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**LW2903 Business and Law**

**Tutorial Questions for Week 7**

**Negligence: Duty, Breach, Damage and Causation**

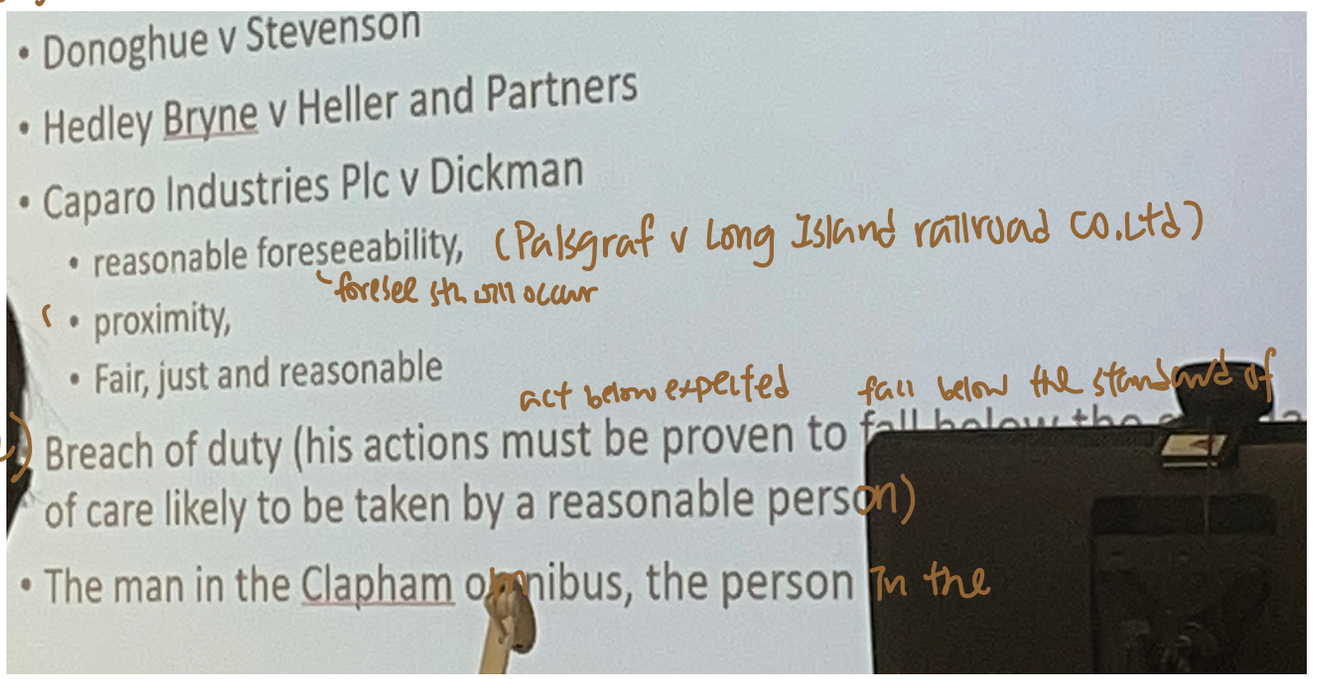
1. Explain the meaning of the "neighbour principle" with reference to cases.

