THE LAW OF TORT

A Teaching Version — Prof Samba Online University of Nigeria

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IMPRINT

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How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — What a Tort Is

A tort is a civil wrong, other than a breach of contract or trust, for which the law gives a remedy — usually damages. This chapter teaches tort's place in the legal order and its general principles.

Tort among the civil wrongs

Contract rests on agreement; tort rests on duties the law imposes on everyone, whether they agreed or not. The neighbour you never met owes you careful driving; the stranger owes you freedom from battery. Tort is the law of imposed duties between persons who did not bargain.

Its remedies are primarily compensatory damages — money measured by the harm — with injunctions to restrain continuing wrongs. Some torts are actionable per se, without proof of damage: trespass is the standing example, because the right itself deserves vindication.

The interests protected

Tort protects the person (assault, battery, false imprisonment), reputation (defamation), property (trespass, nuisance, conversion), economic interests (deceit, passing off, and carefully limited negligence), and peace and comfort (nuisance again). Each tort is a fence around an interest, with its own height and gate.

The student should always begin a tort problem by naming the interest invaded; the tort follows the interest, not the defendant's general blameworthiness.

Fault and strict liability

Most torts require fault — intention or negligence. Some impose strict liability: keeping dangerous things that escape, in the famous rule, answers for the escape without proof of carelessness, because the

keeper chose the risk. The modern law narrows strict liability's islands but does not drain them.

Vicarious liability makes an employer answer for employees' torts committed in the course of employment — not because the employer was at fault, but because the enterprise that profits from the work bears its risks and can spread them by insurance.

Parties and procedure in outline

Tort claims are brought by the person wronged against the wrongdoer, in the civil courts, on the balance of probabilities. Limitation periods bar stale claims, with special protection for children and persons under disability. Joint tortfeasors are each liable for the whole damage, with contribution between them.

Worked example

A pedestrian is knocked down by a delivery rider hurrying for the rider's employer. Her claim names two defendants: the rider, whose negligence is the immediate wrong, and the employer, vicariously liable because the riding was the very work he was employed to do. One harm, two pockets, a single compensation — she recovers once, in full.

Discussion questions

• How does tort differ from contract in the source of its duties?

• Which interests does tort protect? Name four.

• Why does the law make employers vicariously liable?

Chapter summary

In this chapter you have studied the following ground. A tort is a civil wrong, other than a breach of contract or trust, for which the law gives a remedy — usually damages. On tort among the civil wrongs: Contract rests on agreement; tort rests on duties the law imposes on everyone, whether they agreed or not. On the interests protected: Tort protects the person (assault, battery, false imprisonment), reputation (defamation), property (trespass, nuisance, conversion), economic interests (deceit, passing off, and carefully limited negligence), and peace and comfort (nuisance again). On fault and strict liability: Most torts require fault — intention or negligence. On parties and procedure in outline: Tort claims are brought by the person wronged against the wrongdoer, in the civil courts, on the balance of probabilities. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Negligence — Duty and Breach

Negligence is the largest tort: the failure to take reasonable care for those foreseeably affected. This chapter teaches its first two elements — the duty of care and its breach.

The neighbour principle

The modern tort begins from a principle: you must take reasonable care to avoid acts or omissions you can reasonably foresee would injure your neighbour — persons so closely and directly affected by your act that you ought reasonably to have them in contemplation. Foreseeability, proximity, and that it be fair, just, and reasonable to impose a duty: the modern threefold inquiry organises the older principle.

Duty is a question of law for categories of relationship — driver and road user, doctor and patient, employer and employee, occupier and visitor — and a question of judgment at the novel frontier, where courts proceed by analogy and increment.

No duty situations

The law refuses some duties: generally no duty to rescue a stranger, no liability for pure omissions, careful limits on liability for the acts of third parties, and on psychiatric harm and pure economic loss, treated in the next chapter. Each refusal is policy made visible: the line is drawn where liability would become indeterminate or would burden socially useful activity.

Public bodies' duties are tested by the same principles, with the added care that public functions are not distorted by defensive practice — a consideration weighed, not a trump.

