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- c) Assumed by IPP committee that P must foresee psych harm in person of normal fortitude.
- i) Irrelevant if D knew or ought to have known that P was person of lesser normal fortitude. In this instance, D would owe P a duty because of that knowledge of Ps special vulnerability.
- 5) Relationship between P and D (**Annetts**)
- 6) Relationship between D and Victim (**Gifford**) - Court's view employer duty extends to employee's family.

Rules of Determination:

1. Whether or not mental harm was suffered as the result of a sudden shock; and
2. Whether the P witnessed, at the scene, a person being killed, injured or put in danger; and
3. The nature of the relationship between the P and anyone killed, injured or put in danger; and
4. Whether or not there was a pre-existing relationship between the P and the D.

Statutory Limits on Claims

- Qld and NT - IF psych injury is consequential upon phys injury, the common law allows recovery for mental harm.
- Other jurisdictions of Aus: consequential mental harm is compensable only if it amounts to a 'recognised psychiatric illness'.

Cases

<i>Clavel v Savage [2013] NSWSC 775</i>	Intention to cause harm - mere distress - normal fortitude - no lawful excuse (neighbours sued for intentional infliction of emotional distress)	Nervous Shock
<i>Gifford v Strang Patrick Stevedoring Pty Ltd (2003) 214 CLR 269; 198 ALR 100</i>	direct perception requirement was not an essential prerequisite to liability	Nervous Shock
<i>Giller v Procopets (2008) 24 VR 1</i>	Riske videotape distributed - no remedy for mere distress - no equitable compensation for breach of confidence - no cause of action for invasion of privacy as no breach of privacy under Aus Law.	Nervous Shock - Trespass of Person
<i>Jaensch v Coffey (1984) 155 CLR 549</i>	Liberal Approach adopted - rules of foreseeability 2(a) no longer apply - Accident and Aftermath rule established.	Nervous Shock - Negligence
<i>Mount Isa Mines Ltd v Pusey (1971) 125 CLR 383; [1971] ALR 253 ('Mount Isa Mines')</i>	No recovery for normal/ordinary emotions - communicating bad news, no intent, no liability - No relationship requirement - Recovery allowed for rescuers aiding victims	Negligence - Nervous Shock
<i>Tame v New South Wales; Annetts v Australian Stations Pty Ltd (2002) 211 CLR 317; 191 ALR 449 ('Tame')</i>	Prior authoritative definition for NS in Jaensch - Tame extinguished the element of 'sudden sensory perception' - no essential prerequisite that psych illness be caused by sudden shock - Removed 'normal fortitude' aspect of foreseeability test.	Negligence - Nervous Shock - Economic Loss
<i>Wicks v State Rail Authority of New South Wales (2010)</i>	Aftermath provision does not require that a relationship be identified between an alleged psych injury and what happened to a particular victim.	Negligence - Nervous Shock - Economic Loss
<i>Wilkinson v Downton [1897] 2 QB 57</i>	Recovery for NS without physical injury - false statement made causing Shock - meaning of intent 'calculate': likely to have the effect...	Nervous Shock

