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## MEDICAL NEGLIGENCE

The legal issue in this matter is whether **[insert doctor's name]** is liable in negligence to compensate **[insert patient's name]** for harm suffered during medical treatment. The tort of negligence arises where the defendant fails to take reasonable care and causes harm to the plaintiff (**Kyriakakis et al., p 18**). Intent is not required. To succeed, the plaintiff must establish duty of care, breach of duty, causation, and legally recognised damage, on the **balance of probabilities**. Harm may include physical injury, psychiatric illness, property loss or economic loss (**Wrongs Act 1958 (Vic) s 43**).

### Duty of Care

Medical negligence occurs in the context of a doctor–patient relationship, a category in which a duty of care is well established. On the facts, **[insert description of medical relationship—e.g., elective surgery, consultation, diagnosis]**, the defendant clearly owed a duty of care, consistent with the approach in **[Rogers]**.

However, the court must still define the scope of that duty, which is confined to the avoidance of reasonably foreseeable harm. The standard test for foreseeability is whether a reasonable person would foresee a real risk of harm to the plaintiff as a member of a class of persons potentially affected by the defendant's actions (**[Chapman]**).

If the scenario involves a novel duty—such as psychological injury, third-party involvement, or government decisions—the court will apply the **salient features** test from **[Caltex]**. Relevant features include the defendant's control over the situation, the plaintiff's vulnerability, the nature of the harm, and whether it is fair, just and reasonable to impose a duty. On the facts, **[insert vulnerability or dependency of the plaintiff, the level of control the doctor had, or reliance placed by the patient]**, these features suggest that a duty of care should be imposed.

### Breach of Duty

A breach occurs where the defendant fails to act in accordance with the standard of care required. For professionals, this is the standard of a reasonably competent practitioner in that field at the relevant time (**Wrongs Act s 58; [Rogers]**). On the facts, **[insert whether the doctor failed to perform competently, misdiagnosed, or omitted warnings]**, the conduct appears to have fallen short of this standard.

Under **s 48(1)** of the **Wrongs Act**, a person is negligent only if:

- the risk was **foreseeable**;
- the risk was **not insignificant**; and
- a reasonable person in the position would have taken precautions.

The foreseeability element does not require likelihood, only that the risk was not far-fetched or fanciful (**[Shirt]**). On the facts, **[insert what risk materialised and whether**

## **PURE ECONOMIC LOSS**

The legal issue in this matter is whether **[insert defendant's name]** is liable in negligence to compensate **[insert plaintiff's name]** for pure economic loss arising from **[insert brief factual summary, e.g., reliance on negligent advice, lost profits due to defective product or failed infrastructure]**. The tort of negligence arises where the defendant fails to take reasonable care and causes harm to the plaintiff (Kyriakakis et al, p 18). To succeed, the plaintiff must establish duty of care, breach, causation, and legally recognised damage, on the balance of probabilities. Where the loss alleged is purely economic (i.e., not consequential on personal injury or property damage), special principles apply to limit indeterminate liability and guard against overreach.

### **Duty of Care**

Pure economic loss does not fall within the traditional categories of negligence. Courts are cautious about recognising a duty due to concerns over indeterminate liability and interference with commercial autonomy. Therefore, plaintiff's must prove that the loss was reasonably foreseeable and the salient features of the case support a duty (**Caltex**).

Key salient features (**Caltex**) include:

- The plaintiff's vulnerability to the defendant's conduct,
- The defendant's knowledge or assumption of responsibility,
- The plaintiff's reliance on the defendant,
- The nature of the loss (e.g., relational or direct),
- Whether it is fair, just and reasonable to impose a duty.

In (**Perre**), the High Court imposed a duty where the defendant's act of supplying diseased potato seed caused pure economic loss to a third-party grower, due to the foreseeability, vulnerability, and limited class of plaintiffs. Similarly, in (**Hedley**), negligent misstatements gave rise to liability where there was reasonable reliance and assumption of responsibility.

On the facts, **[insert whether the plaintiff relied on defendant's advice, whether loss was relational or direct, whether plaintiff could have protected themselves contractually]**, the salient features support the imposition of a duty of care and make the loss reasonably foreseeable. Accordingly, a duty of care is **[likely/unlikely]** to arise.

### **Breach of Duty**

A breach arises where the defendant fails to take the precautions a reasonable person would have in their position. Under s 48(1) of the *Wrongs Act 1958* (Vic), breach requires:

- The risk was foreseeable,
- The risk was not insignificant, and

## **BATTERY**

The legal issue in this matter is whether **[insert defendant's name]** is liable in the intentional tort of battery to compensate **[insert plaintiff's name]** for physical interference with their person. Battery arises where the defendant commits an intentional, reckless or negligent act that directly causes physical contact with the plaintiff without consent or lawful justification (Kyriakakis et al). It is an intentional tort that is actionable per se, meaning the plaintiff need not prove damage. Once interference is shown, the onus shifts to the defendant to disprove fault or establish a defence (*State of NSW v Ouhammi*).

The cause of action is subject to the statutory limitation period under the Limitations of Actions Act 1958 (Vic): 3 years for personal injury (ss 5(1A), 5(1AA)). On the facts, **[insert whether the action was brought within this period]**, this requirement is likely **[satisfied/not satisfied]**.

### **Positive and Voluntary Act**

Battery requires a positive and voluntary act, rather than a mere omission (*Innes*). The act must be consciously performed by the defendant (*Fagan*). For example, driving onto someone's foot and refusing to move was held to be a continuing positive act sufficient to constitute battery.

On the facts, **[insert example such as "the defendant shoved the plaintiff during an argument" or "swung a bag that hit the plaintiff"]**, the act was both positive and voluntary, satisfying this element.

### **Direct Physical Contact**

The contact must be direct, meaning it followed immediately from the defendant's act. It can occur through an object, intermediary, or even transferred force (*Scott v Shepherd*).

On the facts, **[insert example such as "the contact occurred when the defendant touched the plaintiff's arm or struck them with an object"]**, the contact was a direct consequence of the defendant's act. This distinguishes it from indirect harm actionable only in negligence (*Hutchins*).

### **Fault – Intention, Recklessness or Negligence**

The defendant must have acted intentionally, recklessly, or at least negligently in applying force (*Carter*). Intention is satisfied where the defendant meant to do the act, even if they did not intend the specific consequence. Fault is presumed unless disproved by the defendant (*Ouhammi*).