

TORTS - FINAL EXAM

NEGLIGENCE - CLA NSW 2002

1) DUTY OF CARE

Step 1 - Established Cases

No duty:

- Good Samaritan: exempt from liability for acts/omissions made 'honestly and without recklessness' to assist those in need. (exc. Drugs/motor insurance)
- Police

Duty:

- *Road users*: to exercise reasonable care to avoid foreseeable physical harm to other road users - Chapman v Hearse
- *Manufacturers to consumers*: Manufacturers of consumer products intended for consumption / use in the form in which they issue them with no reasonable possibility of intermediate examination before consumption, where it is foreseeable that lack of reasonable care in the manufacturing process might injure the consumer - Donoghue v Stevenson
- *Doctors/Patients* (warning): Doctors owe a duty to inform patients of 'material risks' (risks which they would be likely to attach significance to); in other words, doctors owe duty towards patient to exercise reasonable care and skill in diagnosis, advice and treatment - Rogers v Whitaker
- *Occupiers of premise/land to third parties*: Occupiers of land do not owe a duty to protect persons on their land from random attack by third parties - Modbury
- *Occupiers of premises to lawful entrants*: Occupiers owe duty to lawful entrants, to exercise reasonable care and skill to avoid foreseeable injury to entrants arising from the physical state and condition of the premises - Zaluzna v Safeway Stores, Modbury Triangle Shopping Centre v Anzil
- *Employers to employees*: take reasonable care to ensure a safe workplace - Paris v Stepney Borough Council
- *Parent/Child* (omission): There is no general duty to take positive action to prevent harm coming to child - Robertson v Swincer
- *Parents to third parties*: Generally, parents must take reasonable care to prevent their child causing harm to third parties - Smith v Leurs (judged according to circumstances)
- *Rescuers*: There is no general duty to rescue - Stuart v Kirkland-Veenstra; however There may be a duty to rescue if the person professes a special skill - Lowns v Woods
- *'Pure' Mental Harm*: See statute which overrides cases - defendant owes a duty if plaintiff can establish that a person of 'normal fortitude' might have suffered a recognised mental illness as a result of Defendant's failure to take reasonable care - courts takes into account whether harm was a rule of 'sudden shock', whether defendant witnessed the accident, the nature of the injury, and the nature of the relationships between those involved etc.
- *Plaintiff engaged in illegal activity*: No duty is owed if plaintiff was engaged in an indictable offence at the time of injury, or plaintiff's conduct contributed materially to the risk of injury; however duty may be owed if plaintiff 'withdraws' participating in the crime - Miller v Miller

