



**“LACK OF USE OF DUTY OF CARE BY A  
PROFESSIONAL IN HIS PROFESSIONAL WORK  
LEADS TO GRATE LOSSES TO THE CLIENT.”**

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## **Lack of use of duty of care by a professional in his professional work leads to grate losses to the client. Discuss with legal principles and decided cases.**

The duty of care is a fundamental principle in professional practice, serving as both a legal and ethical obligation that professionals owe to their clients. It requires professionals to exercise reasonable skill, care, and diligence in the performance of their duties. When a professional fails to uphold this duty, it can result in significant harm to the client, including financial losses, physical injury, or emotional distress. The concept of duty of care originates from the tort of negligence, which is rooted in common law. The landmark case of *Donoghue v Stevenson* [1932] AC 562 established the principle that a person owes a duty of care to those who are closely and directly affected by their actions. In the context of professional relationships, this duty is further refined to reflect the specialized knowledge and skills that professionals are expected to possess. Professionals, such as doctors, lawyers, accountants, architects, and engineers, are held to a higher standard of care due to their expertise and the reliance placed on them by their clients. The duty of care requires professionals to act in the best interests of their clients, providing services that meet the standards of a reasonably competent practitioner in their field. This duty is not only contractual but also arises from the special relationship of trust and confidence between the professional and the client. The courts have consistently emphasized that professionals must exercise their judgment and skills with due care to avoid causing harm to their clients.

A breach of duty of care occurs when a professional fails to meet the standard of care expected of them. This can happen through acts of omission (failing to do something that should have been done) or commission (doing something that should not have been done). To establish a breach, the court will consider the standard of care, foreseeability, and causation. The standard of care refers to what a reasonably competent professional in the same field would have done under similar circumstances. Foreseeability examines whether the harm to the client was a foreseeable consequence of the professional's actions or inactions. Causation determines whether the breach directly caused the client's loss or harm. If a breach is established, the professional may be held liable for negligence, and the client may be entitled to compensation for their losses. The consequences of a breach can be severe, both for the client and the professional. Clients may suffer financial losses, physical harm, or emotional distress, while professionals may face legal liability, reputational damage, and loss of professional standing.

The case of *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 is a landmark case that established the principle that a duty of care can arise in situations where there is a special relationship between the parties, even in the absence of a contractual relationship. In this case, a bank provided a negligent reference about a client's creditworthiness, leading to financial losses for the claimant. The House of Lords held that the bank owed a duty of care to the claimant because it had assumed responsibility for providing accurate information. This case is significant because it extended the duty of care beyond physical harm to include economic loss, which is particularly relevant in professional contexts where clients rely on advice or services that have financial implications. Another important case is *Caparo Industries plc v Dickman* [1990] 2 AC 605, where the House of Lords refined the test for establishing a duty of care. The court held that a duty of care arises when the harm is reasonably foreseeable, there is a relationship of proximity between the parties, and it is fair, just, and reasonable to impose a duty. The case involved auditors who prepared financial statements that were relied upon by a third party, resulting in financial losses. The court found that the auditors did not owe a duty of care to the third party because there was no proximate relationship. This case highlights the importance of the relationship between the professional and the client in determining whether a duty of care exists.

In the medical field, the case of *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 established the Bolam test, which is a key principle in medical negligence cases. It states that a professional is not negligent if they act in accordance with a practice accepted as proper by a responsible body of professionals in the same field, even if other professionals would have acted differently. In this case, a patient suffered injuries during electroconvulsive therapy due to the lack of restraints. The court held that the doctor was not negligent because the practice of not using restraints was accepted by a responsible body of medical professionals. The Bolam test emphasizes that professionals are judged against the standards of their peers, rather than an absolute standard of perfection. However, the case of *Whitehouse v Jordan* [1981] 1 WLR 246 clarified that while the Bolam test provides a defense for professionals, it does not absolve them of the responsibility to act reasonably and with due care. This case involved a medical negligence claim against a doctor who caused brain damage to a baby during delivery. The court applied the Bolam test but also emphasized that a professional's actions must be reasonable and not merely conform to a common practice. The case illustrates that professionals must exercise their judgment and not blindly follow practices that may be outdated or inappropriate in specific circumstances.

In the legal profession, the case of *Arthur JS Hall & Co v Simons* [2002] 1 AC 615 addressed the duty of care owed by lawyers to their clients. The House of Lords held that lawyers owe a duty of care to their clients and can be held liable for negligence if they fail to meet the required standard of care. The case underscores the importance of the duty of care in legal practice and the potential consequences of a breach, including financial losses for the client. This case is particularly relevant because it highlights the high level of trust that clients place in their lawyers and the significant impact that a breach of duty can have on their lives. In addition to these cases, there are numerous other examples where the failure to exercise a duty of care has led to significant losses for clients. For instance, in the construction industry, architects and engineers have been held liable for design flaws that resulted in structural failures, causing injury or death to occupants and financial losses to property owners. Similarly, financial advisors have been sued for providing negligent advice that led to clients losing substantial sums of money. These cases demonstrate the wide-ranging implications of a breach of duty of care across various professions and the importance of adhering to the highest standards of professional practice.

