

## **LAW1113 Exam Notes**

### **1. INTENTIONAL TORTS**

#### **a. False imprisonment**

- i. PVA**
- ii. Total restraint**
- iii. Directness**
- iv. Fault**
- v. Defences**

#### **b. Trespass to land**

- i. Standing to sue**
- ii. Meaning of land**
- iii. PVA**
- iv. Fault**
- v. Directness**
- vi. Defences**
- vii. Remedies**

#### **c. Nuisance**

- i. Standing to sue**
- ii. Unreasonable interference with the land**
- iii. Scope of protection**
- iv. Liability for interference**
- v. Defences**
- vi. Remedies**

### **2. NEGLIGENCE**

- a. Duty of care**
- b. Breach of duty of care**
- c. Causation**
- d. Remoteness**
- e. Pure mental harm**
- f. Pure economic loss**

### **3. DEFENCES**

- a. Contributory negligence**
- b. Voluntary assumption of risk**
- c. Illegality**
- d. Good Samaritans**
- e. Volunteers**

### **4. LIMITATIONS OF ACTIONS**

### **5. DAMAGES**

### **6. VICARIOUS LIABILITY**

# INTENTIONAL TORTS

## False Imprisonment

### DEFINITION

A false imprisonment is committed by the direct intentional or negligent total restraint of the freedom of movement of the Plaintiff by the defendant, without legal authority

### POSITIVE AND VOLUNTARY ACT

**Positive:** Not mere omission or passivity *Innes v Wylie*; "not passive like a door"

**Voluntary:** Conscious and willed: D need not have intended to bring about the results of the conduct, D must consciously bring about the bodily movement which results in the contact with P

### TOTAL RESTRAINT: Burden of proof on the plaintiff

Must be a total restraint of the liberty of the person ... not a partial obstruction of his will *Bird v Jones*; for 'however short a time' *Bird v Jones*;

### IS THERE TOTAL RESTRAINT?

#### *McFadzean v CFMEU*:

- Means of egress must be lawful and reasonable; there is no restraint where a reasonable means of egress is available
  - FI does not occur if P stays of their own account
  - Total restriction is necessary
  - If the P hesitates to use a **reasonable** means of egress, then the period of hesitation **does not count as FI**
  - If the P hesitates to use an **unreasonable** means of egress, then the period of hesitation **counts as FI**

#### **Factors in determining if means of egress are reasonable:**

- Threat or danger to self (could manifest in embarrassment, however this will not reach the threshold *McFadzean*)
- Threat or danger to property (incl. property of others)
- Illegality (even though illegal, can still be reasonable *McFadzean*)
- Distance and time;
  - Physical health of P
  - Clothing and footwear
  - Assessing the terrain to be traversed
  - Experience of P

**Consider:** alternative routes/conditions of entry?

# NEGLIGENCE

## DUTY OF CARE

1. Determine whether the duty of care is settled law;
2. If unsettled and not an immunity;
  - a. Apply the reasonable foreseeability test
  - b. Apply the salient features

## SETTLED DUTY OF CARE

- Driver and other road users: **Chapman v Hearse**
- Employer and employees: **Hamilton v Nuroof**
- Product liability: **Donoghue v Stevenson; Grant v Knitting Mills**
- Occupier's liability: **Safeway Stores v Zaluzna; Modbury SC v Anzil**
- Doctor/patient: **Rogers v Whitaker**

## DUTY OF CARE DOES NOT EXIST/IMMUNITY

- Barristers/clients (concerning work done in court or that concerns court proceedings): **D'Orta-Ekenaike v Victoria Legal Aid**; immunity does not extend to advice on settlements: **Attwells**
- Parents/children in relation to positive acts, not omissions: **Robertson v Swincer**
- Child protection agencies: **Sullivan v Moody**
- Police: **Cran v NSW State**

When there is no settled duty, reasonable foreseeability is necessary but not sufficient to establish a duty of care where there is no settled law. Test for duty is **foreseeability** and **salient features**

## REASONABLE FORESEEABILITY

**Test for RF at duty stage: Sullivan v Moody:** "some carelessness on the part of the defendant would cause some kind of harm to the particular plaintiff or to the class in which the plaintiff belongs"

- Precise sequence of events need not be foreseeable: **Chapman v Hearse**
- Must be 'not unlikely to occur': **Caterson v Commissioner for Railways**
- The risk of injury must be 'real and not far-fetched or fanciful': **Sullivan**

Where the act is incapable of harming an ordinary person, no DoC arises simply because a person who is abnormally susceptible may be affected: **Levi v Colgate**