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PERSONAL AND PROPRIETARY INTERESTS IN NEGLIGENCE

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I

INTRODUCTION

SOME 60 years ago, Lord Atkin declared that a duty of care was owed by one to another not to cause injury to the person or damage to his property.¹ Since then, the principle as enunciated must surely be one of the most enduring pieces of judicial legislation. The ratio has been the litmus test in countless decisions, having a determinant role in allowing or denying a claim. Lord Atkin, at the time of formulation, is unlikely to have foreseen the magnitude of these words embedded in his judgment. The influence of his words is such that only in 1964 was a tributary formed from the Atkinian stream leading to liability for economic loss arising from negligent words.² It signalled a more liberal judicial attitude towards the recovery of economic loss in the tort of negligence. Although heralded as an inspiration,³ if not a saviour, this expectation soon proved hollow.⁴ Attempts to deviate from the Atkin rule began to emerge. Lord Denning’s Spartan Steel⁵ test (consequential upon injury to person or damage to property) is one tenuous example of maintaining the Atkin connection (really economic loss). Lord Wilberforce’s two-stage test⁶ in Anns survived the critics, and argued the strongest hope yet for economic loss claims. It was hailed as the most remarkable example of judicial legislation.

¹ Nanyang Technological University, Singapore.
⁵ Widgery J. in Weller & Co. v. Foot and Mouth Disease Research Institute [1966] 1 Q.B. 569 at 585 is an early example of the impotence of Hedley Byrne as a principle beyond negligent words.
The Wilberforce rule soon fell into disfavour. It had misapplied the Atkin rule, and in its transgression misled some cases and engendered countless litigation, culminating in Murphy. The turning point came in Junior Books with Lord Brandon's timely but unheeded condemnation of past judicial transgressions, and an almost prophetic warning of a potential situation out of control. Judicial contrition followed. Murphy was offered as a sacrificial lamb. The Atkin rule was reinstated. Lord Wilberforce was chastised. The absence of a contractual nexus was used as a reason for allowing the claim against a third party in Donoghue.

At present, the fact that contractual principles would be compromised is a strong reason for denying such claims; Before Murphy, so influential was the Atkin sway that some judges would bend the facts if only to fit the Atkin straitjacket.

II

This paper examines the dual concepts of personal and proprietary interests as essential requirements for the recovery of claims under the tort of negligence. Using the duality of interests, a simple typology is developed that illustrates how such interests operate mainly as exclusionary devices in limiting claims for economic loss. Besides the nature of interests, other key elements in the typology are the actuality of damage (including injury),

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8 The "material, physical damage" averred to by Lord Wilberforce was not, after all, physical damage as understood under the Atkinian principle: see Lord Keith in Murphy, para 9 at 919F.
9 See Batty v Metropolitan Realisations [1978] 2 All E.R. 445, particularly Megaw L.J. at 457g.
10 n. 11 infra, Lord Keith at 922c.
13 Ibid., 218a.
14 n. 1 supra, Lord Macmillan at 25c–g. Contrast with Lord Buckmaster (dissenting) at 5h, citing Baron Alderson in Winterbottom v. Wright (1842) 11 L.J. Ex. 430: "The only safe rule is to confine the right to recover to those who enter into the contract, if we go one step beyond that, there is no reason why we should not go fitter."
15 n. 11 supra, Lord Keith at 921b.
17 In this article, personal interest may be broadly defined as the physical interest arising from the person of an individual, such as his life and limb, but does not include his reputation. A personal interest claim, therefore, arises from the invasion of the person of an individual and is often manifested as bodily injury.
18 Proprietary interest, on the other hand, includes any interest arising from the possession or ownership of chattels, and other such tangible things.
threatened or impending nature of injury and the concept of displacement interests. For exposition, the discussion is structured around five categories that are presented in a descending order of priority below.

1. Physical injury of person (personal interest) and/or physical damage to property (proprietary interest);
2. Threatened physical injury of person (perceived invasion of personal interest);
3. Threatened physical damage to property (perceived invasion of proprietary interest);
4. Displacement interest, short of physical damage to property;
5. Absence of any invasion of personal or proprietary interests.

