

TORTS REVISION

QUESTION 1

DUTY OF CARE

Was it RF to a reasonable person in the defendant's position (describe position) that their acts/omissions (describe) could cause harm to a class of persons of which the plaintiff was a member (describe the class).

**** Use dot points for descriptions ****

Plaintiff will want specific RF, defendant will want it broad.

Was it RF?

- Specific harm does not need to be foreseeable, just a consequence not unlikely, far-fetched or fanciful (*Chapman v Hearse*; *Wyong Shire Council v Shirt*)
- Was it a RF plaintiff? (*Seltsam v McNeil*; *Palsgraf v Long Island Railway* – plaintiff was not RF, she was bystander some distance away when a package exploded while staff assisted another passenger get on the train and *Palsgraf* was injured when something fell on her head as a result of the explosion. It could not have been RF she would be injured.)
- Foreseeability is undemanding (*Seltsam v McNeil*)
- Novel cases require multifactorial approach assessing salient features (*Caltex v Stavar*)
- Established relationships where duty of care exists – doctor/patient; driver/road user; solicitor client
- No general duty on a public authority but para [30] *AMACA* states if they have increased the risk of harm then a duty can be imposed. Assess SF.

**** NOT PROXIMITY****

- close and direct relationship between deft and plaintiff (*Perre v Apand*; *Donoghue v Stevenson*) the more distant the less likely the duty.

❖ SALIENT FEATURES (SF)

VULNERABILITY – *Sullivan v Moody*; *Miller v Miller*

- What control does D have over P risk of harm?
- Does D have any special knowledge?
- Has the D created an increase risk of harm?
- Has the P relied on D to take care of their safety? (AMACA – govt. authority)

AUTONOMY – *Perre v Apand*

- Would imposing a duty of care effect P's freedom of choice?
- Would a duty infringe on the way the P engaged in the activity/conduct involved/?

CERTAINTY / INDETERMINACY – *Sullivan v Moody*; *Pere v Apand*

- Is the class of persons who are at risk of injury indeterminate?
- Is there an excessive burden on a public authority? (AMACA)
- P would argue it is only to a defined class as in *Sullivan v Moody*
- Is it a duty that should be on D of someone with closer relationship such as manufacturer, user etc.

COHERENCE – *Sullivan v Moody*

- Would a duty reduce ability to perform existing functions/responsibilities?
 - Would it conflict with existing responsibilities?
 - Even if not inconsistent would it open 'flood gates' to all similar defendant's? (particularly public authorities) (*Sullivan v Moody*)
 - Role-based coherence
 - Judges to respect division between parliament and community law making bodies
 - Goal-based coherence
 - Public values and community goals.
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- If any of SF point away from a duty, then no duty will be imposed on deft.
 - Conclude with whether a duty is likely to be imposed on the defendant.

QUESTION 2

BREACH & CAUSATION

PART 1- BREACH

WHAT STANDARD?

P must prove this on balance of probabilities

Standard of care will D be compared with?

❖ S31 CLA

the standard of care required of the D is that of a reasonable person in the defendant's position who was in possession of all information that the defendant either had, or ought reasonably to have had, at the time of the incident out of which the harm arose.