

ABOUT THIS STUDY BOOK

This tutor2u OCR A-Level Law study book provides a comprehensive set of essential study notes on the Law of Tort which is assessed in Paper 2 of the OCR Law A-Level exam series.

We've broken down each section into:

- Specification links; Exam reference and topic content
- Complete, concise notes on each topic including relevant statutes, case law and examples
- Exam gold – advice from experienced examiners about common student misconceptions and what to focus on in your revision
- Theory links – linking substantive topics to overarching legal theory
- Key terms glossaries – consolidating each chapter with a definition of the important topic terminology
- Case summary tables – summarising each chapter with a quick reference review of the key cases with topic links and legal significance of each case

Make this study book your own. Highlight and annotate key points. Add your own comments and examples to make the notes invaluable for your exam revision.

CONTENTS

NEGLIGENCE PHYSICAL INJURY TO PEOPLE AND DAMAGE TO PROPERTY	Page 3
OCCUPIERS LIABILITY	Page 23
NUISANCE AND RYLANDS V FLETCHER	Page 35
VICARIOUS LIABILITY	Page 48
DEFENCES	Page 57
REMEDIES	Page 62

NEGLIGENCE

PHYSICAL INJURY TO PEOPLE AND DAMAGE TO PROPERTY

Exam Reference:	H418/02 – Law making and the law of tort (Paper 2) The tort of negligence is a substantive topic that appears in paper 2 of the OCR Law A-Level exam series. 60 marks out of 80 are allocated to substantive law topics in this paper. You will be required to accurately explain the principles of negligence (A01) and apply them to scenario-based situations (A02) as well as analyse and evaluate the law on negligence (A03).
Topic Content:	<ul style="list-style-type: none">• Duty of care: the 'neighbour' principle, the Caparo three-part test and Robinson v Chief Constable of West Yorkshire (2018)• Breach of duty: the objective standard of care and the reasonable man; risk factors• Damage: factual causation and legal causation (remoteness of damage)

Introduction

The law of tort is a civil area of law where liability can be established when a defendant causes damage/injury to a claimant. The law of tort sits separately to that of contract, no contract needs to be proven between a defendant and a claimant in order to establish liability for the wrongdoing. A defendant and a claimant may however be in a contract; this does not exclude claims within tort law.

Negligence is a 'tort', the term 'tort' means a civil wrong. Negligence is therefore a wrongdoing on behalf of a defendant that has resulted in some loss to a claimant and is actionable by law. The phrase negligence encompasses an extremely wide range of possible defendants, claimants and circumstances. The law of negligence is vast and has significantly developed and is now applied to many different sectors.

Within the law of tort, an actionable claim for negligence sits outside of the criminal law, even though a defendant may have caused physical harm to a claimant. This reflects the lower level of fault that needs to be proved in negligence, in comparison with that of crimes. Negligence does not require proof of intent or recklessness as to the causing of harm or loss, a defendant may be found liable in negligence where they do not mean to cause the harm or loss by their actions, nor may they have foreseen the risk of it occurring. The imposition of liability in negligence is however justified, despite the lack of intent, because they have demonstrated a level of fault in their actions or behaviour by falling below the standard that would have been expected in the given circumstances, and thus are legally responsible for the harm or loss that the claimant has suffered.

As negligence falls within the civil law, claims are made by the suffering party (the claimant) and the burden of proof is on the claimant to establish that the defendant is negligent on the balance of probabilities (the standard of proof). Cases are heard, depending upon the amount being claimed and their complexity, in either the County Court or High Court.

Example: Medical Negligence

Medical negligence is a large area of tort law. If a surgeon failed to read a patient's medical records properly and removed the wrong kidney for example, this would be an example of medical negligence. Similarly, a doctor would be negligent if they administered a specific drug for a patient even though there was a record that the patient was in fact allergic to that drug.

Key Case Hill v Chief Constable of West Yorkshire Police (1989)

Claimant: Mrs Hill – mother of deceased victim of the Yorkshire Ripper

Defendant: West Yorkshire Police

Facts: Peter Sutcliffe, the 'Yorkshire Ripper' conducted 13 murders and 8 attempted murders that are known. This case was brought against the Police in negligence by the mother of his last victim, Jacqueline Hill, upon the grounds that the Police were negligent by failing to apprehend Sutcliffe, if they had done her daughter's murder could have been prevented.

Outcome: Not Liable

Legal principle: There is no duty of care on the police to apprehend unidentified criminals and therefore they are consequently not liable in negligence where these criminals commit further crime. Whilst it was certainly foreseeable that an individual like the claimant may be harmed, there was no proximity between the Police and the particular victim, she was simply one of a large category of possible victims. Jacqueline Hill was at no particular distinctive risk and thus no duty could be imposed due to lack of proximity via relationship.

