

**LawExpress**

**'... definitely the best revision guides on the market.'**

Nayiri Keshishi, law student

**BEST  
SELLING  
REVISION  
SERIES**

- > **UNDERSTAND QUICKLY**
- > **REVISE EFFECTIVELY**
- > **TAKE EXAMS WITH CONFIDENCE**

6th edition

# **TORT LAW**

**EMILY FINCH AND STEFAN FAFINSKI**

**LawExpress**  
**TORT LAW**

# Tried and tested

**Law Express** has been helping UK law students to revise since 2009 and its power is proven. A recent survey\* shows that:

- **94%** think that Law Express helps them to revise effectively and take exams with confidence.
- **88%** agree Law Express helps them to understand key concepts quickly.

Individual students attest to how the series has supported their revision:

**'Law Express are my go-to guides. They are an excellent supplement to my course material.'**

Claire Turner, Open University

**'In the modules in which I used these books to revise, generally the modules I found the most difficult, I got the highest marks. The books are really easy to use and are extremely helpful.'**

Charlotte Evans, Queen Mary University of London

**'The information is straight to the point. This is important, particularly for exams.'**

Dewan Sadia Kuraishy, University of Manchester

**'These revision guides strike the right balance between enough detail to help shape a really good answer, but brief enough to be used for last-minute revision. The layout is user friendly and the use of tables and flowcharts is helpful.'**

Shannon Reynolds, University of Manchester

**'I personally found the series very helpful in my preparation for exams.'**

Abba Elguja, University of Salford

\*A survey of 16 UK law students in September 2014.

# TORT LAW

6th edition

**Emily Finch**

**Stefan Fafinski**

**PEARSON**

Harlow, England • London • New York • Boston • San Francisco • Toronto • Sydney • Auckland • Singapore • Hong Kong  
Tokyo • Seoul • Taipei • New Delhi • Cape Town • São Paulo • Mexico City • Madrid • Amsterdam • Munich • Paris • Milan

**Pearson Education Limited**

Edinburgh Gate  
Harlow CM20 2JE  
United Kingdom  
Tel: +44 (0)1279 623623  
Web: [www.pearson.com/uk](http://www.pearson.com/uk)

First published 2007 (print)  
Second edition 2009 (print)  
Third edition 2011 (print)  
Fourth edition 2013 (print and electronic)  
Fifth edition published 2015 (print and electronic)  
**Sixth edition published 2017** (print and electronic)

© Pearson Education Limited 2007, 2009, 2011 (print)  
© Pearson Education Limited 2013, 2015, 2017 (print and electronic)

The rights of Emily Finch and Stefan Fafinski to be identified as authors of this work have been asserted by them in accordance with the Copyright, Designs and Patents Act 1988.

The print publication is protected by copyright. Prior to any prohibited reproduction, storage in a retrieval system, distribution or transmission in any form or by any means, electronic, mechanical, recording or otherwise, permission should be obtained from the publisher or, where applicable, a licence permitting restricted copying in the United Kingdom should be obtained from the Copyright Licensing Agency Ltd, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN.

The ePublication is protected by copyright and must not be copied, reproduced, transferred, distributed, leased, licensed or publicly performed or used in any way except as specifically permitted in writing by the publisher, as allowed under the terms and conditions under which it was purchased, or as strictly permitted by applicable copyright law. Any unauthorised distribution or use of this text may be a direct infringement of the authors' and the publisher's rights and those responsible may be liable in law accordingly.

Contains public information licensed under the Open Government Licence (OGL) v3.0.  
[www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/)

Pearson Education is not responsible for the content of third-party internet sites.

ISBN: 978-1-292-08688-0 (print)  
978-1-292-08720-7 (PDF)  
978-1-292-08719-1 (ePub)

**British Library Cataloguing-in-Publication Data**

A catalogue record for the print edition is available from the British Library

10 9 8 7 6 5 4 3 2 1  
20 19 18 17 16

Front cover bestseller data from Nielsen BookScan (2009–2014, Law Revision Series).  
Back cover poll data from a survey of 16 UK law students in September 2014.

Print edition typeset in 10/12pt Helvetica Neue LT Std by SPi Global  
Print edition printed and bound in Malaysia

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

# Contents

Acknowledgements	vii
Introduction	viii
Guided tour	x
Table of cases and statutes	xii
Chapter 1 Negligence: The duty of care	1
Chapter 2 Negligence: Breach of duty	29
Chapter 3 Negligence: Causation and remoteness of damage	49
Chapter 4 Vicarious liability	69
Chapter 5 Employers' liability and breach of statutory duty	87
Chapter 6 Occupiers' liability	105
Chapter 7 Nuisance	123
Chapter 8 <i>Rylands v Fletcher</i>	143
Chapter 9 Trespass to land	157
Chapter 10 Trespass to the person	169
Chapter 11 Liability for defective products	187
Chapter 12 Defamation and privacy	199
Chapter 13 Defences	221
Chapter 14 Remedies	239
And finally, before the exam . . .	253
Glossary of terms	267
Index	270



## **What do you think of LawExpress?**

We're really keen to hear your opinions about the series and how well it supports your studies. Your views will help inform the future development of Law Express and ensure it is best suited to the revision needs of law students.

Please log on to the website and leave us your feedback. It will only take a few minutes and your thoughts are invaluable to us.

**[www.pearsoned.co.uk/lawexpressfeedback](http://www.pearsoned.co.uk/lawexpressfeedback)**

# Acknowledgements

## **This book is dedicated to STG.**

We are, as ever, grateful to all who have offered feedback on the last edition of *Law Express: Tort Law*, particularly the anonymous academic reviewers who provided some suggestions for improvement. We have been pleased to incorporate these as best we could. We'd really like to hear what you think of the book, which you can do by visiting [www.finchandfafinski.com](http://www.finchandfafinski.com), Twitter at @FinchFafinski or via email to [hello@finchandfafinski.com](mailto:hello@finchandfafinski.com).

Emily Finch and Stefan Fafinski

## **Publisher's acknowledgements**

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups, which helped to shape the series format.



# Introduction

Tort is one of the core subjects required for a qualifying law degree so it is a compulsory component of most undergraduate law programmes. It is usually taught as a first or second-year subject as many of its concepts are relatively straightforward and it bears a certain resemblance to criminal law since it involves a similar two-stage process: the imposition of liability and the availability (or not) of a defence. Aspects of tort will appear in other subjects studied on the law degree: there are elements of negligence in employment law and environmental law whilst harassment is a prominent topic within family law. As such, it is important to have a strong grasp of tort both as a subject in its own right and because of the role it plays in many other law subjects.

Tort covers a wide range of issues that are pertinent to various aspects of everyday life such as the working environment, neighbour disputes and injuries sustained on another's premises. Negligence is a vast topic within tort that covers the many ways in which people inadvertently cause harm to each other. Due to the familiarity of many of the factual situations that arise in tort, students frequently feel quite comfortable with the subject. This can be a problem, however, if the situation gives rise to an outcome that seems unreasonable or unfair. It is important to remember to put aside instinctive evaluations of the situation and focus on the methodical application of the principles of law derived from case law and statute.

This revision guide will help you to identify the relevant law and apply it to factual situations which should help to overcome preconceived notions of the 'right' outcome in favour of legally accurate assessments of the liability of the parties. The book also provides guidance on the policy underlying the law and it identifies problem areas, both of which will help you to prepare for essay questions. The book is intended to supplement your course materials, lectures and textbooks; it is a guide to revision rather than a substitute for the amount of reading (and thinking) that you need to do in order to succeed. Tort is a vast subject – you should realise this from looking at the size of your recommended textbook – so it follows that a revision guide cannot cover all the depth and detail that you need to know and it does not set out to do so. Instead, it aims to provide a concise overall picture of the key areas for revision – reminding you of the headline points to enable you to focus your revision, and identify the key principles of law and the way to use these effectively in essays and problem questions.

