# DOWNLOAD PDF NEGLIGENCE: CAUSATION

## Chapter 1 : bits of law | Tort | Negligence | Damage: Causation

*Causation is the "causal relationship between conduct and result". In other words, causation provides a means of connecting conduct with a resulting effect, typically an injury.*

You will find a lot information that can help you to claim for damages or to deal with disputed motor insurance claims and even to defend you, if you face an inflated high and unreasonable claim against you. On your way looking for a professional car accident damage assessment, to quantify and calculate your traffic accident damages occurred one of the provinces of South Africa, Gauteng - Freestate - Northern Cape - Limpopo - North West - Mpumalanga - KwaZuluNatal KZN - Eastern Cape - Western Cape - you found the RAMLA web pages giving you some ideas about the pro and cons of an independent damage investigation and what you should look on to get a reliable accident damage report, helping you to proof the material claim, against the liable party or the motor insurance company. Working with RAMLA will of course be the most comfortable and economic support in pursuit of a legal compensation claim, whether against a 3rd party or directed to any motor insurance company in South Africa. In the several provinces you find differences in the level of risks, according to traffic density, conditions of the roads, day and night times, weather conditions and many more. A motor car accident rarely does happen just out of one singular fault. Mostly more influential factors and other negligent actions must get together causing a traffic accident at all, when driving through Cape Town or Kahilitsha, Paarl, Parow, Calvinia, Springbok, Vredenburg, as Port Elizabeth, but not just there. In all our South African cities and even in rural areas, are risks by travelling a vehicle on public roads. Be aware that most accidents happen in your very near neighbourhood or on your daily way to or from work in your home town Middelburg, Graff-Reinet, Somerset - East or Somerset West, Grahamstown, Bisho, Zwelisha or East London, due to the facts that one who is very familiar with this routine, will not be on the alert level one should be. But even if you live in other small towns or mayor cities such as Umlazi, Durban, Pietermaritzburg, Potchefstroom, Port Elizabeth, Knysna, Krugersdorp, Oudtshorn, Mossel Bay or Worcester you have to be aware of the danger by making your trip. Other road users may not be up to their best abilities, be drunk for example or driving a motor car that better should not be on the road, as it is not roadworthy and so poses risks to other motorists. Just participate in local traffic within the towns and villages as Roberson, George, Kimberly, Rustenburg or Mabopane, you can be caught up in a vehicle crash at all times, despite you may drive carefully and respect the rules of the road. The other party is always even your risk. Minimising the probability to be caught up in a road crash, especially in bustling cities such as Pretoria, Johannesburg, Soweto, Germiston, Rustenberg, Welkom, Bloemfontein, Polokwane , Durban or Cape Town, where high volumes of motorist getting along all day, the risk to be involved in a car accident is much higher than just travelling in quieter areas as Klerksdorp or Mahikeng. The best will be, if you are on high alert all the time you drive a motor car. Taking care of keeping proper following distances which is a very good measure not to be involved in car accidents, when you on the roads of Kimberly, Queenstown, Beaufort West, Prieska, Upington, Vryburg, De Aar, Belfast, Bethlehem, Kroonstad , Harrysmith, Mabane, Nelspruit or Ermelo. In huge metropolis as Johannesburg or Cape Town where you deal with rush hours when commuters get to and from work in the morning and evening hours, the danger to be trapped up in a motor car accident are explicitly higher as to other traffic times. Car accident lawyers and professional claim managers to analyse, support and pursue your material car accident claim, effective and economical, nationwide in South Africa. The South African law in a motor car accident damage claim. The procedures to be followed, demanding and enforcing car accident compensation, are commonly known as 3rd party claim, in South Africa. Once accident matters or circumstances are analysed the case will be prepared, demanded and pursuit. One of the main obstacles in a vehicle accident damage compensation claim obviously will be the matter of possible disputes. Talking about the law, regarding solving differences that accrues from material car accident damages, the source is the common law of South Africa, the applicable traffic legislation and the developed schemes applied in a court of law over time, solving civil differences. Additionally there is the National Traffic Act, stipulating some essentials applicable to motor car accidents occured in public traffic. The initial obligations burden on any

