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URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21 (21 May 2025): Structural Negligence, Legal Foundations, and the Collapse of Voluntariness

URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21

Date: 21 May 2025

Judges: Lord Hamblen and Lord Burrows (with whom Lord Lloyd-Jones, Lord Briggs, Lord Sales and Lord Richards agreed) [1-164], Lord Leggatt concurring [165-305].

Key Words:

Negligence, Pure Economic Loss, Scope of Duty, Remoteness, Voluntariness Principle, Building Safety Act 2022 (BSA), Defective Premises Act 1972 (DPA), Limitation Period, Contribution Claim, Structural Design Defects, Assumption of Responsibility, Reputational Damage, Grenfell Tower, Remedial Works, Latent Damage, Discoverability, Accrual of Cause of Action

Summary

The Supreme Court in URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21 addressed four key preliminary issues arising from BDW Trading Ltd's (BDW) claims against URS Corporation Ltd (URS), its structural design consultant, following serious defects in residential developments [4, 8].

BDW, the developer, incurred costs remedying the defects and sought recovery in tort (negligence), under the Defective Premises Act 1972 (DPA), and via a contribution claim under the Civil Liability (Contribution) Act 1978 [9, 13]. The appeal raised four legal issues:

1. Whether BDW's repair costs were irrecoverable as "voluntarily incurred" losses;
2. Whether section 135 of the Building Safety Act 2022 (BSA) retrospectively extended the limitation for DPA claims and affected related negligence and contribution claims;
3. Whether a developer is owed a duty under DPA section 1(1)(a); and
4. Whether the contribution requires a prior judgment or settlement [17].

The Supreme Court dismissed URS's appeal on all grounds [163].

Case Law/ Authorities:

Primary UK Authorities

1. Pure Economic Loss

Cases exploring when economic loss (not involving physical damage) is recoverable in tort:

1. ***Cattle v Stockton Waterworks Co*** (1875) LR 10 QB 453 – *Denied recovery for pure economic loss from public utilities [27]*
2. ***Spartan Steel & Alloys Ltd v Martin & Co (Contractors) Ltd*** [1973] QB 27 – *Permitted recovery for consequential loss but not pure economic loss [27]*
3. ***Anns v Merton London Borough Council*** [1978] AC 728 *(overruled)* – *Previously allowed recovery for pure economic loss; overruled by Murphy [27, 51, 52, 74]*
4. ***Murphy v Brentwood District Council*** [1991] 1 AC 398 – *Established that pure economic loss from defective buildings is not generally recoverable in negligence [27, 52, 53, 74, 198]*

2. Assumption of Responsibility (Negligent Misstatement / Concurrent Liability)

Cases focusing on economic loss where the defendant assumed responsibility:

1. ***Hedley Byrne & Co Ltd v Heller & Partners Ltd*** [1964] AC 465 – *Established assumption of responsibility for economic loss [27]*
2. ***Henderson v Merrett Syndicates Ltd*** [1995] 2 AC 145 – *Confirmed concurrent liability in tort and contract based on assumption of responsibility [27]*
3. ***Wellesley Partners LLP v Withers LLP*** [2015] EWCA Civ 1146*;* [2016] Ch 529– *Applied contractual remoteness test to tort claims based on assumed responsibility [33]*

3. Scope of Duty & Remoteness (SAAMCO Line)

Cases examining the scope of duty (especially in professional negligence) and limiting liability to what was within the duty assumed:

1. ***South Australia Asset Management Corp v York Montague Ltd (SAAMCO)*** [1997] AC 191 – *Established the 'scope of duty' or 'SAAMCO' principle [32]*
2. ***Manchester Building Society v Grant Thornton UK LLP*** [2021] UKSC 20; [2022] AC 783 – *Clarified the SAAMCO principle and scope of duty analysis [32]*
3. ***Meadows v Khan*** [2021] UKSC 21; [2022] AC 852 – *Clarified scope of duty and remoteness in clinical negligence; broader application of SAAMCO [32]*

4. Remoteness of Damage (Contract Law Focus)

Cases distinguishing between contractual and tortious remoteness of loss:

1. ***Victoria Laundry (Windsor) Ltd v Newman Industries Ltd*** [1949] 2 KB 528 – *Illustrated remoteness in contract law [33]*
2. ***Koufos v C Czarnikow Ltd*** *(The Heron II)* [1969] 1 AC 350 – *Further illustrated contractual remoteness of damage [33]*
3. ***Brown v KMR Services Ltd*** [1995] 4 All ER 598 – *Supported contract-based remoteness principles (stricter than tort) [33]*

