

# LAW OF TORT SERIES

# NEGLIGENCE

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AINIZA SILIM  
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**LAW OF TORT SERIES : NEGLIGENCE**

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**FIRST EDITION 2023**

**COMMERCE DEPARTMENT**



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### **LAW OF TORT SERIES: NEGLIGENCE**

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e ISBN 978-967-0032-66-5

First Publication 2023

Published by:

UNIT PENERBITAN

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e ISBN 978-967-0032-66-5



# PREFACE

This eBook is written to give readers an overview of negligence, one kind of wrongful tort. It provides an outline of negligence, including its essential elements, relevant instances, reported cases and defences.

As a fundamental concept in tort law, negligence has wide-ranging effects in a variety of situations, including motor vehicle accidents, medical malpractice, premises liability, product liability, and more.

In order to encourage accountability, encourage responsible behaviour, and provide a means of redress for those who have suffered harm due to the negligence of others, it is essential for legal professionals, individuals seeking compensation for injuries, and society at large to understand the principles of negligence.

As such, the goal of this eBook is to improve readers' comprehension of the basic principles of negligence.

Any suggestions, comments or feedbacks for further improvement are most welcome.

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# TABLE OF CONTENT

<b>PREFACE</b>	i
<b>ABOUT WRITERS</b>	ii
<b>TABLE OF CONTENT</b>	iii
<b>TABLE OF CASES</b>	iv
<b>CHAPTER ONE :LAW OF TORT</b>	02
• Define Law of tort	
• Explain tortious liability	
• Differentiate tortious liability with contractual liability	
<b>CHAPTER TWO : NEGLIGENCE</b>	10
• Define negligence	
• Explain the elements of negligence	
<b>CHAPTER THREE : CASES</b>	21
<b>CHAPTER FOUR : DEFENCES</b>	30
• Describe the defences available to negligence:	
a. Contributory negligence	
b. Assumption of risk	
c. mechanical defect	
d. Inevitable accident	
<b>REFERENCES</b>	45

# TABLE OF CASES

Ang Chai Ha & Ors v Sri Jaya Transport Co(PTM) Bhd (1974) 1 MLJ 87 .....	35
Bourhill v Young (1943) AC 92 .....	22
Che Jah binte Mohamad Ariff v CC Scott (1952) MLJ 69 .....	41
Chin Keow v Government of Malaysia & Anor (1967) 1 WLR 163 .....	23
Government of Malaysia & Ors v Jumat b Mahmood (1977) 2 MLJ 103 .....	26
Holmes v. Mather (1875) LR 10 EX 261 .....	43
Kow Nan Seng V Nagamah & Ors (1982) 1 WLR 163 .....	34
Lai Yew Seong v Chan Kim Sang (1987) 1 MLJ 403 .....	35
Mohd Raihan & Ors v. Government of Malaysia & Ors. (1981) 2 MLJ 27 .....	27
Stanley v Powell (1891) 1 QB 86 .....	43
Zulhasnimar bt Hasan Basri & Anor v Dr Kuppu Velumani P & Ors [2017] 8 CLJ 605 .....	25



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# CHAPTER 1

# LAW OF TORT

# CHAPTER 1 :

## Law of Tort

**AT THE END OF THE TOPIC, STUDENT SHOULD  
BE ABLE TO:**

1. Define the law of tort
2. Explain a tortious liability
3. Differentiate a tortious liability with a contractual liability

Change is the law of  
life. And those who look  
only to the past or  
present are certain to  
miss the future.

John F. Kennedy

BrainyQuote®



## What is tort?

A tort is a civil wrong by one party that puts another party at risk of loss or harm and resulting the party who did the tort legally liable.

## What is a tortious liability?

Tortious liability results from the breach of duty fixed by law, which gives the claimant the right to claim his loss against the tortfeasor.

Tortfeasor: the party who causes the tort

Claimant: the party who suffers the loss

## Which category of law is the law of tort?

Tort falls under the types of Civil Law. The Plaintiff is the injured person whereas the defendant is a tortfeasor.

The plaintiff will normally claim the remedies in order to cover his loss.

*The law maker should  
not be a law breaker.*

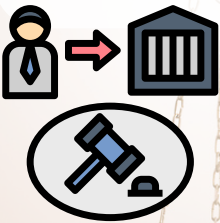
D.V. Rangarajan



## Tortious liability vs Contractual liability

### Tortious liability:

1. It is a breach of duty fixed by law.
2. The claim of damages is to put the plaintiff in a position before the tort happens.