 REVISION NOTE

Things to bear in mind when revising tort law:

- Do use this book to guide you through the revision process.
- Do not use this book to tell you everything that you need to know about tort but make frequent reference to your recommended textbook and notes that you have made yourself from lectures and private study.
- Make sure that you consult your syllabus frequently to check which topics are covered and in how much detail.
- Read around the subject as much as possible to ensure that you have sufficient depth of knowledge. Use the suggested reading in this book and on your lecture handouts to help you to select relevant material.
- Take every possible opportunity to practise your essay-writing and problem-solving technique; get as much feedback as you can.
- You should aim to revise as much of the syllabus as possible. Be aware that many questions in tort that you encounter in coursework and examination papers will combine different topics, e.g. nuisance and trespass to land or employers' liability and trespass to the person. Equally, defences and/or remedies could combine with any of the torts. Therefore, selective revision could leave you unable to answer questions that include reference to material that you have excluded from your revision; it is never a good idea to tackle a question if you are only able to deal with part of the law that is raised.

**Before you begin, you can use the [study plan](#) available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.**

# Guided tour

How to use features in the book  and on the companion website 

## Understand quickly



**Topic maps** – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your revision notes.



**Key definitions** – Make sure you understand essential legal terms.



**Key cases and key statutes** – Identify and review the important elements of essential cases and statutes you will need to know for your exams.



**Read to impress** – These carefully selected sources will extend your knowledge, deepen your understanding, and earn better marks in coursework and exams.



**Glossary** – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms.



**Test your knowledge** – How well do you know each topic? Test yourself with quizzes tailored specifically to each chapter.



**Podcasts** – Listen as your own personal Law Express tutor guides you through a step-by-step explanation of how to approach a typical but challenging question.

## Revise effectively



**Revision checklists** – Identify essential points you should know for your exams. The chapters will help you revise each point to ensure you are fully prepared. Print the checklists from the companion website to track your progress.



**Revision notes** – These boxes highlight related points and areas where your course might adopt a particular approach that you should check with your course tutor.



**Study plan** – Assess how well you know a subject prior to your revision and determine which areas need the most attention. Take the full assessment or focus on targeted study units.



**Flashcards** – Test and improve recall of important legal terms, key cases and statutes. Available in both electronic and printable formats.

## Take exams with confidence



**Sample questions with answer guidelines** – Practice makes perfect! Consider how you would answer the question at the start of each chapter then refer to answer guidance at the end of the chapter. Try out additional sample questions online.



**Assessment advice** – Use this feature to identify how a subject may be examined and how to apply your knowledge effectively.



**Make your answer stand out** – Impress your examiners with these sources of further thinking and debate.



**Exam tips** – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.



**Don't be tempted to** – Spot common pitfalls and avoid losing marks.



**You be the marker** – Evaluate sample exam answers and understand how and why an examiner awards marks.

# Table of cases and statutes

## Cases

- A v B plc [2003] QB 195 (CA) **217, 262**
- A v UK [1998] 2 FLR 959 (ECtHR) **177**
- A and Others v National Blood Authority and Others [2001] 3 All ER 289 (QBD) **196**
- AG Securities v Vaughan [1990] 1 AC 417 (HL) **163**
- Adams v Rhymney Valley DC (2001) 33 HLR 41 (CA) **35**
- Alcock v Chief Constable of South Yorkshire [1992] 1 AC 310 (HL) **19–21, 28, 255**
- American Cyanamid v Ethicon [1975] AC 396 (HL) **249, 263**
- Andrews v Hopkinson [1957] 1 QB 229 (QBD) **192**
- Anns v Merton London Borough Council [1978] AC 728 (HL) **1, 17, 18, 255**
- Ashley v Chief Constable of Sussex Police [2008] 1 AC 962 (HL) **177**
- Associated Newspapers Ltd v Burnstein [2007] 4 All ER 319 (CA) **210**
- Attia v British Gas plc [1988] QB 304 (CA) **21**
- Attorney-General v Guardian [1987] 1 WLR 1248 (HL) **215**
- Attorney-General v Guardian (No. 2) [1990] 1 AC 109 (HL) **215**
- Attorney-General v PYA Quarries Ltd [1957] 2 QB 169 (CA) **132–4, 260, 268**
- Badger v Ministry of Defence [2006] 3 All ER 173 (QB) **231**
- Baker v TE Hopkins & Son Ltd [1959] 1 WLR 966 (CA) **233**
- Baker v Willoughby [1970] AC 467 (HL) **61, 257**
- Barker v Corus UK Ltd [2006] 2 AC 572 (HL) **56**
- Barkey v South Wales Transport [1950] AC 185 (HL) **44**
- Barnett v Chelsea and Kensington Hospital Management Committee [1969] 1 QB 428 (QBD) **53, 257**
- Barrett v Enfield London Borough Council [2001] 2 AC 550 (HL) **24**
- Beard v London Omnibus Co [1990] 2 QB 530 (CA) **78, 258**
- Berkoff v Burchill [1996] 4 All ER 1008 (CA) **205, 218**
- Bernstein v Skyviews and General Ltd [1978] QB 479 (DC) **163, 261**
- Bhamra v Dubb [2010] EWCA Civ 13 **7**
- Bird v Jones (1845) 7 QB 742 **179, 261**
- Blyth v Birmingham Waterworks (1856) 11 Exch 781 **32, 46, 256**
- Bolam v Friern Hospital Management Committee [1957] 1 WLR 582 (QBD) **34–6, 256**
- Bolitho v City and Hackney Health Authority [1998] AC 232 (HL) **35, 256**
- Bolton v Stone [1951] AC 850 (HL) **40, 256**
- Bonnard v Perryman [1891] 2 Ch 269 (CA) **212**
- Bonnington Castings Ltd v Wardlaw [1956] AC 613 (HL) **54, 55, 99, 100, 257**
- Bourhill v Young; Hay v Young [1943] AC 92 (HL) **19**
- Brice v Brown [1984] 1 All ER 997 (QBD) **66**
- Brown v NCB [1962] AC 574 (HL) **98**
- Buckley v Dalziel [2007] 1 WLR 2933 (QB) **207**
- Bunt v Tilley [2007] 1 WLR 1243 (QB) **210**
- Burnie Port Authority v General Jones Pty (1994) 68 ALJ 331 (Australian HC) **152**
- Burton v Islington Health Authority [1993] QB 204 (CA) **23**
- Bux v Slough Metals [1973] 1 WLR 1358 (CA) **93, 101**
- Byrne v Deane [1937] 1 KB 818 (CA) **204, 262**

