

How to Work out a Negligence Action

1. Identify parties

2. a) State Jurisdiction

- If does not specifically state, use Qld

b) State Onus

- Plaintiff bears onus to prove on a balance of probabilities all elements, EXCEPT for defences.
- Defendant bears onus to prove on a balance of probabilities any defences which arise from the facts.

c) State time limitations

- If personal injury or pure psychiatric injury → 3 years from when tort occurred
 - *Limitations of Actions Act s 11*
- If property or economic loss → 6 years from when tort occurred
 - *Limitation of Actions Act s 10*

3. Identify any negligence action/s which arise from the facts.

4. Element 1:

a) What is the duty of care

Established Duties	Novel Duties
<p>a) Manufacturer and consumer</p> <ul style="list-style-type: none"> • <i>Donoghue v Stevenson</i> <p>b) Occupier and entrant</p> <ul style="list-style-type: none"> • Does not extend to criminal conduct of unlawful entrant (<i>Adeels Palace case</i>) • Reasonable care to ensure behaviours of other and activities carried out on premises do not place others at risk of foreseeable harm (<i>Strong v Woolworths Ltd</i>) <p>c) Employer and employee</p> <ul style="list-style-type: none"> • Reasonable care to not expose employees to foreseeable risk of harm (safe system of work, plant, equipment and competent supervisory staff) (<i>Smith v Charles Baker and Sons</i>) <p>d) School authorities/teachers and students</p> <ul style="list-style-type: none"> • Precautions for safety as a reasonable parent would have to avoid foreseeable risks (<i>Cth v Introvigne</i>) • May extend beyond school hours <p>e) Road users to other road users</p>	<p>- If relationship between the parties does not fall under established duties</p> <p>Multi-factor Approach (<i>Sullivan v Moody</i>)</p> <ol style="list-style-type: none"> 1. Kind of harm (not type) suffered must be recognised in law 2. Is harm reasonably foreseeable a result of defendant's conduct? <ul style="list-style-type: none"> • Necessary but not sufficient alone 3. Argue by analogy, induction and deduction from previously decided cases to identify... 4. Factors relevant to the duty of care arising. <ol style="list-style-type: none"> i) control of defendant ii) vulnerability of plaintiff iii) coherency of law iv) indeterminacy (would recognising a duty of care create precedent or expose defendant to a liability in an indeterminate amount for indeterminate time to an indeterminate class) <p>Pure Psychiatric Injury</p> <ol style="list-style-type: none"> 1. recognised (medically) psychiatric injury (<i>Tame v NSW</i>) 2. reasonably foreseeable (<i>Gifford v Strang</i>) 3. other factors: <ol style="list-style-type: none"> i) relationship between plaintiff and victim