THE TORT OF NEGLIGENCE

Exercise 1

Most tort cases in England and the USA are based upon the tort of negligence. Read the following text about the tort of negligence. Fill the gaps in the text with a verb from the blue box.

expect	**do**	**ask**	**agree**
owe	**contribute**	**argue**	**establish**

Under what circumstances is a person or organisation guilty of the tort of negligence? Unfortunately, the definition of the legal term 'negligence' varies according to which book or legal dictionary you are reading. The legal term 'negligence' has a much more complex meaning than the general English meaning of the word. However, most lawyers (**a**) _____ upon the idea that in order to establish negligence in a particular situation we must (**b**) _____ three fundamental questions. These are:

- Did the defendant (**c**) _____ the claimant a duty of care?
- Was that duty of care breached?
- Did the defendant's breach cause, or materially (**d**) _____ to, the damage suffered by the claimant?

If the answer to all three questions is 'yes', then the defendant has been negligent in the legal sense of the word.

To whom do I owe a duty of care? The case law in this area is complicated. However, there is a principle of English law that says that I owe a duty of care to anyone in situations where it is reasonably foreseeable that my act or omission might cause harm to another person. In other words, it is a defence to an allegation of negligence to (**e**) _____ that no reasonable person would have anticipated that my act or omission would cause harm.

Assuming that I can reasonably anticipate the result of my act or omission, what standard of care does the law (**f**) _____ from me? How do I know when I have breached my duty of care? To answer this question, most English law students are asked to remember the general principle of negligence provided by a judge named Alderson in the case of *Blyth v Birmingham Waterworks (1856)*. The judge said:

> 'Negligence is the omission to (**g**) _____ something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.'

Again, the question of whether or not I have breached my duty of care has been decided by an objective test. What would an ordinary, reasonable person do under the same circumstances?

Finally, in order to firmly (**h**) _____ negligence, the claimant must demonstrate that the negligent act of the defendant was the main cause of the damage complained of. A court will often ask:

- Was the chain of causation broken at any time?
- Would the harm that the claimant suffered have happened anyway, even if the defendant had not acted in a particular way?
- Even where there is a clear chain of causation, was the damage too remote, in other words, not reasonably foreseeable by the defendant?

In conclusion, establishing that someone has been negligent is not as straightforward as the general public might imagine.

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to **establish** negligence	reasonably **foreseeable**	the **cause** of damage
to **suffer** damage	to **allege** negligence	a **chain** of causation

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