

BTF1010 NOTES BY CHAPTER

CHAPTER 2

Ch2 Liability for Defective Products

Liability for Negligence

Negligence is a tort.

Tort - civil wrongs which allow the injured party to sue for damages.

Donoghue vs Stevenson - the case that founded the modern law of negligence.

First applied in Australia in : Grant vs Australian Knitting Mills Ltd.

Elements of a negligent action: (three separate elements that must be proved in a negligence claim.

Step 1 - Did the defendant owe a duty of care to the plaintiff?

Step 2 - Did the defendant fail to exercise the required standard of care?

Step 3 - Were the plaintiff's losses directly caused by the defendant's negligence or were the losses reasonably foreseeable?

2.6 WHEN IS A DUTY OF CARE OWED?

- Question of law - judge decides

a duty of care is owed when it can be reasonably foreseen that the acts or omissions of a person would be likely to injure people that are closely and directly affected by the act (the neighbour principle).

2.7 Manufacturers - consumers Manufacturers owe a duty of care to users of their products to protect those users from injuries that are reasonably foreseeable.

2.8 Manufacturers - Innocent bystanders When the type of injury was reasonably foreseeable by a rational person.

2.9 Distributors of products Distributors and retailers may owe a duty to customers, end users and bystanders injured by the products they sell (but do not manufacture). Whether a duty of care exists depends on the facts of the case.

2.10 Service providers

Generally owe a duty to provide reasonable care not to cause foreseeable injury in providing the service.

Other service providers e.g. accountants, auditors (giving professional advice) present special problems due to the nature of the service they are providing (advice/information.)

2.11 Property owners

The normal rules of negligence apply. Property owners owe a duty to take reasonable care to avoid a foreseeable risk of injury.