

**CILEX**

**CPOQ**

# **F2 – The Law of Tort**

*Foundation Stage*

**2021**

# F2: The Law of Tort

The aim of this module is to give you a fundamental knowledge and understanding of the law of tort, the contexts in which it operates and the relationships which it affects. This will enable you to understand how rights and interests are protected by statute and common law; how and when duties and obligations arise; how a breach of a statutory or common law duty may give rise to a cause of action; what full and partial defences might be available to challenge a claim and the potential remedies available.

You will be able to evaluate the strengths and weaknesses of a client's position, be able to offer recommendations and advise in the client's best interests.

Throughout this module you must recognise the limit of your authority and experience and must know when to seek assistance.

The module covers:

1. Tort law in outline
2. Negligence
3. Employers' liability
4. Occupier's' liability
5. Outline of the law relating to highways
6. Trespass and nuisance
7. Defences
8. Causation and remedies in tort

## Learning Outcomes

By the end of this module you will be able to:

1. Identify the applicable law and apply to a matter with reference to the facts and the evidence including identifying overlapping causes of action
2. Evaluate the strengths and weaknesses of a client's position with reference to the law, facts and evidence
3. Advise a client with regard to liability and prospects of success
4. Make appropriate recommendations to the client which is in their best interests.

**Linked online assessment: F2**

<p><b>1. Tort law in outline</b></p>	<p>The law of tort is a fundamental part of civil law and from which numerous causes of action derive. You must understand the scope of the law of tort, its purpose, who it protects and how, and its intended outcomes. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) The function of the law of tort <ul style="list-style-type: none"> <li>• Nature of tort law</li> <li>• Its purpose in terms of outcomes</li> <li>• Interests which the law protects: <ul style="list-style-type: none"> <li>○ The rights of individuals and organisations including the effect of the Human Rights Act 1998:</li> <li>○ Articles 6 and 8</li> <li>○ Property interests (personal and land)</li> <li>○ Economic interests</li> </ul> </li> </ul> </li> </ul>
<p><b>2. Negligence</b></p>	<p>The tort of negligence is an example of the evolution of common law principles to protect individuals or organisations, to whom a duty is owed by others, from damage caused by a breach of that duty. The tort of negligence does not just aim to protect from physical harm but also from economic losses caused by the breach and you must understand the scope of the tort. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) The evolution of the common law principles of negligence</li> <li>b) The duty of care <ul style="list-style-type: none"> <li>• The neighbour test and its application</li> <li>• The standard of care: the concept of reasonableness</li> <li>• Acts and omissions</li> <li>• Reasonable foreseeability of injury</li> <li>• Proximity</li> <li>• Fair, just and reasonable</li> <li>• Categories of established duties</li> </ul> </li> <li>c) Breach of duty <ul style="list-style-type: none"> <li>• The reasonable man</li> <li>• The standard of care expected of those persons having particular professional or recognised skill e.g. medical personnel; lawyers; financial advisors; estate agents and surveyors</li> <li>• Reasonable foreseeability and factors taken into account</li> <li>• Magnitude of risk including likelihood of injury and severity of consequences; cost of precautions and the defendant's objective</li> </ul> </li> <li>d) Causation and damage</li> <li>e) Factual Causation - The "but for" test</li> </ul>

	<p>f) Breaks in the chain of causation: novus actus interveniens</p> <ul style="list-style-type: none"> <li>• The intervening act of the claimant</li> <li>• The intervening act of another</li> </ul> <p>g) Reasonable foreseeability: foresight not hindsight</p> <p>h) Remoteness of damage</p> <ul style="list-style-type: none"> <li>• Factors taken into account to determine remoteness</li> <li>• Rescuers</li> <li>• The “egg-shell” skull rule</li> </ul> <p>i) Outline of res ipsa loquitur: how the circumstances of an accident may give rise to an inference of negligence</p> <ul style="list-style-type: none"> <li>• Requirements</li> <li>• An unexplained occurrence outside the ordinary course of events under the management or control of the defendant</li> <li>• Effect of the maxim</li> <li>• Rebuttal of the maxim by reasonable explanation</li> </ul> <p>j) Relationship between negligence and cybersecurity</p>
<p><b>3. Employers’ liability</b></p>	<p>The principles of negligence form the basis of understanding how an employer’s liability arises to employees and others. Employers have a contractual and statutory duty to their employees and can be liable for the negligence of employees or independent contractors which causes damage to property or to others. You must recognise whether an employer is liable in a given set of circumstances. Therefore, you will need to know the following:</p> <p>a) Scope of duty</p> <ul style="list-style-type: none"> <li>• The Health and Safety at Work Act 1974 and the general concept of the duty owed under the workplace regulations e.g. the Management of Health and Safety at Work Regulations 1999 in terms of reasonableness</li> <li>• Common law duty</li> <li>• Contractual duty</li> <li>• Defences</li> <li>• Liability for independent contractors</li> </ul> <p>b) Vicarious liability</p> <ul style="list-style-type: none"> <li>• Employees employed under a contract of employment</li> <li>• Relationships akin to employment and worker status</li> <li>• Scope of duty owed by employer for harm to others</li> <li>• The course of employment <ul style="list-style-type: none"> <li>○ Dishonesty</li> <li>○ Disobedience</li> <li>○ Criminal activity</li> </ul> </li> </ul>

