

TORTS LAW SUMMARY



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TABLE OF CONTENTS

Case List 7

1. INTRODUCTION TO TORTS AND NEGLIGENCE..... 15

1.1 Capacity to Sue and be Sued..... 17

2. DUTY OF CARE 18

2.1 Introduction 18

2.2 Incremental Approach 19

2.3 Salient Features Approach..... 19

 2.3.1 Vulnerability and Control 21

 2.3.2 Policy Considerations 22

2.5 Other Approaches..... 26

 2.5.1 Proximity 26

 2.5.2 Three Stage Test 27

3. STANDARD OF CARE AND BREACH OF DUTY..... 28

3.1 Introduction 28

3.2 Standard of Care 29

3.3 The Reasonable Person – Characteristics of the Defendant..... 29

 3.3.1 Special Skills – Professionals 29

 3.3.2 Special Skills – Generally 30

 3.3.3 Beginners 32

 3.3.4 Children and the Elderly 32

 3.3.5 *Disability* 33

3.4 The Reasonable Person – Characteristics of the Plaintiff 34

 3.4.1 Skill and Knowledge 34

 3.4.2 Children 35

 3.4.3 Intoxication 35

 3.4.4 Professional Standards 35

 3.4.5 Medical Standards 36

 3.4.6 Technical Knowledge Available to the Defendant..... 37

3.5 Breach of Standard 37

 3.5.1 The Risk Was Foreseeable 37

 3.5.2 The Risk Was Not Insignificant 39

 3.5.3 Reasonable Response to the Risk 39

 3.5.4 Probability of Harm 39

 3.5.5 Likely seriousness of the risk or harm 40

 3.5.6 Burden of Taking Precautions 41

 3.5.7. Warnings and Obvious Risks 42

 3.5.8 Social Utility of Risk-Creating Activity 44

3.5.9 Common Practices.....	45
3.5.10 Defective Product Design	47
3.6 Proof of Breach	47
3.6.1 Burden of Proof.....	47
3.6.2 Standard of Proof and Inferences	47
3.6.3 Potential Multiple Defendants	48
4. DAMAGE - CAUSATION	49
4.1 Introduction	49
4.1.1 The Big Picture	49
4.2 The “Necessary Condition” Test.....	50
4.2.1 Common Sense and Experience Test	50
4.2.2 The Legislative ‘Necessary Condition’ Test.....	51
4.3 Novus Actus Interveniens.....	52
4.4 Cumulative Causation	53
4.5 Increase in Risk.....	54
4.6 Lost Chances	55
4.7 Causation in Medical Failure to Warn Cases	55
5. DAMAGE – REMOTENESS OF DAMAGE/ SCOPE OF LIABILITY	56
5.1 Introduction	56
5.2 Common Law Position on Remoteness of Damage	56
5.2.1 Minimum Damage Required	56
5.2.2 Reasonable Foreseeability of Damage	56
5.2.3 Kind of Damage	57
5.3 Egg-Shell Skull Rule.....	60
6. VICARIOUS LIABILITY AND NON-DELEGABLE DUTIES	63
6.1 Introduction.....	63
6.2 Relationship of Employment	63
6.3 Relationship of Agency	67
6.4 During Course of the Relationship.....	69
6.4.1 Passion and Resentment.....	69
6.4.2 Unconnected Acts.....	70
6.4.3 Employer Prohibitions	70
6.4.4 Criminal Acts of Employees	72
6.5 Independent Contractors and Non-Delegable Duties.....	72
6.5.1 Hospital and Patient.....	72

6.5.2 School Authority and Pupil.....	73
6.5.3 Danger to Neighbouring Land Users	74
6.5.4 Employer and Employee.....	74
6.5.5 Landlords	75
6.5.6 Tort Law Reform	75
6.6 Psychological Injury	75
7. CONCURRENT LIABILITY/ MULTIPLE TORTFEASORS	77
7.2 The distinction between joint/multiple tortfeasors and concurrent tortfeasors	77
7.2.1 Contribution between Tortfeasors.....	78
7.3 Proportionate Liability.....	79
8. DEFENCES - CONTRIBUTORY NEGLIGENCE	80
8.1 Introduction	80
8.2 Standard of Care to be applied to the Plaintiff.....	81
8.2.1 Children.....	82
8.2.2 Policy Considerations	83
8.2.3 Expected Performance of Statutory Obligations	83
8.2.4 Imminent Danger/Emergency	83
8.2.5 Intoxication	85
8.3 Causation and Reasonable Foreseeability.....	86
8.4 Apportionment of Damages.....	87
9. DEFENCES – VOLUNTARY ASSUMPTION OF RISK	89
9.1 Introduction	89
9.2 Statutory Defence	89
9.2.1 Obvious Risks	89
9.2.2 Inherent Risks	90
9.2.3 Risk Warnings for Recreational Activities	91
9.2.4 Exclusion Clauses.....	91
9.2.5 Dangerous Recreational Activities	92
9.3 Common Law Defence	92
9.3.1 Voluntarily Accepted the Risk	92
9.3.2 Appreciation of the Scope of the Risk.....	94
9.3.3 Actual Perception of the Danger	95
10. DAMAGES FOR PERSONAL INJURY.....	96
10.1 Introduction	96
10.2 The Need to Itemise.....	96
10.3 Pecuniary loss.....	97
10.3.1 Loss of earning capacity	97

