

Butterworths Common Law Series Buckley: The Law of Negligence and Nuisance

Fifth Edition

Series editor

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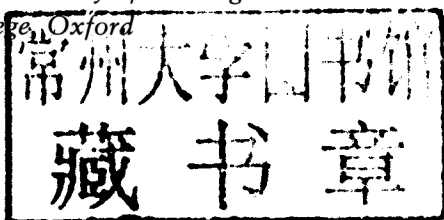
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Dedication

For Olivia

Series Preface

The common law is justifiably seen as a jewel in the crown of English law. The common law has travelled far afield to many other countries where it has been adopted and developed by the local courts. No longer the sole preserve of the judges in London (or Edinburgh and Cardiff), its durability and richness has been due in no small way to the diversity of approach that exists between the common law countries throughout the world. Many of the great judges in England, such as Coke, Mansfield, Blackburn, Atkin, Devlin, Reid and Denning, and those from overseas such as Oliver Wendell Holmes, Benjamin Cardozo and Owen Dixon, have been masters of the common law. As we enter the new Millennium, the common law continues to influence the development of law elsewhere. It will remain a major export, but now also an import, of this country.

Butterworths Common Law Series conceives of the common law in broad terms, providing analyses of the principles informing the frameworks of the law derived from judicial decisions and legislation. The *Series* seeks to provide authoritative accounts of the common law for legal practitioners, judges and academics. While providing a clear and authoritative exposition of the existing law, the *Series* also aims to identify and examine potential developments in the common law drawing on important and significant jurisprudence from other common law jurisdictions. Judges have increasingly looked to academic works for guidance on the accepted view of the law but also when contemplating a reformulation or change of direction in the law. The *Series* may, it is hoped, provide some assistance such that the law is less likely to be left undeveloped ‘marching . . . in the rear limping a little’, to quote a famous judicial aphorism (*Mount Isa Mines v Pusey* (1970) per Windeyer J).

Andrew Grubb

Preface

A striking feature of this edition is that the title has been amended so as accurately to reflect the scope of the book. The fourth edition, published in 2005, combined, in expanded and updated form, my two previous books on Tort: *The Modern Law of Negligence* (3rd edn, 1999) and *The Law of Nuisance* (2nd edn, 1995). But in accordance with the view that sharp conceptual distinctions between the two torts are no longer appropriate, the word 'Nuisance' was not included in the title. In practice, however, this omission may have obscured the full extent of the work. In fact the book endeavours to provide a detailed exposition of both Negligence and Nuisance (apart from statutory nuisance). Although, as in the last edition, the material has been integrated to highlight the similarities between the two torts, the section and chapter headings now reflect the subject-matter more clearly. Thus, although there is necessarily a degree of overlap, especially in relation to damage to property, Chapters 1–10, 15–22, 24–28 and 31–32 deal mainly with negligence, while Chapters 11–14, 23, and 29–30 deal mainly with nuisance.

In the negligence field the six years since the last edition saw the House of Lords, prior to its transformation into the Supreme Court, hand down an unusually large number of decisions involving fundamental principles. Basic duty of care issues were explored in *Sutradhar v National Environment Research Council and Customs and Excise Commissioners v Barclays Bank*. In *Barker v Corus* the House, by a majority, reached a decision on the assessment of damages against multiple defendants in asbestosis cases (later reversed in part by the Compensation Act 2006). In *Rothwell v Chemical & Insulating Co* the House controversially reversed a long line of decisions on the actionability of 'pleural plaques' in asbestos exposure cases (a decision subsequently overturned by legislation in Scotland but not in England). The difficult issues surrounding asbestos-induced disease were also considered by the new Supreme Court in *Sienkiewicz v Greif*, in which the court addressed the problem of establishing liability for mesothelioma. In *Brooks v Metropolitan Police Commissioner* and *Smith v Chief Constable of Sussex Police* the House of Lords examined the principles governing the liability of the police in negligence. In *Mitchell v Glasgow City Council* and *Jain v Trent Strategic Health Authority* the House declined to impose negligence liability on public authorities. In no fewer than four cases, *Law Society v Sephton*, *Haward v Fawcetts*, *A v Hoare* and *Horton v Sadler*, the House considered problems involving limitation of actions (in the two latter cases overruling recent decisions of its own). In *Corr v IBC Vehicles* the House dealt with a difficult question of liability under the Fatal Accidents Acts to the dependants of a deceased who

