

Law of Torts

University of Birmingham

Seminar 5 – Negligence III (Breach & Factual Causation)

If we have found that the defendant owed the claimant a duty of care, we must then to consider whether the defendant fell below the standard expected of the *reasonable person* (ie. whether she breached her duty of care). Importantly, when we assess breach, the court will not demand perfection – it is accepted by the courts that accidents happen. What we need to determine is whether, objectively assessed, the defendant fell below the expected standard of care; in short, she acted unreasonably.

You will see from some of the cases listed below that in exceptional instances the courts may relax the objective standard of assessment (see: *Mansfield* from Seminar 1), however, this is quite rare. Professionals are held to a professional standard of care: the reasonable doctor, the reasonable surveyor, the reasonable teacher etc.

If, based on the facts of the case, it has been determined that the defendant did indeed breach her duty, we must then move to consider the final stage of the negligence assessment: causation. This final stage is broken into two limbs: factual causation, which we consider here, and legal causation or remoteness, which we will consider in our next seminar. At the factual causation stage, we need to establish whether, based on the balance of probabilities, the defendant caused the claimant's damage/injury – is there a causal link between the defendant's negligence and the claimant's injury? As a first step, we ask whether '*but-for*' the defendant's negligence would the claimant have suffered the claimed injury? If the injury would have happened regardless of the defendant's negligence, then we cannot establish factual causation. As we'll see, however, answering this question is not always straightforward and the courts have to consider stretching the causal chain to achieve fairness and corrective justice aims.

Required Reading:

Textbook

Lunney, Nolan, and Oliphant, *Tort Law: Text and Materials* – Chapters 4 & 5 (pp 213-264)

Horsely and Rackley, *Tort Law* – Chapters 8 & 9 (pp 245-273)

Breach

Nettleship v Weston [1971] 1 QB 691 (already covered in first tort seminar)

Past Questions On Tort Of Negligence

J Spring



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