

Unit 13



Title:	Law of Tort
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the general principles of tortious liability	<p>1.1 Define 'tort'</p> <p>1.2 Explain the characteristics of tort</p>	<p>1.1 Civil Wrong, arising from a breach of duty, fixed by law, generally giving rise to compensation by way of an action for unliquidated damages</p> <p>1.2 Common law basis; importance of procedure; requirement of fault; absolute and strict liability; <i>injuria sine damno</i> (a person may not have suffered damage yet have a cause of action in tort) and <i>damnum sine injuria</i> (a person may have suffered damage yet have no cause of action in tort); mental element, including motive and malice; the influence of the Human Rights Act 1998</p>
2 Understand the objectives of the law of tort	<p>2.1 Explain the objectives of the law of tort</p> <p>2.2 Analyse the effectiveness of the law of tort in achieving its objectives</p>	<p>2.1 Compensation, deterrence, justice, appeasement, normative rules of behaviour; protection of interests recognised by law; relationship with other areas of law such as contract and criminal law</p> <p>2.2 Assessing effectiveness; efficiency and effectiveness of tort as compensation scheme: comparison with other models,</p>

		including private insurance, social security benefits and non-fault based systems: see, eg, the Pearson Commission Report, the New Zealand Compensation Scheme
3 Understand the law of trespass	<p>3.1 Explain the law of trespass to the person</p> <p>3.2 Explain the law of tort in <i>Wilkinson v Downton</i></p> <p>3.3 Explain the law of trespass to land</p> <p>3.4 Explain the law of trespass to goods</p>	<p>3.1 Definitions of torts: (a) Assault is an act of the defendant which causes claimant agreed reasonable apprehension of the infliction of a battery on him by the defendant; (b) ' Battery is the intentional and direct application of force to another person'; (c) False imprisonment is 'the infliction of bodily restraint which is not impliedly or expressly authorised by law'; identification and explanation of the law of trespass to the person including defences of consent, necessity, self-defence, contributory negligence, and lawful arrest; relevant case law</p> <p>3.2 Definition of tort: 'The defendant has wilfully done an act calculated to cause harm to the claimant '; relevant case law: eg, <i>Wilkinson v Downton (1897)</i>, <i>Janvier v Sweeney (1919)</i>, <i>Wainwright v Home Office (2004)</i></p> <p>3.3 Definition of tort: trespass to land is constituted by unjustifiable interference with the possession of land; identification and explanation of the law of trespass to land; relevant case law: eg, <i>Kelson v Imperial Tobacco (1957)</i>, <i>Bernstein v Skyviews & General Ltd (1971)</i>; defences: justification by law: Police and Criminal, Evidence Act 1984, Neighbouring Land Act 1992; Common Law: repossession of chattels, licence</p> <p>3.4 Definition of tort: trespass to goods is a wrongful physical interference with them;</p>

	<p>3.5 Analyse the law of trespass and the tort in <i>Wilkinson v Downton</i></p> <p>3.6 Apply the law of trespass and the tort in <i>Wilkinson v Downton</i> to a given situation</p> <p>3.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>identification and explanation of the law of trespass to goods; relevant case law: eg, <i>Kirk v Gregory (1876)</i>, <i>Wilson v Lombank (1963)</i>; tort against possession; exceptions to the possession rule; defences</p> <p>3.5 Analysis of the law of trespass to the person, trespass to land and trespass to goods; common characteristics of trespass: actionable per se, direct; requirement of fault; consideration of states of mind: <i>Fowler v Lanning (1959)</i>, <i>Letang v Cooper (1965)</i>, <i>Wilson v Pringle (1987)</i>; trespass distinguished from the tort in <i>Wilkinson v Downton</i>; analysis of the concept of possession; possession distinguished from ownership, trespass to goods distinguished from conversion (outline only)</p> <p>3.6 Application of the law to a complex scenario</p> <p>3.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>4 Understand the law of negligence</p>	<p>4.1 Explain negligence</p> <p>4.2 Explain the evolution of the requirement of duty of care</p> <p>4.3 Explain the law in those areas in which</p>	<p>4.1 Definition: <i>Blyth v Birmingham Waterworks Co (1856)</i>, per Alderson B; its main elements: duty of care, breach of duty of care, consequential damage that is not too remote in law</p> <p>4.2 Established categories of duty of care to; test of proximity: <i>Heaven v Pender (1883)</i>, test for proximity: <i>Donoghue v Stevenson (1932)</i>, per Lord Atkin; foreseeability, proximity, fair and reasonable: <i>Caparo v Dickman (1990)</i></p> <p>4.3 Meaning of public policy: consideration by</p>

