

It appeal took the  
opportunity to clarify  
the

Law



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It is unclear whether there is a legal obligation for employers to provide a reference to its current or former employees and if legal action can be taken in case of carelessness, negligence, malice or defamation. Duty of care is “ a moral or legal obligation to ensure the safety or well-being of others”. Unless stated in the contract, the employer is not obliged to write a reference, however, it is seen as a moral obligation. In *Bartholomew v London Borough of Hackney*<sup>1</sup> the Court of Appeal took the opportunity to clarify the law concerning this area and made clear that employers must not only take care in preparing any statement about their employee in the reference, but they also must make certain that the comprehensive impression of the employee from scrutiny of the reference is not unfair or misleading:” An employee is under a duty of care to provide a reference which is in substance true accurate and fair. The reference must not give an inaccurate or misleading impression overall even if the discrete components are factually correct.

However the duty of care... does not mean that a reference must in every case be full and comprehensive.” <sup>1</sup>In *Spring v Guardian Assurance plc* 1995 2 AC 296 (HL) the house of Lords ruled that, if the reference makes the subject of it incur in economic loss due to the employer’s failure to meet this duty, then the employer is liable to pay damages to the employee (MacIntyre 2012). This conclusion can be derived from *Donoghue v Stevenson* 1932 (UKHL 100) which created the modern concept of negligence:” The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed. The cardinal principle of liability is that the party complained of should owe to the party complaining

a duty to take care and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty.

" (Lord Macmillan *Donoghue v Stevenson* 1932 (UKHL 100) p. 24)31

<http://www.oxfordreference.com/view/10.1093/acref/9780199551248.001.0001/acref-9780199551248-e-1255?rskey=s1SwYp=13> Page 24

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[https://www.uni-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches\\_Recht/Law\\_of\\_Torts/Siry\\_SS\\_2017/](https://www.uni-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches_Recht/Law_of_Torts/Siry_SS_2017/)

[Donoghue\\_v\\_Stevenson\\_\\_1932\\_\\_UKHL\\_100\\_\\_26\\_May\\_1932\\_.pdf](#)