The consequences of a breach of duty of care can be devastating for clients. Financial losses are one of the most common outcomes, particularly in cases involving professionals such as accountants, financial advisors, and lawyers. For example, negligent financial advice can lead to significant investment losses, while errors in legal representation can result in unfavorable court judgments or the loss of valuable rights. Physical harm is another potential consequence, particularly in cases involving medical professionals or engineers. For instance, a surgeon's negligence during an operation can result in permanent disability or even death, while an architect's failure to ensure the structural integrity of a building can lead to collapses and injuries. Emotional distress is also a significant consequence, particularly in cases where clients have placed a high degree of trust in the professional. For example, a therapist's breach of confidentiality can cause severe emotional harm to a client, while a lawyer's failure to adequately represent a client in a family law matter can result in the loss of custody of a child.

To prevent breaches of duty of care, professionals must adhere to certain principles. Continuous education and training are essential to ensure that professionals stay abreast of developments in their field and continuously improve their skills and knowledge. Adherence to professional standards is also crucial, as these standards provide a benchmark for acceptable practice. Effective communication is another key principle, as professionals must communicate clearly and effectively with their clients to ensure that they

understand the risks and implications of their decisions. Risk management is also important, as professionals must identify and address potential risks that could harm their clients. By adhering to these principles, professionals can minimize the risk of breaching their duty of care and ensure that they provide the highest standard of service to their clients.

In addition to these principles, professionals must also be aware of the legal and ethical implications of their actions. The duty of care is not only a legal obligation but also an ethical one. Professionals have a moral responsibility to act in the best interests of their clients and to prioritize their well-being above all else. This requires ongoing education and training to stay abreast of developments in their field, as well as a commitment to continuous improvement in their practice. It also requires professionals to be vigilant and proactive in identifying and addressing potential risks that could harm their clients. By doing so, professionals can uphold the trust and confidence that clients place in them and ensure that they provide the highest standard of service.

The duty of care is particularly important in professions where the stakes are high, such as medicine, law, and finance. In the medical profession, for example, a breach of duty of care can have life-altering consequences for patients. In *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, a doctor failed to inform a patient of the risks associated with childbirth, leading to severe complications. The court held that the doctor breached their duty of care by not providing the patient with sufficient information to make an informed decision. This case highlights the importance of informed consent and the duty of care owed by medical professionals to their patients. Similarly, in the legal profession, a breach of duty of care can result in significant financial losses for clients. In *SAAMCo v York Montague Ltd* [1997] AC 191, a surveyor provided inaccurate property valuations, leading to significant financial losses for the lender. The court held that the surveyor breached their duty of care by failing to provide accurate information. This case underscores the importance of accuracy and diligence in professional practice.

In the construction industry, the duty of care is critical to ensuring the safety and integrity of buildings and infrastructure. In *Murphy v Brentwood District Council* [1991] 1 AC 398, a local authority was held liable for approving defective building plans that resulted in structural damage. The case highlights the duty of care owed by architects and engineers to ensure the safety of their designs. Similarly, in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619, a local authority was held liable for failing to identify a child's learning difficulties, resulting in a lack of appropriate educational support. The case illustrates the duty of care owed by educational professionals to their students.

The duty of care is also relevant in the financial sector, where professionals such as accountants and financial advisors are entrusted with managing their clients' wealth. In *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145, the House of Lords held that managing agents owed a duty of care to their clients to manage their investments prudently. The case highlights the importance of diligence and competence in financial management. Similarly, in *Royal Brompton Hospital NHS Trust v Hammond* [2002] UKHL 14, a construction company was held liable for delays in completing a project, resulting in financial losses for the client. The case underscores the duty of care owed by professionals to complete their work in a timely and efficient manner.

In conclusion, the duty of care is a cornerstone of professional practice, and its breach can have devastating consequences for clients. The legal principles established in cases such as *Donoghue v Stevenson*, *Hedley Byrne & Co Ltd v Heller & Partners Ltd*, *Caparo Industries plc v Dickman*, *Bolam v Friern Hospital Management Committee*, *Whitehouse v Jordan*, and *Arthur JS Hall & Co v Simons* provide a framework

for understanding the scope and implications of this duty. Professionals must be aware of their obligations and take all necessary steps to ensure that they meet the required standard of care. Failure to do so not only exposes them to legal liability but also undermines the trust and confidence that clients place in them. Ultimately, the duty of care is essential for maintaining the integrity of professional practice and protecting the interests of clients. By adhering to the principles of continuous education, adherence to professional standards, effective communication, and risk management, professionals can uphold their duty of care and ensure that they provide the highest standard of service to their clients.