

The background of the cover is a vibrant, abstract composition of vertical paint drips in various colors including blue, green, yellow, orange, red, and purple. The drips are thick and glossy, creating a sense of movement and depth. A white semi-transparent box is overlaid on the center of the cover, containing the text.

Eleventh edition

# Tort Law

Catherine Elliott & Frances Quinn

# Tort Law



Pearson

At Pearson, we have a simple mission: to help people make more of their lives through learning.

We combine innovative learning technology with trusted content and educational expertise to provide engaging and effective learning experiences that serve people wherever and whenever they are learning.

From classroom to boardroom, our curriculum materials, digital learning tools and testing programmes help to educate millions of people worldwide – more than any other private enterprise.

Every day our work helps learning flourish, and wherever learning flourishes, so do people.

To learn more, please visit us at [www.pearson.com/uk](http://www.pearson.com/uk)

Eleventh Edition

# Tort Law

Catherine Elliott and  
Frances Quinn



Pearson

---

Harlow, England • London • New York • Boston • San Francisco • Toronto • Sydney  
Dubai • Singapore • Hong Kong • Tokyo • Seoul • Taipei • New Delhi  
Cape Town • São Paulo • Mexico City • Madrid • Amsterdam • Munich • Paris • Milan

**Pearson Education Limited**

Edinburgh Gate  
Harlow CM20 2JE  
United Kingdom  
Tel: +44 (0)1279 623623  
Web: [www.pearson.com/uk](http://www.pearson.com/uk)

First published 1996 (print)  
Second edition published 1999 (print)  
Third edition published 2001 (print)  
Fourth edition published 2003 (print)  
Fifth edition published 2005 (print)  
Sixth edition published 2007 (print)  
Seventh edition published 2009 (print)  
Eighth edition published 2011 (print)  
Ninth edition published 2013 (print and electronic)  
Tenth edition published 2015 (print and electronic)  
**Eleventh edition published 2017 (print and electronic)**

© Pearson Education Limited 1996, 1999, 2001, 2003, 2005, 2007, 2009, 2011 (print)

© Pearson Education Limited 2013, 2015, 2017 (print and electronic)

The rights of Catherine Elliott and Frances Quinn to be identified as authors of this work have been asserted by them in accordance with the Copyright, Designs and Patents Act 1988.

The print publication is protected by copyright. Prior to any prohibited reproduction, storage in a retrieval system, distribution or transmission in any form or by any means, electronic, mechanical, recording or otherwise, permission should be obtained from the publisher or, where applicable, a licence permitting restricted copying in the United Kingdom should be obtained from the Copyright Licensing Agency Ltd, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN.

The ePublication is protected by copyright and must not be copied, reproduced, transferred, distributed, leased, licensed or publicly performed or used in any way except as specifically permitted in writing by the publishers, as allowed under the terms and conditions under which it was purchased, or as strictly permitted by applicable copyright law. Any unauthorised distribution or use of this text may be a direct infringement of the authors' and the publisher's rights and those responsible may be liable in law accordingly.

All trademarks used herein are the property of their respective owners. The use of any trademark in this text does not vest in the author or publisher any trademark ownership rights in such trademarks, nor does the use of such trademarks imply any affiliation with or endorsement of this book by such owners.

Contains public sector information licensed under the Open Government Licence (OGL) v3.0.  
<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Pearson Education is not responsible for the content of third-party internet sites.

ISBN: 978-1-292-15609-5 (print)  
978-1-292-15611-8 (PDF)  
978-1-292-15610-1 (ePub)

**British Library Cataloguing-in-Publication Data**

A catalogue record for the print edition is available from the British Library

**Library of Congress Cataloging-in-Publication Data**

Names: Elliott, Catherine, 1966- author. | Quinn, Frances, 1963- author.  
Title: Tort law / Catherine Elliott and Frances Quinn.  
Description: Eleventh edition. | Harlow, England : Pearson, 2017.  
Identifiers: LCCN 2016059048 | ISBN 9781292156095 (Print) | ISBN 9781292156118  
(PDF) | ISBN 9781292156101 (ePub)  
Subjects: LCSH: Torts--England.  
Classification: LCC KD1949 .E44 2017 | DDC 346.4203--dc23  
LC record available at <https://lccn.loc.gov/2016059048>

10 9 8 7 6 5 4 3 2 1  
21 20 19 18 17

Print edition typeset in 9/12.5 Frutiger LT Com by SPi Global  
Printed in Slovakia by Neografia

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

# Brief contents

Preface	xiii
Acknowledgements	xiv
Table of cases	xv
Tables of statutes, statutory instruments and European legislation	xxvii
<b>1</b> Tort law: an introduction	1
<b>2</b> Negligence: elements of the tort	15
<b>3</b> Negligence: causation, defences, limitation and criticism	54
<b>4</b> Negligence: psychiatric injury	100
<b>5</b> Negligence: economic loss	120
<b>6</b> Negligence: public bodies	137
<b>7</b> Employers' liability	157
<b>8</b> Occupiers' liability	172
<b>9</b> Product liability	192
<b>10</b> Breach of statutory duty	216
<b>11</b> Defamation	228
<b>12</b> Privacy	268
<b>13</b> Nuisance	288
<b>14</b> The rule in <b>Rylands v Fletcher</b>	313
<b>15</b> Trespass to land	325
<b>16</b> Trespass to the person	336
<b>17</b> Joint and several liability	357
<b>18</b> Vicarious liability	363
<b>19</b> Remedies in tort	384
Appendix: Answering examination questions	408
Glossary	413
Index	417



# Contents

Preface	xiii
Acknowledgements	xiv
Table of cases	xv
Table of statutes, statutory instruments and European legislation	xxvii
<b>Chapter 1 Tort law: an introduction</b>	<b>1</b>
Comparing tort with other legal wrongs	2
The role of policy	3
Tort and the requirement of fault	4
Reasons for a requirement of fault	4
Arguments against a requirement of fault	5
Alternative methods of compensation for personal injury	7
Reform of the tort system	10
Answering questions	12
Summary of Chapter 1	12
Reading list	13
<b>Chapter 2 Negligence: elements of the tort</b>	<b>15</b>
Duties of care	16
The 'floodgates' argument	17
Impact on insurance	17
Impact on social activities and business	18
Public policy	18
Development of the law on duties of care	18
Duties of care: the Caparo test	22
Duties of care for omissions	26
Duties of care for third party acts	28
Breach of a duty of care	32
The standard of reasonableness	33
Damage	45
Answering questions	49
Summary of Chapter 2	51
Reading list	52



● <b>Chapter 3 Negligence: causation, defences, limitation and criticism</b>	<b>54</b>
Causation	55
The 'but for' test	55
Multiple causes	58
Intervening events	65
Remoteness of damage	67
The tests for remoteness	67
Proving negligence	72
Defences	73
Contributory negligence	74
<i>Volenti non fit injuria</i> (consent)	77
Illegality	81
Statutory authority	84
Inapplicable defences	85
Time limits	86
Personal injury cases	88
Reform of limitation periods	91
Criticisms of negligence law	91
Compensating victims of harm	92
Marking fault	93
Deterring carelessness	94
Spreading risk	94
Individualism and negligence	95
An economic solution?	95
Answering questions	96
Summary of Chapter 3	97
Reading list	99
● <b>Chapter 4 Negligence: psychiatric injury</b>	<b>100</b>
What is psychiatric injury?	101
Answering questions	117
Summary of Chapter 4	118
Reading list	119
● <b>Chapter 5 Negligence: economic loss</b>	<b>120</b>
Economic loss and policy	121
Answering questions	134
Summary of Chapter 5	135
Reading list	135

<b>Chapter 6 Negligence: public bodies</b>	<b>137</b>
The police	138
Answering questions	155
Summary of Chapter 6	156
Reading list	156
<b>Chapter 7 Employers' liability</b>	<b>157</b>
Employers' liability: the historical position	158
The employer's personal duty	160
Types of harm	163
The scope of the employer's duty	168
Defences	169
Answering questions	169
Summary of Chapter 7	170
Reading list	171
<b>Chapter 8 Occupiers' liability</b>	<b>172</b>
The law before the Occupiers' Liability Acts	173
Who is an occupier?	174
Liability to visitors: Occupiers' Liability Act 1957	175
Defences under the 1957 Act	181
Liability to trespassers: Occupiers' Liability Act 1984	182
Defences under the 1984 Act	186
Answering questions	188
Summary of Chapter 8	189
Reading list	190
<b>Chapter 9 Product liability</b>	<b>192</b>
Product liability in contract	193
Product liability in negligence	195
The Consumer Protection Act 1987	200
Other remedies for defective products	210
Answering questions	211
Summary of Chapter 9	213
Reading list	214
<b>Chapter 10 Breach of statutory duty</b>	<b>216</b>
Scope of the tort	217
Elements of the tort	222
Defences	224

Problems with statutory torts	224
Breach of EU legislation	225
Answering questions	225
Summary of Chapter 10	226
Reading list	226
<b>Chapter 11 Defamation</b>	<b>228</b>
Elements of defamation	229
Parties to a defamation action	238
Defences	241
Remedies for defamation	256
Issues in defamation	258
Answering questions	262
Summary of Chapter 11	264
Reading list	266
<b>Chapter 12 Privacy</b>	<b>268</b>
The background to privacy protection	269
The current law on privacy	270
Elements of the tort	272
Remedies	283
Answering questions	284
Summary of Chapter 12	286
Reading list	286
<b>Chapter 13 Nuisance</b>	<b>288</b>
Private nuisance	289
Elements of the tort	289
Who can be sued?	295
Who can sue?	298
Defences	299
Remedies	303
Problems with private nuisance	304
Nuisance and human rights	305
Public nuisance	306
Tort actions for public nuisance	307
Differences between private and public nuisance	308
Answering questions	308
Summary of Chapter 13	309
Reading list	311

<b>Chapter 14</b>	<b>The rule in Rylands v Fletcher</b>	<b>313</b>
	Elements of the tort	314
	Who can sue?	318
	The mental element	318
	Defences	319
	Relationship to other torts	320
	The role of <b>Rylands v Fletcher</b>	321
	Answering questions	322
	Summary of Chapter 14	323
	Reading list	324
<b>Chapter 15</b>	<b>Trespass to land</b>	<b>325</b>
	Elements of the tort	326
	The mental element	330
	Defences	330
	Remedies	332
	Trespass in the criminal law	334
	Answering questions	334
	Summary of Chapter 15	335
	Reading list	335
<b>Chapter 16</b>	<b>Trespass to the person</b>	<b>336</b>
	Assault	337
	Battery	339
	False imprisonment	341
	Defences	344
	Other protections from physical harm	348
	Answering questions	353
	Summary of Chapter 16	354
	Reading list	356
<b>Chapter 17</b>	<b>Joint and several liability</b>	<b>357</b>
	Types of liability	358
	Answering questions	361
	Summary of Chapter 17	361
	Reading list	362
<b>Chapter 18</b>	<b>Vicarious liability</b>	<b>363</b>
	Who is an employee?	364
	In the course of employment	369
	Independent contractors	378

Why is vicarious liability imposed?	379
Answering questions	380
Summary of Chapter 18	382
Reading list	383
<b>Chapter 19 Remedies in tort</b>	<b>384</b>
Damages	385
Compensatory damages	385
Compensation for personal injury	387
Non-compensatory damages	396
Problems with damages	400
Injunctions	401
Interlocutory injunctions	402
Damages in lieu of injunction	402
Answering questions	404
Summary of Chapter 19	404
Reading list	406
<b>Appendix: Answering examination questions</b>	<b>408</b>
General guidelines	408
Essay questions	409
Problem questions	411
Glossary	413
Index	417

# Preface

As always, the period between the last edition of this book going to press, and this one being prepared has seen plenty of developments in the law of tort. In this 11<sup>th</sup> edition, we cover the first cases to come to court since the Defamation Act 2013 came into force, as well as new developments in the ever-evolving law of privacy or, as we have now been officially told we can call it, misuse of private information. Other areas which have seen interesting cases in the past couple of years include the illegality defence, liability of public bodies for negligence, vicarious liability and the tort in **Wilkinson v Downton**, often assumed to be a relic of history and yet capable of giving a very lifelike twitch just when you least expect it.

In this edition, we have restructured the coverage of negligence, dividing up what was a single chapter so that liability for economic loss and psychiatric injury now have chapters of their own. This was in response to suggestions from lecturers, who felt that these topics had become too large and unwieldy to sit in a general chapter on the principles of negligence. We agree, and hope the new structure will make these two quite difficult areas more accessible – but we would be interested to hear the views of other teachers, and students, on the change.

As with the previous editions, our aim is to provide a clear explanation of the law of tort. As well as setting out the law itself, we look at the principles behind it, and discuss some of the issues and debates arising from tort law. We hope that the material here will allow you to enter into that debate and develop your own views as to how the law should develop.

One of our priorities in writing this book has been to explain the material clearly, so that it is easy to understand, without lowering the quality of the content. Too often, law is avoided as a difficult subject, when the real difficulty is the vocabulary and style of legal textbooks. For that reason, we have aimed to use ‘plain English’ as far as possible, and explain the more complex legal terminology where it arises. There is also a glossary of legal terms at the back of the book. In addition, chapters are structured so that material is in a systematic order for the purposes of both learning and revision, and clear subheadings make specific points easy to locate.

Although we hope that many readers will use this book to satisfy a general interest in the law, we recognise that the majority will be those who have to sit an examination on the subject. Therefore, each chapter features typical examination questions, with detailed guidance on answering them, using the material in the book. This is obviously useful at revision time, but we recommend that when first reading the book, you take the opportunity offered by the ‘Answering questions’ sections to think through the material that you have just read and look at it from different angles. This will help you both understand and remember it. You will also find a section at the end of the book which gives useful general advice on answering exam questions on tort law.

This book is part of a series, all the books in which have been written by the current authors. The other books in the series are *The English Legal System*, *Criminal Law* and *Contract Law*.

We have endeavoured to state the law as at 1 January 2017.

