

# SUMMARY OF TORTS

## NEGLIGENCE

- Definition: non-intentional direct or indirect but wrongful harm of the plaintiff
- Duty of Care, Breach + Causation MUST be met to prove negligence
- Plaintiff bears the onus of proof

## DUTY OF CARE

- Does the defendant owe a duty of care to the class of plaintiffs of which the plaintiff belongs?
- Did the defendant take reasonable care to prevent the foreseeable risk of injury?
- Duty of Care cases come under three areas:
  - o Obvious cases - 'neighbourhood principle':
    - Relationship between parties is usually physically/temporally close and needs no further analysis
  - o Established categories:
    - Relationship between parties is already established by law
    - Reasonable foreseeability usually enough
    - Doctor/patient, solicitor/client, occupier/entrant, consumer/manufacture, road user/road user, employer/employee
  - o Problematic (special duty) cases:
    - Salient features:
      - Specific factual enquiry about the relationship between the parties

Principle case: Donoghue v Stevenson`

<p><i>Donoghue v Stevenson</i> [1932] AC 562</p>	<ul style="list-style-type: none"><li>- Defendant, Stevenson, is the manufacturer of opaque bottles of ginger beer – these are sold to distributors and then shopkeepers</li><li>- Plaintiff, Mrs Donoghue was given a ginger beer by her friend bought from a shop</li><li>- Mrs Donoghue consumes ginger beer, pouring it into a cup – she comes across a decomposed snail</li><li>- Plaintiff suffers from gastroenteritis + sues for negligence</li></ul> <p><b>Decision:</b> P successful in the appellate court</p> <p><b>Lord Atkin's 'neighbour principle'</b> - <i>"you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour."</i></p> <p>Your neighbour: <i>"persons who are so <b>closely and directly affected by my act</b> that I ought reasonable to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in to question."</i></p> <p>***Duty of care can arise without a contractual relationship</p>
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## STEPS

### STEP 1: Established categories

*Is there an established category of duty? If so, cite the established category, explain why the facts fall within that category, and move on.*

- 1. **road users** to exercise reasonable care to avoid foreseeable physical harm to other road users (*Chapman v Hearse*)

- 2. **manufacturers of consumer products** where foreseeable that lack of reasonable care in the manufacturing process might injure the consumer's person (*Donoghue v Stevenson*)
- 3. **medical practitioners to patients** to exercise reasonable care and skill in diagnosis, advice, treatment (*Rogers v Whitaker*)
- 4. **occupiers of premises owe to lawful entrants**, the reasonable care and skill to avoid foreseeable injury to entrants arising from the physical state and condition of the premises (*Modbury, Strong v Woolworths Big W*)
- 5. **employers to employees** to take reasonable care to ensure a safe workplace (*Paris v Stepney Borough Council*)

<p><i>Chapman v Hearse</i> (1961) 106 CLR 112</p>	<ul style="list-style-type: none"> <li>- Dark and stormy night</li> <li>- D1, Chapman driving carelessly and collides with another vehicle + is thrown from the car</li> <li>- Plaintiff, Dr Cherry, is a medical doctor driving on the road + goes to the aid of Chapman</li> <li>- Defendant 2, Hearse is driving along the road too fast - he strikes and kills Dr Cherry</li> <li>- Plaintiff's family bring action to claim compensation for wrong to their family member</li> <li>- Plaintiff originally sues Hearse             <ul style="list-style-type: none"> <li>o Hearse sues Chapman whose original driving caused the chain of events</li> </ul> </li> </ul> <p>Was injury to Dr Cherry reasonably foreseeable to Chapman?</p> <p><b>Decision:</b> Dr Cherry's widow successfully brought claim against Hearse, Chapman owed no duty of care to Dr Cherry, not reasonably foreseeable to Chapman that Dr Cherry would be harmed by Hearse's driving</p> <p><i>'In order to establish the prior existence of a duty of care with respect to a plaintiff subsequently injured as the result of a sequence of events following a defendant's carelessness <b>it is not necessary for the plaintiff to show that the precise manner in which his injuries were sustained was reasonable foreseeable; it is sufficient if it appears that injury to a class of persons of which he was one might reasonably have been foreseen as a consequence.</b></i></p>
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## STEP 2: Reasonable foreseeability and the foreseeable plaintiff

If no established category, is the allegedly negligent conduct the positive act of a private individual causing bodily injury? If so, then you need to establish that the **risk was reasonably foreseeable** to the class of plaintiff (*Chapman v Hearse*) and the type of injury (*Sydney Water v Turano*)

