8 Tort Law

Text 1: Negligence & Occupier's Liability

1. Pre-reading tasks
1. Before you read the text, give an example of conduct which can cause injury to a person or
damage to property but is neither a crime nor a breach of contract.
2. Look at the following statements and mark what you think the answers are. Then scan the
text and check your initial hypotheses.

a. If a person who caused you harm in the course of his employment is poor, you can sue his employer. True/False
b. One has a legal duty to rescue persons or property in danger. True/False
c. An occupier of land owes a legal duty to lawful visitors but he does not owe it to trespassers. True/False

3. Now read the text and answer the questions that follow.

Torts, Crimes and Broken Contracts

In everyday life there are many instances of harmful behaviour which neither reaches
the level of a crime (and therefore will not be prosecuted by the police) nor can it be treated as
breach of contract because the victim had no contract with the wrongdoer. Examples of such
count include interference with a person's property, damage to his honour or reputation,
violation of his privacy or physical attack on a person where no intention or recklessness can
be shown. These wrongs are called torts (Old French: 'harm, wrong') and are the subject of
tort law. Tort is a wrong committed by one individual against another individual's person,
property or reputation. Or, if we focus on legal consequences that may follow it, then tort is a
wrongful act or omission for which damages can be obtained in a civil court by the person
wronged. Like crimes, torts may be common-law or statutory, depending on their origin.

Many acts can be treated both as a tort and a crime. For example, dangerous driving is
a crime but it may give rise to an action in tort if it causes injury to another person. In this
case the crime will be prosecuted by agents of the state in the name of the Crown, but the
injured person may seek compensation from the tortfeasor (committer of the tort) in a civil
court by means of an action in tort. The standard of proof required is lower than in many
criminal prosecutions since for many torts it is not necessary to show any particular mental
element.

Some acts can be treated both as a tort and a breach of contract. For example,
negligent driving by a taxi-driver that causes injury to his passenger is both the tort of
negligence and breach of the contract to carry the passenger safely to his destination. The
passenger may sue either in tort or for breach of contract, or both. Normally it is easier to sue
for breach of contract than in the tort of negligence, but the former is only possible when a
contract exists. When the claimant has a choice, he will decide which case is easier to prove
and under which law he is likely to get larger damages. In contract, the aim of damages is to
put the claimant in the position that he would have been in if the contract had been performed;
in tort, damages are to restore the position he would have been in if the tort had not occurred.
In exceptional cases in tort (but never in contract) the defendant's wrongdoings may be
punished by exemplary damages (also called ‘punitive’ or ‘vindictive’ damages). They are
given, for instance, when the defendant has deliberately calculated that the profits to be made
out of committing a tort may exceed the damages at risk. In such cases, exemplary damages
are given to prove that ‘tort does not pay’.

Another difference between the law of tort and the law of contract is that in contract
the rights of third parties are limited, whereas in tort anyone may sue or be sued, even a child
or mentally sick person. It may even be possible to sue the employer of a person who commits
a tort in the normal course of his employment. This kind of liability for torts or crimes
committed by another is known as vicarious liability. Suing somebody who is vicariously
liable may be useful where the defendant is poor and one is seeking higher damages. (But
even if the employer is found liable, this does not necessarily relieve the employee of
liability).

Various torts protect a wide range of interests: the tort of negligence protects an
individual's person and property; the torts of assault and false imprisonment - his personal
freedom; the torts of conversion and trespass - title to property; the tort of nuisance -
enjoyment of property; the tort of defamation - a person’s reputation; and the torts of
intimidation, conspiracy and passing off - various commercial interests. We shall consider
some torts in this chapter and some in subsequent chapters.

Negligence

“The Common Law of England has been laboriously built about a
mythical figure- the figure of the “Reasonable Man”.
A.P. Herbert

By far the most common tort is the tort of negligence providing compensation for
personal injury and property damage caused by negligence. Negligence is failure to do
something that a reasonable man would do, or doing something that a reasonable man would
not do. We have seen that negligence is a form of ‘mens rea’ in criminal law but it is also a
tort which consists in the breach of a duty of care resulting in damage to the claimant. The
modern law of negligence developed from an extremely important case, Donoghue v.
Stevenson (1932), where Mrs. Donoghue sued the supplier of a ginger beer drink which she
had drunk and which contained the remnants of a decomposed snail. The judge, Lord Atkin,
held that the manufacturer owed Mrs. Donoghue a duty of care, which he defined as the legal
obligation to take reasonable care to avoid causing damage to one’s neighbour, and a
neighbour in his definition is anyone who you might reasonably foresee could be affected by
your acts or omissions.