Catherine Elliott and Frances Quinn  
London 2016

# Acknowledgements

We are grateful to the following for permission to reproduce copyright material:

## Text

Extract on page 23 from *Caparo Industries plc v Dickman* [1990] 2 AC 605; Extract on page 35 from *Bolam v Friern Barnet Hospital Management Committee* [1957] 1 WLR 582; Extract on pages 32–3 from *Nettleship v Weston* [1971] 2 QB 691; Extract on page 58 from *Page v Smith (No 2)* [1996] 1 WLR 855; Extract on page 76 from *Gough v Thorne* [1966] 1 WLR 1387; Extract on page 81 from *Delaney v Pickett* [2012] 1 WLR 2149; Extracts on page 84, page 218, page 220 from *X v Bedfordshire County Council* [1995] 2 AC 633; Extract on page 108 from *Mcloughlin v O'Brian* [1983] 1 AC 410; Extracts on page 108, pages 113–4 from *Alcock v Chief Constable of Yorkshire* [1992] 1 AC 310; Extract on page 132 from *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145; Extract on page 133 from *Smith v Eric S Bush* [1990] 1 AC 831; Extract on page 151 from *Rabone v Pennine Care NHS Foundation Trust* [2012] 2 AC 72; Extract on page 162 from *Wilson v Tyneside Window Cleaning Co* [1958] 2 QB 110; Extract on page 176 from *McGeown v Northern Ireland Housing Executive* [1995] 1 AC 233; Extract on page 206 from *Roe v Minister of Health* [1954] 2 QB 66; Extract on page 207 from *European Commission v United Kingdom (Case C-300/95)* [1997] ECR I-2649. © European Union, 1995–2017; Extract on page 249 from *Adam v Ward* [1917] AC 309; Extract on pages 253–4 from *Flood v Times Newspapers Ltd* [2012] 2 AC 273; Extract on pages 269–70 from *Attorney-General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109; Extract on page 298 from *Khorasandjian v Bush* [1993] QB 727; Extract on page 300 from *Allen v Gulf Oil Refining Ltd* [1981] AC 1001; Extract on page 315 from *Rickards v Lothian* [1913] AC 263; Extract on page 318 from *Read v Lyons* [1947] AC 156; Extract on page 349 from *Wilkinson v Downton* [1897] 2 QB 57; Extract on page 366 from *Hall v Lorimer* [1992] 1 WLR 939; Extract on page 372 from *Dubai Aluminium Co Ltd v Salaam* [2003] 2 AC 366.

Contains public sector information licensed under the Open Government Licence v3.0.

# Table of cases

- A v Hoare and other appeals* [2008] UKHL 6; [2008] 1 AC 844; [2008] 2 All ER 1; [2008] All ER (D) 251 (Jan) **88, 90, 347**
- A and others v National Blood Authority (No 1)* [2001] 3 All ER 289 **202, 203**
- AAA v Associated Newspapers Ltd* [2013] EWCA Civ 554 **277**
- AB v South West Water Services Ltd* [1993] QB 507; [1993] 1 All ER 609; [1993] 2 WLR 507 **399–400**
- AB and others v Ministry of Defence* [2012] UKSC 9; [2012] 2WLR 643 **89**
- Abouzaid v Mothercare (UK) Ltd, The Times*, 20 February 2001 **203, 207**
- Adam v Ward* [1917] AC 309 **249, 250**
- Adams v Bracknell Forest Borough Council* [2004] UKHL 29; [2005] 1 AC 76; [2004] 3 All ER 897 **88**
- Adams v Ursell* [1913] 1 Ch 269 **302**
- Adams and another v Rhymney Valley District Council* [2000] Lloyd's Rep PN 777; [2001] PNLR 68; [2000] All ER (D) 1015 **37**
- Al Hassan-Daniel v Revenue and Customs Commissioners* [2010] EWCA Civ 1443; [2011] QB 866; [2011] 2 All ER 31 **83**
- Alcock v Chief Constable of Yorkshire* [1992] 1 AC 310; [1991] 4 All ER 907; [1991] 3 WLR 1057 **93, 104–8, 116**
- Alexander v North Eastern Railway Co (1865)* 6 B & S 340 **241**
- Alexandrou v Oxford* [1993] 4 All ER 328 **139, 143**
- Allen v Gulf Oil Refining Ltd* [1981] AC 1001; [1981] 1 All ER 353; [1981] 2 WLR 188 **299, 307**
- Allied Maples Group v Simmons & Simmons* [1995] 1WLR 1602 **61**
- American Cyanamid Co v Ethicon Ltd* [1975] AC 396; [1975] 1 All ER 504; [1975] 2 WLR 316 **403**
- Anchor Brewhouse Developments v Berkley House (Docklands) Developments (1987)* 38 BLR 82 **326**
- Anderton v Clwyd County Council* [2002] EWCA Civ 933; [2002] 3 All ER 813; [2002] 1 WLR 3174 **148**
- Andrews v Hopkinson* [1957] 1 QB 229; [1956] 3 All ER 422; [1956] 3 WLR 732 **195**
- Angel v H H Bushell & Co* [1968] 1 QB 813; [1967] 1 All ER 1018; [1967] 2 WLR 976 **250**
- Anns v Merton London Borough* [1978] AC 728; [1977] 2 All ER 492; [1977] 2 WLR 1024 **18, 20, 122, 130**
- Argyll (Margaret Duchess of) v Argyll (Duke of)* [1967] Ch 302; [1965] 1 All ER 611; [1965] 2 WLR 790 **269**
- Ashley v Chief Constable of Sussex Police* [2008] UKHL 25; [2008] 1 AC 962; [2008] 3 All ER 573 **345–6**
- Ashton v Turner* [1981] QB 137; [1980] 3 All ER 870; [1980] 3 WLR 736 **81**
- Aspro Travel v Owners Abroad Group* [1995] 4 All ER 728; [1996] 1 WLR 132 **236–7**
- Attia v British Gas plc* [1988] QB 304; [1987] 3 All ER 455; [1987] 3 WLR 1101 **107**
- Attorney-General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109; [1988] 3 All ER 545; [1988] 3 WLR 776 **269–70**
- Attorney-General v PYA Quarries* [1957] 2 QB 169; [1957] 1 All ER 894; [1957] 2 WLR 770 **306**
- Attorney-General of Ontario v Orange Productions Ltd (1971)* 212 DLR (3d) **306**
- Austin and another v Metropolitan Police Commissioner* [2005] EWHC 480 (QB); [2005] All ER (D) 402 (Mar); [2005] NLJR 515 **341**
- Author of a Blog, The v Times Newspapers Ltd* [2009] EWHC 1358; (QB); [2009] EMLR 22 **274, 280**
- Badger v Ministry of Defence* [2005] EWHC 2941 (QB); [2006] 3 All ER 173; 91 BMLR 1 **75, 77**
- Bailey v Ministry of Defence* [2008] EWHC Civ 883; [2009] 1 WLR 1052 **58–9**
- Baker v Willoughby* [1970] AC 467; [1969] 2 All ER 549; [1969] 2 WLR 489 **65, 74**
- Barber v Somerset County Council; Hatton v Sutherland; Jones v Sandwell Metropolitan Borough Council; Bishop v Baker Refractories Ltd* [2002] EWCA Civ 76; [2004] UKHL 13; [2002] 2 All ER 1153 **164–5**
- Barker v Corus UK Ltd; Murray v British Shipbuilders (Hydrodynamics) Ltd; Patterson v Smiths Dock Ltd* [2006] UKHL 20; [2006] 2 AC 572; [2006] 3 All ER 785 **62, 64**
- Barkway v South Wales Transport Co Ltd* [1950] AC 185; [1950] 1 All ER 392 **73**



- Barnes v Irwell Valley Water Board [1939] 1 KB 21; [1938] 2 All ER 650; 36 LGR 493 **196**
- Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428; [1968] 1 All ER 1068; [1968] 2 WLR 422 **55, 97**
- Barr and others v Biffa Waste Services [2012] EWCA Civ 312; [2013] QB 455; [2012] 3 All ER 380 **300**
- Barrett v Enfield London Borough Council [2001] 2 AC 550; [1999] 3 All ER 193; [1999] 3 WLR 79 **147–8**
- Barrett v Ministry of Defence [1995] 1 WLR 1217 **27, 41, 145**
- Basely v Clarkson (1681) 83 ER 565; 3 Lev 37 **330**
- Batchellor v Tunbridge Wells Gas Co (1901) 84 LT 765 **317**
- Bayler v Manchester Railways Co (1873) LR 8 CP 148 **370**
- Beary v Pall Mall Investments (a firm) [2005] EWCA Civ 415; [2005] All ER (D) 234 (Apr); 149 Sol Jo LB 509 **39**
- Beasley v Buckinghamshire County Council [1997] PIQR P473 **150**
- Beckham v News Group Newspapers [2005] EWHC 2252 (QB); [2005] All ER (D) 220 (Oct) **281**
- Bellew v Cement Co Ltd [1948] IR 61 **302**
- Benjamin v Storr (1874) LR 9 CP 400 **307**
- Berisha v Stone Superstore Ltd (2014), **113**
- Berkoff v Burchill [1996] 4 All ER 1008; *The Times*, 9 August 1996 **231**
- Bernard v Attorney-General of Jamaica [2004] UKPC 47; [2004] All ER (D) 96 (Oct) **372**
- Bird v Jones (1845) 7 QB 742 **341**
- Blake v Galloway [2004] EWCA Civ 814; [2004] 3 All ER 315; [2004] 1 WLR 2844 **80**
- Bland v Moseley (1587) (unreported) **290, 298**
- Bogle v McDonald's Restaurants Ltd [2002] All ER (D) 436 **203**
- Bolam v Friern Barnet Hospital Management Committee [1957] 2 All ER 118; [1957] 1 WLR 582; 1 BMLR 1 **35**
- Bolitho v City & Hackney Health Authority [1998] AC 232; [1997] 4 All ER 771; [1997] 3 WLR 1151 **35–6, 57**
- Bolton v Stone [1951] AC 850; [1951] 1 All ER 1078 **41–2, 50**
- Bonnard v Perryman [1891] 2 Ch 269 **257**
- Bonnick v Morris [2002] UKPC 31; [2003] 1 AC 300; [2002] 3 WLR 820 **252**
- Bottomley v Todmorden Cricket Club [2003] EWCA Civ 1575; [2004] PIQR P18 **179**
- Bourhill v Young [1943] 1 AC 92; 1942 SC (HL) 78; [1942] 2 All ER 396 **101, 112**
- Bourne Leisure v Marsden [2009] EWCA Civ 671; [2009] 29 EG 99 (CS) **178**
- Bowman v MGN Ltd [2010] EWHC 895; [2010] All ER (D) 173 **231**
- Box v Jubb (1879) 14 Ex D 76 **319**
- Bradford City Metropolitan Council v Arora [1991] 2 QB 507; [1991] 3 All ER 545; [1991] 2 WLR 1377 **398**
- Brasserie du Pêcheur SA v Federation of Republic of Germany (Case C-46/93); R v Secretary of State for Transport, ex p Factortame Ltd (No 4) (Case C-48/93) [1996] ECR I-1029; [1996] QB 404; [1996] All ER (EC) 301 **225**
- British Celanese v AH Hunt [1969] 1 WLR 959 **315**
- British Chiropractic Association v Singh [2010] EWCA Civ 350; [2011] 1 WLR 133 **243, 248**
- British Railways Board v Herrington [1972] AC 877; [1972] 1 All ER 749; [1972] 2 WLR 537 **184**
- British Transport Commission v Gourley [1956] AC 185; [1955] 3 All ER 796; [1956] 2 WLR 41 **393**
- Brooke v Bool [1928] 2 KB 578 **359**
- Brooks v Commissioner of Police for the Metropolis and others [2002] All ER (D) 416 (Mar); [2002] EWCA Civ 407; *The Times*, 26 April 2005 **139, 155**
- Brooks v Home Office [1999] 2 FLR 33 **55**
- Brown v Cotterill (1934) 51 TLR 21 **195**
- Bryanston Finance v De Vries [1975] QB 703; [1975] 2 All ER 609; [1975] 2 WLR 718 **249**
- Burstein v Associated Newspapers [2007] EWCA Civ 600; [2007] 4 All ER 319 **242**
- Bux v Slough Metals [1973] 1 WLR 1358 **161**
- Bybrook Barn Garden Centre Ltd v Kent County Council [2001] BLR 55 **291**
- Byrne v Deane [1937] 1 KB 818 **230**
- C v D [2006] EWHC 166 (QB); [2006] All ER (D) 329 (Feb) **349, 353**
- Cain v Francis; McKay v Hamrani [2008] EWCA Civ 1451; [2009] QB 754; [2009] 2 All ER 579 **90**
- Caldwell v Maguire and Fitzgerald [2001] EWCA Civ 1054; [2002] PIQR P6 **43**
- Calvert v William Hill Credit Ltd [2008] EWCA Civ 1427; [2008] All ER (D) 155 (Dec) **126**
- Cambridge Water Co v Eastern Counties Leather [1994] 2 AC 264; [1991] 1 All ER 53 294, **295, 316, 318, 321, 323**
- Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22; [2004] 2 AC 457; [2004] 2 All ER 995 **270–2**
- Candler v Crane, Christmas & Co [1951] 2 KB 164; [1951] 1 All ER 426 **122**
- Caparo Industries plc v Dickman [1990] 2 AC 605; [1990] 1 All ER 568; [1990] 2 WLR 358 **21–3, 51, 128**
- Capital and Counties plc v Hampshire County Council [1997] QB 1004; [1997] 2 All ER 865; [1997] 3 WLR 331 **28, 143, 144**
- Carmichael v National Power [1999] 4 All ER 897; [1999] 1 WLR 2042 **367**
- Carr-Glynn v Frearsons [1999] Ch 326; [1998] 4 All ER 225; [1999] 2 WLR 1046 **130**

