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# **Scenario 1:**

  According to *The Federal Circuit Court Rules*[[1]](#footnote-0), the person who does not understand nature and consequence while processing, like a minor, needs a litigation guardian to make a decision in the lawsuit. Besides, the litigation guardian must be an adult and able to fairly and competently conduct the case. Therefore, in this case, Sam will be a litigation guardian for Sarah.

## **Sarah v Charles**

Tort of negligence:

   Based on the case, Sarah is the plaintiff, and Sam is her litigation guardian, and Charles is the defendant. The crucial legal issue is whether Sam can sue Charles successfully under TON.

   The first subordinate legal issue is whether Charles owed Sarah the DOC. The relationship between the plaintiff and the defendant cannot be recognized, so applying the case of *Donoghue v Stevenson*[[2]](#footnote-1), the “neighbor test” must be considered. Due to Charles speeding, the defendant cannot handle unexpected situations promptly, which was potentially harmful to the plaintiff. Next, Charles was driving on the highway surrounded by farmland where Sarah was living, so Charles's conduct closely affected Sarah. Therefore, two elements of the “neighbor test" are satisfied. In conclusion, Charles owed Sarah the DOC.

   The next subordinate legal issue is whether Charles breached his DOC, which he owed Sarah. There are four elements clarify this issue: Probability of harm stated by *Bolton v Stone*[[3]](#footnote-2), likely seriousness of harm stated in *Paris v Stepney Borough Council*[[4]](#footnote-3), the cost for precaution quoted in *Latimer v AEC*[[5]](#footnote-4) and the social utility mentioned in *Watt v Hertfordshire County Council*[[6]](#footnote-5). The higher probability of harm and the higher likely seriousness of harm reflected in the higher SOC. Firstly, the probability is medium because there will be few people living in the farmland. Secondly, the seriousness of harm is high because when the running vehicles hit people, it is likely to cause serious injuries or even fatal. Thirdly, the cost for precaution is cheap and easy because the defendant could speed down and observe around carefully. Finally, Charles just wanted to save human life, himself, from the accident, so there is the social utility. Although Charles had his reason to cross the farmland, he speeded. Hence, he breached the DOC, which he owed Sarah.

   In conclusion, two requirements are satisfied, so Sam can sue Charles successfully under TON.

## **Sarah v Free:**

Tort of negligence:

   In this case, Sarah is the plaintiff, Sam is her litigation guardian and Free is the defendant. The crucial legal issue is whether Sam can sue Free successfully under TON.

   The subordinate legal issue is whether Free owed Sarah a DOC. Similar to the case of Sarah v Charles, it is concluded that by examining the “Neighbor test", Free owed Sarah a DOC.

   The next subordinate legal issue is whether Free breaches a DOC that he owed Sam. Farmland is not a crowded place, so when Free changes lanes suddenly, it is rare for Charles to ram Sarah. Hence, the probability is low. Next, the likely seriousness is significant because hitting people with a high speed could lead to severe injuries and even death. Additionally, if Free did not exceed the limit speed and observed around carefully before changing lanes, the accident would not happen. Thus, the cost for precaution is cheap and easy. Finally, there is no social utility in this case. Therefore, Free breached a DOC which he owed Sarah.

   Consequently, Free was negligent, and Sam can successfully sue Free under TON.

## **Sam v Charles:**

Tort of negligence:

    Based on the case, Sam is the plaintiff, and Charles is the defendant. The crucial legal issue is whether Sam can sue Charles successfully under TON.

    The first requirement is whether Charles owed Sam a DOC. Similar to the case of Sarah v Charles, so it is concluded that Charles owed Sam a DOC.

    The second requirement is whether Charles breached a DOC that he owed Sam. Similar to the case of Sarah v Charles the probability of harm is medium, the cost for precaution is easy and cheap, and the social utility is to save human life. Besides, the likely seriousness is significant because ramming into the structure with a high speed could devastate it and threaten human-life. To conclude, Charles breached a DOC which he owed Sam.

   In conclusion, based on two satisfying requirements, Sam can successfully sue Charles under TON.

## **Sam v Free:**

Tort of negligence:

   In this case, Sam is the plaintiff, and Charles is the defendant. The crucial legal issue is whether Sam can sue Free successfully under TON.

   The first requirement is whether Free owed Sam a DOC. By examining the “neighbor test", Free owed Sam a DOC, explained in the case Sarah v Charles.

