of damage. Later the cracked pipework caused damage to surrounding property: that was when the cause of action arose. *Nitrigin Eireann Toerant* v. *Inco Alloys Ltd.* [1992] 1 All E.R. 854.

DEFECTIVE PREMISES ACT 1972

1.—(1) A person taking on work for or in connection with the provision of a dwelling (whether the dwelling is provided by the erection or by the conversion or enlargement of a building) owes a duty—

(*a*) if the dwelling is provided to the order of any person, to that person; and
(*b*) without prejudice to paragraph (*a*) above, to every person who acquires an interest (whether legal or equitable) in the dwelling;

to see that the work which he takes on is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed.

(2) A person who takes on any such work for another on terms that he is to do it in accordance with instructions given by or on behalf of that other shall, to the extent to which he does it properly in accordance with those instructions, be treated for the purposes of this section as discharging the duty imposed on him by subsection (1) above except where he owes a duty to that other to warn him of any defects in the instructions and fails to discharge that duty.

(3) A person shall not be treated for the purposes of subsection (2) above as having given instructions for the doing of work merely because he has agreed to the work being done in a specified manner, with specified materials or to a specified design.

(4) A person who—

(*a*) in the course of a business which consists of or includes providing or arranging for the provision of dwellings or installations in dwellings; or
(*b*) in the exercise of a power of making such provision or arrangements conferred by or by virtue of any enactment;

arranges for another to take on work for or in connection with the provision of a dwelling shall be treated for the purposes of this section as included among the persons who have taken on the work.

(5) Any cause of action in respect of a breach of the duty imposed by this section shall be deemed, for the purposes of the Limitation Act [1980], to have accrued at the time when the dwelling was completed, but if after that time a person who has done work for or in connection with the provision of the dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work shall be deemed for those purposes to have accrued at the time when the further work was finished.

. . .

Questions

1. Is this a duty *of care*? Is the liability imposed herein as strict as that imposed on the manufacturer of products by the Consumer Protection Act 1987? Do the two Acts apply to the same kinds of damage?
2. Do the factual differences between buildings and chattels justify distinct legislative treatment or permit the application of similar common law principles?

3. Does this section apply where the fault is not in the work done but in not doing more work? Yes, according to *Andrews* v. *Schooling Independent* [1991] T.L.R. 149 (damp penetrated plaintiff's flat because work was not done in the basement, not demised).

Note:

This Act is Parliament's solution to the problem of defective housing (jerry-building) which the court in *Anns* was also tackling, though without reference to the Act which was already in force.

Valuable though this section apparently is, it has in fact been very little used. The reason is that it is rendered inoperative by s.2 of the Act if a scheme of insurance approved by the Minister is in force, and for many years such an approved scheme, under the National House Builders Council, was in existence. Now, apparently, there is no currently approved scheme, so s.1 is fully operative and will be much deployed. See Wallace, "*Anns* Beyond Repair" (1991) 107 L.Q.R. 228, 243.

SPARTAN STEEL AND ALLOYS LTD. v. MARTIN & CO. (CONTRACTORS) LTD.

Court of Appeal [1973] 1 Q.B. 27; [1972] 3 W.L.R. 502; 116 S.J. 648; [1972] 3 All E.R. 557 (noted 89 L.Q.R. 10 (1973))

Action by industrialist against highway contractor in respect of property damage and lost profits

Excavating with a mechanical shovel, the defendant carelessly damaged a cable and interrupted the supply of electricity to the plaintiffs' factory 400 yards away. In order to prevent damage to their furnace the plaintiffs had to damage its contents (on which they would have made a profit of £400) by £368, and they were prevented by the absence of electric current from processing four more "melts" which would have netted them £1,767.

Faulks J. held that the plaintiffs were entitled to all three sums; the Court of Appeal (Edmund Davies L.J. dissenting) held that they were entitled to the first two sums only.

Lord Denning M.R.: . . . At bottom I think the question of recovering economic loss is one of policy. Whenever the courts draw a line to mark out the bounds of *duty*, they do it as matter of policy so as to limit the responsibility of the defendant. Whenever the courts set bounds to the *damages* recoverable—saying that they are, or are not, too remote—they do it as matter of policy so as to limit the liability of the defendant.

