Duty of Care—Physical harm by positive act

Donoghue v Stevenson

Where the appellant consumed part of the ginger beer manufactured by the respondent, which, contained decomposed remains of a snail. The customer was the appellant's friend. The appellant suffered from shock and severe gastro-enteritis as a result of the impurities in the ginger beer, which she had visually seen after some time. The appellant's claim was that it was the duty of the respondent to provide a system which would not allow snails to get into the bottles and provide an efficient system of inspection and in failure of these duties, the respondent caused the accident.

- Proximity should not be confined to mere physical proximity. It should extent to close and direct relations where a person alleged would know that the other would be directly affected by his careless act.
- In Heaven v Pender, the doctrine of proximity in regards to the sale of goods were described as being used immediately as it would in all probability be used at once before a reasonable opportunity for discovering any defect. It was also contended that the manner of supplying goods would probably cause danger in cases where negligent conduct was prominent.
- A manufacturer puts an article of food in a container, which he knows will be opened by the actual consumer. There can be no inspection by any purchaser or consumer. Negligently, in course of preparation the manufacturer therefore allows contents to be mixed with poison.
- Where a manufacturer has an intention for the products to reach an ultimate consumer leaving them with no possibility of examination, with the knowledge that without reasonable care an injury may arise, that manufacturer owes a duty to the consumer to take that reasonable care.

Hargrave v Goldman

The respondent owned a property in Western Australia on which a large tree was struck by lightning causing a fire. The tree was in the middle of the property and was in 200 metres proximity of neighbours. The respondent organised for the tree to be cut down which caused more fire and as he damped the fire down he left it, alone which caused a large bush fire. The appellant sued the respondent in nuisance and negligence due to the spreading to their property.

- Had the respondent taken reasonable care, he could have put out the burning logs.
- The question in this case is whether the appellant must try to forestall and prevent a peril.
- The judicial development of the law has found a duty of care to arise where there is ownership of land. To hold that the respondent had a duty of care to prevent the fire on his land spreading would be in accordance with the modern concepts of land occupier's obligations.
- Conclusion: A man has a duty to exercise reasonable care when there is a fire upon his land of which he knows or ought to know, that by reasonable care the danger can be rendered harmless.
- Appeal allowed.

Chapman v Hearse

Chapman had an accident as a result of Hearse's negligence and Dr Cherry went to the aid of him in and died in the process. The respondent alleged contributory negligence on part of the doctor and joined the appellant as a third party claiming contribution from him. The trial judge held that Hearse had been negligent and that Chapman was liable to make a contribution of one-fourth of the damages awarded.

- Appellant argued that he there was no reasonable foreseeability and therefore no duty of care.
- Dr Cherry, attending an injured man where it was dark and wet where visibility was poor and no one present to warn him of oncoming traffic was a situation of some danger.
- Question: whether a reasonable man might foresee, as a consequence of the collision, the attendance on the roadway of persons fulfilling a moral and social duty to those injured.

- In agreement with the Full Court of Appeal, the High Court doesn't think the precise sequence needed to be reasonably foreseeable - instead, it needs to be a **consequence of the same general character**.
    - "It is, we think, sufficient...to ask whether a consequence of the same general character as that which followed was reasonably foreseeable as one not unlikely to follow a collision between two vehicles on a dark wet night upon a busy highway[1]."
    - Quoting *Haynes v Harwood*: "it is not necessary to show that this particular accident and this particular damage were probable; it is sufficient if the accident is of a class that might well be anticipated as one of the reasonable and probably results of a wrongful act[2]."
- The particular sequence here was of a class that should have been anticipated when driving negligently - driving negligently could very easily result in someone being run over.
- The Appellants argument fails.

Romeo v Conservation Commission

Where the plaintiff fell of a cliff after socialising and having a few alcoholic drinks. She became paraplegic as a consequence.

Kirby J:

- Just because a risk is foreseeable, doesn't mean the defendant has to do anything.
- "It is quite wrong to read past authority as requiring that *any* reasonably foreseeable risk, however remote, must in *every* case be guarded against."
- Rather, whether measures need be taken, and what measures, is determined by inquiring into the relevant circumstances.
- Although a reasonably forseeable risk may indeed give rise to a duty, it is the inquiry as to the scope of that duty in the circumstances and the response to the relevant risk by a reasonable person which dictates whether the risk must be guarded against to conform to legal obligations."
- Factors in this case include:
- No injury has ever occurred before, in over 100 years. This means that the probability of harm is very very small. **Low probability**.
- Must bear in mind the limited resources of the Defendant (as a public authority especially). Spending money here to prevent very improbable accidents would mean they have no money for something else, perhaps more important.
- The danger should have been obvious to the Plaintiff - it was a cliff. **Obvious risk**.
- 'Natural' look of the site was a part of its attraction - fencing would diminish its value to society.

- Erecting a fence here and everywhere where there is a risk will be very costly as well as undermine the aesthetic attraction of the site. **High burden**.
- All in all, it was not reasonable to expect the Defendant to have done more. The accident was very improbable, and the risk of the cliffs was so obvious that the Defendant could have reasonably assumed no one would walk off them. In addition, requiring a fence would mean erecting a face everywhere along the coast - this is too much of a burden.