Junior Books Ltd. v. Veitchi Co. Ltd.[1]—Easing the Right to Recover for Pure Economic Loss

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Although there was a considerable lack of uniformity in the reasoning of the Australian High Court justices who decided *Caltex Oil (Australia) Pty. Ltd. v. The Dredge "Willemstad"*,[2] the decision itself appeared to herald a new era in the law relating to recovery of negligently inflicted pure economic loss. The judgments made it quite clear that recovery was not to be denied merely because the economic loss was not accompanied by, or did not flow directly from, physical injury to the plaintiff's person or property.

Nevertheless, Australian courts have been slow to implement *Caltex* as a basis for granting recovery of pure economic loss. Although the plaintiff succeeded in *Watts v. Public Trustee for Western Australia*,[3] the Full Court of the Victorian Supreme Court, on facts nearly identical to *Watts*, came to the opposite result in *Seale v. Perry*.[4] Recovery has also been denied in each of the following cases: *George Hudson Pty. Ltd. v. Bank of New South Wales*;[5] *Millar v. Candy*;[6] and *Johns Period Furniture Pty. Ltd. v. Commonwealth Savings Bank of Australia*.[7] It will be interesting to see whether the rather broad pronouncements of the House of Lords in *Junior Books Ltd. v. Veitchi Co. Ltd.*[8] will produce a more liberal attitude in the Australian Courts.

The House of Lords was asked to determine whether the facts as averred by the plaintiff Junior Books Ltd. stated a good cause of action under the Scottish law of delict (which their Lordships accepted as being not materially different from the common law of negligence—hence the importance of the case for Australian law). According to the averments, the plaintiff had had a factory built for it under a building contract. The defendant was engaged as a specialist sub-contractor to lay the flooring. While the defendant had been nominated for the job by the plaintiff's architects, no contractual relationship existed between plaintiff and defendant, the latter's contract being with the main contractors, as is the practice of the building industry. Subsequently, defects appeared in the floor, which the plaintiff alleged were the result of negligent workmanship by the defendant in laying it. Further alleging that these defects necessitated replacing the entire floor, the plaintiff claimed damages on the basis of the cost of replacement, plus other consequential amounts, including the costs of moving machinery

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1. [1982] 3 All E.R. 201 (H.L.).
2. (1976) 136 C.L.R. 529.
3. [1980] W.A.R. 97 (W.A. Sup. Ct., Burt C.J.).
4. [1982] V.R. 193.
5. (1978) 3 A.C.L.R. 366 (N.S.W. Sup. Ct., Master Allen).
6. (1981) 38 A.L.R. 299 (Federal Court of Australia).
7. (1980) 24 S.A.S.R. 224 (S.A. Sup. Ct., Full Bench).
8. *Supra* note 1.

and loss of profits to the business while the replacement was to be carried out.

There was no allegation that the defects in the floor made it dangerous or constituted it a threat to person or property. This took the case outside the mainstream of prior authority stretching from *Donoghue v. Stevenson*[9] to *Anns v. Merton London Borough Council.*[10] Furthermore, the economic losses claimed by the plaintiff were completely "pure", since it had never been accepted that the negligently produced defects in a manufactured article (in this case the floor) would suffice as the "physical damage" necessary to take the case out of the category of pure economic loss.

Faced squarely with the issue, all their Lordships[11] clearly held that pure economic loss can be recovered in a negligence action. This, they said, had been established by the well-known decision in *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.*[12] The firm statements of their Lordships in *Junior Books*, plus the four to one majority decision in the plaintiff's favour, finally puts to rest the last vestiges of the argument that this holding in the *Hedley Byrne* case was restricted to what is now commonly referred to as the area of negligent misstatement or professional negligence.

Having accepted that there can be, in general, a duty of care to avoid causing economic loss, the House of Lords in *Junior Books* then considered the vital issue of the scope of the duty of care. Where the alleged negligence occurs in the production or manufacture of a work, does the duty extend beyond one to take a reasonable care to ensure that the work does not constitute a danger to person or property?[13] This must be what was meant by Lord Roskill, who in giving the principal speech for the majority, stated that the question to be decided was "whether the relevant Scots and English law today extends the duty of care beyond a duty to prevent harm being done by faulty work to a duty to avoid such faults being present in the work itself."[14]

The test sanctioned by the House of Lords to define the scope of the duty of care to avoid causing economic loss is that put forward by Lord Wilberforce in *Anns v. Merton London Borough Council,*[15] which test is a refinement of Lord Atkin's famous "neighbour principle" in *Donoghue v. Stevenson.*[16] As Lord Wilberforce put it:

