

CHAPTER 11 THE TORT OF NEGLIGENCE

After studying this chapter students should be able to:

OUTLINE THE DIFFERENCE BETWEEN THE LAW OF TORTS AND CONTRACT AND CRIMINAL LAW

- A tort is a civil wrong and is primarily about providing a remedy for people for harm that they have suffered. The Law of Torts concerns involuntary obligations that are imposed upon persons by the law.
- Criminal Law is primarily about punishing the people who have committed wrongs in the eyes of the state.
- In the Law of Contract, the obligations imposed in the contract have been voluntarily agreed to by the parties when they entered into the contract.

EXPLAIN THE NECESSARY INGREDIENTS OF NEGLIGENCE

- The three necessary ingredients to establish a duty of care are:
 - The defendant owed the claimant a duty of care;
 - The defendant breached that duty of care;
 - Reasonably foreseeable damage was caused by the breach of duty.
- The three elements sometimes overlap, and in a court case the issues are often looked at together rather than separately.

EXPLAIN HOW A DUTY OF CARE MAY BE ESTABLISHED

- The claimant must establish that there is legal authority for a duty existing or where it is a new duty of care use the three-staged test: The harm or loss caused was reasonably foreseeable, and
 - There was proximity between the claimant and the defendant, and
 - It is fair, just, and reasonable in all the circumstances for the law to impose a duty on the defendant.

UNDERSTAND THE SPECIAL REQUIREMENTS FOR THE RECOVERY OF PURE ECONOMIC LOSS AND FOR LOSS AS A RESULT OF PSYCHIATRIC INJURIES

- Pure economic loss is where the financial loss of the claimant is not connected to any physical injury of the claimant or damage to his property.
- Recovery of pure economic loss through the tort of negligence is very limited. A duty of care will only be imposed if there is a 'special relationship' between the parties.

DESCRIBE THE PRINCIPLE OF BREACH OF A DUTY OF CARE

- The claimant must establish that the defendant broke his duty of care by doing something that a reasonable man in the circumstances would not have done, or failing to do something that a reasonable man in the circumstances would have done.
- The standard of care is an objective test.
- In deciding a duty has been breached, the court will take into account the probability and potential seriousness of harm being caused to the claimant, the reasonableness/practicalities of taking precautions, and the usefulness to society of what the defendant was attempting to achieve.

EXPLAIN THE EXTENT OF DAMAGES RESULTING FROM BREACH OF A DUTY OF CARE

- The claimant must prove, on the balance of probabilities, that the defendant's negligence caused or materially contributed to the injury or loss sustained.
- The loss or damage suffered by the claimant must be reasonably foreseeable.
- If a claimant has a particular weakness and, therefore, suffers a greater injury than a normal person, the defendant will be liable to the full extent of the claimant's injuries.
- The chain of events may be broken by an intervening event or act.
- The defendant is only liable for injury up until the intervening event.
- A defendant who injures a claimant who has already been injured will be liable only in so far as his act increases or exacerbates the pre-existing injury.