

# TORT OF NEGLIGENCE

## QUESTION 1

(a) Richard's painting business has become very successful over the past few years. As a result of this growth in his business, Richard has been able to employ a supervisor, Jed. While working at a height of 6 metres on his business's home-made mechanical platform Jed has an epileptic seizure and falls to the ground breaking his leg. The mechanical platform was unsafe because it did not comply with the Australian Safety Standards. Jed is now suing Richard, at common law, for not providing a safe system of work. Advise Richard, using the basic information above, as to whether Jed could bring a successful claim against him in the Tort of Negligence. In answering the question explain what each of the elements of negligence are and how they would be applied. (10 Marks)

The issue identified here is whether Jed could successfully sue Richard in the tort of negligence for providing an unsafe and hazardous work environment.

Negligence is defined by the failure to extend a duty of care, to prevent others from getting injured through an individual's advertent or inadvertent acts or omissions. In order to build a case through the tort of negligence, the plaintiff must prove that the defendant had a duty of care, breached that duty of care and consequently resulted in loss, damage or injury to the plaintiff. A duty of care is owed to all those who are closely and directly affected by an individual's act. According to the neighbourhood principle, a duty of care is owed to all those with whom the individual is in a proximate relationship. Most often employer and employee relationships involve an established duty of care where the employer owes a duty of care in terms of safety to his/her employees working in close proximity.

Furthermore, risk of injury in a workplace could be reasonably foreseeable if safety standards are not properly complied with. In this case, as Jed's employer, Richard has an established duty of care to Jed and as the relationship is sufficiently close, Richard should take enough care not to put Jed at risk.

As Richard's mechanical platform was not upto Australian safety standards, there was a foreseeable risk of employees getting injured. Thus, Richard owed Jed a duty of care.

# Past Questions On Tort Of Negligence

**S.I. Strong, Liz Williams**



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## **Table of Contents Past Questions On Tort Of Negligence**

1. Understanding the eBook Past Questions On Tort Of Negligence
  - The Rise of Digital Reading Past Questions On Tort Of Negligence
  - Advantages of eBooks Over Traditional Books
2. Identifying Past Questions On Tort Of Negligence
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Past Questions On Tort Of Negligence
  - User-Friendly Interface
4. Exploring eBook Recommendations from Past Questions On Tort Of Negligence
  - Personalized Recommendations
  - Past Questions On Tort Of Negligence User Reviews and Ratings

- Past Questions On Tort Of Negligence and Bestseller Lists
- 5. Accessing Past Questions On Tort Of Negligence Free and Paid eBooks
  - Past Questions On Tort Of Negligence Public Domain eBooks
  - Past Questions On Tort Of Negligence eBook Subscription Services
  - Past Questions On Tort Of Negligence Budget-Friendly Options
- 6. Navigating Past Questions On Tort Of Negligence eBook Formats
  - ePub, PDF, MOBI, and More
  - Past Questions On Tort Of Negligence Compatibility with Devices
  - Past Questions On Tort Of Negligence Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Past Questions On Tort Of Negligence
  - Highlighting and Note-Taking Past Questions On Tort Of Negligence
  - Interactive Elements Past Questions On Tort Of Negligence
- 8. Staying Engaged with Past Questions On Tort Of Negligence
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Past Questions On Tort Of Negligence
- 9. Balancing eBooks and Physical Books Past Questions On Tort Of Negligence
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Past Questions On Tort Of Negligence
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Past Questions On Tort Of Negligence
  - Setting Reading Goals Past Questions On Tort Of Negligence
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Past Questions On Tort Of Negligence
  - Fact-Checking eBook Content of Past Questions On Tort Of Negligence
  - Distinguishing Credible Sources

13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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