

NEGLIGENCE
AND THE
DUTY OF CARE

NEGLIGENCE

Doing what a reasonable person would not do

OR

Not doing what a reasonable person would do.

The most important tort is that of negligence and the most important element of that tort is the duty of care.

A person is liable for every negligent act they commit. The control element for legal liability is the requirement for the defendant to owe the plaintiff a duty of care. Usually that negligent conduct falls short of a standard.

Thus it would be not feasible for every loss caused by the negligence of another to give rise to an action in tort, there must be some way of deciding when one party has a duty of care in respect of another.

Donoghue v Stevenson [1932] AC 562

The Plaintiff went to a café with a friend, who bought her a bottle of ginger beer. After drinking most of it, she found a decomposed snail in the bottle and became ill. The Plaintiff had no contract with the café, so she sued the manufacturers in delict (the Scottish equivalent of tort).

Held - The House of Lords said the manufacturers had a duty of care to the consumer of their product, even if they don't know the product is dangerous and there was no contractual relationship between the parties.

But what is the test that is imposed in situations where there has not previously been found to have been a duty of care?

According to Lord Atkin in **Donoghue v Stevenson**:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

The liability extended, using this test, fairly rapidly in the immediate aftermath of **Donoghue**.

Brown v Cotterill [1934] 51 T.L.R. 21

Liability was extended to a stonemason who owed a duty of care in respect of a tombstone which he erected that subsequently fell over and killed a person visiting the grave.

Watson v Buckley, Osbourne, Garrett & Co.[1940] 1 All E.R. 174

A distributor was held to be liable to the plaintiff who contracted dermatitis after a hairdresser had treated him with a hair dye supplied originally by a Spanish company, which had gone into liquidation.

Held – The distributor had been negligent in failing to test the product or ascertain the circumstances of manufacture, and advertising it as a safe hair dye, when in fact it contained acid.

Stennett v Hancock & Peters [1939] 2 All E.R. 578

A flange came off a lorry and the owner took it for repair to Peters, a few hours afterwards when it was being driven, the flange came off again injuring the plaintiff.

The judge stated he must have known if he didn't perform the job properly it could injure someone.

Held – A duty of care was owed to the plaintiff.

The only problem is that it is far too easy to extend the group of people indefinitely and so end with the one result not wanted, that is endless litigation.

Home Office v Dorset Yacht Co. [1970] AC 1004

The appellants were responsible for the operation and running of a borstal. Several inmates escaped whilst on a training exercise, whilst under the supervision of three borstal officers and damaged the respondents yacht moored nearby.

The question for the court, did the appellant owe any duty of care to the yacht owners?

Held – Yes, the appellants should have foreseen that if they failed to exercise reasonable care in their control and supervision, damage was likely to be caused.

However, in most situations, a failure to act will not be enough to give rise to liability.

Smith v Littlewoods Organisation Ltd [1987] AC 241

The defendant bought a cinema intending to demolish it and build a supermarket. While it was standing empty, vandals broke into the cinema and started a fire which spread to adjacent property. The owners of the adjacent property sued for the defendant's negligence,

Held - The House of Lords said there was no liability. The defendant had a general duty to ensure the condition of their property was not a source of danger to other property: whether that included a duty to prevent fire by vandalism depended on whether a reasonable owner would have foreseen that as a probable risk and on the facts that was not so, as they had boarded up the property. There was no duty to patrol all the time to keep out vandals.

Especially if the potential for liability is extremely wide:

Hill v Chief Constable of West Yorkshire [1989] AC 53

This was a claim brought by estate of Jacqueline Hill against the Chief Constable for damages, as she was the last of the "Yorkshire Ripper's" victims. It was claimed that the police should have done more to apprehend the Ripper and so avoid the unnecessary death.

The defendant sought to have the claim struck out as it did not disclose a cause of action.

Held: it was properly struck out by the trial judge.

Foreseeing any likely harm was not enough some further ingredient was needed to establish proximity of relationship between the plaintiff and defendant. Sutcliff (the Ripper) was never in the custody of the police and Hill was one of a vast number of female members of the public at risk but at no special, distinctive risk in relation to them.

It might be that the chances of being killed in a road accident or a street accident are greater than those of being murdered by a psychopath but there are good policy grounds for this type of decision.

The next question should be for whom am I liable if they should be injured through my negligence?

Bolton v Stone [1951] AC 850

Miss Stone, standing on the pavement outside her house, was struck by a cricket ball hit from an adjacent cricket ground. The ball must have travelled about 100 yards, clearing a 17-foot fence, and such a thing had happened only about six times in thirty years.

Held – Miss Stone's claim for damages was rejected by the House of Lords: the Club had taken reasonable precautions given the unlikelihood of the risk, and thus were not in breach of their duty of care. Such a small risk would not be anticipated by an ordinary man.

So that the person who performs an act is not insuring that some person will not be harmed he is merely exercising reasonable care.

Haley v London Electricity Board [1965] AC 778

Workmen from the Electricity Board were preparing to carry out work on underground cables; they dug a hole, and in order to give warning of the danger (*before the permanent barriers arrived*) they laid a long-handled hammer across the pavement. The Plaintiff, a blind man, walked along the pavement on his way to work; he tripped over the hammer and was injured.

Held - The House of Lords said the defendants were negligent; they had given adequate warning to sighted people, but it was common knowledge that large numbers of blind people walked unaided along pavements and the duty of care extended to them as well.

But what you are doing must, in certain instances, be compared with what would happen if you did nothing, the utility test.

Watt v Hertfordshire County Council [1954] 1 WLR 835

The plaintiff, a fireman was on duty when a call was received to free a woman trapped under a lorry, those on duty were ordered to load a jack onto a lorry and go to the scene. The jack could not be secured properly and men were ordered to hold it in place.

The lorry braked and the jack fell over injuring the plaintiff.

Held – The plaintiff was not entitled to damages as his employers were not guilty of negligence.

“One must balance the risk against the measures necessary to eliminate it, the risk of sending the lorry was not so great to prohibit an attempt to save life”

The result is that, although no test is conclusive, the general guidance is there subject to some modification in special situations.