

Duty of Care

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Security guards must understand the concept of duty of care, which entails the actions a reasonable person should take in a given situation. They should also be adept at securing and protecting a crime scene until appropriate authorities arrive. While detailed legal knowledge is unnecessary, grasping the main ideas is crucial.

Duty of Care Explained

In English tort law, duty of care is an obligation one individual owes to another to avoid causing them unreasonable harm or loss. If this duty is breached, the responsible party is legally liable to compensate the victim for any damages incurred. This concept evolved in the 20th century from common law, originating with the landmark case *Donoghue v Stevenson*. In this case, a woman successfully argued that a ginger beer manufacturer owed her a duty of care when the product was negligently produced.

General Principles of Duty of Care

A duty of care typically arises when one party's activities could reasonably cause harm to another, whether physically, mentally, or economically. Common examples include driving, which can lead to physical injury, and giving economic advice, which can result in financial loss. If an individual has not created a potentially harmful situation, they generally do not have a duty to warn others or prevent harm, unless a special relationship necessitates it.

Situations Recognizing Duty of Care

Courts recognize the existence of duty of care in various situations, usually due to special relationships between the parties. Examples include:

- **One Road-User to Another:** Drivers have a duty to operate their vehicles safely to avoid causing harm to others on the road.
- **Employer to Employee:** Employers must provide a safe working environment and take reasonable steps to prevent injury or harm to their employees.
- **Manufacturer to Consumer:** Manufacturers must ensure their products are safe for use and do not cause harm to consumers.
- **Doctor to Patient:** Doctors have a duty to provide competent medical care and avoid causing harm to their patients.
- **Solicitor to Client:** Solicitors must act in their clients' best interests and provide competent legal advice to prevent any adverse effects.

Establishing Duty of Care

To claim negligence, the first element that must be established is a legal duty of care. This involves the relationship between the defendant and the plaintiff, which must obligate the defendant to take reasonable care to avoid causing injury to the plaintiff. There are two primary ways to establish a duty of care:

1. **Special Relationships:** As outlined above, specific relationships inherently involve a duty of care.
2. **Case Law Principles:** Outside of these relationships, duty of care can be established based on principles developed through case law.

Conclusion

Understanding duty of care is essential for security guards to ensure they act appropriately to prevent harm and protect crime scenes. This knowledge helps them fulfill their responsibilities effectively and avoid potential legal liabilities.

The Neighbor Principle

The concept that an individual might owe a duty of care to another, even without a prior relationship or interaction, was solidified in common law with the 1932 case of *Donoghue v Stevenson*. This case established that a manufacturer owes a duty of care to the end consumer regarding the negligent production of goods. Mrs. Donoghue's claim for damages due to gastroenteritis and nervous shock was upheld when it was discovered that a snail had been negligently allowed into a bottle of ginger beer she had consumed.

Lord Atkin laid the foundation for liability by introducing the neighbor principle between the involved parties. He asserted that the manufacturer should have taken reasonable care during the production of the ginger beer to prevent causing any foreseeable harm to Mrs. Donoghue:

"There must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. ... The rule that you are to love your neighbor becomes in law you must not injure your neighbor; and the lawyer's question: Who is my neighbor? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then, in law, is my neighbor? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions that are called in question."

Lord Atkin's declaration set forth the neighbor principle, outlining a general duty that individuals must exercise reasonable care in their actions or inactions to avoid harming others who are in close proximity. The fact that Mrs. Donoghue was unknown or unidentified to the manufacturer was irrelevant, as the harm she suffered was a foreseeable consequence of the manufacturer's negligence.

The Anns Test

After the solidification of the neighbor principle in negligence, it became apparent over time that this principle alone was not always easily applicable to emerging forms of duty or novel negligence scenarios. Consequently, new categories of negligence developed, as seen in the case of *Hedley Byrne & Co Ltd v Heller & Partners Ltd*, which addressed different types of negligent acts rather than forming a unified doctrine from *Donoghue v Stevenson*. Roughly thirty years post-*Donoghue*, in *Home Office v Dorset Yacht Co Ltd*, Lord Reid expressed judicially that: “the time has come when we can and should say that it ought to apply unless there is some justification or valid explanation for its exclusion.” However, it was the case of *Anns v Merton London Borough Council* that formally introduced the neighbor principle as a test for negligence.

In *Anns*, the issue concerned the negligent construction of a block of maisonettes, commissioned by the Merton London Borough Council. The flats, completed in 1972, had poorly constructed foundations, leading to sloping floors and cracks in the walls. The lessees sued the council for negligence, arguing that there was a duty of care to ensure the building was properly constructed and usable.

Rejecting the previous approach where duty of care claims had to fit under established categories, the House of Lords unanimously recognized the existence of a duty. Lord Wilberforce's *Anns* test set forth a prima facie duty of care with two key components:

- There must be a sufficient relationship of proximity or neighborhood between the alleged wrongdoer and the person who suffered damage, such that carelessness by the former would likely cause harm to the latter.
- There must be no relevant considerations that would reduce or limit the scope of the imposed duty.

