plaintiff, who was aged 17 at the time, suffered very serious personal injuries when playing hooker in a colts rugby match, when a scrum collapsed, and his neck was broken. He claimed damages against the first defendant, a member of the opposing team, and against the second defendant, the referee. The claim against the first defendant was dismissed, and there was no appeal against that decision. The plaintiff argued that the second defendant owed him a duty of care to enforce the Laws of the Game, to apply them fairly, to effect control of the match so as to ensure that the players were not exposed to unnecessary risk of

Asif Tufal injury and to have particular regard to the fact that some of the players (including the plaintiff) were under the age of eighteen at the date of the match. The second defendant accepted that he owed the plaintiff a duty of care, but argued that the first defendant's duty to the plaintiff was only to refrain from causing him injury deliberately or with reckless disregard for his safety, that this standard of care itself qualified or informed his own standard of care, and that he could only be liable where he had shown deliberate or reckless disregard for the plaintiff's safety.

The judge adopted the plaintiff's definition of the second defendant's duty. He found that the second defendant had not enforced safety requirements set out in the Laws of the Game which contained special provisions relating to players aged under nineteen, and requiring front rows to engage in a crouch-touch-pause-engage sequence. He also found that there had been roughly three or four times the number of collapsed scrums that would not be abnormal in such a game, at the conclusion of the last of which, close to the end of the match, the plaintiff sustained his injuries.

He found that as a consequence of the second defendant's failure to instruct the front rows sufficiently and require the crouch-touch-pause-engage sequence the relevant scrum collapse and the consequential injuries to the plaintiff occurred, in breach of the second defendant's duty of care to him. The second defendant appealed. Held, dismissing the appeal, that the judge had adopted the correct formulation of the second defendant's duty.

It was not necessary to show a high level of probability that if the scrum collapsed serious injury of the kind which occurred was a highly probable consequence; serious spinal injury was a foreseeable consequence of a collapse of the scrum and of failure to prevent collapse of the scrum, and that was sufficient. The plaintiff was not volens to the risk of injury; he had consented to the ordinary incidents of a game of rugby, not to a breach of duty by the official whose duty it was to apply the rules and ensure, so far as possible, that they were observed.

Control over third parties Home Office v Dorset Yacht Co [1970] 2 All ER 294, HL Ten borstal trainees were working on an island in a harbour in the

custody and under the control of three officers. During the night seven of them escaped. It was claimed that at the time of the escape the officers had retired to bed, leaving the trainees to their own devices. The seven got on board a yacht moored off the island and set it in motion. They collided with another yacht, the property of the respondents, and damaged it.

The respondents sued the Home office for the amount of the damage. A preliminary issue was ordered to be tried whether on the facts pleaded in the statement of claim the Home Office, its servants or agents owed any duty of care to the respondents capable of giving rise to a liability in damages with respect to the detention of persons undergoing sentences of borstal training, or with respect to the manner in which such persons were treated, employed, disciplined, controlled or supervised whilst undergoing such sentences.

It was admitted that the Home Office would be vicariously liable if an action would lie against any of the borstal officers. On appeal against the decision of the preliminary point in favour of the respondents, Held -(Viscount Dilhorne dissenting) the appeal would be dismissed because i) (per Lord Reid, Lord Morris of Borth-y-Gest and Lord Pearson) (a) the taking by the trainees of the nearby yacht and the causing of damage to the other yacht which belonged to the respondents ought to have been foreseen by the borstal officers as likely to occur if they failed to exercise proper control or supervision; in the particular circumstances the officers prima facie owed a duty of care to the respondents; dictum of Lord Atkin in *Donoghue (or M'Alister) v Stevenson* [1932] All ER Rep at 11 applied; b) the fact that the immediate damage to the property of the respondents was caused by the