- Cairns v Modi [2012] EWHC 756 (QB) **206**
- Calgarth, The* [1927] P 93 (CA) **110**
- Cambridge Water Co v Eastern Counties Leather plc [1994] 2 AC 264 (HL) **149, 150, 152–4, 261, 264**
- Campbell v Mirror Group Newspapers [2004] UKHL 22; [2004] 2 AC 457 **215, 262**
- Candler v Crane Christmas & Co [1951] 2 KB 164 (CA) **12**
- Caparo Industries plc v Dickman [1990] 2 AC 605 (HL) **6–8, 14, 15, 27, 254, 255**
- Capital and Counties plc v Hampshire County Council [1997] QB 1004 (CA) **23**
- Capps v Miller [1989] 1 WLR 839 (CA) **234**
- Carmarthenshire County Council v Lewis [1955] AC 549 (HL) **10**
- Carslogie Steamship Co Ltd v Royal Norwegian Government [1952] AC 292 (HL) **63, 257**
- Cassidy v Daily Mirror Group Newspapers Ltd [1929] 2 KB 331 (CA) **205**
- Cassidy v Ministry of Health [1951] 2 KB 343 (CA) **44**
- Castle v St Augustine's Links (1922) 38 TLR 615 (DC) **134**
- Caswell v Powell Duffryn Associated Collieries Ltd [1940] AC 152 (HL) **100, 102**
- Century Insurance v NI Road Transport Board [1942] AC 509 (HL) **78, 79, 258**
- Chadwick v British Railways Board [1967] 1 WLR 912 (QBD) **19**
- Chaudry v Prabhakar [1989] 1 WLR 29 (CA) **14**
- Chester v Afshar [2004] UKHL 41 **57**
- Christie v Davey [1893] 1 Ch 316 (Chancery Div) **131**
- Cole v Turner (1704) 6 Mod Rep 149 **174**
- Collins v Wilcock [1984] 1 WLR 1172 (DC) **174, 267**
- Connor v Surrey County Council [2010] EWCA Civ 286 **23**
- Conway v George Wimpey & Co [1951] 2 KB 266 (CA) **161**
- Cook v Square D Ltd [1992] ICR 262 (CA) **91**
- Cork v Kirby MacLean Ltd [1952] 2 All ER 402 (CA) **52, 257**
- Cornish v Midland Bank plc [1985] 3 All ER 513 (CA) **14**
- Corr v IBC Vehicles [2008] 2 WLR 499 (HL) **62**
- Coventry v Lawrence [2014] UKSC 13 **128**
- Cramaso LLP v Ogilvie-Grant [2014] UKSC 9 **15**
- Crowhurst v Amersham Burial Board (1878–9) LR 4 Ex D 5 (DC) **149**
- Cruddas v Adams [2013] EWHC 145 (QB) **206**
- Cummings v Granger [1977] QB 397 (CA) **227**
- Customs and Excise Commissioners v Barclays Bank plc [2006] UKHL 28; [2006] 3 WLR 1 (HL) **15, 18**
- Cutler v Wandsworth Stadium Ltd [1949] AC 398 (HL) **96, 102**
- D v Bury Metropolitan Borough Council [2006] 1 WLR 917 (CA) **24**
- D & F Estates Ltd v Church Commissioners for England [1989] AC 177 (HL) **18**
- Daborn v Bath Tramways Motor Co Ltd [1946] 2 All ER 333 (CA) **42**
- Donoghue v Stevenson [1932] AC 562 (HL) **5–7, 27, 31, 191, 192, 197, 254, 262**
- Donovan v The Face (1992) (unreported) **205**
- Dooley v Cammell Laird and Co Ltd [1951] 1 Lloyd's Rep 271 (Liverpool Assizes) **21**
- Douglas v Hello! [2001] QB 267 (CA) **215**
- Dulieu v White [1901] 2 KB 669 (KBD) **184**
- Easson v LNER [1944] 2 KB 421 (CA) **44**
- Ellis v Environment Agency [2008] EWCA Civ 1117 **57**
- Evans v Triplex Safety Glass Co Ltd [1936] 1 All ER 283 (KBD) **193**
- F v West Berkshire HA [1990] 2 AC 1 (HL) **174, 178**
- Fairchild v Glenhaven Funeral Services Ltd [2003] 1 AC 32 (HL) **55–7**
- Fardon v Harcourt-Rivington [1932] All ER Rep 81 (HL) **42**
- Fosbrooke-Hobbes v Airwork Ltd [1937] 1 All ER 108 (DC) **109**
- From v Butcher [1976] QB 286 (CA) **233, 234, 236, 263**
- General Cleaning Contractors v Christmas [1953] AC 180 (HL) **91**
- George v Eagle Air Services [2009] 1 WLR 2133 (PC) **44**
- Gillick v West Norfolk and Wisbech AHA [1986] AC 112 (HL) **226**
- Glasgow Corporation v Taylor [1922] 1 AC 44 (HL) **113, 259**
- Gorely v Codd [1967] 1 WLR 19 (Lincoln Assizes) **38**
- Gorris v Scott (1874) LR 9 Exch 125 **99, 102, 259**
- Gough v Thorne [1966] 1 WLR 1387 (CA) **232, 237, 263**

## TABLE OF CASES AND STATUTES

- Google Inc v Vidal-Hall [2015] EWCA Civ 311 **216**
- Grant v Australian Knitting Mills [1936] AC 85 (PC) **192**
- Gravil v Carroll [2008] ICR 1222 (CA) **80**
- Gray v Thames Trains Ltd [2009] 1 AC 1339 (HL) **228**
- Green v Associated Newspapers [2005] QB 972 (CA) **212**
- Gregg v Scott [2005] UKHL 2; [2005] 2 AC 176 (HL) **58, 59, 257**
- Griffiths v Arch Engineering Co (Newport) Ltd [1968] 3 All ER 217 (Newport Assizes) **192, 262**
- Groves v Lord Wimborne [1898] 2 QB 402 (CA) **96**
- Haley v London Electricity Board [1965] AC 778 (HL) **40**
- Hall v Brooklands Auto-Racing Club [1933] 1 KB 205 (CA) **34**
- Harris v Birkenhead Corporation [1976] 1 WLR 279 (CA) **109**
- Harris v Perry [2009] 1 WLR 19 (CA) **42**
- Harrison v Vincent [1982] RTR 8 (CA) **39**
- Hartley v Mayoh & Co [1954] 1 QB 383 (CA) **97, 102, 259**
- Harvey v Plymouth City Council [2010] EWCA Civ 860; [2010] PIQR P18 **110**
- Haseldine v Daw (CA) & Son Ltd [1941] 2 KB 343 (CA) **116, 192**
- Hedley Byrne & Co Ltd v Heller and Partners Ltd [1964] AC 465 (HL) **2, 12–15, 255**
- Henderson v Merrett Syndicates [1995] 2 AC 145 (HL) **15**
- Hill v Chief Constable of West Yorkshire [1989] AC 53 (HL) **23, 26**
- Hillier v Air Ministry (1962) *The Times*, 8 December **149**
- Hollywood Silver Fox Farm Ltd v Emmett [1936] 2 KB 468 (DC) **131, 260**
- Home Office v Dorset Yacht Co Ltd [1970] AC 1004 (HL) **10**
- Hotson v East Berkshire Area Health Authority [1987] AC 750 (HL) **57, 58, 257**
- Hounga v Allen [2014] UKSC 47 **228**
- Hudson v Ridge Manufacturing Co. [1957] 2 QB 348 (Manchester Winter Assizes) **10**
- Hunter v British Coal [1999] QB 140 (CA) **21**
- Hunter v Canary Wharf [1997] AC 655; [1997] 2 All ER 426 (HL) **128, 131–3, 260, 265**
- ICI Ltd v Shatwell [1965] AC 656 (HL) **100**
- Iqbal v London Transport Executive (1973) 16 KIR 329; (1973) *The Times*, 7 June (CA) **79**
- Jackson v Murray [2015] UKSC 5 **234**
- Jameel (Mohammed) v Wall Street Journal Europe Sprl (No 3) [2007] 1 AC 359 (HL) **209**
- Jetivia SA v Bilta (UK) Ltd [2015] UKSC 23 **228**
- Jobling v Associated Daries Ltd [1982] AC 794 (HL) **61, 257**
- Joel v Morison (1834) 172 ER 1338 **77, 268**
- John Summers & Sons Ltd v Frost [1955] AC 740 (HL) **98, 102, 159**
- John v Mirror Group Newspapers [1997] QB 586 (CA) **212**
- Johnson v Steele [2014] EWHC B24 (QB) **206, 244**
- Jones v Boyce (1816) 1 Stark 492 (CCP) **233**
- Jones v Festiniog Railway (1867–8) LR 3 QB 733 (DC) **149**
- Jones v Livox Quarries [1952] 2 QB 608 (CA) **230, 263**
- Jones v Manchester Corporation [1952] 2 QB 852 (CA) **83**
- Junior Books Ltd v Veitchi Co Ltd [1983] 1 AC 520 (HL) **1, 17, 18, 255**
- Kennaway v Thompson [1981] QB 88 (CA) **138**
- Kent v Griffiths, Roberts and London Ambulance Service [1999] PIQR P192 (CA) **23**
- Keown v Coventry Healthcare NHS Trust [2006] 1 WLR 953 (CA) **118, 119, 260**
- Khorasandjian v Bush [1993] QB 727 (CA) **127**
- King v Liverpool City Council [1986] 1 WLR 890 (CA) **10**
- Knightley v Johns [1982] 1 WLR 349 (CA) **60**
- Knowles v Liverpool County Council [1993] 1 WLR 1428 (HL) **92, 101, 259**
- Knuppfer v London Express Newspapers [1944] AC 116 (HL) **206**
- Kralj v McGrath [1986] 1 All ER 54 (QBD) **19**
- Kubach v Hollands [1937] 3 All ER 907 (KBD) **193**
- Lagden v O'Connor [2004] 1 AC 1067 (HL) **66, 258**
- Lamb v Camden London Borough Council [1981] QB 625 (CA) **60**
- Latimer v AEC Ltd [1953] AC 643 (HL) **41, 91, 101, 256, 258**