In many of the cases where economic loss had been held not to be recoverable, it has been put on the ground that the defendant was under no *duty* to the plaintiff. Thus where a person is injured in a road accident by the negligence of another, the negligent driver owes a duty to the injured man himself, but he owes no duty to the servant of the injured man—see *Best* v. *Samuel Fox & Co. Ltd.* ([1952] A.C. 716, 731): nor to the master of the injured man—*Inland Revenue Commissioners* v. *Hambrook* ([1956] 2 Q.B. 641, 660): nor to anyone else who suffers loss because he had a contract with the injured man—see *Simpson & Co.* v. *Thomson* ((1887) 3 App.Cas. 279, 289): nor indeed to anyone who only suffers economic loss on account of the accident: see *Kirkham* v. *Boughey* ([1958] 2 Q.B. 338, 341). Likewise, when property is damaged by the negligence of another, the negligent tortfeasor owes a duty to the owner or possessor of the chattel, but not to one who suffers loss only

because he had a contract entitling him to use the chattel or giving him a right to receive it at some later date: see *Elliot Steam Tug Co. Ltd.* v. *Shipping Controller* ([1922] 1 K.B. 127, 139) and *Margarine Union GmbH* v. *Cambay Prince Steamship Co. Ltd.* ([1969] 1 Q.B. 219, 251–252).

In other cases, however, the defendant seems clearly to have been under a duty to the plaintiff, but the economic loss has not been recovered because it is *too remote*. Take the illustration given by Blackburn J. in *Cattle* v. *Stockton Waterworks Co.* ((1875) L.R. 10 Q.B. 453, 457), when water escapes from a reservoir and floods a coal mine where many men are working. Those who had their tools or clothes destroyed could recover: but those who only lost their wages could not. Similarly, when the defendants' ship negligently sank a ship which was being towed by a tug, the owner of the tug lost his remuneration, but he could not recover it from the negligent ship: though the same duty (of navigation with reasonable care) was owed to both tug and tow: see *Société Anonyme de Remorquage à Hélice* v. *Bennetts* ([1911] 1 K.B. 243, 248). In such cases if the plaintiff or his property had been physically injured, he would have recovered: but, as he only suffered economic loss, he is held not entitled to recover. This is, I should think, because the loss is regarded by the law as too remote: . . .

On the other hand, in the cases where economic loss by itself had been held to be recoverable, it is plain that there was a duty to the plaintiff and the loss was not too remote. Such as when one ship negligently runs down another ship, and damages it, with the result that the cargo has to be discharged and reloaded. The negligent ship was already under a duty to the cargo owners: and they can recover the cost of discharging and reloading it, as it is not too remote: see *Morrison Steamship Co. Ltd.* v. *Greystoke Castle (Cargo Owners)* ([1947] A.C. 265). Likewise, when a banker negligently gives a reference to one who acts on it, the duty is plain and the damage is not too remote: see *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [below, p. 63].

The more I think about these cases, the more difficult I find it to put each into its proper pigeon-hole. Sometimes I say "There was no duty." In others I say: "The damage was too remote." So much so that I think the time has come to discard those tests which have proved so elusive. It seems to me better to consider the particular relationship in hand, and see whether or not, as a matter of policy, economic loss should be recoverable, or not. . . .

So I turn to the relationship in the present case. It is of common occurrence. The parties concerned are: the electricity board who are under a statutory duty to maintain supplies of electricity in their district; the inhabitants of the district, including this factory, who are entitled by statute to a continuous supply of electricity for their use; and the contractors who dig up the road. Similar relationships occur with other statutory bodies, such as gas and water undertakings. The cable may be damaged by the negligence of the statutory undertaker, or by the negligence of the contractor, or by accident without any negligence by anyone: and the power may have to be cut off whilst the cable is repaired. Or the power may be cut off owing to a short-circuit in the power house: and so forth. If the cutting off of the supply causes economic loss to the consumers, should it as matter of policy be recoverable? And against whom?

