

[7.05] /191	<h2 style="text-align: center;">The General Duty of Care</h2>
	<h3>General</h3>
	<ul style="list-style-type: none"> - General principles governing the existence of a duty of care in negligence <ul style="list-style-type: none"> o Standard/common circumstances - use an established legal formula or rule that lays down the requirements for duty of care relating to the class of case in which one falls, the particular duty situation o Novel situation - a new rule for the new situation may be established by resort to a general principle; factors for/against considered - Duty of care operates to define the scope and substance of negligence law - Breach and causation somewhat pre-empted by the duty of care concepts in determining what is regarded as responsible and irresponsible behaviour
[7.10]	<h3><i>Donoghue v Stevenson</i> [1932] AC 562</h3>
(a)/194	<p>Appellant - victim/plaintiff, argued duty of the respondent (manufacturer) to provide a system of business that would not allow snails to enter bottles and (b) duty to provide an efficient system of inspection</p>
(1)/194	<p>traditional categories of duties too limited</p>
(2)	<p>general principles – ‘the liability for negligence...is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay.’</p>
(3)/195	<p>THE RULE – “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour”</p>
	<p>Neighbour in law: “persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.</p>
(4)/195	<p>Principle of 'proximity' – “not confined to physical proximity, extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by the careless act”</p>
(4a)	<p><i>Heaven v Pender</i> - proximity doctrine in relation to the sale of goods - neighbour in this context is the consumer ultimately (not the retailer)</p>
(5)	<p>Application test of reasonable foreseeability - emphasis on goods having to be 'used immediately' and before a reasonable opportunity of inspection</p>
(6)	<p>application of principle – manufacturer knows food will be opened by the actual consumer, can be no preliminary inspection by any purchaser and/or the consumer. Negligently in the course of preparation he allows the contents to be mixed with poison</p>
(7)/196	<p>Other circumstances that may vary the required degree of care e.g. nature of the thing, less dangerous goods vs dangerous goods</p>
(8)	<p>Conclusion: "<i>a manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up the products will result in an injury to the consumer's life or property owes a duty to the consumer to take that reasonable care</i>"</p>
[7.20]	<h3><i>Grant v Australian Knitting Mills</i> [1936] AC 85 - adoption of <i>Donoghue</i> in Australian context (Privy Council)</h3>
(1)/199	<p>no privity of contract between a consumer and manufacturer (if there is a middle retailer), the liability is in tort and cause of action is negligence (in manufacture)</p>
(2)	<p>cause, damage suffered caused in fact by the negligent and improper way in which the manufacturers made the garments</p>
(3)/199	<p>citing and applying <i>Donoghue</i> principle, differs from a contractual relationship</p>
(5)	<p>‘the principle of <i>Donoghue</i>'s case can only be applied where the defect is hidden and unknown to the consumer, otherwise the directness of cause and effect is absent'</p>
(6)/201	<p>essential point: the article should reach the consumer with the same defect as it had when it left the manufacturer</p>
[7.45]	<h3>Categories of duties</h3>
	<ul style="list-style-type: none"> - Determining the approach to take in accepted categories - Whether an act or omission is involved and what kind of act - What kind of harm has been caused - Who the defendant is and who the plaintiff is - When factors move away from the traditional negligence cases, more is required to establish the duty of care

	<u>The wrong - acts/omissions/words</u>
[7.55]	Hargrave v Goldman [1963] HCA 56
	- omission through failure to put out a fire which caused damage to the appellant's property
	- The law casts no duty upon a man to go to the aid of another who is in peril or distress not caused by him
(1)/210	Common law - the occupier of land has long been liable in one form of action or another for consequence
(2)/211	flowing from the state of his land and of happenings there
	- To hold that the respondent had a duty to his neighbours to take reasonable care to prevent the fire on his land spreading would be in accordance with modern concepts of a land occupier's obligations
(3)/212	- Conclusion - a man has a duty to exercise reasonable care when there is a fire upon his land (although no started or continued by him) of which he knows or ought to know, if by the exercise of reasonable care it can be rendered harmless or its danger to his neighbour diminished
	▪ Important omission in the law of torts - failure to warn
	<u>Types of defendant -</u>
[7.65]	- Individuals = paradigm, Others = public authorities and the government, occupier of premises, school authorities, children, hospitals, solicitors, employers, landlords etc.
	<u>Types of harm -</u>
[7.70]	- Physical injury and property image = paradigm, Others - psychiatric injury, pure economic loss
	o Novel cases - incremental approach, salient factors using analogies to similar decided cases
	▪ Some are a matter of policy
	- Sullivan v Moody; Thompson v Cannon (2001) 207 CLR 562 - case rests on foreseeability which is not sufficient, difficulty in establishing proximate relationship
(1)/216	- allow recovery for damages for publishing statements to the discredit of a person where the law of defamation would not – plaintiffs accused of child abuse after medical practitioners ‘carelessly’ came to the conclusion
(2)	that the father seemed to be the obvious cause of the abuse, plaintiffs suffered shock, psychiatric injury and financial distress
(3)/217	- duty of care begin from the recognition that those who made the report had other responsibilities - people may be subject to a number of duties, if those obligations are inconsistent no duty exists
	- Statutory scheme required conflicting interests for the child and the suspects (parents in this case)
(4)	- Lack of relationship between themselves and the defendants (regardless of parentage)
[7.40]	<u>Salient Factors/Incremental Approach</u>
	- First reasonable foreseeability test -> Salient factors test
	o Level of vulnerability of the plaintiff compared with the power/control of the defendant in the situation - position to be harmed?
	o Level of reliance of the plaintiff on the defendant
	o Kind of knowledge involved
/207	- HC emphasised that a duty of care is not a general duty but is limited in scope according to the category - duty of care to identifiable people in identifiable circumstances
/208	- Kuhl v Zurich Financial Services Australia Ltd - French CJ & Gummow J :
	'the formulated duty must neither be so broad as to be devoid of meaningful content nor so narrow as to obscure the issues required for consideration'
[7.85]	- Caltex Refineries Pty Ltd v Stavar [2009] NSWCA – guidance in dealing with a novel case
/218	- “...such considerations as control, vulnerability, assumption of responsibility and nearness or proximity.”
/219	- list of salient features
[7.95]	<u>Reasonable Foreseeability</u>
	Whether it is reasonably foreseeable that your action might bring harm to another:
	o An event is reasonably foreseeable if the defendant's action increases the likelihood of the event; and
	o Harm is reasonably foreseeable if there is a systematic relationship between the defendant's action and the plaintiff's harm.
	Chapman v Hearse (1961) 106 CLR 112 -
(1)/220	- Chapman (appellant in this case) crashed into a vehicle, was unconscious -> Dr Cherry attending to him -> Hearse (respondent) struck Dr Cherry at the scene who died
(2)/221	- Trial judge found Hearse had been negligent + Chapman also liable for contributory negligence -> appeal to the high court against order for contribution
	- Question - whether Chapman would have been liable for the 'same damage' in the suit with Cherry's executor
	- Appellant argues - Cherry's death caused solely by the negligent driving of Hearse and not a breach of duty on his part + the death as a consequence of Chapman's negligence was too remote to fix him with responsibility
(3)	- The task of attending to the injured man with no one present to warn of oncoming traffic involved Dr Cherry

