

Class Cases:

- Is set for each question
- Depends on the question

## **Topics 4 and 5: Tort of Negligence**

**Issue/s:**

Has \_\_\_ committed the tort of negligence against \_\_\_? If so, can \_\_\_ rely on any defences?

**Law:**

1. A duty of care (Donoghue v Stevenson, 1932)
  - Provided that there is a relationship between parties
  - If the relationship between the parties is not one that falls within the established duties of care, then to establish the existence of duty of care, the plaintiff must show two things:
    - a) That it was reasonably foreseeable that the defendant's act or omission could cause harm to someone in the plaintiff's position
      - 'Neighbour principle': whatever a person is doing, they owe a duty of care to those people they can reasonably foresee as likely to be affected by their conduct
      - Not necessary to show that the defendant actually foresaw, just that the reasonable person in the defendant's situation would have foreseen the possibility of harm
    - b) The salient (relevant) features of the case are consistent with the existence of duty of care.
      - The court will consider the relationship between the parties and other features of the case, and then compare those features with the relevant features of other cases where a duty of care has been found to exist
2. Breach of the duty of care (Bolton v Stone, 1951)
  - Must be established that the defendant has in fact been careless
  - Reasonable person test: defendant has not breached their duty of care unless they fail to do what a reasonable person would have done in the circumstances
    - a) The risk was foreseeable (that is, it is a risk of which the person knew or ought to reasonably to have known)
    - b) The risk was not insignificant
    - c) In the circumstances, a reasonable person in the person's position would have taken those precautions
      - i. The probability that the harm would happen if precautions were not taken
      - ii. The likely seriousness of the harm
      - iii. The burden of taking precautions to avoid the risk of harm
      - iv. The social utility of the activity creating the risk of harm
3. Harm caused by breach of duty
  - Must be established that the defendant's breach of duty caused the harm suffered by the plaintiff
  - According to the civil liability legislation, in deciding a breach of duty caused particular harm, the court must be satisfied that:
    - 1) The breach of duty was a necessary condition of the occurrence of the harm (factual causation)
    - 2) It is appropriate for the scope of liability of the defendant to extend to the harm so caused (scope of liability)

**Defences:**

Voluntary assumption of risk: (Agar v Hyde, 2000)

The plaintiff was fully aware of the risk at the time the harm was caused and they voluntarily assumed that risk – defendant is relieved of all liability. Must be shown that:

- The plaintiff had full knowledge and appreciation of the risk
- The plaintiff freely and willingly agreed to the precise risk that eventuated