

Introduction to Tort

Tort derives from the French word 'wrong'. It is a collection of civil laws that have evolved since medieval times and around the same time as contract laws were being developed.

In tort proof of fault requires evidence that the defendant is liable. This can make it difficult for the claimant to establish fault and can mean that they are unable to succeed in their claim. For example in the area of medical negligence, fault is notoriously difficult to prove. A claimant will have to provide evidence that a doctor's actions have fallen below the standard of care expected of the ordinary reasonable doctor. 'Taking on' the medical profession in a legal battle makes this a difficult challenge in itself, so much so that there have been suggestions made to make such medical claims 'no - fault' although this proposals have never been adopted.

The legal principle of strict liability applies to torts where it is not necessary to show that the defendant was negligent or had intent to cause harm. Strict liability can be seen in the tort known as **Rylands v Fletcher**

The defendant owned a mill and constructed a reservoir on their land. The reservoir was placed over a disused mine. Water from the reservoir filtered through to the disused mine shafts and then spread to a working mine owned by the claimant causing extensive damage. The defendants were strictly liable for the damage caused by a non- natural use of land.

Most torts have developed through the common law (developed by judges) such as nuisance. However, there has been some statutory intervention, namely the Occupiers' Liability Acts of 1957 and 1984, which have created a duty and responsibility to visitors and trespassers

Public policy decisions can be seen in the law of tort where the judge will decide a case based on what is best for the whole of society rather than the individual parties in the case. This can also be linked to the 'floodgates argument' where by a decision is made to ensure that the courts will not be suddenly 'flooded' by cases.

Justice is another theme, which runs through the law of torts. The law tries to create fairness and can be used to evaluate the legal rules and theory. For example, why is it fair that an employer is responsible for the torts committed by his/her employees; or is it fair that a motorist may be deemed negligent even when they have not broken the speed limit?

Justice is particularly important in deciding if the defendant owes the claimant a duty of care. Part of the test used to establish this asks the court 'is it just, fair and reasonable to impose a duty of care?'

Sometimes there is an overlap with the law of tort and the criminal law. For example, if a negligent motorist causes injury to another road user, the injured party will want to sue for compensation plus the police may wish to prosecute if there is evidence of dangerous driving e.g. the motorist was using their mobile phone.

The Human Rights Act 1998 also links to the law of tort. Article 8 'the right to respect for family and private life' has connections to the land - based torts such as nuisance and **Rylands v Fletcher**, where land owners must ensure that their activities do not infringe the rights of their neighbours. Article 2 'the right to life' was also considered in the recent case of **Michael v Chief Constable of South Wales Police (2015)**

Ms Michael dialled 999 requesting police protection from her historically aggressive ex-boyfriend. Ms Michael told the call handler that her ex-boyfriend had come to the house, found her with another man, bit her ear and had taken the other man away in the car saying he would come back to hit her. Later, in the call, according to the recorded transcript of the conversation, Ms Michael stated her ex-boyfriend had told her "I'm going to drop him home and fucking kill you". The call handler later gave evidence that she had heard "hit you" rather than "kill you". The call was graded by Gwent police as a G1 call, requiring an immediate response by police officers. When giving the South Wales Police an abbreviated version of events, the call handler did not reference the threat to kill and the priority of the call was downgraded to 'G2': officers should respond within 60 minutes. A second call was received at during which Ms Michael was heard to scream and the line went dead. Police officers arrived at Ms Michael's home at to find she had been brutally attacked and had died from her wounds. Ms Michael's family claimed against the two police forces for damages for negligence and under the Human Rights Act 1998, invoking right to life under Article 2 of the ECHR. The police forces sought a strike out of these claims or summary judgment, which was refused at first instance. On appeal, the Court of Appeal reversed that decision in part and held unanimously that there should be summary judgment in favour of the defendants on the negligence claim, but the Article 2 ECHR claim should proceed to trial. The claimants appealed to the Supreme Court on the claim that the police were liable in negligence.

Term	Definition
Strict liability	A tort that does not require the proof of fault either through negligence or intent to cause harm.
Fault - based liability	A tort that requires the proof of either negligence or intent to cause harm.
Common law	Law made by judges e.g. Donoghue v Stevenson established the 'neighbour principle' used in negligence to decide if a duty of care is owed.
Statutory law	Law made by parliament e.g. the Occupiers' Liability Act 1984 extended liability to trespassers in certain circumstances.
Public policy	A decision in a case or an Act where the impact on society is the basis for the rule.
Justice	Being fair and reasonable.
Floodgates argument	A case is decided in a way, which limits or restricts the right to make a claim so that the courts are not 'flooded' with claims e.g. you cannot sue the police for not catching a criminal sooner.
Human Rights Act 1998	The Human Rights Act 1998 allows you to defend your rights in the UK courts and th at the Government, the Police, Councils etc. must treat everyone equally, with fairness, dignity and respect.