

## NEGLIGENCE: DUTY OF CARE & BREACH OF DUTY

### (1) Duty of Care

#### Definition

- The duty of care is the obligation to avoid acts or omissions which you can reasonably foresee would be likely to cause damage to another.
- And to whom does one owe a duty of care?
- Those persons who are so closely & directly affected by my actions that I should reasonably foresee that they would likely to be affected by my actions

#### Dicta Lord Atkin

- Speaking about *Donoghue v Stevenson*
  - o whenever one person is by circumstances placed in such a position with regard to another, that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other (person) a duty arises to use ordinary care and skill to avoid such danger.
  - o You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour/another

#### (a) Reasonable Foreseeability

- Presupposes an objective or a reasonable person's standard
- The reasonable person is an embodiment of community values and what the community expects of a responsible citizen
- the concept allows us to evaluate D's conduct not from his or her peculiar position, but from that of a reasonable person similarly placed
- Reasonable foreseeability is a question of law
  - o (*Chapman v Hearse*) Car accident – car driven by Chapman overturns; Dr. Cherry stops to help Chapman and gets killed by car driven by Hearse; Dr.Cherry estate sues Hearse; Hearse joins Chapman as a third party claiming D Cherry's death had been caused by Chapman's original act of negligence in overturning car.
  - o **Chapman** should have reasonably foreseen the sequence of events that could follow from his negligent driving including the possibility of a 'rescuer' entering upon the roadway (such as Cherry) and being exposed to risk of injury.

## NEGLIGENCE: CAUSATION & REMOTENESS

### (1) Causation

#### Definition

- P must prove on the BoP (s52) that D caused P's harm in both fact and law (s52).
- Establishing a duty of care existed between P and D
- P must show that the breach must have caused or materially contributed to the damage for which the P seeks damage.

#### (a) Losses/Injuries

- Standard of Proof: Proof by interference is acceptable if the circumstances appearing in evidence give rise to a reasonable and definite inferences (*Halloway v McFeeters*)
- Where there are multiple possible implications, through evidence and applying common sense, the most likely will succeed.

## **(b) Factual Causation**

- The 'But For' Test: the court must consider whether it is more probable than not in a hypothetical set of circumstances that the P would have been injured.
  - o But for the D's actions or omissions would the P have suffered injury or harm.
  - o If the answer is 'yes' a prime facie casual connection has been established (*Barnett v Chelsea and Kensington Hospital Management Committee*)
  - o In cases where D failed to disclose information/warm, the P must prove BoP that they weren't aware of the risk or information (**s56(1)**) **But** does not apply for work done by one for another unless a health service.

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## **NEGLIGENCE: SITUATIONS**

### **(1) Abnormal Plaintiffs**

- *Levi v Colgate – Palmolive Pty Ltd (1941)*
- Receives a gift of bath salts and notices skin tingling – she is hyper sensitive due to allergy

### **(2) Blind Plaintiffs**

- *Haley v London Electricity Board [1965]*
- Boards employees excavated a trench on a footpath
- They places a pick and shovel at one end and a 'punner' at the other
- Blind pedestrian falls over, strikes head and becomes deaf
- Was it reasonably foreseeable that a blind person would come by? **Yes**, blind people use footpaths in cities (compared with bush paths?)
- Low obstacle would become serious danger to an 'abnormal' pedestrian
- To **reduce** risk, surround with a suitable light fence

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## **TRESPASS: TO THE PERSON**

### **(1) Common elements**

These apply to all trespasses (i.e. battery, assault, false imprisonment, trespass to goods and trespass to land)

#### **Definition**

- "A positive and voluntary act that either intentionally or negligently causes direct interference without lawful excuse."

#### **(a) Actionable per se**

- P does not need to prove damage (harm). Intentional/negligent act
- Actions that do not require the allegation or proof of additional facts to constitute a cause of action nor any allegation or proof that damages were suffered