- Leach v Chief Constable of Gloucestershire Constabulary [1999] 1 WLR 1421 (CA) **19**
- Letang v Cooper [1965] 1 QB 232 (CA) **172, 173, 261**
- Liesbosch Dredger (Owners) v SS Edison (Owners)* [1933] AC 449 (HL) **66**
- Lister and others v Helsey Hall Ltd [2002] 1 AC 215 (HL) **80, 258**
- Lister v Romford Ice & Cold Storage Co Ltd [1957] AC 555 (HL) **83**
- Livingstone v MoD [1984] NI 356 (Northern Ireland CA) **173**
- Lloyd v Grace Smith & Co [1912] AC 716 (HL) **81**
- LMS International v Styrene Packaging and Insulation Ltd [2005] EWHC 2065 (QBD Technology & Construction Court) **147**
- London County Council v Cattermoles (Garages) Ltd [1953] 1 WLR 997 (CA) **79**
- London Graving Dock v Horton [1951] AC 737 (HL) **109**
- Lonrho Ltd v Shell Petroleum Co Ltd (No 2) [1982] AC 173 (HL) **95, 259**
- Lowe v Associated Newspapers Ltd [2007] QB 580 (DC) **210**
- Lowery v Walker [1911] AC 10 (HL) **111, 259**
- Luxmoore-May v Messenger May Baverstock [1990] 1 WLR 1009 (CA) **35**
- McAlpine of West Green (Lord) v Bercow [2013] EWHC 1342 (QB) **205, 206**
- McFarlane v EE Caledonia Ltd [1994] 2 All ER 1 (CA) **21**
- McGhee v National Coal Board [1973] 1 WLR 1 (HL) **55, 257**
- McKew v Holland & Hannen & Cubitts (Scotland) Ltd [1969] 3 All ER 1621 (HL) **61, 257**
- McLoughlin v O'Brian [1983] 1 AC 410 (HL) **22, 255**
- McWilliams v Sir William Arrol & Co Ltd [1962] 1 WLR 295 (HL) **92**
- Maga v The Trustees of the Birmingham Archdiocese of the Roman Catholic Church [2010] EWCA Civ 256 **81**
- Maguire v Sefton Metropolitan Borough Council [2006] 1 WLR 2550 (CA) **115**
- Majrowski v Guy's and St Thomas's NHS Trust [2007] 1 AC 224 (HL) **80**
- Malone v Laskey [1907] 2 KB 141 (CA) **127, 128**
- Marsdon v Bourne Leisure [2009] EWCA Civ 671 **113**
- Mattocks v Mann [1993] RTR 13 (CA) **66**
- Michael v Chief Constable of South Wales Police [2015] UKSC 2 **26**
- Miles v Forest Rock Granite Co (Leicestershire) Ltd (1918) 34 TLR 500 (CA) **147**
- Miller v Jackson [1977] QB 966 (CA) **40, 126, 268**
- Mitchell v Glasgow City Council [2009] UKHL 11; [2009] 1 AC 874 **11, 254**
- Mohamud v WM Morrison Supermarkets plc [2014] EWCA Civ 116 **81**
- Montgomery v Lanarkshire Health Board [2015] UKSC 11 **36, 57**
- Morales v Eccleston [1991] RTR 151 (CA) **232**
- Morgan v Odhams Press [1971] 1 WLR 1239 (HL) **206**
- Morris v Murray [1991] 2 QB 6 (CA) **225, 262**
- Morris v United Kingdom [2011] ECHR 774; (2011) 53 EHRR 30 (ECtHR) **217**
- Mullaney v Chief Constable of West Midlands Police [2001] EWCA Civ 700 **93**
- Mullin v Richards [1998] 1 WLR 1304 (CA) **37, 256**
- Murphy v Brentwood District Council [1991] 1 AC 398 (HL) **1, 18, 255**
- Murphy v Culhane [1977] QB 74 (CA) **228**
- Murray v Ministry of Defence [1988] 1 WLR 692 (Northern Ireland HL) **180, 261**
- Musgrove v Pandelis [1919] 2 KB 43 (CA) **147**
- Nettleship v Weston [1971] 2 QB 691 (CA) **37, 256**
- Newstead v London Express Newspaper Ltd [1940] 1 KB 377 (CA) **206, 262**
- Ng Chun Pui v Lee Cheun Tat [1988] RTR 298 (PC) **45**
- Nicholls v Ladbrokes Betting & Gaming [2013] EWCA Civ 1963 **93**
- OLL Ltd v Secretary of State for Transport [1997] 3 All ER 897 (QBD) **23**
- Osman v UK (2000) 29 EHRR 245 (ECtHR) **24**
- Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (*The Wagon Mound*) (No 1) [1961] AC 388; [1961] 1 All ER 404 (PC) **64, 65, 67, 136, 150, 258**
- Page v Smith [1995] AC 155 (HL) **20, 21, 255**
- Palmer v Cornwall County Council [2009] EWCA Civ 456; [2009] ELR 314 **42**



