

Index

100-per-cent principle, CICS and, 155–6	statutory limits on damages, 155, 160, 168
accident insurance	tort reform, 194, 243
availability, 290	
loss prevention measures,	behaviour <i>see</i> conduct
encouraging/requiring, 429–31	bereavement
suitability of, 291	benefits, 303, 349–50
accidents	damages for, 88–9, 144, 159–61, 168, 170–1, 284–5, 321, 408
definition, 3–4	pensions, 154
prevention <i>see</i> prevention of accidents	recognition of loss due to, 410
actions <i>see</i> claims and claimants	Beveridge Report
acts, omissions distinguished, 70–5	and 1946 Acts, 329–31
administration	and post-1946 developments, 332–6
costs, 24–5, 323, 448, 482	
Criminal Injuries Compensation Scheme, 322–4	Canada
social security system, 351–4	duty of care, 77
agreement not to sue, <i>volenti</i> and, 58–60	imposition of liability, 81
animals, nuisance ( <i>Rylands v. Fletcher</i> ), 29–30, 98–9	road accident schemes, 482–3
Atiyah, Patrick	captive insurers, use of, 228
on ‘blame culture’ and fault principle, 190	car accidents <i>see</i> road accidents
on efficiency of tort compensation, 197	care <i>see</i> duty of care; standard of care
reform proposals, 491–3	carers
Australia	accident insurance, 290
contributory negligence survey, 56–7	benefits introduced for, 333
fatal cases, 133	contributory negligence and family cases, 53–5
imposition of liability, 79, 81, 121	damages awarded to, 150–1, 254, 410
‘insurance crisis,’ 194, 195, 242	valuation of services provided by, 146–7, 410–11, 472
limitation of corporate liability, 230	working tax credit, 351
loss of earnings, 148	carers’ allowance
National Disability Insurance Scheme, 468, 471, 472, 489	award, 368
New South Wales transport accident scheme, 475–6	overview, 348
restriction of liability, 82–3	taxation, 361–2
<i>Rylands v. Fletcher</i> , 98	causation
	analysis of, 14
	causing and increasing risk of harm 111–14
	and conceptual basis of tort, 29

- causation (*cont.*)
- conduct and, 118–24
  - contributory negligence and, 50–2
  - difficulty in establishing, 106–7
  - and distinction of nonfeasance/misfeasance, 73, 74–5
  - duty of care and, 67, 72
  - as element of negligence, 30–1
  - factual causation *see* factual causation
  - fault principle and, 31–2
  - general-deterrence theory and, 446–7
  - generally, 109
  - human causes, 6–11
  - legal causation as basis of liability, 92, 96
  - multiple causation, 115–17
  - natural causes, 3, 4, 6–11
  - proving, 109–11
  - remoteness of damage and, 117, 126
  - requirement to prove, 107
  - society's responsibility for human causes, 8–9
  - statistics, 14–17, 22
  - strict liability and, 92
  - weakness of law relating to, 103
- charities
- claim for value of service provision, 150–1
  - damages, 384
  - double compensation, 381
  - payments from, 274
  - taxation, 362–3
- claims and claimants
- accident claims generally, 201–7
  - actions commenced, 203–4
  - cases reaching trial and set down for trial, 201–3
  - conduct *see* conduct
  - costs of tort compensation, 390–6, 400–1
  - court waiting times in personal injury actions (table), 202
  - criminal injuries compensation, 299–300
  - defendants *see* defendants
  - funding *see* entries at funding
  - industrial injuries and illnesses, 216–18
  - medical injuries, 219–21
  - non-claimants
    - alternative remedies, 209–10
    - claims consciousness, 210–15, 324–5
    - research findings, 207–9
  - public liability, 218–19
  - reasons for making/not making claims
    - alternative remedies, 209–10
    - claims consciousness, 210–15, 324–5
    - research findings, 207–9
  - road accidents, 215–16
  - settlement *see* settlements
  - tort claims generally, 204–7
- claims assessors, use of, 224, 262, 270
- claims consciousness
- Criminal Injuries Compensation Scheme, 324–5
  - overview, 210–15
- claims crisis, 194, 195, 242, 243
- claims management companies (CMCs), use of, 192, 224, 261–2
- class actions, use of, 275
- collective liability, fault principle and, 178–9
- common employment doctrine
- abolition, 32, 245–6
  - restriction, 326
- common law, insurance and, 248–54
- compensation/blame culture, fault principle and, 189–98, 262, 267
- compensation for accidents
- definition of accident, 3–4
  - definition of compensation, 4, 406–9
  - full compensation *see* damages
  - functions of compensation systems *see* functions of compensation systems
