

The Law of
**Defective
Premises**

Anthony Speaight
& Gregory Stone



With a foreword by
the Honourable Mr Justice Wood

The Law of Defective Premises

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Mr Justice Wood, one of Her Majesty's
Judges of the High Court of Justice

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Foreword

by the Honourable Mr Justice Wood,
one of Her Majesty's Judges
of the High Court of Justice

Mrs Saidee Dutton was, and I hope is, of diminutive stature, but she possessed great courage. She felt that she had suffered injustice at the hands of a builder and the Bognor Regis Urban District Council. She issued a writ against both and proceeded to court against the latter. Mr Justice Cusack found in her favour at first instance. The local authority appealed and without the benefit of legal aid she resolved to fight them and indirectly all the local authorities in England and Wales. After a hearing in the Court of Appeal lasting two weeks she succeeded. Leave to appeal to the House of Lords was granted on conditions. No appeal was pursued.

Little could Saidee Dutton have realized that by her courageous decision she was seeing the opening of yet another chapter in the English common law of negligence, a chapter which has now developed into a book—this book.

Dutton v Bognor Regis UDC is said by some to have been one of the most significant decisions in the law of negligence since *Donoghue v Stevenson* in 1932. Whether this is so or not, this new development of the principles pronounced in that famous speech of Lord Atkin is still in its infancy.

The appearance of this present book—which is one of the first, if not the first, upon this branch of the law—is therefore most timely and the authors are to be congratulated upon their lucid presentation of the many problems which have been shown to abound. These areas of uncertainty in this new branch of the law await the decision of the English courts, although, as suggested by the authors, some guidance may be sought from decisions within Commonwealth jurisdiction. The law as it stands undoubtedly creates difficulties for those engaged in the construction industry and legislative reform is already being considered—for example in the field of limitation of actions.

I have read this book with interest. It is invaluable to have an analysis of the cases as this recent line of authority evolves, and this book will, I am sure, prove an essential addition to the libraries, not only of lawyers, but also of builders—large and small—architects, engineers and the staffs of local authorities.

I wish it well.

Royal Courts of Justice
London WC2
25 March 1982

John Wood

Preface

The purpose of this book is to identify, and to attempt to explain, an area of the English law of rapidly growing importance. Those engaged in building work have become acutely aware, particularly since the House of Lords decision in *Anns v London Borough of Merton*, that they have new liabilities to contend with, quite distinct from their more familiar obligations under the standard building contracts.

The last decade has seen a full pendulum swing of public opinion. In 1970 against a background of concern at the lack of protection for home-owners the Law Commission published proposals for legislative reform to strengthen their remedies. In August 1980 the Lord Chancellor referred to the Law Reform Committee those questions of the accrual of causes of action and limitation in cases involving latent defects, which had been the cause of so much unease to the construction industry, local authorities and professional men. Such a shift of concern over so short a period is testimony to the dramatic development of the law.

That development has been partly the work of Parliament and partly the work of judges extending the common law. The contrast between those two sources of new law forms a theme of this book. When Parliament created a restricted remedy in the Defective Premises Act, it was immediately eclipsed by the courts increasing the ambit of the entire law of negligence to encompass almost every aspect of defective building. In retrospect the statutory interventions seem little more than tinkering with an old framework by comparison with the radical changes effected by the judges.

The principles of the new framework are now clear, but several significant questions remain uncertain. In discussing how English courts may resolve those questions, we have drawn on decisions from Commonwealth jurisdictions which may provide valuable pointers to the future direction of English law.

We have been assisted by a large number of people, to all of whom we express our thanks. We would like to express particular gratitude to the following persons: to Brian Pryor, for his encouragement; to Patrick Surrey, who gave invaluable assistance throughout, particularly by commenting on the first draft of the manuscript; to Michael Johnson, with whom we were able to discuss some of the more difficult questions in this area of the law; to Peter Laws for his patient understanding; to David Haswell of the Greater London Council, who assisted us with the sections on Inner London; to Leslie Fairweather, Peter Davey and others of *The Architects' Journal*; to Gail Webster who compiled the index and tables and gave other invaluable assistance; and to our typists Olwen Huber and Doreen Wright. We acknowledge with gratitude the permission of the Incorporated Council of Law Reporting for England and Wales to quote from various judgements. We are also grateful to HMSO for permission to reproduce statutory and Parliamentary material.

The errors and omissions that remain must, however, be our final responsibility.

December 1981.

