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