

LAW231

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The Elements of Negligence

Breach of a Duty

The Standard of Care

<p>Bolton v Stone [1951] AC 850 (HL)</p>	<p>Facts: P stepped outside the front gate, but hit by a cricket ball that has been hit over a 7ft fence and into the nearby road. Sued club for negligence injury.</p> <p>Held: Not negligent as too unlikely. Lord Reid considers 2 factors to take into account</p> <ol style="list-style-type: none"> 1) Reasonably foreseeable is a threshold, not being physically possible is not enough, reasonable person will balance the factors. Take into account the magnitude of the risk. 2) Potential damage that might be caused.
<p>Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty [1967] (PC)</p> <p>Wagon Mound 2</p>	<p>Facts: Discharged oil where managers thought could cause fire, got reassured by wharf, spark fell on oil and caused fire.</p> <p>Appeal where there was judgement for defendant. Appeal granted.</p> <p>Lord Reid adds two additional factors to his Bolton judgement</p> <ol style="list-style-type: none"> 1) The ease or difficulty of taking remedial measures (before the risk occurs) 2) Social validity of the defendant's activity
<p>Paris v Stepney Borough Council [1951] AC 367 (HL)</p> <p><i>Seriousness of potential consequences</i></p>	<p>Facts: Car mechanic was blinded in one eye and sufficiently blinded in another. Sued employer was negligent in not providing safety glasses.</p> <p>Held: Despite not a general practice, should provide goggles given the circumstances and the degree of damage that could occur</p>
<p>Watt v Hertfordshire County Council [1954] 1 WLR 835 (CA)</p> <p><i>Risk relative to result</i></p>	<p>Facts: Employed as a firefighter when duty was called from 200-300 hundred yards away, the officer ordered to transport the jack by a truck and must be steadied. Truck braked and P injured. Claim the risk should not have been run.</p> <p>CA Held: Balance the risk and the end to be achieved, reasonable for a relatively small risk could be run. No liability.</p>
<p>Tomlinson v Congleton Borough Council [1951] AC 367 (HL)</p> <p><i>Inherent risk in activity</i></p>	<p>Facts: In country park, stated on notice "dangerous water: no swimming" and employed rangers to give oral warnings. P dived in waters and injured head.</p> <p>Held - Lord Hoffman: P freely and voluntarily undertook an activity which inherently involves some risk. A duty to protect against obvious risks or self-inflicted exists only in cases in which there is no genuine and informed choice</p>

Individual Circumstances

<p>Goldman v Hargrave [1967] (PC)</p> <p><i>Individual Circumstances</i></p>	<p>Facts: Farmer let gumtree that had been hit by lightning to burn on his land, was reasonable to do so but the wind came and blew fire to neighbours.</p> <p>PC: What is reasonable to one man may not be reasonable to another taking into account the resources of the parties.</p> <p>Standard of care is what is reasonable to do so in their individual circumstances.</p>
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<p>Nettleship v Weston [1971] 2 QB 691 (CA)</p> <p><i>Skill - Learner Driver</i></p>	<p>Facts: Learner driver crashes into the pavement and Plaintiff (an experienced driver in the car) was injured.</p> <p>Held: Standard of a learner = standard of a driver of skill, experience and care who is sound in wind and limb. Not morally at fault but legally liable.</p>
<p>Mullin v Richards [1998] 1 WLR 1304 (CA)</p> <p><i>Youth and Age</i></p>	<p>Facts: Two school girls mock sword fight, chipped and went into P's right eye.</p> <p>Law: Takes into account age. Objective standard but takes into account of age.</p> <p>Held: not reasonably foreseeable consequence of every ruler fight or violence given the fencing is nothing more than a schoolgirl game. No evidence of negligence.</p>
<p>Mansfield v Weetabix Ltd [1998] 1 WLR 1263 (CA)</p> <p><i>Disability</i></p>	<p>Facts: Driver suffered malignant insulinoma (he did not know) and crashed into Plaintiffs shop causing extensive damage.</p> <p>CA lowered standard of care to take into account disability provided he was innocent (did not know his condition)</p> <p>Judicial discretion - this judge prioritised corrective justice over compensation</p>
<p>Whitehouse v Jordan [1980] 1 WLR 582 (HL)</p> <p><i>Professional</i></p>	<p>Fact: Delivery of baby, claimed the baby was pulled to hard and caused injury. A professional man and error of judgement is not negligent.</p> <p>Error of judgement could be a defence IF it is carried with reasonable care and skill.</p> <ul style="list-style-type: none"> - Negligent liability is determined prospectively. Based on standards prevailing at the time of negligence. Put in the shoes of the defendant and not based on hindsight.
<p>Shakoor v Situ [2001] 1 WLR 410 (QB)</p>	<p>Facts: P argued because a practitioner of TCHM (traditional chinese herbal medicine) holds himself out in this country as a medical man specialising in the treatment of skin diseases, he should be judged not only by those who practice his art but asking with the standard of a medical men in an equivalent position in orthodox medicine.</p> <p>Held: assessed by a standard of reasonable component peer in the same field.</p> <p>Where D did not possess special skill or knowledge, it need not be demonstrated, unless they held themselves out as an expert.</p>
<p>Bolitho v City and Hackney Health Authority [1998] AC 232 (HL)</p> <p>Standard not set by expert evidence</p>	<p>Facts: Claim for negligence for severe brain damage for a paediatric registrars failure to attend after being summoned by the nurse twice to come</p> <p>Held: For defendant. Intubation was a risk process in itself. Do not need to run.</p> <p>Ratio: Expert evidence is weighty but that is not conclusive of the standard of care, courts must be persuaded it was reasonable. Could reject if it consider the opinion lacks a logical foundation (reasonable and responsible)</p>
<p>Hucks v Cole</p> <p>[referred to in Bolitho]</p>	<p>Facts: Doctor failed to treat patient with penicillin although a number of doctors said they would.</p> <p>Evidence of another practitioner is a very weighty matter but not conclusive. Courts must be vigilant to see whether the reasons given for putting a patient at risk are</p>

