

False imprisonment

→ Direct & intentional/negligent total restraint of the freedom of movement of P by the D without legal authority

- Voluntary/positive
 - Same as battery (see above)
- Fault (intention/negligent)
 - D has to prove their actions were not intentional unless it was a highway case (*Venning v Chin*)
- Actionable per se
 - Doesn't need to be aware (*Myer Stores v Soo*)
- Total restraint
 - Can't be partial restraint (*Bird v Jones*)
 - If you accept contractual condition, no false imprisonment (*Balmain New Ferry Co v Robertson*; *Herd v Weardale Steel Coke*)
 - Must be complete submission of will, can be psychological (*Symes v Mahon*)
 - Can still have FI without knowledge (*South Australia v Lampard-Trevorrow*)
 - There must not be a reasonable means of egress (*McFadzean v CFMEU*)
 - What is reasonable egress → consider:*
 - Threat/danger to self
 - Threat/danger to property
 - Distance/time eg. Physical condition of P, clothing
 - Serious illegality
- Directness of restraint
 - Must be proximate cause of FI (*Coles Myer v Webster*)
 - Can't be passive bystander
 - Voluntary action by P can interrupt directness (*Myer Stores v Soo*)

Negligence

- Negligence: failure to exercise reasonable care (*s43 Wrongs Act*)
 - Establish the class of harm that's occurred:
 1. Property damage
 2. Personal injury
 3. Economic loss
 4. Mental harm
- Consequential anything, discuss at remoteness stage
- PEL/PMH, you have to discuss at duty stage as they have different RF tests

Negligence: Duty of care

- DUTY: Was it reasonably foreseeable to a reasonable person in the position of the D that careless conduct of any kind on the part of the D may result in some kind of damage to the P or to a class of persons to which the P belongs?
 - P must show that D had a duty of care
- When establishing a duty of care:
- 1. Is there reasonable foreseeability?**
 - You must take reasonable care to avoid acts/omissions which you can reasonably foresee would be likely to injure your neighbour (*Donoghue v Stevenson*, per Atkin L)
 - *Sullivan v Moody*: reasonable person must've foreseen a real, rather than far-fetched or fanciful, possibility of some harm to P
 - *Chapman v Hearse*: precise sequence doesn't need to be reasonably foreseeable, just needs to be a consequence of the same general character (use this for convoluted series of events)
 - Intervening act doesn't cut off liability as long as it was reasonably foreseeable result of original act
 - *Caterson v Commissioner for Railways*: what's likely to occur, or not unlikely to occur
- If no settled law, reasonable foreseeability is necessary but not sufficient to establish a duty of care (*Sullivan v Moody*) → have to also consider salient features.

2. Examine salient features of the case (*Sullivan v Moody*)

→ PICK ABOUT 5

- Assumption of responsibility (*ACT v Crowley*)
 - Did D assume responsibility?
 - Did P rely on D?

- Exposure of D to indeterminate liability (*Perre v Apand; Johnson Tiles*)
 - When it can't be realistically calculated
 - If there is indeterminate liability → in favour of D
- Vulnerability
 - Can the P protect himself against harm
 - Steps P could take to prevent harm
- Control (*ACT v Crawley*)
 - Did the D control the circumstances giving rise to the risk to P
 - The more control D has → more it favours P
- Interference with legitimate business activity (*Perre v Apand*)
 - If imposing a DOC on D interferes with legitimate business activity, it is less likely to require a duty of care
- No conflict of duties
 - Duty to child, society, occupation (*Sullivan v Moody*)
- Conflict of law
 - Can P recover under better suited tort or area of law?
- Actual/constructive knowledge of risk of harm to P (*Perre v Apand*)
 - D's knowledge
- P's illegality
- Contractual/statutory regime (*Johnson Tiles*)
- Floodgates
 - If they are opened → in favour for D
- Autonomy of individual (*Perre v Apand*)
 - Will imposing duty be inconsistent with legitimate pursuit of D's interests?
 - Overcome if D already owes duty to third party

"Considering the above salient features, it's likely there will be DOC owed by D to P"

SETTLED LAW– NO DUTY:

- Police when investigating crime (*ACT v Crowley*)
- Barristers when in court or intimately connected with case (*Giannarelli*, upheld in *D'Orta*)
- Parents no DOC for omissions – yes DOC for actions (*Robertson v Swincer*)
 - No clear standards
 - Impossible to meet standards all the time

Pure economic loss

1. Is there pure economic loss?
 - Loss not consequential on injury to person/property of P (*Caltex*)
 - Consequential: consequence of personal injury/property damage caused by D to P
 - Loss of business income (*Metrolink*)
2. TEST: was it reasonably foreseeable that the P (individually or as a member of a class) might suffer pure economic loss as a result of carelessness on the part of the D? (*Caltex*)
 - 'Not unlikely to occur' (*Caterson*)
 - **It is/isn't likely in this case that D should have foreseen that**

