



THE LAW OF TORT

COURSE GUIDE

GENERAL INTRODUCTION TO THE COURSE

Tort is a branch of the civil law (as opposed to Criminal Law) based on a claim that the defendant has caused injury or loss to the claimant by breaking a relevant obligation imposed by the general law. However, this definition tells you nothing about what conduct is tortious. You will understand what is tortious only when you know what counts as injury or loss and what obligations the law imposes. Very broadly, tort law is one of the methods by which people who have suffered injuries are compensated. It deals with whether losses should lie where they fall or should be transferred to someone thought to be 'to blame' (not necessarily in the moral sense) for what has happened. Of course the person 'to blame' will often be insured or will be a large company or government department and so the losses will often be spread more widely. For example, when a person is injured by a careless motorist, the motorist's insurance company will pay the damages and the ultimate costs of the accident will fall on the general community who pay insurance premiums. Broadly speaking, the law of tort took its present shape in the nineteenth century although of course it has developed considerably since then.

The course aims to examine the effectiveness of the tort system in compensating individuals suffering personal injury, injury to reputation, psychological damage, economic loss or incursions on private property as a result of intentional acts, accidents and disease. Focusing on the tort of negligence, the course explores the social, economic, and political context in which the rules and principles of tort applies.

As such, the course will be divided and taught in three parts. The first part explores the historical development of tort, the nature and relation between tort law and other branches of the law of obligations. While examining tort's relation with other legal subjects, it provides an in-depth exploration of two organising themes: fault and damage within tort law, drawing upon a range of examples from tort law and from the tort of negligence. Part Two contains the core of the course and its an extensive exploration of the tort of negligence, with special emphasis on the examination of the duty of care concept. The

final part of the course explores some intentional torts, with emphasis on torts aimed at the protection of reputation, confidential information and the quiet enjoyment of land.

Sierra Leone Law School

For those wishing to take the Bar Exams to become Barristers and Solicitors of the High Court of Sierra Leone, it is a **MANDATORY REQUIREMENT** that you study and pass the Law of Tort at University level.

LECTURER DETAILS

ACADEMIC YEAR

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Office Location: 16 Pademba Road, Freetown.

Office Hours: 15:00Hrs – 18:00Hrs, Thursdays during term time.

RESEARCH INTERESTS

Economics, Taxation, Medical Negligence, International Development, International Security and Intellectual Property.

TUTORS

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USE OF TUITION LINE

The Tuition Line will operate for Tort Law during term time. At the opening of tuition lines, students can access tutorials from either of the two tutors above. But this will be more beneficial if you attend lectures. When the line opens, students can:

- Acquire additional knowledge on topics discussed in class from reputable legal practitioners
- Discuss problem and essay questions

- Discuss key cases, so as to improve understanding of what legal propositions such key cases establish and how to deploy them in essays and problem questions.
- Discuss key academic articles, to aid understanding of what critical issues they address and how to deploy them in essay questions.

INTRODUCTORY READING

- Harlow, Understanding Tort Law, 3rd Edition (2011), Sweet & Maxwell

REQUIRED BOOK

- Chris Turner, Sanmeet Kaur Dua: Unlocking Torts, 5th edn. (2019), Routledge.

RECOMMENDED BOOKS

- John Murphy and Christian Witting, Street on Torts, 13th edn. (2012), Oxford University Press
- Mark Lunney and Ken Oliphant Tort Law: Text and Materials, 4th edn. (2010), Oxford University Press
- Jenny Steele, Tort Law: Text, Cases and Materials, 2nd edn. (2010) Oxford University Press
- Markesinis and Deakins, Tort Law, 6th edn, Oxford; Clarendon Press
- Richard Kidner, Casebook on Torts, 12th edn. (2012), Oxford University Press
- Winfield & Jolowicz, Tort, 18th edn. (2010) Sweet & Maxwell

IMPORTANT

This course guide is not a text book or even an introduction to the subject. It is intended to direct you through the subject and to give you an indication of how to tackle each topic. The most sensible thing to do will be to read through each heading of this guide, in order to identify the main topics with which it deals and then read the relevant sections in the textbooks. The cases in this guide are not necessarily listed in order of importance; there are of course many more relevant, recent and local Sierra Leone cases than are referred to here.

By the end of this course, you should be able to:

- a) Demonstrate an understanding of the basic rules and principles relating to Tort Law
- b) Demonstrate familiarity with various theories pertaining to the nature and functions of Tort Law
- c) Write critically and analytically about key concepts of Tort Law
- d) Display a detailed knowledge of principles governing the tort of negligence
- e) Display knowledge and understanding of key cases in tort law
- f) Display knowledge and understanding of academic literature relating to tort law
- g) Demonstrate an ability to apply case law, academic articles and, where appropriate legislative sources to complex hypothetical scenarios in tort and to aid critical analysis of aspects of the law of tort.