The first consideration is the position of the statutory undertakers. If the board do not keep up the voltage or pressure of electricity, gas or water—or, likewise, if they shut it off for repairs—and thereby cause economic loss to their consumers, they are not liable in damages, not even if the cause of it is due to their own negligence. The only remedy (which is hardly ever pursued) is to prosecute the board before the magistrates. Such is the result of many cases starting with a water board—*Atkinson* v. *Newcastle and Gateshead Waterworks Co.* ((1887) 2 Ex.D. 441); going on to a gas board—*Clegg, Parkinson & Co.* v. *Earby Gas Co.* ([1896] 1 Q.B. 592); and then to an electricity company—*Stevens* v. *Aldershot Gas, Water & District Lighting Co. Ltd.* (best reported in (1932) 31 L.G.R. 48; also in 102 L.J.K.B. 12). In those cases the courts, looking at the legislative enactments, held that Parliament did not intend to expose the board to liability for damages to the inhabitants en masse: see what Lord Cairns L.C. said in *Atkinson* v. *Newcastle and Gateshead Waterworks Co.* (2 Ex.D. 441, 445) and Wills J. in *Clegg, Parkinson & Co.* v. *Earby Gas Co.* ([1896] 1 Q.B. 592, 595). In those cases there was *indirect* damage to the plaintiffs, but it was not recoverable. There is another group of cases which go to show that, if the board, by their negligence in the conduct of their supply, cause direct physical damage or injury to person or property, they are liable: see *Milnes* v. *Huddersfield Corporation* ((1886) 11 App.Cas. 511, 530) by Lord Blackburn; *Midwood & Co. Ltd.* v. *Manchester Corporation* ([1905] 2 K.B. 597); *Heard* v. *Brymbo Steel Co. Ltd.* ([1947] 2 K.B. 692) and *Hartley* v. *Mayoh & Co.* ([1954] 1 Q.B. 383). But one thing is clear: the statutory undertakers have never been held liable for economic loss only. If such be the policy of the legislature in regard to electricity boards, it would seem right for the common law to adopt a similar policy in regard to contractors. If the electricity boards are not liable for economic loss due to negligence which results in the cutting off of the supply, nor should a contractor be liable.

The second consideration is the nature of the hazard, namely, the cutting of the supply of electricity. This is a hazard which we all run. It may be due to a short circuit, to a flash of lightning, to a tree falling on the wires, to an accidental cutting of the cable, or even to the negligence of someone or other. And when it does happen, it affects a multitude of persons: not as a rule by way of physical damage to them or their property, but by putting them to inconvenience, and sometimes to economic loss. The supply is usually restored in a few hours, so the economic loss is not very large. Such a hazard is regarded by most people as a thing they must put up with—without seeking compensation from anyone. Some there are who install a stand-by system. Others seek refuge by taking out an insurance policy against breakdown in the supply. But most people are content to take the risk on themselves. When the supply is cut off, they do not go running round to their solicitor. They do not try to find out whether it was anyone's fault. They just put up with it. They try to make up the economic loss by doing more work next day. This is a healthy attitude which the law should encourage.

The third consideration is this: if claims for economic loss were permitted for this particular hazard, there would be no end of claims. Some might be genuine, but many might be inflated, or even false. A machine might not have been in use anyway, but it would be easy to put it down to the cut in supply. It would be well-nigh impossible to check the claims. If there was economic loss on one day, did the claimant do his best to mitigate it by working harder next day? And so forth. Rather than expose claimants to such temptation and defendants to such hard labour—on comparatively small claims—it is better to disallow economic loss altogether, at any rate when it stands alone, independent of any physical damage.

The fourth consideration is that, in such a hazard as this, the risk of economic loss should be suffered by the whole community who suffer the losses—usually many but comparatively small losses—rather than on the one pair of shoulders, that is, on the contractor on whom the total of them, all added together, might be very heavy.

The fifth consideration is that the law provides for deserving cases. If the defendant is guilty of negligence which cuts off the electricity supply and causes actual physical damage to person or property, that physical damage can be recovered . . . and also any economic loss truly consequential on the material damage: see *British Celanese Ltd.* v. *A.H. Hunt (Capacitors) Ltd.* ([1969] 1 W.L.R. 959) and *S.C.M. (United Kingdom) Ltd.* v. *W.J. Whittall & Son Ltd.*

([1971] 1 Q.B. 337). Such cases will be comparatively few. They will be readily capable of proof and will be easily checked. They should be and are admitted.