VS

### Contractual liability:

1. It is a breach of contract
2. The claim of damages is to cover the loss due to the breach.



## General Features of Tort

1. There must be a wrongful or unauthorized act or omission
2. This act affects the interest or rights of others
3. The injured party/victim has right to a claim for damages

### THE AIM OF THE LAW OF TORT

The most important function is compensation or loss distribution.

The tortfeasor needs to pay monetary compensation to share the burden of victim's loss.

### ACCORDING TO ROGER:

"The law of tort is concerned with the redress of wrong and injuries (other than breaches of law) by means of civil action brought by the victim."

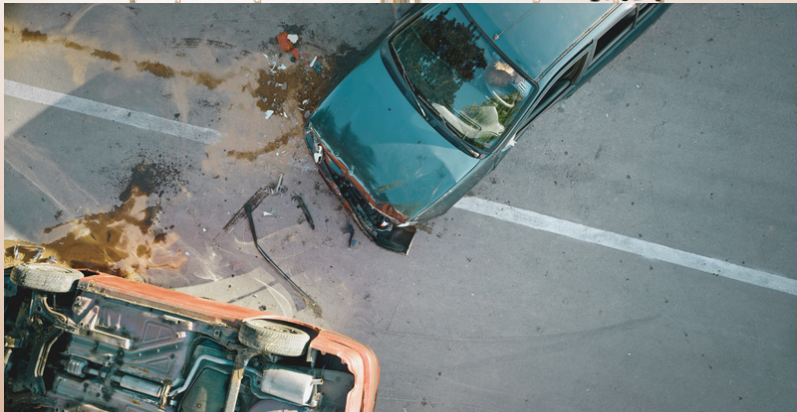




## Example of Tort

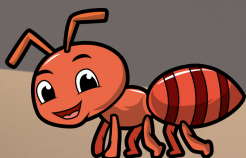
An accident is one example of tort.

Car A caused loss to car B  
Car A is a tortfeasor whereas  
Car B is a victim.  
Tortfeasor need to  
compensate the victim.



Victim (plaintiff) will sue defendant (tortfeasor) for compensation of loss.

## Types of wrongful Tort

**1****NEGLIGENCE****2****NUISANCE****3****TRESPASS****4****DEFAMATION****5****STRICT LIABILITY**

In this book, we will  
discuss on  
NEGLECTENCE.

## Chapter 1

READY FOR A  
QUIZ?

1

What does it mean by 'tort'?

2

What is a tortious liability?

3

Differentiate between tortious liability and contractual liability.

4

List 5 types of wrongful tort.

scan for answer



The background of the slide features a close-up, slightly blurred image of a balance scale, symbolizing justice or legal matters. Overlaid on this image are several vertical bars of varying heights and shades of brown and tan, creating a textured, layered effect.

# CHAPTER 2

# NEGLIGENCE



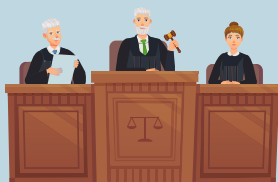
# CHAPTER 2 :

## Negligence

**AT THE END OF THE TOPIC, STUDENT SHOULD  
BE ABLE TO:**

1. Define negligence
2. Explain the elements of negligence

Negligence is the failure  
to exercise the appropriate  
level of care





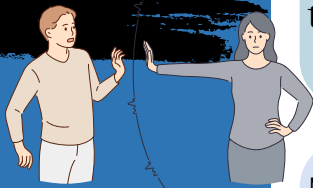
What is negligence?



Literally: carelessness.

Legally: a breach of legal duty by one person who fails to avoid what a reasonable person would regard as a foreseeable risk and causes injury or damage to the other.

Who are the parties to negligence?



1. Tortfeasor/ defendant:  
the one who breaches the duty.

2. Victim/ plaintiff:  
the one who suffers loss/injury due to the breach.

The nature of negligence



Negligence is the most significant wrongful tort. It might happen in our daily lives. Accidents such as motor vehicle accidents, construction accidents, wrong prescription of medicines, etc.

