Negligence [Summary Notes]

To establish the Tort of Negligence, it must be shown that

1. The defendant owed the plaintiff a duty of care **(duty of care)**
2. The defendant breached his or her duty of care **(breach of duty)**
3. The defendant's breach caused damage/harm to the plaintiff **(causation)**
4. The damage/harm is not "too remote" **(remoteness)**

Of course, it is also very important to consider whether a defendant can rely on any defences to negligence. **(defences)**

Duty of Care

PHYSICAL HARM

Does the relationship give rise to a recognised category of duty of care?

Recognised categories for a duty of care include:

- Employers and employees
- Occupiers and entrants
- Road users
- People with authority and those in their control
- Professionals and clients (e.g: lawyer and client; doctor and patient)
- Manufacturers and consumers

Cases where a duty of care does not exist are:

- Advocates Immunity
    - A Solicitor or barrister cannot be sued for negligence by his or her client for;
        - Work performed in the courtroom
        - Work out of court which leads to a decision affecting the conduct of a case in court - D'Orta-Ekenaike v Victoria Legal Aid (2005)
    - Immunity does not extend to advice which leads to settlement - Attwells v Jackson Lalic Lawyers Pty Ltd (2016)
- Parents
    - Robertson v Swincer (1989)
    - Parents do not have a general duty "to exercise care in supervision for the protection of the child from harm"
        - Exception: Positive act creating the danger of risk.

Does the relationship not give rise to a duty of care?

If a relationship is not in a pre recognised category, it then must be determined that it is a novel case.

Novel cases: Reasonable foreseeability and Salient features

- **REASONABLE FORESEEABILITY:**

Negligence [Case Summaries]

Duty of Care

PHYSICAL HARM

Does the relationship give rise to a recognised category of duty of care?

Hamilton v Nuroof (WA) Pty Ltd [1956] 96 CLR

- The employer, the defendant, had contracted to repair with bitumen certain flat roofs at the top of a building of six storeys. The sixth storey was set back from the fifth and was surmounted by a motor generator room against one wall of which an iron room or shed had been constructed. The work included the use of bitumen on the roof of the motor generator room. Three or four buckets would be sufficient. It was found convenient to heat the bitumen on the open space on the roof of the fifth floor. Thence it was necessary to lift the heated bitumen to the roof of the motor generator room. For that purpose a bucket or drum was used capable of containing four gallons. Two-thirds full it weighed forty pounds. The course was preferred of raising the bucket by means of a rope to the sixth floor and then passing it by hand to the roof of the motor generator room. The plaintiff received his injuries because in raising by hand a bucket of molten bitumen in front of his body high enough for a man above the level of his head to reach it the bitumen was spilled over him.
- Whether the employer's duty may perhaps be stated as a duty to ensure that all reasonable steps are taken to provide a safe system of working.
- a breach of this duty was proved in the present case, and that the appeal should be allowed and judgment given for the plaintiff for damages to be assessed

Australian Safeway Stores v Zaluzna (1986) CLR 479

- In Australia the protection of the common law is regarded as sufficient without more: “It is not necessary, in an action in negligence against an occupier, to go through the procedure of considering whether one or other or both of a special duty *qua* occupier and an ordinary duty of care was owed. All that is necessary is to determine whether, in all the relevant circumstances including the fact of the defendant’s occupation of premises and the manner of the plaintiff’s entry on them, the defendant owed a duty of care under the ordinary principles of negligence to the plaintiff. A prerequisite of any such duty is that there is the necessary degree of proximity of relationship.”

- On Saturday 20 January 1979 towards midday the respondent entered what has been described as the "foyer area" of the appellant's supermarket at Mount Waverley in Victoria, intending to buy some cheese. It was a rainy day and in consequence the vinyl-tiled floor of the foyer area had become wet or moist. Unfortunately, before entering the area of the supermarket where the merchandise was displayed, the respondent slipped and fell heavily on the floor. She sustained personal injury. She sued the appellant in the Supreme Court of Victoria for damages for negligence, alleging both a breach of the general duty of care and a breach of the duty owed by an occupier to an invitee.
- The respondent was a lawful entrant upon the land of the appellant establishes a relationship between them which of itself suffices to give rise to a duty on the part of the appellant to take reasonable care to avoid a foreseeable risk of injury to the respondent.