

LAW OF TORTS

I. Definition and Types of Torts

1. Mini-presentations

Group 1 – Torts

Tort is conduct that harms other people or their property. It is a private wrong against a person for which the injured person may recover damages, i.e. monetary compensation. The injured party may sue the wrongdoer (tortfeasor) to recover damages to compensate for the harm or loss incurred. The conduct that is a tort may also be a crime.

Some torts require **intent** before there will be liability and some torts require no intent. In other words, in some cases, there is liability for a tort even though the person committing the tort did not have any intent to do wrong.

Types of Torts

There are basically three types of torts: **intentional torts**, **torts based on negligence** and **strict liability torts**.

An **intentional tort** is a civil wrong that occurs when the wrongdoer engages in intentional conduct that results in damage to another. Striking another person in a fight is an intentional act that would be the tort of battery. Striking a person accidentally would not be an intentional tort since there was not intent to strike the person. This may, however, be a negligent act. Careless conduct that results in damage to another is negligence.

The intent element of these torts is satisfied when the **tortfeasor** acts with the desire to bring about harmful consequences and is substantially certain that such consequences will follow. Mere reckless behavior, sometimes called willful and wanton behavior, does not give rise to the level of an intentional tort.

If a person commits an intentional tort, this means that he intentionally violated a legal duty he owed to the victim. This is different from a negligent tort, in which the tortfeasor violated the duty that every member of society has to exercise reasonable care in their actions with others.

The distinction between an intentional tort and a negligent tort is important for several reasons. First, if an individual wants to sue for an intentional tort, he must prove that the tortfeasor acted with "intent." This is a separate legal requirement that the plaintiff must fulfil, in addition to proving all the other facts of the case and proving actual damage.

Strict liability, sometimes called absolute liability, is the legal responsibility for damage, or injury, even if the person found strictly liable was not at fault or negligent – the injured party is not required to prove fault – liability is strict. An example of strict liability is injury caused by wild animals in the care of the tortfeasor; because the tortfeasor owns tigers, the tortfeasor is responsible for any injury, without the need for the injured party to prove negligence.

Differences between Crimes and Torts

A *crime* is a wrong arising from a violation of a *public duty*. A *tort* is a wrong arising from the violation of a *private duty*. Again, however, a crime can also constitute a tort. For example, assault is a tort, but it is also a crime. A person who is assaulted may bring criminal charges against the assailant and may also sue the assailant for damages under tort law. An employee's theft of his

employer's property that was entrusted to the employee constitutes the crime of embezzlement as well as the tort of conversion. The police may prosecute a crime, and the offender is imprisoned, but this does not compensate the injured party; to obtain compensation the injured party will need to bring a claim in tort law.

Group 2 – Main types of torts: trespass and false imprisonment

Trespass

A trespass is an unauthorized action with respect to a person or property.

A trespass to the person consists of any contact with someone's person for which consent was not given. This is technically described as a battery. An assault would be a situation where a plaintiff reasonably believed a battery upon his person was about to be committed. An example of an assault would be where one person swings his fist at another person. If the person made contact, this would be an assault and battery. A defense to assault and battery would be in cases of self-defense.

A trespass to land involves going on or above the property of another without permission. A trespass can also involve the unpermitted use of the airspace of another's property as well as actually going on the actual property. However, this rule has been modified to allow the flight of aircraft above the land as long as it does not interfere with the proper use of the land.

A trespass to personal property is the use of someone's property without the person's permission. A conversion occurs when personal property is taken by a defendant and kept from its true owner without permission of the owner. **Conversion** is the civil side of the crime of theft. The concept is based on the tortfeasor converting something to their own use. It also requires an intention to deprive the true owner of their ownership – so if you put a mobile in your pocket thinking it was yours it would not be conversion.

False Imprisonment

False imprisonment involves detaining a person without that person's consent. It can take the extreme form of kidnapping or the less extreme form of detaining a shopper for suspected shoplifting without reasonable grounds.

A defense to false imprisonment would be consent of the detainee, or if a store owner had reasonable grounds to believe that the detainee was guilty of shoplifting (shopkeeper's privilege). This privilege allows a store owner (or his employee) to detain a suspected shoplifter based on reasonable suspicion for a reasonable time.

A customer was shopping at the handbag counter of the defendant's store. She did not make any purchase and left the store. When she was a few feet outside the store, an employee of the store tapped her lightly on the shoulder to attract her attention and asked her if she had made any purchase. When she inquired why, the employee asked, "What about that bag in your hand?" The customer said that it belonged to her and she opened it to show by its contents that it was not a new bag. The employee gave the customer a "real dirty look" and went back into the store without saying a word. The customer then sued the store for false imprisonment. Was the store liable? No.

Judgment would be for the store. There was no false imprisonment because there was no actual detaining of the customer. The circumstances did not show the use of force or threat of force that stopped the customer from proceeding on her way. Her action of stopping and showing the contents of her handbag was voluntary.

Group 3 – Main types of torts: negligence and malpractice

Negligence is a failure to follow the degree of **care** that would be followed by a reasonably prudent person in order to avoid foreseeable harm. A person can be negligent if he or she acts with less care than a reasonable person would use under similar circumstances.

Bob drove a car on a country road at 35 miles an hour. The maximum speed limit was 45 miles an hour. He struck and killed a cow that was crossing the road. The owner of the cow sued Bill for the value of the cow. Bill said that since he was not driving above the speed limit, there could be no liability for negligence. Was this defense valid? No. A person must at all times act in the manner in which a reasonable person would act under the circumstances. The fact that Bill was driving within the speed limit was only one of the circumstances to consider. The weather or the condition of the road may have made it unreasonable to drive at 35 miles an hour. Driving slower than the speed limit does not in and of itself prove that the driver was acting reasonably.