> " ... the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or

9. [1932] A.C. 562.
10. [1978] A.C. 728.
11. Lord Fraser of Tullybelton, Lord Russell of Killowen, Lord Keith of Kinkel, Lord Roskill and Lord Brandon of Oakbrook.
12. [1964] A.C. 465.
13. To so limit the duty of care would not in general preclude recovery for economic loss. Economic loss in the form of expenses incurred to avert the danger would be compensable: see *Junior Books, supra* note 1, at 206 (Lord Keith), 212-3 (Lord Roskill) and 217 (Lord Brandon); *cf. Rivtow Marine Ltd. v. Washington Iron Works* (1973) 40 D.L.R. (3d) 530 (Supreme Court of Canada), at 552-3 (per Laskin J.).
14. *Junior Books, supra* note 1, at 213.
15. *Supra* note 10.
16. *Supra* note 9.

neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a *prima facie* duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise ..."[17]

That the House of Lords adopts this test for economic loss can be seen from the judgments of Lord Roskill, with whom Lords Fraser and Russell agreed, and even of the dissentient, Lord Brandon.[18] In so doing, their Lordships have made an important breakthrough. While in the past others[19] have alluded to the possibility of treating economic loss recovery in this way, we now have in *Junior Books* a strong affirmation by at least four of their Lordships that the scope of the duty of care in economic loss situations is to be determined by the same approach used in all other negligence cases.[20] No longer are judges to view economic loss claims more sceptically than other negligence claims, or apply a test which incorporates the assumption that economic losses are not to be recovered except in very special circumstances.

This position may be contrasted with that arguably taken by the Australian High Court in the *Caltex* case.[21] It has been suggested[22] that Gibbs, Mason and Stephen JJ. placed their initial focus not on whether a relationship of proximity or neighbourhood existed between the plaintiff and the defendants, but rather on the broader policy concern regarding indeterminate liability in economic loss cases—Cardozo C.J.'s spectre of "liability in an indeterminate amount for an indeterminate time to an indeterminate class.[23] Only if this spectre does not loom should economic loss be compensable; thus developed what most see as the rule derived from *Caltex*, namely that there will be liability for negligently caused economic loss where "the defendant has knowledge or means of knowledge that the plaintiff individually, and not merely as a member of an unascertained class, will be likely to suffer economic loss as a consequence of his negligence ..."[24]

17. *Supra* note 10, at 751-2.
18. *Junior Books, supra* note 1, at 211 and 213 (Lord Roskill) and 217 (Lord Brandon).
19. *E.G.*, Lord Wilberforce in the *Anns* case, *supra* note 10, at 752; Lord Reid in *Home Office v. Dorset Yacht Co. Ltd.* [1970] A.C. 1004, at 1027.
20. While Lord Keith did not expressly apply the "two-stage" test of *Anns, supra* note 10, his reliance upon *Donoghue v. Stevenson, supra,* note 9, and *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd, supra,* note 12 indicates that he too would not initially treat economic loss any differently from other kinds of loss resulting from negligent acts or conduct.
21. *Supra* note 2.
22. J.R. Terry, "Current Judicial Analyses of Negligence" (1981) 55 A.L.J. 728 and 804, at 805-6.
23. *Ultramares Corporation v. Touche* (1931) 174 N.E. 441, at 444.
24. *Caltex, supra* note 2, at 555 (per Gibbs J.). Cf. Mason J.'s formulation at 593; "a defendant will ... be liable for economic damage due to his negligent conduct when he can reasonably foresee that a specific individual, as distinct from a general class of persons, will suffer financial loss as a consequence of his conduct." While it is beyond the scope of this paper, a close examination of Stephen J.'s discussion of the five factors which he enumerated as being determinative of the plaintiff's right to recover in *Caltex* (see 136 C.L.R. 529, at 576-7) seems to reveal that he would require proof of the same matters as would Gibbs and Mason JJ.

This discrepancy is understandable when one realizes that the *Anns* case was not decided until some five months after the High Court handed down its decision in *Caltex*. Nevertheless, the House of Lords' adoption in *Junior Books* of the *Anns* test for economic loss claims raises the question whether Australian law will not follow this general approach to duty of care, or whether it will continue to treat economic loss claims as something special and apart from other types of negligence-based claims.

