

# [Principles of negligence in nursing references](https://assignbuster.com/principles-of-negligence-in-nursingnreferences/)

This paper will investigate the principles of negligence and criticallyexplore the requirement for an awareness and understanding of the laws that areinvolved for safe practice in the health service (NHS Education for Scotland, 2014).  It will consider ethical issues that nurseswill face in practice and the difficult clinical decision-making process. Notall medical injuries are because of the result of negligence. All healthprofessionals strive to run a safe medical practice, however still within themedical system errors are being made. Negligence is defined as ‘ a failure totake proper care of something’, and this seems a reasonable concept and yet steppingto professional medical negligence it rises to three elements of negligence. Professional negligence is a complex area of the law where, medical negligence canonly be proved if all components of the three-part test are present on thebalance of probabilities (civil law) or beyond reasonable doubt (criminalprosecution) (Bryden & Storey, 2011). The three-part testconsists of certain considerations between the health professional and the deliveryin their duty of care. The test is based on the reasonable foreseeability ofharm (Griffith & Tengnah, 2017). These three elementsfor the duty of care will not always be separately identifiable, at times theymay overlap and include other influences (Griffith & Tengnah, 2017).

A nurse has an obligation andaccountability within their responsibility to deliver a duty of care topatients, families and carers (Nursing and Midwifery Council, 2015). Nurses are dutybound to adhere to The Code, and although not specified it suggests that in thesection Prioritise People, “ nurses must make patients care and safety theirmain concern, and ensure that patients’ needs are recognised, assessed andresponded to” (Nursing and Midwifery Council, 2015). According to (Beauchamp & Childress, 2013) framework, nurses work to promote their patients’ best interests andnonmaleficence. There four principles suggestthat all healthcare professional should act to benefit his/her patient. This framework is widely used and considers the medicalethics in a clinical setting and despite their limitations since theirintroduction they are used to teach and evaluate ethical dilemmas in healthcare(Page, 2012). Duty of care for personal injury was initially established by Lord Atkins namingit the neighbour test. His Seminal judgement suggests that ‘ you should treatothers as you would want to be treated yourself’, his use of the words of theparable of the good Samaritans (Thomson Reuters, 2016). This was introducedfollowing the case of Donoghue v Stevenson [1932] UKHL 100,  (Chapman, 2009). Although in the summary of this case Donoghuewas unable to sue Stevenson for breach of contract it was concluded thatStevenson owed a duty of care to his consumers, so it was decided that injurywas sustained through negligence in his duty of care (Bryden & Storey, 2011).

In comparison the case of CaparoIndustries Plc v Dickman [1990] UKHL 2 however was more diverse with regards tothe question to breach of duty of care. This case was a different situation, wherethere were arguments of public policy documents, so to determine negligence thethree-fold test needed to be established (Hartshorne, 2007). For this to exist there has to arelationship of proximity between the claimant and the defendant and the foreseeabilityof the defendant’s actions and the claimant’s injuries and whether it is reasonableto impose a duty of care (Tan, 2010). This case was ruledthat there was not a duty of care to the entire public who may or may not place dependence on the reportwhen forming financial decisions (Hartshorne, 2007). Everyone has the right to respect for his/her private and familylife (Human Rights Act , 1998). However, a nurses’involvement with others is complicated because the duty of care exists themoment that the patient or client presents for treatment or care including astranger on the street (Dowie, 2017). According to (Young, 2009), there still stands a dilemma around what the duty of care means for a nurse inpractice. Can it be argued that there is not a legal duty to nurses all thetime. A duty of care will combine a legal duty, professional and ethical duty, along with accountability on all these levels (Bond & Paniagua, 2009) suggest that nursesare not considered everyday citizens. There is no legal requirement from alegal perspective to a nurse to help in an accident or incident unless they arethe cause, however from a professional and ethical viewpoint they do have aduty (Dimond, 2015). It is important to balance rights andobligations and to consider a deontological perspective in practice (Mandal, et al., 2016).

