

property damage. This is most unlikely to occur. The alternative is to move towards a system in which the determining factor in deciding whether or not a duty of care is owed will be not only the nature of the damage but also the degree of proximity between the parties. The newly-found emphasis placed by the House of Lords on proximity may lack intellectual coherence,⁸⁶ but it could be used to block extended liability for economic loss and thus to grant recovery in clear-cut and deserving cases.⁸⁷ Examples might be in cases of defective products where there has been a clear course of dealing between consumer and manufacturer even though there were no contractual relations between them; this approach might, following the lead given in *Murphy*, resurrect *Junior Books* as a reliance case. This would have the merit of removing the illogical and potentially unjust distinctions outlined above, at a cost, it must be admitted, of greater uncertainty and increased litigation. It is doubtful whether the current members of the House of Lords consider that a price worth paying, but the views of future judges may differ. Further developments are awaited!

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⁸⁶ I am not particularly wedded to the use of the term "proximity", the intellectual spuriousness of which is demonstrated by Tan Keng Feng, "The Three-Part Test: Yet Another Test of Duty in Negligence" (1989) 31 *Mai. L.R.* 223. What I am arguing for is the development of a criterion which would permit recovery for pure economic losses in exceptional circumstances outside the *Hedley Byrne* parameters.

⁸⁷ See Stapleton, note 19 above, at pp. 228-229.

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