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acts of third persons, the trainees, did not prevent the existence of a duty on the part of the officers towards the respondents because (per Lord Reid) the taking of the yacht and the damage to the other was the very kind of thing which the officers ought to have seen to be likely, or (per Lord Morris of Borth-y-Gest and Lord Pearson) the right of the officers to control the trainees constituted a special relation which gave rise to an exception to the general rule that one person is under no duty to control another to prevent his doing damage to a third; dictum of Dixon J in *Smith v Leurs* (1945) 70 CLR at 261, 262, applied; c) the fact that something was done in pursuance of statutory authority did not warrant its being done unreasonably so that avoidable damage was negligently caused; dictum of Lord Blackburn in *Geddis v Proprietors of Bann Reservoir* (1878) 3 App Cas at 455 applied; (d) there was no ground in public policy for granting complete immunity from liability in negligence to the Home Office or its officers. (ii) (per Lord Diplock) there was material, fit for consideration at the trial, for holding both that the officers were acting in breach of instructions and ultra vires and that they owed a duty of care to the respondents. Decision of the Court of Appeal sub nom *Dorset Yacht Co Ltd v Home Office* [1969] 2 All ER 564 affirmed. Control of land or dangerous things *Dominion Natural Gas v Collins and Perkins* [1909] AC 640, PC

In actions for damages in respect of an accident against the appellant gas company it appeared that the appellants were not occupiers of the premises on which the accident had occurred and had no contractual relations with the plaintiffs, but that they had installed a machine on the said premises, and the jury found that the accident was caused by an explosion resulting

from gas emitted, owing to the appellants' negligence, through its safety valve direct into the closed premises instead of into the open air: Held, that the initial negligence having been found against the appellants in respect of an easy and reasonable precaution which they were bound to have taken, they were liable unless they could shew that the true cause of the accident was the act of a subsequent conscious volition, e. g. , the tampering with the machine by third parties. TYPES OF CLAIMANT *Pitts v Hunt* [1990] 3 All ER 344, CA The plaintiff, who was aged 18, and a friend, who was aged 16, spent the evening drinking at a disco before setting off home on the friend's motor cycle with the plaintiff riding as a pillion passenger.

The plaintiff was aware that the motor cyclist was neither licensed to ride a motor cycle nor insured. On the journey home the motor cyclist, encouraged by the plaintiff, rode the motor cycle in a fast, reckless and hazardous manner deliberately intending to frighten members of the public. The motor cycle collided with an oncoming car and the plaintiff was severely injured. The motor cyclist, whose blood alcohol level was more than twice the legal limit for driving a motor vehicle, was killed. The plaintiff claimed damages in negligence against the personal representative of the motor cyclist and against the driver of the oncoming car.

The judge found that there had been no negligence on the part of the driver of the car and held that the plaintiff could not recover damages against the motor cyclist's estate because the two were engaged on a joint illegal enterprise and the claim was barred by the maxim *ex turpi causa non oritur actio* and public policy. The judge further held that the claim would have been defeated by the defence of *volenti non fit injuria* but for the fact that s

148(3) of the Road Traffic Act 1972, by providing that any 'agreement or understanding' between the driver and a passenger of a motor vehicle had no effect so far as it purported to negative or restrict the driver's liability to the passenger, precluded the defendants from relying on that defence in the context of a motor accident, and that in the event the plaintiff was 100% contributorily negligent. The plaintiff appealed against the dismissal of his claim against the motor cyclist's estate.

Held -Where one person was injured as the result of the actions of another while they were engaged in a joint illegal enterprise the issue whether the injured party was entitled to claim against the other person or whether his claim was barred by the maxim *ex turpi causa non oritur actio* was to be determined not according to whether there was any moral turpitude involved in the joint illegal enterprise but whether the conduct of the person seeking to base his claim on the unlawful act and the character of the enterprise and the hazards necessarily inherent in its execution were such that it was impossible to determine the appropriate standard of care because the joint illegal purpose had displaced the ordinary standard of care. Since the plaintiff had played a full and active part in encouraging the motor cyclist to commit offences which, had an innocent third party been killed, would have amounted to manslaughter by the commission of a dangerous act, the plaintiff ought not to be permitted to recover for the injuries which he sustained arising out of that unlawful conduct, on the grounds of the application of the maxim *ex turpi causa non oritur actio*, public policy and the fact that the circumstances precluded the court from finding that the driver owed any duty of care to the plaintiff. The appeal would therefore be

