

LAW 2442: Commercial Law

Summarised Notes

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NEGLIGENCE

Summary of Negligence

A person commits the tort of negligence if:

1. They owe the other person a duty of care
2. They breach the duty of care
3. Their breach causes the other person to suffer reasonably foreseeable harm

1. Duty of Care

Neighbour Principle - Donoghue v Stevenson

- This case established the 'neighbour principle': duty of care is owed to anyone that one can reasonably foresee is likely to be harmed by one's action or failure to act
- a reasonably foreseeable test: Bourhill v Young

Salient Features of the Case – Sullivan v Moody

- The salient features are the relevant aspects of the facts which the court will consider in determining whether a Duty of Care is owed (from other cases where a duty of care is found to exist)
- The Control or Vulnerability test determines which of the parties was in charge or in a position of control

Established Duty of care situations

- Solicitors and their clients – **Hawkins v Clayton**
- Occupiers of premises and entrants – **Australian Safeway Stores Pty Ltd v Zaluzna**
- Doctors and their patients – **Rogers v Whitaker**
- Car drivers and other road users – **Imbree v McNeilly**
- Manufacturers and consumers – **Donoghue v Stevenson**
- Architects and the and the occupiers of the buildings they design – **Voli v Inglewood Shire Council**
- A duty of care in negligent misstatement cases arises where there is a special relationship between parties Hedley Byrne v Heller
- Relevant to professionals who regularly give advice to clients, three criteria to be met to establish duty of care (Shaddock v Parramatta City Council):
 1. The advice was of a serious or business nature
 2. The defendant knew or should have known that the plaintiff intended to rely on the advice
 3. It was reasonable in the circumstances for the plaintiff to rely on the defendant's advice
- L. Shaddock & Associates Pty Ltd v Parramatta City Council – defendant held liable
- Hedley Byrne & Co Ltd v Heller and Partners Ltd – not liable as there was a disclaimer

2. Breach of Duty of Care

Reasonable Person Test

- Fail to do what a reasonable person would have done in the circumstances
- To show the defendant has been careless
- if defendant's conduct falls below the standard of the reasonable person they breach

Other Tests

- The **probability that the harm** would occur if care was not taken (Bolton v Stone)
- The **likely seriousness of the harm** (Paris v Stepney Borough Council)
- **The burden of taking precautions** to avoid the risk of harm (Latimer v AEC Ltd)
- The **social utility of the activity** that creates the risk of harm (Watt v Hertfordshire County Council)