CHIEF EXAMINER REPORT

JANUARY 2025

LEVEL 6 UNIT 13 LAW OF TORT

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2025 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

Candidates must always be prepared to discuss issues of concern within individual legal areas. Simply reciting legislation and case law will not suffice as marks for legal knowledge are capped and so without analysis of the principles that are addressed within the question, candidates will be unable to gain more than approximately half of the marks awarded.

Conclusions should attempt to conclude the debate with information such as progress on any reviews or recommendations or developments in case law principles. A summary of previously stated facts and authority cannot be credited. Those candidates with good answers refrained from summarising and focused on bringing the discussion to an end.

There continues to be a common issue when answering problem questions. A candidate's approach to these is vital and this must include an approach that covers the relevant legislation and case law, along with a clear and logical application of those laws and principles to the facts given.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Section A

Question 1	25 marks
This question focused on the liability of occupiers in relation to obvious risks. Generic information, lacking in an analysis of the case law and rulings relating to how much responsibility is placed on occupiers in relation to obvious risks. An example of a debate that could have been raised would be how this will differ depending on the age of the claimant. For example, what may be obvious to an adult may not be so obvious to a child. Many marks were lost due to the lack of focus and analysis on that particular area of this area of liability.	
Suggested Points for Response:	
• Case law's role in limiting scope of statutory rules is to protect occupiers from unfair claims • Claims resulting from dangerous activities voluntarily carried out by persons of full capacity are not covered e.g., Tomlinson v Congleton Borough Council (2003); Evans v Kosmar Villa Holidays (2007); Edwards v Sutton (2016); Taylor v English Heritage (2016) • General approach of case law is to protect individual autonomy for people to take obvious risks if they wish to do so and they must bear the consequences should they get injured • In Wells v Full Moon Events & Ors 2020 the court confirmed that where the injury/loss materialises from risk inherent in the activity and obvious to the claimant the defendant is not liable • From Wells it seems there are 3 categories in which liability might arise: • 1st category - When claimant is not exercising informed choice – employees whose work requires them to take the risk and those lacking in some relevant capacity such as the inability of children to recognise danger – see cases like Herrington and Reeves • 2nd category – risks that are not obvious to the claimant but are known or ought reasonably to be known to the D – in Wells the risk of the puddle should have been obvious to the claimant • 3rd category – see Poppleton v Trustees of Portsmouth Youth Activities Committee [2008] – D has in some way assumed responsibility for the claimant's safety – e.g., Watson v British Boxing Board of Control [2011] a professional boxer was injured and successfully sued the governing body due to lack of medical facilities • Court in Evans v Kosmar Villa Holidays [2007] "People should accept the risks they chose to run and….there should be no duty to protect them against obvious risks" • A duty to protect from self-inflicted harm only exists where the victim had no genuine or informed choice or lacked capacity (Risk v Rose Bruford College 2013) • The claimant has to show D ought to have foreseen an act or omission may expose someone to extra risk ***over and above those inherent in the activity*** (Brand v No Limits Track Days 2020)	

Question 2a	8 marks

As with all of the essay questions, a lack of more recent cases that either clarified or overruled historic cases meant many marks were not able to be awarded. Many candidates, for example, continued to use old cases that the Supreme Court have since overruled in relation to what could be considered the immediate aftermath and the concept of the 'slow burn'.

Suggested Points for Response:

- Denning in Hinz v Berry (1970) - cannot be mere feelings of grief, sorrow, worry, financial strain etc – must be recognisable form of psychiatric harm (nervous shock)
- In McLoughlin v O'Brian (1983) court confirmed that the test for liability is the ordinary test of reasonable foresight (was it reasonably foreseeable that nervous shock would be suffered)
- Long line of case law including primarily Alcock (1991), Page v Smith (1995) and White v Chief Constable of South Yorkshire (1999)
- Distinction between physical and psychiatric harm
- Distinction between primary and secondary victims
- Primary is personally endangered or reasonably believes themselves to be
- Secondary is neither personally endangered nor reasonably believe themselves to be
- Primary victims need only prove physical harm was foreseeable (Page)
- Must be foreseeable in person of reasonable fortitude (White)
- Secondary victim must meet the criteria set out in Alcock
- Must hear or see the incident with their own senses
- Must have close tie of love and affection with a victim
- Must have been at the incident or the immediate aftermath
- Must have suffered psychiatric harm