The tradition of law’s partiality towards personal interests as against proprietary interests underlies the paradigm. Category 1 claims are obviously allowable. The focus of the discussion is on the main themes and how these dual interests function as exclusionary devices. In the second category, Murphy is seen to provide some useful indications for limited recoveries of claims. This is in contrast with the perception of Murphy as limiting such claims. It is argued that there are circumstances where an invasion of perceived personal interest may still be recoverable in law. Such cases are where the victim has no choice but to incur expenses in averting a threatened invasion of personal interests. Category 3 is for those cases where only proprietary interests are being threatened. The brief discussion there restates an unexceptional view of the law in treating proprietary interest as subordinate to personal interest. In the immediate post-Murphy situation, the law is unlikely to allow such recoveries. Category 4 is anomalous and defies legal logic—and for this reason is especially interesting. Category 5 completes the paradigm for cases where neither of the interests is invaded.

\[19\] An earlier paper of the authors’ paradigm appears in [1989] 3 M.L.J. xxiii. The formulation of the paradigm owes much to the earlier work of Peter Cane (1979) 95 L.Q.R. 117.

\[20\] Although much has been written about physical injury as an interest more worthy of protection [see Stevens (1973) 23 University of Toronto Law Journal 431; M. A. Milner, "Negligence in Modern Law" (1967)] there is a dearth of literature (and much less, judicial authority in the area of economic loss) on the interesting question of whether personal interest has higher value than proprietary interest. Some argue that the Unfair Contract Terms Act 1977 (c. 50), albeit on exclusion clauses, operates on the premise that personal interest has higher merit than proprietary interest: cf. ss. 2(1) and 2(2) UCTA.
CATEGORY 1 Physical injury of person (personal interest) and/or physical damage to property (proprietary interest)

That recovery is possible where the plaintiff suffers damage to personal interest and/or proprietary interest is now firmly entrenched in the tort of negligence.

The progenitor and locus classicus of this type of category is Donoghue v. Stevenson\textsuperscript{21} itself, which involved the negligent manufacture and supply of a bottle of ginger beer, causing the pursuer to suffer personal injury.\textsuperscript{22} The case therefore dealt with an invasion of the pursuer's personal interest. If the bottle had exploded and damaged other property of the pursuer, for example her handbag placed beside the bottle, but had not injured her, recovery is equally possible. In this case, her proprietary interest (ownership of the handbag) would have been invaded, sounding in a claim for damages in negligence. A third scenario would be where the bottle exploded, but caused no injury to the pursuer nor damage to her other property. Whatever way one analyses the situation, the pursuer's only loss would be pure financial loss—since other than the bottle, no interests of the pursuer has been invaded. In other words, the dual interests requirement has operated as an effective exclusionary device.\textsuperscript{23}

It is interesting to note that the American legal system also insisted on this paramount requirement of some invasion of personal or proprietary interests as a prerequisite of claim in the tort of negligence. Almost telepathically, the laws in the United Kingdom and America imposed liability on suppliers and manufacturers of products for the loss of personal and proprietary interests.\textsuperscript{24}

In 1916, the American landmark case of Macpherson v. Buick Motor Co.\textsuperscript{25} was decided, in which the manufacturer of a defective car was liable for the invasion of personal interest of an ultimate purchaser.

\textsuperscript{21} n. 1 supra.
\textsuperscript{22} Shock and severe gastro-enteritis.
\textsuperscript{23} Lord Oliver in Murphy v. Brentwood views the matter in slightly different terms, \textit{viz.} "The infliction of physical injury to the person or property of another universally requires to be justified. The causing of economic loss does not": n. 11 supra, at 934a.
\textsuperscript{24} Donoghue v. Stevenson was decided quite independently of the American developments, although Lord Atkin derived satisfaction from the fact that his decision broadly accorded with the courts of the United States: n. 1 supra at 20a–b.
\textsuperscript{25} (1916) 217 N.Y. 382.
Some 16 years later across the Atlantic, the British House of Lords established a similar precedent and held the manufacturer of a bottle of ginger beer liable for the personal injury of a consumer who had consumed the ginger beer and consequently suffered personal injury.