	<p>public policy plays a significant role in determining the existence of duty of care</p> <p>4.4 Explain the law on breach of duty of care</p> <p>4.5 Explain the legal tests for causation in fact</p> <p>4.6 Explain the law on breaks in the 'chain of causation'</p>	<p>the court of whether a duty of care should exist rather than whether it does exist; key areas of public policy: pure economic loss resulting from negligent acts and negligent misstatements, psychological damage, police, local authorities, acts of third parties, omissions; identification and explanation of the law; understanding of relevant case law</p> <p>4.4 Identification and explanation of the law; understanding of relevant case law: <i>Blyth v Birmingham Waterworks Co (1856)</i>, per Alderson B; harm must be reasonably foreseeable at time; hindsight must not be used; questions of skill and judgment: objective test; relevance of accepted body of professional opinion; magnitude of risk tests: likelihood and seriousness of damage; importance of the object</p> <p>4.5 Identification and explanation of the law; understanding of relevant case law: the claimant must demonstrate a causal link between the breach of duty of care by the defendant and the damage suffered by the claimant; tests used: the 'but for' test, eg, <i>Barnett v Chelsea Hospital Management Committee (1969)</i>; the 'material increase of risk test', eg, <i>McGhee v NCB (1973)</i>; <i>Baker v Willoughby (1969)</i>, <i>Jobling v Associated Dairies (1981)</i>; subsequent developments including <i>Fairchild v Glenhaven Funeral Services (2003)</i>, <i>Gregg v Scott (2005)</i>, <i>Barker v Corus UK (2006)</i>, s3 Compensation Act 2006</p> <p>4.6 Identification and explanation of the law; understanding of relevant case law: <i>Nova</i></p>
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	4.7 Explain the law on remoteness of damage (causation in law) in negligence	4.7 Identification and explanation of the law; understanding of relevant case law: <i>The Wagon Mound (No 1)</i> (1961), <i>Hughes v Lord Advocate</i> (1963); acts of third parties, eg, <i>Smith v Littlewoods Organisation</i> (1987)
	4.8 Explain the doctrine of 'take your victim as you find him'	4.8 Identification and explanation of the law; understanding of relevant case law: eg, <i>Smith v Leech Brain & Co Ltd</i> (1961), <i>Robinson v Post Office</i> (1974)
	4.9 Explain the law governing proof of negligence	4.9 Identification and explanation of the law; understanding of relevant case law: burden and standard of proof; s11 Civil Evidence Act 1968; <i>res ipsa loquitur</i> (the thing speaks for itself)
	4.10 Analyse the law of negligence	4.10 Analysis of the law of negligence; to include: the interests protected; public policy; the nature of the harm; the parties; remedies; the effectiveness of the action
	4.11 Apply the law of negligence to a given situation	4.11 Application of the law to a complex scenario
	4.12 Critically evaluate a given issue or situation to predict probable legal implications	4.12 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
5 Understand the law of tort relating to	5.1 Explain the law on the employer's personal	5.1 Identification and explanation of the law;

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<p>employers' liability</p>	<p>liability to the employee in negligence</p> <p>5.2 Explain the law of vicarious liability</p> <p>5.3 Analyse the common law on employer's liability</p> <p>5.4 Apply the common law governing the liability of employers to a given situation</p> <p>5.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>understanding of relevant case law: duty is an implied term of the contract; tests for employee/employer relationship; content of employer's common law duty to the employee; relevant case law: eg, <i>Ready Mixed Concrete (South East) v MPNI (1968)</i>, <i>Wilson & Clyde Coal v England (1938)</i></p> <p>5.2 Identification and explanation of the law; understanding of relevant case law: liability for acts of another: employees, agents, independent contractors; tests for employee; tests for agent; circumstances in which liability for independent contractor may arise; tortious act done in the course of employment; frolics of one's own; lending a servant</p> <p>5.3 An analysis of the common law governing employers' liability to employees and vicarious liability</p> <p>5.4 Application of the law to a complex scenario</p> <p>5.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>6 Understand the law of tort relating to liability for premises</p>	<p>6.1 Explain the law under the Occupiers' Liability Acts of 1957 and 1984</p>	<p>6.1 Area of tort governed by the Acts: liability arising as a result of the occupation of premises; key elements: occupation of premises, duty arising as a consequence, breach of duty, damage; identification and explanation of the 1957 law; understanding of the relevant statute and case law: Occupiers' Liability Act 1957: meaning of 'occupier', meaning of 'premises', to whom duty is owed, classes of lawful visitor,</p>

