DONOGHUE V. STEVENSON (1932)

Mrs Donoghue was in a café with her friend. She had some ginger beer, which was in an opaque bottle, with her ice cream, and later she emptied the rest into a glass. To her horror a decomposing snail came out. She consequently suffered shock and gastric illness and sued the manufacturer. As her friend had paid, there was an important legal issue to consider. Mrs Donoghue was owed no contractual duty because she did not buy the drink herself. The case eventually went to the HL on the issue of whether a manufacturer could owe a duty in tort to a consumer who did not buy the goods. Elaborate judgments were delivered, but most subsequent judges and legal writers agree that one particular passage in the speech of Lord Atkin actually contains the ratio decidendi of this case, which is that a manufacturer owes a duty to a consumer:

“. . . a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care”

The ratio does not mention snails or ginger beer bottles. Thus it has since been extended to many other faulty products causing harm to consumers, including cars, hair-dyes, foodstuffs, and even underpants containing chemical irritants.

Besides the ratio element of the judgment, which is binding, there are also groups of words or statements which are known as obiter dicta. These statements go beyond the limits of a case and are merely persuasive in future cases. Lord Atkin said that the biblical requirement that we must 'love our neighbour' became, in law, that we must not injure our neighbour. He said, "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour". He then goes on to answer the question 'who then, in law, is my neighbour?' and answers, "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question"

This became known as the 'neighbour principle' and although seen by most as obiter at the time, it has become binding through being applied by the higher courts. Once a higher court is 'persuaded' by a statement it then becomes a binding precedent.

When trying to understand how significant a case is, you must check in which court it was decided. If it is a Court of Appeal decision it binds the inferior courts, yet is merely persuasive to the House of Lords. Also s2 Human Rights Act 1998 provides that the courts 'must take into account' any decisions of the European Court of Human Rights. Such decisions are not binding but are persuasive.

1. Explain the terms 'ratio decidendi' and 'obiter dicta'
2. What is the ratio decidendi here?
3. What can be said to be obiter dicta?
4. State 2 other products the ratio has been applied to
5. Where else might a persuasive precedent come from?
Animals bite back

Rodents have changed the law in Britain.
Report by Gary Slapper

Over many decades, the modest mouse has made a surprisingly wholesome contribution to the development of British food safety law. The law is at stake in this area. Cases of food poisoning have risen by more than 400 per cent in the past decade, and more than 60,000 cases are reported in Britain every year.

When John and Frances Mulheren were children in the 1940s, the father bought them a bottle of "Bar's Perfect Stone Ginger Beer" in Glasgow. It turned out to be imperfect because it contained a dead mouse, which made the children ill. The Court of Session in Scotland ruled that the company was not liable to pay compensation to the brothers Mulheren. Lord Amstrong said that where a manufacturer's goods were widely distributed to consumers "it would be little short of outrageous to make them responsible to members of the public."

Significant legal change has since occurred, however. As Marie Henriques discovered after finding a dead mouse in the last bite of a Tropic chocolate bar she had bought from Piccadilly Circus Tube station last year. Under today's law, not only does Ms Henriques, 32, of East London, have a clear right of civil action against the manufacturer of the bar, Mars UK, but the criminal law now also has an interest in this area. Later this month a prosecution brought by Westminster council against Mars UK under the Food Safety Act 1990 will be heard at Horseferry Road Magistrates' Court.

Three years after the Court of Session decided in favour of those who had suffered a mouse in their ginger beer, the House of Lords changed the whole direction of the law with a historic judgment in Donoghue v Stevenson, the case known to law students as the "case of the ginger beer case." This was another Scottish case, but, as a House of Lords decision, one which also governed the law of England and Wales. Mrs Mary Donoghe had been bought a bottle of ginger beer by a friend in a café in Paisley. She poured a little of the contents over some ice cream in a tumbler. But when her friend poured out the remaining ginger beer, out floated a snail in a state of decomposition.

