




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Common Law Duty To Care and Environmental Protection

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Presentation Outline

1. Introduction/Background
2. Rational for Common Law Duty To care in Environmental Protection
3. The Concept of Duty To care
4. Duty To care Owed to an Individual
5. Duty To care Owed to the Environment
6. Conclusion



Introduction/Background

- The law as we know it protects entities or individuals that have rights and duties
- The debate as to whether the environment or Natural resources have rights per se, is an evolving conversation.
- The emergency and evolution of earth Jurisprudence is key to this debate
- The Earth Community and all the beings that constitute it have fundamental “rights”, including the right to exist, to have a habitat or a place to be, and to participate in the evolution of the Earth community.
- “Common Law Duty to care” is an attempt to make environmental rights Justiciable



Rational for Duty To care in Environmental Protection

- Should the duty to care for the environment be statutory or common law?



The Concept of Duty To care

- One person owes a duty of care not to injure the person or property of another
- Hinged on the Neighbor Principle
“a person should take reasonable care to avoid acts or omissions that s/he can reasonably foresee as likely to cause injury to **the neighbor**” Lord Atkins in [Donoghue v Stevenson](#)
- The common law actions in **trespass**, **nuisance** and **negligence** are, by implication or explicitly, founded on the duty to care.
- However, the common law does not recognize that a duty of care may be owed to the environment *per se*



Protecting the duty of Care

So How do we Use the duty to care to protect the Environment?



Duty To care Owed to an Individual

- Avoid causing or contributing to land degradation that causes or may cause damage to the land of another landholder;
- Protect water resources;
- Respect for Riparian Rights on shared resources
- The Rule in Rylands V Fletcher
- Other torts:
 - Nuisance
 - Trespass
 - Negligence



Duty To care Owed to the Environment

➤ Pollution control legislation have introduced a general duty of care owed to the

environment, rather than to individuals, eg:

- Waste Management Regulations
- Ambient Air Quality Regulations and Standards
- Laws on Water protection and Regulation



Conclusion

- The Common Law duty to care helps to identify cause of action in protection of the environment
- Extends the protection accorded to individuals to the environment
- Makes environmental rights justiciable in the absence of protecting legislation

