

LAW OF TORT

Comprehensive Study Guide

Chapters 1–12 | Negligence | Employers' Liability | Occupiers' Liability | Product Liability | Nuisance

This guide covers all 12 chapters of the Law of Tort including: duty of care, breach, causation, pure economic loss, psychiatric harm, employers' liability, defences, remedies, vicarious liability, occupiers' liability, product liability, and nuisance.

Chapter 1 — Negligence: Duty of Care

1.1 Introduction

A tort is an infringement of a legal right or a breach of a legal duty that allows for a claim in the civil courts. The tort of negligence is legally defined as a breach of a legal duty of care owed to a claimant that results in harm to the claimant, undesired by the defendant.

The Four Elements of Negligence

To succeed in a negligence claim, a claimant must prove four elements in sequence: 1. Duty of Care — did the defendant owe a legal duty to the claimant? 2. Breach of Duty — was the defendant's conduct at fault? 3. Causation — did the breach actually cause the damage? 4. Defences — are there any valid legal defences available?

1.2 Duty of Care

1.2.1 Established Duty Situations

These are relationships where previous case law has already determined that a duty of care is owed. Common examples include:

- Road user to other road users
- Doctor to patient
- Employer to employee
- Manufacturer to consumer
- Teacher to pupil
- **Rescuers:** A duty is owed where a defendant's actions create a dangerous situation making a rescue attempt reasonably foreseeable.

Baker v TE Hopkins & Son Ltd

A duty was owed to a rescuer where the defendant's negligence created a dangerous situation which made rescue foreseeable.

1.2.2 Novel Duty Situations

Novel situations are new scenarios where the courts must decide for the first time if a duty of care should exist.

1.2.2.1 The Neighbour Principle

🏠 Donoghue v Stevenson [1932] AC 562

Lord Atkin formulated the neighbour principle: "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour."
Neighbours are persons so closely and directly affected by an act that the defendant ought to have them in mind.

The Caparo Three-Part Test (Caparo Industries plc v Dickman [1990])

The modern approach for novel situations requires: 1. Reasonable foresight of harm to the claimant 2. Sufficient proximity of relationship between the parties 3. It is fair, just and reasonable to impose a duty Additionally, the law should develop incrementally by analogy with established authorities.

1.2.2.2 Duty of Care and Policy

The "fair, just and reasonable" limb of the Caparo test allows courts to consider broader public policy factors:

Policy Factor	Effect on Duty Analysis
Floodgates	Preventing one admission leading to thousands of similar claims
Deterrence	Ruling for claimant discourages anti-social behaviour
Resources	Considering ultimate payers (insurers) and societal cost
Public benefit	Weighing benefits like increased public safety
Upholding the law	Ensuring legal rules maintain their power

🏠 Hill v Chief Constable of West Yorkshire [1989]

The police did not owe a duty to individual members of the public during investigations — such a duty would be too wide and onerous.

1.3 Liability for Omissions to Act

General Rule

There is no duty of care for omissions — failing to act to prevent harm. There is no legal duty to rescue a stranger drowning in a lake, even if a reasonable person would feel morally compelled to do so.

1.3.2 Exceptions: When a Duty to Act Arises

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- **Duty not to make the situation worse:** Once a party chooses to act they must not make matters worse, even if they had no initial duty to intervene.
 - **Special relationships of power or control:** Employer/employee; schools/children; parents/children; instructors/pupils.

🏠 Home Office v Dorset Yacht Co Ltd [1970]

Officers supervising young offenders owed a duty of care because they had a relationship of control over the boys who later escaped and caused damage.

Chapter 2 — Negligence: Breach of Duty

2.2 The Standard of Care

🔪 Blyth v Birmingham Waterworks Co (1856)

Negligence is doing something a "prudent and reasonable man" would not do, or omitting to do what they would. This established the objective "reasonable person" standard.

