

2023 UNIT SPECIFICATION

Title:	(Unit 5) 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'	1.1 Define 'tort' 1.2 Describe the scope of tort 1.3 Describe the effects/functions of the law of tort 1.4 Define 'negligence'	1.1 Civil wrong. 1.2 Description of common law and statutory example of torts such as: <ul style="list-style-type: none"> • nuisance; • trespass (to land, goods and the person); • defamation; • breach of statutory duty under the Occupier's Liability Acts 1957 and 1984; • Consumer Protection Act 1987, etc. 1.3 Normative rules, compensation, retribution. 1.4 Definition by reference to relevant case law, particularly the comments of Alderson B in <u>Blyth v Birmingham Waterworks Co (1856)</u> .

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	<p>3.3 Explain the current law relating to duty of care in cases of psychiatric harm</p> <p>3.4 Identify situations giving rise to actionable psychiatric harm</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>	<ul style="list-style-type: none"> • The ‘rescuer’ situation. Relevant case law: e.g. <u>Chadwick v BRB</u> (1967), <u>White & Ors v CC of S Yorkshire Police & Ors</u> (1999). <p>3.3 Nature and quality of harm suffered:</p> <ul style="list-style-type: none"> • Primary and secondary victims; • Relevant case law: • e.g. <u>Page v Smith</u> (1995), <u>Hinz v Berry</u> (1970), <u>Alcock & Ors v CC of S Yorkshire Police</u> (1992), <u>White & Ors v CC of S Yorkshire Police & Ors</u> (1999), <u>Walker v Northumberland CC</u> (1995). <p>3.4, 3.5 & 3.6</p> <ul style="list-style-type: none"> • Application of the law to given scenarios relating to public policy and the duty of care owed to primary and secondary victims in respect of psychiatric harm.
<p>4. Understand the law governing breach of duty of care</p>	<p>4.1 Describe the standard test for breach of duty</p> <p>4.2 Explain the requirement of reasonable foreseeability</p>	<p>4.1 The standard (basic) ‘reasonable man’ test;</p> <ul style="list-style-type: none"> • test is objective. Relevant case law: e.g. <u>Blyth v Birmingham Waterworks Co</u> (1856), Alderson B. <p>4.2 Reasonable foreseeability of harm at the time, hindsight not to be used. Relevant case law: e.g. <u>Roe v Minister of Health</u> (1954).</p>

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	<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>4.3 Standard of care expected of a defendant exercising a particular skill.</p> <ul style="list-style-type: none"> • Relevant case law, e.g. • <u>Nettleship v Weston</u> (1971) (learner drivers); • <u>Bolam v Friern Hospital Management Committee</u> (1957) (reasonably competent professional); • <u>Bolitho v City and Hackney Health Authority</u> (1997) (accepted body of professional opinion); • & e.g. <u>Whitehouse v Jordan</u> (1981) (doctor), <u>Chester v Afshar</u> (2004) (duty to explain); • <u>Montgomery v Lanarkshire Health Board</u> (2015) (duty to inform of risks). <p>4.4 The greater the risk, the greater the precautions which should be taken.</p> <ul style="list-style-type: none"> • Relevant case law: <u>Bolton v Stone</u> (1951) • & e.g. <u>Hilder v Portland Cement</u> (1961). <p>4.5 The factors considered when assessing the standard of care expected of a Defendant:</p> <ul style="list-style-type: none"> • the Claimant’s age and vulnerability; • the special characteristics of the defendant, the Defendant’s objective and the cost of avoiding harm; • Relevant case law, e.g. <u>Paris v Stepney BC</u> (1951), <u>Mullin v Richards</u> (1998), <u>Watt v Herts CC</u> (1954) and <u>Latimer v AEC</u> (1953).
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	<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>4.6, 4.7 & 4.8</p> <ul style="list-style-type: none"> • Application to relevant scenarios of the standard test for breach of duty, reasonable foreseeability, questions of skill, judgment and experience, the magnitude of risk test and the factors considered when assessing the standard of care.
<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>5.3 Explain the legal tests on causation in fact</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 be:</p> <ol style="list-style-type: none"> (a) a factual link between the Defendant's breach of duty of care and the harm suffered by the Claimant; and (b) the type harm suffered by the Claimant must not be too remote in law if the claim is to be successful. <p>5.3</p> <ul style="list-style-type: none"> • The 'but for' test. Relevant case law, e.g. <u>Barnett v Chelsea & Kensington HMC</u> (1969) & e.g. <u>Holt v Edge</u> (2007), <u>Gouldsmith v Mid Staffordshire Hospitals General NHS Trust</u> (2007) & <u>Palmer v Cornwall CC</u> (2009). • The 'material increase in risk' test. Relevant case law: e.g. <u>McGhee v NCB</u> (1973). • Quantification of risk (more probable than not). Relevant case law: e.g. <u>Page v</u>

