

# Week 1 Workshop: Worksheet 1 With Answers

<b>Module Number</b>	LAW604	<b>Module Title</b>	Civil Litigation and Advocacy
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## 1. Introduction

When carrying out an initial case analysis and periodically reviewing the case thereafter, ensure that you answer the following questions:

1. Have all possible causes of action and potential defendants been identified?
2. What as a matter of law must the client establish?
3. What facts will the client have to establish ('the material facts')?
4. What evidence is currently available to establish the material facts?
5. What evidence needs to be obtained in order to establish any particular material fact?
6. How strong is the client's case? What material facts are favourable and unfavourable?

## 2. Case Study

Assume that you act for Mr and Mrs Brasher. They own a large house locally and had agreed to let out part of it for a couple of months to a Mr Violet. Apparently, when he arrived to take up his tenancy at 11 pm that night, he lost control of his car when driving up the clients' driveway and crashed into their recently completed extension. The clients' garden, the extension and some of their furnishings and fittings were all damaged.

The first step is to establish whether the clients have any basis for making a claim against Mr Violet. This is known as the cause of action. The most obvious claim is in negligence.

### Question 1

What, as a matter of law, must the clients prove to make a claim in negligence successfully against Mr Violet?

### **Answer 1**

That Mr Violet owed them a duty of care.

The material facts that establish a breach of that duty.

The material facts that establish that the damage to the client's property was caused by the breach of that duty, ie the link between Mr Violet's car leaving the driveway and crashing into their extension.

That as a consequence of the crash the clients suffered damage and loss.

### Question 2

Complete the following table to start your case analysis.

<b>Client:</b>
<b>Opponent:</b>

Cause of action:		
Elements to establish	Facts to establish	Available evidence
<i>Duty of care</i>		
<i>Breach of duty</i>		
<i>Causation</i>		
<i>Loss and damage</i>		

## Answer 2

<b>Client:</b> Mr and Mrs Brasher.		
<b>Opponent:</b> Mr Violet.		
<b>Cause of action:</b> Negligence.		
Elements to establish	Facts to establish	Available evidence
<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.

## Question 3: Next Steps in Case Analysis

We need to consider the strengths and weaknesses of the known case, consider the strengths and weaknesses of the following:

1. Duty of care

2. Breach of duty
3. Causation
4. Loss and damage

Make a note of any points you decide on.

### Answer

1. *Duty of care.* This is unlikely to be an issue unless Mr Violet is going to deny that he was the driver. It is well established law that a driver owes a duty to drive to the standard of a reasonable competent driver. By entering the driveway in his car, Mr Violet owed them a duty to drive with reasonable care.
2. *Breach of duty.* This will probably be a key disputed issue. Why did the car leave the drive and crash into the house? Any evidence needs to be preserved. It may be appropriate to obtain an expert's opinion at this stage.
3. *Causation.* This is unlikely to be an issue unless Mr Violet denies that the crash took place. If breach can be proved, it will not be disputed that his vehicle caused damage to the clients' property.
4. *Loss and damage.* However, even if the clients can establish breach of duty (liability), they will still have to prove the amount (quantum) of their claim. Do they have any receipts for repair works already done, or estimates for works that need to be done? These may well be disputed, and the evidence available to prove each item claimed must be considered. At the first interview you will need to itemise each item of loss and analyse the evidence you have or may be able to obtain to prove the amount claimed. This is usually not so problematic where property is damaged as (subject to the duty to mitigate) the cost of replacement/repair is a guide to the amount of the loss. However, where the loss does not have a readily ascertainable financial value, eg loss of profits, more thought must be given to the evidence which can be obtained and relied upon to support the amount claimed.