

# Week 1 Workshop: Worksheet 2 With Answers

<b>Module Number</b>	LAW604	<b>Module Title</b>	Civil Litigation and Advocacy
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In the case analysis table you prepared on the last worksheet, we have some evidence to support each of the legal elements which must be proved. This will not always be the case – you may have no evidence in respect of a particular element, and that column in your case analysis table will be blank. Clearly, you could add a column at this stage, setting out the evidence that should be obtained.

## Question 1

Try to identify the evidence you will need and complete the additional column in the table below.

<b>Client:</b> Mr and Mrs Brasher.			
<b>Opponent:</b> Mr Violet.			
<b>Cause of action:</b> Negligence.			
<b>Elements to establish</b>	<b>Facts to establish</b>	<b>Available evidence</b>	<b>Evidence to obtain</b>
<i>Duty of care</i>	That the clients occupy the property and Mr Violet (a road user) entered onto the driveway.	Clients own the property and saw Mr Violet enter the driveway in his car.	
<i>Breach of duty</i>	By driving too fast and erratically, Mr Violet lost control, left the drive and did not avoid crashing into the extension.	Clients who saw Mr Violet do this.	
<i>Causation</i>	That by crashing into the extension the clients thereby suffered loss.	Clients who saw Mr Violet do this.	
<i>Loss and damage</i>	Damage to garden, the extension, some furnishings and fittings.	Clients.	

## Answer

<b>Client:</b> Mr and Mrs Brasher.			
<b>Opponent:</b> Mr Violet.			
<b>Cause of action:</b> Negligence.			
<b>Elements to establish</b>	<b>Facts to establish</b>	<b>Available evidence</b>	<b>Evidence to obtain</b>
<i>Duty of care</i>	That the clients occupy the property and Mr Violet (a road user) entered onto the driveway.	Clients own the property and saw Mr Violet enter the driveway in his car.	
<i>Breach of duty</i>	By driving too fast and erratically, Mr Violet lost control, left the drive and did not avoid crashing into the extension.	Clients who saw Mr Violet do this.	Expert evidence: an examination of the vehicle/driveway may produce evidence which supports the clients' evidence as to the speed of the vehicle/loss of control.
<i>Causation</i>	That by crashing into the extension the clients thereby suffered loss.	Clients who saw Mr Violet do this.	
<i>Loss and damage</i>	Damage to garden, the extension, some furnishings and fittings.	Clients.	An expert will need to produce a report detailing the damage to the extension and the cost of repair.

As the litigation progresses you will need to ensure all necessary procedural steps are taken for the evidence to be used at trial. You may find it helpful to classify each piece of evidence as documentary, witness of fact, expert or real.

You must always remember that the process of case analysis is one of evaluation – will the evidence enable the client to succeed on the balance of probabilities. Throughout a case, in order to assess and advise on its merits, we are looking for favourable facts and unfavourable facts (often called 'good' facts and 'bad' facts).

## **Question 2**

Undertake a good fact/bad fact analysis of the Brasher and Violet case.

## **Answer**

Example, it would be a favourable ('good') fact if, say, Mr Violet had previous convictions or points on his driving licence for speeding. That would point towards liability on this occasion. It would not prove liability, but it would be circumstantial evidence implying that he may have been speeding up Mr and Mrs Brasher's drive. Equally it would be an unfavourable ('bad') fact if, say, Mr and Mrs Brasher's builders had left nails or sharp objects on or near the driveway when completing the extension works. If such items caused the tyres on Mr Violet's car to burst and he lost control of the car as a result, he could argue that he was not to blame, in whole or part, for the accident.

At the end of Stage 1 of Civil Litigation, once we know the prospective defendant's response to the claim, we can then record what legal and factual issues are agreed, and those that are disputed. Whilst it will still be necessary for the statements of case to refer to the facts relating to all issues – whether disputed or not – the procedural and evidential focus will be on the issues in dispute between the parties.