5. Voluntary Payments (No Recovery)

Cases exploring when voluntary payments or repairs block recovery in tort or contract:

1. ***Admiralty Comrs v SS Amerika*** [1917] AC 38 – *Denied recovery for voluntary payments not legally required [38, 53, 56, 183]*
2. ***The Esso Bernicia*** [1989] AC 643 – *Denied recovery for voluntary payments; used to explore the voluntariness principle [42-44, 47]*
3. ***Hambro Life Assurance plc v White Young & Partners*** (1987) 38 BLR 16 – *Denied claim where repairs were done voluntarily by the building owner [50, 53]*
4. ***Anglian Water Services Ltd v Crawshaw Robbins & Co Ltd*** [2001] BLR 173 – *Held voluntary payments to third parties were not recoverable [46-48, 54, 184]*

6. Accrual of Cause of Action (Economic Loss & Discoverability)

Cases dealing with when a claim for economic loss arises, especially in professional negligence:

1. ***Pirelli General Cable Works Ltd v Oscar Faber & Partners*** [1983] 2 AC 1 – *Established when a cause of action in tort for latent defects accrues; challenged in this case due to its reliance on outdated premises [22, 70, 77]*
2. ***Forster v Outred & Co*** [1982] 1 WLR 86 – *Accrual of pure economic loss claims before discoverability [75]*
3. ***Law Society v Sephton & Co*** [2006] UKHL 22; [2006] 2 AC 543 – *Supported accrual before loss is discovered [75]*
4. ***Axa Insurance Ltd v Akther & Darby*** [2009] EWCA Civ 1166; [2010] 1 WLR 1662 – *Confirmed early accrual for economic loss claims [75]*
5. ***Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)*** [1997] 1 WLR 1627 – *Addressed accrual dates in relation to financial loss [75]*

Legislation

- *Building Safety Act 2022 (BSA) — esp. s135 (Limitation Periods)*
- *Latent Damage Act 1986*
- *Limitation Act 1980*
- *Civil Liability (Contribution) Act 1978*
- *Defective Premises Act 1972 (DPA)*

International & Academic References

1. Pure Economic Loss & Accrual upon Discovery

Cases and commentary exploring whether economic loss (particularly latent defects) accrues upon occurrence or discovery:

1. ***Mallonland Pty Ltd v Advanta Seeds Pty Ltd*** *[2024] HCA 25 – Permitted recovery for consequential loss but not pure economic loss [27]*
2. ***Kamloops v Nielsen*** *[1984] 2 SCR 2 (Canada) – Advocated discoverability for pure economic loss; influential internationally [76]*
3. ***Sutherland Shire Council v Heyman*** *(1985) 157 CLR 424 (Australia) – Supported discoverability for economic loss [76]*
4. ***Invercargill City Council v Hamlin*** *[1996] AC 624 (New Zealand) – Supported delayed*

accrual for latent defects [76]

5. ***Bank of East Asia Ltd v Tsien Wui Marble Factory Ltd*** *[2000] 1 HKLRD 268 (Hong Kong) – Further authority for discoverability in pure economic loss claims [76]*

2. Voluntary Payments & Causation

Cases and texts dealing with whether voluntary conduct (like payments or rescue) breaks the chain of causation:

1. ***General Feeds Inc Panama v Slobodna Plovidba Yugoslavia (The Krapan J)*** *[1999] 1 Lloyd's Rep 688 – Confirmed voluntary payments may break causation [56]*
2. ***Haynes v Harwood*** *[1935] 1 KB 146 – Rescue cases do not break causation; rescuer may recover [56]*
3. ***Clerk & Lindsell on Torts,*** *24th ed (2023) para. 26.11 – Commentary on causation and voluntary intervention [56]*
4. ***Tettenborn & Wilby, The Law of Damages,*** *2nd ed (2010) para. 3.50, 7.52 – Analysis of voluntary acts and causation [56]*

3. Mitigation of Loss & Reasonableness of Remedial Steps

Cases addressing the recoverability of costs incurred to mitigate loss or protect reputation:

