TEXTBOOK ON

TORTS

Third Edition

Michael A. Jones



Contents

1 PERSPECTIVES

1.1 Scope of tort 1.2 Malice, intention and fault 1.3 Role of insurance 1.4 Objectives of tort 1.4.1 Appeasement and justice 1.4.2 Deterrence and efficiency 1.4.3 Compensation and loss distribution 1.5

2 NEGLIGENCE I: DUTY OF CARE

ix

хi

1

22

xiii

xxxvii

Preface

Table of Cases

Table of Statutes

Accident compensation

Abbreviations of titles of books

2.1 General principles 2.1.1 The neighbour principle 2.1.2 Fore-seeability and proximity 2.1.3 Duty and the unforeseeable plaintiff 2.1.4 Policy and the function of duty 2.2 Excluded interests and limited duties 2.2.1 Omissions—2.2.1.1 Undertaking—2.2.1.2 Relationship between plaintiff and defendant—2.2.1.3 Control over third parties—2.2.1.4 Control of land or dangerous things 2.2.2 Types of plaintiff 2.2.3 Types of defendant—2.2.3.1 Legal proceedings—2.2.3.2 Exercise of statutory powers 2.2.4 Types of loss—2.2.4.1 Economic loss: statements—2.2.4.2 Economic loss: acts—2.2.4.3 Nervous shock—2.2.4.4 Other types of loss	
3 NEGLIGENCE II: BREACH OF DUTY	103
3.1 The reasonable man 3.1.1 The objective standard 3.1.2 Unfore-seeable harm 3.1.3 Foreseeable harm: risk—3.1.3.1 Magnitude of the risk—3.1.3.2 Defendant's purpose—3.1.3.3 Practicability of precautions 3.1.4 General practice 3.2 Special standards 3.2.1 Professionals 3.2.2 Sport 3.2.3 Children 3.2.4 Design 3.3 Proof of breach 3.3.1 Burden of proof 3.3.2 Res ipsa loquitur—3.3.2.1 Application—3.3.2.2 Effect	
4 NEGLIGENCE III: CAUSATION AND REMOTENESS OF DAMAGE	124
4.1 Factual causation 4.1.1 The 'but for' test 4.1.2 Proof of causation 4.1.3 Loss of a chance 4.2 Causation in law 4.2.1 Successive sufficient causes 4.2.2 Intervening acts—4.2.2.1 By third parties—4.2.2.2 By the plaintiff 4.3 Remoteness of damage 4.3.1 Foreseeability and	

vi Contents

directness 4.3.2 Manner of the occurrence 4.3.3 Type of harm 4.3.4 Extent of the harm—4.3.4.1 Eggshell skulls—4.3.4.2 Plaintiff's impecuniosity 4.3.5 Reflections on *The Wagon Mound* 4.3.6 Other torts

NEGLIGENCE IV: EMPLOYERS' LIABILITY

5.1 Common law duties 5.1.1 Competent staff 5.1.2 Safe place of work 5.1.3 Proper plant and equipment 5.1.4 Safe system of work 5.2 Statutory duties 5.3 Defences 5.3.1 Volenti non fit injuria 5.3.2 Contributory negligence

6 NEGLIGENCE V: DANGEROUS PREMISES

6.1. Liability of occupiers to visitors 6.1.1 Occupiers 6.1.2 Visitors 6.1.3 The common duty of care—6.1.3.1 Children—6.1.3.2 Skilled visitors—6.1.3.3 Independent contractors—6.1.3.4 Warning 6.1.4 Acceptance of risk 6.1.5 Exclusion of liability 6.1.6 Contributory negligence 6.2 Liability of occupiers to other entrants 6.2.1 Persons other than visitors 6.2.2 Existence of the duty 6.2.3 Content of the duty 6.2.4 Warning 6.2.5 Acceptance of risk 6.2.6 Exclusion of liability 6.3 Liability of non-occupiers to entrants 6.3.1 Independent contractors 6.3.2 Landlords 6.3.3 Builders and architects

