

Revision Summary Chapter 14

The tort of negligence

- The current test to establish a duty of care requires (i) foreseeability of damage; (ii) proximity; and (iii) that the imposition of a duty must be just, fair, and reasonable.
- Once the claimant has established that a duty of care exists, he will need to establish that the defendant breached that duty.
- The standard of care owed is that of the reasonable man. If the defendant is a child, the standard is that of a reasonable and prudent child of the defendant's age.
- Four factors are relevant when determining breach of duty: (i) the likelihood of injury; (ii) the seriousness of the injury; (iii) the cost of precautions; and (iv) the usefulness of the defendant's conduct.
- The claimant will need to establish that the defendant's negligence was the factual and legal cause of his loss.
- The court will ask whether the claimant would have suffered the loss 'but for' the defendant's negligence. An affirmative answer means that the loss would have occurred anyway and the defendant will not be liable.
- The claimant will need to establish that the harm suffered was not too remote from the defendant's negligent act. The defendant is only liable for those types of harm that are a reasonably foreseeable consequence of his negligence.