

## DUTY OF CARE

**To prove a duty of care was owed** → defendant owed a duty of care to the plaintiff, duty was breached, breach resulted in damage to the plaintiff

**Neighbour principle** → You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

Lord Atkin → “The liability for negligence, whether you style it such or treat it as in other systems as a species of culpa, is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any *moral code* would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way *rules of law* arise which limit the range of complainants and the extent of their remedy. Donoghue v Stevenson [1932] Ms Donoghue’s friend brought her a ginger beer in an opaque bottle. When the SECOND glass was poured, a decomposed snail was added to the ginger beer and ice cream float. This allegedly caused Ms Donoghue ‘shock and severe gastro-enteritis’. Ms Donoghue sought to sue the manufacturer but, having no contractual relationship, relied on an action in negligence. Duty of care in tort does not require a contractual relationship

**Incremental Approach** → conservative approach that looks at slowly developing new duties by arguing analogously from existing categories of duties Home Office v Dorset Yacht Co Ltd [1970] → (seven boys, in juvenile detention, were working on an island under the supervision of three officers; the boys escaped and boarded a yacht, which collided with the yacht owned by the respondent). The House of Lords held that the Home Office **owed a duty of care** as it was *foreseeable* that yachts in the vicinity were at risk if the boys escaped custody.

**Reasonable foreseeability** → asks whether a person could or should reasonably have foreseen the harms that resulted from their actions. Chapman v Hearse (1961) Chapman’s negligent driving resulted in a collision; Chapman was thrown out of the car and became unconscious; Dr Cherry, who was aiding Chapman, was struck by Hearse, resulting in his death. Cherry’s widow successfully sued Hearse. Why was Chapman involved in this case then? The High Court had to consider whether Chapman owed a duty of care to Dr Cherry. The Court ruled that such a duty existed. It reasoned: “It is, we think, sufficient ... to ask whether a consequence of the same general character as that which followed was reasonably foreseeable ... it not necessary for the plaintiff to show that the precise manner in which his injuries were sustained was reasonably foreseeable; *it is sufficient if it appears that injury to a class of person of which he was one might reasonably have been foreseen as a consequence*”. It should also be noted that what is reasonably foreseeable can **change as per the state of scientific knowledge** regarding risks to certain injuries – e.g., risk of exposure to asbestos; impact of climate change.

**Salient factors** → evaluate existence of duty with regard to a non-exhaustive list of factors affecting the appropriateness of imputing a legal duty to take reasonable care to avoid harm or injury Caltex Refineries Pty Ltd v Stavar [2009] the court had to consider the position of a woman whose husband worked from 1964 to 1991 with asbestos in various oil refineries. He would wear asbestos- contaminated clothing home from work and Mrs Stavar washed his contaminated clothes. In 1971 legislation came into effect providing that workers with asbestos wear protective clothing and that the clothing was to be washed on site. Mrs Stavar developed malignant mesothelioma as a result of coming into contact with asbestos fibres on Mr Stavar’s clothes. The Dust Diseases Tribunal found no duty of care owed to Mrs Stavar for the period before 1974, which was when Caltex became the employer of her husband. She appealed to the Court of Appeal.

## Parent Companies → Legal Bypass

**Separate legal persons** → parent company is generally not liable for the conduct of its subsidiaries Vedanta Resources plc v Lungowe [2019] The Court observed that the *Chandler* indicia were mere examples in which such a duty may arise and laid down a general principle: “liability of parent companies in relation to the activities of their subsidiaries is not, of itself, a distinct category of liability in common law negligence” (para 49) “the general principles which determine whether A owes a duty of care to C in respect of the harmful activities of B are not novel at all” (para 54) The Court elaborated several pathways under which parent companies may owe such a duty. More importantly, it noted: “Everything depends on the *extent* to which, and *the way in which*, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise **the management of the relevant operations** (including land use) of the subsidiary.”

### Identify the negligent act and defendants

1. Defendant owed a duty of care to the plaintiff
2. Duty was breached
3. Breach resulted in damage to the plaintiff

#### 1. Defendant owed a duty of care to the plaintiff

The existence of the duty of care is *most critical* because if there is no duty, there cannot be a breach or damage.

