

1.3 Module 3 Law of Tort

1.3.1 Headline information about the module

Module title	Law of Tort
Module NFQ level (only if an NFQ level can be demonstrated)	N/A
Module number/reference	Module 3
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	1
Semester (semester1/semester2 if applicable)	Semester 1 and 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	15
List the teaching and learning modes	Full Time, Part Time
Entry requirements (statement of knowledge, skill and competence)	Learners to have programme entry requirements
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers are expected to hold at least an NFQ level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	Two Semesters, 24 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	4
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstration		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
72	1:60	24	1:20				279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				50			50	100%		

1.3.2 Module aims and objectives

Tort Law offers learners key learning and skills in their foundational year. The module aims to introduce learners to the origins and functions of Tort Law. Learners are enabled to distinguish between the theoretical and practical underpinnings of Tort Law compared to other areas of law, including Contract Law and Criminal Law. The module is designed to provide learners with a broad perspective by examining all key areas of Tort Law including negligence, defamation, occupiers' liability and trespass. Learners are equipped to understand and address the practical effect of Tort Law on day to day life including the handling of psychiatric injury claims and employer liability. Learners are also familiarized with the defences and remedies available in Tort actions, including contributory negligence and damages. Finally, the Modules aims to enable learners to apply tort law principles to different factual scenarios.

1.3.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Evaluate the origins and functions of tort law
- (ii) Apply a specialised knowledge of the fundamental doctrines and principles of the law of torts and the characteristics of specific torts
- (iii) Analyse the inter-relationship between tort and the other branches of law particularly contract and constitutional law
- (iv) Apply knowledge of the remedies available in tort and the legal underpinnings behind them
- (v) Research legal problems using both hard copy sources and online legal databases.
- (vi) Apply tort law principles to practical, abstract factual situations arising in a legal context
- (vii) Engage in legal reasoning and analysis demonstrating knowledge of the principles of tort law

1.3.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Law of Tort is a core module where learners become familiar with the principles, legislation and case law relating to the area of Tort Law within the Irish legal system. The Module comprises learning in key areas of law from both a professional practice and academic. It is also one of the subjects that is examined by the Law Society of Ireland to embark upon training as a solicitor in Ireland. This module serves to directly underpin programme-learning outcomes 1, 2, 3, 4, 5, 6, 8, 10.

1.3.5 Information provided to learners about the module

Learners receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class notes (on a weekly basis).

Additionally, this material is made available through Moodle, the college Virtual Learning Environment, along with other relevant resources and activities.

1.3.6 Module content, organisation and structure

Law of tort is a 15 ECTS credit module taught and assessed over two academic semesters. The module is delivered over 24 lecture sessions of four hours' duration for full-time learners and three hours' duration (inclusive of seminar) for part-time learners.

The learning outcomes for this programme have been aligned with the knowledge, skills and competencies indicated as appropriate for Level 6 on the NFQ. They have been articulated using the QQI Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014) and for Generic Higher Education and Training (July 2014).

- Negligence including:
 - Duty of care
 - Standards of care
 - Causation and remoteness
 - Type of damage including nervous shock and economic Loss
 - Proof of negligence & *Res Ipsa Loquitur*:
 - Defences including contributory Negligence, Waiver and Illegality
- Vicarious liability
- Employer's liability
- Nuisance
- Trespass to land
- Rule in *Rylands v Fletcher*
- Defamation
- Limitation of actions
- Damages
- Liability for defective products
- Passing off
- Occupier's liability
- Trespass to the person
- Medical negligence
- Professional negligence

1.3.7 Module teaching and learning (including formative assessment) strategy

The module is delivered using participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. Formative assessment is provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical tort law disputes or issues. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is also provided in the form of interactive exercises such as directed class discussion topics and reference current affairs pertaining to tort law at the time of instruction.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process they engage in the answering of sample examination questions and correction of their own or peers' papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities whereby they draft their own exam question in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include

webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

1.3.8 Work-based learning and practice-placement

Law of tort is a class based 15 ECTS credit module and does not involve work-based learning and practice placement.

1.3.9 E-learning

Moodle, the College Virtual Learning Environment is an essential tool permitting learners to engage with the lecturer and other module supports including class notes, research material, the learner forum and online resources such as legal databases. Moodle can be accessed in the learners' homes. The learners are also given access to Lynda.com as a resource for referencing.