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	<p>6.2 Analyse the law under the Occupiers' Liability Acts 1957 and 1984</p> <p>6.3 Apply the Occupiers' Liability Acts 1957 and 1984 and relevant case law to a given situation</p> <p>6.4 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>permission and its limits, nature of duty owed, special groups: children and those in pursuit of a common calling; overlap with common law negligence and appropriate cause of action; defences, including the limitations imposed by the Unfair Contract Terms Act 1977; relevant case law, eg, <i>Wheat v Lacon (1966)</i>; identification and explanation of the Occupiers' Liability Act 1984 and relevant case law: eg, <i>Tomlinson v Congleton District Council (2003)</i>, <i>Keown v Coventry NHS Trust (2006)</i></p> <p>6.2 Analysis of the law under the relevant acts: to include distinguishing actions under the 1957 and 1984 Acts from one another and from common law negligence; the interests protected; the nature of the harm; the parties; remedies; the effectiveness of the actions</p> <p>6.3 Application of the law to a complex scenario</p> <p>6.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>7 Understand the law of nuisance</p>	<p>7.1 Explain the law of private nuisance</p>	<p>7.1 Definition of the tort of private nuisance: the unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it; identification and explanation of the law; understanding of case law: factors considered by the court when determining unlawful interference: repetition, continuance, and state of affairs; the existence of malice; locality; the practicality of preventing nuisance; the</p>

	<p>7.2 Explain the law of public nuisance</p> <p>7.3 Explain the law of the tort in <i>Rylands v Fletcher</i></p> <p>7.4 Analyse the law of nuisance (including the tort in <i>Rylands v Fletcher</i>)</p>	<p>claimant's interest in the land; the nature of the harm suffered; the status and culpability of the defendant; remoteness of damage; defences: prescription, statutory authority, consent; relevant case law</p> <p>7.2 Definition of the tort of public nuisance: a public nuisance is one which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects who come within the sphere or neighbourhood of its operation; the claimant must show particular harm; identification and explanation of the law; understanding of relevant case law: what constitutes a class; particular harm; defences; relevant case law</p> <p>7.3 Definition of the tort in <i>Rylands v Fletcher</i>: the person 'who for his own purpose brings on his lands and collects there anything likely to do mischief if it escapes must keep it in at his peril, and if he does not do so is prima facie liable for all the damage which is the natural consequence of its escape', <i>Rylands v Fletcher (1866)</i> per Blackburn J; identification and explanation of the law; understanding of relevant case law: things likely to do mischief; the question of strict liability; non-natural user; escape; the question of liability for personal injuries; remoteness of damage; defences; relevant case law</p> <p>7.4 To include: distinguishing public nuisance, private nuisance, and the tort in <i>Rylands v Fletcher</i>; the interests protected; the nature of the harm; the parties; remedies; the</p>
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	<p>7.5 Apply the law of nuisance (including <i>Rylands v Fletcher</i>) to a given situation</p> <p>7.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>effectiveness of the action</p> <p>7.5 Application of the law to a complex scenario</p> <p>7.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
8 Understand the law of defamation	<p>8.1 Define the tort of defamation</p> <p>8.2 Distinguish libel from slander</p> <p>8.3 Explain the law of defamation</p>	<p>8.1 The publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun or avoid him</p> <p>8.2 Libel is defamation expressed in permanent form; see also: ss1 and 16(1) Defamation Act 1952, s28 Cable & Broadcasting Act 1984, s4 Theatres Act 1968; libel is actionable per se; slander is defamation by means of spoken word or gesture: general rule: must show damage; actionable per se as an exception: imputation of crime, infectious disease, s1 Slander of Women Act 1891, disparaging person in office trade or profession</p> <p>8.3 Identification and explanation of the law; understanding of case law and statute: publication capable of bearing a defamatory meaning; innuendo; refer to the claimant/identification of the claimant; publication to a 3rd party; defences: justification, fair comment, absolute privilege, qualified privilege; relevant case law: eg, <i>Youssouf v MGM (1934)</i>, <i>Keays v Murdoch Magazines (1992)</i>, <i>Tolly v Fry (1931)</i>, <i>Humphries v Thompson (1905 – 1910)</i>, <i>Berkoff v Burchill (1996)</i>; statutory intervention to include: Law of Libel</p>

