

Unit 5



Title:	Law of Tort
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the meaning of the term ‘the tort of negligence’	<p>1.1 Define ‘tort’</p> <p>1.2 Describe the scope of tort</p> <p>1.3 Describe the effects/functions of the law of tort</p> <p>1.4 Define ‘negligence’</p> <p>1.5 Explain what must be demonstrated in order to mount a successful claim in negligence</p>	<p>1.1 Civil wrong.</p> <p>1.2 Description of common law and statutory example of torts such as nuisance, trespass, defamation, breach of statutory duty under the Occupier’s Liability Acts 1957 and 1984, Consumer Protection Act 1987 etc.</p> <p>1.3 Normative rules, compensation, retribution.</p> <p>1.4 Relevant case law, particularly the comments of Alderson B in <i>Blyth v Birmingham Waterworks Co (1856)</i>.</p> <p>1.5 Duty of care, breach of duty of care, damage resulting from the breach of duty of care. Relevant case law: eg: <i>Glasgow Corporation v Muir (1943)</i>, <i>Barnett v Chelsea & Kensington HMC (1969)</i>.</p>
2 Understand the tests for establishing a duty of care in cases of physical personal	2.1 Describe the general legal tests governing duty of care in negligence	2.1, 2.2, 2.3 Neighbour Test – <i>Donoghue v Stevenson (1932)</i> , <i>Caparo v Dickman (1990)</i>

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<p>injury and physical damage to property</p>	<p>2.2 Apply the tests for establishing duty of care in negligence to a given set of facts</p> <p>2.3 Use the current law to predict probable legal outcomes deriving from given facts</p>	<p>– three stage test: reasonable foreseeability, proximity and just and reasonableness. Relevant case law: eg: <i>Topp v London Country Bus (SW) Ltd (1993)</i>.</p>
<p>3 Understand the concept of public policy, particularly in the context of duty of care in negligence</p>	<p>3.1 Explain the meaning of public policy in the context of duty of care in negligence</p> <p>3.2 Explain the role of public policy in the establishment of duty of care in the context of psychological harm</p> <p>3.3 Explain the current law relating to duty of care in cases of psychological harm</p> <p>3.4 Identify situations giving rise to actionable psychological harm (nervous shock)</p> <p>3.5 Apply the tests for establishing duty of care cases of psychological harm in negligence in ‘factual’ situations</p> <p>3.6 Use the current law to predict probable legal outcomes deriving from given facts</p>	<p>3.1 Consideration by the court of whether a duty of care should exist; S1 Compensation Act 2006: instruction to court to consider implications of awarding compensation. Consideration of how public policy issues affect the liability of public authorities such as the police, fire brigade or local authorities. Relevant case law: eg: <i>Hill v CC of West Yorkshire (1988)</i>, <i>Osman v UK (1998)</i>.</p> <p>3.2 Historical development of case law including <i>Bourhill v Young (1942)</i>, <i>McLoughlin v O’Brian (1982)</i>, <i>Alcock & Others v Chief Constable of South Yorkshire (1992)</i>.</p> <p>3.2, 3.3 and 3.4 Nature and quality of harm suffered; primary and secondary victims; relevant case law, eg: <i>Page v Smith (1995)</i>, <i>Hinz v Berry (1970)</i>, <i>Alcock & Others v Chief Constable of South Yorkshire (1992)</i>, <i>White v Chief Constable of South Yorkshire (1999)</i>, <i>Walker v Northumberland CC (1995)</i>.</p> <p>3.5 and 3.6 Application to relevant scenarios.</p>
<p>4 Understand the law governing breach of duty of care</p>	<p>4.1 Describe the basic test for breach of duty</p>	<p>4.1 The “reasonable man” test. Relevant case law: eg: <i>Blyth v Birmingham Waterworks Co</i></p>