dismissed; dictum of Mason J in *Jackson v Harrison* (1978) 138 CLR 438 at 455-456 applied; *Thackwell v Barclays Bank plc* [1986] 1 All ER 676 and *Saunders v Edwards* [1987] 2 All ER 651 not followed. Per curiam (1) In the context of a plea of contributory negligence it is logically unsupportable to find that a plaintiff was 100% contributorily negligent since the premise on which s 1 of the Law Reform (Contributory Negligence) Act 1945 operates is that there is fault on the part of both parties which has caused the damage and that the responsibility must be shared according to the apportionment of liability.

Where (per Dillon and Beldam LJ) the parties have engaged in a joint illegal enterprise and the parties are equally to blame the correct apportionment of liability is 50% each. (2) The effect of s 148(3) of the 1972 Act is that it is not open to the driver of a motor vehicle to say that the fact that his passenger could be said to have willingly accepted a risk of negligence on the driver's part relieves the driver of liability for his negligence since the defence of *volenti non fit injuria* is precluded by s 148(3) in the context of a motor accident; *Winnik v Dick* 1984 SLT 185 approved; dictum of Ewbank J in *Ashton v Turner* [1980] 3 All ER 870 at 878 disapproved. Per Dillon and Balcombe LJ.

Section 148(1) of the 1972 Act does not have the effect that an express or tacit agreement by the parties to engage in a joint illegal enterprise involving a motor vehicle cannot be relied on to negate or restrict liability for negligent driving, since s 148(3) is concerned to preclude a defence of *volenti non fit injuria* but is not concerned with any defence of illegality and the section does not contemplate an illegal 'agreement or understanding' to carry out an illegal purpose. Per Beldam LJ. If the driver of a motor vehicle



commits a road traffic offence so serious that it would preclude the driver on public policy grounds from claiming an indemnity under a policy of insurance statutorily required 7 [www.lawteacher.co.uk](http://www.lawteacher.co.uk) Asif Tufal to be effected for the benefit of a passenger, public policy will also preclude the passenger from claiming compensation if he is jointly guilty of that offence. *Clunis v Camden* [1998] 3 All ER 180, CA

On 24 September 1992 the plaintiff, who had a history of mental disorder and of seriously violent behaviour, was discharged from the hospital where he had been detained as the result of an order under s 3 of the Mental Health Act 1983, and moved into the area covered by the defendant health authority. Under s 117 of the 1983 Act the health authority was under a duty to provide after-care services for the plaintiff, and a psychiatrist employed by it was designated as the plaintiff's responsible medical officer. However, the plaintiff failed to attend appointments arranged for him by the medical officer, and his condition deteriorated. On 17 December, in a sudden and unprovoked attack, the plaintiff stabbed a man to death at a tube station. He was charged with murder, but at his trial pleaded guilty to manslaughter on the grounds of diminished responsibility and was ordered to be detained in a secure hospital.

Subsequently, the plaintiff brought an action for damages against the health authority alleging that it had negligently failed to treat him with reasonable professional care and skill in that, inter alia, the responsible medical officer had failed to ensure that he was assessed before 17 December, and that if he had been he would either have been detained or consented to become a patient and would not have committed manslaughter. The health authority

applied to strike out the plaintiff's claim as disclosing no cause of action on the grounds (i) that it was based on his own illegal act which amounted to the crime of manslaughter, and (ii) that it arose out of the health authority's statutory obligations under s 117 of the 1983 Act and those obligations did not give rise to a common law duty of care. The deputy judge dismissed the application and the defendant appealed.