2.2.2 Special Standards: The Skilled Defendant

🔪 Bolam v Friern Hospital Management Committee [1957] — The Bolam Test

A professional is not negligent if they act in accordance with a practice accepted as proper by a responsible body of opinion in that profession. Professionals are judged against a competent peer in their field, not the "man on the Clapham omnibus".

🔪 Bolitho v City and Hackney Health Authority [1997]

The Bolam test requires the body of professional opinion to withstand logical analysis. The court — not the profession — is the final arbiter of reasonableness. A practice that cannot be logically justified will not provide a defence.

2.2.3 The Under-Skilled Defendant

Category	Rule
Learner drivers	Must meet the standard of a reasonably competent driver from their first drive (Nettleship v Weston)
Junior doctors	Must meet the standard of a hypothetical competent doctor in that specific post (Wilsher v Essex AHA)
Amateurs	Judged as a reasonably competent amateur — but attempting a job requiring a professional can be negligent in itself
Children	Standard of an ordinary, prudent, reasonable child of the same age (Mullin v Richards)

2.3 Relevant Factors in Determining the Standard of Care

Factor	Key Rule / Case
Likelihood of injury	If a risk is extremely small a reasonable person would neglect it — no breach (Bolton v Stone)

Risk of greater injury	More care required where potential harm is particularly serious, e.g. one-eyed employee (<i>Paris v Stepney BC</i>)
Cost of precautions	If risk is slight but eradication cost is substantial, doing nothing may be reasonable (<i>Latimer v AEC Ltd</i>) — BUT impecuniosity is no defence
Social utility	Saving human life justifies abnormal risks (<i>Watt v Hertfordshire CC</i>); unlawful activity requires very high care
Common practice	Following practice is evidence of reasonableness but not conclusive — the practice itself may be negligent
State of knowledge	Judged by knowledge available at the time of the incident (<i>Roe v Ministry of Health</i>)

2.4 Proving Breach — Res Ipsa Loquitur

Res Ipsa Loquitur — "The Thing Speaks for Itself"

Allows the court to infer negligence without direct evidence. Three conditions must be met:
1. The thing causing damage was under the defendant's control
2. The accident would not normally happen without negligence
3. The actual cause is unknown to the claimant
If satisfied, a prima facie inference of negligence arises which the defendant must then explain.

Chapter 3 — Negligence: Causation

3.2 Causation in Fact

The "But For" Test

The primary test: "But for the defendant's breach of duty, would the harm have occurred?" If the harm would have happened regardless of the breach, causation is not established.

🚫 **Barnett v Chelsea and Kensington Hospital Management Committee [1969]**

A doctor's failure to examine a patient was a breach, but because the patient would have died from arsenic poisoning regardless of treatment, the breach was not the factual cause of death.

3.2.3 Material Contribution

In cases involving multiple causes, the claimant need only prove the breach "materially contributed" to the damage — not that it was the sole or main cause.

🚫 **Bonnington Castings Ltd v Wardlaw [1956]**

A lung disease contracted from both "guilty" dust (breach) and "innocent" dust (no breach) — since the guilty dust materially contributed, causation was established.

3.3 & 3.4 Divisible and Indivisible Injuries

Type	Rule	Example
Divisible injury	Damages apportioned proportionately between defendants	Asbestosis from multiple employers — defendant liable only for their share (Holtby v Brigham)
Indivisible injury	Each tortfeasor fully liable to claimant; contribution sought under Civil Liability (Contribution) Act 1978	Broken leg — any defendant who contributed can be sued for the full amount

3.5 Novus Actus Interveniens — Breaking the Chain

Intervening Event	Effect on Chain
Instinctive third party reaction	Does NOT break the chain (Scott v Shepherd — firework case)
Foreseeable negligence of	Does NOT break the chain (Rouse v Squires)

third party	
Unforeseeable negligent third party act	DOES break the chain (Knightley v Johns)
Reckless/intentional third party act	Likely to break the chain UNLESS defendant under duty to prevent it (Stansbie v Troman)
Claimant's entirely unreasonable act	DOES break the chain (McKew v Holland)
Claimant's reasonable act	Does NOT break the chain — treated as contributory negligence instead (Wieland v Cyril Lord Carpets)

3.6 Remoteness of Damage

🚚 The Wagon Mound (No 1) [1961]

The test for remoteness is reasonable foreseeability: "Is the damage of such a kind that a reasonable person would have foreseen it?" Damage that is unusual and unexpected is generally not recoverable.