Breach — the reasonable person

Breach is falling below the standard of the reasonable person in the defendant's position: the ordinary prudent driver, the reasonably competent doctor. The standard is objective — the learner driver is held to the competent driver's standard — but it adjusts to the activity: professionals are judged by the standards of their profession, children by those of reasonable children of their age.

In deciding breach, courts weigh the likelihood of harm, its seriousness, the cost and practicability of precautions, and the activity's social value. A risk may be worth running; a precaution may cost more than the harm it prevents. The calculus is practical, not mathematical.

Proof of breach and res ipsa loquitur

The claimant proves breach on the balance of probabilities. Sometimes the facts speak: where a thing under the defendant's control causes harm that ordinarily does not happen without negligence, and the defendant offers no explanation, the court may infer negligence — res ipsa loquitur, the thing speaks for itself. It is an evidential aid, not a reversal of the burden in substance.

Worked example

Barrels of flour fall from a warehouse window onto a passer-by in the street below. She cannot prove which employee erred or how. The doctrine answers: barrels do not fall from careful warehouses; the thing speaks, and the warehouse keeper must explain or pay. The inference is drawn because the alternative — demanding proof locked inside the defendant's walls — would make the right worthless.

Discussion questions

• State the neighbour principle and the modern threefold inquiry.

• How is the standard of care adjusted for professionals and children?

• What three conditions let the thing speak for itself?

Chapter summary

In this chapter you have studied the following ground. Negligence is the largest tort: the failure to take reasonable care for those foreseeably affected. On the neighbour principle: The modern tort begins from a principle: you must take reasonable care to avoid acts or omissions you can reasonably foresee would injure your neighbour — persons so closely and directly affected by your act that you ought reasonably to have them in contemplation. On no duty situations: The law refuses some duties: generally no duty to rescue a stranger, no liability for pure omissions, careful limits on liability for the acts of third parties, and on psychiatric harm and pure economic loss, treated in the next chapter. On breach — the reasonable person: Breach is falling below the standard of the reasonable person in the defendant's position: the ordinary prudent driver, the reasonably competent doctor. On proof of breach and res ipsa loquitur: The claimant proves breach on the balance of probabilities. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Negligence — Causation, Remoteness, and Special Harms

Duty and breach are not enough: the breach must cause the harm, and the harm must not be too remote. This chapter teaches causation, remoteness, and the special rules for psychiatric harm and economic loss.

Factual causation

The claimant must show that, but for the breach, the harm would not have occurred. Where several causes combine, material contribution to the harm suffices. Where medical science cannot say which of several possible causes operated, special doctrines assist in defined cases — the student should know the problem's shape even where its solutions remain debated.

Intervening acts may break the chain: a free, deliberate, informed act of a third party or of the claimant himself ordinarily does; a foreseeable intervening event, including negligent medical treatment and the rescuer's intervention, ordinarily does not.

Remoteness — the kind of harm

The defendant answers for harm of a kind that was reasonably foreseeable, though not its full extent: the thin-skulled claimant is taken as found, and an egg-shell skull makes the defendant pay for the fracture he could not have predicted in degree. The kind must be foreseeable; the quantum need not be.

This asymmetry is deliberate: it is just that the wrongdoer, not the innocent, bears the surprise of an unusual vulnerability.

Psychiatric harm

For psychiatric injury the law distinguishes primary victims — those within the range of foreseeable physical injury — from secondary victims, who witness harm to others and must satisfy controls of proximity in relationship, in time and space, and in the manner of perception, and must suffer a recognised psychiatric illness, not mere grief or fright.

The controls are avowedly policy: the law fears indeterminate claims and so fences this field more closely than physical injury.

Pure economic loss

Financial loss unconnected with physical injury or property damage is generally irrecoverable in negligence, save in defined pockets: negligent misstatement made under an assumption of responsibility to a known claimant for a known purpose is the great exception. The boundary polices the line between tort and contract, where economic expectations are meant to live.

