

Breach of Duty – The Standard of Care.
 Where the defendant fails to perform to the standard of a reasonable man.
 An Act or an Omission

Who is a Reasonable Man? Objective Test!!		
<p>Older times man in the street. The man on the clapham omnibus.</p>		<p>In Reality: Judges probably regard themselves as the reasonable man. <i>Miller v Jackson</i></p>
<p>Objective Standard: Courts disregard the characteristics of the defendant <i>Nettleship v Weston</i></p>		
Factors courts take into account:		
<p style="text-align: center; background-color: #00ffff;">(1) Foreseeability.</p> <p>Injury must have been reasonably foreseeable. At the time of the event – not just with the benefit of hindsight. <i>Roe v Minister of Health</i></p>	<p style="text-align: center; background-color: #00ffff;">(2) Magnitude of the Risk</p> <p>The law expects a degree of care commensurate with the risk created.</p> <p style="text-align: center;">Likelihood of the harm. <i>Bolton v Stone</i> <i>Miller v Jackson</i></p> <p style="text-align: center;">Severity of the Potential Damage: <i>Paris v Stepney</i> <i>Harris v Perry</i></p>	
<p style="text-align: center; background-color: #00ffff;">(3) Practicality of Precautions.</p> <p>How much effort or cost would it take?? Were there any obvious precautions? Did the defendant(s) take them? <i>Latimer v AEC Ltd</i> <i>The Wagon Mound (No.2)</i></p>	<p style="text-align: center; background-color: #00ffff;">(4) Potential Utility of the Defendant's Conduct.</p> <p>What was the defendant trying to achieve? <i>Watt v Hertfordshire County Council</i> Compensation Act 2006 s.1 <i>The Scout Association v Barnes</i></p>	<p style="text-align: center; background-color: #00ffff;">(5) Common Practice.</p> <p>D - Arguing there is no breach because it was commonplace - everyone does it. Courts are unlikely to say everyone else is wrong. <i>Bolitho v City and Hackney</i> <i>Sutcliffe v BMI Healthcare.</i></p>

Exceptions - Special Situations:		
<p style="text-align: center; background-color: #00ffff;">Professionals:</p> <p>Person who has a Special Skill Not judged by the standard of a reasonable man – but by the standard of his peers. <i>Bolam v Friern Hospital</i> <i>Pierce v Doncaster</i></p> <p>Applies to trainees as well</p> <p style="text-align: center;">doctors: self-regulating – worrying?!</p> <p style="text-align: center;">Bolam Test: Only need 1 person in the profession to agree - <i>Bolam</i> But this opinion must be capable of withstanding logical analysis <i>Bolitho</i></p>	<p style="text-align: center; background-color: #00ffff;">A child.</p> <p>Judged by the standard expected of an ordinary child of the same age. <i>Mullin v Richards</i> <i>Ochard v Lee.</i></p>	<p style="text-align: center; background-color: #00ffff;">Public Authorities</p> <p><i>Knight v Home Office.</i></p>
<p style="text-align: center; background-color: #00ffff;">Emergencies</p> <p>rules are relaxed</p>	<p style="text-align: center; background-color: #00ffff;">Horseplay:</p> <p>D's behaviour must be reckless or v.high degree of carelessness <i>Blake v Galloway</i></p>	<p style="text-align: center; background-color: #00ffff;">Learner Drivers:</p> <p>expected to meet standard or reasonably competent qualified driver. <i>Nettleship v Weston</i></p>