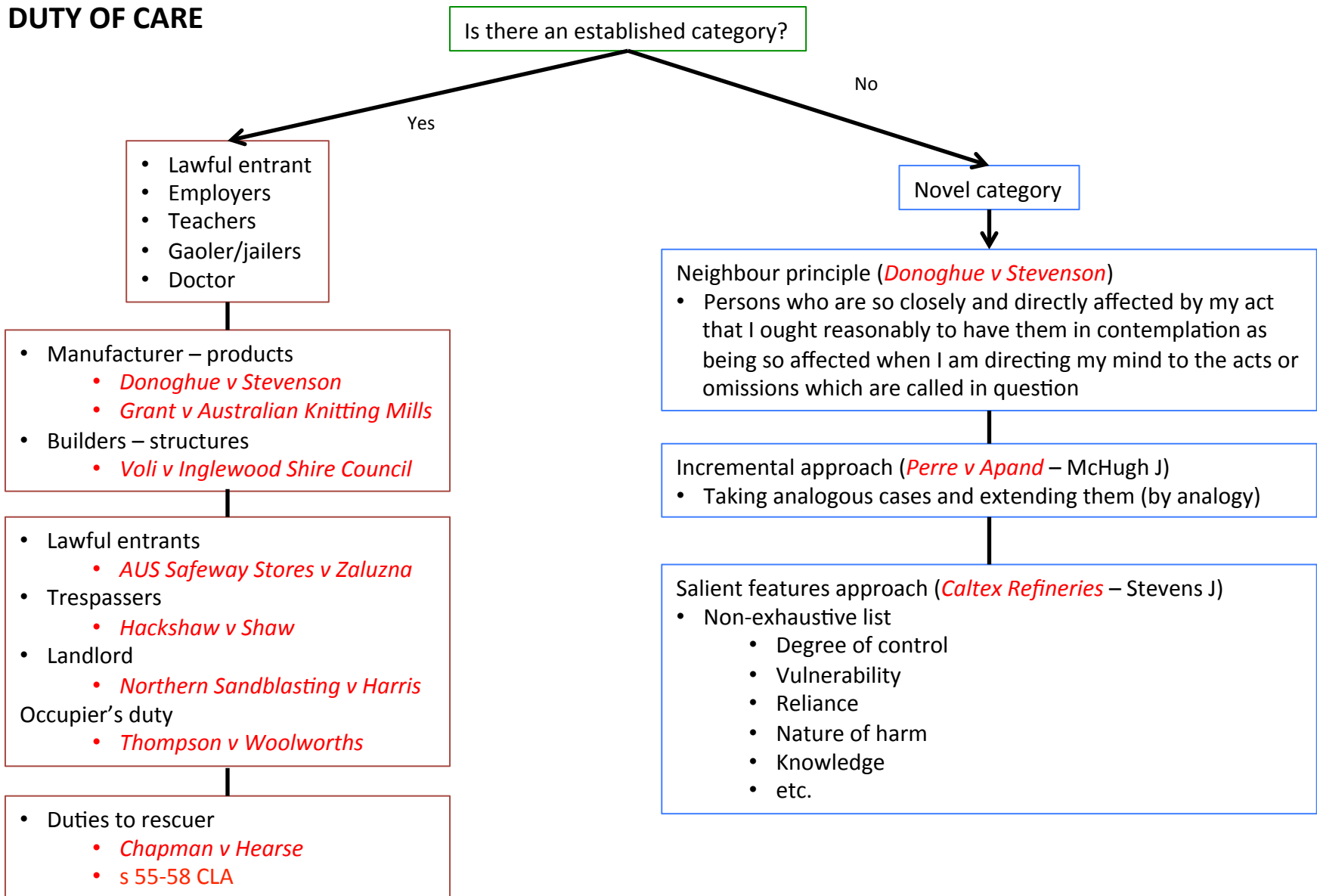


DUTY OF CARE



DUTY OF CARE – Methods to determine DoC

Neighbour principles: Persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question	<i>Donoghue v Stevenson</i>
Incremental approach by McHugh J: Taking analogous cases and extending them (by analogy)	<i>Perre v Apand</i>
Salient feature: (non-exhaustive) <ul style="list-style-type: none">• Foreseeability of harm• Nature of harm• Control• Vulnerability• Reliance• Assumption of risk• Proximity• Pre-existing relationship between plt and dft• Nature of activity• Knowledge• Indeterminacy of liability• Imposition on autonomy• Existence of conflicting duty (from other principles of law or statute etc.)	<i>Caltex Refineries v Stavar</i>
Fundamental principle in Aus “a DoC will be imposed when it is reasonable in all the circumstances to do so”	<i>Graham Barclay Oysters v Ryan</i>

DUTY OF CARE – Established categories

Manufacturer of product owes a duty to take reasonable care	<i>Donoghue v Stevenson</i>
<ul style="list-style-type: none"> • A K in which a defendant renders services to a 3rd party may be relevant to the content of duty of care that the defendant owe to others in tort, arising out of the manner in which the work is carried out. • An occupier may be liable for the work done by an independent contractor in some circumstance 	<i>Voli v Inglewood Shire Council</i>
Rejected the long-established classification of lawful entrants. The fact that a person is a lawful entrant is sufficient to give rise to a duty to take reasonable care to avoid foreseeable risks of injury	<i>Australian Safeway Stores v Zaluzna</i>
The mere relationship of an occupier and trespasser is not sufficient to satisfy the requirement of proximity. Something more is required: which includes either knowledge of the actual/likely presence of a trespasser or RF of a real risk of such presence	<i>Hackshaw v Shaw</i>
No immunity to protect landlord/lessor from a duty of care and liability under the ordinary principles of negligence. Landlord owed duty as much as an occupier to tenant and 3 rd parties for lack of reasonable care	<i>Jones v Barlett</i>
There is a duty between occupier and lawful entrant regardless of the obviousness of the risk	<i>Thompson v Woolsworth</i>
Cardozo J: “Danger invites rescue. The wrong that imperils life is a wrong to the imperilled victim; it is also a wrong to his rescuer”	<i>Wagner v International Railway Co</i>
A person’s negligent conduct has placed himself/herself (or any other person) in a dangerous situation owes a duty to a rescuer who responds to the situation	<i>Chapman v Hearse</i>

DUTY OF CARE – GOOD SAMARITAN - CLA

s 55 – Application of part	Act applies to all civil liabilities except those listed in s 3B (intention to injure/cause death, sexual assault/misconduct)
s 56 – Definition of good samaritan	Acting in good faith – without expectation of payment/reward – comes to assistance of a person apparently injured/risk of being injured
s 57 – What does it cover	Does not incur liability for acts/omission while assisting Does not affect vicarious liability for others
s 58 - Limitation	<ul style="list-style-type: none">• If GS caused the injury in the first place• GS is impaired (intoxication, drugs) no exception for medicine purpose• Failure to exercise reasonable care• If GS is impersonating health officer etc./someone with skills