

## Section B

### Question 4

The first issue in relation to bringing a claim of negligence would be to establish a duty of care between Maryam, the patient, and Dr George, the doctor assigned to her. The principle in Donoghue v Stevenson would apply to doctor and patient relationships, as reiterated in the case of Arlington. This is because as per Donoghue, if one can foresee that their act affects another person, they are under a duty to act reasonably. The 'neighbour principle' applies to the case of Maryam and Dr George. If Dr George does not exercise the standard of care required by him, due to the gravity of his job of being a professional doctor, Maryam could suffer injuries that could affect her for a long duration of time.

In conclusion, a duty of care by Dr George to Maryam has been established.

Second, a breach of duty of care is to be shown. The case of Qualcast (Wolverhampton) Ltd v Haynes questioned the determination of the standard of care needs in different circumstances. It was said that the standard of care was to be assessed objectively, and not always bound by precedent.

Due to that, proving for breach now takes into account five factors. The first relevant factor would be the state of knowledge of Dr George. In Roe v Minister of Health, the court held that there is no obligation on the defendant to guard against risks other than those that were within his or her responsible contemplation, and that it would be unfair to make a defendant liable for an unforeseeable risk. However, if the defendant was aware of the possibility of harm, he must guard it with whatever necessary precaution, as per Walker v Northumberland County Council. On the facts, Dr George's action of suturing the small tear there and then could be interpreted as him understanding the repercussions that it might bring if not fixed, as per Walker.

However, it was later found out that the tear was more serious than it first appeared to seem. The stance on an error in judgement could be supported by the case of Whitehouse v Jordan where Lord Edmund Davies said that "the test of negligence is the standard of the ordinary skilled man exercising or professing to have that special skill. If a surgeon fails to measure up to that standard in any respect of clinical judgement or otherwise, he has been negligent." Following Whitehouse, the position in Roe on unforeseeable risk may not apply because the facts on Dr George did not mention whether he could not foresee the risk of a "quick-fix" in that moment of time of being exposed to the small tear.

# Sample Torts Essay Questions

**Marcel A. Müller**



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