

TORTS CASE NOTES:

Unit 2.

DUTY OF CARE: CH5

- **Jaenich v Coffey**

Motorbike rider accident, wife suffered nervous shock when she found out and was told, RF should be used as the test not proximity... proximity was defined out of the neighbourhood principle ie nearness or closeness. Causal proximity = directness of act or conduct by D to loss or injury to P. this all limits RF, proximity adds an additional requirement before DofC can arise.

‘reasonable care’ arises from 3 conditions: 1. Reasonable foreseeability, 2. Proximity to conduct/injury and 3. No stat or common law arising from DofC.

- **Donaghue v Stevenson (1932)**

Snail found in a bottle of beer, not purchased by Donaghue but consumed by her caused gastro.

Lord Atkins ‘neighbourhood principle’ ... a legal remedy for an obvious social wrong.

You must take care to avoid acts or omissions which are reasonably foresee would be likely to injure your neighbour – persons who are so closely and directly affected by my act that I ought to have them in my contemplation as being so effected when I am directing my mind to the acts or omissions that are being called into question.

- **Chapman v Hearse (1961) CLR**

“reasonably foreseeability” – Chapman was driving and Dr cherry administered aid and was run over by Hearse.

Cherry had moral obligation to help, wet and dark meant there was a risk. Chapman was under a DOC in the management of his vehicle it would have been ‘reasonably foreseeable’ that someone administering aid would be injured.

Chapman paid ¼ damages to Cherry.

- **Miller v Miller (2011)**

- FACTS: aboriginals were out of the town all ages, and a young aboriginal woman stole a car, the others got in and they drove around. An uncle took over the driving and starting driving crazy, the girl who stole it was very upset by his driving she asked to get out and he wouldn’t let her. They had an accident in which she was injured.
- The court was involved with a number of issues.
- 1 -The defence is referred to as **joint** illegality (if 2 people did something illegal and one gets hurt the law is not going to intervene in tort to provide damages to somebody who is doing something illegal). He wouldn’t let her out so this ceased.
- The uncle was liable. She was contributory negligent.
- Is the civil law going against the criminal law?
- 2 -The looked at the totality of the relationships.
- 3 – she lost 50% for contributory negligence.

