Negligence

The House of Lords in *Rondel* v. *Worsley* [1967] 3 W.L.R. 1966 in holding that a barrister was immune from an action in negligence in respect of his conduct and management of a case in court and the preliminary work connected therewith, affirmed the decision of the Court of Appeal reported in [1967] 1 Q.B. 443 (noted *supra* p. 254). The House of Lords based their decision not on the absence of contract between barrister and client but on public policy and long usage in that (1) a barrister must be able to carry out his duty to the court fearlessly and independently; (2) such actions would make the re-trying of the original actions inevitable and so prolong litigation contrary to public interest; and (3) a barrister was obliged to accept any client who sought his services.

A majority of the House of Lords went on to hold that a barrister should not be immune from an action in negligence in relation to matters unconnected with cases in court for if he fails to exercise the ordinary care and skill that can reasonably be expected of him, he should be and is is no better position than any other professional man.

In *Re Thomas Gerrard & Son Limited* [1967] 3 W.L.R. 84 it was held that an auditor must use reasonable skill and care in carrying out his statutory duty under what in New Zealand is s. 166 Companies Act 1955. It is the duty of the auditors on discovering falsified invoices to make exhaustive enquiries and to inform the board of directors of the company. The auditors' failure to do so in this case put them in breach of their duty. As payment of dividends was a natural and probable result of the false picture presented by the company's accounts, as approved by the auditors, they were held liable for the amount of those dividends. The auditors had claimed that they were not in breach of their duty as they were not given sufficient time in which to make their audit and conduct such investigations as were necessary. It was held, however, that in such circumstances the auditors must refuse to make a report at all or make only an appropriately qualified report. They are not justified in making a report the truth of which they have not had time to verify.

Gorely v. *Codd* [1967] 1 W.L.R. 19 once again brought before the Court the problem of liability for a child causing injury to another child with a firearm. The defendant, a mentally retarded child of 16½ years, had pointed a .22 air rifle at another child and had accidentally discharged it causing serious injury. The injured infant and his father sued the infant defendant in negligence and assault and joined his father alleging that he was negligent in permitting his son to use the air rifle. Nield J. in examining this aspect stated that "it is quite clear as a matter of principle that a person who entrusts a firearm to another must be careful to see that he entrusts it to somebody who is competent, and not to someone who is not responsible by reason of mental illness or otherwise may be said to be incompetent" ([1967] 1 W.L.R. 19 at 26). On the facts however, His Honour held that the adult defendant was not not in breach of his duty. Although his son was retarded academically, his competence was not otherwise affected and he had given his son sufficient instruction in the use of air rifles. This being the case supervision of the infant defendant was not necessary. It was emphasised that

no two cases can possibly be the same and the present case was decided on the present facts.

Rescue and Shock

In *Chadwick* v. *British Railways Board* [1967] 1 W.L.R. 912 the question of whether there was a duty of care to a rescuer sustaining shock was considered by Walker J. It was held that the defendants having, by their negligence, put passengers in peril should have reasonably foreseen that someone would attempt to rescue those passengers. Accordingly they owed a duty to such a rescuer. The fact that the risk run by the rescuer was not of the same kind as that run by the persons being rescued did not deprive the rescuer of his remedy and his injury by shock was in the circumstances a foreseeable consequence of the defendant's negligence. The learned judge held that damages were recoverable for injury for shock even where the injured person's shock was not caused by fear for his own safety or for that of his children. This, therefore, is the first time that damages have been awarded for shock stemming from anxiety for the safety of a total stranger. However, it must be remembered that here the injured person was in the capacity of an active participant in a positive act of rescuing rather than a passive bystander.

Damages

In considering the question as to whether a pension to which compulsory payments have been made is to be taken into account in assessing damages Lord Denning M.R. stated in *Parry* v. *Cleaver* [1967] 3 W.L.R. 739, at 741, that "In order to assess the compensation, the dominant rule of law is that the injured party should receive such a sum of money as will put him in the same position as he would have been in if he had not received the injuries". He went on to say (at p. 743) that "the injured party should give credit for all sums which he receives in diminution of his loss, save that there are exceptional cases (such as insurance benefits) for which he need not give credit". Thus the plaintiff's pension had to be taken into account as he had made compulsory contributions to the pension fund and had a right to a pension on discharge.

In *Cook* v. *Wright* [1967] N.Z.L.R. 1034 Wild C.J. held, in allowing a claim by parents for expenses incurred in visiting their injured child during treatment in hospital, that it must be shown that the visits were necessary in the light of the patient's medical condition at the relevant time and that the persons claiming recovery were under a legal duty to the patient to pay the costs. The Chief Justice went on to say at p. 1037 that "It is only where the visits have so definite a therapeutic value that the parents can be said to be under a legal duty to provide for them that they are entitled to recover the expense reasonably incurred. Every case will depend on its own facts." It was pointed out that while such parental visits are a natural consequence in such circumstances and likely to some extent to assist recovery in every case, the expenses of visits prompted merely by love and affection or which give no more than solace or pleasure to the parents are not recoverable.

Employer's Liability

In *James* v. *Hepworth & Grandage* [1967] 3 W.L.R. 178 a workman was injured through failure to wear safety gear the availability of which was made known by means of a large printed notice erected in the workshop. The injured man was illiterate and could not read the notice and he claimed that the employers should have done more in order to fulfil their duty of care to him. The employer's duty of care to his employee is owed to each employee individually and not to employees in general so that the precautions an employer must take in order to fulfil this duty will be affected by the circumstances concerning the particular employee which are known or ought reasonably to be known by the employer. It was held however, that in this case there was no duty to an illiterate employee. The fact that the employers did not know of the employee's illiteracy was irrelevant as such a disability was very rare and not to be expected in this day and age.

Workers Compensation

In *Meredith* v. *Wright Stephenson & Co. Limited* [1967] N.Z.L.R. 626 s. 3 and s. 5 of the Workers Compensation Act 1956 once again came under review. The plaintiff had been injured in a car accident whilst returning from a staff social function in another town. The function was to farewell a popular staff member who was leaving the area and staff from surrounding areas were invited to attend. The plaintiff asked the Court to hold that his attendance at this function was in the course of his employment and that he was therefore travelling from his work at the time of his accident. The Court was, however, able to distinguish *Scott* v. *Sims Cooper & Co.* [1960] N.Z.L.R. 481 and held that as he was under no duty or obligation to attend the social function he was not travelling to or from his work. Consequently the company was not liable for the accident as it did not arise out of or in the course of his employment.

D. G. Fels.