

English for Lawyers 3

Lecturer: Miljen Matijašević
G10, room 6/I, Tue 14:15–15:15
e-mail: miljen.matijasevic@pravo.hr
Session 6, 20 Nov 2018

Negligence

(cont.)



Concept of negligence

- ▶ „breach of the duty of care owed to the claimant which results in damage/injury/loss suffered by the claimant”
- ▶ things to be established by the court:
 - duty of care
 - reasonable foreseeability of harm (reasonable foresight)
 - standard of care („reasonable man”)
 - breach of duty of care
 - causation

Causation

- ▶ after negligence is proved, the next thing to determine is actual liability for the damage
- ▶ the link between the breach of duty of care and the damage – CAUSATION

- ▶ ‘but for’ test:
 - ‘Would the claimant have suffered damage but for the negligent act of the defendant?’

- ▶ standard of proof: **balance of probabilities**

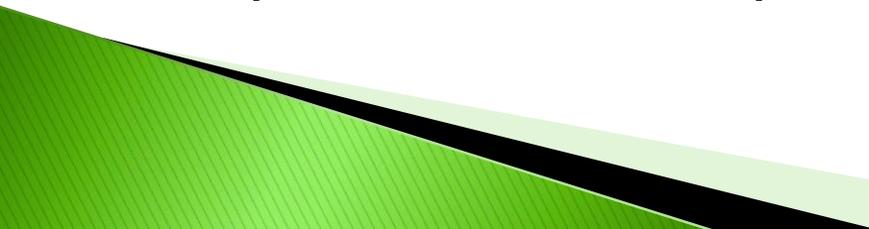
Causation

- ▶ multiple possible sources of damage
 - non-tortious natural risk
 - claimant's conduct (contributory negligence)
- ▶ possible effects
 - defendant found not liable
 - reduction of the amount of damages
- ▶ How do you think the court makes a decision when multiple risks are involved?

Causation

- ▶ breaking the chain of causation
- ▶ **intervening act** (*novus actus interveniens*)
 - by the claimant
 - by a third party
 - by a natural event
- ▶ Think of examples of intervening acts that interrupt the chain of causation!

Regulation of negligence

- ▶ developed in common law and still largely regulated by case law
 - ▶ examples of codified negligence law:
 - **consumer protection**: EU regulations impose strict liability on any person in the chain of production and distribution of harmful products (product liability laws)
 - **occupier's liability**: occupant of premises is liable for any damage sustained by visitors to the premises due to poor maintenance
- 

Causation

- ▶ Do exercise VI – true or false?
 - ▶ In pairs, take turns to explain the key terms of negligence (ex. IV & VII)
 - ▶ DISCUSSION
 - ▶ read and discuss the case studies (ex. IX & X)
- 

Thank you for your attention!