In one of the most famous decisions in the history of British law, the House of Lords held that the manufacturer of the ginger beer had to pay compensation to Mrs Donoghe because, though the company had no control over it, it owed her a duty of care. The ginger beer was sealed in an opaque bottle so the retailer would have had no way of seeing the snail in the bottle. Thus, it was reasonably foreseeable that, as a consumer,

Mice: the curse of food manufacturers

Mrs Donoghe was someone who was likely to be affected by the care taken or not taken in the ginger beer factory. "The rule that you are to love your neighbour," said Lord Aikin in a landmark legal phraseology, becomes in law: you must not injure your neighbour."

The decision meant that everyone owes a duty to be reasonably careful to anyone likely to be affected by their conduct. It was a decision soon applied not only to manufacturers of food but to people and organisations in all walks of life. The accountant, the banker, the doctor, the local council, the train company, and, indeed, the lawyer. Having started at a small pace in the 1930s, the law of negligence galloped ahead said is now the largest area of civil litigation.

The 1980s saw many social panics over food, involving salmonella, listeria, botulism and BSE. The Food Safety Act 1990 was legislated in this context and creates a systematic structure for food law, under which many special regulations have been made. The main provisions of the Act include offences of "rendering food injurious to health", and selling food that does not comply with food safety requirements. The penalties for a conviction at the Crown Court rise as high as an unlimited fine in two years imprisonment.

Not all victims in this field seek immediate recourse to law. Last month Patricia Henderson, a teacher from Northumberland, was nibbling on a lettuce leaf when she put her hand to a jar of Sainsbury's mixed herbs and felt something horrendous. She dropped it on a plate and found herself confronted by a live toad. Mrs Henderson's screams, as the toad was so severe that she developed chest pains. Sainsbury's staff were summoned and managed to impound the toad. They also disabled the situation with a bunch of flowers, some vouchers and a new salad.

In the next millennium, the computer, cursor-moving mouse (through the disputable wills, contracts, deeds, and defamatory texts that it helps to create) will generate much more work for lawyers but the familiar whiskered rodent will still, doubtless, be making regular appearances in the law reports.

Dr Slapper is Director of the Law Programme at the Open University.
Animals bite back!

1. Which case is referred to as ‘historic’?
2. Why?
3. In which court was it set?
4. Why is this important?
5. What was the ratio decidendi?
6. What fact can you see as ‘material’?
7. What was Lord Atkin’s test called?
8. What did the decision mean?
9. State 3 other types of ‘relationship’ that the precedent has been applied to
10. Do you think Mrs Henderson should have sued or was it better avoid the courts?

Answers

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Worksheet 1 - Tort

Torts are civil wrongs based on people’s responsibility to each other rather than to society as a whole. There are several:


**Negligence**

There are 3 things a claimant must prove:

- duty of care
- breach of that duty
- damage caused by that breach

1 **Duty**

Based on the neighbour principle from *Donoghue v Stevenson 1932*

Read the case and make a short summary of the facts

Why couldn’t Mrs D sue the shopkeeper?
Whom did she sue?
What did the court decide?
How were the manufacturers negligent?

Write out Lord Atkin’s neighbour test
Now put this into your own words

This test has been used in subsequent cases and extended to several other relationships - give 3 examples of such relationships
1.
2.
3.

Caparo v Dickman 1990 - follows D v S but adds to it, establishing a new 3-part test
•
•
•

Make up a short scenario (people, place, action) and then discuss who might owe whom a duty and why (apply the neighbour test & Caparo)
Tort

Gibson v Chief Constable of Strathclyde Police (1999), The Times, May 11 (Outer House of the Court of Session, Scotland): Once a police officer has taken charge of a road traffic situation which, without control by him, presents a grave and immediate risk of death or serious injury to road users likely to be affected by the particular hazard, it is consistent with the underlying principle of neighbourhood for the law to regard him as being in such a relationship with road users as to satisfy the requisite element of proximity. Therefore, the police owe road users a duty of care where an officer has taken control of a hazardous road traffic situation, in this case a collapsed bridge, but later leaves the hazard unattended and without having put up cones, barriers or other signs. (Hill v Chief Constable of West Yorkshire [1989] AC 53 distinguished.)
Duty Cases
Summarise the facts and note which part of the Caparo test was most relevant