10.3.2 Collateral source rule	97
10.3.3 Voluntary Services - <i>Griffiths v Kerkemeyer</i> Damages	98
10.4 Non-pecuniary loss.....	99
10.4.1 Loss of life expectancy.....	99
10.4.2 Loss of amenities	99
10.4.3 Pain and suffering	99
11. PARTICULAR NEGLIGENCE SITUATIONS	100
11.1 Liability for Omissions	100
11.1.1 Distinguishing between Acts and Omissions	100
11.1.2 When a Duty will Arise	100
11.1.3 Occupation of Land	100
11.1.4 Duty to Protect Someone or Something Under One's Control.....	101
11.1.5 Parent and Child	102
11.1.6 Professional Duty to Rescue.....	103
11.1.7 Duty to Protect	103
11.2 Atypical Plaintiff.....	104
11.3 The Unborn Plaintiff.....	105
11.3.1 Negligence Before Conception	105
11.3.2 Negligence Ex Utero	105
11.3.3 Negligence In Utero	106
11.4 Wrongful Birth.....	107
11.5 Wrongful Life.....	108
11.6 Recovery for Mental Harm	108
11.6.1 Introduction – Establishing a Duty of Care to Avoid Mental Harm	108
11.6.2 Recognised Psychiatric Illness	109
11.6.3 Normal Fortitude and Circumstances of the Case	109
11.7 Rescuers.....	113
11.8 Liability of Statutory Authorities	114
11.8.1 Distinction Between Powers and Duties of Statutory Authorities	114
11.8.2 Breach of Statutory Duty	114
11.8.3 Breach of Special Statutory Powers	115
11.8.4 Breach of Discretionary Powers.....	116
12. INTENTIONAL TORTS.....	121
12.1 Trespass to Person.....	121
12.2 Battery.....	122
12.2.1 There must be direct application (a positive act)	123
12.2.2 Force - Requirement of hostility?	124
12.2.3 Fault	125
12.2.4 Without Consent	125
12.2.5 Defences	126

12.3 Assault	126
12.3.1 Apparent ability to apply force.....	127
12.3.2 Intended to cause fear.....	127
12.3.3. Plaintiff feared imminent contact.....	128
12.3.4 Defences.....	128
12.4 False imprisonment	128
12.4.1 Physical or psychological restraint/there must be a total restraint.....	129
12.4.2 Does the plaintiff need to know of the restraint?.....	130
12.4.3 Without Consent.....	131
12.4.4 Conditional imprisonment.....	131
12.4.5 Directness.....	131
12.4.6 Remedies for Trespass to the Person.....	132
13. DEFENCES TO INTENTIONAL TORTS	133
13.1 Consent	133
13.2 Necessity	134
13.3 Self defence	134
14. TRESPASS TO LAND	136
14.1 Meaning of land	136
14.2 Acts that will constitute trespass	137
14.2.1 Entering land without consent of the landowner.....	137
14.2.2 Remaining on land after permission to remain has been withdrawn.....	137
14.3 Title to sue	138
14.4 Injunctions as a remedy	139
14.5 Nuisance	139
14.5.1 Private Nuisance.....	140
14.5.2 Defendant's Activities 'Unreasonable'.....	140
14.5.3 Title to Sue.....	141
14.5.4 Defences.....	142
14.5.5 Public Nuisance.....	142
14.5.6 Title to Sue.....	143
15. INTERFERENCE WITH CHATTELS	144
15.1 Trespass to Chattels	144
Title to Sue.....	144
15.2 Conversion	144
Title to Sue.....	145
Fault.....	145
15.3 Detinue	145
Title to Sue.....	145

Case List

Cases

<i>Acts Interpretation Act 1901</i> (Cth).....	114
<i>Adamson v Motor Vehicle Insurance Trust</i> (1957) 58 WALR	17, 34
Agar v Hyde (2000) 201 CLR 552	21
<i>Albrighton v Royal Prince Alfred Hospital</i> [1980] 2 NSWLR 542	73
<i>Aldridge v Booth & Ors</i> (1986) EOC 92-17	133
<i>Annetts v Australian Stations Pty Ltd</i> (2002) 191 ALR 449	38
Annetts v Australian Stations Pty Ltd (2002) 211 CLR 317	111, 113
<i>APQ v Commonwealth Serum Laboratories</i> [1999] 3 VR 633	56
<i>Armstrong v Strain</i> [1952] 1 KB 232	67
<i>Att-Gen v PYA Quarries Ltd</i> (1957) 2 QB 169	142
Bale v Seltsam Pty Ltd [1996] 126	25
Balmain Ferry and Co v Robertson (1906) 5 CLR 379	130
Bankstown City Council v Zraika; Roads and Maritime Services v Zraika (by his tutor Zraika) [2016] NSWCA 51	106
<i>Barton v Armstrong</i> [1973] UKPC 2 i	126
<i>Beecham v Henderson</i> 422 F.3d 372 (6th Cir. 2005)	48
Bennett v Minister for Community Welfare (1992) 176 CLR 408	51, 53
Berstein v Skyviews and General Ltd [1978] 1 QB 479	136
Birch v Thomas [1972] 1 WLR 294	92
<i>Bird v Jones</i> [1845] 7 QB 742	129
<i>Blyth v Birmingham Waterworks Co</i> (1856) 11 Ex Ch 781	29
<i>Bolam v Friern Barnet Hospital Management Committee</i> [1957] 1 WLR 582	36
<i>Bolam v Friern Hospital Management Committee</i> [1957] 1 WLR 582	36
<i>Bollam v Friern Hospital Management Committee</i> [1957] 1 WLR 582	29
<i>Bolton v Stone</i> [1950] 1 KB 201	100
Bolton v Stone [1951] AC 850	39, 139
<i>Bolwell Fibreglass Pty Ltd v Foley & Anor</i> [1984] V.R. 97	145
<i>Bonnington Castings v Wardlaw</i> [1956] AC 613	54
Bourhill v Young [1943] AC 92	26
Bourhill v Young [1948] AC 92	112
Bowditch v McEwan (2002) 36 MVR 235	106
<i>Bradey v Schatzel</i> [1911] St R Qd 206	126, 127
<i>Bradshaw v McEwans Pty Ltd</i> (1951) Unreported High Court decision (27 April 1951)50	
<i>Bradshaw v McEwans Pty Ltd</i> (1951) Unreported High Court decision 27 April 195148	
<i>Brian Rixon v Star City Pty Ltd</i> [2001] NSWCA 265	122
<i>Brodie v Singleton Shire Council</i> (2001) 206 CLR 512.....	120
<i>Brooke v Bool</i> [1928] 2 KB 578.....	77
<i>Broom v Morgan</i> [1952] 1 QB 597	63
Buckley v Lloyd Aviation Jet Charter Pty Ltd (1992) SASR 269	43
<i>Bugge v Brown</i> (1919) 26 CLR 110	69, 71
<i>Burnie Port Authority v General Jones Pty Ltd</i> (1994) 179 CLR 520	74
<i>Burns v Lipman</i> (1971) 132 CLR 157	18
<i>Bus v Sydney County Council</i> (1989) 167 CLR 78	35
Bye v Bates (1989) 51 SASR 67	82
<i>Byrnes v Snare</i> (1986) 66 ALR 296	18
<i>Bywell Castle</i> (1879) 4 P.D. 21	83
Bywell Castle (1879), 4 P.D. 21	83
<i>Caledonian Collieries Ltd v Speirs</i> (1957) 97 CLR 202	41
<i>Caledonian Collieries v Speirs</i> (1957) 97 CLR 202	100
Canterbury Bankstown RLFC v Rogers (1993) Aust Torts Reps 81-246	53
<i>Caparo Industries plc v Dickman</i> [1990] UKHL 2.....	19, 27

