Professional Liability

Third Edition

Robert Wickins

Hong Kong University Press
香港大學出版社

First Published 1989
Second Edition 1991
Third Edition 1996

ISBN 962 209 404 X

Printed in Hong Kong by Condor Production Ltd.

Contents

Chapter 1

Duty of Care

1.1 Contract and Tort

1.1.1 Two major areas of civil liability in English law are those of contract and tort. Liability in contract is based on a legally enforceable agreement between the parties. Generally, only the parties to a contract can enforce the contract or rely on it as a defence. Other persons cannot sue or rely on the contract even though they are affected by it in some way. A contract thus does not give rights to the whole world. This is the principle of privity of contract. Furthermore, because of the concept of freedom of contract, the parties to a contract are generally free to negotiate any terms they consider desirable. In the absence of statutory controls, they can thus limit or expand the scope of their legal duties by simple agreement. Liability in tort is generally based on the concept of a legal duty not to injure other persons or their property interests. This duty is based on general concepts such as reasonable foreseeability, and is not limited by privity of contract. It is thus possible for a person to be liable in tort to other persons with whom he has never negotiated or even met. It is obvious from what has been said that contract and tort are separate and independent branches of civil law. If a person is knocked down in the street and injured through the carelessness of the driver of a motor vehicle, or a person suffers interference with the use of land because of excessive noise from nearby premises, the resulting legal liability is not based on any express or implied agreement or contract between the parties. It arises in tort. Basic textbooks therefore deal with contract and tort as quite separate areas.

1.1.2 However, it is quite possible in many business situations for liability in contract and tort to overlap to a considerable extent. This is particularly important in the area of professional liability. It is an

implied term of many contracts that one of the parties will perform his task with reasonable care or skill. For example, it is implied that a carrier will use reasonable care in carrying the goods under the contract of carriage; that an architect will use reasonable care in designing a building; that an agent or an employee will do his work with reasonable care; and that the drawer of a cheque owes a duty to his bank to draw it with reasonable care under the contract between them. At the same time, the person can also owe a duty of care with regard to the same transaction under the tort of negligence. The other party to the contract may thus be able to sue for breach of contract and under the tort of negligence with regard to the same careless act, although he cannot generally make a profit from this double liability.

1.1.3 A good example of this situation is the case of *Esso Petroleum Co. Ltd.* v. *Mardon* [1976] 2 A11 ER 5. The plaintiff was a large petrol company which operated a chain of petrol outlets. The company acquired a new site for a petrol station, and after detailed study it estimated that the station could reach a turnover of 200,000 gallons a year by the third year of operation. However, this estimate was on the basis that the station faced onto a main road. In fact, the local council later only gave planning permission on the basis that the station would face onto a side-street. Despite this change the managers of the company negotiated with the defendant to give him a tenancy of the new station, and gave a firm verbal statement based on their long experience and expertise in the petrol marketing business that the station would still achieve an annual turnover of 200,000 gallons. The statement was not incorporated in the written contract of lease between the parties which was finally signed with regard to the station. Because the station faced onto a side-street it never achieved a turnover of more than 70,000 gallons.

The Court of Appeal held that the verbal statement was in the circumstances not a mere forecast or expression of opinion, but a parallel verbal contract, or as it is called in law a collateral warranty. The plaintiff was liable for the loss arising from breach of this contractual undertaking. Furthermore, because of the plaintiff's special expertise and long experience in petrol marketing on which it knew the defendant was relying, the company owed a duty of care in tort to the defendant in making the statement. The company was thus liable to the defendant in the tort of negligence, independently of any liability in contract.

1.1.4 At one time there was a strong body of legal opinion based on the concept of privity of contract that if a professional person entered into a contract concerning his professional skills with one party, then this implied he was not to be liable to others for negligence in the performance of his duties in the underlying transaction. This idea has now been firmly rejected by the courts. In *Clay* v. *A.J. Crump & Sons Ltd. & others* [1963] 3 A11 ER 687 an architect was employed under a contract with the building owners to prepare plans and supervise certain demolition and construction work. He was sued in the tort of negligence by a labourer employed by the building contractors for carelessly failing to supervise the building site, and thereby causing injury to the labourer. A wall had been left standing in a dangerous condition through failure of the architect to inspect it properly. The building contractors assumed that the demolition contractors and the architect had made a decision to leave the wall standing after proper inspection. The building contractors therefore commenced work near the wall and it collapsed, injuring one of their labourers. In the Court of Appeal, Ormerod, L.J. said that it was argued on behalf of the architect that he was employed under a contract with the owners and in consequence was answerable only to them, if by any act or omission he was in breach of that contract. Ormerod, L.J. accepted that there was a time when this view of the law would have prevailed, but decisions in recent years had broadened the basis on which persons could be found liable if they were in default in the performance of their contractual duties. Therefore, in considering whether the architect in this case owed a duty to the plaintiff other questions had to be taken into account than the contractual liabilities of the architect to the building owner. The architect was found by the Court to have a general duty of care in tort to all persons working on the site under the project, as well as his duty of care under the contract with the building owners.

1.1.5 The law has thus arrived at the position originally predicted by Lord Macmillan in the famous case of *Donoghue* v. *Stevenson* (see 1.3.2–1.3.7) that on the one hand there was the well-established principle that no one other than a party to a contract could complain of a breach of that contract. On the other hand, there was the equally well-established doctrine that negligence, apart from contract, gave a right of action to the party injured by that negligence. The fact that there was a contractual relationship between the parties which might give rise

to an action for breach of contract did not exclude the co-existence of a right of action founded on negligence as between the same parties independently of the contract, though arising out of the relationship in fact brought about by the contract. Of this situation, Lord Macmillan felt that the best illustration was the right of the railway passenger injured by carelessness to sue the railway company either for breach of the contract of safe carriage or under the tort of negligence in carrying him. And there was no reason why the same set of facts should not give one person a right of action in contract, and another person a right of action in tort. However, the Privy Council in the more recent case of *Tai Hing Cotton Mill Ltd.* v. *Liu Chong Hing Bank Ltd.* [1985] 2 A11 ER 947 (see 1.6.7 and 1.6.8) expressed the view that the courts should be reluctant to create a liability in tort between parties to a contract where no liability for a matter covered by the contract existed under the contract. Such a liability in tort would be rather artificial and would overturn the concept of freedom of contract.

1.1.6 Subsequent to the *Tai Hing Cotton Mill* case, a number of cases in the Court of Appeal have emphasized the reluctance of the courts to override or outflank interlocking contractual liabilities between a number of parties by the use of a common law duty under the tort of negligence. In *Simaan General Contracting Co.* v. *Pilkington Glass Ltd.* (No. 2) [1988] 1 A11 ER 791 the Court of Appeal refused to impose a duty of care under the tort of negligence, in favour of the main contractor, on a manufacturer who supplied glass pursuant to a contract with the sub-contractor. This was because such an approach would have the effect of depriving some of the parties of the benefit of statutory provisions applying to contract, such as the Sale of Goods Act; and would also outflank the protection given by exemption clauses and arbitration clauses contained in contracts. It was better to deal with such disputes within the framework of the contracts freely negotiated by the parties. In *Greater Nottingham Co-operative Society Ltd.* v. *Cementation Piling and Foundations Ltd.* [1988] 2 A11 ER 971 the Court of Appeal again refused to impose a duty of care in tort on a sub-contractor in favour of the building owner for careless piling work, where the contracts between the parties did not expressly provide for such liability. Lastly, in *Norwich City Council* v. *Harvey* [1989] 1 A11 ER 1180, the Court of Appeal refused to impose a duty of care in tort on a sub-contractor in favour of a building owner, for

liability in relation to a fire. The Court of Appeal felt such a duty was not just and reasonable, as the building owner had agreed in the contract with the main contractor to accept liability for all risk of fire, and the sub-contractor had in turn contracted with the main contractor on that general basis. It can thus be seen that the courts are reluctant to outflank contractual obligation by some artificial or unfair reliance on a duty of care in tort.

1.1.7 However, the courts have re-emphasized in several recent cases that concurrent liability in contract and tort can still exist in appropriate circumstances. Thus in *Punjab National Bank* v. *De Boinville* [1992] 1 WLR 1138 the Court of Appeal stated that an insurance broker had a concurrent duty in contract and tort to his client, and the duty in tort could extend to an assignee of an insurance policy originally taken out in the name of the client. This was especially so where the broker knew that the assignee was involved in giving the original instructions for the policy, and the policy was meant to protect the assignee's interests as a lender of funds to the client.

In *Henderson and others* v. *Merrett Syndicates Ltd. and others* [1994] 3 A11 ER 506 the House of Lords had to consider whether members' agents and managing agents at Lloyds of London owed duties of care in tort to the members of Lloyds insurance syndicates. The members' agent had a contract with the syndicate members whereby he gave general advice to the members on investment in insurance syndicates. The managing agent had a contract with the members' agent whereby the former agreed to obtain insurance business for the syndicate and invest the premiums.

The House of Lords held that the members' agents had concurrent liability in contract and tort to the syndicate members; and the members were free to sue in whichever branch of the law was more convenient or advantageous to them. Furthermore, the managing agents owed a duty of care in tort directly to the members, as well as a contractual duty of care to the members' agents. Concurrent liability had been accepted by the courts in a number of Commonwealth countries, and the House of Lords felt that it did not cause any injustice in the present case. Liability in tort did not contradict anything in the chain of contracts in the case. The *Tai Hing Cotton Mill* case thus had no application, as it had only laid down that liability in tort should not be created if it overrode or contradicted a contract, or created an entirely new liability .