Lord Roskill's comment[25] to the effect that the *Anns* decision resolved certain of the difficulties discussed in *Caltex* might indicate that the former course will now be followed by Australian law. It is certainly true that many judges now recognize that the distinction between physical and economic loss is an artificial and arbitrary one with regard to drawing a line to separate recovery from non-recovery situations.[26]

On the other hand, it cannot be ignored that economic loss has an "inherent capacity to manifest itself at several removes from the direct detriment inflicted by the defendant's carelessness."[27] Therefore, Lord Roskill's view that the scope of the duty of care should be determined by considerations of principle rather than of policy is, with respect, not entirely desirable. His Lordship says:

> " ... if principle suggests that the law should develop along a particular route and if the adoption of that particular route will accord a remedy where that remedy has hitherto been denied, I see no reason why, if it be just that the law should henceforth accord that remedy, that remedy should be denied simply because it will, in consequence of this particular development, become available to many rather than to a few."[28]

This may well be a sufficient answer to the "floodgates" argument which his Lordship was addressing, but if he meant to suggest that the policy against exposing the defendant to "indeterminate liability" should not play a part in determining the scope of the duty of care, then it is open to serious question.[29]

In the writer's view, the contrasting approaches to the scope of duty issue can be reconciled by adopting the *Anns* test as the general one for all questions of duty of care, but by considering the indeterminate liability question at the second stage when deciding whether a *prima facie* duty should be negatived or limited. Terry[30] suggests that this was done by Sir Robert Megarry V.-C. in *Ross v. Caunters*[31] and by the English Court of Appeal in *Lambert v. Lewis*.[32] This would also appear to be the approach taken by Lord Fraser in the principal case.[33] It is the case that Lord Roskill does

25. *Junior books, supra* note 1, at 213.
26. *E.G.* Lords Fraser (at 204), Roskill (at 213) and Brandon (at 216) in *Junior books, supra* note 1; Stephen J. (at 568), Mason J. (at 591) and Murphy J. (at 606) in *Caltex, supra* note 2.
27. *Caltex, supra* note 2, at 573-4 (per Stephen J.).
28. *Junior Books, supra* note 1, at 209.
29. *Quaere* whether Lord Roskill's requirement that the adoption of the remedy be "just" would incorporate concerns of indeterminate liability.
30. Terry, *supra* note 22, at 730.
31. [1980] Ch. 297.
32. [1982] A.C. 225.
33. *Junior Books, supra* note 1, at 203-4.

not raise this matter when considering the second stage of the *Anns* test[34] which raises the aforementioned apprehension in the writer's mind about the effect of the last quotation.[35]

Having concluded that the question of the defendant's liability should be decided by reference to the test set out in the *Anns* case,[36] their Lordships proceeded to apply that test to the facts before them. However, before continuing in this direction, it would be appropriate at this juncture to briefly consider the speech delivered by Lord Keith. As already mentioned,[37] although Lord Keith formed part of the majority with respect to the actual disposition of the case, his reasons were somewhat different from those of his brethren:

> "If the cost of maintaining the defective floor is substantially greater than it would have been in respect of a sound one, it must necessarily follow that their manufacturing operations are being carried out at a less profitable level than would otherwise have been the case, and that they are therefore suffering economic loss. That is the sort of loss which the appellants ... ought reasonably to have anticipated ... The appellants accordingly owed the respondents a duty to take reasonable care ... and are liable for the forseeable consequences, sounding in economic loss, of their failure to do so. These consequences may properly be held to include less profitable operation due to the heavy cost of maintenance. In so far as the respondents, in order to avert or mitigate such loss, incur expenditure on relaying the floor surface, that expenditure becomes the measure of the appellants' liability."[38]

It was on this narrow ground that his Lordship was willing to conclude that the plaintiff's averments stated a good cause of action. He expressly declined to "advance the frontiers of the law of negligence"[39] any further. Indeed, his Lordship went so far as to opine that to do so would be wrong in principle. As this aspect of his speech is in substance similar to Lord Brandon's dissent,[40] which is considered later, the writer's comments on it would seem to apply here as well.