motorists if involved in a traffic accident on public roads are outlined in the National Traffic Act, at section  This section tells you what the participants at least have to do when ever tangled by a car accident, as to report the accident, exchange personal data etc. It will be of high advantage to have someone on side, knowing the law and the wide ranging implications applying in motor accident disputes, being able to follow the procedures and solve the compensation claim positively. When does it make sense claiming for motor car damage compensation? This implies the question of economic matters is secondary to the principle. If a claim exceed a certain amount in relation to cost for demand and pursuit of the matter and the claimant will not be able doing it in own capacity, but prepared spending a smaller portion of compensation, which may be lost entirely, if no action will be taken. In figures it may imply that no claim for car accident damages, less than for the compensation of R 10  A claim below R 18  A claim higher than the threshold for the small claims court, above R 20  Any damages higher than R 60  We do offer a low flat rate as once off fee, which covers all we do in pre-litigation, starting with case evaluation, preparation, demand and pursuit. If a matter cannot be solved before legal actions in a court of law in the country, RAMLA takes the matter further, to the lowest costs available in the court schemes, which effectively means, if a case is won, all or most of those costs will be recoverable and recuperated from the liable party. That in fact means, a RAMLA client just deposits the estimate expenses and once costs are taxed and enforced, such will be paid back to the client. Its definitely one of the best claim options we do know on offer in South Africa and if all will be as predicted, the matter has been pursuit nearly free of costs. Motor Vehicle Accident We offer the solution in Car Accident matters, analysing, supporting, demanding, corresponding, negotiating, settlement agreements and further taking matters to a court of law in South Africa, if no amicable solution could be found, in pre-litigation, to best favourable conditions in a professional and decisive routine. Facing challenges with motor car accident issues in South Africa? RAMLA will be the solution, demanding compensation, resolving disputes, defending against inflated or unreasonable claims, in all sectors of vehicle accident damage compensation problems. What does - Negligence, Recklessness, Causation and Culpa means in a motor car accident damage claim? The pure occurrence of traffic accidents on South African Roads will have reasons, why a car accident happened and what are the causes. Dealing with financial recovery for vehicle accident damages, on RAMLA web pages, the recovery of damages must start in analysing the background of the road crash, as that only can lead to answer questions of who was negligent, driven recklessness, and must be blamed for the causation of the car accident, throughout culpable behaviour. A motorist found driving negligent or even recklessness, faces a claim for the recovery of traffic accident damage to property or motor car, of another or more parties, involved in the crash. Contact South African traffic legislation imposes a huge amount of awareness and obligations on motorists, once driving a car on public roads. If those duties, formulated in traffic regulations are violated, it can lead being found driving negligent or even recklessness and consequently blamed for compensation of harm to others. Negligent driving of a motor car can easily happen and means that the car driver did not obey all the rules of the road. Motorists driving recklessness are those, deliberately violate the traffic legislation as to an extraordinarily level, and infringe the duties of safe driving. Driving negligently or recklessness, must not necessarily lead to a motor car accident, but once it happens that such bad or negligent car driver, caused or being involved in an accident, the question who and to what extent will be liable for damage compensation is at stake. There are many factors to look on what can cause negligence. A motorist can be found negligent, but not being the cause for the particular accident. The driver caused the accident, will face liability, being the complete or partyly liable motorist. The determination who and on which reasons, is either innocent and did not contribute, be driven negligent or even recklessness, can depend on many issues. Recklessness is the advanced form of misbehaviour, racing instead of speeding, not respecting any rights of other motorist, forcing the way through the traffic, driving under the influence of alcohol, drugs etc. Driving recklessness is a criminal offence and should be investigated by SAPS and the one found been recklessness brought to book. Your specialised expert to sort out MVA matters Professional - competent - swift - decisive and affordable Below please find, as to your question in your web search for a solution in terms of MVA matters, we provide you with some answers, just click to the linked questions below.

## Chapter 2 : Negligence: Causation |

*In order for a plaintiff to win a lawsuit for negligence, he or she must prove all of the "elements."For instance, one of the elements is "damages," meaning the plaintiff must have suffered damages (injuries, loss, etc.) in order for the defendant to be held liable.*

These are what are called the "elements" of negligence. Most jurisdictions say that there are four elements to a negligence action: Some jurisdictions narrow the definition down to three elements: Duty of care[ edit ] Main article: The first step in determining the existence of a legally recognised responsibility is the concept of an obligation or duty. In the tort of negligence the term used is duty of care [7] The case of Donoghue v Stevenson [8] [] established the modern law of negligence, laying the foundations of the duty of care and the fault principle which, through the Privy Council , have been adopted throughout the Commonwealth. The friend bought Mrs Donoghue a ginger beer float. She drank some of the beer and later poured the remainder over her ice-cream and was horrified to see the decomposed remains of a snail exit the bottle. Donoghue suffered nervous shock and gastro-enteritis, but did not sue the cafe owner, instead suing the manufacturer, Stevenson. As Mrs Donoghue had not herself bought the ginger beer, the doctrine of privity precluded a contractual action against Stevenson. The Scottish judge, Lord MacMillan, considered the case to fall within a new category of delict the Scots law nearest equivalent of tort. However, these act as guidelines for the courts in establishing a duty of care; much of the principle is still at the discretion of judges. The test is both subjective and objective. There is a reduced threshold for the standard of care owed by children. In the Australian case of McHale v Watson, [17] McHale, a 9-year-old girl was blinded in one eye after being hit by the ricochet of a sharp metal rod thrown by a year-old boy, Watson. The defendant child was held not to have the level of care to the standard of an adult, but of a year-old child with similar experience and intelligence. Certain jurisdictions, also provide for breaches where professionals, such as doctors, fail to warn of risks associated with medical treatments or procedures. Doctors owe both objective and subjective duties to warn; and breach of either is sufficient to satisfy this element in a court of law. For example, the Civil Liability Act in Queensland outlines a statutory test incorporating both objective and subjective elements. In Donoghue v Stevenson, Lord Atkin declared that "the categories of negligence are never closed"; and in Dorset Yacht v Home Office it was held that the government had no immunity from suit when they negligently failed to prevent the escape of juvenile offenders who subsequently vandalise a boatyard. In other words, all members of society have a duty to exercise reasonable care toward others and their property. Stone , [19] the House of Lords held that a defendant was not negligent if the damage to the plaintiff were not a reasonably foreseeable consequence of his conduct. In the case, a Miss Stone was struck on the head by a cricket ball while standing outside a cricket ground. Finding that no batsman would normally be able hit a cricket ball far enough to reach a person standing as far away as was Miss Stone, the court held her claim would fail because the danger was not reasonably or sufficiently foreseeable. Causation law In order for liability to result from a negligent act or omission, it is necessary to prove not only that the injury was caused by that negligence, but also that there is a legally sufficient connection between the act and the negligence. Factual causation actual cause [ edit ] See also: Causation in English law and Breaking the chain For a defendant to be held liable , it must be shown that the particular acts or omissions were the cause of the loss or damage sustained. Asbestos litigations which have been ongoing for decades revolve around the issue of causation. Interwoven with the simple idea of a party causing harm to another are issues on insurance bills and compensations, which sometimes drove compensating companies out of business. Legal causation proximate cause [ edit ] Negligence can lead to this sort of collision: The idea of legal causation is that if no one can foresee something bad happening, and therefore take care to avoid it, how could anyone be responsible? For instance, in Palsgraf v. Long Island Rail Road Co. The plaintiff, Palsgraf, was hit by coin-operated scale which toppled because of fireworks explosion that fell on her as she waited on a train platform. A train conductor had run to help a man into a departing train. The man was carrying a package as he jogged to jump in the train door. The package had fireworks in it. The conductor mishandled the passenger or his package, causing the package to fall. The fireworks slipped