In all cases it is for theclaimant to prove that the defendant was negligent on the balance ofprobabilities, this being the case giving the civil burden of proof (Stauch, et al., 2003). Once establishedthat a duty of care exists between parties it is then that the claimant mustprove that a duty of care was breached (Gerard , 2008). Establishing a breach is one of the threeelements in proving negligence (Owen, 2007). Demonstrating that the defendant is not negligent if the damage to the claimantwas not a reasonably foreseeable consequence of their conduct (Beever, 2007) It is the likelihoodof harm and whether the defendant had taken all practical precautions toprevent harm, something that is considered what a reasonable man would do (de Villiers, 2015). The case of Boltonv Stone[1951] AC 850, [1951] 1 All ER 1078 has  characteristicswithin this case in judgement to viewing safety from the defendant’s side (Wilson, 2011). The defendant tookall reasonable measures of safety in to account, however there was always aconceivable possibility that harm could occur, but this being so extreme anobligation of care that unable to be imposed in all cases. The Bolam test is anassessment that came about from the case of Bolam v Friern Hospital ManagementCommittee [1957] 1 WLR 582. It is used to assess the standard of reasonablecare in negligence cases (Abraham, 2017). As with (Wilsher v Essex Area Health Authority [1988] AC 1074, , 1988) on the balance of probabilitycould the hospital be held liable, in this case the defendant failed to provide services as per the standards set by the governingbody (Kline & Khan, 2013) Initially the Court found the defendant, Essex Area Health Authority, liable for the infant’s injuries, citing McGhee v National Coal Board [ 1973] 1 WLR 1 (Mandal, et al., 2016). Since the case was complexdue to there being a multitude of consequences, proving liability on thedefendant could not be entirely found (Mandal, et al., 2016). However, thedefendant was still liable to give a standard of care of that of a qualifieddoctor, and in the first instance McGhee had been wrongly citied. So due to thenumber of possible causes it was for the claimant to establish the likelihoodof causation. However, harm is unacceptable regardless of the consequences (Mandal, et al., 2016)

In the case of Chester v Afshar[2004] UKHL 41) incomparison to Bolton v. Stone[1951] AC 850, [1951] 1 All ER 1078 not all reasonable precaution wastaken with Afshar in giving all information to the patient and ensuring thepatient was aware of all risks involved (Thomas, 2009). The principal issues of autonomy, confidentiality, justice, beneficence, and non-maleficence are significant factors that adoctor should be mindful and considerate off when making decisions every day (Thomas, 2009). Although itcould not be proven entirely that the lack of information was the cause forfurther discomfort, it can be recognised that “ but for” the lack of informationChester may not have continued with surgery. Conversely the “ but for” test doesnot provide a complete or exclusive test of causation in the law of tort (Stapleton, 2015). On these facts thejudge found that the claimant had established a causal link between the breachand the injury she had sustained and held that the defendant was liable indamages (Parliament, 2003).

Causationof injury is the most difficult principle to prove under the principles ofnegligence (Alvarez, 2012).  In provingcausation, it is not enough to show that the defendant’s conduct caused theinjury to happen, it is generally the person harmed that must prove that thestandard of care fell below what is expected of what a reasonably competentperson would give (Voyiakis, 2018). Considering this part of negligence, the other elements need to be fulfilled so Firstly it needs to be establishedwhat effect did it have on the patient (Griffith &Tengnah, 2017). So, finding a causal link needs to be obtained (Avery, 2017). When claiming for anegligent act compensation is sometimes awarded for damages caused (Bryden & Storey, 2011). There is athree-year window for claiming negligence from the alleged negligenceoccurring, or from when aware of a negligent act (Bryden & Storey, 2011). This assists forminors until they mature and come of age (Bryden & Storey, 2011).

It is well represented in the case law of (Barnett v Chelsea [1968] 2 WLR 422, n. d.) even though thedefendant was in breach of their duty of care, they did not however cause theinjury. Though, in this case it could be asked could the patient have suffereddue to the breach in care also considering possible phycological trauma to thefamily. However, this was a civil action, had it been determined thatChelsea was the cause of death thenthis would have become a gross negligence hearing as with the case of R vAdomako [1995]. Gross negligence does not signify an intention to cause harm, if it was to be intentional this would be classed as murder (Ferner & Mc Dowell, 2006). It needs to be ascertainedthat a breach in the standard of care that was given caused harm (Griffith & Tengnah, 2017). The court are awarethat negligence can also induce psychological upset, so as a result of thisthere are instances when the court will award damages to the claimant (Avery, 2017). However contrary tothis there is a distinction made for this to happen, this is primary andsecondary victims (Sowersby, 2014). The distinction lays between directinvolvement and those who become distressed upon discovering about negligenceon another person (Sowersby, 2014). This is well noted in the case law of (Alcock and others v Chief Constable of YorkshirePolice, 1992)AC31091-2 Likewise, the case of (Jaensch v Coffey [1984] 155 CLR 549,, n. d.) itwas determined that it was more than reasonable foreseeability, proximity wasalso relevant, doctrine was extended beyond those who perceive with their eyes (Vandhana &Dharshini, 2018). So, does this warrant a relationship between psychiatric illness and careless conduct(Raz, 2010). However, in thiscase are there ways to have been more aware and demonstrated more empathy, anddid they practice non- maleficence, is this just behaviour. Harm must be proven by an act ofnegligence or omission (Dowie, 2017). Itis important to understand that carelessness is not classified as negligencethese acts are a lack of being unmindful, forgetful and inconsiderate (Raz, 2010). In spite of theelements required to prove negligence, there is the case of “ Res Ipsa loquitur”, this is the principle that incidentscan occur where it is appropriate to imply a negligent act (Brenner & Bal, 2015) This is where an act“ speaks for itself” (Brenner & Bal, 2015). This must meetthree conditions to establish a negligent act, as in the case of Cassidyv Ministry of health [1951].