There are two themes in the decision of the House of Lords in *Donoghue* which warrant comment. The first theme relates to the judicial paranoia of falling into the "contractual trap"—that the imposition of liability on manufacturers might unleash a flood of litigation, seriously undermine if not erode altogether the privity of contract doctrine, and unduly burden manufacturers with unnecessary responsibility. This theme has a long history, and has been expressed in varied forms. More recently, certain members of the judiciary have articulated this anxiety in terms of "transmissible warranties."

The second theme relates to the question of the claimant's knowledge of the defect, or more accurately the lack of it, as a necessary hallmark for recovery. The pursuer in *Donoghue* was not aware of the mischief in the product, and neither was there a reasonable prospect of intermediate examination to discover the defect. This theme which weighed heavily in the speeches of the majority in the seminal decision of *Donoghue*, and gradually less prominently in subsequent cases, has recently regained some of its force. As will be seen later, the plaintiff's knowledge of the tortfeasor's invasion of personal or proprietary interests bears upon the question of the choice available to the plaintiff in obtaining the risk of injury to person or damage to property.

Let us now examine how the elements of personal or proprietary interests both define a justiciable claim in the tort of negligence, and in defining such a claim, act as an exclusionary device.

In building cases, the owner of the property claiming against the builder needs to show that he was injured or that other property of his was damaged. If the building only was damaged, there

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27 This phraseology in England probably originated from Lord Brandon's dissenting judgment in *Junior Books* v. 3 supra at 218d—"imposition of warranties."
28 Lord Keith in *Murphy v. Brentwood*, n. 11 supra at 917f.
has been no invasion of his personal or proprietary interests. The owner who repairs the defect and remains in occupation has suffered no injury.\footnote{30} Although there was a threat of invasion of his personal interest, his continued occupation of the premises with the full knowledge of the risk, would nullify his claim. The cost of repairs is defined as economic loss, as much as if he had chosen to vacate the property, sold the house and claimed the diminution in value of the property.\footnote{31}

In cases involving the rendering of a service, as in inspection of foundations by a local authority, the need to show invasion of personal or proprietary interests is equally necessary. For the purposes of the necessary proprietary interest, there must be some damage to other property of the plaintiff other than the property being the subject-matter of the service rendered or act done. If the case were otherwise, the claim would not be dissimilar to a warranty for the service rendered or the act done to be undertaken with reasonable care and skill—a claim more suited under the principles of contract law.\footnote{32} If the defective foundations had caused a wall to crack and fall, and consequently damage the owner’s car parked in the garage, such loss would bear no affinity to the “warranty claim.” Contractual principles are, therefore, not compromised.

**CATEGORY 2 Threatened physical injury of person (perceived invasion of personal interest)**

The invasion of an individual’s personal interests, whether of life or limb, has for a long time received the recognition of the law, and consequently its protection. The law’s partiality in the protection of the sanctity of life and limb \textit{vis-à-vis} the subordinate nature of proprietary interest, is unexceptional. This bias can perhaps be explained on the basis that existence of being surpasses possession of things. In the natural order of things, life and limb are surely more valuable than property, and thus in greater need of the law’s preservation.

However, where such personal interests are perceived rather than actual, and where such injuries to life or limb are threatened

\footnote{31} In \textit{Murphy v. Brentwood}, the plaintiff had sold the house and decided to move elsewhere.
\footnote{32} For example, \textit{Supply of Goods and Services Act 1982} (c. 29).
rather than real, the law has been rather more hesitant in granting relief—not because it is less worthy of protection, but because it is harder to formulate such a claim because of certain eccentricities inherent in the law of negligence. The characteristic feature of such claims in this category is the absence of actual injury to persons, but the presence of imminent bodily injury. Proponents advancing this claim have argued strongly that if injury is imminent, the victim should not be made to "wait and see" until his interest has been invaded before the law grants relief.\textsuperscript{33} Allowing the plaintiff his claim sooner rather than later would serve the purpose of protecting the victim's personal interest by preventing what would inevitably have been an invasion of such interest, while censuring the tortfeasor's conduct and prompting him to take corrective steps in preventing the occurrence of the tort in future.

