

### **Topic 3 Torts and Negligence**

#### **Tort of Negligence:**

is caused if a person carelessly causes harm to another person.

A person commits the Tort of Negligence if:

1. The defendant owes the other person a duty of care; and
2. They defendant breached the duty of care; and
3. The defendant's breach of duty causes the other person to suffer reasonably foreseeable harm.

#### **1. Requirement 1: Duty of Care**

The onus is on the Plaintiff to establish the existence of the duty of care.

**Donoghue v Stevenson [1932]** established the 'Neighbourhood principle' that identified a number of relationships which, by law, automatically owe a duty of care.

(^ALWAYS STATE THIS^)

#### **Duty of Care Established Categories:**

**(say automatically owed duty of care to these categories)**

- Motorists owe a duty of care to other road users;
- Doctors owe a duty of care to their patients;
- Accountants owe a duty of care to clients;
- Bankers owe a duty of care to their clients;
- Manufacturers of products owe a duty of care to their customers;

Case: **Donoghue v Stevenson (1932)**

- Occupiers owe a duty of care to people who come onto their premises;

Case: **Australian Safeway Stores Pty Ltd v Zaluzna (1987)**

- Employers owe a duty of care to their employees;
- Debateable – schools owe a duty of care to students.

If a manufacturers' or occupiers' duty of care exists, one still has to establish stages/steps 2 and 3 – breach of duty and if the harm was caused by the breach of duty – and then consider whether there are any relevant defences;

NOTE: In addition to the tort of negligence, manufacturers are also liable to people who use their goods or products under the Australian Consumer Law - ACL (Topic 11).

### **Public Authority – do they owe a duty of care?**

- Can include Government and Council bodies and organisations;
- They have control over public spaces – such as parks, streets, roads, waterways;
- Questionable whether or not public authorities automatically owe a duty of care to people who are situated on areas under their control;
- Depends on: whether or not there exists a duty of care to warn of hidden risks:
  - 1) Is there a hidden risk that requires warning or prevention?
  - 2) Is the risk so foreseeable or obvious to a reasonable person that no duty of care would exist?

### **Owe duty of care:**

Case: **Nagle v Rottneest Island Authority (1993)**

(submerged rocks, hidden risk that did require warning, was not foreseeable)

Case: **Swain v Waverley (2005)**

(area was patrolled, submerged sandbar, encouraged people to come and dive)

### **Does not owe duty of care:**

Case: **Romeo v Conservation Commission (1998)**

(rocks fell down, risk was too obvious)

Case: **Vairy v Wyong Shire Council (2005)**

(unpatrolled area no signs dived and injured, risk was too obvious)

### **Duty of Care no Established Categories:**

What if there are no established categories?

These 2 tests must then be satisfied:

**Test 1:** Was it foreseeable that the Defendant's conduct could cause harm to someone in the Plaintiff's position?

Case: **Donoghue v Stevenson (1932)**– 'neighbour principle'

**Test 2:** Are the salient features of the case consistent with the existence of a duty of care?

### **Salient Features include:**

- Relationship between parties;
- Control;
- Relative knowledge;
- Experience;
- Vulnerability and reliance;
- Personal responsibility