

Commercial Law

Tort of Negligence

The tort of negligence is committed by the defendant if the following requirements are satisfied:

- ✓ Duty of Care
- ✓ Breach of Duty of Care
- ✓ Harm Caused by the Duty of Care (Damage)

Duty of Care

The general definition of negligence is provided in Section 48 and Section 50 of Wrongs Act (Vic) 1958.

- In order to establish a duty of care, the **neighbour principle**, as presented in Donoghue v Stevenson, 1932 (P221) must be satisfied.
- The neighbour test also refers to the reasonable foreseeability test, which is discussed in Bourhill v Young, 1943 (P222).
- The court may also take the **salient features** of the case into consideration, as done in Sullivan v Moody, 2001 (P223), Section 56 Wrongs Act (Vic) 1958. Tests under salient features include:
 - Vulnerability Test
 - Tests if the plaintiff was able to defend themselves from the risk of the harm.
 - Cole v South Tweed Heads Football Club, 2004 (P223)
 - Section 56 Wrongs Act (Vic) 1958
 - Control Test
 - Tests if the defendant had full control of the situation.
 - Modbury Triangle Shopping Centre v Anzil, 2000 (P223)
 - Reliance Test
- Occupier's Liability
 - Australian Safeway v Zaluzna, 1987 (P240) – An occupier of premises owes a duty of care to all persons entering the premises to ensure that the premises are safe.
 - Phillips v Daly, 1988 (P240) – The occupier is not automatically liable for any injury sustained by a visitor to their premises. The occupier must be proven to be careless.

Breach of Duty of care

The defendant breached their duty of care if they failed to do what a reasonable person would do; in other words, the **reasonable person test**, as presented in Imbree v McNeilly, 2008 (P230), Section 48, Section 53 and Section 54 Wrongs Act (Vic) 1958.

- The Probability of the Harm
 - Bolton v Stone, 1951 (P227) – If the risk of injury is so small that a reasonable person would not have done anything about it, then the defendant has not breached their duty of care.
 - Woods v Multi-Sport Holdings, 2002 (P227) – If the risk of injury is so obvious that the defendant doesn't need to provide prevention, then the defendant has not breached their duty of care by failing to take steps to prevent the risk.
- The Likely Seriousness of the Harm
 - Paris v Stepney Borough Council, 1951 (P228) – If the possible harm arising from a careless act is not very significant, then the defendant will owe a low standard of care; likewise, if the possible harm is very serious, then the defendant will owe a higher standard of care.
- The Burden of Taking Precautions
 - Latimer v AEC, 1953 (P228) – If the defendant would have voided the risk of injury by taking some relatively simple precautions, their failure to take those precautions is a breach of duty of care. If the risk of injury was only avoidable by taking significant, expensive and onerous precautions, then the defendant has not breached their duty of care by failing to take those precautions.
- The Social Utility of the Conduct
 - Watt v Hertford Shire CC, 1954 (P229) – If, at the time that the defendant's conduct was alleged to have caused harm to the plaintiff, the defendant was doing something socially useful, then the defendant has not breached their duty of care.