<i>Carrier v Bonham</i> (2002) 1 Qd R 474	17
Caterson v Commissioner of Railways (1973) 128 CLR 99	84
<i>Cattanach v Melchior</i> (2003) 215 CLR 1	107
<i>Century Insurance Co Ltd v Northern Ireland Road Transport Board</i> [1942] AC 50969	
CES v Superclinics (Australia) Pty Ltd (1995) Aust Torts Reps 81-360	107
<i>Chairman National Crime Authority v Flack</i> (1998) 86 FCR 196	144
Chapman v Hearse (1961) 106 CLR 112	83
<i>Chapman v Hearse</i> [1961] HCA 46	24
Chapman v Hearse 1961] HCA 46	24
<i>Chappel v Hart</i> [1998] HCA 55	54, 55
<i>Chatterton v Gerson</i> [1981] QB 432	133
<i>Chin Keow v Government of Malaysia & Anor</i> [1967] 2 MLJ 45	30
Chomentowski v The Red Garter Restaurant (1970) 92 WN(NSW) 1070	52
<i>Civil Law (Wrongs) Act 2002</i> (ACT)	29, 43
<i>Civil Liability (Wrongs) Act 2002</i> (ACT)	85
<i>Civil Liability Act 1936</i> (SA)	passim
<i>Civil Liability Act 2002</i> (NSW)	85
<i>Civil Liability Act 2002</i> (NSW)	36
<i>Civil Liability Act 2002</i> (NSW)	passim
<i>Civil Liability Act 2002</i> (Qld)	116
<i>Civil Liability Act 2002</i> (TAS)	37, 43
<i>Civil Liability Act 2003</i> (QLD)	passim
<i>Civil Liability Act 2003</i> (Qld)	91
<i>Civil Liability At 1936</i> (SA)	29
Clarey v The Principal & Council of the Women's College (1953) 90 CLR 170 140	
<i>Coates v Government Insurance Office of NSW</i> (1995) 36 NSWLR 1	109
<i>Cole v South Tweed Heads Rugby League Football Club Ltd</i> (2004) 217 CLR 469	35
<i>Cole v Turner</i> (1704)	125
Collins v Hertfordshire [1947] 1 All ER 633	32
<i>Collins v Wilcock</i> [1984] 1 WLR 1172	122
<i>Collins v Wilcock</i> [1984] 3 All ER 374	passim
Colonial Mutual Life Assurance Society Ltd v The Producers and Citizens Co-	
operative Assurance Co of Australia Ltd (1931) 46 CLR 141	68
<i>Commissioner of Railways v Ruprecht</i> (1979) 142 CLR 563	81, 82
<i>Commonwealth of Australia v Introvigne</i> (1982) 150 CLR 258	73
<i>Commonwealth v Introvigne</i> (1981-1982) 150 CLR 258	18
Commonwealth v Introvigne (1982) 150 CLR 258	74
Commonwealth v McLean (1996) 41 NSWLR 389	61
Cortis v Baker (1968) SASR 367	85
Cowell v Rosehill Race Course Co Ltd (1937) 56 CLR 605	138
Crimmins v Stevedoring Industry Finance Committee (1999) 200 CLR 1	118
Daborn v Bath Tramways Motor Co Ltd [1946] 2 All ER 333	44
<i>Daly v Liverpool Corporation</i> [1939] 2 All ER 142	32
Dansar Pty Ltd v Byron Shire Council [2014] NSWCA 364	115
<i>Dare v Dobson</i> [1960] SR (NSW) 474	78
Davies v Swan Motor Co (Swansea) Ltd [1949] 2 KB 291	81
Deatons Pty Ltd v Flew (1949) 79 CLR 370	70
Dickinson v Waters Ltd (1931) 31 SR (NSW) 593	131
<i>Dixon v Western Australia</i> [1974] WAR 65	101
<i>Dodwell v Burford</i> (1669) 1. Mod Rep 24	124
<i>Donoghue v Stevenson</i> [1932] UKHL 100	18, 24
Dorset Yacht Co v Home Office [1970] UKHL 2	22
<i>Doubleday v Kelly</i> [2005] NSWCA 151	35
Doughty v Turner Manufacturing [1964] 1 QB 518	58
<i>Dovuro Pty Ltd v Wilkins</i> [2003] HCA 51	19