Assessment

Students will be tested by means of continuous assessments and a final examination. The exam timetable will be released in good time with dates and locations. The exams generally follow the normal type rules as other Universities. However, the university can alter the format, style or requirements of an examination paper without notice. Because of this, you are strongly advised to check the instructions on each paper.

Referencing and Good Academic Practice

Good academic practice requires that you provide full and proper references for all materials that you make use of in your written work. Any reference to ideas or material from other sources (including internet sources), whether in the form of direct quotation or paraphrasing must be acknowledged using properly formatted referencing style. You are welcome to use the referencing style of your choice, provided that you are consistent (i.e., don't mix and match styles) and the style is recognised by the school. If you're unsure about the format of a particular referencing style, please consult a referencing style guide.

Problem Questions

You will be given a set of facts and either asked to advise on one or more of the characters or to discuss issues of tortious liability which arise. You **must** avoid simply identifying the subject matter of the problem and writing all you know about it. Before writing, you should analyse the facts carefully to work out the relation between the parties and the legal issues to which are relevant and marry the facts and the legal principles into a logically structured answer. You **must** remember that **you are solving a problem** and not simply writing an account of a particular area of law. Most problems contain at least some issues that are not entirely clear; you have to identify these and suggest the solution to which you think a court will be likely to come and give your reasons for doing so. Problem questions seldom relate only to materials in a single chapter. You may expect to answer questions that involve more than one tort or involve issues that are discussed in different chapters.

Essay Questions

Such questions rarely ask for a straightforward account of a particular topic. They ask you to write **critically** about a particular topic, to compare one topic with another, to suggest reforms and improvements, to analyse the reasons which lie behind particular areas of law and so forth.

In both kinds of question, the most common error is **irrelevance**. You must (at all times) identify the precise issues raised and direct your answer to them.

Grades

Your grades will be based on class assessments and a final exam, which will be graded blindly. The school will provide more information about the final exam towards the end of the semester. Quality and quantity are both considered in assessing class participation. In general, voluntary participation is given more credit than induced participation when making this assessment.

Electronic Devices

Please remember to turn off your cell phones or on silent before class. Those who wish to use their laptops, tablets or Ipads to take notes may do so. If you

choose to use one of these, please refrain from surfing the internet, checking emails, instant messaging, social media, etc. during class.

Attendance

A sign-in sheet will be distributed at the start of class. Please initial the sign-in sheet during the class. If you forget to sign in during the class, you will be marked as absent for that class. You cannot sign in after the class has finished. The School has a rule—over which I have no control—that a student cannot miss more than 20% of classes. Please make sure you do not violate this rule, as the penalty is severe.

Assignments

At the very least, we will cover one topic per class. This may be followed by an assignment on topics covered. Please note that individual lecturers have a different approaches to required word counts on an Essay. My approach is strict and I will **ONLY** accept 10% over the total amount required. If you decide not to reach the stipulated figure, there will be no penalty. But be mindful that with less than what is required, you may not have answered the questions correctly. You will **LOSE** marks if you exceed the extra percentage allowed on the stipulated word count.

Research

1. Sierralii
2. Bailii
3. Westlaw
4. Lexis Nexis

Cases

Along with the English cases listed below, we shall be dealing with Sierra Leone and other African Cases on each topic.

Teaching

1. COURSE OVERVIEW AND THE ORIGINS, NATURE AND FUNCTIONS OF TORT LAW

Street, 3-22

Winfield & Jolowicz, 1-97

- Letang v. Cooper 1965 1 QB 232
- Brown v. Kendall, 60 Mass. 292 (1850)

- Morris v. Marsden 1952 1 All ER 925

2. NEGLIGENCE: DUTY OF CARE

Street, 25-53

Winfield & Jolowicz, 149-194

- Heaven v Pender [1883] 11 QBD 503
- Donoghue v Stevenson [1932] AC 562
- Anns v Merton London Borough Council [1978] AC 728
- Murphy v Brentwood District Council [1990] 2 All ER 908
- Caparo v Dickman [1990] 1 All ER 568

3. DUTY OF CARE: THE CONCEPT OF FORESIGHT

Street, 110-128

Winfield & Jolowicz, 290-293, 334-363

- Top v London County Bus (South West) Ltd [1993] 1 WLR 976
- Margereson v J W Roberts Ltd [1996] PIQR P358
- Bhamra v Dubb [2010] ECWA Civ 13

4. PUBLIC BODIES: JUST, FAIR AND REASONABLENESS CRITERION

Street, 54-67

Winfield & Jolowicz, 232-251

- Hill v Chief Constable of West Yorkshire [1988] 2 All ER 238
- Hemmens v Wilson Browne [1994] 2 WLR 323
- Mitchell v Glasgow City Council 2009] 2 WLR 481; UKHL 11
- Ephraim v Newham London Borough Council [1993] PIQR P156