Bourhill v Young 1942

Farndon v Harcourt-Rivington 1932

Hill v CC of West Yorkshire 1989

Mulcahy v MOD 1996
In *Hill v CC for West Yorkshire 1988*, a consequence of the ‘Yorkshire ripper’ case, the police were held not to owe a duty to potential victims of a crime after releasing a suspected killer through lack of evidence. When he killed again the mother of the victim sued the police, claiming they owed a duty to her daughter. Although this was foreseeable, the HL refused to find a duty of care, partly because of lack of proximity between the police and an unknown member of the public, but more because it would not be in the public interest, and so not fair, just and reasonable to impose a duty. The threat of being sued could make the police less efficient in carrying out their duties. This immunity for the police is not, however, absolute. There have been several successful claims against the police where harm is more foreseeable or there has been a greater degree of proximity between the police and C. This shows that all three parts of the test are connected. The more foreseeable something is, and the greater the degree of proximity, the more likely it is that it will be fair, just and reasonable to impose a duty. In *Reeves v MPC 1999*, the police were held to owe a duty to a prisoner who committed suicide whilst in their care, and whom they knew to be a suicide risk. The police had left the door flap open and he used it to hang himself with his shirt. His widow sued, and a duty of care was found to exist. An important factor was that the police *knew* that he was a suicide risk. There was also greater proximity, between the police and a single prisoner in custody. Finally, there was no policy reason, such as opening the door to too many claims (the floodgates argument), not to impose a duty. In another suicide case, *Orange v CC of West Yorkshire Police 2001*, a similar claim failed. In this case the man who hanged himself while in custody, after being arrested whilst drunk, was *not* a known suicide risk.

1. What is the 3-part Caparo test?
2. Which part of the test failed in Hill?
3. Why was this?
4. Explain how each part of the Caparo test applied in Reeves
5. Did this case overrule or distinguish Hill?
6. Why, most importantly, was a duty imposed in Reeves?
7. What is the ‘floodgates’ argument?
8. Why was no duty imposed in Orange?
Worksheet on liability for products

At common law the consumer is afforded some protection by the tort of negligence e.g.

The strongest legal weapon that a consumer has, however, is the Consumer Protection Act 1967 (CPA).

The CPA is better than suing in tort as it introduces strict liability. This means

There is also no need to prove a duty, merely that the defendant is a ‘producer’ or ‘manufacturer’. The following people are liable under the Act:

- 
- 
- 
- 

What must you prove?

'Damage' is defined as death, personal injury or loss of, or damage to, private property (i.e., not business property). Loss must exceed £275.

The Act applies to defective rather than damaged goods, i.e., ones that are unsafe.

In assessing whether the product is unsafe, the court must have regard to:

1. 
2. 
3. 
4. 

Defences: It is a defence to show any of the following:

- 
- 
- 
- 
- 

Contributory negligence also applies and a term attempting to exclude liability under the Act will be ineffective.
BREACH Cards exercise (my copy)
The courts will balance various factors in deciding if the duty has been breached or not. *(What are these? Seriousness of harm, degree of risk, utility or justification, cost & practicality of avoiding risk etc).* They will also consider common practice especially in professional negligence cases, and age will be relevant so that children will be judged by the standard of a reasonable child of that age.

In groups take a case and discuss the following questions:

- Who owes a duty to whom?
- What is the standard expected?
- What particular factor(s) are relevant in your case?
- Was the duty breached? How?
- Does the Compensation Act apply?

