

Week 8:

Law of Torts:

A tort is concerned with a legally binding obligation that arises when one person's wrongful conduct infringes another person's right and loss or damage is caused.

Examples of torts:

- Trespass to land – the right to enjoy your land or goods without interference
 - Assault – threatening is assault, beating is battery
 - False imprisonment – locking someone in a room
 - Nuisance – e.g. loud noise from neighbour at 6am on Sunday
 - Defamation – bringing down one's reputation through slander (spoken word between individuals) and libel (more widely published)
- NEGLIGENCE – The tort of negligence was largely a common law creation
Plaintiffs have to prove duty, breach and damage

Elements of negligence:

1. You must owe a duty of care – reasonably foreseeable and proximity

The duty of care in specific situations:

1. *Duty of care and acts causing physical harm*

You must take reasonable care to avoid acts or omissions, which can be reasonably foreseeable, would be likely to injure your neighbour (proximity)

Donoghue v Stevenson

May D went to a café with her friend, her friend purchased a bottle of ginger beer, May became violently ill and went into a nervous shock when she realised she consumed the remnants of a decomposed snail in that bottle, May sued the manufacturer (manufacturer duty to consumer on pg.352)

Australian Safeway Stores v Zaluzna

Madbury v Anzil

2. *Duty of care and acts causing mental harm*

Jaensch v Coffey

Coffey's husband injured by Jaensch driving negligently, coffee brought to hospital and saw her husband in extreme pain/though she was going to die, developed severe anxiety and depression

Tame v NSW

Annetts v Australian Stations

3. *Duty of care and liability for omissions*

Rogers v Whittaker

Woman sees doctor, couldn't see well in one eye and it looked unsightly, doctor said could give cosmetic surgery for improving the eyesight and making it look better, she was a particularly nervous woman, asked them to make sure doesn't operate on wrong eye, doctor operated on bad eye and it wasn't a success she went blind in that eye, she suffered from condition called sympathetic ophthalmia so she was completely blind, she sued doctor for not advising her of the risks

CAL v MAB

Man asked publican to not give him motorbike keys if too drunk, man was too drunk and publican gave him the keys, was there duty of care? Publicans do not have a duty of care to their patrons to monitor their drinking levels and prevent them from driving it is their own responsibility so the high court overruled the publican being sued

4. *Negligent acts causing pure economic loss – indeterminacy problem*
Indeterminacy of liability (must be part of small class of determinant plaintiffs), reasonable foreseeability, vulnerability to risk, defendant's knowledge (defendant must be aware their act will harm the plaintiff)

Perre v Apand

Perre was neighbour of farm with infected potato plant seeds, his crop was less than 20km away from neighbours crop, Perre's main source of income was selling to Western Aus, Western Aus legislation will not buy crop that has been less than 20km away from infected crop

Johnson Tiles v Esso

Hit Melbourne's gas line Melbourne had no gas for 2 weeks

5. *Negligent statements causing pure economic loss*

Mutual Life (MLC) v Evatt

Evatt wanted to sue MLC for faulty advice

Issue is whether they owe a duty of care

MLC made statements to Evatt about the state of Palmer Ltd, Evatt acted on the advice and lost money

Decision → a duty of care will not exist unless advice was given by an expert with specific skills, they decided there was a duty of care
Special relationship test – capacity or opportunity to exercise judgement... comes under a duty of care both to utilise with reasonable care the information and sources of information at his disposal...

Whenever a person gives information or advice to another, upon a serious matter, and the speaker realises or ought to realise that he is being trusted, and it is reasonable in the circumstances for the other party to seek or accept and in either case to act upon that information and advice the speaker

2. You must have breached that duty of care – reasonable person's test

What a reasonable person would do to reduce the risk of harm; what a reasonable person would have done in the circumstances (probability of risk occurring, potential gravity from the harm, burden of preventing the risk, social utility of the act)

Breaches of the duty of care two-step approach:

1. The risk of injury was reasonably foreseeable
2. If the risk was reasonably foreseeable the Act asks how would a reasonable person have responded

3. There must be damaged suffered

Causation – but-for test (no damage or loss would have occurred but for the negligence of the plaintiff), remoteness (reasonable foreseeability)

4. Are there any defences; contributory negligence, voluntary assumption of risk

Contributory negligence– defence would be that plaintiff has contributed to act him or herself; they've been negligent in causing the act themselves

Voluntary assumption of risk – person won't be negligent if you voluntarily assume the risk

Lord Atkins neighbour principle – avoid acts or omissions which you can reasonably foresee would be likely to injure and law limits ones legal duty to his neighbour (those who are so closely and directly affected by one's act); test reasonable foreseeability and proximity

Conduct must be wrongful

When answering a question on negligence look for 1) duty of care, 2) standard of care (high potential gravity of harm, low burden of preventing harm and probability of risk), 3) causation and 4) remoteness

These ^ were established in the case *Wyong Shire Council v Shirt*