

Introduction to the tort of negligence: putting it together

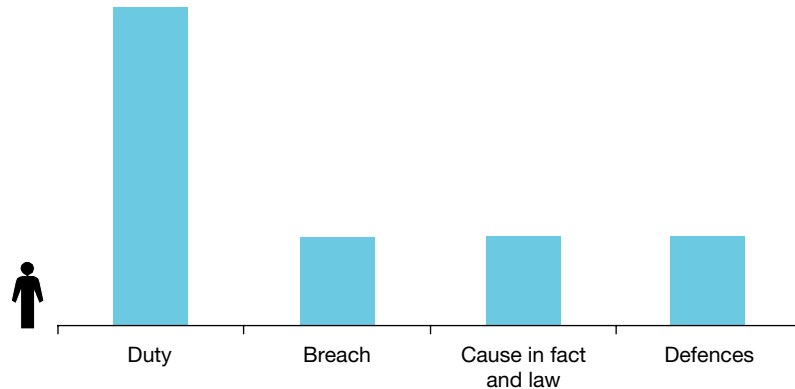
As we noted in **Chapter 2**, sometimes it can help to ‘visualise’ the elements of a claim in the tort of negligence. Some further examples follow. The purpose of these very simple diagrams is simply to illustrate the varying importance of, or difficulty in establishing, each element of the tort of negligence. Of course, they cannot convey the details of the case. It is not intended to or to be in any way mathematical—it is purely to give the reader a general impression of the relative importance of each ‘hurdle’. What it does show, however, is that though in *every* case each element of the tort must be present for the claim to succeed, typically only one or two are likely to be at issue. The uncontroversial aspects of the case will be glossed over relatively quickly.

You might like to consider where the ‘hurdle’ or ‘hurdles’ arise in the cases you come across in your studies and what a similarly constructed diagram of these cases would look like.

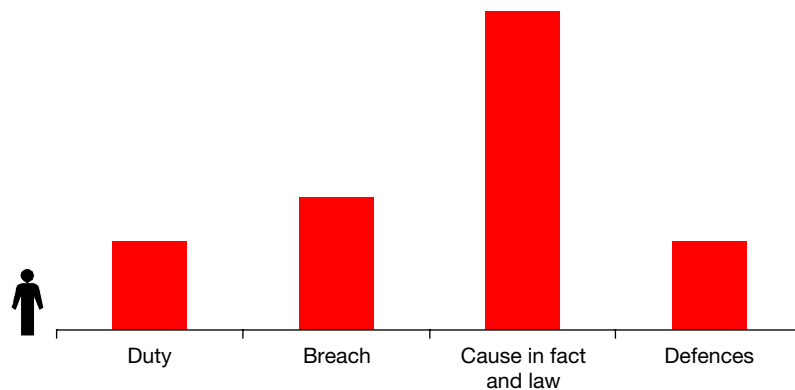
Alcock v Chief Constable of South Yorkshire Police [1992] HL

Alcock is one of a number of cases arising out of the Hillsborough Stadium disaster. The claimants were friends and family of people who had died in the disaster and who suffered psychiatric injury. The question for the court was whether the police owed them a duty of care. Although the House of Lords held that the police did not owe the claimants a duty of care in relation to the psychiatric injury they suffered, had they decided otherwise, the issues of breach and causation would have been relatively straightforward. In other words, it was clear that the defendants had failed to show reasonable care and that their carelessness had caused the claimants’ loss. What was at stake was whether the law did indeed regard the defendants as under an obligation to take reasonable care. This can be represented (rather crudely) by the diagram in **Figure 1** which follows.



FIGURE 1 Case example: *Alcock v Chief Constable of South Yorkshire Police* [1992]***Fairchild v Glenhaven Funeral Services* [2002] HL**

This case (see **Figure 2**) involved claims by three employees who had developed mesothelioma as a result of being exposed to asbestos dust while working for the defendants. It is well established that employers owe their employees a duty of care. Moreover, it was plain on the facts that, by exposing the claimants to asbestos dust, the defendants had failed to take reasonable care for their safety. The key question was one of causation. Since each of the claimants had worked for a number of different employers, each of which had exposed them to asbestos fibres, the claimants had difficulty showing which employer was responsible for their illness given that their condition may have stemmed from inhaling a single asbestos fibre on one isolated occasion. In other words, though each of the defendant employers *could have* caused the relevant harm, it was much harder (indeed impossible) to prove which one actually *did*.

FIGURE 2 Case example: *Fairchild v Glenhaven Funeral Services* [2002]

***Morris v Murray* [1991] CA**

Morris and Murray (see **Figure 3**) had spent the afternoon drinking in the pub after which they decided to take Murray's light airplane for a spin. Morris drove them both to the airfield and helped to prepare the plane for take-off. Shortly after the plane took off it crashed, killing Murray (who was flying the plane) and seriously injuring Morris. It was clear that Murray had been negligent, however his estate successfully met Morris's claim for compensation with the defence that he had voluntarily assumed the risk of injury by Murray's negligence.

FIGURE 3 Case example: *Morris v Murray* [1991]