  - historical development in outline, 459–64
  - introduction to, 3–6
  - justice as ground for, 403–5
  - opinions as to reform, 403–6
  - see also* damages
- compensation neurosis, problem of, 130
- Compensation Recovery Unit (CRU), settlements recorded with, 204
- compensation schemes
- overview of 'social' schemes, 12
- compulsory insurance
- case for and against, 294, 297
  - cost of, 242–3
  - deductibles, 431
  - enforcement of, 92
  - failure to take out, 258
  - function of, 12, 32
  - funding by, 453, 469–70, 482–3
  - introduction of, 95, 245, 246
  - payment of claims, 243
  - proceeds of, 231–2
  - proposal to extend first party insurance, 491–3

- requirement for, 12, 427–8
- social security and, 12–13
- spouses and, 245–6
- see also* national insurance
- conduct
  - blame and, 50, 62–5
  - of claimant generally, 50
  - Criminal Injuries Compensation Scheme and, 316–18
  - fault principle and, 183–4
  - illegality, 50, 62–5
  - legal causation and, 118–24
  - of others, duties to control, 79–81
  - rules and standards of behaviour
    - avoiding injury to self, 428–9
    - causing injury to others, 420–8
  - see also* contributory negligence; negligence; *volenti fit non injuria*
- consciousness *see* claims consciousness
- consumer choice, general deterrence and, 451
- contractual duties, fault principle and, 97–8
- contribution, joint liability and, 100–1
- contributory negligence
  - assessment, 55
  - blame and, 55, 56–7
  - causation and, 50–2
  - defence of, 50
  - doctrine of, 428, 446
  - family cases, 53–5
  - fault system and, 50–1, 56–7
  - law reform, 32, 245
  - negligence distinguished, 52–3, 249–50
  - overview, 50–2
  - survey, 56–7
  - usefulness of doctrine, 57–8
  - volenti non fit injuria* (voluntary assumption of risk) and, 60–1
- coroners' inquests, effect on claims, 268–9
- corporations
  - bankruptcy, 230
  - corporate defendants and intangible losses, 167
  - insuring of, 227–8
  - reorganization plans, 230
  - suing of defunct companies, 252–3
  - as tort defendants, 227–32
  - vicarious liability, 92, 94–5, 101, 222, 227–32
  - see also* employers; industrial injuries scheme (IIS)
- corrective compensation, overview, 406
- corrective justice (fairness), as goal, 416–17, 477
- cost-benefit analysis, use of, 162
- costs
  - administrative, 24–5, 323, 448, 482
  - criminal injuries compensation, 401–2, 449
  - externalization of costs, 439–40, 450
  - general deterrence and, 438–42
  - industrial injuries, 390–1, 397, 398–9, 448–9
  - of insurance (overview), 390–6
  - legal costs, assistance for, 260–6
  - medical negligence claims, 396, 397
  - no-fault compensation schemes, 485
  - production costs, 436
  - public liability, 396
  - reforms, 489–90
  - road accidents, 390–1, 393–4, 395–6, 439–40, 443, 446–7
  - social security, 398–9
  - social services, 396–7
  - tort system, 390–6, 400–1
  - usage costs, 436
- county courts, cases heard in, 201–2, 203–4, 280
- courts
  - actions commenced, 203–4
  - cases reaching trial, 201–3
  - county courts, 201–2, 203–4, 280
  - court orders, 225–6
  - criminal injuries compensation, 300–2
  - Crown Courts, 301
  - group litigation orders (GLOs), 275–6
  - High Court, 201–4, 280
  - litigation procedures, 267–8
  - representative actions, 274–5
  - waiting times (table), 202
- crime
  - compensation for criminal injuries
    - compensation orders, 300–2
    - costs, 401–2, 449
    - generally, 303
    - over-compensation, 388–9
    - see also* Criminal Injuries Compensation Scheme (CICS)
    - tort claims, 299–300
  - criminal proceedings, 268–9
  - illegality and negligence, 50, 62–5
  - prevention of, 49–50, 80–1
  - statistics, 15–16
  - violent, 309–13, 404–5

- Criminal Injuries Compensation
  - Board/Authority (CICB/CICA), reports, 299–300
- Criminal Injuries Compensation Scheme (CICS)
  - 100-per-cent principle, 155–6
  - administration, 322–4
  - awards, 119–20
  - claims consciousness, 324–5
  - comparison with tort liability
    - assessment of compensation, 318–22
    - conduct of claimant, 316–18
    - generally, 315–22
    - mental distress/nervous shock, 315–16
  - costs, 401–2, 449
  - generally, 5, 6, 7, 12, 22–3, 32, 49–50, 300, 373–4, 404–5
  - justification for, 303–8
  - over-compensation, 388–9
  - scope
    - accidental injuries, 313–14
    - crimes of violence, 309–13, 404–5
    - exclusions, 314–15
    - generally, 308–9