   The second requirement is whether Free breached DOC, which he owed Sam. Similar to the case of Sarah v Free, the probability is low and the cost for precaution is cheap and easy. Next, the likely seriousness is similar to the case of Sam v Charles, so it is significant. Finally, the social utility did not exist in this case. Therefore, Free breached a DOC which he owed Sam

In conclusion, Free was negligent, and Sam can successfully sue Free under TON.

## **Charles v Free:**

Tort of negligence:

        In the case, Charles is the plaintiff, and Free is the defendant. The crucial legal issue is whether Charles can sue Free successfully under TON.

       The subordinate legal issue is whether Free owed Charles a DOC. By examining through the “Neighbour Test", the first element is satisfied because Free exceeded the limit speed, which contains potential harm to Charles. Besides, Free was driving next to Charles; thus, the second element is satisfied. Hence, Free owed Sarah a DOC.

       The next legal issue is whether Free breached a DOC that he owed Charles. Other drivers could not handle situations promptly when Free changed lanes surprisingly without observation, so the probability is high. Next, the likely seriousness is significant because a collision between two vehicles at high speed may cause severe accidents, even fatal. Additionally, the cost for precaution is easy; particularly, Free could control at limit speed and change lanes gradually. Finally, there was no social utility. Hence, Free breached DOC, which he owed Charles.

      In conclusion, Free was negligent, so Charles can successfully sue Free under TON.

## **Sarah v Fresh Fruits company:**

Vicarious Liability

The crucial legal issue is whether the Fresh Fruits company (FFC) vicariously liable for the harm caused by Charles.

Based on the case of *Century Insurance v Northern Ireland Road Transport Board*[[7]](#footnote-6), the “scope of employment” must be considered. Because the case did not mention whether Charles was on authorized task, there are two reasonable situations. Firstly, during an accident, If Charles was authorized to drive his truck to make revenue for FFC, Charles's conduct was done within “scope of employment" and FFC would be vicariously liable. By contrast, If Charles did not have an authorized task to drive his truck, FFC would not be vicariously liable.

In conclusion, if Charles’s authorized task is to drive his truck, Sam (Sarah's litigation guardian) can successfully sue FFC under vicarious liability and vice versa.

## **Sam v Fresh Fruits company**

Vicarious liability

The crucial legal issue is whether the Fresh Fruits company (FFC) vicariously liable for the harm caused by Free.

 Similar to the case of Sarah v Fresh Fruits company, it is concluded that if Charles had an authorized task to drive his truck to make a revenue for the FFC, Sam can successfully sue FFC under Vicarious Liability. By contrast, If Charles was not authorized to drive his truck, Charles cannot successfully sue FFC under vicarious liability.

# **Scenario 2:**

## **Ryder v a little girl:**

Tort of negligence:

In the case, Ryder is the plaintiff, the defendant is a little girl. The crucial legal issue is whether Ryder can sue the defendant successfully under TON.

   The subordinate legal issue is whether the little girl owed Ryder a DOC. By examining the “Neighbor test", the first element is satisfied because the little girl's conduct could make Ryder slip on the soapy floor in the passageway, which contains potential harm to the plaintiff. Besides, Ryder and a little girl were in the common area of the Centre, so the second element is approved. Thus, a little girl owed Ryder a DOC.

   The next subordinate legal issue is whether the little girl breached DOC, which she owed Ryder. Firstly, the probability of harm is high, because shopping centre are usually crowded, and when there is a soapy spot on the floor, guests easily slip on it. Next the likely seriousness is medium because slipping on the soapy floor could lead to physical injuries but not severe like fatal. Besides, the cost for precautions is cheap and easy; particularly, the girl could not blow bubbles and rub soapy liquid in crowded areas. Lastly, there is no social utility in this case. To conclude, the little girl breached a DOC, which she owed Ryder.

 In conclusion, the little girl was negligent, so Ryder can successfully sue little girl under TON.

## **Ryder v Woolworths:**

Tort of negligence:

     Ryder is the plaintiff and the defendant is Woolworths. The crucial legal issue is whether Ryder can sue Woolworths successfully under TON.

    The subordinate legal issue is whether Woolworths owed Ryder a DOC.

Although Ryder slipped on the passageway next to Woolworths, it was proved that she was going into Woolworths by CCTV footage. Hence, Ryder would be Woolworths's customer. Based on the rules in *Australian Safeways Stores Pty Limited v Zaluzna*[[8]](#footnote-7), the relationship between Woolworths and Ryder was occupiers and guests. In conclusion, Woolworths owed Ryder a DOC.

