

TORTS

BREACH OF DUTY

<p>1. Standard of Care</p>	<p>Is that of the reasonable person on the Bondi bus. EXCEPT:</p> <ul style="list-style-type: none"> Standard is lowered for Children <p><i>McHale</i> FACTS: The respondent, Watson, was a twelve-year-old boy who attempted to hit a post with a sharpened piece of metal. The dart, however, missed the post and instead blinded the appellant, McHale, in one eye. HELD: Not negligent because a boy of 12 years could not be expected to foresee that the dart might not stick to the post and could go off at a tangent and hit someone.</p> <ul style="list-style-type: none"> Standard is raised for extra skill <p><i>Imbree</i> FACTS: Passenger allowed a 16-year-old unlicensed person to drive. Defendant argued that the other person knew they weren't skilled. HELD: Standard wasn't lowered. If you hold yourself out as having the skill, you are held to the standard of person with that skill.</p> <ul style="list-style-type: none"> No change for Mental illness <p><i>Carrier</i> FACTS: Defendant walked in front of a bus and was suffering a mental illness HELD: The same standard of care as the reasonable person on the Bondi Bus</p>
<p>2. Bolam Principle</p>	<p>Can the defendant utilize CLA s50 + s5P (The Bolam Principle - <i>Rogers</i>) All CRITERIA:</p> <ul style="list-style-type: none"> Is the defendant a Professional? <ul style="list-style-type: none"> Not defined in s50 (1) Plaintiff would argue that it covers the professions traditionally recognised: doctor, lawyer, accountant. Defendant would argue that factors such as having a specialised skill, license, qualification, belonging to a professional organization amount to being a professional. Is the defendant providing services? <ul style="list-style-type: none"> Does not include warning, advice or other information in respect of the risk of death of or injury to a person associated with the provision by a professional of a professional service (s5P) Is the service widely accepted? <ul style="list-style-type: none"> Differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section. s50 (3) Does not need to be universally accepted s50 (4) Is the opinion Irrational? <ul style="list-style-type: none"> Court decides s50 (2)
<p>3. RF</p>	<p>Reasonable foreseeability of risk of injury 'not insignificant' CLA s5B(1)</p> <ul style="list-style-type: none"> More demanding than common law "not far-fetched or fanciful" but still minimal. (Don't spend long here)