

TORT OF NEGLIGENCE

- ELEMENTS

- Duty of Care
- Breach of the duty
- Damages:
 - Causation
 - Remoteness

- **Duty of Care**

- “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.”
- Who, in law, is your neighbour?
- “The answer seems to be persons who are so closely and directly affected by my act that that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”.

- **Standard of Care**

- The reasonable person test.
- Whether a hypothetical reasonable onlooker would have foreseen the possibility of harm or loss to certain individuals involved in the particular event
- Professionals have a higher standard of care applied e.g. orthopaedic surgeon – the standard of care that must be exercised is that of a reasonably competent orthopaedic surgeon.

- **Breach**

- 1. **Foreseeability**

- Whether there has been a breach requires an analysis of two things:
 - Whether the danger or risk was foreseeable; and
 - How a reasonable man would have responded to the foreseeable risk
- A court may take several things into account:
 - the probability of the risk of injury
 - gravity of the harm
 - burden of eliminating the risk; and
 - social value of the defendant's conduct.

- **Damage**

- There has to be some actual damage for the claim to succeed.

- There needs to be a connection between the negligent act and the damage caused

- Causation - the “but for” test

- The party being sued should not be held liable for all the consequences of the damage

- Remoteness

- **Defences**

- Contributory Negligence

- E.g. not wearing a seatbelt in a car crash reduced by 25%

- Voluntary Assumption of Risk

- Exemption Clauses