## TABLE OF CASES AND STATUTES

- Pape v Cumbria County Council [1992] ICR 132 (QBD) **93**
- Paris v Steyne Borough Council [1951] AC 367 (HL) **41, 256**
- Parmiter v Coupland (1840) 6 M & W 105 **204, 267**
- Performance Cars Ltd v Abraham [1962] 1 QB 33 (CA) **58, 257**
- Perl (Exporters) Limited v Camden LBC [1983] QB 342 (CA) **10**
- Perry v Sidney Phillips & Son [1982] 1 WLR 1297 (CA) **66**
- Phipps v Rochester Corporation [1955] 1 QB 450 (DC) **112, 259**
- Polemis and Furness, Withy & Co, *Re* [1921] 3 KB 560 (CA) **63–5, 67, 258**
- Pursell v Horn (1838) 112 ER 966 **173**
- R v Ireland [1998] AC 147 (HL) **175, 261**
- R v Johnson [1997] 1 WLR 367 (CA) **134**
- R v Lowrie [2005] 1 Cr App R (S) 95 (CA) **134**
- R v Meade and Belt (1823) 1 Lew CC 184 **175**
- R v Ong [2001] 1 Cr App R (S) 117 (CA) **134**
- R v Rimmington [2006] 1 AC 459 (HL) **134, 135, 260**
- R v Ruffell (1991) 13 Cr App R (S) 204 (CA) **134**
- R v St George (1840) 9 C & P 483 **176**
- RHM Bakeries v Strathclyde Regional Council (1985) SLT 214 (HL) **152**
- Rahman v Arearose Ltd [2001] QB 351 (CA) **93**
- Rantzen v Mirror Group Newspapers [1994] QB 670 (CA) **211**
- Read v J Lyons & Co Ltd [1947] AC 156 (HL) **147**
- Ready Mixed Concrete Ltd v Minister of Pensions [1968] 2 QB 497 (DC) **74, 76, 258**
- Redland Bricks Ltd v Morris [1970] AC 652 (HL) **247, 251, 252, 263**
- Revill v Newbery [1996] QB 567 (CA) **177, 228, 229, 262**
- Reynolds v Strutt and Parker [2011] EWHC 2263 (QB) **234**
- Reynolds v Times Newspapers [2001] 2 AC 127 (HL) **200, 208–10**
- Rhodes v OPO [2015] UKSC 32 **182**
- Rickards v Lothian [1913] AC 263 (PC) **147, 152**
- Robb v Salamis (M & I) Ltd [2007] 2 All ER 97 (HL) **98**
- Robert Addie & Sons (Collieries) Ltd v Dumbreck [1929] AC 358 (HL) **117, 269**
- Robinson v Kilvert (1889) 41 Ch D 88 (CA) **129, 260**
- Robinson v Chief Constable of West Yorkshire Police [2014] EWCA Civ 15 **7**
- Rookes v Barnard [1964] AC 1129 (HL) **245, 263**
- Rothwell v Chemical & Insulating Co Ltd: *Re* Pleural Plaques [2007] 3 WLR 876 (HL) **21, 53**
- Rylands v Fletcher (1868) LR 3 HL 330 (HL) **141, 143–55, 261, 264, 265**
- Sarjantson v Chief Constable of Humberside Police [2013] EWCA Civ 1252 **26**
- Scott v London & St Katherine Docks Co (1865) 3 H & C 596 **43, 44, 256**
- Scott v Shepherd (1773) 96 ER 525 **173**
- Seby v Companies House [2015] EWHC 115 (QB) **15**
- Sidaway v Bethlem Royal & Maudsley Hospital Governors [1985] 1 AC 871 (HL) **37**
- Sienkiewicz v Greif [2011] UKSC 10; [2011] 2 AC 229 **56, 68**
- Silkin v Beaverbrook Newspapers [1958] 1 WLR 743 (DC) **210**
- Sim v Stretch [1936] 2 All ER 1237 (HL) **204**
- Smith v Charles Baker & Sons [1891] AC 325 (HL) **226**
- Smith v Chief Constable of Sussex Police, *see* Van Colle v Chief Constable of Hertfordshire Police; Smith v Chief Constable of Sussex Police—
- Smith v Finch [2009] EWHC 53 (QB) **234**
- Smith v Leech Brain & Co Ltd [1962] 2 QB 405 (CA) **65, 258**
- Smith v Littlewoods; Maloco v Littlewoods Organisation Ltd [1987] AC 241 (HL) **9, 11, 254**
- Smoldon v Whitworth and Nolan [1997] PIQR 133 (CA) **39, 226**
- Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd [1973] 1 QB 27 (CA) **16, 255**
- Speed v Thomas Swift & Co Ltd [1943] 1 KB 557 (CA) **92, 101, 259**
- Spring v Guardian Assurance plc [1995] 2 AC 296 (HL) **15**
- St George v Home Office [2009] 1 WLR 1670 (CA) **231**
- St Helen's Smelting Co v Tippings (1865) 11 HL Cas 642 (HL) **129**
- Stansbie v Troman [1948] 2 KB 48 (CA) **10, 11**
- Staples v West Dorset District Council (1995) 93 LGR 536 (CA) **115**
- Stapley v Gypsum Mines Ltd [1953] AC 663 (HL) **233**
- Stennett v Hancock and Peters [1939] 2 All ER 578 (KBD) **192**
- Stephens v Avery [1988] Ch 449 (DC) **215**

- Stevenson, Jordan and Harrison Ltd v Macdonald and Evans (1952) 1 TLR 101 (CA) **74, 268**
- Stone v Smith (1647) Style 65 **161**
- Storey v Ashton (1869) LR 4 QB 476 (DC) **77**
- Stovin v Wise [1996] AC 923 (HL) **9**
- Sturges v Bridgman (1879) LR 11 Ch D 852 (CA) **129, 136, 137, 260**
- Sutcliffe v Pressdram [1991] 1 QB 153 (CA) **211**
- Sutherland Shire Council v Heyman (1985) 60 ALR 1 (High Court of Australia) **7**
- Sutradhar v National Environment Research Council [2006] 4 All ER 490 (HL) **8**
- Tamiz v Google Inc [2013] EWCA Civ 68 **210**
- Taylor v A Novo (UK) Ltd [2013] EWCA Civ 194 **21, 22**
- Taylor v Rover Car Co Ltd [1966] 1 WLR 1491 (Birmingham Assizes) **193**
- Thomas v National Union of Mineworkers [1986] Ch 20 (DC) **176**
- Thompson v Metropolitan Police Commissioner [1998] QB 498 (CA) **244, 263**
- Titchener v BRB [1983] 1 WLR 1427 (HL) **113**
- Tolley v Fry & Sons Ltd [1931] AC 333 (HL) **205**
- Tomlinson v Congleton County Borough Council [2004] 1 AC 46 (HL) **119**
- Transco plc v Stockport MBC [2004] 2 AC 1 (HL) **148, 261**
- Vacwell Engineering Co Ltd v BDH Chemicals Ltd [1971] 1 QB 111 (CA) **192**
- Van Colle v Chief Constable of Hertfordshire Police; Smith v Chief Constable of Sussex Police [2009] 1 AC 225 (HL) **24–26, 255**
- Vellino v Chief Constable of Greater Manchester Police [2002] 1 WLR 218 (CA) **227**
- Vernon v Bosley (No. 1) [1997] RTR 1 (CA) **19**
- Viasystems Ltd v Thermal Transfer Ltd [2006] QB 510 (CA) **75, 76**
- W v Egdell [1990] Ch 359 (CA) **215**
- Wainwright v Home Office [2004] 2 AC 406 (HL) **181**
- Wainwright v United Kingdom (Application No. 12350/04); (2006) 44 EHRR 809, ECtHR **181**
- Walker v Commissioner of the Police of the Metropolis [2014] EWCA Civ 897 **179**
- Walker v Northumberland County Council [1995] 1 All ER 737 (DC) **93**
- Walton v North Cornwall District Council [1997] 1 WLR 570 (CA) **14**
- Ward v Tesco Stores Ltd [1976] 1 WLR 810 (CA) **44**
- Watson v Croft Promo-Sport Ltd [2009] 3 All ER 249 (CA) **138**
- Watt v Hertfordshire County Council [1954] 1 WLR 835 (CA) **42**
- Wells v Cooper [1958] 2 QB 265 (CA) **37**
- West v Bristol Tramways Co [1908] 2 KB 14 (CA) **149**
- Wheat v E Lacon & Co Ltd [1966] AC 522 (HL) **109, 268**
- Wheeler v Copas [1981] 3 All ER 405 (DC) **109**
- Wheeler v JJ Saunders Ltd [1996] Ch 19 (CA) **137**
- Wheeler v New Merton Board Mills Ltd [1933] 2 KB 669 (CA) **100, 102**
- White and Others v Chief Constable of the South Yorkshire Police [1999] 2 AC 455 (HL) **21**
- White v Jones [1995] 2 AC 207 (HL) **15**
- Wigg v British Railways Board (1986) 136 NLJ 446 (QBD) **21**
- Wilkinson v Downton [1897] 2 QB 57 (DC) **170, 172, 180–5, 261**
- Wilsher v Essex Area Health Authority [1988] 1 AC 1074 (HL); *affirming* [1987] QB 730 (CA) **37, 54, 55, 257**
- Wilson & Clyde Coal Co Ltd v English [1938] AC 57 (HL) **90, 101**
- Wong v Parkside NHS Trust [2003] 3 All ER 932 (CA) **181**
- Woodland v Essex County Council [2013] UKSC 66 **76**
- Woodward v Mayor of Hastings [1945] 1 KB 174 (CA) **116**
- Wooldridge v Sumner [1963] 2 QB 43 (CA) **38, 227, 256**
- X (Minors) v Bedfordshire County Council [1995] 2 AC 633 (HL) **23, 24**
- Yachuk v Oliver Blais Co Ltd [1949] AC 386 (PC) **232**
- Yeo v Times Newspapers Ltd [2014] EWHC 2853 (QB) **203**
- Yewen v Noakes (1880–81) LR 6 QBD 530 (CA) **73, 267**
- Young v Kent County Council [2005] EWHC 1342 (QB) **118, 119**
- Z v UK (2002) 34 EHRR 3 (ECtHR) **24**
- Zurich Insurance v International Energy Group [2015] UKSC 33 **57**