Question 2b	17 marks

Suggested Points for Response:

- Issues relating to the requirement of close tie of love and affection, including the ability to rebut the presumptions based on established relationships
- Issues relating to the requirement that the claimant was either at the scene or at its immediate aftermath including debates relating to the timing and conditions to be clarified to define the scope of the 'immediate aftermath'; for example, it will still be considered the immediate aftermath so long as the scene has not been cleaned up (Galli-Atkinson v Seghal 2003)
- Previous rulings and judicial mindsets relating to the requirement that the psychiatric harm was due to a sudden event including cases in which parties have deteriorated over time; for example, Sion v Hampstead Health Authority (1994); Taylor v A Novo (2014); Ronayne v Liverpool Woman's Hospital NHS Trust (2015); Young v Downey (2021)
- Clarification provided by the Supreme Court in conjoined appeals of Paul, Polmear and Purchase in 2023 that there is no need for sudden shock (discredited requirement) or horrific event (too subjective) but that a claimant must still prove causation and a causal connection between the witnessing of an event and the illness suffered by the claimant; highlighted significance of the claimant witnessing the event and having direct perception; the medical profession should not be liable for 'secondary victims' that witness the deaths of loved ones due to a disease and this was described by the court as just a 'part of life'

- Ruling is hoped to avoid contradictory rulings such as those between Walters and Taylor and debates surrounding isolated and continuing breaches when assessing proximity
- Proposals for reform were presented to parliament in the Negligence and Damages Bill 2015/16 but it never made it pass First Reading; this came about as Hillsborough Disaster Inquiry was concluded that ruled there had been unlawful killings; the courts expected many claims against the police, therefore, the new legislation will not move forward for the time being
- Would have changed who was considered to have close tie – siblings, aunts and uncles, colleagues and friends
- Would have extended to those that saw deterioration at later date
- And included those that were notified about it later
- Would have repealed requirement that event was 'shocking'

Question 3	25 marks

The responses from the candidates that did attempt this question were answered fairly well. Candidates showed good knowledge of the leading cases that have shaped the development of this area of law. Not many candidates could gain the marks provided for the analysis of these cases and their impact.

Suggested Points for Response:

Legal development:

- general approach is that claims for consequential economic loss are possible (Sparten Steel & Alloys v Martin & Co 1973
- claims for pure economic loss are excluded
- courts adopt restrictive and cautious approach at expanding circumstances covered
- floodgate concerns relating to indeterminate scope of liability (e.g., Ultrameres v Touche 1931)
- only liable if made statement fraudulently, maliciously, to cause intentional harm to a person or their reputation or the statement formed part of a contract (Derry v Peek 1889) but could be no action for pure economic loss
- although decision confirmed in Candler v Crane, Christmas & Co 1951, Lord Denning in dissenting judgement discussed future requirement for categories to expand such as those involving negligent accountants
- categories under which liability could arise began to grow in 1960's
- liability can arise if a defendant assumes responsibility for a claimant's economic interests (Hedley Byrne & Co v Heller & Partners 1964)
- test of negligence under Donoghue not suitable for these cases and therefore the concept of a 'special relationship' is to be applied (Hedley)
- Proximity difficult to define (see Junior Books v Veitchi 1983)
- assumption of responsibility approach widely used such as in Spring v Guardian Assurance 1994 and BCCI v Price Waterhouse 1998)
- during 1990's categories expanded further in Caparo v Dickman Industries 1990 in which an alternative approach was proposed for circumstances that did not meet criteria under Hedley
- Caparo offered three-part test to establish whether to impose a duty based on the foresight of economic loss, proximity and the fact that it would be just and reasonable to impose such a duty in the circumstances
- Customs and Excise v Barclays, where it was suggested that where there was no voluntary assumption/reasonable reliance it was then necessary to consider the general Caparo approach as well as the specific PEL requirements

Area's worthy of consideration:

- wide area of law therefore not easily to define simply
- many cases involving builders and defects with faulty construction of houses that expanded the understanding and application of the imposition of a duty (e.g., Murphy v Brentwood DC 1990; Department of Environment v Thomas Bates 1990)
- many ways in which economic loss can be suffered and therefore courts must remain flexible, for example, goods damaged in transit complications (e.g., Muirhead v Industrial Tank Specialities 1986; Leigh & Sillivan Ltd v Aliakmon Shipping 1986)
- cases involving whether the limitations of the scope of liability for claims by people that are no longer able to work (e.g., Dryden & Ors v Johnson Matthey plc 2018; although this case was ultimately accepted on the basis of personal injury as opposed to economic loss)