   The subordinate legal issue is whether Woolworths breached DOC. Similar to the case of Ryder v a little girl, the probability of harm is high and likely seriousness is medium. Besides, the cost of precautions is cheap and easy; specifically, Woolworths staff could inspect and clean up the floor regularly. Lastly, there is no social utility in this case. Therefore, Woolworths breached a DOC, which it owed Ryder.

To conclude, Woolworths was negligent, so Ryder can successfully sue Woolworths under TON.

## **Ryder v Westfield Shopping Centre (WSC):**

Tort of negligence:

    In this case, Ryder is the plaintiff and WSC is the defendant. The crucial legal issue is whether Ryder can successfully sue WSC under TON.

   The subordinate legal issue is whether WSC owed Ryder a DOC. Based on the rules in Australian Safeway Stores Pty Ltd v Zaluzna (cited in the case of Ryder v Woolworths), the relationship between Ryder and WSC was occupiers and guests. To conclude, WSC owed Ryder a DOC.

   The next subordinate legal issue is whether WSC breached DOC. Firstly, the probability of harm is high because if there is a spot of soapy liquid on the floor, consumers could easily slip. Next, the likely seriousness is medium (explained in the case Ryder v a little girl). Thirdly, the cost of precaution is cheap and easy because the WSC could inspect and clean the floor regularly. Lastly, there is no social utility. Hence, WSC breached the DOC, which it owed Ryder.

In conclusion, Ryder can successfully sue WSC under TON.

## **Ryder v Robert:**

Tort of negligence:

   Based on the case, Ryder is the plaintiff, and Robert is the defendant, and the crucial legal issue is whether Ryder can successfully sue Robert under TON.

   The first requirement is whether Robert owed Ryder a DOC.

By examining the “Neighbor test", two elements are satisfied; specifically, Robert immediately jumped to save Ryber without thinking carefully, so his conduct was potentially harmful to Ryder. Moreover, Robert was standing near Ryder when the accident occurred. As a result, Robert owed Ryber a DOC.

   The second requirement is whether Robert breached DOC. Generally, when helping others, a reasonable person rarely causes harm to others, so the probability of harm is low. Next, the likely seriousness of harm is low because there was no potential risk to cause severe injuries. Moreover, the cost for precaution is difficult because it was a natural reflex of Robert's body and he could not control his arm’s force promptly. Lastly, social utility existed because in the emergency situation, Robert just wanted to save Ryder, which was a valid point. Hence, Robert did not breach DOC.

Consequently, Robert did not breach a DOC and Ryder cannot successfully sue Robert under TON.

## **Ryder v Little girl’s parents:**

Parental liability:

The crucial legal issue is whether Ryder can successfully sue little girl's parents under Parental liability.

Following the rules in *Smith v Leurs*[[9]](#footnote-8); parents could be liable for their child's committed torts if they did not properly control or supervise their child. Specifically, the little girl was near her parents' company, so reasonable parents must carefully supervise and control her, which could prevent a little girl’s negligent conduct. To conclude, Ryder can successfully sue Little girl's parents under Parental Liability.

## **Ryder v Tom:**

      Tort of negligence:

    The crucial legal issue is whether Ryder who is the plaintiff can successfully sue Tom who is the defendant under TON.

   The subordinate legal issue is whether Tom owed Ryder a DOC. By examining the “Neighbour Test”, Tom' conduct is potentially harmful to Ryder because he opened a bottle for the five-year-old girl who was unable to control behavior in public. Besides, Tom was working in the supermarket, so his conduct closely affected Ryder. Therefore, Tom owed Ryder DOC.

   The next legal issue is whether Tom breached his DOC. The probability of harm is low because Tom just opened the lid of a children's toy, it was rare to cause harm. Next, the likely seriousness of harm is medium (explained in case Ryder v a little girl). The cost for precaution is cheap and easy because Tom could not open it and remind a little girl. Finally, there is no social utility. Consequently, Tom did not breach a DOC which he owed Ryder.

To conclude, Ryder cannot successfully sue Tom under TON.

## **Ryder v Woolworths:**

Vicarious Liability:

   The crucial legal issue is whether Woolworths vicariously liable for harm caused by Tom.

   Tom was a supermarket's staff but opening the bottle was not Tom's authorized task and did not make a benefit for Woolworths. Hence, Tom's conduct was not done within the “Scope of employment", based on the rules in Century Insurance v Northern Ireland Road Transport Board (cited in case Sarah v FFC).

   As a result, Ryder cannot sue Woolworths successfully under Vicarious Liability.