Anthony Speaight
Gregory Stone

Table of statutes

Agricultural Holdings Act 1948 (11 & 12
Geo. 6, c. 63)

s. 6 96

Agriculture (Miscellaneous Provisions)

Act 1972 (c. 62)

s. 15(2) 96

Arbitration Act 1950 (14 Geo. 6, c. 27)

s. 4 145

Brine Pumping (Compensation for
Subsidence) Act 1891 (54 & 55 Vict.,
c. 40) 123

Civil Aviation Act 1949 (12, 13 & 14

Geo. 6, c. 67)

s. 40(2) 122

Civil Liability (Contribution) Act 1978

(c. 47)

s. 1(1) 172

s. 1(2) 173

s. 1(3) 173, 174

s. 1(4) 173

s. 2(1) 172

s. 2(3) 172

s. 7(3) 173

Coal Mining (Subsidence) Act 1950 (14

Geo. 6, c. 23) 123

Coal Mining (Subsidence) Act 1957 (5 &

6 Eliz. 2, c. 59)

s. 1(1)–(4), Sch. 1, Sch. 6, Sch. 12 123

Defective Premises Act 1972 (c. 35)

195–200

s. 1 55, 56, 92

s. 1(1) 16, 17, 55, 67, 88, 138, 147

s. 1(2) 17, 51

s. 1(3) 17

s. 1(5) 18, 147

s. 2(1) 15

s. 2(6) 15

s. 2(7)b) 15

s. 3 56, 92, 93

s. 3(1) 56

s. 3(2)a), (2)c) 94

s. 4 92, 94, 100

s. 4(1) 101, 102, 134

s. 4(2) 101, 134

s. 4(3) 101

s. 4(4)–(5) 101, 134

s. 4(6) 100, 134

s. 6(1) 91

s. 6(2) 16, 102

s. 6(3) 18

s. 6(4) 97, 100

s. 7(2) 14

Deposit of Poisonous Waste Act 1972 (c.
21) 121

Fatal Accidents Act 1976 (c. 30) 173

Fire Prevention (Metropolis) Act 1774
(14 Geo. 3, c. 78) 121

Health and Safety at Work Act 1974 (c.
37)

s. 63 70

s. 70 69

ss 71(1), (4), 74(1) 53

House Purchase and Housing Act 1959 (7
& 8 Eliz. 2, c. 33) 177

Housing Act 1957 (5 & 6 Eliz. 2, c. 56)

s. 4 177, 178

ss 6, 7 96

s. 9(1) 178–183

s. 9(3) 182

ss 10(1)–(5), (7), 11(1), (3), 12(1), (2),
(4) 184

ss 12(3), 16(1), (3)–(5), 17(1)–(3), 19,
20(1)–(3) 185

ss 13, 14, 16, 17 183

ss 21, 22, 27(1), (5), 28 186

Housing Act 1957 (*contd*)

- s. 39(1) 178, 179
- s. 39(2) 182
- s. 48 187
- s. 157(2) 181
- s. 166(2) 183
- s. 169 183
- s. 189(1) 182

Housing Act 1961 (c. 65)

- s. 32, 32(1) 95, 101, 134
- s. 33 134

Housing Act 1964 (c. 56) 177

Housing Act 1969 (c. 33) 177

Housing Act 1980 (c. 57)

- s. 80 95

Housing (Financial Provisions) Act 1958
(c. 42) 177Housing Rents and Subsidies Act 1975 (c.
6) 179

Land Compensation Act 1961 (9 & 10

- Eliz. 2, c. 33) 177

Law of Property Act 1925 (15 & 16 Geo.
5, c. 20) 184

- s. 136 23

Law Reform (Contributory Negligence)
Act 1945 (8 & 9 Geo. 6, c. 28)
30–31, 173

Limitation Act 1975 (c. 54) 156

Limitation (Amendment) Act 1980 (c.
24)

- s. 8 143

Limitation Act 1980 (c. 58)

- s. 2 142
- s. 5 142
- s. 8 143
- s. 10 173
- s. 11 155, 194
- s. 14 155, 194
- (1) 155
- s. 33 155, 156
- (3) 156

London Building Act 1930 (20 & 21 Geo.
5, c. clviii) 71, 88London Building Act (Amendment) Act
1935 (25 & 26 Geo. 5, c. xcii) 71,
88London Building Acts (Amendment) Act
1939 (2 & 3 Geo. 6, c. xcvi) 176,
189

- ss 47(2), 53, 55, 56 124
- ss 60, 61(1), (2), (4), 62(1), (2), 63(1),
(3), 64(1), (2), 65 190
- ss 67, 69(1), (2), 70 191
- ss 75, 77, 97–99 71