1. **Bolton 1951** - no breach, risk of harm very small, plus took precautions

2. **Harris v Perry 2008** - no breach, standard of care - that of a reasonably careful parent – was reached + the risk of serious harm was not reasonably foreseeable

3. **McHale 1966** - no breach as standard expected was that of a 12 year old. *(NB in Staley v Suffolk CC 1985 a 12 year old was found negligent for throwing a tennis ball at another pupil and hitting the dinner lady)*

4. **Latimer 1953** – no breach, took precautions and not practical to close the factory, this outweighed the risk

5. **Mullen v Richards 1998** – no breach, standard of reasonable child
   
   *(CA followed McHale - did it have to? No, Australian case)*

6. **Watts 1954** - no breach, social benefit justified the risk

7. **Bolam 1957** – no breach, standard of a professional is that to be expected of the reasonable person *in that profession* and what is reasonable can be decided by reference to medical opinion. Here opinion was divided, so he didn't act unreasonably. **Bolitho 1997** qualifies Bolam on the basis that the medical opinion must have a logical base—otherwise D could argue some group of quack doctors would have done it that way.

8. **McDonell 2005**, breach, standard of doctor, but balancing factors still relevant so 2nd examination by GP fell below standard as risk of harm (meningitis) higher by then and most doctors would have done a fuller examination

9. **Paris 1951** – breach, risk of serious injury greater so standard higher, duty was breached

**Compensation Act 2006 S 1**: in deciding whether D should have taken particular steps to meet the standard of care (e.g., take precautions), a court may consider whether a requirement to take those steps might prevent a desirable activity from being undertaken or discourage people from undertaking functions in connection with a desirable activity (e.g. Bolton – cricket; Watts – saving a life; possibly Harris – children being able to play).
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Black = 3 marks, red = 5 marks.

1. What was established in Bolam and how was it qualified in Bolitho?
2. Why was no duty owed in Bourhill v Young?
3. What was the test in Donoghue v Stevenson and who created it?
4. What were the facts of Mulcahy v MOD?
5. What is the 3-part test for proving D owes C a duty of care? Give a case for each part
6. What 3 things must be proved in order to prove someone is negligent?
7. What standard is considered in order to establish breach of a duty of care? How does this apply to children/drivers?
8. Give an example of a situation where a duty may be owed and how it could be breached (eg when driving, by not looking)
9. What were the facts of Bolton v Stone, and was there a breach of duty?
10. State 2 of the factors a judge might consider when deciding on breach of duty
11. Why might a judge decide a duty has not been breached in a rescue situation even though D acted in a negligent manner?
12. Who might be immune from owing a duty and why? Which case supports this?
Jolley v Sutton LBC 1998 and 2000

Read the case and answer the questions

1. Which 2 courts heard the appeal?
2. Who is the claimant and what is he claiming?
3. Which case did the CA refer to regarding foreseeability?
4. *The court found a duty and breach of it so why did they allow the appeal?*
5. In 'Hughes' Lord Pearce stated a test which set a precedent for future cases - what was it?
6. If it was foreseeable that children may play on abandoned boats what was the difference here which prevented causation being proved?
7. What happened in the subsequent appeal to the House of Lords and why?
8. Do you think the decision of the CA or HL was right?
### Causation card exercise: Match the principle to the case

<table>
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<th>Case</th>
<th>Principle</th>
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<td><strong>Fairchild v Glenhaven Funeral Services 2002</strong></td>
<td>Provides an exception to the ‘but for’ rule where C cannot prove which one of two or more factors caused the harm. The HL noted, however, “considerable restraint is called for” in any relaxation of the test.” (Lord Nicholls). Each employer was found to be liable in full, as each negligent exposure had increased the risk of getting the disease.</td>
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<td><strong>Barker v Corus 2006</strong></td>
<td>The HL confirmed Fairchild but held liability should be apportioned on the basis of how far each employer had contributed to the risk of harm occurring. The Compensation Act reversed this, effectively reinstating Fairchild.</td>
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<td><strong>Clough v First Choice Holidays 2006</strong></td>
<td>The CA indicated that the Fairchild exception would have no application in a personal injury claim arising from a single incident. In such a case C had to prove the accident would not have happened ‘but for’ the breach of duty. Proving the breach increased the risk of harm was not enough.</td>
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<td><strong>Rothwell v Chemical &amp; Insulating Co Ltd. and other appeals 2007</strong></td>
<td>The HL held there was no action in tort in respect of a risk of future injury (unless, as in one case, the worry had led to a recognisable psychiatric injury).</td>
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<td><strong>Hull v Sanderson 2008</strong></td>
<td>The CA confirmed Fairchild was limited to cases where it was impossible, not just difficult, to say which one of two or more factors caused the harm. Although they noted that the HL “did not speak with one voice on the scope of the exception”</td>
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White v Jones: economic loss and judicial creativity

Read the article and then answer the questions.