7 NUISANCE

7.1.1 Private nuisance 7.1.1 Definition 7.1.2 Constituents of liability—7.1.2.1 Physical damage—7.1.2.2 Interference with enjoyment of land—7.1.2.3 Interference with servitudes 7.1.3 Unreasonable user—7.1.3.1 Locality—7.1.3.2 Abnormal sensitivity—7.1.3.3 Duration of the interference—7.1.3.4 Public benefit—7.1.3.5 Malice—7.1.3.6 Natural condition of the land—7.1.3.7 Negligence 7.1.4 Who can sue? 7.1.5 Who is liable?—7.1.5.1 Creator—7.1.5.2 Occupier—7.1.5.3 Landlord 7.1.6 Defences—7.1.6.1 Prescription—7.1.6.2 Statutory authority—7.1.6.3 Other defences—7.1.6.4 Ineffective defences 7.1.7 Remedies—7.1.7.1 Damages—7.1.7.2 Injunction—7.1.7.3 Abatement 7.1.8 Standard of liability 7.2 Public nuisance 7.2.1 Definition 7.2.2 Distinguished from private nuisance 7.2.3 The public rights protected—7.2.3.1 Public health—7.2.3.2 Convenience: obstruction of the highway—7.2.3.3 Safety: dangers to the highway 7.2.4 Particular damage 7.2.5 Standard of liability

8 STRICT LIABILITY

8.1. Rylands v Fletcher 8.1.1 Dangerous things 8.1.2 Accumulation 8.1.3 Escape 8.1.4 Non-natural use 8.1.5 Who can sue? 8.1.6 Type of damage 8.1.7 Defences—8.1.7.1 Consent—8.1.7.2 Plaintiff's default—8.1.7.3 Act of God—8.1.7.4 Act of stranger—8.1.7.5 Statutory authority—8.1.7.6 Necessity 8.1.8 Remoteness of damage 8.1.9 Future of strict liability for hazardous activities 8.2 Fire 8.2.1 Liability at common law 8.2.2 Statute 8.3 Animals 8.3.1 Liability at common law 8.3.2 Animals Act 1971 8.3.3 Dangerous species 8.3.4 Non-dangerous species 8.3.5 Defences 8.3.6 Straying livestock 8.3.7 Injury to

198

161

171

231

Contents

livestock by dogs 8.3.8 Straying on to the highway 8.3.9 Remoteness of damage 8.4 Vicarious liability 8.4.1 Justification 8.4.2 Basis of liability 8.4.3 Who is a servant?—8.4.3.1 Lending a servant—8.4.3.2 Vehicle drivers 8.4.4 Course of employment—8.4.4.1 Implied and ostensible authority—8.4.4.2 Express prohibition—8.4.4.3 Criminal acts 8.4.5 Master's indemnity 8.5 Liability for independent contractors 8.5.1 Basic rule 8.5.2 Primary liability 8.5.3 Statutory duties 8.5.4 Common law duties—8.5.4.1 Withdrawal of support—8.5.4.2 Public nuisance—8.5.4.3 Hazardous activities—8.5.4.4 Private nuisance—8.5.4.5 Master and servant—8.5.4.6 Bailees 8.5.5 Collateral negligence

9 BREACH OF STATUTORY DUTY

274

9.1 Is the breach actionable? 9.1.1 Statutory remedy 9.1.2 Common law remedy 9.1.3 Benefit of a class 9.1.4 Public rights and particular damage 9.1.5 Public utilities 9.2 Statutory negligence 9.3 Ambit of the statute 9.4 Causation 9.5 Defences