1.3.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

1.3.11 Reading lists and other information resources

Primary Reading:

McMahon, B.M.E. & Binchy, W. (2013) *Irish Law of Torts*. Dublin: Bloomsbury
Quill, E. (2014) *Torts in Ireland*. Dublin: Gill Education

Secondary Reading

Tully, T, (2014) *Tort Law in Ireland*. Dublin: Clarus Press.
Horsey, K. & Rackley, E. (2017) *Tort Law*. Oxford: OUP.
Lunney, M. & Oliphant, K. (2017) *Tort Law: Text and Materials*. Oxford: OUP
McMahon, B.M.E. & Binchy, W. (2005) *Casebook of Irish Law of Torts*. Dublin: Butterworths
Healy, J. (2006) *Principles of Irish Torts*. Dublin: Clarus Press
Peel, W. & Goudkamp, J. (2014) *Winfield & Jolowicz on Tort*. London: Sweet & Maxwell

1.3.12 Specifications for module staffing requirements

Lecturers are expected to hold at least an NFQ level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

1.3.13 Module summative assessment strategy

Theoretical knowledge is assessed by both continuous assessment (50%) and a summative end of year examination (50%). The continuous assessment shall consist of a written assignment (50%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to Tort Law. Problem Style questions will enable learners to apply the principles of Tort Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii, iii, iv, vi,	50%
2	Assignment	v, vii	50%

1.3.14 Sample assessment materials

Sample Assignment Question

"Prisons may, as an inevitable consequence of the character of persons detained, be dangerous places. Prisoners are entitled to expect that authorities would take reasonable care to protect them from attack by fellow prisoners. What is reasonable, will as always, depend on the circumstances. As the cases recognise, prison authorities may have to thread a delicate line between the achievement of the objective of protecting the safety of prisoners and the risks of adopting unduly repressive and inhumane measures. They must balance the protective function and possible demand for instructive searches against the need to permit prisoners an appropriate degree of freedom of movement and human dignity."

- Fennelly J., in *Creighton v. Ireland and Attorney General* [2010] I.E.S.C. 50 at para. 4

Discuss in light of the approach of the Irish Courts to the question of the standard of care required by the State in discharging the duty of care owed to prisoners in Irish prisons.

- Please note: This assignment is worth 50% of the overall mark for the Law of Torts module.
- The assignment length is 2,500 words, excluding footnotes and bibliography, and 10% above or below this count will not alter your mark.
- The assignment should be typed, in Time New Roman font, size 12. There should be 1.5 line spaces between each line, and the margins of all text should be justified.

- It is essential that your assignment draws on both case law and academic commentary and all such sources should be referenced using the OSCOLA referencing system.
- A guide to the system is posted on Moodle. Excessive direct quotations from other sources, even if referenced, without using your own words to show what you have learned may cause you to lose marks.
- Thus when you read others' work and wish to use their material you should put their thoughts in your own words, and then reference the source for the original material. This is an important point.
- All assignments must be submitted by the nominated date and time via the TURNITIN link on MOODLE. You must include a cover sheet with your assignment.
- Learners are reminded regarding the rules concerning academic misconduct. You must not use someone else's work without referencing the source, and please note that TURNITIN will tell us whether you have done so.

Please refer to the programme's assessment marking criteria in your programme handbook.

Sample Examination
Answer any three of the following questions.
All questions carry equal marks.

Question 1

A medical practitioner is obliged to inform his patient not only of the nature of a proposed treatment but also of its risks and the chances of success.

Discuss the validity of the above statement using appropriate case law to support your answer.

Sample Answer 1

Students should discuss the Doctrine of Informed Consent with reference to trespass to the person.

The development of the Doctrine of Informed Consent in Irish law should also be outlined and causation difficulties discussed.

Students should cite, inter alia, Canterbury v Spence & Washington Hospital Centre 464 F 2d 772 [1972] – U.S. Court of Appeals District of Columbia Circuit, Reibl v Hughes (1980) 114 DLR (3d) 1, Walsh v. Family Planning Services Ltd. [1992] 1 IR 496, Sidaway v Board of Governors of the Bethlem Royal Hospital [1985] AC 871, Farrell v. Varian Unrep., HC, 19 November 1994, Geoghegan v. Harris [2000] 3 IR 536.

Students might make a comparison between the law in Ireland, Australian, Canada and England.

Students will be expected to refer to the decisions in Walsh, Geoghegan v Harris and Fitzpatrick v White and could also cite the UK case of Montgomery v Lanarkshire Health Board (General Medical Council intervening) [2015] UKSC 11 and the recent Irish case Healy -v- Buckley, The Bon Secours & Bon Secours System [2015] IECA 251 (17th November 2015).

Students should also confirm that the appropriate cause of action is negligence, as confirmed by the Supreme Court in Walsh.

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.

