## **Contents**

Preface v Acknowledgments xiii Table of statutes xv Table of cases xxi Table of abbreviations xliii

Introduction 1

### PART ONE: PRINCIPLES AND POLICY OF NEGLIGENCE

### Chapter 1 An action for damages in perspective 13

- 1 The Bradford football fire 13
  - (a) The background 13
  - (b) The actions 14
  - (c) The stages of procedure 15
  - (d) The pleadings 18
  - (e) Judgment 26
- 2 Points for discussion 29
- (a) The plaintiffs 29
  - (b) The defendants 34
  - (c) The cause of action 34
  - (d) Sources of compensation 35
  - (e) The aims of the law of tort 37

#### Chapter 2 The duty of care 39

- 1 The activity duty 40
- 2 The duty of positive action 65
  3 The exercise of statutory powers 99

#### viii Contents

## Chapter 3 Protected persons 113

- 1 The foreseeable plaintiff 114
- 2 Nervous shock 118
- 3 Rescuers 131
- 4 The unborn child 142

## Chapter 4 Protected economic interests 149

- 1 Voluntary undertakings 155
  - (a) False information and advice 155
    - (i) Deceit 155
    - (ii) Negligence 159
  - (b) Duties in tort and contract 196
  - (c) Duties to third parties 203
- 2 Relational interests 230
  - (a) Another's property 230
  - (b) Another's life 237
    - (i) Transmission of causes of action on death 237
    - (ii) Death as a cause of action 239

## Chapter 5 Breach of duty 247

- 1 The reasonable person 248
  - (a) The average standard 248
  - (b) Foreseeability and the standard of care 250
  - (c) Special skill 258
  - (d) Infants 264
- 2 Application of the standard of care 268
  - (a) The likelihood of the occurrence of injury 268
  - (b) The gravity of the injury which may be suffered 271
  - (c) The cost and practicability of measures necessary to overcome the risk 273
  - (d) The purpose of the defendant's acts 274
  - (e) Competitions 275
  - (f) Common practice 276
- 3 Aids in discharging the burden of proof 286
  - (a) Statute 286
  - (b) Common law-res ipsa loquitur 287

#### Chapter 6

### Causation and remoteness of damage 299

- 1 Factual causation 299
- 2 Selection among operative factual causes 319
- 3 Foreseeability of the kind of damage 329

- 4 Development of The Wagon Mound doctrine 338
  - (a) The degree of foreseeability
  - (b) The thin skull rule 338
  - (c) The type or kind of damage 346

Chapter 7

Defences: contributory negligence, volenti non fit injuria, exclusion of liability and illegality and public policy 353

- 1 Contributory negligence 354
  - (a) Before 1945 354
  - (b) The defence since 1945 357
  - (c) Emergencies 369
  - (d) Infants 370
  - (e) Workers 372
  - (f) Apportionment of damages 373
- 2 Volenti non fit injuria 373
  3 Exclusion of liability 389
- 4 Illegality and public policy 392 egaculata di Leganya a calaisi di Severali

Chapter 8

Assessment of damages 403

- 1 The aims of an award of damages 403
- 2 Personal injuries 410
- 3 Property damage 436

### PART TWO: SPECIFIC DUTIES AND INTERESTS

Chapter 9

Liability for defective premises 441

- 1 Occupiers' liability 441
  - (a) To 'visitors' 441
- (i) Occupation 444
  - (ii) The common duty of care—relevant factors 450
  - (iii) Exclusion of liability 456
  - (b) To trespassers 461
- 2 Non-occupiers' liability for premises 466

Chapter 10

Liability for damage caused by things 491

- 1 Negligence 492
- (a) In general 492

#### x Contents

- (b) Development of the law 492
- (c) Economic loss 500
- (d) The problem of proof 503
- 2 Strict liability 504

## Chapter 11 Liability for animals 521

#### Chapter 12

### Statutory torts and employer's liability 531

- 1 Express creation of new torts 533
- 2 Express exclusion of civil remedy 535
- 3 Creation of new torts by judicial interpretation of statutes 536
- 4 Causation and breach of statutory duty 555
- 5 Contributory negligence and breach of statutory duty 559
- 6 The interpretation of industrial safety legislation: a note 561
- 7 Employer's liability to employees for negligence 564

#### Chapter 13

#### Intentional interference with the person 569

- 1 Trespass, intention and negligence 570
- 2 Assault and battery 578
- 3 False imprisonment 583
- 4 Wrongful interference 591
- 5 Defences 594
  - (a) Contributory negligence: consent: necessity 594
  - (b) Defence of the person or property 606
  - (c) Lawful authority 607

### Chapter 14

#### Interference with land 609

- 1 Trespass to land 611
  - (a) Special situations 611
    - (i) The highway 61
    - (ii) Air space 613
  - (b) The plaintiff 619
  - (c) The nature of the defendant's act 620
  - (d) Trespass ab initio 621
  - (e) Necessity 622
- 2 Nuisance 623
  - (a) In general 623
  - (b) Foreseeability, fault and nuisance 632

- (c) Act of trespasser 637
  (d) Natural hazards 640
- 3 Escape of dangerous things from land 650

4 Fire 665

# Chapter 15 Deliberate interference with interests in trade or business 673

1 Conspiracy 674

2 Interference with contract 693

3 Intimidation 718

4 Interference with trade by unlawful means 724

5 Passing-off and other forms of unlawful competition 733

# Chapter 16 Interests in reputation—defamation 739

1 The distinction between libel and slander 741

2 Words or matter defamatory of the plaintiff 745

3 The distinction between defamation and malicious falsehoods 760

4 Publication 764

5 Defences 767

(a) Justification 767

(b) Fair comment 770

(c) Privilege 774

(i) Absolute privilege 774

(ii) Qualified privilege 778

6 Apology 789 7 Damages 790

8 Excursus: the protection of privacy 795

### PART THREE: LOSS DISTRIBUTION

### Chapter 17 Vicarious liability 805

1 Liability for employees 807

2 Liability for delegated tasks 819

(a) Driving a motor vehicle 819

(b) Transactions with third parties 826

(c) Joint enterprises 829

(d) Partners 831

3 The course of employment 832

4 Liability for independent contractors 851

5 Employer's liability to employees 858

6 Corporations, trade unions and associations 864

#### xii Contents

## Chapter 18 Joint liability 867

1 Effect of release of joint tortfeasor 868

2 A single award 870

3 Contribution between tortfeasors 871

(a) By statute 871

(b) Under the contract of employment 875

#### Chapter 19

#### Insurance and compensation 883

- 1 Compulsory insurance provisions 885
- 2 Motor insurers' bureau 898
- 3 Insurance documents 903
- 4 The settlement process 913
- 5 Other compensation systems 917
- 6 The future of compensation 929
  - (a) Comprehensive approaches 929
  - (b) 'Mixed' approaches 931

Index 941