and exploded on the ground causing shockwaves to travel through the platform. On appeal, the majority of the court agreed, with four judges adopting the reasons, written by Judge Cardozo, that the defendant owed no duty of care to the plaintiff, because a duty was owed only to foreseeable plaintiffs. Three judges dissented, arguing, as written by Judge Andrews, that the defendant owed a duty to the plaintiff, regardless of foreseeability, because all men owe one another a duty not to act negligently. Such disparity of views on the element of remoteness continues to trouble the judiciary. If the court can find that, as a matter of law, the defendant owed no duty of care to the plaintiff, the plaintiff will lose his case for negligence before having a chance to present to the jury. However, some courts follow the position put forth by Judge Andrews. In jurisdictions following the minority rule, defendants must phrase their remoteness arguments in terms of proximate cause if they wish the court to take the case away from the jury. Remoteness takes another form, seen in The Wagon Mound No. The ship leaked oil creating a slick in part of the harbour. The wharf owner asked the ship owner about the danger and was told he could continue his work because the slick would not burn. The wharf owner allowed work to continue on the wharf, which sent sparks onto a rag in the water which ignited and created a fire which burnt down the wharf. In Australia the concept of remoteness, or proximity, was tested with the case of Jaensch v Coffey. The court upheld that, in addition to it being reasonably foreseeable that his wife might suffer such an injury, it required that there be sufficient proximity between the plaintiff and the defendant who caused the collision. Here there was sufficient causal proximity. This should not be mistaken with the requirements that a plaintiff prove harm to recover. As a general rule, a plaintiff can only rely on a legal remedy to the point that he proves that he suffered a loss; it was reasonably foreseeable. When damages are not a necessary element, a plaintiff can win his case without showing that he suffered any loss; he would be entitled to nominal damages and any other damages according to proof. Negligence is different in that the plaintiff must prove his loss, and a particular kind of loss, to recover. In some cases, a defendant may not dispute the loss, but the requirement is significant in cases where a defendant cannot deny his negligence, but the plaintiff suffered no pecuniary loss as a result even though he had suffered emotional injury or damage but he cannot be compensated for these kind of losses. The plaintiff can be compensated for emotional or non-pecuniary losses on the condition that If the plaintiff can prove pecuniary loss, then he can also obtain damages for non-pecuniary injuries, such as emotional distress. The requirement of pecuniary loss can be shown in a number of ways. A plaintiff who is physically injured by allegedly negligent conduct may show that he had to pay a medical bill. If his property is damaged, he could show the income lost because he could not use it, the cost to repair it, although he could only recover for one of these things. The damage may be physical, purely economic, both physical and economic loss of earnings following a personal injury, [34] or reputational in a defamation case. Emotional distress has been recognized as an actionable tort. Generally, emotional distress damages had to be parasitic. That is, the plaintiff could recover for emotional distress caused by injury, but only if it accompanied a physical or pecuniary injury. A claimant who has suffered only emotional distress and no pecuniary loss would not recover for negligence. However, courts have recently allowed recovery for a plaintiff to recover for purely emotional distress under certain circumstances. The eggshell skull rule was recently maintained in Australia in the case of Kavanagh v Akhtar. Damages Damages place a monetary value on the harm done, following the principle of restitutio in integrum Latin for "restoration to the original condition". Thus, for most purposes connected with the quantification of damages, the degree of culpability in the breach of the duty of care is irrelevant. Once the breach of the duty is established, the only requirement is to compensate the victim. One of the main tests that is posed when deliberating whether a claimant is entitled to compensation for a tort, is the " reasonable person ". Simple as the "reasonable person" test sounds, it is very complicated. It is a risky test because it involves the opinion of either the judge or the jury that can be based on limited facts. However, as vague as the "reasonable person" test seems, it is extremely important in deciding whether or not a plaintiff is entitled to compensation for a negligence tort. Damages are compensatory in nature. Anything more would unlawfully permit a plaintiff to profit from the tort. There are also two other general principles relating to damages. Firstly, the award of damages should take place in the form of a single lump sum payment. Therefore, a defendant should not be required to make periodic payments however some statutes give exceptions for this. Secondly, the Court is not

concerned with how the plaintiff uses the award of damages. General damages - these are damages that are not quantified in monetary terms e. A general damage example is an amount for the pain and suffering one experiences from a car collision. Lastly, where the plaintiff proves only minimal loss or damage, or the court or jury is unable to quantify the losses, the court or jury may award nominal damages. Punitive damages - Punitive damages are to punish a defendant, rather than to compensate plaintiffs, in negligence cases. For example, the manner of this wrongful act increased the injury by subjecting the plaintiff to humiliation, insult. This can be by way of a demurrer , motion to dismiss, or motion for summary judgment. Whether the case is resolved with or without trial again depends heavily on the particular facts of the case, and the ability of the parties to frame the issues to the court. The duty and causation elements in particular give the court the greatest opportunity to take the case from the jury, because they directly involve questions of policy. On an appeal from a dismissal or judgment against the plaintiff without trial, the court will review de novo whether the court below properly found that the plaintiff could not prove any or all of his or her case.

