

JURD7161 Torts

Case Book (A-Z)

117 cases, full P-FIRAC, alphabetical with A-Z dividers

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HOW TO USE

Alphabetical; flip to the letter. Each card is full **P-FIRAC** (Procedure, Facts, Issue, Rule, Application, Conclusion). The **topic** it belongs to is appended to the citation, so you know which element it argues.

For the doctrine flow and which case to cite where, use the Theory Book and the Cheat Sheet.

A

<i>Adeels Palace Pty Ltd v Moubarak</i> (2009) 239 CLR 420 , Occupiers' liability and duty to third parties	
Procedure	HCA (unanimous), appeal from the NSW Court of Appeal; patrons sued a restaurant occupier after a shooting.
Facts	A dispute at a New Year's Eve function at Adeels Palace escalated; a patron left, returned with a gun and shot two people. The venue had no security guards.
Issue	Whether the occupier owed and breached a duty to provide security to protect patrons from the criminal acts of other patrons, and causation.
Rule	An occupier may owe patrons a duty of reasonable care for their safety, but that duty does not ordinarily extend to preventing the criminal conduct of others unless the risk was such that a reasonable occupier would guard against it; here causation under s 5D Civil Liability Act also failed because security would not necessarily have prevented a determined gunman.
Application	Even assuming a duty and breach, the plaintiffs could not show that the absence of security guards was a necessary condition of the harm; a determined armed attacker could well have shot regardless.
Conclusion	Appeal allowed, claims failed; the decision reinforces <i>Modbury</i> on third-party crime and shows causation as a second hurdle.
<i>Agar v Hyde</i> (2000) 201 CLR 552 , Defences #2: Voluntary assumption of risk & dangerous recreational activity	
Procedure	Appeal to the High Court.
Facts	Adult rugby players injured in scrums sued the international rule-makers.
Issue	Did the distant rule-makers owe a duty, and did the players assume the risk?
Rule	No duty rested on the remote rule-makers, and adults who choose to play accept the inherent risks of the game.
Application	Voluntary participation carries the inherent, not the negligent, risks.
Conclusion	No liability.
<i>Alcock v Chief Constable of South Yorkshire Police</i> [1992] 1 AC 310 , Mental harm	
Procedure	Appeal to the House of Lords arising from the Hillsborough stadium disaster litigation.
Facts	96 people were crushed to death at Hillsborough due to police negligence. Relatives and friends who saw the events live on television, attended the stadium, or identified bodies later claimed psychiatric injury as secondary victims.
Issue	What limits the duty owed to secondary victims of a shocking event.
Rule	Recovery for secondary victims requires close ties of love and affection with the primary victim, proximity in time and space to the event or its immediate aftermath, and perception by one's own unaided senses. TV broadcasts did not satisfy the proximity / perception requirement.
Application	Most claimants failed: some lacked the requisite close relationship, others were not proximate to the event or perceived it only through television, and identifying bodies hours later was not the immediate aftermath.

F

Fallas v Mourlas [2006] NSWCA 32 , Defences #2: Voluntary assumption of risk & dangerous recreational activity

Procedure	NSW Court of Appeal (split).
Facts	A group spotlighting kangaroos; the plaintiff held the light; a companion, mishandling a handgun in the car after being told to be careful, shot him in the leg.
Issue	Was being shot by a companion an obvious risk of the dangerous recreational activity (s 5L)?
Rule	Even if the activity is dangerous, the specific risk (being shot by a companion carelessly handling a firearm in the vehicle) was not obvious to the plaintiff.
Application	Characterised narrowly, the risk was not obvious to Mourlas.
Conclusion	s 5L did not bar the claim.

Fearn v Board of Trustees of the Tate Gallery [2023] UKSC 4 , Private nuisance

Procedure	UK Supreme Court. Mann J dismissed at trial; the Court of Appeal dismissed on different reasoning; the UKSC allowed the appeal 3:2 and remitted for remedy.
Facts	The Tate Modern opened a public viewing platform on its 10th floor giving 360-degree views of London. It overlooked the Neo Bankside flats, which had floor-to-ceiling glass walls; hundreds of thousands of visitors a year could look directly into the flats, some photographing and posting them. The flat owners sued in private nuisance for an injunction.
Issue	Can mere overlooking (visual intrusion) amount to private nuisance, and is the test 'substantial + unreasonable' or 'substantial + not common and ordinary use'?
Rule	Lord Leggatt for the majority: overlooking is capable of being a private nuisance, and the test is whether D's use of land is a 'common and ordinary use' for the locality (reviving Bramwell B in <i>Bamford v Turnley</i>); if it is not, a substantial interference is actionable, and D takes P as found, so the glass-wall design was no answer.
Application	A public viewing platform drawing hundreds of thousands of visitors was not a common and ordinary use of museum land in that locality, so the substantial visual intrusion into the flats was actionable.
Conclusion	Appeal allowed 3:2, remitted for remedy. Significant in the UK but expressly NOT followed in Australia by <i>Hunt Leather</i> ; in Australia overlooking by itself is unlikely to ground nuisance and the 2024 statutory privacy tort is the better route.

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Flight Centre Ltd v Louw [2011] NSWSC 132 , Mental harm

Procedure	NSW Supreme Court.
Facts	P claimed psychiatric injury arising in the employment context; the case engaged the CLA Part 3 mental-harm provisions and the foreseeability of psychiatric injury to the employee.
Issue	Whether a duty to avoid pure mental harm was owed under s 32 on the facts and how Part 3 applied.