- s. 81 72

- ss 82, 82(2) 87

- ss 83, 84, 84(2), 88, 89(2), 90, 148 72

London Government Act 1963 (c. 33)

- s. 40(1), Sch. 11 71

Matrimonial Homes Act 1967 (c. 75) 97

Misrepresentation Act 1967 (c. 7) 31,
33, 36, 37

- s. 1(b) 27
- s. 2(1) 29, 30
- s. 2(2) 32
- s. 3 35

Nuclear Installations Act 1965 (c.
57) 122Occupiers' Liability Act 1957 (5 & 6 Eliz.
2, c. 31) 47, 85, 125, 134, 138–140

- s. 1(1)–(3) 133
- ss 1(3)a), 2(2), 2(6) 127
- s. 2(1) 130
- ss 2(3), 2(4)a) 128
- s. 2(4) 129
- ss 3(1), (3) 132
- s. 4 41, 97, 100, 102

Offices Shops and Railway Premises Act
1963 (c. 41) 96Prescription Act 1832 (2 & 3 Will. 4,
c. 71)

- s. 2 108

Public Health Act 1936 (26 Geo. 5 & 1,
Edw. 8, c. 49) 69, 186

- s. 54(1) 70, 71
- s. 55(1) 71
- s. 58 191
- s. 59(1) 70, 71
- s. 61 69
- ss 64(1), (2), 65(1), (2) 70, 71
- ss 65(5) 71
- s. 91 188
- s. 92, 92(1) 186, 187
- s. 94(1) 188
- s. 94(2) 188, 189
- ss. 95(1), (2), 96(1), 99, 100 189
- s. 343(1) 186

Public Health Act 1961 (9 & 10 Eliz. 2,
c. 64)

- s. 4(6) 71

Regulation of Railways Act 1868 (31 &
32 Vict., c. 119) 22

Rent Act 1977 (c. 42) 100

- s. 15(3) 95

xii Law of Defective Premises

Supreme Court of Judicature Act 1873
(36 & 37 Vict., c. 66) 143

Unfair Contract Terms Act 1977 (c. 50)
143
ss 1(1)c), 1(3) 131

s. 2 18, 137
s. 2(1) 131, 132
s. 2(2) 18, 131
s. 3, 3(2) 18
s. 3(4) 132
s. 11(1), (5) 131
s. 31(1), (2) 18

Table of cases

- AMF (International) Ltd v Magnet
Bowling [1968] 1 WLR 1028; [1968] 2
All ER 789 63, 129
- Acrecrest v Hattrell & Partners [1980]
JPL 172; (1979) 252 EG 1107 55,
80, 84, 167, 174
- Adams v Tuer (1923) LT 218; [1923]
WN 278 181
- Addis v Gramophone Co. [1909]
AC 488 169
- Alexander v Mercouris [1979] 1 WLR
1270; [1979] 3 All ER 305 14
- Anderson v Coutts (1894) 58 JP 369
127
- Anns v Merton LBC [1978] AC 728;
[1977] 2 WLR 1024; [1977] 2 All ER
492 13, 22, 43, 45, 47, 48, 49, 54, 66,
69, 74, 76, 77, 81, 82, 83, 85, 87, 91,
100, 135, 138, 139, 152, 158, 159, 165,
167, 193
- Applegate v Moss [1971] 1 QB 406;
[1971] 2 WLR 541; [1971] 1 All ER
747 2, 18, 148
- Ashdown v Samuel Williams & Sons Ltd
[1957] 1 QB 409; [1957] 3 WLR 1104;
[1957] 1 All ER 35 CA 130, 131
- BL Holdings v Wood (1979) 12 BLR 1
64
- Bacon v Grimsby Corporation [1950] 1
KB 272; [1949] 2 All ER 875 CA
181
- Bagot v Stevens Scanlan & Co. Ltd
[1966] 1 QB 197; [1964] 3 WLR 1162;
[1964] 3 All ER 577; [1964] 2 Lloyd's
Rep. 353 10, 59, 151
- Bailey v Bullock [1950] 2 All ER 1167;
[1950] WN 482 167
- Ball v London County Council [1949] 2
KB 159; [1949] 1 All ER 1056 CA
96
- Baratt v District of North Vancouver
(1978) 89 DLR (3d) 473 82
- Batty v Metropolitan Property
Realisations Ltd [1978] QB 554; [1978]
2 WLR 500; [1978] 2 All ER 445
CA 10, 43, 46, 47, 49, 50, 59, 83, 137
- Beamann v ARTS (1949) 1 KB 550;
[1949] 1 All ER 465 CA 149
- Behrens v Bertram Mills Circus [1957] 2
QB 1; [1957] 2 WLR 404; [1957] 1 All
ER 583 170
- Benabo v Wood Green Borough Council
[1946] KB 38; [1945] 2 All ER 162
182
- Beswick v Beswick [1968] AC 58; [1967]
3 WLR 932; [1967] 2 All ER 1197
24
- Betts v Penge UDC [1942] 2 KB 154;
[1942] 2 All ER 61 186, 187
- Bevan Investment Ltd v Blackhall &
Struthers [1973] 2 NZLR 45 64
- Billings A. C. v Ridden [1958] AC 240;
[1957] 3 WLR 496; [1957] 3 All ER
1 97, 99, 100, 134
- Bolam v Friern Hospital Management
[1957] 1 WLR 582; [1957] 2 All ER
118 60
- Bond v Nottingham Corporation [1940]
Ch 429 109
- Bonomi v Backhouse (1859) El Bl & El
646; (1861) 9 HLC 503 106, 109
- Bottomley v Bannister [1932] 1 KB
458 39, 40, 41, 43, 90, 91
- Bowen v Paramount Builders [1977] 1
NZLR 394 43, 47, 51, 52, 93n, 159,
166
- Bower v Peate (1876) 1 QBD 321 109,
112
- Bradford Corporation v Pickles [1895]
AC 587 107

