Damages for Causation

Once the claimant has shown the existence of a duty of care and proved that it has been breached by falling below the appropriate standard of care, they must still prove the D's negligent act or omission caused the damage (injury to the person physical or mental, damage to property or economic loss).
The claimant in order to be successful must then prove a causal link both in fact and in law and that the loss or damage is not too remote.

Factual Causation and the 'but for' test

The starting point in establishing causation is that not only has the damage occurred but that D was the cause. Damage must be factually caused by D's breach and it is reasonably foreseeable

The test was explained simply by Lord Denning in **Cork v Kirby McLean Ltd 1952** " if the damage would not have happened but for a particular fault then that fault is the cause of the damage; if it would have happened just the same … the fault is not the cause of the damage".
So if the damage would have happened anyway D will not be liable for it. The claimant was a factory worker who died when he had an epileptic seizure while working on a platform with no railings over 20 feet above the ground. His employers were not aware of his condition, nor of the fact that his doctor had told him not to work at heights. The claimant's partner sued the defendant employers in the tort of negligence. The Court of Appeal held the defendant liable.

The leading case in this area is **Barnett v Chelsea and Kensington HMC** Was this a fair decision?
Three-night watchmen went to A&E for sickness after drinking tea made by a fourth man. Nurse phoned the duty doctor who did not come to examine the men but recommended that they go home and see their own doctors. One of the men went home and died of poisoning by arsenic. His widow sued the hospital claiming that the doctor was negligent in not examining her husband and causing his death. She was able to prove that the doctor owed a duty of care and by not examining him, he had broken his duty of care. However, the evidence showed that by time the husband called at the hospital, it was already too late to save his life. The arsenic was in his system in such a quantity that he would've died whatever was done. This meant that his death was not caused by the doctor's breach of duty of care, so the claim failed

Consider the earlier case of **Paris v Stepney BC**.
If the claimant had been injured on the arm rather than in the eye would the failure of providing goggles have prevented the harm?
The claimant only had sight in one eye due to in injury sustained in the war. During the course of his employment as a garage hand, a splinter of metal went into his sighted eye causing him to become completely blind. The employer did not provide safety goggles to workers engaged in the type of work the claimant was undertaking. The defendant argued there was no breach of duty as they did not provide goggles to workers with vision in both eyes and it was not standard practice to do so. There was therefore no obligation to provide the claimant with goggles.

Multiple factual causes of damage

The problem of proving a causal link between the defendant's negligent act and the damage is always made more difficult where there is the possibility of more than one cause. There are 2 types of multiple causes:

a) Multiple consecutive (follow each other) causes

In breaches that follow each other there is not too much of a problem in proving the but for test.

In **Performance Cars Ltd v Abraham** the court held that in most cases the original person in breach would be liable. The appellant hit the claimant's car (a silver cloud Rolls Royce) as a result of his admitted breach of duty. Two weeks prior to this incident the Rolls Royce had been in a previous incident whereby another negligent driver had hit the car. As result of the previous incident the car required a re-spray. The claimant claimed £75 for the re-spray for the prior incident and obtained judgment by default. However, the claimant has never received the sum. The claimant sought to claim the £75 from the appellant. It was conceded that the claimant could not recover the same loss twice. The question for the court was which defendant should pay or whether they should be jointly liable.

How many times was the Rolls Royce hit?

Wright v Cambridge Medical Group 2011 the claimant ages 11 months contracted chicken pox. She was admitted to hospital. In couple days the claimant developed a bacterial super infection which the hospital had not diagnosed at the time of her discharge. The bacteria seeded into the proximal femur resulting in osteomyelitis. Her condition was causing her discomfort so they went to GP and claimants condition failed to improve d considerable worsened. The doctor was contacted and the doctor didn't make an arrangement for the claimant to be seen. Divorce was negligent. By time they found out what was wrong with her, she had developed a permanently unstable hip and restricted mobility

Was it foreseeable that a late referral could cause harm?