1.2 Moral or Legal Duty

1.2.1 The courts recognize a fundamental distinction between law and morality. This affects many branches of civil law. Thus, in the law of contract an important issue is whether the parties intended to have a legally binding agreement enforceable in a court, or merely a moral or social agreement binding in honour only. This general issue also affects the tort of negligence. As the courts recognize that there can be moral, political, social, and economic duties between parties in society, it is often difficult to decide when a true legal duty of care enforceable in the courts arises between parties.

1.2.2 It follows in English law that every action or wrong done to a person does not necessarily have a legal remedy. A person at common law can sell a business for a large sum, and then set up a competing business in the same street. A person does not have some general right to a view from the windows of his house, even if blocking the view with another building lowers the value of the house. A person does not have a general right to privacy. At common law, embarrassing financial or personal information could generally be published about a person as long as it was accurate, even though it might indirectly cause serious financial loss. It was necessary to bring the matter within one of the existing torts in order to establish legal liability.

1.2.3 From the point of view of professional liability we are concerned mainly with the tort of negligence, although there are a number of other torts such as trespass, passing off, nuisance, and defamation. The English system of law has always been reluctant to impose some general legal duty of care under the tort of negligence on persons to correct situations caused by the spiteful or careless acts or omissions of third parties beyond their control. If a child is drowning in a pond, does a member of the public who happens to be passing by have any duty to rescue the child? Obviously, a duty to rescue others from situations which we have not caused, and where it involves the risk of danger to ourselves, is generally a moral rather than a legal duty. It does not really make sense or justice to try to impose a legal duty of bravery or social concern on citizens. It is arguably a matter best left to the individual conscience. A more difficult question is whether there is a duty on every citizen to rescue the child if the pond is very shallow and there is no real danger involved? Some writers have

posed the issue of whether a citizen has a duty to get his shoes wet, or miss an important business meeting in such circumstances in order to help others.

1.2.4 Although such an example is obviously on the borderline between morality and law, it is arguable that there is no legal duty of care in such a case under English law. As Lord Atkin said in the famous case of *Donoghue* v. *Stevenson*, acts or omissions which any moral code would regard as wrong cannot in a practical world be treated so as to give a right to every person injured by them to demand compensation. For practical reasons the rules of law must put a limit on the type of situations where a legal remedy can be claimed.

1.2.5 Again, does the government have a legal duty to protect tax-paying citizens and their property from violence and disorder by rioters, criminal elements, or foreign military forces? This issue has actually arisen in a number of cases in the commercial context. In the case of *China Navigation Company* v. *Attorney General* [1931] 2 KB 197, the plaintiff was an English shipping company which carried on a shipping business from Hong Kong. Ships were being frequently attacked by pirates in Chinese territorial waters and on the high seas. The plaintiff and other shipping companies persuaded the Government of Hong Kong to provide military guards on the ships. After a period of time, the Government notified the shipping companies that it would no longer provide guards unless the shipping companies paid the costs involved. The plaintiff sued the Government, claiming a declaration that the Crown had a legal duty to provide reasonable protection for British citizens and could not demand payment for discharging its legal duty. The Court of Appeal held that the Crown had no legal duty to use its military forces to protect British citizens outside British territory, and that it could lawfully charge for providing such protection.

1.2.6 The issue arose again in *Tang Chai-on* v. *Attorney General* [1970] HKLR 209. The plaintiff claimed damages against the Government for failing to protect the plaintiff's business during disorder in Hong Kong. The Court referred to the Crown Proceedings Ordinance (Cap 300) which took away the general immunity of the Crown in civil cases, and provided that the Crown could be liable in tort to the same extent as a private citizen. In other words, the Crown could only be liable if the duty in question also fell on private citizens. Rigby, C.J.

therefore held that the Crown could not be sued in the circumstances of this case, as the duty of protection applied only to the Crown. In effect, as the duty cannot be enforced in the courts, it is only a political duty which can be enforced by criticism in the Legislative Council or the newspapers.

1.2.7 A similar issue arose more recently in Britain in the case of *Hill* v. *Chief Constable of West Yorkshire* [1987] 1 All ER 1173. A murderer committed thirteen murders over a ten year period before he was finally arrested by the police. A relative of the last victim sued the police in the tort of negligence for allegedly failing in various ways to organize the investigation of the crime with reasonable care and skill. After pointing out that the police can be liable for assault, unlawful arrest, wrongful imprisonment, and malicious prosecution, the Court of Appeal held that the police authorities did not have a general legal duty to individual members of the public to use reasonable care in investigating crimes, and could not be sued for damages in such circumstances under the tort of negligence. Such a duty would lead to a waste of resources and other undesirable social consequences. The decision has been confirmed by the House of Lords, [1988] 2 All ER 238.

1.2.8 The same result occurred in the case of *Calveley* v. *Chief Constable of the Merseyside Police* [1989] 1 All ER 1025. The House of Lords held that the police authorities had no duty of care under the tort of negligence to individual police officers, with regard to the conduct of disciplinary investigations and hearings against such officers. To allow the police authorities to be sued under the tort of negligence for the careless conduct of such investigations would be against public policy, as it would tend to unduly restrict the investigating officers in the fearless and efficient discharge of their public duty in such matters. In any event, the careless conduct of such proceedings would usually not result in any economic loss of a kind recognized by the law. Any remedy for the officers should be by way of judicial review, rather than an action for damages under the tort of negligence.

1.2.9 In Hong Kong, the Commissioner of Police is charged under the Police Force Ordinance (Cap 232) with the supreme direction and administration of the police force, subject to the orders and control of the Governor. It is thus fairly clear that the duty to investigate crime

is an executive or political duty rather than a general legal duty to each individual citizen. Although the courts may in exceptional cases force the police authorities by court order to enforce the law, they will not at the request of an ordinary citizen interfere in the way the police authorities administer the police force, deploy manpower, or investigate crime (see *Hill* v. *Chief Constable of West Yorkshire* [1987] 1 A11 ER 1173, 1178 and 1179). Nor will the courts give damages to members of the public for breach of these administrative duties.

1.2.10 We can thus see that a very important issue is whether the courts regard the duty in any particular situation as a legal duty under the tort of negligence, or a moral, political, or social duty unenforceable in the courts.

1.3 Legal Duty of Care

1.3.1 Even in purely commercial situations between businessmen the courts were reluctant for many years to impose some general duty of care in the tort of negligence. There thus grew up a number of cases where defendants were held liable to specific individuals in specific business situations where some close connection arose between the parties, usually in a rather direct way from some contractual undertaking.

1.3.2 In the famous case of *Donoghue* v. *Stevenson* [1932] A11 ER Rep 1, the question had to be faced clearly for the first time at the highest level of whether there was some general principle of liability in negligence of wide application to all business situations. A friend had purchased a bottle of soft-drink from a retailer for the plaintiff. The plaintiff drank some of the soft-drink, and on pouring out some more, the decomposed remains of a snail fell out of the bottle. The plaintiff claimed to have suffered nervous shock and a stomach illness, as a result of drinking the contaminated liquid from the bottle. The bottle was made of dark glass, so it was not reasonable to expect the retailer or the plaintiff to detect the impurity.

1.3.3 The plaintiff could not sue the retailer for breach of contract relating to sale of goods, as she had received it as a gift from her friend. As the plaintiff was at the end of a chain of contracts between the manufacturer, the wholesaler, the retailer, and the customer, the plaintiff had no

close connection with the manufacturer in time, space, or contract. The House of Lords thus had to face directly the issue of whether a manufacturer had a general legal duty of care to all the ultimate consumers of a product. This could involve liability over a long period of time to a large number of persons whom the manufacturer had never met, and with whom he had never had any close business contact.

1.3.4 It is often forgotten that there were two very similar cases (both of which were considered in *Donoghue* v. *Stevenson*) where a plaintiff had failed to establish such a duty. In *Bates* v. *Batey & Co. Ltd.* [1913] 3 KB 351, the defendants were soft-drink manufacturers. The defendants were held not liable to a ultimate consumer who was injured when the bottle containing their product exploded through a defect which could have been found by reasonable care on their part. In *Mullen* v. *Barr & Co.* and *McGowan* v. *Barr & Co.* [1929] SC 461, an ultimate consumer of soft-drink sued the manufacturers after drinking from a bottle in which a decomposed mouse was later found. In finding that no general duty of care existed, Lord Anderson stated in the Scottish Appeal Court that where goods were widely distributed throughout a country it would be ridiculous to make the manufacturers responsible to members of the public for the condition of the contents of every bottle which issued from their factory. Such a liability would mean that the manufacturers would be called on to meet claims for loss which they would find difficult to investigate, and which would have no reasonable financial limit. Lord Anderson's remarks were quoted with approval by Lord Buckmaster in his dissenting judgment in *Donoghue* v. *Stevenson*. The plaintiff in *Donoghue* v. *Stevenson* thus had to face what Lord Buckmaster in the case regarded as major unfavourable precedents.

1.3.5 Perhaps rather surprisingly in these circumstances, the House of Lords decided by a majority decision of three against two, that the manufacturer had a general duty of care under the tort of negligence to the ultimate consumer on the facts of the case. The earlier cases were thus overruled. It tends to be forgotten that *Donogue* v. *Stevenson* involved a split decision, and that the principle of a general duty of care crept into the law by the narrowest margin. It has shown surprising growth ever since, although a number of eminent judges have refused to extend it to new situations, or have warned that despite

the general duty the facts of each case still have to be carefully examined before liability is imposed.