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	<p>4.2 Explain the requirement of reasonable foreseeability</p> <p>4.3 Explain the law's approach to questions of skill, judgment and experience</p> <p>4.4 Explain the 'magnitude of risk' test</p> <p>4.5 Explain the law's approach to the importance of the Defendant's objective when the tort was committed</p> <p>4.6 Identify breach of duty</p> <p>4.7 Apply the tests for establishing breach of duty of care in negligence to a given set of facts</p> <p>4.8 Use the current law to predict probable legal outcomes deriving from given facts</p>	<p>(1856), <i>Alderson B.</i></p> <p>4.2 Relevant case law: eg: <i>Roe v Minister of Health (1954)</i>: reasonable foreseeability of harm at the time, hindsight not to be used.</p> <p>4.3 Relevant case law eg: <i>Nettleship v Weston (1971)</i>; learner drivers <i>Whitehouse v Jordan (1981)</i>, <i>Bolam v Friern Hospital Management Committee (1957)</i>, <i>Bolitho v City and Hackney Health Authority (1997)</i>; accepted body of professional opinion.</p> <p>4.4 Relevant case law: <i>Bolton v Stone (1951)</i>, <i>Hilder v Portland Cement (1961)</i>.</p> <p>4.5 The relevance of a socially desirable objective. Relevant case law, eg: <i>Watt v Herts CC (1954)</i>.</p> <p>4.6, 4.7 and 4.8 Application to relevant scenarios.</p>
<p>5 Understand the law governing 'Causation'</p>	<p>5.1 Explain the need to demonstrate damage caused by breach of duty of care</p> <p>5.2 Explain the need to demonstrate causation in fact and causation in law</p>	<p>5.1 The Claimant must demonstrate a causal link between the breach of duty by the Defendant and the damage suffered by the Claimant.</p> <p>5.2 There must (a) be a factual link between the breach of duty of care by the Defendant and the harm suffered by the Claimant and (b) the harm suffered by the Claimant must not be too remote in law if the claim is to be</p>

	<p>5.3 Explain the legal tests on causation in fact</p> <p>5.4 Explain the tests used in situations where there are multiple causes of harm</p> <p>5.5 Explain breaks in the Chain of Causation</p> <p>5.6 Explain the test for remoteness of harm (causation in law) in negligence</p> <p>5.7 Identify situations in which causation in law and fact are in issue</p> <p>5.8 Apply the relevant law to a given set of facts</p> <p>5.9 Use the law on damage to predict probable</p>	<p>successful.</p> <p>5.3 The ‘but for’ test, relevant case law eg: <i>Barnett v Chelsea & Kensington Hospital Management Committee (1969)</i>; the “material increase of risk” test; relevant case law eg: <i>McGhee v NCB (1973)</i>, <i>Page v Smith (No 2) 1996</i>: (balance of probabilities).</p> <p>5.4 Relevant case law eg: <i>Baker v Willoughby (1969)</i>: multiple torts; <i>Jobling v Associated Dairies (1982)</i>: where disease overtakes damage resulting from initial tort; <i>Wilsher v Essex AHA (1986)</i>, <i>Fairchild v Glenhaven Funeral Services (2001)</i>, <i>Barker v Corus UK (2006)</i> & s.3 Compensation Act 2006: multiple possible causes of the same injury.</p> <p>5.5 Relevant case law including situations where there was a break in the chain: eg: <i>Knightly v Johns (1982)</i> and where there was not: eg: <i>The Oropesa (1948)</i>, <i>Rouse v Squires (1973)</i>.</p> <p>5.6 Relevant case law: remoteness: eg: <i>The Wagon Mound (No 1) (1961)</i>, <i>Hughes v Lord Advocate (1963)</i>; take your victim as you find him, eg: <i>Smith v Leech Brain & Co Ltd (1962)</i>, <i>Liesbosch Dredger v SS Edison (1933)</i>, <i>Robinson v Post Office (1974)</i>.</p> <p>5.7, 5.8 and 5.9 Application to relevant scenarios.</p>
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	legal outcomes deriving from given facts	
6 Understand the law governing vicarious liability in the context of negligence	<p>6.1 Describe the doctrine of vicarious liability</p> <p>6.2 Explain the requirements for establishing vicarious liability</p> <p>6.3 Identify situation in which vicarious liability may be in issue</p> <p>6.4 Apply the relevant law to given facts</p> <p>6.5 Use the law governing vicarious liability to predict probable legal outcomes deriving from given facts</p>	<p>6.1 Definition of the doctrine: liability for acts of third parties (employer's liability for wrongful acts of an employee).</p> <p>6.2 – 6.5 Three requirements for establishing vicarious liability: is it a tort; is it committed by an employee; is it committed in the course of employment. Relevant case law: control test eg: <i>Yewens v Noakes (1880)</i>, <i>Mersey Docks & Harbour Board v Coggins & Griffith (1946)</i> organisation test, eg <i>Stevenson Jordan and Harrison v McDonald and Evans (1952)</i>, <i>Cassidy v Ministry of Health (1951)</i>, <i>Whittaker v Minister of Pensions (1967)</i> multiple test eg <i>Ready Mixed Concrete (South East) v MPNI (1968)</i> <i>Hilton v Thomas Burton (Rhodes) Ltd (1961)</i> & <i>Kay v ITW Ltd (1967)</i>: (course of employment): <i>Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd & Others (2005)</i>: (establishment of employer).</p>
7 Understand defences to claims in negligence	<p>7.1 Explain function and nature of defences</p> <p>7.2 Identify appropriate defences</p> <p>7.3 Explain the defence of <i>ex turpi causa</i></p> <p>7.4 Explain the defence of consent (<i>Volenti non fit injuria</i>)</p>	<p>7.1 Full defences defeat entire action; partial defences reduce damages.</p> <p>7.2 Diagnosing appropriate defences.</p> <p>7.3 Definition and explanation; relevant case law eg: <i>Clunis v Camden & Islington HA (1998)</i>.</p> <p>7.4 Definition and explanation; relevant case law e.g. <i>Stermer v Lawson (1977)</i>: knowledge of risk, <i>Smith v Baker (1891)</i>: exercise of free choice, <i>ICI v Shatwell (1965)</i>: voluntary acceptance of risk: <i>Baker v Hopkins (1959)</i>: rescuers.</p>