You may be surprised at the large number of people covered by the term ‘neighbour’.
Doctors have a duty of care to their patients, users of the highway have a duty of care to all
other road users, solicitors owe a duty of care to their clients, and so on. A professional is
expected to show the skill of an average member of his profession; if it is substantially worse,
then it is regarded as gross negligence and may lead to criminal liability. Manufacturers of
defective goods, as shown by the case above, can be liable for negligence. To win an action in
negligence a claimant must prove three things: (1) that the defendant owed the claimant a duty
of care, (2) that this duty has been breached and (3) that it was the defendant's act or omission
that caused the claimant’s loss.

It is crucial to note that no liability exists if there is no duty of care owed to the claimant.
For example, there is no general duty to prevent other persons causing damage, or to rescue
persons or property in danger. In determining the existence and scope of the duty of care, the
courts take into account: a) the foreseeability of damage (was the claimant a foreseeable
victim of the defendant’s wrong?); b) the proximity of a relationship between the parties (e.g.
was there a close tie of love and affection between the claimant who suffered nervous shock
as the result of witnessing an accident and the victim of an accident?) or, literally, the
proximity in time and space to the scene of an accident; and c) whether it is fair, just and
reasonable to impose a duty of care. The last two arms of the test, proximity and fairness,
reflect matters of public policy: on the one hand, it is necessary to allow people to get just
compensation for harm suffered but, on the other, the courts try to discourage a big increase in
the number of civil actions for fear that this might open the floodgates to many more lawsuits.
Besides, it is possible that those threatened with liability may respond by taking unnecessary safety precautions or giving up a socially beneficial activity altogether (the danger of ‘overkill’). For these reasons, the courts are slow in recognising claims brought against such bodies as local authorities, the police, the army, etc.

Nevertheless the number and variety of negligence actions increases year by year. Damages are now awarded not only for personal injury or damage to property but also for financial loss connected to this, for example, in situations where as a result of his injuries a person is temporarily forced to give up work and therefore suffers financial loss. However, damages are not payable for pure economic loss, i.e. loss which does not stem from any physical damage to the claimant or his property, for example, where a defective product causes harm to itself but not to other property, or where a newsagent closes due to the owner's illness for two months and the person who delivers newspapers suffers a loss of earnings while the shop is closed. Exceptionally, liability for pure economic loss is recognised in situations where a ‘special’ professional or business relationship exists between the parties, which make it reasonable for one party to rely upon the other party's exercise of a special skill, knowledge or capacities. In these situations the professional is deemed to, have assumed a legal responsibility to another (Hedley Byrne & Co. v. Heller & Partners Ltd (1964)). For example, banks must be particularly careful in supplying information to credit companies: if the person receiving a loan from a credit company fails to repay it, the bank could be held liable. Thus, not only can people be liable for careless deeds or omissions but it is possible for them now to be liable for careless statements if they were made in circumstances that made it reasonable to rely on them.

In the case of an accident, it is now possible to claim damages not only for the physical suffering but also for the mental injury caused by the accident (but not for ‘mere’ distress or anxiety, unaccompanied by physical injury, for example, fear of death suffered by survivors of a railway crash). Where the claimant's injuries are purely mental, it is normally necessary to show that they amount to a ‘positive psychiatric illness’. This situation in turn leads to an increase in the cost of many services since professionals have to pay very high insurance premiums to cover themselves in case they are ever successfully sued by a client.

Generally the burden of proof in this tort is on the claimant. But this may sometimes present a difficulty, for example, for an ordinary buyer of goods attempting to challenge a manufacturer. Therefore, in cases where the only possible cause of harm is negligence the courts have been inclined to apply the rule res ipsa loquitur (Latin: ‘the facts speak for themselves’), which shifts the burden of proof to the defendant. In Steer v. Durable Rubber Co Ltd (1958) a girl of six was scalded when a hot water bottle split. Since the defendant company could not prove that it had not been negligent, it was held liable.