# DOWNLOAD PDF NEGLIGENCE: CAUSATION

## Chapter 3 : Negligence: Duty, Breach, Causation, Damages | Marco Wimmer

*In negligence cases (which are among the most popular types of cases in the legal system), there are four parts that law students try to cram into their brains before an exam: duty, breach, causation and damages.*

In most torts cases, causation can be broken down into two different types: The cause in fact of an injury is the one that, if it had not happened, the injury would not have happened either. Proximate cause asks whether the injury was foreseeable. The famous torts case that explains the difference between cause in fact and proximate cause is Palsgraf v. Long Island Railroad Co. In this case, a man ran across a train platform to catch a train. He was carrying a package. As he approached the train, it began to move, so at the last second the man tried to leap aboard the train. As he was trying to get onto the train, two Long Island railroad guards, one on the train itself and one on the train platform, pushed and pulled the man, trying to make sure he landed securely on the train. As the railroad guards jostled the man, he dropped his package, which happened to be full of fireworks. The fireworks exploded, panicking the crowd on the platform. A panicking crowd member pushed against a heavy set of scales. The scales fell over onto Mrs. Palsgraf sued the railroad, claiming that the negligence of the railroad guards in pushing the man onto the train caused her injuries. The court found that cause in fact existed, because if the package had not been dropped, its exploding contents would not have scared the bystander into pushing the scales so they fell on Mrs. However, the court held that proximate cause did not exist, because there was no way that the railroad guards could have foreseen that Mrs. Palsgraf would be hit by falling scales if they pushed a man trying to get onto the train at the opposite end of the train platform. In some types of personal injury cases, however, causation is the center of the case. For instance, in a strict liability case like those involving products liability or ultrahazardous activities, the plaintiff only needs to prove that the harmful behavior or product caused her injuries. Join the Discussion Cancel reply Please note: Comments are encouraged in order to permit visitors to discuss relevant topics. Comments are moderated and might be edited by RLG before being published.

## Chapter 4 : Causation (law) - Wikipedia

*Negligence: Duty, Breach, Causation, Damages Most people of my Mesa automobile accident clients believe that just because they were injured, by something or someone, they should be compensated. This is just not true.*

Therefore, the courts have modified the but for test. In Wilsher v Essex Area Health Authority [] , the defendant could only be held responsible for one of the possible risk factors and it could not be shown that this increased the risk of the claimant suffering the harm. Therefore, despite the widening of the but for test the claimant was still unable to satisfy the causation requirement. Divisible injury The issue arises: The claimant suffered asbestosis due to exposure to asbestos at work. The asbestosis was a cumulative condition, which got progressively worse the longer the exposure continued. Over a period of time, the claimant had been carrying out the same work for several employers, including the defendant. To what extent was the defendant liable? The defendant would be responsible for a proportion of the harm suffered by the claimant. Therefore, damages were apportioned between the defendant and the other employers the tortfeasors according to the length of time the claimant worked for each employer. The claimant must make a claim against all the tortfeasors in order to recover full damages. S1 Entitlement to contribution  S2 Assessment of contribution  Under of the Civil Liability Contribution Act , the defendants are jointly and severally liable for the full damages owed to a claimant. This means a claimant may bring a claim for full damages against only one of the defendants. It aids a claimant to recover full damages even if one of the other defendants is insolvent or untraceable. In addition, under S2 1 , the courts can apportion liability for damages between the defendants according to their share of responsibility for the harm caused. Recent developments A recent decision has been criticised for weakening the test for factual causation and therefore, leaving employers and insurers vulnerable to large claims. However, it can also be seen as providing just recourse for claimants who have suffered serious harm. The claimants had developed mesothelioma, a cancer, caused by exposure to asbestos. The claimants had worked for several employers and were exposed to asbestos in each job. The defendants were some but not all of the employers. Medical evidence failed to show which of the employers had been responsible for the exposure which led to the cancer. Each defendant argued that the but for test was not satisfied as their breach may have not been responsible for triggering the cancer. Could the defendants be held responsible? The Court of Appeal found that the lack of medical certainty meant that causation could not be proved. However, the House of Lords approved the approach in McGhee v National Coal Board [] , finding that the defendants had materially contributed to the risk of the claimants contracting the cancer. It also found that mesothelioma was an indivisible injury and therefore, the defendants were jointly and severally liable. Another controversial decision followed, which appeared to retract the scope of the decision in Fairchild v Glenhaven Funeral Services Ltd []. Barker v Corus [] 2 AC Facts: The claimants contracted mesothelioma working for a number of employers. However, when the case was brought the defendant was the only employer still trading. The defendant argued that if was unfair to impose joint and several liability when their breach had only contributed to the risk of harm. The defendant argued liability should be proportionate only to the extent to which they contributed to the risk the time that they had employed the claimants and exposed them to the asbestos. Could the defendant be held jointly and severally liable? Parliament passed the Compensation Act which effectively reversed the decision for claimants suffering mesothelioma. However, it remains unclear whether the decision will be followed in cases where causation is based on a material contribution to the risk of harm. Therefore, the courts must focus on the outcome of events not the damage which occurred. However, it refused to rule out the possibility of successful loss of chance cases in different circumstances. Gregg v Scott [] WL 48 Facts: The claimant had a lump under his arm which the defendant doctor negligently diagnosed as benign. Medical evidence, suggested that if the misdiagnosis had not have occurred the claimant would have had a forty five per cent chance of recovery. The initial incident meant that the car was in need of a re-spray prior to the incident involving the defendant. Could the defendant be liable for the damage? Similarly, issues can arise in relation to personal injuries. The claimant had suffered physical injuries after a vicious assault at work, which employer, the first defendant, had negligently failed to protect him from. Furthermore, the claimant suffered