Held – (1) The rule of public policy that the court would not lend its aid to a plaintiff who relied on his own criminal or immoral act was not confined to particular causes of action, but only applied if the plaintiff was implicated in the illegality and was presumed to have known that he was doing an unlawful act. In the instant case, the plaintiff's plea of diminished responsibility accepted that his mental responsibility was substantially impaired but did not remove liability for his criminal act, and therefore he had to be taken to have known what he was doing and that it was wrong. It followed that the health authority had made out its plea that the plaintiff's claim was based on his crime of manslaughter; dictum of Best CJ in *Adamson v Jarvis* (1827) 4 Bing 66 at 72-73 and *Burrows v Rhodes* [1899] 1 QB 816 applied; *Meah v McCremer* [1985] 1 All ER 367 doubted. 2) Having regard to the fact that under the 1983 Act the primary method of enforcement of the obligations under s 117 was by complaint to the Secretary of State, the wording of the section was not apposite to create a private law cause of action for failure to carry out the duties under the statute. Moreover, bearing in mind the ambit of the obligations under s 117 and the statutory framework, it would not be fair, just and reasonable to impose a common law duty of care on an authority. The plaintiff could not, therefore, in the instant

case establish a cause of action arising from the failure by the health authority or the responsible medical officer to carry out their functions under s 117 of the 1983 Act. Accordingly, the appeal would be allowed; *X and others (minors) v Bedfordshire CC*, *M (a minor) v Newham London BC*, *E (a minor) v Dorset CC* [1995] 3 All ER 353 applied. 8 www. lawteacher. co. uk Asif Tufal

*Revill v Newbery* [1996] 1 All ER 291, CA The 76-year-old defendant was sleeping in a brick shed on his allotment in order to protect valuable items stored in it when he was awoken in the middle of the night by the sound of the plaintiff attempting to break in. He took his shotgun, loaded it and, without being able to see whether there was anybody directly in front of the door, fired a shot through a small hole in the door, wounding the plaintiff in the arm and chest. The plaintiff was subsequently prosecuted for the various offences which he had committed that night and pleaded guilty; the defendant was also prosecuted on charges of wounding but was acquitted.

Thereafter the plaintiff brought proceedings against the defendant, claiming damages for breach of the duty of care under s 1 of the Occupiers' Liability Act 1984 and for negligence. The judge found that although the defendant had not intended to hit the plaintiff he could reasonably have anticipated that he might do so and was thus negligent by reference to the standard of care to be expected from the reasonable man placed in the defendant's situation. The judge further found that the defendant had used greater violence than was justified in lawful self-defence and rejected the defendant's submission that he was relieved of all liability on the basis of the maxim *ex turpi causa non oritur actio* since the plaintiff had been involved in a criminal enterprise at the time of injury.

On the question of contributory negligence the judge found the plaintiff two-thirds to blame. The defendant appealed. Held – A plaintiff in a personal injury claim for damages for negligence was not debarred from making any recovery by the fact that he was a trespasser and engaged in criminal activities at the time the injury was suffered. The duty of care owed to a trespasser by an occupier under s 1 of the Occupiers' Liability Act 1984 and by persons other than occupiers at common law, namely to take such care as was reasonable in all the circumstances of the case to see that the trespasser did not suffer injury on the premises, applied even where the trespasser was engaged in a criminal enterprise. On the facts, the judge had been justified in finding that the plaintiff was a person to whom the defendant owed some duty of care and that the defendant, who had used greater violence than was justified in lawful self-defence, was in breach of that duty, and in finding substantial contributory negligence on the part of the plaintiff. The appeal would accordingly be dismissed. *British Railways Board v Herrington* [1972] 1 All ER 749 and *Pitts v Hunt* [1990] 3 All ER 344 considered. *Haynes v Harwood* [1935] 1 KB 146, CA The plaintiff, a police constable, was on duty inside a police station in a street in which, at the material time, were a large number of people, including children. Seeing the defendants' runaway horses with a van attached coming down the street he rushed out and eventually stopped them, sustaining injuries in consequence, in respect of which he claimed damages:

Held, (1) that on the evidence the defendants' servant was guilty of negligence in leaving the horses unattended in a busy street; (2) that as the defendants must or ought to have contemplated that some one might

attempt to stop the horses in an endeavour to prevent injury to life and limb, and as the police were under a general duty to intervene to protect life and property, the act of, and injuries to, the plaintiff were the natural and probable consequences of the defendants' negligence; and (3) that the maxim "volenti non fit injuria" did not apply to prevent the plaintiff recovering. *Brandon v. Osborne Garrett & Co.* [1924] 1 K. B. 548 approved. *Cutler v.*

*United Dairies (London), Ltd.* [1933] 2 K. B. 297 distinguished, and dicta therein questioned. Decision of *Finlay J.* [1934] 2 K. B. 240 affirmed. 9 www.lawteacher.co.uk *Asif Tufal Ward v Hopkins; Baker and another v Hopkins* [1959] 3 All ER 225, CA A company, which carried on business as builders and contractors, undertook work on a well which involved clearing it of water. The well was some fifty feet deep and about six feet in diameter. H, a director of the company, and W and another workman employed by the company, erected a platform twenty- nine feet down the well and some nine feet above the water and lowered on to it a petrol-driven pump.

After the engine of this pump had worked for about one and a half hours it stopped and a haze of fumes was visible in the well. The working of the petrol engine created also a dangerous concentration of carbon monoxide, a colourless gas. H returned to the well after working hours that evening and observed the haze and noticed a smell of fumes. On the following morning at about 7. 30 a. m. H instructed the two workmen to go to the well, but said to W " Don't go down that bloody well until I come". The workmen arrived at the well at about 8. 15 a. m. , and, before H had arrived, one of the workmen

went down the well and a few minutes later the other workman also went down it.

Both were overcome by fumes. A doctor, who was called to the well, went down the well with a rope tied to his body in order to see if he could rescue the men, though he had been warned not to go. He also was overcome by fumes. Endeavour was made to haul him to the surface by the rope, but the rope caught in a down pipe in the well and he could not be brought to the surface until help arrived some time later. He died shortly afterwards. The court found that H had acted in good faith but that he lacked experience and did not appreciate the great danger that would be created in the well and did not seek expert advice on the proper method of emptying the well.

In actions for damages for negligence resulting in the death of W and the doctor damages were awarded, but those awarded in the case of W were apportioned, one-tenth of the responsibility being attributed to W. On appeal, Held: (i) the defendant company were liable for negligence causing the death of W because the method adopted to empty the well had created a situation of great danger to anyone descending the well on the morning in question, and the defendant company were negligent in that no clear warning of the deadly danger was given to W on that morning, H's order not to go down the well until he came being insufficient to discharge the defendant company's legal duty to take reasonable care not to expose W to unnecessary risk, though the apportionment of one-tenth of the responsibility to W would not be disturbed. ii) the defendant company were liable for negligence causing the death of the doctor because it was a natural and proper consequence of the defendant company's negligence towards the two workmen that

