Duty of Care (*)

Novel Cases	**Current Approach** **1. Foreseeability of harm** of a general character to a class of persons. **2. "Salient features"** (multi-factor approach).
*Established Categories	In most cases, ***DOC*** clear. Qu. is has D ***breached*** that duty (Element 2). 1. Manufacturers/Consumers********** ***Donoghue v Stevenson*** **[1932] AC 562.** ***Grant v AKM*** **[1936] AC 85** Leading Australian decision; line of manufacturer cases since. ~ Dr gets dermatitis after wearing soiled long johns (underwear). ~ Sues both retailer (under SOGA legislation) and **Manufacturer** in negligence. ~ D (manuf) un able to distinguish ***Donoghue***.(just like you couldn't see the snail in the opaque bottle, you couldn't see the chemicals in the PJs) *is the consumer an *abnormal/foreseeable* plaintiff? *how important is the idea of the possibility of *intermediate* examination for product liability cases? 2. Suppliers of dangerous goods • **(Cigarettes)** ***McCabe v BAT Aust*** **(2002) and** ***BAT Aust v Cowell*** **(2002) (VSC)** • **(Firearms)** • **(Pharmaceuticals)** 3. Motorist/ Road users 4. Employer/Employee********** **** Paris v Stepney Borough Council*** **(1950) BC [1951].** FACTS: Paris was employed by Stepney Borough Council as garage-hand. He had suffered a war injury that left him with sight in only one eye. While Paris was attempting to loosen a rusted car axle bolt with a hammer, he caused a chip of

	metal to fly into his sighted eye, and as a result was permanently blinded in both eye HELD: Stepney Borough Council was aware of his special circumstances and failed in their duty of care to give him protective goggles 5. Prison Authority / Prisoner 6. School / Pupil* 7. Hospital / Patient **eg. medical negligence ⇒ death.** **The issue is whether the patient would have dies anyway.** 8. Doctor / Patient ***Rogers v Whitaker* (1992) 175 CLR 479** Maree Lynette Whitaker, who had for many years been almost totally blind in her right eye, consulted Christopher Rogers, an ophthalmic surgeon, who advised her that an operation on the eye would not only improve its appearance but would probably restore significant sight to it. Whitaker agreed to undergo surgery. After the operation there was no improvement to the right eye, and Whitaker developed inflammation in the left eye which led to loss of sight in that eye. **HELD: the appellant's failure to <u>acquaint the respondent with the danger</u> of sympathetic ophthalmia as a possible result of the surgical procedure to be carried out** 9. Occupier of land/ Entrants**********

1) ***Australian Safeway Stores v Zaluzna*** (1987) (*Supermarkets*).

FACTS: Plaintiff went into the Defendant's store. It was raining outside so the foyer was wet and the defender slipped and injured himself. Defendant alleged that Plaintiff comes within 'invitee' category and damage wasn't unusual, therefore no duty.

HELD: Courts rejected the traditional approach to occupiers' liability, and decided that from now on the general duty of care formula under Donoghue v Stevenson should be applied to all cases.

Here we have a commercial relationship as well as reasonable foreseeability, therefore there is a duty of care. Court argued that when you expect people to come into your shop and pay you money, the least you can do is provide a safe environment.

2) ***Hackshaw v Shaw* (1984) 155 CLR 614** ("Farmer Joe" trespass case).
Whether or not a landowner used reasonable force when confronting a trespasser on their property.
Whether s/he owed them a duty of care.

3) ***Nagle v Rottnest Island Authority*** (1993) (***Public Authorities***)
the appellant dived from a partially submerged rock ledge into the water. He brought this action for damages in respect of the injuries he suffered, claiming that the Board was negligent in failing to give any or any adequate warning.

Occupiers/ Entrants …

* Supermarkets; Shopping centres.

* Rugby leagues clubs/ Clubs and Hotels

* Even night clubzz (intoxication)

10. nervous shock and 3rd parties**********

Motorists owe DOC to *relatives* for **nervous shock** caused during aftermath of accident.

Jaensch v Coffey (1984) 155 CLR 549.
This case considered the issue of proximity when deciding whether or not a negligent driver was responsible for the sudden nervous shock sustained from witnessing her husband's serious injuries from a motor vehicle accident.

HELD:
The High Court allowed recovery for what is now called "pure mental harm" to Mrs Coffey.
Though not present at the scene of the accident, she came to the hospital during the period of the immediate post-accident treatment of her injured husband.

Claimants could recover damages for a recognised psychiatric illness, which is a result of a shock

	occasioned by the death or injury of their loved ones (or fellow workers if the claimant is a rescuer),even though they were not physically present at the scene of the accident. However, the claimants must have experienced the “immediate aftermath” of the event “with their own unaided senses”. The claimant’s sensory perception of the accident could be either visual or auditory or both. ***Peakhurst Inn Pty Ltd v Fox*** The central principle - that a householder or occupier of a business is entitled to use reasonable force (and only reasonable force) to defend against an intruder - is often difficult to apply. Mr Newton "exceeded the bounds of appropriate conduct" when he began to beat Mr Fox after finding him offering no resistance. That was an assault involving "excessive force which was not necessary for his own defence, the protection of his family or the hotel". In this case Mr Newton - even though it is his employer who will be paying - seems unfairly punished. And Mr Fox seems unfairly rewarded - **as does his mother with her successful claim for nervous shock**. Some limit on civil claims in cases such as this is surely indicated.