Worked example

A careless driver slightly injures a man with an abnormally thin skull, who dies from the minor blow. The kind of harm — personal injury from a collision — was plainly foreseeable; the extent was not. The egg-shell rule answers: the driver pays for the death he caused, not merely the bruise he expected. Wrongdoers take their victims as they find them.

Discussion questions

• State the 'but for' test and the material-contribution answer.

• What must be foreseeable: the kind of harm, or its extent?

• Why does the law fence psychiatric harm and economic loss more closely?

Chapter summary

In this chapter you have studied the following ground. Duty and breach are not enough: the breach must cause the harm, and the harm must not be too remote. On factual causation: The claimant must show that, but for the breach, the harm would not have occurred. On remoteness — the kind of harm: The defendant answers for harm of a kind that was reasonably foreseeable, though not its full extent: the thin-skulled claimant is taken as found, and an egg-shell skull makes the defendant pay for the fracture he could not have predicted in degree. On psychiatric harm: For psychiatric injury the law distinguishes primary victims — those within the range of foreseeable physical injury — from secondary victims, who witness harm to others and must satisfy controls of proximity in relationship, in time and space, and in the manner of perception, and must suffer a recognised psychiatric illness, not mere grief or fright. On pure economic loss: Financial loss unconnected with physical injury or property damage is generally irrecoverable in negligence, save in defined pockets: negligent misstatement made under an assumption of responsibility to a known claimant for a known purpose is the great exception. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Defences to Negligence and Damages

The defendant in negligence may answer with the claimant's own contribution, with consent, or with the limits of damages law. This chapter teaches the defences and the measure of compensation.

Contributory negligence

Where the claimant's own carelessness contributed to the damage, damages are reduced to the extent the court thinks just, having regard to the claimant's share of responsibility — a complete defence only in the rarest case under the modern apportionment statutes. The child claimant is judged by the standard of a reasonable child; the rescuer's contribution is judged indulgently.

Both parties' fault is compared by causative potency and blameworthiness together — the apportionment is an assessment, not an arithmetic.

Volenti — consent to the risk

Volenti non fit injuria: no injury is done to one who consents. The spectator accepts sport's ordinary risks; the passenger who rides with a visibly drunk driver may find his damages reduced or barred where true voluntary acceptance of the specific risk is proved. Mere knowledge of a risk is not consent to it — the worker knows the factory's dangers and consents to none of them.

Exclusion of negligence liability by notice is controlled by the same statutory fairness regime met in contract, and cannot exclude liability for death or personal injury caused by negligence in the modern pattern.

The measure of damages

Damages aim to restore, so far as money can, the position before the tort: special damages for proved financial loss — earnings, expenses, care — and general damages for pain, suffering, and loss of amenity, assessed by the court's judgment guided by comparable awards. Future losses are calculated with multipliers and discounts for the uncertainties and the lump sum's early receipt.

Interest, mitigation, and the collateral-benefits questions — insurance, pensions, charity — complete the working picture: the claimant must mitigate, and benefits are treated by rules that avoid double recovery without punishing thrift or generosity.

Death claims

Where the victim dies, two claims arise: the estate's claim for the deceased's own losses up to death, and the dependants' claim for their loss of dependency, under the fatal-accidents legislation. The dependants' award measures the value of the support they have lost, not the value of the life, which the law does not price.

Worked example

A passenger accepts a lift from a driver he knows to be drunk, and is injured when the car leaves the road. The court finds the risk truly and voluntarily accepted in its specific character, and in any event reduces damages substantially for contribution. Knowledge alone would not have done it — the finding is of acceptance, proved from the whole scene.

Discussion questions

• How does apportionment for contributory negligence work?

• Why is knowledge of a risk not the same as consent to it?

• What two claims arise when the victim dies?