- Someone in D's position could reasonably foresee that their conduct holds a risk of injury to a class of people to which P belongs if care is not taken

<p><i>Chapman v Hearse</i> (1961) 106 CLR 112</p> <p><i>Class of plaintiff</i></p>	<ul style="list-style-type: none"> <li>- Dark and stormy night</li> <li>- D1, Chapman driving carelessly and collides with another vehicle + is thrown from the car</li> <li>- Plaintiff, Dr Cherry, is a medical doctor driving on the road + goes to the aid of Chapman</li> <li>- Defendant 2, Hearse is driving along the road too fast - he strikes and kills Dr Cherry</li> <li>- Plaintiff's family bring action to claim compensation for wrong to their family member</li> <li>- Plaintiff originally sues Hearse             <ul style="list-style-type: none"> <li>o Hearse sues Chapman whose original driving caused the chain of events</li> </ul> </li> </ul>
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	<p><b>Decision:</b> the risk was reasonably foreseeable</p> <p><i>“it is sufficient if it appears that injury to a class of persons of which he was one might reasonably have been foreseen as a consequence”</i></p>
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<p><i>Sydney Water Corporation v Turano (2009) 239 CLR 51</i></p> <p>Type of injury</p>	<ul style="list-style-type: none"> <li>- Plaintiff, Mrs Turano</li> <li>- Defendant 1 – Sydney Water</li> <li>- Defendant 2 – Council</li> <li>- 1980s – Sydney water lays water pipe across a culvert (ditch) running parallel to the road</li> <li>- In 2000s - plaintiff and their family driving on the road and tree falls directly on their car – Mr Turano is killed</li> <li>- Reason for tree falling: water pipe blocked water + hence, caused water to gather – led to the rotting of the tree roots</li> <li>- Tree was growing on land owned by the council</li> <li>- Trial judge found local council liable – these decisions reversed by NSW Court of Appeal – Sydney Water found liable</li> <li>- Sydney water appealed to the High Court</li> </ul> <p>Whether the council is responsible, based on their conduct for the eventual injury of the Turano family?</p> <p><b>Decision:</b> Sydney Water had not legal duty of care to the Turanos</p> <p><i>“Reasonably foreseeability of the class of injury is an essential condition of a legal obligation to take care for the benefit of another.”</i></p> <p><i>“The point to be made is that the laying of the water main in this location <b>did not create an immediate risk of harm to road users</b>. The <b>temporal relation</b> between Sydney Water’s conduct and Mrs Turano’s injury was relevant to the determination of whether the relationship between them gave rise to a duty.”</i></p>
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**STEP 3:** If not, then you have either: complex duty scenario or pure mental harm case

*Reasonably foreseeability is a necessary but not sufficient condition for establishing duty of care*

**‘Foreseeability is not enough’ (Sullivan v Moody)**

- *Sullivan v Moody:*
  - o Rejects proximity formula – searches for salient features
  - o Sometimes there is no duty of care
    - Fact that something is foreseeable OR there is a sufficient relationship, does not necessarily make someone have a duty of care
- Civil Liability Act doesn’t articulate any test for complex duty cases
- What approach to use:
  - o Look at **salient features** of D’s relationship to P
- Salient features:
  - o D’s control or creation of risk
  - o D’s assumption of responsibility for risk
  - o P’s vulnerability to and/or reliance on D
  - o D’s conflicting duties/coherence/’policy’
- **Complex duty involves:**
  - o

# STEPS for complex duty

## Introduction

- Reasonable foreseeability is a necessary but not sufficient condition for establishing a duty of care in this case (*Sullivan v Moody*).
- A complex duty analysis is required.

## Sub-heading 1: reasonable foreseeability

- Paragraph A: was the risk reasonably foreseeable in the sense that it was a “real risk” (*Chapman v Hearse*) or a “real and not far-fetched possibility” (*Sullivan v Moody*)?