someone would attempt to rescue them, and the defendant company should have foreseen that consequence; accordingly the defendant company were in breach of duty towards the doctor. Dictum of Lord Atkin in *M'Alister (or Donoghue) v. Stevenson* ([1932] All E. R. Rep. at p. 11) applied. (iii) no defence to the claim arising out of the death of the doctor was afforded either (a) by the principle of *novus actus interveniens*, for that did not apply where, as in the present case, the act in question was the very kind of thing that was likely to happen as a result of the negligence. Dictum of Greer, L. J. , in *Haynes v. Harwood* ([1934] All E. R. Rep. at p. 107) applied. r (b) by the maxim *volenti non fit injuria*, for that could not be successfully invoked as a defence by a person who had negligently placed others in a situation of such peril that it was foreseeable that someone would attempt their rescue. Dictum of Greer, L. J. , in *Haynes v. Harwood* ([1934] All E. R. Rep. at p. 108) applied. (iv) the doctor had not acted recklessly or negligently and had neither caused nor contributed to his own death. 10 [www.lawteacher.co.uk](http://www.lawteacher.co.uk) Asif Tufal Per Willmer, L. J. : bearing in mind that danger invites rescue, the court should not be astute to accept criticism of the rescuer's conduct from the wrongdoer who created the danger. Decision of Barry, J. ([1958] 3 All E. R. 47) affirmed. *Chadwick v BRB* [1967] 2 All ER 945, QBD In December, 1957, C. was about forty-four years old and since 1945 had been successfully engaged in a window-cleaning business and taking an interest in social and charitable activities in his community. In 1941 when he was twenty-eight years old, he had suffered some psycho -neurotic symptoms, but he had not suffered from them for sixteen years thereafter and he was not (so the court found) someone who would be likely to relapse under the ordinary stresses of life. On Dec. 4, 1957, immediately following a collision

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between two railway trains on a line a short distance from his home, C. voluntarily took an active part throughout the night in rescue operations at the scene of the accident, in which ninety persons had been killed and many others were trapped and injured. As a result of the horror of his experience at the scene of the accident C. suffered a prolonged and disabling anxiety neurosis necessitating hospital treatment. In an action brought by C. and continued after his death by his widow as his personal representative it was conceded by the defendants that the accident was caused by negligence for which they were legally responsible, but liability to C. in damages was denied. Held: the defendants were in breach of duty to C. and his illness was suffered as a result of that breach, with the consequence that his personal representative was entitled to recover damages, for the following reasons (i) it was reasonably foreseeable in the event of such an accident as had occurred that someone other than the defendants' servants might try to rescue passengers and might suffer injury in the process; accordingly the defendants owed a duty of care towards C. *Ward v. T. E. Hopkins ; Son, Ltd.* ([1959] 3 All E. R. 225) followed. (ii) injury by shock to a rescuer, physically unhurt, was reasonably foreseeable, and the fact that the risk run by a rescuer was not exactly the same as that run by a passenger did not deprive the rescuer of his remedy. (iii) damages were recoverable for injury by shock notwithstanding that the shock was not caused by the injured person's fear for his own safety or for the safety of his children. Principle laid down in *Hay (or Bourhill) v. Young* ([1942] 2 All E. R. 396) applied. *Dulieu v. White ; Sons* ([1900-03] All E. R. Rep. 353) and *Owens v. Liverpool Corpn.* ([1938] 4 All E. R. 727) considered. (iv) as a man who had lived a normal busy life in the community with no mental illness for sixteen years, there was nothing in C.



's personality to put him outside the ambit of the defendants' contemplation so as to render the damage suffered by him too remote. Dictum of Lord Wright in *Hay (or Bourhill) v.*

Young ([1942] 2 All E. R. at pp. 405, 406) distinguished. ECONOMIC LOSS CARELESS ACTS (a) As a consequence of physical damage to a third party's property *Cattle v Stockton Waterworks (1875) LR 10 QB 453* Defendants, a waterworks company, under their Act laid down one of their mains along and under a turnpike-road, made under an Act which declared 11 www.

lawteacher. co. uk Asif Tufal the soil to be in the owners of the adjoining land, subject only to the right to use and maintain the road. K. was owner of land on both sides, at a spot where the road was carried across a valley on an embankment, and wanting to connect his land on either side, K. employed Plaintiff at an agreed sum, to make a tunnel under the road. In doing the work, it was discovered that there was a leak in the Defendants' main higher up the road, and on the Plaintiff digging out the earth, the water from the leak flowed down upon the work and delayed it, so as to cause pecuniary damage to the Plaintiff, for which he brought an action against Defendants: - Held, that assuming K. could have maintained an action against Defendants for injury to his property (as to which the Court gave no opinion), the damage sustained by Plaintiff by reason of his contract with K. becoming less profitable, or a losing contract, in consequence of the injury to K. s property, gave Plaintiff no right of action against Defendants. -The tunnel was formed by digging through half the width of the road, forming the tunnel, and then completing the other half in the same way. Before commencing the work K. obtained the consent of the road surveyor and the trustees: -Held, assuming

