TORTS
SUMMARY

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- Class notes
- John Murphy, Street on Torts (Revised 12th ed.) Oxford 2008
- Richard Kidner, Casebook on Torts (Revised 10th Ed) Oxford 2008
- Elliot & Quinn, Tort Law, (Revised 6th Ed), 2007
1. INTRODUCTION TO NEGLIGENCE

- The law of negligence in Singapore is based largely on English law, although there are areas in which the Singapore courts have chosen to depart from the principles espoused by the UK courts. While the law referred to here will, wherever possible, be that applied by the courts in Singapore.

- The diagram below illustrates the elements that need to be satisfied in order to successfully make a claim for negligence under the Spandeck\(^1\) formulation that has set out guidelines for invoking a successful claim of negligence.

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\(^1\) Spandeck Engineering v. DSTA (2007) 1 Sing L.R 720
2. DUTY OF CARE

2.1 Introduction & Development of Duty of Care

- 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.

  - Duty is an artificial conceptual barrier which the claimant must overcome before his action can even be considered. Its role is to keep the tort of negligence within manageable proportions by distinguishing situations in which a claim may, in principle, be entertained from those in which no action is possible.

- 2.1.1 Starting Point: Donoghue v. Stevenson

  Donoghue v. Stevenson:

  - The HOL had laid down a general principle for when a duty of care would exist.

    - Lord Atkin stated that the principle was that ‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour’

    - Scope: ‘persons who are so closely and directly affected by my act that I ought to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in questions.’

  *Note that individual does not have to be identified but rather if the claimant belonged to a category of people to whom a risk of harm was foreseeable.

    - TEST: Objective test [What a reasonable person could have been expected to foresee]
2.1.2 From Donoghue to Anns-Merton (2 stage test)

**Anns v. Merton London Borough (1978)**

**Case Facts:** The plaintiffs had sued the council in damages for being negligent in failing to inspect the foundations of the building. At trial, the plaintiff’s case failed as it was barred by statute. The CA allowed the appeals on the basis that the cause of action arose when the damage was discovered or ought to be discovered.

**Holding:**

Lord Wilberforce argued that it was no longer necessary to find a precedent with similar facts. Instead, he suggested that whether a duty of care arose in a particular factual situation was a matter of general principle.

**TEST:**

1) Did the parties satisfy the neighbour test—Was the claimant someone to whom the defendant could reasonably be expected to foresee a risk of harm?
2) If yes, a *prima facie* duty of care existed. Though it went further to ask whether there were any policy consideration that dictated that no duty should exist.

In general words, the neighbour test would apply unless there were policy reasons for excluding it.

2.1.3 From 2 stage test to Caparo (3 stage test)

**Caparo Industries PLC v Dickman [1990] 2 AC 605**

**Case Facts:**

The plaintiffs had relied on the publication of the auditor’s report in the company to buy the shares to mount a successful take over bid. The reports made it known to the public that there was a 1.2million pre-tax profit but in actual fact, Fidelity had made a loss of 400,000.

Caparo brought an action against Fidelity’s auditor’s arguing that the auditors owed it a duty of care because they could foresee that a bidder would rely on the accounts in...
order to make investment decisions about the level of shareholding in Fidelity.

**Holding:**

No duty was owed to the plaintiffs.

- **TEST:**
  1) **Was the damage reasonably foreseeable?**
     - Similar to the neighbour principle. Whether a reasonable person in the defendant's position would have foreseen the risk of damage?
     - It must be reasonably foreseeable that damage or injury would be caused to the particular defendant in the case, or to a class of people to which he or she belongs, rather than just to people in general.

  2) **Was there a relationship of proximity between defendant and claimant?**
     - It concerns the ‘closeness’ of the relationship. It can be seen as another way of expressing the foreseeability test.
     - Proximity can also be expressed in terms of a relationship between the defendants and the activity, which caused harm to the claimant.

  3) **Is it just, fair and reasonable to impose a duty in situation?**
     - Reference to policy reasons usually arises only, where both the foreseeability and proximity requirements have been met but courts believe that there is a sound policy reason for denying the claim.

"Do note that this case or rather Lord Bridge’s analysis has been understood to lay down a 3-stage test. But in fact that is very entirely opposite of what he has said. He is proposing an incremental approach rather than following novel categorization or trying to fit facts into the categories.

- **2.1.4 Singapore’s position: Spandeck Formulation**
Spandeck Engineering v DSTA(2007) CA

- **Case Facts:** It involved a dispute in certification of payment relating to a construction project in Nee Soon Camp. Spandeck had been the main contractors for the a project redevelopment and there was any direct contractual relationship between Spandeck and DSTA [Superintending OFFICER]. Spandeck claimed that DSTA owed them a duty of care in their certification of their works and DSTA had been negligent and that duty was breached resulting in financial loss for Spandeck.

- **Holding:**
  Trial judge noted that DSTA had not assumed any direct responsibility to Spandeck for its financial loss and that there was no direct contractual relationship. Judge found that DSTA owed no duty of care and even if such a duty existed DSTA had not breached it on the facts.
  
  Appeal dismissed at the CA.

*Developments in this case:
1) Same test to be applied for both economic loss and physical losses
2) A 2-stage test to be applied with a preliminary question of factual foreseeability to be asked.

**TEST:**
1) There is a need (when ascertaining whether there exists A duty of care) to establish that there is sufficient legal “proximity” between the parties.

However, the Court of Appeal went further and declared that proximity is not a mere label or artificial concept not susceptible to definition but has substance which is capable of being defined and of being expressed in terms of legal principles and so the courts should endeavour to introduce some meaning into the concept.

Once factual foreseeability and legal proximity as the first stage of the two-prong test is established: A **prima facie** duty of care arises.
2) Whether policy “considerations should then be applied to the factual matrix to determine whether or not to negate this duty”.

3. DUTY OF CARE- Kinds of Harm

3.1 Psychiatric Harm (Nervous Shock)
   - Definition: Nervous shock refers to an “impact, through the senses, of external events on the mind”, [McLoughlin v O’Brien [1982] 2 All ER 298 at 301] evidenced by an identifiable psychiatric illness. [Hinz v Berry [1970] 1 All ER 1074]

3.1.2 Distinction between Primary and Secondary Victim
   - In Singapore, after Ngiam Kong Seng\(^2\) case, all victims [be it primary or secondary] are claim under the same category.

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\(^2\) Ngiam Kong Seng v. Lim Chew Hock [2008] 3 SLR 674

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