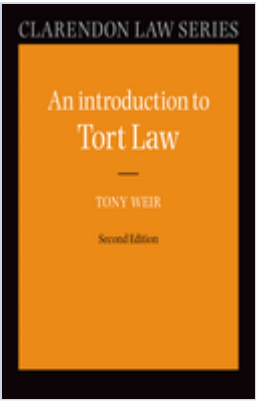

An Introduction to Tort Law (2nd edn)
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3. Breach of Duty

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Abstract

Celebrated for their conceptual clarity, titles in the Clarendon Law Series offer concise, accessible overviews of major fields of law and legal thought. This chapter discusses breach of duty. To establish breach of duty, it must be determined that there was some misbehaviour by the defendant himself. The chapter addresses the question of whether the defendant behaved reasonably. It considers factors such as foreseeability of harm objective standard, normal practice, utility of conduct, cost of prevention, conduct of others, and emergencies. It then turns to the identification of the breach.

Keywords: tort law, breach of duty, negligence, duty of care

If the existence of a duty of care is a question of law (and it is, even though the duty question is now said to be so heavily dependent on the proven facts that courts are reluctant to strike out a claim on the pleadings), the question whether the defendant was or was not in breach of that duty is surely one of fact. This means that decisions on breach are not citable as *authorities;* they are merely *illustrations* of the application of the indubitable rule that if one is under a duty at common law such care must be taken as is called for in all the circumstances.

Vastly more cases in the courts turn on whether there was a breach than on whether there was a duty, riveting though the latter matter is from the point of view of legal development and of scholars with articles to write. Fortunately or unfortunately, there is not much to say on the question of breach: we do not have exciting matters of policy to discuss, or even the question whether we should discuss them or not. On the breach

question, we are not asking whether it would or would not be good to make the defendant liable if he fell below what we are entitled to expect of him, we are asking simply whether he did in fact fall below that standard, the standard being set by the down-to-earth model of the reasonable, alert, mature, and considerate person in his position.

In the days when we had a jury in these cases, it was for them to decide whether the defendant was negligent or not, once the judge had decided that in law there was a duty to take care. The jury gave no reasons, just as it gives no reasons for convicting or acquitting the accused in criminal trials. Judges are obliged to give reasons, even for a correct conclusion, so what they say on the question of breach begins to look like law, but it is still really a 'jury' question, a matter of impression resulting from the consideration and weighing-up of lots of different factors. Jury findings were virtually unappealable, but appeals against similar findings by judges are now quite common. There are restrictions, however. In *Barber v Somerset CC* the Court of Appeal disagreed with the finding of the trial judge that the deputy headmistress had not behaved with sufficient sympathy for the teacher who was claiming damages for stress, but the House of Lords unwisely held by a majority that the Court of Appeal (with whose view of the law it was in entire agreement) was not entitled to reverse the trial judge's finding of fact.[1]

Different Duties

There are duties and duties, and they vary in intensity. A 'duty' laid down by statute may prescribe a certain result, so that there is a breach if that result is not achieved and the defendant will be liable even if he is not to blame at all, subject to any defence which the statute may provide. Duties at common law, by contrast, are normally duties to behave reasonably, so that a breach is only established if there is some misbehaviour by the defendant himself. Nevertheless there are some duties, even at common law, such that a party may be put in breach of his duty though he himself is in no way at fault. Duties of this intensity are described as 'non-delegable': it is enough to render the defendant liable if the party to whom he delegated performance of his duty failed to meet the appropriate standard. As has been said, there must be 'due diligence in the work itself '.[2] Among such duties at common law are those of the employer towards his employees as regards the safety of working conditions, and that of the bailee towards the bailor as regards the safety of the goods in his possession. As regards activities which he permits on his land the duty of the occupier of land towards his neighbour's property is probably of this intensity; towards visitors, by contrast, the occupier of premises is not answerable for the faults of his independent contractors, unless he should have realised that they were unreasonably endangering the visitors, in which case he is himself at fault and in breach of his personal duty to take all reasonable steps for their protection.