Even though these reasons seem to be compelling and ought to justify the law's protection, they have recently been subjected to close and careful analysis in the House of Lords in \textit{Murphy v. Brentwood}. First impressions of \textit{Murphy v. Brentwood} suggest that recovery of loss incurred in averting imminent invasion of personal interest, is irrecoverable as pure economic loss, thus relegating this category of claim to the almost uninterrupted line of non-liability cases since 1875.\textsuperscript{34} But the authors are firmly of the view that limited cases of threatened personal interests do attract liability in negligence, notwithstanding that \textit{Anns} has been departed from, and \textit{Dutton} overruled.

In cases where the victim's personal interest has been threatened, a claim can only be made upon discovery by the victim of facts of a defect or a state of affairs which is threatening his life and limb if allowed to continue. Without such knowledge the victim would not even know that his personal interest has been threatened, and much less that he has a claim against the tortfeasor. But such knowledge is a double-edged sword which no sooner allows him to charge the defendant, then it jeopardises his claim in two respects. First, under the penalty of an absolute bar in the rule that he who voluntary assumes a risk with full know-

\textsuperscript{33} "Prevention is better than cure" school of thought. See Laskin J. in \textit{Rivertown Marine Ltd. v. Washington Iron Works} [1973] 6 W.W.R. 692 at 716, \textit{viz.} "Prevention of threatened harm resulting directly in economic loss should not be treated differently from post-injury cure." But see Lord Oliver's comment on the fallacy of such reasoning: n. 11 \textit{supra} at 938j.

\textsuperscript{34} \textit{Cattle v. Stockton Waterworks Co.}, n. 46 \textit{infra}. 
knowledge of the nature and extent of the risk cannot be heard in law to complain, as having voluntarily accepted the risk.\textsuperscript{35} Secondly, that the threat to his personal interest ceases as soon as he becomes aware of the risk or danger to his life and limb. With the threat removed by his knowledge of imminent injury to life and limb, he is expected to preserve his personal interest by avoiding the threat in any way he reasonably can.\textsuperscript{36} In avoiding this threat, he might have several options available to him. In weighing the options available to him, personal interests naturally override proprietary interests, rendering the latter interest as subordinate to the former. As has been earlier observed, one of the touchstones of liability in the tort of negligence is the fact that a claimant’s personal interest has been invaded. With the threat removed, the victim’s personal interest is no longer invaded or jeopardised and any potential claim consequently ceases.

Despite the furor that \textit{Murphy} has caused, within the context of “building cases” the decision in \textit{Murphy}—against the imposition of liability by the owner against the builder for imminent threat of injury—is entirely unexceptional. One simply cannot imagine cases where the owner of the house, threatened by the invasion of his personal interest, could succeed in maintaining a claim under this category. It is improbable that the law would elevate an owner’s right of occupation\textsuperscript{37} to retain his proprietary interest above that of his personal interest of safety to life and limb. Given this premise, any owner’s insistence on remaining in the property by expending cost and expense in repairing or removing the defect, is irrecoverable in the tort of negligence.

It is critical to understand that \textit{Murphy} is premised on the victim having a choice—he decides whether or not to avoid the invasion of his personal interest. This is most evident in the judgments of Lords Oliver\textsuperscript{38} and Keith,\textsuperscript{39} and to a lesser extent that of Lords Bridge\textsuperscript{40} and Jauncey.\textsuperscript{41} Even more interesting is the nature of the linkage between the element of knowledge and the

\textsuperscript{35} The doctrine of “Volenti non fit injuria.” The recent case of \textit{Morris v. Murray} [1990] shows that the doctrine is still very much alive. Also see Jaffey [1983] C.L.J. 87, “Volenti Non Fit Injuria.”

