

# VCE Legal Studies: An outline

## Negligence

In 1984, Justice Deane of the High Court of Australia noted that the general framework of common law negligence was expounded in *Donoghue v Stevenson* [1932] AC 562 in the House of Lords. The heart of that case was Lord Atkin's judgment that each of us owes a duty of care to our neighbour. Then followed his definition of "neighbour" as "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".

### Did a duty of care exist?

Legislation in Victoria has extended the principles established in *Donoghue v Stevenson*. The *Wrongs Act 1958* (as amended) states that a person owes a duty of care if the following circumstances exist:

- The risk was foreseeable
- The risk was not insignificant, far-fetched or fanciful
- A reasonable person in the same position would have taken precautions to eliminate the risk

### Was the duty of care breached?

Courts have developed some principles to assist in determining breach:

- The standard of care will increase with the seriousness of the injury or loss which could result
- The greater the likelihood of the injury, the greater the level of care which will be needed to avoid the injury
- The easier the task of avoiding the injury, the more reasonable it is to expect that measures will be taken to avoid it

### Did the injury result from the breach of duty?

It must be established that the injury was the result of the breach of duty and not from some other cause. The injury can be physical, mental or economic.

### Defences

- No duty of care was owed – it was not reasonable to foresee that the injury or loss would occur
- The duty of care was not breached – the defendant did not fail to do what a reasonable person would do in the circumstances
- The injury or loss did not arise from the breach of duty i.e. it was caused by something else
- The plaintiff consented to the risk e.g. where the plaintiff was injured in a sporting event within the rules of the activity
- Contributory negligence – where the plaintiff was partly responsible for his own injury or loss. This may result in a reduction of damages

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## Remedies

- Compensatory damages\*
- Aggravated compensatory damages
- Exemplary damages
- Contemptuous damages
- Injunctions\*

\*These are the most common remedies.

## Legislative provisions

- *The Wrongs Act* (1958) - See above
- *Limitation of Actions Act* (1958) – Specifies time periods in which actions must be brought



### Impact

There may be physical, mental or economic suffering on the part of the plaintiff as well as costs to both parties in legal costs as well as damages payable by the defendant to a successful plaintiff.