Concentration on breach of the defendant's duty, whether by himself or by his delegate, must not, however, lead one to suppose that a defendant is necessarily exempt from liability just because no duty incumbent on him was breached: he may well be answerable for someone else's breach of duty, as is the case of the employer whose employee commits a tort in the course and scope of his employment. This 'vicarious liability' calls for detailed consideration in Chapter 6.

The Test of Reasonableness

Here we shall focus on the normal duty in the tort of negligence, the duty to take such care as is required in all the circumstances to see that the person to whom the duty is owed does not suffer foreseeable damage of an appropriate kind. It is not a duty to *ensure* safety, but a duty to *try*— not, however, just a duty to try one's best, but a duty to reach the proper standard of effort, unavailing though it may prove to be. The critical question is whether the defendant behaved *reasonably,* and in deciding what the answer to this question should be many factors play a role. This is not surprising since the question is whether the defendant behaved reasonably *in all the circumstances,* and the circumstances may vary greatly. In particular, while the duty is constant, the steps to be taken to meet it vary enormously depending on the situation. Consider, for example, how cautiously one should carry a baby and a beach ball respectively. As Sedley LJ has said: 'a ubiquitous duty of care does not imply a uniform standard of care'.[3]

A definition was hazarded in 1856: 'Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do'.[4] Perhaps Baron Alderson was wrong to prioritise 'omission', for we have seen that when, as it usually is, the duty is to refrain from damaging the victim, the breach of this duty (if one is to be negative) must be a failure to refrain, that is, some positive conduct. As we saw earlier, Stevenson's breach of duty did not consist in failing to keep the snail out of the bottle, but in putting into circulation a bottle which was poisonous owing to his want of care. Viscount Simonds made the point when he said in criticism of the pleadings in a case where a workman had been blinded by the fracture of a metal tool called a drift, '... the accident occurred not through a failure to supply a suitable drift—a failure that could result in nothing—but through the supply of an unsuitable drift. Therein lay the alleged negligence...'.[5] Omissions constitute a breach of duty only where there is a duty to take positive steps. Such a duty certainly exists at common law in the case of the bailee and the occupier and has recently been extended to certain cases where the defendant can be said to have 'assumed responsibility', especially by inducing the victim to rely on his expertise, but generally, in the absence of a special relationship, a breach consists in a positive act, the duty being a duty to avoid causing harm by acting carelessly.

Relevant Factors

Foreseeability of Harm

If conduct, duly appraised at the time, appears perfectly innocuous, quite unlikely to cause any harm, it can hardly be called negligent. Thus in one case patients were severely injured because the drug with which they were injected had been adulterated by the antiseptic liquid in which the ampoules were kept. The antiseptic had seeped into the ampoules through tiny invisible cracks. These cracks must have been due to a slight jolting in the hospital, but since no one knew at the time that such a slight jolt might cause invisible cracks through which seepage could occur, the hospital was held not liable.[6] Now that we know better (thanks to that very incident, actually), it would be negligent to use a drug from an ampoule which had been kept in a bath of unstained antiseptic, since the precaution of staining is simple to take and effective to disclose adulteration.

Likewise employers are not liable for failure to take precautions against conditions which are not recognised at the time as sufficiently deleterious to workmen's health to require them.[7] Nor, by statute, are producers of a product which only subsequent developments in scientific knowledge have enabled us to recognise as defective.[8]

It is relevant not only whether some harm is likely but also how serious the foreseeable harm is. Even if the harm is not really likely to occur but would be extremely serious in the unlikely event that it did occur, the duty may require one to take precautions to avoid it. The case always cited involved a one-eyed workman in Stepney called Paris, though he was more like the Cyclops than his namesake who preferred Aphrodite to Athene and triggered the Trojan War. Because Paris would be totally blind if his one eye were injured whereas his fellow-workmen if similarly injured would still be able to see, their employer owed Paris a duty to take particular precautions to guard him against such injury.[9] Risk involves not only chance of injury but the seriousness of injury should it occur.

