

**Negligence = is a breach of a duty of care owed by the defendant to the claimant.**

**Duty of Care – Crucial element, without it – no claim.**

**Not usually a duty of Care imposed for an omission.**

### Historical Development of the Concept.

#### **(1) The 'Neighbour Principle'**

**Was the harm reasonably foreseeable to someone in the position of the defendant?**

*Donoghue v Stephenson*

Lord Atkin – 'good neighbourliness' morality  
Lord Macmillan – pragmatic case-by-case approach

principle – over time became stretched.

#### **(2) 2 Stage Test.**

**(1) was harm reasonably foreseeable? (neighbour principle)**  
**(2) Is there a good reason why there shouldn't be a duty of care?**

*Dorset Yacht v Home Office* – Lord Reid  
*Anns v Merton London Borough Council* – Lord Wilberforce.

#### **Problems with 2 Stage Test:**

Lord Keith - inabilities of a single general principle.

*Yuen Kun Yeu v A-G for Hong Kong*

Been given  
too much  
importance

Oversimplified by  
Wilberforce.

Used a lot to by-pass  
doctrine of privity of  
contract.

too vague &  
**unpredictable.**  
too much **discretion**  
with judges

#### **(4) 3 Stage Test.**

*(only used where there is no precedent or legislation)*

**(1) Foreseeability:**

**(2) Proximity:**

**(3) Is it fair, just  
and reasonable to  
impose a duty?**

#### **Problems with the 3 Stage Test**

Still as vague as the 2 stage test – just a little more complex.

Proximity – '*Proximity is a slippery word*' (Lord Nichols in *Stovin v Wise*)

### **Negligence in the Human Rights Era:**

#### **Human Rights Act 1998.**

recognition of a positive duty on public  
authorities to safeguard the rights of life,  
physical integrity, private & family life &  
personal property

#### **Impact: Lady Justice Arden:**

*'developments have been subtler than forecast'*

seems the courts will only develop the law in specific cases.

## Using the 3 Stage Test

### Stage 1 – Foreseeability:

**Could the defendant have reasonably foreseen that their negligence would harm the claimant?**

Clearest of 3 Stages.

'Neighbour Principle' *Donoghue v Stevenson*

Flexible & Open to Manipulation by the Courts.

Should be phrased to encompass not purely 1 claimant.

*Attorney General v Hartwell*

### Stage 2 – Proximity:

**Is there a sufficiently proximate relationship between claimant & defendant?**

No Precise meaning & again a lot of discretion with the Judges.

Some Relevant Factors:

**(a) Relationship between Defendant & Claimant.**

Do they personally know one another

*Osman v Ferguson*

Was it an economic relationship.

*Everett v Comojo*

**(b) Was there an 'Assumption of Responsibility' by the Defendant?**

Answering the phone – will constitute an assumption of resp.

*Kent v Griffiths*

**(c) Type of Harm?**

Physical Injury – easier to sue than just economic loss.

*Yowles v Evans*

**(d) Size of the Class of People who could have been affected?**

Larger the group – less likely courts will find a duty of care.

*Hill v Chief Constable of West Yorkshire*

Courts don't want to open the flood gates to claims.

Problems with Proximity stage:

*'proximity expresses a conclusion, a judgement, a result, rather than a principle' (Stevenson J).*

The court's decision as to what the law should be *'necessarily influences the court's perception of what is sufficiently proximate' (Lord Oliver).*  
(In other words - Judges find the outcome they want & then work backwards to find the proximity.)

### Stage 3

**Is it fair, just & reasonable to impose a duty?**

Relevant factors:

**(a) Questions of Policy:**

**Floodgates** – If courts recognised this claim - Would they be flooded with similar claims.

**(b) Insurance Position of the Defendant?**

Defendant is insured – more likely to find a duty of care.

*Yowles v Evans*

**(c) Does the Defendant act for the Collective Welfare?**

Courts – more reluctant to impose a duty of care where the defendant acts for an authority.

Because – it would open flood gates – detract from the authorities main purpose.

*The Nicholas H*

**(d) Does the Conduct in question involve an Omission rather than an Act?**

More likely to impose a duty of care for an Act than an Omission.

*Smith v Littlewoods, Stovin v Wise*

## Liability for Omissions

exceptional circumstances.

The situations where liability may arise *'do not fall into any neat pattern...'* (Tony Honore)

Broad Categories:

Where the defendant has...

**(a) created a source of danger**  
(even without fault)

**(b) assumed responsibility for the claimants welfare.**

**(c) occupies a position of responsibility.**