## FOUR Elements of Negligence

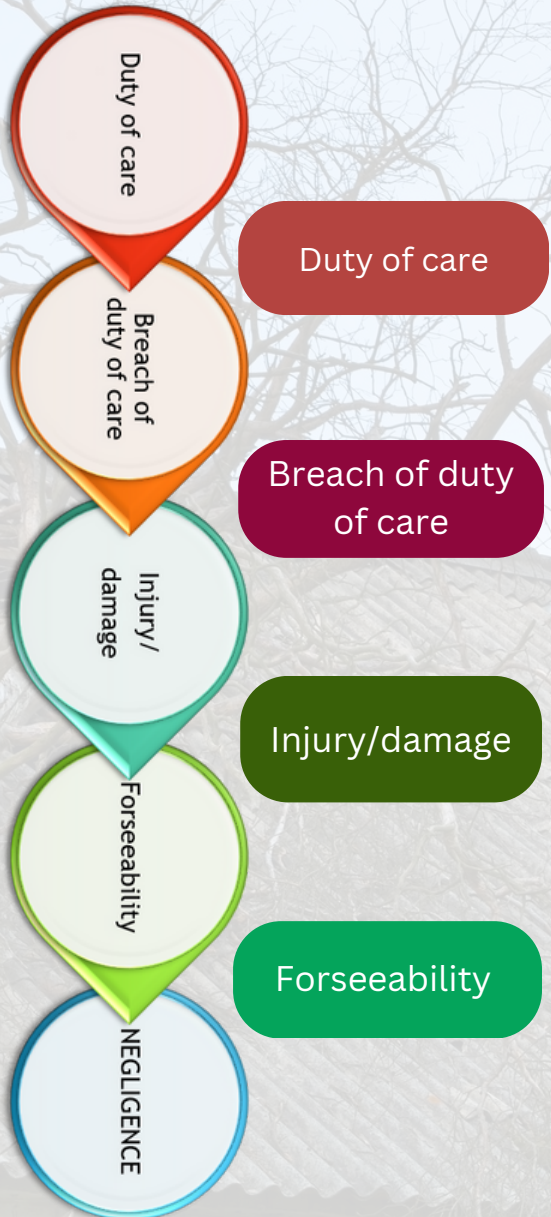
All four elements need to be established by plaintiff in order to succeed in a claim of negligence towards defendant

If one of the elements is absent, the claim for negligence might fail.

Watch a video:



<https://youtu.be/lkvILEZJCdM>



## FOUR Elements of Negligence



### Duty of care



**The parties have a duty of care to each other. Example: Driver & road users.**

### Breach of duty of care

**Tortfeasor breaches his duty to take care. Example: An accident occurred.**



### Injury/damage

**Injury or damage occurs as a result of the breach. It causes loss to the victim. Example: bodily injuries due to an accident.**

### Forseeability

**The injury or damage suffered is expected to happen if such breach is occurred. Example: If there is motor vehicle accident, the person affected might be injured.**



## FOUR Elements of Negligence



# 1

## DUTY OF CARE

that the defendant owed a plaintiff a duty of care

This is a legal duty not to injure other persons.

### Example:

The drivers need to drive carefully in order not to be involved in an accident that might cause injury to a third party.

It is NOT a legal duty to do good to others.

**Example:** Ali saw someone who was drowning. Ali has no duty under the law to help that person.

## FOUR Elements of Negligence



# 2

## BREACH OF DUTY OF CARE

The defendant had breached this duty of care

The defendant has breached his duty of care towards the plaintiff.

### Example:

The car driver failed to stop at a red light and caused an accident with another motor vehicle.

The breach happens when the defendant does something that he is supposed not to do or has not done something that he was supposed to do.

**Example:** Ali saw someone who was drowning. Ali has no duty under the law to help that person.



## FOUR Elements of Negligence



### INJURY OR DAMAGE

# 3

There must be injury or damage due to the breach.

The victim or plaintiff must suffer property loss or bodily injury.

#### Example:

A car driver recklessly knocked down a pedestrian and caused him injury. A pedestrian has right to sue the driver for negligence.

If the negligence causes no injury or loss, no action for negligence can be taken against tortfeasor.

#### Example:

A cyclist slightly knocked down a pedestrian. If no injury or damaged suffered, claim for negligence will not succeed.

## FOUR Elements of Negligence



## FORESEEABILITY OF INJURY 4

The injury suffered must be expected to happen due to the breach.

The victim or plaintiff must suffer property loss and/or bodily injury, which were expected to happen if the breach of duty occurred.