Rule	Explanation
Similar in type	If the type of harm is foreseeable, it does not matter the precise way it occurred was not (Hughes v Lord Advocate)
Type not foreseeable	Claim fails — e.g. Weil's disease from rat urine not foreseeable where only rat bites were (Tremain v Pike)
Egg-shell skull rule	If harm type is foreseeable, defendant liable for FULL extent even if claimant has a pre-existing vulnerability (Robinson v Post Office)

Chapter 4 — Negligence: Pure Economic Loss

The General Rule

A defendant does NOT owe a duty of care not to cause pure economic loss (PEL). PEL is financial loss not flowing from physical injury or property damage. The courts limit recovery to prevent "boundless" liability to an indeterminate number of claimants.

Consequential economic loss (following from physical harm) IS recoverable. **Pure economic loss** (no accompanying physical damage) is generally NOT recoverable.

4.2 Defective Products — Murphy Rule

🔪 Murphy v Brentwood DC [1991]

If a defect is discovered before it causes physical harm to people or other property, the cost of repair is PEL and not recoverable in negligence. The proper remedy for a defective product is to sue in contract.

4.3.1 Damage to Third Party Property — Spartan Steel

🔪 Spartan Steel & Alloys Ltd v Martin & Co [1973]

A contractor negligently cut the electricity cable (third party's property). The claimant recovered: (a) for the "melt" physically damaged in their furnace and (b) profit lost on those specific melts. They could NOT recover profit lost on future melts unable to be processed during the power cut — this was PEL.

4.3.2.2 Negligent Statements — Hedley Byrne Liability

The Hedley Byrne Test

A duty of care for PEL caused by negligent statements arises if there is a "special relationship" between the parties, characterised by: 1. Assumption of responsibility by the defendant 2. Reasonable reliance by the claimant

Caparo Refinement — The Four Criteria

1. The defendant knew the purpose for which the advice was required 2. The defendant knew the advice would be communicated to the claimant 3. The defendant knew the claimant was likely to act on it without independent inquiry 4. The claimant acted on the advice to their detriment

Extension

Case

Key Point

Employment references	Spring v Guardian Assurance [1994]	Former employer owes a duty when providing a reference
Wills / solicitors	White v Jones [1995]	Solicitor owes duty to intended beneficiaries — negligent delay can give rise to liability
Contract overlap	Henderson v Merrett Syndicates [1995]	Can sue in tort for PEL even where a contract for professional services exists

4.5 Exclusion of Liability

Statute	Applies to	Key Rule
UCTA 1977	Business-to-business claims	Death/personal injury NEVER excludable; other losses subject to reasonableness test
Consumer Rights Act 2015	Trader-to-consumer claims	Death/personal injury NEVER excludable; other losses must be "fair"
Smith v Eric S Bush [1990]	Reasonableness factors	Bargaining power, availability of alternative advice, difficulty of task, availability of insurance

Chapter 5 — Negligence: Pure Psychiatric Harm

General Rule and Key Distinction

A defendant does NOT owe a duty not to cause pure psychiatric harm. This must be distinguished from consequential psychiatric harm (following a physical injury) which IS recoverable. To claim for pure psychiatric harm the injury must be: 1. A medically recognised condition (PTSD, clinical depression) — not mere grief or anxiety 2. Caused by a sudden shocking event — not gradual build-up

5.3 Primary vs Secondary Victims

Category	Who They Are	Test for Duty
Primary victim	In the actual area of danger or reasonably believed they were	Duty owed if physical injury to claimant was foreseeable — foreseeability of psychiatric harm NOT needed (Page v Smith)
Secondary victim	Not in physical danger — witnesses injury to others or fears for another's safety	Must satisfy all four Alcock control mechanisms (see below)

5.5 The Alcock Control Mechanisms for Secondary Victims

🔪 **Alcock v Chief Constable of South Yorkshire Police [1992] — Hillsborough**
Established four requirements for secondary victims. All four must be satisfied.

