

29 Tort 1: personal injury claim

A Tort

A **tort** is a **civil**, not criminal, **wrong**, which excludes breach of contract. A tort entitles a person **injured by damage or loss** resulting from the tort to **claim damages in compensation**. Tort law has been built upon decisions made in reported court cases. Torts include, for example:

- **negligence** – the **breach of a duty of care** which is owed to a **claimant**, who in consequence **suffers injury or (a) loss**;
- **trespass** – **direct and forcible injury**, for example if person A walks over B's land **without lawful justification** or A removes B's goods without permission;
- **defamation** – publishing a statement about someone which lowers the person in the opinion of others. This is known as **libel** when in a permanent form, and **slander** if it is in speech;
- **nuisance** – for example if A acts in a way which prevents B from the **use and enjoyment** of his land.

In the case of **product defects causing damage or harm** to consumers, **strict liability**, that is, legal responsibility for damage independent of negligence, is imposed on producers and suppliers by the Consumer Protection Act, which puts into effect a European Union Product Liability Directive.

Note: **claimant** – formerly known as **plaintiff** (England and Wales) and **pursuer** (Scotland)

B Client briefing notes – personal injury claims

One of the clients of a large regional law firm is 'Get Fit', a chain of fitness centres. Below is an extract from draft briefing notes prepared by the law firm, intended to inform the managers of 'Get Fit' of the potential cost in the event of a successful **personal injury claim in negligence** following an accident at one of their centres.

A person who has **sustained an injury** at the centre and who believes that they may have a **claim against** the company ('Get Fit') will usually seek advice to assess whether the likely level of damages, i.e. the financial compensation that may be awarded, is sufficient to **justify the risk of pursuing a claim**.

The amount of damages, known as the **quantum**, is usually made up of two aspects.

- **General Damages** are paid to **compensate the claimant**, that is, the person making the claim, for the **pain and suffering** resulting from the injury and for the effect this has on their life. These damages are difficult to assess and guidelines are published by the Judicial Studies Board. You may hear these being referred to as the JSB guidelines. Reference is also made to the level of **damages awarded** by courts in similar cases.
- **Special Damages** are calculated more objectively as these consist of claims for the past and future **financial loss** to the claimant. This typically includes **loss of earnings**, in addition to the cost of care and necessary equipment required **as a result of** the injury.

In some cases, when **liability is admitted**, it may be appropriate to **make interim payments** on account of the full award. For instance, the claimant may be **undergoing** a course of **medical treatment**. This will fall into the special damages category and payment can therefore be made before the **final claim is settled**.

29.1 Complete the definitions. Look at A opposite to help you. There is more than one possibility for one of the answers.

- 1 – a breach of duty towards other people generally
- 2 – financial compensation for loss or injury
- 3 – physical or economic harm or loss
- 4 – person who makes a claim
- 5 – making public a statement which harms someone's reputation
- 6 – total legal responsibility for an offence which has been committed
- 7 – an interference with private property
- 8 – spoken statement which damages someone's character

29.2 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Noun	Adjective
'slander	'slanderous
defamation	
libel	
liability	
injury	

29.3 Complete this letter regarding a personal injury claim at a 'Get Fit' fitness centre. Look at A and B opposite to help you. Pay attention to the grammatical context. There is more than one possibility for three of the answers.

Dear Sirs

Our client: Ms Paula Kosmaczewski

Re: Accident at Rothbury 'Get Fit' fitness centre on 8 March 2007

We are instructed by the above-named client with regard to a personal (1) that took place as a result of an accident in your Rothbury fitness centre on 8 March.

We are instructed that the circumstances of the accident were that our client was running on an exercise machine when the rotating track stopped abruptly and she fell forward and (2) an injury to both her right shoulder and right knee. A member of the centre's staff was summoned by another centre user. The staff member assisted our client. Another member of staff said that the running machine had not been maintained recently. Our client was assisted by centre staff to a taxi and went home. On the 30 March our client consulted her doctor because of the pain and restricted movement in her shoulder and knee as a result of the accident. Her doctor referred her to the hospital for specialist examination and treatment. Our client is still (3) medical treatment and has recovered 80% but is advised by medical consultants that she is unlikely to recover 100%.

Our client is self-employed as a freelance musician. As a result of the accident she was unable to fulfil ten weeks of contracted work and has (4) a loss of (5)

As you are aware, under section 2 of the Occupiers' Liability Act 1957 the occupier of the premises (6) a duty of (7) to all visitors to keep the premises and equipment reasonably safe. Our client's accident results from a failure to keep equipment safe and a member of staff (8) liability. Our client has a valid (9) against you in (10)

Over to you



Describe the liability of a client who owns a leisure or sports centre to users of the centre in a jurisdiction you are familiar with, as if to a colleague from a different legal jurisdiction.

39 Commercial leases

A Interest in property



Nina Kahn, a partner in a Bristol law firm's **Real Estate**, or Property, Department, is talking to a foreign client about commercial leases.

