Asif Tufal

THE TORT OF NEGLIGENCE

DEFINITION - 1

The breach of a legal duty to take care, resulting in damage to the claimant which was not desired by the defendant: L.B. Curzon, *Dictionary of Law*.

DEFINITION - 2

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." Per Alderson B., *Blyth v Birmingham Waterworks Co.* (1856)

1. DUTY OF CARE

A duty of care was originally established by applying Lord Atkin's "Neighbour" Test from: *Donoghue v Stevenson* (1932).

The modern three-stage test was laid down by the HL in: *Caparo Industries v Dickman* (1990). The court must now consider:

(A) Whether the consequences of the defendant's act were reasonably foreseeable.

For example, damage or harm was held to be reasonably foreseeable in:

Kent v Griffiths (2000); and *Jolley v Sutton LBC* (2000).

But not in:

Bourhill v Young (1943); or *Topp v London Country Bus Ltd* (1993)

(B) Whether there is a relationship of proximity between the parties, ie a legal relationship or physical closeness.

For example, there was proximity in:

Home Office v Dorset Yacht Club (1970).

But not in:

Caparo v Dickman (1990).

(C) Whether in all the circumstances it would be fair, just and reasonable that the law should impose a duty.

It was held not to be fair, just and reasonable to impose a duty on the police in:

Hill v C.C. of W. Yorkshire (1988).

However, a duty was imposed on the fire brigade in:

Capital v Hampshire County Council (1997).

2. BREACH OF DUTY

The Standard Expected

Negligence is falling below the standard of the ordinary reasonable person. Specific rules apply if the defendant is a child, a learner or a professional:

* For children, see: *Mullin v Richards* (1998);
* For experts: *Bolam v Friern Barnet Hospital* (1957);
* For learners: *Nettleship v Weston* (1971), and *Wilsher v Essex Health Authority* (1986).

In all other cases, the court will consider the following four factors in deciding if there has been a breach of duty:

(A) The degree of risk involved.

Here the court will consider the likelihood of harm occurring.

There was either no known risk or a low risk in:
Roe v Minister of Health (1954)
Bolton v Stone (1951).

There was a known risk in:
Haley v London Electricity Board (1964).

(C) The seriousness of harm.

Sometimes, the risk of harm may be low but this will be counter-balanced by the gravity of harm to a particularly vulnerable claimant. See, for example:

Paris v Stepney Borough Council (1951).

(B) The practicability of taking precautions.

The courts expect people to take only reasonable precautions in guarding against harm to others. See, for example:

Latimer v AEC Ltd (1952).

(D) The social importance of the risky activity.

