

LA TROBE TORT LAW - NEGLIGENCE

Duty → Breach → Damage/Causation/Remoteness → Defences → Remedies → Week 12

How to use this document: for each exam issue, use the subsection in order. Start with the definition, check the elements, write the statute-first rule, use the cases as authority, apply the examples/non-examples, then adapt the IRAC template. The IRAC templates are intentionally close to full answer paragraphs; replace bracketed parts with exam facts and delete irrelevant alternatives.

Negligence map

Stage	Exam question	Consequence
1. Duty of care	Did D owe P a legal duty to take reasonable care against this kind of harm?	If no duty, the claim fails for that defendant/harm. If duty exists, move to breach.
2. Breach of duty	Did D fall below the required standard of reasonable care?	If no breach, claim fails even if harm occurred. If breach exists, move to damage.
3. Damage / causation / remoteness	Has P suffered legally recognised harm, did D's breach cause it, and is it within scope?	If any sub-gate fails, D is not liable for that harm.
4. Defences	Can D reduce or defeat liability?	Contributory negligence usually reduces; volenti/immunity may defeat.
5. Remedies	What compensation is available and how is it classified/calculated?	Identify each head of loss and statutory limits.
6. Week 12	Can another party be liable or can liability be distributed?	Analyse vicarious liability, direct liability, non-delegable duty, contribution/proportionate liability.

HD writing rule

Never write only "D was negligent". Write the gate, the test, the statute/case, the facts that satisfy or defeat each requirement, and the consequence. Always separate each plaintiff, defendant and harm.

1. DUTY OF CARE

Definition: Duty of care asks whether the law recognises a relationship requiring D to take reasonable care to avoid the type of harm suffered by P. It is a legal responsibility question, not a carelessness question. Breach asks whether D failed to meet the duty; duty asks whether D had the obligation at all.

Exam trigger: Duty is triggered in every negligence problem. You must identify the plaintiff, defendant, and harm before choosing the correct duty pathway. The harm matters because D may owe a duty for physical injury but not necessarily for pure economic loss or pure mental harm.

Duty pathway	When to use	Examples
Established category	Use where precedent already recognises this D/P relationship and harm type.	Driver-road user, school-student, doctor-patient, occupier-entrant.
Novel duty	Use where no established category clearly covers the facts.	Older sibling supervising child, new technology harm, unusual third-party reliance.
Special duty	Use where the law restricts duty despite foreseeability.	Pure economic loss, pure mental harm, public authority/statutory power, omissions.

1A. Established duty categories

Definition: An established duty category exists where case law already recognises that this type of defendant owes this type of plaintiff a duty of care for this type of harm. It is not enough to say "duty exists"; you must name the category, cite the authority, and still check whether the particular harm is within the content and scope of that duty.

Elements/workflow to establish an established duty:

1. Identify D and P.
2. Identify the harm type.
3. Match the relationship to a recognised category.
4. Cite the case that establishes that category.
5. Check the content/scope: does this duty cover this risk and this harm?

6. If yes, state duty is likely and move to breach.

Relevant statute: There is no single Wrongs Act section creating all established duties. The ordinary duty categories are mainly common law. Statutes may still refine specific categories: s 14B for occupiers, ss 57–60 for professionals/special skill, s 83 for public authorities, and ss 67–75 for mental harm. Use the statute only where the facts trigger it.

Donoghue v Stevenson [1932] AC 562 — manufacturer/consumer and neighbour principle

Brief facts: A consumer became ill after drinking ginger beer allegedly containing a decomposed snail. She had no contract with the manufacturer.

Outcome: The House of Lords allowed the negligence claim to proceed.

Legal point: A manufacturer can owe a duty to ultimate consumers where the product is intended to reach them without intermediate inspection. The case also provides the neighbour principle: take reasonable care to avoid acts or omissions foreseeably likely to injure persons closely and directly affected.

Use when: Product safety, manufacturer-consumer duty, general duty foundation.

Exam sentence: As established in Donoghue v Stevenson, a manufacturer owes a duty to consumers closely and directly affected by defective products intended to reach them without intermediate inspection.

Chapman v Hearse (1961) 106 CLR 112 — road users/rescuers

Brief facts: Chapman negligently crashed. Dr Cherry stopped to help and was struck by Hearse, another negligent driver.

Outcome: Chapman could still be liable despite Hearse's later negligence.

Legal point: A defendant need not foresee the precise sequence of events; it is enough that injury to a class including P was reasonably foreseeable. Rescuers may be within the foreseeable class.

Use when: Road accidents, rescuers, chain of events, later negligent acts.

Exam sentence: As established in Chapman v Hearse, D need not foresee the precise manner of injury; it is enough that injury to a class including P was reasonably foreseeable.