The reasonable person standard varies in accordance with the situation. The degree of care required of a person is that which an ordinarily prudent person would exercise under similar circumstances. This does not necessarily mean a degree of care that would have prevented the harm from occurring. The elements required to establish negligence are: the presence of **duty**; a **voluntary act or failure to act (an omission)** that breaches the duty; **proximate causation of harm**; and **damage** (i.e., the breach of duty causes harm to the plaintiff).

Torts involve **duties** created by law. Just because someone is hurt does not mean that someone else must pay for the harm. There must have been a duty which has been breached. A plaintiff will not be allowed to recover from a defendant if the defendant did not breach a duty that was owed to the plaintiff. For example, if a burglar breaks into my house and trips over an item of furniture, I am not liable to the burglar because I had no duty to him. However, if a guest in my house trips over a piece of furniture, I may have a duty to that guest. The breach of duty must result from a voluntary act or failure to act.

In order for someone to be legally responsible for damage, it is necessary to show that the wrongful act was the proximate cause of the harm. The injury must be shown to be the natural and probable result or consequence of the alleged act of negligence. The plaintiff must prove that the defendant's negligence proximately caused the Plaintiff's injury. There may be more than one proximate cause of an accident.

The final element of negligence is damages. A plaintiff may recover monetary damages to compensate the plaintiff for economic losses such as lost wages and medical expenses. A plaintiff

may also recover non-economic losses such as for pain and suffering. The former are claimed on a normal accounting basis, and the latter are at the discretion of the judge.

Malpractice

Malpractice is a failure by a physician or other professional to use the skill and care that other members of their profession would use under similar circumstances. When an accountant, doctor, attorney, or some other professional contracts to perform services, there is a duty to exercise skill and care as is common within the community for persons performing similar services. Failure to fulfil that duty is malpractice.

Group 4 – Nuisance

Nuisance is a civil wrong, consisting of anything wrongfully done or permitted that interferes with or annoys others in the enjoyment of their legal rights. It is anything that annoys or disturbs the free use of one's property or that renders its ordinary use or physical occupation uncomfortable.

A nuisance is anything that interferes with the rights of citizens, the enjoyment of their property, or their comfort. It is to be noted that an unreasonable interference with another person's use and enjoyment of his/her property is determined by the injury caused by the condition and is not determined by the conduct of the party creating the condition.

A nuisance is differentiated from a trespass to land. A trespass is an invasion of a person's interest in the exclusive possession of their land, whereas a nuisance is an interference with the use and enjoyment of the land and does not require interference with the possession.

A person injured by a nuisance can recover damages in an action at law for tort. Similarly, damages can also be recovered for injury resulting from the legal use of a property, if such use substantially damages the property of another.

Nuisances are divided into different subheads such as nuisances per se, public or common nuisances, private nuisances, etc.

A public nuisance exists when an act or condition is subversive of public order or constitutes an obstruction of public rights. In other words, a public nuisance involves an unreasonable interference with a right common to the general public. In order to constitute a public nuisance, it is not necessary that it affects the whole community. It is a public nuisance if the injury or annoyance affects the people of a local neighborhood. Public nuisances always arise out of unlawful acts. Therefore, acts that are lawful or authorized by a valid statute, or which the public convenience demands, cannot be a public nuisance.

A public nuisance can constitute either a crime or may be the subject of a civil action by public officials or private individuals. At common law, the term "public nuisance" covers a variety of minor criminal offenses that interfere, for example, with the public health, safety, morals, peace, or convenience.

Public nuisances include for example, a manufacturer who has polluted a stream and might be fined

and be ordered to pay the cost of cleanup. Public safety nuisances include shooting fireworks in the streets or storing explosives.

A private nuisance is a civil wrong that affects a single individual or a definite number of persons in the enjoyment of some private right which is not common to the public. In other words, a private nuisance is a substantial and unreasonable interference with the private use and enjoyment of one's land. Examples include interference with the physical condition of the land, disturbing the comfort of its occupants, or threatening injury or disturbance in the future.

Nuisances that interfere with the physical condition of the land include vibration or blasting that damages a house; destruction of crops; raising of a water table; or the pollution of soil, a stream, or an underground water supply. Examples of nuisances interfering with the comfort, convenience, or health of an occupant are foul odors, noxious gases, smoke, dust, loud noises, excessive light, or high temperatures, e.g. a landowner burning plastic and old tyres so that the smell and smoke affect his neighbours.

Group 5 - Defamation

Defamation is the communication of a false statement that harms the reputation of an individual. The law of defamation protects a person's reputation and good name against communications that are false and derogatory. Defamation consists of two torts: libel and slander. **Libel** consists of any defamation that can be seen, most typically in writing. **Slander** is a form of defamation that consists of making false oral statements about a person which would damage that person's reputation. If I spread a rumor that my neighbor has been in jail and this is not true, I could be held liable for slander.

A person is liable for the defamation of another. In order to prove defamation, the plaintiff must prove:

- that a statement was made about the plaintiff's reputation, honesty or integrity that is not true;
- there was publication to a third party (i.e., another person hears or reads the statement); and
- the plaintiff suffers damage as a result of the statement.