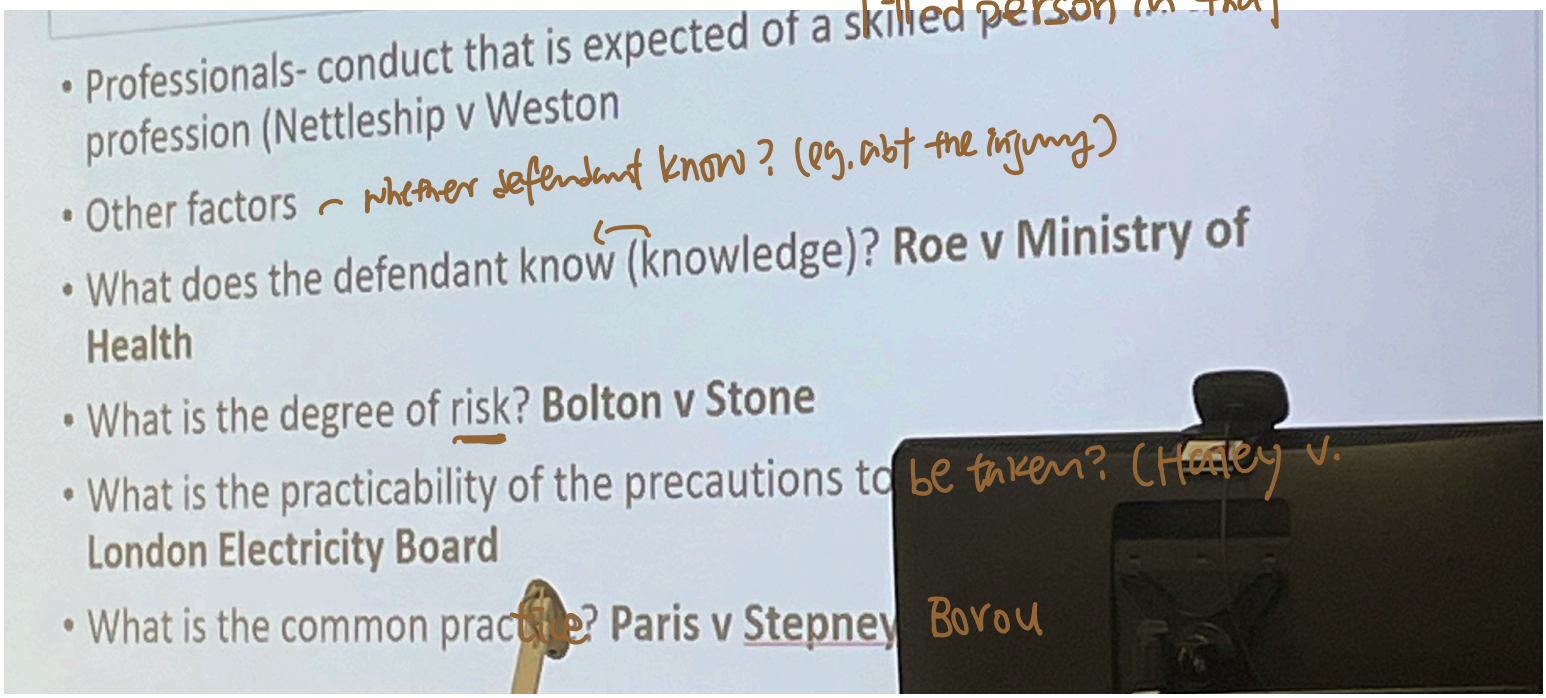
practical but they fail to do that (eg. take precaution when passing by)

2. How do you determine whether a person is in breach of duty? Which tests would you use? Use case law to illustrate the point.

3. What is the difference between causation in fact and causation in law? Consider the following two cases:
   - *Barnett v Chelsea & Kensington Hospital Management Committee* [1969] 1 QB 428;
   - Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) [1961] AC 388.

Q1)






2) Eg. a blind person
↳ physical sign is not practical & insufficient
↓
違反 breach of duty of care (eg. when sth is unreasonable)

unreasonable practice (not a common practice)
↳ eg. doesn't wear safety goggles while working at construction

- Factual causation- But for test
- Causation in law- Is it reasonable to expect that the defendant knew their actions could and would cause harm?

could not have happened

eg. pour oil onto the sea → unreasonable act
↳ could not have led fire

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Dont include Eric
In answer → more
complicated

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**Tutorial Questions for Week 8**

**Negligence: Negligent Statement**

1. Janice consulted Eric, her best friend, who is also a real estate agent from S&P Realty International Limited ("S&P") to help her find a property in Hong Kong. Eric showed Janice several properties in Hong Kong. At the end, she decided to buy a three-storey house in Tai Po. She went to Central Bank ("the Bank") for a mortgage. David Willard, a surveyor, was employed by the bank to inspect and value the property. Janice paid the valuation fee of $4000 to the bank to have the valuation done.