Australian Safeway Stores Pty Ltd v Zaluzna (1987) 162 CLR 479 — occupier/entrant

Brief facts: A customer slipped on a wet supermarket floor.

Outcome: The High Court treated occupier liability under ordinary negligence principles.

Legal point: Occupiers owe entrants reasonable care in relation to foreseeable risks arising from the state of the premises.

Use when: Shops, campuses, cafés, houses, public premises, slips/trips.

Exam sentence: As established in Zaluzna, an occupier owes lawful entrants a duty to take reasonable care to avoid foreseeable injury from premises hazards.

McLean v Tedman (1984) 155 CLR 306 — employer/employee

Brief facts: A garbage collector was injured while working and the employer argued employee carelessness.

Outcome: The High Court emphasised the employer's duty to provide a safe system of work and to anticipate employee inadvertence.

Legal point: Employers owe employees a strong duty to provide safe systems, equipment and supervision.

Use when: Workplace injuries and unsafe work systems.

Exam sentence: McLean v Tedman establishes that an employer must take reasonable care for employee safety and may need to anticipate ordinary worker inadvertence.

Commonwealth v Introvigne (1982) 150 CLR 258 — school/student

Brief facts: A student was injured when a school flagpole collapsed.

Outcome: The school authority owed a non-delegable duty to ensure reasonable care was taken for pupil safety.

Legal point: Schools owe students a protective duty because students are under school supervision and control.

Use when: School injuries, excursions, supervision failures, contractors in school activities.

Exam sentence: Under Introvigne, a school owes pupils a protective duty to ensure reasonable care is taken for their safety while under school supervision.

Rogers v Whitaker (1992) 175 CLR 479 — doctor/patient

Brief facts: A surgeon failed to warn of a small but serious risk of sympathetic ophthalmia affecting the patient's good eye.

Outcome: The doctor breached the duty to warn of material risks.

Legal point: Doctors owe patients a duty of reasonable care and skill, including warning of material risks; professional practice is not conclusive in warning cases.

Use when: Medical treatment, informed consent, material risk warnings.

Exam sentence: Rogers v Whitaker establishes that doctors owe patients a duty to exercise reasonable care and warn of material risks a reasonable patient would attach significance to.

Hedley Byrne v Heller [1964] AC 465 — professional/adviser to known reliant party

Brief facts: A bank gave a credit reference that was relied upon; the reference was inaccurate but given with a disclaimer.

Outcome: Duty for negligent misstatement was recognised in principle, but the disclaimer defeated liability.

Legal point: A duty may arise where D assumes responsibility for information/advice and P reasonably relies.

Use when: Advice/information causing economic loss.

Exam sentence: Hedley Byrne supports a duty for negligent misstatement where D assumes responsibility and P reasonably relies, subject to disclaimers.

New South Wales v Bujdoso (2005) 227 CLR 1 — prison authority/prisoner

Brief facts: A prisoner was attacked by other prisoners and argued the authority failed to protect him.

Outcome: The High Court recognised a duty of care owed by prison authorities.

Legal point: Custodial authorities owe prisoners reasonable care because prisoners are under their control and cannot fully protect themselves.

Use when: Prisoner safety and state control.

Exam sentence: Bujdoso establishes that prison authorities owe prisoners a duty to take reasonable care against foreseeable harm, including harm by other prisoners.

Type	Example and why
Met example	A supermarket customer slips on an uncleaned spill. This fits occupier/entrant under Zaluzna, so duty is likely established.
Not met example	A business loses profits because traffic near a shopping strip was delayed by a car accident. Driver/road user duty does not automatically establish a duty for pure economic loss; special duty analysis is required.

HD IRAC template — Established duty

Issue	The issue is whether [D] owed [P] a duty of care for [harm]. This appears to fall within an established duty category because [relationship].
Rule	There is no single Wrongs Act provision creating ordinary duties of care; established duty is mainly common law. An established category exists where precedent recognises that this type of D owes this type of P a duty for this type of harm. The relevant category is [category]. In [case] ([year]), the court held that [case principle]. The duty must still be confined to its content and scope: it must cover [this plaintiff/class] and [this kind of harm].
Application	Here, [D] was [role] and [P] was [role], so the relationship is analogous to [case/category]. The harm is [physical injury/property damage/etc], which is the kind of harm this duty is directed at preventing. [P] will argue duty is straightforward because [facts showing category, control, reliance, premises, supervision, treatment, employment]. [D] may argue the harm is outside the scope because [harm too remote/special harm/economic loss/mental harm/statutory function]. That argument is [weak/strong] because [explain].
Conclusion	Therefore, [D] likely owed [P] a duty of care under the established category of [category]. The analysis moves to breach. Alternatively, although a general duty exists, it may not extend to [specific harm], so a special/novel duty analysis may be required.