NEGLIGENCE CASES				
DUTY OF CARE				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Donoghue v Stevenson* [1932]** House of Lords	Lord Atkin	Neighbour principle, duty of care establishment	Appellant drank an opaque bottle of ginger-beer manufactured by the respondent which contained the decomposed remains of a snail.	Neighbour principle: you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure persons who are so closely and directly affected by your actions that you ought reasonably have considered them. A manufacturer of goods, which he sells in a form which is to reach the ultimate consumer with no reasonable possibility of intermediary examination, owes a duty of care to the consumer to take reasonable care.
***Palsgraf v Long Island Railway Co* [1928]** NY Court of Appeal	Benjamin Cardozo CJ	Unforeseeable plaintiff	A man, being pushed onto a train, dropped his nondescript package containing fireworks causing an explosion, throwing down scales at the other end of the plaintiff which injured the plaintiff.	A plaintiff must be sufficiently proximate to the incident, to the degree that the defendant ought to have had them in reasonable consideration in order to establish a duty of care.
***Wilson & Horton Ltd v Attorney General* [1997]** Court of Appeal	Hammond J	Foreseeability	A fire broke out in a paper warehouse caused by non-tortious events, but the damage was exacerbated by negligent over-stacking of papers.	The test is not whether something is heavily freighted with danger, but that it is not something that a reasonable person would brush aside. Guidelines or bylaws are evidence that a risk is reasonably foreseeable.
***Goldman v Hargrave* [1967]** Privy Council	Lord Wilberforce	Duty to adjoining neighbours	A tall tree struck by lightning was felled and instead of putting the fire out immediately, the defendant left it to burn out by itself. The next day the fire spread onto the respondent's properties.	Where there is a hazard not brought onto the property by the owner or as a consequence of a dangerous use of land, the existence of a duty to adjoining neighbours must be based upon knowledge of the hazard, ability to foresee the consequences of not checking or removing it, and the ability to abate it.
THIRD PARTY INTERVENTIONS				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Home Office v Dorset Yacht* [1970]** House of Lords	Lords Reid and Diplock	Third party	Borstal boys escaped negligent supervision of officers and caused damage to plaintiffs yacht.	Where human action forms the link between the original wrongdoing of the D and the loss suffered by P, that action must have at least been very likely to happen to not be

				seen as NAI. Foreseeability is not sufficient – must be very likely!
Lamb v Camden London Borough Council **[1981]** Court of Appeal	Lords Denning, Oliver Watkins	Third party	Homeowner away overseas for years, council breaks water main near house so it becomes uninhabitable for renters. Squatters move in and cause damage.	The test in *DY* is too wide, and should be limited on the facts based on duty, remoteness and causation + policy. An act must be almost inevitable for D to be liable for the actions of a third party it cannot control.
Smith v Littlewoods **[1987]** House of Lords	Lord Mackay and Goff	Third party	Property company buys a disused cinema and leaves it abandoned. Vandals break in and set fire to it, causing damage to adjoining properties.	**Mackay:** approach is based on whether there is a known danger (vandals) which there isn't, and the interested parties (if the risk is so significant, neighbours should have made property owners aware, and they didn't). **Goff:** A DOC is only owed to protect against third party when D creates a source of danger (*Haynes*, horse) or D has tempting danger on the property (fireworks). Many things can spark danger in homes, so there is only liability if the danger is something which the D should guard against ○ Is leaving an abandoned building derelict a tempting danger? More burden is put on the plaintiff ○ Is flammable film a known hazard which the D should have guarded against? ▪ Lots of things can be a fire risk – liability dependent on facts, very rare Tort does not cover pure omissions because people have to be able to have autonomy unless there is a special relationship ○ Is this a case of pure omission (not having 24/7 guards) or of buying the property and managing it negligently? Either way, there is no general duty to prevent a 3P from causing damage to others, even if it is foreseeable.
Mitchell v Glasgow City Council **[2009]** House of Lords	Lord Hope	-	-	The foreseeability of harm is not of itself enough for the imposition of a duty of care owed by landlords to the neighbours of tenants they know to be violent.