## Statutes

Civil Aviation Act 1982 **137**

Civil Evidence Act 1968 **30, 45**

s. 11 **43, 45**

s. 11(2)(a) **45**

Civil Liability (Contribution) Act 1978 **70, 82**

s. 1(1) **82**

s. 2(1) **82**

Compensation Act 2006–

s. 1 **42, 119**

s. 1(a), (b) **120**

s. 2 **120**

s. 3 **56, 57**

s. 3(2)(b) **56**

Congenital Disabilities (Civil Liability) Act 1976 **23**

Consumer Protection Act 1987 **187–9, 191, 193–8**

s. 1(2) **195**

s. 2(1) **193**

s. 2(2) **195**

s. 2(2)(a) **195**

s. 2(2)(b) **195, 196**

s. 2(2)(c) **195**

s. 2(3) **195**

s. 2(5) **195**

s. 3 **194**

s. 3(1) **194**

s. 3(2) **194, 195**

s. 3(2)(a)–(c) **194**

s. 4 **196**

s. 4(1)(a)–(f) **196**

s. 5(1), (2) **194**

s. 5(4) **194**

s. 7 **196**

s. 45(1) **195**

Consumer Rights Act 2015 **190**

Contagious Diseases (Animals) Act 1869 **99**

s. 75 **99**

Courts and Legal Services Act 1990 **211**

Defamation Act 1952–

s. 5 **212**

s. 6 **213**

Defamation Act 1996–

s. 1 **210**

s. 2 **211**

Defamation Act 2013 **199–213**

s. 1 **212, 219**

s. 1(1) **205**

s. 2 **207, 212, 219**

s. 3 **210, 213, 219**

s. 4 **208, 209, 213, 219**

s. 4(a), (b) **209**

s. 5 **211, 213**

s. 6 **207, 213**

s. 7 **207, 213**

s. 8 **214**

s. 9 **214**

s. 10 **214**

s. 11 **203, 214**

s. 15 **204**

Employers' Liability (Defective Equipment) Act 1969

**89, 92, 95**

s. 1(1)(b) **92**

Enterprise and Regulatory Reform Act 2013 **89, 103**

s. 69 **95, 97**

Factories Act 1937 **98**

s. 14(1) **98**

Factory and Workshop Act 1901 **97**

Factory and Workshop Act 1907 **97**

Factory and Workshop Act 1908 **97**

Health and Safety at Work etc. Act 1974 **95**

Human Rights Act 1998 **201, 212, 214**

s. 6 **215**

Sch. 1 **214**

Law Reform (Contributory Negligence) Act 1945 **117**

s. 1(1) **229**

s. 4 **230**

Limitation Act 1980–

s. 4A **203**

Malicious Communications Act 1988–

s. 1 **134**

Mental Health Act 1983 **177, 180**

Mesothelioma Act 2014 **57**

Mineral Workings (Offshore Installations) Act 1971 **95**

Misrepresentation Act 1967 **95**

National Parks and Access to the Countryside Act 1949–  
s. 60 **117**

Occupiers' Liability Act 1957 **105–21**  
s. 1(1) **108**  
s. 1(3)(a) **109**  
s. 2(1) **112**  
s. 2(2) **111, 121**  
s. 2(3)(a) **112**  
s. 2(3)(b) **112, 114**  
s. 2(4)(a) **114**  
s. 2(4)(b) **115**  
s. 2(5) **116**

Occupiers' Liability Act 1984 **105–21**  
s. 1(1) **117**  
s. 1(3) **118**

Police and Criminal Evidence Act 1984 **164, 177, 178, 180**

Protection from Harassment Act 1997 **95, 127, 182**  
s. 1 **80, 81, 182**  
s. 1(2) **182**  
s. 1(3) **183**  
s. 3 **81, 182, 184**  
s. 7(2)–(4) **182**

Public Health (Control of Disease) Act 1984 **180**

Road Traffic Act 1998–  
s. 3 **45**  
s. 149(3) **226**

Senior Courts Act 1981–  
s. 69 **203**

Serious Organised Crime and Police Act 2005–  
s. 110 **178**

Social Action, Responsibility and Heroism Act 2015 **42**

Southern Rhodesia Act 1965 **96**

## ■ Statutory instruments

Grinding of Metals (Miscellaneous Industries) Regulations 1925, SI 1925/904 **100**

Provision and Use of Work Equipment Regulations 1992, SI 1992/2932 **90, 102**  
reg. 11 **90, 102**

Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083 **190**

Use of Work Equipment Regulations 1998, SI 1998/2306 **98**

## ■ European legislation

85/374/EEC Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products **189, 193**

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 **185, 215**  
Art. 2 **25, 26**  
Art. 3 **24, 177**  
Art. 6 **24**  
Art. 8 **181, 201, 212, 214–17**  
Art. 8(1) **214**  
Art. 8(2) **214, 216**  
Art. 10 **201, 216**  
Art. 13 **24, 181**