These considerations lead me to the conclusion that the plaintiffs should recover for the physical damage to the one melt (£368), and the loss of profit on that melt consequent thereon (£400): but not for the loss of profit on the four melts (£1,767), because that was economic loss independent of the physical damage. I would, therefore, allow the appeal and reduce the damages to £768.

Edmund Davies L.J. (dissenting): ... The facts giving rise to this appeal have already been set out ... Their very simplicity serves to highlight a problem regarding which differing judicial and academic views have been expressed and which it is high time should be finally solved. The problem may be thus stated: Where a defendant who owes a duty of care to the plaintiff breaches that duty and, as both a direct and a reasonably foreseeable result of that injury, the plaintiff suffers only economic loss, is he entitled to recover damages for that loss?

In expressing in this way the question which now arises for determination, I have sought to strip away those accretions which would otherwise obscure the basic issue involved. Let me explain. We are not here concerned to inquire whether the defendants owed a duty of care to the plaintiffs or whether they breached it, for these matters are admitted. Nor need we delay to consider whether as a direct and reasonably foreseeable result of the defendants' negligence any harm was sustained by the plaintiffs, for a "melt" valued at £368 was admittedly ruined and the defendants concede their liability to make that loss good. But what *is* in issue is whether the defendants must make good (a) the £400 loss of profit resulting from that material being spoilt and (b) the £1,767 further loss of profit caused by the inability to put four more "melts" through the furnace before power was restored. As to (a), the defendants, while making no unqualified admission, virtually accept their liability, on the ground that the £400 loss was a *direct* consequence of the physical damage caused to the material in the furnace. But they reject liability in respect of (b), not because it was any the less a *direct* and reasonably foreseeable consequence of the defendants' negligence than was the £400, but on the ground that it was unrelated to any physical damage and that economic loss not anchored to and resulting from physical harm to person or property is not recoverable under our law as damages for negligence.

In my respectful judgment, however it may formerly have been regarded, the law is today otherwise. I am conscious of the boldness involved in expressing this view, particularly after studying such learned dissertations as that of Professor Atiyah on *Negligence and Economic Loss* ((1967) 83 L.Q.R. 243), where the relevant cases are cited. I recognise that proof of the necessary linkage between negligent acts and purely economic consequences may be hard to forge. I accept, too, that if economic loss of itself confers a right of action this may spell disaster for the negligent party. But this may equally be the outcome where physical damage alone is sustained, or where physical damage leads directly to economic loss. Nevertheless, when this occurs it was accepted in *S.C.M. (United Kingdom) Ltd.* v. *W.J. Whittall & Son Ltd.* ([1971] 1 Q.B. 337) that compensation is recoverable for both types of damage. It follows that this must be regardless of whether the injury (physical or economic, or a mixture of both) is immense or puny, diffused over a wide area or narrowly localised, provided only that the requirements as to foreseeability and directness are fulfilled. I therefore find myself unable to accept as factors determinant of legal principle those considerations of policy canvassed in the concluding passages of the judgment just delivered by Lord Denning M.R. ...

For my part, I cannot see why the £400 loss of profit here sustained should be recoverable and not the £1,767. It is common ground that both types of loss

were equally foreseeable and equally direct consequences of the defendants' admitted negligence and the only distinction drawn is that the former figure represents the profit lost as a result of the physical damage done to the material in the furnace at the time when power was cut off. But what has that purely fortuitous fact to do with legal principle? In my judgment, nothing ...

Despite the frequency with which *Cattle* v. *Stockton Waterworks Co.* is cited as authority for the proposition that pecuniary loss, without more, can never sustain an action for negligence, I respectfully venture to think that Blackburn J. was there laying down no such rule. Had he intended to do so when, two years later as Lord Blackburn, he was a party to the decision in *Simpson & Co.* v. *Thomson* ((1877) 3 App.Cas. 279), this fact would surely have emerged when he concurred (at pp. 292 *et seq.*), in the dismissal of underwriters' claim for recoupment of the sum they had paid for a total loss. ...