Occupier's Liability

Closely related to the tort of negligence is the occupier’s liability. This is a statutory tort regulated by the 1957 and 1984 Occupiers’ Liability Acts. An occupier of premises owes a duty of care to all lawful visitors but he does not owe a duty of care to criminals: a criminal must take the premises as he finds them. So, if a burglar breaks into a shop and injures himself, the shop owner would not be liable. However, the courts have long recognised that an occupier owes a duty of care to certain trespassers, and especially to children. In the case of British Railways Board v. Herrington (1972) a 6-year-old boy got onto the railway property through a hole in the fence and was injured on an electrified section of rail. The Board was held liable in negligence even though the boy was a trespasser. The Occupier’s Liability Act of 1984 makes it very clear that an occupier owes a duty of care to ‘persons other than his visitors’, in other words, trespassers. This would include, for example, those who have regularly walked through the property where the occupier has done nothing to prevent them and so they have assumed that this was not unlawful. In situations where members of the public enter somebody's land for educational or recreational purposes and suffer some personal injury, the occupier may be held to be liable. This will depend on a) whether the occupier has put up an appropriate notice of attending danger, for example ‘There is a savage horse in this field. Enter at your peril’, (if he has, he will not be liable); and b)
whether members of the public pay an entrance fee to visit the premises (if they do, the occupier will be held liable, whether he put up a notice or not).

Defences

Even if a claimant has managed to prove his case on the balance of probabilities, the defendant can still avoid liability if he has a defence. A defence is a point of law or fact that, if determined in favour of the defendant, will relieve him of liability wholly or in part. In the tort of negligence a defendant can try to disprove the elements of proof shown by the claimant. He may claim: (1) that he owed no duty of care to the claimant; (2) that even though he owed a duty of care, he had not been in any way careless and therefore had not breached this duty; (3) that even though he had been negligent, his negligence did not cause the claimant's loss. Let us look at each of these in turn.

(1) No duty of care. For example, an occupier of premises does not owe a duty of care to criminals.

(2) No breach. The following example may explain the point. If a customer slips on a wet floor in a shop and sustains a broken arm, the shop owner may try to show that he has not been negligent: for example, there was a warning notice displayed prominently in front of this section of the floor. If the court accepts his argument, then the duty of care has not been breached. However, if despite his instructions a worker had neglected to place the warning sign, the shop owner will be liable. For an employer it is no defence to say that he strictly forbade the activities which caused the injuries; he will still be liable for the acts of his employees.

(3) No causative link. In a frequently cited case, Barnett v. Chelsea and Kensington Hospital Management Committee (1969), Mr. Barnett went to the casualty department of the hospital late at night, complaining of vomiting after having drunk tea. The duty doctor refused to see him but sent him home; three hours later the man died of arsenic poisoning. Clearly, the hospital owed Mr. Barnett a duty of care and had breached it by not examining him. But since there is no cure for poisoning of this sort, the court held that the death was not a direct consequence of the breach, and Mr. Barnett's widow was unsuccessful.

Some other defences available include:

(4) Remoteness of damage. As in contract, if the harm suffered is considered too remote from the defendant’s actions, damages are not payable. In Bourhill v. Young (1943), Mrs. Bourhill, who was eight months pregnant, happened to witness a collision between a motorcyclist, who had been travelling too fast, and a car. In a suit against Young’s estate, she alleged that witnessing the accident, seeing the pool of blood on the road caused her to suffer nervous shock and a miscarriage. The House of Lords found that Young could not have been expected to foresee this eventuality.

(5) Consent. If a person consents to suffer damage or consents to run the risk of it, he cannot claim compensation. This principle is sometimes expressed by the Latin phrase *volenti non fit injuria* (‘to one who is willing no harm is done’). In the case of Morris v. Murray (1991), the claimant and the pilot had consumed considerable amounts of alcohol before the flight. In the crash the pilot died and the claimant was severely injured. The court held that the claimant had consented to take the risk and was not entitled to damages.

(6) Contributory negligence. It is possible for a defendant to attempt to show that the claimant was partly responsible for loss or injuries sustained. If the court accepts this, it may well reduce the level of damages by an amount that the court thinks just and equitable. Thus careless driving, knowingly travelling with a drunken driver, and failure to wear a seat belt are common forms of contributory negligence in highway accidents.