severe continuing psychiatric injury as a result. Medical evidence showed that the complex psychiatric injury could be attributed to the two separate tortious incidents. To what extent was each defendant liable? The hospital was solely responsible for the blindness. The court found that both were liable for the psychiatric injury. On the basis of the medical evidence, the psychiatric injury was found to be divisible and therefore, the damages were apportioned between the employer and the hospital. However, the chain may be broken by an intervening event. Extrinsic intervening events nova causa interveniens may occur or the independent act of someone other than the defendant novus actus interveniens may also interfere with the chain of causation. However, an intervening event does not necessarily break the chain of causation. Third party The intervening act of a third party may break the chain of causation. A third party act will not break the chain of causation if the defendant is under a legal duty to prevent that act. Stansbie v Troman [] 2 KB 48 Facts: The claimant had property stolen from her house, when the defendant, a decorator, left the house unoccupied and unlocked. The defendant was under at duty to secure the property if he left the house. Did the intervening act break the chain of causation? The chain of causation was not broken, the actions of the thief, was the very reason the defendant was under a duty to secure the property. The defendant was driving negligently which led to his car turning over near the exit from a one-way tunnel. The police officer who arrived at the scene negligently directed the plaintiff to drive back up the tunnel. The plaintiff collided with an oncoming vehicle and was injured. The chain of causation was broken. However, the gross negligence of the officer was not foreseeable. A negligent act of a third party is more likely to break the chain of causation, but not definitely because some errors of judgment are foreseeable. Therefore, the question of foreseeability, even if the third party was negligent will be decided on the facts of each case. Rouse v Squires [] QB Facts: Another lorry driver, who was also driving negligently, failed to see the blockage soon enough and killed the victim. The Court of Appeal found that the chain of causation was not broken, as it was reasonably foreseeable that other drivers may arrive at the scene too fast to stop. Both the defendant and the second driver had made a material contribution to the indivisible injury. Under the Civil Liability Contribution Act the court apportioned liability between them. An instinctive intervention, by a third party, may not break the chain of causation if it is a foreseeable reaction. Scott v Shepherd 2 Wm Bl Facts: The defendant threw a lighted squib into a crowded market. Two other individuals picked the squib up and threw it away from themselves and their stalls. The squib eventually exploded in front of the plaintiff, who lost his eye. Did the intervening acts break the chain of causation? A few days later, the plaintiff was descending some steep steps without a handrail. He lost control of his leg and fell down the stairs, severely fracturing his ankle. His unreasonable conduct is novus actus interveniens. The chain of causation has been broken and what follows must be regarded as caused by his own conduct The claimant was injured at work, resulting in his leg being amputated. The defendant was liable was for this injury. Several months later, the claimant had an accident, trying to use his new prosthesis, which meant that he would be permanently confined to a wheelchair. However his damages were reduced as contributory negligence was accepted as a partial defence. Like the amputation, the fall was This article can be found online at www.

## Chapter 5 : What Is The Law On Negligence In California? | Evan W. Walker Law

*The third element of negligence is causation. The breach of the duty of care must be the legal cause of the harms suffered by the injured person. There are two distinct but closely related components of legal causation: actual cause and proximate cause.*

The Clements litigation involved a personal injury claim. On August 7th, , Mr. Clements were riding a motor bike from Prince George, B. Clements was driving the bike, with Mrs. Clements riding behind him in the passenger seat. The weather was wet and the bike was about pounds overloaded. Clements passed the centre line, the nail fell out, deflating the rear tire, which caused the bike to wobble and crash. Clements was thrown off the bike, and suffered a severe traumatic brain injury Clements, para 1. Clements then sued Mr. The only issue was whether his negligence caused the injury to Mrs. Clements argued that the likely cause of the accident was the puncture and subsequent deflation of the rear tire, and that the accident would have occurred even in the absence of negligence Clements, para 2. The trial judge found that Mr. On this basis, Mr. Clements was found liable Clements, para 3. On appeal, the B. There have been multiple cases dealing, either implicitly or explicitly, with the relationship between the two tests. Among these cases are: Farrell , [] 2 S. Leonati , [] 3 S. In Cook, three men were out hunting when two of them fired their guns, hitting a fourth hunter with a single shot. Even though it could not be determined which defendant actually caused the injury, it was clear that both of them had breached their duty of care to the plaintiff, subjecting him to an unreasonable risk of injury that in fact materialized Clements, para  To deny recovery in such circumstances would not have met the negligence law goals of compensation, fairness and deterrence, in a manner consistent with corrective justice Clements, para  It was unclear what caused the atrophy or when it had occurred. In Athey, a plaintiff who suffered from pre-existing back problems got into two car accidents, suffering a herniated disc. He sued the drivers of the other motor vehicles in negligence. Her estate sued the supplier for negligence in failing to prevent blood donations from those with a high risk of HIV. In finding the supplier liable, the Court and more specifically, Major J. Indeed, in obiter, Major J. In Resurfice, the plaintiff ice-maker suffered a personal injury a burn when he accidentally caused a fire by pouring water into the gas tank of the ice-making machine. He sued the manufacturer and distributor of the machine, alleging negligence in not making clear the distinction between the water and gas tanks Clements, para  Thus, prior to Clements, the SCC, despite never in fact applying the material contribution test, has accepted that such a test might be appropriate in special circumstancesâ€¦ and it is in Clements that those circumstances are finally defined. Ultimately, the SCC allowed the appeal and ordered a new trial Clements, para 54 , having found that the trial judge made two errors:

## Chapter 6 : Causation in tort law

*What is "causation"? "Causation," in a personal injury case, makes the crucial link between a person or company's behavior and another person's calendrierdelascience.com if a defendant in a negligence case is horribly careless or reckless, he cannot be held liable for injuring the plaintiff unless his negligent behavior caused the injury.*