Requirement	Detail
1. Foreseeability	It was reasonably foreseeable a person of normal fortitude in their position would suffer psychiatric illness
2. Proximity of relationship	A close relationship of love and affection with the immediate victim — presumed for parents/children/spouses; others must prove it
3. Proximity in time and space	Present at the accident or its immediate aftermath (McLoughlin v O'Brian — 2 hours later, still covered in oil, qualified; mortuary 8 hours later did not)
4. Proximity of perception	Shock perceived through own senses — mere third-party communication is insufficient; live TV generally insufficient

5.6 Rescuers

Rescuers have no special legal status — they are classified as primary or secondary victims depending on whether they entered the area of physical danger. Professional

rescuers who are not in personal danger and do not have close ties of love and affection with victims will rarely satisfy the Alcock criteria.

🏠 White v Chief Constable of South Yorkshire Police [1999]

Police officers who assisted at Hillsborough were not primary victims — they were not in the area of danger. They could not satisfy the Alcock control mechanisms as secondary victims.

Chapter 6 — Employers' Liability

6.2 The Employer's Common Law Duty — Four Categories

🏛️ **Wilsons & Clyde Coal Co Ltd v English [1938]**

Established the four-fold division of the employer's personal duty of care. This duty is personal and non-delegable.

Category	Key Details
1. Competent staff	Must know or ought to know of the risk posed by a particular worker (Hudson v Ridge Manufacturing). Extends to protection from bullying and psychological harm (Waters v Commissioner of Police).
2. Adequate plant and equipment	All necessary equipment must be provided and maintained. Under the Employer's Liability (Defective Equipment) Act 1969, employer is deemed negligent if equipment is defective even if the fault lies with the manufacturer.
3. Safe system of work	Widest duty — physical layout, task sequences, training, warnings, safety equipment. Employer must ensure compliance, not merely devise the system.
4. Safe workplace	Non-delegable; applies regardless of where the employee works (General Cleaning Contractors v Christmas). Employer must assess and minimise dangers at any premises to which employees are sent.

6.2.5 Stress at Work

The safe system of work duty extends to protecting employees from work-related stress. The threshold question is whether injury to health through stress was reasonably foreseeable.

🏛️ **Hatton v Sutherland [2002]**

Key factors for foreseeability of stress: the nature and extent of the work and signs from the employee. Employers are generally entitled to assume an employee can cope with normal job pressures and may take assurances at face value unless they have reason to think otherwise. The Alcock control mechanisms do NOT apply to stress-at-work claims.

Chapter 7 — Defences to Negligence

Defence	Type	Effect
Consent (volenti non fit injuria)	Complete	Claimant recovers nothing
Illegality (ex turpi causa)	Complete	Claimant recovers nothing
Contributory negligence	Partial	Damages reduced by the claimant's share of responsibility

7.2 Consent — Volenti Non Fit Injuria

To succeed, the defendant must prove: (1) the claimant had full knowledge of the specific risk; and (2) the claimant willingly consented to accept that risk. Knowledge alone is not consent — *sciens* is not *volens*.

Scenario	Position
Motor vehicles (s.149 RTA 1988)	Defence INVALID for passengers in compulsory insurance motor vehicle situations
Employees	Rarely succeeds — employees lack real freedom of choice (Smith v Baker)
Rescuers	Rarely succeeds — moral/social/legal compulsion negates consent (Haynes v Harwood)
Drunken pilot (Morris v Murray)	Defence succeeded — level of intoxication was "extreme and glaring"; passenger had implicitly waived their rights

7.3 Contributory Negligence

Under the Law Reform (Contributory Negligence) Act 1945, damages are reduced by a percentage "just and equitable" based on the claimant's share of responsibility, considering both culpability and causal contribution.