Example: Proximity and Festival Food

Imagine a food manufacturer produced a new product which they were giving away for free at a festival to promote sales. Were a person eating this free product to become ill, they would be proximate to the manufacturer despite not purchasing the food, because they were proximate under the relationship of manufacturer and consumer.



Exam Gold In the exam in order to apply the principle of proximity you should clearly state in what way the two parties are proximate and why.

3: Is it fair, just and reasonable to impose a duty of care?

This is the final part of the three-part Caparo (1990) test to establish a duty of care, and the most complex. This aspect of the test typically allows a court to consider external factors and the implications upon wider society of imposing a duty of care in the particular situation.

If the courts are being required to establish a new duty they will consider this criteria, under this provision the court considers the wider societal and legal implications of imposing a duty, as opposed to just whether it is fair to impose a duty in the particular circumstances of the case before them. The courts may be reluctant to impose a duty of care in two situations (1) the duty would impose an additional and burdensome obligation on those performing public services and (2) when recognising a duty will open the 'floodgates to litigation'.

1) Public services – the courts recognise that the emergency services, such as the Police and Fire service, need to be able to act without undue worry about legal action in negligence against them. If it felt that the imposition of a duty may detrimentally affect the efficient work of these services, a duty may be refused on these grounds.

It was previously thought that this meant that authorities such as the Police were entirely exempt from liability in negligence in the execution of their duties, again, the case of Robinson (2018) proved to have significant implications for this understanding. In this case the Supreme Court clarified that the Police may be under a duty of care to protect an individual from a danger of injury which they have themselves created, however, the police are not normally under a duty of care to protect individuals from a danger of injury which they have not themselves created. For example, the Police do not owe a duty of care to prevent harm caused by third parties e.g. criminals. If the duty of care owed by the

Police extended to preventing harm by criminals, every time a crime occurred the victim would have an actionable claim in negligence, this would divert essential funds away from preventing and investigating crime, as well as affecting the main purpose of policing and potentially deterring police recruitment.

2) The floodgates argument – the courts may also be reluctant to impose a duty of care where they believe that this may give rise to a large number of claims that would overwhelm the legal system or are not entirely justifiable, for example, because of the overwhelming burden it will place on defendants.

Key Case Sumner v Colborn (2018)

Claimant: Motorist

Defendant: Landowners

Facts: The claimant hit a cyclist when emerging from a road and blamed the incident on his view being blocked by vegetation on the adjacent land, against which he sought a claim.

Outcome: Not Liable

Legal principle: As there was no existing precedent on this particular issue, in line with the guidance in Robinson (2018), reasonableness had to be considered in terms of imposing the duty. The implications of imposing a duty in this situation would be too onerous, the duty would affect any owner of premises planting vegetation on their land. Additionally, such a duty would likely create a large number of claims from insurance companies against landowners for contributions to insurance payments.



Theory link

Basic understanding of the public policy factors governing the imposition of a duty of care (the Caparo three-part test) in a claim for physical injury to people and damage to property.

Example: Teachers and School Trips

If a teacher was taking students on a school trip, and when on the coach put too many bags in an overhead locker and this fell out onto a pupil's head causing injury, the teacher would owe them a duty of care in this situation.

If one of the teacher's other students performed badly in an exam because they had not revised, there is no actionable claim. The teacher's duty of care in negligence only extends to physical injury and property damage.



Exam Gold Students often find fair, just and reasonable the most complex element to apply in the exam. When discussing this element discuss whether either of the explained reasons apply for not imposing a duty, if neither of these factors are present, it is likely that a duty will be justified. Don't forget if the duty you are discussing already exists or there is a clearly analogous one, this element does not require discussion and you cite Robinson as your authority.



Theory link

The court also decided the case of Tomlinson v Congleton Borough Council (2003) based on public policy grounds, to prevent floodgates opening and finding them liable would discourage councils from providing facilities for individuals to enjoy themselves and effect social utility of parks.



Exam Gold In an application question, when discussing whether an occupier of premises does owe a trespasser a duty of care, each of these three criteria should be explained and then applied. Application requires discussion of the scenario facts that have been presented. All three criteria needs to be satisfied to find the occupier liable for personal injury of a trespasser. Remember, unlike a lawful visitor, a trespasser cannot claim for property damage.

Nature and extent of the duty

Once it has been established that a duty is in fact owing to a trespasser, the statute further outlines the precise nature and extent of the duty owed to the trespasser.

s1(4) Occupiers Liability Act 1984: ‘...the duty is to take such care as is reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned’.

