

**Mid-Semester & Final Exam Torts Answer Guidelines: Intentional Torts
and Negligence**

Torts Exam Guideline Summaries

Trespass & Intentional Torts

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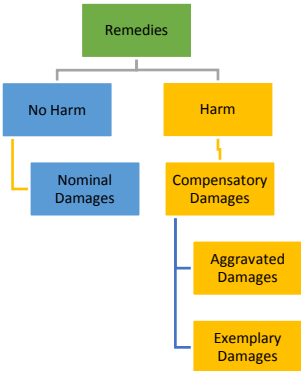
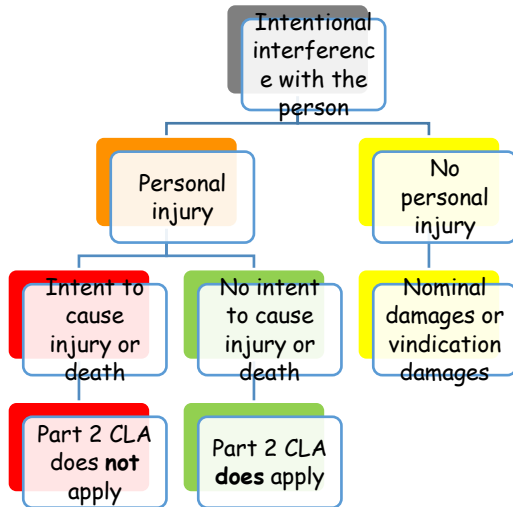
Negligence

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Trespass to Person: Assault	
Headings	Description
Plaintiff v Defendant (assault)	
Definition	<p>Brief definition of Tort:</p> <p>The tort of Assault is a threat made by D that causes P to reasonably apprehend imminent harm made without justification. <i>Barton v Armstrong</i></p>
Conduct/ Direct Threat	The facts of the threat in the case.
Cause P to reasonably apprehend imminent/ immediate harm	<ul style="list-style-type: none"> Objectivity test (reasonable person) <i>Zanker v Vartzokas</i> <u>threat must be 'present and continuing'</u> for it to be imminent. <i>Tuberville v Savage</i> Mention whether threat was conditional Must be positive, direct and intentional threat. Means of carrying out the threat <i>Stephen v Myers</i>
Fault (intentional or negligent/reckless)	<ul style="list-style-type: none"> Intentional: D intended to commit act that comprised trespass, intent to commit trespass is not necessary. <i>Hall v Fonceca</i>
Summarise issues of liability	
Defences (Self defence, Necessity, Consent, Inevitable accident, Criminality, Provocation)	<ul style="list-style-type: none"> Self defence: Statutory (CLA 2002 s52) or common law. CLA s52- (1) where conduct of P was unlawful (2) (a) If conduct of D was necessary to defend themselves or others (b) prevent or stop deprivation of liberty of themselves or others (c) protect property from interference (d) prevent criminal trespass to land <u>Conduct must be REASONABLE response</u> Common Law: when CLA does not apply, <u>D must have reasonable apprehension of affliction of physical force</u> to themselves or others. Must not exceed what is reasonable necessary for protection. <i>Fontin v Katapodis</i> Necessity: D acted to prevent harm to person or property, act must be reasonable in circumstances. <i>Southwark London Borough Council v Williams</i> Consent(express or implied): P must prove interference was without or exceeded consent <i>McNamara v Duncan</i>. Must be real consent and freely given <i>Chatterton v Gerson</i>. Capacity

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	<p>to consent (mental incapacity, drunk, asleep, next of kin cannot give consent) <i>Malette v Shulman</i>. Implied consent depends on circumstances (acceptable ordinary conduct of everyday life <i>Collins v Wilcock</i>).</p> <ul style="list-style-type: none"> • Inevitable Accident: an act that was not intended and could not have been avoided by exercise of reasonable care and skill <i>Public Transport Commissioner v Perry</i>. Occurs when conduct fails to satisfy fault element, neither intentional or reckless. • Criminality: <i>CLA 2002 s54</i> Criminals cannot be awarded damages. • Provocation (partial only): will only result in reduction of any award damages <i>Fontin v Katapodis</i>
<p>Remedies (Nominal or Compensatory + Aggravated or Exemplary)</p>  <pre> graph TD Remedies[Remedies] --> NoHarm[No Harm] Remedies --> Harm[Harm] NoHarm --> Nominal[Nominal Damages] Harm --> Compensatory[Compensatory Damages] Compensatory --> Aggravated[Aggravated Damages] Compensatory --> Exemplary[Exemplary Damages] </pre>	<ul style="list-style-type: none"> • Note how CLA 2002 (pt 2) limits the amount of damages you can get if there is no intention to cause interference or injury. 'Injury' must be interpreted broadly (infliction of non-trivial physical or mental harm upon P). • No harm=Nominal (acknowledgement of infringement on P's right) • Harm=Compensatory + Aggravated=to acknowledge affront to the integrity of P. Exemplary=Only in cases where conduct of D is outrageous or discreditable, attempts to penalise and acts as deterrent for other people.  <pre> graph TD A[Intentional interference with the person] --> B[Personal injury] A --> C[No personal injury] B --> D[Intent to cause injury or death] B --> E[No intent to cause injury or death] D --> F[Part 2 CLA does not apply] E --> G[Part 2 CLA does apply] C --> H[Nominal damages or vindication damages] </pre>
<p>Conclusion</p>	<p>- The likely case scenario of court findings.</p>