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committed suicide as a result of depression induced by injuries caused by the defendants' negligence. In *Gray v Thames Trains* and *Stone and Rolls v Moore Stephens* the extent to which illegality can be a defence in negligence was examined by the House. Although the book was already in proof when the decisions of the Supreme Court in *Jones v Kaney* and *Baker v Quantum Clothing* were handed down, it proved possible to include the former (removing expert witness immunity) briefly in the text and references to the latter (on exposure to noise) in the footnotes.

There have inevitably been many relevant decisions of the Court of Appeal and High Court in the past six years. Among the Court of Appeal decisions was *Thompson v Tameside and Glossop NHS Trust*, in which the court handed down a decision of far-reaching importance on the indexation of damages for future medical care. In *Calvert v William Hill Credit Ltd* the same court considered a claim by a compulsive gambler that the defendants should have protected him from his addiction. Whether smoking and drug-taking can constitute contributory negligence was considered in *Badger v Ministry of Defence* and *St George v Home Office* respectively. Questions involving occupiers' liability arose in *Keown v Coventry Healthcare NHS Trust*, *Poppleton v Portsmouth Youth Committee Trustees*, *Bourne Leisure Ltd v Marsden* and *Harvey v Plymouth City Council*; and the scope of liability for injuries caused by children was considered in *Percy v Harris*, *Orchard v Lee* and *Palmer v Cornwall County Council*. In *Dickins v O2* and *Daw v Intel Corporation* the extent of negligence liability to employees for stress-induced illness was explored. The nature of the liability of surveyors was considered in *Platform Funding v Bank of Scotland*. Attempts to impose negligence liability against the background of a statutory relationship succeeded in *Rice v Secretary of State for Trade and Industry* and *Connor v Surrey County Council*, but failed in *X and Y v Hounslow LBC*. The nature of liability for breach of statutory duty was explored in *Bretton v Hancock* and *Trustee in Bankruptcy of St John Poulton v Ministry of Justice*. *Cain v Francis* and *Ministry of Defence v AB* on limitation of actions were significant decisions, as was *Everett v Comojo* on negligence liability for the deliberate acts of third parties. In *Dobson v Thames Water Utilities* the Court of Appeal also explored the relationship between the common law of nuisance and the Human Rights Act, while in *Regan v Paul Properties* it considered the law relating to rights to light. *Watson v Croft Promosport Ltd* concerned the judicial discretion with respect to remedies in nuisance cases, while other important Court of Appeal decisions in the nuisance sphere included the *Corby Group Litigation*, on the recoverability of damages for personal injury in public nuisance, and *Biffa Waste Service Ltd v Mashinenefabrik Ernst Hese GmbH* on vicarious liability in situations involving special hazard.

A feature of public discussion of the law of negligence in recent years has been the fear, not necessarily well-founded, of a 'compensation culture'. This prompted the legislature, in the Compensation Act 2006, to require courts to consider whether the imposition of liability could have a 'deterrent effect' upon the undertaking of a 'desirable activity'. The influence of this provision, which probably declared rather than changed the law, can be seen in the deliberations of the Court of Appeal in *Scout Association v Barnes* and *Uren v Corporate Leisure*. Other enactments covered in the text include the NHS Redress Act

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2006 and the Third Parties (Rights against Insurers) Act 2010, although at the time of writing these had yet to be brought into force.

RA Buckley

Reading, May 2011

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