

# English for Lawyers 3

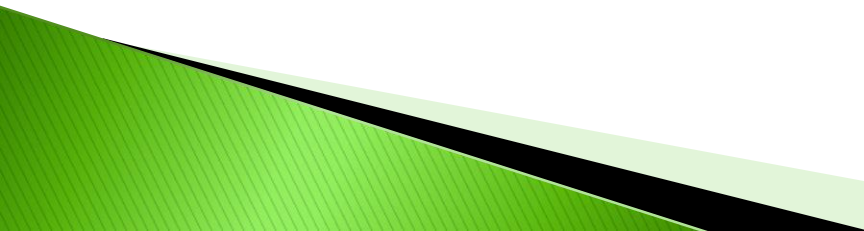
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# Revision

The Law of Torts



# The Law of Torts

1. How can we define a tort?
  2. What can happen as a consequence of tortious conduct?
  3. Compare:
    1. trespass to land and nuisance
    2. assault and battery
    3. false imprisonment and defamation
    4. libel and slander
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# The Law of Torts

- ▶ Do exercise 143/VII
- ▶ DISCUSSION
  - analyze the cases in exercise VIII with a partner
  - discuss in class

# Negligence




# Concept of negligence

- ▶ involves situations where a lack of care by a person who was expected to provide it causes damage to another
- ▶ developed in English law in 1932 by the House of Lords
- ▶ **Donoghue v Stevens** [HL 1932], a.k.a. the Paisley snail case

# Concept of negligence

- ▶ Donoghue v Stevens (HL 1932)
- ▶ Lord Atkin – the ‘neighbour principle’
- ▶ „You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.”
- ▶ Who does Lord Atkin refer to as a ‘neighbour’?

# Concept of negligence

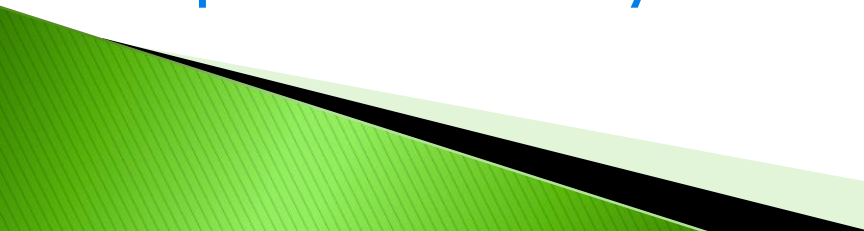
- ▶ negligent conduct may entail **legal liability** and warrant the payment of **damages**
  - ▶ key concepts:
    - duty of care
    - reasonable foreseeability of harm (reasonable foresight)
    - standard of care
    - breach of duty of care
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# Duty of care and reasonable foresight

- ▶ Think of situations which probably involve a duty of care!


# Duty of care and reasonable foresight

- ▶ reasonable foreseeability of damage caused by a lack of care suggests there probably is a duty of care
  - ▶ reasonable foresight – harm that can reasonably be expected
  - ▶ Think of examples of such harm and harm which might not be reasonably expected in a possible duty of care situation!
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# Standard of care

- ▶ judging whether a duty of care was breached requires knowing what standard of care is expected of the defendant
- ▶ general standard: conduct by a **reasonable man** in the given circumstances
- ▶ Reasonable man is a legal concept. What care do you think can be expected from him?
  - ▶ Free from over-apprehension and over-confidence


# Standard of care

- ▶ What difficulties might arise in determining the care of a reasonable man?
  - ▶ What about cases of professional negligence?
  - ▶ professional negligence – **professional standard**
  - ▶ a body of experts will attest to common, standard and reasonable practices in the relevant profession
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# Breach of the duty of care

- ▶ if the defendant's acts or omissions were below the standard – breach of the duty of care is established
  - ▶ negligence is proved
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# Considerations in establishing a breach of the duty of care

- ▶ defendant's ability to stand the loss
  - ▶ impact of the decision on the profession concerned
  - ▶ future adjudication (setting precedents)
  - ▶ the 'floodgates' argument
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# Breach of duty of care

- ▶ Do exercise III – true or false?

**Thank you for your attention!**

