

In of negligence,
which refers to "a
breach

[Business](#), [Management](#)



In English common law the term duty of care is encompassed by the term Tort of Negligence, which refers to " a breach of duty or a failure of one party to exercise the standard of care required by law, resulting in damage to the party to whom the duty was owed".

A tort is " a wrongful act or an infringement of a right (other than under contract) leading to legal liability." In this essay, I will be critically discussing the problem of liability when it comes to references given to potential employers in respect of students. There are three main components that makes up a tort which include, duty of care, breach of that duty, and damage or loss develop as a result of such damage. In the very infamous case of *Donoghue v Stevenson* (1932), where Mrs. Donoghue became very sick after drinking the contents of a ginger beer as she later 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 an established case within the modern law of negligence. Lord Atkin, the judge of the case, stated a neighbour test " The rule that you are to love your neighbour becomes in law you must not injure your neighbour" (Lord Atkin, 1932). When deciding whether a claimant has to be owed a duty of care, the courts follow a three-stage test that came about from the results of the *Caparo Industries plc v Dickman* 1990 2 AC 605 which involves stage one, if damage or loss foreseeable, stage two, the proximity of the two parties and whether the situation is fair, just and reasonable.

In the *Caparo* case, *Caparo Industries* purchased shares in *Fidelity Plc* due to the reliance of the accounts that 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 over negligence in publishing accounts. Yet, the courts deemed that no duty of care was owed as there was not sufficient proximity between Caparo and Fidelity as Fidelity weren't aware of Caparo industries and their intentions. After finding if a claimant is to be owed a duty of care a breach of duty needs to be proved. To do this a But for test is carried out, this requires a question to be asked to find out if the defendant caused the damage, the question asked is "'but for' the defendant's actions, would the claimant have suffered the loss".

If the answer is no, the defendant is liable for damages. A popular example of the application of the But for test is the case of *Barnett v Chelsea & Kensington Hospital* 1969 1 QB 428. In this case Mr Barnett 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 from arsenic poisoning. The hospital was not held as liable for his death due to the doctor'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, *Spring v 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 was dismissed due to clashes in management after a takeover, the new company then gave Mr Spring with a negative reference leading to him not being accepted by other companies.

Mr Spring then sued the company for negligent misstatement and the company was liable for damages in tort. The court took side with Mr Spring and was owed a duty of care in tort. This suggests that there is a liability

of previous employers to provide and accurate reference for their previous employees as attempting to deceive employers with false references as it can be sued for negligence. However, it's difficult to relate this case to the question as, will schools / universities have similar levels of liability for providing accurate references when compared to businesses. When researching into the liability of universities about references I found the case of McKie v Swindon College 2011 EWHC 469 (QB). Mr McKie left his role within Swindon College to seek another challenge, he took his skills and positive reference to the University of Bath which included conversing with his previous employer. After liaising with his previous employer, Swindon sent a condemning e-mail to the University of Bath regarding previous conflicts of staff relationships through Mr McKie's behaviour.

This led to Mr McKie being fired from his job and him taking Swindon College to court claiming damages as he believed the e-mail was a reference. McKie won the case however the judge dismissed the e-mail being a reference but he regarded the e-mail as "fallacious and untrue" and the reason why he lost his job. After ruling that the breach was due to negligent misstatement, the judge cited that there was suitable proximity between the two parties so the claim was deemed to be fair and reasonable. In conclusion, the University of Sussex will be found as liable if they breach the duty of care if they were to provide a negligent misstatement in a reference to an employer of one of their previous or current employee or student. This is due to them failing to meet criteria within the tort of duty of care, such as proximity, foreseeability of loss and if the action was just and reasonable. This will lead to the

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University paying for damages that they caused and doesn't differ from regular companies and employers. References: Barnett v Chelsea & Kensington Hospital Management Committee (2015).

Available at: https://en.wikipedia.org/wiki/Barnett_v_Chelsea_%26_Kensington_Hospital_Management_Committee (Accessed: 8th December 2017). Caparo Industries plc v Dickman (2017). Available at: https://en.wikipedia.org/wiki/Caparo_Industries_plc_v_Dickman (Accessed: 8th December, 2017). English Oxford Dictionary (2017). Available at: <https://en.oxforddictionaries.com/definition/tort> (Accessed: 6th December 2017). Matthew Chapman, 'The Snail and the Ginger Beer: The Singular Case of Donoghue v Stevenson' (Law Report Annual Lecture, 07 July 2010) Available here: <https://www.lawteacher.net/cases/donoghue-v-stevenson.php> (Accessed: 07 December 2017).

Negligent Misstatement: Employee References (2012). Available at: <https://www.carruthers-law.co.uk/articles/negligent-misstatement/> (Accessed: 10th December 2017).

Negligent Misstatement: Employee References (2012). Available at: <https://www.carruthers-law.co.uk/articles/negligent-misstatement/> (Accessed: 10th December 2017).

University of Colorado (1997). Available at: <https://www.colorado.edu/engineering/civil/db/DBS/glossary.cgi?word=Tort+of+Negligence>.

(Accessed: 6th December 2017)

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