10 DEFECTIVE PRODUCTS

286

10.1 Common law 10.1.1 Manufacturers' duty 10.1.2 Extending the duty 10.1.3 Intermediate inspection 10.1.4 Causation and contributory negligence 10.1.5 Warning 10.1.6 Continuing duty 10.1.7 Proof 10.1.8 Type of loss 10.2 Statute 10.2.1 Plaintiffs 10.2.2 Defendants 10.2.3 Products 10.2.4 Defects 10.2.5 Type of loss 10.2.6 Causation 10.2.7 Defences and limitation 10.2.7.1 Miscellaneous defences—10.2.7.2 Development risks—10.2.7.3 Limitation

11 TRESPASS TO LAND

308

11.1 Nature of the action 11.1.1 Intention 11.1.2 Damage 11.1.3 Trespass and nuisance 11.2 The interference 11.2.1 Types of trespass 11.2.2 Airspace and subsoil 11.2.3 Highways 11.3 Justification 11.3.1 Licence 11.3.2 Rights of entry 11.3.3 Trespass ab initio 11.4 Possession—Who can sue? 11.5 Remedies

12 TRESPASS TO THE PERSON

317

12.1 Trespass and negligence 12.2 Assault and battery 12.3 Criminal injuries 12.4 False imprisonment 12.5 Defences 12.5.1 Consent 12.5.2 Lawful arrest 12.5.3 Self-defence 12.6 Malicious prosecution 12.6.1 Initiating proceedings 12.6.2 Prosecution ended in the plaintiff's favour 12.6.3 No reasonable and probable cause 12.6.4 Malice 12.6.5 Damage

13 DEFAMATION

328

13.1 The cause of action 13.1.1 What is defamatory? 13.1.2 Reference to the plaintiff 13.1.3 Publication 13.1.4 Libel and slander 13.2 Defences 13.2.1 Truth (or justification) 13.2.2 Absolute privilege—13.2.2.1 Parliamentary proceedings—13.2.2.2 Judicial proceedings—13.2.2.3 Official communications 13.2.3 Qualified privilege—13.2.3.1 Statements in pursuance of a duty—13.2.3.2 Protection of an interest—

viii Contents

13.2.3.3 Privileged reports 13.2.4 Fair comment—13.2.4.1 Matters of public interest—13.2.4.2 Comment and fact—13.2.4.3 What is 'fair' comment? 13.2.5 Malice

14 DEFENCES AND LIMITATION

364

14.1 Volenti non fit injuria 14.1.1 Voluntary 14.1.2 Agreement 14.1.3 Knowledge 14.1.4 Drunken drivers and sporting events 14.2 Excluding liability 14.3 Illegality 14.4 Other defences 14.4.1 Mistake 14.4.2 Inevitable accident 14.4.3 Necessity 14.5 Contributory negligence 14.5.1 Scope of the Law Reform (Contributory Negligence) Act 1945 14.5.2 Causation 14.5.3 Standard of care—14.5.3.1 Children—14.5.3.2 The infirm—14.5.3.3 Workmen—14.5.3.4 Emergency 14.5.4 Apportionment 14.6 Contribution between tortfeasors 14.7 Limitation 14.7.1 Personal injuries and death 14.7.2 Latent damage 14.7.3 Deliberate concealment 14.7.4 Persons under a disability

15 REMEDIES AND DEATH

404

15.1 Damages 15.1.1 Types of damages—15.1.1.1 Nominal and contemptuous—15.1.1.2 General and special—15.1.1.3 Aggravated and exemplary 15.1.2 A single action and the lump sum 15.1.3 Personal injuries—15.1.3.1 Medical and other expenses—15.1.3.2 Loss of earnings—15.1.3.3 Pain and suffering—15.1.3.4 Loss of faculty and amenity 15.1.4 Damage to property 15.1.5 Mitigation 15.1.6 Interest on damages 15.2 Injunction 15.3 Death in relation to tort 15.3.1 Survival of actions 15.3.2 Fatal accidents and loss of dependency—15.3.2.1 The action—15.3.2.2 Dependants—15.3.2.3 Damages

Index 437