Did D's late referral contribute significantly to C's permanent injury? **b) Multiple concurrent causes**

If the damage is caused by multiple causes that are acting concurrently (at the same time) then the but for test does not provide an absolute test for proving causation especially if the injury/disease is indivisible (cannot determine who is responsible). **Fairchild v Glenhaven Funeral Services Ltd 2002** This was a conjoined appeal involving three claimants who contracted mesothelioma, a form of lung cancer contracted by exposure to asbestos. Mesothelioma can be caused by a single fibre of asbestos. The condition does not get worse the greater the exposure. Once the fibre has embedded into the lung it can lay dormant for 30-40 years before giving rise to a tumour which can then take 10 years to kill. It will be only the last 1-2 years where a person may experience symptoms. By this time it is too late to treat. Each of the claimants had been exposed to asbestos by a number of different employers. They were unable to demonstrate, and medical science was unable to detect, which employer exposed each of them to the one fatal fibre.

The House of Lords decided that if D's breach materially increased the harm to C, that breach can be said to have caused any resulting harm and each and every D is liable. If

the disease that Fairchild had was cumulative i.e. got worse after each exposure would it have been easier or harder to prove causation?
Were any of the employers innocent in Fairchild?

Who has benefitted from the extension of the material contribution rule to the risk of harm?
This area of causation and apportioning damages is complex and therefore Parliament has had to intervene to clarify the law by the **Compensation Act 2006**.
If factual causation cannot be proven then the claim fails. However if factual causation has been satisfied then the claimant now has to prove legal causation.

Legal Causation / Novus Actus Interveniens (new intervening act) Even though the defendant can be identified as negligent and the but for test has been satisfied the chain of causation may still be broken by a subsequent intervening act. If the court accepts that this intervening act is the true cause of the damage suffered, then the defendant may not be liable. This is known as a novus actus interveniens and removes liability. However if the court does not accept this argument then the defendant remains liable.
There are various NAI that have been accepted by the court and potentially can break the chain of causation:

a) Remoteness of damage
If the loss or damage is not foreseeable it is too remote from the breach.

The Wagon Mound
The defendant's vessel, The Wagon Mound, leaked furnace oil at a Wharf in Sydney Harbour. Some cotton debris became embroiled in the oil and sparks from some welding works ignited the oil. The fire spread rapidly causing destruction of some boats and the wharf. Although damage done to the wharf by oil being spilled is reasonably foreseeable, the fire damage was not reasonably foreseeable

Corr v IBC Vehicles Ltd 2008
Did the accident at work (breach) cause the suicide or was it too remote? Did the depression or suicide have to be foreseeable? The Claimant was the widow of Thomas Corr who died. Mr Corr had been a maintenance engineer, working for Vauxhall motorcars. On the production line was an automated arm with a sucker for lifting the panels. One of these malfunctioned. Mr Corr and another working to remedy the fault were working to repair it. Suddenly, without warning, the machine picked up a panel and lifted it out of the press. He was in the way. He moved his head. The panel struck him on the right side of his head and severed most of his ear. The reconstruction of the ear had been long and painful, requiring several operations and absences from work. The Claimant had been disfigured, suffered unsteadiness, mild tinnitus, severe headaches and difficulty in sleeping. In addition he suffered a Post Traumatic Stress Disorder reliving the accident and having flash backs to the event. He began to suffer from nightmares, struggled to cope with daily life and struggled with his work. He felt bitter towards his employers, and was angry that he had never received a proper apology. He became bad

tempered and drank more than he had before the accident. He later committed suicide. Mrs Corr brought a claim against the employer on behalf of the estate and under the Fatal Accidents Act 1976. She was awarded £85,000.00 in respect of the claim on behalf of the estate but the claim under the Fatal Accidents Act was dismissed by the Judge. After dismissing the claim found that the deceased's suicide was not reasonably foreseeable by

the Defendant and the damages sought to be recovered in relation to the suicide fell outside the scope for the Defendant's duty of care.

b) Type of damage/injury to be foreseeable

If the type of damage is foreseeable then the fact that it occurred in an unforeseeable way or that the consequences were more extensive than could be foreseen will not affect liability.

Hughes v Lord Advocate

Two boys aged 8 and 10 went exploring an unattended manhole. The manhole had been left by workmen taking a break. It was surrounded by a tent and some paraffin lamps were left to warn road users of the danger. The boys took a lamp down the hole. One of them dropped the lamp and an unforeseeable explosion occurred resulting in extensive burns. Held that the damage was not too remote it was foreseeable that the boys may suffer a burn from the lamp. The fact that the burn resulted from an unforeseeable explosion did not prevent the type of damage being foreseeable.