Bear in mind the following:

The argument against a duty of care extending to a wide section of the public - the ‘floodgates argument’ - arises in both psychiatric harm/nervous shock cases (thousands may witness an event as in Alcock) and in economic loss cases (thousands or even millions may read a statement as in Caparo). It can also extend to cases of physical loss in certain situations, such as Hill v CC of West Yorkshire 1989, where the HL held the police did not owe a duty to the general public to prevent/detect crime as it could lead to defensive policing. As a matter of policy, it was not ‘fair, just and reasonable’ to impose a duty.

1 What was the loss and to whom was it caused?
2 How does ‘assumption of responsibility’ apply to professionals?
3 Can you see any indication of judicial creativity?
4 What do you think the majority decision was based on?
5 Why did 2 Law Lords dissent?
6 What was the gap in the law identified in White?
7 Could the estate sue the solicitor?
8 What was Lord Goff particularly concerned about?
9 What is a policy issue? What example can be seen here?
10 Do you believe judges should/should not allow policy to influence their decisions?
Economic Loss and negligent misstatement

A distinction is made between economic loss and pure economic loss. Where there is no physical damage, either to person or property, a claim for financial loss would usually fail because the loss is only economic.

Example You are walking to work when you see someone screaming that her husband has been hit by a car. You stop to help. As a result, you are late for a meeting, which means you lose an important contract. You also lose a day’s pay. The husband can claim for his injuries and for loss of earnings whilst off work. The wife may have a claim for psychiatric harm, which can also include any loss of earnings. However, your loss of earnings was not a result of either physical or psychiatric harm so you cannot claim. In all three cases there is economic loss (earnings). Only in the last is it pure economic loss and so not recoverable.

The law also makes a distinction between economic loss caused by negligent statements (or, more correctly, m…………………), and economic loss caused by negligent acts.

negligent misstatements

In Hedley Byrne v ……… 1963, a bank gave a credit reference in which they negligently stated that their client was sound. The Cs relied on this and consequently suffered heavy losses when the client went into liquidation. On the facts the claim failed due to a d………………. However the principle was established by the HL that there could be liability in tort for such losses if there was a ‘special …………..’ between C and D. The n……………… principle from D……………. v S…………….. was held to be too wide.

A ‘special relationship’ means that:

- a …………………. is possessed by D, who makes the statement
- C reasonably ………… on D’s statement
- D knows that C is ………….to rely on the statement

Note the overlap. The more special someone’s skill is, the more reasonable it is to rely on it.

special skill

Mutual Life and Citizen’s Assurance Co v ……… 1971 - the claim failed because D was in the insurance business and the advice was in respect of investments. The majority (3-2) held that only if they were in the business of giving that type of advice would a duty arise. The minority thought a duty could arise when D knew the statement would be reasonably ……… on, even if they were not in that particular line of business.

Esso Petroleum v ……… 1976 - the minority view was applied. Esso gave a negligent estimate of the potential turnover of a garage. This was not within their area of expertise, but the court held that they were liable to the buyer. They knew that the statement would be relied on and they had implied that they had expertise so it was reasonable for the Cs to rely on it.

http://www.drsr.org/sally.htm
knowledge

Smith v ........ 1989 - the HL held a surveyor owed a duty to a house buyer even though he prepared the survey for the building society lending them money. He owed a duty to the 3rd party buyers because it was quite obvious that they would rely on his survey. There were obiter ...... which suggest a buyer might fail. It is normal practice in such deals to have your own survey done, so a surveyor for the lender would not ‘know’ the buyer would rely their survey – they would expect them to have a survey done for themselves. The court felt there would only be a duty if it was “highly likely” C would rely on the statement. Here, as in Hedley, there was a disclaimer but by this time further protection could be found in the Unfair .......... .......... Act 1977. This Act prohibits unreasonable exclusions of liability.

