

# **LAWS1104: INTRODUCTION TO LAW**

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## NEGLIGENCE CAUSING PURE ECONOMIC LOSS

Lochgelly Iron Co v. M'Mullan: “**Negligence** consists of a legal duty to take care and breach of that duty by the defendant causing damage to the plaintiff.”

- **Pure economic loss:** Where the plaintiff suffers no personal injury or physical damage to their property but is simply financially worse off as a result of D's negligent acts.

*Elements –*

### 1. Establish a DOC.

**Duty of care:** Legal obligation to avoid harm to others by taking reasonable precautions.

*Negligent acts or omissions –*

- **Reasonable foreseeability + Other salient features.**
  - **Reasonable foreseeability:** Is it reasonably foreseeable that if D fails to take reasonable care in *doing an act* that P will be harmed? *Donoghue v. Stevenson*
  - Consider the **other salient features** for and against the finding that a DOC exists.
    - **Indeterminacy:** Will the DOC expose D to indeterminate liability? *Sullivan v. Moody*
    - **Vulnerability:** Was P in a position to protect himself from the damage? *Perre v. Apand*
    - **Burden on commercial activity:** Will the DOC amount to an unreasonable burden on the commercial activity of D?
    - **D's actual or constructive knowledge of the risk and its magnitude.**

*Negligent statements –*

- **Reasonable foreseeability + Reliance criteria + Other salient features.**
  - **Reasonable foreseeability:** Is it reasonably foreseeable that if D fails to take reasonable care in *providing information or advice* that P will be harmed? *Donoghue v. Stevenson*
    - **“Something more than reasonable foreseeability of harm is required: there must be some reliance or assumption of responsibility.”**
  - **Reliance criteria:** *Mutual Life and Citizens' Assurance Co Ltd v. Evatt*
    - D gives information or advice on a serious matter, particularly a matter of business.
    - D realises or ought to realise that P would rely on the information or advice.
    - It is reasonable for P to rely on the information or advice.
  - Take the **other salient features** into account when considering whether D realised or ought to have realised that P would rely on the information or advice and whether it was reasonable for P to rely on the information or advice.
    - **Special skill:** Was D an expert or in a position to be perceived as such in the matter?
    - **Nature of the relationship.**
    - **Context of the discussion.**
    - **Request for information:** Did P request the information from D?
    - **Financial interest:** Did D have any financial interest in P's reliance on the statement?
    - **Assumptions or disclaimers of liability:** *Hedley Byrne & Co v. Heller & Partners*