NERVOUS SHOCK				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Bourhill v Young* [1943]** House of Lords	Lord Russell, Lord Wright	Nervous shock, SV	D caused a car crash and was killed. A bystander was 8 months pregnant and claimed she suffered a stillbirth from "fright" of hearing the accident	DOC only owed to other parties on the road. P was not involved, had her back turned and was safely out of the way and had no fear of immediate injury to herself. Not sufficiently proximate or foreseeable. Shock must be caused directly by the acts of the D (no negligence without DOC)
***McLoughlin v O'Brian* [1983]** House of Lords	Lord Wilberforce	Nervous shock, SV	Wife suffered severe mental distress after seeing her husband and two kids in hospital following a car crash with D. One daughter died later.	A plaintiff may recover damage where there is no physical injury to themselves but to a close friend or relative. Physical proximity means close in time or space, but direct eyesight/hearing is arbitrary. Relational proximity can go beyond family/spouses, but should be closely scrutinised. Closer the tie, greater the claim.
***Alcock v Chief Constable of South Yorkshire* [1992]** House of Lords	Lord Ackner, Lord Oliver	NS, SV, television broadcast	Claimants are relatives of those crushed to death in the Hillsborough disaster who either watched the event on TV or were present at the accident.	**1. Class of persons whose claim should be recognised (relational proximity)** Close friendships and immediate familial ties would generally suffice. Degree of love and affection to be considered/analysed for RF. **2. Proximity of the plaintiff to the accident** Close in time and space, presence is not required. Aftermath must be immediate – 1 hour in *McLoughlin*, but 8 hours too much here. **3. Means by which the shock is caused** TV screening by broadcasting agencies is NAI – no longer RF that plaintiffs would be able to view due to clash with regulations. TV broadcasts would not equate to sight or hearing, unless it is non-graphic content that shows obvious death (balloon explosion)
***White v Chief Constable of South Yorkshire Police* [1999]** House of Lords	Lord Steyn	NS, SV (work related)	Policemen working during the Hillsborough disaster sued their employer	An employer owes a duty to keep employees safe from physical harm, not psychological. Officers should not be considered rescuers here as they never were under any danger to themselves, nor believed they were. Policy for not allowing policemen to recover while relatives were

				denied. Any more expansion to the tort must be undertaken by Parliament
Queenstown Lakes District Council v Palmer **[1999]** NZ Court of Appeal	Thomas J	ACC bar? NS to SV	Husband suffered NS seeing his wife killed in a rafting accident, wants to sue but could be barred by ACC.	ACC does not cover pure mental injury after 1992 and so CL cases are not barred, as he is suing out of his own injury. SV can sue for compensation for mental injury but PV can't (arises out of physical injury) but this is part of the social contract legislative decision.
Van Soest v Residual Health Management **[2000]** NZ Court of Appeal	Blanchard and Thomas JJ	NS, SV	Relatives of patients who died from medical negligence are suing for grief.	Needs to be a recognisable psychiatric disorder or illness suffered. Consistent with ACC. Relational proximity should stay at 'close and loving'. Dissent: abandon requirements for prox and just have RF. No requirement for psychiatric illness as long as suffering is outside the range of ordinary human experience. (Thomas J)
BREACH				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
Blyth v Birmingham Waterworks **[1856]** Court of Exchequer	Alderson B, Bramwell B	Breach	An unprecedented frost caused the fire plug in the defendant's water pipe to come out – large flood damaged the plaintiff's house	Negligence governed by RP standard – RP not required to prepare for unprecedented natural events. Cause of the damage was obscure.
Watt v Hertfordshire City Council **[1954]** English Court of Appeal	Singleton and Denning LJ	Breach	Firefighter injured by jack falling in a car while travelling to an accident 300m away when the jack was not properly secured because of the nature of the vehicle.	Measuring due care requires balancing the risk against the measures necessary to eliminate the risk and the ends to be achieved. The ends concerned saving life and limb, so the risk is justifiable.
United States v Carrol Towing Co Inc **[1947]** 2nd Circuit Court of Appeal	Learned Hand J	Breach	An unattended barge sank following a collision caused by the defendant's failure to retie it after moving it.	The equation for determining the duty is whether the burden of preventing the risk is less than the gravity of the potential injury multiplied by the probability that it will occur.
Bolton v Stone **[1951]** House of Lords	Lord Reid	Breach	The claimant was injured when a cricket ball flew into her outside her home. Balls had been known to fly that way before, but no one had	The injury was reasonably foreseeable, but it is justifiable not to take steps to eliminate a real risk if it is small and the circumstances are such that a reasonable man, careful of the safety of his neighbour, would think it right to neglect it.

