

LAW KNOWLEDGE ORGANISER:

TORT LAW 1

KEY WORDS AND DEFINITIONS - NEGLIGENCE

Negligence is having a duty of care which is breached resulting in damage.

Duty of care: neighbour principle - *Donoghue v Stevenson* and incremental approach - *Caparo v Dickman* - foreseeability, proximity and just, fair and reasonable.

Breach of duty of care: has the standard fallen below that of a reasonable man in the same situation? *Nettleship v Weston*.

Four tests: degree of probability harm will be done, magnitude of likely harm, cost and practicality of preventing risk and potential benefits of the risk.

Special characteristics of the defendant can be taken into account in some circumstances such as professional persons and children.

Resulting damage: 1. Causation, the but for test - *Barnett v Chelsea and Kensington HA*

2. Remoteness of damage - *the Wagon Mound*

KEY WORDS AND DEFINITIONS - PSYCHIATRIC DAMAGE

Damage to the mind rather than physical damage - *Alcock v Chief Constable of South Yorkshire Police*

Primary victims - physical injury or reasonably foreseeable that physical damage would happen that led to psychiatric damage

Secondary victims - psychiatric injury having not been subjected to physical injury

There has to be a sufficiently proximate relationship and the psychiatric damage must be reasonably foreseeable.

KEY WORDS AND DEFINITIONS - PROVING NEGLIGENCE

s.11 Civil Evidence Act 1968 states that convictions can be used to prove a specific act has been completed.

Res ipsa loquitur - the facts speak for themselves.

Two conditions: 1. events must be under control of defendant - *Gee v Metropolitan Railway* - and 2. there must be no direct evidence of what happened - *Barkway v South Wales Transport*

This leads to a presumption of negligence against the defendant who can then try to rebut that presumption.

KEY WORDS AND DEFINITIONS - ECONOMIC LOSS

Consequential economic loss - physical injury arising from negligence. Pure economic loss - all other loss. Usually pure economic loss is not recoverable though *Hedley Byrne v Heller* did ease those limits a little

ASSESSMENT OBJECTIVES AND SKILLS:

COMPONENT 2: Take each part of the scenario and define, case/law, apply each part of the definition, case/law and final application.

COMPONENT 3: Essay - fully explain the area of law in the question and then include 3 or 4 points of evaluation.

KEY WORDS AND DEFINITIONS - DEFENCES

Consent - *volenti non fit injuria* - *Morris v Murray* - if the claimant consented to the harm, there can be no liability

Passengers in vehicles generally cannot consent to being driven by a drunken driver - RTA 1988

Contributory negligence - where the claimant is partially to blame for the harm, the claimant will lose the percentage of the damages that they are to blame

s.1(1) Law Reform (Contributory Negligence) Act 1945 and *Sayers v Harlow UDC*

Elements: 1, claimant failed to take care of their own safety and 2. they didn't recognise the risk even though a reasonable person would have

KEY WORDS AND DEFINITIONS - OCCUPIERS' LIABILITY

Lawful Visitors: Occupiers' Liability Act 1957. Common duty of care to those who have permission to be on the land - take reasonable care in all circumstances to see that the visitor is safe.

An occupier is someone who has occupational control over the land - *Wheat v Lacon and Co*

Occupiers have to be ready for children to be less careful than adults (s.2(3)(a)), someone exercising a calling should show reasonable care for themselves (s.2(3)(b)) and an independent contractor's work is not the fault of the defendant if they took steps to ensure they were competent (s.2(4)(b)).

Unlawful visitors: Occupiers Liability Act 1984. Statutory duty of care to those who don't have permission to be on the land - take reasonable care to ensure the unlawful visitor is safe if the following applies: they are aware of the danger or have reasonable grounds to believe that it exists, they know, or have reasonable grounds to believe, that the unlawful visitor is in the vicinity of the danger concerned or that they may come into the vicinity of the danger and the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer the unlawful visitor some protection.

LAW KNOWLEDGE ORGANISER:

TORT LAW 2

KEY WORDS AND DEFINITIONS - PRIVATE NUISANCE, PUBLIC NUISANCE AND RYLANDS V FLETCHER

Private nuisance is an interference with a person's use and enjoyment of their land. There are three kinds, encroachment onto land, physical injury to neighbour's land, interference with quiet enjoyment of land.

Three elements: The claimant must have an interest in the land - *Foster v Warblington ODC*, there must be an unreasonable use of the land - *Robinson v Kilvert*, there must be damage to the claimant .

Usually the occupier will be the defendant but it can be the owner in certain circumstances.

There are two defences: 1. statutory authority and prescription.

Public nuisance is an interference with a class of society's use of land. It is a crime and a tort.

A class of people is a group with similar characteristics - *Attorney General v PYA Quarries Ltd* .

Examples include local communities - *R v Ruffell*, group with a common interest - *R v Ong*, impact on the community - *R v Lowrie*.

Civil actions under public nuisance can be brought by realtor action, by a local authority or by an action for tort by a private citizen who has suffered particular loss.

Rylands v Fletcher is a tort from the industrial revolution with the following elements:

1. Something must have been collected and kept on the defendant's land. *Miles v Forest Granite Co*
2. The use of the land must be non-natural. Lord Cairns in *Rylands* suggested that if water had naturally accumulated on or below the surface of the land then liability would not have arisen. *Rickards v Lothian*
3. The thing brought onto the land must be likely to do mischief if it escaped. *Transco v Stockport MBC*
4. The thing brought onto land must have escaped and caused damage. *Cambridge Water Co v Eastern Counties Leather*

KEY WORDS AND DEFINITIONS - REMEDIES

Damages and injunctions are the main remedies.

Damages are to put the claimant back in the position before the harm. 6 types - general, nominal, aggravated, special, contemptuous, exemplary

Injunctions are mandatory to force the defendant to do something and prohibitory to stop the defendant from doing something.

A quia timet injunction is awarded when someone fears a tort against them and an interim injunction is awarded in the run up to a hearing.

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COMPONENT 3: Essay - fully explain the area of law in the question and then include 3 or 4 points of evaluation.

KEY WORDS AND DEFINITIONS - TRESPASS

Trespass to land is unjustifiable interference with land which is in exclusive possession of another

There are four essential elements:

1. There is direct interference with the land. *Southport Corporation v Esso Petroleum*
2. The interference must be voluntary. *Stone v Smith*
3. There is no need for the defendant to be aware they are trespassing. *Conway v George Wimpey*
4. There is no need for the claimant to experience harm or loss.

Trespass can be from the heavens down to hell - *Star Energy v Bocardo*

Defences: Legal authority, license including contractual license and necessity

KEY WORDS AND DEFINITIONS - VICARIOUS LIABILITY

Vicarious liability is the term used to explain the liability of one person for the torts committed by another.

Usually this is an employer/employee relationship.

Two relevant questions:

Is the person who committed the tort an employee? Degree of control test, organisation test, multiple test

Was the tort committed in the course of that person's employment? A frolic of his own or doing something in a forbidden manner. Travelling to work usually not included in liability for employer