- Braithwaite v South Durham Steel Co.
[1958] 1 WLR 986; [1958] 2 All
ER 161 127
- Brandon Electrical v William Press
(1956) 107 LJ 332 44n
- Brew Bros Ltd v Snax [1970] 1 QB 612;
[1969] 3 WLR 657; [1970] 1 All ER
587 97, 113
- Bridges v Harrow London Borough
(1981) 260 EG 284 105
- British Celanese v Hunt A. H.
(Capacitors) Ltd [1969] 1 WLR 959;
[1969] 2 All ER 1252 44n
- British Railways Board v Herrington
[1972] AC 877; [1972] 2 WLR 537;
[1972] 1 All ER 749 HL 139, 140
- Broder v Saillard (1876) 2 Ch D 692 112
- Brook Enterprises v Wilding (1973) 38
DLR (3d) 472 62
- Buckland v Guildford Gaslight & Coke
Co. [1949] 1 KB 410; [1948] 2 All ER
1086 141
- Buckley v Lane Herdman & Co. [1977]
CLY 3143 168
- Bunclark v Hertfordshire County
Council (1977) 243 EG 455 105,
164, 166, 169
- Bunker v Charlesbrand & Son Ltd [1969]
2QB 480; [1969] 2 WLR 1392; [1969] 2
All ER 59 127, 128
- Burton v Pinkerton (1876) LR 2 Ex.
340 167
- Butler v Standard Telephone & Cables
Ltd [1940] 1 KB 399; [1940] 1 All ER
121 104, 105
- Callaghan v Robert Ronague (Supreme
Ct Auckland) Au. 12/76 17/9/79 169
- Canada Steamships v The King [1952]
AC 192; [1952] 1 TLR 261; [1952] 1 All
ER 305 PC 33n
- Cartledge v Jopling E. & Sons Ltd [1963]
AC 758; [1963] 2 WLR 210; [1963] 1
All ER 341 33n
- Cattle v Stockton Waterworks & Co.
(1875) LR 10 QB 453 44, 157
- Cavalier v Pope [1906] AC 428 39, 41,
43, 90, 91, 93, 94, 96
- Chin Keow v Government of Malaysia
[1967] 1 WLR 813 PC 60
- Clay v Crump [1964] 1 QB 533; [1963] 3
WLR 866; 3 All ER 687 CA 47n,
61, 62, 136
- Clayton v Woodham & Sons (Builders)
Ltd [1962] 2 QB 533; [1962] 1 WLR
585; [1962] 2 All ER 33 CA 62, 136
- Clippen Oil Co. Ltd v Edinburgh &
District Water Trustees [1907] AC
291 163
- Cochrane v Chanctonbury RDC [1950] 2
All ER 1134 CA 184
- Cocker v Cardwell (1869) LR 5 QB 15
189
- Cohen v West Ham Corporation [1933] 1
Ch 814 181, 182
- Collins v De Guisti [1975] 4 SALR 223
(in Afrikaans) 7
- Collins v Hopkins [1923] 2 KB 617n 91n
- Columbus Co. v Clowes [1903] 1 KB
244 64
- Colwell v St Pancras Borough Council
[1904] 1 Ch. 707 110
- Compania Columbiana de Seguros v
Pacific Steam Navigation Co. [1965] 1
QB 101; [1964] 2 WLR 484; [1964] 1
All ER 216; [1963] 2 Lloyd's Rep.
479 21n
- Cooke v Rowe [1950] NZLR 410 3n
- County & District Properties v C. Jenner
& Son Ltd [1976] 2 Lloyd's Rep.
728 143, 145
- Coventry City Council v Cartwright
[1975] 1 WLR 845; [1975] 2 All
ER 99 187
- Cox v Philips Industries [1976] 1 WLR
638; [1976] 3 All ER 161 170
- Creed v McGough & Sons [1955] 1 WLR
1005; [1955] 3 All ER 123 126
- Cremdean Properties Ltd v Nash (1977)
241 EG 837; 244 EG 547 33-35
- Critchell v Lambeth Borough Council
[1957] 2 QB 535; [1957] 3 WLR 108;
[1957] 2 All ER 417 CA 182
- Crumble v Wallsend Local Board [1891]
1 QB 503 110
- Cunard v Antifyre [1933] 1 KB 551
97, 99, 100, 116, 117, 120
- Cushing v Peter Walker & Sons [1941] 2
All ER 693 114
- Daisley v B. S. Hall & Co. (1972) 225 EG
1553 66
- Dalton v Angus (1881) 6 App. Cas.
740 106, 108, 118
- Darley Main Colliery Co. v Mitchell
(1886) 11 App. Cas. 127 110, 154
- Davey v Harrow Corporation [1958] 1
QB 60 104
- Davis v Foot [1940] 1 KB 116 90, 93
- Davis v St Mary's Demolition Co. Ltd
[1954] 1 WLR 592; [1954] 1 All ER
578 141

