

NEGLIGENCE – DUTY OF CARE

Elements of negligence:

- Defendant must have owed a duty of care to the plaintiff;
- The defendant must have breached that duty;
- The defendant's breach of duty must have caused damage, of a legally recognised kind, to the plaintiff;
- The damage must not have been too remote;
- Does the defendant have a defence?

Duty of Care

The Court's Approach

3 categories of duty of care:

1. Situations in respect of which it is settled law that a duty of care exists
2. Situations in respect of which it is settled law that no duty of care exists;
3. Situation in which there is no settled law telling us whether or not a duty of care exists

General Test – Reasonable Foreseeability

Was it reasonably foreseeable that, if the defendant was careless in engaging in the general activity in question, the plaintiff, either as an individual, or as a member of a particular class of people, might have been harmed?

Donoghue v Stevenson

FACTS:

- Young man went to café with Mrs Donoghue
 - o Bought ginger beer with ice-cream
- Ginger beer came in opaque bottle
- Owner of café poured some ginger beer into ice cream
- Mrs Donoghue went to pour remainder
 - o Decomposed remains of a dead snail fell from the bottle
- Prior to this case, no general test for duty of care
- Mrs Donoghue sought to sue manufacturer of ginger beer in negligence

ISSUE: Did drink manufacturer owe her a duty of care?

HELD:

- There must be some principle underlying that specific relationships to which the court held a DOC attached that can be applied to new cases
- Defendant intended for the drink to reach the consumer unopened
 - o Should have reasonably foreseen injury to the plaintiff if reasonable care wasn't taken
 - o Duty of care was owed

Issues with general test:

- What degree of risk must be able to foresee?

Caterson v Hearse

NSW Court of Appeal held that it should be reasonably foreseeable that the defendant's actions would be likely to injure the plaintiff. This was overturned in the High Court where Barwick J established that it was enough if it was reasonable foreseeable that the defendant's actions would not be unlikely to harm the plaintiff.

Sullivan v Moody

It must be reasonably foreseeable, that if the defendant did not take reasonable care, there would be a risk that the plaintiff would be harmed that was not fanciful or far-fetched.

Chapman v Hearse

FACTS:

- Chapman negligently collided with car in front of him and was thrown to the road
- Dr Cherry was driving by and stopped to help him
- Mr Hearse ran into Dr Cherry and killed him
 - o Cherry's estate sued Hearse for damages
 - o Hearse sued Chapman for his original negligence
- Hearse had to show that Chapman owed a duty of care to Cherry
- Chapman contended that when he acted negligently, the series of events that led to Cherry's injuries were not reasonably foreseeable

HELD:

- Chapman's contention rejected
 - o Specific series of events does not need to be reasonably foreseeable
- It is only necessary that harm of some kind was foreseeable from the general activity in question

- Vulnerable plaintiffs

If a plaintiff is especially vulnerable to a particular kind of harm, so that activity that would not harm someone who was normal would harm the plaintiff, will that harm be regarded as reasonably foreseeable for the purposes of whether there is a duty of care?

Levi v Colgate-Palmolive

FACTS:

- Received free samples including bath salts
 - o Skin became red and itchy
- Levi sued for negligence
 - o Levi had allergies, effects would not have occurred

HELD:

- Duty of care only arises when a reasonable person ought to realise that her actions may cause injury to other if she is careless
- Where the act is incapable of injuring an ordinary person, no duty arises simply because a person who is abnormally susceptible may be affected

- If the defendant knows that a particular abnormal person is likely to be affected by her action, she may have a duty to take special precautions to avoid injury to that person.
- The mere fact that abnormal persons exist in the community does not alter the general standards to which one must conform
- Supplies of ordinary domestic products are subject to no duty to issue warning that the use of such products may cause injury to abnormal persons who may be allergic to them
- No duty of care owed to Levi

Haley v London Electricity Board

FACTS:

- Defendants dug trench along footpath
 - o Defendant's employees put a hammer across pavement in front of trench 2ft above ground on some railings to prevent people from falling into trench
- Blind plaintiff tripped and fell into trench
 - o Sued in negligence

HELD:

- Sue was successful
- The defendant's employees had a duty of care to take reasonable care not to endanger people who might reasonably be expected to walk along the footpath
- That duty extended to blind people if the defendants ought to have foreseen that blind people might walk along the footpath
- It was reasonably foreseeable that a blind person might pass along the footpath on the day in question

Even if someone has a particular susceptibility to a certain injury so that a careless act that wouldn't harm someone else may harm them, it doesn't necessarily follow that the risk of them being harmed would be unforeseeable.

While reasonable foreseeability is necessary for there to be a duty of care, other than in a very limited range of cases, it will not be sufficient. This is because there is judicial concern that claims for negligence might get out of hand.

Sullivan v Moody

FACTS:

- Plaintiff was man in SA, suspected of sexually abusing his child
- Child examined by medical practitioners and social workers who were working for the department of community welfare
 - o Department operated pursuant to the Community Welfare Act
- Reported that child may have been abused
- Plaintiff sued medical practitioners
 - o Suffered psychiatric injury as a result of the report

HELD:

- Rejected plaintiff's claim
- Even if it was reasonably foreseeable that carelessness on the part of the defendants may cause psychiatric injury to the plaintiff, no duty of care was owed to the plaintiff