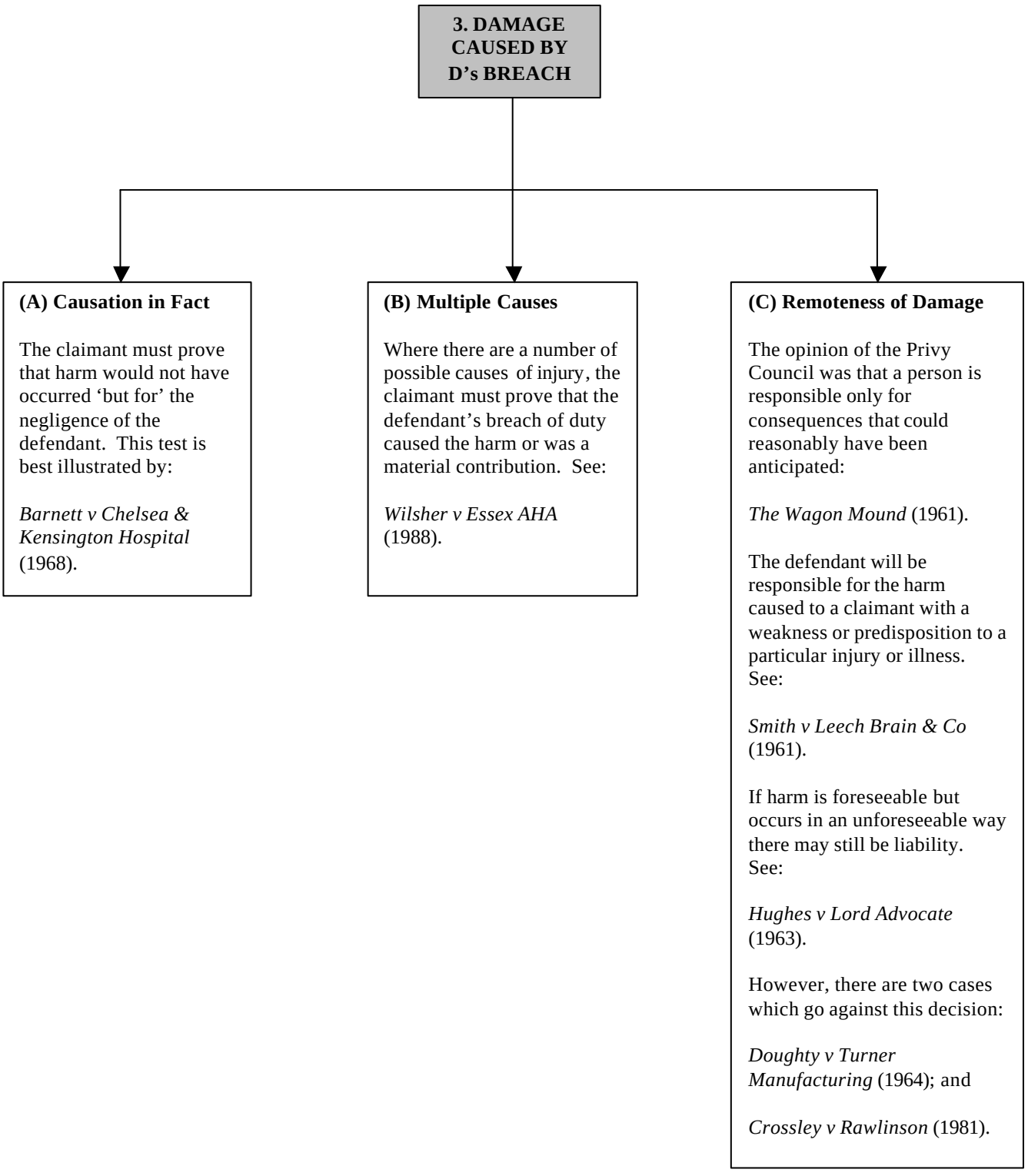
If the defendant's actions served a socially useful purpose then he may have been justified in taking greater risks. See, for example:

Watt v Hertfordshire County Council (1954).

PROOF OF BREACH

The claimant must produce evidence which infers a lack of reasonable care on the part of the defendant. However, if no such evidence can be found, the necessary inference may be raised by using the maxim *res ipsa loquitur*, ie the thing speaks for itself. See:

Scott v London & St Katherine Dock Co (1865)


3. DAMAGE CAUSED BY D's BREACH
(A) Causation in Fact
The claimant must prove that harm would not have occurred 'but for' the negligence of the defendant. This test is best illustrated by:
Barnett v Chelsea & Kensington Hospital (1968).
(B) Multiple Causes
Where there are a number of possible causes of injury, the claimant must prove that the defendant's breach of duty caused the harm or was a material contribution. See:
Wilsher v Essex AHA (1988).
(C) Remoteness of Damage
The opinion of the Privy Council was that a person is responsible only for consequences that could reasonably have been anticipated:
The Wagon Mound (1961).
The defendant will be responsible for the harm caused to a claimant with a weakness or predisposition to a particular injury or illness. See:
Smith v Leech Brain & Co (1961).
If harm is foreseeable but occurs in an unforeseeable way there may still be liability. See:
Hughes v Lord Advocate (1963).
However, there are two cases which go against this decision:
Doughty v Turner Manufacturing (1964); and
Crossley v Rawlinson (1981).