



Robby Bernstein

COMPLETE COVERAGE OF ECONOMIC LOSS

Economic Loss • 3rd Edition • Robby Bernstein

**PUBLISHING
MAY 2013**

"This is a substantial work that subjects to detailed analysis the whole of the law of negligence. ... I had some difficulty in preparing to write this foreword because I was constantly enticed by the very detailed analysis and discussion of topics that I find fascinating ... If the reader of this foreword has only borrowed a copy of the 3rd Edition of Economic Loss, I suspect that, by the time he has delved into its contents, he will wish to add one to his personal library. I certainly look forward to adding one to mine."

Lord Phillips of Worth Matravers, the past President of the Supreme Court of the United Kingdom, in his Foreword to the 3rd Edition of Economic Loss

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“Robby Bernstein’s groundbreaking work on economic loss has long been an essential book for lawyers working in this area. With its clear analysis and full comparative coverage, it always has something useful to say on the difficult legal issues which arise in this area.”

Hugh Tomlinson QC

WIDESPREAD CLARITY

This is a book about the common law tort of negligence with special reference to cases of pure economic loss.

Robby Bernstein’s third edition of **Economic Loss** sets out, explains and comments on the principles applied by the courts in economic loss cases.

With more than 400 new cases and approximately 1,700 more pages than in the previous edition - if you are involved in tort law, then you should not be without **Economic Loss**.



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2 VOLUMES

£375

- Deals with situations in which one person’s negligent act or omission causes another person to suffer a loss which is not to his person or his property, and where the relationship between them is usually non-contractual
- Sets out and comments on the principles applied by the courts in pure economic loss cases
- Covers general themes and alternative approaches before dealing with the broad categories of situations in which questions concerning pure economic loss and duties of care in tort arise
- Discusses and analyses virtually all of the significant reported cases on this topic in England and the Commonwealth
- Examines the principles applicable to the imposition of, or the refusal to impose, duties of care where the claimant’s loss/injury is to his person or to his property; particularly in the field of product liability and in relation to the acts or omissions of statutory authorities
- Looks at the complex problem of the effect of the existence of a contract on the outcome of a pure economic loss duty of care claim in tort
- Presents General Principles in Volume One and Specific Applications in Volume Two
- Deals with very interesting cases, such as: a decomposing snail in a bottle of ginger beer, a Pentium III “ultimate media machine” which was anything but, a night-watchman whose tea was poisoned with arsenic, lobsters that died in a tank before Christmas, a judge who said that there is no difference between a rodent and a gastropod, one and a half dead flies in an unopened dispenser of purified drinking water, an advertising agency whose client failed to pay ‘as advertised’, a ship that sank after it was certified ‘good to go’, a tavern that lost business because a boat crashed into a bridge, two dead mice in bottles of ginger beer and a gambler who was banned from buying too many lottery tickets.
- Also includes cases of a compulsive gambler who went to the dogs, an asbestos worker whose pleural plaques were not actionable, an auctioneer who was out-bid by foot and mouth disease, a potato farmer who was devastated by bacterial wilt, a soldier who shot his girlfriend’s lover, a house inspector who said “no responsibility”, and the Lords who said ‘yes responsibility’, a couple who lost \$30m to a fraudster and almost got their bank to pay for it, an abattoir whose dividing wall was not high enough, an asset-freezing Order that didn’t, a factory-owner whose diesel storage tank’s tap did not have a lock, a very honest patient with cauda equina syndrome - and much more.

"I was extremely pleased to learn that the third edition of this work is imminent... In the course of my practice. I have turned on many occasions to the second edition of this work. On each occasion I was grateful to have available such a well-researched, erudite, informative and easily-accessed source for research."

Gerald Simpson QC

WHATS NEW?

- More than 400 new cases and approximately 1,700 more pages than in the second edition.
- The scope of this third edition of Economic Loss is broader than the first two editions. In addition to considering the duty of care question in relation to pure economic loss and economic loss that is not pure economic loss (i.e., consequential economic loss), this edition also deals with the analytical framework for determining when a duty of care in the tort of negligence is appropriate in cases where the plaintiff's loss/injury is to his person or to his property.
- Includes new and/or expanded sections dealing with topics like causation, remoteness of loss, foreseeability, proximity, the scope of a duty of care, the composite approach, assumption of responsibility, the *Hedley Byrne* principle, the current test, reflective loss, the relaxation of the relational pure economic loss rule, the rule in *The Albazero*, the *Panatown* broad basis of liability, public authority liability and concurrent liability in the context of a construction contract.
- Expanded coverage of the pure economic loss position in Australia, Canada and New Zealand and, to a lesser extent, the USA.

HERE YOU WILL FIND THE ANSWERS TO SOME VEXED LEGAL QUESTIONS LIKE:

- Whether a duty can exist and whether a duty does exist are different kinds of questions, and it seems to me that the law gives different kinds of answers to them. (**Lord Clyde in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619**)
- Lack of causation is often used as an explanation as to why the scope of duty is limited, while the converse is not true. (**Evans-Lombe J in *Barings Plc (In Liquidation) & Anr v Coopers & Lybrand (No.4)* [2002] 2 BCLC 364**)
- It seems to me problematical, with respect, to try to explain remoteness in terms of foreseeability. If anything, it is foreseeability which has to be explained in terms of remoteness. (**Sedley LJ in *Spencer v Wincanton Holdings Ltd* [2010] PIQR P8**)
- "Unreasonable" is a protean adjective. (**Sedley LJ in *Spencer v Wincanton Holdings Ltd* [2010] PIQR P8**)
- 'Causation' and 'remoteness' are two epithets which describe the same process of legal decision making. (**Aikens LJ in *Spencer v Wincanton Holdings Ltd* [2010] PIQR P8**)

ABOUT THE AUTHOR

Robby Bernstein, B Com LLB (Witwatersrand) BCL (Oxon), is a Barrister (England and Wales) and a Barrister and Solicitor (Ontario). He specialises in complex commercial cases, with a particular interest in cases involving pure economic loss. After practising in England for 12 years as a solicitor, in 1993 he emigrated to Canada, where he is a Barrister, Solicitor, Mediator and Arbitrator.

"The broad division of the chapters into the different categories of case, along with clear, detailed and concise analysis and commentary of the case law across all common law jurisdictions is second to none. I eagerly await the arrival of the third edition."

**Andrew Archer,
Barrister, Australia**

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