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	<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><u>Smith (No 2)</u> (1996) & e.g. <u>Chester v Afshar</u> (2004) & <u>Gregg v Scott</u> (2005).</p> <p>5.4</p> <ul style="list-style-type: none"> • Successive causes of harm. Relevant case law, e.g. <u>Baker v Willoughby</u> (1969), <u>Jobling v Associated Dairies</u> (1982) & e.g. <u>Rahman v Arearose Ltd</u> (2000). • Multiple causes of harm. Relevant case law, e.g. <u>Wilsher v Essex AHA</u> (1986). • Multiple tortfeasors, including cases regarding asbestos-related diseases. Relevant case law: e.g. <u>Fairchild v Glenhaven Funeral Services</u> (2001), <u>Barker v Corus UK</u> (2006) & e.g. <u>Heneghan v Manchester Dry Docks Ltd</u> (2016), <u>Sienkiewicz v Grief</u> (2011). • s.3 Compensation Act 2006. <p>5.5 New intervening acts:</p> <ul style="list-style-type: none"> • the three situations where there is a break in the chain of causation. Relevant case law, e.g. <u>McKew v Holland</u> (1969) & <u>Knightley v Johns</u> (1982). • Situations where there is no such break. Relevant case law, e.g. <u>Rouse v Squires</u> (1973) & e.g. <u>Corr v IBC Vehicles Ltd</u> (2009) & <u>Spencer v Wincanton Holdings</u> (2009). • The effect of negligent medical treatment on the chain of causation. Relevant case
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	<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 legal outcomes deriving from given facts</p>	<p>law, e.g. <u>Webb v Barclays Bank plc & Portsmouth Hospitals NHS Trust</u> (2001).</p> <p>5.6</p> <ul style="list-style-type: none"> • Foreseeability of type of injury. Relevant case law, e.g. <u>The Wagon Mound (No 1)</u> (1961). • The 'thin-skull' rule. Relevant case law, e.g. <u>Smith v Leech Brain & Co Ltd</u> (1962) & e.g. <u>Robinson v Post Office</u> (1974) & <u>Lagden v O'Connor</u> (2004). <p>5.7, 5.8 & 5.9</p> <ul style="list-style-type: none"> • Application of the law relating to causation to given scenarios.
<p>6. Understand the law governing vicarious liability in the context of negligence</p>	<p>6.1 Describe the doctrine of vicarious liability</p> <p>6.2 Explain the requirements for establishing vicarious liability</p>	<p>6.1 Definition of the doctrine:</p> <ul style="list-style-type: none"> • Liability for acts of third parties. (Employer's liability for wrongful acts of employee). • The effect of vicarious liability. <p>6.2 The three requirements for establishing vicarious liability:</p> <ol style="list-style-type: none"> 1) Is it a tort? 2) Is it committed by an employee? 3) Is it committed in the course of employment?

