

## **Cook v Cook (1986) 162 CLR 376**

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### **Facts**

- The Defendant, Margaret, was an inexperienced driver without even a learner's permit when her family member, Irene, (the Plaintiff) told her to drive her car.
- They began to drive together, however the Defendant thought she was going to hit a parked car. She therefore sped up and crashed into a stobie (telephone) pole.
- The Plaintiff sued.
- The Defendant argued her conduct should only be measured against that of an experienced driver (rather than an average driver) because the Plaintiff knew about her inexperience.

### **Issues**

- What was the standard of care that the Defendant's behaviour should be compared to?

### **Held**

- The Court held that there is a "special class" of circumstances where the general proposition of the 'ordinary person' is altered.
- This occurs where "special and extraordinary facts transform the relationship between passenger and driver" - for example where a learner driver is under instruction.
- In each case, it will be for the person asserting the existence of this "special class" to prove it exists
- In this case, the Plaintiff knew the Defendant was inexperienced and unlicensed, and encouraged her to drive anyway. This was one of those special classes.
- Nonetheless, the Plaintiff's decision to speed up when she saw the parked car was a breach of the duty of care even for an inexperienced driver.
- They awarded damages to the Plaintiff but reduced them by 70% for her contributory negligence.

### **Quotes**

The most that can be said is that the circumstances must be special and exceptional in the sense that they so alter the ordinary relationship of driver and passenger that it would be plainly unreasonable for the standard of the duty of care owed by the driver to the passenger to be what could reasonably be expected of an experienced, skilled and careful driver.

In these circumstances, the appellant's known incompetence and inexperience as a driver was a controlling element of the relationship of proximity between the parties. That special element of the relationship took it out of the ordinary relationship between a driver and passenger into a special category

of relationship between a driver who is known to be quite unskilled and inexperienced and a passenger who has voluntarily undertaken to supervise his or her driving efforts. The standard of the duty of care which arose from that distinct relationship of proximity was that which could reasonably be expected of an unqualified and inexperienced driver.

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