If the injury suffered is too remote, it will not be covered under the claim for negligence.

The remoteness of the injury means that, as a reasonable man, the injury is not expected to happen.

### Example:

If A knocked down B, B was expected to suffer the injury. C who is not involved in the accident is not expected to injure.

Therefore, only B can sue for negligence.

C is outside the area of foreseeable danger. He cannot sue for negligence

## Examples of Negligence



A driver hit a redlight and knocked another road user.

A doctor failed to observe the patient properly and caused severe injury.



An employer failed to provide safety equipment to the workers and caused an accident.





READY FOR A  
**QUIZ?**

**Scan QR code to answer the quiz**

Good luck and all the best!!!!



The background features a close-up, slightly blurred image of a balance scale, symbolizing justice or law. Overlaid on this are several vertical bars of varying heights and shades of brown and tan, creating a layered, architectural effect.

# CHAPTER 3

# CASES

# CHAPTER 3 :

## Cases

### LIST OF CASES:

1. Bourhill v Young (1943) AC 92
2. Chin Keow v Government of Malaysia & Anor (1967) 1 WLR 163
3. Kow Nan Seng V Nagamah & Ors (1982) 1 WLR 163
4. Zulhasnimar bt Hasan Basri & Anor v Dr Kuppu Velumani P & Ors [2017]
5. Government of Malaysia & Ors v Jumat b Mahmood (1977) 2 MLJ 103
6. Mohd Raihan & Ors v. Government of Malaysia & Ors. (1981) 2 MLJ 27



# Cases on Negligence

## Duty of care -foreseeability

### **Bourhill v Young (1943)**

#### Facts

Defendant (D) was in charge of causing an accident with a car in which he was killed. The plaintiff (P) was exiting a tram about 50 feet away at the time of the collision. The plaintiff heard the collision and saw what happened right away. At the time of the occurrence, the plaintiff was eight months pregnant, and she later gave birth to a stillborn child. The plaintiff filed a lawsuit against the estate of the defendant, alleging that the negligence caused her to experience loss, stress, and nervous shock.

#### Issue:

Whether the defendant owed a duty of care to the plaintiff.  
Did the plaintiff's sufferings seem foreseeable?

#### Court's Decision:

Any psychological injury that P might have sustained as a result of the accident was not D's responsibility. D's negligently provoking a loud traffic accident was not anticipated to cause psychiatric harm to P, nor was P sufficiently close to the actual crash site. D could not owe P a duty of care as a result.

# Cases on Negligence

## Medical negligence- standard of care

### **Chin Keow v Government of Malaysia & Anor (1967)**

#### Facts

The defendant prescribed penicillin, which caused the death of the plaintiff's daughter within an hour. Here, the defendant failed to make any inquiry into the medical history of the patient.

#### Issue:

Whether there was a breach of the standard of care by the doctor towards his patient.

#### Court's Decision:

The Defendant was negligent. If he had made inquiries, he would have discovered that the deceased patient was allergic to penicillin.

# Cases on Negligence

**Medical negligence- standard of care- injury**

## **Kow Nan Seng V Nagamah & Ors (1982)**

### Facts

Def was injured in a road accident and got medical treatment in a hospital, which was attended by a medical officer. A plaster was applied to his leg, but owing to a lack of skill and observation in monitoring it, the leg turned black and was amputated.

### Issue:

Whether there was a breach of the standard of care by the doctor towards his patient.

### Court's Decision:

The claim for negligence was successful. The plaintiff suffered injury due to the breach of duty by the defendant, which caused him to lose his leg.

# Cases on Negligence

Medical negligence- no breach of duty

## **Zulhasnimar bt Hasan Basri & Anor v Dr Kuppu Velumani P & Ors [2017]**

### Facts

Plaintiff, a 36-week pregnant woman, was hospitalised for excessive blood pressure and abdominal pain. It was given medicine. Following her fall, a caesarean section was used to deliver the child. The Baby sustained a cerebral damage as a result of acute birth asphyxia.

### Issue:

Whether there was a breach of the standard of care by the doctor towards his patient

### Court's Decision:

The claim for negligence did not succeed. The doctors had done the procedures according to the medical standards required.



# Cases on Negligence

## Negligence- foreseeability of injury

### **Government of Malaysia & Ors v Jumat b Mahmood (1977)**

#### Facts

The plaintiff's right eye was hurt when the sharp point of the pencil his buddy was holding came into contact with it. He needs to have his eye removed. The plaintiff filed a lawsuit, claiming that the teachers' lack of supervision contributed to the tragedy.