- Dawson v Great Northern & City Railway [1905] 1 KB 260 22
- De Lassalle v Guildford [1901] 2 KB 215 36
- Derry v Peek (1889) 14 App. Cas. 337 26
- District of Surrey v Church (1977) 76 DLR (3d) 721 64
- Dodd Properties v Canterbury City Council [1980] 1 WLR 433; [1980] 1 All ER 928 163, 171
- Donoghue v Stevenson [1932] AC 562 HL 27, 40, 41, 62, 85, 90, 91, 92, 100, 117, 118, 141
- Dorset Yacht Co. Ltd v Home Office [1970] AC 1004; [1970] 2 WLR 1140; [1970] 2 All ER 294; [1970] 1 Lloyd's Rep 453 75
- Doyle v Olby (Ironmonger) [1969] 2 QB 158; [1969] 2 WLR 673; [1969] 2 All ER 119 CA 171
- Dudlow Estate Ltd v Sefton Metropolitan BC (1978) 249 EG 1271 180
- Dutton v Bognor Regis UDC [1972] 1 QB 373; [1972] 2 WLR 299; [1977] 2 All ER 462 13, 38, 40-43, 45, 54, 62, 69, 73, 82, 91, 139, 151, 158, 159, 165, 166
- Eames London Estates Ltd v North Herts DC (1981) 259 EG 491 153
- East Ham Borough Council v Bernard Sunley [1966] AC 406; [1965] 3 WLR 1096; [1965] 3 All ER 619 160
- Edwards v Railway Executive [1952] AC 737; [1952] 2 All ER 430 HL 127
- Electrochrome Ltd v Welsh Plastics Ltd [1968] 2 All ER 205 44n
- Ellis v Torrington [1920] 1 KB 399 22
- Ellis Copp & Co. v Richmond LBC (1976) 245 EG 931 179
- Esso Petroleum Co. Ltd v Mardon [1976] 1 QB 801; [1976] 2 WLR 583; [1976] 2 All ER 5; [1976] 2 Lloyd's Rep. 305 CA 10, 29, 59, 137
- Fairline Shipping Corporation v Adamson [1975] QB 180; [1974] 2 WLR 824; [1974] 2 All ER 967; [1974] 1 Lloyd's Rep. 133 133
- Fairman v Perpetual Investment Building Society [1923] AC 74 97n
- Florida Hotels Ltd v Mayo (1965) 113 CLR 588 64
- Gabolinscy v Hamilton City Corporation [1975] 1 NZLR 150 169
- Gallagher v McDowell Ltd [1961] NI 26 40, 56, 91, 135
- Gilchester Properties Ltd v Gomm [1948] 1 All ER 493 34
- Glegg v Bromley [1912] 3 KB 474 22
- Gloucestershire CC v Richardson [1969] 1 AC 480; [1968] 3 WLR 645; [1968] 2 All ER 1181 HL 9
- Goldman v Hargrave [1967] AC 645; [1966] 3 WLR 513; [1966] 2 All ER 986 [1966] 2 Lloyd's Rep. 65 114, 115, 118, 120, 121
- Goody v Baring [1956] 1 WLR 448; [1956] 2 All ER 11 34
- Gorris v Scott (1874) LR 9 Exch. 125 166
- Goslin v Curry (1844) 7 Man. & G 342 171
- Gosling v Anderson (1972) 223 EG 1743 31, 36
- Greaves & Co. (Contractors) Ltd v Baynham Meikle & Partners [1975] 1 WLR 1095, [1975] 3 All ER 99, [1975] 2 Lloyd's Rep. 325 CA 8, 9, 58, 60, 64
- Green v Fibreglass Ltd [1958] 2 QB 245; [1958] 3 WLR 71; [1958] 2 All ER 521 129
- Greenwell v Low Beechburn Coal Co. [1897] 2 QB 165 113
- Gregory v Piper (1829) 9 B & C 591 121
- Griffiths v Evans [1953] 1 WLR 1424; [1953] 2 All ER 1364 CA 168
- Groom v Crocker [1939] 1 KB 194; [1938] 2 All ER 394 CA 10
- Hadley v Baxendale (1854) 9 Exch. 341 138
- Haig v London Borough of Hillingdon (unreported) 75, 82
- Hall v Duke of Norfolk [1900] 2 Ch. 493 113
- Hall v Manchester Corporation (1915) 84 LJ Ch. 732; [1915] WN 192 181
- Hancock v B. W. Brazier (Anerley) Ltd [1966] 1 WLR 1317; [1966] 2 All ER 1; [1966] 2 All ER 901 CA 3n, 4, 5, 7n
- Harbutts' Plasticine v Wayne Tank and Pump Co. [1970] 1 QB 447, [1970] 2 WLR 198, [1970] 1 All ER 225 18, 159, 160
- Harris v Birkenhead Corporation [1976] 1 WLR 279, [1976] 1 All ER 341 126
- Heap v Ind Coope and Allsopp Ltd