Chapter summary

In this chapter you have studied the following ground. The defendant in negligence may answer with the claimant's own contribution, with consent, or with the limits of damages law. On contributory negligence: Where the claimant's own carelessness contributed to the damage, damages are reduced to the extent the court thinks just, having regard to the claimant's share of responsibility — a complete defence only in the rarest case under the modern apportionment statutes. On volenti — consent to the risk: Volenti non fit injuria: no injury is done to one who consents. On the measure of damages: Damages aim to restore, so far as money can, the position before the tort: special damages for proved financial loss — earnings, expenses, care — and general damages for pain, suffering, and loss of amenity, assessed by the court's judgment guided by comparable awards. On death claims: Where the victim dies, two claims arise: the estate's claim for the deceased's own losses up to death, and the dependants' claim for their loss of dependency, under the fatal-accidents legislation. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — Trespass — To the Person, To Land, To Goods

Trespass is the tort of direct interference, actionable without proof of damage. This chapter teaches its three branches and the defences of lawful authority, consent, and necessity.

Trespass to the person

Assault threatens, battery applies, unlawful force; false imprisonment restrains total liberty without lawful authority — the locked room, the unlawful detention, the shopkeeper's back office without cause. The interference must be direct and intentional; careless contact belongs to negligence.

Everyday contacts — the crowded bus, the guiding hand — are no battery: the law reads into social life an implied licence for its ordinary touchings.

Trespass to land

Entering, remaining on, or placing things upon another's land without authority is trespass, though no damage is done. The airspace above and the soil below are protected to the extent the ordinary use of the land requires. The remedy vindicates possession: the person in possession sues, not the absent owner, because possession is the interest invaded.

Continuing trespass accrues day by day; self-help — re-entry peaceably — is permitted within strict limits, and the courts prefer their own process.

Trespass to goods and conversion

Direct interference with goods in another's possession is trespass to goods; conversion is the graver wrong — dealing with goods in a manner seriously inconsistent with the owner's rights: taking, selling, destroying, or refusing to return on demand by one entitled. The converter pays the goods' full value, in effect a forced sale.

An innocent handler may convert — the auctioneer who sells stolen goods answers though he suspected nothing — because conversion protects ownership against dealing, not merely against dishonesty.

Defences

Lawful authority — the constable's arrest, the bailiff's warrant — consent, and necessity answer trespass. Necessity is narrow: the ship moored to another's dock in a storm is privileged while the storm lasts, though damage done may still be paid for — privilege to act is not always privilege to act for free.

Worked example

A store detective detains a shopper for an hour in a back office on a suspicion he cannot articulate, finding nothing. False imprisonment is complete: total restraint, no lawful authority, suspicion without grounds. The shopper need prove no loss beyond the imprisonment itself — the tort is actionable per se, because liberty needs no receipt to be valuable.

Discussion questions

• Distinguish assault, battery, and false imprisonment.

• Why does the possessor, not the owner, sue in trespass to land?

• How does conversion differ from trespass to goods?

Chapter summary

In this chapter you have studied the following ground. Trespass is the tort of direct interference, actionable without proof of damage. On trespass to the person: Assault threatens, battery applies, unlawful force; false imprisonment restrains total liberty without lawful authority — the locked room, the unlawful detention, the shopkeeper's back office without cause. On trespass to land: Entering, remaining on, or placing things upon another's land without authority is trespass, though no damage is done. On trespass to goods and conversion: Direct interference with goods in another's possession is trespass to goods; conversion is the graver wrong — dealing with goods in a manner seriously inconsistent with the owner's rights: taking, selling, destroying, or refusing to return on demand by one entitled. On defences: Lawful authority — the constable's arrest, the bailiff's warrant — consent, and necessity answer trespass. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Nuisance and the Escape of Dangerous Things

Nuisance protects the use and enjoyment of land against unreasonable interference. This chapter teaches private and public nuisance, and the strict rule for escapes of dangerous things.

Private nuisance

Private nuisance is an unreasonable interference with the use or enjoyment of land: noise, smell, smoke, vibration, encroaching roots and branches. Reasonableness weighs locality — what is nuisance in a residential street may be none in an industrial district — duration, sensitivity, and malice, which can make an otherwise tolerable act unreasonable.

Only those with an interest in the land may sue; the interference must be substantial, judged by the ordinary person's standards, not the claimant's special delicacy — though a defendant may not aim at a known sensitivity and plead its abnormality.