\textsuperscript{36} Similar in principle to the claimant’s duty in contract law to mitigate his loss as a prerequisite to his claim for damages.

\textsuperscript{37} Even though the home is a man’s castle, this right would be displaced in favour of the more important right to safeguard life and limb.

\textsuperscript{38} \textit{n. 11 supra, at 933b–c} (perhaps the clearest of the four on the issue of choice).

\textsuperscript{39} \textit{ibid. at 917}.

\textsuperscript{40} \textit{Ibid. at 926b–c}.

\textsuperscript{41} \textit{Ibid. at 942l–g}.
concept of choice. If one accepts that the presence of choice characterises the decision in *Murphy*, it is at least tempting to consider the situation where the victim is not given a choice in deciding whether to avoid the invasion of his personal interest.

Taking a hypothetical example—imagine that X is a manufacturer and supplier of artificial hearts to be transplanted in patients suffering from acute heart disease while waiting for a suitable cadaveric donor. Through no want of care and skill, Dr Y, the heart surgeon, performs the operation for the transplant of the artificial heart. But owing to serious design and manufacturing flaws, X has grave misgivings in the artificial heart and recalls all units transplanted with the warning that unless removed, patients risked certain death (imminent injury). The absence of actual injury would take this case outside the *Donoghue* principle (category 1). Since the patient has suffered no injury, his claim falls under the threat of personal interest category. His knowledge of the risk of injury, however, is no bar to relief because, unlike *Murphy*, he has no choice in deciding as the owner did in *Murphy* whether to avoid the imminent invasion of his personal interest. Since he does not have the choice, continuing with the state of affairs does not make him *volens* to the risk. His only choice is to avert the imminent injury by removal of the artificial heart. Surely financial expenditure spent in order to prevent the threat of a personal interest in such circumstances is recoverable? The cost incurred in protection of one’s personal interest in the absence of any other choice available to the victim in protecting that interest, should be recoverable in principle and policy.

An extension of this principle is the law’s need to protect a person’s personal interest, whether as an individual or a third party, and whether as actual or imminent injury, may be seen in the example mooted by Lord Bridge. According to Lord Bridge, a building owner who discovers a latent defect in his property might succeed in his claim against the builder, for the cost needed to obviate the threat of invasion of personal interest to his neighbour, and users of highway. Although the discovery of imminent danger to himself would, for the reasons discussed above, weaken his claim, it must be remembered that he is not claiming for an invasion of his own personal interest (irrecoverable under *Murphy*) but that of third parties; his neighbour and users of the high-
way adjoining his property are unaware of the imminent invasion to their personal interest, and to the extent of their lack of knowledge or ignorance, should in principle be protected under this category.

**CATEGORY 3 Threatened physical damage to property (perceived invasion of proprietary interest)**

After Murphy it would be exceedingly difficult for claims within this category to succeed in the House of Lords. If perceived personal interest claims were insufficient to attract liability, so much less would a claim based strictly on threatened invasion of proprietary interest. Try to imagine a situation arising purely of threatened proprietary interest where the claimant does not have a choice to avert the potential damage. For so long as that choice resides in him, any loss suffered can only be economic loss and thus irrecoverable.

**CATEGORY 4 Displacement interest, short of physical damage to property**

This category deals with cases where the plaintiff has an interest in the property (being non-contractual in nature) and, as a result of the defendant's negligence, the property is affected in some material way, albeit short of physical damage. The strict application of the Atkin principle would deny recovery of claims falling within this category because damage to property must be established as a *sine qua non* to recovery. For reasons to be given, this category of claims represents the weakest form of claims.

First, such a claim does not meet the requirements of the Atkin principle in that the claimant cannot say that either his personal interest or proprietary interest has been invaded, sounding in loss or damage. In most claims under this category, although the plaintiff can show some form of proprietary interest, he is unable to show recognisable physical loss.