- Carroll v Fearon [1998] PIQR P416 **197–8**
- Cartledge v Jopling [1963] AC 758; [1963] 1 All ER 341; [1963] 2 WLR 210 **88**
- Cassell & Co Ltd v Broome [1972] AC 1027; [1972] 1 All ER 801; [1972] 2 WLR 645 **398**
- Cavendish Funding Ltd v Henry Spencer & Sons Ltd [1998] PNLR 122 **74**
- CC v AB [2006] EWHC 3038 (QB); [2008] 2 FCR 505 **281**
- Century Insurance v Northern Ireland Road Transport [1942] AC 509; [1942] 1 All ER 491 **369**
- Chadwick v British Railways Board [1967] 1 WLR 912 **80, 108, 109, 115**
- Charing Cross Electricity Co v Hydraulic Co [1914] 3 KB 772 **319**
- Chaudry v Prabhakar [1989] 1 WLR 29; [1988] 3 All ER 718 **125**
- Cheng v Paul (2000) 10 BHRC 525 **244**
- Chester v Afshar [2004] UKHL 41; [2005] 1 AC 134; [2004] 4 All ER 812 **38, 39, 56**
- Chic Fashions (West Wales) Ltd v Jones [1968] 2 QB 299; [1968] 1 All ER 229; [1968] 2 WLR 201 **329**
- Christie v Davey [1893] 1 Ch 316 **290, 293, 309**
- Church of Jesus Christ of the Latter-Day Saints (Great Britain) v West Yorkshire Fire and Civil Defence Authority, *The Times*, 20 March 1997, CA; *affirming The Times*, 9 May 1996 **143**
- Cinnamond v British Airport Authority [1980] 1 WLR 582 **329**
- City of London Corporation v Samede [2012] EWCA Civ 160; [2012] 2 All ER 1039 **328, 402**
- CJD Group B Claimants v Medical Research Council [2000] Lloyd's Rep Med 161; (1998) 141 BMLR 157 **103**
- Claimants appearing on the Register of the Corby Group Litigation v Corby Borough Council [2008] EWCA Civ 463; [2008] BLR 411 **307**
- Clare v Perry (t/a Widemouth Manor Hotel) [2005] EWCA Civ 39; [2005] All ER (D) 67 (Jan) **177**
- Close v Steel Co of Wales [1962] AC 367; [1962] 2 All ER 953; [1961] 3 WLR 319 **224**
- Clunis v Camden and Islington Health Authority [1998] QB 978; [1998] 3 All ER 180; [1998] 2 WLR 902 **82**
- Coco v AN Clark [1969] RPC 41 **269, 271, 272**
- Collett v Smith and Middlesbrough Football Company [2008] EWHC 1962 (QB); (2008) 105(33) LSG 21 **390**
- Collins v Renison (1754) 1 Say 138 **333**
- Commissioners of Customs and Excise v Barclays Bank plc [2006] UKHL 28; [2007] 1 AC 181; [2006] 4 All ER 256 **24, 26**
- Condon v Basi [1985] 1WLR 866 **43**
- Conn v Sunderland [2007] EWCA Civ 1492; [2008] IRLR 324 **352**
- Cook v Square D Ltd [1992] ICR 262 **162**
- Cooke v United Bristol Healthcare NHS Trust; Sheppard v Stibbe and another; Page v Lee [2003] EWCA Civ 1370; [2004] 1 All ER 797; [2004] 1 WLR 251 **390**
- Co-operative Group (CWS) Ltd v Pritchard [2011] EWCA Civ 329; [2012] QB 320; [2012] 1 All ER 205 **346**
- Corby Group Litigation v Corby Borough Council [2009] EWHC 1944; [2010] Env LR D2 57, **307**
- Corr (Administratrix of Corr decd) v IBC Vehicles Ltd [2008] UKHL 13; [2008] 1 AC 884; [2008] 2 All ER 943 **66**
- Costello v Chief Constable of Northumbria Police [1999] 1 All ER 550 **27**
- Coventry v Lawrence [2014] UKSC 46; [2014] 4 All ER 517; [2014] 3 WLR 555 **403**
- Cream Holdings Ltd v Banerjee [2004] UKHL 44; [2005] 1 AC 253; [2004] 4 All ER 617 **283**
- Crossley v Faithful and Gould Holdings Ltd [2004] EWCA Civ 293; [2004] 4 All ER 447; [2004] ICR 1615 **167**
- Croucher v Inglis (1889) 16 R 774 **249**
- Crowhurst v Amersham Burial Board (1878) 4 Ex D 5; [1874–80] All ER Rep 89 **317**
- Crown River Cruises Ltd v Kimbolton Fireworks Ltd [1996] 2 Lloyd's Rep 533 **293, 317**
- CTB v News Group Newspapers [2011] EWHC 3099 (QB); [2011] All ER (D) 183 (Dec) 274, **284**
- Cullen v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 39; [2004] 2 All ER 237; [2003] 1 WLR 1763 **221**
- Cullin v London Fire and Civil Defence Authority [1999] PIQR P314 **111**
- Cutler v United Dairies (London) Ltd [1933] 2 KB 297 **80**
- D v East Berkshire Community Health NHS Trust; MAK v Dewsbury Healthcare NHS Trust; RK v Oldham NHS Trust [2005] UKHL 23; [2005] 2 All ER 443; [2003] EWCA Civ 1151; [2004] QB 558; [2003] 4 All ER 796 **148–51, 154**
- D & F Estates v Church Commissioners for England [1989] AC 177; [1988] 2 All ER 992; [1988] 3 WLR 368 **196**
- Daniells v Mendonca (1999) 78 P & CR 401 **402**
- Danns v Department of Health [1998] PIQR P226 **220**
- Darby v National Trust for Places of Historic Interest or Natural Beauty [2001] EWCA Civ 189; [2001] PIQR P27 **176**
- Das v Ganju [1999] PIQR P260 **90**
- Davey v Harrow Corporation [1958] 1 QB 60; [1957] 2 All ER 305; [1957] 2 WLR 941 **289**
- Daw v Intel Corp (UK) Ltd, *sub nom* Intel Corp (UK) Ltd v Daw [2007] EWCA Civ 70; [2007] 2 All ER 126 **166, 169**
- Dean v Allin & Watts [2001] EWCA Civ 758; [2001] 2 Lloyd's Rep 249 **30, 125**
- Delaney v Pickett [2011] EWCA Civ 1532; [2012] 1 WLR 2149 **81, 82**
- Dennis v Ministry of Defence [2003] EWHC 793 (QB); [2003] Env LR 34 **302, 305, 309**
- Derbyshire County Council v Times Newspapers [1992] QB 770; [1992] 3 All ER 65; [1992] 3 WLR 28 **241, 263**

- DPP v Jones [1999] 2 AC 240; [1999] 2 All ER 257; [1999] 2 WLR 625 **328**
- Djermal v Bexley Heath Health Authority [1995] 6 Med LR 269 **37, 94**
- Dobson v Thames Water Utilities Ltd [2009] EWCA Civ 28; [2009] 3 All ER 319 **299**
- Doe d Carter v Barnard (1849) 13 QB 945 **331**
- Donachie v Chief Constable of Greater Manchester Police [2004] EWCA Civ 405; *The Times*, 6 May 2004 **167**
- Donaghey v Bolton & Paul [1968] AC 1; [1967] 2 All ER 1014; [1967] 3 WLR 829 **224**
- Donnelly v Joyce [1974] QB 454; [1973] 3 All ER 475 **388**
- Donoghue v Folkestone Properties Ltd [2003] EWCA Civ 231; [2003] QB 1008; [2003] 3 All ER 1101 **185**
- Donoghue v Stevenson [1932] AC 562; 1932 SC (HL) 31 **18, 19, 22, 135, 193, 195, 414**
- Donovan (Jason) v The Face (1998) (unreported) **231**
- Dooley v Cammell Laird [1951] 1 Lloyd's Rep 271 **111**
- Doughty v Turner Manufacturing Co [1964] 1 QB 518; [1964] 1 All ER 98; [1964] 2 WLR 240 **69, 70**
- Douglas, Zeta Jones and Northern & Shell plc v Hello! Ltd (No 1) [2001] QB 967; [2001] 2 All ER 289; [2001] 2 WLR 992 **271, 275, 278, 284**
- Downtex v Flatley [2003] EWCA Civ 1282; (2003) 147 S.J.L.B. 1152 **250**
- Doyle v Wallace [1998] PIQR Q146 **389, 404**
- Duborn v Bath Tramways [1946] 2 All ER 333 **95**
- Dulieu v White & Sons [1901] 2 KB 669 **101, 102**
- Dwek v Macmillan Publishers [1999] EWCA Civ 2002; [2000] EMLR 284 **232, 235, 263**
- E (a child) v Souls Garages Ltd, *The Times*, 23 January 2001 **76**
- Easson v London and North Eastern Railway Co [1944] KB 421; [1944] 2 All ER 425 **72–3**
- Eastern and South Africa Telegraph Co v Cape Town Tramways Co [1902] AC 381 **319**
- Elias v Pasmore [1934] 2 KB 164 **329**
- Escola v Coca-Cola Bottling Co of Fresno 150 P 2D 897 (1944) **199–200**
- Esso Petroleum Co Ltd v Marden [1976] QB 801; [1976] 2 All ER 5; [1976] 2 WLR 583 **125**
- Esso Petroleum Co Ltd v Southport Corporation [1956] AC 218; [1955] 3 All ER 864; [1956] 2 WLR 81 **331**
- ETK v News Group Newspapers [2011] EWCA Civ 439; [2011] 1 WLR 1827 **278**
- European Commission v United Kingdom (Case C-300/95) [1997] ECR I-2649; [1997] 3 CMLR 923; [1997] All ER (EC) 481 **207**
- Evans v Souls Garage *see* E (a child) v Souls Garages Ltd Evans v Triplex Safety Glass Co Ltd [1936] 1 All ER 283 **76**
- F, *Re, sub nom* F v West Berkshire Health Authority [1990] 2 AC 1 340; [1989] 2 All ER 545; [1989] 2 WLR 1025 **340**
- Fairchild v Glenhaven Funeral Services Ltd (t/a GH Dovener & Son) [2002] UKHL 22; [2003] 1 AC 32; [2002] 3 All ER 305 **61, 64**
- Ferdinand (Rio) v MGN [2011] EWHC 2454 (QB); [2011] All ER (D) 04 (Oct) **280, 281**
- Ferguson v Dawson [1976] 1 WLR 1213 **366**
- Fitzgerald v Lane [1989] 1 AC 328; [1988] 2 All ER 961; [1988] 3 WLR 356 **360**
- Flood v Times Newspapers Ltd [2012] UKSC 11; [2012] 2 AC 273; [2012] All ER (D) 153 (Mar) **253**
- Forbes v Wandsworth Health Authority [1997] 1 QB 402; [1996] 4 All ER 881 **90**
- Fraser v Winchester Health Authority (2000) 55 BMLR 122; *The Times*, 12 July 1999 **163**
- French and others v Chief Constable of Sussex Police [2006] EWCA Civ 312; [2006] All ER (D) 407 (Mar) **110**
- Froom v Butcher [1976] QB 286; [1975] 3 All ER 520; [1975] 3 WLR 379 **77**
- G (a child) v Bromley London Borough Council (2000) 2 LGLR 237; [1999] ELR 356 **148**
- Galashiels Gas Co Ltd v O'Donnell (or Millar) [1949] AC 275; 1949 SC (HL) 31; [1949] 1 All ER 319 **222**
- Galli-Atkinson v Seghal (2003) **112**
- Gautret v Egerton (1867) LR 2 CP 371 **175**
- Gecas v Scottish Television (1992) (unreported) **242**
- Gee v Metropolitan Railway Co (1873) LR 8 QB 161 **72**
- General Cleaning Contractors v Christmas [1953] AC 180; [1952] 2 All ER 1110; [1953] 2 WLR 6 **162**
- George v Eagle Air Services [2009] UKPC 21; [2009] 1 WLR 2133 **72**
- Gillingham Borough Council v Medway (Chatham) Dock Co [1993] QB 343; [1992] 3 All ER 923; [1992] 3 WLR 449 **293, 300**
- Glaister and others v Appleby-in-Westmorland Town Council [2009] EWCA Civ 1325; [2010] PIQR P6 **31**
- Glasgow Corporation v Taylor [1922] 1 AC 44; [1921] All ER Rep 1 **178**
- Goldsmith v Bhoynul [1998] QB 459; [1997] 4 All ER 268; [1998] 2 WLR 435 **241**
- Goodwill v British Pregnancy Advisory Service [1996] 1 WLR 1397 **126**
- Gorham v British Telecommunications plc [2000] 1 WLR 2129 **89, 131**
- Gorringe v Calderdale Metropolitan Borough Council [2004] UKHL 15; [2004] 2 All ER 326; [2004] 1 WLR 1057 **222**
- Gorris v Scott (1874) LR 9 Ex 125 **223**
- Gough v Thorne [1966] 3 All ER 398; [1966] 1 WLR 1387 **76**