#### 4. Occupiers' liability

The principles of negligence form the basis of understanding how an occupier may be held liable to others for dangers arising due to the state of the premises or for things done or omitted to be done on the premises. Therefore, you will also need to know the following:

- a) The duty owed in negligence at common law
- b) Occupiers' Liability Act 1957
  - Meaning of occupier
  - Meaning of premises
  - The state of the premises including things done or omitted to be done
  - Visitors
    - Meaning
    - The scope and standard of the duty owed
    - Time-limited permission
    - Geographical and space restrictions
    - Warnings and obvious risks
    - Child visitors
    - Factors to be taken into account
    - Age
    - Allurements
  - Liability for independent contractors:
    - Factors to be taken into account including insurance cover
  - Limitations on liability
  - Unfair Contract Terms Act 1977
  - Law Reform (Personal Injuries) Act 1948
- c) Occupiers' Liability Act 1984
  - Difference between a visitor and a trespasser
  - The scope and standard of any duty owed under the Act including conditions to be satisfied
  - Where dangers are obvious

#### 5. Outline of the law relating to highways

The principles of negligence form the basis of your understanding of how a highway authority may be held liable to others for dangers arising due to the state of the highway. In addition to the common law duty in negligence, to complement your knowledge, you also need to know about the statutory framework. Therefore, you will need to know the following:

- a) The Highways Act 1980
  - The statutory duty to maintain (s.41)
  - The extent of the duty and factors to be taken into account
  - Transient hazards
  - The defence of reasonable care (s.58)

	<ul style="list-style-type: none"> <li>b) Public rights of way – Countryside and Rights of way Act 2000</li> <li>c) Local authority adopted highways</li> </ul>
<p><b>6. Trespass and nuisance</b></p>	<p>Relating to negligence, occupier’s liability and highways, occupation of land can give rise to a liability to others. You should also know how the law protects the right to ownership and enjoyment of land. Trespass and nuisance are potential causes of action including the imposition of strict liability. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) Trespass to land <ul style="list-style-type: none"> <li>• What constitutes trespass</li> <li>• Duration</li> <li>• Defences <ul style="list-style-type: none"> <li>○ Common law e.g. Licence</li> <li>○ Under statute e.g. police or other enforcement officials</li> </ul> </li> </ul> </li> <li>b) Nuisance <ul style="list-style-type: none"> <li>• What constitutes nuisance</li> <li>• Public nuisance <ul style="list-style-type: none"> <li>○ Meaning of public nuisance</li> <li>○ Class of people</li> <li>○ Special damage</li> </ul> </li> <li>• Private nuisance</li> <li>• Meaning of private nuisance <ul style="list-style-type: none"> <li>○ Balance of interests: unlawful interference with use or enjoyment of land contrasted with reasonable use of land</li> <li>○ Proprietary interest</li> <li>○ Factors to be taken into account: <ul style="list-style-type: none"> <li>○ Reasonableness: -Sensitivity; extent of harm caused; locality; malice; usefulness of defendant’s conduct</li> </ul> </li> </ul> </li> <li>• Defences and arguments <ul style="list-style-type: none"> <li>○ Prescription (private only)</li> <li>○ Statutory authority</li> <li>○ Coming to nuisance; usefulness of defendant’s conduct</li> </ul> </li> </ul> </li> <li>c) The rule in Rylands v Fletcher <ul style="list-style-type: none"> <li>• The scope of strict liability</li> <li>• Persons liable</li> <li>• The non-natural use of land</li> <li>• Dangerous things and things likely to do mischief e.g. water, fire, explosives; escape</li> </ul> </li> </ul>

## 7. Defences

A cause of action may arise which may result in the imposition of liability. When considering liability, you should also consider what general defences might be available to a defendant which may provide a full or partial defence to any claim. Therefore, you will need to know the following:

- a) Volenti non fit injuria
  - Knowledge of risk
  - Notice of risk
  - Acceptance of risk
  - Participants in or spectators at activities and events
- b) Ex turpi causa non oritur action
  - Course of committing an offence
- c) Law Reform (Contributory Negligence) Act 1945
  - Effect of contribution to accident
  - Effect of contribution to injury
- d) Volunteer, rescue and imperilled situations

## 8. Causation and remedies in tort

Causation is important, that is, the need to show a link between the breach of duty or infringement of a right or interest and the damage caused and what remedy is most suitable. Therefore, you will need to know the following:

- a) Remoteness of damage
  - Egg shell skull
  - Foreseeability - The Wagon Mound
  - Intervening acts
  - Pure Economic Loss
  - Physical Damage
  - Defective goods or property
  - Damages in personal injury claims
    - Purpose, measure and assessment of general damages
    - Purpose, measure and assessment of special damages
    - Non-compensatory damages; Aggravated and exemplary damages
    - Injunctions: Mandatory; Prohibitory
    - Contributory negligence: Law Reform (Contributory Negligence) Act 1945; Effect on damages; Children
    - Mitigation and betterment