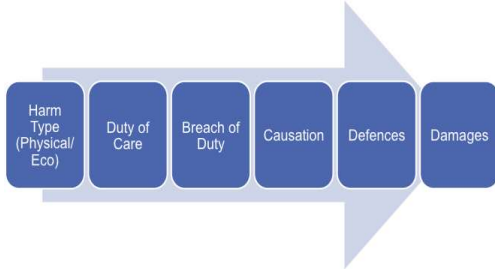


NEGLIGENCE, TORT

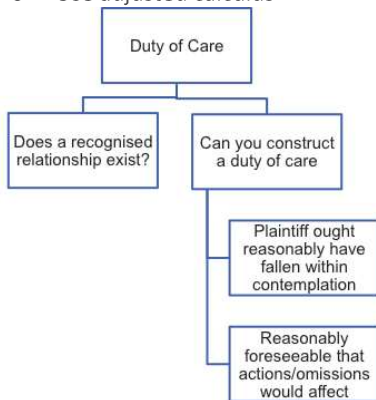
What does one hope to gain for suing for negligence?

- The **Tort of Negligence** only provides **monetary compensation** for harm down to property, person or particular economic interests – also known as **damages**.



Step 1: Recognize the type of harm:

- Physical / Property
 - o Use the normal calculus
- Pure Economic Loss
 - o Use adjusted calculus



Step 2: Arguing a Duty of Care:

Option 1: Accepted Relationships (e.g: Doctor and patient)

- Occupier and Visitors (*Australian Safeway Stores*)
- Manufacturer to Consumer (*Donoghue v Stevenson*)
- The potential plaintiff is *entirely dependent* on the other party. Dependence is the common thread.

Option 2: “Neighbour” Relationship

Where the **plaintiff ought reasonably** have been in contemplation; and was it **reasonably foreseeable** that the action could cause harm. These rule comes from case: **Lord Aitken** in [*Donoghue v Stevenson*].

Two Outcomes:

1. Owe a duty to a person who **ought reasonably** be in contemplation when you act (or not act); and **[OBJECTIVE TEST]**
2. That duty is restricted to action/inaction that you can **reasonably foresee** will cause injury to such a person **[SUBJECTIVE TEST]**

Wrongs Act 1958 s48:

1. A person is not negligent in failing to take precautions against a risk of harm unless:
 - a. The risk was **foreseeable** (that is, it is a risk of which the person knew or ought to have known); and
 - b. The risk was **not insignificant**; and
 - c. In the circumstances, a **reasonable person** in the person’s position would have taken those precautions.

Consider relevant factors to construct duty:

- Defendants knowledge of action affecting plaintiff

- Defendants control over plaintiff, or plaintiff’s dependence.
- Special roles that would suggest such a protective duty

Step 3: What does it mean to breach your duty?

- Largely an issue of common law, but assisted by the **Wrongs Act 1958 (Vic) s48(1)(c)**:
 - o “In the circumstances, a reasonable person in the person’s position would have taken those precautions.” [objective test]
- This is a codification of **Wyong Shire Council v Shirt**
- The legislations provides us a framework to use from the **Wrongs Act s48**:
 - o The **probability** that the harm would occur if care were not taken (**Bolton v Stone**)
 - o The likely **seriousness** of the harm (**Paris v Stepney Borough Council**)
 - o The **burden of taking precautions** to avoid the risk of harm (**Latimer v AEC Ltd**)
 - o The **social utility** of the activity that creates the risk of harm (**E v Australian Red Cross Society (1991)**)
 - o The **higher the probability/likely seriousness of harm**, the required **level of care is higher**.
 - o The **higher the burden of precautions/higher social utility**, then the required **level of care is lower**.

Bolton v Stone (1951)	Facts: She walks past a cricket pitch and gets hit by a ball, she’s suing for breach of care. Probability that the harm would occur is Low Likely seriousness of harm , is low not life threatening. Low burden of taking precautions to avoiding risk. Conclusion: the <i>required level of care</i> is low . As the standards are pretty low, all they had to do was to have a fence, which they did, and hence, there was no breach .
E v Australian Red Cross Society (1991)	Facts: Red Cross takes blood donations and does blood transfusions. Transfused blood had HIV, and subsequently infected many people with HIV/AIDS. Probability of the harm is supposedly low as all blood should have been assessed and screened before transfusion, this is human error. Likely seriousness of the harm , is high as it is still an incurable infection. Social utility is high , it outweighed the needs of the 5% of people that the blood infected. Conclusion: Red Cross was found not liable of breach of care .
Paris v Stepney Borough Council (1951)	Facts: One-eyed mechanic, working under a vehicle. Hits metal which flakes off, striking him in his good eye. Not wearing or provided with glasses. Probability of harm is high Likely seriousness of harm is high (because he only has one good eye). The employer should have had a higher standard of care for him than for someone with two good eyes. Low burden of taking precautions as the employer just needs to provide him with glasses. Conclusion: Found to have breached the duty of care.