

LAWS1030/LAWS5024 TORTS

Final Exam Scaffold

Concise edition

2025

PART A
FOUNDATIONS
Topics 1–2

PART B
TRESPASS AND NUISANCE
Topics 3–7

PART C
NEGLIGENCE
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PART D
VICARIOUS AND CONCURRENT
LIABILITY
Topics 15–16

How to read this scaffold

11 Apportionment under the LRMPA 1965

- At common law contributory negligence was a **complete defence** (*Butterfield v Forrester*)
 - Now the claim survives and **damages are reduced**.
 - (a) does not defeat the claim **LRMPA 1965 s 9(1)(a)**
 - (b) damages reduced as just and equitable **LRMPA 1965 s 9(1)(b)**
 - (c) contract defence not defeated **LRMPA 1965 s 9(2)**
 - (d) damages not to exceed maximum limit **LRMPA 1965 s 9(3)**
- WEIGH
- (a) comparative culpability
 - (b) relative causal potency
- *Pennington v Norris* night pedestrian struck → **reduction cut**
 - *Butterfield v Forrester* fast rider hits pole → **barred**

Red: the words the answer needs.

Navy italic: a case. Green: a section.

Green tint: the Act's own words.

The label says how the list works: all required, any one of, weigh, in order.

Grey: the case in a line. Yellow: the fact it turned on. Arrow: the result.

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PART C · NEGLIGENCE

Negligence: breach of duty

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1 Pick the right standard first

- Breach asks how much care D had to take and whether D **fell below** it. It is a **question of fact**, so only principles and reasoning carry over. Start with **CLA s 5B** and **CLA s 5C**
- Route professionals through **CLA s 5P** and **CLA s 5O**.

IN ORDER

- (a) is D a professional
- (b) duty to warn of risk **CLA s 5P**
- (c) claim within its scope **CLA s 5O**

2 The objective standard of the reasonable person

- D is held to the **objective standard** of the reasonable person **in D's position**, not D's own best efforts (*Vaughan v Menlove* at 474–475 (Tindal CJ)). Negligence is omitting what a reasonable person would do, or doing what a prudent and reasonable person would not (*Blyth v Birmingham Waterworks* at 784 (Alderson B)).
- ▶ *Bolton v Stone* cricket ball injury → **no breach**

3 Identify the risk of harm

- Before applying s 5B, define the risk at the right **level of generality**: not so specific that D escapes, not so broad it says nothing. State the **broad causal mechanism**, not the exact sequence of events (*Tapp v Australian Bushmen's*).
- ▶ *Tapp v Australian Bushmen's* horse slipped on arena → **breach**

4 Was the risk foreseeable?

- **CLA s 5B(1)(a)**: the risk must be "foreseeable (that is, it is a risk of which the person knew or **ought to have known**)". At common law a risk is foreseeable if real, even if remote, and **not far-fetched or fanciful**
- It says nothing about probability (*Wyang Shire Council v Shirt* (Mason J)).
- ▶ *Wyang Shire Council v Shirt* misleading deep water sign → **negligent**

5 Was the risk not insignificant?

- **CLA s 5B(1)(b)**: "the risk was **not insignificant**". **More demanding** than foreseeability, but not by very much (*Shaw v Thomas* at [44]).

6 Would a reasonable person have taken the precaution?

- **CLA s 5B(1)(c)**: D is negligent only if "in the circumstances, a **reasonable person** ... would have taken those precautions". The court weighs the **CLA s 5B(2)** factors "**amongst other relevant things**", broadly codifying the common law calculus (*Wyang Shire Council v Shirt* at [47] (Mason J)).

WEIGH

- (a) probability of harm **CLA s 5B(2)(a)**
- (b) likely seriousness of the harm **CLA s 5B(2)(b)**
- (c) burden of taking precautions **CLA s 5B(2)(c)**
- (d) social utility of the activity **CLA s 5B(2)(d)**
- (e) common law: risk against alleviating action

7 Probability of harm

- A reasonable person does not guard against **every foreseeable risk**
- A **very small probability** can make costly precautions disproportionate (*Bolton v Stone*). But a small risk removable with no difficulty, disadvantage or expense should be removed (*Wagon Mound (No 2)* (Lord Reid)).
- ▶ *Commonwealth v Introvigne* falling flagpole hit schoolboy → **liable**

8 Seriousness of harm and vulnerable plaintiffs

- The more serious the potential harm, the **more care required**. Where D knows or ought to know harm to a particular P would be more serious, D must take **extra precautions** for that P (*Paris v Stepney Borough Council*).
- ▶ *Paris v Stepney Borough Council* one-eyed worker without goggles → **liable**

9 Burden of precautions and similar risks

- The burden includes **cost, difficulty and inconvenience**, and under **CLA s 5C(a)** "includes the burden of taking precautions to avoid **similar risks of harm** for which the person may be responsible". Judge it looking forward from D's position across all similar places, not with hindsight from P's accident (*Romeo v Conservation Commission of the Northern Territory* at [123] (Kirby J)).
- ▶ *Romeo v Conservation Commission of the Northern Territory* unfenced cliff fall → **no breach**