1.3.6 The most famous judgment in *Donoghue* v. *Stevenson* is probably that of Lord Atkin where he clearly stated that a basic principle was involved. Referring to a past case, Lord Atkin said that the whole approach had been wrong in seeking to confine the law to rigid and exclusive categories, and by not giving sufficient attention to matters of general principle. The law of negligence was based on the concept of a fundamental duty of care to those injured. After drawing a distinction between legal and moral duties, Lord Atkin then stated the nature of the duty of care. It was a duty to take reasonable care to avoid acts or omissions which could be reasonably foreseen would be likely to injure your neighbour. A neighbour was a person who was so closely and directly affected by the acts or omissions that the defendant ought reasonably to have him in mind when doing the acts or omissions. This is the famous reasonable foreseeability test for the existence of the duty of care in tort. Lord Atkin made clear that he regarded this as a principle of general application which would unify the specific examples of liability in the past cases, and which would act as a general guide in future situations.

1.3.7 An equally famous statement was made in the case by Lord Macmillan when he said that the law of negligence must adjust and adapt itself to the changing circumstances of life, and the categories of negligence are therefore never closed. Lord Macmillan thus emphasized that the law governing negligence could constantly adapt itself to new situations and new technical inventions. The statements of both these eminent judges have been widely quoted in the leading cases since *Donoghue* v. *Stevenson.*

1.3.8 Although it is difficult to give any simple and precise definition of the tort of negligence, as it covers such wide-ranging situations, it is clear from the cases that it involves three basic elements, namely (i) a legal duty of care, (ii) breach of duty, and (iii) consequential damage. Negligence could be defined as liability for careless acts or omissions arising from a breach of a legal duty generally towards those whom we should reasonably foresee are likely to suffer damage, and who do suffer resulting damage recognized by the rules of law.

1.4 Liability for Careless Statements

1.4.1 Since *Donoghue* v. *Stevenson*, the concept of a general duty of care has been applied in many cases to create liability in a wide range of situations for acts and omissions relating to the manufacture, use, or supervision of articles, equipment, and projects. However, the courts were still reluctant to impose liability for careless verbal or written statements by persons outside the bounds of contract. Following this general approach, the Court of Appeal in *Candler* v. *Crane Christmas & Co.* [1951] 1 All ER 426 by a majority of two against one, held that a firm of accountants and auditors owed no duty of care to a person whom they knew was going to rely on the accounts and balance sheet prepared by them, in investing in a company.

1.4.2 Twelve years later, the general issue of liability for careless statements in the tort of negligence came before the House of Lords for decision in the leading case of *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [1963] 2 All ER 575. This case laid the groundwork for general liability for careless statements in tort. The facts of the case are rather complex, but are worth examining in some detail. The plaintiffs were advertising agents and were going to act on behalf of a company manufacturing electrical goods. They were going to undertake personal liability on certain contracts for the company, and thus wished to be sure of the company's general financial position. The company was part of a group which was actually in serious financial trouble, and the parent company had recently gone into liquidation. The electrical company was undergoing financial restructuring, and was heavily in debt to its bankers and trade creditors. The plaintiffs were generally unaware of the situation, and asked their bankers to contact the company's bankers to obtain a reference on the financial position of the company. Their bankers contacted the company's bankers by telephone, and later in writing, and obtained financial references. The company's bankers did not know specifically for whom the other bankers wanted the references, but did know that they were wanted for a person intending to contract with the company. The plaintiffs relied on the verbal and written references, and eventually lost over £17,000 when the company went into liquidation. The plaintiffs then sued the company's bankers for damages in tort, claiming that the references carelessly failed to reveal the company's true financial position.

1.4.3 The House of Lords held that the defendants were not liable, because it had been agreed between the bankers that the references would be furnished without any responsibility by the defendants. It is important to realize that it was actually the plaintiffs' bankers who had suggested during the telephone conversation that the references be furnished without any responsibility by the defendant bankers. The written reference later given by the defendants followed this principle, and stated that it was given without responsibility on the part of the bank or its officials. This disposed of the case. According to the House of Lords, the defendants in the circumstances had to accept the basis on which the references were given, namely without any legal liability.

1.4.4 However, the Law Lords went on to give their opinions on a number of other issues, although they were not strictly necessary for the decision in the case. It should be noted that the Law Lords were divided over whether liability for careless statements was significantly different from that for careless acts. Lord Reid stated that the law must treat careless words differently from careless acts, because words could spread widely without the consent or the foresight of the speaker or writer. It would be one thing to say that the speaker owed a duty to a limited class of persons with whom he dealt directly, but it would be going very far to say that he owed a duty to every ultimate consumer to whom the words were repeated and who acted on those words to his detriment. Again, Lord Pearce said that negligent statements created different problems from negligent acts. Words were more volatile than deeds, and could be widely and speedily circulated. They did not easily lose their effect with the passage of time, and were not consumed like food. However, they were often dangerous and could cause vast financial damage. Difficult legal problems arose with negligent statements because their effect often depended on other statements or documents, and in many situations it could be argued that there was some need to check the statement or its context before relying on it. If the mere hearing or reading of words were held to create liability, there might be no limit to the persons to whom the speaker or writer could be liable. Damage by negligent acts to persons or property on the other hand was usually more visible and obvious, and its limits could be more easily defined. On the other hand, Lord Morris of Borth-Y-Gest felt that there was no essential distinction between injury caused by reliance on words, and injury caused by

reliance on the safety of equipment or the safety for use of the contents of a bottle of soft-drink.

1.4.5 However, all the Law Lords then went on to agree that there was a general liability for careless statements in tort. This liability arose towards persons whom a reasonable man would reasonably foresee would rely on the information given by a professional person in the ordinary course of his business or profession. Individual Law Lords considered in their judgments how far this duty extended to various specific situations, and three members of the House of Lords in the case expressly approved the dissenting judgment of Denning, L.J. in the case of *Candler* v. *Crane Christmas & Co.* (see 4.1.4 and 4.1.5). The decision of the majority in that case was thus in effect overruled. We will consider in more detail the full effects of the decision and observations of the House of Lords in the *Hedley Byrne* case in Chapter 4.

1.4.6 The *Hedley Byrne* case created general principles of liability for careless advice or information. However, attempts have been made to extend the principles in the case to the omission to give advice, or the failure to warn a party about some matter in a commercial transaction. The courts have generally been reluctant to allow such an extension (however, see 1.5.6 and 3.8.8). Thus, in *Barclays Bank PLC* v. *Khaira and another* [1992] 1 WLR 623 a judge of the English High Court held that a bank which had invited a wife to sign a mortgage over the jointly owned matrimonial home in return for a loan to the husband, had no duty to the wife in tort to explain the document to her or advise her to get independent legal advice. This was so even though the wife was a customer at another branch of the bank. Furthermore, the fact that many banks had a practice of explaining documents to signatories did not create a legal duty. The judge was reluctant to extend the *Hedley Byrne* case because there was no voluntary assumption of responsibility by the bank, nor did the wife show by her conduct that she relied on the bank for an explanation.

1.4.7 A similar result was reached in *Law Wan-lan* v. *Well Built Development Co Ltd. and Others* [1988]2HKLR435. The representative of a development company and the solicitor acting for a bank visited an aged and illiterate lady. The purpose of the visit was to request the lady

to sign a document confirming the transfer of some land to the development company, so that a loan could then be given to the company by the bank. Doubts had arisen about the original sale of the land to the development company because the lady's brother had signed on her behalf under a power of attorney. The solicitor invited her to sign the document, but the lady at first refused. After some persuasion by the representative of the developer, she signed and the solicitor witnessed her signature. The lady later sued the solicitor claiming that he had a duty of care in tort to explain the document to her and advise her to get independent legal advice.

The Hong Kong Court of Appeal rejected this approach. The solicitor only acted as a witness to the document, and like any other witness had no duty of care to the lady. There was also nothing to show that he had voluntarily assumed any wider role. However, it should be noted that if a bank or other person volunteers to give an explanation of a document in a commercial situation, then usually this will create a duty of care. See *Cornish* v. *Midland Bank PLC* [1985] 3 A11 ER 513. Note that there can also be an equitable duty on lenders in some circumstances to take reasonable steps to ensure a signature is truly voluntary. See for example *Banco Exterior Internacional* v. *Mann* [1995] 1 A11 ER 936 and *TSB Bank PLC* v. *Camfield* [1995] 1 A11 ER 951.

1.4.8 It is often sought to apply the principles in the *Hedley Byrne* case to new situations by using the concept of a voluntary assumption of responsibility. (See for example 1.5.6, 1.5.7, 1.6.15, and 1.6.18). However, this concept has been criticized as being somewhat misleading. It is clear that the defendant often is not aware of the legal consequences of his actions, and has no real intention of undertaking any legal liability. To call his assumption of responsibility voluntary is therefore open to question. Again, the assumption of responsibility is not usually in express terms, but is implied by the courts from all the surrounding circumstances. It is clear that the test for the voluntary assumption of responsibility is really objective and in fact pays little attention to what the defendant actually thought or intended. A duty of care is thus imposed if the court feels a reasonable man would reasonably conclude from all the circumstances that it is fair to impose liability. To a large extent the voluntary assumption of responsibility involves a policy decision by the courts, rather than a search for an individual's intentions.

