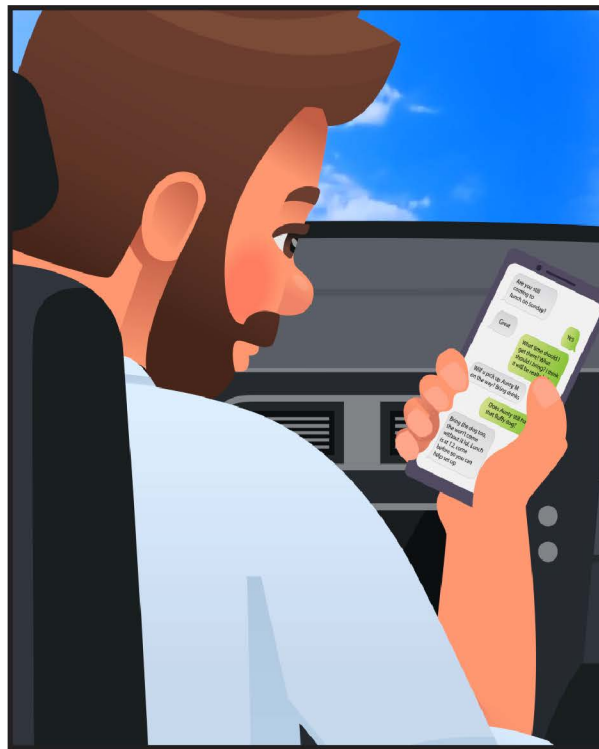


# A brief overview of 'What is Negligence?'



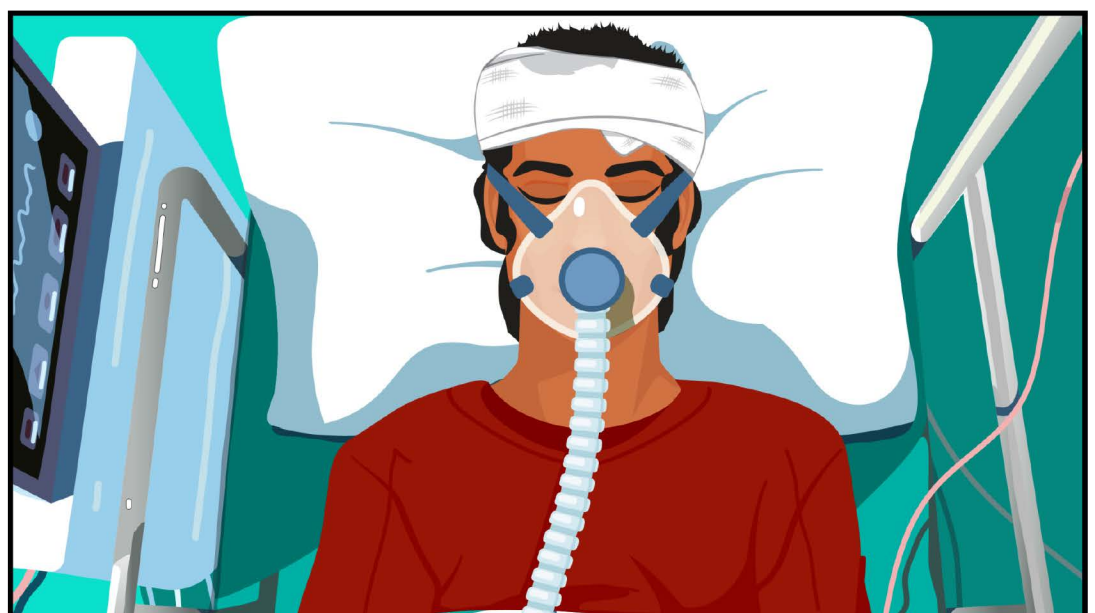
We see Liam walking down the footpath while he is busy looking down at his mobile phone and wearing his headphones.



We can see a car coming down the road approaching the pedestrian crossing. The driver has been distracted by looking down at his phone as he is no longer looking at the road ahead.



The driver of the car has just hit the pedestrian on the crossing. His attention was distracted by a mobile text.



The pedestrian has been injured by the car. He has been placed in an ambulance and is on the way to hospital.



If the injured pedestrian decides to sue, he will now be called the plaintiff (he starts the action), and he will sue the driver (now the defendant), for his injuries. The driver was careless and not paying attention because he was driving while looking at his mobile. This accident was caused by his negligence. Negligence is an unintentional tort, that is, a driver does not intend to run down pedestrians.



### Barrister for the plaintiff

To win a negligence claim, as this is a *civil action*, my client, the plaintiff, must prove on the balance of probabilities, that the defendant owed my client a reasonable duty of care.

That is, to drive carefully and not to run him down (particularly on a pedestrian crossing). He has breached his duty of care because he hit my client with his car on a crossing, and my client was injured as a result.

A *reasonable person* driving a car would keep a lookout for other road users (including pedestrians) and could foresee causing injury to a pedestrian crossing the street if he was not paying attention to the road in front of him.

From the facts, we would say the defendant breached his duty of care by looking at his mobile while driving and was not as careful as a reasonable person would be. Finally, we need to consider the issue of *causation*. First, would the injury have occurred 'but for' the defendant's negligent driving? This is a question of fact. Secondly, did the defendant's use of the mobile distract him and cause the accident? If he had not been looking at his mobile while driving, would there still have been an accident? If we look at the facts, clearly the acts of the defendant looking at his mobile while driving led to his inattention and the hitting of the plaintiff. Causation would seem to be satisfied.



### The Judge

Does the defendant have a defence? From the facts, it appears that the plaintiff was not paying attention to whether it was safe to cross the road as he was busy on his mobile. The law states you have to accept some responsibility for your safety. In this matter the court would probably find the plaintiff contributed to his injuries by not checking if it was safe to cross the road. The amount of damages in Kina that the plaintiff will be entitled to for his injuries will be determined by what percentage, if any, he was responsible for his injuries. This depends on many factors including looking at his phone while approaching and using the crossing without first checking it was safe to cross. He will also recover damages for pain and suffering, ongoing medical and hospital costs, loss of income and future earnings.

## SUMMARY OF NEGLIGENCE

DUTY, and BREACH OF DUTY, and CAUSATION, and DAMAGE

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DAMAGES PGK