Second, such claims often lack the element of personal interest required. Third, because such claims closely resemble contractual

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44 The workers in *Rutson*, n. 33 *supra*, clearly had a choice in deciding whether to abandon or continue with use of the crane.

45 For claims that were contractual in nature, see *Leigh & Sillivan Ltd. v. Aliakmon Shipping Co.* [1985] 2 All E.R. 44 (plaintiff, buyers of goods, with no title in goods unable to sue shipowners for damage to goods); *Candlewood Navigation Corp. Ltd. v. Mitsui OSK Lines Ltd., The Mineral Transporter, The Ibaraki Maru* [1985] 2 All E.R. 935.
claims, recovery in tort has often been blindly and unjustly denied.

There are several cases attracting liability, although not falling within the strict Atkin rubric. Tempting as it may be to dismiss these cases as anomalous decisions, representing minor but necessary deviations of judicial benefactions, an attempt will be made to identify some common thread running through these decisions.

The starting point is perhaps *Cattle v. Stockton Waterworks*,46 a decision of the Court of Exchequer. The influence of this case on subsequent decisions is understandable in the light of the eminence of one judge47 in that case. A builder had contracted for a lump sum to construct a tunnel under the road. Due to the defendant’s negligence, a water pipe sprang a leak, and before long, inundated the tunnel thus severely obstructing the plaintiff’s work. The plaintiff’s contract was rendered less profitable, and not unnaturally he sued for the consequent loss of profits. His claim was dismissed.

An analysis of the plaintiff’s claim reveals two basic types of losses. The first relates to the costs towards the removal of his tools, and the clearing of the tunnel (displacement loss). The second, as in the case, was to claim the loss of profits attributable to the delay in construction works. If the builder had owned the mine he might legitimately claim for invasion to his proprietary interest (tunnel). But he did not and instead related his claim to the loss of profits that he suffered *vis-à-vis* his contract with the owner of the mine. This is clearly economic loss and thus irrecoverable. On the other hand if he had related his claim to his possession of some property (tools and equipment), the affinity with contractual claims would be absent.

The subsequent case of *Morrison Steamship Co. Ltd. v. Greystoke Castle*48 demonstrates that the absence of injury or damage is no bar to relief, and reinforces the authors’ view of relating one’s claim with the displacement of proprietary interest. In that case the plaintiff, cargo owners, contracted with a shipowner for the

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latter to carry certain cargo belonging to the plaintiff. Due to the defendant's negligence (in part) the ship was damaged, but not the plaintiff's goods. The House of Lords allowed the plaintiff's claim for financial loss even though the goods were not physically damaged within the meaning of Donoghue.

The decision of the High Court of Australia in Caltex Oil v. The Dredge "Willemstad," is a vivid illustration of a case lacking the Atkin formulae of injury to person or damage to property. Notwithstanding, the plaintiff successfully brought an action for damages in what were clearly economic losses. The defendant's dredge, "Willemstad," was carrying out certain dredging operations when it negligently fractured the pipeline serving an oil refinery across Botany Bay. But because the pipeline was not owned by the plaintiff, the plaintiff could not say that their proprietary rights in the pipeline had been invaded. The oil belonging to the plaintiff which was lost during the fracture, is clearly recoverable under the Atkin formula. This was not the present claim of the plaintiff. The plaintiff claimed for the cost of transporting the refined oil by alternative means during the period the pipeline could not be used.

The High Court of Australia unanimously allowed the plaintiff's claim. On one view of the case, recovery is possible where the defendant's negligence has a physical effect (something much less than physical damage) on the person or property of the plaintiff. The Cattle limitation did not apply because the plaintiff was not relating his claim to the loss he suffered vis-à-vis third parties (the "contractual trap" which proved fatal to the plaintiff's claim in Cattle), but rather to his own proprietary interest in the oil being displaced.

Interesting questions involving the nature and extent of a person's proprietary interest arises in cases where what is invaded relates to certain amorphous rights—fishermen's rights to fish in a

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49. This appears most clearly in Lord Porter's judgment: n. 49 supra at 288. It also included other items such as crew's wages, pilotage fees and warehousing costs—the type of expenses which a plaintiff would typically incur in similar circumstances.