1.5 The Extension of Liability for Negligence

1.5.1 Since *Donoghue* v. *Stevenson* and the *Hedley Byrne* case, the scope of the tort of negligence has expanded rapidly, based on the application of the general principle of reasonable foreseeability rather than on close regard to previous cases. It is only possible in a book of this nature to indicate some examples of this development of interest to business students.

1.5.2 In *McArdle* v. *Andmac Roofing Co. & others* [1967] 1 A11 ER 583, a subsidiary company of a large group operating holiday camps was allotted the job of arranging repair and extension work on the group's buildings. The subsidiary company had four employees, including an engineer. The subsidiary company contracted with two small building firms to carry out various aspects of a simple building renovation project. No head contractor was employed to organize and supervise the work. The main work involved the repair of a roof. An employee of one of the building firms fell through a gap left in a roof by the employees of the other building firm. It was held by the Court of Appeal that as the subsidiary company was in practical control of the site, it had a common law duty to the employees of the building firms to supervise and coordinate the work with reasonable care, so that the actions of one firm did not create a danger to the other. The company was thus partly liable to the injured employee for the failure to ensure proper safety precautions were taken by the building firms on the site. It is also clear from the case that each building firm had a duty to the employees of the other to take reasonable precautions for their safety.

1.5.3 As a result of this case and others such as *Clay* v. *A.J. Crump & Sons Ltd. & others* [1963] 3 A11 ER 687 (see 1.1.4, 3.4.5 and 3.5.1), an employer who participates in any kind of joint project of whatever nature has a general and wide-ranging duty to not only his own employees, but all others working on the project. This duty does not depend on positive statutory requirements governing that particular activity. It is also clear that the employer cannot merely assume that the other employers participating in the project will take all reasonable and necessary precautions, or that the person exercising formal or informal powers of supervision over the whole project will take all reasonable and necessary steps to coordinate the project safely. There is a duty on each employer to take reasonable steps to avoid acts or

omissions which it is reasonably foreseeable will be likely to injure others working on the project.

1.5.4 A major advance in the law of negligence was made in *Ross* v. *Caunters* [1979] 3 A11 ER 580. Solicitors were instructed to prepare a will for a client. The will included a gift to his sister-in-law. The solicitors posted the will to the client, but failed to send full instructions as to the legal rules governing the signing of the will. As a result the husband of the sister-in-law witnessed the will, and this made the gift to her invalid. The problem only came to light after the client had died, when it was too late to rectify it. Sir Robert Megarry, V.C. held that a solicitor who is instructed by a client to carry out a transaction to confer a financial benefit on an identified third party owed a duty directly to the third party to use reasonable care in carrying out the transaction. This was in addition to any duty to the client. Furthermore, Megarry, V.C. considered that the duty did not depend on any active or passive reliance by the third party on the advice given by the solicitors. Indeed, it applied even if the third party had absolutely no knowledge of the transaction. The solicitors were held liable for the financial loss suffered by the beneficiary as a result of the failure of the gift.

1.5.5 This case obviously opens a wide window of liability for all manner of professional persons who recommend or carry out financial transactions for clients. For example, it could equally apply to accountants or financial advisers who arrange the transfer of shares for a client, or who recommend a specific restructuring of corporate affairs. If the transaction turns out to be invalid or defective in law, or has some adverse financial effect, through lack of reasonable care by the professionals involved, they could be liable for financial loss to third parties as well as to the actual client. As we have seen, liability could even extend to persons they have never met and who placed no reliance on their professional recommendations. The basic test for liability is simply whether a reasonable professional adviser would be able to have reasonably foreseen that his default would cause loss to such a third party.

1.5.6 Following the conservative trend in recent years to limit the scope of liability in the tort of negligence, doubts have been raised about the correctness of the decision in *Ross* v. *Caunters*. It has been pointed

out that often the professional person will have no real contact or communication with the third party who is to benefit from the transaction. It is thus difficult to say that there is proximity (see 1.6.4). Furthermore, the third party may often not even know the transaction is taking place, and places no reliance on the professional person involved.

A similar situation to *Ross* v. *Caunters* was considered by the High Court of Australia in *Hawkins* v. *Clayton and Others* (1988) 78 ALR 69. Solicitors prepared a will for a client and agreed to hold it in safe custody. The solicitors were later notified of the death of the client, but failed to take any steps to find the executor of the will for nearly six years. In the meantime, the executor was unaware that the client had died. The executor, who was also the only beneficiary of the will, sued the solicitors under the tort of negligence for the economic loss suffered by him due to the client's house falling into disrepair during the six years it was left unattended. The solicitors could easily have found the executor by looking in the phone book and making several telephone calls.

By a majority of three against two, the High Court held that there was a duty of care to the executor to take reasonable steps to find him, and notify him of the terms of the will. The solicitors had breached this duty, resulting in economic loss. The majority judges acknowledged that there were problems with the concepts of proximity and reliance in the circumstances of the case. However, by accepting custody of the will the solicitors assumed the responsibility of taking reasonable steps to find the executor. It was foreseeable that the client and the executor would be likely to rely on them for notification. Furthermore, it was fair and reasonable to impose liability as the duty was not very onerous or difficult; and solicitors had advertised extensively to the public that they were the best persons to make and keep wills.

The minority felt that it was clear there was no contractual duty with regard to taking steps to find the executor, and there was nothing in the conduct of the solicitors to show any voluntary assumption of responsibility in tort. The minority also felt that there was nothing to show any reliance by the client or the executor on such conduct. In fact, the client at one stage had advised the solicitors that she was making a new will. The minority considered that the imposition of a duty could have wide consequences. It could apply to many different situations, and could lead to quite onerous obligations which could not be clearly defined or limited.

1.5.7 The whole issue of liability in this area of law came before the House of Lords recently in *White and another* v. *Jones and another* [1995] 2 WLR 187. Solicitors had delayed in preparing a new will for a client after receiving his instructions. The client died before the new will was prepared. The solicitors were sued under the tort of negligence by two beneficiaries who would have benefited under the new will. The Court of Appeal found that there was a duty of care. (see [1993] 3 A11 ER 481).

The House of Lords by a majority of three against two upheld the decision to impose a duty of care. The majority Law Lords recognized that the case of *Ross* v. *Caunters* did create conceptual difficulties. Often it would be difficult to show any reliance by the beneficiary. Also, should there be liability for pure omissions in this area? However, the problem could be solved by the principle of voluntary assumption of responsibility. The solicitors by accepting the instructions to make the will assumed responsibility in law to the beneficiaries, whether there was any actual reliance by them or not. This solution was fair and reasonable, and there was no conflict of interest in such a situation. Liability for pure omissions and for pure economic loss was acceptable in the circumstances, and caused no special problems. The majority Law Lords recognized that the imposition of a duty created new law, but felt that the extension was minimal and in accordance with the incremental approach suggested in the *Sutherland Shire* case (see 4.1.11). Even if a particular beneficiary in a particular case did not rely on the solicitors who prepared a will, families generally did tend to rely on them in such matters. Solicitors were well aware of this general reliance.

The minority considered that the imposition of a duty of care would create a broad new category of liability, applicable to many professions besides solicitors. It would be difficult to impose any reasonable limits on it and such liability should not be created.

1.5.8 This area of negligence has obviously led to a considerable difference of judicial opinion. Concerns by some judges about the looseness of the relationship between the parties and the difficulties of putting definite limits on the duty have been overborne by concerns for practical and commercial justice.

It should be noted that *Ross* v. *Caunters* was distinguished in *Clarke* v. *Bruce Lane & Co and others* [1988] 1 A11 ER 364. A solicitor who had prepared a will for a client was sued by a beneficiary

in negligence for failing to advise the client not to grant a very generous lease of his land to a third party. The beneficiary argued that the creation of the lease, which contained an option to purchase at a considerable undervalue, caused him economic loss by lessening the economic benefit that he would get under the will.

The Court of Appeal held that there was no duty of care in such circumstances. The client was free to deal with his property during his lifetime in any way he wished, he could even give it away for free. This prevented any legal proximity arising between the solicitor and the beneficiary. If the solicitor attempted to impose any limits on the client's freedom in the interests of the beneficiary, it would be a situation of professional conflict of interest. In any event, the duty would be owed to any persons who might be potential beneficiaries of future wills, and this would be too wide a class. Lastly, the client had a remedy in this case. He or his personal representative could sue the solicitor for any professional negligence in the transaction concerning the lease, and there was thus no need to create a separate remedy for the beneficiary. It is arguable that this case and those mentioned in the next paragraph are still correct on the facts despite the decision in *White* v. *Jones.*

1.5.9 It should also be noted that *Ross* v. *Caunters* was again distinguished in *Grand Gelato Ltd.* v. *Richcliff (Group) Ltd. and others* [1992] 1 A11 ER 865 where a solicitor for the seller was held to have no duty of care to the purchaser in answering queries about title in a conveyancing transaction, even though there was reliance. Such a duty was not necessary because there was a duty on the seller with regard to careless misrepresentation in answering such queries. A similar result followed in *Hemmens* v. *Wilson Browne* [1993] 4 A11 ER 826. A client had instructed a solicitor to prepare a document giving a friend a right to request £110,000 to buy a house at any time in the future. The document prepared by the solicitor was not legally binding and only created a moral obligation. The solicitor was held not to have any duty of care directly to the friend as the client was still alive, and could rectify the situation or sue the solicitor for any lack of care. Note however *Punjab National Bank* v. *De Boinville and others* (see 1.1.7) where it was held that an insurance broker could have a duty of care to the assignee of an insurance policy as well as the original client, at least where the broker knew that the assignee was likely to take over the policy and had participated in giving the original instructions for the insurance.