- involvement within sporting events e.g., West Bromwich Albion FC v El-Safty 2006)
- involvement in employment contexts (e.g., Merrett v Babb 2001; Neil Martin Ltd v Revenue & Customs Commissioners 2007)
- cases involving defendant possessing or holding themselves out as possessing special skills confirms in these situations that liability will arise if it is known by the defendant that the statement will be reasonably relied upon (e.g., Mutual Life & Citizens Assurance v Evatt 1971; Esso Petroleum v Mardon 1976; Chaudhry v Prabhakar 1989; Burgess & Another v Lejonvarn 2018)

Question 4	25 marks

There was evidence of good knowledge of the principles within this area of law but responses lacked an analysis of these cases and their relevance to the question asked.

Suggested Points for Response:

- Principles permitting claims against interference with an interest in land:
- Intentional entry onto or interference
- Without permission or lawful right
- Onto another's land
- Can include, for example, squatting and fly tipping
- Defences include licence, justification, necessity and *jus tertii* (land is possessed by a third-party)
- Remedies include injunctions, damages and the removal of trespassers
- Land includes not only everything on the surface but everything beneath it down to the centre of the earth and the space directly above (Gifford v Dent 1926; Kelsen v Imperial Tobacco 1957; Grigsby v Melville 1974)
- Ownership carries with it the right to the airspace above to such height as is necessary for the ordinary use and enjoyment of the land and the structures on it (Bernstein v Skyviews and General Ltd 1978)
- Stopping point recently been described as the place where pressure and temperature make concepts of ownership absurd (Bocardo SA v Star Energy UK Onshore Ltd 2010)
- Various cases have come before the courts such as those involving drilling (see Bocardo)
- An unauthorised trespass into a neighbour's airspace will normally be restrained by injunction (see Trenberth (John) Ltd v National Westminster Bank Ltd 1979)

Possible issues for discussion:

- Tort being actionable per se shows the fundamental importance of protecting interests in land and continued need
- Invaluable tort as covers many circumstances/types that other torts do not (Kelsen v Imperial Tobacco)
- Objective assessment for the award of damages (see Pennock v Hodgson 2010)
- A deliberate interference can result in aggravated damages being awarded (e.g., Owers v Bailey 2006)
- Low thresholds render requirements easy to satisfy supports a continued use

- Court does not need to show the defendant intended the trespass, only the activity (e.g., Gilbert v Stone 1647)
- Claimants can bring claim for innocent/mistaken entry (Conway v George Wimpey 1951)
- Claimants can bring claim for a negligent entry (League Against Cruel Sports v Scott 1986)
- Enables cases to be brought against trespassers that cannot be named (e.g., Canary Wharf v Brewer & Ors. 2018; O2 Arena (Arisco Ltd v Law & Ors. 2019; Cameron v Liverpool Vicotria Insurance 2019; Quintain (Wembley Retail Park) Ltd v Persons Unknown 2023)
- Must be a real and imminent risk of trespass to land being committed, impossible to name the persons involved in committing the trespass, be possible to give effective notice of any injunction and the terms of the injunction must be sufficiently clear to enable persons potentially affected to know what they must not do and have clear geographical and temporal limits (Boyd v Ineos Upstream Ltd 2019)
- Must take care with the wording of any injunctions against 'Persons Unknown' (see RGCM Ltd v Lockwood & Ors. 2019; Hampshire Waste Services Ltd & Ors. V Persons Unknown 2003)
- Motive of the defendant is irrelevant in trespass cases (see Mohamud v Morrisons 2016)

Section B

Question 1	25 marks

Many candidates showed good knowledge of two of the three torts in this area. Marks that were not able to be gained related to a lack of case law provided when these torts were outlined.
Candidates did not show the same level of knowledge in relation to false imprisonment and many marks were not able to be gained when candidates applied this to the incident within the question.