#### Issue:

Whether there was a breach of duty by the teacher  
Does the injury seem reasonably foreseeable?

#### Court's Decision:

The injury is not directly caused by the lack of supervision. There was a remote possibility of injury. The teacher did not expose the students to the risks. Therefore, the defendant was not liable.



# Cases on Negligence

## Negligence- foreseeability of injury

### **Mohd Raihan & Ors v. Government of Malaysia & Ors. (1981)**

#### Facts

The plaintiff was accidentally struck on the head by a changkol wielded by his fellow pupil during a practical gardening lesson. He suffered a severe injury and sued the defendant for lack of proper supervision.

#### Issue:

Whether there was a breach of duty by the teacher  
Does the injury seem reasonably foreseeable?

#### Court's Decision:

The defendants were liable. Warning was not enough.

[CLICK HERE](https://prezi.com/p/_vwm9qzul0hl/case083/)

[https://prezi.com/p/\\_vwm9qzul0hl/case083/](https://prezi.com/p/_vwm9qzul0hl/case083/)



**Chapter 3**

READY FOR A  
**QUIZ?**

**Click or scan for the quiz**

<https://wordwall.net/resource/58302548>



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# CHAPTER 4

# DEFENCES

# CHAPTER 4 :

## Defences

**AT THE END OF THE TOPIC, STUDENT SHOULD  
BE ABLE TO:**

1. Describe the defences available to negligence:
  - a. Contributory negligence
  - b. Assumption of risk
  - c. Mechanical defect
  - d. Inevitable accident



What is the purpose of defences?

Defences are available to the defendant to avoid liability in negligence

**1**

**Contributory negligence**

**2**

**Assumption of risk**

**3**

**Mechanical Defect**

**4**

**Inevitable Accident**



## 1

## Contributory negligence

What is contributory negligence?

It refers to a situation where the plaintiff also contribute to own his injury.

**A plaintiff's failure to exercise the standard of care that he is required to do for his own protection becomes a legally contributing cause, together with the defendant's default, in causing his own injury.**

**Contributory negligence is a partial defence. The court will look on how much the plaintiff contributed to his own injury.**

**1****Contributory negligence****ELEMENTS****1**

**Duty of care of  
the plaintiff to  
himself**

**2**

**The breach of  
duty**

**3**

**The injury  
must be of a  
type of  
reasonably  
foreseeable.**



## 1

## Contributory negligence

### Example:

A motorcyclist was not wearing a helmet. He was knocked down by a car that hit a red light.

The motorcyclist failed to exercise care for himself and contributed to his own injury.

If the claim succeeds, the court might reduce the damages based on the theory of contributory negligence.

**Contributory negligence happen if the motorcyclist fulfills THREE (3) elements :**

- He has a duty to wear a helmet to protect himself from injury.
- He fails to wear a helmet.
- He suffered a severe head injury due to the negligence of a car driver. This injury is expected to happen when he fails to wear a helmet when the accident happens.

## 1

**Contributory negligence****CASES****Lai Yew Seong v Chan Kim Sang (1987) 1 MLJ 403**

Court: plaintiff was 100% contributory negligent for hitting a car from behind. Contributory negligence means the failure by a person to use reasonable care for the safety of himself or his property so that he becomes the author of his own wrong.

**Ang Chai Ha & Ors v Sri Jaya Transport Co(PTM) Bhd (1974) 1 MLJ 87**


The deceased died when the car collided with the bus driven by the defendant's servant. The deceased brought in the boot of the car 11 4-gallon tins of petrol. He died of severe burns.

Court: The fire would in all probability have happened as a direct consequence of the collision, notwithstanding the tins of petrol in the dec's car. Therefore, the damage was not too remote.




## 2

## Assumption of Risk



What is an assumption of risk?



The plaintiff has voluntarily assumed the risk.

It is based on the Latin maxim:  
"VOLENTI NON FIT INJURIA"  
which means  
"To a willing person, it is not wrong."

According to this legal principle, a person who knowingly and purposefully places herself in danger is not accountable for any harm that might result.

If the plaintiff assumes the risk involved in an obviously dangerous activity but proceeds to engage in the activity, he or she may not be able to recover damages for injuries.