- Gould v McAuliffe [1941] 2 All ER 527 **184**
- Grainger v Hill (1838) 4 Bing NC 212; 7 LJP 85 **342**
- Grant v Australian Knitting Mills [1936] AC 85 **198**
- Gray v Thames Trains Ltd [2009] UKHL 33; [2009] 3 WLR 167; [2009] 4 All ER 81 **82**
- Green v Chelsea Waterworks Co (1894) 70 LT 547 **319**
- Greenock Corporation v Caledonian Railway Co [1917] AC 556; 1917 SC (HL) 56 **320**
- Gregg v Scott [2005] UKHL 2; [2005] 2 AC 176; [2005] 4 All ER 812 **60, 64, 97**
- Griffiths v Arch Engineering Co [1968] 3 All ER 217 **198**
- Griffiths v Brown [1999] PIQR P131; *The Times*, 23 October 1998 **41**
- Grobbelaar v News Group Newspapers Ltd [2001] EWCA Civ 33; [2002] UKHL 40; [2003] EMLR 1 **252–3**
- Groves v Wimbourne [1898] 2 QB 402 **219, 220, 224**
- Gwilliam v West Hertfordshire Hospitals NHS Trust [2002] EWCA Civ 1041; [2003] QB 443; [2002] 3 WLR 1425 **180**
- H West & Son v Shephard [1964] AC 326; [1963] 2 All ER 625; [1963] 2 WLR 1359 **392, 400–1**
- Hale v Jennings [1938] 1 All ER 179 **317**
- Haley v London Electricity Board [1965] AC 778; [1964] 3 All ER 185; [1964] 3 WLR 479 **23**
- Hall v Lorimer [1992] 1 WLR 939 **365**
- Halpin v Oxford Brookes University [1996] CLY 5658 **250**
- Halsey v Esso Petroleum [1961] 2 All ER 145; [1961] 1 WLR 683 **293**
- Harris v Birkenhead Corporation [1976] 1 WLR 279 **174**
- Harris v Perry [2008] EWHC 990 (QB); (2008) All ER (D) 88 (May); [2009] 1 WLR 19 **44–5**
- Haseldine v Daw [1941] 2 KB 343 **179**
- Hatton v Sutherland *see* Barber v Somerset County Council  
Hatton v United Kingdom [2003] All ER (D) 122 (Jul); [2002] 1 FCR 732 **163–5, 169**
- Hawley v Luminar Leisure [2006] EWCA Civ 30; *The Times*, 14 February 2006 **366–7**
- Haynes v Harwood [1935] 1 KB 146; [1934] All ER Rep 103 **30, 80**
- Heasman v Clarity Cleaning Co [1987] ICR 949 **374**
- Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465; [1963] 2 All ER 575; *affirming* [1962] 1 QB 396; [1961] 3 All ER 891 **122–4, 135, 167**
- Heil v Rankin and another and Other Appeals [2000] 2 WLR 1173 **391**
- Henderson v Merrett Syndicates Ltd [1995] 2 AC 145; [1994] 3 All ER 506; [1994] 3 WLR 761 **123, 132, 134**
- Henderson v Wakefield Shirt Co Ltd [1997] PIQR P413 **168**
- Herd v Weardale Steel Coke and Coal Co [1915] AC 67 **345**
- Hickman v Maisey [1900] 1 QB 752 **327**
- Higgs v Foster (t/a Avalon Coaches) [2004] EWCA Civ 843 **183**
- Hill v Chief Constable of West Yorkshire [1988] 2 WLR 1049 **29, 138, 152**
- Hilton v Thomas Burton (Rhodes) Ltd [1961] 1 WLR 705 **374, 384**
- Holbeck Hall Hotel v Scarborough Council [2000] QB 836; [2000] 2 All ER 705; [2000] 2 WLR 1396 **290**
- Hollywood Silver Fox Farm Ltd v Emmett [1936] 2 KB 468 **294**
- Holmes v Watson (1839) 10 Ad & El 503 **328**
- Holt v Edge [2006] EWHC 1932 (QB); [2006] All ER (D) 371 (Jul) **33**
- Holtby v Brigham & Cowan [2000] 3 All ER 421; [2000] ICR 1086 **61**
- Home Office v Dorset Yacht Co [1970] AC 1004; [1970] 2 All ER 294; [1970] 2 WLR 1140 **30**
- Horrocks v Lowe [1975] AC 135; [1974] 1 All ER 662; [1974] 2 WLR 282 **250–1**
- Horton v Jackson [1996] CLY 4475 **176**
- Hotson v East Berkshire Health Authority [1987] AC 750; [1987] 2 All ER 909; [1987] 3 WLR 232 **60, 97**
- Howard v Furness, Houlder Ltd (1936) 55 Ll L Rep 121 **195**
- Howlett v Holding [2006] EWHC 3758 (QB); [2006] All ER (D) 162 (Jan) **352**
- Huckle v Money (1763) 2 Wils 205 **398**
- Hudson v Ridge Manufacturing Co Ltd [1957] 2 QB 348; [1957] 2 All ER 229; [1957] 2 WLR 948 **160**
- Hughes v Lord Advocate [1963] AC 837; 1963 SC (HL) 31; [1963] 1 All ER 705 **69**
- Hulton v Jones [1910] AC 20 **235, 236**
- Humber Oil Terminal Trustee Ltd v Owners of the Ship 'Sivand' [1998] 2 Lloyd's Rep 97 **71**
- Hunt v Severs [1994] 2 AC 350; [1994] 2 All ER 385; [1994] 2 WLR 602 **388, 394**
- Hunt (David) v Times Newspapers [2013] EWHC 1868 (QB) **254**
- Hunter v British Coal [1999] QB 140; [1998] 2 All ER 97 **111**
- Hunter v Canary Wharf Ltd and London Docklands Development Corporation [1997] AC 655; [1997] 2 All ER 426; [1997] 2 WLR 684 **45, 290, 298–9, 304–5**
- Hussain v Lancaster City Council [2000] 1 QB 1; [1999] 4 All ER 125; [1999] 2 WLR 1142 **297**
- Hussain v New Taplow Paper Mills Ltd [1988] AC 514; [1988] 1 All ER 541; [1988] 2 WLR 266 **393**
- Huth v Huth [1915] 3 KB 32 **237**
- Imperial Chemicals Industries v Shatwell [1965] AC 656; [1964] 2 All ER 999; [1964] 3 WLR 329 **78, 224**
- Iqbal v Prison Officers Association [2009] EWCA Civ 1310; [2010] QB 732; [2010] 2 All ER 663 **343**
- Island Records Ltd, ex p [1978] Ch 122; [1978] 3 WLR 23 **218**
- J'Anson v Stuart (1787) 1 Term Rep 148 **235, 263**

- Jacklin v Chief Constable of West Yorkshire [2007] EWCA Civ 181; [2007] 1 All ER (D) 212 (Feb) **403**
- Jaensch v Coffey (1984) 155 CLR 549 **112**
- Jagger v Darling [2005] EWHC 683 (Ch) **274**
- Jain v Trent Strategic Health Authority [2009] UKHL 4; [2009] 1 AC 853; [2009] 1 All ER 957; [2009] 2 WLR 248 **151**
- James McNaughton Paper Group Ltd v Hicks Anderson & Co [1991] 2 QB 113; [1991] 1 All ER 1 **129**
- Jameson v Central Electricity Generating Board [2000] 1 AC 455; [1999] 1 All ER 193; [1999] 2 WLR 141 **360**
- Janvier v Sweeney [1919] 2 KB 316 **349**
- Jarvis v Hampshire County Council [1999] Ed CR 785 **148**
- JGE v Trustees of the Portsmouth Roman Catholic Diocesan Trust [2012] EWCA Civ 938; [2012] IRLR 846 **366**
- Jobling v Associated Dairies [1982] AC 794; [1981] 2 All ER 752; [1981] 3 WLR 155 **65**
- John v Mirror Group Newspapers [1997] QB 586; [1996] 2 All ER 35; *The Times*, 14 December 1995 **398**
- John Munroe (Acrylics) Ltd v London Fire and Civil Defence Authority [1997] QB 983; [1996] 4 All ER 318; [1996] 3 WLR 988 **143**
- John (Sir Elton) v Associated Newspaper [2006] EWHC 1611; [2006] EMLR 772 **256, 275, 276, 285**
- Johnstone v Bloomsbury Health Authority [1992] QB 333; [1991] 2 All ER 293; [1991] 2 WLR 1362 **162**
- Jolley v London Borough of Sutton [2000] 1 WLR 1082 **177**
- Jones v Boyce (1816) 1 Stark 493 **75**
- Jones v Livox Quarries [1952] 2 QB 608; [1952] 1 TLR 1377 **74**
- Joseph v Spiller [2010] UKSC 53; [2011] 1 AC 852; [2011] 1 All E.R. 947 **243, 244**
- Joyce v O'Brien [2013] EWCA Civ 546; [2014] 1 WLR 70 **82**
- Junior Books v Veitchi [1983] 1 AC 520; [1982] 3 All ER 201; [1982] 3 WLR 477 **20, 122, 123, 134**
- Kaye v Robertson [1991] FSR 62 **270, 284**
- Keays v Guardian Newspapers Ltd [2003] EWHC 1565 (QB); [2003] All ER (D) 04 (Jul) **242**
- Kennaway v Thompson [1981] QB 88; [1980] 3 All ER 329; [1980] 3 WLR 361 **304**
- Kent v Griffiths and others (No. 2) (2000) 3 CCL Rep 98 **144**
- Keown v Coventry Healthcare NHS Trust [2006] EWCA Civ 39; [2006] 1 WLR 953 **182, 186, 189**
- Khodaparast v Shad [2000] 1 WLR 618; *The Times*, 1 December 1999 **396**
- Khorasandjian v Bush [1993] QB 727; [1993] 3 All ER 669; [1993] 3 WLR 476 **298**
- Kiam v MGN Ltd [2002] EWCA Civ 43; [2003] QB 281; [2002] 2 All ER 219 **256**
- Kirkham v Chief Constable of Greater Manchester [1990] 2 QB 283; [1990] 3 All ER 246; [1990] 2 WLR 987 **78**
- Krupffer v London Express Newspapers Ltd [1944] AC 116; [1944] 1 All ER 495 **236**
- Kubach v Hollands [1937] 3 All ER 970 **199**
- Kuddus v Chief Constable of Leicestershire [2001] UKHL 29; [2002] 2 AC 122; [2001] 3 All ER 193 **399–400**
- Lagden v O'Connor [2003] UKHL 64; [2004] 1 AC 1067; [2004] 1 All ER 277 **70**
- Lane v Holloway [1968] 1 QB 379; [1967] 3 All ER 129; [1967] 3 WLR 1003 **345**
- Langley v Dray [1998] PIQR P314 **22**
- Latimer v AEC Ltd [1952] 2 QB 701; [1952] 1 All ER 1302 **42, 50, 162**
- Law Society v KPMG Peat Marwick [2000] 4 All ER 540; [2000] 1 WLR 1921 **129**
- Law Society v Sephton & Co [2006] UKHL 22; [2006] 3 All ER 401; affirming [2004] EWCA Civ 1627; [2005] QB 1013; reversing in part [2004] EWHC 544 (Ch) **87**
- Lawrence v Fen Tigers *see* Coventry v Lawrence
- Lawrence v Pembrokeshire County Council [2007] EWCA Civ 446; [2007] 1 WLR 2991; [2007] II ER (D) 214 (May) **149**
- League Against Cruel Sports v Scott [1986] QB 240; [1985] 2 All ER 489 **327, 330**
- Leakey v National Trust for Places of Historic Interest or Natural Beauty [1980] QB 485; [1980] 1 All ER 17; [1980] 2 WLR 65 **290**
- Lennon v Commissioner of Police of the Metropolis [2004] EWCA Civ 130; [2004] 2 All ER 266; [2004] 1 WLR 2594 **125**
- Letang v Cooper [1965] 1 QB 232; [1964] 2 All ER 929; [1964] 3 WLR 573 **339**
- Liesbosch Dredger v SS 'Edison' [1933] AC 449; [1933] All ER Rep 144 **70**
- Lillie and Reed v Newcastle City Council [2002] EWHC 1600; (2002) 146 SJLB 225 **250**
- Limpus v London General Omnibus Co (1862) 1 Hurl & C 526 **370**
- Lippiatt v South Gloucestershire Council [2000] 1 QB 51; [1999] 4 All ER 149 **297**
- Lister v Hesley Hall Ltd [2001] UKHL 22; [2001] 2 All ER 769 371, **376**
- Lister v Romford Ice and Cold Storage [1957] AC 555; [1957] 1 All ER 125; [1957] 2 WLR 158 **377**
- Livingstone v Ministry of Defence (1984) NI 356 **340**
- Lloyd v Grace, Smith & Co [1912] AC 716 **371**
- Lonrho v Shell Petroleum (No 2) [1982] AC 173; [1981] 2 All ER 456; [1981] 3 WLR 33 218, **350**