## Sub-heading 2: salient features analysis

- Paragraph A:
  - o Salient feature X is present because...
- Paragraph B:
  - o Salient feature Y is present because...
- Paragraph C:
  - o Salient feature Z is present because...
- Paragraph D: weigh the salient features, arriving at a working hypothesis about whether D owed P a duty of care

## Sub-heading 3: policy reasons (if relevant)

- Paragraph A: there is policy reason X to find that D didn't owe P a duty of care
- Paragraph B: if your working hypothesis is that D owed P a duty, consider whether policy reason X is enough to reject that working hypothesis

## Sub-heading 4: conclusion

- D did/did not owe P a duty of care

## Complex duty cases

### Intro to salient features: foreseeability isn't enough, hence, salient features

<i>Sullivan v Moody</i>	<ul style="list-style-type: none"><li>- Plaintiffs are parents of the children</li><li>- Defendants: medical practitioners and others who have statutory duty to investigate child sex abuse</li><li>- Claim brought against defendants – they were careless in their management of information when investigating sexual abuse and hence had impacts of social exclusion + mental illness of the P's</li><li>- Plaintiffs brought case saying D's owed duty of care to children and the parents</li><li>- Established that 'foreseeability is not enough' (salient features needed)</li></ul> <p><b>Decision:</b> Plaintiffs unsuccessful in claiming D owed Duty of care</p> <p><i>“But if a suggested duty of care would give rise to inconsistent obligations, that would ordinary be a reason for denying that the duty exists.”</i></p> <p><i>“Foreseeability is not enough”</i></p> <p><i>“Considering whether the persons who reported their suspicions about each appellant owed that appellant a duty of care <b>must begin from the recognition that those who made the report had other responsibilities. A duty of the kind alleged should not be found if that duty would not be compatible with other duties which the respondents owed.</b>”</i></p>
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## Incident foreseeable

<b>Godfrey v NSW (2004)</b>	<ul style="list-style-type: none"><li>- Prisoner escaped jail and entered news agency where pregnant P was working</li><li>- Prisoner held P at gunpoint and demanded money</li><li>- P suffered shock and 8 days later gave birth to child who suffered disabilities brought about by his premature birth</li></ul> <p><b>Decision:</b> no established duty of care owed by a prison authority to prevent harm caused by an escaped prisoner beyond the immediate vicinity of a jail</p> <p><i>“the duty it would appear is owed to the public at large”</i></p>
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## D's control or creation of risk

<b>Donoghue v Stevenson</b>	<ul style="list-style-type: none"><li>- Defendant, Stevenson, is the manufacturer of opaque bottles of ginger beer – these are sold to distributors and then shopkeepers</li><li>- Plaintiff, Mrs Donoghue was given a ginger beer by her friend bought from a shop</li><li>- Mrs Donoghue consumes ginger beer, pouring it into a cup – she comes across a decomposed snail</li><li>- Plaintiff suffers from gastroenteritis + sues for negligence</li></ul> <p><b>Decision:</b> P successful in the appellate court, Stevenson created and controlled the risk</p> <p><i>“the manufacturer, or indeed the repairer, of any article entirely from contract, owes a duty to any person by whom the article is lawfully used to see that it has been carefully constructed...”</i></p> <p><i>“it may be a good general rule to regard the responsibility as ceasing when control ceases”</i></p> <p>Your neighbour is <i>“persons who are <b>so closely and directly affected by my act</b> that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”</i></p>
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<b>Modbury Triangle Shopping Centre Pty Ltd v Anzil (2000) 205 CLR 254</b>	<ul style="list-style-type: none"><li>- P (first respondent) employed in video shop in a shopping centre</li><li>- P went out to his car at end of shift at night (where lights were turned off in the car park) and was brutally beaten by three people</li><li>- P sued proprietor of shopping centre</li><li>- P successful in trial and appeal to SA Full Court</li></ul> <p>Whether D (the proprietor of the shopping centre) owed a duty of care relevant to the kind of harm suffered by P?</p> <p><b>Decision:</b> D successful in appeal to High Court – Modbury was not liable because they cannot control a third party</p> <p><i>“The <b>control</b> and <b>knowledge</b> which form the basis of an occupier’s liability in relation to the physical state or condition of land are absent when one considers the possibility of criminal behaviour on the land by a stranger.”</i></p> <p><i>“The <b>unpredictability of criminal behaviour</b> is one of the reasons why, as a general rule, and in the absence of some special relationship, <b>the law does not impose a duty to prevent harm to another from the criminal conduct of a third party, even if the risk of such harm is foreseeable.</b>”</i></p>
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<b>Sydney Water Corporation v Turano</b>	<ul style="list-style-type: none"><li>- Plaintiff, Mrs Turano</li><li>- Defendant 1 – Sydney Water</li><li>- Defendant 2 – Council</li></ul>
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