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Laws1203 Final: Elements of Negligence

[P suffers a relevant actual harm]

1. Duty of Care (owed by D to class of Ps to which P belongs?)

Legal duty on *such Ds* generally to take reasonable care to avoid that general kind of harm to the general class of actors to which P belongs

- Established categories (move swiftly to 'breach' issue)- CITE A CASE TO SHOW OFF BUT ITS ENOUGH to just say There was occupier's Liability
 - Some Established Categories of Duty of Care:
 - **Occupier to lawful entrant** [re: physical premises] ([Safeway Stores v Zaluzna](#) 7.5.3C)
 - **Road users to other road users** [re: care and skill driving] ([chapman v Hearse](#))
 - **Doctor to patient** [re: care & skill diagnose, advise, treat] ([Donoghue v Stevenson](#))
 - **Employer to employee** [re: safe & healthy workplace]
 - **Manufacturer to consumer** [re: product safety]
- New but simple cases (no established category):

If *clear positive act* by D, a *private individual*, which *directly causes physical harm* to P, reasonable foreseeability of harm of that general nature to that class of P's is usually enough for a DoC to exist.

Salient Factors:

Relationship factors suggesting it would be reasonable to impose a DoC where no established duty exists:

(a) D Creates or Controls Risk:

Donoghue v Stevenson; Sydney Water; Modbury Shopping Centre (cf. *Safeway v Zaluzna*); **Agar v Hyde; Stuart v Kirkland-Veenstra**

(b) D's assumption of responsibility for risk (P's reliance on D):

Modbury Shopping Centre; Swain v Waverly Council e.g. Life guard expected to take positive acts to save people should the necessity arise

(c) P's vulnerability to / reliance on D's control:

Agar v Hyde; Crimmins v Stevedoring Industry (they told him to go he went, they had control he had none therefore DoC, asbestos shipping) ; **Voli v Inglewood**

(d) Conflicting duties / coherence / 'policy':

Sullivan v Moody (sexual assault investigations and parent's reps); **H&NELHD v McKenna; Graham Barclay Oysters; etc.,**

- No DoC owed by gaol to prevent harm caused by escaped prisoner; duty limited to the course of the escape where D still has control.

Say specifically *duty to do what thing or a duty to not do what thing.*

1. Special relationships:

- i) Doctor and patient
Examine, diagnose, treat, and provide info / warning
Rogers v Whitaker / Wallace v Kam:
'single comprehensive duty' 'material risks' approach
- (ii) Parent and child
D's duty to others re children in D's care: **Smith v Leurs** (my children harm others) - only liable if the basis that the child's act could not have taken place but for the breach of the parents
D's duty to D's own children: **Robertson v Swincer**-There is policy reasons against allowing children to bring an action their parents, it places an intolerable burden on the parents to live up to expectations they might not even know of
- (iii) Rescuers (week 9 readings)
Stuart v K-V; Lowns v Woods; Part 8 of Act (esp. s.57)
 - No one is under obligation to rescue
 - If I am the cause of the danger tho, then I am under an obligation to do something about it
Lowns v Woods 7.9.9 ;- Doctors have an obligation to rescue