- Loutchansky v Times Newspapers Ltd (No 1) [2001] EWCA Civ 536; [2002] QB 321; [2001] 4 All ER 115 **253**
- Lyons v Gulliver [1914] 1 Ch 631 **306**
- M v Newham Borough Council *see* X v Bedfordshire County Council
- MAGA v Trustees of the Birmingham Archdiocese of the Roman Catholic Church [2010] EWCA Civ 256; [2010] 1 WLR 1441 **373**
- Maguire v Harland & Wolff plc [2005] EWCA Civ 01; 149 Sol Jo LB 144; [2005] All ER (D) 242 (Jan) **40**
- Mahamoud (Ahmed) v Morrisons Supermarkets (2014) (unreported)
- Mahfouz v Ehrenfeld [2005] EWHC 1156 (QB); [2005] All ER (D) 361 (Jul) **240**
- Mahon v Osborne [1939] 2 KB 14; [1939] 1 All ER 535 **72**
- Majrowski v Guy's and St Thomas' NHS Trust [2006] UKHL 34; [2007] 1 AC 224; *affirming* [2005] EWCA Civ 251 **166, 352, 376**
- MAK v Dewsbury Healthcare Trust *see* D v East Berkshire Community Health NHS Trust, **148**
- Mansfield v Weetabix Ltd [1998] 1 WLR 1263; [1997] PIQR P526 34, **49**
- Marcic v Thames Water Utilities Ltd [2003] UKHL 66; [2004] 2 AC 42; [2004] 1 All ER 135 **301, 305, 306**
- Mardas v New York Times [2008] EWHC 315 (QB); [2008] All ER (D) 184 (Dec) **240**
- Margereson v JW Roberts Ltd [1996] EnvLR 304 **69**
- Marriott v West Midlands Regional Health Authority [1999] Lloyd's Rep Med 23 **36**
- Martin and Browne v Grey (1998) (unreported) **395**
- Mason v Levy Auto Parts of England Ltd [1967] 2 QB 530; [1967] 2 All ER 62; [1967] 2 WLR 1384 **320**
- Mason v Williams & Williams Ltd [1955] 1 WLR 549 **197**
- Matania v National Provincial Bank [1936] 2 All ER 633 **296**
- Matthews v Ministry of Defence [2003] UKHL 4; [2003] 1 AC 1163; [2003] 1 All ER 689 **154**
- Mattis v Pollock (t/a Flamingos Nightclub) [2003] EWCA Civ 887; [2004] 4 All ER 85; [2003] 1 WLR 2158 **373, 381**
- McCartan Turkington Breen (a firm) v Times Newspapers Ltd [2001] 2 AC 277; [1998] NI 358; [2000] 4 All ER 913 **248, 256**
- McCarthy v Coldair Ltd [1951] 2 TLR 1226 **223**
- McCullagh v Lane Fox and Partners Ltd [1996] PNLR 205 **127**
- McDonald's Corp v Steel (No 4); *sub nom* Steel v McDonald's Corp (locus standi), *Independent*, 10 May 1990 **241**
- McFarlane v Tayside Health Board [2000] 2 AC 59; [1999] 4 All ER 961 **24, 45, 46, 203**
- McFarlane v Wilkinson [1997] 2 Lloyd's Rep 259 **103**
- McGeown v Northern Ireland Housing Executive [1995] 1 AC 233; [1994] 3 All ER 53; [1994] 3 WLR 187 **175**
- McGhee v National Coal Board [1972] 3 All ER 1008 **58, 59, 63**
- McGhie v British Telecommunications plc [2005] EWCA Civ 48; [2005] All ER (D) 120 (Jan) **89**
- McKenna v British Aluminium Ltd [2002] Env LR 30 **299**
- McKennitt (Loreena) v Ash (Niema Ash and Purple Inc Press) [2008] IP & T 703; [2007] 3 WLR 194; *affirming* [2005] EWHC 3003 (QB); [2006] All ER (D) 02 (Feb) **277, 279, 282, 284, 285**
- McKew v Holland 1970 SC (HL) 20; [1969] 3 All ER 1621 **66, 97**
- McKinnon Industries v Walker [1951] WN 401 **291, 309**
- McLoughlin v O'Brian [1983] 1 AC 410; [1982] 2 All ER 298; [1982] 2 WLR 982 **101, 104–6, 108, 112, 116**
- McManus v Beckham [2002] EWCA Civ 939; [2002] 4 All ER 497; [2002] 1 WLR 2982 **234**
- Meering v Grahame-White Aviation Co Ltd (1920) 122 LT 44 **342**
- Mersey Docks and Harbour Board v Coggins & Griffiths (Liverpool) Ltd [1947] AC 1; [1946] 2 All ER 345 **368**
- Michael v Chief Constable of South Wales [2012] EWCA Civ 981; [2012] HRLR 30 **141, 142, 155**
- Milkovich v Lorain Journal Co 497 US 1 (1990) **260**
- Miller v Jackson [1977] QB 966; [1977] 3 All ER 338; [1977] 3 WLR 20 **302, 303, 309**
- Mitchell v Faber & Faber [1998] EMLR 807 **231**
- Mitchell v Glasgow City Council [2009] UKHL 11; [2009] 1 AC 874; [2009] 3 All ER 205 **25**
- Monk v Warbey [1935] 1 KB 75 **219, 220, 224**
- Monsanto plc v Tilly [2000] EnvLR 313; (1999) 149 NLJ 1833 **331**
- Mosley v News Group Newspapers [2008] EWHC 687 (QB); [2008] All ER (D) 135 (Apr) 274, **280, 282, 285**
- Moy v Pettman Smith (a firm) and another [2005] UKHL 7; [2005] 1 All ER 903; [2005] 1 WLR 581 **39**
- M/S Aswan Engineering Establishment Co v Lupdine Ltd [1987] 1 WLR 1 **197**
- Muirhead v Industrial Tank Specialities [1986] QB 507; [1985] 3 All ER 705; [1985] 3 WLR 993 **23**
- Mulcahy v Ministry of Defence [1996] QB 732; [1996] 2 WLR 474 **145**
- Mullaney v Chief Constable of West Midlands [2001] EWCA Civ 700; *Independent*, 9 July 2001 **168**
- Mullin v Richards [1998] 1 WLR 1304 **33, 34**
- Murphy v Brentwood District Council [1991] 1 AC 398; [1990] 2 All ER 908; [1990] 3 WLR 414 **18, 20, 123, 130, 135**
- Murray v Express Newspapers plc, *sub nom* Murray v Big Pictures (UK) Ltd [2008] EWCA Civ 446; [2008] 3 WLR 1360 **273, 277**

- Murray v Ministry of Defence [1988] 1 WLR 692 **342**
- Muuse v Secretary of State for the Home Department [2010] EWCA Civ 453; *The Times*, 10 May 2010 **398**
- N v UK Medical Research Council [1996] 7 Med LR 309 **40**
- Nail (Jimmy) v HarperCollins and News Group [2004] EWCA Civ 1708; [2005] 1 All ER 1040 **255**
- Nash v Sheen, *The Times*, 13 March 1953 **345**
- National Coal Board v England [1954] 1 All ER 546 **81**
- National Telephone Co v Baker [1893] 2 Ch 186 **117**
- Naylor (t/a Mainstreet) v Payling [2004] EWCA Civ 560; [2004] PIQR P36 **180**
- Nettleship v Weston [1971] 2 QB 691; [1971] 3 All ER 581; [1971] 3 WLR 370 **32, 34, 94**
- Network Rail Infrastructure Ltd v Morris [2004] EWCA Civ 172; [2004] All ER (D) 342 (Feb) **292, 309**
- New York Times v Sullivan 376 US 254 (1964) **261**
- Newman v United Kingdom Medical Research Council *see* N v UK Medical Research Council
- Newstead v London Express Newspapers Ltd [1940] 1 KB 377 **235**
- Ngu Chun Piu v Lee Chuen Tat [1988] RTR 298 **73**
- Nicholls v Ladbrokes Betting & Gaming Ltd [2013] EWCA Civ 1963; [2014] PIQR P4 **42**
- Nichols v Marsland (1876) 2 Ex D 1 **320**
- NMT v Wilmshurst (2010) (unreported) **248**
- Norman v Future Publishing [1999] EMLR 325; [1998] All ER (D) 606 **233**
- North Glamorgan NHS Trust v Walters [2002] EWCA Civ 1792; [2003] PIQR P16 **107**
- O'Shea v Mirror Group Newspapers Ltd [2001] EMLR 40 **235, 260**
- Ogwo v Taylor [1988] AC 431; [1987] 3 All ER 961; [1987] 3 WLR 1145 **179**
- Olotu v Secretary of State for the Home Department [1997] 1 WLR 328 **219**
- Omega Trust Co Ltd v Wright Son & Pepper (No 1) [1997] PNLR 424 **127**
- Orchard v Lee [2009] EWCA Civ 295; [2009] PIQR P16 **34**
- Osman v United Kingdom (1998) 29 EHRR 245; [1999] 1 FLR 193; [1999] Fam Law 86 **114, 139–43, 150–4, 156**
- Overseas Tankship (UK) v Miller Steamship Co ('The Wagon Mound') (No 2) [1967] 1 AC 617; [1966] 2 All ER 709; [1966] 3 WLR 498 **68–9, 71**
- Overseas Tankship (UK) v Morts Dock & Engineering Co ('The Wagon Mound') (No 1) [1961] AC 388; [1961] 1 All ER 404; [1961] 2 WLR 126 **68–9, 71**
- P Perl (Exporters) v Camden London Borough Council [1984] QB 342; [1983] 3 All ER 161; [1983] 3 WLR 769 **28**
- Padbury v Holliday and Greenwood Ltd (1912) 28 TLR 492 **379**
- Page v Smith [1996] AC 155; [1995] 2 All ER 736 **101–3, 106**
- Page v Smith (No 2) [1996] 1 WLR 855 **58, 69**
- Palsgraf v Long Island Railroad 162 NE 99 (NY 1928) **22**
- Pape v Cumbria County Council [1992] 3 All ER 211 **162**
- Paris v Stepney Borough Council [1951] AC 367; [1951] 1 All ER 42 **40, 41, 168**
- Parkinson v St James and Seacroft University Hospital NHS Trust [2001] EWCA Civ 530; [2002] QB 266; [2001] 3 All ER 97 **46, 47**
- Parry v Cleaver [1970] AC 1; [1969] 1 All ER 555; [1969] 2 WLR 821 **394, 404**
- Paul Davidson Taylor (a firm) v White [2004] EWCA Civ 1511; [2004] All ER (D) 304 (Nov); 148 Sol Jo LB 1373 **39, 56**
- Perry v Butlins Holiday World [1998] Ed CR 39; [1997] EGG 171 **177**
- Phelps v Hillingdon London Borough [2001] 2 AC 619; [2000] 4 All ER 504; *reversing* [1999] 1 All ER 421; [1998] All ER (D) 534 **148, 153, 219**
- Phipps v Rochester Corporation [1955] 1 QB 450; [1955] 1 All ER 129; [1955] 2 WLR 23 **178**
- Pickett v British Rail Engineering Ltd [1980] AC 136; [1978] 3 WLR 955 **391**
- Pierce v Doncaster Metropolitan Borough Council [2008] EWCA Civ 1416; [2009] 3 FCR 572 **150**
- Pitts v Hunt [1991] 1 QB 24; [1990] 3 All ER 344; [1990] 3 WLR 542 **79, 81, 381**
- Polemis and Furness Withy & Co Ltd, *Re* [1921] 3 KB 560 **68–70, 93**
- Pollard v Tesco Stores Ltd [2006] EWCA Civ 393; [2006] All ER (D) 186 (Apr) **204**
- Pratt v Director of Public Prosecutions [2001] EWHC Admin 483; (2001) 165 JP 800 **351**
- Priestly v Fowler (1837) 150 ER 1030; 1 Jur 987 **158**
- Prince of Wales v Associated Newspapers [2006] EWCA Civ 1776; [2008] Ch 57; [2007] 2 All ER 139 **278**
- Princess Caroline case *see* Von Hannover v Germany
- Quinland v Governor of HM Prison Belmarsh [2002] EWCA Civ 174; [2003] QB 306; [2003] 1 All ER 1173 **344**
- R v Bournemouth Community and Mental Health NHS Trust, *ex p L* (Secretary of State for Health intervening) [1999] 1 AC 458; [1998] 3 All ER 289; [1998] 3 WLR 107 **342**
- R v Broadmoor Special Hospital Authority, *The Times*, 5 November 1997 **340**

- R v Brown [1994] 1 AC 212; [1993] 2 All ER 75; [1993] 2 WLR 556 **340**
- R v Costanza [1997] Crim LR 576 **337**
- R v Croydon Health Authority [1998] PIQR Q26; *The Times*, 13 December 1997 **45**
- R v East Sussex County Council, ex p T [1998] AC 714; [1998] 2 All ER 769; [1998] 2 WLR 884 **222**
- R v Governor of Her Majesty's Prison Brockhill [2000] 3 WLR 843 **343, 344**
- R v Ireland (Robert Matthew); R v Burstow (Anthony Christopher) [1998] AC 147; [1997] 4 All ER 225; [1997] 3 WLR 534 **337**
- R v Johnson (Anthony Thomas) [1997] 1 WLR 367; [1996] 2 Cr App R 434 **306**
- R v Rimmington; R v Goldstein [2005] UKHL 63; [2006] 1 AC 459; [2006] 2 All ER 257 **307**
- Rabone v Pennine Care NHS Foundation Trust [2012] UKSC 2; [2012] 2 AC 72; [2012] 2 All ER 381; [2012] 2 WLR 381 **151**
- Rae v Mars [1990] 1 EGLR 161 **181**
- Read v Lyons [1947] AC 156; [1946] 2 All ER 471 **317, 318**
- Ready Mixed Concrete (South East) Ltd v Minister of Pensions [1968] 2 QB 497; [1968] 1 All ER 433; [1968] 2 WLR 775 **365**
- Redland Bricks Ltd v Morris [1970] AC 652; [1969] 2 All ER 576; [1969] 2 WLR 1437 **401**
- Reeman v Department of Transport [1997] 2 Lloyd's Rep 648 **128**
- Rees v Darlington Memorial Hospital NHS Trust [2002] EWCA Civ 88; [2003] QB 20; [2002] 2 All ER 177 **47**
- Reeves v Commissioner of Police for the Metropolis [1999] 3 WLR 363 **26, 75, 78**
- Regan v Paul Properties DPF No 1 Ltd [2006] EWHC 1941 (Ch); [2006] All ER (D) 407 (Jul) **403**
- Revill v Newberry [1996] QB 567; [1996] 1 All ER 291; [1996] 2 WLR 239 **75, 82, 174, 186**
- Reynolds v Times Newspapers [2001] 2 AC 127; [1999] 4 All ER 609; [1999] 3 WLR 1010 **251–4, 260**
- Richardson v LRC Products Ltd [2000] PIQR P164 **203, 204**
- Richardson v Pitt-Stanley [1995] AC 123; [1995] 1 All ER 460; [1995] 2 WLR 26 **204**
- Riches v News Group Newspapers Ltd [1986] QB 256; [1985] 2 All ER 845; [1985] 3 WLR 432 **237**
- Rickards v Lothian [1913] AC 263 **315–7, 321**
- Rigby v Chief Constable of Northamptonshire [1985] 1 WLR 1242 **138, 85, 315, 331**
- River Wear Commissioners v Adamson (1877) LR 2 App Cas 743 **330**
- RK v Oldham NHS Trust *see* D v East Berkshire Community Health NHS Trust
- Roberts v Gable [2007] EWCA Civ 721; [2008] QB 502; [2008] 2 WLR 129 **254**
- Roberts v Ramsbottom [1980] 1 WLR 823 **34, 50**
- Robinson v Kilvert (1889) LR 41 Ch D 88 **291, 309**
- Robinson v Balmain Ferry Co Ltd [1910] AC 295 **342**
- Roe v Minister of Health [1954] 2 QB 66; [1954] 2 All ER 131; [1954] 2 WLR 915 **39, 85, 95, 206, 210**
- Roles v Nathan [1963] 1 WLR 1117 **179, 181**
- Ronan v Sainsbury's Supermarkets Ltd [2006] EWCA Civ 1074; [2006] All ER (D) 80 (Jul) **387**
- Rookes v Barnard [1964] AC 1129; [1964] 1 All ER 367; [1964] 2 WLR 269 **397, 399**
- Rose v Miles (1815) 4 M & S 101 **306**
- Rose v Plenty [1976] 1 WLR 141 **370, 380**
- Ross v Caunters [1980] Ch 297 **130, 131**
- Rothwell v Chemical & Insulating Co Ltd and another and other appeals; *Re Pleural Plaques Litigation* [2007] UKHL 39; [2007] All ER (D) 224 (Oct) **104**
- Rowlands v Chief Constable of Merseyside Police [2006] EWCA Civ 1773; [2007] 1 WLR 1065 **397, 398**
- Rylands v Fletcher (1868) 1 LR 1 Ex 265 **294, 314–15, 333, 400, 415**
- S v W [1995] 3 FCR 649; [1995] 1 FLR 862 **181, 348**
- Sarjantson v Humberside Police (2013), **142**
- Sayers v Harlow Urban District Council [1958] 1 WLR 623 **342–3**
- Scally v Southern Health and Social Services Board [1992] 1 AC 294; [1991] 4 All ER 563; [1991] 3 WLR 778 **167**
- Scott v Associated British Ports [2000] All ER (D) 1937 **183**
- Scott v London and St Katherine's Docks (1865) 3 H & C 596 **72**
- Scott v Shepherd (1773) 3 Wm BI 892 **71**
- Scout Association v Barnes [2010] EWCA Civ 1476 **44**
- Sedleigh-Denfield v O'Callaghan [1940] AC 880; [1940] 3 All ER 349 **289–90, 296**
- Selwood v Durham County Council [2012] All ER (D) 177 (Jul) **149**
- Shelfer v City of London Electric Lighting Co [1895] 1 Ch 287 **402**
- Shelley v Paddock [1979] QB 120; [1978] 3 All ER 129
- Shiffman v Order of St John [1936] 1 All ER 557 **317**
- Sidaway v Board of Governors of the Bethlehem Royal Hospital [1985] AC 871; [1985] 1 All ER 643; [1985] 2 WLR 480 **38**
- Siddorn v Patel [2007] EWHC 1248 (QB); [2007] All ER (D) 453 (Mar) **182**
- Sienkiewicz v Greif (UK) Ltd [2011] UKSC 10; [2011] 2 AC 229; [2011] 2 All ER 857 **63**
- Simmons v British Steel plc [2004] UKHL 20; 2004 SC (HL) 94; [2004] ICR 585 **103, 166**



