

Law of Tort (Negligence)

A person is negligence if he/she fails to take reasonable care to prevent loss or injury to others whom he/she could reasonable have foreseen might have been injured if such care was not taken.

Liability of negligence

A buyer of a defective good who suffered a loss (either physical damage or personal injury) as a result of the defect could only sue the person who sold him or her good, but not the manufacture. The only exception is where the product was dangerous and the manufacturer was aware of this fact.

Donoghue v Stevenson p368

(Court held that the liability for negligence did not depend on contract, plaintiff must prove 3 steps for establishing negligence. A manufacturer who sold a product owed a duty to consumers of the product to take reasonable care in its production because it was reasonable foreseeable that if such are was not taken, the consumer could be injured.)

Step 1: Does the defendant owe a duty of care to the plaintiff?

1. **Liability for acts/omissions causing physical, psychological property damage:**
Donoghue v Stevenson

Reasonable foreseeability of harm and proximity

- Neighbour test (Donoghue v Stevenson)—neighbour is the person who is so closely and directly affected by defendant's act or omissions which he/she fails to take reasonable care and such injury is reasonable foreseeable.

Donoghue v Stevenson

1. Donoghue drink ginger beer contained with decomposed snail
2. Donoghue got gastroenteritis
3. Donoghue sued Stevenson
4. Ginger beer did not contain substances likely to cause her injury
5. No contract between Donoghue and Stevenson
6. Contract between café owner and Donoghue's friend
7. Did not fall inside the scope of product liability (defect product)
8. No remedy for Donoghue at that time
9. Introduce tort of law
10. Discuss four steps
11. *The court held that a man has the duty of care to conduct himself in such way as to avoid harm to others, where a reasonable man would have seen*

that such harm could occur

➤ Two parts test of “neighbour”

I. Reasonable Foreseeability

Easy to apply “reasonable foreseeability of harm” test when there is **physical damage (eg D v S)** or when there is a **precedent that has established a duty of care**:

- Tame v New South Wales p370 *High court held that police was no duty of care owed to P*

1. Appellant involved in car accident and alcohol content test
2. Appellant only drunk a little beer
3. Police incorrectly reported
4. Been correctly later
5. Became obsessed and having psychotic depressive because community believe she was drunk although content is low
6. She sued the police
7. Could **not** reasonable foresee
8. **Not** reasonable to require him to have her mental healthy in contemplation

- Sullivan v Moody p371

父亲被指控性侵女儿，医生检查说女儿被性侵，其实没有，父亲受到了精神上打击，告了医生，医生是 in good faith(好心)

The High Court held that there was no duty of care owed to the plaintiff

There is a ‘**real possibility**’ rather than fanciful or **far-fetched** one.

II. **Proximity** (接近)

- Physical: closeness in sense of space and time
- Circumstantial: closeness arising from the circumstances of the case or relationship between parties
- Causal: a direct link between the act/omission of Defendant and loss/damage to Plaintiff

• Duty of Care in specific situation

➤ Physical harm

Chapman v Hearse p373

Chapman 不好好开车在高速出车祸，Cherry 去救他，结果被 H 撞死了
reasonable foreseeable

The High court held that Chapman was liable in negligence for Cherry’s death..

➤ Mental harm

Jaensch v Coffey p373

丈夫出车祸重伤然后死了，妻子遭受“nervous shock”引起妇科心理等疾病。
即使妻子不在车祸现场 *The High Court held that C could recover damage for ‘nervous shock’. Plaintiff could recover damages for a recognised psychiatric illness, caused by the death or injury of family or loved ones*

• liability for omissions (not doing)

- The only circumstance in which a person may be liable for omissions is where a

person has positive duty to act.

Rogers v Whitaker p375

医生没有告诉病人手术失败的后果，导致左眼失明两只眼睛都看不见了
The High Court held that doctors have a duty to warn patients of the risk associated with a surgical procedure.

- The public authority that controls and management land or other public areas come under a duty to act to protect members of the public against foreseeable danger in those area.

Nagle v Rottneest Island Authority p376

N 在 Reserve 跳水（没有 warn public 不适合跳水），撞到了水下的石头，四肢瘫痪，*The High Court held that R owed the duty of care to warn those visitors of any foreseeable risks of injury to which they might be exposed.*

- But have to consider whether the authority's functions are limited by the availability of resources

Graham Barclay Oysters Pty Ltd v Ryan p377

R 因为吃了来自污染了的 Wallis Lake 的生蚝而得了肝炎 *The High Court held that defendant authority was not liable for injury suffered by the plaintiff.*
他想治理污染的湖但是因为资源有限做不到，超出能力范围

- Negligent acts causing pure economic loss

Issue of indeterminate(模糊的) amount of time/class

Caltex Oil (Aust) Pty Ltd v The Dredge "Willemstad" p378

运油管道被 operator who knew plaintiff relied on for the pipeline for transporting oil 破坏 *The High Court held that C could recover the economic loss suffered.*

Peer v Apand Pty Ltd p378

种子提供者知道种子有病，还提供给一个人种，不确定有没有传染到那人隔壁的土豆 *The High Court held damage suffered by P was foreseeable and A owed a duty of care to the P*

- Factors prove this case and pure economic loss:
 1. Whether the loss suffered by the P was reasonable foreseeable
 2. Nature of the relationship between D and P
 3. Whether the P belonged to a determinate or an indeterminate class
 4. The P's vulnerability (cannot protect him/herself)
 5. The D's knowledge of the P's vulnerability
 6. Whether the D assumed responsibility for the risk being taken by the P
- Indeterminacy question: cannot be "realistically calculated" and depends on "what the defendant knew or ought to have known of the number of claimants and the nature of their likely claims, not the [actual] number or size of their claim"

Johnson Tiles Ltd v Esso Australia Pty Ltd p379

煤气爆炸，两个人死了，八个人受重伤，煤气公司提供不了煤气，商店告煤气公司说没有煤气做不了生意

- three step methodology of reasoning: 1. reasonable foreseeability of injury 2. whether there is a relationship of proximity 3. consideration of competing

- “salient features” for the against the finding that a duty of care exists.
- Indeterminacy: 决定不了受损范围太多，不能确定
 - Vulnerability question: 受伤害的那方能不能 minimize the loss
 - **Very often a duty of care has been established by precedent.** For new/unusual situations where no precedent, need to consider **salient features**: Perre v Apand and Johnson
 - Vulnerability of plaintiff?
 - Assumption of responsibility by D
 - Indeterminacy argument
 - **Liability for defective advice and information causing pure economic loss**

Two Party Situation

- The law will imply a duty of care in the making of **statements**, and that a negligent, though honest, statement may give rise to an action for damages Hedley Byrne & Co Ltd v Heller & Partners Ltd p381 银行文件写了 exclusion clauses
 1. P was an advertising agency
 2. Place advertisement on behalf of Easipower (D)
 3. P ask credit reference from bank
 4. A written report indicating creditworthy
 5. In fact D was not creditworthy and P unable to recover
 6. Discuss four steps

The court held that there was no a duty of care arise, liability for negligent misstatement, apart from contract, was limited to where there was a fiduciary relationship.

Mutual Life and Citizens' Assurance Co Ltd v Evatt p381 Special relationship must exist before a duty.

MLC 只是做了一个报表，E 自己根据这个报表做的决定 *The Court held that MLC owed no duty of care to E in these circumstances.*