(7) Illegality. According to the Latin maxim, *ex turpi causa non oritur actio*, no action can be founded on a disreputable cause. Indeed, it would undermine the authority of law if damages were awarded to those who break the law. For example, if a safeblower injures his partner by detonating the explosives too soon, the injured party would be unable to recover damages because his injury was sustained in the course of criminal conduct.

2. Text 1 comprehension questions.
Answer these questions.
1 How do torts differ from crimes?
2 How do torts differ from broken contracts?
3 What is the key question for the court to decide when imposing vicarious liability on the employer?
4 How do considerations of public policy (i.e. the interests of the community) influence judges’ decisions about the existence of a duty of care?
5 Why is the number of negligence actions growing year by year?
6 Why do professionals have to insure their business?
7 How does the res ipsa loquitur rule benefit consumers?
8 What is occupier's liability?

3. True-false statements
Confirm or refute these statements. Begin with a short answer, e.g. 'Yes, it is/has/does, etc.' or 'No, it isn't/hasn't/doesn't, etc.' and add one sentence to prove your point.
1 A victim of a crime can pursue his claim for compensation in a criminal court.
2 A professional is expected to show the highest standard of skill of his profession.
3 Professionals can be liable for the informal advice they give to others.
4 If one suffered fear or mental distress due to somebody’s negligence but was not in any way hurt physically, he cannot sue the tortfeasor.
5 No duty of care is owed to a trespasser.
6 If an occupier of land is aware of some danger on his premises, he must put up an appropriate notice.
7 In actions of negligence the defendant is responsible for any damage, whether foreseeable or not.

4. The tort of negligence
Read the following cases and say: a) will the claimant be successful in suing for negligence; b) does the defendant owe a duty of care to the claimant? Explain why.

1. A decorator agreed to lock the premises on leaving but neglected to do so. During his absence the house was robbed. The occupier sues him for the value of the goods stolen by thieves during the decorator's absence.

2. When a fire broke out in a football stadium, the police failed to control the panic-stricken crowd. People rushed to escape and many were crushed to death when terraces collapsed as a result of overcrowding. A girl's fiance died in the crush. She is suing the police for mental injury caused by the death of a loved one.

3. This case is related to the previous one. Many football fans happened to witness the football disaster on television. They are suing the police for psychiatric disorder caused by witnessing scenes of the accident.

4. A woman was trapped in a faulty lift in a council house and had to spend two hours there before she was rescued. As a result she has developed claustrophobia and a fear of being trapped in a lift. She is suing the local authority for the ensuing mental distress.

5. An advertising firm was engaged to conduct an advertising campaign by a certain company. The firm enquired into the financial stability of the company that employed them and the company's bank gave a favourable reference, adding however that the information was supplied 'without responsibility'. Reliance on this reference has caused the advertising firm to lose £17,000 when the company went into liquidation. The claimants are suing the bank for the careless statement.
6. A man was driving his car when it suddenly skidded across the road colliding with oncoming traffic. The court presumes that the accident was caused by the defendant's negligence; the man is unable to give a satisfactory explanation of the skid.

7. As a result of road workers' carelessness, the electricity cable running to a metal-processing plant nearby was damaged and the power was cut off for several hours. The plant is suing the building contractors for the lost profits a) on the metal that was being processed and damaged by the power cut and b) on the metal the plant was not able to process in the time the power was off. (The electricity cable that was damaged belonged to the electricity board, not the plant.)

8. A driver is instructed by his employer to deliver a parcel from Norwich to Bristol. He stops off between Norwich and Bristol in order to buy himself lunch and negligently damages another car in the restaurant car park. The owner of the damaged car sues the driver's employer.

5. Collocations with 'tort'

Study the collocations below and write five sentences to illustrate their meaning.

- to give rise to an action in tort / a tort action
- to seek compensation (from smb) by means of an action in tort
- to commit a tort
- the law of tort(s)
- to be capable of protection in the tort of nuisance
- to have no right under this tort
- a tort involving dangerous animals
- under rules of tort liability / liability in tort
- to start a legal action in tort

6. Text 1 Notes

Note-taking

Make one-page Notes or a Mind Map of Text 1. When you have finished, go over the following checklist:

1. Did I reduce the original text to single words and short phrases?
2. Did I leave out articles, most verbs, etc.?
3. Did I structure the information?
4. Did I use signs, symbols, and abbreviations?
5. Did I use colour to highlight the key information?
6. Did I fit everything onto one page?