    - subrogation rights, 375–6
  - crisis in insurance, impact of, 194, 198, 242–3, 459
  - culpability, liability and, 178–82
  - culture of blame/compensation, fault principle and, 189–98, 262, 267
- damage to property *see* property
- damages
  - aggravated damages, 172, 415–16
  - for bankruptcy, 225
  - bereavement, 88–9, 144, 159–61, 168, 170–1, 284–5, 321, 408
  - contributory negligence and 55
  - full compensation
    - commitment in practice, 156–60
    - general damages, 143
    - generally, 142–3
    - interest, 143–4
    - lost earnings and support, 144–8, 151–6
    - medical and other expenses, 148–51
    - special damages, 143
  - generally, 238–9, 405–6
  - instalment payments, 225
  - intangible losses *see* intangible losses
  - lump sum
    - alternatives to lump sums, 138–42
    - fatal cases, 131–4
    - personal injury cases, 129–31
    - suitability of lump sums, 136–8
    - variation of awards after trial, 134–6
    - workers' compensation claims, 326–8
  - maxima, 171–2
  - negotiation on, 269
  - out-of-court settlement, 282–5
  - over-compensation *see* over-compensation
  - periodical payments
    - arguments against, 138–9
    - use of, 138–9, 140–2
  - punitive (exemplary) damages, 170–1, 172–3, 405, 415–16
  - reduction due to alcohol, 52
  - statistics, 19–21
  - statutory limits, 155, 160, 168
  - structured settlements, 139–40
    - see also* compensation for accidents
  - dangerousness, strict liability and, 103–4
  - death *see* bereavement; fatal injuries
  - defective products *see* product liability
  - defendants
    - bankruptcy, 224–5, 230, 247
    - corporations/employers, 227–32
    - enforcement of judgments against, 224–6
    - generally, 222
    - individuals, 222–7
    - repeat, 267
  - Denmark, subrogation rights, 379
  - design, negligence in, 46–50
  - deterrence
    - as function of compensation systems, 419–35, 477–82
    - general deterrence *see* general deterrence
    - punitive damages as, 172–3
    - rules and standards of behaviour
      - avoiding injury to self, 428–9
      - generally, 420
  - disability
    - assessment of compensation, 472–3
    - causation, 6–7
    - costs of social services, 396–7
    - discrimination on grounds of, 363–5
    - effects on income, 18–19
    - employment and, 18–19, 363–5
    - housing and residential accommodation, 366
    - mobility schemes, 365–6
    - other social services, 367–8

- protecting reasonable expectations, 9–10
  - reforms, 466–8
  - responsibility for human causes, 8–9
  - social security and
    - generally, 6–7, 333–4, 354–7
    - long-term incapacity from industrial injuries, 342–5
    - reform proposals, 487–91
  - social services, 396–7
  - social services and, 363–8
  - statistics on, 18–19
  - tax reliefs, 361–3
  - unemployment and, 365
  - disablement', loss of amenities distinguished, 344
  - disease
    - causation, 6–8
    - compensation generally, 3, 6
  - distributional issues
    - distribution of losses
      - generally, 410
      - how should it be distributed, 411–13
      - what should be distributed, 410–11
    - generally, 19–22
    - redistributive compensation, 407
    - strict liability and, 478
  - domestic violence, exclusion from CICS, 314–15
  - double compensation, charities, 381
  - driving *see* road accidents
  - duties
    - breach of statutory duty, 94–7, 124–5
    - causation and, 67, 72
    - contractual duties, 97–8
  - duty of care
    - distinction between acts and omissions
      - control over property, 81–3
      - duties of physical protection, 76–9
      - duties to control the conduct of others, 79–81
    - generally, 70–5
    - undertakings, 75–6
  - as element of negligence, 30–1
  - nature of, 66–8
  - situations where imposed, 68–70
- earnings
  - earnings-related national insurance, 332
  - earnings-related principle, 152, 332–3, 472
  - loss of *see* loss of earnings
- egalitarianism, issue of, 10–11
- elasticity of demand, general deterrence and, 442–4
- employment
  - common employment doctrine, 32, 245–6, 326
  - disability and, 18–19, 363–5
  - duty of care, 76–7
  - employers as defendants, 227–32
  - negligence of employees, 32, 116, 117
  - over-compensation and, 382
  - responsibility for blame, 222
  - sick pay, 209–10, 291–2, 345–6, 372–3
  - vicarious liability, 92, 94–5, 101, 222, 227–32
    - see also* industrial injuries scheme (IIS)