ConclusionSo, what does this mean to nursingpractice, a nurse is always duty bound by the NMC code of conduct to adhere tobeing candour. It is established that it is unethical in medical practice to deliversubstandard care. It is important to understand that actions should be based onthe right intentions. A nurse should understand their principles of duty andrecognise their obligations and the rights of others. Recommendations fornursing practice would be to always develop and follow through with a goodnursing care plan and remain up to date on the organisations policies andprocedures. It is important to recognise scope for practice and standardswithin a work place, and always identify and know their limitations and alwaysask for clarification when not fully understanding a task.

# References

* Abraham, T., 2017. A Short History of the Bolam Test- A Key Stone of Medical Negligence Law for 60 Years. [Online] Available at: https://www. gponline. com/short-history-bolam-test-keystone-medical-negligence-law-60-years/article/1441675 [Accessed 17th Novemeber 2018].
* Alcock and others v Chief Constable of Yorkshire Police (1992).
* Alvarez, M., 2012. Review: Action, Ethics, and Responsibilty & Causing Human Actions: New Perspectives on the Causal Theory of Action. Oxford Journals, 72(One), pp. 190-193.
* Avery, G., 2017. Law and Ethics In Nursing and Healthcare. 2nd ed. London: Sage.
* Barnett v Chelsea [1968] 2 WLR 422 (n. d.).
* Beauchamp, T. L. & Childress, J. F., 2013. Principles of Biomedical Ethics. 5th ed. Oxford: Oxford University Press.
* Beever, A., 2007. Rediscovering the Law of Negligence. First ed. Oxford: Hart Publishing.
* Bolton v Stone AC 850, (1951).
* Bond, P. & Paniagua, H., 2009. Understanding the Law and Accountability. Practice Nursing, 20(8), pp. 406-408.
* Brenner, L. H. & Bal, B. S., 2015. Medicolegal Sidebar: The Law and Social Values: Res Ipsa Loquitur. Clinical Orthopaedics and Related Research, 473(1), pp. 23-26.
* Bryden, D. & Storey, I., 2011. Duty of Care and Medical Negligence. British Journal of Anaesthsia, 11(4), pp. 124-127.
* Bryden, D. & Storey, I., 2011. Duty of Care and Medical Neligence. Continuing Education in Anaesthesia Critical Care & Pain, 11(4).
* Caparo Industries Plc v Dickman [1990] UKHL 2 (1990).
* Cassidy v Ministry of health . (1951).
* Chapman, M., 2009. The Snail and The Ginger Beer A Singular Case of Donoghue v Stevenson. First ed. London: Wildy Simmonds & Hill Publishing.
* Chester v Afshar [2004] UKHL 41) (2004).
* de Villiers, M., 2015. Forseeability Decoded. Minnesota Journal of Law, Science & Technology, 16(1).
* Dimond, B., 2015. Legal Aspects of Nursing. 7th ed. Harlow: Pearson.
* Donoghue v Stevenson [1932] UKHL 100, (1932).
* Dowie, I., 2017. Legal, ethical and Professional Aspects of Duty of Care for Nurses. Nursing Standard, 32(16-19), pp. 47-52.
* Dowie, I., 2017. Legal, Ethical and Professional Aspects of Duty of Care for Nurses. Nursing Standard, 16-19(32), pp. 47-52.
* Ferner, R. E. & Mc Dowell, S. E., 2006. ” Doctors Charged With Manslaughter in the Coarse of Medical Practice”. Journal of The Royal society of Medicine, Volume 99, pp. 309-14.
* Gerard , P., 2008. What Happens When a Breach of The Duty of Care Results in Death?. Guidelines in Practice.
* Griffith, R. & Tengnah, C., 2017. Law and Professional Issues in Nursing. Fourth ed. London: Sage Publications.