1.5.10 In *Smith* v. *Bush* [1987] 3 A11 ER 179 (see also 2.8.15) a firm of surveyors prepared a report on a house for a lending society. The report stated the value of the house, that it was in reasonable repair, and required no essential repairs. In fact, the surveyors had carelessly failed to notice an important structural defect. The report was shown to the purchaser of the house by the lending society when the purchaser applied to the society for a loan to buy the house. This was normal practice. The surveyors were held liable to the purchaser in negligence, as they owed a duty of care to her because they knew she would be shown a copy of the report and would be likely to rely on it, and she did rely on it and suffered loss. The decision was confirmed by the House of Lords [1989] 2 A11 ER 514.

1.5.11 It can be seen from the cases mentioned that professional persons can be liable for their professional defaults to a wide range of individuals other than their clients and employees, as a result of the reasonable foreseeability test. The only major limit with regard to such liability could be where there is the possibility of a real conflict of interest between the client and the third party. This issue was raised in *Ross* v. *Caunters*, but was held to be not relevant on the facts of the case. If there is the possibility of such a conflict of interest, then the professional adviser might have no duty to the third party.

1.5.12 Another area of interest to business students which until recently has seen steady advances by the tort of negligence is land law. In *Cuckmere Brick Co. Ltd.* v. *Mutual Finance Ltd.* [1971] 2 A11 ER 633, a mortgagee advertised land for sale under the power of sale given in a mortgage. Mention was made in the advertisements that government planning permission for building houses on the land had been obtained. However, no mention was made that planning permission for flats had also been obtained, because the mortgagee wrongly believed that this had lapsed. After the sale, the mortgagor sued the mortgagee for loss, claiming that a significantly higher price could have been obtained if the permission for flats had been mentioned. On past precedents it was very doubtful whether a mortgagee had any duty to the mortgagor other than to act honestly. However, the Court of Appeal held that a mortgagee has a duty to handle the sale with reasonable care. The mortgagee was in breach of this duty by carelessly failing to bring all material information to the attention of potential buyers, and was liable for the resulting loss. It is clear from

the case that it is not negligent for a mortgagee to sell on a falling market, but he must exercise reasonable care in the method and execution of the sale.

1.5.13 However, in *The China and South Sea Bank Ltd.* v. *Tan Soon-gin* [1990] 1 HKLR 546, the Privy Council stated that it was best to consider the duties of a mortgagee as arising under the rules of equity, rather than under the tort of negligence. No doubt was thrown on the actual decision in the *Cuckmere Brick* case, but the Privy Council warned that the tort of negligence had to be kept within proper bounds. It did not replace other torts, override the principles of equity, or contradict contractual obligations. Thus a mortgagee owed no duty of care under the tort of negligence to a guarantor of the debtor, to exercise his power of sale under a mortgage at any time or at all. Even if lack of action by the mortgagee caused the property secured by the mortgate to become valueless, there was no remedy for the guarantor under the tort of negligence. The only remedy in certain limited circumstances, would be under the rules of equity protecting guarantors. These did not apply on the facts of the case.

1.5.14 This more conservative trend was taken further in the recent case of *Downsview Nominees Ltd.* v. *First City Corporation* [1993] 3 A11 ER 626. A company had given two debentures to creditors, which both created fixed and floating charges over its assets. On default by the company, the second debenture holder appointed a receiver. To terminate this receivership, the first debenture holder appointed its general manager and biggest shareholder, one Russell, to be receiver. Russell caused the company to carry on trading and it suffered substantial losses. The second debenture holder had made two offers to take over the first debenture by paying all monies due under it, but it was only after some considerable time and at the direction of the court, that the first debenture holder finally accepted payment. The second debenture holder sued the first debenture holder and the receiver, Russell, under the tort of negligence and the rules of equity for the conduct of the receivership. The fundamental issue arose as to whether a mortgagee and a receiver had a general duty of care to subsequent mortgagees.

1.5.15 The Privy Council strongly rejected the view of the New Zealand Court of Appeal that a mortgagee and a receiver owed general duties

of care under the tort of negligence to subsequent mortgagees. The duties of a mortgagee and a receiver arose only under the rules of equity. The Privy Council felt that exclusion of a duty in tort was justified because a receiver was not in any sense an expert in a particular trade carried on by the mortgagor; the receiver often had to rely on information given by officers of the mortgagor; there would be a tendency for unjust claims against receivers who often had to work in difficult circumstances; and there were other practical remedies available to aggrieved parties such as appointing a liquidator or paying off the mortgage. The Privy Council reiterated that the trend in recent cases was that the tort of negligence should not be extended so as to replace or supplement other torts, contractual obligations, statutory duties or equitable rules in relation to every kind of damage.

1.5.16 However, it should be noted that although the Privy Council rejected any application of the tort of negligence, the receiver was held to be in breach of the equitable duty of good faith because he did not use his powers for the legitimate purpose of recovering the monies due under the first debenture. Instead, they were used to carry on trading to obtain indirect financial benefits for the first debenture holder. Again, the first debenture holder was liable because it had wrongfully refused to allow the first debenture to be paid off by the second debenture holder. It should also be noted that the Privy Council did not specifically overrule the *Cuckmere Brick* case, but considered that it might be correct if limited to its actual facts. It was thus authority for the principle that if a mortgagee decided to sell mortgaged property, then he must take reasonable care to obtain a proper price, but not for any wider principle relating to a general duty of care.

Following this case, the Hong Kong Court of Appeal in *Chou Tai-chuan* v. *Richard Greenshields of Canada (Pacific) Ltd.* [1991] 2 HKLR 415 held that the situation of a sharebroker entitled to sell shares to liquidate a deficit on a customer's margin trading account was very similar to that of a mortgagee. Thus the sharebroker was free to choose if and when to sell, as long as the shares were sold at current market prices at the time of the sale.

1.5.17 In *Dutton* v. *Bognor Regis United Building Co. Ltd. & another* [1972] 1 A11 ER 462, the Court of Appeal considered the liability of the District Council and the builder to an ultimate purchaser where there had been a failure to provide adequate foundations for a house. The

Council was held to have a duty of care to future purchasers of the house for the way in which it inspected the foundations in carrying out the provisions of building legislation. Despite past precedents which created a rather uncertain situation, two of the judges stated that there was no fundamental distinction between personal and real property with regard to the tort of negligence. A builder, who also owned the land, could therefore be liable in tort to an ultimate purchaser or occupier for failure to construct a building with reasonable care. It is important to note that the purchaser in the case who suffered loss did not buy the house directly from the builder. Furthermore, Lord Denning, M.R. gave his opinion in the case that the legal position of a building inspector in tort was only a specific example of a general rule. All professional persons who certified or gave advice on the safety of buildings, machines, or materials could be liable to all those who suffered injury as a result of their carelessness. He quoted the examples of lift inspectors and food analysts certifying the fitness of products (but see *Yuen Kun-yeu & others* v. *Attorney General* described in 4.5.7 where the Privy Council expressed some doubt as to whether government factory inspectors could be liable in tort for negligent performance of their statutory duties.)

1.5.18 The decisions in the *Dutton* case were approved by the House of Lords in *Anns* v. *London Borough of Merton* [1977] 2 A11 ER 492. Although Lord Salmon stated in the case that the immunity from liability in tort of a landlord who sells or lets a house which is dangerous or unfit for habitation is deeply entrenched in English law, the House of Lords declared that a landlord who was also the builder could be liable to ultimate purchasers or occupiers who suffer loss through careless building work.

1.5.19 However, the recent case of *Murphy* v. *Brentwood District Council* [1990] 2 A11 ER 908 has severely curtailed the application of the tort of negligence in relation to land law. The plaintiff purchased a newly constructed house from a builder. About 10 years later, the plaintiff noticed serious cracks in the house and upon investigation discovered that the foundations of the house were seriously defective, even though they had been inspected by the Local Council and approved. The resale value of the house was lowered by £35,000 as a consequence of the defects. The House of Lords held that the Council owed no duty of care to the purchaser with regard to inspecting and approving the

foundations under building legislation, at least for damage to the house itself. Any such damage to the building resulting from the Council's carelessness was pure economic loss not covered by the tort of negligence. The House of Lords considered that liability in tort for damage to the house itself would introduce wide liability on manufacturers for all manner of defects in the quality of chattels, and would lead to transferrable warranties of quality outside the bounds of contract. Liability in tort to the ultimate consumer by the manufacturer for defects in the quality of the product itself had not been contemplated even in the famouse case of *Donoghue* v. *Stevenson*. The decisions in the cases of *Dutton* v. *Bognor Regis United Building Co. Ltd.* and *Anns* v. *London Borough of Merton* were therefore overruled.