Scenario	Reduction
Seatbelt — injury entirely avoidable	25% (Froom v Butcher)
Seatbelt — injury would have been less severe	15% (Froom v Butcher)
Crash helmet not worn	Same scale as seatbelt (Capps v Miller)
Drunken driver passenger	Reduction applied (Owens v Brimmell)

Rescuers	Only negligent if "wholly unreasonable disregard" for own safety
Children	Judged against ordinary child of same age (Gough v Thorne)
Employees	Courts slower to find negligence in noisy/repetitive environments (Caswell v Powell Duffryn)

7.4 Illegality — Ex Turpi Causa

A complete defence where the claimant's injury is so closely connected to their own illegal activity that granting a remedy would be contrary to public policy.

Pitts v Hunt [1991]

A pillion passenger who encouraged a drunk, uninsured motorcyclist to ride recklessly was barred from recovery. The illegal activity was central to the claim.

Chapter 8 — Remedies for Personal Injury and Death

The Goal of Tort Damages

To place the claimant in the same position they would have been in had the tort not occurred. Claimants must mitigate their loss — they cannot profit from the incident.

8.2.4 General and Special Damages

Type	Definition	Examples
Special damages	Pre-trial financial losses calculable precisely	Loss of earnings to date; medical expenses incurred
General damages	Losses not precisely calculable — left to court discretion	Pain, suffering, loss of amenity; ALL future losses

8.3.1 Non-Pecuniary Losses — PSLA

Head	Test	Key Point
Pain and suffering	Subjective	Claimant must be conscious and aware of injury (<i>Wise v Kaye</i>)
Loss of amenity	Objective	Recoverable even if claimant is unconscious (<i>West v Shephard</i>)

8.3.3 Pecuniary Losses

Head	Key Rule
Medical expenses	Reasonable expenses recoverable; claimant may choose private treatment and recover costs (s.2(4) Law Reform (Personal Injuries) Act 1948)
Loss of earnings pre-trial	Net earnings (after tax, NI, pension) including bonuses and perks
Loss of earnings post-trial	Multiplicand (annual net loss at date of trial) × Multiplier (from Ogden tables, adjusted by -0.25% discount rate and life contingencies)
The "lost years"	If injury shortens life expectancy, claimant recovers for lost earning years to support dependants minus amount they would have spent on themselves (25% with family; 33% without) (<i>Pickett v British Rail</i>)
Services provided to claimant	If relative gives up work to care, award based on relative's lost earnings capped at commercial rate (<i>Housecroft v Burnett</i>)

Smith v Manchester award	Compensates claimant still working but at real risk of disadvantage on open labour market
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Deductions from Damages

NOT deducted: insurance payments, ill-health pensions, charitable gifts. DEDUCTED: State benefits (under Social Security (Recovery of Benefits) Act 1997) — deducted from awards for lost earnings or care; defendant repays the State.

8.4 Damages on Death

Act	Who Benefits	What is Recoverable
Law Reform (Miscellaneous Provisions) Act 1934	The estate	Pain and suffering, property damage, expenses, and lost income up to date of death; funeral expenses paid by estate
Fatal Accidents Act 1976	Dependants on the statutory list	Loss of dependency (net earnings minus personal expenditure); fixed bereavement award of £15,120 for spouse/civil partner or parents of never-married minor; funeral expenses paid by dependants

Chapter 9 — Vicarious Liability

What is Vicarious Liability?

Vicarious liability is not a tort itself. It is a form of secondary liability where an employer is held jointly liable for the torts of their employee. The parties are jointly liable — the claimant can sue either or both. If the employer pays, they can seek an indemnity from the employee.

9.2 Three Requirements for Vicarious Liability

- The worker must be an employee (or in a relationship "akin to employment")
- The employee must have committed a tort
- The tort must have been committed in the course of employment

9.2.1 Relationship "Akin to Employment"

🔪 Various Claimants v Catholic Child Welfare Society [2012]

Five criteria for a relationship akin to employment: (1) employer more likely to have means to compensate; (2) tort committed while acting on employer's behalf; (3) activity part of employer's business; (4) employer created the risk by engaging the worker; (5) worker under employer's control.