			ever been hit and the chance of that happening was infinitesimal.	
***Wagonmound No. 2* [1967]** Privy Council	Lord Reid	Breach	The Wagonmound leaked furnace oil onto the harbour, and sparks from nearby welders set the oil on fire, destroying the ship and two others moored nearby.	*Bolton* should be followed only if there is a valid reason for neglecting the risk (considerable expense, etc.) In cases where eliminating the risk presents no difficulty, disadvantage or expense, the RP would eliminate it.
***Goldman v Hargrave* [1967]** Privy Council	Lord Wilberforce	Breach	A tall tree struck by lightning was felled and instead of putting the fire out immediately, the defendant left it to burn out by itself. The next day the fire spread onto the respondent's properties.	Where there is a hazard not brought onto the property by the owner or as a consequence of a dangerous use of land, the breach of duty to adjoining neighbours must be based upon knowledge of the hazard, ability to foresee the consequences of not checking or removing it, and the ability to abate it.
***Tomlinson v Congleton Borough Council* [2003]** House of Lords	Lord Hoffman	Breach	A disused quarry was converted into a lake and swimming was banned (widely posted). P dived into the lake and broke his neck.	Social value of the activity which gives rise to the risk may be considered when determining if it was reasonable to eliminate the risk. It will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land.
***Bolam v Friern Hospital Management Committee* [1957]** Queens Bench	McNair J	Exception to breach by professionals	P was electric shocked for depression, suffered a fracture from convulsions. P says they should have been sedated, but medical opinions differed.	Where specialist opinion differ, and those differences are well backed up, courts can't "decide for" the specialists – both approaches would be valid. **Note:** in *Montgomery* 2015 the UKSC said that patients should be made aware of risks of both sides to decide for themselves. **Question:** how would this case be considered under ACC?
***Nettleship v Weston* [1971]** UK Court of Appeal	Lord Denning	Learner driver	Learner driver lost control of the car and crashed, injuring the driving instructor.	All drivers must drive with the skill and care of an expert, no matter their status. If any driver goes off the road and injures a pedestrian or property, they are prima-facie liable. **Policy:** liability required for insurance third-party insurance access, which is required by Parliament.
***Cook v Cook* [1986]**	Mason, Wilson,	Learner driver	Learner driver crashed the car and injured her passenger, who was	The passenger was aware of the nature of the driver, and was deliberately instructing and supervising her. This

