

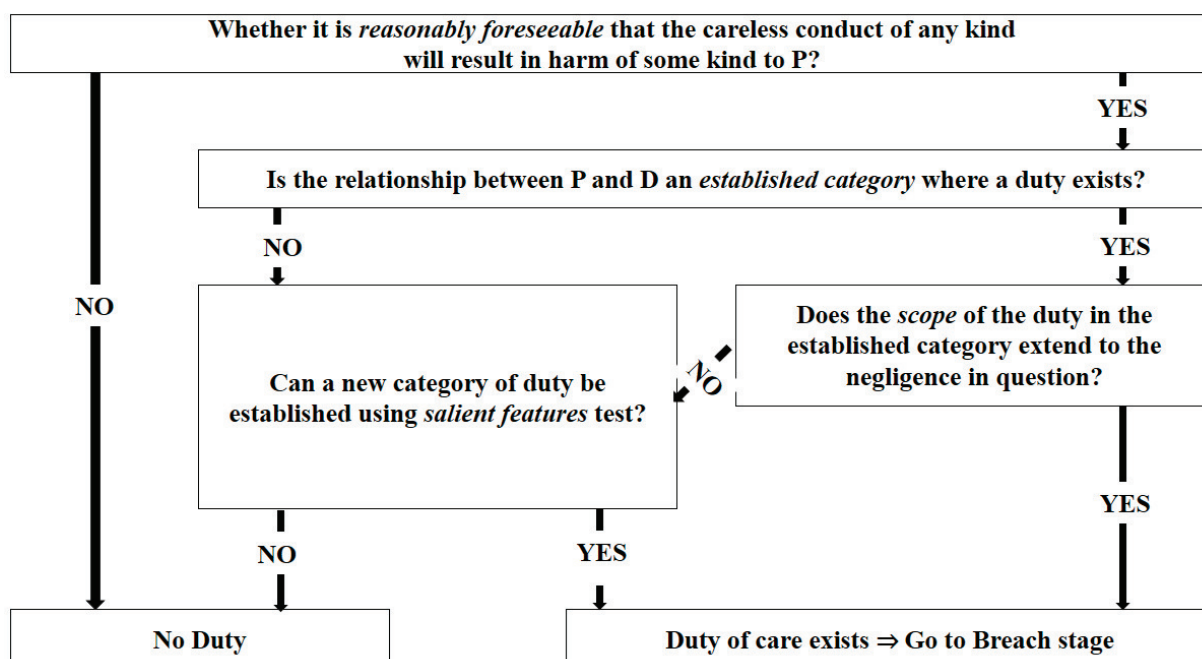
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DUTY AND PRELIMINARY

DUTY OF CARE

D owes P a duty of care where it reasonably foreseeable that the careless conduct of any kind will result in harm of some kind to P, and scope of such duty extends to P.



Clearly formulate the Duty

Pay attention where the case potentially involves

- Omission
- Duty to control the conduct of a third party
- Mental harm
- Statutory authority

Reasonable foreseeability

At duty stage, it suffices that the careless conduct of any kind will result in harm of some kind to P (*San Sebastian* per Glass JA), ie, the harm is 'not unlikely to occur' (*Chapman*).

1. Reasonable foreseeability suffices at duty stage if P establishes that a reasonable person in the position of D would have foreseen the risk of harm to P or to a class of person to whom P belongs (*Sullivan*; *Chapman v Hearse*).
 - A. Real and not far-fetched (*Sullivan*)
 - B. Reasonableness (*Tame*)
2. Not necessary for P to show that the precise manner in which his injuries were sustained was reasonably foreseeable (*Chapman v Hearse*) → not involving **probability**
3. Pure mental harm → *WA 1958 s 72*
4. Pure economic loss
 - A. In terms of negligent misstatement, it must be reasonable for P to rely on the statement
 - (1) D bank gave the statement as to the customer's credit 'without responsibility' (*Hedley Byrne v Heller*)

BREACH

Tribunals of fact may give effect to different views as to the age at which normal adult foresight and prudence are reasonably to be expected in relation to particular sets of circumstances.