50. Since the plaintiff had an interest in the cargo displaced (proprietary interest), the exclusionary rule in Cattle v. Stockton did not apply.


52. The damages were not actually assessed, but were agreed at $95,000, being the cost in part in providing alternative means of transporting refined oil from the refinery to Banksmeadow, and in part in Caltex having taken delivery of products at another of its terminals and distributed them from there rather than from Banksmeadow. There was no mention of the sum including loss of profits referable to a contract with a third party.
given area; a shipowner’s rights in the unhindered passage of his ship through a waterway. At present, the law is unclear as to whether claims in such circumstances could be sustained. However, within the context of the paradigm, some proprietary rights have to exist before any claims for loss may be made.

**CATEGORY 5 Absence of invasion of personal or proprietary interests**

This last category is included to complete the paradigm. Cases falling within it are irrecoverable simply because no recognisable interest has been shown to be invaded.

**IV**

**Conclusions**

The law in this area is clearly in a state of development and change. It is quite clear that *Anns* did not endear itself to many supporters. Lord Wilberforce’s quixotic phrase “material physical damage” (to fit the *Donoghue v. Stevenson* straitjacket), when the damage was clearly economic loss, spawned a series of unfortunate decisions, leading to uncertainty in this area of the law. Against this decision in *Murphy* was necessary, if not expected. But in the authors’ view, the retreat from *Anns* is not as drastic as some would see and given time the *Donoghue* stream will develop tributaries as the law moves incrementally, without the haunting ghost of *Anns*.

The authors would proffer the following tentative conclusions:

(1) the “duty of care” concept, and the more recent concept

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55 For cases where the claim was denied because of a lack of proprietary interest, see *Cape Reay Reins Compagnie Francaise de Navigation a Vapeur v. English and American Shipping Co.* (1921) 1 L.L. Rep 464; *Konstantinidis v. World Tanker Corp.* “The World Harmony” (1965) 2 All E.R. 139; *Elliot Steam Tug Co. Ltd. case*, n. 46, supra; *Candlewood Navigation Corp. Ltd. v. Mitzi* (1985), n. 45 supra. Generally, this is the demise of time charterers who do not have the proprietary interest in the chartered ship. For an American decision of similar effect, see *Robbins Dry Dock v. Flint* (1927) 275 U.S. 303 (Supreme Court, Holmes J.).


of proximity are vague and imprecise, and should not be used exclusively as providing a universal test in deciding whether a claim is allowed or denied. A far more objective, and it is submitted, workable, criterion would be to examine the nature and type of interest invaded—whether personal or proprietary—\textsuperscript{59} in addition to the concept of proximity. The dual interest concept has an inbuilt mechanism which excludes liability in cases where no recognisable interest is shown (presumption of non-liability) unless it falls under category 4 (displacement interest).

(2) The decision in \textit{Murphy} is welcomed in that it has clarified the meaning of economic loss considerably. Any loss not related to invasion of personal or proprietary interest is by definition economic loss, and generally irrecoverable.

(3) Personal interest claims are higher in priority than proprietary interest claims, and \textit{ceteris paribus} more worthy of the law's protection. The need to preserve life and limb transcends the need to protect things, be these property or chattels.

(4) Perceived personal interest claims should be denied unless the claimant who discovers the state of affairs has no choice but to incur financial expenses in removing or averting the threat and invasion of his personal interest. In practice such occurrences are likely to be few and far between, and most improbable in the "building" context.

(5) Perceived proprietary interest should not be recoverable in law unless such claims can invoke elements of invasion of personal interest.

(6) Displacement interest, short of damage to property, should exceptionally be protected in so far as such interest does not relate to contractual interest.

\textsuperscript{59} It is interesting to find a recent proposal for a distinction to be made between reality and personality in determining liability for defective building cases: see Cooke R., "An Impossible Distinction" [1991] L.O.R. at 67.