

- Since the civil liability reforms following the insurance crisis the law of negligence is now a combination of case law and statutory rules.

• A person commits the tort of negligence if:

1. they owe the other person a duty of care; and
2. they breach the duty of care; and
3. their breach causes the other person to suffer reasonably foreseeable harm.\

there are three requirements

Requirement 1: A duty of care

- In most cases the establishment of the existence of a duty of care will be relatively straightforward, provided that the relationship between the parties falls within the established categories of duty of care.

examples of who owns a duty of care

- Motorists owe a duty of care to other road users
- Doctors owe a duty of care to their patients.
- Manufacturers owe a duty of care to people who use their products.
- Occupiers owe a duty of care to people who come onto their premises.
- Employers owe a duty of care to their employees.

- If the relationship does not fall within one of the established categories, the plaintiff must establish that two tests are satisfied.
 1. First, it must be shown that at the time of the incident it was reasonably foreseeable that the defendant's conduct could cause harm to someone in the plaintiff's position.

Neighbour principle: whatever person is doing, they own a duty of care to those people they can reasonably foresee (so like anyone that could of got hurt becuses of there carelessness)as likely to be affected by their conduct.

"Who, 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"

– Donoghue v Stevenson (1932): (duty of care)

to be liable in negligence a duty of care must be owed by one party to another. Plaintiff drank a bottle of ginger beer, which a friend had bought for her, there was a snail in it which was detected partway thru the drink, plaintiff claimed to suffer shock and serve gastro, she claimed against the manufacturer, that the manufacturer should have taken more care during production to not cause injury to health, house of lords said 2 to 3 that the defendant did owe such a duty.

Bourhill v Young (1943) (doesn't owe duty of care)

A motorcyclist collided with a motor vehicle as a result of the motorcyclist's careless riding. The plaintiff was standing 10 metres away from the point of the accident and saw the aftermath. She suffered nervous shock and sued the motorcyclist in the tort of negligence. The court decided that it was not reasonably foreseeable that the conduct of the defendant could cause harm to someone in the position of the plaintiff and that, therefore, the defendant didn't owe the plaintiff a duty of care.

- Chapman v Hearse (1961): (accident happened, someone went to help and died) (duty of care)

Chapman was injured in a motor vehicle accident as a result of his negligent driving. Cherry stopped to assist him. While Cherry was going to help him, he got hit and killed by a car driven by Hearse. Cherry's estate sued Hearse for damages in negligence. To succeed, Hearse needed to establish that Chapman owed a duty of care to Cherry. That is, "a driver owes a duty of care to the people that might stop to assist them in the event of an accident." The court decided that even though the precise chain of events leading to Cherry's death was not reasonably foreseeable, it was reasonably foreseeable that Chapman would be injured and Cherry was coming to help him. Therefore, Chapman owed Cherry a duty of care.

2. salient features of the case are consistent with the existence of a duty of care.

- This means that the court will consider the relationship between the parties and other features of the case and then compare those features with the features of other cases where a duty of care has been found to exist.
 - Sullivan v Moody (2001) (187)
 - Tame v New South Wales

Requirement 2: Breach of duty

- To establish a breach of duty, it must be shown that the defendant failed to do what a reasonable person would have done in the same circumstances.

The court will take into account:

- **the probability of harm: Bolton v Stone (1951)**

if the risk of injury was so small that a reasonable person would not have done anything about it, the defendant has not reached their duty of care.

Bolton v Stone (Standard of Care)

the defendant may be justified in disregarding a foreseeable risk of injury where the probability of that risk occurring is small and the circumstances are such that a reasonable man would think it right to neglect the risk. In this case the plaintiff brought an action against the defendant cricket club after being injured by a ball that was hit out of the cricket ground during a match. The evidence showed that the risk of a person being struck was negligible, the court weighed that the only way to stop this would be to stop laying cricket @ the ground altogether, the decision was that a reasonable man would have thought it right to ignore the risk

– The likely seriousness of the harm: Paris v Stepney Borough Council (1951)

if the possible harm arising from a careless act is not very significant then the defendant will owe a low standard of care, but if the possible harm is very serious then they will owe a higher standard of care.

Paris v Stepney Borough Council (p192)

– the burden of taking precautions: Latimer v AEC (1953) (is it expensive to take the risk away if so then the court will say there was no breach compared to low cost involved there will be a breach)

if the defendant could have avoided the risk of injury by taking some relatively simple precautions, their failure to take those precautions is likely to be a breach of duty. However, if the risk of injury could only have been avoided by taking significant, expensive and onerous precautions, it is less likely that the defendant will have breached their duty by failing to take those precautions.

Latimer v AEC (P193)

a factory that was owned by ACE Ltd was flooded and the floor became slippery. Latimer slipped on the wet floor and sued AEC Ltd for compensation. AEC Ltd could have closed the factory while the floor was wet, but this precaution as a significant and expensive one and a reasonable person would not have taken precaution in the circumstances. ACE Ltd had not breached its duty of care.

– the social utility of the defendant's activity: Watt v Hertfordshire County Council (1954)

the court will look at if the purpose of it was positive to the social, example trying to help someone but then you get hurt. (an ambulance taking someone to hospital then gets in a car accident is less likely to be found to have breached their duty of care.

Watt v Hertfordshire County Council

Watt was an employee as a fireman in fire service operated by the Hertfordshire County Council (HCC). The station received an emergency call to attend an accident that involved a woman to be trapped under a car. The Jack was required, but the vehicle specially fitted to carry the jack was otherwise engaged. Consequently, the officer in charge ordered the jack to be put on another vehicle on which there was no means of securing it. While they were on the way to the scene, the jack moved inside the vehicle and hit Watt's leg, injuring him. Watt sued the HCC claiming damages for negligence. The court decided that there was no breach as it was a positive cause to the society even though there