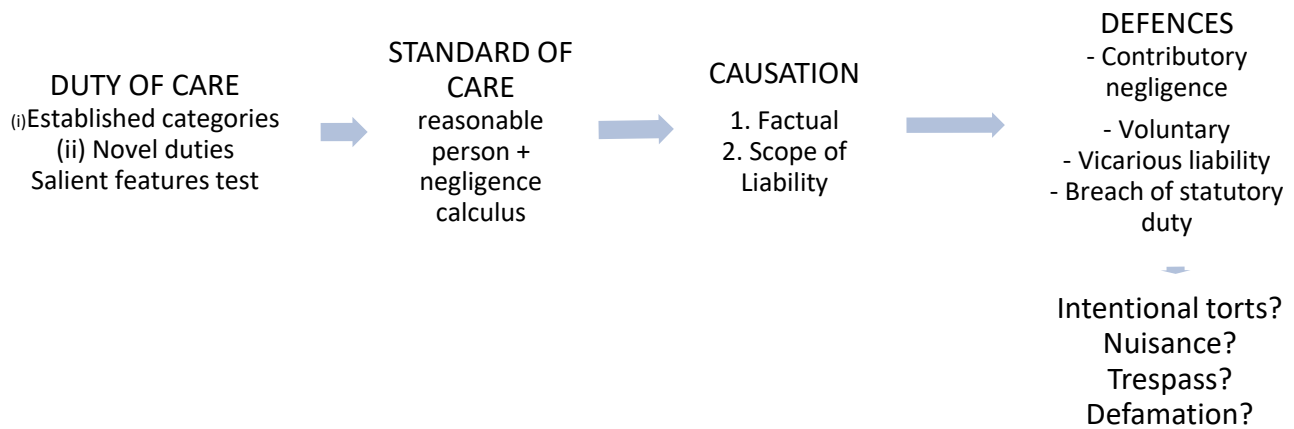


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Wrongs Act 1958 (Vic)

No-fault compensation schemes (Vic):

Transport Accident	Workers' Compensation	Criminal Injuries Compensation	National Disability Insurance (Fed)
· Transport Accident Act 1986 (VIC)	· Workplace Injury Rehabilitation & Compensation Act 2013 (Vic)	<i>Victims of Crime Assistance Act</i> 1996 (Vic)	Complement not replace existing schemes Cannot access NDIS until you try to sue under common law

A common law action is available:

- In any situation not covered by one of the no-fault schemes
- In any criminal injury case

ISSUE

Does [D] owe [P] a duty of care? Can [P] recover losses from [D]?

Misfeasance = D has failed to take reasonable care
doing something badly (liable)

Nonfeasance = D failed to take positive steps
doing nothing at all (generally not liable)

- Exceptions to nonfeasance:
Special relationship between P and D – D is required to take positive action for P's safety
Special relationship between D and 3rd party – D is required to take positive actions to control others

DUTY OF CARE

Donoghue v Stevenson; Harriton v Stephens

D owes P duty of care if it is reasonable foreseeable that his act or omission might harm P

P is so closely and directly affected by the D's act that D ought to have them in mind

Chapman v Hearse

Not necessary for P to show that the precise manner in which the injuries were sustained was reasonable foreseeable

It is sufficient if it appears that injury to a class of persons of which he was one might reasonably have been foreseen as a consequence

ESTABLISHED DUTIES

If it is an established duty – state it!

Doctor *Rosenberg v Percival; Gattanagh v Melchoir*

Lawyer *Hunt & Hunt Lawyers v Mitchell Morgan Nominees*

Teacher *Richards v Victoria*

Employer *Stevens v Bodribb Sawmilling Co*

Prison guard *Howard v Jarvis*

Manufacturer

Donoghue v Stevenson; Australian Knitting Mills v Grant

Driver *Imbree v McNeilly*

Driver – pedestrians *Manley v Alexander*

Teacher/Student

Richards v Victoria (main authority)

- DOC owed while under supervision.
- Not a duty of insurance against harm but avoid harm being suffered

Geyer v Downs

Schools duty to ensure playground supervised when gates open even if outside school hours

Trustees of RCC v Koffman

Even though incident occurred after school hours and outside grounds, D is liable. The extent of liability is dictated by circumstances

Graham v NSW

There is no duty to go further than reasonable to take precautions *special relationships have their limits

St Marks Orthodox Coptic College v Abraham – NSW case

P suffered injuries after a fall at his school but it was before formal supervision was begun. D not liable

Parent/Child

- No general duty to protect them from harm from other sources

Exemption:

Parent's actions have created the risk of harm

Lynch v Lynch

Pregnant women is liable to her unborn child because she did not drive safely

Prison

Howard v Jarvis

Jailer subject to a duty to exercise reasonable care for the safety of the prisoner

NSW v Budjoso

Violence is highly likely

Prison authority is inmates only protection

Roberston v Swincer & Havn v Conley

Not liable if a child is in a car with a third party

Doctor

Negligence cannot be brought until harm crystallizes

Doctor-non-patient

Lowns v Woods – NSW case

In an emergency situation, DOC is owed by doctor to a person who is not the doctor's patient

- This case was during work hours not a social setting
- P ordered direct help to doctor not to everyone

P, child had an epileptic fit. Sister went to doctor for help. Doctor refused. D liable for Ps brain damage.