Duty, Breach, Causation, Damages Negligence: Duty, Breach, Causation, Damages Most people of my Mesa automobile accident clients believe that just because they were injured, by something or someone, they should be compensated. This is just not true. In order for the defendant to be liable to injured party, there must be a component of fault â€" in this case, the fault takes the form of negligence. Arizona follows a pretty standard definition of negligence which is: The defendant owed a duty of care to the injured party, and this duty is defined and imposed by law; Breach of that duty: The defendant breached that duty of care, or, in other words, did not take the proper care in doing something Causation: The breach of that duty caused the injuries that the injured person is complaining of. This can get quite complicated because there are two types of causation: For example, say I am at an intersection waiting to make a turn. I am struck from behind, pushed into the intersection and I hit an on-coming car with my car. While I am the one who, in fact, caused injury to the on-coming car, I would not be liable to that person because I am not the legal cause of the injury. The operator of the car who struck me is the legal cause of the injury to the on-coming vehicle. Finally, even if you are injured in a Mesa automobile accident or collision you still have to prove damages. This means that I was actually injured and lost something of tangible value â€" it could be time at work, lost wages, medical bills, mental pain, or anguish. Except in rare cases the law does not presume damages â€" you must prove them! The duty of care people owe to each other is complicated. Jury instructions are a great place to get easy to read definitions of what the law is in many different circumstances. As a Mesa personal injury lawyer , my cases consist mainly of automobile accidents and injury, duty usually comes in one of two forms: NEGLIGENCE Type 1 Assume Laws Obeyed Duty to Observe A driver is entitled to assume that another motorist will proceed in a lawful manner and obey the laws of the roadâ€"unless it should become apparent to that driver, acting as a reasonably careful person, that the other motorist is not going to obey the laws of the road. All drivers have a continuing duty to make that degree of observation that a reasonably careful person would make under similar circumstances. Every driver of a automobile or under a duty to every other driver to watch out and take care for the safety of every other person on the road. Full time and attention is to be paid by every driver, for the safety of everyone. So, when someone is out there driving while talking on the phone or texting, or even just having an animated conversation with another passenger in the car, they are violating this duty to observe. Because they are distracted. The other interesting thing here is that your duty to proceed in a lawful manner and to obey all traffic laws ends when you notice that another driver is not operating his or her vehicle in a lawful manner â€" you can, for example, cross the yellow line to avoid getting hit and NOT be negligent, even if you run into another vehicle, even though the law says that you cannot cross a yellow line. Proving this may be difficult, though. Duty is also be described by Arizona,City or County statutes or ordinances. The law says you can only make that turn when you are sure it is safe to do so and if the light is green or yellow. Violating these types of laws is called negligence per se. That means if the jury finds that the at-fault driver violated one of many statutes, such as the left hand turn statute, that driver is AUTOMATICALLY assumed to be negligent and the jury can move onto determining causation and damages. This is what the jury would be instructed: If you find from the evidence that a person has violated any of these laws, that person is negligent. You should determine whether that negligence was a cause of injury to [name of plaintiff]. If you are injured by a drunk driver, he will be presumed to have been negligent operating the vehicle. The Arizona Jury Instructions also address duty in these types of cases: A child who does not use the degree of care that is ordinarily exercised by children of the same age, intelligence, knowledge, and experience under the existing circumstances is negligent. An adult must anticipate the ordinary behavior of children, and that children might not exercise the same degree of care for their own safety as adults. As you can see, when we are dealing with the negligence of a child, the analysis of fault is different ordinary negligence analysis. Second, there is a duty

on the injured adult to anticipate the way most children behave and to protect or guard themselves against that kind of behavior. So, when little Johnny comes flying across the room, jumps in your arms and breaks your arm, chances are, you are not going to get any money from the parents homeowners insurance. Because that is what children do and as the adult, you need to anticipate that behavior and protect yourself from harm. As I go along in these blogs, we will go further into depth on these and many other subjects that my clients seem interested in.

## Chapter 7 : calendrierdelascience.com: Torts Rules of Law

*â€¢When âˆ†'s negligence increases the likelihood of cause, the fact that it may have happened is not enough to break causal link. â€¢ Where the negligence of âˆ† greatly multiplies the chances of accident to the Ï€, and is of a character naturally leading to its occurrence, the mere possibility that it might have happened without the negligence is not sufficient to break the causal chain.*

The prima facie case for negligence requires: Duty is owed to the plaintiff by the defendant Breach of the Duty Causation: The defendant caused the harm to occur. The plaintiff suffers harm. In order to hold a defendant liable for negligence, the defendant must owe a duty of reasonable care to the plaintiff. Two issues arise in terms of duty of reasonable care: Foreseeability Foreseeability The duty of care must be toward a foreseeable plaintiff. A plaintiff is foreseeable if he was in the zone of danger created by the defendant. Standard of Care The Standard of care that the defendant must exercise towards the plaintiff is that of a reasonable, ordinary and prudent person in the same or similar circumstances. Factors to consider that may or may not modify the circumstances include: Physical characteristics A person who has great physical strength will be judged according to an ordinary person of great physical strength. Likewise, a weak person will be judged according to a standard of what an ordinary weak person would do. Average Mental Ability Everyone is judged as being of average mental ability and no accommodation is made for being extraordinarily intelligent. Same knowledge as an average member of community Presumed to have common knowledge about known dangers in the community. Professionals Professionals are judged according to other professionals in same community. Children Breach of the Duty In order to be held liable for negligence the action by plaintiff must fall below standard of care. The primary issue is where to draw the line as to the standard of care. Factors to consider in drawing the line are: Custom in the community Violation of statute negligence per se Violating a statute creates a rebuttable presumption of negligence. Defendant is presumed to be liable for negligence if he breaks a law and cause harm to the plaintiff but he can rebut that presumption by showing that there was a custom to break the law. Res Ipsa Loquitur Latin for "The thing speaks for itself. There are two types of causation: Actual Causation and Proximate Causation. Did the defendant actually cause the harm to occur? There are two different tests you can use. Ask yourself the question: If several causes could have caused the harm, then any cause that was a substantial factor is held to be liable. This sometimes difficult to grasp concept is actually very simple on most exams. Be sure to check with your professor but if in doubt, use the following generally accepted test: If harm is unforeseeable, then defendant is not held liable by reason that there is no proximate causation. Famous Proximate Cause Case: Railroad guard pushes man who drops package. Package contains hidden fireworks that explode and cause scales to fall harming plaintiff. Illustrates that harm was not foreseeable by guard as to plaintiff so no proximate cause. The plaintiff must suffer some harm. Was there actual harm? Did plaintiff attempt to mitigate the harm? Actual harm or injury: Can be shown by the following: Plaintiff must not act in a manner that makes damages worse - i. Defendant is not liable for damages where plaintiff did not mitigate. Even if a defendant is found liable for negligence, he can argue to be relieved of or share liability because of a valid defense. Contributory Negligence In these circumstance, the plaintiff contributed to the negligent act. The defendant must prove the plaintiff was negligent using the negligence test above. Under common law, if both parties are negligent, then the one with the last clear chance to prevent the accident is liable; otherwise both plaintiff and defendant share liability. Assumption of Risk If plaintiff knew the risk and voluntarily assumed the risk by engaging in the behavior then the plaintiff will be denied recovery. Emergency Doctrine Allows defendant to lower standard of care because an emergency required them to act rashly in order to avoid a greater harm from occurring. Custom Custom can be used to show that behavior was in line with the behavior of everyone else, thus resulting in no breach.