Cases

<i>Fontin v Katapodis (1962) 108 CLR 177</i>	HC held - P's action in battery succeeded as D's defence of self-defence failed.	Remedies and Defences
<i>Gray v Motor Accident Commission (1998) 196 CLR 1; 158 ALR 485</i>	P sued D in battery - HC affirmed exemplary damages - held that it was to deter (even if paid by insurer). D also punished criminally	Remedies and Defences
<i>Horkin v North Melbourne Football Club Social Club [1983]</i>	Contrib neg - not a defence at CL to intentional torts so apportionment legislation does not apply to such claims.	Remedies and Defences
<i>Lamb v Cotogno (1987) 164 CLR 1; 74 ALR 188</i>	P sued D in battery - HC affirmed exemplary damages - held that it was to deter (even if paid by insurer).	Remedies and Defences
<i>New South Wales v Riley (2003) 57 NSWLR 496</i>	False imprisonment as Police did not tell P why he was being detained - broken wrist was due to false imprisonment - reduced damages due to P's contrib neg.	Remedies and Defences
<i>Port Stephens Shire Council v Tellamist Pty Ltd (2004) 135 LGERA 98; [2004] NSWCA 353</i>	P had suffered no loss - not entitled to any compensatory damages - no affect to value of land to remove trees.	Remedies and Defences
<i>Toyota Finance Australia Ltd v Dennis (2002) 58 NSWLR 101</i>	D was not entitled to rely on defence of recaption of goods. Not entitled to use any force to repossess the car -- assault.	Remedies and Defences
<i>Wilton v Commonwealth Trading Bank of Australia [1973] 2 NSWLR 644</i>	As contrib neg had not been a defence to an action in conversion at CL, it could not give rise to apportionment under the legislation	Remedies and Defences
<i>XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd (1985) 155 CLR 448; 57 ALR 639</i>	First awarded: 5527.90 tanks, \$400000 exemplary damages. Appeal - Exaemplary reduced to \$150000. HC affirmed amount.	Remedies and Defences

- *Holdings v Jennings* [1979]
- *Stockdale v Hansard* (1839)
- Legislation:
 - The Publication of document by order, or under the authority of parliamentary body;
 - The Publication of debates and proceedings, or under the authority or parliamentary body.
 - *Defamation Act 2005 (Qld)* s 27(2)(a).
- ❖ Judicial Proceedings:
 - The privilege applies to:
 - judges, parties to the action, witnesses, legal practitioners and jurors.
 - Proceedings of quasi-judicial bodies - *Mann v O'Neill* (1997); *Hercules v Phease* [1994].

Defence of Publication of Public Documents - s28(1)

- ❖ Legislation (s28(1))
 - It is a defence if D proves the matter was contained in:
 - A public document
 - A fair summary of a public document.

Defence of Fair Report of Proceedings of Public Concern - s29

- ❖ It is a defence if:
 - The D proves that the matter was a fair report of any proceedings of public concern.
 - The matter was in or, was a fair extract from earlier published report of proceedings of public concern - D would have had no knowledge that the earlier published report was not fair.

Defence of Qualified Privilege - s30

- ◆ **Legislation**
 - There will be a defence for qualified privilege if:
 - The recipient of the information has an interest in having the information
 - The matter is published in the course of giving the information to the recipient
 - The conduct of the D in publishing the matter is reasonable in the circumstances.
- ◆ **Duty and interest**
- ◆ **Common interest between maker and recipient**
- ◆ **Malice (s30(4))**
 - A defence of qualified privilege is defeated if the P proves that the publication of the defamatory matter was actuated by malice.
 - Malice includes:
 - D may publish something for a reason other than why the privilege is given.
 - D did not have an honest belief in what has been published.
- ◆ **Occasions that attract qualified privilege**
 - Reciprocity of interest
 - Common interest
 - Retort or reply:
 - The matter has to be a political discussion;
 - The publication has to be reasonable;
 - The publication has not been actuated by malice.

Lange v ABC (1997)

Defence of Honest Opinion - s31

- ❖ It is a defence to the publication of the defamatory matter if the D proves that:
 - The matter was an expression of opinion of the defendant rather than a statement of fact; and
 - The opinion related to a matter of public interest; and
 - The opinion is based on proper material. s31(1)
 - The opinion was not honestly held by the D at the time the matter was published. s31(4)

Defence of Innocent Dissemination - s32

- ❖ D must prove that:
 - D published as an agent of a subordinate distributor;
 - D didn't know and shouldn't have known it was defamatory; and
 - Ds lack of knowledge was not due to D's negligence.

Defence of Triviality - s33

- ◆ **Legislation:**
 - It is a defence if D proves that the P was unlikely to sustain any harm.

Defamation Remedies:

- ❖ Damages:
 - Damages for injury to reputation (Non-economic loss)
 - Damages for economic loss
 - Aggravated damages
 - Exemplary damages are prohibited
 - Contemptuous damages
- ❖ Injunction:
 - Interlocutory injunction