- equivalent compensation, types of, 407–8
- Europe/European Union
  - 'alternative dispute resolution' (ADR), 272
  - compensation for victims of violent crime, 312
  - human rights issues, 68, 192, 272, 459
  - imposition of liability, 81, 231–2
- ex gratia* compensation schemes
  - fault principle and, 105–8
  - hepatitis-C and HIV, 107–8
  - vaccine damage, 105–7
  - variant CJD, 108
- exemplary (punitive) damages, use of, 170–1, 172–3, 405, 415–16
- expectations
  - equivalent compensation and, 407–8
  - protection of reasonable, 9–10
- expenses, full compensation damages and, 148–51
- externalization of costs, 439–40, 450
- facts of the case, negligence as fault, 32–6
- factual causation
  - causing and increasing risk of harm, 211–14
  - limits on liability of factual causes
    - damage not within risk, 124–6
    - foreseeability, 126–8
  - generally, 117–18
  - legal causation, 118–24
  - multiple causation, 115–17
  - omissions, 114–15
  - product liability, 110, 114–15
  - proving, 109–11
  - summary of issues, 128
- failure to act *see* omissions (failure to act)

- fairness *see* justice
  - family cases
    - contributory negligence and, 53–5
    - negligence, 88–90
  - fatal injuries
    - bereavement benefits, 349–50
    - bereavement damages, 88–9, 160–1, 168, 408
    - Criminal Injuries Compensation Scheme, 321–2
    - full compensation damages, 142–3, 157–8
    - inquests, 268–9
    - intangible losses, 160–1, 162, 170
    - loss of earnings and, 144–6
    - lump-sum damages, 131–4
  - fault
    - blame and, 183–6
    - contributory negligence and, 50–1, 56–7
    - definition, 179–81
    - generally, 4, 12–13, 235, 250–1
    - negligence as, facts of case, 32–6
    - proof of, 93
  - fault principle
    - appraisal of
      - avoidance of responsibility, 189–98
      - compensation bears no relation to degree of fault, 174–6
      - compensation bears no relation to means of tortfeasor, 176–8
      - contribution to culture of blame, 189–98
      - difficulty of adjudicating allegations of fault, 186–9
      - justice and no-fault compensation, 184–6
      - lack of attention to victims' conduct or needs, 183–4
      - legal liability and moral culpability, 182
      - moral culpability without legal liability, 182
    - 'blame culture' and, 189–98, 262, 267
    - causation and, 31–2
    - collective liability and, 178–9
    - departures from
      - breach of statutory duty, 94–7, 124–5
      - contractual duties, 97–8
      - ex gratia* compensation schemes, 105–8
      - joint liability, 99–101
      - procedural devices, 93–4
      - product liability, 101–3
      - proposals to extend strict liability, 103–5, 464–6
    - Rylands v. Fletcher* rule, 98–9
    - strict liability, 91–3, 103–5, 464–6
    - vicarious liability, 101
  - generally, 31–2
  - negligence and, 174–6
  - objections to 186–9
  - popular morality and 182
  - product liability 101–3
  - finance *see* entries at funding
  - first-party insurance
    - for benefit of others 244–5
    - compared with tort liability 294–8
    - compensation reform proposals 491–3
    - general-deterrence theory and 449–50
    - generally, 233–8, 373, 473
    - over-compensation and, 382–4
    - types, 289–94
  - foreseeability, negligence and, 44–5, 66–8, 124–5, 126–8
  - fraud, social security system, 357–9
  - full compensation *see* damages
  - functions of compensation systems
    - allocation of risks, 413–15
    - assessment of systems, 409–10
    - corrective compensation, 406
    - corrective justice, 416–17, 477
    - criteria for success, 409–10
    - definition of compensation, 4, 406–9
    - deterrence/prevention
      - general deterrence, 435–55
      - generally, 419–20
      - no-fault system, 480–2
      - prevention by insurance, 429–35
      - rules and standards of behaviour, 420–9
  - distribution of losses
    - generally, 410, 450
    - how distributed, 411–13
    - what distributed, 410–11
  - equivalent compensation, 407–8
  - preliminary questions, 403–6
  - punishment, 415–16
  - redistribution, 407
  - as substitution/solace, 408–9
  - vindication or satisfaction, 417–19
- funding of systems, reform issues, 475–7
- funding of tort claims, 260–6
- future of compensation system *see* reform proposals
- general deterrence
  - accident prevention and, 437–8

- allocation of costs to activities, 439–42