The Three-Stage Test

Following the establishment of the two-stage test for a duty of care, there was a significant judicial retreat from this approach, as it was often considered too inclusive and readily applicable to cases potentially conflicting with public policy. The test was formally overruled in *Murphy v Brentwood District Council*, where the House of Lords used the Practice Statement to deviate from the *Anns* test. The current test for determining a duty of care, upheld in law today, is found in the judgments of *Caparo Industries plc v Dickman*.

A major criticism of the *Anns* test was that it combined the criteria for proximity of relationship with foreseeability of harm. While Lord Atkin's neighbor principle emphasized the necessity for both a proximate relationship and foreseeability of harm, the *Anns* test did not clearly distinguish between these elements. Richard Kinder noted that this conflation sometimes led courts to overlook relevant policy considerations and encouraged “lazy thinking and woolly analysis.” The prevailing test seeks to balance the need for a control mechanism—proximity of

relationship—with foreseeability of harm. Lord Oliver's speech in *Caparo Industries plc v Dickman* encapsulates the test for a duty of care:

- The harm that occurred must be a reasonably foreseeable result of the defendant's conduct.
- A sufficient relationship of proximity or neighborhood must exist between the alleged wrongdoer and the person who has suffered damage.
- It must be fair, just, and reasonable to impose liability.

By reintroducing proximity as a crucial control mechanism, it is asserted that these three stages are 'ingredients' of liability rather than tests in their own right. For instance, liability can arise between complete strangers when positive acts involving foreseeable physical harm occur. However, in cases of negligent omissions and misstatements, it is necessary to demonstrate both a proximate relationship and foreseeability of harm.

Status of the Claimant

The status of a claimant in a negligence case can either create a duty of care where one would not typically exist or negate it altogether. For instance, rescuers may have a duty of care owed to them, whereas certain other claims may be barred. Claims such as those where a doctor is expected to advise against childbirth or where the police owe a duty of care to individuals involved in criminal activities are generally not entertained. In *McKay v Essex Area Health Authority*, a child's claim that a doctor should have advised his mother to seek an abortion was dismissed. While the Congenital Disabilities (Civil Liability) Act allows claims where negligence causes a disability, claims of wrongful life remain barred due to policy reasons. Similarly, in *Vellino v Chief Constable of the Greater Manchester Police*, a criminal's claim that the police owed him a duty of care not to let him escape after arrest was considered 'absurd.'

Rescuers

Common law has established that those who attempt rescue are owed a duty of care by individuals who create dangerous situations, wherein it is foreseeable that rescuers might intervene. This duty applies to both professional rescuers, like doctors or lifeguards, and ordinary individuals, even if the rescuer's attempt is careless or reckless. The basis for this liability was first recognized in *Haynes v Harwood*. In this case, a child who caused a horse to bolt by throwing a stone at it was held liable to a policeman who attempted to stop the horse and got injured. The duty was further confirmed in *Baker v T E Hopkins & Son Ltd*, with Wilmer LJ stating:

"Assuming the rescuer not to have acted unreasonably, therefore, it seems to me that he must normally belong to the class of persons who ought to be within the contemplation of the wrongdoer as being closely and directly affected by the latter's act."

The duty of care owed to a rescuer is distinct from that owed to those being rescued. For example, individuals trespassing onto a railway line and putting themselves in danger were not owed a duty of care. However, the stationmaster who attempted to rescue them and was fatally injured was owed a duty of care, as it was foreseeable that he would attempt a rescue. Additionally, a duty of care may arise when an individual endangers themselves and a rescuer is injured, even though the individual owes no duty of care to themselves.

Duty of Care for Omissions

In negligence law, generally, no duty of care arises purely from omissions—failures to act that could prevent harm to others. However, if an individual creates a hazardous situation, even unintentionally, a duty of care may emerge to prevent harm to others. For example, leaving a car without lights on the side of a well-lit road can create a duty of care towards other drivers, making the car owner jointly liable if another driver collides with the vehicle.

There are specific circumstances where individuals may be liable for omissions due to a pre-existing special relationship. Such relationships can be statutory, like those imposed by the Occupiers' Liability Acts, which require property owners to reasonably protect others from harm. Alternatively, relationships may be inferred or imposed based on the necessity to shield individuals from third parties.

In *Stansbie v Troman*, for instance, a decorator failed to secure a property he was working on, leading to a burglary in his absence. The court found that he owed a duty to the homeowner to adequately secure the premises while he was away. Similarly, authorities or services may owe a duty of care to individuals to safeguard them from harm. In *Reeves v Commissioner of Police of the Metropolis*, the police were deemed responsible for ensuring the safety of a prisoner known to be at risk of suicide while in custody.

Authorities have also been held liable for failing to protect against risks posed by third parties in certain contexts. For instance, an education authority was found liable for failing to prevent the risk posed by young children on a public road, resulting in an injury to a driver who swerved to avoid a child who had escaped onto the road.