	in a situation of some danger
(4) -	Argued that the sequence of events was not reasonably foreseeable - however this test was rejected
-	Better test/question - whether a reasonable man might foresee, as the consequence of such a collision, the attendance on the roadway at some risk to themselves of persons fulfilling a moral and social duty to render aid to those incapacitated or injured - 'whether a consequence of the same general character would be reasonable foreseeable...'
(5) -	In order to establish the prior existence of a duty of care with respect to a plaintiff subsequently injured as the result of a sequence of events following a defendant's carelessness "it is not necessary for the plaintiff to show that the precise manner in which his injuries were sustained was reasonably foreseeable; it is sufficient if it appears that injury to a class of persons of which he might reasonably have been foreseen as a consequence..."
Note. 4 /222	Minister Administering the Environmental Planning and Assessment Act 1979 v San Sebastian Pty Ltd [1983] 2 NSWLR 269, 395-6: "The proximity upon which a Donoghue type duty rests upon proof that the defendant and plaintiff are so placed in relation to each other that it is reasonably foreseeable as a possibility that careless conduct of any kind on the part of the former may result in damage of some kind to the person or property of the latter: Chapman v Hearse (1961) 106 CLR 112 at 120, 121."
Note. 2 /222	RTA v Dederer (2007) 324 CLR 330 - Gummow J : "The RTA's duty of care was owed to all users of the bridge, whether or not they took ordinary care for their own safety...however, the extent of the obligation owed by the RTA was that of a roads authority exercising reasonable care to see that the road is safe "for users" exercising reasonable care for their own safety": Brodie v Singleton Shire Council" (at 47). - RTA did not have to foresee dangers, which would arise because of people failing to take care of themselves.
[7.30] (1)/203	Home Office v Dorset Yacht Co Ltd [1970] AC 1004 - extended duty of care (1/3 cases development of DoC) Damage done to a boat (private property) by independent human activity of the prisoners, the Home Office did owe a duty of care because it was specifically foreseeable that yachts in the vicinity were at risk if the prisoners escaped custody
(2)/204	Detainees where in the lawful custody of the institution under the control of officers with instructions to keep them in custody and under control - ought to have reasonably known the risks as a likely consequence of their neglect of duty
(3) -	Emphasised foreseeability - omission of the guards makes the home office liable, extended the law that a duty could be owed by a third party far removed if they complied with the rules
7.110]	The Unforeseeable Plaintiff
	Palsgraf v Long Island R R Co 248 NY 339 (1928) (US) - 2 men ran to catch a train, and guards helped them by pulling them on, a parcel containing fireworks held by one of the men was dislodged by a guard, exploded, and knocked down scales, hitting the plaintiff - Sued railway company for negligence by their employees - Held: she was an unforeseeable plaintiff, therefore dismissed
/223	Bale v Seltam Pty Ltd [1996] QCA 288 - asbestos case - The wife of a man who worked with asbestos who washed his clothes and used his car became ill from second-hand contact but the injury was 'having regard to the state of scientific knowledge on the subject, not reasonably foreseeable' - Dissenting opinion: "The respondent ought to have known, at least by the end of 1963, that there was a risk amongst the unidentified and unknown possible toxic effects of asbestos dust was injury to those, such as wives, who are exposed to it." - 2009 - a woman in a similar position was awarded damages by the Dust Diseases Tribunal of NSW and the NSWCA confirmed that a duty of care could arise in such a situation now - foreseeability changing due to circumstances as knowledge, science and technology develops
Note 3. /223	Tame v NSW (2002) 211 CLR 317 Mrs Tame, was involved in a motor accident where the other driver was at fault. The police erroneously filled in the accident report as showing that the plaintiff had a blood-alcohol reading of 0.15 which actually applied to the other driver. - The police acknowledged their mistakes, issued a formal apology, fixed it after 2-3 months - Insurer still paid a substantial sum to the Plaintiff, although it took time before the payments came. - The Plaintiff developed an irrational and obsessive fear that delay of the payments is related to her perceived drunkenness, and that everyone around her thought she was drunk -> psychotic depression - Rejected her claim on the basis that the link between a misstatement on a form and nervous shock was too remote to be regarded as reasonably foreseeable