Is it an established category or a novel category? → *if established, state that it is one; if novel, justify why*

DOC requirements change for certain special parties → specific rules

#### **Established:**

- Employer and employees → Paris v Stepney Borough Council [1951] (the plaintiff, who worked in a garage, injured his only good eye hit by a piece of metal; the employer knew about this special condition, but still did not provide safety goggles to him; it was not an ordinary industry practice to provide such goggles during that time). The House of Lords by a majority held that the **duty of care was breached** by not supplying the goggles. Lord Macdermott reasoned that → “the **known circumstance** that a *particular workman is likely to suffer a graver injury than his fellows* from the happening of a given event is one which must be taken into consideration in assessing the nature of the employer’s obligation to that workman.”
- Manufacturer and consumer → Donoghue v Stevenson [1932] → ACL
- Owners and builders → s 37 Design and Building Practitioners Act 2020 → owners have a cause of action against builders for negligent construction → “construction work” defined in s 36
  - Section 37 of the Act provides:
  - “(1) A person who carries out **construction work** has a duty to exercise reasonable care to avoid economic loss caused by defects—
    - a) in or related to a building for which the work is done, and
    - (b) arising from the construction work.
  - (2) The duty of care is owed to each owner of the land in relation to which the construction work is carried out and to each subsequent owner of the land.
  - (3) A person to whom the duty of care is owed is *entitled to damages* for the breach of the duty *as if the duty were a duty established by the common law.*”
  - The term “ construction work” has been defined broadly by Section 36. In addition to building work, it includes preparation of designs, the manufacture or supply of building products, and supervision, coordination or project management over building work
- Occupier and entrants
  - Under common law, occupiers, including businesses, owe a duty of care to their lawful visitors to ensure the premises are reasonably safe. → Modbury Triangle Shopping Centre v Anzil (2000) → An occupier will not owe a DOC where they do not have the capacity to control a third party’s behaviour or entry, such as third-party criminals. Anzil, who was employed by a video shop in the Shopping Centre, was attacked by unknown people at 10:30pm when he was walking towards his car parked in the car park; the car park lights were timed to go off at 10pm; earlier the practice was to keep the lights on until 11pm. The question before the High Court was whether the Shopping Centre had a duty of care to Anzil for the physical injury inflicted by third parties? The High Court by majority held that the Shopping Centre’s duty of care “as an occupier of land did not extend to taking reasonable care to prevent physical injury to the first respondent resulting from the criminal behaviour of third parties on that land”. Gleeson CJ noted that the basis of the occupier’s duty in relation to the condition of the premises was “*control over, and knowledge of, the state of the premises*”. Unlike *Dorset Yacht*, the defendant in this case had no control over the behaviour of the men who attacked Anzil. Nor could reliance be the basis of a duty of care in this case, e.g., the video shop could have its own additional security arrangements. This was also not a case of assumption of responsibility – the responsibility to illuminate the car park does not lead to the responsibility to protect the respondent from attack by criminals in the car park. Gleeson

CJ though observed that a duty to take reasonable steps *may* arise in circumstances in which the criminal conduct has high degree of foreseeability and predictability

- Licensed premises over entrants to other entrants → *Adeels Palace v Moubarak* (2009) → An occupier will have a DOC where they have control over entry and who remains at their premises, possibly owing to a statutory obligation
- Occupiers and landlords of defective premises → *Australian Safeway Stores v Zaluzna* (1987) The duty owed to the entrant depended on what category of entrant they were classified as; ie whether that person was an invitee (someone who has been invited onto the property for the benefit of the occupier), licensee (a person who has been allowed to come onto the property) and contractual entrant or trespasser (a person illegally entering the property). An occupier is a person who owns (or is on) and controls the relevant land. (Zaluzna slipped on the wet floor of a supermarket and injured) held that the **common law of negligence subsumed occupiers' liability**. In other words, occupiers' duty of care in Australia *no longer varies* as per the category of the entrant.