<i>Dulieu v White & Sons</i> [1901] 2 KB 669	61
<i>Edwards v Noble</i> (1971) 125 CLR 296	18
<i>Egan v State Transport Authority</i> (1982) 31 SASR 481	145
<i>Ellis v Wallsend District Hospital</i> (1989) 17 NSWLR 553	73, 133
<i>Employees Liability Act 1991</i> (NSW)	78
<i>Employees' Liability Act 1991</i> (NSW)	63
<i>Esanda Finance Corp v Peat Marwick Hungerfords</i> (1997). 188 CLR 241	22
<i>Fagan v Metropolitan Police Commissioner</i> 1969] 1 QB 439	121
<i>Fairchild v Glenhaven Funeral Services Ltd</i> [2002] UKHL 22	54
<i>Fallas v Mourlas</i> [2006] NSWCA 32	90
<i>Falvo v Australian Oztag Sports Association & Anor</i> [2006] NSWCA 17 (2 March 2006)	92
Fennell v Robson [1977] 2 NSWLR 486	142
<i>Fitter v Veal</i> (1701) 12 Mod 542	96
<i>Fontin v Katapodis</i> (1962) 108 CLR 177	126, 132, 134, 135
<i>Forde v Skinner</i> (1830), 4 Car. & P. 239	124
Fox v Hack Aust Torts Reps 80 – 531	45
<i>Froom v Butcher</i> [1975] 3 All ER 520	80, 87
<i>Gaetani v Trustees of the Christian Brothers</i> [1988]. Aust Torts Reports 80-156	50
Gala v Preston (1991) 172 CLR 243	23
Gent-Diver v Neville [1953] QSR 1	86
<i>Georgeski v Owners Corporation Sp49833</i> [2004] NSWSC 945 (7 October 2004). 138	
<i>Geyer v Downs</i> (1978) 138 CLR 91	102
<i>Geyer v Downs</i> (1978) 17 ALR 408	18
<i>Giannarelli v Wraith</i> (1988) 165 CLR 543	22
Gifford v Strang Patrick Stevedoring Pty Ltd (2003) 214 CLR 269	112
Glasgow Corp v Taylor [1922] 1 AC 44	42
<i>Glasgow Corporation v Muir</i> [1943] UKHL 2	29
Goldman v Hargrave (1966) 115 CLR 458	101
<i>Gorringe v The Transport Commission (Tas)</i> (1950) 80 CLR 357	120
<i>Graham Barclay Oysters Pty Ltd v Ryan</i> (2002) 211 CLR 540	19
<i>Graham Barclay Oysters Pty Ltd v Ryan</i> [2002] HCA 54	27
<i>Griffiths v Kerkemeyer</i> (1977) 139 CLR 161	98
<i>Groom v Crocker</i> [1939] 1 KB 194	18
Guru v Coles Supermarkets Australia Pty Ltd [2016] NSWDC 349	43
Haber v Walker [1963] VR 339	52
Haileybury College v Emanuelli [1983] 1 VR 323	40
Haley v London Electricity Board [1964] 2 QB 121	104
<i>Hall v Fonceca</i> [1983] WAR 309	126
<i>Hall v Foncecea</i> [1983] WAR 309	127
<i>Halliday v Nevill</i> (1984) 155 CLR 1	125, 137
<i>Hamilton v Nuroof (WA) Pty Ltd</i> [1956] 96 CLR 18	18
Hargrave v Goldman (1963) 110 CLR 40	100, 139
<i>Harper v GM Haden & Sons Ltd</i> [1933] Ch 298	143
<i>Harrison v Michelin</i> [1985] 1 All ER 918	70
Harriton v Stephens; Waller v Hoolahan [2004] NSWCA 93	108
<i>Hart v Herron</i> (1984) Aust Torts Reports H 80-201	125, 131
<i>Hawkins v Clayton</i> (1988) 164 CLR 539	18
Haynes v G Harwood & Son [1935] 1 KB 146	93
<i>Haystead v Chief Constable of Derbyshire</i> [2000] 2 Cr App R 339	124
Henderson v PTC (1981) 37 ALR 29	33
<i>Henry v Thompson</i> [1989] 2 Qd R 412	132
Herd v Weardale Steel Coke and Coal Co [1915] AC 67	131
<i>Hewitt v Bonvin</i> [1940] 1 K.B. 188	67
Hill v Chief Constable of West Yorkshire [1989] A.C. 53	22