9.2.2 Course of Employment

Scenario	Liable?	Reason
Smoking while unloading oil (Century Insurance v NI Road Transport Board)	YES	Unloading is authorised even if smoking is not — unauthorised mode of authorised act
Milkman using prohibited child labour (Rose v Plenty)	YES	Child's work benefited the business
Driver giving prohibited lift to hitch-hiker (Twine v Bean's Express)	NO	Giving the lift did not further the business
Sexual abuse by school warden (Lister v Hesley Hall)	YES	Sufficiently close connection — his job was to care for the children he abused (Lister Principle)

9.2.5 Frolic of Their Own

An employee acting entirely outside the course of employment is on a "frolic of their own." Courts consider the extent of the deviation from the authorised route/task and whether the employee was still doing their job or was on a purely personal mission.

Chapter 10 — Occupiers' Liability

Act	Governs	Claimant Type
Occupiers' Liability Act 1957	Duty to LAWFUL VISITORS	Persons with express or implied permission to be on the premises
Occupiers' Liability Act 1984	Duty to OTHERS (primarily trespassers)	Those without permission — duty is limited and not automatic

10.2 The 1957 Act — Visitors

10.2.4 & 10.2.5 The Common Duty of Care

Occupiers must take reasonable care in all circumstances to ensure the visitor is reasonably safe for the permitted purpose. The duty targets the visitor's safety, not the absolute safety of the premises.

Visitor Type	Special Rule
Children	Expect children to be less careful than adults. Allurements (dangerous temptations like poisonous berries) require higher precautions (<i>Glasgow Corporation v Taylor</i>). Very young children: expect parental supervision (<i>Phipps v Rochester Corporation</i>).
Skilled visitors	Can expect them to appreciate and guard against special risks incidental to their job; does not extend to general dangers unrelated to their trade.
Independent contractors	Generally not liable for faulty technical work if occupier: (a) chose a competent contractor; (b) took reasonable steps to check work. Technical work need not be personally checked (<i>Haseldine v Daw</i>); non-technical work must be (<i>Woodward v Mayor of Hastings</i>).

Warnings

An adequate, specific warning can discharge the duty. Must be specific ("Danger — Slippery Floor") and appropriate for the visitor. No warning needed for obvious dangers.

10.3 The 1984 Act — Trespassers

Duty is NOT Automatic — Three Conditions Required

(1) Occupier is aware of the danger or has reasonable grounds to believe it exists (2) Occupier knows or believes the trespasser is near or may come near the danger (3) The risk is one against which the occupier can reasonably be expected to provide some protection

Comparison	1957 Act (Visitors)	1984 Act (Trespassers)
Duty	Automatic (common duty of care)	Not automatic — 3 conditions required
Damage covered	Personal injury AND property damage	Personal injury only — no property damage
Exclusion of liability	Possible (subject to UCTA/CRA)	Cannot be excluded — Act is a safety net
Consent defence	Available	Available (Ratcliff v McConnell)
Contributory negligence	Available	Available

Chapter 11 — Product Liability

Regime	Basis	Key Feature
Contract law	Breach of contract	Best for original purchasers with a direct contract
Negligence (common law)	Breach of duty of care	Essential for non-purchasers; requires proof of fault
Consumer Protection Act 1987	Statutory strict liability	No fault required; wider claimants; specific defences

11.2 Negligence — The Narrow Rule in Donoghue v Stevenson

Element	Wide Scope
Manufacturer	Broadly interpreted — includes repairers (Haseldine), installers (Stennett v Hancock), and suppliers who ought to inspect (Andrews v Hopkinson)
Product	Any item including packaging, containers, labels, and instructions
Consumer	The ultimate user and anyone the defendant should reasonably foresee as likely to be injured
No intermediate examination	Manufacturer liable unless there was a LIKELIHOOD (not mere possibility) an intermediate party would inspect and find the defect