* Hartshorne, J., 2007. Confusion, Contradiction and Chaos Within the Hous of Lords Post Caparo v Dickman. [Online] Available at: https://lra. le. ac. uk/bitstream/2381/27596/4/J\_Hartshorne\_article\_. pdf [Accessed 09 November 2018].
* Human Rights Act , 1998. Gov. uk. [Online] Available at: https://www. legislation. gov. uk/ukpga/1998/42/schedule/1/part/I/chapter/7 [Accessed 09 November 2018].
* Iwan, D., 2017. Legal, Ethical and Professional Aspects of Duty of Care for Nurses. Nursing Standard, 32(16), pp. 47-52.
* Jaensch v Coffey (1984) 155 CLR 549, (1984).
* Jaensch v Coffey [1984] 155 CLR 549, (n. d.).
* Kline, R. & Khan, S., 2013. Duty of Care of Healthcare Professionals. Public World.
* Mandal, J. H., Ponnambath, D. K. & Parija, S. C., 2016. Utilitarian and Deontological Ethics In Medicine. Tropical Parasitology, 6(1), pp. 5-7.
* NHS Education for Scotland, 2014. Professionalism and Professional Accountability in Clinical Skills Practice. [Online] Available at: http://www. csmen. scot. nhs. uk/media/1318/professionalism\_and\_professional\_accountability. pdf   
  [Accessed 18th Novemeber 2018].
* Nice, 2011. Making Difficult Choices: Ethical Commissioning. [Online] Available at: https://www. evidence. nhs. uk/search? q= ethical+principles+in+healthcare+research [Accessed 30th October 2018].
* Nursing and Midwifery Council, 2015. The Code. [Online] Available at: https://www. nmc. org. uk/globalassets/sitedocuments/nmc-publications/nmc-code. pdf
* Owen, D. G., 2007. The Five Elements of Negligence. Hofstra Law Review, 35(4), pp. 2-9.
* Page, K., 2012. The Four Principles: Can They Be Measured and Do They Predict Ethical Decision Making. BMC Medical Ethics, 13(1), p. 1.
* Parliament, 2003. Opinions of the Appeal for Judgement In the Cause. [Online] Available at: https://publications. parliament. uk/pa/ld200304/ldjudgmt/jd041014/cheste. pdf [Accessed 11 Novemeber 2018].
* R v Adomako (1995).
* Raz, J., 2010. Resposability and the Negligence Standard. Oxford Journal of Legal Studies, 30(1), pp. 1-18.
* Sowersby, R., 2014. Psychiatric damage: Primary and Secondary Victims. [Online] Available at: http://www. guildhallchambers. co. uk/pdfs/guildhall-1794. pdf [Accessed 17th Novemeber 2018].
* Stapleton, J., 2015. An “ Extended But-For Test For” The Casual Relation In The Law Of Obligations. Oxford Journal of Leagal Studies, Volume 35.
* Stauch, M., Wheat, K. & Tingle, J., 2003. Medical Law. Second ed. London: Cavendish .
* Tan, D., 2010. The Salient Features of Proximity: Examining the Spandeck Formulation for Establishing a Duty of Care’. Singapore Journal of Legal Studies, pp. 459-83.
* Thomas, J., 2009. Ethical and Legal Issues in Medical Practice. US National Library of Medicine, 25(3), pp. 335-336.
* Thomson Reuters, 2016. Principles and Progress. [Online] Available at: http://sites. thomsonreuters. com. au/journals/files/2018/07/Justice\_Peter\_Applegarth\_2016-90-ALJ-711. pdf [Accessed 07 Novemeber 2018].
* Vandhana, R. & Dharshini, P., 2018. A Test of Proximity and Forseeabilty With Respect To The Tort Of Negligence: An International Perspective. International Journal of Pure and Applied Mathematics, 120(5), pp. 453-462.
* Voyiakis, E., 2018. Causaton and Oppertunity In Tort. Oxford Journal of Legal Studies, 38(1), pp. 26-47.
* Wilsher v Essex Area Health Authority [1988] AC 1074, (1988).
* Wilson, J., 2011. The Delight of Everyone. New Law Journal, Issue 7482.
* Young, A., 2009. Review: The Legal Duty of Care for Nurses and Other Healthcare Professonals. Journal of Clinical Nursing, Volume 18, pp. 3071-3078.