

# [In of negligence, which refers to "a breach](https://assignbuster.com/in-of-negligence-which-refers-to-a-breach/)

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In English common law the term duty of care is encompassed by the termTort of Negligence, which refers to “ a breach of duty or a failure of one party to exercise the standard ofcare required by law, resulting in damage to the party to whom the duty wasowed”.

A tort is “ awrongful act or an infringement of a right (other than under contract) leadingto legal liability.” In this essay, I will be critically discussing the problemof liability when it comes to references given to potential employers inrespect of students. There are three main componentsthat makes up a tort which include, duty of care, breach of that duty, anddamage or loss develop as a result of such damage. In the very infamous case ofDonoghue v Stevenson (1932), where Mrs. Donoghue became very sick after drinking the contents of a ginger beer as shelater became ill sue to the contents being contaminated by a decomposed snail. Donoghue sued the café owner and her claim was successful and it has been anestablished case within the modern law of negligence. Lord Atkin, the judge ofthe case, stated a neighbour test “ The rule that you are tolove your neighbour becomes in law you must not injure your neighbour” (LordAtkin, 1932).  When deciding whether a claimant has to be owed a duty of care, thecourts follow a three-stage test that came about from the results of the CaparoIndustries pIc v Dickman 1990 2 AC 605 which involves stage one, ifdamage or loss foreseeable, stage two, the proximity of the two parties and whetherthe situation is fair, just and reasonable.

In the Caparo case, CaparoIndustries purchased shares in Fidelity Plc due to the reliance of the accountsthat stated the company had made pre-tax profits of over £1 million. However, Fidelity had in fact lost money. This lead to Caparo suing Fidelity overnegligence in publishing accounts. Yet, the courts deemed that no duty of carewas owed as there was not sufficient proximity between Caparo and Fidelity asFidelity weren’t aware of Caparo industries and their intentions.  After finding if a claimant is tobe owed a duty of care a breach of duty needs to be proved. To do this a Butfor test is carried out, this requires a question to be asked to find out ifthe defendant caused the damage, the question asked is “‘ but for’ the defendant’s actions, would the claimant have suffered theloss”.

If the answer is no, the defendant is liable for damages. A popularexample of the application of the But for test is the case of Barnettv Chelsea & Kensington Hospital 1969 1 QB 428. In this case MrBarnett went to hospital with complaints of severe stomach aches and vomiting, five hours after being sent home and told to see his GP, Mr Barnett died fromarsenic poisoning. The hospital was not held as liable for his death due to thedoctor’s failure to examine the patient did not cause the death of Mr Barnett.  When referring to referencing of a previous employer under duty of care, Springv Guardian Assurance plc 1995 2 AC 296 (HL) is a very popular case. In this case, the plaintiff (claimant) was employed by an estate agents but wasdismissed due to clashes in management after a takeover, the new company thengave Mr Spring with a negative reference leading to him not being accepted byother companies.

Mr Spring then sued the company for negligent misstatement andthe company was liable for damages in tort. The court took side with Mr Spring andwas owed a duty of care in tort. This suggests that there is a liability ofprevious employers to provide and accurate reference for their previousemployees as attempting to deceive employers with false references as it can besued for negligence. However, it’s difficult to relate this case to thequestion as, will schools / universities have similar levels of liability forproviding accurate references when compared to businesses. When researching into the liability of universities about references Ifound the case of McKie v Swindon College 2011 EWHC 469 (QB). Mr McKie left hisrole within Swindon College to seek another challenge, he took his skills andpositive reference to the University of Bath which included conversing with hisprevious employer. After liaising with his previous employer, Swindon sent acondemning e-mail to the University of Bath regarding previous conflicts ofstaff relationships through Mr Mckie’s behaviour.

This led to Mr Mckie beingfired from his job and him taking Swindon College to court claiming damages ashe believed the e-mail was a reference. McKie won the case however the judgedismissed the e-mail being a reference but he regarded the e-mail as “ fallacious and untrue” and the reasonwhy he lost his job. After ruling that the breach was due to negligentmisstatement, the judge cited that there was suitable proximity between the twoparties so the claim was deemed to be fair and reasonable.  In conclusion, the University of Sussex will be found asliable if they breach the duty of care if they were to provide a negligentmisstatement in a reference to an employer of one of their previous or currentemployee or student. This is due to them failing to meet criteria within thetort of duty of care, such as proximity, foreseeability of loss and if theaction was just and reasonable. This will lead to the University paying fordamages that they caused and doesn’t differ from regular companies andemployers. References:·     Barnett v Chelsea & Kensington HospitalManagement Committee (2015).

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