1. Actual Harm

2. Duty of Care

The plaintiff (P) must first establish that a general duty to prevent injury to that class of plaintiffs existed.

1. Established category? (Move to breach)
A duty of care exists as the relationship (____) falls into an established category. (CAL No. 14)
   a. Road users (Bourhill v Young)
   b. Employers (Paris v Stepney Borough Council)
   c. Doctors (Rodgers v Whitaker)
   d. Teachers (NSW v Lepore)
   e. Parents (direct positive acts)
   f. Prison guards (NSW v Bujdosso)
   g. Occupier (Safeway v Zaluzna)
   h. Manufacturers of goods for consumption (Donoghue v Stevenson)

2. Special Relationship?
   a. Parent/Child (omission)
      i. Due to policy reasons and protection of autonomy, there is no general duty to take positive action to prevent harm coming to child. (Robertson v Swincer)
   b. Parents to third parties
      i. Generally, parents must take reasonable care to prevent their child causing harm to third parties. (Smith v Leurs) (this is judged in the circumstances)
   c. Occupiers to third parties
      i. Occupiers of land do not owe a duty to protect persons on their land from random attack by third parties. (Modbury)
   d. Rescuers
      i. There is no general duty to rescue (Stuart v Kirkland-Veenstra)
      ii. There may be a duty to rescue if the person professes a special skill (Lowns v Woods)
      iii. Good Samaritans are exempt from liability for acts/omissions made ‘honestly and without recklessness’ to assist those in need. (s 5 CLWA) (exc. Drugs/motor insurance)
   e. Doctors/Patients (warning)
      i. Doctors owe a duty to inform patients of ‘material risks’ (risks which they would be likely to attach significance to) (Rodgers v Whitaker)
   f. ‘Pure’ Mental Harm
      i. Statute, overriding Tame & Annetts, has now reinstated the previous common law test from Jaensch v Coffey for pure mental harm: D owes a duty if P can establish that a person of ‘normal fortitude’ might have suffered a recognised mental illness as a result of D’s failure to take reasonable care.
      ii. The courts must consider whether the harm was a result of a ‘sudden shock’, whether P witnessed the accident, the nature of the bodily injury, and the nature of the relationship between P and D, and P and the victim. (s 34 CLWA)
   g. P engaged in illegal activity
      i. No duty is owed if P was engaged in an indictable offence at the time of injury, or P’s conduct contributed materially to the risk of injury (s 94 CLWA)
      ii. A duty may be owed if P ‘withdraws’ from participation in a crime. (Miller v Miller)
   h. P intoxicated or relying on intoxicated person
      i. There is a rebuttable presumption of contributory negligence if P was intoxicated (s 95 CLWA) or over 16 and relying on an intoxicated person. (s 96 CLWA)