(1) Limitation on capacity for foresight and prudence is characteristic of humanity at normal childhood stage of development (*McHale* per Kitto J).

a. D's conduct was unpremeditated and impulsive common to a boy at his age.

(2) The standard of care expected of P child driver was that of an 11 year old, who had performed the manoeuvre previously without mishap (*Zanner*).

C. Mental illness (*Carrier v Bonham* (Qld CA, persuasive))

An adult lacking capacity because of mental illness in a negligence claim cannot be judged by any objective standard of an ordinary reasonable person suffering from that mental illness (per McMurdo P).

(1) There is no such thing as a 'normal' condition of unsound mind and it would be impossible to devise a standard by which the tortious liability of persons suffering such an affliction could be judged as a class.

(2) It is only proper that, in the event of persons of unsound mind venturing into 'normal' society, their conduct should be judged according to society's standards including the duty of exercising reasonable foresight and care for the safety of others.

D. Inexperienced driver (*Imbree v McNeilly*)

The standard of car driver owes to passengers and other road users is not to be qualified by reference to the level of experience of the driver, or the injured' knowledge of the driver's experience.

(1) Otherwise, the knowledge of experience might prejudice the informed passenger.

a. Might affect finding of contributory negligence

E. Professional (*Rogers; WA 1958* ss 57-60)

(1) Professional or expert (*WA 1958* ss 57, 58)

a. Professional: an individual practising a profession.

b. Holding out as possessing a particular skill (*WA 1958* s 58).

(2) Diagnosis and treatment v Advising treatment options (*Rogers*)

a. Diagnose: *WA 1958* s 59

– Generally give effect to peer professional opinion: s 59(1)

– Identify peer professional opinion: ss 59(3)(4)

– Retain the discretion to disregard the peer professional opinion when determining it unreasonable: ss 59(2)(5)

b. Advise and warn: *WA 1958* s 60; *Rogers*

A professional has a duty to warn a patient/client of a material risk inherent in the proposed treatment.

– Material risk: a reasonable person in the patient's or client's position, if warned of the risk, would be likely to attach significance to it; or if the professional knows or should be reasonably aware that the particular patient or client, if warned of the risk, would be likely to attach significance to it.

F. Public authority (*Dederer; WA 1958* s 83)

<p>2. Nature of activity undertaken by D</p> <p>3. Control over third party</p>		<p>The <u>conferral on a local authority of statutory powers</u> in respect of activities occurring within its boundaries does not itself establish in that authority <u>'control' over all risks of harm</u> which may eventuate from the conduct therein of independent commercial enterprises.</p>
	<p><i>Godfrey</i></p>	<p>The <u>place</u> of offence is remote from the prison, and over <u>two months</u> have passed after the escape.</p>
	<p><i>Stuart</i></p>	<p>It was not the police officers who controlled the source of harm that Mr V might kill himself</p>
	<p><i>Modbury</i></p>	<p>D shopping centre had no control over the criminal activity occurring in the parking lot</p>
	<p><i>Bujdoso</i></p>	<p>A prison authority is under a duty to take reasonable care to ensure the safety and security of vulnerable prisoners over whom the <u>prison authority exercises complete effective control</u>.</p>
	<p><i>Greyer</i></p>	<p>School had control over pupils' conduct even before school hours, and had instructed teachers to look out for student activities</p>
	<p><i>Adeels</i></p>	<p>D hotel, as a licenced premise, had control over whether to let in the patrons</p>
	<p><i>Pyrenees</i></p>	<p>D council had control to remove the risk in the chimney</p>
	<p><i>Smith v Leurs</i></p>	<p>Parental control, where it exists, must be exercised with due care to prevent the child inflicting intentional damage on others or causing damage by conduct involving <u>unreasonable risk of injury to others</u>.</p>
	<p><i>Thompson v Woolworths</i></p>	<p>Although D shopping centre did not employ P deliverywoman, it controlled the delivery time and place.</p>
	<p><i>Hargrave v Goldman</i></p>	<p>D owner of the farm ought to have known that the farm might caught fire after the lightning.</p>
	<p><i>Hill v West Yorkshire CC</i></p>	<p>Police generally does not owe a duty of care in the investigation into crime to prevent injury to a member</p>