Lowns decided on proximity – no longer endorsed by HC applied *BT v Oei*; *Alexander v Heis*

Duty to control third parties

1. **No duty to control the actions of another**

Smith v Leurs

13 boy fired a stone to tree but hit P in the eye. Child not to use shanghai sling shot outside of family home, D not liable (otherwise D would be)

2. **Duty only arises where control is capable No duty to take care of the public at large**

NSW v Godfrey – NSW case

Escapee was not near vicinity of jail. Assault took place months after

3. **Highly foreseeable and predictable**

Modbury Triangle Shopping Centre v Anzil

Unpredictability of criminal behaviour in the absence of special relationship = no duty

4. **Duty – special relationship to control**

Dorset Yacht Co Ltd v Home Office

Seven boys were working on an island under control by police officers. When the officers slept, boys escaped, boarded a yacht and crashed it.

5. **In the absence of knowledge of a danger, D could not reasonably foresee the risk of harm**

Smith v Littlewoods Organisation

D owned derelict building. Vandals broke in, set the building on fire, causing damage to P. D not liable.

Even if there was a duty - the risk of fire was too small to justify 24 hour watch

Occupiers do not owe a DOC to neighbors with respect to deliberate wrongdoing of others on their land.

Employer

English v Rogers

Safety in the workplace

Owners/operators of licensed venues

CAL v Motor Accidents Insurance Board

No relationship

Affirmative duty

Rare that a court will find DOC to take positive action

6. **No general duty to act 'in the absence of special circumstances' such as assumption of responsibility**

WD & HO Wills v State Rail Authority of NSW

P goods were stolen from a building leased by the D. Building was left unguarded and thieves broke in. D not liable.

If there is increasing crime, it does not follow that occupiers must owe a DOC to those nearby

7. **Best position to act**

If D knew of the harm = D could have prevented it
Club Italia (Geeling) Inc v Ritchie

P, police officer, injured during a violent brawl held at Ds nightclub. Bouncers identified man who attacked P – potential troublemaker. D did not eject him. P attended the club earlier at Ds request to respond to a disturbance caused by patrons. D failed to control 3rd party and did not warn P of circumstances. D liable.

8. **Random battery**

Ashrafi Persian Trading Co v Ashrafinia

P was hit on the head with an iron bar by an unknown person while sleeping in a motel owned by D. The assailant was outside the building but reached through a gap between the sliding door of the room and the wall. D, motel owner, did not owe P a duty to protect her from the criminal acts of others. Following *Modbury*

9. **Random battery**

Proprietors of strata plan v drakulic

P was robbed and injured by a masked intruder on the stairs in the block of units where she lived. She sued the body corporate that owned the building, alleging her injuries were caused because the building manager had disabled the lock. D not liable. Following *Modbury*

Ps Autonomy

If P is free to protect themselves = there is no duty to take action
P responsible for their own fate

Cal v Motor Accidents *death

Ps husband was drinking at Ds hotel & gave motorbike keys to licensee & was refused service after hours of drinking. Licensee asked to collect husband. P refused and demanded keys. P rode away and was killed. P sued D. D not liable

Stuart v Kirkland-Veenstra *suicide

2 police officers saw man sitting by himself in a car with a hose connected to the exhaust pipe. P told officers he thought about suicide but changed his mind. P committed suicide. Ps wife sued officers for failure to exercise power - to apprehend person who appeared mentally ill. D not liable.

Third parties actions were theirs alone and not the responsibility of anyone else.

POLICY QUESTION:

It is inappropriate to impose D a duty to act affirmatively where indeterminate liability is a distinct possibility (NSW v Godfrey).

If anyone should be made liable for the unfortunate consequences it would be the assailant.

Ps claim amounts to an injury that goes uncompensated at common law however she can claim 'no fault compensation scheme' at statute.

NOVEL DUTIES

is determined by the

SETTLE METHODOLOGY

STEP 1: FORSEEABLE

P must show that s/he is a member of a class of people (ascertainable class) who would foreseeably be at risk of injury if D failed to take care

Graham Barclay Oysters v Ryan

- Test not satisfied = DOC not owed
- Test satisfied = DOC owed

Reasons not to find DOC:

Sullivan v Moody

1. It would undermine other legal rules
2. The duty is incompatible with another duty
3. It would expose D to indeterminate liability

STEP 2: SALIENT FEATURES

No feature trumps others

Caltex Refineries v Starvar

1. **Vulnerability** (including Ps autonomy)
2. Nature of the harm alleged
3. Degree and nature of **control** able to be exercised
4. Special control
(inc. capacity + reasonable expectation)
5. **Knowledge**
6. Reliance
7. Assumption of responsibility
8. Proximity or nearness
9. Closely connected with P
10. Potential indeterminacy
11. Extent of the freedom of individuals
12. Existence of conflicting duties

Scope of duty:

Extends D to [x] to protect [P] from foreseeable risks

Conclude

D owes P a duty of care