

## DUTY OF CARE

### Established Duties of Care

#### Non-Delegable Duties (NDD)

Duty	Authority	Scope
Manufacturer to consumer	<i>Donoghue v Stevenson</i>	Take reasonable precautions to prevent injury or loss to any person it can reasonably be foreseen could use the product without intermediate inspection
Occupier to entrant	<i>Strong v Woolworths</i>	Take reasonable care to avoid foreseeable risks of injury to an entrant (arising out of the state of the premises)
Employer to employee	<i>Smith v Charles Baker &amp; Sons</i>	Take reasonable care not to expose employees to foreseeable risks of injury → safe system of work, safe plant & equipment and competent supervisory staff
Road user to road user	<i>Imbree v McNeilly</i>	Take reasonable care to avoid a risk of reasonably foreseeable injury to persons on the highway or to persons and premises adjacent to the highway
School authorities to students	<i>Commonwealth v Introvigne</i>	Take reasonable care and supervision to protect students from foreseeable risks of injury as a reasonable parent would
Medical professionals to patients	<i>Rogers v Whitaker</i>	Exercise reasonable care and skill in the provision of services → diagnosis, treatment & giving advice
Legal practitioners to clients	<i>Heydon v NRMA Ltd</i>	Exercise due care and diligence in carrying out the terms of the retainer

Non-delegable duties require the defendant to ensure that reasonable care is taken by those who they control to not expose the plaintiff to foreseeable risks → *Kondis v State Transport Authority*

not strict liability if the duty is non-delegable → still have to prove a breach)

## **Vicarious Liability**

An employer is vicariously liable for the wrongful acts of an employee carried out during the course of employment → *Hollis v Vabu Pty Ltd*

- **tortfeasor is an employee**
  - look at the totality of the relationship to determine whether an employee or independent contractor (*Hollis v Vabu*)
    - multifactor test
      - control
      - mode of payment
      - provision and maintenance of equipment
      - obligation to work exclusively for the employer
      - hours of work
      - provision of holidays
      - deduction of tax
      - right to delegate work
- **employee committed a tortious act**
- **the tort was committed in the course of the employment**
  - identify the scope of employment
  - *NSW v Lepore*
    - frolic or intentional act is outside course of employment

## **Novel duties of care**

Pure psychiatric injury or pure economic loss

Multi-factor approach used in Australia → *Sullivan v Moody*

### Pure Psychiatric Injury

- **Medically recognised injury**
  - *Tame v NSW*
    - for psych. injuries - not mere grief or sorrow