Be ready to talk in front of the class using your notes.

Text 2: Torts of Trespass, Nuisance and Strict Liability

7. Pre-reading tasks

1. On many private estates one can see a notice ‘Trespassers will be prosecuted’. Why is it legally incorrect?
2. Look at the following statements and mark what you think the answers are. Then scan the text and check your initial hypotheses.

   a. A boxer who severely injures his opponent has no defence. True / False
   b. A private citizen can arrest another private individual. True / False
   c. If a new building blocks a pleasant view from your house, you have a right to legal protection. True / False

3. Now read the text and do the exercise that follows.

Trespass
The tort of trespass is defined as a wrongful direct interference with another person or his property, such as: striking a person, taking away his goods without his consent or entering his land. Indirect or consequential injury, such as leaving an unlit hole into which someone falls, is not trespass (but one can seek another action, for example, in the tort of negligence). The act of trespass is a tort per se, i.e. a tort itself, and it is not necessary to prove that it has caused actual damage.

**Trespass to the person** covers only intentional acts and can take one of three forms: assault, battery, and false imprisonment. You will remember that assault is threatening someone in such a way that they genuinely believe that they are going to be physically hurt (for example, pointing a gun at someone), while battery is the actual application of force to someone (or mere touching) without his consent. False imprisonment is unlawful restriction of a person's freedom of movement, not necessarily in prison. It includes unlawful arrest and unlawfully preventing a person leaving a room or a shop. It is enough to show that you have been detained against your will, even if it was for a short time, no force or threats were used, and you were not harmed or inconvenienced. However, since damages are related to the harm suffered, it is hardly likely that anyone will sue in such a case unless his aim is to obtain an injunction.

Defences. In trespass to the person the consent of an adult is effective. However, consent to an act which causes actual bodily harm or a greater level of harm does not provide a defence unless it falls within certain categories accepted by the law, such as organised sports, surgery carried out by a medically qualified person, stunt shows, etc. There have been cases where rugby players or footballers were sued in the civil courts for 'trespass to person', but they have been largely unsuccessful. The claimant might succeed only if he could prove that his opponent acted completely outside the rules. A doctor sued for trespass to the person can plead necessity if it can be proved that the treatment was in the best interests of the patient and he acted in accordance with a responsible and competent body of medical opinion. Other defences include [self-defence; preventing a greater evil], that is, assisting someone else who was being attacked; **parent authority** - the right to punish one's own child, but the law protects children against excessive and unreasonable punishment. Besides this, there are instances where it is legal for a private citizen to arrest someone - this is known as a citizen's arrest. Provided the defendant had reasonable grounds for suspicion and provided an offence has been committed, it is unlikely he would have to pay damages, even though the person in question subsequently proves his innocence.

**Trespass to goods** includes touching, moving or carrying them away. It consists in any wrongful interference with them, for example, damaging goods in some way, removing a car from a garage, killing an animal or, as has been held recently, wheel-clamping a motor car. Closely related to it is the tort of **conversion**. Conversion means denying the owner his right of possession to the goods. It could arise, for example, where a company refuses to return the hired equipment or pay for a further week's hire. It could also arise where a person buying goods on hire-purchase tried to sell them without permission of the owner. Banks could be sued for conversion if they payout on a cheque to a person who has no title to it (International Factors v. Rodríguez, 1979). Destroying goods or altering them to another species are also acts of conversion. The main difference between trespass and conversion is that in trespass the taking of goods is temporary and is not done to exercise rights over the goods.

Defences. In trespass to goods, **inevitable accident** is a defence. For example, a driver who rammed your car to avoid running over a child knew that he would damage your car, but he may try to explain to the court that no ordinary care and skill could have prevented the accident. Contributory negligence is not a defence to conversion or intentional trespass to goods; nor is it a defence that the defendant acted innocently, subject to some exceptions. The claimant in conversion must prove that he had ownership, possession or the right to immediate possession of the goods at the time of the defendant's wrongful act.