Public figures have a more difficult time proving defamation. Politicians or celebrities are understood to take some risk in being in the public eye and many of them profit by their public persona. A celebrity must prove that the party defaming them knew the statements were false, made them with actual malice (intent to harm), or was negligent in saying or writing them. Proving these elements can be an uphill battle. However, an outrageously inaccurate statement that's harmful to one's career can be grounds for a successful defamation suit, even if the subject is famous. For example, some celebrities have won suits against tabloids for false statements regarding their ability to work, such as an inaccurate statement that the star had a drinking problem.

Another important aspect of defamation is the difference between fact and opinion. Statements

made as "facts" are frequently actionable defamation. Statements of opinion or pure opinion are not actionable. Some jurisdictions decline to recognize any legal distinction between fact and opinion. To win damages in a libel case, the plaintiff must first show that the statements were "statements of fact or mixed statements of opinion and fact" and second that these statements were false. Conversely, a typical defense to defamation is that the statements are opinion. One of the major tests to distinguish whether a statement is fact or opinion is whether the statement can be proved true or false in a court of law. If the statement can be proved true or false, then, on that basis, the case will be heard by a jury to determine whether it is true or false. For example, your statement of opinion is just an opinion, and does not contain specific facts that can be proved untrue. "The waiters and waitresses at the Tivoli Restaurant are too slow and the food is too spicy." This is a statement of opinion. "I got food poisoning at the Tivoli Restaurant" is potentially a defamatory statement if, in fact, the restaurant can prove that you never contracted food poison."

Some statements, while libelous or slanderous, are absolutely privileged in the sense that the statements can be made without fear of a lawsuit for slander. The best example is a statement made in a court of law. An untrue statement made by a witness about a person in court which damages that person's reputation will generally not be held to be liability to the witness as far as slander is concerned.

Group 6 – Strict liability torts + Vicarious liability

Strict Liability

Strict or absolute liability is the legal responsibility for damage or injury, even if the person found strictly liable was not at fault. In order to prove strict liability in tort, plaintiff needs to prove only that the tort happened and that the defendant was responsible for the act or omission. In the case of strict liability in the USA, neither good faith nor the fact that the defendant took all possible precautions is a valid defense. A common example of strict liability is imposing product liability in the case of defectively manufactured products.

Strict liability applies especially in cases involving hazardous or dangerous activities.

Generally, liability based on a tort only arises where the defendant either intended to cause harm to the plaintiff or in situations where the defendant is negligent. However, in some areas, liability can arise even when there is no intention to cause harm or negligence. For example, when a contractor uses dynamite which causes debris to be thrown onto the land of another and damages a landowner's house, the landowner may recover damages from the contractor even if the contractor was not negligent and did not intend to cause any harm. Basically, society is saying that the activity is so dangerous to the public that there must be liability. However, society is not going so far as to outlaw the activity.

Example: Acme Construction Company was constructing a highway. It was necessary to blast rock with dynamite. The corporation's employees did this with the greatest of care. In spite of their precautions, some flying fragments of rock damaged a neighboring house. The owner of the house

sued the corporation for damages. The corporation raised the defense that the owner was suing for tort damages and that such damages could not be imposed because the corporation had been free from fault. Was this defense valid? No. While ordinarily fault is the basis of tort liability, there are cases in which absolute liability is imposed on the actor. This means that when harm is caused, it is no defense that none was intended or that due care had been exercised to prevent the harm.

Other examples of absolute liability situations would be harm caused by storage of flammable gas and explosives, factories which produce dangerous fumes or smoke in populated areas, and the production of nuclear material.

Vicarious Liability

Vicarious liability is the responsibility of the superior for the acts of their subordinate. It is the responsibility of a third party who has the right, ability or duty to control the activities of a violator. Typically liability flows from the relationship of master and servant. The relationship includes the power to direct the servant in the execution of the duties of his/her employment, and to control the acts that no injury is done to third persons.

An employer can be held vicariously liable for an employee's tortious act against the person or property of a third party in a transaction of the employer's business. If a negligent act is committed by an employee acting within the general scope of her or his employment, the employer will be held liable for damages. For example, if the driver of a gasoline delivery truck runs a red light on the way to a gas station and strikes another car, causing injury, the gasoline delivery company will be responsible for the damage if the driver is found to be negligent.

Based on: www.uslegal.com

Source: <http://en.wikipedia.org/wiki/>, <http://legal-dictionary.thefreedictionary.com/>

Torts – Summary

Fill in the missing information in the summary below.

Tort is a civil wrong for which the injured party may recover damages. The adjective of the word "tort" is tortious.

Types of torts

intentional negligent strict liability

A person committing a tort is called a tortfeasor.

A **trespass** is an unlawful (protiprávní) act causing injury to the person, property, or rights of another.

Trespass to the person may take two forms:

- **_assault_** (hurting the person)
- **_battery_** (making the person believe that he/she will be hurt).

Trespass to _land_ means going on private property of another without his/her **_consent_** (souhlas). Even if the trespass is committed by mistake the person is **_liable_** (odpovědný) for damages.

Conversion is the civil side of the crime theft – personal property is taken by the defendant without owner's permission.

False imprisonment occurs when a person is detained without his/her consent.

Negligence is a **_failure_** (“selhání”) to follow the degree of care that is owed to the plaintiff.

The elements required for negligence are:

- The duty of **_care_** existed
- The duty was **_breached_**
- The harm was **_caused_** by the wrongful act

Negligence committed by a professional (doctor, attorney) is called **_malpractice_**.

Nuisance is anything that **_interferes_** (zasahuje) with the rights of a citizen.

Nuisance can be

- **_public_** (unreasonable interference affecting the community) Example: **_polluted stream, fireworks, etc._**
- **_private_** (civil wrong affecting an individual) Example: **_smoke, noise, light, etc._**

Defamation is a statement that is **_false_** (not true) and harms the **_reputation_** of an individual.

