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Negligence scaffold:

Name the plaintiff and defendant, and the tort.

- If it is an employee, say it will be vicarious liability, with employer as a joint tortfeasor.

Duty of care:

- Is it an established duty? (see p x)
- If not, look at reasonable foreseeability and salient features (on page x)
- Is it pure economic loss? (see p x) – Consider reasonableness, knowledge, ascertainable class
- Is it a statutory authority? (see p x) – Is it a power or duty? Have they begun to act?

Breach:

CLA s5B

Establishing breach: CLA s5B

- 5B(1)(a) – the risk was foreseeable (*Wagon Mound no 2*)
- 5B(1)(b) – the risk was not insignificant – *Wyong Shire Council v Shirt* – more onerous test than the old ‘far fetched and fanciful’ (*Shaw v Thomas*)
- 5B(1)(c) – a reasonable person in the person’s position would’ve taken precautions (*McHale v Watson* – standard for children)

Calculus of negligence:

- 5B(2)(a) – the probability that harm would occur (*Bolton v Stone*)
- 5B(2)(b) – the likely seriousness of the harm (*Paris v Stepney Borough Council*)
- 5B(2)(c) – the burden of taking precautions (*Romeo v Conservation Commission of NT*)
- 5B(2)(d) – the social utility of the act (*Watt v Hartfordshire County Council*)

Causation:

Section 5D – (see page x)

- 5D(1)(a) – that negligence was a necessary condition of the harm (factual causation) (the but for test)
- 5D(1)(b) – it is appropriate to extend the scope of the liability
- 5D(2) – exceptional cases, where but for doesn't work, court is to consider whether or not and why liability should be imposed

Strong v Woolworths – if not necessary condition, can be causation if it increased the risk, was a material cause or more probable than not that it contributed

Is it a novus actus? (*Haber v Walker*)

Remoteness:

Section 5D(4)

- Considering whether the type of injury was foreseeable
- Use s5D(4) – court is to consider whether or not and why responsibility for the harm should be imposed
- All about whether the damage is reasonably foreseeable – *Wagon Mound no 1*
- Only need to foresee the kind of damage, not precise manner or extent (*Hughes v Lord Advocate*, *Jolley v Sutton Borough*)
- Requires harm of a like kind be foreseeable (*Mount Isa Mines v Pusey*)

Defences: (see page x)

Main are:

- Contributory negligence
- Voluntary assumption of risk
- obvious risk (s5F-H)

- Inherent risk (s5I)
- Recreational activity and risk warnings (s5M) Can also waiver DOC in s5N.
- Dangerous recreational activity (s5L)

Damages:

Negligence: Can't get nominal bc there is always damage. And don't get exemplary. Only compensatory. Need to say whether it's under proportionate (economic loss or property damage) or joint and several because physical injury.

Intentional tort: nominal damages for no actual damage, or compensatory damages for the damage, or as in *Ibbett* – exemplary damages to make an example of the defendant, or could ask for an injunction if trespass to land and ongoing

Week 1

Introduction: The common law of tort

Elements common to all Trespass Torts – intentional torts:

- ▶ A positive voluntary act
- ▶ Which DIRECTLY
- ▶ Interferes with the Plaintiff (person, land, goods)
- ▶ Is actionable *PER SE*: Damage is not an element in trespass

Onus of Proof of Fault in Trespass Cases

- On the defendant except in highway cases:
McHale v. Watson: High Court (1964)

Elements of battery:

1. A positive voluntary act
2. Which directly (*Scott v Shepherd*)
3. Causes contact, (*Rixon v Star City*)

Is the act that must be intended (*Wilson v Pringle*)

Can be any contact with the person (*Collins v Wilcock*)

Hostility not necessary

Elements of assault:

1. Positive voluntary act
2. Which directly causes
3. Reasonable apprehension of imminent contact (NO CONTACT)

(*Rozsa v Samuels*) – creation of fear is gist (*Rixon v Star City*) (*Barton v Armstrong*)

An assault is any direct threat by a person which intentionally or negligently creates in another an apprehension of imminent, harmful or offensive conduct

Elements of false imprisonment:

1. Positive voluntary act (but can also be an omission)
2. Which directly causes (*Zanker v Vartzokas*)
3. Total restraint (but *Symes v Mahon*)

Imprisonment must be intended, plaintiff doesn't have to be aware of the imprisonment

The total restraint may be just mentally – believe they have no choice

(*Balmain Ferry Co*) (*McFadzean*) (*Myer Stores v Soo*)

Action on the Case

- ▶ Damage is the gist of the action
- ▶ Consequential damage
- ▶ Onus of proof always on Plaintiff

The Tort of Negligence is an action on the case

Interests protected:

- Economic interests
- Goods, property, land
- Personal interests, harm to body, mental harm