

Chapter 2

Negligence (tort law) - Involves harm caused by carelessness.

The elements of a negligence ACTION:

Step 1: WHEN IS A DUTY OF CARE OWED?

Did the defendant OWE a duty to the plaintiff to take reasonable care to avoid the injury that occurred?

The Test Used- From **Donoghue v Stevenson** (pg. 45):

You must take **reasonable care** to avoid acts or omissions which you can reasonably foresee would be likely to injure your **neighbour**.

Neighbour= *Persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.*

Duty of care owed by manufactures to consumers

- Grant v Australian Knitting Mills pg. 48

Duty of care owed by manufactures to innocent bystanders

The manufacture of a vehicle with faulty brakes owes a duty of care to not only the passengers in the faulty vehicle but also to other road users.

Duty of care owed by distributors of products

Retailers may owe a general duty of care

- McPhersons Ltd v Eaton pg. 49

Duty of care owed by service providers

Repairers and installers are treated in the same way as manufactures. E.g. if faulty brakes. Pg. 50

Duty of care owed by property owners

Australian Safeway Stores Pty Ltd v Zaluzna pg. 50

Acts of third Person:

- Modbury Triangle shopping centre v Anzil pg. 52
- Club Italia v Ritchie pg. 52

Duty of care owed by road users (includes motorists and pedestrians)

All road users owe a duty to take reasonable care not to cause foreseeable injury to other road users.

Duty of care – failing to act

In general, there is no duty to act to protect another person from harm. However, a special duty may arise if there is a special relationship eg school and students

Duty of care where the injury is psychological harm(mental harm)

- Jaensch v Coffey pg. 54
- Tame v NSW pg. 54
- Annetts v Australianb Stations pg. 55

PURE ECONOMIC LOSS

- Caltex oil v The Dredge Willemstad pg. 57
- Hill vs Van Erp pg. 57
- Perre v Apand pg. 58

The Test Used- From **Perre v Apand** pg. 58:

- Whether the loss suffered by the plaintiff was **reasonably foreseeable**
- The nature of the **relationship**
- Whether the plaintiff belonged to a determinate (not many plaintiff's) or indeterminate (many plaintiff's) **class**
- The **plaintiffs vulnerability**
- The defendants **knowledge** of the plaintiffs vulnerability
- Whether the defendant assumed responsibility for the **risks** being taken by the plaintiff

Step 2: WHAT STANDARD OF CARE IS OWED?

Did the defendant fail to exercise the proper standard of care?

The Test Used (balance test)- From **Wyong Shire Council v Shirt**

One must Consider the **magnitude of the risk** and the degree of **probability** of its occurrence, along with the **expense, difficulty** and **inconvenience** of taking alleviating action.

Eg. if you have a big dog you must build a big fence despite the difficulty and expense ect.

- Romeo v conservation commission of the Northern Territory pg. 64

Standard of care and the design of goods

- O'Dwyer v Leo Buring pg. 66
- Rasbora v JCL Marine

Standard of care and the production of goods

The courts accept that manufacturers are entitled to use a sampling system to check for defects because checking each individual product is inefficient.

However, there is no defence to say the consumer should have checked for defects before use.

Standard of care and the packaging of products

If a product is known to be dangerous manufacturers must take reasonable care when transporting.

- Adelaide chemical & fertiliser Ltd v Carlyle pg. 68

Standard of care and the proper labelling of products

Must warn against dangers they ought to have known about

Standard of care and the distributor/ retailer

Distributors and retailers owe a duty of care to consumers.

However, in the case of pre-packaged goods, they have no real opportunity to check for faults. Thus, a retailer is not normally expected to examine goods for defects.

However, if the retailer is aware of the damaged goods, it is expected to take corrective action.

Standard of care and the delivery of professional services

The level of care is that reasonably to be expected of a person claiming to have those skills including specialist skills.

In general, a person providing professional services is to be taken to have exercised reasonable care if it is established that the person acted in a manner that is accepted in Australia by a significant number of respected practitioners in the field.