Defamation may take two forms

- **_libel_** - in writing
- **_slander_** - in speaking

Statements of opinions are not **_actionable_** (žalovatelné) as opposed to statements of facts.

Liabilities

Strict or absolute liability is responsibility for injury even if the person is not at **_fault_**.

Responsibility of the employer for the acts of their employees is called **_vicarious_** liability.

Created by the team of authors.

TORTS

I. Law of Torts in a Legal Drama

Clip 0

Silent watching

Describe what you think is going on. - 2 lawyers and their driver, a taxi driver, accident, insurance claim/legal action, the policeman takes reports.

Clip 1

Explain the following lines from the scene:

This is a matter for insurance, not a frivolous lawsuit.

Do not pursue this matter.

When you lose, you'll be covering my fee.

As his employer, you're liable for his actions.

I sued for my citizenship.

What is the legal development of the case? - legal action/frivolous lawsuit

What type of liability is the driver referring to? - vicarious liability

Clip 2

Exam practice. Listening.

Fill in the gaps with words you hear in the video:

Ray needs to see Harvey because he was named in a multimillion dollar lawsuit.

Donna likes compliments but she objects to having limitations placed on her beauty.

Ray does not have to worry about the expense because Harvey is taking the case pro bono. One of the reasons he gives for not minding doing this is that he thinks the judge is going to dismiss the case.

Clip 3

Harvey is trying to get the case dismissed. Tony learns about it and claims his right to be present. They both present arguments to the judge – why the case should/should not be dismissed.

List both arguments and find out how the judge ruled.

Harvey's arguments	Tony's argument
<ul style="list-style-type: none">• This case should be dismissed. It's a matter for insurance.• Plaintiff's entire claim rests upon the assumption that he would've won this year's medallion• It is a fender-bender, not a multimillion-dollar lawsuit.	<ul style="list-style-type: none">• Insurance only covers repairs. It does not deal with my losses.• I missed my chance to get my taxi medallion.• The loan I got expires in one week. On top of that, a medallion costs 300,000 this go-round. Next year, 350.• Vicarious liability applies to

	discrimination, harassment, and accidents. Employers are responsible for their employees' negligence.
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The Judge ruled for _the plaintiff (Court finds a reasonable suit here.)_____.

Clip 4
Pre-watching

What is the **opening statement** and what is its **aim**?

- The opening statement is generally constructed to serve as a "road map" for the fact-finder. This is especially essential, in many jury trials, since jurors (at least theoretically) know nothing at all about the case before the trial, (or if they do, they are strictly instructed by the judge to put preconceived notions aside). Though such statements may be dramatic and vivid, they must be limited to the evidence reasonably expected to be presented during the trial. http://en.wikipedia.org/wiki/Opening_statement
- Appeal to emotions, persuade the jury.

On a piece of paper, write an argument you would use in the opening statement if you were in Tony's shoes. Appeal to emotions!

What does it mean to "take the fifth" and when can it be used?

- refuse to testify by invoking the Fifth Amendment, which states that nobody may be forced to testify as a witness against himself or herself

Take notes listing the development of the case:

- Mike was made to admit that unless Mr. Benghazi made up for that lost time, they were going to be late for that meeting.
- Harvey made Tony admit that he only had seven minutes to get downtown in rush hour traffic, accused him of using the accident to paint him and Ray Benghazi as a couple of scapegoats and finally made him admit the light was yellow.
- In a sidebar conference the case was settled. What were the conditions of the settlement?
- Tony pays nothing, takes responsibility for the accident, and his insurance company makes Ray whole. In return, Harvey waives his right to collect legal fees.

Source: Suits - Bail Out, Season 1, Episode 5
Tasks created by the team of authors.

I. Lawyer – Client Interview

1. Interviewing and advising - interview structure

The list below covers some major language functions a lawyer might perform when interviewing a client. For each function, language suggestions are given. Complete the gaps 1-15 with suitable functions A-O.

OPENING

- Greeting the client, preliminary small talk
1. O I hope you had no trouble finding our office.
- getting an overview of the case, explaining circumstances and structure of the interview
2. E. Let me assure you that everything you tell me today will be held in strict confidence.
3. J. I understand that you would like some advice on your employment situation.

LISTENING AND QUESTIONING

- listening actively to establish facts of events, checking for understanding
4. I. Mmm...I see.
5. K. OK, we've identified three issues which we need to focus on. These are...Is that how you see it?
- identifying aims of the client
6. H. What would be an ideal outcome for you?
7. L. Perhaps you could let me know what your priorities are in this matter.

SUMMARIZING

- summarizing the client's concerns and goals
8. G. If I understand you correctly, you're saying that ...
9. M. Allow me to summarize what you've said.
- seeking further information from the client
10. F. I need to know more about...

ADVISING

- giving a brief outline of the relevant law and applying the law to the client's problem
11. N. The legal position is as follows...
12. P. I am sorry to inform you that there is no legal ground for this claim.
- outlining available options, helping the client reach a decision if appropriate
13. D. I have to warn you that proving that ...will be extremely difficult.
14. A. You have two or three options here. The first... the second... and the third is to....

CONCLUDING

- describing the follow-up action to be taken by lawyer and by client
15. C. Let me go through the file and read through the contract. Then I'll prepare the complaint.
- concluding the interview appropriately
16. B. Thanks for coming in to see us today. Don't hesitate to phone or send me an email if you have any questions.

