

NEGLIGENCE

"I advise [PL] to sue [D] in negligence for damages."

"Negligence" means failure to exercise reasonable care (s43 Wrongs Act).

GENERAL INTRO;

"PL must prove (on the BoP) that...."

D owed PL a DoC. PL must also prove that D breached this DoC by falling below the standard of a reasonable [person/board/doctor], that this breach was a cause of the PL's injury, and it was not too remote.

NB: ** Did the parties have a contract??

- *"Just because P can sue for breach of contract does not exclude a right of action in negligence" (Lord Macmillan in Donoghue).*

DUTY OF CARE

Did [defendant] owe [PL] a DoC?

1. There is a general DOC to avoid causing harm to others by carelessness (*Donoghue v Stevenson*).

Additionally, there is a presumption that a DOC will exist in cases involving personal injury or property damage caused by a positive act (*Sutherland*).

****** DOES THIS RELATIONSHIP FALL INTO AN ESTABLISHED DUTY CATEGORY??**

IF SO, BANG THAT OUT AND MOVE ONTO BREACH****

(Parents and barristers)

2. As the relationship between [PL] and [D] does not fall under an established DoC relationship, it is necessary to determine that D owed P a DoC in relation to the circumstances.

3. The Reasonable Foreseeability test - (*Champan v Hearse*)

The general class of persons who might be put at risk of injury if [defendant] failed to take reasonable care includes [name class]. [PL] is apart of this class, because [draw analogy]. Through this test, we can establish that the reasonable person/doctor/board/council, in the position of [defendant] would have foreseen a 'real', rather than 'far-fetched or fanciful' possibility of [general class of injury] to [the class of persons] of which P is one (*Sullivan v Moody*). Although the precise sequence of events leading to the injury was unusual [describe], the harm is still reasonably foreseeable (*Chapman*).

- If you have an unusual Plaintiff say;
Although [name of PL] had/was [describe unusual abnormality], making her more susceptible to harm, he/she is still a reasonable person you would expect to encounter at the time of the negligence (*Hatey*), and therefore the risk of harm to him/her is foreseeable (*Caterson*)

4. Test 2 - Salient Features

This is a novel situation- therefore the court must impose a salient features test to objectively determine whether [D] owed a DoC to [PL] (*Sullivan v Moody*)

Purchase to see more....