It must be remembered, however, that although foreseeability of harm is a relevant factor when conduct falls to be evaluated, it is only one factor among others, and the crucial question is whether the defendant behaved reasonably in the light of all the factors. Thus it is eminently foreseeable that people in a demanding job may suffer stress, but as Simon Brown LJ said once, 'It is not easy to make good … a claim in negligence for … work-related stress… Unless there was a real risk of breakdown which the claimant's employers ought reasonably to have foreseen *and which they ought properly to have averted,* there can be no liability'.[10]

Objective Standard

It is said that the test of negligence is 'objective', independent, that is, of the defendant's own attitude or qualities. Thus a farmer whose stack of wet hay spontaneously ignited and caused a fire was held liable although he sincerely believed that this could not happen.[11] He was not conscious of doing anything dangerous, but most farmers knew better. What if the defendant was not conscious at all? A driver who has a heart attack at the wheel is not liable unless he should have known of the risk,[12] but by contrast, a man who had a stroke but continued to drive, though very erratically, was indeed held liable.[13] Nor is it relevant, if a car is being badly driven, that the driver was just a learner: a provisional driving licence is not a licence to injure.[14] Senility is clearly not a mitigating factor, since even the very old are old enough to know better, but what of infancy? Most of the cases involve kids engaging in childish activities such as fencing with plastic rulers (in class!),[15] and the tendency seems to be to ask what a person of their age could be expected to do. The question comes up more often as regards the feckless child's own claim, which will be discussed in Chapter 8 on contributory negligence.

To be noted is that it is not the defendant's *general* conduct but his conduct with regard to the particular incident which is in issue. If one answers a particular question incorrectly, it is irrelevant that one gave a perfect answer to the previous thousand inquiries. If a particular tree on one's estate would, if inspected, be seen to be dangerous, it is no answer that one was inspecting other trees on the estate and would have reached that tree tomorrow. During the war when many bombed buildings in London were in a state of collapse, a loose pane of window glass fell on the plaintiff passer-by. That pane could easily have been

tweaked out, and it was nothing to the point that the agent was admirably busy seeing to other, perhaps more pressing, dangers.[16] On the other hand, a mother cannot be expected to keep her eye on a child, or every child, every moment of the day.

Normal Practice

If the defendant has acted in a perfectly normal manner, he is unlikely to be held liable in negligence. Accordingly, if in the area in question there is a normal practice it must generally be shown that the defendant deviated from it. But the normal and the normative are not necessarily congruent, and the courts are ready on occasion to state that what is generally done is not good enough, and conversely to uphold beneficial deviations, for progress always takes the form of deviation from standard practice. In many areas there are Codes of Practice, not binding as law but nevertheless indicative of what people in that group think proper. The Highway Code is just one example, not binding but informative.

But experts may disagree on what is proper procedure. This happened very often when the plaintiff and defendant chose their own experts as witnesses. Recent procedural changes emphasise that a joint report is very desirable, and even permit the judge to appoint a court expert, as is the practice on the continent. But it may be clear that there are two or more quite respectable views about what should be done in particular circumstances. Here the courts adopt the *Bolam* test, originally in medical matters, whereby if the defendant acted in a manner regarded as acceptable by a reputable group of experts, he will not be held negligent even if others in the profession quite plausibly prefer another procedure.[17] To attacks on this position as an improper deference by the judiciary to the medical profession the courts have responded by emphasising that they do reserve the right to disapprove even a widely-held view and treat adherence to it as negligent, as they have done with certain practices of solicitors.[18] On the other hand, courts which impose novel duties, as they have done in the fields of social services and education, seek to allay fears that liability will become rampant by emphasizing that the *Bolam* test applies, and that in consequence findings of breach will be less common than one might suppose. Such comforting and complacent predictions are never supported by evidence, and like most wishful thinking commonly prove false.