1.5.20 It seems clear from the judgments in the case of *Murphy* v. *Brentwood District Council* that the same reasoning would apply to the builder and he would not be liable at common law to the ultimate purchaser for defects in the quality of a house due to carelessness, in the absence of a contract between the parties. However, Parliament has imposed a limited amount of liability on builders in Britain for defective building work by the Defective Premises Act 1972. It should be noted that the House of Lords in the *Brentwood* case expressly left open the question whether the Council could be liable in tort if the undetected defect in the foundations caused physical injury to persons or damage to other property, rather than merely damage to the house itself. It should also be noted that the House of Lords considered in the case that a builder could be liable at common law on the ordinary principles of negligence if a defect caused by careless building work eventually caused physical injury to persons or damage to other property. However, the Law Lords rejected the complex structure theory that had been suggested in the case of *D & F Estates Ltd.* v. *Church Commissioners for England & others* (see 3.8.7). It was unrealistic to regard a building, or even a chattel, which has been wholly erected or manufactured by the same contractor as a complex structure in which one defective part (such as the foundations) could cause damage to another part (such as the walls or roof). It was better to consider the building or chattel as a single indivisible unit for the purposes of the tort of negligence. The Law Lords did concede that where equipment was installed by separate subcontractors, such as boilers for heating purposes or electrical wiring, liability for damage to the rest of the

building or structure could arise under the ordinary principles of negligence. The Brentwood case, taken as a whole, thus seems to have brought liability for defective building work into line with the general principles put forward in the case of *Donoghue* v. *Stevenson.*

1.5.21 The decision in the *Brentwood* case was reinforced by the House of Lords in the case of *Department of the Environment* v. *Thomas Bates & Son* [1990] 2 A11 ER 943. A builder was held not to be liable to a lessee of a building for weak concrete which meant that the building could not be used to its designed floor-loading capacity. As there was no danger to the public or cracking in the concrete, the diminished value of the building was pure economic loss which was not covered by the law of tort.

1.6 Limitations on Liability for Negligence — Public Policy and Proximity

1.6.1 It is now time to consider whether there are any major limitations on the general test of reasonable foreseeability for liability in negligence. In a statement in *Anns* v. *London Borough of Merton* which has been widely quoted with approval in later cases, Lord Wilberforce said that the legal test for the existence of a duty of care consisted of two parts. Firstly, whether there was such a sufficiently close relationship or connection between the parties that it was reasonably foreseeable by the defendant that his acts or omissions would be likely to injure the plaintiff. Secondly, even if liability did seem to arise on the basis of such reasonable foreseeability, were there any wider reasons which should prevent the duty of care arising, or limit its application in particular situations. Lord Wilberforce, with whose speech three of the other Law Lords agreed, thus accepted a policy limit on the general test of foreseeability in appropriate circumstances. It is thus clear that the courts can refuse to impose liability for negligence even though damage to a person is reasonably foreseeable, if this would lead to a stupid or unfair result.

1.6.2 A recent case in the House of Lords is a good example of the sort of policy considerations which influence the courts. In *McGeown* v. *Northern Ireland Housing Executive* [1994] 3 A11 ER 53 a tenant of a house on a housing estate tripped on a poorly maintained footpath

and injured herself. The footpath was in law a public right of way, but was on land owned by the government authority which ran the housing estate. The tenant sued the government authority in the tort of negligence for failure to adequately maintain the footpath.

The House of Lords confirmed old precedents and held that an owner of land over which a public right of way passed had no common law duty of care to members of the public to keep the way in reasonable repair. This was so even if nobody else had a duty to repair the right of way. The main justification given by the House of Lords for this decision was one of policy. Public rights of way pass over many different types of land, and it would often impose an unreasonable or even impossible financial burden upon landowners if they had to keep them in reasonable repair.

1.6.3 The judges have found it somewhat difficult to agree on exactly what this policy limitation involves, although the general concept is clear enough. Although probably necessary, it could be said to introduce a considerable measure of uncertainty into the law. Lord Salmon in the *Anns* case said the imposition of liability should be manifestly fair, and in accordance with logic or common sense. Lord Hodson in the *Hedley Byrne* case said that the result must not be unreasonable, or cause great commercial inconvenience. In *Dutton* v. *Bognor Regis United Building Co. Ltd. & another* (see 1.5.17), Lord Denning, M.R. boldly stated that judges had to consider matters of social policy in deciding liability for negligence. Lord Denning was of the view that in deciding whether to apply or extend a duty of care to new situations, judges should openly ask themselves what would be the best policy that the law could adopt. Lord Denning then went on to identify the following policy factors relevant to the case: (1) the justice of the situation, (ii) whether the objectives of any relevant legislation would be fulfilled by imposing liability, (iii) whether the defendant could economically bear the loss, and (iv) whether the imposition of liability would lead to undesirable side-effects for the public. In *Ross* v. *Caunters* (see 1.5.4) the judge in the case even went so far as to regard policy considerations as possibly covering the moral blameworthiness of the defendant's conduct, and whether the imposition of a duty of care would increase the likelihood of future protection to the public.

On the other hand, in *Junior Books Ltd.* v. *Veitchi Co. Ltd.* [1982] 3 A11 ER 201, Lord Roskill said that although policy considerations had from time to time been allowed to play their part in limiting or in

extending the scope of the tort of negligence since it was developed, he thought that the application and extent of the duty of care was best determined by matters of principle rather than policy. Judges thus often differ on exactly how much weight should be given to relevant policy considerations, and this makes prediction of the future development of the law in this area somewhat difficult.

1.6.4 The situation has been further confused because the general test for negligence in the case of *Anns* v. *London Borough of Merton* (see 1.5.18 to 1.6.1) has been severely criticized in a number of recent cases, including by the Privy Council in *Yuen Kun-yeu & others* v. *Attorney General* (see 4.5.7) and the House of Lords in *Caparo Industries PLC* v. *Dickman* (see 4.1.10 to 4.1.15). The Privy Council and the House of Lords have emphasized in these cases that three elements must be considered in deciding whether to impose a duty of care. Firstly, the principle of reasonable forseeability must be satisfied. Secondly, there must be a close connection or relationship between the parties. The Courts have used the word proximity to describe this relationship. While stressing that it has not been sufficiently emphasized in past cases, they have been very reluctant to attempt a definition of the concept. It seems that all relevant circumstances must be considered in deciding whether there is sufficient proximity to impose a legal duty of care. This has led to considerable uncertainty in the law. Lastly, there must be no policy considerations, based on such matters as fairness, commercial practicality, and public policy, which prevent the imposition of a duty of care. The Courts have also emphasized in the recent cases mentioned in this paragraph that the concept of a duty of care under the tort of negligence should develop cautiously step by step and by close analogy with past cases, rather than by massive extensions based merely on the general principle of reasonable foreseeability.

1.6.5 One of the main policy arguments against extending the tort of negligence has been the so-called floodgates argument. This is the concept that an extension of liability in a particular case would open the gates to a flood of litigation which would overwhelm the courts, and make defendants liable to a wide class of plaintiffs for enormous sums of money. This would create an impractical and unjust situation. The floodgates argument has featured in many major cases since *Donoghue* v. *Stevenson*. In fact, the two dissenting Law Lords in that

case, Lord Buckmaster and Lord Tomlin, based their refusal to accept a general principle of negligence largely on the floodgates argument. Lord Buckmaster, quoting from previous cases, warned that if the tort of negligence was allowed to advance by one step on the basis of general principle, there was no logical reason why it would not advance fifty. The result would be commercially impractical. Defendants would be called upon to meet unlimited claims to a virtually unlimited class of persons. Lord Tomlin pointed out with some alarm that after a major disaster, such as a railway accident, hundreds or even thousands of persons might be able to sue a careless manufacturer of some minor component.

1.6.6 Since *Donoghue* v. *Stevenson*, the reaction of judges to the floodgates argument has varied a great deal. Some have given it little weight, others have placed considerable reliance on it. For example, it seems to have been accepted by Lord Pearce in the *Hedley Byrne* case (see 1.4.2–1.4.5) as having some validity when he considered the limits on liability imposed by the courts in other countries. Lord Denning and Sachs, L.J. considered the floodgates argument at length in *Dutton* v. *Bognor Regis United Building Co. Ltd. & another* (see 1.5.17), and rejected it as exaggerated in the circumstances of the case. In any event, it could not be allowed to defeat justice. It was considered and rejected again by Lord Salmon on the facts in the *Anns* case (see 1.5.18), and in rather strong terms by Lord Fraser of Tullybelton and Lord Roskill in *Junior Books Ltd.* v. *Veitchi Co. Ltd.* (see 1.6.3 and 3.8.6). Lord Roskill said that the floodgates argument may on occasion have its proper place in the law, but if general principle suggested that the law should advance along a particular route, it should not be blocked just because the remedy would be available to many rather than just a few. On the other hand, the floodgates argument succeeded in the Court of Appeal in *Hill* v. *Chief Constable of West Yorkshire* (see 1.2.7), and in the House of Lords in *Leigh & Sillavan Ltd.* v. *Aliakmon Shipping Co. Ltd.* : *The Aliakmon* (see 3.8.12) relating to economic loss. Also rather ironically, Lawton, L.J. in the case of *Dennis* v. *Charnwood Borough Council* [1982] 3 A11 ER 486 felt that Lord Salmon had been too optimistic in rejecting it in the *Anns* case. He considered that there had subsequently been a considerable amount of litigation against local councils concerning supervision and inspection of poor building work, which would have been better dealt with by a compulsory insurance scheme for builders.

1.6.7 We now turn to a few major examples of where the courts have refused to extend the tort of negligence in recent years. In view of the widening trend regarding liability in negligence, it has been an open question for some years whether the drawer of a cheque has a general duty of care to his banker. Past cases involved specific duties such as a duty to actually write the cheques with reasonable care, and a duty to immediately report knowledge or reasonable suspicion of forgery. The issue of a general duty of care arose for decision at the highest level in *Tai Hing Cotton Mill Ltd.* v. *Liu Chong Hing Bank Ltd.* [1985] 2 A11 ER 947. An accounts clerk employed by a manufacturing company forged the signature of the managing director as drawer on about 300 company cheques amounting to over 5 million dollars, and diverted the money to himself. This forgery went on for a number of years before it was discovered, as there appeared to be no close supervision or control of the clerk's work. The question which arose for decision was whether a drawer has a general duty to his bank to run his business with reasonable care and proper accounting systems, to protect the bank against the consequences of dishonesty. If there was such a duty, carelessness could mean the drawer was estopped from denying the forgery and would have to bear the loss.