The duty owing to trespassers under the 1984 Act is to take reasonable care to avoid personal injury due to the dangerous state of the premises. This is a narrower duty than owed to visitors under the 1957 Act as the duty does not extend to property damage or any other forms of loss.

Discharging the duty/Breach of duty of care

This is yet again premised upon acting reasonably and consideration of the relevant risk factors. The defendant occupier will be found in breach of their duty if they have failed to act as a reasonable occupier.

Warning notices can also apply to trespassers providing it is clear of the implications of the dangers.

S1(5) OLA 1984: ‘Any duty owed... in respect of a risk may, in an appropriate case, be discharged by taking such steps as are reasonable in all the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk.’

This means that the duty can be discharged, there will be no breach if a warning sign has been used and this is reasonable given the particular danger as shown in Rhind v Astbury Walker Park (2004) and Tomlinson v Congleton Borough Council (2003).

Whether the warning applies to a child will depend upon whether the child is old enough to understand the warning.



Exam Gold In an application question, where a tort (such as negligence or occupiers’ liability) has multiple elements for discussion, one way to write your answer is to explain and then apply each element as you go along. An alternative option is to explain all the principles and then apply them. There is no correct or incorrect way to approach these questions however applying separately, carries the risk of running out of time with incomplete application, or forgetting some vital part. Application (A02) is worth 12 of the 20 marks, allocate your time in the exam accordingly.



Exam Gold Occupiers liability can feature as a scenario-based question or an evaluation question. The evaluation question remains the same on both sides of the paper in Section B. The evaluation question for occupier’s liability could be focused on either act or parts of it. It could also require a comparative analysis between the 1957 and the 1984 act.

Key Terms – Occupiers liability

Occupiers Liability Act 1957	The statute that contains the law of duty of care owed by occupiers of premises to lawful visitors.
Occupiers Liability Act 1984	The statute that contains the law determining when a duty of care is owed by occupiers of premises to trespassers and the nature and extent of that duty.
Statute	An Act of Parliament, a legal document containing written law created by the primary lawmakers.
Occupier	The party against which a claim is made, a person(s) exercising a degree of control over the premises. This may include, but is not limited to, an owner, a tenant or a resident.
Premises	The structure or land / grounds, the poor maintenance of which has resulted in harm or loss to the claimant.
Visitor	An entrant onto or into premises that is lawfully allowed.
Trespasser	An entrant onto or into premises that is entering without lawful right.
Common duty of care	According to the OLA 1957 the duty of care that is owed to all lawful visitors by the occupiers of premises. This is a duty of care to ‘take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe’.
Skilled visitors/ Tradesman	A type of lawful visitor, against which occupiers of premises are entitled to expect to ‘in the exercise of his calling will appreciate and guard against special risks ordinarily incident to it so far as the occupier leaves him free to do so’ according to 2(3)(b) OLA 1957.
Independent contractors	Contractors employed by occupiers of premises to undertake work. Where their work causes harm or loss to visitors to the premises, according to s2(4)(b) OLA 1957 the occupier may avoid liability where certain elements are satisfied.
Warning signs	A notice created by the occupier warning of a specific risk associated with the premises. If reasonable, this may act as a defence and absolve liability in some circumstances.
Exclusion clause	A notice by an occupier of premises that there will be no or reduced liability where harm or loss is caused to a claimant.

Case summary – Occupiers liability

Name	Topic Link	Legal significance
Trustees of the PYAC v Poppleton (2008)	Occupiers liability – danger arising due to the state of the premises	A claimant will only be able to make a claim in occupiers liability where it can be proved that the risk of harm arose due to the dangerous state or condition of the premises, not due to the claimant’s actions on those premises.
Wheat v Lacon & Co Ltd (1996)	Occupiers liability – occupier	In this case it was held that the word occupier denotes ‘a person who had a sufficient degree of control over premises to put him under a duty of care towards those who came lawfully on to the premises’, additionally there may be more than one occupier.
Dean and Chapter of Rochester Cathedral v Debell (2016)	Occupiers liability – adult visitors	In respect of adult visitors, the common duty of care does not extend to prevent everyday slips and trips, nor does the duty require occupiers to maintain their premises in a perfect and risk-free state, the duty only arises when there is present a risk which creates a ‘real source of danger’.