The actual basis of Lord Keith's decision would seem to be an adaptation of the then Laskin J.'s approach in the *Rivtow Marine Ltd. v. Washington Iron Works.*[41] The important difference is that while the then Laskin J. favoured recovery when steps are taken to avert the threat of physical danger, Lord Keith was willing to extend recovery when the threat was merely one to ordinary business operations. The major comment one can make in this regard, is that, given the otherwise rather conservative tone of his judgment, it seems incongruous for Lord Keith to be granting tort protection against a loss of profits. Certainly others have been wary to tread his path.[42]

34. *Id.*, at 214.
35. See text at note 28.
36. *Supra note 10.*
37. *Supra* note 20.
38. *Junior Books, supra* note 1, at 206.
39. *Ibid.*
40. In fact, Lord Keith expressly adopts some of Lord Brandon's views: *id.*, at 207.
41. *Supra* note 13.
42. *E.G.* Stephen J. in the *Caltex* case, *supra* note 2, at 577 and 578-9.

Returning, then, to the rest of the House's application of the *Anns* two-stage test for duty of care, stage one presented no problem, even to the dissentient Lord Brandon. Given that the defendant had been specifically nominated by the plaintiff's architects as a specialist sub-contractor, the proximity was as close as it could be, short of a direct contractual relationship.[43] Opinions differed however at the second stage, when it had to be decided whether the scope of the *prima facie* duty thus found could be limited.

In his dissenting speech, Lord Brandon gave two reasons for concluding that the scope of the duty of care did not extend to cover the facts as alleged by the plaintiff. In the first place, danger or the threat of danger of physical damage to person or property had always been regarded as an essential ingredient to an action founded on negligence in the production of work. In Lord Brandon's view, "to dispense with that essential ingredient ... would ... involve a radical departure from long-established authority.[44] The acceptance of this viewpoint would result in economic loss being recoverable only if it falls into one of two specific categories, namely where there was a threat to person or property or where a negligent misstatement has been made. This categorization approach, in the writer's opinion, would be undesirable. As Lord Wilberforce stated immediately preceding the passage[45] in which he set out the two-stage test for duty of care:

> " ... the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist."[46]

In the principal case, Lord Roskill curtly dismissed the point:

> "My Lords, with all respect to those who find this a sufficient answer I do not. I think this is the next logical step forward in the development of this branch of the law."[47]

The other consideration which led Lord Brandon to conclude that the *prima facie* duty of care should be limited involved the distinction between tort and contract. The imposition of liability on the defendant for producing merely a defective as opposed to a dangerous floor would have been appropriate only if the defendant and the plaintiff had been in a contractual relationship. To allow the plaintiff to recover would circumvent the contract/tort distinction, by effectively creating between those not bound by contract a warranty that the floor was as free from defects as the exercise of reasonable care could make it.[48]

In other words, according to Lord Brandon, a producer of goods or services has a duty to use reasonable care not to create the potential for danger. However, apart from contract, the producer

43. *Junior Books, supra* note 1, at 213-4 (Lord Roskill) and 217 (Lord Brandon).
44. *Id.*, at 218.
45. See text at note 17.
46. *Anns, supra* note 10, at 751.
47. *Junior Books, supra* note 1, at 214.
48. *Id.*, at 218.

has no other common law obligation to exercise a degree of care in the production process. To adopt this view, with respect, may be seen to be tantamount of judicially sanctioning shoddy workmanship. It rests upon the view that the court's only purpose is to determine the rights and liabilities of the parties before it, to solve the particular dispute. It fails to ensure that producers produce goods and services that attain some *minimum* standards of quality.

It might be suggested that these concerns are met by the courts in other ways. In particular, it would be usual that the producer will have a contractual relationship with someone, as Veitchi Ltd. had with the main contractor in the principal case. That contract will impose upon the producer the duty to exercise the degree of care which Lord Brandon stated should not have existed between the plaintiff and the defendant. If he fails to do so, he will be held to account when the ultimate consumer of the goods or services produced, for example, Junior Books Ltd., sues the party with which it is in a contractual relation, for example, the main contractor who would in turn assert a contractual claim against the producer, (for example, Veitchi Ltd.[49] But this analysis assumes that the intermediate party has warranted to the consumer that the goods or services will be free of defects; it assumes that the intermediate party has not contractually excluded or limited his liability to the consumer; and it assumes that the producer has not contractually excluded or limited his liability to the intermediary. If any one of these assumptions is not present on the facts of the particular case, there will be no incentive on the producer to exercise a minimum degree of care.**

Lord Roskill's reaction to this line of reasoning was little different from that which he gave to the suggestion, accepted by Lord Brandon, that threat of danger should be an essential ingredient to the right to recover; in short, he was not impressed:

> "My Lords, I seem to detect in that able argument reflections of the previous judicial approach to comparable problems before *Donoghue v. Stevenson* was decided. That approach usually resulted in the conclusion that in principle the proper remedy lay in contract and not outside it. But that approach and its concomitant philosophy ended in 1932 and for my part I should be reluctant to countenance its re-emergence some fifty years later in the instant case. I think today the proper control lies not in asking whether the proper remedy should lie in

49. See the remarks of Lord Keith in the principal case, at 207.
Editors' Note
** It is not clear to the Editors that this is so contrary to the interests of the consumers, as presumably the consumer's carrying the risk of the product being defective, but not dangerous, will be compensated for by cheaper products. The poor cannot afford Rolls-Royces, yet to require them to wait until they do is to deny them cars. In any case Coase's Theorem indicates that in a situation such as this, if transaction costs are nil, then the liability rule is irrelevant. Since a consumer's making a claim on a producer requires the producer to investigate it, the transaction costs are plainly higher than leaving the loss lie where it falls for a reduction in price, this implies dearer products, not only in the superficial sense that the implicit cost of the risk of a defective product is made explicit, but also because such an allocation of risk is more expensive to administer: see R. Posner, "Economic Analysis of Law", second edition, Boston, 1977, at 35-36.

> contract or instead in delict or tort, not in somewhat capricious judicial determination whether a particular case falls on one side of the line or the other, not in somewhat artificial distinctions between physical and economic or financial loss ... but in the first instance in establishing the relevant principles and then deciding whether the particular case falls within or without those principles."[50]

Nevertheless, it would be difficult to deny that this rejection of Lord Brandon's second reason for refusing recovery in the principal case does raise some fundamental questions concerning the continued viability of the doctrine of privity of contract. It may be that this decision surreptitiously continues the process of the undermining of that doctrine which, it has been suggested, began with the Privy Council's decision in *New Zealand Shipping Co. Ltd. v. A.M. Satterthwaite & Co. Ltd. ("The Eurymedon").*[51] If that is so, then it will be incumbent upon the House of Lords and courts generally to face the issue squarely in the near future, but closer examination of this aspect of the *Junior Books* decision can be left to another paper.

Involved in Lord Brandon's objection to the blurring of the contract/tort distinction are certain practical difficulties, which he raised, and which caused some concern to members of the majority as well. In the first place, if a producer is put under a duty not to produce defective work, what standard of quality must be reached in order to satisfy that duty?[52] Put another way, how can a court decide if work is "defective"? Normally, a work will have to reach standards of quality set out by the terms of the contract that will exist between the producer and the other party to that contract. Obviously, some contracts will set lower standards than others.[53] The problem raised by their Lordships is how to decide which of the possible sets of standards should apply when a non-party to the contract claims that the work is "defective", that is, has not come up to standard. Should such a plaintiff be able to insist upon standards greater than those set by the contract? Should the plaintiff who has no knowledge of the original contractual standards be able to recover if the work is defective in the sense that is has not met those standards? Even if the plaintiff did have such knowledge, should the law allow a non-party to effectively enforce a contract through the use of the principles of tort law? Lord Brandon also points out that even if this problem of standards of quality can be overcome there is another practical problem of what is to be done if the producer has in the contract effectively excluded or limited liability for defects in the work—would it be fair to deny the producer the benefits of his prudent bargaining by upholding an action brought in negligence by someone not a party to the contract?[54]

50. *Junior Books, supra* note 1, at 213.
51. [1975] A.C. 154. See Tedeschi, (1981) 55 A.L.J. 876.
52. *Junior Books, supra* note 1, at 218; see also at 204-5 (Lord Fraser) and 207 (Lord Keith).
53. These standards could differ depending, for example, on the price agreed to be paid for the work.
54. This point troubled Lord Roskill as well, but he did not have to decide it on the facts of the case: see 214 of the principal case.

While both of these matters will undoubtedly give rise to difficult decision-making in some individual cases, that is not, with respect, a sufficiently good reason for denying the existence of a relevant duty of care both on the facts of *Junior Books* itself, and more generally in cases where the plaintiff alleging defective production of work is not a party to the contract creating the obligation to produce the work. Although a producer would ordinarily contemplate that the person most likely to be concerned with the quality of the work would be the opposite party to the contract, it will often not be beyond the producer's reasonable contemplation that others will be at risk of suffering economic loss if the work is of poor quality. The fact that such persons lack a particular characteristic, namely contractual relations with the producer, should not deny them a remedy in tort.

