

TORTS LAW SUMMARY



LAWSKOOL.CO.NZ

LAWSKOOL NEW ZEALAND

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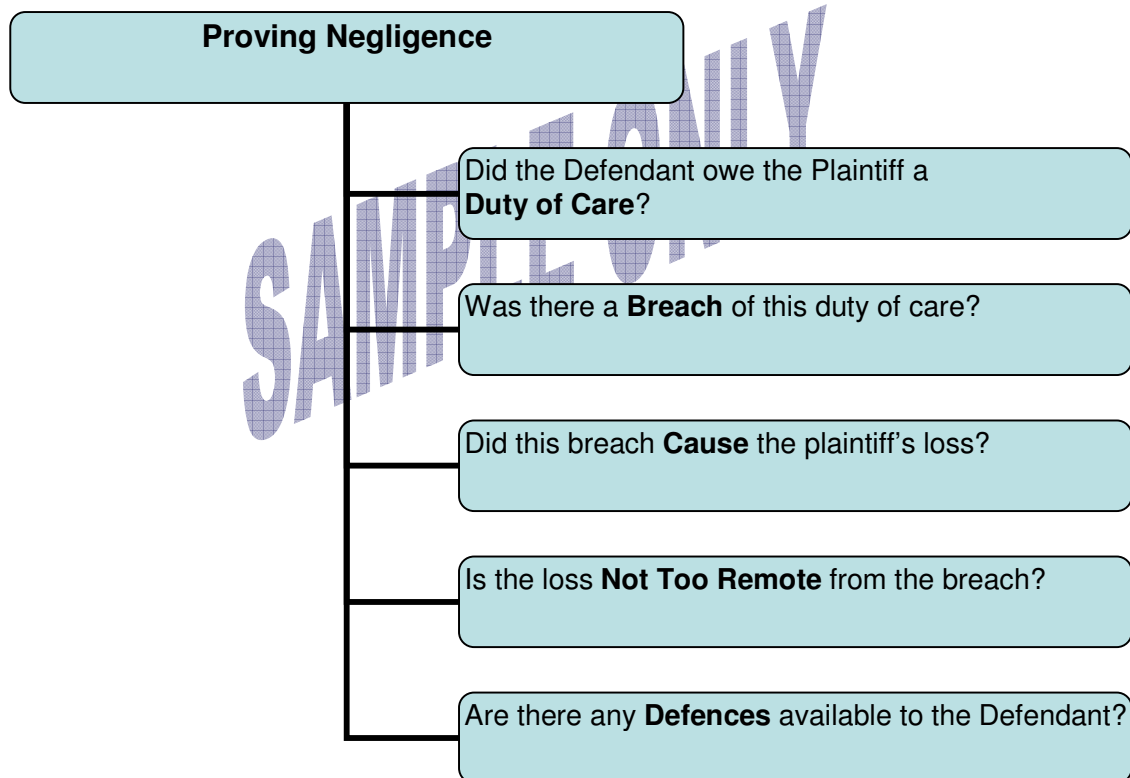
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1. INTRODUCTION TO NEGLIGENCE

- Unlike many countries, New Zealand has an Accident Compensation regime that allows for damages to be received from personal injury therefore unlike most common law jurisdictions the law of torts and in particular the tort of negligence does not have its usual function- namely to provide compensation for damages.
- This compensation regime is based on a statutory regime that creates a system to award damages simply upon the ability of the claimant to fit into one of the statutory conditions for cover. Determining this is done so in an administrative manner.



2. DUTY OF CARE

2.1 Introduction

- Negligence is not a tort unless it results in the commission of a wrong, and the commission of a wrong imports a violation of a right. A Defendant will only be held liable in circumstances where it can be determined that he or she owed the Plaintiff a duty to take reasonable care to avoid causing the Plaintiff damage or loss.
- It should be noted that without a duty of care requirement in negligence the scope for claim would be far too wide. The word 'negligence' on its own only looks at the defendant's conduct and no other factors, Judges therefore created such requirements to define the boundaries for liability.
- A Defendant will owe the Plaintiff a duty of care in two situations:
 - Where the relationship between the Plaintiff and Defendant falls within an established category in which the court is required to impose a duty of care such as:
 - employer/employee (*Hamilton v Nuroof (WA) Pty Ltd*);
 - manufacturer/consumer (*Donoghue v Stevenson*);
 - doctor/patient (*Rogers v Whitaker*);
 - owner/occupier (*Zaluzna v Australian Safeways Stores Pty Ltd*);
 - solicitor/client (*Hill v Van Erp*); and
 - parent/child (*Robertson v Swincer*).
 -
 - Where the court adopts the incremental approach based on salient features and determines that the Defendant owes a duty of care to the Plaintiff.

2.2 Incremental Approach Based on Salient Features

2.2.1 Two staged test *Anns v London Borough of Merton**

- Instead of bringing facts where a duty of care has existed in a previous situation, two stages must be identified;
 1. Whether there is a sufficient relationship of proximity or neighbourhood that any carelessness on the part of the defendant would create a prima-facie duty of care and;
 2. Whether there are any policy considerations that would negate or reduce the scope of the duty or class of person to whom is seeking damages.
- It should be noted that the *Anns* test was quickly accepted by the New Zealand Court of Appeal in *Scott Group Ltd v Mcfarlane* [1978]

Chapman v Hearse

- Facts
 - The Defendant, Chapman, negligently drove his car and caused a serious car collision.
 - A doctor, Cherry, drove past the incident and offered medical assistance to the Defendant.
 - Mr Hearse negligently drove into Dr Cherry and killed him.
 - The widow of Dr Cherry successfully brought an action in negligence against Mr Hearse.
 - The present case arose out of an action of contributory negligence by Hearse against Chapman.
 - Chapman argued that he owed no duty of care to Dr Cherry because it was unforeseeable that a doctor would offer medical assistance to him and later be struck by a third party.
- Held
 - It is not necessary that the precise sequence of events leading to the injury is foreseeable.
 - It is sufficient that the Plaintiff belong to a class of persons (in this case rescuers) to whom the damage could have been foreseen.



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