

LAWS 4106

Torts



SAMPLE EXTRACT

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Recognised Duty Relationships

Driver & Other Road Users:

- ❖ Chapman v Hearse (1961) HCA – duty between driver & doctor attending to a casualty on the road.
- ❖ Imbree v McNeilly [2008] HCA – a learner driver owes all other road users a duty of care that requires the learner to meet the same standard of care as any other driver on the road.

Employer & Employees:

- ❖ Hamilton v Nuroof (WA) (1956) HCA – injury to labourer while bitumenising roof, claim based on implied agreement between labourer & employer to provide a safe system of work, proper instruction & effective supervision. Held: **duty of a reasonably prudent employer to take reasonable care to avoid exposing employees to unnecessary risk of injury** (in this case a better system of handling buckets of hot bitumen would have significantly reduced the risk to the employees).

Manufacturer & Consumers (Product Liability):

- ❖ Donoghue v Stevenson [1932] UK.
- ❖ Graham Barclay Oysters v Ryan (2002) HCA – contamination not reasonably discoverable upon any intermediate inspection, evidence of such a duty of care relating to product liability was not disputed.

Doctor & Patient (Professional & Client):

- ❖ Rogers v Whitaker (1992) HCA – law imposes duty on medical practitioners to exercise reasonable care/skill in provision of professional advice/treatment that extends to examination, diagnosis, treatment & provision of information to a patient.

Occupier & Entrant (Occupier's Liability):

- ❖ Australian Safeway Stores v Zaluzna (1987) HCA – R slipped on wet floor on A's premises, the fact that R was a lawful entrant/invitee on A's land establishes a relationship between them which suffices to give rise to a duty by A to take reasonable care to avoid foreseeable risk to R.
- ❖ Thompson v Woolworths (Qld) (2005) HCA – duty to exercise reasonable care by R for safety of entrants to its premises extended to exercising reasonable care that its system did not expose people who made deliveries to unreasonable risk of physical injury (A required to conform to R's system; constituted significant aspect of relationship between them).
- ❖ OLA 1985 (WA) s5.
 - (1) Occupier required to show care to entrant that is reasonable to ensure they will not suffer injury/damage due to any dangers from state of premises or act/omission done on premises (obligations may be restricted/modified/excluded by agreement; (1) subject to (2) & (3)).
 - (2) Duty does not apply to risks willingly assumed by entrant (but occupier owes duty not to create danger with deliberate intent of doing harm/damage & not act with reckless disregard of the presence of entrant).
 - (3) A person on the premises with intention of committing or in commission of an offence is owed only the duty of care referred to in (2).

Mental Harm Liability in Particular Contexts

Rescuers & Others:

- ❖ Mount Isa Mines v Pusey (1970) HCA – **no prerequisite for a family relationship between the plaintiff & an injured person at scene.**
- ❖ Wicks v State Rail Authority (NSW) (2010) HCA – **shock to policemen not confined to immediate arrival on scene** of train crash (witnessing person killed/injured/peril not restricted to exact time).

Receipt of Bad News:

- ❖ Mount Isa Mines v Pusey (1970) HCA – **no duty to break bad news gently or to do nothing which creates bad news.**

Damage to Property:

- ❖ Campbelltown City Council v Mackay (1989) NSWCA – liability found where plaintiffs suffered major anxiety, insecurity & persistent distress causing **severe depressive disorders resulting from the collapse of their home** (foreseeable effect of negligence by the defendants).

Work Stress:

- ❖ Koehler v Cerebos (2005) HCA – **issues of excessive workload generally covered by the contract of employment.**

Defendant as Immediate Victim:

- ❖ Bourhill v Young [1943] UK – shock suffered by plaintiff caused by defendant's collision was not within the area of potential danger which the defendant should reasonably have had in view (not foreseeable that noise of the collision would cause a shock to person behind a tramcar).
- ❖ FAI Insurance v Lucre [2000] NSWCA – plaintiff suffered PTSD after being in road accident where the other driver was killed. Held: deceased liable for damages (plaintiff more than a 'mere bystander').