- application in practice, 444–5
- approach, 450–3
- ascertaining costs of accident, 438–9
- assessment of value of approach, 450–3
- bankruptcy and, 451
- basic idea, 435–8
- causation and, 446–7
- competition and, 435–8
- conclusions on, 453–5
- consumer choice and, 451
- generally, 419–20, 435–55
- insurance and, 439, 449–50
- product liability, 454–5
- responsiveness to price mechanism, 442–4
- rules and standards of behaviour
  - avoiding injury to self, 428–9
  - causing injury to others, 420–8
- social security system and, 448–9
- tort system and, 445–8
- Germany, no-fault road accident scheme, 486
- goals of system *see* functions of compensation systems
- group claims
  - claimants, 221
  - settlements, 273–7
- harm
  - costs of avoidance, negligence and, 41–3
  - likely magnitude of, 40–1
  - probability of, 39–40
- hepatitis-C infection, *ex gratia* compensation, 107–8
- HIV infection, *ex gratia* compensation, 107–8
- housing, social, 366
- illegality, conduct and negligence, 50, 62–5
- income distribution *see* distributional issues
- income support (IS)
  - entitlement, 335–6
  - introduction, 350–1
  - payment, 350
  - replacement by universal credit, 351
  - statistics, 18–19
- individuals
  - claims by
    - collection of evidence, 267–8
    - negotiation of claims, 267–73
  - as tort defendants, 222–7
- industrial injuries scheme (IIS)
  - accidents and diseases, 216–18, 339–42
  - benefits generally, 336–7
  - coverage, 12, 314
  - extension, 330–1, 484, 487
  - general-deterrence theory and, 450
  - as model for reform, 491
  - risk allocation, 408
  - scope of scheme, 337–9
  - statistics, 22–3
  - type of scheme, 482–3
  - use of term, 337
- inquests/inquiries, fatal injuries, 268–9
- insurance, common law and, 248–54
- insurance crisis, impact of, 194, 198, 242–3, 459
- insurance industry, legal profession and, 495–6
- insurers, handling of tort claims, 232–3
- intangible losses
  - corporate defendants and, 167
  - damages
    - assessment of, 160–5
    - generally, 296
    - justification for payment of damages, 170–1
    - subjective factors, 169–70
    - tariff system, 165–8
  - generally, 160
- interest, damages awards and, 143–4
- joint liability, fault principle and, 99–101
- justice
  - corrective justice (fairness), 416–17, 477
  - dual systems and, 469
  - as ground for compensation, 403–5
  - no-fault compensation and, 184–6
- legal causation
  - as basis of liability, 96
  - conduct and, 118–24
  - omissions, 124
  - product liability, 124
- legal expenses (before-the-event) insurance,
  - provision of, 255, 261, 263, 293–4
- liability
  - culpability and, 178–82
  - negligence as basis, 30–1
- loss
  - definition of, 4, 410
  - distribution of
    - generally, 410, 450
    - how distributed, 411–13
    - what distributed, 410–11

- loss (*cont.*)
  - intangible *see* intangible losses
  - prevention of, 49–50, 80–1, 429–31
  - social loss, 448
  - valuation, 410–11
- loss of earnings
  - assessment of damages for, 130–1
  - fatal injuries, 132
  - full compensation damages
    - 100-per-cent principle, 155–6
    - earnings-related principle, 151–5
    - generally, 144–8
    - justification, 151
  - insurance against, 290–1, 294–6
  - lump-sum damages, 136
  - reduced earnings allowance, 342
  - road accidents, 373
- lump-sum damages
  - alternatives to
    - arguments against abandoning lump-sum system, 138–9
    - early proposals, 139
    - periodical payments, 140–2
    - structured settlements, 139–40
  - fatal cases, 131–4
  - personal injury cases, 129–31
  - suitability, 136–8
  - variation of awards after trial, 134–6
  - workers' compensation claims, 326–8
- medical expenses, full compensation, 148–51
- medical injuries, claims, 219–21
- mental distress, CICS and tort liability
  - compared, 315–16
- mental illness, Criminal Injuries Compensation Scheme and, 315–16
- misfeasance, nonfeasance distinguished, 73, 74–5
- mobility schemes, provision of, 365–6
- moral culpability, legal liability and, 178–82
- morality, fault principle and popular morality, 182
- Motor Insurers' Bureau (MIB)
  - liability, 314, 373–4, 396
  - work of, 32, 254–8
- motoring *see* road accidents
- multi-party claims *see* group claims
- multiple causation, but-for test and, 115–17
- National Insurance
  - contributions, 294, 335
  - earnings-related, 332
  - introduction of, 328–9