# Negligence:

## The duty of care

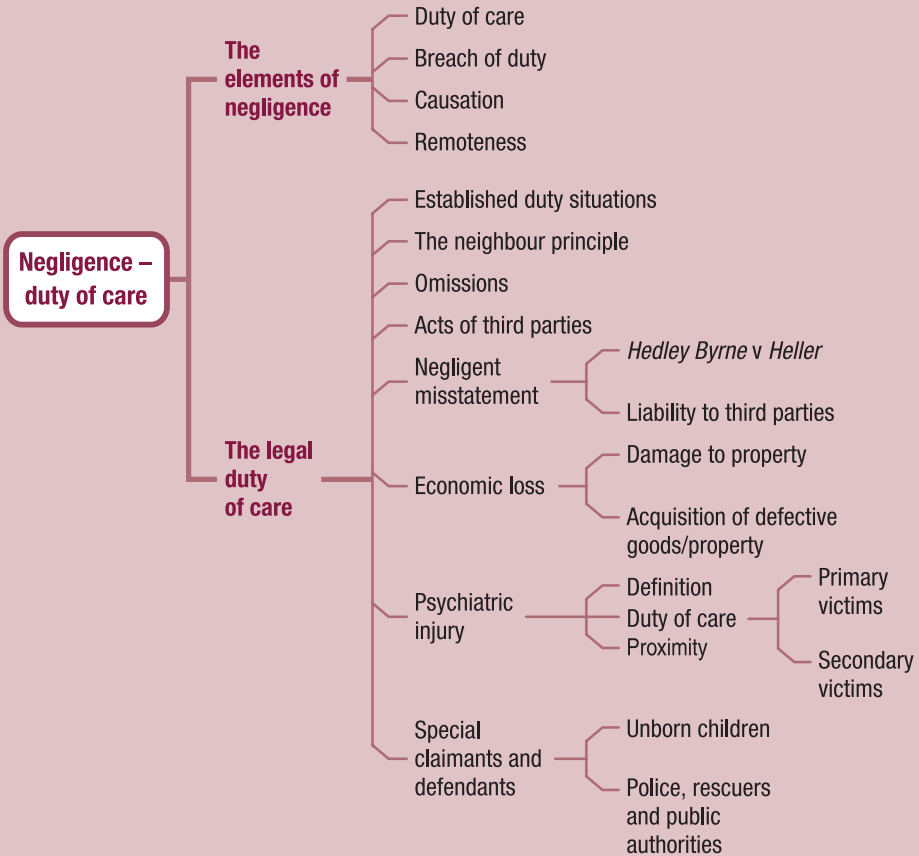


### Revision checklist

#### Essential points you should know:

- The composite elements required to establish the tort of negligence
- The general definition of the legal duty of care
- Liability for omissions and the acts of third parties
- The principles of negligent misstatement
- The definition of economic loss and the limited circumstances under which it may be recoverable
- The changes to the extent of economic loss introduced by *Anns*, *Junior Books* and *Murphy*
- The definition of psychiatric injury and how it applies to primary and secondary victims
- The duty of care in relation to special claimants and defendants

## Topic map



## ■ Introduction

### **Negligence has grown to become the largest area of tort law.**

In everyday terms, negligence means failure to pay attention to what ought to be done or to take the required level of care. Its everyday usage implies a state of mind (carelessness), whereas the tort of negligence is concerned with the link between the defendant's behaviour and the risk that ought to have been foreseen. When revising negligence, be careful not to let the everyday meaning of the word distract you from the legal meaning of negligence.

As negligence is such an immense topic, it has been broken down into three chapters in this book. It may help to think of this chapter as dealing with the question of whether or not the defendant has a legally recognised duty to take care, while the following two chapters deal with whether the defendant has been careless (breach of that duty) and whether that carelessness caused the harm suffered by the claimant and that the harm gives rise to a legal claim (causation and remoteness).

### **ASSESSMENT ADVICE**

#### **Essay questions**

Essay questions on the duty of care in negligence could concentrate on one particular duty situation in particular or cover several of them in a much broader evaluation of the role of the duty of care in negligence. Broad questions tend to be unpopular with students as many of the situations which limit the duty can be overlooked in selective revision. This means that, equipped with a good understanding of all the duty of care situations covered in this chapter, you would be well placed for your answer to stand out among those of your more ill-prepared colleagues. Remember that unpopular questions tend to be done either very well, or very badly.

#### **Problem questions**

Problem questions on negligence are very common. They can often include non-standard duty of care situations. For example, in a negligence scenario involving three parties, one might suffer physical loss or damage, one might suffer economic loss and another psychiatric harm. If you had just focused your revision on the 'standard' duty of care in negligence, you could lose out on many of the marks available for such a question. In all duty of care problems, remember to be methodical when applying the case law relating to the special duty situations to the facts given and work through each of the elements of the duty in turn.



## Sample question

Could you answer this question? Below is a typical essay question that could arise on this topic. Guidelines on addressing the question are included at the end of the chapter, whilst a sample problem question and guidance on tackling it can be found on the companion website.

### ESSAY QUESTION

The scope of the duty of care in negligence depends ultimately on the courts' assessment of the need to protect society from the carelessness of others.

Discuss.

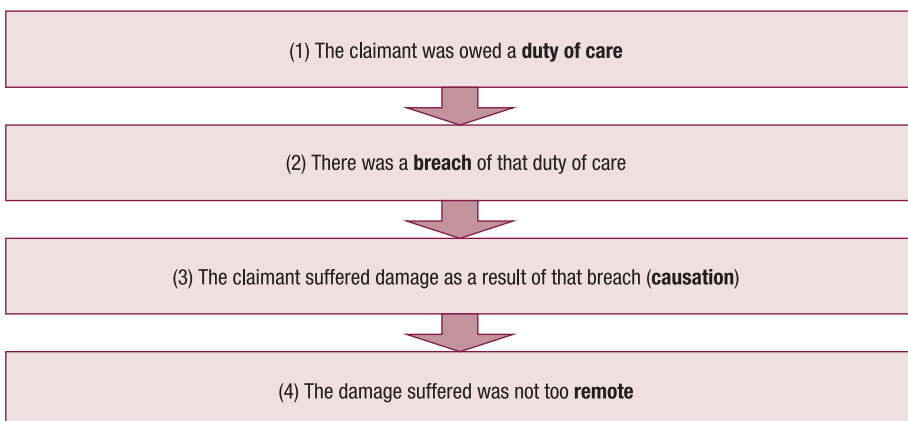
## The elements of negligence

### KEY DEFINITION: Negligence

A breach of legal duty to take care which results in damage to the claimant. (Rogers, W.V.H. (2002) *Winfield and Jolowicz on Tort*, 16th edn, London: Sweet & Maxwell, p. 103.)

This definition of **negligence** can be broken down into the four component parts that a claimant must prove to establish negligence. The legal burden of proving each of these elements falls upon the claimant. See Figure 1.1.

Figure 1.1



## Duty of care

This chapter concerns the first element of negligence which is the legal duty of care. This concerns the relationship between the defendant and claimant, which must be such that there is an obligation upon the defendant to take proper care to avoid causing injury to the claimant in all the circumstances of the case.

There are two ways in which a duty of care may be established:

- the defendant and claimant are within one of the ‘established duty situations’; or
- outside of these situations, according to the principles developed by case law.

### Established duty situations

There are a number of situations in which the courts recognise the existence of a duty of care. These usually arise as a result of some sort of special relationship between the parties.

### The neighbour principle

Examples include:

- one road user to another;
- employer to employee;
- manufacturer to consumer (see *Donoghue v Stevenson* in the next section and also in Chapter 11);
- doctor to patient;
- solicitor to client.

Outside of these categories of established duty, a duty of care will be determined on the basis of individual circumstances. The ‘neighbour principle’ formulated by Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 (HL) was initially used to determine whether a duty of care existed between defendant and claimant:

#### KEY CASE

#### ***Donoghue v Stevenson* [1932] AC 562 (HL)**

*Concerning: duty of care; neighbour principle*

#### **Facts**

Mrs Donoghue and a friend visited a café. Mrs Donoghue’s friend bought her a bottle of ginger beer. The bottle was made of opaque glass. When filling Mrs Donoghue’s glass, ►

## 1 NEGLIGENCE: THE DUTY OF CARE

the remains of a decomposed snail – which had somehow found its way into the bottle at the factory – floated out. Mrs Donoghue developed gastroenteritis as a result.

