

GCE

LAW:  
Liability in negligence for injury to  
people and damage to property

SUGGESTED IDEAS FOR  
TEACHING/LEARNING



## SUGGESTED IDEAS FOR TEACHING AND LEARNING

Teacher /Lecturer:	
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Course:	AS Level Law
Topic:	Liability in negligence for injury to people and damage to property
Session:	Liability

Unit:	Unit 2
Ref. to specification:	The Law of Tort
Suggested time allocation:	4 – 8 hours

**Aims & Objectives:** At the end of these sessions the student will be able to:

- **Explain** the duty of care owed to people and damage to property.
- **Apply** the neighbour principle and *Caparo* test.
- **Explain** breach of duty.
- **Explain** the objective standard of care.
- **Apply** the reasonable person test.
- **Explain** causation of damage.
- **Apply** the ‘but for’ test.
- **Explain** legal causation.
- **Explain** and apply foreseeability and remoteness of damage.
- **Explain** the effect of an intervening act.
- **Explain** liability for psychiatric injury
- **Distinguish** between primary and secondary victims
- **Understand** the main defences to negligence \*this is needed as pervasive knowledge; defences are not specifically mentioned in the specification.

### Main Teaching and Learning Activities

#### **Teacher/Lecturer Activities:**

- Introduce the topic with reference to the aims and objectives set out above.
- **DUTY OF CARE:** Explain that the tort of negligence was introduced in the famous case of *Donoghue v Stevenson (1932)*.  
**Activity: Class Discussion** – learner to recall the facts of this famous case from their work on Judicial Precedent. Use active questioning to recap the facts.
- Spend some time exploring Lord Atkin’s neighbour principle. There are many and varied resources available online which explore this case and its principles in more detail.  
**Activity: Class Discussion** – “who is your neighbour?”
- Another important landmark case in the duty of care is *Caparo Industries v Dickman (1990)* which established a three-part test for establishing whether a duty of care exists. It has arguably further been extended in *Bharm v Dubb (2010)*.  
**Activity: Individual task** – Learners could create a mindmap or wall display showing either Lord Atkin’s neighbor principle and/or the *Caparo* three-part test.
- **STANDARD OF CARE:** The standard that has to be achieved when one owes a duty of care is that of the **reasonable man**.

- The standard of care was further defined in *Blyth v The Company of Proprietors of The Birmingham Waterworks (1856)*. The reasonable man test is often referred to as the Man on the Clapham Omnibus.

**Activity: Research** – Use a multimedia device to access Lord Reed’s explanation of the ‘reasonable man’ test in *Healthcare at Home Ltd v The Common Services Agency (2014)*.

\*The relevant reference is p49, paras 1-4.

- **CAUSATION:** Explain that there are two strands to causation that have to be proved for a successful negligence claim:

- **factual causation**

- **legal causation**

- **Factual Causation:** this is the ‘but for’ test and shows that there is a link between the defendant’s act or omission and the injury or loss caused. The leading case to be discussed here is *Barnett v Chelsea & Kensington Hospital (1969)*. Other cases include *Bonnington Castings Ltd v Wardlaw (1965)*, *McGhee v National Coal Board (1973)*, *Fairchild v Glenhaven Funeral Services (2003)*.
- Explain the concept of ‘loss of chance’ cases – these are cases where the defendant’s negligence deprived the claimant of the opportunity to avoid a loss. Leading cases are *Hotson v East Berkshire Area Health Authority (1988)* and *Gregg v Scott (2005)*.
- The factual causation test will only be satisfied if there is no *novus actus interveniens* – that is an intervening act which breaks the chain of causation. Leading cases: *Knightley v Johns (1982)*, *Baker v Willoughby (1969)*, *Jobling v Associated Dairies (1982)*, *McKew v Holland & Hannen & Cubitts (Scotland) Ltd (1969)*.

**Activity: Class Discussion** – Consider what might be classed as an intervening act? What is the effect on the claim of an intervening act?

**Activity: Short response question** – Explain what is meant by factual causation in the law of tort.

- **Legal Causation:** this refers to the fact that the defendant is legally responsible for the injury and it must be shown that the reasonable person could foresee the injury occurring....so long as the damage sustained by the claimant was not too **remote**.
- There are two tests for establishing remoteness of damage:
  - *Re Polemis (1921)*, and
  - *The Wagon Mound (No. 1) (1961)* – this is the test that all courts follow in practice today. That is, that a claimant must show that the type of damage caused by the defendant’s act or omission was reasonably foreseeable.

**Activity: Research Exercise** – Research these two leading cases and summarise the test for remoteness contained in each one.

- Explain that the ‘thin skull rule’ means that if the type of injury is foreseeable but because of some pre-existing condition the extent of the injury is worse than would usually have been expected, the claimant is still liable for the full extent of the injury – *Smith v Leech Brain & Co Ltd (1962)*.

**Activity: Short response question** – Explain what is meant by legal causation in the law of tort.

**Activity: Application of the law** – Consider the law on negligence and apply to the problem question on Jack and Jayden.

- **PSYCHIATRIC DAMAGE:** Psychiatric damage is injury to the mind rather than the body. In order to understand this, learners need to be aware of the difference between primary and secondary victims.

**Activity: Research Exercise – Hillsborough Disaster (1989) – see exercise in Teacher Guide on the Hillsborough Disaster.**

- Discuss the leading case of *Alcock v Chief Constable of South Yorkshire Police (1992)* which was brought by 10 claimants who all claimed they had suffered psychiatric injury as a result of the experiences inflicted on them in the Hillsborough disaster. Explore each of these claimants and discuss whether you think they were secondary victims and therefore have a claim: *Robert Alcock, Brian Harrison, Mr & Mrs Copoc, Brenda Hennessey, Denise Hough, Stephen Jones, Catherine Jones, Joseph Kehoe, Alexandra Penk.*

Each claimant's case could be provided to learners on a flash card for them to read to the rest of the class, or a role play scenario could be set up.

**Activity:** Apply the test of “sufficient proximity” to determine whether someone is a secondary victim, laid down in the case to each of the claimants.

**Activity: Class Discussion:** do you agree with the decision in *Alcock*? Why do you think the courts have tried to limit claims for psychiatric damage?

### Student Activities:

- MindMap – learners to summarise Lord Atkin's neighbourhood principle and the three-part *Caparo* test.
- Research – look at key cases for definitions and summaries of the ‘reasonable man’ test and the remoteness of damage tests.
- Class Discussion – various starter activities to assess prior knowledge and consolidate existing knowledge.
- Short response essay practice – write a short essay on
  1. What is meant by factual causation in the law of tort?
  2. What is meant by legal causation in the law of tort?

This is a good exercise to practice essay questions and to incorporate the use of legal authority.

- Scenarios – apply the law of negligence to the given scenario. This is good examination practice for the problem style questions.

### Suggested links / resources:

- PowerPoint presentation
- Teacher Guide
- Case Summaries

*Alcock v Chief Constable of South Yorkshire (1991)*

<http://bailii.org/uk/cases/UKHL/1991/5.htm>

- Hillsborough YouTube clip: <https://youtube.com/watch?v=MNS26Oj9B4o>

## Assessment of Learning

During the lesson

Group exercises and direct questioning show how much the students have understood the law relating to liability in negligence for injury to people and damage to property, including psychiatric injury.

Subsequent to lesson