11.3 Consumer Protection Act 1987

Element	Rule
Who can sue	Any individual who has suffered damage from a defective product
Damage covered	Death and personal injury (unlimited); private property damage above £275 threshold
Defect	Safety is not such as persons generally are entitled to expect — STRICT LIABILITY (A v National Blood Authority)
Defendants	Producer; own-brander; importer into EU; forgetful supplier who fails to identify supply chain

CPA Defences

(a) Compliance with legal requirements made the defect inevitable (b) Defendant did not supply the product (e.g. it was stolen) (c) Non-business supply (d) Defect did not exist when product was supplied (e) Component manufacturer: defect entirely due to main product design or manufacturer's instructions (f) Development risks (state of the art): global scientific

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knowledge could not have revealed the defect NOTE: Liability under the CPA CANNOT be excluded.

Chapter 12 — Nuisance

Type	Nature	Who Can Sue
Private nuisance	Protects individual enjoyment of land	Only those with a proprietary interest (owner-occupiers, tenants)
Rylands v Fletcher	Strict liability for escape of dangerous material from land	Persons with proprietary interest affected by the escape
Public nuisance	Primarily criminal — protects public rights	Anyone suffering "particular damage" above the general harm to the public

12.2 Private Nuisance

Definition

An unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it. A claimant must prove an interference occurred and that it was unlawful (meaning substantial and unreasonable).

12.2.4 Factors in Determining Unlawfulness

Factor	Key Rule
Duration and frequency	Continuous/frequent interferences more likely unreasonable; isolated incidents rarely constitute nuisance unless from a continuing state of affairs
Extent of harm	Conduct is objective ("normal" behaviour); harm is subjective. Physical damage usually treated as excessive.
Character of neighbourhood	Relevant ONLY for personal discomfort claims; level of interference expected in that locality (urban vs rural) (Coventry v Lawrence)
Public benefit	Rarely a defence to liability
Malice	Spiteful or improper motive makes interference more likely to be unreasonable
Abnormal sensitivity	If a claimant's property is abnormally sensitive the claim fails — unless the interference would affect a normal user too, in which case the full loss is recoverable

12.2.7 Who is Liable?

Defendant	Liability
Creator of	Liable even if no longer occupying the land

nuisance	
Occupier	Liable for nuisances they created, by employees/dangerous contractors, AND those by trespassers or nature if they "adopted" or "continued" them
Landlord	Only liable if they authorised the nuisance, it existed at the start of the lease, or they failed to make promised repairs

12.2.9–12.2.10 Defences and Remedies

Effective Defences	Ineffective Defences
Prescription (20 years of actionable nuisance)	Claimant "came to the nuisance" — no defence
Statutory authority (inevitable result of statute)	Public benefit
Act of God (unforeseeable natural event)	Contributory actions of others
Consent and contributory negligence	Planning permission (can change neighbourhood character but is not itself a defence)

Remedy	Notes
Damages	Past physical harm (repair costs/loss of value) or personal discomfort (amenity value)
Injunction	Discretionary — prohibitory, mandatory, or quia timet. Court may grant damages in lieu if harm is small and compensable (Shelfer guidelines).
Abatement (self-help)	Direct removal of interference by victim — usually requires prior notice unless emergency

12.3 The Rule in Rylands v Fletcher

Requirements for Strict Liability Under Rylands v Fletcher

(1) Defendant brings onto their land something likely to do mischief if it escapes (2) The thing actually escapes from the defendant's land (3) Non-natural use of land — extraordinary or unusual use (4) The damage is of a reasonably foreseeable type (Wagon Mound test) Defences: act of a stranger, Act of God, statutory authority, consent, contributory negligence

12.4 Public Nuisance

Public nuisance is an act or omission that endangers the life, health, property, or comfort of the public at large. To sue in tort, the claimant must suffer "particular

damage" over and above the general public — such as property damage, loss of profit, or personal injury. Unlike private nuisance, personal injury claims are recoverable.

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