In *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [below, p. 63], one of those "exceptional cases" referred to by Lord Denning M.R. in *S.C.M. (United Kingdom) Ltd.* v. *W.J. Whittall & Son Ltd.* and a landmark in the branch of the law with which we are here concerned, Lord Devlin, referring to *Morrison Steamship Co. Ltd.* v. *Greystoke Castle (Cargo Owners)*, said (at p. 518): "Their Lordships did not in that case lay down any general principle about liability for financial loss in the absence of physical damage; but the case itself makes it impossible to argue that there is any general rule showing that such loss is of its nature irrecoverable." ...

Having considered the intrinsic nature of the problem presented in this appeal, and having consulted the relevant authorities, my conclusion, as already indicated, is that an action lies in negligence for damages in respect of purely economic loss, provided that it was a reasonably foreseeable and direct consequence of failure in a duty of care. The application of such a rule can undoubtedly give rise to difficulties in certain sets of circumstances, but so can the suggested rule that economic loss may be recovered *provided* it is directly consequential upon physical damage. Many alarming situations were conjured up in the course of counsel's arguments before us. In their way, they were reminiscent of those formerly advanced against awarding damages for nervous shock; for example, the risk of fictitious claims and expensive litigation, the difficulty of disproving the alleged cause and effect, and the impossibility of expressing such a claim in financial terms. But I suspect that they (like the illustrations furnished by Lord Penzance in *Simpson & Co.* v. *Thomson* ((1877) 3 App.Cas. 279, 289 *et seq.*) would for the most part be resolved either on the ground that no duty of care was owed to the injured party or that the damages sued for were irrecoverable *not* because they were simply financial but because they were too remote ...

I should perhaps again stress that we are here dealing with economic loss which was both reasonably foreseeable and a direct consequence of the defendants' negligent act. What the position should or would be were the latter feature lacking (as in *Weller & Co.* v. *Foot and Mouth Disease Research Institute* ([1966] 1 Q.B. 569)) is not our present concern. By stressing this point one is not reviving the distinction between direct and indirect consequences which is generally thought to have been laid at rest by *The Wagon Mound* [below, p. 209], ... Both directness and foreseeability being here established, it follows that I regard Faulks J. as having rightly awarded the sum of £2,535.

Lawton L.J.: This appeal raises neatly a question which has been asked from time to time since Blackburn J. delivered his well-known judgment in *Cattle* v. *Stockton Waterworks Co.* ((1875) L.R. 10 Q.B. 453) and more frequently since the decision in *Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [below, p. 63], namely, whether a plaintiff can recover from a defendant, proved or admitted to have been negligent, foreseeable financial damage which is not

consequential upon foreseeable physical injury or damage to property. . . . In my judgment the answer to this question is that such financial damage cannot be recovered save when it is the immediate consequence of a breach of duty to safeguard the plaintiff from that kind of loss.

This is not the first time a negligent workman has cut an electric supply cable nor the first claim for damages arising out of such an incident. When in practice at the Bar I myself advised in a number of such cases. Most practitioners acting for insurers under the so-called "public liability" types of policy will have had similar professional experiences; if not with electrical supply, with gas and water mains. Negligent interference with such services is one of the facts of life and can cause a lot of damage, both physical and financial. Water conduits have been with us for centuries; gas mains for nearly a century and a half; electricity supply cables for about three-quarters of a century; but there is not a single case in the English law reports which is an authority for the proposition that mere financial loss resulting from negligent interruption of such services is recoverable. Why?