Utility of Conduct

If some harm is foreseeable, one must ask whether the conduct was at all useful. If the conduct was useless, then a very slight risk of harm will suffice to stamp it as negligent. Thus to spill oil when you are supposed to be filling an oil-tank is certainly negligent: there is nothing to be said in its favour. On the other hand, if the aim of the exercise is praiseworthy, one may be entitled to take the risk of causing harm to others, provided that that harm is either not at all likely, or is unlikely to be serious. The leading case of *Bolton v Stone* needs to be carefully understood.[19] The defendants were a cricket club in Cheetham. The point of cricket, in so far as it has one, is for the batsman to hit the ball out of sight, for which he is awarded extra points. The road outside the cricket ground (there is always a road outside a cricket ground) was not a very busy road, it was a residential district, and very occasionally the bowler was so bad or the batsman so good that a ball was hit out of the ground. On one such occasion when Miss Stone was standing outside her house a ball struck her on the head. The club was held not liable: the ground was sufficiently large and sufficiently fenced—not, certainly, as

events had shown, sufficiently to guarantee that there would be no accidents, but sufficiently to reduce the risk of accident to an acceptable level, given the importance of cricket to British manhood. In brief, the harm was not unforeseeable, but it was not unreasonable of the defendants not to guard against it.

Cost of Prevention

That point could be put another way. In order to avoid the tiny risk that once in a blue moon someone like Miss Stone might be hit by a really exceptional stroke, the cricket ground would have had to be roofed in like the Astrodome or surrounded by an absurdly high fence. In other words, the precautions one must or need take are those proportional to the risk, provided of course that what one is doing is worth doing in the first place. Shortly after the war the floor of a factory was wet, and a workman slipped on it. It was held at common law that in all the circumstances it would not have been reasonable to close the factory just because it was possible that some such minor accident might occur. In other words one may ask whether it would be reasonable to require the defendant to do what was necessary in order to avoid the risk which eventuated.[20] (Regulations now provide that 'So far as is reasonably practicable, every floor in a workplace and the surface of every traffic route in a workplace shall be kept free from obstruction and from any article or substance which may cause a person to slip, trip or fall'.) This has led to liability in some not very deserving cases: the secretary who tripped over a wastepaper basket, the cleaning lady who fell over a box on the floor of the schoolroom she was cleaning, the fireman who slipped on an invisible layer of dust on the floor....

Just as the Regulations require the employer to do everything that is reasonably practicable, despite the effect on business, other occupiers may be put to expense in taking the required precautions. These may not be the only costs. A social cost may also be involved. Just as one should not forget that contracting parties may have family and creditors who will be affected by the decision *inter partes,* so in tort one should not focus so exclusively on victim and defendant as to ignore the effect a decision may have on the general public. In *Tomlinson v Congleton BC,* for example, the House of Lords emphatically, indeed indignantly, reversed the Court of Appeal which had held, in a claim by a young man who had injured himself in a reservoir where swimming was strictly prohibited but notoriously took place, that the occupier was negligent in not erecting a physical barrier which would have barred access to the water altogether.[21] But why should law-abiding third parties be prevented from having innocent fun paddling and playing with spade-and-bucket just because reckless youths might contrive to injure themselves by flagrant disregard of prohibitions designed to protect them? Very strikingly, we find the Compensation Bill 2005 proposing that 'A court considering a claim in negligence may, in determining whether the defendant should have taken particular steps to meet the standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or (b) discourage persons from undertaking functions in connection with a desirable activity.' This has been criticised as merely restating the law, but sometimes (as the decision of the Court of Appeal shows) a restatement of familiar aspects of the law is necessary.

