

- **[Test 1]: Established Category**
- The relationship between [P] and [D] falls within the established category of [CATEGORY: CASE].
- **Categories:**
- Road users: *Broadhill v Young*.
- Driver/passenger: *Cook v Cook*.
- Doctor/patient: *Rodgers v Whitaker*.
- Employer/employee: *Smith v Charles Baker & Co*.
- Occupier/invitee: *Heaven v Pender*.
- Manufacturer/consumer: *Donoghue v Stevenson*
- As a duty of care is established between [P] and [D] it is necessary to examine whether [D] breached that duty.
- **[Test 2]: Novel or Special Duty Category**
- As the relationship between [P] and [D] is not an established category, it is necessary to establish that [D] owed [P] a duty of care in relation to the circumstances in which [P] was injured. [He/she] must show that the facts giving rise to the injury fall within a special duty category.
- **(1) Nervous shock (2) Nonfeasance (3) Statutory Authorities**
- **Category: Nervous Shock**
- **Primary Victims:** As [P] has also suffered a physical injury, consequential nervous shock is also recoverable: *Donoghue v Stevenson*.
- As [P] is a primary victim [he/she] does not have to establish that the psychiatric injury suffered was foreseeable in a person of normal fortitude.
- **Secondary Victims:** As a [P] is a secondary victim, [D] does not owe [him/her] a duty to take care not to cause pure mental harm unless [D] ought to have foreseen that a person of normal fortitude might have suffered a recognised psychiatric injury if reasonable care was not taken.
- To show that a duty of care existed, [P] must show that:
- **[Element 1]:** As a result of the actions of [D], [P] has suffered a recognised psychiatric injury in the form of [APPLY].
- **[Element 2]:** [P's] recognised psychiatric injury was the result of the sudden shock of [seeing/hearing] that [APPLY], rather than mere grief or emotional exhaustion: *Jaensch v Coffey*.
- **[Element 3]:** [P's] psychiatric injury must have been reasonably foreseeable to [D] at the time: *McLoughlin v O'Brian*. [P] does not have to have normal fortitude as long as the impact would be the same for a person of normal fortitude: *Tame*.
- To establish reasonable foreseeability the following factors affecting [P] must be taken into consideration (it's a weighting game Louie!):
- **Close relationship of [P] with original victim:** extends to anyone who is bound by a relationship of love and affection. Certain classes (parents/spouses) are presumed to have this relationship: *Alcock v Chief of South Yorkshire Police*;
- **Direct Sensory Perception/Aftermath:**
- **Hearing is sufficient:** *Hancock v Wallace*: was not at accident, not at hospital, told over the phone.
- **Seeing:** *Alcock*: it is insufficient to see it on TV if individuals cannot be identified, it is limited to those actually present.

- **Aftermath:** *Jaensch v Coffey*: only saw victim go into operating room; *Spence v Percy*: aftermath limited by time; death of victim after 3yr coma is too far removed in time; *Alcock*: identification at morgue is not close enough.
- **Antecedent Relationship:** between [P] and [D]. *Annetts*: phone call established relationship. Duty owed due to the ordinary principles of negligence, closeness of relationship between D and P combined with D's control and risk to son.
- **Sudden Shock:** cannot be accumulated over time: *Annetts*.
- **Gruesome Factor:** nature of the injuries: *Hancock v Wallace*.
- **Control:** degree of control exercised by [D] over safety of victim: *Gifford*.
- **[Element 4]: Policy Issues**
- Despite showing that [D] may owe [P] a duty of care, control mechanisms may limit this duty. These issues include: *Sullivan v Moody*
- **Indeterminacy:** recovery will risk creating an indeterminate liability to an indeterminate number of people.
- **Disproportion:** may impose an unreasonable or disproportionate burden of [D].
- **Disincentive:** litigation may operate as a disincentive to rehabilitation.
- **Coherency of the Law:**
- Tentative Conclusion
- Based on [APPLY], it would be [likely/unlikely] that [D] owed [P] a duty of care. As such, it [is/isn't] necessary to determine whether [D] has breached [his/her] duty.
- **Pure Nervous Shock:** *Hancock v Wallace* – father was a secondary hearsay victim, not at accident, not at aftermath, but told over phone that person decapitated may have been his son; Pl recovered because of extremely close relationship with victim.
- **Category: Nonfeasance –failure to act**
- The general rule is that [D] does not have a duty to take positive action for the safety of [P]: *Stovin v Wise* unless there is a:
- **Pre-existing protective relationship between [P] and [D] imposes a positive duty to act:**
- **Teacher/student:** *Richards v Victoria*: must take reasonable steps to protect students; *Geyer v Downs*: once school grounds opened, duty of care arises;
- **Prisoner/prison authority:** *L v C'th*: must separate violent offenders from those on remand.
- **Occupier/visitor:** *Romeo v NT Conservation Commission*
- **Employer/employee:** *Paris v Stepney Borough*
- **Duty to prevent 3rd party causing harm to [P]:**
- **Child/parent:** *Smith v Leurs*: a duty to prevent child from causing injury to others; *Curmi v McLennan*: parent liable because gun was readily available to child;
- **Guests/hotel:** *Chordas v Bryant*: a duty of care owed to protect patrons; *Wormald v Robertson*: hotel liable because offender had been complained about, but hotel did nothing until he assaulted another guest.
- **Statute may impose a duty to act:** Where an Act creates an obligation and provides enforcement in a specified manner, as a general rule, performance can't be enforced in any other way: *Bishop of Rochester v Bridges*.
- Tentative Conclusion