- [1940] 2 KB 476, [1940] 3 All ER 634 98, 113
- Hedley Byrne and Co. Ltd v Heller and Partners Ltd [1964] AC 465, [1963] 3 WLR 101 [1963] 2 All ER 575 28, 31, 33, 36, 44, 65
- Heywood v Wellers [1976] 1 QB 446 170
- Higgins v Arfon Borough Council [1975] 1 WLR 524, [1975] 2 All ER 589, [1975] 2 Lloyd's Rep. 330 48, 52, 151
- Hillbank Properties Ltd v Hackney LBC [1978] QB 998 [1978] 3 WLR 260, [1978] 3 All ER 343 CA 179, 183
- Hipkiss v Gaydon [1961] CLY 9042 168
- Hoare and Co. v McAlpine [1923] 1 Ch. 167 104
- Hobbs v LSW Railway (1875) LR 10 QB 111 167
- Hollebone v Midhurst & Fernhurst Builders [1968] 1 Lloyd's Rep. 38 159
- Holmes v Minister of Housing and Local Government (1960) 12 P & CR 72 182
- Hone v Benson [1978] CLY 2062 21, 51
- Hooper v Rogers [1975] Ch. 43, [1974] 3 WLR 329, [1974] 3 All ER 417 CA 109
- Horton v Colwyn Bay Urban Council [1908] 1 KB 327 158
- Humphries v Cousins (1877) 2 CPD 239 112
- IBA v EMI Electronics Ltd & BICC Construction Ltd (1978) 11 BLR 29 8, 61
- Ilford UDC v Beal & Judd [1925] 1 KB 671 112
- Inwood Property Co. v Southwark London Borough (1977) 76 LGR 263 179
- Jacobs v London County Council [1950] AC 361, [1950] 1 All ER 737 97n
- Jarvis v Swan Tours [1973] 1 QB 233, [1972] 3 WLR 954 170
- Jennings v Taverner [1955] 1 WLR 932, [1955] 2 All ER 769 3
- Johnson v Leicester Corporation [1934] 1 KB 638 178
- Jones v Festiniog Railway (1868) LR 3 QB 733 121
- Jones v Gooday (1841) 8 M & W 146 159
- Jordeson v Sutton Southcoates and Drypool Gas Co. [1899] 2 Ch. 217 106, 107
- J. W. Harris & Son Ltd v Demolition Roothing Contractors (NZ) Ltd [1979] 2 NZLR 166 84
- Kaye v Bronesky (1973) 4 BLR 1 CA 58
- Kearney v London & Brighton Railway (1871) LR 6 QB 759 122
- Kent & Porter v East Suffolk River Catchment Board [1941] AC 74, [1940] 4 All ER 527 HL 81, 87
- Kent v Saltdean Estate Co. Ltd (1964) 114 LJ 555 6
- Kiddle v City Business Properties Ltd [1942] 1 KB 269, [1942] 2 All ER 216 121
- King v Victor Parsons & Co. [1973] 1 WLR 29, [1973] 1 All ER 206, [1973] 1 Lloyd's Rep. 189 CA 3, 7, 35, 149
- Kitchen v RAF Association [1958] 1 WLR 563, [1958] 3 All ER 241 148
- Knight v Hext (1979) 253 EG 1227 CA 120
- Konskier v B. G. Goodman Ltd [1928] 1 KB 421 120
- Lambeth LBC v Stubbs (1980) 255 EG 789 188, 189
- Langbrook Properties Ltd v Surrey County Council [1970] 1 WLR 161, [1969] 3 All ER 1424 106, 118, 120
- Lawrence v Cassel [1930] 2 KB 83 5n
- LCC v Farren [1956] 1 WLR 1297, [1956] 3 All ER 401 CA 183
- LCC v Herring [1894] 2 QB 522 191
- LCC v Jones [1912] 2 KB 504 191
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 Lynch v Thorne [1956] 1 WLR 303, [1956] 1 All ER 744 CA 6, 7, 17, 51
 Mafo v Adams [1970] 1 QB 548, [1970] 2 WLR 72 168, 171
 Mahon v Ainscough [1952] 1 All ER 337, [1952] 3 All ER 1404 34
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 McGearry v Campbell [1975] NI 7 5
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 Miller v Cannon Hill Estates Ltd [1931] 2 KB 113 3
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 Ministry of Housing & Local Government v Sharp [1970] 2 QB 223, [1970] 2 WLR 802, [1970] 1 All ER 1009 44, 45
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 Morgan v Liverpool Corporation [1927] 2 KB 131 177
 Morgan v Perry (1973) 229 EG 1737 66
 Morris v Redland Bricks Ltd [1970] AC 652, [1969] 2 WLR 1437, [1969] 2 All ER 576 116
 Mount Albert BC v Johnson [1979] 2 NZLR 234 50n, 51, 52, 79, 87, 154, 158, 174
 Muhammad v Ali [1947] AC 414 165
 Musgrove v Pandelis [1919] 2 KB 43 121
 Mutual Life & Citizen's Assurance Co. Ltd v Evatt [1971] AC 793, [1971] 2 WLR 23, [1971] 1 All ER 150, [1970] 2 Lloyd's Rep 441 PC 28, 76
 National Coal Board v Thorne [1976] 1 WLR 543, (1976) 74 LGR 429 187, 188
 National Telephone Co. v Baker [1893] 2 Ch. 186 121
 Northwestern Utilities v London Guarantee & Accident Co. [1936] AC 108 121
 Nottingham CDC v Newton [1974] 1 WLR 923, [1974] 2 All ER 760 188
 Ogdens Ltd v Weinberg (1906) 95 LT 567 21n
 Oldschool v Gleeson (Construction) Ltd (1976) 4 BLR 103 63, 64
 Olley v Marlborough Court [1949] 1 KB 532, [1949] 1 All ER 127 33n
 Otto v Bolton & Norris [1936] 2 KB 46 40, 41, 56
 Overbrooke v Glencombe Properties [1974] 1 WLR 1335, [1974] 3 All ER 511 33n
 Oxborrow v Tomkins Horner & Ley (1980) (unreported) 66
 Palmer v Bateman (1908) 2 IrR 393 123
 Palmer v Johnson (1884) 13 QBD 351 5n
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 Perry v Sidney Phillips & Son (1981) 260 EG 389 66n
 Philips v Ward [1956] 1 WLR 471, [1956] 1 All ER 874 66, 161