L

L Shaddock & Associates Pty Ltd v Parramatta City Council (1981) 150 CLR 225 , Pure economic loss

Procedure	High Court of Australia, on appeal; claim by a developer against a council.
Facts	A developer's agent sought information from the council about road-widening proposals affecting a property before purchase. The council's certificate and a telephone answer wrongly indicated no proposal; the developer bought and suffered loss when the land was affected by widening.
Issue	Does a public authority owe a duty of care for a negligent misstatement of information it gives on request, knowing it is likely to be relied on?
Rule	The Hedley Byrne principle applies to negligent provision of information, not just advice. A duty arises where a person who has special knowledge or means of knowledge gives information on a serious matter, knowing or ought to know the recipient intends to rely on it, and it is reasonable for the recipient to do so.
Application	The council held the information and gave it on request knowing it would be relied on for the purchase; reliance was reasonable, so a duty was owed for the negligent answer.
Conclusion	The developer succeeded on the misstatement duty. The case confirms that a public body giving specific information to a specific person who relies can owe a duty despite its public role.

Leakey v National Trust [1980] QB 485 , Private nuisance

Procedure	English Court of Appeal. Ps succeeded at trial; D's appeal dismissed.
Facts	D owned land including Burrow Mump, a natural earth mound prone to landslips. The mound slipped onto Ps' neighbouring property and caused damage. Ps had notified D of the risk in advance and D did nothing.
Issue	Does the measured duty from <i>Goldman v Hargrave</i> (fire) extend to all natural hazards on D's land, such as subsidence and landslip, or is it confined to particular categories?
Rule	Megaw LJ: the <i>Goldman</i> measured duty applies to ALL natural hazards on D's land; an occupier must take reasonable steps to abate a hazard arising on the land once they know or ought to know of it, the duty measured by D's resources, knowledge and physical ability.
Application	The landslip was a natural hazard D knew about after Ps' warning; doing nothing breached the measured duty even though the hazard was not of D's making.
Conclusion	D liable; appeal dismissed. Generalises <i>Goldman</i> across natural hazards (subsidence, landslip, accumulations) and was followed in Australia in <i>Stockwell v Victoria</i> .

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Lederer Group Pty Ltd v Hodson [2024] NSWCA 303 , Mental harm

Procedure	Appeal to the NSW Court of Appeal (Ward P, Leeming JA, Basten AJA) from the District Court, which had found a duty owed, breached and causative (liability split 85% Lederer / 15% Hurex).
Facts	A fatal accident at the Corrimal Shopping Centre loading dock (an elderly man run over by a truck on 26 Oct 2020). P, a worker present at the centre, was

S

<i>Sedleigh-Denfield v O'Callaghan</i> [1940] AC 880 , Private nuisance	
Procedure	House of Lords. P succeeded at trial; the Court of Appeal reversed for D; the HL restored judgment for P.
Facts	A trespassing local authority laid a culvert on D's land but installed it without a protective grate. D's manservant knew of the defect but did nothing. In a heavy storm the culvert blocked with leaves, overflowed and flooded P's neighbouring land.
Issue	Where a nuisance is created by a trespasser (or by natural causes), can the occupier be liable for continuing or adopting it?
Rule	An occupier 'continues' a nuisance if, with knowledge of it, they fail to take reasonable steps to abate it, and 'adopts' it if they make use of the thing; the knowledge of a responsible servant is attributable to the occupier.
Application	D's manservant's knowledge was attributed to D, who had a reasonable opportunity to clear or grate the culvert and failed to do so, which amounted to continuing the nuisance created by the trespasser.
Conclusion	D liable; trial judgment restored. The foundational case for continuer liability and for nuisance by omission; the start of the <i>Goldman / Leakey / Stockwell</i> measured-duty chain.
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<i>Singh bhmf v Lynch</i> [2020] NSWCA 152 , Defences #2: Voluntary assumption of risk & dangerous recreational activity	
Procedure	NSW Court of Appeal (majority).
Facts	Two professional jockeys; the defendant rode in breach of the racing rules, causing contact and injuring the plaintiff.
Issue	Is professional race-riding a dangerous recreational activity, and was the risk obvious (s 5L)?
Rule	Professional horse racing is a recreational activity (<i>Goode v Angland</i>); the risk of a fall from another jockey breaching the rules is obvious, because rule-breaches occur often enough, even though this conduct was 'unexpected, unreasonable and unnecessary'.
Application	Characterised as a rule-breach causing a fall, the risk was obvious.
Conclusion	s 5L barred the claim (special leave to the HCA refused).
<i>Smith v Leurs</i> (1945) 70 CLR 256 , Occupiers' liability and duty to third parties	
Procedure	HCA, appeal in a negligence action against the parents of a child who injured another child.
Facts	A boy fired a stone from a shanghai (slingshot) and injured another child; the parents had warned him not to use it dangerously.
Issue	Whether and when one person owes a duty to control the conduct of another so as to prevent harm to a third party.
Rule	Dixon J: as a general rule one is not responsible for harm caused by the deliberate or independent act of another; a duty to control another arises only in special relationships (such as parent and child), and even then it is a duty of reasonable supervision.