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		<ul style="list-style-type: none"> • The tests for identifying employment status: Historic approaches, including control test plus relevant case law: e.g. <u>Yewens v Noakes</u> (1880) and organisation test plus relevant case law: e.g. <u>Cassidy v MoH</u> (1951) Multiple test. Recognition that this is the main test used in most situations. Relevant case law: e.g. <u>Ready Mixed Concrete (SE) v MPNI</u> (1968) & e.g. <u>Hall v Lorimer</u> (1992). • Position of casual, temporary, agency workers & priests etc; mutuality of obligation; personal service. A relationship 'akin to employment': <u>JGE v Trustees of the Portsmouth RC Diocesan Trust</u> (2012); <u>The Catholic Child Welfare Society and others v The Institute of the Brothers of the Christian Schools and others</u> (2012). Clarification by Supreme Court in <u>Barclays Bank plc v Various Claimants</u> (2020). • Relevant case law: e.g. <u>Carmichael v National Power</u> (1999), <u>Motorola Ltd v Davidson & Anor</u> (2001), <u>MacFarlane & Anor v Glasgow CC</u> (2001) & <u>James v London Borough of Greenwich</u> (2008), <u>E v English Province of Our Lady Charity</u> (2011), • Establishment of employer. Relevant case law: e.g. <u>Mersey Docks & Harbour Board v Coggins & Griffiths (Liverpool) Ltd</u> (1946),
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	<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><u>Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd & Ors (2005)</u> & e.g. <u>Biffa Waste Services Ltd & Anor v Maschinenfabrik Ernst Hese GmbH & Ors (2008)</u>.</p> <ul style="list-style-type: none"> • Need for tort to be committed in “course of employment.” Relevant case law: e.g. <u>Hilton v Thomas Burton (Rhodes) Ltd (1961)</u>, & e.g. <u>Kay v ITW Ltd (1967)</u> & <u>Gravil v Carroll & Anor (2008)</u>. • Development of close connection test <u>Lister v Hesley Hall Ltd (2001)</u>, <u>Maga v Roman Catholic Archdiocese of Birmingham (2010)</u>, <u>Mohamud v WM Morrison (2016)</u>, <u>WM Morrison v Various Claimants (2020)</u>. <p>6.3, 6.4 & 6.5</p> <ul style="list-style-type: none"> • Application of the law relating to vicarious liability to given scenarios.
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<p>7. Understand defences to claims in negligence</p>	<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 Identify appropriate common law and statutory defences from a given scenario.</p> <p>7.3 Definition & explanation.</p> <ul style="list-style-type: none"> • Relevant case law: e.g. <u>Clunis v Camden & Islington HA</u> (1998), <u>Gray v Thames Trains Ltd & Anor</u> (2009) <u>Henderson v Dorset Healthcare University NHS Foundation Trust</u> [2020] <p>7.4 Definition & explanation.</p> <ul style="list-style-type: none"> • Relevant case law: eg: <u>Stermer v Lawson</u> (1977) – knowledge of risk; • <u>Smith v Baker</u> (1891) – exercise of free choice; <u>ICI v Shatwell</u> (1965) – voluntary acceptance of risk; • <u>Baker v Hopkins</u> (1959) – rescuers; • <u>Murray v Harringay Arena</u> (1951) – spectators at sports events & <u>Poppleton v Trustees of the Portsmouth Youth Activities Committee</u> (2008); • participants in hazardous activities. <u>Morris v Murray</u> (1991) - inebriated aircraft passenger; • Effect of s.149 Road Traffic Act 1988 in relation to claims by passengers in road vehicles.
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	<p>7.5 Explain the defence of contributory negligence</p>	<p>7.5 Definition & explanation.</p> <ul style="list-style-type: none"> • Law reform (Contributory Negligence) Act 1945. Relevant case law: e.g. <u>Sayers v Harlow UDC</u> (1958) - proportionate reduction in damages; • <u>Davies v Swan Motor Co</u> (1949) – Claimant places himself in dangerous position; • <u>Froom v Butcher</u> (1976) – Claimant increases amount of harm; • <u>Owens v Brimmell</u> (1977) – Claimant places himself in a position where likely to suffer harm • <u>Fitzgerald v Lane</u> (1988) - apportionment/partly to blame for accident. • Situations where the court is reluctant to find contributory negligence: children, employees, rescuers, dilemma principle. Relevant case law: e.g. <u>Gannon v Rotherham MBC</u> (1991), <u>Harrison v BRB</u> (1981); <u>Dorning v Personal Representative of Rigby (Decd)</u> (2007) & <u>George v Home Office</u> (2008).
	<p>7.6 Explain the use of limitations in time as a defence</p>	<p>7.6 Nature and purpose of limitation periods.</p> <ul style="list-style-type: none"> • Limitation Act 1980; • General limitation period in tort; • Limitation period in personal injury cases; • ‘date of knowledge’ & situation on death of Claimant. • Relevant case law: e.g. <u>Halford v Brookes & Anor</u> (1991)

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	<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>	<ul style="list-style-type: none"> • & e.g. <u>Haward & Ors v Fawcetts & Anor</u> (2006), <u>Mackie v Secretary of State for Trade & Industry</u> (2007), <u>A v Hoare</u> (2008) & <u>Maga v Roman Catholic Archdiocese of Birmingham</u> (2010). • Latent Damage Act 1986. <p>7.7 Relevant statutory provisions:</p> <ul style="list-style-type: none"> • attempts to restrict/exclude liability for death or personal injury - subject to s.65 Consumer Rights Act 2015 and equivalent provision for business-to-business contracts under 2(1) Unfair Contract Terms Act 1977 (UCTA 1977); • attempts to restrict liability for property damage subject to s.62 Consumer Rights Act 2015 and whether 'unfair', and similar provision in s.2(2), s.11 & Schedule 2 of UCTA 1977 - whether 'reasonable'. <p>7.8 & 7.9</p> <ul style="list-style-type: none"> • Application of the law relating to full and partial defences and exclusion and limitation clauses to given scenarios.
<p>8. Understand the principles governing the calculation of damages</p>	<p>8.1 Explain the principles governing the award of damages</p>	<p>8.1 The purpose of damages in tort:</p> <ul style="list-style-type: none"> • to put the claimant in the position he would have been in had the tort not occurred.

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	<p>8.2 Categorise harm suffered under appropriate Heads of Damages</p>	<p>8.2</p> <ul style="list-style-type: none"> • Special Damages: quantifiable financial loss to date of trial. • General Damages: future financial loss (loss of earnings); past & future non-financial loss (pain & suffering, loss of amenity, mental distress). • Damages payable on death: Law Reform (Miscellaneous Provisions) Act 1934, Fatal Accidents Act 1976 (including extended interpretation in <u>Smith v Lancashire Teaching Hospitals</u> (2017) & 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
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	CILEx (The Chartered Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2008

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