K. could, under the circumstances, have been indicted for the nuisance to the high road, the partial obstruction to the highway did not render the whole proceeding so illegal as to prevent Plaintiff who was engaged in it from recovering damages for a wrong. *Weller v Foot and Mouth Disease Research Institute* [1966] 1 QB 569, QBD

The principle of the common law that a duty of care which arises from a risk of direct injury to person or property is owed only to those whose persons or property may foreseeably be injured by a failure to take care is not affected by the decision in *Hedley Byrne ; Co. , Ltd. v. Heller ; Partners, Ltd.* ([1963] 2 All E. R. 575); in order to have a right of action for negligence a plaintiff must show that he was within the defendant's duty to take care, and he may then recover by way of damages for the direct and consequential loss reasonably foreseeable, but, though proof of direct loss is not an essential part of the claim, he must establish that he was within the scope of the defendant's duty of care (see p: 570, letter D, post).

In consequence, as was assumed, of the escape of a virus imported by the defendants and used by them for experimental work on foot and mouth disease at land and premises owned and occupied by them, cattle in the vicinity of the premises became infected with the disease. Because of the disease an order was made under statutory powers closing cattle markets in the district, with the result that the plaintiffs, who were auctioneers, were temporarily unable to carry on their business at those markets and suffered loss. The court was required to assume that the loss to the plaintiffs was foreseeable and that there was neglect on the part of the defendants which

caused the escape of the virus. On the question whether in law an action for damages would lie for the loss,

Held: (i) an ability to foresee indirect or economic loss to another person as the result of a defendant's conduct did not automatically impose on the defendant a duty to take care to avoid that loss; in the present case the defendants were not liable in negligence, because their duty to take care to avoid the escape of the virus was due to the foreseeable fact that the virus might infect cattle in the neighbourhood and thus was owed to owners of cattle, but, as the plaintiffs were not owners of cattle, no such duty was owed to them by the defendants. *Hedley Byrne ; Co. , Ltd. v. Heller ; Partners, Ltd.* ([1963] 2 All E. R. 575) distinguished. *Donoghue (or McAlister) v. Stevenson* ([1932] All E. R. Rep. 1) and *Morrison Steamship Co. , Ltd. v. S. S. 12 www. lawteacher. co. uk Asif Tufal Greystoke Castle (Owners of Cargo)* ([1946] 2 All E. R. 696) considered and applied. (ii) the plaintiffs were also not entitled to recover under the rule in *Rylands v. Fletcher* ([1861-73] All E. R.

Rep. 1) because they had no interest in the cattle endangered by the escape of the virus and the loss to the plaintiffs was not a sufficiently proximate and direct consequence of the escape of the virus. Dictum of Blackburn, J. , in *Cattle v. Stockton Waterworks Co.* ([1874-80] All E. R. Rep. at p. 223) applied. *Spartan Steel ; Alloys v Martin* [1972] 3 All ER 557, CA The plaintiffs manufactured stainless steel alloys at a factory which was directly supplied with electricity by a cable from a power station. The factory worked 24 hours a day. Continuous power was required to maintain the temperature in a furnace in which metal was melted.

The defendants' employees, who were working on a near-by road, damaged the cable whilst using an excavating shovel. The electricity board shut off the power supply to the factory for 14 hours until the cable was mended. There was a danger that a 'melt' in the furnace might solidify and damage the furnace's lining, so the plaintiffs poured oxygen on to the 'melt' and removed it, thus reducing its value by £368. If the supply had not been cut off, they would have made a profit of £400 on the 'melt', and £1,767 on another four 'melts', which would have been put into the furnace. They claimed damages from the defendants in respect of all three sums.