Public nuisance

Public nuisance endangers the public or a section of it — obstructing the highway, polluting a river — and is both a crime and a tort to the individual who suffers particular damage beyond the general public's. The Attorney-General sues for the public; the specially injured sue for themselves.

Statutory authority is a defence where the nuisance is the inevitable result of what the statute authorised; the authorised railway's ordinary noise is the statute's act, not the company's wrong.

The rule of strict liability for escapes

One who brings onto land and keeps there something likely to do mischief if it escapes is liable, without proof of negligence, for the natural consequences of its escape: the reservoir, the chemicals, the accumulated water. The modern law requires a non-natural use of land and has folded much of the rule toward negligence, but its core — the risk-chooser pays — endures.

Act of God, the claimant's own act, consent, and statutory authority defend; the act of a stranger beyond the defendant's control may also answer the claim.

Remedies

Injunction is nuisance's characteristic remedy, because the wrong is continuing; damages compensate the past and may be awarded in lieu of injunction where the injury is small, capable of money estimation, and an injunction would be oppressive — a discretion exercised with the public interest now counted among the factors.

Worked example

A factory's new night shift runs machinery that keeps the neighbouring houses awake, in a street that has always been residential. Locality condemns it: the same noise among factories might be the district's ordinary sound. The court restrains the night running — the factory may work, but not at the neighbourhood's expense of sleep.

Discussion questions

• What factors decide whether an interference is unreasonable?

• Who may sue in public nuisance, and for what?

• State the strict rule for escapes and its modern qualifications.

Chapter summary

In this chapter you have studied the following ground. Nuisance protects the use and enjoyment of land against unreasonable interference. On private nuisance: Private nuisance is an unreasonable interference with the use or enjoyment of land: noise, smell, smoke, vibration, encroaching roots and branches. On public nuisance: Public nuisance endangers the public or a section of it — obstructing the highway, polluting a river — and is both a crime and a tort to the individual who suffers particular damage beyond the general public's. On the rule of strict liability for escapes: One who brings onto land and keeps there something likely to do mischief if it escapes is liable, without proof of negligence, for the natural consequences of its escape: the reservoir, the chemicals, the accumulated water. On remedies: Injunction is nuisance's characteristic remedy, because the wrong is continuing; damages compensate the past and may be awarded in lieu of injunction where the injury is small, capable of money estimation, and an injunction would be oppressive — a discretion exercised with the public interest now counted among the factors. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 7 — Defamation

Defamation protects reputation: libel in permanent form, slander in transient. This chapter teaches the elements, the defences of truth, honest opinion, and privilege, and the modern balance with free expression.

The elements

The claimant must prove a defamatory statement — one that lowers him in the estimation of right-thinking members of society, or shuns him, or disparages him in his calling — referring to him, and published to a third party. Libel is actionable without proof of damage; slander generally requires proof of special damage, with exceptions for imputations of crime, disease, unchastity in the older law, and professional unfitness.

Innuendo extends meaning: words innocent on their face may defame by facts known to the hearers, and the claimant must plead and prove those facts and that hearers knew them.

Truth and honest opinion

Truth is a complete defence: the law does not protect a reputation the claimant does not deserve, and the defendant need prove the statement's substantial truth, not every detail. Honest opinion protects comment — recognisable as opinion, on facts truly stated, on a matter of public interest, that an honest person could hold — however prejudiced or exaggerated the comment, provided it is honestly held.

Malice defeats the qualified defences: a statement made from spite or with knowledge of falsity forfeits the protection its occasion would otherwise give.

Privilege

Absolute privilege protects statements in parliament and in judicial proceedings absolutely, because those forums must be fearless. Qualified privilege protects statements made under a duty to a person with a corresponding interest to receive them — references, complaints to authority, reports of public proceedings fairly and accurately made — and falls to malice.

The modern public-interest defence protects responsible publication on matters of public interest even where the facts cannot all be proved true, where the publisher behaved responsibly by the standards of the craft.

