

Practice questions for Chapter 13 – An introduction to the law of torts

Essay question

Explain the relationship between tort and other forms of legal wrong. What are the aims of the law of torts?

Introduction

- This essay basically requires you to discuss the law of torts within the legal system overall and explain its relationship with the criminal law and with other areas of civil law. The essay will then discuss the various aims of the law of torts.

Relationship between tort and other forms of legal wrong

- A tort is a civil wrong, but it does not follow that the law of torts has no relationship with the criminal law. Certain torts (e.g. battery, libel) can amount to both a crime and a tort, resulting in the defendant being prosecuted in one court and having to pay compensation in a different court in different proceedings. Similarly, certain acts can result in both tortious and criminal liability. For example, a person who looks through the bag of another person and steals items from the bag will commit the crime of theft and the tort of conversion.
- Tort is one form of civil liability, with other notable areas of civil liability being the law of contract and the law of restitution. These areas of civil liability are not mutually exclusive and it is possible for an act to amount to a tort and result in civil liability elsewhere. For example, it is common for certain torts to also amount to a breach of contract.

Aims of the law of torts

- The law of torts has several identifiable aims, namely compensation, deterrence and the protection of interests.

Compensation

- The principal aim of the law of torts is to provide a remedy (usually damages) for persons who have suffered loss due to the tortious activity of another person. In other words, the law of torts aims to shift the loss from those who suffer loss to those who cause it. However, it is debatable how well the law of torts actually achieves this aim due to the prevalence of insurance.
- In many cases, tortfeasors are insured against liability. For example, two of the most significant of litigation are employers' liability and motoring accidents – two areas where insurance is a compulsory requirement.
A study carried out in 2002 found that 94 per cent of compensation is paid out by insurance companies.¹ The result is that the loss is not borne by the tortfeasor, but by his insurance company, with funds that derive from the premiums it receives from its customers. Accordingly, the loss is not shifted, but rather spread out throughout the insurance company's customers.
- Irrespective of the shifting/spreading of risk, the tort system's ability to compensate victims is also mitigated by the fact that the system is regarded as slow and expensive.

¹ T Goriely, R Moorhead and P Abrams, *More Civil Justice? The Impact of the Woolf Reforms on Pre-action Behaviour* (The Law Society and Civil Justice Council, London, 2002) 90.

Deterrence

- The payment of compensation occurs following the commission of a tort. The law of torts aims to prevent the payment of compensation being necessary by preventing or deterring the commission of torts in the first place. Potential tortfeasors, realizing that their actions may result in them being sued and having to pay compensation, will reform their behaviour so as not to cause any harm. In doing so, the law of torts is deterring persons from engaging in tortious activities.
- However, once gain, the prevalence of insurance adversely affects the effectiveness of this aim. A motorist who, whilst driving, negligently causes loss to another, will not be required to pay compensation as it will be paid for by his insurance company. This serves to emasculate the deterrent effect of the law of torts.

The protection of interests

- The law of torts seeks to protect certain interests of persons and, if these interests are adversely affected, a remedy is provided. Our right to enjoy our property peacefully is protected by the torts of trespass and nuisance. Our right to personal safety is protected by the torts of negligence and trespass to the person. Our right not to have our reputation falsely damaged is protected by the torts of libel, slander and malicious falsehood.
- However, the law of torts does not protect all interests. Certain losses are protected, but others are not and it is not always easy to see why certain losses are protected and others are not. Certain interests are deemed so important that a remedy can be obtained even where no loss occurs. For example, our right to bodily safety is so important that the tort of battery can be committed even where no physical harm has occurred. Conversely, other rights are deemed so important that tortious liability will not be imposed as to do so would be to impact upon that right. Accordingly, liability will not arise even where activity causes harm to others. For example, the ability of businesses to make a profit is deemed so important that certain acts that are designed to harm rival businesses (or even drive rivals out of business) will not result in liability (unless several businesses act in concert, in which case the tort of conspiracy might be committed).

