

# MLL213 – Torts Law

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## Prescribed Cases for Each Topic

## Topic 9 – Omissions and Pure Mental Health

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### Pyrenees SC v Day (1998)

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#### Held

- The law of negligence does not 'impose any duty on a person to take steps to prevent harm, even very serious harm befalling another ...
- The careless or malevolent person, who stands mute and still while another heads for disaster, generally incurs no liability for the damage that the latter suffers.'

### C.A.L. No 14 v Motor Accidents Insurance Board [2009]

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#### Held

- For some supervening or overriding reason a person who is owed the putative duty is not autonomous, or fully autonomous – because, for example, some control must be exercised by the defendant over another person who either was vulnerable before the control was first exercised, or has become vulnerable by reason of the control having begun to be exercised.
- That is so for pupils in relation to their teachers, wards in relation to their guardians, prisoners in relation to the risk of fire caused by the negligence of gaolers, prisoners in relation to the risk of harm from other prisoners not properly restrained by gaolers, patients in relation to hospitals, crowds in relation to those charged with the duty to control them, and employees in relation to their employers.

### Modbury Triangle Shopping Centre v Azil (2000)

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#### Held

- A plaintiff generally owes no duty of care to a person to prevent criminal acts by third persons. The defendant could not control the actions of the attackers, and had no knowledge of the intended attack. Criminal attacks are unpredictable, and the defendant could not control their occurrence. (SEE ADEELS CASE)
- *The majority recognized certain exceptional cases where a duty of care would arise:*
- These would be where the defendant had assumed responsibility for the plaintiff's safety because of the existence of a 'protective relationship' between the plaintiff and defendant (such as those of employer and employee and school and pupil) where a defendant undertakes the care and supervision of the plaintiff so as to assume a particular responsibility for the safety of the plaintiff or the property.

## Adeels Palace v Moubarak [2009]

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### Held

- He owner was under a duty to control access to, or continued presence on, the premises of a customer who might be violent or who might engage in other forms of anti-social behaviour.
- The Court distinguished *Modbury* as that case did not involve a claim based on failure to control access to the premises, and furthermore there was no special risk of violent or other anti-social behaviour on the premises (a shopping centre car park)...
- However, the Court did not ultimately determine the question of breach as it found that, even if there was a breach, it did not cause the plaintiffs' injuries **Ultimately, therefore, the case failed on the question of causation.**

## Stuart v Kirkland-Veenstra

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### Held

- The police officers had formed the opinion that Mr Veenstra, while deeply unhappy, was not mentally ill.
- Having formed that opinion, they had no power under s 10 to apprehend Mr Veenstra...the high court agreed the officers had no duty of care to intervene Mr Veenstra from killing himself.
- The mere fact that the officers had the power to act, and could reasonably foresee that if they did not act Mr Veenstra could harm himself, did not of itself establish a duty of care (at [112]). A duty of care to rescue another person is imposed only in exceptional cases.
- On these facts, there were no special features of the relationship between the officers and Mr Veenstra which would take the case outside of this general rule and impose a positive duty on the officers to protect Mr Veenstra against himself.

**Section 85 (Wrongs Act):** In a proceeding, the fact that a public authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

## Pyrenees Shire Council v Day (1998)

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### Held

- The five members of the Court wrote five separate judgments giving different reasons so that it is impossible to extract a ratio from the case. The major points from the case are:
- Although it is impossible to discern a majority approach, the relevant considerations that weighed heavily in the majority of the judgments were:
- The defendant's knowledge of the specific risk and its power to control or minimise the risk, and
- The plaintiff's vulnerability and dependence on the defendant exercising its powers to protect the plaintiff from the risk.
- The defendant had assumed responsibility for the prevention of the risk by embarking on the inspection and compliance process.
- The statutory power was passed for the benefit of a specific class of persons in the position of the plaintiff rather than for the benefit of the public generally.

- The Court held unanimously that the adjoining occupiers could recover, and by majority that the owners and tenants of the subject premises could recover.
- The difference in result between these two categories of plaintiffs came down to questions of dependency and vulnerability. The adjoining occupiers were vulnerable; however disagreement arose about the position of the owners and tenants of the subject premises. Kirby J thought that they were so dependent, emphasising the latent nature of the defect, and that the owners and tenants had no reason to make an inspection of the fireplace for they were not aware of any problem. The minority thought they were not dependent on the Council as they were in control of the premises and could have taken reasonable steps to discover the defect.

### **Crimmins v Stevedoring Industry Finance Committee [1999]**

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#### **Held**

- The majority judges in this case imposed a duty on the defendant authority to take affirmative steps to protect the plaintiff against the risks of exposure to asbestos.
- The plaintiff was *vulnerable* and *powerless* to protect himself. His employment was casual and precluded him or his work mates from developing a strong working relationship with the employers. Also, he had no choice where to work; he was obliged to work where directed by the defendant authority.
- Furthermore, the defendant authority had *knowledge* that the workers were being exposed to dangerous substances such as asbestos and had the *power* to take steps to *control* or minimise the risk.
- The authority could have provided safety equipment, could have warned about the dangers of exposure to asbestos, and could have encouraged employers to adopt better working practices. They had failed to adopt any of these courses of action. Lastly, the plaintiff was in the class of persons (workers) for whose benefit the powers had been conferred.

### **Graham Barclay Oysters v Ryan [2002]**

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#### **Held**

- The Court dismissed the claim against the Council on the basis that, although it had general powers for the protection of public health and the control of pollution, it did not have specific powers or functions in respect of oysters or oyster industry.
- Accordingly, the Court thought that the requisite degree of 'control' was absent on these facts. Further, its powers to control pollution were conferred for the benefit of the public generally, not for the benefit of oyster consumers in particular.

### **Hunter and New England Local Health District v McKenna [2014]**

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#### **Held**

- The Court held that the hospital did not owe this duty of care to the relatives of Mr Rose as such a duty would be inconsistent with the provisions of the *Mental Health Act* (the Act) which governed the detention of mentally ill patients.
- It was an underlying objective of the Act that any restriction on liberty of the mentally ill should be kept to a minimum so as to respect that persons.

### Held

- One factor that is relevant to determining whether a duty of care is owed to prevent pure mental harm is whether a person of 'normal fortitude' would suffer psychiatric injury in the circumstances of the case...it would be a *precondition to recovery* that the defendant could foresee that a person of normal fortitude (that is, a normal degree of susceptibility to psychiatric harm) would suffer psychiatric injury in the circumstances.
- Once the notion of reasonableness regains its rightful place at the front of the negligence inquiry, it must follow that a defendant is entitled to act on the basis that there will be a normal reaction to his or her conduct. The position is different if the defendant knows that the plaintiff is in a special position. But otherwise the defendant should not be penalised for abnormal reactions to his or her conduct.
- To insist that the duty of reasonable care in pure psychiatric illness cases be anchored by reference to the most vulnerable person in the community – by reference to the most fragile psyche in the community – would place an undue burden on social action and communication.