

Trespass to Person:

- Recklessness = the consequences of the defendant's acts are not certain but the defendant is so indifferent to the consequences of their act/s that the result must, or should, have been foreseen by a reasonable person.

- Thus, negligence is subject to the reasonable person test → what would a reasonable person have done/thought?

**Conduct** → Direct interference with P or their land. (Scott v Shepherd)

**Fault** → Negligent/intentional harm (unless it's a highway accident, then onus is on D to disprove (McHale v Watson))

Intent to commit the act is sufficient. No requirement necessary to intend to harm or injure.

**Damage** → There need not be damage in order to make a claim against D as trespass is actionable per se, however, the onus is on P to prove. (Plenty v Dillon)

**Directly** → There also needs to be an immediacy of action, as well as the act cannot be consequential. There cannot be a voluntary act intervening between D's conduct and the result of this conduct.

*Scott v Shepherd* (1773) 2 Wm Bl 892; 96 ER 525

**Facts:** D threw a lighted squib (small explosive firework) into a marketplace. It fell on Y's stall, W picked it up and threw it to R's stall, who threw it to across the market and hit P's face and caused injury to one of his eyes.

**Held:** The injury was the direct result of the D's actions and thus, liable.

*Stanley v Powell* [1891] 1 QB 86

D shot tree and bounced off and shot P. D was held liable.

- Granted because it would be unfair/inappropriate to award P with substantial damages when there was no loss or damage suffered (as trespass are actionable per se).

..... (omitted)

# Part 2 of Torts Law

## Introduction to Negligence and Duty of Care

### Negligence

There are certain elements to negligence which include:

- Duty of care
- Breach of duty
- Causation, proof
- Remoteness of damage, Eggshell skull cases
- Defences to negligence

The following are particular fact situations and exceptions:

- Particular duty areas: unusual plaintiffs, unborn children, mental harm, rescuers
- Pure economic loss, negligent mis-statement
- Liability of Statutory Authorities
- Defective structures
- Omissions
- Vicarious liability, Independent contractors, Duties to employees
- Concurrent liability
- Statutory regimes in NSW – workers compensation, motor accidents
- Death claims

In relation to the law of negligence, the impact of the CLA is as follows:

1. The common law still applies to determine the duty of care element of negligence (the CLA does impact upon the duty of care in relation to criminals and statutory authorities).
2. All other elements of negligence – breach and causation and proof are now determined by the CLA (though in some instances, the Act does not completely replace the common law and many aspects of it remain applicable, for example in relation to the issue of ‘intervening causation’).
3. With reference to principles of statutory interpretation, there is need to have reference to the purpose of the legislation (and additionally it is possible for the courts to refer to extrinsic materials to interpret the Act).
4. Legal practitioners arguing for their respective client will either want to use the pre-existing common law to define the words in the legislation or else move away from the pre-existing common law (depending upon their client’s case). For this reason, we will need to have an appreciation of the pre-existing common law in the areas of breach, causation and proof to understand the impact of the legislation and the likely ways in which it may be interpreted by the courts.

### Duty of Care

To succeed in a claim of negligence, the P must prove three elements:

1. The D owed P a duty of care;
2. The D breached that duty of care by negligent conduct; and
3. That D’s breach caused P actual damage that is not too remote from the breach.

‘Ordinary case’ of negligence – *Donoghue v Stevenson*

- Physical injury
- Positive act (not omission) by D
- Duty est. by ‘neighbour principle’ = reasonable foreseeability of harm

### *Heaven v Pender* (1883) 11 QBD 503

**Facts:** Gray (master painter) entered into contract with D to paint a ship. P, employed by Gray, was painting and standing on the staging when the rope holding the staging broke. P fell to the bottom of the dry dock and was injured. P sued D stating P failed to take reasonable care in the erection of the staging.

**Held:** For P. Held that D did owe P a duty of care.  
on was not self-induced.