- Simmons v Castle [2012] EWCA Civ 1288; [2013] 1 All ER 334; [2013] 1 WLR 1239 **391**
- Simms v Leigh Rugby Football Club [1969] 2 All ER 923 **79**
- Simonds v Isle of Wight Council [2003] EWHC 2303 (QB); [2004] ELR 59 **33**
- Singh v Bhakar [2007] 1 FLR 880; [2006] Fam Law 1026 **351**
- Sion v Hampstead Heath Authority [1994] 5 Med LR 170 **106, 117**
- Six Carpenters, The (1610) 8 Rep 146a **329**
- Smith v Baker [1891] AC 325 **78, 159, 169, 170**
- Smith v Beaudesert Shire Council (1966) 120 CLR 145 **350**
- Smith v Chief Constable of Sussex Police [2008] EWCA Civ 39; [2008] All ER (D) 48 (Feb) **140, 155**
- Smith v Eric S Bush [1990] 1 AC 831; [1989] 2 All ER 514; [1989] 2 WLR 790 **94, 127, 129, 133, 135**
- Smith v Finch [2009] EWHC 53; [2009] All ER (D) 158 **76**
- Smith v Leech Brain & Co Ltd [1962] 2 QB 405; [1961] 3 All ER 1159; [1962] 2 WLR 148 **70**
- Smith v Littlewoods Organisation [1987] AC 241; [1987] 1 All ER 710; [1987] 2 WLR 480 **30**
- Smith v Ministry of Defence [2013] UKSC 41; [2014] AC 52; [2013] 4 All ER 794; [2013] 3 WLR 69 **145**
- Smith v Scott [1973] Ch 314; [1972] 3 All ER 645; [1972] 3 WLR 783 **315**
- Smith v Stages [1989] AC 928; [1989] 1 All ER 833 **375, 380**
- SmithKline Beecham plc and others v Avery and others [2009] EWHC 1488 (QB); [2011] Bus LR D40 **353**
- Smoldon v Whitworth, *The Times*, 18 December 1996 **79**
- South Australia Asset Management Corporation v York Montague Ltd [1997] AC 191; [1996] 3 All ER 365; [1996] 3 WLR 87 **386, 404**
- Southwark London Borough Council v Mills [1999] 2 WLR 409 **291**
- Spartan Steel v Martin [1973] QB 27; [1972] 3 All ER 557; [1972] 3 WLR 502 **121, 132, 134**
- Spencer v Wincanton Holdings Ltd (Wincanton Logistics Ltd) [2009] EWCA Civ 1404; [2010] PIQR P8 **66, 97**
- Spring v Guardian Assurance plc [1995] 2 AC 296; [1994] 3 All ER 129; [1994] 3 WLR 354 **131, 167**
- St Helens Smelting Co v Tipping Ltd (1865) 11 HL Cas 642 **292, 294**
- Stanley v Powell [1891] 1 AC 86 **346**
- Stannard v Gore (t/a Wyvern Tyres) [2012] EWCA Civ 1248 [2014] QB 1; [2013] 1 All ER 694 **318**
- Stansbie v Troman [1948] 2 KB 48 **29**
- Staples v West Dorset District Council (1995) 18 LS Gaz R 36; (1995) 93 LGR 536 **181**
- Steedman v BBC [2001] EWCA Civ 1534; [2002] EMLR 17 **258**
- Steel v McDonald's Corp (locus standi) *see* McDonald's Corp v Steel (No 4) **241**
- Stennett v Hancock [1939] 2 All ER 578 **195**
- Stephens v Myers (1830) 4 C & P 349 **338–9**
- Stovin v Wise [1996] AC 923; [1996] 3 All ER 801; [1996] 3 WLR 388 **146, 156**
- Stovold v Barlows [1995] NPC 154; [1995] EGCS 155; [1996] PNLR 91 **61**
- Stubbings v Webb [1993] AC 498; [1993] 1 All ER 322; [1993] 2 WLR 120, *reversing* [1992] QB 197; [1991] 3 All ER 949 **347**
- Sturges v Bridgman (1879) LR 11 Ch D 852 **293, 301, 303**
- Sunbolf v Alford, *sub nom* Tunbolf v Alford (1838) 2 JP 136; 7 LJ Ex 60 **342**
- Sutherland Shire Council v Heyman [1955–95] PNLR 238; (1985) 60 ALR 1 **20**
- Sutradhar v Natural Environment Research Council [2006] UKHL 33; [2006] 4 All ER 490; *affirming* [2004] EWCA Civ 175; *reversing* [2003] All ER (D) 87 (May) **23–4**
- Swain v Natui Ram Puri [1996] PIQR P442 **183**
- Swinney v Chief Constable of the Northumbria Police [1997] QB 464; [1996] 3 All ER 449; [1996] 3 WLR 968 **21–2, 29, 139, 155**
- Tan v East London and City Health Authority [1999] Lloyd's Rep Med 389, CC (Chelmsford) **113**
- Tate & Lyle Food Distribution Ltd v Greater London Council [1983] 2 AC 509; [1983] 1 All ER 1159; [1983] 2 WLR 649 **307**
- Taylor v A Novo (UK) Ltd [2013] EWCA Civ 194; [2014] QB 150; [2013] 3 WLR 989 **112**
- Terry v Persons Unknown [2010] EWHC 119 (QB); [2010] EMLR 16 **273, 274**
- Tetley v Chitty [1986] 1 All ER 663 **296**
- Theaker v Richardson [1962] 1 WLR 151 **237**
- Thomas v National Union of Mineworkers (South Wales Area) [1986] Ch 20; [1985] 2 All ER 1 **295, 306, 338**
- Thomas v News Group Newspapers Ltd [2001] EWCA Civ 1233; [2002] EMLR 4 **351**
- Thompson v Commissioner of Police of the Metropolis [1998] QB 498; [1997] 2 All ER 762; [1997] 3 WLR 403 **399**
- Thompson v Smiths Shiprepairers (North Shields) Ltd [1984] QB 405; [1984] 1 All ER 881; [1984] 2 WLR 522 **42, 94, 163**
- Thompson-Schwab v Costaki [1956] 1 WLR 335 **290**
- Thornton v Daily Telegraph Media Group [2011] EWHC 1884 (QB); [2011] 1 All ER (D) 243 **231**
- Thour v Royal Free Hampstead NHS Trust [2012] EWHC 1473 (QB); [2012] All ER (D) 21 (Jun) **249**
- Titchener v British Railways Board [1983] 1 WLR 1427 **186**
- Todd and others v Adams and another [2001] 2 Lloyd's Rep 443; *The Times*, 20 August 2001 **219**
- Tolley v J S Fry & Sons Ltd [1931] AC 333 **232**
- Tomlinson v Congleton Borough Council [2003] UKHL 47; [2004] 1 AC 6; [2003] 3 All ER 1122 **184, 185, 189**

- Topp v London County Bus (South West) [1993] 1WLR 976 30
- Transco plc v Stockport Metropolitan Borough Council [2003] UKHL 61; [2004] 2 AC 1; [2004] 1 All ER 589 **316–18, 321, 323**
- Trimingham v Associated Newspapers [2012] EWHC 1296 (QB); [2012] All ER (D) 248 (May) **278, 351**
- Turberville v Savage (1669) 1 Mod 3 **338, 354**
- Twine v Bean's Express (1946) 62 TLR 458 **370, 380**
- Van Colle v Chief Constable of Hertfordshire Police; Smith v Chief Constable of Sussex Police [2008] UKHL 50; [2009] 1 AC 225; [2008] 3 All ER 977 **142, 155**
- Various Claimants v Catholic Child Welfare Society *see* Various Claimants v Institute of the Brothers of the Christian Schools
- Various Claimants v Institute of the Brothers of the Christian Schools [2012] UKSC 56; [2013] 2 AC 1; [2013] 1 All ER 670 **368, 369, 374**
- Vellino v Chief Constable of Greater Manchester [2001] EWCA Civ 1249; [2002] 3 All ER 78; [2002] 1 WLR 218 **27, 82**
- Vernon v Bosley (No 1) [1997] 1 All ER 577 **107**
- Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd [2005] EWCA Civ 1151; [2006] QB 510; [2005] 4 All ER 1181 **368**
- Vision Golf Ltd v Weightmans (a firm) [2005] EWHC 1675 (Ch); [2006] 1 P & CR D37 **358**
- Von Hannover v Germany [2004] ECHR 294; (2005) 40 EHRR 1; [2012] EMLR 16 **275, 276, 281**
- Vowles v Evans [2003] EWCA Civ 318; [2003] 1 WLR 1607 **35**
- W v Essex County Council [2001] 2 AC 592; [2000] 2 All ER 237; [2000] 2 WLR 601 **114, 147**
- Wagon Mound (No 1) *see* Overseas Tankship (UK) v Morts Dock & Engineering Co
- Wagon Mound (No 2) *see* Overseas Tankship (UK) v Miller Steamship Co
- Wainwright v Home Office [2001] EWCA Civ 2081; [2002] QB 1334; [2003] 4 All ER 969 **270, 272, 284, 350**
- Wales v Wadham [1977] 2 All ER 125; [1977] 1 WLR 199 218
- Walker v Northumberland County Council [1995] 1 All ER 737 **163, 169**
- Wallace v Newton [1982] 1 WLR 375 **404**
- Wallbank v Wallbank Fox Designs [2012] EWCA Civ 25; [2012] IRLR 307 **376, 377**
- Walton v Calderdale Healthcare NHS Trust [2005] EWHC 1053 (QB); [2005] All ER (D) 370 (May) **393**
- Ward v Tesco Stores Ltd [1976] 1 WLR 810 **73**
- Ward v The Ritz Hotel [1992] PIQR P315 **176**
- Warren v Henley's Ltd [1948] 2 All ER 955 **371, 381**
- Warriner v Warriner [2002] EWCA Civ 81; [2003] 3 All ER 447; [2002] 1 WLR 1703 **390, 404**
- Waters v Commissioner of Police for the Metropolis [2000] 4 All ER 934; [2000] 1 WLR 1607 **140, 161**
- Watkins v Jones Maidment Wilson (a firm) [2008] EWCA Civ 134; [2008] All ER (D) 27 (Mar) **87**
- Watkins v Secretary of State for the Home Department [2006] UKHL 17; [2006] 2 AC 395; [2006] 2 All ER 353 **396**
- Watson v British Boxing Board of Control Ltd [2001] QB 1134; [2000] All ER (D) 2352; [2001] 1 WLR 1256 **24**
- Watson v Buckley, Osborne, Garrett & Co [1940] 1 All ER 174 **195, 196**
- Watson (Derek) v Croft Promo-Sport Ltd [2009] EWCA Civ 15; [2009] 3 All ER 249; [2008] EWHC 759 (QB); [2008] 3 All ER 1171 **300**
- Watt v Hertfordshire County Council [1954] 1 WLR 835 **43, 44**
- Watt v Longsdon [1930] 1 KB 130 **249**
- Weddall v Barchester Healthcare [2012] EWCA Civ 25; [2012] IRLR 307 **376, 377**
- Wells v Cooper [1958] 2 QB 265; [1958] 2 All ER 527; [1958] 3 WLR 128 **37**
- West v Bristol Tramways Co [1908] 2 KB 14 **317**
- West & Son v Shephard *see* H West & Son v Shephard
- West Bromwich Albion Football Club Ltd v El Safty [2006] EWCA Civ 1299; [2007] PIQR P7 **25**
- Wheat v E Lacon & Co [1966] AC 552; [1966] 1 All ER 582; [1966] 2 WLR 581 **174, 188**
- Wheeler v JJ Saunders [1996] Ch 19; [1995] 2 All ER 697; [1995] 3 WLR 466 **290, 293**
- White v Jones [1995] 2 WLR 207 **130, 131**
- White v Paul Davidson Taylor (a firm) *see* Paul Davidson Taylor (a firm) v White
- White v St Albans City, *The Times*, 12 March 1990 **185**
- White and others v Chief Constable of South Yorkshire and others [1999] 2 AC 455; [1999] 1 All ER 1; [1998] 3 WLR 1509 **101–6, 108–11, 115, 170**
- Wilkinson v Downton [1897] 2 QB 57 **337, 348–50, 353, 355**
- Williams v Hemphill [1966] 2 Lloyd's Rep 101 **374**
- Williams and Reid v Natural Life Health Foods Ltd and Mistlin [1998] 1 WLR 830 **123**
- Wilsher v Essex Area Health Authority [1988] AC 1074; [1988] 1 All ER 871; [1988] 2 WLR 557 **59**
- Wilson v Governors of Sacred Heart Roman Catholic Primary School, Carlton [1998] 1 FLR 663; [1998] Fam Law 249; *The Times*, 28 November 1997 **42**
- Wilson v Pringle [1987] QB 237; [1986] 2 All ER 440; [1986] 3 WLR 1 **340**
- Wilson v Tyneside Window Cleaning Co [1958] 2 QB 110; [1958] 2 All ER 265; [1958] 2 WLR 900 **162**
- Wilson and Clyde Coal Co Ltd v English [1938] AC 57; 1937 SC (HL) 46; [1937] 3 All ER 628 **159, 160**
- Withers v Perry Chain [1961] 1 WLR 1314 **168**