## Chapter 8 : Negligence - Wikipedia

*TORTS OUTLINE NEGLIGENCE (Elements: Duty, Breach, Causation, Scope of Liability, Damages) Duty 1. General Duty of Reasonable Care a. Imposed on all persons not to place others at foreseeable risk of harm through conduct.*

The case law demonstrates the difficulties faced by the courts in trying to identify the precise cause. When he contracted asbestosis he sued the defendants, for whom he had only worked for half of that time. The trial judge reduced damages by 25 per cent. The claimant appealed and tried to argue for application of the principle in McGhee, that once having established a material contribution by the defendants he was entitled to full damages. In comparison, where there is a number of possible concurrent causes of the damage and it is impossible to identify one specific cause responsible for the damage, then it is unlikely that the court will hold that a single cause is ultimately responsible. The consequence of this of course could be that the claimant is left without an action at all, even though the damage must have resulted from one of the causes. While perhaps technically accurate it also seems potentially unfair. When the Rolls Royce was also later negligently struck by another car the court held that this did not relieve the original defendant of liability for a respray that had in any case been made necessary by the first collision. In this way where a pre-existing condition of the claimant has contributed to the eventual damage it has been held that this may affect the extent of the liability of the defendant. The claimant already suffered a varicose condition and when an ulcer formed on the area of the graze he required an operation. While the defendant was held liable for the negligence the court identified that the liability applied only in respect of the graze, not the operation. However, a court when it is trying to determine where liability lies in the case of consecutive causes has inevitably at times been influenced by the desire to avoid in any way under-compensating the victim. He was then forced to take work on a reduced income. At a later time he was shot in the injured leg during an armed robbery and this resulted in the leg having to be amputated. The court identified that the loss of earnings was a permanent state of affairs and had resulted from the original injury. The armed robbery and amputation of the leg had not altered this fact even though the eventual damage was different and worse. Lord Reid explained why in his judgment: His loss is not in having a stiff leg; it is in his inability to lead a full life, his inability to enjoy those amenities which depend on freedom of movement and his inability to earn as much as he used to earn or could have earned if there had been no accident. In this case the second injury did not diminish any of these. So why should it be regarded as having obliterated or superseded them?

## Chapter 9 : Causation in Negligence (Part 1) | Hobbs Giroday

*Element #3: Causation The third element requires that the plaintiff show that the defendant's negligence actually caused his or her injury. Sure, someone might be acting negligently, but the plaintiff can only recover if this negligence somehow causes the injury.*

Background concepts[ edit ] Legal systems more or less try to uphold the notions of fairness and justice. If a state is going to penalize a person or require that person pay compensation to another for losses incurred, liability is imposed according to the idea that those who injure others should take responsibility for their actions. Although some parts of any legal system will have qualities of strict liability , in which the mens rea is immaterial to the result and subsequent liability of the actor, most look to establish liability by showing that the defendant was the cause of the particular injury or loss. Even the youngest children quickly learn that, with varying degrees of probability, consequences flow from physical acts and omissions. The more predictable the outcome, the greater the likelihood that the actor caused the injury or loss intentionally. There are many ways in which the law might capture this simple rule of practical experience: However it is phrased, the essence of the degree of fault attributed will lie in the fact that reasonable people try to avoid injuring others, so if harm was foreseeable, there should be liability to the extent that the extent of the harm actually resulting was foreseeable. Relationship between causation and liability[ edit ] Causation of an event alone is insufficient to create legal liability. Sometimes causation is one part of a multi-stage test for legal liability. For example, for the defendant to be held liable for the tort of negligence, the defendant must have owed the plaintiff a duty of care , breached that duty, by so doing caused damage to the plaintiff, and that damage must not have been too remote. Causation is just one component of the tort. On other occasions, causation is the only requirement for legal liability other than the fact that the outcome is proscribed. For example, in the law of product liability , the courts have come to apply to principle of strict liability: The defendant need not also have been negligent. On still other occasions, causation is irrelevant to legal liability altogether. For example, under a contract of indemnity insurance , the insurer agrees to indemnify the victim for harm not caused by the insurer, but by other parties. Because of the difficulty in establishing causation, it is one area of the law where the case law overlaps significantly with general doctrines of analytic philosophy to do with causation. The two subjects have long been intermingled. Establishing factual causation[ edit ] The usual method of establishing factual causation is the but-for test. The but for test is a test of necessity. Tally , 15 So , Ala. It is quite sufficient if it facilitated a result that would have transpired without it. However, legal scholars have attempted to make further inroads into what explains these difficult cases. Some scholars have proposed a test of sufficiency instead of a test of necessity. This is known as the NESS test. This arguably gives us a more theoretically satisfying reason to conclude that something was a cause of something else than by appealing to notions of intuition or common sense. For them, there are degrees of causal contribution. A member of the NESS set is a "causally relevant condition". This is elevated into a "cause" where it is a deliberate human intervention, or an abnormal act in the context. An intermediate position can be occupied by those who "occasion" harm, such as accomplices. Imagine an accomplice to a murder who drives the principal to the scene of the crime. However, the causal contribution is not of the same level and, incidentally, this provides some basis for treating principals and accomplices differently under criminal law. Leon Green and Jane Stapleton are two scholars who take the opposite view. They consider that once something is a "but for" Green or NESS Stapleton condition, that ends the factual inquiry altogether, and anything further is a question of policy. Establishing legal causation[ edit ] Notwithstanding the fact that causation may be established in the above situations, the law often intervenes and says that it will nevertheless not hold the defendant liable because in the circumstances the defendant is not to be understood, in a legal sense, as having caused the loss. In the United States, this is known as the doctrine of proximate cause. Proximate cause The but-for test is factual causation and often gives us the right answer to causal problems, but sometimes not. Two difficulties are immediately obvious. The first is that under the but-for test, almost anything is a cause. But for the victim of a crime missing the bus , he or she would not have been at the site of the crime and hence the crime would not have