# **Scenario 3**

## **Vo v Hoa**

Tort of negligence:

   In this case, Vo is the plaintiff, and Hoa is the defendant, and the crucial legal issue is whether Vo can successfully sue Hoa under TON.

   The subordinate legal issue is whether Hoa owed Vo a DOC. By examining the “Neighbor test", the first element is satisfied because Hoa spilled water on the floor leading to slippery, which contains potential harm to others. Besides, Hoa and Vo were on the same floor and closed to each other, so the second element is approved. Thus, Hoa owed Vo a DOC.

   The next subordinate legal issue is whether Hoa breached a DOC that she owed Vo. Firstly, the probability is high; specifically, there would be lots of people coming in and out, so customers could easily slip on wet floor. Secondly, the likely seriousness is medium, because the consequences of falling on flat floor would cause physical injuries but not severe like death. Thirdly, the cost of precaution is easy and cheap because Hoa could clean the floor immediately after dropping a water bucket. Lastly, there is no social utility. Afterall, Hoa breached a DOC, which she owed Vo.

   Because the case did not clarify whether Vo agreed to help Hoa clean the wet floor, there are two reasonable situations. Firstly, if Vo accepted Hoa's request, following the Voluntary assumption of risk defence stated by *Insurance Commissioner v Joyce*[[10]](#footnote-9), Hoa could relieve all liability by “full defence”. Therefore, Vo agreed to clean the wet floor, which means Vo was fully aware of the risk and voluntarily accepted it. Secondly, if Vo did not accept Hoa’s request, applying the case of *Ingram v Britten*[[11]](#footnote-10), Hoa could reduce her liability by contributory negligence defence; particularly, Vo was warned about the wet floor, so her carelessness of passing through wet areas contributed to her injuries.

   Afterall, If Vo accepted Hoa's request, Vo cannot successfully sue Hoa under TON. By contrast, if Vo did not, she can successfully sue Hoa under TON, but she has to share the contributory negligence.

## **Vo v Ben**

Tort of negligence:

   In this case, Vo is the plaintiff, and Ben is the defendant, and the crucial legal issue is whether Vo can successfully sue Ben under TON.

   The first requirement is whether Ben owed Vo a DOC. By examining the “Neighbor test", Ben let the machine operate without observation containing potential risk; besides, Ben and Vo were on the same floor of the shop. Hence, Ben owed Vo a DOC.

   The next requirement is whether Ben breached a DOC to Vo. The probability of harm is low because the cane juice machine makes a loud noise when in operation, so a reasonable person can quickly notice. However, the likely seriousness is significant; it can cause severe injuries or loss of body's parts. Besides, the cost for precaution is easy since Ben could turn off the machine before leaving. Lastly, there is no social utility. Briefly, Ben breached a DOC which he owed Vo.

   To conclude, Ben was negligent and Vo can successfully sue Ben under TON.

## **Vo v Thu Phung Desserts (TPD):**

Tort of negligence:

   In this case, Vo is the plaintiff, and TPD is the defendant, and the crucial legal issue is whether Vo can successfully sue TPD under TON.

   The subordinate issue is whether Ben owed Vo a DOC. Based on the case of Australian Safeway Stores Pty Ltd v Zaluzna (cited in case Ryder v Woolworths), the relationship between Vo and TPD falls within the established categories of DOC; specifically, occupiers and guests. Hence, TPD owed Vo a DOC.

   The next subordinate legal issue is whether TPD breached DOC. The probability of harm is high because slipping in the vicinity of an unattended sugarcane juice machine operating, it would be difficult for a reasonable person to avoid crashing into the machines. Next, the likely seriousness level is high, explained in the case of Vo v Ben and Vo v Hoa. The cost for precaution is easy and cheap since the company could equip safety instructions for staff; as cleaning the wet floor immediately and turning off the machine before leaving. Lastly, there is no social utility. Hence the TPD breached DOC which it owed Vo.

 According to the case of Ingram v Britten (cited in case of Vo v Hoa ), TDP can reduce its liability by contributory negligence defence; in particular, Vo knew the dangers, and her carelessness contributed to slipping and crashing into the machine.

  Summarily, TPD was negligent, and Vo can successfully sue them under TON, but she has to be also responsible for her injuries.

## **Vo v Thu Phung Desserts (TPD):**

Vicarious Liability:

   There are two cases that TPD can be sued under Vicarious liability:

### **Vo v Hoa**

The crucial legal issue is whether TPD vicariously liable for harm caused by Hoa.