1.6.8 The Court of Appeal in Hong Kong [1984] HKLR 95 held that there was such a general duty on the basis of the reasonable foreseeability test. However, on further appeal, the Privy Council decided that there was no general duty of care in tort on a drawer to manage his business with reasonable care to protect his bank against dishonesty. The risk of paying out wrongly on forged cheques was a normal risk of banking, and this approach would not open the way to a flood of claims against banks. Furthermore, no general duty of care could be implied in the contract between the drawer and the bank; and there was no duty of care in tort or implied in contract to check over bank statements with reasonable care. Any general duty of care would have to be imposed by legislation or express contractual agreement. The liability for the loss in the case thus fell on the bank.

1.6.9 The *Tai Hing Cotton Mill* case must be seen against the background of a long line of precedents which have stated that a true owner has no common law duty in tort to an innocent purchaser or other person acquiring an interest to take reasonable steps to safeguard property from theft or forgery. Thus it has been said that an owner can be as

careless as he likes with his property, and his right to ownership is not thereby defeated in favour of an innocent third party who acquires it from a thief or a forger. The protection against theft or forgery is the law of the land, not the vigilance of owners. A true owner can claim back property under the tort of conversion from an innocent purchaser even though the owner carelessly lost it in the street, left it on a table in a restaurant, or entrusted it to an employee hired without adequate character references. See for example *Farquharson Brothers & Co.* v. *King & Co.* [1900-03] A11 ER Rep 120; and *London Joint Stock Bank Ltd.* v. *Macmillan and Arthur* [1918-19] A11 ER Rep 30. Even failing to follow the custom of a trade will not of itself create a duty of care to an innocent purchaser. In *Moorgate Mercantile Co. Ltd.* v. *Twitchings* [1976] 2 A11 ER 641 the House of Lords in a majority decision held that members of a trade association had no legal duty in tort to other members or the public to register hire-purchase agreements over motor vehicles on the association's register. This was so even though it was the custom of the members to register such agreements, and it was well known that members would often check and rely on the register before buying vehicles. Again, in *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.* [1938] 1 A11 ER 52, the Privy Council held that failure by a lender to stamp notice of a mortgage or charge on railway receipts for goods did not create a duty of care to innocent third parties, even though it was the custom of the trade to take such action.

1.6.10 In the case of *Kuwait Asia Bank EC* v. *National Mutual Life Nominees Ltd.* [1990] 3 A11 ER 404, the Privy Council also refused to impose liability in tort on a shareholder for the defaults of directors whom the shareholder could appoint and remove under the articles of a company. Somewhat surprisingly, the Privy Council reached this conclusion even though the directors were also employees of the shareholder in its own banking business. The shareholder owed no duty of care to the creditors of the company for the actions of the directors appointed by the shareholder, as this would in the view of the Privy Council undermine the longstanding principles of separate legal personality and the immunity of a shareholder from liability for the debts of a company, enshrined in company law. The shareholder was also not liable on the principle of vicarious liability (see 2.9) for the actions of the directors, because while acting as directors they owed their duty only to the company under company law, and were thus not acting in

law in the course of their employment by the shareholder. The shareholder would only be liable if he interfered in the way the directors carried out their duties for the company, so as to become a shadow director under company law. This was not so on the facts of the case.

1.6.11 A similar result was reached in *Trevor Ivory Ltd.* v. *Anderson* [1992] 2 NZLR 517. The defendant was the major shareholder and managing director of a small family company. The company was in effect a one man operation, running an agricultural supplies and advisory service business. The defendant had a well known reputation in the industry, and he advised the plaintiffs about the spraying of weeds which were threatening their raspberry crop. The plaintiffs placed great reliance on his advice. The weed killer recommended by the defendant severely damaged the raspberry crop. The plaintiffs sued the defendant personally, claiming that the advice was negligent. The plaintiffs alleged that the defendant had in the circumstances undertaken a personal duty of care, even though the invoice for the work and other correspondence was sent in the name of the company.

The New Zealand Court of Appeal rejected the idea of a personal duty of care on the facts, and held that it was clear that the defendant had at all times only intended to contract through his company. It was not just and reasonable to impose any personal common law duty of care, and such a duty on officers of a company for statements or actions related to the affairs of the company would if generally applied undermine the whole concept of limited liability and separate legal personality. The Court did accept that caselaw showed officers of a company could be liable for intentional torts such as deceit committed by the company at their personal instigation, but felt that personal liability for negligence would be quite exceptional. It would only occur where the officer had clearly and voluntarily accepted personal liability. The Court did not give any example of how this might occur.

1.6.12 In recent years the courts have shown a reluctance to extend the tort of negligence into areas traditionally dominated by other concepts of law such as contract, statute, and equity. (see 1.1.6 to 1.1.7 with regard to contract and 1.5.13 to 1.5.16 with regard to equity). Another case illustrating this approach is *Kavanagh* v. *Continental Shelf Company* (No. 46) *Ltd.* [1993] 2 NZLR 648. A company agreed to sell a business and a lease of land to a Local Council. The contract of sale was signed

by the property manager of the Council as agent for the Council. The Council claimed that the agent had exceeded his authority, and refused to complete the purchase. The company sued the agent for breach of warranty of authority under the law of agency, and also for breach of duty of care in the tort of negligence.

The New Zealand Court of Appeal rejected the claim in negligence because there were already adequate remedies under the law of agency. Liability of an agent for exceeding his authority had traditionally been based on principles derived from contract such as warranty of authority, and the Court of Appeal was reluctant to create new and different liabilities in negligence in these circumstances. This was especially so when tortious liability on the agent could in some cases make the principal vicariously liable for the actions of the agent in wrongfully exceeding his authority. The Court of Appeal thus followed the general approach which had been suggested in the *Tai Hing Cotton Mill* case. However, it should be noted that the courts have in some circumstances allowed a principal to sue a sub-agent or sub-bailee in the tort of negligence for physical damage to goods, but not for economic loss caused by delivering the goods to the wrong person. See for example *Lee Cooper Ltd.* v. *Jeakins & Sons Ltd* [1965] 1 A11 ER 280, *Bart* v. *British West Indian Airways Ltd.* [1967] 1 Lloyd's Rep 239, and *Balsamo* v. *Medici and another* [1984] 2 A11 ER 304.

1.6.13 A similar approach has been adopted in a number of cases dealing with statutory provisions. In *CBS Songs Ltd.* v. *Amstrad Consumer Electronics PLC and another* [1988] 2 A11 ER 484 the House of Lords held that any duty on a manufacturer of tape-recording machines not to infringe the copyright of record companies in England arose solely from the provisions of the Copyright Act. The courts could not invent additional and new duties by using the concept of a duty of care in negligence at common law. If the statutory duties were too limited or otherwise unsatisfactory then they would have to be changed by amending legislation. Thus there was no common law duty in tort on the manufacturer to take reasonable steps to warn or discourage purchasers of tape-recorders concerning breach of copyright. In *Deloitte Haskins and Sells* v. *National Mutual Life Nominees Ltd.* [1993] 2 A11 ER 1015 (see 4.1.20) the Privy Council held that it was not permissable for the courts to supplement the limited statutory duty imposed on auditors under the Securities Act of New Zealand with a

wider common law duty in tort. In *M and another* v. *Newham London Borough Council and others* [1994] 4 A11 ER 602, the Court of Appeal held that children and their parents had no right to sue a Local Council, or psychiatrists and social workers employed by it, in damages for any careless breach of statutory powers relating to the detection and control of child abuse. It was not the intention of Parliament that any statutory right to sue for damages should be given. Furthermore, as the powers of the Council with regard to child abuse arose purely from statute, there was no room for a common law duty of care. In any event it would not be fair and reasonable to impose a common law duty, as it would lead to a flood of claims and a waste of scarce resources. However, it should be noted leave has been given to appeal this case to the House of Lords.

1.6.14 On the other hand, three judges of the Australian Federal Court in *Blackwell* v. *Barroile Pty Ltd. and others* (1994) 123 ALR 81 rejected the view of the trial judge that the Australian bankruptcy legislation formed a complete code which excluded any complimentary common law duty of care in tort. The bankruptcy legislation was only one element in considering general liability in tort, and it was clear that the statutory power to compel witnesses to provide information about a bankrupt's financial affairs was only intended by the legislature to be a last resort. It was envisaged that information would often be first sought on a voluntary basis. A solicitor of a bankrupt client who voluntarily provided information to his client's trustee in bankruptcy thus had a common law duty of care to take reasonable steps to provide accurate information, in accordance with the principle in the *Hedley Byrne* case.

