

Tech Level Unit 4 From 6 January 2020 - this qualification is no longer available to new learner registrations



| | |
|------------------------------|-----------------|
| Title: | TORT LAW |
| Level: | Level 3 |
| Credit Value: | 10 |
| Guided Learning Hours | 60 |

| Learning Outcomes | Assessment Criteria | Knowledge, understanding and skills |
|--|---|---|
| The learner will: | The learner can: | |
| 1. Understand the scope of tort law | 1.1. Define what is meant by a tort | A tort is a civil wrong |
| | 1.2 Identify examples of the-scope of tort | Negligence Trespass to land Nuisance Trespass to person Defamation Occupiers' liability Product liability |
| | 1.3 Explain which party in a tort claim bears the burden of proof and explain standard of proof | The burden of establishing the elements of the claim is on the claimant. The standard of proof is on the balance of probabilities. |
| 2. Understand duty of care in negligence | 2.1 Explain the duty of care | The Caparo 3 stage test. |

This specification is for 2018 Tech Level

| | | |
|------------------------------|--|---|
| | 2.2 Explain and apply duty of care in negligence | <p>Neighbour test – Donoghue v Stevenson (1932) further developed in Caparo v Dickman (1990) – three stage test: reasonably foreseeable, proximity of relationship, fair just and reasonable to impose a duty.</p> <p>Established duty situations: duty clearly established by existing case law. Example: Driver to other road users.</p> |
| 3. Understand breach of duty | 3.1 Describe the standard of care required in negligence | <p>Reasonable man test:</p> <p>Defendant must meet the standard expected of ordinary reasonable person in D's position e.g. Blyth v Birmingham Waterworks Co (1856)</p> <p>Objective standard of care e.g. Glasgow Corp v Muir (1943)</p> <p>Special skills / professionals e.g. Bolam v Friern HMC (1957)</p> <p>Inexperience does not lower the standard required e.g. Nettleship v Weston (1971)</p> |
| | 3.2 Explain and apply factors for assessment of breach of duty | <p>Magnitude of risk:</p> <ul style="list-style-type: none"> • likelihood of harm e.g. Bolton v Stone (1951) • and seriousness of harm e.g. Paris v Stepney BC (1951) <p>Cost and practicability of precautions e.g. Latimer v AEC (1953).</p> <p>Social value of activity undertaken e.g. Watt v Hertfordshire CC (1954); Compensation Act 2006 s.1; Social Action Responsibility and Heroism Act 2015</p> |

| | | |
|-----------------------------------|---|---|
| 4. Understand causation of damage | 4.1 Explain the requirement for causation of damage to be established | The damage suffered by the claimant must have been caused by the defendant's breach. |
| | 4.2 Explain causation in fact: the 'but for' test | Would the claimant have suffered harm but for the defendant's act? The answer must be 'no'. e.g.: Barnett v Chelsea & Kensington HMC (1969) |
| | 4.3 Explain new intervening acts – break in chain of causation | New intervening act – of the claimant themselves, of a third party, or act of nature Intervenes between the defendant's breach and the claimant's harm Breaks the chain of causation – so that defendant is not liable for harm suffered after the intervening act. E.g. McKew v Holland [1969]; Knightley v Johns [1982] |
| | 4.4 Explain remoteness of damage (causation in law) | Damage is too remote if it is not a reasonably foreseeable consequence of the defendant's breach. – The Wagon Mound (No 1) (1961) Only the kind of damage suffered needs to be foreseeable; – not the precise extent or way it was caused e.g. Hughes v Lord Advocate (1963) 'Egg shell skull rule': applies where claimant's pre-existing vulnerability leads to damage the extent of which was not foreseeable. Defendant remains liable. You must take your victim as you find them e.g. Smith v Leech Brain (1962) |
| 5. Understand vicarious liability | 5.1 Explain what is meant by vicarious liability | Vicarious liability describes a situation in which one person is liable for the tortious acts of another. <u>Usually</u> arises in employer/employee situations e.g. Lister v Hesley Hall Ltd (2001) or relations akin to employment situations e.g. JGE v Trustees of the Portsmouth RC Diocesan Trust (2012); Various Claimants v CCWS (2013) Cox v Ministry of Justice (2016) |

| | | |
|--------------------------------|---|--|
| | 5.2 Explain the requirements for vicarious liability to arise | <p>A tort must have been committed</p> <p>The tortfeasor must be an employee (or akin to employment) e.g. Ready Mixed Concrete v Minister of Pensions (1968)</p> <p>The tortfeasor must have been acting in the course of employment e.g. Lister v Hesley Hall Ltd (2001); Century Insurance Co Ltd v NIRTB (1942)</p> |
| 6. Understand defences in tort | 6.1 Explain the defence of contributory negligence | <p>Meaning of contributory negligence:</p> <ul style="list-style-type: none"> • The claimant failed to take reasonable care for their own safety, and • That failure contributed to the harm suffered <p>Effect of contributory negligence: Law Reform (Contributory Negligence) Act 1945: Claimant's damages are reduced to such extent as court considers just and equitable.</p> |
| | 6.2 Explain the defence of limitation | <p>Limitation Act 1980: Limitation periods: Tort generally 6 years from accrual of cause of action; Personal injury 3 years from the later of: date on which cause of action accrued or claimant's date of knowledge. Date of knowledge – knowledge that injury was significant and caused by defendant's act or omission.</p> <p>Effect of limitation defence: Complete bar to claim</p> |
| | 6.3 Explain the defence of consent (<i>Volenti non fit injuria</i>) | <p>Meaning and effect of the principle: Volenti non fit injuria</p> <p>Claimant must have knowledge of nature and extent of risk, and Must voluntarily consent to that risk e.g. Morris v Murray (1991); Smith v Baker (1891); Baker v Hopkins (1959)</p> <p>Effect: Provides a complete defence</p> |

| | | |
|--|--|--|
| | 6.4 Explain the defence of illegality (<i>Ex turpi causa non oritur actio</i>) | <p>Meaning and effect of the principle: <i>Ex turpi causa non oritur actio</i></p> <p>Meaning: No claim may be based on an illegal act. e.g Joyce v O'Brien (2013); Gray v Thames Trains Ltd (2009);</p> <p>Effect: provides a complete defence</p> |
| 7. Understand the remedies available in tort | 7.1 Identify available remedies | Damages and injunctions |
| | 7.2 Explain the purpose of damages | The purpose of damages in tort is to put the claimant in the position they would have been in had the tort not occurred (so far as money can do so) |
| | 7.3 Identify and explain types of damages | <p>Special damages: Past pecuniary losses which can be precisely quantified at the time of trial e.g. past loss of earnings.</p> <p>General damages: Non-pecuniary loss (past and future): pain, suffering and loss of amenity Future pecuniary losses: e.g. future loss of earnings, cost of future medical treatment</p> |
| | 7.4 Explain the requirement to mitigate loss | Claimant cannot recover damages for loss which they could reasonably have avoided |
| 8. Understand how to apply tort law | 8.1 Apply Tort Law to a given situation | <ul style="list-style-type: none"> Analyse the facts of a scenario, identify relevant principles of tort law, and apply to the facts Using relevant authority |