

Tort law negligence notes:

- **Negligence definition:** breach of legal duty undesired by the defendant which results in harm caused to a claimant.

Proving negligence

1) duty of care: is the duty established e.g. doctor-patient, employer-employee, manufacturer-consumer, teacher-pupil. If not, we need to apply Caparo test for novel situations.

- **Caparo industries plc v Dickman:** three-part test house of lord's case in determining whether duty of care exists. must be reasonable foresight of harm to claimant, sufficient proximity of relationship for defendant with the claimant and must be fair, just and reasonable to impose duty in first instance (public policy consideration).
- Duty of care will normally arise where harm caused by one person to another through wrongdoing and that harm is foreseeable physical injury to physical damage to property.
- So, claimant needs to show the defendant owed him a duty of care as starting point for proving negligence.
- As general rule, there is no duty of care for omissions unless an exception could apply such as in **Dorset yacht case** where officers assumed responsibility of the deceased.

2) breach of duty: defendant is only liable if he has also breached the duty of care. He must have failed to meet the standard of care required of him.

- Court first assesses how the defendant should have behaved and what standard of care he was expected to meet.
- The court then asks if the defendant's conduct fell below the standards expected.
- **Blyth v Birmingham waterworks:** Defendant needs to meet standard of a reasonable person. The reasonable man on the streets so this is an objective test for breach of duty instead of subjective.
- **Bolam v Friern hospital management committee:** case shows defendants with special skills should be held at higher standard that they hold themselves out to. For example, a doctor should be judged according to the standard of care required of a reasonable doctor.
- **Wells v Cooper:** even when small jobs are being taken, the law still demands a certain level of skills from the defendant.
- **Mullins v Richards:** less is expected in terms of standard of care of the child defendant.
- In order to know whether the defendant has breached a duty of care, look carefully at the facts and decide what kind of defendant we are dealing with and magnitude as well as likelihood of injury occurring as a result of the defendant's breach.
- Burden of proof in proving the defendant has fallen below standards of care expected of him are on the claimant. Claimant needs to show that the damage he suffered was a result of the defendant's actions. A rule which can help the claimant in proving this is the doctrine of res Ipsa Loquitur which translates

into 'the thing speaks for itself'. This was applied in **Scott v London and St Katherine docks co.**

- **S 11 Civil evidence Act (CEA) 1968**: defendant who has been convicted of criminal offence is presumed to have committed that offence in any subsequent civil proceedings. This can also help claimant in proving that the defendant breached a duty of care.

3) causation: need to now look at proving that the defendant's breach of duty caused and therefore resulted in the loss caused to the claimant. There needs to be a causal link between the defendant's breach and the claimant's loss.

- **Barnett v Chelsea and Kensington Hospital management committee**: causation in fact means looking at the 'but for test' (but for the defendant's conduct, would the harm to the claimant have occurred?).
- Proving causation is on the balance of probabilities: it is more likely than not that the harm suffered by the claimant was caused by the defendant because tort is a civil rather than criminal cause of action.
- **Hotson v East Berkshire Area Health Authority**: claimant here failed to prove causation because there was only a 25% chance the defendant's breach had caused his injury and for balance of probabilities a higher than 50% chance is required.
- Material contribution: **Civil Liability (Contribution) Act 1987 ss1(1) and 2(1)** gives court power to apportion damages between guilty parties.

- Breaking the chain of causation: acts of third parties.
- Only negligent intervention of a third party can break the chain of causation as was the case in the case of **Knightley v Johns**.
- Whether or not an intervening act can break the chain of causation is a question of fact and depends on the judgement of the court about circumstances of each case.

- Remoteness of damage: last factor of causation. If court decides the damage is too far removed from the defendant's act, he won't be held responsible.
- **The Wagon Mound (No 1)**: lays out the legal test for remoteness in negligence cases. If a reasonable person would not have foreseen the damage, then the damage cannot be removed. Two provisions of the rule are eggshell skull rule (take your claimant as you find him) and similar in type rule (even if the precise injury was not foreseeable, as long as some form of harm in similar type is, the defendant will be liable).

4) defences:

- Voluntary assumption of risk: **Nettleship v Weston**. Claimant has to have full knowledge of nature and extent of risk and claimant has to be said to willingly consent to accepting the risk of being injured via potential negligence.
- Illegality: **Pitts v Hunt**. Where the claimant is injured by negligence as a result of partaking in criminal act.
- Contributory negligence: **Law of reform (contributory negligence) Act 1945**. where the claimant is in part responsible for their own injuries. The damages will be reduced. The damages will be reduced according to the extent the claimant was responsible for their own injury as evident in the

seatbelt case of **Froom v Butcher** and the crash helmet case of **Capps v Miller**. Child cannot be contributory negligent as in **Gough v Thorne**. Rescuers will be judged according to standard of reasonable rescuer if they are contributory negligent as in the case of **Baker v TE Hopkins and son Ltd**.

- Contribution between tortfeasors: **civil liability (contribution) Act 1978** prescribes contribution between various defendants can allow a person to be liable to harm suffered by another claimant but can recover from any other person liable for the same damage.

Bibliography:

- Elliott, C. and Quinn, F. (2011) *Tort Law*. Old Tappan: Pearson Education UK.