In *Tomlinson* it was a prohibition not a warning, but a warning is a precaution which it is usually easy and cheap to take. Even if one cannot defuse a danger, an adequate warning can often prevent damage resulting from it. Accordingly the Occupier's Liability Act 1957 provides that a warning may satisfy the occupier's duty to take reasonable care to see that his visitors are reasonably safe, and failure to give a warning which would

probably have avoided the damage may well give rise to liability more generally. Thus in *Al-Kandari v Brown*[22] it looked as if the plaintiff's husband might try to kidnap their children and take them abroad, so the defendant firm of solicitors undertook to prevent him getting hold of his passport. They quite properly took it to his Embassy for processing, but the Embassy staff refused to return it to them, and there was nothing the defendants could do about getting the passport back. They were nevertheless held liable when the man got his passport, beat up his wife and absconded with the children, for they could (and should) have warned the wife so that she could get herself and the children out of harm's way.

We have seen that the courts are reluctant to impose on private citizens a positive duty to protect others from harm extrinsic to their activities. This may be in part because taking precautions may cost money. We have seen, too, that the cost of taking adequate precautions may sometimes justify failure to take them. In this connection the courts should be hesitant to interfere with the budgetary decisions of public authorities, though such considerations are irrelevant when the body is under an actionable statutory duty. On occasion, however, the duty itself is modified. Thus while the occupier of premises must certainly take care that those he permits to enter his land are reasonably safe, and must also guard his neighbour against the adverse effects of activities he conducts or permits to be conducted on his land, if the person injured is not permitted to be there, or the harm results to one's neighbour from natural events on one's land rather than any activity, the duty appears to be modified. In these cases the legislature has laid down that the occupier is liable to a trespasser only if the 'risk is one against which in all the circumstances of the case, he may reasonably be expected to offer... some protection' and as to his neighbour the courts have introduced the ' measured duty of care' , which prevented a hotel which fell into the sea from getting damages from the (public) occupier of the seaward land for failure to engage in very expensive coastal protection works.[23]

Conduct of Others

Conduct is sometimes risk-free only on the supposition that others will themselves behave reasonably. It *may,* therefore, be negligent in a driver not to look right and left at a junction even if the light is green, especially if it has just changed in his favour. As Lord Uthwatt once observed: 'A driver is not, of course, bound to anticipate folly in all its forms, but he is not... entitled to put out of consideration the teachings of experience as to the form those follies commonly take'.[24] Likewise, children are very apt to hurt themselves when adults with more sense would not. It is accordingly appropriate for the Occupier's Liability Act 1957 to provide that 'an occupier must be prepared for children to be less careful than adults'. Contrariwise, if the only persons in the danger area are those who are especially good at looking after themselves, this may modify the precautions required of the occupier. You need not tell experts their business.[25]

But if it may be negligent to act on the supposition that others will act with proper care for third parties and indeed themselves (for their own contributory fault will not neutralise the defendant's carelessness but only affect the amount of damages), what about the case where the intervention is deliberate and exploits the situation created or controlled by the defendant with resulting hurt to the claimant? The difficulties here may sometimes be more conveniently resolved in terms of causation rather than breach, on the basis that the deliberate act of the third party, even if foreseeable, may insulate the defendant from liability for what might otherwise be seen as the consequences of his behaviour, but one may also ask whether it was negligent of the defendant not to take steps to avoid such intervention. In one case an unlocked bus with the keys in the

ignition was left outside a pub for hours and hours, which is hardly reasonable, but the bus company was held not liable when the bus was stolen and the thief, whose identity remained unknown, ran over and killed a cyclist[26] (had it not been a regular bus, the claim would have been met by the Motor Insurers' Bureau). We have seen, too, that the owners of a disused cinema were not liable to the neighbour whose property was burnt down when vandals entered the cinema and set fire to some film scraps there: the neighbourhood was not notorious for vandalism, so that the chance of forced entry was slight, and could not be prevented save by having a 24-hour guard, which it would be unreasonable to require in the case of every empty and unalluring building.[27] On the other hand, if the deliberate and damaging act was 'the very thing' that the duty was imposed to prevent, liability may be established. Thus a decorator who had agreed to lock the door of the house and failed to do so was held liable when a thief entered and stole the customer's property; after all, it is against thieves, not rain, that doors are locked.[28] Again, when the police admitted that they had a duty to try to prevent a detainee from committing suicide (there is no duty unless suicide can be foreseen),[29] they were held liable when they negligently failed to prevent his doing so.[30] Note that in both these cases there was a special relationship involving an assumption of responsibility.