A. You have two or three options here. The first... the second... and the third is to....

B. Thanks for coming in to see us today. Don't hesitate to phone or send me an email if you have any questions.

C. Let me go through the file and read through the contract. Then I'll prepare the complaint.

- D. I have to warn you that proving that ...will be extremely difficult.
- E. Let me assure you that everything you tell me today will be held in strict confidence.
- F. I need to know more about...
- G. If I understand you correctly, you're saying that ...
- H. What would be an ideal outcome for you?
- I. Mmm...I see.
- J. I understand that you would like some advice on your employment situation.
- K. OK, we've identified three issues which we need to focus on. These are...Is that how you see it?
- L. Perhaps you could let me know what your priorities are in this matter.
- M. Allow me to summarize what you've said.
- N. The legal position is as follows...
- O. I hope you had no trouble finding our office.
- P. I am sorry to inform you that there is no legal ground for this claim.

Based on Haigh, Rupert, Legal English, Routledge: London and New York 2012 and Amy Krois-Lindner, Matt Firth, Introduction to International Legal English, CUP, Cambridge 2008.

**1. Speaking Practice –
Case 1 - Theft In a Hotel Room**

CLIENT	LAWYER in Brno
<p>You're John Hopkins from London visiting Brno.</p> <p>You booked a single room in a hotel in Brno for one week. One night you went out to the city centre. When you returned you found out that the door to your room had been opened. Your valuables were missing. You informed the hotel receptionist. The hotel called the police.</p> <p>The hotel manager informed you that the hotel is not liable for your loss and that you have to wait for the police and hope they will find the perpetrator.</p> <p>You realized that you had signed an accommodation contract containing the clause that the hotel was not liable for any loss that</p>	<p>A new client, John Hopkins from London, has made an appointment to discuss whether the hotel he was staying in is liable for a burglary that occurred during his stay.</p> <p>The law to be applied: § 2946 NOZ</p> <p><i>(1) Kdo provozuje pravidelně ubytovací služby, nahradí škodu na věci, kterou ubytovaný vnesl do prostor vyhrazených k ubytování nebo k uložení věcí, popřípadě na věci, která tam byla pro ubytovaného vnesena. To platí i tehdy, byla-li věc za tím účelem ubytovatelem převzata.</i></p> <p><i>(2) Prokáže-li ubytovatel, že by ke škodě došlo i jinak, nebo že škodu způsobil ubytovaný nebo</i></p>

<p>might occur. This information is also written on a notice hanging in the lobby.</p> <p>You've come to see a lawyer in Brno for advice. You want to know if the hotel should compensate you for the loss incurred.</p> <p>Ask your lawyer for clarification of your legal position.</p> <p>You are free to make up any other details in response to your lawyer's questions.</p>	<p><i>osoba, která ubytovaného z jeho vůle provází, povinnosti k náhradě škody se zproští. K ujednáním o jiných důvodech zproštění se nepřihlíží.</i></p> <ul style="list-style-type: none"> ● greet the client, make him feel relaxed ● listen actively to your client, sum up the main points ● explain the relevant legislation and how it relates to your client's case ● give advice and suggest further steps ● ask if the client agrees, or if he has any further suggestions ● thank for coming, repeat what you're going to do and say goodbye
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Case 2 – Missing Tablet in a Hotel Lobby

<p>CLIENT</p> <p>You're Mrs. Helen Smith from New York visiting Ostrava.</p> <p>You are staying in a luxury hotel in the centre of the town. Last night you had a drink with your business partner in the lobby of your hotel. She wanted to see the photos of your prize winning Yorkshire terriers. You happily obliged and she was impressed. Unfortunately, once you showed the pictures, you put the tablet on the next seat and forgot to take it when you left. When you remembered and came to fetch it the next morning, it was gone. You reported the fact to the hotel receptionist.</p> <p>The hotel manager informed you that the tablet was not found and the hotel is not liable for your loss.</p> <p>You realized that you had signed an accommodation contract containing the clause that the hotel was not liable for any loss that might occur. This information is also written on a notice hanging in the lobby.</p> <p>You've come to see a lawyer in Ostrava for advice. You want to know if the hotel should compensate you for the loss incurred.</p> <p>Ask your lawyer for clarification of your legal position.</p>	<p>LAWYER in Ostrava</p> <p>A new client, Mrs. Helen Smith from New York, has made an appointment to discuss whether the hotel she was staying in is liable for a loss that occurred during her stay.</p> <p>The law to be applied: § 433 Czech Civil Code § 2946 NOZ</p> <p><i>(1) Kdo provozuje pravidelně ubytovací služby, nahradí škodu na věci, kterou ubytovaný vnesl do prostor vyhrazených k ubytování nebo k uložení věcí, popřípadě na věci, která tam byla pro ubytovaného vnesena. To platí i tehdy, byla-li věc za tím účelem ubytovatelem převzata.</i></p> <p><i>(2) Prokáže-li ubytovatel, že by ke škodě došlo i jinak, nebo že škodu způsobil ubytovaný nebo osoba, která ubytovaného z jeho vůle provází, povinnosti k náhradě škody se zproští. K ujednáním o jiných důvodech zproštění se nepřihlíží.</i></p> <ul style="list-style-type: none"> ● greet the client, make her feel relaxed ● listen actively to your client, sum up the main points ● explain the relevant legislation and how it relates to your client's case ● give advice and suggest further steps ● ask if the client agrees, or if she has any further suggestions
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You are free to make up any other details in response to your lawyer’s questions.	<ul style="list-style-type: none"> • thank for coming, repeat what you’re going to do and say goodbye
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Created by the team of authors.