The defendants admitted that their employees had been negligent, but disputed the amount of their liability. Held – (i) The defendants were liable in respect of the physical damage to the 'melt' and for the loss of profit on it, for that loss was consequential on the physical damage; *SCM (United Kingdom) Ltd v WJ Whittall ; Son Ltd* [1970] 3 All ER 245 followed. (ii) (Edmund Davies LJ dissenting) The defendants were not liable for the loss of profit on the other four 'melts' because (a) no remedy was available in respect of economic loss unconnected with physical damage; *Cattle v Stockton Waterworks Co* [1874-80] All ER Rep 220 followed; b) there was no principle of 'parasitic' damages in English law to the effect that there were some heads of damage which, if they stood alone, would not be recoverable, but would be if they could be annexed to some other claim for damages, i.e. that the economic loss in respect of the four 'melts' was recoverable as a 'parasite' by being attached to the claim in respect of the first 'melt'; *Re London, Tilbury and Southend Railway Co ; Gower's Walk Schools Trustees* (1889) 24 QBD 326, *Horton v Colwyn Bay and Colwyn Urban Council* [1908] 1

KB 327 and Griffith v Richard Clay ; Sons Ltd [1912] 2 Ch 291 explained. Per Lord Denning MR.

At bottom the question of recovering economic loss is one of policy.

Whenever the courts draw a line to mark out the bounds of duty, they do it as a matter of policy so as to limit the responsibility of the defendant.

Whenever the courts set bounds to the damages recoverable saying that they are or are not, too remote – they do it as a matter of policy so as to limit the liability of the defendants. The time has come to discard the tests which have been propounded in the reported cases and which have proved so elusive. It is better to consider the particular relationship in hand, and see whether or not, as a matter of policy, economic loss should be recoverable.

Per Lawton LJ. The differences which undoubtedly exist between what damage can be recovered in one type of case and what in another cannot be reconciled on any logical basis. Such differences have arisen because of the 13 www. lawteacher. co. uk Asif Tufal policy of the law and it may be that there should be one policy for all cases; but the enunciation of such a policy is not a task for the court. Candlewood Navigation v Mitsui [1985] 2 All ER 935, PC A vessel which was time chartered to the plaintiff time charterers was involved in a collision with the appellants' vessel while both vessels were waiting to berth at a New South Wales port.

The collision was caused by the negligence of the crew of the appellants' vessel and resulted in the chartered vessel being damaged and put out of operation while repairs were carried out. The vessel underwent temporary repairs in Australia but those repairs were delayed for a period of some 32

days because the vessel was blocked by a trade union when the owners decided that permanent repairs should be carried out elsewhere. The charterers brought an action against the appellants in the New South Wales Supreme Court claiming damages for economic loss made up of hire they had had to pay while the vessel was repaired and loss of profits for the same period.

The trial judge upheld the charterers' claim and also refused to discount the 32 days in assessing damages. The appellants appealed to the Privy Council, contending that recovery of economic loss suffered as a result of damage caused to a chattel by a wrongdoer should not be tied to the ownership of the chattel but by whether it was a direct result of the negligence and was foreseeable. Held – (1) Applying the principle that a person who was not the owner of a chattel was not entitled to sue a person who damaged the chattel to recover economic loss which resulted from not being able to use the chattel, the charterers were not entitled to recover damages from the appellants for economic loss.

To that extent the appeal would be allowed; *Cattle v Stockton Waterworks Co* [1874-80] All ER Rep 220 and *Simpson ; Co v Thomson* (1877) 3 App Cas 279 applied; dictum of Scrutton LJ in *Elliott Steam Tug Co Ltd v Shipping Con*