1. ***Holden Ltd v Bostock & Co Ltd*** *(1902) 18 TLR 317 – Supported recovery of reasonable mitigation costs [57]*
2. ***Banco de Portugal v Waterlow & Sons Ltd*** *[1932] AC 452 – Supported recovery of costs incurred to protect reputation as a reasonable remedial step [57, 185, 186, 188, 191]*

4. Limitation & Legal Rights

A case discussing the effect of limitation periods on rights and remedies:

1. ***Royal Norwegian Government v Constant & Constant and Calcutta Marine Engineering Co Ltd*** *[1960] 2 Lloyd's Rep 431, 442 – Limitation bars the remedy but not the underlying right [64]*

5. Unjust Enrichment & Restitution

Leading textbook authorities on the law of restitution and unjust enrichment:

1. ***Goff and Jones, The Law of Unjust Enrichment,*** *10th ed (2022), Ch.18 – Authoritative academic analysis on restitution [35]*
2. ***Graham Virgo, The Principles of the Law of Restitution,*** *4th ed (2024), Ch.12 – Key textbook on unjust enrichment [35]*

Background

The case arises in the aftermath of the Grenfell Tower fire in 2017, which exposed widespread safety failures, including unsafe cladding [1, 81]. In response, Dame Judith Hackitt recommended clearer accountability in construction [80], prompting the Building Safety Act 2022 [86–87]. Section 135 of the BSA retroactively extended the limitation period for claims under DPA section 1 to 30 years for dwellings completed before the Act came into force [13, 14, 86(1)–(2)].

The DPA, enacted in 1972 on Law Commission recommendation, imposes a duty on those involved in the provision of dwellings to ensure the work is properly done and the building is fit for habitation [126–131].

BDW, developer of two residential buildings designed by URS, identified structural defects in 2019 and undertook remedial works from 2020 [7]. Before BSA s.135, any DPA claims by homeowners against BDW would have been time-barred. After its enactment, BDW amended its claim against URS to rely on the extended limitation for DPA and new claims under the Contribution Act [13–14, 25–26].

Fraser J found BDW's negligence claim arguable (save for reputational loss) [12, 168]. Adrian Williamson KC later permitted the amendment to include DPA and contribution claims, based on the retrospective effect of BSA s.135 [13–14, 25–26, 169], and the Court of Appeal upheld that decision [15, 169]. URS appealed to the Supreme Court [16, 30].

Key Themes:

1. ***Building Safety and Accountability***

   The decision is set against the Grenfell tragedy and the BSA's legislative reforms, which seek to enforce accountability for historical building defects [1–3, 81–82, 104].

2. ***Retrospective Legislation***

   The case turns on the interpretation of BSA s.135 and its effect on DPA limitation periods, and whether it applies to associated negligence and contribution claims [13–14, 16, 23–24, 51, 166–167, 214–215, 276–281, 299].

3. ***Voluntary Loss, Scope of Duty, and Remoteness***

   The court examined whether BDW's remedial costs, incurred without a legal obligation post-sale, were too remote or outside URS's duty of care [15–16, 20–21, 29–33, 52–53, 60–61, 67–98, 170–172]. This included analysis of the so-called "voluntariness principle" [16–17, 30, 59–61, 76, 96–97, 125, 163, 171–172].

4. ***Statutory Duty under the DPA***

   The judgment clarified that a developer who commissions a dwelling and is its first owner may be owed a duty under DPA s.1(1)(a) by design professionals [9, 13–14, 16–17, 24–25, 29, 63–64, 94–103, 107–113, 126–161, 163, 170, 173, 193–208].

5. ***Contribution Between Wrongdoers***

   The court addressed whether a party can bring a contribution claim without a prior judgment, settlement, or third-party claim and what counts as "payment" under the Civil Liability (Contribution) Act 1978 [16–17, 25–26, 53–54, 99, 161–163, 170, 209–266].

Legal Issues and Analysis

The Supreme Court considered four main grounds of appeal [16]:

Ground 1: Voluntarily Incurred Loss, Scope of Duty, Remoteness

URS argued BDW's remedial costs were irrecoverable, having been voluntarily incurred after BDW ceased to own the buildings and had no legal obligation to repair them [30, 60, 171–172]. URS contended these losses fell outside its scope of duty or were too remote [30, 60].

BDW's claim, rooted in URS's assumption of responsibility under contract [27], was for pure economic loss—specifically, repair costs the duty was meant to prevent [31–32, 69].

