

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

John Delaney



Past Questions On Tort Of Negligence:

Q&A Torts Birju Kotecha, 2014-12-05 Routledge Q As give you the tools to practice and refine your exam technique showing you how to apply your knowledge to maximum effect in an exam situation Each book contains up to fifty essay and problem based questions on the most commonly examined topics complete with expert guidance and fully worked model answers These books provide you with the skills you need for your exams by Helping you to be prepared each title in the series has an introduction presenting carefully tailored advice on how to approach assessment for your subject Showing you what examiners are looking for each question is annotated with both a short overview on how to approach your answer as well as footnoted commentary that demonstrate how model answers meet marking criteria Offering pointers on how to gain marks as well as what common errors could lose them Aim Higher and Common Pitfalls offer crucial guidance throughout Helping you to understand and remember the law diagrams for each answer work to illuminate difficult legal principles and provide overviews of how model answers are structured Books in the series are also supported by a Companion Website that offers online essay writing tutorials podcasts bonus Q As and multiple choice questions to help you focus your revision more effectively

Casebook on Torts Richard Kidner, 2012-06-28 Richard Kidner's established Casebook on Torts is an essential casebook for students of tort law The case selection for this book has been based upon the standard cases and the extracts outline the reasoning behind each case decision

Complete Tort Law S.I. Strong, Liz Williams, 2011-03-17 Complete Tort Law Text Cases Materials combines extracts from a wide range of recent cases with clear explanatory text to create a complete resource for students A wealth of features provide a high level of support making this an ideal introduction to tort law

Law Express: Business Law (Revision Guide) Ewan MacIntyre, 2014-08-01 The Law Express series is designed to help you revise effectively This book is your guide to understanding essential concepts remembering and applying key legislation and making your answers stand out

Tort Law Concentrate Carol Brennan, 2017 Tort Law is a revision guide which covers key topics found on undergraduate and GDL courses A range of pedagogical features helps with the preparation for exams and suggests numerous ways to improve marks providing revision tips and presenting key cases

Kidner's Casebook on Torts Kirsty Horsey, Erika Rackley, 2015 The essential companion for undergraduate tort law students providing a comprehensive portable library of leading tort cases Horsey Rackley bring together a range of carefully edited extracts combined with insightful commentary questions and annotated cases to help students identify and analyse the key elements of a case

Q&A Contract Law 2013-2014 Richard Stone, 2013-04-18 Routledge Q As give you the tools to practice and refine your exam technique showing you how to apply your knowledge to maximum effect in an exam situation Each book contains up to fifty essay and problem based questions on the most commonly examined topics complete with expert guidance and fully worked model answers These new editions for 2013 2014 will provide you with the skills you need for your exams by Helping you to be prepared each title in the series has an introduction presenting carefully tailored advice

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A2 Law for AQA Jimmy O'Riordan, 2003

A2 Law for AQA follows the same format as the AS book but in the depth required for A2 It is tailored to the specification and covers all the AQA options for A2 It builds on what students learnt at AS to ensure they reach the levels expected of them in their A2 exams

California Bar Exam Essay Success: A Complete Handbook for Effective Writing Arlene Macdonald, 2025-04-13

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NCLEX-RN Exam Cram Wilda Rinehart, Diann Sloan, Clara Hurd, 2010-11-16

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