

INTRODUCTION TO THE LAW OF TORT

Tort may be defined as the law of civil wrongs and its aim is to provide recompense for damage caused by the act of another in circumstances in which no other legal duty in respect of the damage exists. There are a whole variety of torts, too many to list, but they can be found in any textbook. In tort law, a **duty of care** is a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others

Basic Principles: There are 3 criteria:

Is there a duty of care owed?

Is there a breach of that duty?

Is there damage caused by that breach?

Give me an example of duty of care that you might owe in your everyday life?

It is difficult to set a standard of care and it has often been related to the "man on the Clapham omnibus."

What is the origin of the expression 'The man on the Clapham omnibus'?

THE MAN makes his debut in the decision of Lord Justice Greer in the case of Hall v Brooklands Auto-Racing Club. (1933) 1 KB 205. He appears as that ubiquitous, and mythical, "reasonable man" in order to set "reasonable" standards. In the case itself he is a spectator at a motor racing event where a number of the watching crowd are seriously injured when a car careers through the barrier. To the question of whether the race organisers owed a duty of care to the victims he is made to reply with a firm negative, since "he would know quite well" that no barrier would provide protection from this "possible but highly improbable" occurrence. Thus the reasonable man denies any right of compensation.

Damage must be proven; direct or indirect harm, it is not necessary to show injury.

The main problem in the law of tort is how far this liability should go and this has received different answers at different times.

Anns v Merton L.B.C. [1978] AC 728

The plaintiffs were lessees and occupiers of flats built in the 1960's by a private builder. The building began to suffer damage, such as cracks in the walls due to movement of the foundations. The defendants were a Local Authority; they had the power to inspect the foundations under local Bye Laws, but had no duty to do so.

Held – A statutory power and a duty could give rise to a duty of care. “*The Wilberforce test of Duty of Care*”.

Murphy v Brentwood D.C. [1990] 3 WLR 414

The defendants local authority failed to inspect the foundations of a building adequately, with the result that building became dangerously unstable. The claimant, being unable to raise the money for repairs, had to sell that house at a considerable loss, which he sought to recover from the local authority, claiming they were negligent in passing the plans which were inadequate.

Held – His action failed, thus bringing to an end the explosion in liability for [Pure Economic Loss](#) experienced over the preceding 20 years. *House of Lords overturned the decision in Anns v Merton (too remote, house sold many times)*.

Clearly there are good arguments each side but which is to prevail is a matter of policy either for the judges or for the state.

Who can be liable?

The Tortfeasor:- the person who commits the tort

Where 2 or more breaches of duty by different defendants cause the plaintiff injury, the liability may be independent, several or joint.

Vicarious Liability this is the liability of a master for the acts of his servants there must be a relationship of control such as employer employee relationship.

Bayley v Manchester, Sheffield and Lincolnshire Rail Co (1873) LR 8 CP 148

The plaintiff, a passenger on one of the defendants' trains, was violently pulled from his carriage, just after the train had started, by one of the defendants' porters, who believed that the plaintiff was on the wrong train. The defendants' byelaws, of which the porter had a copy, provided that: “*porters were not to remove passengers from wrong trains or carriages, but by their rules, of which the porter also had a copy, porters were given a general direction to do all in their power to promote the defendants' interests and it was part of the porter's duty to prevent passengers from travelling by the wrong trains, as far as they were able to do so*”.

Held - The defendants were liable to the plaintiff for the porter's act, because there was evidence that he was acting within the authority given to him by the defendants.