

## Exam Notes – Torts Problem Solving

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## Step 1 – Breach of Duty

### 1. Standard of care

- Start from what standard of care would reasonable person would take in that position.
- **McHale:**  
age should be taken into account; a child is only expected to conform to the objective standard expected for children of similar age and experience.
- **Carrier:**  
unsoundness of mind could not give rise to a separate standard of care.
- **Imbree:**  
an objective standard of care as a licensed driver should be applied, lack of knowledge or skill cannot be taken into consideration in the ‘reasonable person’ test.

### 2. Can the D utilize CLA s 50+ s 5P?

#### ✓ Is the D providing service?

s 50 + s 5P

#### ✓ Is the D a professional?

s 50(1) A person practicing a profession does not incur a liability in negligence arising from the provision of a professional service if it is established that the professional acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice.

#### ✓ Is the service widely accepted?

s 50(3) The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.

s 50(4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.

#### ✓ Is the opinion irrational?

s 50(2) However, peer professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational(不合理的).

#### ✓ s 5P Division does not apply to duty to warn of risk

This Division does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of the risk of death of or injury to a person associated with the provision by a professional of a professional service.