Suggested Points for Response:

Bilal whispering into Amelia's ear:

- An assault causes the claimant to apprehend the infliction of battery on them (Collins v Wilcock (1984))
- Act must be intentional or negligent as to causing the apprehension
- Claimant must have reasonably apprehended the infliction
- Can be no assault if the claimant did not reasonably expect the defendant to carry out the threat (Thomas v NUM (1986))
- A conditional threat does not amount to an assault (Tuberville v Savage (1669))
- Claimant does not need to be in fear (Stephen v Myers (1830); Read v Coker (1853))
- Gestures can be sufficient (Stephen)
- Words alone can constitute an assault (R v Ireland (1998))
- Intended to cause apprehension with initial threat
- However, if wording of threat is a conditional threat the assault is negated (Tubervile; Thomas)
- Apprehension and unlawful elements satisfied
- Immediacy element not satisfied as the wording of the threat is conditional
- No defences appear to apply

Amelia's threats and gestures towards Bilal:

- Apprehension present as Bilal feels the need to restrain Amelia from unwanted contact
- Immediacy requirement satisfied as the threats and gestures are at the same time as Amelia moves towards Bilal
- The wording in unison with the moving towards him along with the raised fist clearly shows the assault was intentional
- No defence appears to apply

Bilal grabbing Amelia:

- Battery is the direct application of unlawful force to an individual
- Application can be a mere touch (Cole v Turner (1704))
- Act must be intentional or negligent (Blake v Galloway [2004])
- Intention can be inferred (Wong v Parkside Health NHS Trust (2003))
- Immediacy is a requirement of this tort
- The application of force must be unwanted and therefore unlawful
- Hostility is not required, and each case is considered on its merits (Faulkner v Talbot [1981])
- Can be liable for all harm suffered even if did not intend harm (Williams v Humphrey [1975])
- Contact is inflicted when Bilal grabs and restrains Amelia
- Bilal can use the common law defence of self-defence
- Appears to meet the requirement of a reasonable use of force in light of threatening words and gestures being made at the same time as Amelia had stepped towards Bilal

False imprisonment by the university security:

- False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law
- Claimant does not have to be aware that they have been restrained, e.g., Meering v Grahame-White Aviation [1920]
- Damages reduced if claimant unaware of restriction
- Act must be intentional or negligent
- Restriction must be complete (Bird v Jones (1845))
- If there is an alternative and/or reasonable 'escape' route, there is no liability
- Restriction must be unlawful

Question 2	25 marks

There were multiple issues to be discussed within this question and most candidates were able to do this. A lack of knowledge was evident in relation to the incidents that took part within the party and the courts approach when dealing with 'employees' that commit a crime and the impact this could have on whether they would be considered 'at work'.

Suggested Points for Response:

Donna:

- **Employee status:**
- Being hired on a zero-hour contract means the employer does not guarantee employment
- Legal term used to describe casual agreements between an employer and an individual
- These contracts do not allow employers to avoid responsibilities and staff employed on this basis are still entitled to employment rights and should be treated fairly
- Leading case outlining multiple factors worthy of consideration is Barclays v Various Claimants 2020
- Court in Uber v Aslam 2021 decided the drivers were employees because they were obliged to accept a certain percentage of trips whenever they had the app turned on, therefore they were employees during this time
- In Independent Workers Union of Great Britain v Central Arbitration Committee 2023, in a case involving Deliveroo drivers, the court ruled that the workers did not have specified hours, could work for other companies and could send a substitute in their place and for these reasons were not employees
- Court would consider the factors in Donna's employment situation to determine if it would be fair, just and reasonable to impose a duty on the employer for the acts committed by her
- Court likely to find the relationship one that is akin to an employment relationship

In the course of employment during traffic incidents:

- The court will consider the nature of the employee's role and assess whether there is a sufficient connection between their role and the tort committed
- Liability can still arise for employers when the worker commits a tort during an authorised act being undertaken in an unauthorised way
- During the incident in which Donna collided with another vehicle, Donna was undertaking a delivery for the company and therefore, despite her speeding, the employer could be liable
- An employer is not liable if a worker commits a tort during an incident that is not classed as during the course of employment and therefore a frolic of their own (e.g., Morrisons v Various Claimants 2020)
- When Donna swerved into the garden and destroyed the plants, she did this on the way to collect her child and will therefore not be considered as being in the course of employment but a frolic of own

Crime committed – during course of employment:

- A crime committed during the course of employment generally falls outside the scope of liability for the employer – unless the actions of the employer expressly authorise
- Lister v Hesley Hall [2001] - even if the act is not authorised the court can still consider the action to come within the scope of employment
- Close connection between the action and the employment?
- Mohamud v Morrison [2016] - employee assaulted customer but close connection test determined he was within the scope of employment

- Morrison v Various Claimants [2020] - released personal data but Supreme Court found that it was not closely connected to acts he was employed for
- Cases have considered the close connection to tasks and motives e.g., Poland v Parr 1927; Various Claimants v Morrison [2020]
- Cases have considered the conduct of an employee being divisible from that which is constituted by employment and that which constitutes a tort e.g., Mohamud v Morrisons (2016); London Borough of Haringey v FZO (2020)
- If Donna's actions can be seen as connected to the purpose of her employment, the employer will be liable

Party at work:

- In Shelborne v CRUK 2019 the court ruled this type of incident would not be connected with the duties of the wrongdoer and was not a risk created or reasonably foreseeable by the employer
- Based on the ruling in Shelborne it is unlikely that the court will find a sufficient connection between the tort committed and the employer

Gaia:

- **Committed trespass to person and crime during work party:**
- In Bellman v Northampton Recruitment 2018 – close connection between managers role and employer
- Based on the ruling in Bellman, it may be found by the court that Gaia was acting in the capacity of her employment, but it must be shown there is a sufficient connection between her employment role and her actions on the night of the party
- This was described as an exceptional case and so may be unhelpful in this case

Question 3a	10 marks

Candidates showed good knowledge of the defence of contributory negligence, however, there was a distinct lack of knowledge relating to illegality. One of the claimants had been involved in illegal behaviour with the defendant and candidates were required to discuss the impact this would have had on the ability of the claimant to claim for compensation.

Suggested Points for Response:

Harry v India:

Consent:

- Consent is unavailable in these circumstances (s149 Road Traffic Act 1988)

Contributory negligence:

- Getting a lift with a driver known to be under the influence of alcohol is likely to be contributory negligence: Dann v Hamilton (1939)
- The defence would fail if the claimant did not know the driver was intoxicated, (e.g., Traynor v Donovan [1987]; Malone v Rowan [1984])
- Passengers are not under a duty to enquire as to the level of intoxication of the driver (Booth v White [2003])
- Campbell v Advantage Insurance Co [2021] – a drunk claimant/passenger is subjected to the ordinary objective test – would a reasonable person had realised the driver was intoxicated/unable to drive?
- Facts state that India is aware of Harry's intoxication and being reluctant only serves to provide further grounding for the claim that she understood the risks when she got in the car

Illegality:

- Does not apply

Harry v Jamal:

Consent:

- Consent is unavailable in these circumstances (s149 Road Traffic Act 1988)

Contributory negligence:

- For reasons above, the actions of Jamal could be considered as contributory negligence
- Facts state he not only suspected but verbally confirmed that Harry was intoxicated

Illegality:

- Jamal's involvement in the act of speeding and by sitting unlawfully within the vehicle, his claim against Harry may fail on the grounds of illegality
- In Pitts v Hunt in 1991 the claim was denied as both the defendant and claimant were intoxicated together on a motorbike; the claimant had known about the driver's intoxication and encouraged the illegal behaviour
- Based on the ruling of Pitt, it is likely that Harry may be successful is using this defence based on Jamal's involvement in the act that led to the injury

Question 3b	15 marks
Suggested Points for Response:	

India

- India's claim involves the court undertaking a speculative claim for the loss of future earnings
- Loss of chance:
- Allied Maples Group v Simmons & Simmons [1995] – chance must be 'real and substantial'
- Doyle v Wallace [1998] – courts used midpoint between two salaries to assess loss of earnings
- Langford v Hebran [2001] – court can calculate using multiple potential outcomes and apply discount to account for contingencies
- Herring v MoD [2003] – court uses a base line career model to 'follow' potential paths and earning capacity
- Chweida v Mishcon de Reya Solicitors [2014] – prospects of success had been negligible so did not cause the claimant any loss
- Smith v Collett [2009] – industry experience and evidence cannot be underestimated
- Claimant must prove real and substantial prospect
- Court makes realistic assessment of prospects of success and assess likely level of damages
- Unlikely India's claim will be successful since it is India's first modelling shoot, and it was a mere promise from an agent provided as evidence on her potential future success