Caparo plc v Dickman 1990 - established the 3-part test for proving a duty. The auditors prepared the accounts for the c........... not potential investors, so they could not know Caparo, as potential investors, would rely on them.

Spring v Guardian Assurance plc 1993 - the HL held that an employer owed a duty to an .......... in respect of a negligent .............., as they knew it would be relied on by a potential employer. In this case the advice was not given to C but was about C. This further extends the duty owed to 3rd parties.

reasonable reliance

Lord Reid said in Hedley that there would be no duty of care for statements made on a s........ occasion. However, in C............. v Prabhakar 1989, a friend who negligently gave advice on buying a ....... was held to owe a duty to C. He had knowledge of such matters and she had reasonably relied on that knowledge.

In Caparo the p........... of the information was said to be relevant. It is not likely to be found reasonable to rely on information intended for someone else for a different purpose.

Assumption of responsibility

The principle of ‘assumption of responsibility’ was rooted in Hedley Byrne but more emphasis was put on it during the nineties. In Henderson v ............. Syndicates 1995, the HL held that syndicate managers could owe their members (underwriters of insurance policies) a duty in tort as well as contract. That duty was to exercise reasonable ......and care. Lord Goff said that where someone assumed ........ for professional services, this would be enough to impose a duty.

White v Jones 1995 - two ........... had been cut out of their father’s will. Before he died he changed his mind and instructed his ............. to amend his will. Despite a reminder this was never done and the daughters did not receive their inheritance. The HL found the solicitors liable to the daughters for

http://www.drsr.org/sally.htm
their losses. The emphasis was on the fact that the solicitor, as a professional, had ‘…………. responsibility’ for his work and thus was under a duty not to do it n………………. It is reasonable for ………………………… of wills to rely on solicitors to do their jobs properly.

The majority based their decision on achieving “practical justice” and appear to be filling in a gap in the law in order to allow a 3rd party beneficiary (who has no contract with the solicitor and so cannot sue in contract law) to claim for the loss of their inheritance. (This is a good example of judicial creativity.)

In Phelps v …………………. BC 2001, the HL held that a professional asked to work with a specific child could be liable to her for his lack of care and skill in the exercise of that profession.

In …….. v Trent Strategic Health Authority 2007, the Authority closed a nursing home and the proprietors suffered economic loss to the business. The CA held that the judge was wrong to hold that it was fair, just and reasonable that the Authority should owe a duty. It was well established that duties should only be held to exist either within existing c………….. or on an incremental basis, and that no similar duty had been found to exist. The court approved C…………. v D…………., and held it was not ….., ….. and ………………to impose a duty of care. The Authority’s primary duty was to the residents of the nursing home and to the public interest, and the urgency of the situation and risk of harm to residents outweighed the economic interests of the proprietors.

In Customs and Excise Commissioners v Barclays Bank 2006, the HL considered the tests. The bank had been responsible for money owed to Customs by another party not being paid in full. The trial judge found that the bank did not owe a duty to the 3rd party (Customs and Excise), mainly based on the lack of any ‘assumption of responsibility’. The CA allowed the appeal by Customs, and Longmore LJ said that the modern law on proving a duty of care derived from 4 cases, C………., H………….., W……… and P……….

In cases of economic loss it was appropriate to use each of the following tests:

1) the 3-fold Caparo test:
   i) ………………………
   ii) ………………………
   iii) whether it is fair, just and reasonable to impose a duty

2) the ‘assumption of responsibility’ test (W…….. v J……..)

3) the ‘i……………’ test (liability is not extended in a giant leap but in short steps)

The HL …………. the decision of the CA, but confirmed the tests. …….. On the facts the HL held that ……… was it fair, just and reasonable to impose a duty on the bank as it was not a party to the transaction between Customs and its creditors. Imposing a duty ……..

**Economic Loss by acts**

The question of whether economic loss could be claimed in respect of negligent acts was answered in the negative by the CA in Spartan Steel and Alloys Ltd v …………. 1973.