	vlaud in the light of any well known advances in medical knowledge or whether they stem from a residual adherence to out of date ideas.
Edward Wong Finance Co Ltd v Johnson Stokes & Masters [1984] AC 296 (PC) [referred to in Bolitho] Customs of Trade	Facts: D conducted mortgage transaction in "Hong Kong style". Borrower absconded with the loan money without providing the security documents for sch loan. PC Held: although the completion in Hong Kong style of almost universally adopted in Hong Kong, D was liable for negligence because there was an obvious risk which could have been guarded against .
Roe v Minister of Health [1954]	Lord Dennings "We must not look at the 1947 incident with 1954 spectacles

Proof of Negligence: Res Lpsa Loquitur

Ratcliffe v Plymouth & Torbay HA	<p>Doctrine that infers negligence from the very nature of an accident or injury in the absence of direct evidence on how any defendant behaved. Duty and Breach could be inferred.</p> <p>P prima facies establishes negligence where</p> <ul style="list-style-type: none"> (i) P relies on the happening of the accident to raise the inference of negligence supported by ordinary human experience (wouldn't have happened without someone being careless). (ii) Under the sole control or management of the defendant (iii) No evidence as to how or why the occurrence took place
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Duty of Care

Marx v Attorney-General [1974] 1 NZLR 164 (CA). <i>Limitations to the duty of care</i>	<p>Facts: Wife of a man who had been injured at work from brain damage and started to abuse her. Wife sued employer arguing the employers owed their employees wife a duty of care.</p> <p>Held: Reasonable foreseeability is a condition precedent to duty but of itself is not sufficient.</p> <p>Duty is a control device to bring liability to the wrongdoer within reasonable limits</p>
Donoghue v Stevenson [1981] AC 562 (HL).	<p>Facts: Friend buys ginger beer, shop owner pours, person drinks and snail comes out. Bottled made by opaque glass, no one can see from outside</p> <p>Held: Existence of a contract did not prevent the D of owing a duty of care in tort and the duty of care in tort is measured by the promise in contract.</p> <p>Lord Atkinson: the duty is not confined to mere physical proximity.</p>
Home Office v Dorset Yacht Co Ltd [1970] AC 004 (HL).	<p>Facts: Borsel (child prison) Officers takes inmates to Brownsea Island, at night the officer went to bed and left them with their devices. The kids tried to escape and hijacked a yacht and collided with the plaintiffs yacht.</p> <p>Lord Reid - There has been a steady trend towards negligence depending on principle so that when a new point emerges we should ask not whether it is covered by authority but whether recognised principles apply to it.</p>