III. TORTS – CASE STUDIES

1. Case Study

1. *You work as a student assistant for the Legal Advice Centre, offering free advice to ordinary people. It’s a good practice and it will look great on your CV. Watch the recording and recall the structure of the lawyer-client interview we worked on last lesson.*
2. *Now, it’s your turn. The name of your client is Bert Simpson. Read the facts of his case and in pairs, try to identify the key legal issues. What tort is involved?*

Groovy Clothing Stores were recently renovated and held an opening sale in their modernised premises. A huge crowd of shoppers entered the store (including Bert). Bert decided to go to the menswear department on the second floor and climbed the stairs with dozens of keen shoppers. Unfortunately, the stairs were unable to take the weight of so many shoppers and one of the stairs gave way. Bert fell three metres and suffered extensive injuries. He will be in hospital for the next six months.

3. *In groups, analyze the case with the help of the questions below and fill in the table.*
 1. Was there a duty of care (by whom and to whom)?
 2. What was the standard of that duty of care? Was the duty of care breached?
 3. If there was a breach, was the damage associated with that breach?
 4. Defences, i.e. did the plaintiff contribute to the breach?

Issues to be identified	
Was a duty of care owed?	<p>Occupiers owe a duty of care to entrants because of their control over the premises.</p> <p>GC is an occupier of premises and thus owes a duty of care to those coming on to the premises</p>
What was the standard of that duty of care?	<p>The standard that is a reasonable, ordinary and prudent person in the circumstances of the occupier.</p>
Was it breached?	<p>Did GC act as a reasonable occupier of premises? Need to examine the risks of omission, the seriousness of the consequences, the possibility of eliminating those risks and compliance with usual practice</p> <p>Foreseeability of harm — apply to the facts</p> <ul style="list-style-type: none"> • opening crowd • too many people on stairs • No warning to shoppers

	<ul style="list-style-type: none"> • →Breach of duty of care to Bert
<p>Causation (Was the damage suffered a direct result of the defendant's actions?)</p>	<p>Two tests:</p> <ol style="list-style-type: none"> 1. causation - 'but for' the breach the damage would not have happened ('But for' the breach, the damages, i.e. Bert's hospitalization and injuries would not have occurred) 2. remoteness - are the injuries reasonably foreseeable? <p>Would the damage have occurred other than as a result of the breach? Is the damage reasonably foreseeable?</p>
<p>Defences (Reasons by the defendant in a negligence case to reduce or avoid damages to be paid to the plaintiff)</p>	<p>Contributory negligence</p> <p>Conclude that it is not relevant to the facts.</p> <p>Failure of Bert to take care of himself on the stairs</p>

Teacher's notes – explanation of the case

In this case, GCS owes Bert a duty of care because Bert was in their premises.

It is reasonably foreseeable that harm could occur: allowing too many people to climb the stairs at the same time could very likely cause serious injuries, especially when people started pushing against each other. In addition, GCS should have foreseen (as it had intended to do) that an opening sale would attract a huge crowd to the store. However we have no information to support whether or not the stairs would collapse when too many people were stepping on it. Clearly such an accident could have been avoided if GCS had simply made an announcement using the public address system or by putting up signs reminding shoppers not to rush up the stairs. Also GCS could have hired extra staff to control the customer flow at the stairs. Given the likelihood of serious harm to the stair users, it would have been reasonable for ordinary and prudent store owners to perform the above precautions. GCS omitted these precautions, failed to warn Bert and other shoppers and as a result caused Bert extensive injuries. It appears that GCS has breached its duty of care to Bert.

Although a shopper entering a shop like GCS would not assume voluntarily the risk of falling down a collapsed staircase, in defence of its breaching duty of care, GCS could probably claim that Bert was partly liable for his injury due to his failure to take reasonable care of himself (contributory negligence) on the grounds that an ordinary, reasonable and prudent person would not force him or herself up the stairs at the same time along with so many other people because of the foreseeability of an accident. If this were the case, then not all the losses and damages Bert suffered would be recoverable.

If GCS failed to prove that it was partly Bert's negligence that caused himself such injuries, it would then be completely liable to Bert for any foreseeable loss or damage which he suffered as a result of the breach. But for the breach, Bert would not have suffered extensive injuries and be hospitalised for six months. Hence the medical expenses for Bert's hospitalisation and any foreseeable and reasonable physical or other economic damages (e.g. loss of earning capacity) though not mentioned in the case, would be recoverable by GCS. It appears that Bert would be successful if he sued GCS for negligence. However, if Bert was held partly liable for his injury due to contributory negligence, he might be able to recover only part of these damages.

Optional exercise

Language exercise – Connectors - do odpovědníku???

The standard of care owed by GCS is that of an ordinary, reasonable and prudent occupier who takes reasonable care to avoid foreseeable risks of harm to entrants (not just shoppers)

of the premises.

Bolton v Stone, Mercer's Case. **In this case**, no information was given as to the standards usually required of store owners or whether GCS has complied with the retail industry's general standards of practice. **However** it is reasonably foreseeable that harm could occur: allowing too many people to climb the stairs at the same time could very likely cause serious injuries, especially when people started pushing against each other. **In addition**, GCS should have foreseen (as it had intended to do) that an opening sale would attract a huge crowd to the store. **However** we have no information to support whether or not the stairs would collapse when too many people were stepping on it. **Clearly** such an accident could have been avoided if GCS had simply made an announcement using the public address system or by putting up signs reminding shoppers not to rush up the stairs. **Also** GCS could have hired extra staff to control the customer flow at the stairs. Given the likelihood of serious harm to the stair users, it would have been reasonable for ordinary and prudent store owners to perform the above precautions. GCS omitted these precautions, failed to warn Bert and other shoppers and **as a result** caused Bert extensive injuries. **It appears that** GCS has breached its duty of care to Bert.