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1 All ER 566 76
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[1964] 2 WLR 996 [1964] 2 All ER
35 109
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Fabre & Partners, *The Times*, 8
February 1982 49, 153
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1047 168
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248 106
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All ER 813 33
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Burlinson [1948] 1 KB 79 189
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Watney Mann (Midlands) Ltd [1976] 1
WLR 1101, [1976] 2 All ER 888 189
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LT QB 688 189
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(1976) 32 P. & CR 411, [1976] JPL
695 181
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WLR 420 [1976] 1 All ER 839 188
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party [1977] 1 WLR 1262, [1978] 1 All
ER 33 162
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Fish Guano Co. [1921] 2 AC 465
122
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EGD 744, 233 EG 1947 168
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(1968) 20 P & CR 261 118, 120
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CA 30
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[1980] Lloyd's Rep. 359, (1979) 252
EG 491 111
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Works [1973] 40 DLR (3d) 530, [1973]
6 WWR 692 46, 83, 158
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221 90
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[1963] 2 All ER 908 128
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WLR 605, [1979] 2 All ER 580 10n,
45
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ER 1570 112
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489, [1940] 1 All ER 26 109
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Ch. D 113 171
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275 183
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(1868) LR 3 HL 330 103, 121-122
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Ltd [1971] 1 QB 337 44
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(1929) 140 LT 1 113
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11 HLC 642 111
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AC 379, [1975] 3 WLR 87, [1975] 2 All
ER 860 186, 187, 188
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[1906] 2 KB 822 107
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AC 880, [1940] 3 All ER 349 104,
112, 113
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56, 91, 135
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Lighting Co. [1895] 1 Ch. 287 110,
116
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264, [1956] 3 WLR 232, [1956] 2 All
ER 265 128
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(1981) 258 EG 855 105
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858, [1976] 2 WLR 493, [1976] 2 All
ER 65 CA 23, 46, 52, 85, 88, 138,
151, 153, 193, 194
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Co. (Contractors) Ltd [1973] QB 27,