Support for this line of reasoning can be drawn from a case involving physical danger to an external agent, *Schiffahrt und Kohlen GmbH v. Chelsea Maritime Ltd. ("The Irene's Success").*[55] There, c.i.f. buyers of cargo were able to recover in a negligence action for damage to the cargo despite the fact that they never became holders of the bill of lading and thus could not sue in contract.[56] To the defendant's argument that a carrier of cargo would only contemplate damage as likely to be suffered by the holder of the bill of lading, Lloyd J. responded:

> "... it creates much too fine a distinction in the mind of the reasonable carrier. What he would surely contemplate, if he were to analyse his state of mind, is that the person who is likely to suffer the damage is the person at whose risk the goods are at the time in question. Such a person is, it is true, likely to possess the additional characteristic that he can sue in contract, as holder of the bill of lading. But that is no reason for excluding someone who does *not* possess that additional characteristic from the reasonable contemplation of the carrier."[57]

Similar sentiments regarding the crucial nature of risk were expressed in the High Court of Australia by Stephen J. in the *Caltex* case:

> "No doubt risk and property are usually coincidental but, where they are not, a denial of recovery of the risk bearer's economic loss consequential upon injury to a chattel the property in which is in another, and the consequence that such economic loss must go uncompensated for simply because of this division of risk and property, seems neither just nor expedient."[58]

With regard to the standards of quality that must be met to satisfy this tortious duty of care, concerns about the doctrine of privity can be met if the courts use an objective measurement to determine what minimum standards of quality a reasonable producer would meet, taking into account not only the actual

55. [1982] 1 All E.R. 218.
56. In so holding, Lloyd J. refused to follow, for reasons which His Honour discusses, the earlier decision of Roskill J. on near-identical facts in *Margarine Union GmbH v. Cambay Prince Steamship Co. Ltd. ("The Wear Breeze")* [1969] 1 Q.B. 219.
57. *"The Irene's Success", supra* note 55, at 221. The emphasis is original.
58. *Caltex, supra* note 2, at 569.

contract, but also the producer's contemplation that others may be at risk of suffering economic loss as a result of the work being produced. One possible solution to the problem of deriving such minimum standards might be to import into this area the well-understood sales concept of merchantability. It surely is not too much to expect that any work produced be able to meet the standard of doing that which foreseeable users would ordinarily expect it to do.[59] As for an exclusion or limitation and liability clause in the contract, it would seem that if it can be established that the producer owed a *prima facie* duty of care to persons not in contractual relations with him, it would be more unfair to burden the latter with the effects of such a clause than it would be to deny the producer its benefit, given the implicit assumption that such persons were, or should have been, in the contemplation of the producer in the first instance.

Finally, one might ask what circumstances should result in a court denying recovery for economic loss caused by "defective" work. In some instances, the victim may not have been within a degree of proximity sufficient to give rise to even a *prima facie* duty of care. This might have been the case if, before the defects in the floor had appeared, Junior Books Ltd. had sold the factory to a new purchaser, who subsequently incurred the sorts of losses which Junior Books Ltd. actually incurred in the case. In other cases, for example, mass-produced goods with defects that do not pose any danger, a *prima facie* duty of care might be negatived, because to allow recovery would result in the imposition of "indeterminate liability" upon the manufacturer. The "indeterminate liability" factor should still be the major concern where the economic loss issue arises, and it is an aspect of the *Caltex*[60] decision that should remain in the forefront of this area of the law, notwithstanding Lord Roskill's apparent aversion to the role of policy expressed in the principal case.[61]

In conclusion, the decision of the House of Lords in *Junior Books Ltd. v. Veitchi Co. Ltd.* is in line with other recent decisions emanating from the United Kingdom which have greatly extended the scope of the duty of care in cases of alleged negligence.[62] While the speeches of the majority may be criticised for cutting too broad a swath without fully considering the ramifications, particularly with regard to the doctrine of privity of contract, and for playing down, or at least failing to emphasize the importance of the "indeterminate liability" policy factor, the case is an important one for Australian courts in two major respects: first, it lays down a general approach to be followed in both economic loss cases and all other negligence claims; and second, by so firmly indicating that economic loss is not to be treated as a special, suspect type of loss, it should encourage our judges to show much greater willingness to allow recovery where there is no "spectre of indeterminate liability".

59. *Cf.* the minority opinion of Peters J. in *Seely v. White Motor Company* (1965) 403 P. 2d 145, at 156.
60. *Supra* note 2.
61. See text at notes 21-35.
62. See the cases discussed by Douglas in "Negligence: Extension of the Duty of Care" (1982) 126 Sol. J. 616.