<i>Hill v Van Erp</i> (1988) 164 CLR 539.....	18
<i>Hogan v Hill</i> 3 18 S.W.2d 580 (1958).....	122
Holbeck Hall Hotel Ltd v Scarborough Borough Council [2000] QB 836	101
<i>Hollis v Vabu Pty Ltd</i> (2001) 207 CLR 21	63, 64, 65
<i>Holloway v McFeeters</i> 94 CLR 470	48
<i>Hollywood Silver Fox Farm Ltd v Emmet</i> [1936] 2 KB 468	141
<i>Hopper v Reeve</i> 1817) 7 Taunt 698. 48.....	124
Hotson v East Berkshire Area Health Authority [1987] 2 All ER 909	55
<i>Howard v Jarvis</i> (1958) 98 CLR 177	18
Howard v Loney [1956] Tas.S.R. 57 (S.C.)	102
<i>Hughes v Lord Advocate</i> [1963] AC 837	57
<i>Hunter v Canary Wharf</i> [1997] AC 655	56
<i>Hunter v Canary Wharf Ltd</i> [1997] UKHL 14.....	141
Imperial Chemical Industries Ltd v Shatwell [1965] AC 656	95
<i>Innes v Wylie</i> (1844) 1 Car & Kir 257.....	122, 123
<i>Insurance Contracts Act 1984</i> (Cth).....	63
<i>Jaensch v Coffey; Romeo v Conservation Commission (NT)</i> [1984] HCA 52	24
<i>Jolley v Sutton London Borough Council</i> [2002] 3 All ER 409.....	57, 58
Jones v Livox Quarries [1952] 2 QB 608	86
<i>Jones v Manchester Corporation</i> [1952] 2 QB 852.....	30
<i>Joslyn v Berryman</i> (2003) 214 CLR 552.....	80, 85
Kavanagh v Akhtar (1998) 45 NSWLR 588	60
<i>Kent v Johnson</i> (1973) 21 F.L.R. 177	142
Kent v Scattini [1961] WAR 74	94
<i>Kondis v State Transport Authority</i> (1984) 154 CLR 672.....	72, 75
Kosky & Anor v The Trustees of the Sisters of Charity [1982] VR 961	105
<i>Latter v Braddell</i> (1881). 50 LJQB 448 (C.A.).....	133
<i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i> (SA)79	
<i>Law Reform (Miscellaneous Provisions) Act 1944</i> (NSW).....	78
<i>Law Reform (Miscellaneous Provisions) Act 1956</i> (NT)	63
Leahy v Beaumont (1981) 27 SASR 29	33
<i>Leame v Bray</i> [1803](KB).....	121
Levi v Colgate-Palmolive Pty Ltd (1941) 41 SR(NSW) 48	104
Liesbosch Dredger v SS Edison [1933] AC 449	62
Lincoln Hunt v Willesee (1986) 4 NSWLR 457	137, 139
<i>Lister v Hesley Hall Ltd</i> [2001] UKHL 22.....	71
<i>Lister v Romford Ice & Cold Storage Co Ltd</i> [2001] UKHL 22	78
LJP Investments v Howard Chia Investments (No 2) (1989) 24 NSWLR 490 136, 139	
<i>Lloyd v Osbourne</i> (1899) 20 LR (NSW) 190	145
<i>Lowns v Woods</i> (1996) Aust Torts Reps 81-376	100, 103
<i>Luxton v Vines</i> (1952) 85 CLR 352.....	50
Lynch v Lynch (by her Tutor Lynch) (1991) 25 NSWLR 411	106
<i>Maher-Smith v Gaw</i> [1969] V.R. 371	48
<i>Maher-Smith v Gaw</i> [1969] VR 371	47
<i>Mahon v Osborne</i> [1939] KB 14.....	30
<i>Maitland v Raisbeck</i> [1944] 1 KB 689	143
<i>Malette v Shulman</i> [1990] 72 (OR 92d) 417	133
March v E & M Stramare Pty Ltd (1991) 171 CLR 506	50
<i>March v E & MH Stramare Pty Ltd</i> (1991) 171 CLR 506	49
<i>McClelland v Symons</i> [1951] VLR 157	127
<i>McCoy v Watson</i> (1976) 13 SASR 506.....	61
McDonald v The Commonwealth (1945) 46 SR (NSW) 129	66
<i>McGee v National Coal Board</i> [1972] 3 All E.R. 1008	54
McGhee v National Coal Board [1972] 3 All E.R. 1008	54
<i>McHale v Watson</i> (1964) 111 CLR 384	82