Janice X employ surveyor directly (reasonable expectation of Janice) (?) → only bank can sue

David inspected the property in June last year. He should have lifted the floorboards in each room to check for termites and he should also check the structure of the house as well. Instead, he casually walked around the house and *visually* inspected the property without lifting a single floorboard. He also failed to check the chimney because he forgot to bring his ladder with him. In his report to the bank, he stated no essential repairs were needed. The bank then paid him $4000 and issued the mortgage to Janice.

Janice moved in early this year. After a month, the bricks from the chimney collapsed through the roof causing substantial damage to the loft. The floorboards in the master bedroom were also infested with termites. It is estimated that the repairs to the loft and the replacement of the floorboards will take up to 9 months - costing a total of $1.2 million.

Janice struggled to pay for the repairs. She remembers seeing a television programme that said S&P's share price increased by 30% in the past year. She decided to ask Eric to verify this. Eric said he is not sure, but he gave her a company report confirming this. The report contained a disclaimer to the effect that the data should not be used for investment purposes. Ignoring this disclaimer, Janice invested all her money in S&P.

purpose of statement different : company x assumption of risk

whether breach of duty?
→ x foreseeability (∵ x show on TV, x rely on that report)
→ x proximity (x prospector invite ppl to invest) intention to convince sb to buy

Janice later discovered that one of S&P's investment deals fell through and the share price dropped by 25%. The next day, Janice was so upset with Eric that she decided to drive to his house to pay him a visit. On the way to his house, her car was hit by a lorry. It turned out the lorry driver had fallen asleep behind the wheels after drinking excessive alcohol. Janice was severely injured and paralyzed as a result.

**Advice Janice.**

x special relationship (x prospector x exchanger)
↳ no assumption of responsibility

Duty of care : David
Driver : should perform standard (profession)
Eric liable for Janice's financial loss (Eric breach of duty)

- Nettleship v Weston- Conduct expected from a skilled person in that profession
- Hedley Byrne v Heller and Partners
- Smith v Eric S. Bush
- White v Jones

net person → liable for all

- **Caparo Industries Ltd v Dickman:** Reasonable foreseeability, proximity and (fair, just and reasonable)
- Knowledge of the purpose for which a statement is made, i.e., the likelihood that someone will rely upon the statement and the purpose for which a statement is made must be identical to that a person relying on the statement
- **Williams v Natural Life Foods**-There must be an assumption of responsibility that creates a special relationship between the parties such as exchanges between the parties

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**Tutorial Questions for Week 9**

**Rights under the Employment Ordinance**

1. What is the purpose of the Employment Ordinance in Hong Kong? As an employee, what rights are you entitled to?

2. Gee is employed by a medium-sized law firm in Hong Kong. Her supervisor asked her to work one day after the Mid-Autumn Festival. Gee reluctantly complied because she's worried about her job prospect. Few months later, Gee's supervisor asked her to work on 1 January 2020 (New Year's Day). Her boyfriend, Kenni told her that she has certain rights under the employment law in Hong Kong. However, when Gee confronted her supervisor, he refused and said their law firm does not have such practice. Gee cannot celebrate New Year's Day with Kenni and they had an argument. Gee would like to seek your help.

   Gee is also pregnant and wants to know her rights in Employment Law.

   **Advise Gee.**

- Burton v Armstrong - Duress : Anyone has contract must be willingly (✗threaten)
- Lochner v New York: freedom of contract

Employment contract: unequal bargaining power btw employer & employee
↳ SchroederMusic Publishing Co. Ltd v Macaulay :
any contract that has a 'take it or leave' feel is a classic case of unequal bargaining power

↳ Holden v Hardy

Q1) To reduce unequal bargaining power (protect employee) → ∴ balance

ICESAR , Article 39 ; protect employee
↳ ✗ be fired just bcs of pregnant

Gee has right for maternity leave (14 weeks) or depend when she wants to start
(1) 4 weeks

eg. illness before delivery

- work not less than 40 weeks ⇒ 先可以有maternity leave，期間×work for other employer（除非employer允許）

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**Tutorial Questions for Week 10**

**Restraint of Trade**

Explain the validity of the following contracts:

Ada was employed as an accountant in a small local firm. Her contract provided that she must not canvass, or solicit the business of, or maintain any personal records of, any client of our company and prohibited her from working as an accountant in Hong Kong for the rest of her life.