The Ds negligently severed a power cable to C’s factory and caused damage to steel in production. The Cs were able to claim for the ………… damage to the steel and for the consequential loss of ……….. on
that steel, but not for further loss of profit due to other, undamaged, machines lying idle. This last sum was pure economic loss because it did not stem from any physical damage.

One case where a claim for pure economic loss succeeded is **Junior Books v ............ 1983**, a subcontractor was held liable to the owner of the premises he was working in and who had ordered the work (through the main contractor). This was almost a contractual relationship and so it sets no .......... for cases where the degree of p............ is less than this.

The rule against recovery for economic loss was reinforced by the HL in **Murphy v ............ DC 1990**. The Council’s building inspector approved plans which meant C’s property was poorly constructed and in a dangerous state. This led to a drop in its value. Reversing the decision of the CA, the HL held there was no duty. The judges appeared to have differing reasons for their decision but the result is that if there is a d........ but it has not yet caused any d........, there is no duty. Of course, if the defect actually leads to damage then the usual rules for physical harm would apply.

**Example**

A property is built according to a set of plans that were negligently prepared. The balcony is unstable, thus making the property worth less than it should be. This is a defect but there is no damage yet. The owners cannot claim as their loss is purely economic – i.e., a lower value. However if the balcony falls off then the house is now physically damaged and a claim can be made.

**Remember**- proving a duty is just the first step in a negligence case. In order to win, C will still have to prove that the duty was breached, *and* that the breach caused the loss suffered.
Psychiatric Harm and creativity

Read the Greatorex case and then answer the following questions:

1. Why do claims for nervous shock need to be subject to controls?
2. What does 'policy considerations' mean?
3. How far do you believe judges should be involved in policy considerations?
4. What were the 3 control mechanisms established in Alcock and summarised by Lord Hoffman in White?
5. What was the distinction made in Page v Smith?
6. Does psychological harm need to be foreseen for a) a primary victim b) a secondary victim?
7. What did the House of Lords in White decide about rescuers?
8. What was special about the claimant in Greatorex?
9. Was a duty of care owed to the claimant in Greatorex?
10. Was this decision based on legal principles or policy considerations?
### Summary of duty for all types of loss

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<th>Economic</th>
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<tbody>
<tr>
<td>Duty based on Donoghue/Caparo test</td>
<td>Duty based on Alcock test</td>
<td>Duty based on Hedley test, Caparo test and assumption of responsibility</td>
<td>No duty</td>
</tr>
<tr>
<td>Go on to prove breach and causation</td>
<td>Go on to prove breach and causation</td>
<td>Go on to prove breach and causation</td>
<td>No claim</td>
</tr>
</tbody>
</table>

### Task 1

Look up the tests mentioned above. Draw a diagram adding the tests and example cases for each type of harm or damage. Keep this for revision.

### Recap: breach and causation

The standard required is that of the reasonable person, an objective test as in *Nettleship v Weston 1971* regarding learners. Note, though the subjective element:

- **Bolitho v City & Hackney HA 1998** - professionals
- **Mullin v Richards 1998** - children

Look at the factors used in assessing the standard:

- the degree of risk - *Maguire v Harland & Wolff plc 2005*
- the seriousness of potential harm - *Paris v Stepney BC1951*
- whether the risk was justifiable - *Watt v Hertfordshire CC 1954*
- the expense and practicality of taking precautions - *Latimer v AEC 1952*
Note these are balanced against each other, thus in *Bolton v Stone* there was a low risk of harm, but the potential harm could be serious, there was also a benefit to the public and sufficient precautions had been taken. Overall the required standard had been reached.

**damage caused by the breach**

- Would the harm have occurred ‘but for’ D’s act or omission? *Barnett v Chelsea & Kensington HMC* but note also *Fairchild v Glenhaven Funeral Services Ltd*
- Was the harm foreseeable or was it too remote? *The Wagon Mound*
- Was this type of harm foreseeable? *Hughes v Lord Advocate*
- Does the thin-skull rule apply? *Smith v Leech Brain*

**Task 2**

Write out the facts and how the law applies for all the above cases on breach and causation. Keep this for revision