McHale v Watson (1966) 115 CLR 199	32, 121, 125
<i>McHale v Watson</i> [1966] HCA 13	32
<i>McLean v Tedman</i> (1984) 155 CLR 306.....	47, 81
<i>McNamara v Duncan</i> (1979) 26 ALJR 584	125, 133
<i>Meering v Graham White Aviation Co</i> (1919) 122 LT 44	130
<i>Merryweather v Nixan</i> (1799) 8 Term Rep.....	78
<i>Modbury Triangle Shopping Centre Pty Ltd v Anzil</i> (2000) 205 CLR 254.....	27, 37, 103
<i>Modbury Triangle Shopping Centre Pty Ltd v Anzil</i> 205 CLR 254	27
<i>Morris v C W Martin & Sons Ltd</i> [1966] 1 QB 701	72, 101
<i>Morriss v Marsden</i> [1952] 1 All ER 925	17
<i>Motor Accidents Act 1988</i> (NSW)	85
<i>Motor Accidents Compensation Act 1999</i> (NSW).....	85, 87, 89
Mount Isa Mines Ltd v Pusey (1970) 125 CLR 383	113
Mount Isa Mines v Pusey (1970) 125 CLR 383	59
<i>Mummery v Irvings Pty Ltd</i> (1956) 96 CLR 99.....	48
<i>Munro v Southern Dairies Ltd</i> [1955] VLR 332	140, 141, 142
<i>Murphy v Brentwood District Council</i> [1991] 1 AC 398.....	19
Murray v Ministry of Defence [1988] 2 All ER 521	130
<i>Myers Store Pty Ltd v Soo</i> [1991] 2 VR 597	129
Nader v Urban Transit Authority (1985) 2 NSWLR 501	59
<i>Nader v Urban Transport Authority</i> (1985) 2 NSWLR 501.....	61
Nagle v Rottneest Island Authority (1993) 177 CLR 423	38, 39
<i>Nationwide News v Naidu</i> (2007) 71 NSWLR 471.....	121
Naxakis v Western General Hospital [1999] HCA 22	55
Neill v NSW Fresh Food and Ice Pty Ltd (1963) 108 CLR 362	42
New South Wales v Seedsman (2000) NSWCA 119	111
<i>Newington v Windeyer</i> (1985) 3 NSWLR 555.....	138
Nilson v Bezzina	78
<i>Northern Sandblasting Pty Ltd v Harris</i> (1997) 188 CLR 313.....	75
<i>Northern Sandblasting v Harris</i> (1997) 188 CLR 313	63
<i>NSW v Lepore Samin v QLD; Rich v QLD</i> (2003) 212 CLR 511	63
<i>NSW v Lepore; Samin v QLD; Rich v QLD</i> (2003) 212 CLR 511	72, 73
O'Connor v South Australia (1976) 14 SASR 187	86
O'Dwyer v Leo Buring Pty Ltd [1966] WAR 67	47
<i>Ogwo v Taylor</i> [1988] AC 431.....	114
<i>Overseas Tankship (UK) Ltd v Miller Steamship Co Ltd or The Wagon Mound (No 2)</i> [1967] 1 AC 617	38
<i>Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd [1967] 1 AC 617 (Wagon Mound (No 2))</i>	49
<i>Owston v Bank of New South Wales</i> (1879) 4 App Cas 270	69
Palsgraf v Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928)	26
<i>Papantonakis v Australian Telecommunications Commission</i> (1985) 156 CLR 7.....	30
Papatonakis v Australian Telecommunications Commission (1985) 156 CLR 731	
<i>Paris v Stepney Borough Council</i> [1950] UKHL 3.....	29, 40
<i>Paris v Stepney Borough Council</i> [1951] AC 367	101
<i>Parker v Airways Board</i> [1982] 1 QB 1004	144
<i>Penfolds Wines v Elliot</i> (1946) 74 CLR 204.....	144, 145
<i>Penfolds Wines v Elliott</i> (1946) 74 CLR 204	144
<i>Pennington v Norris</i> (1956) 96 CLR 10.....	87
<i>Perre v Apand</i> [1999] HCA 36	24
<i>Perre v Apand Pty Ltd</i> (1999) 198 CLR 180	27
Philips v William Whitely Ltd [1938] 1 All ER 566	31
Phoenix Society Inc v Cavanagh (1997) 25 MVR 143	69
<i>Planet Fisheries v La Rosa</i> (1968) 119 CLR 118	99
<i>Plenty v Dillon</i> (1991) 171 CLR 635 F.C.....	121

<i>Police v Greaves</i> [1964] NZLR 295	128
<i>PQ v Australian Red Cross Society and Others</i> [1992] 1 VR 19	41
<i>Pyrenees Shire Council v Day</i> (1998) ALJR 1	27
Pyrenees Shire Council v Day (1998) 192 CLR 330	119
<i>Quarman v Burnett</i> 151 ER 509.....	63
<i>R v Macquarie</i> (1875) 13 S.C.R. (N.S.W.) 264	129
<i>Ranieri v Ranieri</i> (1973) 7 SASR 418	92
Re F (1990) House of Lords	134
<i>Re F (Mental Patient: Sterilisation)</i>	122
<i>Re Marion</i> (1991) FLC 92-193	125
<i>Re T (Adult: Refusal of Treatment)</i> [1992] 4 All ER 649	133
<i>Recreational Services (Limitation of Liability) Act 2002 (SA)</i>	91, 92
<i>Redding v Lee</i> (1983) 151 CLR 117	97
<i>Rixon v Star City Casino</i> [2001] NSWCA 265.....	125
<i>Road Management Act 2004 (Vic)</i>	120
Roads and Traffic Authority of NSW v Refrigerated Roadways Pty Limited [2009] NSWCA 263	116
Roads and Traffic Authority v Scoop (1998) 28 MVR 233	87
Roberts v Ramsbottom [1980] 1 WLR 823	33
<i>Robertson v Swincer</i> (1989) 52 SASR 356.....	18, 102
Roe v Minister of Health [1954] 2 All ER 131	37, 40, 48
<i>Roe v Minister of Health</i> [1954] 2 QB 66	73
<i>Rogers v Whitaker</i> (1992) 175 CLR 479.....	passim
<i>Romeo v Conservation Commission (NT)</i> [1998] NewcLawRw 16.....	27, 37
Romeo v Northern Territory Coastal Commission (1998) 192 CLR 431	41
<i>Rootes v Shelton</i> (1967) 116 CLR 383	89, 94
Rose v Plenty [1976] 1 WLR 141	71
Rowe v McCartney [1976] 2 NSWLR 72	59
<i>Rozsa v Sammuels</i> [1969] SASR 205	127
Rozsa v Samuels [1969] SASR 205	126
Ruddiman & Co v Smith (1889) 60 LT 708	70
<i>Ruddock v Taylor</i> (2003) 58 NSWLR 269.....	128
<i>Ryan v Ann St Holdings Pty Ltd</i> [2005] QDC 345.....	69
<i>Ryan v Great Lakes Council</i> [1999] FCA 177	21
<i>Samos v Repatriation Commission</i> [1960] WAR 219	73
<i>Scanlon v American Cigarette Co Pty Ltd (No 1)</i> . [1987] VicRp 21	89
<i>Schiller v Mulgrave Shire Council</i> (1972) 129 CLR 116.....	115
Scott v Davies [2000] HCA 52	67
<i>Secretary Department of Health and Community Services v JWB and SMB</i> (1992) ALJR 300	133
Sedleigh-Denfield v O'Callaghan [1940] AC 880	142
<i>Seltsam Pty Ltd v McGuinness</i> [2000] NSWCA 29 (7 March 2000).....	50
<i>Sharman v Evans</i> (1977) 138 CLR 563	96, 97, 99
<i>Shellharbour City Council v Rigby</i> [2005] NSWSC 86	35
Shelly v Szelley 354 P.2d 282	84
Sibley v Kais (1967) 118 CLR 424	83
<i>Skelton v Collins</i> (1966) 115 CLR 94.....	97
Sloane v Kirby (1979) 20 SASR 263	95
Smith v Baker & Sons [1891] AC 325	93
Smith v Leech [1962] 2 QB 405	61
<i>Smith v Leech Brain</i> [1962] 2 QB 405.....	60
Smith v Leurs [1944] SASR 213	102
Soblusky v Egan (1960) 103 CLR 215	67
<i>Social Security Act 1991 (Cth)</i>	97
Spence v Percy [1992] 2 Qd R 299	111