'In the UK, it's possible to own either a **freehold** or **leasehold** interest in property. Freehold refers to the estate interest where ownership may be held for an unlimited time without paying rent. A freehold owner, the **freeholder**, may enter into an agreement to lease or let the property, permitting **occupation** for a fixed **term**,

or time, by another person or company who then becomes the **tenant**, also known as the lessee or leaseholder. The freeholder is the **landlord**, or the **lessor**. Some commercial properties, such as shopping centres, may have a complex structure of ownership with a chain of **leases** so that the **occupier**, for example the owner of a small shop in the centre, may **sub-lease** or **underlet** from the tenant and be an **under-tenant**, or even a sub-under-tenant of the freeholder, who is the head landlord.'

B Terms of a commercial lease

'A commercial **tenancy**, the agreement by which a person can occupy a property, may be protected by the **security provisions** of the **statutory regime**. This means that the business tenant in occupation at the end of tenure of the contractual term will have a statutory right to a **renewal of the lease** unless the landlord is able to show that the statutory **grounds exempting the right** apply. An example of such grounds would be the landlord's intention to occupy the property himself or to demolish or substantially redevelop the property. Parties may, of course, agree to opt out of the statutory regime.

Commercial leases are often lengthy, complex documents as they set out the respective obligations of the parties in relation to the property, and these may vary. Such obligations would normally include:

- the amount of rent, the method by which it is to be paid, penalties for late payment, and a **rent review clause** establishing when rent may be increased or decreased;
- provisions for the insurance and maintenance of the property;
- restrictions on dealing with the property, that is, whether the tenant is to be allowed to **transfer interest in** the property to someone else, or to underlet to an under-tenant.

Also included among the obligations would be required conditions, permissions and **covenants** (agreements), and provisions for **yielding up** the lease at the end of the term.

A lease must be for a **term certain**, that is, a fixed period. However, it may include a **break clause** which sets out a **Break Date**, either on a fixed date or on a rolling basis, for example anytime after a fixed date. After this date, the party with the benefit of the break option may **exercise the break** by **serving notice** and may **terminate** the lease early.'

C Obtaining leasehold interest

'Where a new **lease** is to be **granted**, the landlord's solicitors will usually produce a draft lease for approval or amendment by the tenant's solicitor. In circumstances where a tenant is **assigning an existing lease**, that is, transferring his interest in the property, the new tenant will **take the lease** as it is and the landlord's **consent to the assignment** will usually have to be **obtained**. This may be subject to certain conditions, such as the provision of **guarantors** for the performance of the lease – normally the outgoing tenant who signs a **guarantee in favour of** the landlord – or the payment of a rent deposit, depending upon the conditions set out in the lease.'

39.1 Complete the definitions. Look at A opposite to help you. There is more than one possibility for one of the answers.

- 1 – a person who is granted a lease by the freeholder
 2 – property that is held for an indefinite period
 3 – a person who sub-leases from a tenant

39.2 A solicitor is holding an initial meeting with new clients. Replace the underlined words and phrases with alternative words and phrases from B and C opposite. There is more than one possibility for one of the answers.

- 1 We've got some questions we'd like you to help us with. What rights would we have for getting the lease extended on the shop?
- 2 It depends on whether the landlord gives reasons excusing your rights. Or whether there's been agreement to contract out of the legislative rules for tenancy security provisions. I'll need to see the lease before I can advise you properly.
- 3 As tenants, could we give the property to someone else to rent?
- 4 You would need the landlord's agreement and there may be conditions. Unfortunately, I've not been sent a copy of the lease yet.
- 5 When can there be a change to the rent?

39.3 Complete this extract from a draft lease. Look at A, B and C opposite to help you. Words with an initial capital letter are assumed to be defined terms of the lease.

TENANT'S BREAK CLAUSE: ROLLING BREAK

1. TENANT'S RIGHT TO BREAK

- 1.1 For the avoidance of doubt, references in this (1) to the Tenant and to the (2) are to the persons named as such in this lease and to their respective successors in title.
- 1.2 In this clause:
 (a) (3) means the date on which this lease shall (4) pursuant to this clause, and
 (b) **Break Notice** means a notice served pursuant to clause 1.4.
- 1.3 The Break Notice shall specify the Break Date but shall not specify as the Break Date a date which is either;
 (a) earlier than [SPECIFY EARLIEST BREAK DATE], or
 (b) earlier than [six] months after the date on which the Break Notice is deemed to be have been served on the Landlord;
- 1.4 Subject to clause 1.5, the (5) may terminate this lease at any time by (6) on the Landlord.
- 1.5 A Break Notice shall be of no effect if:
 (a) the Tenant has assigned this lease before it serves the Break Notice (whether or not it has made an application to HM Land Registry to register the (7)), or

Over to you



How is the relationship between landlord and tenant regulated in a jurisdiction you are familiar with? What sort of problems may arise in leasing commercial property? How are they resolved?