

Part III – The Law of Torts

Chapter 21 The Nature of a Tort

1. How does Professor Winfield define tortious liability?
2. What are unliquidated damages?
3. The law of tort deals with a wide variety of wrongs these can be divided into three categories. Can you name the torts?
4. What three elements need to be proved for a finding of negligence?

Chapter 22 General Defences

5. The defence of 'remoteness' may be argued in tort. Why did this defence fail in the case of *Wooldridge v Sumner* (1963)?
6. What is meant by *Volenti non fit injuria*?
7. May an apparent consent be negated by statute? If so name the statute/s.
8. Why was the Plaintiff unsuccessful in the case of *Haynes v Harwood* (1935)?

Remoteness of damage

9. What must the Plaintiff show before the question of remoteness arises?
10. What is the 'test for remoteness'?
11. Which case lays down the current test for remoteness?
12. Which case did *The Wagon Mound* overrule?
13. What is meant by the statement '*the test for remoteness*' is objective?
14. What is an objective test? (*The standard of care*)
15. Define the following term *Novus Actus Interviens*?
16. The Defendant '*must take his victim as he finds him*'. What common law rule does this represent?
17. What is meant by a tort of strict liability?

General Defences (Other)

18. Besides the general defence of 'Mistake' in the law of tort name at least four other defences.

Chapter 23 Capacity**Capacity - Parties to Whom Special Rules Apply**

19. Generally any person can sue or be sued but there are exceptions. Name four of these with supporting case law or legislation if appropriate

Vicarious Liability

20. What is meant by vicarious liability?
21. What is the traditional '*test*' in law for the Master and servant relationship?
22. The tortious act of a '*wrongful way of doing what the employee is employed to do*' has been firmly established in case law. Name two of these cases?
23. Case law has established that the employer may be liable even if the employee acts contrary to clear instructions. Name four of these cases.

Chapter 24 Negligence**The Duty of Care**

24. What must a defendant prove in order to succeed in a negligence action? (*The essential elements of the tort of negligence*).
25. The general view taken by the Courts is that a careless person should not have to compensate all the people who suffer as a result of his conduct. What does the Court consider before coming to such a decision?
26. What two questions are asked by the Court in such circumstances?
26. What does '*proximity*' mean in these circumstances and what is the name of the '*test*' which established this?
27. What is the neighbour principle?
28. There are numerous cases in which the '*neighbour principle or test*' has been applied since 1932. Can you name four of these? (*NB. In an examination a student would be expected to know the facts of the cases and apply them in law.*)
29. What is economic loss?

30. Have the Courts been willing to hold that a duty of care exists in such cases?
31. Numerous '*economic loss*' cases have concerned the liability of persons involved in the design, approval and construction of buildings. Name three cases which have reviewed this position? (*Students are advised to make themselves familiar with the facts of case law*).
32. In determining whether a duty of care is owed, are the courts likely to follow *Anns v Merton London Borough Council* or *Murphy v Brentwood District Council*?
33. The approach adopted by the court in *Murphy v Brentwood District Council* (1990) has recently been applied in a case involving Accountants. What is the name of that case?
34. The House of Lords in that case established vitally important criteria for the imposition of duty. What does the three part test consist of?
35. When does nervous shock occur?
36. Is ordinary grief and sorrow regarded by the courts as nervous shock?
37. Why are the courts reluctant to regard a duty as owed to persons who suffer nervous rather than physical injuries?
38. Define *Res Ipsa Loquitur*.
39. What is meant by contributory negligence?

Occupiers' Liability

40. (a) Who in law is regarded as an occupier?
(b) Where would one find the authority of occupiers towards lawful visitors?
41. Name the legislation responsible for replacing the common law rules governing the duty of occupiers of premises to persons other than visitors?

Chapter 25 Strict liability

42. Define strict liability.
43. State the rule of '*strict liability*' in *Rylands v Fletcher* (1868) and as espoused by Blackburn J.
44. What does the rule in *Rylands v Fletcher* (1868) apply to?

Product liability

45. In July 1985 the EC issued a directive on product liability. (a) Which piece of legislation reflects the Directive? (b) What are the functions of the three main parts of the legislation?
46. Name the four things the P must show to succeed in a claim against a manufacturer.
47. What are the three types of product defect?

Chapter 26 Nuisance

Private Nuisance

47. Define a private nuisance?
48. To whom does the rule of '*give and take*' apply?
49. Why is the occupier of the land the only one who can sue?
50. Who can be sued in this regard?
51. What defences are available in private nuisance?
52. What is an '*easement*'?

Public Nuisance

53. Define public nuisance.
54. What remedies are available in public nuisance?

Chapter 27 Trespass and Conversion

Trespass to the Person

55. Define the tort of trespass to the person.
56. Define an assault.
57. Are words capable of being an assault?
58. Define battery.
59. Define False Imprisonment.
60. Give four defences in relation to trespass to the person.
61. Define trespass to land.

62. What type of a tort is trespass to land?
63. State the defences for the tort.
64. What is not a defence to this tort?
65. What remedies are available to the person in possession of the land?
66. What is meant by '*trespass to goods*'?
67. Trespass to goods or land will not be deemed unlawful if it is carried out under what procedure and legislation?
68. Define conversion.
69. State the rights of the Plaintiff.
70. What is the measure of damages for the P?
71. Give two examples of money that will be deducted from a person's award of damages.
72. Give two examples of money that will not be deducted from a person's award of damages.
73. If a person dies as a result of another's negligence does the death put an end to any possible actions in negligence?

Chapter 28 Defamation

74. Distinguish between (a) libel and (b) slander.
75. Lord Atkin in *Sim v Stretch* (1936) laid down a guide for '*defamatory*'. What did he say?
76. If the P is to succeed in a defamation action he/she must show three things. What are these?
77. What defences are available in the tort?
78. How may a D mitigate his payment of damages?

Chapter 29 Remedies and Limitation Periods

Remedies

79. What are the two principal remedies that a court can order for a tortious wrong?
80. How are compensatory damages calculated?

81. Give two examples of the types of things that can be compensated by pecuniary damages following personal injury caused by negligence?
82. If damages are '*exemplary*' what are they compensating?
83. What other remedies may be appropriate for particular torts?
84. What legislation governs the time limits for action in tort?
85. When must an action for (a) damages in respect of personal injury be brought before it is statute barred (b) Libel and slander? Name the relevant legislation.