- [1972] 3 WLR 502, [1972] 3 All ER 557 41n, 158
 Spicer v Smees [1946] 1 All ER 489 112, 113
 Stewart v East Cambridgeshire DC [1980] JPL 171 76, 77
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 Thompson & Wife v Arkell (1949) 99 LJ 597 177
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 Todd v Flight (1860) 9 CBNS 377 97
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 Travers v Gloucester Corporation [1947] KB 71, [1946] 2 All ER 506 91, 93
 Trinidad Asphalt Co. v Ambard [1899] AC 594 107
 Trower v Chadwick (1836) 3 Bing. NC 334 118
 Twyman v Knowles (1853) 13 CB 222 167
 Union Lighterage Co. v London Graving Dock Co. [1902] 2 Ch. 557 108
 Voli v Inglewood Shire Council (1963) 110 CLR 74, (1963) ALR 657 52, 62, 137
 Wagon Mount (No. 2), Overseas Tankship (UK) Ltd v Miller Steamship Co. Pty Ltd [1967] 1 AC 617, [1966] 3 WLR 498, [1966] 2 All ER 709 115, 118
 Walker v Boyle, *The Times* 10 October 1981 34, 35
 Weller v Foot & Mouth Disease Research Institute [1966] 1 QB 569, [1965] 3 WLR 1082, [1965] 3 All ER 560 44n
 Wells v Cooper [1958] 2 QB 265, [1958] 3 WLR 128, [1958] 2 All ER 527 76, 130
 West Ham Corporation v Benabo [1934] 2 KB 253 183
 West Leigh Colliery Co. Ltd v Tunncliffe & Hampson Ltd [1908] AC 27 117
 Westwood v Post Office [1973] QB 591, [1973] 2 WLR 135 [1973] 1 All ER 283 140
 Wheat v Lacon & Co. Ltd [1966] AC 552, [1966] 2 WLR 581, [1966] 1 All ER 582 126
 White v Blackmore [1972] 2 QB 651, [1972] 3 WLR 296, [1972] 3 All ER 158 CA 130
 White v John Warwick [1953] 2 All ER 1021, [1953] 1 WLR 1285 CA 33n
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 Wilchick v Marks & Silverstone [1934] 2 KB 56 98, 113
 Wilde v Gibson (1848) 1 HLC 605 27n
 Wilkins v Leighton [1932] 2 Ch. 106 113
 Wimpey, George & Co. v Sohn [1967] Ch. 487, [1966] 2 WLR 414, [1966] 1 All ER 232 31
 Winterbottom v Wright (1842) 10 M & W 109 39
 Wilson v Finch Hatton (1877) 2 Ex. D 336 91n
 Wringe v Cohen [1940] 1 KB 229 99, 105, 113, 122
 Yianni v Edwin Evans & Sons [1981] 3 WLR 843, [1981] 3 All ER 592 48, 65
 Young & Marten Ltd v McManus Childs Ltd [1969] 1 AC 454, [1968] 3 WLR 630, [1968] 2 All ER 1169 HL 4-5
 Young v Tomlinson [1979] 2 NZLR 441 78, 168, 169, 175