The Perennial Problem of Pure Economic Loss

The issue of whether to allow recovery for pure economic loss in tort has long vexed courts across the common law world. Given the tensions inherent in this area of the law, the existence of problems is neither surprising nor difficult to explain. What is remarkable, however, is the way in which the responses of different jurisdictions have diverged; not only in one dimension, in that they have differed from each other, but in two, since the approaches taken within each jurisdiction have themselves changed over time. As a consequence, the points of both convergence and divergence within the common law have shifted significantly within a relatively short period.

In identifying these points, this paper will consider exactly when a loss should be classified as purely economic, and which interests generate a right to sue for that loss. Intrinsic to such an analysis will be a comparison of the means by which property damage and pure economic loss are classified for forensic purposes. This will require an examination of the various ways in which cases such as *Anns v Merton*¹ and *Spartan Steel & Alloys v Martin & Co*² have been received, and what their rejection or retention tells us about jurisdictional attitudes to recovery for pure economic loss.

As well as discussing what losses are recoverable, it is important to consider which parties can bring a claim; the question of whether a beneficial interest is sufficient to enable a claimant to sue in tort for interference with that interest by a third party is both important and topical. The recent judgment of the English Court of Appeal in *Shell UK Ltd v Total UK Ltd*³ suggests that what had for some time been the subject of converging views within the common law may become an issue on which national approaches diverge. In examining the possible reasons behind this development, this paper will also consider whether *Shell* contributes anything in substantive terms to the common law, and whether its being the cause of increased divergence is problematic in itself.

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¹ [1978] AC 728
² [1973] QB 27
³ [2010] EWCA Civ 180