Remedies and the modern balance

Damages vindicate and compensate, and may be aggravated by the defendant's conduct of the case. Injunctions before trial are rare in defamation — the prior-restraint caution — because the defence of truth should be tried before speech is silenced. The whole subject balances two rights the constitutions of free states protect together: reputation and expression, neither absolute, each the other's boundary.

Worked example

A newspaper reports, fairly and accurately, a councillor's heated words in a public council meeting, including an accusation the councillor later withdraws. The report stands protected by qualified privilege for fair reports of public proceedings: the public's right to know what its council said outweighs the sting, provided the report is fair, accurate, and not malicious.

Discussion questions

• State the three elements of defamation.

• Why is truth a complete defence?

• What defeats qualified privilege, and why?

Chapter summary

In this chapter you have studied the following ground. Defamation protects reputation: libel in permanent form, slander in transient. On the elements: The claimant must prove a defamatory statement — one that lowers him in the estimation of right-thinking members of society, or shuns him, or disparages him in his calling — referring to him, and published to a third party. On truth and honest opinion: Truth is a complete defence: the law does not protect a reputation the claimant does not deserve, and the defendant need prove the statement's substantial truth, not every detail. On privilege: Absolute privilege protects statements in parliament and in judicial proceedings absolutely, because those forums must be fearless. On remedies and the modern balance: Damages vindicate and compensate, and may be aggravated by the defendant's conduct of the case. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 8 — Occupiers' Liability, Employers' Liability, and Product Liability

Three fields complete the negligence map where statutes and special duties govern: premises, the workplace, and defective products. This chapter teaches their outlines.

Occupiers' liability

An occupier owes lawful visitors a common duty of care: to take such care as is reasonable to see that the visitor is reasonably safe for the purpose of the visit. The duty adjusts to the visitor — children require guarding against allurement and hidden danger, specialists are expected to guard against their own trade's risks. Warnings discharge the duty where they enable the visitor to be safe; exclusion of liability is controlled by statute.

To trespassers a lesser duty is owed in the modern law: where the occupier knows of the danger and of the trespasser's likely presence, reasonable care against injury is required — humanity's floor beneath property's rights.

Employers' liability

The employer owes each employee a personal, non-delegable duty of reasonable care: competent staff, safe plant and equipment, a safe system of work, and a safe place of work. Delegating performance does not delegate the duty: the employer who buys the system from a contractor still answers for its safety to his own workers.

The duty is breached by the system that invites shortcuts, the guard removed for production, the warning never given. Industrial disease extends the duty across years: the employer must keep pace with

knowledge of risks as science reveals them.

Product liability

The manufacturer owes the ultimate consumer a duty where products reach the consumer with no reasonable possibility of intermediate examination: the sealed bottle, the packaged food. The modern statutes add strict liability for defective products in many systems, sparing the claimant proof of fault where the product's defect and the damage are shown.

Warnings and instructions are part of the product: a dangerous thing sold with proper warning may be no defect at all, and a safe thing sold without needed instruction may become one.

Liability for animals and other pockets

Keepers answer for animals by rules that distinguish the dangerous species — liability strict — from the tame animal with known dangerous propensities. These pockets share the course's theme: the law allocates each risk to the person who created, kept, or profited from it.

Worked example

A factory's press loses its guard; the foreman, under production pressure, runs it unguarded, and a worker is injured. The employer's non-delegable duty answers: the unsafe system was the employer's breach though a dozen hands performed it. Providing the guard originally is no defence when the system tolerated its removal.

Discussion questions

• State the occupier's common duty of care.

• Why is the employer's duty non-delegable?

• What makes a warning part of the product?

Chapter summary

In this chapter you have studied the following ground. Three fields complete the negligence map where statutes and special duties govern: premises, the workplace, and defective products. On occupiers' liability: An occupier owes lawful visitors a common duty of care: to take such care as is reasonable to see that the visitor is reasonably safe for the purpose of the visit. On employers' liability: The employer owes each employee a personal, non-delegable duty of reasonable care: competent staff, safe plant and equipment, a safe system of work, and a safe place of work. On product liability: The manufacturer owes the ultimate consumer a duty where products reach the consumer with no reasonable possibility of intermediate examination: the sealed bottle, the packaged food. On liability for animals and other pockets: Keepers answer for animals by rules that distinguish the dangerous species — liability strict — from the tame animal with known dangerous propensities. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 9 — Remedies, Limitation, and the Tort Map

The final chapter gathers remedies and limitation, then rebuilds the whole subject as a map the student can carry into any problem.