Many lawyers would be likely to answer that ever since *Cattle* v. *Stockton Waterworks Co.* ((1875) L.R. 10 Q.B. 453), such damages have been irrecoverable. Edmund Davies L.J. has just stated that he doubts whether Blackburn J. laid down any such rule. Knowing that he had these doubts, I have re-read *Cattle* v. *Stockton Waterworks Co.* The claim was in negligence. The declaration was as follows: "that defendants, being a water company, so negligently laid down under a certain turnpike road their pipes for supplying water to a district, and so negligently kept and maintained the pipes in such insufficient repair, and in such imperfect and leaky condition, that, while plaintiff was lawfully constructing for reward to the plaintiff a tunnel across the turnpike road, and was lawfully using the road for such purpose, the pipes leaked, and large quantities of water flowed into the road, and upon the plaintiff's workings, and flooded them, and the plaintiff was hindered and delayed in the work, and suffered great loss." The declaration raised precisely the problem which has to be solved in this case; Blackburn J.'s answer was in these words, at p. 458: "In the present case there is no pretence for saying that the defendants were malicious or had any intention to injure anyone. They were, at most, guilty of a neglect of duty which occasioned injury to the property of Knight, but which did not injure any property of the plaintiff. The plaintiff's claim is to recover the damage which he has sustained by his contract with Knight becoming less profitable, or, it may be, a losing contract, in consequence of this injury to Knight's property. We think this does not give him any right of action."

Earlier in his judgment he had said (at p. 457): "No authority in favour of the plaintiff's right to sue was cited, and, as far as our knowledge goes, there was none that could have been cited." There is still no authority directly in point today. Blackburn J.'s judgment has been cited with approval and followed many times: the judgment of Hamilton J. in *Société Anonyme de Remorquage à Hélice* v. *Bennetts* ([1911] 1 K.B. 243, 248) and of Widgery J. in *Weller & Co.* v. *Foot and Mouth Disease Research Institute* ([1966] 1 Q.B. 569, 588) are instances. For nearly 100 years now contractors and insurers have negotiated policies and premiums have been calculated on the assumption that the judgment of Blackburn J. is a correct statement of the law; and those affected financially by the acts of negligent contractors have been advised time and time again that mere financial loss is irrecoverable.

It was argued that the law has developed since 1875, albeit the development was unnoticed by Hamilton J. and Widgery J. Has it? . . .

. . . If, in the *Greystoke Castle* case, the House of Lords overruled *Cattle* v. *Stockton Waterworks Co.* ((1875) L.R. 10 Q.B. 453), it did so by an unobserved flanking movement, not by a direct assault. . . . The case was argued and

speeches delivered on the basis that the House was considering a problem of maritime law. I would not have the temerity to express any opinion as to the extent to which maritime law and the common law differ as to the kinds of damage which are recoverable; but having regard to their differing historical developments it would not surprise me if there were divergencies. The policies governing their developments may well have been different. What I am satisfied about is that the House of Lords in the *Greystoke Castle* case ([1947] A.C. 265) cannot be said to have overruled *Cattle* v. *Stockton Waterworks Co.* ((1875) L.R. 10 Q.B. 453).

The differences which undoubtedly exist between what damage can be recovered in one type of case and what in another cannot be reconciled on any logical basis. I agree with Lord Denning M.R. that such differences have arisen because of the policy of the law. Maybe there should be one policy for all cases; the enunciation of such a policy is not, in my judgment, a task for this court . . . In my judgment the rule enunciated in 1875 by Blackburn J. is the correct one to apply in negligence cases.

When this principle is applied to the facts of this case it produces the result referred to by Lord Denning M.R. in his judgment. I too would allow the appeal and reduce the damages to £768.

Questions

1. If a company loses profits, its shareholders may lose dividends and its employees wages or jobs. If the company recovers damages, is it the shareholders or the employees who benefit? Could the shareholders or the employees themselves sue? If not, why not? Is it because they tend to be numerous? (See *Prudential Assur. Co.* v. *Newman Industries* [1982] 1 All E.R. 354, 366–367; and *Dynamco* v. *Holland & Hannen & Cubitts* 1971 S.C. 257.)
2. An articulated lorry jack-knifes on the motorway. The following car collides with it, and the driver is injured. No one else suffers physical harm, but the motorway is closed for two hours, and many people miss valuable appointments. Do you think it would be reasonable to distinguish between the different types of harm caused by a single incident?
3. What class of litigants will bring an action for lost profits if such an action is allowed? What class of litigants can bring an action for personal injuries?
4. Does a proper sense of social responsibility require one to bear in mind the financial well-being of trading companies with limited liability?
5. Suppose that the defendant had been operating, with the plaintiff's permission, on the plaintiff's land. Would the result be the same?
6. The old idea that the law of tort should be determined by a moral view of the demands of social responsibility is being challenged by the theory that the law of tort should be determined by its function as a loss-distributing device. Might the results of the two views diverge in the present case?

