

Only focus negligent statement in this course

LW 2903 Business and Law

Lecture 5

Negligence: Duty, Breach,
Causation and Damage

fact &
law

But-for test

(Step)

Negligence

There are many different heads of specific torts.
The most **commonly litigated tort** is the “**tort of negligence**”.

The **ordinary meaning** of “**Negligence**” is “**carelessness**” or “**lack of proper care and attention**”. (Act ^{you do sth} + / Omission ⁻)
eg. drive vehicle — did not do sth

The **tort of negligence** has been defined as:
“...the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff”.

Negligence

- To succeed, the plaintiff (**P**) must establish the following: *limit who can sue / cannot sue*

- (i) The defendant (**D**) owed a **legal duty of care** to P;
- (ii) D **breached such duty** of care;
- (iii) Such breach **caused the damage; and**
- (iv) **The damage should not be too remote.**

*lack of
one = no
action*

遥远

Negligent = liable

Duty of Care

• A man can only be **liable in negligence** if he is **under a legal duty to take care**.

↳ take care of ppl near me

• The **duty of care** is in effect a **control mechanism** to **determine** whether the **tort of negligence** applies in a particular situation.

Duty of Care

x direct contract with manufacturer

✓ sue finally
∴ duty of care (the plaintiff is considered a neighbour)

Ppl who are close to you

– The starting point is the **neighbour principle** in the landmark case: **Donoghue v. Stevenson (1932)**. It was held that **D** had breached his duty of care to **P** who was a foreseeable victim.

plaintiff x
buy the beer
himself (his friend
buy it) no
contractual
relationship

- **The neighbour principle** – You must take **reasonable care** to avoid acts or omission, which you can **reasonably foresee** would likely **injure your neighbour** (persons are so **closely and directly affected** by the acts or omission
- The **three-folds test**: (i) **foreseeability** of harm; (ii) **proximity**; and (iii) **fairness, justice and reasonableness**. court to determine (eg. x sue chief executive not doing well)
- **- Policy immunities*** to determine whether there is duty of care

Duty of Care

∴ They appeal

in charge of prison
(gov. department)

∴ Home office able to pay

foreseeability

• Home Office v. Dorset Yacht Co. Ltd. (1970) : F

- prisoner escapes from prison while the security sleeping
no need to foresee exact harm

接近 proximity (art) space, distance

• Bourhill v. Young (1943) : P

pregnant woman far away, hear loud noise
cannot sue finally

psychiatric injury (must be recognized mental problem)

• McLoughlin v. O'Brian (1982) : P

wife rush to hospital seeing the state of family
can sue

Proximity of relationship

Secondary victim (aftermath test)

- Perception ← ≠ foreseeability

distance - proximity (aftermath) immediate impact (= seeing what happen in the scene)

- Love & affection

All
fulfill

Alcock v Chief Constable of South Yorkshire Police

↳ only claiming for death / physical injury of family (those seeing on live show)

X Perception: ∴ Not unaided (They see on show, not live)

Breach of Duty

- Once it has been **established** that there is a **duty of care** between the parties, it must be established that there is a **breach of that duty**.
- Standard of Care : *Reasonable standard*
- Objective test: The term '**reasonable man**' refers to a reasonable person of **ordinary intelligence**. The test is therefore **objective** - **Bolton v. Stone (1951)**,

Reasonable standard → no breach

Resulting Damage and Causation

因果關係 (P&D) connected
(plaintiff must suffer damage)

Once it is established that the defendant has breached his duty of care towards the plaintiff, the next question is whether the plaintiff's injury was in fact caused by the defendant.

✓ causation: sb put poison

✗ causation → ∴ person die anyway (poison)

The need to consider: sue the hospital for not diagnosing right → pass away

Causation in fact: Barnett v Chelsea & Kensington Hospital Management Committee [1969] BUT - For test

cannot foresee
Causation in law (remoteness): Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) [1961] - Wagon Mound

Doctor 1 not responsible for causing 20 yrs pain
D2 ✓ negligence

when go to hospital
↳ doctor owe you duty of care

D3 x negligence