**Trespass to land** usually takes the form of entering it without permission. For example, if an outsider uses a factory's yard as a shortcut, he is an unlawful visitor and therefore a trespasser. With the exception of certain categories of visitors, such as the police,
Health and Safety inspectors, anyone who enters land without the express or implied permission of the owners is an unlawful visitor. If a lawful visitor abuses his authority, he too becomes a trespasser. Other instances include dumping rubbish on someone else's property or crashing in a car onto it (the owner of the property has the right to retain the vehicle until the trespasser agrees to fix any damage caused by the crash).

Trespass to land is not normally a crime, therefore the notice ‘Trespassers will be prosecuted’ is usually misleading and is called ‘a wooden lie’. Only occasionally is trespass a crime: when a trespasser threatens violence or damages property; when a trespasser has a weapon of offence or a firearm for which he has no reasonable excuse; when trespass takes place on protected territory, such as diplomatic premises, military or railway territory; when squatters occupy someone else's premises displacing the legal occupier and refusing to leave.

Defences. In addition to the legal remedies, that is, injunction and damages, the owner of the premises has the right to eject a trespasser using minimum force, provided he has asked the trespasser to leave. If he can prove these two things to the court, this would be a defence against a claim of rough treatment. But for the trespasser it is no defence to show that the trespass was innocent, for example, that he honestly believed that the land belonged to him. Trespass onto someone else’s property is legal if it is to prevent a greater evil, for example, to rescue a cat that was trapped in a tree.

Nuisance

Nuisance is an activity or state of affairs that interferes with the owner’s enjoyment of his property (private nuisance) or with the health, safety, or comfort of the public at large (public nuisance). Only private nuisance is a tort, while public nuisance is a crime and includes such activities as obstruction of the highway, selling food unfit for human consumption, pollution of the environment, etc.

Private nuisance, unlike trespass to land, is indirect interference with someone's enjoyment of their property. It can take many forms, such as noise, smoke, smells, vibration, fumes or the blocking of a right of way. For example, loud banging and distasteful smells from a nearby factory can be actionable nuisance and the owner can sue for damages, but more likely the court will grant an injunction ordering the company to refrain from this process. In coming to a decision the court will take into account such factors as frequency and duration of the alleged nuisance; the locality (you may have to put up with more in an industrial area than in a residential area), etc. In general, the courts try to balance conveniences and inconveniences of the opposing parties.

However, not all aspects of the use or enjoyment of land are capable of protection in the tort of nuisance. Under English law, there is no right to a pleasant view or, indeed, to light: if a neighbour’s proposed wall would blot out the light, the best the owner can do is try to oppose planning permission. In a case in 1752, Lord Harwicke noted that if there was such a right there would be no great towns. No action lies for interference with merely recreational aspects of the use or enjoyment of land, such as television viewing (as in the case of Hunter v. Canary Wharf Ltd (1997) where the construction of a tall building interfered with domestic television viewing).

Defences. The general principle in nuisance cases is: an owner of land can do what he wishes provided this does not interfere unduly with others. Two points are of importance in nuisance. First, it is no defence for a defendant to say that the claimant 'came to the nuisance'. For example, if you move to a new place and find the smell and noise from a restaurant nearby excessive, it is no defence for the restaurant owner to say it has always been the same and that your predecessors had never complained. However, if this is a recreational area of the town, with dozens of cafes and restaurants, you may have to put up with more personal discomfort in this respect. Secondly, a defendant may not plead necessity. A person who disturbs his neighbours, like doctors making night emergency calls, may find that his plea of necessity will not be accepted by the court. But the law allows some other defences, such as contributory negligence, consent or remoteness. If the defendant is empowered by statute to carry out a certain activity, he has a defence of statutory authority. If a person has enjoyed a right in an uninterrupted way for 20 years (for example, a right to discharge water from his
caves onto his neighbour's land), he can plead *prescription*, i.e. use his prescriptive right as a defence.

**Torts of Strict Liability**

As you already know, a person may be held liable even when he was not at fault - a policy known as strict liability. In the law of tort strict liability is exceptional, but is imposed for torts involving dangerous animals and dangerous things, and some other torts, such as conversion, defamation, etc. Under the Animals Act 1971 the keeper of an animal of a *dangerous species* is strictly liable for any damage it causes, and so is the owner of livestock if it trespasses onto someone else's property. Animals that come under the definition of livestock are cattle, horses, poultry and similar animals kept for domestic use, especially on a farm or ranch, but not as pets. (Damage done by other animals may be remedied under ordinary rules of tort liability, e.g. if a dog strays on the highway and causes an accident, the keeper can be liable in negligence.)

