

JURD7161 Torts

Master Cheat Sheet

The whole negligence action on one map + element quick-refs,
numbers & traps

The negligence action , run it in order

MASTER FLOW (every problem)

1. **0. CLA apply?** s 3B (not intentional/sexual/motor accidents/workers comp). Name P, D, the harm.
2. **1. DUTY** , established category (*Donoghue*) OR salient features (*Sullivan v Moody*) OR special category (mental harm ss 30-33 / PEL *Perre/Esanda* / public authority ss 41-44 / occupier *Zaluzna* + 3rd-party *Modbury*).
3. **2. BREACH** , standard (who is D? *McHale/Carrier/Imbree/Rogers*+s 5O/5P) then calculus **s 5B** (foreseeable + not insignificant + reasonable precautions, prospectively; probability/seriousness vs burden/utility).
4. **3. CAUSATION** , factual **s 5D(1)(a)** (*Strong; March v Stramare* limits; s 5D(2) exceptional *Amaca v Booth/Chappel v Hart*; s 5E onus) then scope **s 5D(1)(b)** (novus actus *Chapman*; remoteness *Wagon Mound*; eggshell *Nader*; s 5D(4)).
5. **4. DAMAGE** , actual recognised harm (s 5).
6. **5. DEFENCES** , CN (s 5R; apportion *Podrebersek*; s 5S up to 100%) ; volenti/obvious risk (ss 5F-5H) ; DRA (s 5L) , complete defences.
7. **6. DAMAGES** , economic (ss 12-15: capacity *Graham v Baker*, net *Cullen*, vicissitudes ~15% *Malec/Wynn*, 5% discount s 14, care s 15) + NEL (s 16: 15% threshold, scale, \$722k cap).
8. **Separate torts:** private nuisance ; breach of statutory duty (5 elements) ; vicarious liability + non-delegable duty.

3 Kind of harm	the statute's mischief (<i>Gorris</i> ; <i>Mummery</i>).
4 Breach	often strict/absolute (<i>Galashiels</i>); duty must be on this D (<i>Darling Island</i>); s 5B if negligence-based.
5 Causation	but-for / material contribution (<i>John Pfeiffer</i>).

Issue	Whether occupiers' liability still ran through the old common-law entrant categories, or whether the occupier owed an ordinary negligence duty of reasonable care.
Rule	An occupier owes a single duty under ordinary negligence principles to take reasonable care to avoid a foreseeable risk of injury to an entrant; the special categories (invitee, licensee) are subsumed into general negligence (the Court applying its earlier reasoning in <i>Hackshaw v Shaw</i>).
Application	As occupier of premises to which the public was invited, Safeway owed Mrs Zaluzna a duty of reasonable care; the existence of a duty did not depend on slotting her into an entrant category.
Conclusion	Duty established on ordinary principles; the case is the leading Australian authority that occupiers' liability is now just negligence.
<i>AX v Ashfield Municipal Council</i> [2012] NSWDC 32 (confirm on AustLII) , Mental harm	
Procedure	NSW District Court.
Facts	P claimed pure psychiatric injury and the case turned on whether the s 32 duty gateway and the s 30 / damages limits in CLA Part 3 were satisfied.
Issue	Application of CLA Part 3 (s 32 duty and the s 30 damages restrictions) to a pure mental-harm claim.
Rule	A claimant for pure mental harm must clear the s 32 normal-fortitude foreseeability gateway and, for damages, the relevant s 30 limits; both must be satisfied.
Application	The Court worked through the Part 3 provisions on the facts to decide whether a duty arose and whether the damages limits applied.
Conclusion	A first-instance worked example of Part 3. (Confirm precise facts, holding and citation on AustLII before relying on it.)
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	loss, and can the lump-sum rule be changed judicially?
Rule	Lord Scarman: the once-and-for-all lump sum is the established common law rule and only Parliament can change it; 'knowledge of the future being denied to mankind', the award for future loss 'will almost surely be wrong... the future will prove the award to be either too high or too low'.
Application	The trial judge's itemised, then record, award stood; careful itemisation guarded against the alleged double-counting of earnings and care. The Lords accepted the inherent inaccuracy as the price of the lump-sum form.
Conclusion	D's appeal failed. The leading judicial admission that lump sums are structurally wrong for catastrophic injury; it anchors the no-fault, periodical-payment and CLA-caps debate and the empirical 'lump sum runs out' critique.