URS relied on four cases—SS Amerika, Esso Petroleum, Anglian Water, and Hambro Life Assurance—to argue a legal bar against recovering voluntary repair costs [76]. The Court rejected this. Those cases either involved no duty of care (SS Amerika, Esso, Hambro) [53], or treated voluntariness as fact-specific, not a legal bar (Anglian Water) [54, 119].

The Court clarified that voluntariness is relevant to legal causation or mitigation, not scope of duty [56, 60, 180]. Recoverability turns on whether the claimant acted reasonably [60]. Prior authorities (e.g. Holden, Banco de Portugal) show that even voluntary payments may be recoverable if they mitigate loss or protect reputation [57–59, 185].

Whether BDW's conduct was reasonable is a factual issue Fraser J rightly left for trial [60–61, 299]. The assumed facts suggest BDW may not have acted "truly voluntarily" [62]. There is no general rule excluding recovery of repair costs simply because they were voluntarily incurred [67–68, 152–153]. Dismissing the appeal, the Court reinforced that incentivising remedial action aligns with legal policy [69, 152–153, 162–163].

Ground 2: Retrospective Effect of BSA Section 135

URS challenged the retrospective reach of BSA s.135, which extends the limitation period for DPA claims to 30 years [16, 23–24, 214–215]. Section 135(3) states the new rule is "to be treated as always having been in force" [94, 275–276].

URS argued this applied only to direct DPA claims, not to connected negligence or contribution actions [93, 98, 275–276]. BDW contended that DPA-based liabilities, even if previously time-barred, are deemed timely, impacting related claims [94].

The Court found no textual basis for limiting s.135 to DPA-only claims [102–103]. Doing so would undermine the BSA's aim of holding those responsible for building defects accountable [104, 107, 230–231, 238, 241, 280].

URS conceded at oral hearing that s.135 also applies to contribution claims [111–112, 280]. The Court agreed, holding that negligence or contribution claims relying on DPA liability are not "collateral" but directly connected to defective buildings [118].

URS also argued that BDW's case relied on rewriting history by treating previously time-barred claims as enforceable at the time repairs were made [119, 277]. The Court rejected this. Section 135 alters the legal consequences of past facts without changing those facts themselves [120–121, 263, 299]. The reasonableness of BDW's repairs must still be judged based on the facts and legal context as they stood at the time [120–121, 265, 299].

The Court held that s.135 applies to any claim—negligence, contribution or otherwise—where limitation under the DPA was previously a bar [125, 163]. However, it does not affect causation or mitigation [125, 163, 299]. The appeal on Ground 2 failed.

Ground 3: Duty Owed to Developer under DPA Section 1(1)(a)

URS claimed that no duty under s.1(1)(a) of the DPA was owed to a developer [16]. The statutory duty applies to "any person ordering the dwelling" [138–139], and BDW argued it met this definition.

The Court examined the legislative history and found that the DPA was designed to protect both purchasers and those commissioning the dwelling, such as first owners [143–145, 148–149].

It saw no basis for excluding developers who both order and initially own the property [143–144, 159]. Construction law texts support this interpretation [150–151(i), 151(iii)].

URS argued it would be anomalous for a person to owe and receive the same duty. The Court disagreed: the statutory language and purpose of ensuring dwelling safety favoured a broad construction [152–153]. Allowing developers to enforce the duty supports the statute's aims [152–153].

URS further argued that recoverable loss must relate to ownership, not post-sale repairs. The Court found this inconsistent with the statutory wording: s.1(1)(a) imposes a duty even on those who never acquire a proprietary interest [160–161].

The Court confirmed that a developer commissioning the work and being the first owner is owed a duty under s.1(1)(a). Appeal on Ground 3 failed [159, 162–163].

Ground 4: Contribution Claim Without Judgment or Settlement

URS contended that BDW could not seek contribution under the Contribution Act without a prior judgment, settlement, or third-party claim [16, 25–26, 54, 162–163, 170(i)–(ii), 211].

Section 1(1) of the Act allows recovery where two parties are liable for the same damage [213, 218]. BDW argued that actual recovery or litigation isn't required—just shared liability [211, 218]. The Court of Appeal agreed [221], but the Supreme Court added that s.1(2) is also critical: it ties the right to contribution to having made, agreed, or been ordered to make a payment [213, 261].