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	<p>8.4 Analyse the law of defamation</p> <p>8.5 Apply the law of defamation to a given situation</p> <p>8.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>Amendment Act 1888, Defamation Act 1952, Rehabilitation of Offenders Act 1974, Defamation Act 1996, Human Rights Act 1998</p> <p>8.4 To include: the interests protected; the nature of the harm; the parties; remedies; the effectiveness of the action; the influence of Articles 8 and 10 of the European Convention on Human Rights; procedure in defamation cases (outline)</p> <p>8.5 Application of the law to a complex scenario</p> <p>8.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>9 Understand general defences</p>	<p>9.1 Explain the role of complete and partial defences</p> <p>9.2 Explain the defence of <i>volenti non fit injuria</i> (Consent)</p> <p>9.3 Explain the defence of <i>ex turpi causa non oritur action</i> (No cause of action arises from an immoral/illegal cause)</p>	<p>9.1 Complete defences defeat the action of the claimant, partial defences act to reduce damages</p> <p>9.2 Identification and explanation of the law showing understanding of relevant case law: that which is consented to cannot be wrong in law; the defendant must show: the claimant agreed to take the risk, had sufficient knowledge to make the agreement real, and that the agreement was voluntary; relevant case law</p> <p>9.3 Identification and explanation of the law showing understanding of relevant case law: victim of tort who is in course of committing a crime may have claim disallowed by the court, eg, <i>Ashton v Turner (1981)</i>; limitations of defence</p>

	<p>9.4 Explain the defence of contributory negligence</p> <p>9.5 Analyse general defences in tort</p> <p>9.6 Apply the law of general defences to a given situation</p> <p>9.7 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>9.4 Identification and explanation of the law showing understanding of relevant case law and statute: claimant was in part responsible for the harm s/he suffered; position at common law; position under Law Reform (Contributory Negligence) Act 1945; relevant case law</p> <p>9.5 To include analysis of nature of the defence, whether a full or partial defence, consideration of the defence in relation to special groups, eg, children, workers, and rescuers</p> <p>9.6 Application of the law to a complex scenario</p> <p>9.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p>10 Understand remedies in tort</p>	<p>10.1 Explain the classification of remedies</p> <p>10.2 Explain the meaning of damages</p> <p>10.3 Explain the purpose of damages in tort</p> <p>10.4 Explain damages for personal injury</p>	<p>10.1 Judicial remedies: damages, injunction; non-judicial remedies: self-help, abatement etc</p> <p>10.2 Monetary compensation</p> <p>10.3 To place the claimant in the position s/he would have been had the tort not been committed</p> <p>10.4 Special Damages: actual pecuniary loss to date of trial; General Damages: to include Future Pecuniary Loss, loss of earnings, past and future non-pecuniary loss, pain, suffering, loss of amenity, mental distress; lost years; aggravated damages; deductions; relevant case law; Damages Act 2006</p>

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	<p>10.5 Explain non-compensatory damages</p> <p>10.6 Explain injunctions</p> <p>10.7 Explain the implications for damages of the death of the claimant</p> <p>10.8 Analyse the law on remedies</p> <p>10.9 Apply the law on remedies to a given situation</p> <p>10.10 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.5 Nominal, Contemptuous and Exemplary damages; relevant case law</p> <p>10.6 Mandatory and prohibitory injunctions; injunctions at trial and interlocutory injunctions: <i>American Cyanamid v Ethicon (1975)</i></p> <p>10.7 Survival of deceased's right of action: Law Reform (Miscellaneous Provisions) Act 1934; claims for financial loss and bereavement: Fatal Accidents Act 1976, Administration of Justice Act 1982</p> <p>10.8 Analysis to include nature of assessment of damages, particularly in case of personal injury and death; giving monetary values to injury and trauma; predicting levels of compensation etc</p> <p>10.9 Application of the law to a complex scenario</p> <p>10.10 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of the Law of Tort
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 44 Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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