Problem question

Discuss the following:

- In February, *The London Chronicle* publishes a story, claiming that Ceri, a member of Parliament, has been taking bribes from a number of prominent businessmen. In return, she has been using her influence to help the businesses these businessmen work for. The accusations are untrue. Shortly after the story is published, Ceri initiates an action for libel in the High Court against the newspaper's publisher. In May, Ceri is killed in a car accident. Ross, Ceri's husband, wishes to continue the claim. Advise Ross.
- The board of Microtech plc is about to launch a takeover bid for NanoCorp plc. The bid is being handled by Baker & Chance LLP (a firm of solicitors) and Cooper & Young (a firm of accountants). Both firms work closely together to prepare the bid documentation, but the documentation is negligently drafted and omits key information. As a result, the bid cannot go ahead as planned, and has to be delayed. As a result of this delay, NanoCorp is taken over by another party. Advise Microtech regarding whom proceedings could be initiated against.
- Mike is killed in a car crash due to the negligent driving of Lucas. Advise Mike's wife, Anna, as to legal courses of action she could take.
- *The Daily Moon* publishes a story, accusing ShopMart of selling goods manufactured in sweatshops

in Thailand. *The Daily Post* publishes the same story on the same day. The stories are untrue. Advise ShopMart as to whom it can sue.

In February, *The London Chronicle* publishes a story, claiming that Ceri, a member of Parliament, has been taking bribes from a number of prominent businessmen. In return, she has been using her influence to help the businesses these businessmen work for. The accusations are untrue. Shortly after the story is published, Ceri initiates an action for libel in the High Court against the newspaper's publisher. In May, Ceri is killed in a car accident. Ross, Ceri's husband, wishes to continue the claim. Advise Ross.

- The question is whether or not Ross can continue the action commenced by Ceri. Generally, the death of the claimant does not cause the claim to fail, and the claim can be continued for the benefit of the deceased's estate.²
- However, this principle does not apply in relation to defamation cases (of which libel is a form).³ It is impossible to defame the dead, and the death of the claimant will extinguish the cause of action. Accordingly, Ross cannot continue the claim.

The board of Microtech plc is about to launch a takeover bid for NanoCorp plc. The bid is being handled by Baker & Chance LLP (a firm of solicitors) and Cooper & Young (a firm of accountants). Both firms work closely together to prepare the bid documentation, but the documentation is negligently drafted and omits key information. As a result, the bid cannot go ahead as planned, and has to be delayed. As a result of this delay, NanoCorp is taken over by another party. Advise Microtech regarding whom proceedings could be initiated against.

- The issue here is whether or not Microtech can initiate proceedings against Baker & Chance or Cooper & Young, or both.
- If two or more persons commit a joint tort, or commit a tort whilst in pursuance of a common design, then they will be regarded as 'joint tortfeasors,' and their liability will be joint and several.⁴ This gives Microtech several options:
 1. It can sue Baker & Chance and Cooper & Young in a joint action
 2. It can sue Baker & Chance for the full amount of its loss
 3. It can sue Cooper & Young for the full amount of its loss

Mike is killed in a car crash due to the negligent driving of Lucas. Advise Mike's wife, Anna, as to legal courses of action she could take.

- The question here is whether or not Anna can bring legal proceedings against Lucas. Generally, the death of the claimant does not cause the claim to fail, and the claim can be continued for the benefit of the deceased's estate.⁵ However, at the time of Mike's death, a claim has not been initiated.
- Fortunately for Anna, the fatal Accidents Act 1976, s 1 allows the deceased's dependants to initiate a claim providing that, had the deceased lived, he would have been able to initiate a claim. As Mike would have likely had a claim against Lucas, Anna can initiate a claim. The 1976 Act also provides that Anna can bring an additional claim for her 'bereavement,' which, at the time of writing, is fixed at £11,800.

² Law Reform (Miscellaneous Provisions) Act 1934, s 1(1).

³ Ibid.

⁴ *Brooke v Bool* [1928] 2 KB 578 (KB).

⁵ Law Reform (Miscellaneous Provisions) Act 1934, s 1(1).

***The Daily Moon* publishes a story, accusing ShopMart of selling goods manufactured in sweatshops in Thailand. *The Daily Post* publishes the same story on the same day. The stories are untrue. Advise ShopMart as to whom it can sue.**

- The issue here is whether ShopMart can bring a claim against *The Daily Moon* or *The Daily Post*, or both.
- Where two or more persons inflict the same damage against the claimant, but through independent actions (as in our case), then those persons are known as several concurrent tortfeasors. Accordingly, *The Daily Moon* and *The Daily Post* will be several concurrent tortfeasors.
- The liability of *The Daily Moon* and *The Daily Post* will be joint and several. This gives ShopMart several options:
 1. It can sue *The Daily Moon* and *The Daily Post* in a joint action
 2. It can sue *The Daily Moon* for the full amount of its loss
 3. It can sue *The Daily Post* for the full amount of its loss