

Negligence Scenario Guide

Explain the principles of law that are relevant to the scenario and where necessary with a relevant case (usually just the name and if important one line of facts) and apply to the scenario.

Need to prove the elements of negligence:

1. Duty of care based on 3 principles of the Caparo Test

- a) **was damage or harm reasonably foreseeable Kent v Griffiths**
- b) **is there a sufficiently proximate relationship between the claimant and D (physical Bourhill v Young, legal relationship, family McLoughlin v O'Brien)**
- c) **is it fair, just and reasonable to impose a duty (should local authorities be allowed to have that duty removed)**

2. Breach of duty – reasonable person based on the same profession case? a) What about learners? **learners are judged at the standard of the competent, more experienced person e.g. Nettleship v Weston**

- b) **Children? the test is based on a reasonable person of the defendant's age at the time of the accident Mullins v Richard**

c) Risk factors:

- 1. **the magnitude Bolton v Stone**
- 2. **the size Hayley v LEB**
- 3. **the gravity of the potential harm Paris v Stepney BC**
- 4. **the cost and practicality of taking precautions Latimer v AEC Ltd**
- 5. **whether the risk was justifiable Watt v Hertfordshire CC**
- 6. **Special characteristics?**

3. Damage i.e. causation

- a) **Factual – case? 'but for' test explained by Lord Denning in Cork v Kirby McLean**
- b) **Legal and what are the potential intervening acts? de minimis rule. Novus Actus Interveniens (breaks the chain of causation) potential NAI are remoteness of damage (the wagon mound), type of damage/injury to be foreseeable (Hughes v Lord Advocate), thin skull rule**

Has the claimant proven negligence?

4. Defences

- a) **Contributory negligence – effect of this? the C is partly to blame by contributing to the harm caused. If proved, then damages can be reduced**
- b) **Consent: what are the 3 essential elements? knowledge of the precise risk involved, exercise of free choice by the claimant, a voluntary acceptance of the risk**

Will the defendant be successful in proving the defence?

5. Remedies

- a) **Special damages - pecuniary losses are? pecuniary losses - measured in money e.g. paying for medical care or cost of hiring a car whilst the claimants car is being repaired or replacing**
- b) **General damages - nonpecuniary losses cover? Any mitigation? loss that is not money base. pain and suffering because of the accident**
- c) **Will damages be given as a lump sum or structured settlement structured settlements allow for money to be paid over a period if the damages are extensive - life changing. e.g. future. lump sums are quick and not long. can pay it once and do not have to go back on it. it is for not as serious injuries Brief conclusion.
If dead, lump sum goes to family**