Note:

A person's chances of obtaining the money he is claiming depend on what he is claiming it for and who he is claiming it from: in other words, both the type of injury he has suffered and the nature of his relationship with the defendant are material, perhaps vital, considerations.

Since *Donoghue* v. *Stevenson* people who act dangerously may have to pay even a complete stranger if the harm they cause is physical. So here *Spartan Steel* recovered for the physical harm they suffered (damage to the ore) but not for the purely financial harm (lost profits), though both results were equally foreseeable. Plaintiff and defendant were total strangers to each other. In *Muirhead* v. *Industrial Tank Specialities* [1985] 3 All E.R. 705 (C.A.) the careless manufacturer of a defective recycling pump had to pay the ultimate purchaser for the damage to his property (dead lobsters) but not the purely financial harm resulting from business interruption. But while in *Spartan Steel* the parties were complete strangers, in *Muirhead* they were not: they were in the relationship of consumer and manufacturer. As *Donoghue* v. *Stevenson* laid down, that is a special

relationship, but when it comes to liability for purely economic loss, it is not special enough.

The economic loss in *Spartan Steel* occurred through the defendant's damaging an electricity cable which belonged to a third party. In cases where property has been damaged by carelessness the courts have long held that only those with a proprietary or possessory interest in that property may bring an action, not those who have merely a financial interest in the well-being of the property, whether that interest be positive, in the sense that they stand to gain if the property remains unimpaired, or negative, in the sense that they will have to pay out if it is damaged or destroyed. There are masses of cases: the courts have rejected claims by the insurer who had to pay out on the policy when the insured property was damaged (*Simpson* v. *Thomson* (1877) 3 App.Cas. 179), the salvor who lost his reward when the tow was sunk (*Société Anonyme de Remorquage à Hélice* v. *Bennetts* [1911] 1 K.B. 243), the buyer who was committed to paying for the goods (*The Aliakmon* [1986] 2 All E.R. 145, (noted [1986] Camb.L.J. 382 (Clarke), 384 (Markesinis)), the auctioneer who would have sold the property on commission (*Weller & Co.* v. *Foot and Mouth Disease Research Institute* [1966] 1 Q.B. 569), and the charterer who was paying for the use of the vessel (*The Mineral Transporter* [1985] 2 All E.R. 935, (noted [1986] Camb.L.J. 13 (Tettenborn), 102 L.Q.R. 13 (M. Jones)). The law could hardly have taken a clearer position, and it has now been reaffirmed so as to allay intervening doubts stemming from *Junior Books* v. *Veitchi Corp.* [1983] A.C. 520, [1982] 3 All E.R. 201.

The position adopted is both right and convenient. It is right to distinguish property damage from financial loss because things, being capable of gratifying the senses, are more significant than wealth, just as people are more significant than things. It would also be inconvenient not to distinguish property damage from financial loss because whereas property damage is always limited in extent (thanks to the physical laws of inertia), the incidence of financial loss knows no bounds, and the courts would have a fearful time trying to set them.

Take the interesting case of *Wimpey Constr. Co. (U.K.) Ltd.* v. *Martin Black & Co.*, 1982 S.L.T. 239. The pursuer was one of a consortium of firms engaged on a huge construction project in the Firth of Forth. The project depended on the availability of a certain crane-barge. This was obtained on hire by another member of the consortium, who procured wire slings from the defender. One day while a concrete pile belonging to the pursuer was being raised, the sling snapped. The pile sank and the crane-barge was so badly damaged that it was out of commission for eight weeks. The pursuer naturally recovered for the loss of its concrete pile, but it also sued for the vast expense involved in the delay to the construction work. The Inner House gave judgment on this point for the defenders. But then the House of Lords decided *Junior Books*. That decision so confused the law that the defenders settled for a huge sum (£1m.) rather than face an appeal to the House of Lords constituted as it was. It is now happily clear that under the present law such an appeal would have been dismissed.