5. NEGLIGENCE: BREACH OF DUTY

Street, 110-133

Winfield & Jolowicz, 279-304

- Blyth v Proprietors of the Birmingham Waterworks [1856] 11 Exch 781
- Hall v Brooklands Auto Racing Club [1933] 1 KB 205
- Roe v Minister of Health [1954] 2 QB 66
- Bolton v Stone [1951] AC 850 HL
- Haley v London Electricity Board [1965] AC 778
- Paris v Stepney Borough Council [1951] AC 367
- Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

- *Montgomery v Lanarkshire Health Board* [2015] UKSC 11

6. NEGLIGENCE: CAUSATION

Street, 150-159

Jane Stapleton, Law, Causation and Common Sense' (1998) 8 Oxford Journal of Legal Studies, 111

- *Barnett v Chelsea & Kensington Hospital Management Committee* [1969] 1 QB 428
- *Chester v Afshar* [2004] UKHL 41; [2004] 4 ALL ER 587
- *Wilsher v Essex Area Health Authority* [1986] 3 All ER 801 CA
- *Hotson v East Berkshire Area Health Authority* [1987] 1 All ER 210
- *Bolitho v City and Hackney Health Authority* [199] 4 All ER 771
- *Re Polemis and Furness, Witchy & Co* [1921] 3 KB 560
- *Henderson v H E Jenkins & Sons* [1970] AC 282

7. NEGLIGENCE: DEFENCES

Street, 187-208

- *Woolridge v Summer* [1963] 2 QB 43
- *Davis v Mann* [1842] 10 M & W 546
- *Froom v Butcher* [1976] QB 286

8. NEGLIGENCE: NOVEL DUTY SITUATIONS

Street, 76-87

- *Hambrook v Stokes Bros* [1925] 1 KB 141
- *Tredget v Bexley Health Authority* [1994] 5 Med LR 178
- *Vernon v Bosely (No.1)* [1997] 1 All ER 577
- *Owens v Liverpool Corporation* [1993] 1 KB 394
- *King v Philips* [1953] 1 QB 429
- *Bourhill v Young* [1943] AC 92

9. TRESPASS TO LAND

Street, 310-322

- *Robson v Hallet* [1967] 2 All ER 407
- *White v Bayley* [1861] 142 ER 438
- *Rigby v Chief Constable of Northamptonshire* [1985]

10. TORTS RELATING TO GOODS

Street, 280-308

- Kirk v Gregory [1876] 1 ExD 55
- Armory v Delamirie 1721] 1 Stra 505
- Bodley v Reynolds 1846] 8 QBD 779

11. TRESPASS TO THE PERSON

Street, 255-279

- Letang v Cooper 1964 2 All ER 929, CA
- Turberville v Savage [1669] 1 Mod Rep 3
- Stephens v Meyers [1830] 4 C & P 349
- R v Brown [1994] 2 All ER 75
- Collins v Wilcock [1984] 3 All ER 374

12. NUISANCE {Private}

- Smith v Giddy [1904] 2 KB 448
- Malone v Laskey [1907]
- Hunter and Others v Canary Wharf Ltd [1997]
- Sedleigh-Denfield v O'Callaghan [1940]
- Christie v Davey 1893 1Ch 316
- Sturges v Bridgman [1897] 11 Ch. D 852
- Miller v Jackson [1977] QB 966

13. NUISANCE {Public}

- A.G v Pya Quarries Ltd [1957] 2 QB 169
- Benjamin v Storr [1874] LR 9 CP 400
- Halsey v Esso Petroleum Co Ltd [1961] 1 WLR 683

14. RYLANDS V FLETCHER: STRICT LIABILITY AND LAND

Street, 485-504

- Giles v Walker [1890] 24 QBD 656
- Leakey v The National Trust [1980] QB 485
- Rylands v Fletcher 1868 LR 1 Exch 265; LR 3 HL 330

15. DEFAMATION AND PROTECTION OF PRIVACY

Street, 533-595

- Monson v Tussauds Ltd [1894] 1 QB 671

- Byrne v Deane [1937] 2 All ER 204
- Theaker v Richardson [1962] 1 All ER 229

16. VICARIOUS LIABILITY

Street, 415-436

Winfield & Jolowicz, 36-48

- Mersey Docks v Coggins [1947] AC 1
- Poland v Parr [1927] 1 KB 236
- Century Insurance Co Ltd v NI Trans Board [1942] AC 509
- Rose v Plenty [1976] 1 WLR 141
- Storey v Ashton 1869] LR 4 QB 476
- Hilton v Thomas Burton (Rhodes) Ltd 1961] 1 WLR 705

