

Table of Contents

<i>Preface</i>	iii
<i>Table of Cases</i>	xi
Chapter 1 Introduction to Pure Economic Loss	1
1. Introduction	1
2. Pure Economic Loss Distinguished from Physical Damage	7
3. Of Categories and Categorization	15
Chapter 2 Negligent Misrepresentation	27
1. Introduction	27
2. Historical Development	29
3. The Duty of Care	36
(a) Introduction	36
(b) The Justification for a Special or Restrictive Duty of Care	39
(c) The Existence of Duty: When Does the Law Recognize a Duty of Care in Speech?	43
(i) The Special Relationship	47
(ii) Foreseeable Reasonable Reliance	50
(iii) Voluntary Assumption of Responsibility	57
(iv) Disclamatory Language	62
(v) Common Indicators of Duty	73
(vi) Other Considerations for Duty of Care	86
(d) Summary and Conclusions	89
4. Misrepresentations Between Contracting Parties	90
(a) Introduction	90
(b) Post-Contractual Misrepresentation	90
(c) Pre-Contractual Representations	96
5. Liability to Whom and for What Loss?	104
(a) Introduction	104
(b) The End and Aim Rule	106
(c) Exceptional Profession-specific Approach	110
(d) Beyond the Problem of Indeterminate Amount	114
(e) Summary	122
6. Contributory Negligence	122
7. Quantification of Damages	125
Chapter 3 Negligent Performance of a Service	129
1. Introduction	129
2. Direct Undertakings to Perform a Specific Service	130

viii / Table of Contents

3.	Indirect Undertakings to Perform a Specific Service	136
(a)	Third Party Beneficiary or End and Aim	137
(b)	Incidental Beneficiaries	147
4.	Imposition of Additional Duties Derived from the Defendant's Contract with a Third Party	154
5.	Imposition of Duties of Affirmative Action	160
Chapter 4 Owners' Claims for Damages Relating to Defective Products or Building Structures		173
1.	Introduction	173
2.	The Majority Position: No Recovery in Tort	180
3.	Dangerous Defects	185
4.	Shoddy Products: Those Which Neither Cause, Nor Pose a Risk of Causing, Physical Harm	194
5.	The Duty to Warn	204
6.	Summary and Conclusions	207
Chapter 5 Relational Economic Loss		209
1.	Introduction	209
2.	In Support of the Exclusionary Rule	216
(a)	A General Justification for the Exclusionary Rule	217
(b)	Possible Alternatives to a Firm Exclusionary Rule ...	227
(i)	Specific Exceptions	228
(ii)	Specific Limiting Formulas	229
(iii)	General Guidelines and Judicial Discretion	230
3.	Pure Economic Loss Consequent on Property Damage	235
(a)	Non-Contractual Relational Loss	235
(b)	Contractual Relational Loss	241
(i)	The Utility Cases	242
(ii)	Other Contractual Relational Claims	246
(c)	The Exceptions	251
(i)	General Average	252
(ii)	Possessory Interest	254
(iii)	Joint Fishing Ventures	257
(iv)	The Joint Venture Exceptions	258
(v)	Transferred Loss	261
(vi)	Economic Loss Consequent on Damage to a Public Resource	267
4.	Pure Economic Loss Consequent on Personal Injury	273
5.	Summary	276
Chapter 6 The Liability of Statutory Public Authorities		279
1.	Introduction	279
2.	The Immunity Principle and Statutory Powers	290
(a)	<i>Anns v. London Borough of Merton</i>	290
(b)	The Substantive Rationale for Immunity	292

Table of Contents / ix

3.	(c) Policy v. Operational: Drawing the Line	296
3.	Negligence and Mandatory Public Duties	312
	(a) Nonfeasance	312
	(b) Misfeasance of a Mandatory Public Duty	313
4.	Proximity: An Alternate Approach to the Same End	315
5.	Limits to Immunity: Liability for the Improper Exercise of Discretion	329
	<i>Index</i>	339