

Exam Scaffolding

STEPS:

1. Is there a Doc?
 1. If an established category, move to breach issue (not contentious)
 1. Occupier's duty
 2. Teacher student (State of Vic v Bryar)
 3. Doctor and patient
 1. To examine, diagnose, treat + inform/warning
 2. *Rogers v Whitaker*: 'single comprehensive duty' + 'material risks' approach
 4. Parent and child
 1. *Robertson v Swincer*; *Smith v Leurs*
 5. Rescuers
 1. *Stuart v K-V*; *Lowns v Woods*
 2. s. 5* CLWA:
 - (1) *A good Samaritan does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently:*
 - (a) *injured or at risk of being injured; or*
 - (b) *in need of emergency medical assistance.*
 - 2) ... protection not apply if (a) 3rd party vehicle insurance (b) S impaired by a recreational drug.
 6. Special kinds of harm:
 - 'Pure nervous shock'
 - *Tame v NSW* + *Annetts v Aus Stations*
 - Reasons for judicial caution and previous test = recognised psych illness + (a) normal fortitude; (b) 'sudden shock'; (c) 'direct perception'
 - Part 3.2 CLWA 2002
 2. If new cases: = if clear positive act by a private individual which directly causes physical harm to P, reasonable foreseeability of damage of that general nature to that class of P's is enough
 3. If complex case / omission, need:
 - reasonable foreseeability of that kind of harm to that class of P's ... PLUS
 - 'relationship factors / salient features'
 - Vulnerability / reliance: *Agar v Hyde** *Crimmins v Stevedoring Industry*; *Voli*
 - Assumption of responsibility / reliance: *Modbury Shopping Centre** ; *Safeway v Zaluzna*
 - Control: *Graham B Oysters** ; *Stuart v KV** ; *D v S**; *Syd Water** ; *Agar**; *Modbury**
 - Conflicting duties / coherence / 'policy' (indeterm. liability, autonomy, policy/ political) *Sullivan v Moody**; *Oysters**; + others

BREACH:

Probability of harm occurring:

Magnitude of risk:

Burden:

Social utility:

CAUSATION:

Scope of liability: