

# Duty of Care: PSYCHIATRIC HARM

## Does a duty exist?

### 1. Reasonable foreseeability

- Could a reasonable person in D's position foresee that a person in P's position might in circumstances of the case suffer psychiatric harm?
  - *Donoghue v Stevenson* (1932)
- Person of normal fortitude: *Tame v New South Wales*

### s.32

- I. in pure mental harm, consider
- II. mental harm was suffered as the result of a sudden shock;
  - Doesn't have to be sudden shock (*Annetts*)
  - Totality of the experience (*Wicks*)
- III. witnessed, at the scene, a person being killed, injured or put in peril
  - Can be aftermath (*Wicks*)
- IV. Nature of the relationship between plaintiff and any person killed, injured or put in peril;
- V. whether pre-existing relationship between the plaintiff and the defendant;

## DUTY:

- Reasonable foreseeability is cast before the accident happened
  - *Wicks*
- It's a matter involving "a value judgment upon ascertained facts,"
  - *Anwar Mondello Farms*
- It is reasonably foreseeable and not far-fetched or fanciful
  - *Whong Shire Council v Shirt*
- There is a foreseeable plaintiff
  - *Palsgraf v Long Island Railway Co*
- A duty alone does not satisfy reasonable foreseeability.
  - *Sullivan v Moody*
- Novel cases require a multifactorial approach of assessing salient features
  - *Caltex Refineries*

### 2. Salient Features

## Autonomy:

- Is it a choice or voluntary act which interferes with the freedom and security of individuals

- *Tame v New South Wales (2002)*
- Would placing a burden on a defendant autonomy be unreasonable
  - *Sullivan v Moody*

#### **Control and Vulnerability:**

- Can you act to minimise the harm or protect yourself from suffering psychiatric harm
  - *Annetts v Australian Stations (2002)*
- Who is in control?
  - Glifford
- Are they a vulnerable plaintiff?
  - *Trevorrow*

#### **Certainty:**

- Is the class of person's determinative and not uncertain in nature
  - *Sullivan v Moody (2001)*

#### **Coherence:**

- Does it interfere with other duties of the defendant?
- Is it inconsistent with the purpose of a statute
  - *Sullivan v Moody (2001); Tame v New South Wales (2002)*

#### **Is there a duty?**

### **3. Limitations on Damages**

- Is this pure or consequential mental harm?
- Is this a recognised psychiatric illness?
  - S.53(2): Pure
    - 'mere' emotional distress, anxiety or grief will not suffice
      - *Tame v NSW*
  - S.53(3): Consequential

#### *DOES IT COMES WITHIN*

#### **Present at the scene:**

#### **s.53(1)(a)**

*Was physically injured in the accident or was present at the scene when the accident occurred*