REMEDIES

Exam Reference:	H418/02 – Law making and the law of tort (Paper 2) The law of remedies is a substantive topic that appears in paper 2 of the OCR Law A-Level exam series. 60 marks out of 80 are allocated to substantive law topics in this paper. You will be required to accurately explain the remedies available in tort law (A01) and apply them to scenario-based situations (A02).
Topic Content:	<ul style="list-style-type: none"> • Basic understanding of compensatory damages for physical injury to people, damage to property and economic loss • Basic understanding of the principle of mitigation of loss • Injunctions

Remedies

Once it has been proved, on the balance of probabilities that a defendant is liable, the next step for the courts is to determine the appropriate remedy. The term remedy recognises that the step ordered by the court is intended to rectify or resolve the situation that has been created by the defendant's tortious actions.

There are two main remedies available to the courts:

- 1 Compensatory damages** – This is the primary remedy sought by claimants and offered by the courts.
- 2 An injunction** – This is an equitable remedy, this means that a claimant is not automatically entitled to an injunction upon proof of liability, however an injunction can be ordered by the court where suitable as a remedy to the particular issue in question.

Both remedies are available to all the torts covered in the OCR specification.



Exam Gold In the exam, if you are asked to advise of the defendant's liability and remedies available, the reference to remedies means that at the end of your discussion for the tort you need to discuss which would be the most appropriate remedy and why. Unless it is particularly complex this analysis can be reasonably concise.

Compensatory damages

The term damages essentially refers to monies paid to a claimant by the defendant in compensation of the harm or loss that has been caused, by their tortious actions.

Damages are intended to be compensatory and restorative, they seek to restore the claimant in the position that they would have been in had the negligent incident not occurred. In order to restore a claimant (as far as possible) to their pre-tortious position, they will have their actual losses repaid and will receive a further amount to compensate for any future losses. Note, this is distinctly different to damages in contract law which aim to put a claimant in their post-contract position, the aim of damages in tort law is return as far as possible to the pre-tortious circumstances of the claimant, though in cases of personal injury this is clearly not in reality possible.

As distinct to fines paid in the criminal law, damages do not aim to punish the defendant, nor is the claimant expected to profit from the award of damages, a claimant is not supposed to be left in a preferable position once they have received their damages. This is so as to prevent litigation from being an attractive and financially beneficial course of action.

When determining the appropriate amount of damages to award to a claimant, the courts first have to establish which losses the claimant will be compensated for. A claimant is not automatically compensated for all losses that they have suffered, only those clearly caused by the fault of the defendant, and usually subject to a test of reasonable foreseeability.

The courts identify two categories of loss that can be suffered by a claimant:

Type of loss	Definition	Example
Pecuniary loss	A loss with an easily identifiable financial value	Loss of earnings whilst unable to work Travel costs Cost of cancelled holiday if unable to travel Cost of repairs to property damaged Medial costs e.g. counselling, prescriptions
Non-pecuniary loss	A loss that does not have an easily identifiable financial value	Physical injury suffered Loss of amenity Loss of limb(s) Psychiatric harm Shortening of life expectation Pain and suffering

In respect of the losses that they have suffered, the courts will award the claimant two different types of damages. Both types of damages can be awarded in one case.

Special damages: these damages are awarded for the financial losses incurred by the claimant up to the date of the trial. Therefore, the pecuniary losses that the claimant has suffered up to the date of the trial. These are damages which can be assessed with some level of accuracy.

General damages: general damages are awarded for non-pecuniary losses that the claimant has incurred and will continue to incur and the future pecuniary losses that the claimant will suffer. The amount of general damages to be awarded is determined by the judge. The assessment of general damages is much more complex than that of special damages.

General damages may be claimed under a number of different 'heads'. There is no limit to the number of heads of general damages that a claimant may seek in one single claim. There may be multiple claims under each head. There are three common heads of general damages.

1 Pain, suffering and loss of amenity: these damages are very difficult to calculate, imposing a financial value on an injury is complex. Damages are awarded for the physical and mental injury and suffering of the claimant including any reduction of the quality of life, this is known as 'loss of amenity'.

The Judicial Studies Board lays down guidelines with respect the size of award for different injuries. A claim can only be made under this head where the claimant is conscious to their circumstances, a claimant in a permanent and irreversible coma would not have grounds to claim under this head, but would under others.

2 Future medical care and personal assistance: if a claimant is going to require ongoing medical care or assistance at home they will be awarded damages to compensate for this. Where the claimant (the person who has suffered the loss) is cared for by a relative compensation can be claimed for the loss of earnings of the person caring for them.

3 Loss of future earnings: if a claimant is prevented from continuing their employment as a result of the tort they can be compensated for the loss of earnings that they have suffered. This is a very difficult head to predict and the calculation will be based upon the evidence that can be presented.

A formula is used to calculate the damages that should be awarded for future loss of earnings:

$$\text{Claimant's net annual loss} \times \text{Number of earning years left} = \text{Damages for future loss of earnings}$$