State of NSW v Briggs [2016] NSWCA 344	75
<i>State of NSW v Burton</i> [2008] NSWCA 319	50
<i>State of Victoria v Bryar</i> (1970) 44 ALJR 174	102
<i>Stephens v Myers</i> (1830) 172 ER 735	127
<i>Stevens v Brodribb Sawmilling Co Pty Ltd</i> (1986) 160 CLR 16	64
<i>Storey v Ashton</i> (1869) LR 4QB 476	69, 71
Sullivan v Moody [2001] HCA 59	21, 22, 27
Sungravure Pty Ltd v Meani (1964) 110 CLR 24	81
<i>Sutherland Shire Council v Heyman</i> (1985) 157 CLR	27
<i>Sutherland Shire Council v Heyman</i> (1985) 157 CLR 424	100, 118
<i>Symes v Mahon</i> [1922] SASR 447	129
Tame v New South Wales (2002) 211 CLR 317	110
the <i>Civil Liability Act 2002</i> (Tas)	114
Thompson v Smiths Shiprepairers (North Shields) Ltd [1984] QB 405	45
<i>Ticehurst v Skeen</i> (1986) 3 MVR 307 (NSW SC)	100
<i>Todorovic v Waller</i> (1981) 150 CLR 402	96
<i>Travel Compensation Fund v Tambree</i> (2005) 224 CLR 627	27
<i>Tuberville v Savage</i> [1669] EWHC KB J25	127
<i>Union Transport Finance v British Car Auctions Ltd.</i> [1978] 2 All E.R. 385	145
<i>Vairy v Wyong SC</i> [2004] NSWCA 247	19
Van Gervan v Fenton (1992) 175 CLR 327	98
<i>Vaughan v Menlove</i> (1837) 132 ER 490 (CP)	34
<i>Victoria Park Racing and Recreation Grounds Co Ltd v Taylor</i> (1937) 58 CLR 479	140
<i>Voli v Inglewood Shire Council</i> (1963) 110 CLR 74	18, 24
<i>Wagon Mound (No 1)</i> [1961] AC 388	56
Wagon Mound (No. 1) [1961] AC 388	57
Wagon Mound (No. 2) [1967] 1 AC 617	57
<i>Wagon Mound No 2</i> [1967] 1 AC 617	140
<i>Wallaby Grip (BAE) Pty Ltd v Macleay Area Health Service</i> (1998) 17 NSWCCR 35553	143
<i>Walsh v Ervin</i> [1952] VLR 361	105
Walter v James	105
<i>Walter v Selfe</i> [1851] EngR 335	140
Watt v Hertfordshire County Council [1954] 2 All ER 368	44
Watt v Rama [1972] VR 353	106
<i>Waugh v Kippen</i> (1986) 160 CLR 156	115
<i>Weaver v Ward</i> King's Bench, 1616	121
Wells v Cooper (1958) 2 All ER 527	30
<i>West v GIO of NSW</i> (1981) 148 CLR 62	48
<i>White v Jones</i> [1995] 1 All ER 691	19
<i>Wilkinson v Downton</i> [1897] 2 Q.B. 57	121
<i>Williams v Commissioner for Road Transport</i> (1933) 50 CLR 258	80
<i>Williams v Milotin</i> [1959] SydLawRw 17	121
Wilson v Pringle [1986] EWCA Civ 6	124
Woods v Multi-Sport Holdings Pty Ltd 208 CLR 460	43
<i>Woolcock Street Investments Pty Ltd v CDG Pty Ltd</i> [2004] HCA 16	19
<i>Workers Compensation Act 1987</i> (NSW)	89
<i>Wrongs Act 1936</i> (SA)	56, 89, 90
<i>Wrongs Act 1954</i> (Tas)	80
<i>Wrongs Act 1959</i> (Vic)	79
<i>Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002</i> (Vic)	passim
Wyong Shire Council v Shirt (1980) 146 CLR 40	38, 39, 41
<i>X (Minors) v Bedfordshire CC</i> [1995] 2 AC 633	114
<i>X and Y v Pal</i> (1991) 23 NSWLR 26	50, 105
<i>Yonge v Toynbee</i> (1910) 1 KB 215	17
<i>Zaluzna v Australian Safeways Stores Pty Ltd</i> (1986) 162 CLR 479	18

