Negligence, breach of duty, and circumstantial pressure

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When judges determine breach of duty questions in negligence, they are under an obligation to take account of relevant circumstances. While this is a settled feature of negligence law, there are reasons for thinking that it merits close analysis. Relevant case law reveals judges to be receptive to arguments against the imposition of liability that have to do with the pursuit of outcomes that promise benefits to most, but not all, members of society. This feature of negligence law constitutes a standing threat to the pursuit of corrective justice. More generally, it emerges from examination of relevant cases that judges are responsive, when determining breach of duty questions, to circumstantial pressures that shape their understanding of the contexts in which they render their decisions.

A duty to warn relatives in clinical genetics: arguably ‘fair, just and reasonable’ in English law?

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The use of ‘next-generation’ genetic sequencing technology that allows the sequencing of large parts, or even the entirety, of a patient’s genome is advancing rapidly in the UK and around the world. This is set to greatly increase the level of health information that will be of relevance to relatives and the latest medical guidance advises that there is a professional duty to consider warning a patient’s relatives of a serious genetic risk in limited circumstances. However, the High Court in ABC v St George’s Healthcare NHS Trust [2015] EWHC 1394 (QB) recently found that a legal duty on the part of doctors to warn a patient’s daughter of a genetic risk of Huntington’s disease without the patient’s consent, was not even ‘reasonably arguable’ and would not be ‘fair, just and reasonable’. This article considers the courts’ approach to a duty of care towards ‘third parties’ in this context and concludes that some form of a duty of care to genetic relatives in clinical genetics is at very least arguably ‘fair, just and reasonable’.

A tour of the tort of negligence

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Dunnage v Randall is a recent and significant decision of the Court of Appeal. It raises numerous fundamental questions regarding the tort of negligence, including in relation to the objective standard of care, the concept of involuntariness and scope for an insanity defence. The decision also presents difficult issues regarding the relationship between tort law and the criminal law. This article engages critically with the Court’s reasons. It also seeks to understand the principles enunciated by the Court and to tease out their wider implications.