Is this test wider or narrower than the **Wagon Mound** test? Who does it benefit the claimant or defendant?

In **Bradford v Robinson Rentals** why were the employers liable for the injuries? The claimant was required by his employer to take a van from Exeter to Bedford, collect a new van and drive it back to Exeter. It was an extremely cold winter and neither van had heating. As the windscreen kept freezing over, he had to drive the whole return journey with the windows open. The claimant suffered frostbite and was unable to work, the court decided that the employers were responsible for his injuries, even though the injury he suffered was very unusual. Some injury from the cold was reasonably foreseeable

However **Doughty v Turner Asbestos** illustrates when an injury will not be reasonably foreseeable. The claimant was injured when asbestos lid was knocked into a vat of molten metal. Shortly after, a chemical reaction caused an explosion of the metal which burnt the claimant. Scientific knowledge at the time could not have predicted the explosion and so the burn injuries were not reasonably foreseeable. It could be foreseen that knocking something into the molten metal might cause a splash, but the claimant's injury was caused by something different.

The principles set out in The Wagon Mound and Hughes were confirmed by the HofL in **Jolley v Sutton LBC**

Two 14-year-old boys found an abandoned boat on land owned by the council and decided to do it up. The boat was in a thoroughly rotten condition and represented a danger. The council had stuck a notice on the boat warning not to touch the boat and that if the owner did not claim the boat within 7 days it would be taken away. The council never took it away. The boys had been working on the boat for 6-7 weeks when one of them suffered severe spinal injuries, resulting in paraplegia, when the boat fell on top of him. The boys had jacked the boat up to work on the underside and the jack went through the rotten wood. The claimant brought an action under the Occupiers Liability Act 1984. The trial judge found for the claimant. The Court of Appeal reversed the decision,

holding that whilst it was foreseeable that younger children may play on the boat and suffer an injury by falling through the rotten wood, it was not foreseeable that older boys would try to do the boat up. The claimant appealed. House of Lords held that the claimant's appeal was allowed. The risk was that children would "meddle with the boat at the risk of some physical injury" The actual injury fell within that description.

c) The thin skull or the eggshell skull rule or take your victim as you find them This means that if a disability in a victim means they are likely to suffer more serious harm or even die, then D is still liable, even though a person without that disability would not have been so seriously harmed. It is an exception to the requirements for foreseeability, as D may be liable for a type of harm that was not foreseeable. **Smith v Leech Brain**

Because of the defendants' negligence, a man was burnt on the lip by molten metal in a factory. The man had an existing pre-cancerous condition. The burn eventually brought about the onset of full cancer and the man died. His widow claimed against the defendants. The courts decided that as a burn was reasonably foreseeable, because of the eggshell skull rule the defendants was liable for the man's death.

Res ipsa loquitur –the thing speaks for itself

Who has the burden of proving negligence? Claimant

What is the standard of proof? Balance of probabilities

What must the claimant show in a situation of res ipsa loquitor?

- The defendant was in control of the situation which caused the injury • The accident would not have happened unless someone was negligent • There is no other explanation for the injury

What does a defendant then have to do?

If these three points can be proved by the claimant then the burden of proof moves to the defendant who must prove that he/she was not negligent

e.g.

Scott v London and St Katherine Docks

The claimant was hit and injured by six heavy bags of sugar which fell from the defendants' warehouse. The claimant did not know what had happened to make the bags fall. He could only show that he was injured by the falling bags

- The sacks fell from the defendants' warehouse that was under the defendants' control
- Heavy sacks do not fall unless someone was negligent
- There was no other reason for the sacks to fall

The court decided that the defendants were liable as they were unable to prove that they had not been negligent

What fell on the C? Was D liable?

Is this case still relevant today?

Summary:

- Would the harm have occurred 'but for' D's act or omission?
- Is there more than one cause? If so the test may be modified.
- Was the harm foreseeable or was it too remote?
- Was this type of harm foreseeable?
- Does the thin-skull rule apply?

If both causation in fact and in law are proven then C is likely to be successful in a claim of negligence as they will have proven there was a duty of care, breach of it and D caused the damage. However D can raise a defence, which will remove or in some cases reduce their liability.