Source:

https://www.dlswest.rmit.edu.au/lisu../content/D_BUS/law/negligence_LL/casestudy.html

4. Group Work: Finish the e-mail letter of advice to Mr. Simpson summarizing the case and legal issues you have discussed, and outline the possible steps to be taken next. Use the language phrases listed in the table below the template.

To: simpson@gmail.com

From:

Subject: Your personal injury claim

Dear Mr Simpson,

Thank you for coming to see us at Legal Advice Centre on 12 February where we discussed your accident in Groovy Clothing Stores on 12 December last year. I am writing to summarise our discussion and to identify the key negligence issue. A few recommendations with regard to your claim are included at the end of the letter.

Yours sincerely,

For your reference:

<p>Useful Sentence Openers</p> <p>You informed me that ... You described... You told me...</p> <p>After consulting with my colleague ...I have come to the conclusion that...</p> <p>The legal issue here is whether or not ...</p> <p>Should you be interested in pursuing ... I would be happy to assist you... our firm is well prepared to assist you.</p> <p>In order for us to succeed in a claim against the store, we must prove that ... To prove this we will need to ... If your claim succeeds, ... You would also be entitled to claim for ...</p> <p>I will now write to the store to ... I will be in touch again shortly, but in the meantime, if you have any questions, please do not hesitate to contact me.</p> <p>I look forward to hearing from you soon. Yours sincerely,</p>	<p>Useful Connectors</p> <p>Giving arguments In my view Clearly It appears that</p> <p>Result Therefore Thus Consequently As a result In the end As a consequence</p> <p>Contrasting ideas But Whereas Rather However Even though Although</p> <p>To add information Further Furthermore Moreover In addition Also</p>
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Based on: https://www.dlsweb.rmit.edu.au/lisu./content/D_BUS/law/negligence_LL/casestudy.html

2. Compulsory Assignment (credit requirement)

Write a formal letter of advice to your client, Kendra, who asked you to explain to her legal position in the following legal case.

Case:

Kendra took part in a friendly game of football. She had played before and was familiar with the game. Michael was on her team. In the course of play, Michael bumped into Kendra and knocked her to the ground. He stepped on her hand, causing injury to a little finger that later lead to permanent immobility. She sued Michael for damages. He defended on the ground that she had assumed the risk.

Include all the following points in your letter. Do not forget to use an appropriate style of this type of a letter (formality, choice of words, legal terms)

- Chance of winning - not good
- She knew it was risky (plaintiff/ injury foreseeable)
- Michael did not mean to hurt her (defendant/no intention to harm)

You can follow the given structure of a letter of this type:

Purpose: State what the letter is for.

Problem: State the facts that give rise to the problem

Summarise your conclusion: It may seem strange to state your conclusion near the beginning of a letter. However, it is not a mystery novel you are writing and stating a conclusion can assist the reader in understanding what you have to say in the remaining parts, where you analyse the problem and set out options.

Possibilities: Discuss the options that are available in view of the facts and the law that applies.

Proposal: Set out one of the options as the one you would recommend to the client, and explain why it is the most beneficial to them.

Practical Steps

Is there something that either you or your client has to do? If so, make it clear who should do what and when. It is usual to invite a client to seek clarification if required.

Created by the team of authors.

3. Frivolous Lawsuits and Stella Awards

1. *We are going to listen to a recording about Stella Awards, based on a US law suit. It is very famous, you may have heard about it already. Read the introduction to an article about Stella Awards and correct anything you may think to be wrong:*

For those unfamiliar with these awards, they are named after 99-year-old Stella Linden who spilled hot chocolate on herself and successfully sued KFC in New Mexico, where she purchased hot chocolate. You remember, she took the lid off the chocolate and put it between her knees while she was driving. Who would ever think one could get burned doing that, right? That's right; these are awards for the most outlandish lawsuits and verdicts in the U.S. You know the kind of cases that make you scratch your head. So keep your head scratcher handy.

Green – likely to be answered before listening

Yellow – likely to be answered after listening

Key:

For those unfamiliar with these awards, they are named after 79-year-old Stella Liebeck who spilled hot coffee on herself and successfully sued the McDonald's in New Mexico, where she purchased coffee. You remember, she took the lid off the coffee and put it between her knees while she was driving. Who would ever think one could get burned doing that, right? That's right; these are awards for

the most outlandish lawsuits and verdicts in the U.S. You know the kind of cases that make you scratch your head. So keep your head scratcher handy.

Source: based on <http://boards.dailymail.co.uk/cafe/10254172-2012-stella-awards.html>



1. You are going to hear a discussion between two law students, Maria and Fabio, about a well-known product liability case. Maria mentions **compensatory damages** and **punitive damages**. What is the difference between these two types of damages? Which should be the highest in a case involving serious negligence?

1. Listen to the discussion and correct the remaining mistakes in the previous text.

1. Listen once more and answer these questions.

1. What does Fabio mean by the words **frivolous lawsuit**?
2. What injury did the plaintiff suffer?
3. Why did McDonald's refuse to settle out of court?
4. How much did the court award Liebeck in compensatory damages? How much in punitive damages?
5. What was the reasoning of the court?
6. How much did Liebeck finally receive in damages?