3. Do the salient features weigh in favour or against a duty of care?

Perre v Apand:

- **Indeterminate liability**
 - Mchugh: when it can't be realistically calculated
 - General rule: no DOC to 'second line' victims (who suffer PEL due to PEL of 'first line' victim)
- Control
- Vulnerability
- Interference with legitimate business
- Actual/constructive knowledge of risk of harm
- Autonomy of individual

Johnson Tiles:

- Indeterminate liability
- Vulnerability
- Interference with legitimate business activities
- Contractual regime
- Statutory regime
- Reliance/assumption of responsibility

Also consider:

- P's illegality
- Conflict of laws
- Statutory regime

Pure mental harm

- Do you have mental harm?
 - Psychological or psychiatric injury: s 67
 - Recognized diagnosed mental illness: s 75, *Mount Isa*
- Mental harm can result in economic loss: s 74
- S23: in any action for injury to the person the P shall not be debarred from recovering damages merely because the injury complained of arose wholly/in part from mental/nervous shock
- Do you have consequential or pure mental harm? S 67
 - Consequential: s 74(1)
 - If consequential – use *Sullivan v Moody*
 - Discuss at remoteness stage
- **Direct/indirect?**
 - Indirect: must satisfy s73
 - S 73(2)(a): witness at the scene
 - This is broad interpretation, includes if P arrives in aftermath (*Wicks*)
 - S 73(2)(b): close relationship
 - Not legal status, consider closeness, affection & love (*Gifford*)
 - S 73(3): no damages to be awarded if the victim would be unable to recover damages from D
- Reasonable foreseeability test:
 - S 72(1): D knew/ought to have foreseen person of normal fortitude may suffer illness
 - S 72(3): doesn't affect DOC if D knows/ought to have known P is of less than normal fortitude
 - According to circumstances of the case: s 72(2); *Wicks*
- Salient Features
 - S 71: Follow common law for areas statute doesn't cover
 - *Annetts v Australian Stations* (found to have duty):
 - Assumption of responsibility: made assurances to parents
 - No indeterminate liability: responsibility means duty was confined to small group
 - Vulnerable: P were vulnerable to risk of harm D exposed them to
 - Control: D controlled circumstances giving rise to risk
 - Interference with business: not legitimate to expose employees to risk of harm
 - No conflict of duties: duty to P is co-extensive with duty to employees
 - *Tame v NSW* (no duty):
 - Conflict of duties: to find a duty in this situation conflicts with police's statutory reporting duties
 - Conflict of laws
 - *Gifford v Strang* (no duty):
 - Relationship: closer relationship, more likely duty of care
 - No indeterminate liability: nature of relationship limits this
 - Vulnerability: P had no way to protect themselves

Negligence: Defences

The onus is on D to raise any relevant defences

Contributory negligence

- S26: if P was contributory negligent to harm suffered, D's damages can be reduced
- S63: court can determine reduction of damages of 100% if the court thinks its just and equitable to do so
- 1. Breach → Did P fail to take reasonable care of themselves?
 - S 62(2): same principles as negligence breach
- a) Standard of a reasonable person who ____ (say what P has done, eg who has heard water overflowing)
- b) What the person knew/ought to have known at the time (eg. Knowledge that she just had the water pipe fixed)
 - No allowance made for drunkenness (*Joslyn v Berryman*)
 - S 14G: useful for D if P was drunk/illegality eg. Reasonable person would realize driver is drunk
- If P has been put in situation of danger: determine whether P's action is reasonable by comparing degree of inconvenience caused by D against risk taken (*Caterson v Commissioner for Railways*)
- Consider sudden emergency, anticipating another's negligence – courts are more lenient, not CN (*Caterson*)
- Reasonable person test changes for minors (*McHale v Watson*)
- S 48(2): what a reasonable person would've done
 - Probability of harm occurring without care being taken
 - Likely seriousness of harm
 - Burden of taking precautions
 - Social utility of activity creating harm

"Likely foreseeable and a not insignificant risk that damage/harm may occur by P's actions of... therefore P's acts likely departed from the standard of care of a reasonable person"

- 2. Causation → Did this failure contribute to the harm?
- 'But for' test: would P have got injuries if he had not taken those actions?
 - Contribution to harm may arise where:
 - P's failure to take care contributed to *accident*
 - P's failure to take care contributed to *injury's* nature/extent eg. Not wearing a seatbelt (*Froom v Butcher*)
- Apportionment of damages (*Pennington v Norris*)
 - Distinguish from *Pennington*
 - 'Just & equitable apportionment' of responsibility
 - Not moral blameworthiness
 - Each parties' degree of departure from their respective standards of care

Conclude with percentage, not 50/50