"Payment" includes payment in kind, such as remedial works, if they can be monetised [226]. BDW's repairs satisfied this requirement [226, 266].

Section 10 of the Limitation Act 1980 links accrual of the contribution right to a judgment, award, or agreed payment [228, 230–231], reinforcing that the right arises post-payment.

URS relied on older law under the 1935 Act, which had suggested contribution rights arose only after judgment or settlement [241–242]. The Court reviewed the legislative background and rejected this as inconsistent with the 1978 Act's scheme [244–248, 250–252, 258–259].

The Court concluded that contribution can be claimed after a payment (including in kind), even if no claim was asserted or settled [263]. BDW's repair works were sufficient. Requiring prior judgment would unfairly prevent contribution where one party reduces a shared liability but no third-party claim is brought [265]. The appeal on Ground 4 failed [163, 266].

Conclusion

The Supreme Court dismissed URS's appeal on all four grounds [162-165].

1. **Negligence**: There is no rule barring recovery of voluntarily incurred repair costs. Whether such costs are too remote or outside the scope of duty depends on causation and mitigation, to

be determined at trial [77, 163, 192].

2. **Retrospective Limitation**: Section 135 of the BSA applies not only to DPA claims but also to related negligence and contribution claims relying on DPA liability. While it removes time bars, it does not alter historical facts relevant to mitigation or causation [125, 163, 304].
3. **Duty to Developer**: A developer who commissions and initially owns a dwelling is owed a duty under DPA s.1(1)(a). BDW's post-sale repair losses fall within this duty [161, 163, 207–208].
4. **Contribution Without Judgment**: A party who makes a payment in kind (e.g. repairs) can claim contribution without prior judgment, settlement, or formal claim. The payment suffices if liability is established in the contribution proceedings [163, 266].

Key Takeaway:

The judgment significantly clarifies several points in construction and negligence law, particularly in the context of building safety legislation:

- ***Voluntarily incurred costs** are not irrecoverable by default. Recoverability depends on reasonableness and factual context [67–68, 152–153, 298–299].*
- ***Section 135 of the BSA** extends limitation for historic DPA claims and related tortious and contribution claims, ensuring accountability for defective construction [107, 125, 163, 230–231, 273].*
- ***Developers are within the protective scope** of DPA s.1(1)(a), even when the duty is owed by and to the same entity [143–144, 159, 163].*
- ***Contribution does not require litigation** by or against the claimant. Payment (including remedial work) triggers the right to recover from another party liable for the same damage [163, 266].*
- *The Court acknowledged but did not overrule Pirelli. It noted strong arguments in favour of a discoverability-based test for accrual of economic loss claims, while recognising the Latent Damage Act 1986 limits the practical relevance of Pirelli [71–74, 76, 163, 166–167].*

Parting Thoughts

If URS thought it could deliver defective buildings, walk away, and let developers shoulder the repairs in silence, the Supreme Court has disabused it of that belief—decisively, and with six Lords and one Lord Justice in complete agreement.

The so-called "voluntariness principle" was dismantled with forensic precision. The Court held that reasonable repair costs, even if undertaken without a legal compulsion, can still be recoverable. BDW's actions were not charitable impulses—they were foreseeable, rational responses to structural design failure.

Section 135 of the BSA was given teeth. The Court rejected attempts to hollow out its effect: it applies not just to direct DPA claims, but to all claims dependent on underlying DPA liability. This is not rewriting history; it is legislative clarity with practical effect.

Developers—often blamed, rarely protected—now have confirmation that they are within the DPA's reach as "persons ordering the dwelling." No more ambiguity: where the first owner commissions the build, the statutory duty applies.

And contribution? The tired argument that one must wait for judgment, settlement, or a formal claim was put to rest. A party who makes good the damage—even by picking up a hammer rather than a cheque—can seek reimbursement from co-liable parties.

In URS v BDW, the Court cleared away legal fog. Voluntariness is not immunity. Contribution is not contingent on courtroom ritual. Building safety, accountability, and the developer's right to redress now rest on firmer foundations. Structural engineers, take note.

#BuildingSafetyAct #DefectivePremisesAct #LimitationPeriods #TortOfNegligence #ContributionClaims #Retrospectivity #BuildingSafety #GrenfellTower #UKSupremeCourt #Voluntariness #LegalRemedies #DDAlegal #LegalUpdate #ConstructionLaw #LegalJudgment

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