- Wong v Parkside Health NHS Trust [2001] EWCA Civ 1721; [2003] 3 All ER 932 **350**
- Woodland (Annie) v Essex County Council *see* Woodland (Annie) v Swimming Teachers Association
- Woodland (Annie) v Swimming Teachers Association [2013] UKSC 66; [2014] AC 537; [2014] 1 All ER 482 **378**
- Woodward v Mayor of Hastings [1945] KB 174 **179**
- Wooldridge v Sumner [1963] 2 QB 43; [1962] 2 All ER 978; [1962] 3 WLR 616 **79**
- Worsley v Tambrands (1999) 48 LS Gaz R 40; *The Times*, 11 February 2000 **204**
- Wright (a child) v Cambridge Medical Group (a partnership) [2011] EWCA Civ 669; [2013] QB 312; [2012] 3 WLR 1124 **63**
- Wringe v Cohen [1940] 1 KB 229 **296**
- X v Bedfordshire County Council [1995] 2 AC 633; [1995] 3 All ER 353; [1995] 3 WLR 152 **84, 146–50, 153, 217–20**
- Yachuk v Oliver Blais Co [1949] AC 386; [1949] 2 All ER 150 **76**
- Yearworth and others v North Bristol NHS Trust [2009] EWCA Civ 37; [2010] QB 1; [2009] 2 All ER 986 **48**
- Yorkshire Traction Co Ltd v Walter Searby [2003] EWCA Civ 1856; (2004) 148 SJLB 61 **161**
- Z v United Kingdom (29392/95) (2001) 34 EHRR 97; [2001] 2 FLR 612; [2001] 2 FCR 246; [2001] Fam Law 583 **139, 142, 150, 151, 153–4, 156**
- Ziemniak v ETPM Deep Sea Ltd [2003] EWCA Civ 636; [2003] 2 All ER (Comm) 283 **220**

# Table of statutes, statutory instruments and European legislation

## Table of statutes

- Civil Aviation Act 1982 **326**
- Civil Evidence Act 1968 **72**  
s. 11 **72**
- Civil Liability (Contribution) Act 1978  
**359, 60, 372, 377, 413**  
s. 3 **359**  
s. 4 **359**
- Civil Partnership Act 2004 **395**
- Clean Air Act 1956 **289**
- Companies Act 1985 **23**
- Compensation Act 2006 **3, 43, 63**  
s. 1 **43**  
s. 3 **63**
- Consumer Credit Act 1974 **210, 212, 214**
- Consumer Protection Act 1961 **210**
- Consumer Protection Act 1987 **193, 200–14, 322**  
Pt II **210**  
s. 2 **209**  
s. 2(1) **202**  
s. 2(3) **201**  
s. 3 **208**  
s. 4 **205**  
s. 4(1)(e) **207**
- Contagious Diseases (Animals) Act 1869 **223**
- Contracts (Rights of Third Parties) Act 1999 **193, 195, 212**
- Control of Pollution Act 1974 **289**
- Countryside and Rights of Way Act 2000 **176, 184, 189**
- Courts Act 2003 **393**  
s. 100 **393**  
s. 101 **393**
- Courts and Legal Services Act 1990 **256**  
s. 8 **256**
- Criminal Justice Act 2003 **346**  
s. 329 **346**
- Criminal Justice and Public Order Act 1994 **334**
- Criminal Law Act 1967 **346**  
s. 3(1) **346**
- Crown Proceedings (Armed Forces) Act 1987 **145**
- Education Act 1993 **222**
- Employers' Liability (Compulsory Insurance) Act 1969 **7, 160**
- Employers' Liability (Defective Equipment) Act 1969 **161**  
s. 1(1) **161**
- Enterprise and Regulatory Reform Act 2013 **217**  
s. 69 **217**
- European Convention on Human Rights  
Art. 2, **142**  
Art. 6, **138, 141, 151, 153, 154**  
Art. 6.1, **142, 151, 152**
- Factories Act 1937 **222**
- Family Law Reform Act 1969 **346**
- Fatal Accidents Act 1976 **114, 360, 395, 405, 413**
- Health and Safety at Work etc Act 1974 **158, 217**
- Highways Act 1980 **222**
- Human Fertilisation and Embryology Act 1990 **48, 49**
- Human Rights Act 1998 **83, 141–2, 145, 149, 151, 155, 156, 236, 264, 269–72, 276, 283, 284, 299, 305, 311**
- Art. 3, **145, 149**  
Art. 8, **145, 149**  
s. 12 **257, 283**
- Latent Damage Act 1986 **87**
- Law Reform (Contributory Negligence) Act 1945 **74, 158–60**  
s. 1(1) **76**
- Law Reform (Miscellaneous Provisions) Act 1934 **395**  
s. 1 **395**
- Law Reform (Personal Injuries) Act 1948 **160, 394**
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 **391**
- Libel Act 1843 (Lord Campbell's Act)  
s. 1 **254**  
s. 2 **255**
- Libel Act 1845 **254**
- Limitation Act 1980 **86, 88, 91, 360, 414**  
s. 2 **347**  
s. 11 **347**  
s. 14A **87**  
s. 32A **238, 258**  
s. 33 **89, 90**
- London Building (Amendments) Act 1939 **403**
- Merchant Shipping Act 1970 **221**
- Merchant Shipping Act 1979 **221**
- Ministry of Health Act 1919 **220**
- Misrepresentation Act 1967 **132**
- NHS Redress Act 2006 **9**
- Northern Ireland (Emergency Provisions) Act 1987 **221**  
s. 15 **221**

Nuclear Installations Act 1965 **322**  
 Nuclear Installations Act 1969 **322**  
 Occupiers Liability Act 1957 **173, 175, 176, 181, 182, 184, 186, 187–90, 378, 415, 416**  
   s. 1(3) **175, 182**  
   s. 2(1) **175, 181**  
   s. 2(2) **176, 182, 188–9**  
   s. 2(3) **181, 182**  
   s. 2(3)(a) **177**  
   s. 2(3)(b) **178, 179**  
   s. 2(4)(a) **181**  
   s. 2(4)(b) **179**  
   s. 2(5) **181**  
   s. 2(6) **175**  
   s. 5(1) **180**  
 Occupiers Liability Act 1984 **82, 173, 175, 176, 178, 182–90, 415**  
   s. 1(3) **183**  
   s. 1(5) **187**  
   s. 1(6) **186**  
   s. 2 **182**  
  
 Parliamentary Papers Act 1840 **245**  
   s. 1 **245**  
 Partnership Act 1980 **372**  
 Police and Criminal Evidence Act 1984 **331, 343**  
   s. 17 **331**  
 Prosecution of Offenders Act 1985 **219**  
 Protection from Harassment Act 1997 **166, 298, 348, 350–3, 355, 376**

  s. 1 **351**  
   s. 2 **352**  
 Public Order Act 1986 **328**  
  
 Race Relations Act 1976 **217**  
   s. 57(1) **224**  
 Reservoirs Act 1975 **322**  
 Road Traffic Act 1930 **220**  
 Road Traffic Act 1988 **7, 73, 79, 346, 381**  
   s. 38(7) **73**  
   s. 149 **79**  
  
 Safety of Sports Grounds Act 1975 **217**  
 Sale of Goods Act 1893 **193**  
 Serious Organised Crime and Police Act 2005 **343**  
 Sex Discrimination Act 1975 **217**  
   s. 66(1) **224**  
 Social Security (Recovery of Benefits) Act 1997 **394**  
 Supreme Court Act 1981 **393, 414, 415**  
   s. 37 **401**  
  
 Unfair Contract Terms Act 1977 **79, 182, 187–90**  
   s. 2(1) **181**  
   s. 3(1) **182**  
  
 Water Industry Act 1991 **301**

## Table of statutory instruments

Fishing Vessel (Safety Provisions) Rules 1975, SI 1975/330 **219**  
 Merchant Shipping (Life Saving Appliances) Regulations 1980, SI 1980/538 **220**  
 Southern Rhodesia (Petroleum) Order 1965, SI 1965/2140 **218**

## Table of European legislation

### Conventions

European Convention on Human Rights and Fundamental Freedoms **138, 151, 276**  
 Art. 2 **141–2**  
 Art. 3 **149**  
 Art. 6 **138, 151, 152, 76**  
 Art. 6.1 **142, 151, 152**  
 Art. 8 **149, 270, 271, 276, 284, 305**  
 Art. 10 **236, 270, 352**

### Directives

Product Liability Directive (85/374/EEC) **206, 207, 208**

# Chapter 1

## Tort law: an introduction

### This chapter discusses:

- What is a tort
- How torts compare to other legal wrongs
- The roles of policy and fault in tort law
- Alternative compensation methods for personal injury
- Proposed reforms of the tort system.

The law of tort covers a wide range of situations, including such diverse claims as those of a passenger injured in a road accident, a patient injured by a negligent doctor, a pop star libelled by a newspaper, a citizen wrongfully arrested by the police, and a landowner whose land has been trespassed on. As a result, it is difficult to pin down a definition of a tort; but, in broad terms, a tort occurs where there is breach of a general duty fixed by civil law.

When a tort is committed, the law allows the victim to claim money, known as damages, to compensate for the commission of the tort. This is paid by the person who committed the tort (known as the tortfeasor). Other remedies may be available in addition to or instead of this. In some cases, the victims will be able to claim damages only if they can prove that the tort caused some harm, but in others, which are described as actionable *per se*, they need only to prove that the relevant tort has been committed. For example, landowners can claim damages in tort from someone trespassing on their land, even though no harm has been done by the trespasser.

## Comparing tort with other legal wrongs

### ● Torts and crimes

A crime is a wrong which is punished by the state; in most cases, the parties in the case are the wrongdoer and the state (called 'the Crown' for these purposes), and the primary aim is to punish the wrongdoer. By contrast, a tort action is between the wrongdoer and the victim, and the aim is to compensate the victim for the harm done. It is therefore incorrect to say that someone has been 'prosecuted' for negligence, or 'found guilty' of libel, as these terms relate to the criminal law (journalists frequently make this kind of mistake, but law students should not).

There are, however, some areas in which the distinctions are blurred. In some (quite rare) tort cases, damages may be set at a high rate in order to punish the wrongdoer, while in criminal cases, the range of punishments now includes provision for the wrongdoer to compensate the victim financially, though this is still not the primary aim of criminal proceedings, and the awards are usually a great deal lower than would be ordered in a tort action.

There are also cases in which the same incident may give rise to both criminal and tortious proceedings. An example would be a car accident, in which the driver might be prosecuted by the state for dangerous driving, and sued by the victim for the injuries caused.

### ● Torts and breaches of contract

A tort involves breach of a duty which is fixed by the law, while breach of contract is a breach of a duty which the party has voluntarily agreed to assume. For example, we are all under a duty not to trespass on other people's land, whether we like it or not, and breach of that duty is a tort. But if A refuses to dig B's garden, A can only be in breach of a legal duty if they have already agreed by means of a contract that A will do so.

In contract, duties are usually only owed to the other contracting party, whereas in tort, they are usually owed to people in general, or specific groups of people (such as, for example, employees). While the main aim of tort proceedings is to compensate for harm suffered, contract aims primarily to enforce promises.

Again, there are areas where these distinctions blur. In some cases, liability in tort is clarified by the presence of agreement. For example, the duty owed by an occupier of land to someone who visits the land is greater if the occupier has agreed to the visitor's presence, than if the 'visitor' is

actually a trespasser. Equally, many contractual duties are fixed by law, and not by agreement; the parties must have agreed to make a contract, but once that has been done, certain terms will be imposed on them by law.

A defendant can be liable in both contract and tort. For example, if a householder is injured by building work done on their home, it may be possible to sue in tort for negligence and for breach of a contractual term to take reasonable care.

## The role of policy

Like any other area of law, tort has its own set of principles on which cases should be decided, but clearly it is an area where policy can be seen to be behind many decisions. For example, in many tort cases one or both of the parties will, in practice, be insurance companies – cases involving car accidents are an obvious example, but this is also true of most cases of employers' liability, medical negligence and occupiers' liability. The results of such cases may have implications for the cost and availability of insurance to others; if certain activities are seen as a bad risk, the price of insurance for those activities will go up, and in some cases insurance may even be refused. There is, therefore, an argument for saying that this fact should be taken into account when tort cases are decided. In some cases, judges do specifically refer to the issue of insurance, but more often, it is not overtly mentioned yet still appears to be given consideration.

In terms of simple justice, it may seem desirable that everybody who has suffered harm, however small, should find it easy to make a claim. In practical terms, however, the tort process is expensive and it is difficult to justify its use for very minor sums. The courts therefore have to strike a balance between allowing parties who have suffered harm to get redress, and establishing precedents that make it too easy to get redress with the result that people make claims for very minor harms. The English courts have often been resistant to upholding claims that would 'open the floodgates' for a large number of new cases, which again brings policy into the decision.

There are other practical concerns too: it has been suggested, for example, that in the USA, where ordinary individuals are much more likely to sue than here in the UK, medical professionals are inclined to avoid new techniques, or to cover themselves by ordering costly and often unnecessary tests, because of the danger of legal action. While it is clearly a good thing that dangerous techniques should not be used, medical science has always had to take certain risks in order to make new discoveries, and it may be that fear of litigation can stunt this process.

These are difficult issues to weigh up, and traditionally English judges avoided the problem by behaving as though such considerations played no part in their decisions, referring only to established principles. However, in recent years they have been more willing to make clear the policy implications behind their decisions: certainly the 'floodgates' argument mentioned above has been overtly referred to in the case law on both nervous shock and the recovery of economic loss in negligence (see Chapters 4 and 5).