The defendant can use this defence if the plaintiff consented to the defendant's act.



## 2

# Assumption of Risk

## ELEMENTS

1. Consent

2. The consent must be voluntary

3. Full knowledge



I suffered an injury while hiking with you. You asked me to join you, and then you need to bear my injury.

but you voluntarily agreed to join me. You know all the risks, right?



You already assumed the risk; you consented to it. So you cannot claim from me.

## 2

# Assumption of Risk

## ELEMENTS

### 1. Consent

- The plaintiff has assumed the risk but consented to proceed with the act. The plaintiff may therefore not be able to recover any injury suffered due to the act.
- The plaintiff needs to have an agreement with the defendant that the latter will not be liable if he is negligent.
- If there is no written agreement, the court will look into the facts of the case to determine whether there is implied consent.

### Nettleship v Wetson(1971)

The plaintiff agreed to give the defendant a driving lesson and was subsequently injured when the defendant hit the lamp post due to his inexperience. The defence of Volenti was rejected by the court.

## 2

# Assumption of Risk

## ELEMENTS

### 2. The consent must be voluntarily

- Plaintiff's consent must be freely and voluntarily given.
- The plaintiff must not be forced to consent on the risk



**Bowater v Rowley Regis Corporation (1944)**

A person is said to be voluntarily assuming the risk if he is in a position where he has a choice. He must fully know the circumstances in which he must make a choice and not be under any duress or coercion.



## 2

## Assumption of Risk

### ELEMENTS

#### **3. The plaintiff must have full knowledge of the risk**

- The mere awareness of risk's existence is insufficient.
- He must have a full knowledge of the nature and extent of the risk of injury.
- If the plaintiff does not know of the risk, but that he should have known about it, he is said to be not volenti but may be considered to be contributorily negligent.

# 3

## Mechanical Defect

What is mechanical defect?

Mechanical defects may refer to defective auto parts and vehicles. It can be either a design defect or a manufacturing defect.

If the motor vehicle accident happened due to a mechanical defect, the defendant may use it as a defence.

To use this defence, a defendant must prove that the malfunction was neither preventable or detectable by reasonable vehicle inspection or maintenance.



## 3

## Mechanical Defect

The claim will be successful if the defendant can prove through his record of service that the vehicle is free from defects.

### **Che Jah binte Mohamad Ariff v CC Scott (1952)**

The defendant's car, in which the plaintiff was a passenger, collided with another vehicle, injuring her. The defendant testified that it had previously been sent to a reputable repair because its brakes had failed, and the workshop had determined that it was in good condition. Court: Because the latent defect in the brake was caused by skilled labour, the defendant cannot be held liable for carelessness.



## 4

**Inevitable Accident**

An inevitable accident refers to those accidents which could not be prevented, under general circumstances.

It is referred to as an inevitable accident when the accident was unforeseeable and could not have been prevented despite the defendant using reasonable caution.



An inevitable accident is only applicable when an incident is unforeseen and has unavoidable consequences notwithstanding reasonable care and protection.

If the situation in question is avoidable and predictable, like floods, and the ensuing harm may be avoided with reasonable safeguards, the argument that the disaster was inevitable is unlikely to hold up.

## 4

**Inevitable Accident****Holmes v. Mather (1875)**

The defendant's servant was driving his horses on a public highway when they were startled by a dog's barking. As a result, the horses became unmanageable, and despite the servant's efforts, they injured the plaintiff. In this case, the defendant was held not liable, and his servant was considered free from all blame.

**Stanley v Powell (1891)**

The plaintiff and defendant went pheasant hunting as a shooting group. The defendant's shot, which was meant to shoot a pheasant but missed, hit the plaintiff after it rebounded off a tree.

The defendant was not held liable because this injury was accidental and beyond his control.

## Chapter 4

READY FOR A  
QUIZ?

## FILL IN THE BLANK:

1 \_\_\_\_\_ are available to the defendant to avoid liability for negligence.

2 \_\_\_\_\_ happens if the plaintiff also contributes to his own injury.

3 \_\_\_\_\_ means "to a willing person, it is not wrong".

4 \_\_\_\_\_ refers to those accidents which could not be prevented, under general circumstances.

5 Elements for assumption of risk are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

scan for answer





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e ISBN 978-967-0032-66-5



Published by:

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Politeknik Sultan Salahuddin Abdul Aziz Shah  
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