consequences” schools of thought will approve the actual decision in the case under consideration. Yet the essential issue in the case is easily misconceived, and it may be questioned whether it was rightly identified by Hiemstra J. At p. 117 he said: “When applying this series of criteria [of the Restatement] the problem posed here becomes simple. The answer is that the stroke was due to a superseding cause, namely the eating of the cheese, for which the actor was not responsible.” Was it right to focus attention upon the eating of the cheese? There is nothing in the judgment to suggest that the eating of cheese by the plaintiff, while he was under treatment with parstellin, was an “unlikely” or “extraordinary” or “unforeseeable” event. Men do eat cheese from time to time, and it does not impress one as an extraordinary coincidence that the plaintiff should have eaten some while taking the parstellin. The unforeseeable or unknown element in the case was the harmful propensity of parstellin when combined with certain foodstuffs not uncommonly eaten. The real issue in the case was, it is suggested, the liability of the defendant for harm resulting from treatment with a drug which was believed to be, but was not, harmless. (It was not harmless, because it was capable of causing harm to a person whose diet was in no respect abnormal.) Clearly, this was not how Hiemstra J. conceived the issue: “The eating of the cheese operated independently. The giving of the medicine was a normal response, and if that had had ill effects, the actor would have been liable” (p. 116, my italics). This is to regard the drug as harmless, and the eating of cheese as abnormal. If, on the other hand, eating cheese is not regarded as so abnormal as to constitute a novus actus interveniens, should the defendant not have been liable in respect of the stroke? The administration to the plaintiff of an approved drug having (unknown) dangerous properties was a risk of the kind that is incidental to medical treatment, and to which he had been exposed as a direct result of the negligence of the insured.

C. C. Turpin.

COVENANTS AFFECTING LAND

Students of the Turf will no doubt be delighted by the decision of Stamp J. in Sefton v. Tophams Ltd. [1964] 1 W.L.R. 1408, as it may save Aintree racecourse, the venue of the Grand National Steeplechase, from the hands of the “developer.” Students of that less exciting subject, the law of real property, will find the case of interest, as the case contains a good deal of material on the subject of restrictive covenants.
Earl Sefton and his forefathers owned, until 1949, the freehold title to Aintree racecourse. In 1839 the land was first demised to a member of the Topham family. From 1839 until 1949, the land was held by the Topham family, and in the later stages by Tophams Ltd., a family company, under a succession of leases.

In 1949 the plaintiff conveyed the freehold reversion to Tophams Ltd., who covenanted, during the lifetime of the plaintiff, "not to cause or permit the land to be used otherwise than for the purposes of horse-racing [and certain other purposes]." It was common ground that the development of the racecourse for the purposes of housing was not one of those purposes. The covenant went on to say that "Tophams Ltd. shall not remain liable for a breach of this covenant after they shall have parted with all interest in the land."

In 1963, as Tophams Ltd. were finding it difficult to make the racecourse pay, Mrs. Topham, the "dominating and guiding spirit in all that concerned Topham's affairs" decided to sell the land for development. On June 2, 1964, Tophams Ltd. agreed to sell the land to Capital and Counties Ltd. for development as a housing estate, for the sum of £900,000.

The plaintiff now commenced this action, claiming two injunctions:

(i) against Tophams Ltd., to restrain them from causing or permitting the land to be used otherwise than for horse-racing, in breach of the covenant;

(ii) against Tophams Ltd. and Capital and Counties Ltd., to restrain them from carrying the contract of June 2, 1964, into effect.

Now, at the date of the contract, the plaintiff retained no land in the vicinity. Accordingly, although the covenant was duly registered as a land charge of class D (ii) under the Land Charges Act, 1925, the plaintiff could not enforce the covenant in equity against Capital and Counties Ltd. (see L.C.C. v. Allen [1914] 8 K.B. 642, and Megarry and Wade, The Law of Real Property, 2nd ed., p. 729).

This, of course, could not affect the liability of Tophams Ltd. for a breach of the covenant, since there was privity of contract between them and Earl Sefton.