Zanker v Vartzokas (1988) 34 A Crim R 11 128, 129

Sample

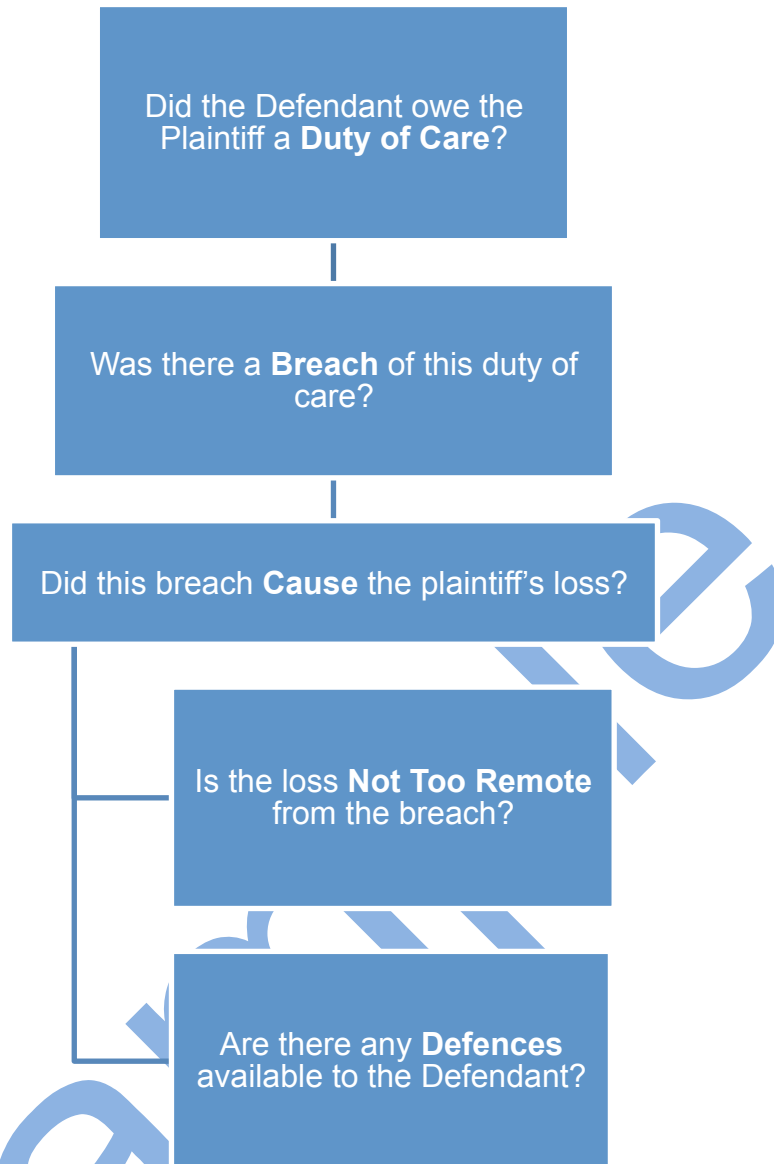
1. INTRODUCTION TO TORTS AND NEGLIGENCE

- The word ‘tort’ means ‘wrong’ and arises in civil law
- A tort may be understood as a wrong which, other than a breach of contract, will be redressed in civil law with damages.¹
- Generally, there are three key aspects of the law of torts, namely:
 1. an act or omission;
 2. the infringement of rights; and
 3. an action for damages
- Torts can be classified as either a misfeasance or a nonfeasance.
 - A misfeasance is a positive act causing harm. The wrongdoer commits the act voluntarily and knowingly. It is irrelevant as to whether or not the tortfeasor knew that the act would result in harm.
 - A nonfeasance is an omission or failure to act which results in harm.
- Negligent acts that result in damage to the plaintiff can be sued upon in negligence or trespass. This can include injury, damage or loss – be it in the form of personal injury, physical damage to property, a recognised psychiatric illness and/or financial loss.
 - Direct interference causing damage can be sued upon in either negligence or trespass.
 - Indirect interference is actionable only in negligence (not trespass).
- There are three elements to be proved by the plaintiff to establish a liability in negligence, namely:
 1. a duty of care existed;
 2. a breach of this duty of care occurred; and
 3. the injury was caused by, and not too remote from, the breach.
- The diagram below illustrates the elements that need to be satisfied in order to successfully make a claim for negligence pursuant to the civil law² which has subsumed the common-law tort of negligence.

Proving Negligence

¹ C Sappideen and P Vines, *Fleming’s The Law of Torts* (10th ed, 2011) 3.

² *Civil Liability Act 2002* (NSW) (‘NSW’); *Civil Liability Act 2003* (Qld) (‘QLD’); *Civil Liability Act 1936* (SA) (‘SA’); *Civil Liability Act 2002* (Tas) (‘TAS’); *Wrongs Act 1958* (Vic) (‘VIC’); *Civil Liability Act 2002* (WA) (‘WA’); *Civil Law (Wrongs) Act 2002* (ACT) (‘ACT’); *Personal Injuries (Liabilities and Damages) Act 2003* (NT) (‘NT’).



- If all of the above elements are established it is likely that the Defendant will be liable unless he or she can establish a solid defence.
- It is important to note the existence of the 'once and for all' rule. This rule means that the Defendant can only be sued once. As such, the award of damages will compensate the plaintiff for the original injury and also for consequential loss.



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