**Negligence**

- breach of legal duty to take care which results in damage to the claimant

The four main component parts that a claimant must prove to establish (prove) negligence:

* The defendant owed the claimant a **duty of care**
* The defendant **breached that duty of care**
* The defendant’s conduct must have resulted in **damage** to the claimant
* The relationship between the act and the consequence it produces, the so-called **causation** – as a result of that breach the claimant suffered damage

- negligence arises when one person owes to another a duty of care and where damage which should be considered to be reasonably foreseeable, arises from that breach of duty

**Duty of Care**

**-** a legal obligation imposed on an individual requiring him to exercise a reasonable standard of care to avoid causing harm to others or their property

- to establish whether there exists a duty of care in certain situations, the requirement is that there must be a **sufficiently proximate (direct) relationship** between the claimant and the defendant

**Breach (violation) of Duty**

- if the defendant’s conduct falls below the standard of care required by law

- the conduct of the defendant will be measured against that of the **reasonable person**

**Causation**

- the claimant must show a **causal link between the defendant’s act and the damage suffered**

- this is called **chain of causation**

- **the “but for” test** – a test that the courts use to determine causation – the question to be asked in establishing causation is “but for the defendant’s breach of duty, would the loss or damage have occurred?” – if the answer to this question is negative, then there is causation (causality) between the defendant’s act and the damage suffered by the claimant

- problems can arise when an **intervening act breaks the chain of causation** – in such case, the defendant will not be liable for the damage despite being in breach of the duty of care

**An intervening act may be:**

* A third party act
* An act of the claimant
* An act of God

**-** the question of whether an intervening act will break the chain of causation is one for the courts to decide in all the circumstances

**Damage**

- the final element required in establishing negligence is the extent of the damage suffered by the claimant which should be attributable to the defendant

- if no damage has been caused by the defendant’s breach of duty, the claimant will not have a case to pursue

- if damage has resulted, then it must be foreseeable damage – it must not be too **remote** (unforeseeable) from the defendant’s negligence

Legal remedies:

- award of damages – to recompense the claimant

- where the injury is to property, then the amount of damages (quantum) can often be worked out exactly

In personal injury case, an award of damages usually consists of:

* **General damages** – reflect the costs which are capable of being presented to the court in a form of calculation, this may include loss of earning before trial, future losses and medical expenses

- focus on the past

* **Special damages** – relate to compensation for the injury itself

- focus on the future

Contributory negligence

- in some cases, the damages will be reduced because the claimant will be found contributorily negligent

- the partial defence of **contributory negligence** means that the claimant has been partly to blame for the damage or injury suffered

- the claimant may still make a claim against the defendant but any damages awarded to the claimant will be reduced by the amount he was to blame

- the court will look at the contribution of both parties to the harm suffered by the claimant and apportion a percentage of responsibility to each party (seatbelt – 25%)