Both injunctions were granted:

(i) against Tophams Ltd., to restrain them from "causing or permitting" the racecourse to be used for purposes other than horse-racing. Tophams Ltd. had argued that they had a right to sell the land, and that, after a sale, they would, according to its
terms, cease to be liable under the covenant. This argument was rejected on the ground that Tophams Ltd. would, by the sale, be permitting the land to be used for purposes other than horse-racing;

(ii) against Tophams Ltd. to forbid them from carrying out their contract with Capital and Counties Ltd., on the ground that if they did so they would be "causing or permitting" the land to be used for a forbidden purpose. Furthermore, his Lordship granted an injunction against Capital and Counties Ltd., on the ground that by entering into the agreement they had been guilty of the tort of inducing a breach of contract. It was acknowledged that Capital and Counties Ltd. were aware of the covenant, and Stamp J. held that the promise to pay £900,000 for the land was the "inducement."

The effect was that Earl Sefton, by invoking the law of tort, was able to enforce a covenant against a purchaser from the covenantor when he could not do so directly, according to the normal equitable rules about restrictive covenants. One may naturally feel qualms about such a development, as it may have made a substantial change in the rules about the running of the burden of such covenants.

The decision need not be confined to facts like these, where the original covenantor has covenanted not to "cause or permit" some activity on the land. Suppose, for instance, A sells Blackacre to B, and takes a covenant from B (for the benefit of A's adjoining land), that B will not build on Blackacre; A sells his adjoining land, and then B sells Blackacre to C, who begins to build. Here there is still a breach of covenant by B, as his liability is purely contractual. Accordingly, C could be held liable for inducing a breach of the covenant by B, if he bought the land knowing of the covenant. B is liable, notwithstanding the sale, since he is deemed, by section 79 (1) of the Law of Property Act (infra) in the absence of a contrary intention, to covenant on behalf of his successors in title. This, in effect, creates a covenant "in gross," as it is not dependent on a relation of "dominancy" and "serviency" of the tenements.

One or two further points may be noticed:

(i) Stamp J. quoted section 79 (1) of the Law of Property Act, 1925, which provides, so far as material:

"A covenant relating to any land of a covenantor . . . shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself and his successors in title, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed." He concluded that there was no
contrary intention expressed in this case, and that the covenant was intended to be binding on Tophams Ltd., after they had sold the land, even though, in accordance with the terms of the covenant itself, they were not to be liable for any breaches of it. In any event, he held that if Tophams Ltd. did convey the land to Capital and Counties Ltd., they would be causing or permitting a breach of the covenant.

(ii) It is stated in Winfield on Tort (7th ed., p. 683) that, in order to succeed in an action for inducing breach of contract "the plaintiff must prove not only the inducement but also that he has been damaged by the breach of contract" (Goldsoll v. Goldman [1914] Ch. 603). It is a little difficult to see what damage Earl Sefton would suffer in this case, since he had parted with all his land in the area.

(iii) It is also apparently the first time that the tort of "inducing a breach of contract" has been prayed in aid in such a situation. As has been pointed out above, the effects may be considerable.

An appeal is pending.

PAUL B. FAIREST.

AGREEMENT FOR LEASE—LEASE TO CONTAIN SUCH OTHER COVENANTS AND CONDITIONS AS SHALL BE REASONABLY REQUIRED BY THE LANDLORDS—SPECIFIC PERFORMANCE

It may sometimes happen that the parties to negotiations for a lease may wish to enter into a binding agreement for a lease after the main points of the lease have been agreed but before the details have been finally settled. One way of achieving this result, according to the decision of the Court of Appeal in Sweet & Maxwell Ltd. v. Universal News Services Ltd. [1964] 2 Q.B. 699, is to enter into an agreement in writing which sets out the main points and goes on to provide that the lease shall contain "such other covenants and conditions as shall be reasonably required" by the landlords. Questions may still arise, of course, with regard to the reasonableness or otherwise of the landlords' subsequent requirements. There will, however, be a binding contract: and there will be nothing on the face of the contract to preclude an order for specific performance.

The agreement for a lease in the present case formed clause 6 of a much wider agreement between the parties. By clause 6 (a) the landlords agreed to grant and the tenants agreed to take a lease of the fifth floor of a building, of which the landlords were themselves tenants, for a term of five years from March 25, 1962, at a