1.6.15 Again in *Stovin* v. *Wise* [1994] 3 A11 ER 467, the English Court of Appeal held that a Local Council was not in breach of any statutory duty in failing to remove a bank of earth on neighbouring land which obstructed the view of highway users approaching a road junction. This was because the bank of earth did not come within the precise wording of the relevant legislation concerning obstructions to highways. However, the Court of Appeal held that the Council was in breach of a complimentary common law duty of care to road users under the tort of negligence when it decided to exercise its statutory powers to acquire part of the land and remove the bank which it regarded as a danger, but failed to complete the process within a

reasonable time. The Council had voluntarily assumed a responsibility towards road users by its actions and could thus be liable at common law for negligence. Note also *E* v. *Dorset County Council* [1994] 4 A11 ER 640. Children and their parents had no right to sue a Local Council, or psychologists or teachers employed by it, for damages arising from any failure to carry out statutory duties to children with learning difficulties. However, there might be a common law duty of care if it was known advice or reports would be likely to be shown to the parents and acted upon by them. Leave has been granted for this case to be appealed to the House of Lords. See also *T.* v. *Surrey County Council and others* [1994] 4 A11 ER 577, discussed in 4.5.12.

1.6.16 It appeared from judicial statements in the Privy Council and the House of Lords that the tort of negligence should not be extended into areas traditionally dominated by other torts. Thus the Court of Appeal in *Spring* v. *Guardian Assurance PLC and others* [1993] 2 A11 ER 273 overruled earlier authority and the trial judge to hold that an employer giving a personal reference to a prospective new employer about the character of an employee was under no duty of care and could not be sued for negligence by the employee. This area of the law had been traditionally covered by the torts of defamation and malicious falsehood. In many situations it was necessary to prove intentional or reckless wrongdoing under these torts in order to succeed. If the tort of negligence was allowed in such areas of law the court felt it would lead to major changes in complex rules which had been worked out over many years to balance completing social interests.

1.6.17 A similar result had been reached in two earlier New Zealand cases. In *Bell-Booth Group Ltd.* v. *Attorney General* [1983] 3 NZLR 148, the New Zealand Court of Appeal held that liability of the government for statements made by departmental officers and broadcast on television to the effect that the defendant's plant growth product was commercially useless should be governed by the tort of defamation, malicious falsehood or the equitable concept of breach of confidence. Introducing liability in negligence would seriously distort and dangerously simplify a well defined area of law. Again in *Balfour* v. *Attorney General* [1991] 1 NZLR 519 a teacher sued the government in negligence for statements about his character and professional abilities contained on his personal file, and which had been given to prospective employers. The New Zealand Court of Appeal held that the matter was covered

by the tort of defamation and it would be inappropriate to apply the tort of negligence. In any event the maintenance of the personal files was done under legislation as part of government's public responsibility to maintain teaching standards and the welfare of students. Therefore there were policy reasons for holding that there was no duty of care in negligence. If every adverse comment on the files had to be exhaustively verified, the government would be unduly hampered in carrying out its public responsibilities.

1.6.18 It is therefore somewhat surprising that upon appeal in *Spring* v. *Guardian Assurance PLC and others* [1994] 2 WLR 187 the House of Lords rejected the approach of the Court of Appeal with only one dissenting judgment by Lord Keith. The Law Lords considered that the torts of defamation and negligence generally covered different areas of law and different types of damage. The fact that they occasionally overlapped should not exclude the tort of negligence from appropriate situations. Applying the tort of negligence to the close relationship of employer and employee would not radically alter the whole field of defamation law. The House of Lords thus felt the *Bell-Booth* case might be correct on the facts as there was not a close relationship between the parties, although the *Balfour* case was more doubtful.

The House of Lords based the duty of care on the employer in giving a reference on the principles of foreseeability and proximity. Most of the Law Lords made reference in this regard to the principles of the *Hedley Bryne* case, and Lord Goff specifically based his approach on the concept of the employer having special knowledge and voluntarily assuming responsibility, with the employee placing reliance on his care and skill.

The Law Lords were not persuaded to deny a duty of care by arguments of public policy. They did not consider legal liability would have a serious effect on the willingness of employers to give references, or to be completely open and truthful in regard to their contents. The floodgates argument was also dismissed. The Law Lords felt that justice to the employee outweighed other factors, especially in view of the serious consequences of an inaccurate reference. An employee would often find it difficult or impossible to obtain another job. The Law Lords were also influenced by the increasing statutory protection given to employees in matters such as unfair dismissal, and the increasing use in industry of annual appraisals which were often shown to staff.

1.6.19 The Law Lords also felt that the fact that an employer had a statutory or contractual duty to give a reference to another member of a trade association, did not in itself prevent a separate duty to the employee. In this case the employer was required to give the reference by the rules of a trade association set up to regulate the insurance industry under legislation. However, it could be argued that a duty of care should not be so readily imposed if an employer does not have the choice of disclaiming liability or refusing to give a reference. Furthermore, it could be argued that more emphasis should have been placed on the fact that the purpose of giving the references under the insurance industry scheme was to protect the public from fraud and incompetence by insurance agents. Thus, as in the *Balfour* case, more freedom should have been given to employers to be as open or critical as possible in giving references in order to protect the public, without fear of legal proceedings for negligence.

A few remaining points should be noted. Three Law Lords considered that there is also a general implied contractual duty to use reasonable care if a reference is given by an employer, although it seems doubtful whether this implied term positively requires a reference to be given. The question of whether an employer had a duty of care to the recipient who requested a reference or to other persons to whom it was shown, as well as to the employee, was specifically left open for future decision. The question of whether a duty of care could be imposed on persons other than an employer, such as friends or business associates who gave a reference, was also left open.

1.6.20 Another area where the courts have been reluctant to extend liability in tort is that of government agencies. This is set out in 4.5 of Chapter 4, and in 1.2.5–1.2.9 of Chapter 1.

Points to Note

1. A person can be liable under similar duties of reasonable care arising from contract and also from the tort of negligence with regard to the same transaction, but the courts are reluctant to create liability under the tort of negligence between the parties to a contract where none existed under the contract. The courts are also reluctant to allow the tort of negligence to override or outflank contractual rights and obligations between parties.

2. In many situations the duty of care between parties is often regarded by the courts as a moral, social, or political duty, rather than a legal duty under the tort of negligence giving rise to financial liability.

3. The legal duty of care which creates liability under the tort of negligence is based on the general principle that a person is liable for acts or omissions which a reasonable man could reasonably foresee would be likely to injure others, whom it is reasonably foreseeable will be affected.

4. There is general liability under the reasonable foreseeability principle for negligent statements as well as negligent acts or omissions, although some judges consider negligent statements give rise to special legal difficulties.

5. The courts have recently begun to give increasing emphasis to the concept of voluntary assumption of responsibility when extending liability for negligence, particularly careless statements. This concept is misleading because it involves an objective judgment by the court on whether imposing a duty of care is reasonable, rather than any search for the actual intentions of the defendant.

6. There is a general duty of care on all those working on a joint project to take reasonable steps to avoid acts or omissions which a reasonable person would reasonably foresee are likely to injure others working on the project.

7. Architects, surveyors, lawyers, and other professionals have been held liable under the tort of negligence to persons other than their clients for negligent acts, omissions, and advice, where it was reasonably foreseeable such persons would be likely to be injured.

8. Although it is doubtful at common law whether an owner who sells or lets a house which is in an unfit condition can be liable in the tort of negligence, an owner who is also the builder can be liable in tort to ultimate purchasers or occupiers who suffer physical injury or damage to other property through careless building work. However, builders are not liable in tort to such ultimate purchasers or occupiers for defects in the building itself which only lower the value of the building.

9. Mortgagees and receivers are also under a legal duty to take reasonable care in selling property under a mortgage to obtain the true market price, if they decide to sell. However, this duty is based on equity, rather than the tort of negligence.

10. The courts have recognized that legal liability based on the general principle of reasonable foreseeability must be limited by policy considerations in appropriate cases. The courts have thus refused to impose liability if the result would be unfair, against commercial common sense, or would lead to undersirable social consequences. This policy limitation has created uncertainty in the law of negligence.

11. In accordance with policy considerations, the courts have held that a landowner has no duty to the public to take reasonable care to keep a public right of way over his land in repair, as this could impose an excessive and unjust financial burden on the owner.

12. The courts have also emphasized that legal liability based on the general principle of reasonable foreseeability must be limited to situations where there is a close relationship or proximity between the parties. The courts have refused to define the concept of proximity except to say that it means considering all the circumstances of the case.

13. The courts have sometimes refused to extend liability under the tort of negligence if they felt that it would lead to a flood of claims, or actions for enormous sums by an almost unlimited class of persons.

14. The courts have held that there is no general duty of care under the tort of negligence on the drawer of a cheque to manage or supervise his business with reasonable care, to prevent forgery of his cheques by his employees. The risk of forgery in such cases is the inherent risk of running a bank.

15. The courts have traditionally taken the view that an owner of property generally has no duty of care in tort to an innocent purchaser or other person eventually acquiring an interest to take reasonable steps to safeguard the property against theft or forgery.

16. The courts have shown reluctance to extend the tort of negligence into

areas of law traditionally dominated by other concepts such as contract, statute, and separate legal personality.

17 The courts have therefore held that an agent generally has no duty of care in tort to third parties for carelessly exceeding his contractual authority from his principal; nor are the courts prepared in many situations to supplement or extend limited statutory duties with wide common law duties of care.

18. The courts have also held that a shareholder of a company owes no duty of care under the tort of negligence to the creditors of a company for the defaults of directors appointed and removable by the shareholder, as long as the shareholder does not interfere with the way in which the directors carry out their duties.

19. The courts have taken the view that a director even of a small family company is usually not personally liable under the tort of negligence for advice given to persons contracting with the company.

20. Rather surprisingly, the courts have recently held that an employer has a duty to an employee to take reasonable care in giving a reference, even though this may overlap with the tort of defamation.

Table of Legislation

Table of Cases

Index