1. Complete the procedural history section of this excerpt from a case note, using words you have studied so far.

CASE: Liebeck v. McDonald's Restaurants

FACTS: In 1992, Stella Liebeck, a 79-year-old woman from New Mexico, bought a cup of coffee from the drive-through of a McDonald's restaurant. Liebeck (1) **placed** the coffee between her legs and opened it. She (2) **spilled** the entire cup of coffee on her lap, burning her lower body severely. At the hospital, it was (3) **determined** that she had (4) **suffered** third-degree burns on six per cent of her skin. She stayed in the hospital for eight days. She was (5) **treated** for two years.

PROCEDURAL HISTORY: After several attempt to reach a (6) **settlement** failed, the claimant sued the (7) **defendant** for gross negligence. The jury (8) **found for** the claimant, determining that the defendant was 80% responsible and the claimant 20%. Claimant was (9) **awarded** \$200,000 in compensatory (10) **damages**, which was then reduced by 20% to \$ 160,000. \$2.7 million in (11) **punitive** damages were also awarded. These damages were then reduced to \$ 480,000.

The decision was (12) **appealed** by both claimant and defendant. However, an out-of-court settlement for less than \$6000.000 was finally reached.

Source of listening: A. Krois-Lindner, M. Firth, Introduction to International Legal English, CUP 2008,

1. Reading and Discussion

Many stories are going around the net saying they are “The Stella Awards”. Many of these stories are false. Despite these stories having been debunked years ago, they not only still circulate, but many reporters still talk about them as if they were true, which says a lot about their professionalism.

Read the following cases and decide which of them are true and which of them are fabricated (made up).

Stella Awards – true or fabricated?	Your comment:
<p>Case No 1: Kathleen Robertson was awarded \$780,000 by a jury after breaking her ankle tripping over a small child who was running inside a furniture store. The owners of the store were understandably surprised at the verdict, considering the misbehaving child was Ms. Robertson's son.</p>	<p>Fab.</p>
<p>Case No 2: Mary Ubaudi was a passenger in a car that got into a wreck. She put most of the blame on the deepest pocket available: Mazda Motors, who made the car. Ubaudi demands "in excess of \$150,000" from the automaker, claiming it "failed to provide instructions regarding the safe and proper use of a seatbelt."</p>	<p>True</p>
<p>Case No 3: Terrence Dickson was going out of a house he finished robbing by way of the garage. He was not able to get the garage door to go up because the automatic door opener was malfunctioning. He couldn't re-enter the house because the door connecting the house and garage locked when he pulled it shut. The family was on vacation, so Mr. Dickson found himself locked in the garage for eight days. He survived on a case of Pepsi he found, and a large bag of dry dog food. Dickson sued the homeowner's insurance claiming the situation caused him undue mental anguish. The jury agreed to half a million dollars and change.</p>	<p>Fab.</p>
<p>Case No 4: A Philadelphia restaurant was ordered to pay Amber Carson \$113,500 after she slipped on a spilled soft drink and broke her coccyx. The beverage was on the floor because Ms. Carson threw it at her boyfriend 30 seconds earlier during an argument.</p>	<p>Fab.</p>
<p>Case No 5: The police officer Marcy Noriega had the suspect from a minor disturbance handcuffed in the back of her patrol car. When the suspect started to kick at the car's windows, Officer Noriega decided to subdue him with her Taser. Incredibly, instead of pulling her stun gun from her belt, she pulled her service sidearm and shot the man in the chest, killing him instantly. The city, however, says the killing is not the officer's fault; it argues that "any reasonable police officer" could "mistakenly draw and fire a handgun instead of the Taser device" and has filed suit against Taser, arguing the company should pay for any award from the wrongful death lawsuit the man's family has filed.</p>	<p>True</p>
<p>Case No 6: In November, Mr. Grazinski purchased a brand new 32 foot Winnebago motor home. On his first trip home, having joined the freeway, he set the cruise</p>	<p>Fab.</p>

<p>control at 70 mph and calmly left the drivers seat to go into the back and make himself a cup of coffee. Not surprisingly, the Winnie left the freeway, crashed and overturned. Mr. Grazinski sued Winnebago for not advising him in the handbook that he could not actually do this. He was awarded \$1,750,000 plus a new Winnebago.</p>	
<p>Case No 7 : And just so you know that cooler heads do occasionally prevail: Kenmore Inc., the makers of Dorothy Johnson's microwave, were found not liable for the death of Mrs. Johnson's poodle after she gave it a bath and attempted to dry it by putting the poor creature in her microwave for, "just a few minutes, on low," The case was quickly dismissed.</p>	<p>Fabricated from a very old urban legend!</p>

Stella Awards – true or fabricated?, <http://www.stellaawards.com/bogus.html>

References:

Part I, ex. 1, pp. 1-6: information provided by USLegal.com, <http://en.wikipedia.org/wiki/http://legal-dictionary.thefreedictionary.com/>

Part II, pp. 9- 10, clips from: Suits - Bail Out, Season 1, Episode 5

Part III, ex. 1, p. 15: <http://www.youtube.com/watch?v=LpPL24DVB70&feature=youtu.be>

Part III, ex. 2, p. 18, structure of the letter based on:

http://www.vanuatu.usp.ac.fj/student_resources/Resources_Main/legal_letters.html

Part III, ex. 1 – listening, pp. 19-20: A. Krois-Lindner, M. Firth, Introduction to International Legal English, CUP 2008, p. 32

Case study: based on

https://www.dlsweb.rmit.edu.au/lisu../content/D_BUS/law/negligence_LL/casestudy.html

Stella Awards – true or fabricated?, <http://www.stellaawards.com/bogus.html>