Based on Century Insurance v Northern Ireland Road Transport Board (cited in case Ryder v a little girl), Hoa was TPD's staff, she dropped water without cleaning immediately, which directly caused Vo’s injuries. However, whether Hoa’s conduct was within the “Scope of employment”. Firstly, if Hoa’s authorized task was to clean the wet floor to help TPD protect its customers from dangers, Hoa’s conduct was within the “scope of employment”, and TPD would be vicariously liable. By contrast, if cleaning the floor was an authorized task of TPD’s cleaners not Hoa, TPD would not be vicariously liable for harm caused by Hoa.

Consequently, if Hoa’s authorized task was to clean the wet floor, Hoa’s conduct was done within “scope of employment” and Vo can successfully sue TPD under vicarious liability and vice versa.

### **Vo v Ben**

   The crucial legal issue is whether TPD vicariously liable for the harm caused by Ben.

   Based on Century Insurance v Northern Ireland Road Transport Board (cited in the case Ryder v a little girl), when the incident occurs, Ben, who is a staff, was authorized to work and be responsible for the sugar cane machine to make a benefit for TPD, so “Scope of employment” is satisfied.

   Afterall, Vo can successfully sue TPD under Vicarious Liability.

# **Scenario 4:**

## **Gary v Jamala**

Contractual Law

    In this case, Jamala is an offeror, and Gary is an offeree. The crucial legal issue is whether Gary can successfully sue Jamala for breaching the contract.

   The subordinate issue is whether there was an agreement between Gary and Jamala. Based on the case of *Smith v Hughes*[[12]](#footnote-11), there are two requirements: offer and acceptance, needed to be considered. About agreement requirement, through the rules in *Mildura Office Equipment & Supplies Pty Ltd v Canon Finance Australia Ltd*[[13]](#footnote-12), there are three required key details to make a clear and complete offer; specifically, the subject matter of the offer (Jamala's apartment), the involved parties (the seller is Jamala and the buyer is Gary) and the price (the sale price is $500.000). Therefore, Jamala's offer is clear and complete. Next, whether the offer was valid, based on the case of *R v Clarke*[[14]](#footnote-13), the offer would be valid until the offeree is made aware of it. In this case, on 5th January 2017, the offer of Jamala successfully communicated to Gary, so there was a valid offer between Jamala and Gary. Regarding acceptance, based on the rules in *Scammell and Nephew Ltd v Ouston*[[15]](#footnote-14), the acceptance must be clear and certain; this element was not satisfied because Gary's acceptance was not including the subject matter and price. Moreover, through the rules in *Masters v Cameron*[[16]](#footnote-15), the acceptance must be unconditional while Gary asked Jamala to leave him with her current custom-sized furniture in the apartment. Hence, Gary's acceptance was invalid due to his condition. Besides, according to the rules in *Eliason v Henshaw*[[17]](#footnote-16), Jamala could require a certain method of acceptance. In particular, Jamala required that Gary must send an acceptance by mail, but on 10th January 2017, Gary delivered his acceptance by post. Hence, Gary violated the rule of acceptance. As a result, Gary's acceptance was not valid, and there is no agreement established between Gary and Jamala.

   In conclusion, Gary and Jamala did not form an enforceable contract, so Gary cannot successfully sue Jamala for breaching the contract.

## **Russell v Jamala:**

Contractual Law

   According to the case, Russell is an offeror, and Jamala is an offeree. The crucial legal issue is whether Russell can successfully sue Jamala for breaching the contract.

   Based on the case of Smith v Hughes (cited in the case Gary v Jamala), offer and acceptance requirements could examine whether there was a valid agreement between Russell and Jamala. Following the rules of Mildura Office Equipment & Supplies Pty Ltd v Canon Finance Australia Ltd (cited in the case Gary v Jamala), Russell’s offer included all required key details that Russell would buy an apartment of Jamala with $450,000 and a significant discount on revocation services for Jamala’s next house. However, this offer is not clear because the word “significant" was generally used to describe more or less, and it was not clear how much discount Jamala would actually receive. Hence, Russell's offer was invalid. Regarding the acceptance. Applying the rules in Scammell and Nephew Ltd v Ouston (cited in the case Gary v Jamala), Jamala’s acceptance was not clear and certain about the subject matter and the price. Jamala did not mention that she would sell her apartment nor what specific price in her acceptance. Therefore, Jamala's acceptance was invalid. As a result, Russell's offer and Jamala's acceptance were invalid, so there was no agreement established between Russell and Jamala.

   In conclusion, Russell and Jamala did not form an enforceable contract, so Russell cannot successfully sue Jamala for breaching the contract.

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