  - purpose, 12
- negligence
  - as basis of liability, 30–1
  - blame and, 29–30, 34, 43, 51–2, 175, 178
  - breakdown of, 277–9
  - causation as element, 29, 30–1
  - claims assessors, 262, 270
  - claims management companies (CMCs), 192, 224, 261–2
  - conduct of claimant, 50, 62–5
  - contributory negligence *see* contributory negligence
  - cost of avoidance of harm, 41–3
  - on damages, 269
  - definition of, 31, 180
  - in design, 46–50
  - effect of insurance, 249–50
  - employment cases, 32, 116, 117
  - family cases and, 88–90
  - as fault, facts of case, 32–6
  - fault principle and, 174–6
  - foreseeability and, 44–5, 66–8, 124–5, 126–8
  - function of negligence formula, 43, 446
  - generally, 259, 266–7
  - group claims *see* group claims
  - individual claims, 267–73
  - likely magnitude of harm, 40–1
  - nature of, 36–9
  - objective standard of care, 45–6
  - in operation, 46–50
  - probability of harm, 39–40
  - time taken, 279–82
  - tort system and, 445–6
  - transfer of costs and, 440–1
- nervous shock, CICS and tort liability
  - compared, 315–16
- New Zealand
  - imposition of liability, 81
  - national accident insurance scheme, 13, 152, 155, 459, 466, 467–8, 469, 471, 472, 474–5, 481, 482, 483–4
- no-fault compensation
  - costs, 485
  - dual systems, 466–70, 490
  - goals of system, 478–9, 480–2
  - justice and, 184–6
  - reform proposals, 92, 466–70
  - road accident scheme proposals, 482–6
  - strict liability as alternative, 464–6

- non-pecuniary losses *see* intangible losses
- nonfeasance, misfeasance distinguished, 73, 74–5
- nuisance
  - nuisance value of claim, 284
  - Rylands v. Fletcher*, 29–30, 98–9
  - suing under tort of, 441–2
- omissions (failure to act)
  - acts distinguished, 70–5
  - control over property, 81–3
  - duties of physical protection, 76–9
  - duties to control conduct of others, 79–81
  - factual causation, 114–15
  - legal causation, 124
  - nonfeasance and misfeasance distinguished, 73, 74–5
  - undertakings, 75–6
- operation, negligence in, 46–50
- opinions on compensation, 403–6
- over-compensation
  - concept of, 371–2
  - criminal injuries compensation, 388–9
  - general principles, 379–82
  - subrogation and recoupment, 374–9
- tort damages
  - and charitable payments, 384
  - and personal insurance, 382–4
  - and sick pay, 382
  - and social security benefits, 384–8
- periodical payments
  - arguments against, 138–9
  - use of, 138–9, 140–2
- personal injury
  - accidents causing, 14–16
  - damages, 129–31
- personal injury actions, court waiting times (table), 202
- physical protection, duties of, 76–9
- preferential treatment, current situation as to, 470–2
- premiums, risk-related, 431–5
- prevention of accidents
  - cost of precautions, 41–3
  - encouraging/requiring loss prevention measures, 429–31
  - as function of compensation systems, 419–35
  - general-deterrence theory and, 437–8
  - generally, 6
  - insurance and, 429–35
  - risk-related premiums and similar techniques, 431–5
- price mechanism, general-deterrence theory and, 442–4
- probability of harm, negligence and, 39–40
- product liability
  - claims consciousness, 212
  - contractual duties, 97–8
  - factual causation, 110, 114–15
  - fault principle and, 101–3
  - general deterrence and, 454–5
  - leading case, 69–70
  - legal causation, 124
  - res ipsa loquitur* and, 93–4
- property
  - control over, 81–3
  - damage to
    - insurance and, 4, 294
    - reform proposals, 494
    - road accidents, 209
    - volenti* and agreement not to sue, 59
  - insurance, 4, 289, 294, 297
  - no-fault compensation, 184–5
- protection, duties of, 76–9
- psychiatric damage (nervous shock)
  - Criminal Injuries Compensation Scheme and, 315–16
  - negligence claims, 83–8
- public liability
  - claims, 218–19
  - costs of claims, 396
- public opinion on compensation reform, 403–6
- public vindication, as function of compensation systems, 417–19
- punishment, as function of compensation, 415–16
- punitive (exemplary) damages, use of, 170–1, 172–3, 405, 415–16
- reasonable expectations, protection of, 9–10
- reasonableness, reasonable persons, 33–6
- recoupment *see* subrogation and recoupment
- redistributive compensation, aim of, 407
- reform proposals
  - assumptions underlying, 194–5
  - basic issues
    - assessment of compensation, 472–5
    - funding, 475–7
    - goals of system, 477–82