The Compensation Act 2006 now gives judges specific permission to address one particular aspect of policy when deciding cases involving negligence or breach of statutory duty. Section 1 of the Act states that when considering whether a defendant should have taken particular steps to meet a standard of care, a court

May ... have regard to whether a requirement to take such 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.



The clause was a response to claims that Britain has developed a 'compensation culture' in which people are too ready to sue over trivial events.



### Topical Issue

#### A compensation culture

Over the past decade, both the media and politicians have frequently argued that Britain has a 'compensation culture', in which people have become too ready to sue over trivial events, and in which it has become common to try to blame someone for events which would once have been seen as nothing more than accidents. The media in particular give the impression that the number of cases is constantly rising, and the courts are flooded with trivial claims; it is, for example, widely believed that the British courts allowed a claim against McDonald's by a woman who was scalded because her coffee was too hot. In fact, when the government set up a taskforce to investigate the issue, its report, *Better Routes to Redress* (see 'Reading on the internet' at the end of this chapter), found that the number of people suing for personal injury has gone down in recent years, and there was no statistical evidence that the compensation culture actually exists. As you will discover when you read the next chapter, it is not legally possible in England to claim in negligence for trivial accidents that are nobody's fault, and while it is true that McDonald's were sued for selling excessively hot coffee in the USA, an attempt to bring a similar claim in the English courts failed.

## Tort and the requirement of fault

Most torts require that the defendant was at fault in some way. This means that, in order to be liable, the defendant must either have deliberately acted wrongfully, or there must have been something they could reasonably have been expected to do to prevent the harm they caused, which they failed to do. However, there are a few torts which can be committed without the defendant being at fault in any way. These are known as strict liability torts. Whether or not a tort requires fault has an impact on how easy it is to claim under that tort, since it is clearly much easier simply to prove that a defendant has done a particular act, or caused a particular sort of damage, than it is also to have to prove that they acted deliberately, or could have taken steps to avoid the damage. There is therefore a certain amount of debate about whether more torts should be made no-fault (and therefore strict liability) in order to give better protection to potential claimants. In some countries, for example, there are no-fault systems for claims involving car accidents and for medical negligence. This issue sometimes comes up in exam questions, so it is useful to understand some of the arguments for and against a requirement of fault.

## Reasons for a requirement of fault

### ● Control of tort actions

The fact that a claimant must usually prove fault limits the number of tort actions brought, and helps prevent the courts from being overloaded and potential defendants being exposed to very wide and unpredictable liability.

### ● **Laissez-faire policy**

The modern tort system arose in the nineteenth century, when the doctrine of *laissez-faire* was prominent. This argued that individuals should be responsible for their own actions, with as little intervention from the state as possible. People were not required actively to look after each other, only to avoid doing each other harm, and they would only be expected to make amends for such harm as they could reasonably have avoided doing – in other words, not for harm caused when they were not at fault. It was considered best for the state to provide a framework of rules so that people could plan their affairs, but to intervene in those affairs as little as possible.

### ● **Deterrence**

The requirement of fault is said to promote careful behaviour, on the basis that people can take steps to avoid liability, whereas under strict liability it would be beyond their control, leaving little incentive to take care.

### ● **Wider liability would merely shift the burden**

Compensation is designed to shift the burden of harm from the person who originally suffered the harm to the person who pays the compensation. It moves, rather than cancels out, the loss. As a result, it can be argued that it is better to let the loss lie where it falls unless some other purpose can be served by providing compensation. A fault requirement adds an additional purpose, that of punishing the wrongdoer and deterring others.

### ● **Accountability**

The requirement of fault is a way of making people pay for what they have done wrong, which appears to be a deep-seated social need – even though in many cases it is actually an insurance company which pays, and not the person responsible.

### ● **Strict liability merely reverses the burden of proving fault**

Almost all strict liability torts allow the defendant to plead the contributory fault of the claimant as a defence, or as a factor which should reduce damages. In practice, therefore, strict liability often amounts to nothing more than a reversal of the burden of proof.

## Arguments against a requirement of fault

### ● **Unjust distinctions**

The result of the fault principle is that two people who have suffered exactly the same injuries may receive very different levels of compensation. For example, John and Jim both lose the use of their legs in separate car accidents; in Jim's case, the driver is proved to be at fault, in John's, the driver is not. They both suffer the same degree of pain; they both end up with the same disability and the same problems. Yet Jim may win thousands of pounds in damages to help him cope with those problems, while the most John can hope to receive are benefits provided by the social security

system. As we shall see further on, some countries have partially replaced tort law with no-fault compensation schemes aimed at dealing with this problem. A no-fault scheme could compensate not only accidents, but also hereditary and other disabilities and illnesses, on the basis that the problems are the same, regardless of cause.

### ● **Illogical distinctions**

Even if it is admitted that the potentially huge number of tort actions has to be limited in some way, proof of fault is not the only means by which this could be done, nor a particularly logical choice. It appears to be the result of a policy decision that it is sometimes just to reward defendants who have been careful, by protecting them from liability for the consequences of their actions. Quite apart from the fact that fault is difficult to prove, and failure to prove fault does not mean that fault did not occur, it is difficult to see the logic of this approach when the wrongdoer is insured, and would not personally lose anything by paying damages.

### ● **Lack of deterrence**

The practical deterrent effect of fault liability is debatable. First, the generalised duty to take care is too vague to influence behaviour much. Secondly, in many cases the tortfeasor will be well aware that damages will be paid by their insurance company. Motorists are obliged by law to take out insurance against accidents, as are most employers, and many professional organisations run negligence insurance schemes for their members. It can be argued that defendants also know that a claim may result in higher premiums, but it is debatable whether this is actually much of a deterrent, especially in business situations where the cost can simply be passed on to consumers via higher prices.

Of course, cost may not be the only deterrent; bad publicity can be equally powerful, if not more so. However, large corporations with good lawyers can largely avoid such publicity by negotiating an out-of-court settlement which includes a condition that the claimant does not reveal details about the case or the settlement. In such a case, claimants' chances of recovery seem to depend not on fault, but on the amount of pre-trial publicity they can drum up.

### ● **Tort should compensate and not punish**

It can be argued that it is not the job of tort to punish wrongdoers; that function properly belongs to the criminal law.

### ● **Damages can be disproportionate to fault**

As we will see when we look at negligence, there are cases in which a very minor level of fault can result in very serious consequences. There can be a huge disproportion between defendants' negligence (which may only be a momentary lapse in concentration) and the high damages that they subsequently have to pay.

### ● **Expense**

The need to prove fault increases the length, and so the cost, of tort cases. This increases the proportion of money that is spent on operating the tort system rather than compensating claimants.

## ● Unpredictability

The fault principle adds to the unpredictability of tort cases, and increases anxiety and pressure on the parties. This is generally more of a problem for claimants, who will often be involved in a court case for the first time, than for defendants, who will usually be supported by an insurance company which has wide experience of such cases. The practical result is that claimants may feel pressurised into accepting settlements worth much less than they could have won if they had gone to court.

## ● Problems with the objective standard

Fault is judged by reference to an objective standard of behaviour, which ignores the knowledge or capacity of the individual; this can mean that someone is legally at fault, when we would not consider that they were at fault morally, or at least not to the degree suggested by the law. For example, the law requires an objective standard of care from drivers, and it expects this equally after 20 years of driving, or 20 minutes.

## Alternative methods of compensation for personal injury

A hundred years ago, the law of tort, with all its flaws, was almost the only way of gaining compensation for accidental injury, but its role has declined with the development of insurance and social security. For these the issue of fault is usually irrelevant.

## ● The social security system

The vast majority of accident victims who need financial support get it not from the tort system, but through social security benefits. This is because most accident victims do not sue anybody, either because the accident was not (or cannot be proved to be) someone else's fault, or because they do not realise they could sue, or because for some reason they decide not to. They may be unable to work for a long period or even permanently and, unless they have insurance, state benefits will be their only means of financial support. Benefits vary depending on the person's needs, and how much they have paid into the system while working, but are unlikely to provide for more than the bare essentials of life – unlike tort compensation, which is designed as far as possible to give an accident victim back the standard of living he or she enjoyed before the accident.

The social security system tends to provide support for injury victims more quickly, and with less uncertainty than the tort system, but its drawbacks are the very low levels of support, and the continuing stigma attached to accepting state benefits. Tabloid newspapers, for example, routinely refer to benefits as 'handouts', when the recipients may in fact have been paying into the social security system for years through tax and national insurance.

## ● Insurance

A whole range of policies provide insurance cover in many potentially dangerous situations. Two of the most important sources of accidents are road traffic and industry, and statute makes it a criminal offence for either vehicle users or employers to be without adequate insurance (under the Road Traffic Act 1988 and the Employers' Liability (Compulsory Insurance) Act 1969, respectively).

In addition, the Motor Insurers' Bureau, an organisation set up by the insurance industry, gives money to traffic accident victims where the driver is either uninsured or unidentified (as in the case of a 'hit and run' accident). Many people take out household insurance, which usually covers occupiers' liability. Three main types of policy provide compensation where accidental death or injury occurs: life assurance, personal accident insurance and permanent health insurance.

In many cases, employers provide a variety of benefits which may also be of use to accident victims. There may be lump sums payable under occupational pension schemes where death or injury lead to premature retirement. Some employers offer sick pay at higher rates and for longer periods than the statutory scheme, though this rarely exceeds six months on full pay.

## ● Compensation for victims of crime

There are additional sources of financial help for those who are injured as a result of crime. The Criminal Injuries Compensation Scheme compensates victims of violent crime, and those injured while trying to prevent crime, for pain and suffering and loss of amenity (meaning loss of the ability to lead a full life through injury).

The sums awarded are based on a tariff, which allocates specific sums to different levels of injury. Traditionally, the tariff amounts were similar to those which a court would pay out for the same sort of injury if a tort claim was made. In 2012, however, against a great deal of opposition, the government made radical changes to the scheme, removing compensation for the lowest levels of injury, and cutting the amounts given to those in the middle range. The Criminal Injuries Compensation Scheme also offers compensation for loss of earnings, for those unable to work after an injury, but at a lower level than a tort claim would. In practice, the scheme provides a remedy where a person's rights in tort are useless because the assailant has not been identified, or would be unable to pay substantial damages if sued.

A second source of compensation for crime victims is the compensation order, which courts can make against those convicted of crimes, in order to pay for any damage they have done in committing the crime. The orders can cover compensation for personal injury, or loss of or damage to property; in practice most are for theft, handling stolen goods and criminal damage.

## ● The NHS complaints system

Since the mid-1990s, claims against the NHS for medical negligence have been increasing, and currently cost the NHS over £1.4 billion a year in compensation and legal fees. As a result, in 2001, the National Audit Office looked into the issue of negligence claims against the NHS, and concluded that money could be saved, and complaints dealt with more efficiently, if a new system specifically for NHS complaints was created.

The National Audit Office pointed out that research showed that, in many cases, financial compensation was not the patient's main aim. Often, they were more interested in getting a genuine explanation of what had gone wrong, an apology, and some kind of reassurance that action would be taken to prevent other people being injured by the same sort of mistake. It was when the NHS failed to meet these needs that attitudes tended to harden, leading people to sue for compensation. The report concluded that if measures were put in place to address these issues, fewer legal cases might be brought.

A further report was produced in 2003 by the Chief Medical Officer, Liam Donaldson. In *Making Amends*, he too recommended the creation of a new scheme for NHS complaints, which would make it easier to get not just compensation, but also acknowledgement of mistakes, and care and

rehabilitation to deal with the results of the medical negligence. The emphasis in the report was on creating a system in which, instead of the patient having to prove fault, and the NHS attempting to fight claims, NHS staff would be encouraged to admit mistakes, and the organisation would take responsibility for improving practice by learning from such mistakes.

The government's response to *Making Amends* was the NHS Redress Act 2006. It allows the creation of an NHS Redress Scheme which, the explanatory notes to the Act state, will 'provide investigations when things go wrong, remedial treatment, rehabilitation and care where needed, explanations and apologies, and financial compensation in certain circumstances' without the need to go to court. Patients who accept redress offered under the scheme will have to waive their right to take legal action.

The Act is what is known as an enabling Act, which sets out a broad framework for the scheme and then permits the detailed rules to be put in place by means of secondary legislation. It was passed in November 2006, and the government then began consulting with interested parties before deciding on the details of how the scheme will work. It was eventually decided that the scheme would be piloted in Wales, and a new NHS redress scheme began operating there in April 2011. The idea of the scheme is to encourage the NHS to be more receptive of complaints, rather than taking a defensive attitude, and to simplify the way straightforward, relatively low-value claims are dealt with.

The scheme only applies to claims worth up to £25,000, and allows patients to make a claim verbally, by post or by email. The scheme obliges the relevant NHS trust to investigate the complaint, respond to the patient, and assess whether the actions complained of have caused harm to the patient. Where there is negligence, as well as paying financial compensation, which can include the cost of any remedial treatment required, the trust should give an apology and a clear explanation of what went wrong, and have an action plan in place to make sure the same thing does not happen again to someone else. No studies have yet been done to assess how well the scheme is working, but there have been criticisms that allowing trusts to investigate themselves means that the investigations cannot be considered fully independent and unbiased. No plans have yet been made to extend the scheme to England.

## ● Special funds

Highly publicised accidents involving large numbers of victims, such as the sinking of the *Herald of Free Enterprise* ferry off Zeebrugge and the King's Cross underground fire, sometimes result in the setting up of special funds to compensate the victims.

## ● No-fault systems

The social security and insurance arrangements run alongside the tort system in England. However, in some countries, tort liability in particular fields has been completely replaced by a general no-fault scheme of compensation. The main benefits of this are that similar levels of harm receive similar levels of compensation, regardless of whether fault can be proved, and that the money spent on administering the tort system, and providing legal aid in tort cases, can instead be spent on compensating those who have suffered harm. It should be pointed out here that tort is a notoriously uneconomical way of delivering benefits to those who need them: the 2001 survey of medical negligence claims by the National Audit Office found that in nearly half the cases studied, the costs of the case would be higher than the damages awarded to the claimant. In cases where the claim was for more than £500,000, 65 per cent cost more than the eventual damages.