

LAW10004 Introduction to Business Law Notes

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Topic 4 Negligence. Chapter 6

Carelessly causing Harm

For legal action under the tort of negligence to succeed, it must satisfy 3 requirements:

- 1.) The defendant owed the plaintiff a duty of care (p.220)
- 2.) The defendant breached that duty of care (p.225)
- 3.) The defendant's breach caused the plaintiff to suffer harm (p.233)

Requirement 1: Duty of care

The plaintiff must establish the existence of a duty of care

Well-established duties of care (p.220)

- Motorists owe a duty of care to other road users¹
- Doctors owe a duty of care to other patients²
- Solicitors owe duty of care to clients³
- Manufacturers owe duty of care to people who use their products⁴
- Occupiers owe a duty of care to people who come onto their premises^{5 6} (p.240)
- Architects owe a duty of care to people who occupy the buildings they design⁷
- Agents owe duty of care to their principle
- Directors owe duty of care to their company
- Employers owe a duty of care to their employees

Neighbour principle: if the relationship does not fall into one of these categories reasonable foreseeability⁸⁹ and salient (relevant) features¹⁰ will be considered (p.22-224)

¹ Imbree v McNeilly (2008) 236 CLR 510 (p. 230)

² Rogers v Whitaker (1992) 175 CLR 479 (p.232)

³ Hawkins v Clayton (1988) 164 CLR 539

⁴ Donoghue v Stevenson [1932] AC 539 (p.221)

⁵ Australian Safeway stores Pty Ltd v Zaluzna (1987) (p.240)

⁶ Hackshaw v Shaw (1984) 155 CLR 614 (p.241)

⁷ Voli v Inglewood shire council

⁸ Bourhill v Young (p.222)

⁹ Chapman v Hearse (1961) 106 CLR 112 (p.222)

¹⁰ Sullivan v Moody (2001) 207 CLR 562

Requirement 2: Breach of duty of care (p.225)

For the plaintiff to prove that the defendant **breached their duty of care**, they must establish that:

- The risk was foreseeable
- Risk was not insignificant
- In the circumstances, a reasonable person would have taken precautions^{11 12}

The court may decide a person owes a **lower duty of care** due to their:

- Status as a minor¹³
- Inexperience (this does not apply to driving a vehicle)¹

A person may hold a **higher standard of care**, e.g. if they are a medical specialist²

Non-delegable duty of care: the person owes a duty to ensure that all reasonable care is taken, and cannot avoid liability by delegating responsibility. This only extends to negligent acts, not intentionally harmful acts.

Examples include:

- Duty owed by employers to employees¹⁴
- Duty owed by hospital to its patients¹⁵
- Duty owed by school to its students¹⁶
- Duty owed by an occupier in relation to things on their property and under their control that could cause harm to others¹⁷

Note: in most cases, there is no liability for **failing to act** (p.233)

Requirement 3: Harm caused by the breach of duty (p. 233)

It must be established that the defendant's breach of duty caused the harm suffered by the plaintiff.

The court must be satisfied that:

- 1.) The breach of duty was a necessary condition of the occurrence of harm (**factual causation**) This is proven by the 'but for' test¹⁸ or 'material contribution test'^{19 20}
- 2.) It is appropriate for the scope of the liability of the defendant to extend to the harm so caused (**scope of liability**)¹¹ Was the harm reasonably foreseeable?²¹

¹¹ Wrongs Act 1958 (Vic) s 48(1)

¹² Bolton v Stone [1951] AC 850

¹³ McHale v Watson (1966) 115 CLR 199

¹⁴ Kondis v State Transport Authority (1984) 154 CLR 672 (p.233)

¹⁵ Roe v Ministry of Health [1954] 2 QB 66

¹⁶ Commonwealth v Introvigne (1982) 150 CLR 258

¹⁷ Burnie Port Authority v General Jones Pty Ltd (1994) 179 CLR 520

¹⁸ Yates v Jones [1990] Aust Torts Reports 81-009 (p. 235)

¹⁹ Chappel v Hart (1998) 195 CLR 232 (p. 235)