- reform proposals (*cont.*)
  - limited or comprehensive reform, 466–70
  - no-fault schemes, 464–70
  - preferential treatment, 470–2
  - strict liability 103–5, 464–6
- contributory negligence, 32, 245
- costs of, 489–90
- legislation resulting from, 194
- private insurance solution, 491–3
- property damage, 494
- road accident schemes, 482–6
- role of insurance industry and legal
  - profession, 494
- schemes other than road accident, 486–7
- social welfare solution, 487–91
- remoteness of damage, causation and, 117, 126
- representative actions
  - burden of proof, 93–4
  - use of, 274–5
- residential accommodation, social services, 366
- responsibility
  - avoidance of, 189–98
  - for human causes, 8–9
- risk
  - allocation of, 413–15
  - damage not within, 124–6
  - foreseeability, 44–5, 66–8, 126–8
  - objective standard of care and, 45–6
  - risk-related insurance premiums, 431–5
  - volenti non fit injuria* (voluntary assumption of risk)
    - agreement not to sue and, 58–60
    - contributory negligence and, 60–1
    - defence of, 50, 58
    - standard of care and 61–2
- road accidents
  - cases reaching trial, 203, 204–5, 215–16
  - contributory negligence and, 53, 55, 60–1, 428–9
  - costs, 390–1, 393–4, 395–6, 439–40, 443, 446–7
  - deterrence, 420–2
  - driving ability and, 175–6
  - duty of care and, 68–9, 77
  - earnings-related principle, 153–4
  - enforcement of judgments, 226
  - fatal injuries, lump sum damages, 133
  - fault principle, 32, 92, 174–5
  - hit-and-run accidents, 32, 254–5
  - intangible losses, 162
  - joint liability, 99–101
  - legal causation, 119–20, 121–3
  - liability insurance, 233–4, 238–9, 245
  - loss of earnings, 373
  - multiple causation, 116
  - negligence in design, 47–9
  - negotiation of claims, 268–9
  - no-fault compensation schemes, 482–6
  - prevention, 40
  - property damage and, 209, 494
  - risk-related insurance premiums, 431–3
  - society's responsibility, 8
  - statistics, 14–15, 187–8, 204–5, 215–16
  - strict liability and, 91–2
  - subrogation rights, 375
  - uninsured drivers, 247–8, 254–8
  - volenti non fit injuria* (voluntary assumption of risk), 58–61
- rules and standards of behaviour
  - avoiding injury to self, 428–9
  - causing injury to others, 420–8
  - generally, 420
- Rylands v. Fletcher* rule, application of, 29–30, 98–9
- satisfaction, as function of compensation
  - system, 417–19
- Scandinavia, subrogation rights, 379
- schools, legal duty of, 250
- self-insurance, 227–8
- services, liability for, 15
- settlements
  - importance of, 259–60
  - structured settlements, 139–40
  - time taken, 279–82
- shock, compensation for nervous shock, 315–16
- sick pay
  - choice of compensation system, 372–3
  - claims for, 209–10
  - first-party insurance, 291–2
  - over-compensation and, 382
  - statutory sick pay, 345–6
  - tort damages and, 382
- social responsibility
  - goals of system, 477–82
  - for human causes, 8–9
- social security
  - 100-per-cent principle, 155–6
  - administration, 351–4
  - Beveridge Report and 1946 Acts, 329–31
  - choice of compensation system, 372–3

- compensation for criminal injuries and, 303
- costs, 398–9
- coverage, 6, 235–6
- dependency culture, 193
- developments since 1946, 332–6
- disability and, 6, 7, 18–19, 332–6
- earnings-related principle, 152, 332–3, 472
- entitlement, 7
- flat-rate principle, 152
- foundations of system
  - National Insurance, 328–9
  - workers' compensation, 326–8, 329–31, 384, 453
- fraud, 357–9
- fraud and abuse, 357–9
- general deterrence, 448–9
- general-deterrence theory and, 448–9
- income support *see* income support (IIS)
- industrial injuries
  - accidents and disease, 339–42
  - administration, 351–4
  - benefits, 342–5
  - bereavement benefits, 349–50
  - Beveridge Report, 329–31
  - coverage of system, 6
  - long-term incapacity, 346
  - scope of system, 337–9
  - short-term incapacity, 346
  - workers' compensation, 326–8, 329–31, 384, 453
- long-term incapacity from industrial injuries, 346
- means testing, 335, 474
- in mixed system, 11, 12–13
- pensions, 292, 332
- recovery of benefits, 155, 204, 375–6, 384–8, 391
- redistribution and, 407
- reform proposals, 459–60, 467–8
- sickness benefits, 6, 209–10, 290–1, 328–9, 332
- subrogation rights, 375, 377, 378–9
- taxation and, 361–2
- tribunals, 351–4, 496
- social services
  - costs, 396–7