Question 2

Mary had been on a night out with her friends and was making her way home, when she was attacked by a man wearing a balaclava. He viciously attacked Mary and when she tried to fight back, he stabbed her in the chest and left her for dead on the ground. Luckily, a passer-by heard the commotion and contacted the emergency authorities who found Mary and saved her life. She spent a week in hospital and immediately made a statement to the Gardaí when she was discharged.

She told Garda White all of the details and he advised her that the knife had been recovered from the scene and it appeared that there were fingerprints on the handle of the knife. Garda White was going to personally bring the knife to Garda Forensics Lab in Dublin to have the fingerprints lifted.

Unfortunately, Garda White forgot about the case as he was busy planning his Halloween costume for that night. He was going as Rambo and had everything he needed, except a hunting knife. He decided he would take the knife that the attacker had used and bring it to the Forensics Lab in Dublin the following day. Unfortunately, Garda White got drunk and lost the knife and has not been able to find it since.

Mary has recently been informed by the Gardaí that they are not in a position to arrest anyone in connection with the attack, as they have no evidence whatsoever. The only evidence was the knife that was used, but the knife is now no longer available.

Mary is devastated that her attacker will never be brought to justice and seeks your advice as to whether or not she can sue the Gardaí and the State and in particular, whether the Gardaí owe her a duty of care in their investigation of criminal offences. Students should confine their answers to the law of negligence.

Sample Answer 2

This question relates the duty of care owed by Gardaí to victims of crime.

Students should set out the recent developments in case law in the area, such as L.M. v The Commissioner of An Garda Síochána, The Minister for Justice, Equality and Law Reform, The Director of Public Prosecutions, Ireland and The Attorney General & Belinda Lockwood v Ireland, The Attorney General, and The Commissioner of An Garda Síochána [2015] IESC 81 where the Supreme Court stated that the issue is not yet resolved in Ireland and requires a full trial of the issues. Students should refer to the Glencar v Mayo Co. Council decision to ground their analysis of the questions which are likely to arise i.e. whether it is fair, just and reasonable to impose such a duty.

Students should also refer to Smyth & Anor. v. The Commissioner of An Garda Síochána & Ors [2014] IEHC 453 where Peart J. spoke of the acceptance that in general the law, in the absence of mala fides, does not impose an actionable duty of care on Gardaí in respect of the performance of their duties and suggested that this was not a principle conferring a 'blanket immunity' in all circumstances but rather a principle which admitted of exceptions in special circumstances.

Students can also refer to the earlier decisions in Ireland such as AG. v. J.K. and Ors. [2011] IEHC 65 and the numerous authorities in the UK, beginning with Hill v. Chief Constable of West Yorkshire [1989] A.C. 53., and revisited again in Michael v Chief Constable of South Wales [2015] UKSC 2, [2015] All ER (D) 215 (Jan).

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.

Question 3

Niall recently bought an old residential building in Cork. The building is on a corner, with one side facing a busy street and the other side facing a quiet residential street. Having purchased the property Niall successfully applied for planning permission to convert the building into a fast food restaurant that is open 24 hours a day, seven days a week.

Ciara is a resident on the quiet residential street and is very annoyed with the noise from the new 24-hour fast food restaurant. Ciara is particularly annoyed as most nights she is woken repeatedly by the noise of cars braking, car doors opening and closing, car radios, cars driving away and customers chatting loudly outside the restaurant.

After a particularly bad night Ciara tells her friend Theresa about the position she finds herself in. Theresa tells Ciara that she once remembers hearing a similar story on the radio, and that they referred to it as a nuisance.

Explain to Ciara what is meant by 'nuisance' and its application in her case. Use case law to support your answer.

Sample Answer 3

This question deals with nuisance.

Students should approach this question using ILAC.

Students should identify the two types of nuisance, public and private nuisance and that question relates to private nuisance.

Students should outline the two forms of private nuisance which may amount to unlawful disturbance for which the defendant will be responsible:

- *that which causes material or physical damage*
- *that which interferes with the plaintiff's use and enjoyment of property*

The answer should discuss unreasonable conduct and refer to locality, duration, sensitivity, public utility, malice, public convenience.

Relevant case law should be cited throughout.

Advice should be provided to Ciara.

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.

Question 4

“For my own part, it seems to me that a policy based limit on the category of those entitled to recover is, in the absence of legislation, a less dangerous route to follow than one based on foreseeability. Under a foreseeability test, absent qualifications for policy reasons, there could be very significant numbers of persons who could advance claims for compensation for nervous shock having fulfilled the temporal and spatial requirements of the proximity test, particularly when and where a multiple tragedy takes place.”

