

Answer Guides

Problem question: Focus is on weeks 10-13

Purpose of the Law of Negligence: To promote reasonable conduct that averts foreseeable harm
[Annetts](#) (Gummow, Kirby)

DUTY, BREACH, CAUSATION

a) Duty: Did the D owe a DOC?

Was it RF that D's conduct could result in any harm to P?

i. Is there an established **category**?

If NO ↓

If YES → Apply + Scope of DOC

ii. Apply incremental approach through RF [neighbourhood] + Salient Features > [Perre v Apand](#)

1. Neighbourhood principle - so closely/directly affected - ought to have in mind > Atkin L

2. Was it **RF** that D's conduct could result in any harm to P?

→ Public Body owes DOC of reasonable PB > [Romeo](#); [Australian Safeways](#); **s5U-W**

3. What **salient features** should be taken into account?

→ Knowledge of risks > [Agar v Hyde](#) (Rugby - inherent risk)

→ Indeterminate liability >

→ Policy considerations > [Sullivan v Moody](#) (clash of duties); Lawyer immunity >

[Giannarelli v Wraith](#)

→ Vulnerability of P/Control of D > [Ryan v Great Lakes](#)

iii. What is the **scope + content** of the DOC?

→ Illegality? Omission? Public Body?

b) Breach s5B: Did D breach their DOC?

i. What is the **SOC** owed? [... was that of a RP in the shoes of the Ptf]

→ Occupier ∴ must apply **OLA** which coexists w' **CLA** but rules over ComLaw at breach >

→ The reasonable doctor?

→ the reasonable child? > [McHale v Watson](#)

→ cannot take inexperience into account ([Imbree v McNeilly](#)) BUT can take

age/experience > [Zanner v Zanner](#)

ii. Was the risk RF in that the D **knew/ought** to have known? > [Macro v Scarborough Life Surf](#)

iii. Was the risk **not insignificant**?

→ "RF" definition est "not far fetched or fanciful" > [Wyong Shire v Shirt](#)

→ NOW **CLA** > **s15AA Interpretation Act** - extrinsic material - not deemed that diff > Ipp

→ that it hadn't happened before + followed industry strd doesn't deny breach > [Mercer](#)

iv. Would a RP in the shoes of the D have taken such **precautions**? [those the Ptf claiming]

→ **s5B(2)** is restatement of Shirt Calculus > [Southern Props v Dep of Conservation](#)

→ Seriousness/Probability v Burden/Social utility > **s5B(2)**

→ If risk so slight can refrain from acting > [Bolton v Stone](#)

→ Costs v aesthetics ([Romeo](#); [Dederer](#))

v. Were there additional relevant facts?

→ Was it an **obvious risk**? > [LINK: Defences]

→ Industry standards? > [Woods v Multisport Holdings](#)

DUTY OF CARE

[FOCUS: RELATIONSHIP]

STEP 1

...In order to make a successful claim, [] must first establish that a DOC existed.

... Here, the test is: **would a reasonable person foresee that damage/injury might result from the D's actions.**

Established Categories

STEP 2 ... Is there a relevant ESTABLISHED CATEGORY?

- ♦ Employer - Employee > [Hamilton v Nuroof \(1956\)](#)
- ♦ Doctor - Patient > [Rogers v Whitaker](#); [Rosenberg v Percival](#)
 - **Scope:** Includes treatment + diagnosis + advise
 - **Analogy:** Doctor - Help-Seeker > [Lowns v Woods](#) [epileptic boy - only physician in town]
- ♦ Driver - Passenger > [Imbree v McNeilly](#) [to passengers/those sharing the road]
- ♦ Driver - Other Road Users > [Chapman v Hearse](#)
 - **Analogy:** Driver - Pedestrian/standerby > [Dulie v White & Sons](#) [horse into bar]
- ♦ Manufacturer - Consumer > [Donoghue v Stevenson](#); [Graham Barclay Oysters](#) [Oysters case]
- ♦ Jailor - Prisoner > [Cekan v Haines](#); [Howard v Jarvis](#)
- ♦ Carrier - Passenger > [Mercer v Commissioner for Road Transport](#) (tram - dead man switch)
- ♦ Teacher - Student > [Roman Catholic Church v Habda](#) (flying fox - teacher attendance)
- ♦ Occupier - Entrant [Occupier's Liability Act] > [Zaluzna](#) (pre **OLA**); [Thompson v Woolworths](#)
 - Definition of Occupier + Entrant → GenLaw > **Occupier's Liability Act ss.5(1)-(3)**

If NO → Can a novel category be created? [Go to STEP 3]

If YES ↓

STEP 2A ... What is the SCOPE + CONTENT of the DOC?

"obligations of a particular scope, and that scope may be more or less expansive depending on the relationship in question.... [and] whatever their scope, all duties of care are to be discharged by the exercise of reasonable care. They do not impose a more stringent or onerous burden." > [RTA v Dederer](#) (Gummow)

Novel Categories

STEP 3.1 REASONABLE FORESEEABILITY of potential harm to P?

... First question is whether the D **should/ought** [prospective inquiry] to have RF that their conduct may result in damage of some kind to P or a class ppl of which P is a part of > [San Sebastian](#)

****Is it RF that the D's conduct of any kind may result in damage of some kind to P?***

- ♦ Precise sequence of events does not need to be foreseeable, only the **risk of injury** to a specific **class of ppl** > [Chapman v Hearse](#)