**Advise Ada.**

Bennie was employed as a manager in Dairy Milk Ltd. He oversaw the delivery team. Bennie had direct contact with the customers. Bennie left Dairy Milk Ltd and started his own business in selling dairy products. His employment contract provides that Bennie should not for 5 years after leaving employment, sell any dairy products to his existing customers. The main purpose of the contract is to prevent Bennie from poaching Dairy Milk's customers.

**Advise Bennie.**

Clara worked as a bartender in a nightclub called DOZO. Her employer taught her the secret method to make a popular cocktail called "Midnight Blues". The drink is very popular in Hong Kong is only available in DOZO. Clara left DOZO to work for a rival nightclub, MISO. In her existing contract, it stated that she is prohibited from carrying on, in any capacity, in competition with DOZO.

**Advise Clara.**

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**Tutorial Questions for Week 11**

**Termination of an Employment Contract**

1. Lawrence, graduated with a Juris Doctor degree and completed his Postgraduate Certificate in Law ("PCLL") in 2021. He started his training contract on 1 August 2021 with an international law firm in Hong Kong. His supervisor, Anita, asked him to work *every single day in December* – including Winter Solstice Festival and Christmas Day. He reluctantly complied because he was worried about his training contract. Anita never mentioned, nor arrange a break for Lawrence and Lawrence was completely exhausted by January. Anita also asked Lawrence to work on 1 January 2022.

   With the fifth wave of the pandemic and the omicron variant, the law firm divided the employees into two teams – Team A and B. Anita asked Lawrence to come to work regardless of whether team A or team B was on duty. She also told Lawrence that the failure to do so would result in disciplinary actions. When Lawrence came to work, Anita would pat Lawrence on his butt and say, "*Hey sexy, good job*". The situation seems to have worsen in the last few months and she asked him for sexual favours in order to maintain his training contract. Anita would also scold and beat him up. Lawrence saw a psychiatrist and he was diagnosed with depression. He wanted to resign, but he was too busy with the work and did not have time to check the Employment Ordinance.

   He noticed that a clause in his training contract that prohibited him from working as a solicitor in Central for 12 months after leaving the current post and the contract also prohibit him from using annual leave to offset the notice period.

   **Advise Lawrence on the employment issues above.**

## add title

- ***Fitch v Dewes*** (1921)- Solicitor Had dealt confidentially with employer's clients. This restriction was held to be reasonable.
- ***Faccenda Chicken Ltd v Fowler*** [1986] The Court held the restraint was unreasonable. **Fowler did not use any trade secrets of his ex-employer. He did not have any close relations with his ex-employer's customers.**
- ***Kao, Lee and Yip (a firm) v Lau Wing and Tsui Wai Yu*** (2008) 11 HKCFAR 579The Ordinance therefore makes it clear that where an employee has earned his entitlement to paid annual leave, he has an accrued right which receives statutory protection. Such protection is wholly for the benefit of the employee since only employees earn an entitlement to annual leave. No such protection is needed or provided for in relation to the employer. The employee is entitled in law to utilise his leave entitlement as part of his notice period.
- **S8 A. Damages for wrongful termination of contract**

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**Tutorial Questions for Week 12**

**Hong Kong Legal System**

1. "*The court which interprets a statute has more power than the legislature which passed the law.*"
   **Discuss.**

2. What's the difference between a ratio decidendi and obiter dictum?

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**Tutorial Questions for Week 12**

**Alternative Dispute Resolution**

1. "The adversarial system is a powerful means of ensuring justice, but it is not without flaws and arbitration/mediation is a better way of ensuring justice".

   ***Discuss the above statement with reference to the advantages and disadvantages of ADR and explain the differences between a Civil and Criminal litigation in Hong Kong.***

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**Tutorial Questions for Week 13**

**Personal Data Privacy / Revision**

1. Consider the objectives of the Data Privacy Principles.