  - employment-related, 363–5
  - generally, 363
  - housing and residential accommodation, 366
  - mobility, 365–6
  - other services, 367–8
- society
  - collective liability, 178–9
  - mixed society and mixed systems, 11–13
  - responsibility' for human causes, 8–9
  - social responsibility, 477–82
- solace, compensation as, 408–9
- standard of behaviour *see* rules and standards of behaviour
- standard of care, objective standard, 45–6
- statistics
  - accidents causing personal injury/death, 14–16
  - actions commenced, 203–4
  - cases reaching trial, 201–3
  - death and disability from non-accidental causes, 16–17
  - distribution and sources of compensation, 19–22
  - effects of disability on income, 18–19
  - generally, 13–14
  - home accidents, 211
  - industrial injuries, 15–16, 190–1, 204–5, 216–18
  - lump-sum damages awards, 137
  - medical negligence, 14–16, 23–4, 190–1, 204–5, 219–21
  - prevalence of disability, 17–18
  - road accidents, 14–15, 188, 190–1, 204–5, 215–16
  - seriousness of cases, 22–5
  - tort claims, 190–1
- statutory duty, breach of, 94–7, 124–5
- stress, mental/nervous, 315–16, 339–42
- strict liability
  - assessment of compensation, 473
  - breach of contractual duties, 97–8
  - breach of statutory duty, 94–7
  - causation and, 92
  - fault principle and, 91–3, 103–5, 464–6
  - goals of compensation system, 477
  - joint liability, 99–101
  - nature of liability insurance, 235
  - no-fault compensation as alternative, 464–6
  - product liability, 97–8, 101–3
  - proposals to extend
    - dangerous things and activities, 103–4
    - railway accidents, 104–5
  - Rylands v. Fletcher* rule, 98–9
  - vicarious liability, 101
- structured settlements, use of, 139–40

- subrogation and recoupment
  - administrative costs of, 373
  - effect of insurance, 249
  - entitlement to, 5–6, 373, 374–9
  - offset of social security payments against, 404–5
  - scheme for, 193, 204, 386–8, 397, 400, 448
  - tort claims, 382–3
  - from tortfeasors, 247–8
- substitute, compensation as, 408–9
- Sweden, no-fault road accident scheme, 486–7
- tariff system
  - Criminal Injuries Compensation Scheme, 318–22
- taxation
  - and compensation generally, 361–3
  - earnings-related principle and, 152
  - intangible losses, 165–8
  - social security system and, 448–9
  - State compensation schemes and, 11
- tort
  - conceptual basis, 29–30
  - costs, 390–6, 400–1
  - general deterrence and, 445–8
  - negligence and, 445–6
  - over-compensation *see* overcompensation
  - tort liability and first-party insurance compared, 294–8
- transfer of costs, negotiation and, 440–1
- tribunals, social security, 351–4, 496
- United States
  - accident prevention in, 429–30
  - ‘Brandeis brief’, 38–9
  - claims consciousness, 210, 212
  - class actions, 275
  - corporate defendants, 230
  - defensive medicine, 425
  - general deterrence, 454–5
  - ‘insurance crisis’, 194, 242
  - intangible losses, 167
  - no-fault compensation, 184–5, 482–3
  - product liability, 454–5
  - public opinion on compensation, 403–4
  - punitive damages, 172–3, 415
  - tort reform, 194, 227, 243
- universal credit (UC), operation of, 350–1
- vaccine damage, *ex gratia* compensation, 105–7
- valuation of loss, 127–8
- variant CJD, *ex gratia* compensation, 108
- variation of awards, lump sum damages, 134–6
- vicarious liability
  - animals, 15–16, 92
  - contractors, 229, 248
  - corporations, 92, 94–5, 101, 222, 227–32
  - fault principle and, 101
- vindication, as function of compensation, 417–19
- violent crime
  - compensation for, 309–13, 404–5
  - domestic violence, exclusion from CICS, 314–15
- volenti non fit injuria* (voluntary assumption of risk)
  - agreement not to sue and 58–60
  - contributory negligence and 60–1
  - defence of, 50, 58
  - standard of care and, 61–2
- welfare system *see* social security; social services
- widows *see* bereavement
- workers’ compensation
  - 100-per-cent principle, 155
  - allocation of risks, 414
  - Beveridge Report and 1946 Acts, 329–31, 398–9
  - choice of tort damages or social security benefits, 384–8
  - contributory negligence, 56
  - cost reduction, 24–5
  - criminal injuries, 449
  - crisis in system, 459
  - as foundation of social security system, 326–8
  - general deterrence, 453
  - no-fault compensation, 97
  - provision of schemes, 356
  - recoupment, 376
  - retention of system, 337–8