Per Kearns J. in *Cuddy v. Mays* [2003] IEHC 103

Policy has played a role in the limitations of persons who can claim compensation for negligently inflicted psychiatric injuries (nervous shock) claims. However, the law in Ireland and the UK has not developed in tandem. Discuss.

Sample Answer 4

*Students are expected to set out the different approaches of the Irish Courts and the UK Courts as enunciated in *Kelly v Hennessey* and *Alcock v. Chief Constable of South Yorkshire Police* [1992] 1 A.C. 310.*

*Students should set out the *Kelly v Hennessey* test, as per *Hamilton C.J.*:*

- i) The plaintiff must establish that he or she actually suffered ‘nervous shock’. This term has been used to describe ‘any recognisable psychiatric illness’ and a plaintiff must prove that he or she suffered a recognisable psychiatric illness if he or she is to recover damages for ‘nervous shock’.*
- ii) A plaintiff must establish that his or her recognisable psychiatric illness was ‘shock induced’.*
- iii) A plaintiff must prove that the nervous shock was caused by a defendant's act or omission.*
- iv) The nervous shock sustained by a plaintiff must be by reason of actual or apprehended physical injury to the plaintiff or a person other than the plaintiff.*
- v) If a plaintiff wishes to recover damages for negligently inflicted nervous shock he must show that the defendant owed him or her a duty of care not to cause him a reasonably foreseeable injury in the form of nervous shock.”*

*Irish cases applying this test include, *Cuddy v Mays* and *Curran v Cadbury*.*

*In the UK, the leading case is *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 which confirms the earlier Judgment of Wilberforce L. in *McLoughlin v. O’Brian* [1983] 1 AC 410 where the distinction between primary and secondary victims was made and provides that where a plaintiff wishes to claim damages for psychiatric injury he must prove that the damage was reasonably foreseeable. In addition, where*

the plaintiff was not directly involved in the accident (a secondary plaintiff) a secondary victim, must also satisfy:

- i) A close relationship in terms of love and affection*
- ii) Closeness to the accident in time and space*
- iii) Direct perception:*

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.

Question 5

Last Saturday morning while putting her bin out for collection Sarah was knocked to the ground by Ian, who while cycling his path on the footpath was speaking on his mobile phone. Ian immediately accepted all responsible and provided Sarah with his contact details and identification, Sarah's neighbour Cathy witnessed the incident and immediately brought Cathy to the hospital, where it was discovered that not only was Sarah suffering from concussion which required a one night stay in hospital but she had also sprained her ankle and would be out of work for one week. Sarah is not paid when she is out of work on sick leave. Sarah is concerned about the cost of her hospital stay and loss of earning, however, her neighbour Cathy advises that Sarah will be awarded damages.

Sarah has never heard this expression before and decides to search online for the word 'damages', and discovers that there are lots of types of damages, but that two appear to be most relevant in her situation.

Sarah approaches you seeking further explanation of these two particular categories of damages, how the following categories of damages are calculated and when their award may be considered by the court to be appropriate:

- *General damages for non-pecuniary loss;*
- *Special damages.*

Sample Answer 5

General Damages for Pecuniary Loss:

Students should set discuss the Judgments in Reddy v. Bates (1983) IR 141 and Conley v. Strain [1988] IR 628 and Nolan v. Murphy [2005] IESC 17.

These issues were most recently considered by the Court of Appeal in Nolan v Wirenski [2016] IECA 56 (Ryan P., Peart J., Irvine J.)

Stronger students might consider the comments of the High Court and Court of Appeal in Russell v HSE and in particular, the attitude of the Court to the Defendant's suggestion that the lowering of the real rate of return would lead to the State having to pay higher awards of damages.

Exemplary Damages:

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.

Question 6

There are four elements which are deemed to trigger the Statute of Limitations, 1991. Explain each of the four elements, citing relevant case law.

Sample Answer 6

This question deals with the Statute of Limitations and when the date of knowledge is.

In answering this question, students should consider the 1991 Act and subsequent changes in the 2004 Act.

It will then be necessary for students to review the relevant sections of the 1991 Act and the four elements which are deemed to fix the plaintiff with knowledge sufficient to trigger the statute of limitations, namely,

- i) that he had been injured,*
- ii) that it was a significant injury,*
- iii) the identity of the defendant*
- iv) that the injury was caused in whole or in part by an act or omission which is alleged to constitute negligence, nuisance or breach of duty.*

The primary cases which must be cited are Gough v. Neary and Cunningham v. Neary and a comparison of the two.

An excellent answer would incorporate academic commentary, show evidence of outside reading and essentially will offer some opinion on the topic.