

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.

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(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.