17. REMIDIES

- Damages
- Injunction
- Abatement
-

18. GENERAL DEFENCES

- Volenti Non Fit Injuria
- Contributory Negligence
- Illegality
- Inevitable Accident
- Act of God
- Necessity
- Statutory Authority
- Self-Help

19. Limitation Periods

- Generally
- The Basic Period
- Latent Damage
- Personal Injuries
- Other Statutory Provisions
- Power of the Court to Extend
- Legal Disability

- Fraud and Concealment

20. Pleadings

SOME HELPFUL TERMINOLOGIES

actionable per se

an action for a tort where the claimant does not have to prove that damage occurred, only that the tort occurred

but for test

the main test for establishing factual position in an action for negligence – ‘but for the defendant breach of duty the damage would not have occurred’

claimant

the person who brings an action to

damages

refers to the compensation awarded by the court in a successful claim is

defendant

the person against whom the claim in tort is made

economic loss

refers to a loss that is purely financial e.g. loss of profit - in contrast to personal injury or damage to property

exemplary damages

a form of damages which is not related to compensation for damages suffered but for which the court makes to show disapproval of the defendant's action

ex turpi causa non oritur actio

a defence that may be used against the claimant whose claim arises from their own criminal actions

interim (interlocutory)

an injunction given before the actual disputes had to avoid harm that may be caused to the claimant before the action comes to court

joint tortfeasors

where the wrongful acts carried out by more than one person they are joint tortfeasors and any or all of them can be sued

malice

motive is generally unimportant in most torts but in some circumstances acting maliciously is an element of the tort, e.g. malicious falsehoods and nuisance

mense profits

used in trespass to land -- allowing the claimant to claim for damage done by the trespasser and for any costs incurred in recovering possession of the land

misfeasance

this is where the defendant has acted wrongly.

Neighbour principle

a test using negligence stress tablets with a duty of care is called

nervous shock

a recognised psychiatric injury such as clinical depression and post-traumatic stress disorder caused by a single shocking event

nominal damages

a small sum of damages awarded where there has technically been a wrong but no actual damages caused

non-feasance

this is where the defendant has a duty to act and is liable for failing to act

non-pecuniary damages

compensation for pain, suffering and loss of amenities where judges have developed rates of compensation

novus actus interveniens

'means a new act intervenes' - refers to situations where the defendant is excused liability because another intervening act has broken the chain of causation

occupier

in liability for damage caused by the state of premises the occupier is the person in actual control of the premises where the damage occurs

pecuniary damages

damages that can be calculated in financial terms example loss of earnings

prescription

a defence in private nuisance where the thing complained of had been active for 20 years or more and the claimant had known about it and not complained before

proximity

refers to the fact that the defendant should contemplate that his actions may have an effect on potential claimants rather than physical closeness

remoteness of damage

also known as causation in law - refers to damage which is foreseeable and therefore which the courts are prepared to compensate -- they would not compensate for damage that was too remote a consequence of the defendant's breach.

res ipsa loquitur

literally means 'the thing speaks for itself' – this is where the claimant is unable to show details of the negligence but the damage was obviously caused negligently, the defendant will be required to show that he was not negligent

several liability

where there are joint tortfeasors, each one can be separately liable for the whole damage - so if one lacks funds to pay compensation, the claimant can bring the action against the one that can pay

special damage

occurs in slander where the claimant usually has to prove that he has suffered damage as a result - also occurs in public nuisance where the claimant has to show that he has suffered damage over that suffered by the public generally

special damages

not to be confused with special damage – generally refers to damages for financial losses and expenses incurred up to the date of trial which have to be pleaded separately from the claim itself

strict liability

refers to tort where the claimant does not have to show fault on the part of the defendant. A defendant is held fully liable for any injury sustained by another party regardless of whether the injury was intended – animals owned or possessed, abnormally dangerous acts and product liability.

thin skull rule

also known as the eggshell rule - means that the defendant has to take extra care of the claimant who is susceptible to a certain type of harm

tort

french word meaning wrong so is the general word used to describe civil wrongs

tortfeasor

will be the defendant in tort action the person who commits the wrong

trespass

torts based on trespass tend to involve interference, e.g. with regards over land, or property or indeed with their bodily integrity.

Trespass ab initio

In the case of people who have a legal right to enter land such as a meter reader, if they commit wrong while on land, they are said to be trespassers from when they entered.

trespasser

A person who enters a premises without permission or who exceeds the permission they are given

vicarious liability

Not a tort in itself but a means of imposing liability on somebody who is responsible for the tortfeasors; usually an employer

visitor

Usually refers to somebody who enters premises lawfully

volenti non fit injuria

Literally means 'no injury can be done to a willing person' – so is a defence where the claimant understands the risk of harm and willing to accept.

**PLEASE READ THE RELEVANT
TOPICS BEFORE EVERY CLASS**