

Concurrent liability

- Vicarious liability is the liability of an employer for a tort committed by an employee within the course of employment
- **Stevens v Brodribb sawmilling** → the existence of control between an employer and employee is not enough to prove a relationship for vicarious liability. Further criteria such as obligation to work, hours to work etc is also considered
- **Elazac Pty Ltd v Sheriff** → the plaintiff was not an employee but a contractor. He considered himself to be self-employed also everything he did in his work showed that he was an independent worker
- **Hollis v Vabu** → the plaintiff who was hit by a cyclist (cyclist worked for Vabu and was in the course of employment.)
 - Issue explored = Vicarious liability (requisite relationship).
 - Was held that there was a requisite relationship due to reasons such as control of Vabu on the employee, the fact that they had to wear Vabus work uniform etc. Thus defendant (Vabu) was held vicariously liable
- **Sweeney v Boylan nominees** → an employer of an independent contractor is not vicariously liable
- **Limpus v London General Omnibus** → employer still held liable for employee even if the actions of the employee was negligent during the time of employment
- **Oceanic Crest Shipping Co v Pilabara Harbour Service** → an employer is not vicariously liable for the employee if the employee exercises some independent discretion or authority
- **NSW v Lepore** → plaintiff (Lepore) was the victim of sexual harassment by a public school teacher.
 - Issue = Vicarious liability and non delegable duties.
 - Decision = no vicarious liability because sexual harassment (aka criminal conduct) is outside the scope of the teachers duties. He had no authority and essentially the actions of the teacher had nothing to do with the employment therefore the state could not be held vicariously liable for the teachers actions.
 - A non-delegable duty is a duty of the school to provide care for the children in it. However the scope of sexual harassment escapes the authority of the school due to its broad nature.
- **Civil Liability Act 2002**
 - **5Q Liability based on non-delegable duty**
 - (1) The extent of liability in tort of a person ("the defendant") for breach of a non-delegable duty to ensure that reasonable care is taken by a person in the carrying out of any work or task delegated or otherwise entrusted to the

person by the defendant is to be determined as if the liability were the vicarious liability of the defendant for the negligence of the person in connection with the performance of the work or task. → *This can be seen in NSW v Lepore however the judges ruled that the nature of the criminal act escaped the scope of a non-delegable duty that is entrusted upon schools*

- (2) This section applies to an action in tort whether or not it is an action in negligence, despite anything to the contrary in section 5A.

Introduction to Negligence

Tort of negligence also known as duty of care

- The defendant must have owed the plaintiff a duty of care
- That duty of care must have been breached
- And that breach must have caused damage to the plaintiff

- **Donoghue v Stevenson** → first case to establish duty of care (no need for contract). The defendant owed a duty of care to the plaintiff and this duty of care was breached as he manufactured a drink that had a decomposed snail in it. Due to this the plaintiff fell sick and thus was invented the tort of Negligence, Duty of Care
- **Hedley Byrne case** → this case established duty of care for economic loss. Pure economic loss: Negligent words
- **Home Office v Dorset Yacht** → duty of care of third parties established.
 - Home office was in charge of taking care of the juveniles. The juveniles damaged the yachts.
 - The court held that this was a foreseeable risk that home office should and could have taken precautions against
 - Thus home office liable for the actions of the juveniles

Salient factors approach: starts of assessing duty of care through reasonable foreseeability test and then the salient factors such as level of vulnerability of plaintiff compared with the power and control of the defendant and the kind of knowledge involved etc.

- **Kuhl v Zurich finances** → first step of duty of care is reasonable foreseeability and then further onto the salient factors of the relationship between the plaintiff and defendant
- **Perre v Appand** → potato case. Reasonable foreseeability and salient factors used.
 - Issue = pure economic loss : negligent actions

- It was reasonably foreseeable that the plaintiffs would suffer from damage due to the defendants actions
- Vulnerability of the plaintiff exists; the plaintiff was not able to protect himself from the harm by the defendant (salient factor)
- **Sullivan v Moody** → No Duty of Care for medical practitioners as they should be able to perform their duties without the fear of legal claim from a 3rd party.