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Introduction to English Law

Lecture 6: Tort Law

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Dr. Ian Curry-Sumner
UCERF, School of Law, Utrecht University

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Categorisation of Torts

- Difference between “Law of Tort” and “Law of Torts”
- How to categorise torts in England & Wales:
 1. Level of intent of the tortfeasor, and
 2. Interest affected by the tort.
- Ratio: compensation and deterrence
- Punitive or exemplary damages – confined to 2 cases:
 - Conduct calculated to make a profit: *Cassell v. Broome* [1972]
 - Oppressive conduct by Government servants: *Thompson v. MPC* [1998]


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Categorisation of Torts

Intentional	Negligence	Nuisance	Strict Liabe
Against the person	→	Assault, battery, false imprisonment	
Against property	→	Trespass to land, conversion	
Dignitary	→	Defamation, deceit	
Economic	→	Fraud	

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Negligence

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    graph TD
      A[A duty of care] --> B[A breach of duty]
      B --> C[Damage foreseeable]
      D((What does this mean?))
  
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Duty of Care (1)

General
Question of law for the judge


Ratio
Aims to limit liability, acts as a control device

Historical Development: Pre 1932
Until 19th century no real concept of duty as we know it now
Liability existed within confined relationships
Doctor-patient, ferryman-passenger, blacksmith-customer etc.

Reasons for change: social, industrial and technological revolution

Distinction drawn with contract: *contract* imposes obligations if agreed
tort imposes obligations by law

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Duty of Care (2)


Historical Development: Post 1932

Donoghue v. Stephenson (1932)

1. Neighbour test introduced
2. New category of duty was created: “categories of negligence are never closed”

“You must take reasonable care to avoid acts or omission which you can reasonably foresee would be likely to injure your neighbour.
Who then is your neighbour? The answer seems to me to be persons who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question”

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Duty of Care (3)

Historical Development: Post 1977

Anns v. London Borough of Merton (1977)

2 stage test:


- Whether as between the alleged wrongdoer and the person who has suffered damage relationship of proximity existed, in which case *prima facie* duty of care.
- If 1st question answered affirmatively then need to see if any considerations to limit

This is thus an expansive understanding of the duty of care.

Problems
 Couldn't get insurance to cover and so judiciary had to act.

Sutherland Shire Council v. Heyman (1985)
Yuen Kiu-yeu v. AG of Hong Kong (1987)
Caparo Industries v. Dickman (1990)

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Duty of Care (4)

Historical Development: Post 1990

Murphy v. Brentwood DC (1990)


3 stage test:

- Damage must have been reasonably foreseeable
- There must have been proximity between the parties
- It must be just, fair and reasonable to impose liability

We put the "reasonable" man in the defendant's position and work out whether reasonable man would have foreseen the likelihood of the injury.

Therefore need to know what's the "reasonable man"

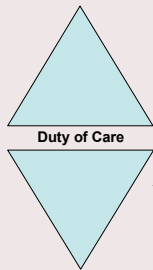
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Duty of Care: Expansion


Pre Donoghue

Donoghue v. Stephenson
Hedley Byrne v. Heller
Anns v. Merton LBC



2006
e.g. White v. Jones

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Back to Negligence ...

A duty of care

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A breach of duty

1. Foresight of damage, *i.e.* according to reasonable man test


2. Proximity between parties

3. Just, fair and reasonable to impose liability

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Damage

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Breach of Duty (1)

General
 How much care must the D take.

Objective test chosen. Why? Simplicity and practicality.

Blyth v. Birmingham Waterworks Co. (1856)
 Standard required is not that of a particularly conscientious person but that of the average prudent person in the eyes of the court. It has been said that the reasonable person can be found on "the Clapham omnibus".

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Breach of Duty (2)

What factors used in determining reasonable man?


Likelihood of harm
Bolton v. Stone (1951)
The Wagon Mound (No 2) (1967)
Hayley v. London Electricity Board (1965)

Magnitude of harm
Paris v. Stepney BC (1951)

Utility of defendant's conduct
Watt v. Hertfordshire CC (1954)

Difficulty of avoiding harm (cost of precautions)
Latimer v. AEC (1953)
Bolton v. Stone (1951)

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Breach of Duty (3)


What characteristics can be used in determining the reasonable man?

Children
Mullin v. Richards (1998)

Lunatics
Roberts v. Ramsbottom (1980)

Amateurs
Nettleship v. Weston (1971)

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Back to Negligence ...

A duty of care

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A breach of duty


Reasonable man

1. Damage reasonable foreseeable
 2. Proximity between parties
 3. Just, fair and reasonable to impose liability

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Damage

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Damage (1)

General
2 questions:

1. Factual causation – “but for” test
2. Legal causation:
 1. Was the harm directly caused by the D? Until 1961
→ *break in the chain of causation*
 2. Was what happened reasonable foreseeable? Since 1961
→ *remoteness and foreseeability*

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Damage (2)


Factual causation: “but for” test

Barnett v. Chelsea and Kensington Hospital [1969] 1 QB 428

Most cases no problems. However:

- 1) **Negligent omissions:** *McWilliams v. Sir William Ltd* [1962] 1 WLR 295
- 2) **More than one cause:** *Performance Cars v. Abraham* [1962] 1 QB 33
- 3) **Loss of a chance:** *Hotson v. East Berkshire AHA* [1987] 1 All ER 909

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Damage (3)


Legal Causation: Remoteness

Until 1961: Direct consequence test
Re Polemis and Furness [1921] 3 KB 560

Since 1961: Reasonable foreseeability test

The Wagon Mound (No. 1) [1961] AC 388
D^s negligently discharged fuel oil into Sydney Harbour. Oil spread to P^s wharf where welding was taking place. The P^s were assured that there was no danger of the oil catching fire. 2 days later the oil caught fire and the wharf and ships were damaged.

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Damage (4)

Legal Causation: Remoteness

The Wagon Mound (No. 1) [1961] AC 388: Viscount Simonds

1) **Kind of damage needs to be foreseeable:**

Hughes v. Lord Advocate [1963] AC 837
D^s employees erected a tent over a manhole and surrounded it with paraffin lamps. 10 year old dropped a lamp down the hole and due to combustion, explosion occurred and P badly burned. HoL said they D^s were liable because it was not the extent of the damage that needed to be foreseeable or the manner in which it happened, but the kind of damage that occurred.

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Damage (5)

2) Extent of damage is not an issue:

Page v. Smith [1996]

P driving his car when he was involved in an accident caused by the D's negligence. Suffered no physical injury and no compensatable nervous shock. His claim was for the development of ME. Had suffered from ME for number of years, but was in remission. As result of accident, relapse.

3) Hyper-sensitive plaintiffs

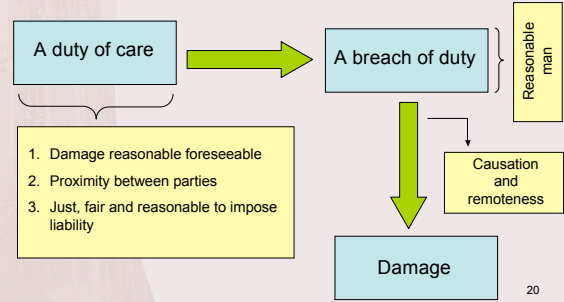
Smith v. Leech [1962] 2 QB 405

Burn on lip as a result of D's negligence. Burn caused cancer and died 3 years later. D's argued that not liable as could not have foreseen the damage. What was the result do you think?

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Back to Negligence ...



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