Emergencies

Conduct which would certainly be unreasonable in normal circumstances may well not be held negligent if it is a reaction to an emergency. Thus in one case the plaintiffs were proceeding quite normally on the correct side of a four-lane highway when the defendant's lorry crossed the central line and crashed into them, something that manifestly calls for explanation. The defendant established that a car in front of him had suddenly and without warning swerved into his path and he himself had had to swerve in order to avoid a collision. He was acquitted of negligence.[31] So was the shipowner who deliberately offloaded oil from his vessel into the sea, whence it fouled the plaintiff's foreshore; he needed to do this in order to save the lives of the crew aboard. It would have been different had it been the defendant's fault that the emergency arose[32] (there is now strict liability by statute for oil pollution).

Degrees of Negligence?

One oddity of our law is that if one falls at all below the requisite standard, it is immaterial how far below it one falls. In other words, it apparently doesn't matter how slight or gross the negligence is. This is clearly counterintuitive. Other systems operate quite nicely with the concept of gross negligence, without which in certain situations there will be no liability, slight negligence not being enough. In our own system, outside the area of private law, we used to apply an analogous concept. Until very recently the decisions of public bodies were apt to be quashed only if they were *'Wednesbury* unreasonable', that is, very unreasonable indeed. Again, the proposed law against corporate killing specifies that the accused's conduct must fall 'far below' what can rightly be expected. To dispense with so useful a concept in private law is really unjustifiable. The reason it is so repeatedly rejected comes from a quotable quote by a Victorian judge that 'Gross negligence is simply negligence with a vituperative epithet'.[33] It is nothing of the sort: it is no more difficult to say whether a person fell far below the acceptable standard than whether he fell below it at all. There is no real difficulty in saying whether conduct is more or less negligent, and the courts every day apportion liability on the basis of how negligent a party was, whether as between the claimant and the defendant under the Contributory

Negligence Act 1945 or between different tortfeasors under the Contribution Act 1978. Particularly in the novel areas of liability, such as those of public bodies as regards social welfare and educational functions, it would be very useful to accept the principle that in order to involve liability misconduct must be really manifest, instead of hiding, as judges do, behind an invocation of the *Bolam* test. Here one may ponder the observation of Lord Bingham, pressed with the suggestion that in cases against public authorities the focus should shift from duty to breach: 'if breach rather than duty were to be the touchstone, no breach could be proved without showing a very clear departure from ordinary standards of skill and care'.[34] The notion of gross negligence would also be useful (and just) in the area of claims for sporting injuries. Indeed, on one view, sportsmen are liable for injuring their opponents only if their conduct constitutes more than an error of judgment and amounts to something really unnecessarily dangerous.[35]

Misrepresentation

Liability in negligence may be imposed not only on those whose dangerous conduct causes physical harm but also, since 1963, on those whose careless speech or other transactional conduct causes merely financial harm. Speech is subject to a criterion inappropriate to physical conduct, namely accuracy. Being wrong in what one says is not quite the same as doing wrong in what one does, but there is a tendency to suppose that it is enough for liability that what one said was wrong. Indeed the absurd Misrepresentation Act 1967 presumes that if what you said was wrong it was wrong of you to say it: you are presumed from the mere fact of error to have been at least negligent, perhaps even fraudulent! This is grotesque. One may, of course, if paid, guarantee the truth of what one says, and then one will be liable simply because it was not true, but for tortious liability in misrepresentation at common law you must not only have said something inaccurate or misleading, but must have been at fault in saying or believing it.[36]

Identification of the Breach

The next stage of the enquiry being to ascertain whether the tortfeasor's breach of duty contributed to the occurrence of the injury, it is clearly necessary to identify precisely what he did wrong, what he did that he shouldn't have done or didn't do that he should. If there are several aspects of the tortfeasor's conduct which can be criticised, the sensible claimant will pick on one with some causative effect. If a person driving uninsured and without a licence causes an accident by turning right without indicating his intention, it is on the last aspect of his conduct that the sensible claimant will focus rather than his other delinquencies.