HOME OFFICE v. DORSET YACHT CO.

House of Lords [1970] A.C. 1004; [1970] 2 W.L.R. 1140; [1970] 2 All E.R. 294; [1970] 1 Lloyd's Rep. 453; 114 S.J. 375

Action by owner against Home Office in respect of property damage done by runaway Borstal boys

Seven Borstal boys, five of whom had escaped before, were on a training exercise on Brownsea Island in Poole Harbour, and ran away one night when the three officers in charge of them were, contrary to instructions, all in bed. They boarded one of the many vessels in the harbour, started it and collided with the plaintiff's yacht, which they then boarded and damaged further.

To the preliminary question of law, whether on the facts as pleaded any duty of care capable of giving rise to a liability in damages was owed to the plaintiff by the defendant, their servants or agents, an affirmative answer was given by

Thesiger J., by the Court of Appeal [1969] 2 Q.B. 412, and by the House of Lords (Viscount Dilhorne dissenting).

Lord Reid: ... The case for the Home Office is that under no circumstances can Borstal officers owe any duty to any member of the public to take care to prevent trainees under their control or supervision from injuring him or his property. If that is the law, then inquiry into the facts of this case would be a waste of time and money because whatever the facts may be the respondents must lose. That case is based on three main arguments. First it is said that there is virtually no authority for imposing a duty of this kind. Secondly, it is said that no person can be liable for a wrong done by another who is full age and capacity and who is not the servant or acting on behalf of that person. And thirdly it is said that public policy (or the policy of the relevant legislation) requires that these officers should be immune from any such liability.

The first would at one time have been a strong argument. About the beginning of this century most eminent lawyers thought that there were a number of separate torts involving negligence, each with its own rules, and they were most unwilling to add more. They were of course aware from a number of leading cases that in the past the courts had from time to time recognised new duties and new grounds of action. But the heroic age was over; it was time to cultivate certainty and security in the law; the categories of negligence were virtually closed. The Attorney-General invited us to return to those halcyon days, but, attractive though it may be, I cannot accede to his invitation.

In later years there has been a steady trend towards regarding the law of negligence as depending on principle so that, when a new point emerges, one should ask not whether it is covered by authority but whether recognised principles apply to it. *Donoghue* v. *Stevenson* [above, p. 29] may be regarded as a milestone, and the well-known passage in Lord Atkin's speech should I think be regarded as a statement of principle. It is not to be treated as if it were a statutory definition. It will require qualification in new circumstances. But I think that the time has come when we can and should say that it ought to apply unless there is some justification or valid explanation for its exclusion. For example, causing economic loss is a different matter; for one thing, it is often caused by deliberate action. Competition involves traders being entitled to damage their rivals' interests by promoting their own, and there is a long chapter of the law determining in what circumstances owners of land can and in what circumstances they may not use their proprietary rights so as to injure their neighbours. But where negligence is involved the tendency has been to apply principles analogous to those stated by Lord Atkin: *cf. Hedley Byrne & Co. Ltd.* v. *Heller & Partners Ltd.* [below, p. 63]. And when a person has done nothing to put himself in any relationship with another person in distress or with his property mere accidental propinquity does not require him to go to that person's assistance. There may be a moral duty to do so, but it is not practicable to make it a legal duty. And then there are cases, *e.g.* with regard to landlord and tenant, where the law was settled long ago and neither Parliament nor this House sitting judicially has made any move to alter it. But I can see nothing to prevent our approaching the present case with Lord Atkin's principles in mind.

Even so, it is said that the respondents must fail because there is a general principle that no person can be responsible for the acts of another who is not his servant or acting on his behalf. But here the ground of liability is not responsibility for the acts of the escaping trainees; it is liability for damage caused by the carelessness of these officers in the knowledge that their carelessness would probably result in the trainees causing damage of this kind. So the question is really one of remoteness of damage ...

If the carelessness of the Borstal officers was the cause of the plaintiff's loss, what justification is there for holding that they had no duty to take care? The