²⁰ Cook v ACT Racing Club Incorporated and the Aust. Jockey Club Inc. [2001] ACTSC 106 (p.235)

²¹ Overseas Tankship (UK) Ltd v Mort Dock & Engineering Co Ltd (The Wagon Mound No. 1) [1961] AC 388 (p.236)

Egg-shell rule: only the type of harm must be reasonably foreseeable, not the extent of the harm. Liability is for full extent of harm, provided the type of harm is reasonably foreseeable. (p. 236)

Defences:

Voluntary Assumption of risk (p. 327,) must prove:

- Plaintiff had full knowledge and appreciation of risk²²
- Plaintiff freely and willingly agreed to the precise risk that eventuated²³

Contributory negligence: if the plaintiff contributed to their own loss or injury, liability will be apportioned between the defendant and the plaintiff.^{24 25} To determine this, the court applies the same principles as those applied in determining the defendant's liability²⁶

In some cases, contributory negligence on the plaintiff's part can even result in the plaintiff being found to be **completely responsible** for their own loss or injury²⁷

If the plaintiff was **intoxicated** at the time of the incident, or the plaintiff was relying on the care and skill of a person they knew to be intoxicated, contributory negligence on the part of the plaintiff will be presumed.²⁸

Other defences and immunities: (p.239)

- **Barristers:** do not owe a duty of care in work related to court²⁹ Also applies to solicitors
- **Volunteers:** will not incur civil liability for work done in good faith for Commonwealth³⁰ or for a community organisation.³¹ Liability is attached to the organisation under State and Territory legislation
- **Emergency service providers**³²
- **Compliance with standard practice**
- **Apology:** this will not relieve the defendant from liability for consequences of their conduct.

²² Agar b Hyde (2000) 201 CLR 552

²³ Rootes v Shelton (1967) 116 CLR 383 (p. 237)

²⁴ Ingram v Britten [1994] Aust Torts Reports 81-291 (p.238)

²⁵ Manley v Alexander (2005) 223 ALR 228 (p.238)

²⁶ Wrongs Act 1958 (Vic) s 62

²⁷ Wrongs Act 1958 (Vic) s 63

²⁸ Wrongs Act 1958 (Vic) s 14G

²⁹ D'Orta - Ekenaike v Victoria Legal Aid (2005) 223 CLR 1

³⁰ Commonwealth volunteers Protection Act 2003 (Cth)

³¹ Wrongs Act 1958 (Vic) s 37

³² Wrongs Act 1958 (Vic) s 31B

Applications of Negligence:

- 1.) Occupiers liability (p.240)
- 2.) Liability of public authorities (p.242)
- 3.) Bailment (p.243)

Carelessly Causing Financial Harm (p.244)

Situations where the plaintiff will be able to recover compensation for pure economic loss suffered because of the defendant's carelessness include:

- 1.) Where the defendant has carelessly caused harm to the person or property of a **third party** and this has caused financial harm to the plaintiff^{33 34}
- 2.) Where the plaintiff has suffered financial harm because of the defendant's **defective product**³⁵
- 3.) Where the plaintiff has suffered financial harm because of the defendant's **negligent advice**.³⁶

The defendant owes a duty of care if 3 criteria are met:

- 1.) The advice was of a business or serious nature
- 2.) The defendant knew or should have known that the plaintiff intended to rely on the advice³⁷
- 3.) It was reasonable in the circumstances for the plaintiff to rely on the defendant's advice³⁸

In some circumstances the person giving advice will not only be liable to the person they directly advise but also to **third parties** who rely on the advice. (p.247)

³³ Willemstad (1976) 136 CLR 529 (p.244)

³⁴ Perre v Apand Pty Ltd (1999) 198 CLR 180 (p.245)

³⁵ Junior Book Ltd v Veitchi Co Ltd [1983] 1 AC 520 (p.245)

³⁶ Rentokil Pty Ltd v Channon (1990) 19 NSWLR 417 (p.246)

³⁷ Hedly Byrne & Co Ltd v Heller and Partners Ltd [1964] AC 465 (p.246)

³⁸ L Shaddock & Associates Pty Ltd v Parramatta City Council [No 1] (1981) 150 CLR 225 (p.246)