Fear for the Future:

- ❖ APQ v Commonwealth Serum Laboratories [1999] Vic – potential that a shock caused by receiving sudden news that plaintiff might contract a disease was so distressing that it affronted her mind & caused a recognised psychiatric illness.
- ❖ CSR v Maddalena [2006] HCA – **psychiatric illness caused by fear of developing asbestosis compensable.**

Contributory Negligence (Partial Defence)

- ❖ Joslyn v Berryman (2003) HCA – McHugh J: plaintiff guilty of contributory negligence when they **expose themselves to risk of injury reasonably foreseeable & avoidable & suffers an injury within the class of risk** to which they were exposed.

Establishing Defence:

- ❖ CLA 2000 (WA) s5K
 - Principles that apply to the defendant in assessing liability are the same for the plaintiff (1).
 - Standard of care is that of a reasonable person ((2)(a)).
 - Determined on the basis of what the person knew/ought at the time ((2)(b)).
- ❖ Davies v Swan Motor [1949] UK – Denning LJ: **plaintiff only owes a duty to themselves.**

Children & Disability:

- ❖ Joslyn v Berryman (2003) HCA – McHugh J: **standard tailored to the age of the child plaintiff.**
- ❖ Town of Port Hedland v Hodder (2012) – Martin CJ (dissent): **contributory negligence should take disability into account.**

Employees:

- ❖ Commissioner for Railways (Old) v Ruprecht (1979) HCA – plaintiff did not look before stepping onto railway & was hit by a wagon. Held: **inadvertence not such as to amount to a failure to take reasonable care** (employment demanded concentration, habitual danger, reasonable grounds for not expecting), no conscious deliberate disregard for safety.
- ❖ Czatyрко v ECU (2005) HCA – **plaintiff's omission merely inadvertence**, it was not deliberate or intentional or in disregard of a direction/order from the defendant & therefore not contributory negligence (**suggests failing to comply with safety instructions may be sufficient**).

Inconvenience; Agony of the Moment:

- ❖ Caterson v Commissioner for Railways (1973) HCA – Gibbs J: consider whether plaintiff's action in taking the risk was unreasonable (**weigh up degree of inconvenience against the risk he takes in order to escape from it**), relevant facts are the speed of the train, the capacity of alternative means of getting himself off (communication cord) & that the jump was instinctive.

Anticipating the Negligence of Others:

- ❖ Sibley v Kais (1967) HCA – Held: despite road regulations, reasonable care would involve having one's vehicle sufficiently in hand to halt the vehicle or avoid an accident, **no general rule that a driver can rely on the performance by others of their duties in all circumstances** (reasonableness of the assumption that another will act IAW their duties is a question of fact).

Intoxication:

- ❖ CLA 2002 (WA) s5L
 - Applies if person who suffered harm intoxicated at the time of the act/omission (1).
 - Does not apply if not self-induced (2).
 - Contributory negligence presumed unless proven BoP it did not contribute to the harm (3).
 - Intoxicated = alcohol/drug/substance impairs capacity to exercise reasonable care/skill (4).
- ❖ Joslyn v Berryman (2003) HCA – McHugh J: **reasonable person is sober.**

Causation & Remoteness:

- ❖ Jones v Livox Quarries [1952] UK – plaintiff's dangerous position on the vehicle was one of the causes of his damage (**if injuries sustained in a collision were made worse due to the plaintiff's position, then the damage is partly the result of his own fault**).
- ❖ Seat Belts.
 - Froom v Butcher [1976] UK – Held: contributory negligence, **if passengers do not fasten their seat belts then their own lack of care may be the cause of their injuries.**
- ❖ Crash Helmets.
 - O'Connell v Jackson [1972] UK – Held: contributory negligence, although defendant solely responsible for the collision, the **additional injuries to the plaintiff would not have occurred if he had worn a crash helmet.**

Apportionment:

- ❖ Pennington (1956) HCA – requires a **comparison of 'culpability'** (means the degree of departure from the standard of care).
- ❖ Podrebersek (1985) HCA – **comparison of culpability & the relative importance of the acts of the parties in causing the damage** (whole conduct must be examined).
- ❖ 100% contribution not allowed in WA.