The importance of ascertaining exactly in what respect the defendant fell short of what was required can be seen in a case already mentioned.[37] The defendant motorist collided with the claimant pedestrian as she emerged into the defendant's path from behind a stationary transit van. The defendant was driving at 20 miles per hour, which was too fast in the prevailing conditions, but the accident would still have happened if she had been driving at quarter of that speed, which would have been perfectly reasonable. The judge's decision for the defendant (no causation) was upheld, though for the wrong reason (no duty!): since the accident would have happened just the same if the defendant had been driving with reasonable care, her failure to do so did not contribute to its occurrence.

Notes

1 [2004] UKHL 13.

2 *Riverstone Meat Co v Lancashire Shipping Co* [1961] 1 All ER 495 at 523.

3 *Vellino v Chief Constable* [2001] EWCA Civ 1249, para 45.

4 *Blyth v Birmingham Waterworks* (1856) 156 ER 1047 at 1049.

5 *Davie v New Merton Board Mills* [1959] AC 604 at 617.

6 *Roe v Minister of Health* [1954] 2 All ER 131.

7 *Thompson v Smiths Shiprepairers* [1984] 1 All ER 881 at 895.

8 Consumer Protection Act 1987, s 4(i)(e) 60

9 *Paris v Stepney BC* [1951] AC 367.

10 *Garrett v Camden London Borough Council* [2001] EWCA Civ 395 (emphasis added),para 63; and see *Hatton v Sutherland* [2002] EWCA Civ 76.

11 *Vaughan v Menlove* (1837) 132 ER 490.

12 *Waugh v James K Allen* 1964 SLT 269.

13 *Roberts v Ramsbottom* [1980] 1 All ER 7.

14 *Nettleship v Weston* [1971] 3 All ER 581.

15 *Mullin v Richards* [1978] 1 All ER 920.

16 *Leanse v Egerton* [1943] 1 All ER 489.

17 *Bolam v Friern Barnet Hospital Management Committee* [1957] 2 All ER 118.

18 *Bolitho v City and Hackney Health Authority* [1997] 4 All ER 771 at 779.

19 [1951] 1 All ER 1078.

20 *Latimer v AEC* [1953] 2 All ER 449.

21 *Tomlinson v Congleton BC* [2003] UKHL 47.

22 [1988] 1 All ER 833.

23 *Holbeck Hall v Scarborough BC* [2000] 2 All ER 705.

24 *London Passenger Transport Board v Upson* [1949] AC 155 at 173.

25 *Ferguson v Welsh* [1987] 3 All ER 777.

26 *Topp v London Country Bus* [1993] 3 All ER 448.

27 *Smith v Littlewoods Organization* [1987] 1 All ER 710.

28 *Stansbie v Troman* [1948] 2 KB 48.

29 *Orange v Chief Constable* [2001] 3 WLR 736.

30 *Reeves v Commissioner of Police* [1999] 3 All ER 897.

31 *Ng Chun Pui v Lee Chuen Tat* [1988] RTR 298.

32 *Esso Petroleum v Southport Corporation* [1955] 3 All ER 864.

33 *Wilson v Brett* (1843) 152 ER 737 at 739.

34 *D v East Berkshire Community Health NHS Trust* [2005] UKHL 23 at 49.

35 *Caldwell v Maguire* [2001] EWCA Civ 1054.

36 *Gooden v Northamptonshire CC* [2001] EWCA Civ 1744.

37 *Sam v Atkins* [2005] EWCA Civ 1452.