Jamal

- Jamal can claim under the head of pain and suffering for the continuing severe headaches
- section 1(1) Administration of Justice 1982 allows for recognition of pain and suffering
- 'Pain and suffering' is assessed subjectively and will include the increased pain resulting from the surgical injuries and necessary medical treatment as well as anxiety concerning possible deterioration, reduced life expectancy and future medical treatment
- Jamal is able to claim for lost earnings during the year he is unable to work before the trial
- Loss of earnings - general method is to use multiplier but if there are too many imponderables in Jamals working circumstances, the court can choose from the others methods (Blamire and/or Smith v Manchester award) (Khuzan Irani v Oscar Duchon 2019; Moeliker v A Reyrolle Ltd 1977 approved in BXB v (1) Watch Tower and Bible Tract Society of Pennsylvania (2) Trustees of the Barry Congregation of Jehovah's Witnesses 2020)
- Jamal can claim for future loss of earnings for the period he is unable to work during his recovery
- The head of future medical care covers reasonably incurred expenses
- The claimant's future medical and other care-related expenses are calculated in a similar way to future loss of earnings
- Jamal can claim for the loss of amenity due to not being able to play rugby as he did every weekend e.g., Wise v Kaye 1962; West v Shepherd 1964; Heil v Rankin 2000

Question 4	25 marks

Candidates showed good knowledge of this area of law for the primary factors to be analysed. However, there was distinct lack of knowledge and analysis relating to the impact of planning permission and incorrectly treated this as being able to override private interests.

Suggested Points for Response:

Malcolm v Neil for the noise from circuit:

- Malcolm has a proprietary interest therefore can make a claim
- Malcolm can claim for the loss of the quiet enjoyment of his property
- Court will weigh competing interests (Lawrence v Fen Tigers 2013)
- Court will have to determine if the interference constitutes a material interference and lasts for more than a trivial duration
- Whilst locality is not determinative the fact that the area is well-known for being quiet the court may consider this and the impact the nuisance is having on any other residents
- If the defendant claims their purpose has social utility, the courts have described individuals being burdened for a public interest as being a 'bad law' (Bamford v Turnley 1862; Marcic v Thames Water 2004)
- When determining whether to award an injunction or damages the court will assess whether the harm caused can be compensated with money and the impact of an injunction (see Watson v Croft Promo-Sport 2009)
- In Coventry v Lawrence 2012 a car racing circuit had become part of the nature of locality and so was not deemed a nuisance
- If Malcolm is the only person that is complaining he may, at the very least, only be awarded damages
- The presence of malice makes what would normally be considered reasonable into an unreasonable act (Christie v Davey 1893)

Olivia v Neil for the light shining into her home:

- Olivia has a proprietary interest therefore can make a claim
- In Grange Wind Farm v North Lincolnshire Council 2010 the claimant won her claim in which they stated that the shadow flicker from a wind farm
- Based on the ruling Grange Wind Farm, there is a chance for Olivia's claim to be successful if the interference can be shown to be more than trivial
- The fact that Neil has permission from the local authority does not guarantee that the activity will not be a nuisance
- The court will consider multiple factors including the benefit to the community
- Public interest is potentially an important factor, e.g., Miller v Jackson 1975; Dennis v MoD 2003; Barr v Biffa Waste Services 2012
- Continuation of the activity for 20 years usually leads to the right being granted through prescription; however, the circuit has only been operating for 18 years

Peter v Neil for the protection of the right to a view and being overlooked:

- There has historically been no protection for the right to a view as it is not seen as a necessity (Bland v Moseley (1587); Aldred's Case (1610); AG v Doughty (1752); re-asserted in Hunter v Canary Wharf 1997)

- However, the court has been willing to accept that in certain circumstances the view from a property may be a valid deciding factor, for example, if it was the reason the property was purchased (Dalton v Angus 1880)
- The right to not be overlooked was traditionally not protected
- Since the Supreme Court ruling in Fearn v Tate Gallery Board of Trustees 2020 this is also capable of being considered a nuisance
- However, the facts in Fearn were exceptional due to the number of visitors looking into the claimant's home and so it is unlikely those living or visiting the building development next to Peter would reach similar numbers