- As the relationship between [P] and [D] is that of a [APPLY], it would be [likely that [D] owed [P] a duty of care. As such, it is necessary to determine whether [D] has breached their duty.
- **Category: Statutory Authorities**
- For [P] to succeed in a claim against [D], the court must decide that [D] is under a common law duty to exercise statutory power and when exercising power they are is under a duty to take reasonable care: *Anns v London Borough of Merton*.
- [Key Principles: *Anns v London Borough of Merton*
- If SA exceeds power and thereby causes damage, it will be liable
- If it has a duty to act and its failure to act causes damage, it will be liable
- If SA has no statutory obligation to act, it is not liable for any failure to act except when by its conduct it places itself in such a position.
- Where it exercises powers in respect of operational functions, it will be liable]
- **[Element 1]: Legislative Intent**
- [P] must show that the Act establishing the [statutory authority] intended for it to be liable for [APPLY]. If given power – discretionary, if given duty – mandatory.
- **[Element 2]: Did the authority have a CL duty to exercise statutory power?**
- As [P] claims that the [Statutory Authority] owed [him/her] a duty of care the courts will examine the following salient factors: *Crimmins* [NOTE: a ‘no’ answer to any factor will result in no duty arising]
- **Reasonable Foreseeability:** that their act or omission might result in injury to [P]
- **Class of People:** did the authority have the power to protect the interest of a specified class of people including the [P] rather than the public at large.
- **Vulnerability:** [P] was especially vulnerable and could not reasonably be expected to adequately safeguard himself or interests
- **Knowledge:** knew or ought to have known of an existing risk of harm to a specific class of people
- **Impose Liability:** would the imposition of a duty of care impose liability with respect to the [D’s] exercise of “core policy making” or “quasi-legislative” functions? If yes, no duty.
- **Other Issues:**
- **Control:** was the authority in a position of control: *Barclay Oysters*
- **Resources:** the ability of the SA to afford to undertake measures.
- **Supervening Policy Reasons:** e.g. indeterminacy
- *Pyrenees Council v Day 1998:* Council failed to follow up an order directing tenant to repair fireplace; fire broke out and damaged neighbouring property; held council owed a duty to neighbours because:
 - Council had specific knowledge
 - Council had power to prevent it
 - P was vulnerable, so power to prevent amounted to a duty
- **CASE DETAILS:**
- *Sutherland S.C v Heyman:* **Facts:** Council inspected P’s buildings (but not footings) & approved. Cracks later appeared & P sued **Held:** Council was found negligent, but not liable as there was no general duty was owed to exercise its powers. However if Councils actions gave rise to reliance then a duty arises. *Mason J* spoke of general reliance.

- *Parramatta C.C v Lutz*: **Held**: Adopted the 'general reliance' approach. The Council owed a DOC because it had adopted a general practice of demolishing known derelict buildings thus P entitled to assume council would promptly demolish building.
- *Pyrenees Council v Day*: Council failed to follow up an order directing tenant to repair fireplace; fire broke out and damaged neighbouring property; held Council owed duty to neighbours because: (i) Council had specific knowledge; (ii) power to prevent it; (iii) P was vulnerable; so power to prevent amounted to a duty. Kirby applied Caparo test: (i) Reasonable Foreseeability; (ii) Proximity; (iii) Fair, Just and Reasonable. Brennan applied Legislative Intent test: was right to private recovery intended.
- *Perre v Apand P/L*: P may recover if: (i) particular class of people at risk; (ii) the class is vulnerable because unable to protect itself; (iii) it was only a minor variation on the rule that physical damage was necessary to found an action.
- *Ryan v Great Lakes Council*: No absolute duty owed by SA; Council ought to have known the possible damage that would result from omission but failed to take reasonable steps to prevent the damage. This case showed the importance of foreseeability.
- *Crimmins v Stevedoring*: **Facts**: were Stevedores under D of C to warn workers of asbestos. **Held**: no legislative intention that they were liable. Messy case need (i) Rf that failure to exercise stat. Power would cause P's injuries (ii) did it cause them to have to warn a specific class (iii) was P vulnerable (iv) was there knowledge of possible harm to P. AND DO NOT NEED (i) would such a duty impose liability in relation to core policy making (ii) would it open flood gates