A principle of strict liability for *dangerous things* was first stated in the case *Rylands v. Fletcher* (1868), in which the defendant had a reservoir built on his land that caused flooding of the claimant’s mine. The occupier of the land is strictly liable for damage caused by an escape of dangerous things accumulated on his land.

**Defences.** One defence is remoteness. In the case of damage caused by an escape of dangerous things accumulated on somebody's land, the occupier is liable only if the damage is reasonably foreseeable. But the keeper of an animal belonging to a dangerous species or the owner of livestock is liable for any damage it causes, whether foreseeable or not. It is no defence in these torts that the defendant took reasonable care to prevent damage, but various other defences are admitted, such as *necessity*, *statutory authority*, consent of the claimant; *act of God* - an event due to natural causes (storms, earthquakes, floods, etc.) so exceptionally severe that no one could reasonably be expected to anticipate or guard against it; or *default of the claimant*, as in the case of *Dunn v. Birmingham Canal Co* (1872) where the plaintiff performed mining operations beneath the defendant's canal with full knowledge of the likely consequences and whose mine was damaged as a result of flooding.

8. Text 2 true-false statements

Confirm or refute these statements. Begin with a short answer, e.g. ‘Yes, it is/has/does, etc.’ or ‘No, it isn't/hasn't/doesn’t, etc.’ and add one sentence to prove your point.

1. A doctor whose treatment causes harm to a patient can rely on the defence of necessity.
2. A stranger who 'borrows' your car and then returns it commits an act of conversion.
3. The occupier of land has no right to apply force to eject a trespasser.
4. A trespasser can be sued even if he did not physically hurt the claimant.
5. A trespasser can be prosecuted even if he did not commit any act of violence.
6. If the owner of a dangerous animal can show that he took reasonable care to prevent damage, he has a defence.
7. If the owner of a dangerous thing can show that the damage caused by its escape from his land was not foreseeable, he has a defence.
8. The only possible remedy in tort is damages.

9. A lawful visitor?

In each of the following examples decide a) whether a person enters the premises as a lawful visitor or a trespasser; b) which of the lawful visitors have the *express* or *implied* permission of the occupier, a *statutory* right to enter or a right *under a contract*? Prove your point.

1. A customer at a shopping mall.
2. A policeman without a search warrant but who has reasonable cause to believe that a serious offence is being committed.
3. A person invited for an interview for a job.
4. A reporter spying on a celebrity in pursuit of a 'hot' story.
5. An employee at an office party who gets so badly drunk that he is requested to leave.
6. An official reading an electricity meter.
7. A door-to-door salesman.
8. A hotel guest.

10. Defences in tort  
Law
Read the following cases and say: a) what is the tort in question; b) does the defendant have a defence? Be ready to prove your point.

1. A front-seat passenger is injured in a car accident that occurred due to the driver's fault. The defence lead the evidence that the claimant did not wear a seat belt.

2. A football player accidentally injures another player during the game. In fact, the injury is so bad that it finishes the other man’s career.

3. A guard arrests a man who, he honestly believes, was stealing sugar from his employer’s wagon. The man later proves his innocence. It is also proved that some sugar has in fact been stolen.

4. A local health authority authorizes a doctor to sterilize a mentally incompetent woman. She sues the doctor.

5. People used the defendant’s field as a shortcut on their way to the railway station. The defendant knew it and he took no steps to stop them. One day a man was attacked and injured by a savage horse which the defendant had put into the field without any warning.

6. A chemical solvent used by a leather manufacturer spilt into the ground and contaminated the underground water. About 9 months later the solvent reached and contaminated the plaintiff’s borehole some 1.5 miles away. On the facts, it was not foreseeable that the seepage of the solvent into the soil would cause harm to the plaintiff.

7. A habitual criminal was injured when he jumped from the window of his second floor flat trying to escape arrest by the police. He is suing the police, who knew he had done the same in the past yet took no reasonable care for his safety.

8. During the owner’s absence a car’s alarm goes off and blares all night. The sleepless man, in front of whose house the car is parked, in exasperation throws fresh eggs on the car which badly damage the paint. The car owner is suing the man for damage done to the car.