Damages in tort

Tort damages compensate: the claimant is restored, so far as money can, to the pre-tort position — the counterpart of contract's expectation measure, and the student should be able to state both and never confuse them. Aggravated damages mark injured feelings from high-handed wrongdoing; exemplary damages, in their narrow categories, punish and deter outrageous conduct, notably by servants of the government acting oppressively.

Injunctions restrain continuing or threatened wrongs; self-help survives in narrow channels — abatement of nuisance, recaption of goods peaceably, defence of person and property — always within reasonable force.

Limitation

Claims die by time: personal-injury claims within their shorter period, other torts within theirs, with the court's discretion to extend in injury cases weighing the delay's reasons and the evidence's survival. Latent damage has its own knowledge-based rules, so that a claim is not dead before it could be known.

Limitation is not a technicality but a policy: stale evidence makes unjust trials, and defendants are entitled, after the period, to order their affairs in peace.

The map whole

Every tort problem asks: what interest was invaded; which tort protects it; what are its elements; what defences answer; what remedy fits; is the claim in time? Six questions, in order, from the first chapter's fences to this chapter's clock.

Revise by interest: person, reputation, land, goods, economic interest — and hang each tort on its interest. The map, carried whole, is the subject.

Worked example

A claimant discovers, eight years after a factory's closure, an illness that medical evidence links to its dust, the link unknowable earlier. The latent-damage rules and the court's discretion are the battleground: time ran from knowledge, and the court weighs the delay since knowledge, not since the dust. The limitation analysis is argued from the policy, not merely the calendar.

Discussion questions

• How do tort and contract damages differ in their aim?

• Why do limitation periods exist?

• Recite the six questions of a tort problem.

Chapter summary

In this chapter you have studied the following ground. The final chapter gathers remedies and limitation, then rebuilds the whole subject as a map the student can carry into any problem. On damages in tort: Tort damages compensate: the claimant is restored, so far as money can, to the pre-tort position — the counterpart of contract's expectation measure, and the student should be able to state both and never confuse them. On limitation: Claims die by time: personal-injury

claims within their shorter period, other torts within theirs, with the court's discretion to extend in injury cases weighing the delay's reasons and the evidence's survival. On the map whole: Every tort problem asks: what interest was invaded; which tort protects it; what are its elements; what defences answer; what remedy fits; is the claim in time? Six questions, in order, from the first chapter's fences to this chapter's clock. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — What a Tort Is

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Tort among the civil wrongs; The interests protected; Fault and strict liability; Parties and procedure in outline. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A pedestrian is knocked down by a delivery rider hurrying for the rider's employer. Her claim names two defendants: the rider, whose negligence is the immediate wrong, and the empl..."

Problem 2 — Negligence — Duty and Breach

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The neighbour principle; No duty situations; Breach — the reasonable person; Proof of breach and res ipsa loquitur. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "Barrels of flour fall from a warehouse window onto a passer-by in the street below. She cannot prove which employee erred or how. The doctrine answers: barrels do not fall from car..."

Problem 3 — Negligence — Causation, Remoteness, and Special Harms

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Factual causation; Remoteness — the kind of harm; Psychiatric harm; Pure economic loss. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A careless driver slightly injures a man with an abnormally thin skull, who dies from the minor blow. The kind of harm — personal injury from a collision — was plainly foreseeable;..."

Problem 4 — Defences to Negligence and Damages

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Contributory negligence; Volenti — consent to the risk; The measure of damages; Death claims. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A passenger accepts a lift from a driver he knows to be drunk, and is injured when the car leaves the road. The court finds the risk truly and voluntarily accepted in its specific ..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

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