High Court of Australia	Deane and Dawson JJ		aware of the drivers lack of skill and inexperience.	altered the duty to only that which could be expected of an unqualified and unskilled driver. **Note:** this was overturned by *Imbree v McNeilly* in 2008, as a lower standard of care was not desirable.
DAMAGE				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Barnett v Chelsea and Kensington Hospital* [1969]** Queen's Bench	Nield J	Damage	Three men went to hospital complaining of vomiting, and were sent home and instructed to contact their GP. The men died five hours later from arsenic poisoning.	The damage must result because of the negligent act on the balance of probabilities – if the defendant was not negligent, but the balance of probabilities shows that they must have died anyway, the defendant is not liable.
***Rothwell v Chemical and Insulating Company* [2008]** House of Lords	Lord Hoffman	Damage – asymptomatic conditions	Appellants developed pleural plaques which are not harmful and do not develop into a disease, but are evidence of presence to high exposure of asbestos, signalling an increased chance of developing such an illness in the future.	Symptomless conditions on the body are not actionable, even if they signify an increased potential for actionable injury at a later date (asbestos-related mesothelioma). **ACC:** one of the appellants developed a mental injury from apprehension of the plaques, but this would not give cover as there was no actionable physical injury.
***Dryden v Johnson Matthey Plc* [2018]** UK Supreme Court	Lady Black	Damage – asymptomatic conditions	The claimants developed asymptomatic platinum salt sensitisation due to negligence, which meant they could no longer work at their jobs or they would suffer an allergic reaction.	Actionable damage simply requires a physiological change in your body which impairs you in doing what you could do before that is more than negligible. Distinguished from *Rothwell* because of the physiological change in the body and because medical evidence supported a difference in the conditions. Plaques were only a marker of exposure and did not directly lead to other diseases, while sensitisation could directly cause allergic reactions, causing a loss of capacity to work. **ACC:** would be eligible for cover because there was a loss/decrease in income and there was actionable personal injury. No mental injury considerations.
CAUSATION				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Atkinson v Accident Compensation Corporation* [2002]**	-	Damage and causation (in fact)	-	Any risk must be realised in the occurrence of a personal injury and that injury must be proved to have been caused

				by the risk factor involved. If the omission to treat causes an identifiable added injury, cover would be available.
***Ambros v Accident Compensation Corporation* [2007]** NZ Court of Appeal	Glazebrook J	Damage and causation (in fact) +	Pregnant woman with heart condition was not properly examined or treated, and died one week after giving birth. Evidence shows she would have likely survived if treated properly.	The evidential onus to prove causation is on the plaintiff. In medical cases it can be difficult to prove causation, so courts should consider drawing inferences, statistics, and proximity of the treatment (or omission) to the injury. If the evidence supports plaintiff, Corporation's inquisitive nature supports the tactical burden shifting to them.
REMOTENESS				
CASE:	**JUDGE:**	**TOPIC:**	**FACTS:**	**LAW:**
***Wagonmound No. 1* [1961]** Privy Council	Viscount Simonds	Remoteness – extent	The Wagonmound crew negligently allowed oil to leak into the harbour, which caught fire and damaged the nearby wharf.	Previously *Re Polemis* law considered whether the damage was direct, rather than foreseeable. This was dropped for the foreseeable type of damage test – if type is foreseeable, defendant is liable regardless of whether the extent of damage is foreseeable. If a direct consequence is probable, it is likely reasonably foreseeable anyway.
***Hughes v Lord Advocate* [1963]** House of Lords	Lord Guest	Remoteness - details	Children knocked a paraffin lamp into an unattended manhole, causing a unique explosion which burnt the children.	As long as the type of harm (injury by fire) is reasonably foreseeable, how the damage came about (specific details) need not be.
***Stephenson v Waite Tileman Ltd* [1973]** NZ Court of Appeal	Richmond J	Remoteness – extent for bodily injury damages	Plaintiff cut his hand while working and it got infected, eventually causing brain damage.	Although the broad base of the foreseeability of damage rule is that it would be unjust to hold a wrongdoer liable for damage of a kind which is unforeseeable, there are many matters of detail which may be unpredictable but for which the wrongdoer should still be liable. This does not seriously alter the eggshell skull principle that a wrongdoer must take his victim as they find them. Unforeseeable effects and latent susceptibility caused by the injury fall within its extent and are therefore irrelevant, as long as the type of initial injury is foreseeable. Eggshell skull rule and *Wagonmound No. 1* principle must be reconciled against each other for balance.

***Mustapha v Culligan of Canada* [2008]** Supreme Court of Canada	McLachin CJ	Remoteness - psychiatric injury	Plaintiff saw a dead fly in bottled water purchased from Culligan, scarring him and causing significant psychological harm.	Although all branches of negligence technically satisfied, this breach would not ordinarily result in psychiatric harm to the reasonable person. Unusual or extreme reactions to events caused by negligence are imaginable but not reasonably foreseeable, which is the standard at tort law. If Culligan had known of this specific vulnerability, they would have been liable. **ACC:** pure psychiatric injury, no cover