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	<p>7.5 Explain the defence of contributory negligence</p> <p>7.6 Explain the use of limitations in time as a defence</p> <p>7.7 Explain the use of exclusion and limitation clauses to actions in negligence</p> <p>7.8 Apply the relevant law to given facts</p> <p>7.9 Use the law governing defences to predict legal outcomes</p>	<p>7.5 Definition and explanation. Relevant Act of Parliament: Law Reform (Contributory Negligence) Act 1943. Relevant case law: e.g. <i>Sayers v Harlow UDC (1958)</i>: proportionate reduction in damages, <i>Davies v Swan Motor Co (1949)</i>: claimant places himself in dangerous position, <i>Froom v Butcher (1976)</i>: claimant increases amount of harm, <i>Owens v Brimmell (1977)</i>: claimant places himself in a position where likely to suffer harm, <i>FitzGerald v Lane (1988)</i>: apportionment.</p> <p>7.6 Explanation Relevant Acts of Parliament: Limitation Act 1980, Latent Damage Act 1986. Relevant case law: eg: <i>Halford v Brookes & Another (1991)</i>.</p> <p>7.7 Relevant Statutory provisions, SS 2(1) 2(2) and 11 Unfair Contract Terms Act 1977; Schedule 2</p> <p>7.8 and 7.9 Application to relevant scenarios.</p>
<p>8 Understand the principles governing the calculation of damages</p>	<p>8.1 Explain the principles governing the award of damages</p> <p>8.2 Categorise harm suffered under appropriate Heads of Damages</p>	<p>8.1 The purpose of damages in tort: put the claimant in the position he would have been in had the tort not occurred.</p> <p>8.2 Special Damages: actual pecuniary loss to date of trial; General Damages: future Pecuniary Loss - loss of earnings past and future non-pecuniary loss; pain, suffering, loss of amenity, mental distress; Damages payable on death: Law Reform</p>

		(Miscellaneous Provisions) Act 1934, Fatal Accidents Act 1976, Administration of Justice Act 1982.
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Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area 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)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
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	Only available to owning awarding body
Availability for delivery	1 September 2008

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