### Legal principle

Since Mrs Donoghue had not bought the bottle of ginger beer herself she could not make a claim in contract upon breach of warranty. She therefore brought an action against the manufacturer of the ginger beer. The House of Lords had to decide whether a duty of care existed as a matter of law.

The House of Lords held that the manufacturer owed her a duty to take care that the bottle did not contain foreign bodies which could cause her personal harm. This is known as the *narrow rule* in *Donoghue v Stevenson* – that a manufacturer of goods owes a duty of care to their ultimate consumer.

More importantly, the case establishes the *neighbour principle* which determines whether the defendant owes a duty of care in any situation. Lord Atkin stated:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

The neighbour principle is not limited in its application. As Lord Macmillan said in *Donoghue v Stevenson*: ‘The categories of negligence are never closed.’ This means that the courts can formulate new categories of negligence to reflect the current social view and make decisions based on consideration of public policy.

The basic concept of the neighbour principle was reformulated almost 60 years later in *Caparo Industries plc v Dickman* [1990] 2 AC 605 (HL).

### KEY CASE

#### ***Caparo Industries plc v Dickman* [1990] 2 AC 605 (HL)**

*Concerning: duty of care*

#### **Facts**

The case considered the liability of an auditor for financial loss suffered by investors. However, it also set out the three points which a court must consider to establish whether a duty of care exists.

**Legal principle**

The three points are:

- reasonable foresight of harm;
- sufficient proximity of relationship;
- that it is fair, just and reasonable to impose a duty.

*Caparo v Dickman* effectively redefined the neighbour principle such that it adds the requirement that there must be a relationship of sufficient proximity and that the imposition of a duty of care must be fair, just and reasonable (on this point, see *Robinson v Chief Constable of West Yorkshire Police* [2014] EWCA Civ 15). The comparison can be seen in the following table:

<i>Caparo v Dickman</i>	<i>Donoghue v Stevenson</i>
Reasonable foresight of harm	Avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour
Sufficient proximity of relationship	Persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question
Fair, just and reasonable to impose a duty	

**EXAM TIP**

When discussing the duty of care in your answers it is important to remember the third requirement imposed by *Caparo v Dickman*.

In *Caparo*, Lord Bridge endorsed the view of Brennan J in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 (High Court of Australia) in which he said that it was preferable:

that the law should develop novel categories of negligence incrementally and by analogy with established categories, rather than by a massive extension of a *prima facie* duty of care restrained only by indefinable ‘considerations’ which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed.

In other words, the *Caparo* test should be used incrementally to determine duty of care and that each case should be considered by analogy to previous comparable duties. An example of this can be found in *Bhamra v Dubb* [2010] EWCA Civ 13 in which the defendant provided

## 1 NEGLIGENCE: THE DUTY OF CARE

a wedding feast for a Sikh wedding, in which one dish contained eggs. The claimant was allergic to eggs and shortly after eating the dish became ill as a result of an anaphylactic reaction and died a few days later. The court held that the nature of the occasion was such as to extend the scope of the ordinary duty of care to encompass personal injury caused through the consumption of otherwise wholesome food containing eggs.

The House of Lords also commented on the *Caparo* test in *Sutradhar v National Environment Research Council* [2006] 4 All ER 490 (HL). Lord Hoffmann stated that:

It has often been remarked that the boundaries between these three concepts [from *Caparo*] are somewhat porous but they are probably none the worse for that. In particular, the requirement that the imposition of a duty should be fair, just and reasonable may sometimes inform the decision as to whether the parties should be considered to be in a relationship of proximity and may sometimes provide a special reason as to why no duty should exist, notwithstanding that the relationship would ordinarily qualify as proximate.

In particular, proximity remains a requirement for the existence of a duty of care even where the damage sustained takes the form of physical injury; foreseeability alone is not sufficient. In order to satisfy the requirement for proximity, the claimant must show that the defendant had a measure of control over and responsibility for the potentially dangerous situation.

The basic elements that need to be considered in establishing duty of care are illustrated in Figure 1.2.

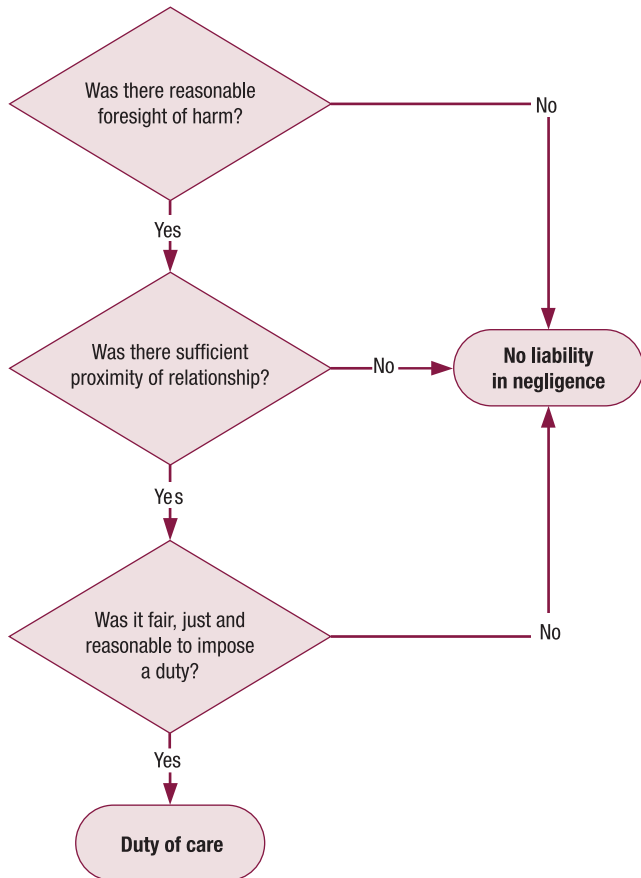
### ! Don't be tempted to . . .

Don't engage in a discussion of the elements of the duty of care if you are tackling a problem question that deals with an established duty situation. You will waste words and time going through the *Caparo* test if the problem involves, say, an incident between road users. You should simply say that there is an established duty situation and move on to the key issues raised by the question.

Having looked at the basic idea of the duty of care, the remainder of this chapter will consider the various restrictions and limitations on the basic test from *Caparo* in turn. These have developed in response to particular situations where the *Caparo* test needed modification, namely:

- omissions (failing to act);
- acts of third parties;
- misstatements;
- economic loss;
- nervous shock (or psychiatric harm);
- special claimants and defendants.

Figure 1.2



## ■ Omissions (failing to act)

As Lord Goff said in *Smith v Littlewoods; Maloco v Littlewoods* [1987] AC 241 (HL) 271, 'the common law does not impose liability for what are called pure omissions'. Similarly in *Stovin v Wise* [1996] AC 923 (HL) 943–4, Lord Hoffmann commented that:

[It] is less of an invasion of an individual's freedom for the law to require him to consider the safety of others in his actions than to impose upon him a duty to rescue or protect . . . A duty to prevent harm to others or to render assistance to a person in danger or distress may apply to a large and indeterminate class of people who happen to be able to do something.

In other words, the law does not recognise a duty of care owed to the whole world to take positive action to prevent harm. In *Caparo* terms, it would not be fair, just or reasonable to