occurred. This often does not matter in the case where cause is only one element of liability, as the remote actor will most likely not have committed the other elements of the test. The legally liable cause is the one closest to or most proximate to the injury. This is known as the Proximate Cause rule. However, this situation can arise in strict liability situations. Intervening cause[ edit ] Imagine the following. A critically injures B. As B is wheeled to an ambulance, she is struck by lightning. She would not have been struck if she had not been injured in the first place. The effect of the principle may be stated simply: But if the new act breaks the chain, the liability of the initial actor stops at that point, and the new actor, if human, will be liable for all that flows from his or her contribution. Note, however, that this does not apply if the Eggshell skull rule is used. This is an element of Legal Cause. Tice Rule[ edit ] The other problem is that of overdetermination. Each shot on its own would have been sufficient to cause the damage. But on the but-for test, this leads us to the counterintuitive position that neither shot caused the injury. However, courts have held that in order to prevent each of the defendants avoiding liability for lack of actual cause, it is necessary to hold both of them responsible, See Summers v. Tice , 33 Cal. This is known, simply, as the Summers v. This is two negligences contributing to a single cause, as distinguished from two separate negligences contributing to two successive or separate causes. These are "concurrent actual causes". In such cases, courts have held both defendants liable for their negligent acts. A leaves truck parked in the middle of the road at night with its lights off. B fails to notice it in time and plows into it, where it could have been avoided, except for want of negligence, causing damage to both vehicles. Both parties were negligent. An actor is liable for the foreseeable, but not the unforeseeable, consequences of his or her act. For example, it is foreseeable that if I shoot someone on a beach and they are immobilized, they may drown in a rising tide rather than from the trauma of the gunshot wound or from loss of blood. However it is not generally speaking foreseeable that they will be struck by lightning and killed by that event. This type of causal foreseeability is to be distinguished from foreseeability of extent or kind of injury, which is a question of remoteness of damage, not causation. There is no novus actus interveniens. However, I may not be held liable if that damage is not of a type foreseeable as arising from my negligence. If Neal punched Matt in the jaw, it is foreseeable that Matt will suffer a bodily injury that he will need to go to the hospital for. Other relevant considerations[ edit ] Because causation in the law is a complex amalgam of fact and policy, other doctrines are also important, such as foreseeability and risk. Foreseeability tests[ edit ] Some aspects of the physical world are so inevitable that it is always reasonable to impute knowledge of their incidence. So if A abandons B on a beach, A must be taken to foresee that the tide comes in and goes out. But the mere fact that B subsequently drowns is not enough. A court would have to consider where the body was left and what level of injury A believed that B had suffered. If B was left in a position that any reasonable person would consider safe but a storm surge caused extensive flooding throughout the area, this might be a novus actus. That B was further injured by an event within a foreseen class does not of itself require a court to hold that every incident falling within that class is a natural link in the chain. Only those causes that are reasonably foreseeable fit naturally into the chain. So if A had heard a weather forecast predicting a storm, the drowning will be a natural outcome. But if this was an event like a flash flood , an entirely unpredictable event, it will be a novus actus. If A honestly believes that B is only slightly injured and so could move himself out of danger without difficulty, how fair is it to say that he ought to have foreseen? The test is what the reasonable person would have known and foreseen, given what A had done. It is the function of any court to evaluate behaviour. A defendant cannot evade responsibility through a form of wilful blindness. Fault lies not only in what a person actually believes, but also in failing to understand what the vast majority of other people would have understood. Hence, the test is hybrid, looking both at what the defendant actually knew and foresaw i. In cases involving the partitioning of damages between multiple defendants, each will be liable to the extent that their contribution foreseeably produced the loss. Risk[ edit ] Sometimes the reverse situation to a novus actus occurs, i. Abbott Laboratories, P. The manufacturer of the particular medication that caused the injury could not be ascertained for certain. The defendant was held liable because of the amount of risk it contributed to the occasioning of the harm. However, it does show that legal notions of causation are a complex mixture of factual causes and ideas of public policy relating to the availability of legal remedies. In R v Miller [] UKHL 6, the House of Lords said that a person who puts a person in a dangerous

position, in that case a fire, will be criminally liable if he does not adequately rectify the situation. Evidence proving causation[ edit ] To be acceptable, any rule of law must be capable of being applied consistently, thus a definition of the criteria for this qualitative analysis must be supplied. Let us assume a purely factual analysis as a starting point. A injures B and leaves him lying in the road. C is a driver who fails to see B on the road and by running over him, contributes to the cause of his death. Roads are, by their nature, used by vehicles and it is clearly foreseeable that a person left lying on the road is at risk of being further injured by an inattentive driver.