

There are three main requirements that need to be considered under the law of negligence.

Therefore, a person commits the tort of negligence if:

Requirement 1: DUTY OF CARE - The Defendant owes the Plaintiff a duty of care

Requirement 2: BREACH OF DUTY - The Defendant breaches the duty of care

Requirement 3: CAUSATION - The breach of duty causes the Plaintiff to suffer loss, damage or injury, and the injury was caused by the breach.

Then after these main requirements are considered, you need to then look at

1. Defences AND
2. Remedies

REQUIREMENT 1: DUTY OF CARE

- a) Public Authority, if not
- b) Established Categories, if not
- c) Non-Established categories

A: PUBLIC AUTHORITY:

Public Authorities: considers whether or not there exists a duty of care to warn of hidden risks.

What is a hidden risk?

Ask yourself: is there a hidden risk that requires warning or prevention? Or is the risk so foreseeable or obvious to a reasonable person that no duty of care would exist?

Occupier's Liability – Public Authorities

Duty of care was owed

See: Nagle v Rottnest Island Authority (1993)

Case Facts:

- Submerged rock at a designated swimming area, sign said "Swimming area"
- Hidden risk- not foreseeable and encouraged people to swim there
- RIA should have a warning sign (they had control & power over the premises), therefore Liable to Nagle
- Held that there should have been a notice of the hidden danger

See: Swain v Waverley (2005)

Case Facts:

- Submerged sandbar at a patrolled surf beach (in between the flags)
- Hidden risk - not foreseeable and surfer was injured

- Court decided there was a duty of care to warn e.g. sign or move flags to a place with no sandbar

Hidden risk not found

See: Romeo v Conservation Commission

Case Facts:

- Unfenced public space on a cliff top;
- Victim claimed: should have had a sign saying “Don’t get too close to the edge” or “Loose rocks”
- Held: hidden risk was not found as the risk was so obvious

See: Vairy v Wyong Shire Council

Case Facts:

- Plaintiff dived into the sea from a non-man-made platform
 - Unpatrolled, no signs- plaintiff cracked his neck
- Held: Judge said signs should be created, but looking forwards, there were plenty of points where the risk occurs, and a reasonable council simply would not erect a sign in every single point where danger occurs - too much of a burden (any reasonable person would know not to dive)

B: ESTABLISHED COMMON LAW CATEGORIES INCLUDE:

- Motorists & other road users
- Doctors & patients
- Accountants & clients
- Bankers & clients
- Employers & employees

Manufacturers & customers (ACL Applies here too):

Legal principal: A manufacturer of goods or products owes a duty of care to people who use their goods or products – such as customers.

See: Donoghue v Stevenson [1932]

Case Facts:

- Mrs May Donoghue was at a café drinking (allegedly) a ginger beer.
- The drink was bought by her friend, from the retailer
- When the remainder of the drink was poured out into Donoghue’s glass, the remains of a decomposed snail floated out of the bottle.
- It was not possible to detect the remains of the snail, before consuming most of the contents of the bottle.
- Donoghue suffered nervous shock and severe gastroenteritis

Held: Manufacturer owes a duty of care; “neighbourhood principle” must take reasonable care to avoid foreseeable acts/omissions which are likely to injure your neighbour (in this case, manufacturer should have taken the necessary precautions to ensure that each drink was safe to drink - with no unknown substances inside)