

## Tips on Answering Tort Problem Questions

### **Tips on how to structure your answer**

Always answer a tort problem question by considering each possible claimant in turn. So before you start writing your answer, identify who in the problem is likely to want to bring a claim and who they might be able to sue.

So let's say that we have a tort problem question where there are two possible claimants – Fred and Shirley – and Fred might be able to sue Andy, Jane and Arnold in respect of the losses that he has suffered in the problem and Shirley might be able to sue Linda and Arnold in respect of the losses that she has suffered. So – begin with Fred as your first possible claimant and then take each person he might be able to sue in turn – first Andy, then Jane, then Arnold – and consider in relation to each of these people whether Fred might actually be able to sue that person for compensation in respect of some or all of the losses that he has suffered in the problem.

So you would first of all consider whether Fred can sue Andy. In considering this, identify all the possible causes of action Fred might have against Andy – can he sue him in negligence? can he sue him for libel? can he sue him under the Consumer Protection Act 1987? – and consider which of these causes of action is likely to be successful (and consider, in relation to those causes of action that are likely to be successful, how much Fred will be entitled to sue Andy for by virtue of that cause of action – if, for example, Fred can sue Andy in negligence, how much will he recover?). When you've finished with Fred and Andy, go on to consider the position between Fred and Jane using the same method and then look at the position between Fred and Arnold.

Once you've done that, you'll be finished with Fred and it'll be time to turn to your next possible claimant, Shirley. And you should do exactly the same thing with Shirley – first consider whether she can sue the first person she might be able to sue (Linda), looking at all the causes of action she might have against Linda, seeing which ones are likely to be successful and how much she will recover under each of those causes of action, and then move on to do the same in relation to the second person she might be able to sue (Arnold). When you've done that, you'll have finished with Shirley and finished the problem.

Use headings throughout your problem answer to break it up and to make it clear (both to yourself and the examiner) what you are doing. So, suppose in the above problem, Fred might want to sue Andy in negligence and in defamation. Your first heading in doing the problem answer should be “Fred” followed by a sub-heading reading “Claim against Andy” then a sub-sub-heading “Claim in negligence” followed by a discussion of whether Fred can sue Andy in negligence and after that a second sub-sub-heading “Claim in defamation” followed by a discussion of whether Fred can sue Andy in defamation. Having finished considering the position between Fred and Andy, you should have a new sub-heading “Claim against Jane” followed by sub-sub-headings corresponding to each of the possible causes of action Fred might have against Jane. And so until the conclusion of your answer.

### **Ten tips on what to do in writing your answer**

(1) Don't start your problem answer by saying such things as "This problem raises many interesting issues relating to the law on....". This is just waffle and a waste of time. If you feel the need to say something to introduce your answer to the problem, just say "I will consider each claimant in turn" and then get on with considering the first possible claimant.

(2) Don't be afraid to find that more than one defendant is liable to compensate a particular claimant in respect of some loss that that claimant has suffered. (If this couldn't happen, we wouldn't have a law on contribution.) So don't think that if A can sue B for compensation for some loss that A has suffered, then A can't also sue C for compensation in respect of that loss. If you have concluded in a particular problem that B and C are both liable in tort to compensate A in respect of some loss that he has suffered, don't worry about making it clear that if A chooses to sue B for compensation in respect of the loss that he has suffered, B will be entitled to recoup some of the money he will have to pay A by making a claim in contribution from C – that'll be obvious. And certainly don't try to quantify how much B will be entitled to claim from C by way of contribution – you won't be expected to resolve this issue by the person setting the problem. (On a similar but unconnected point, note that if A is entitled to sue B for compensation in respect of some loss that he has suffered subject to a discount to take account of A's contributory negligence that contributed to the loss he has suffered, it is enough to note that the damages payable to A will be reduced to take account of A's contributory negligence – you don't have to quantify by how much they'll be reduced.)

(3) Don't invent facts – just consider what claims can be brought on the facts as they are set out in the problem. Don't say things such as "Of course, if A did x, he would not be entitled to bring a claim" – if the problem question doesn't say that A did x, then don't consider what the position would be if he did do x. If the problem question does not supply you with enough information to resolve the issue of whether A will be entitled to sue B in tort for compensation in respect of some loss that he has suffered, then simply say so and move on.

(4) Don't go on and on about really obvious points – you won't gain any extra marks for quoting loads of cases which support the view that, say, a driver owes other users of the road a duty to take care not to drive dangerously (a proposition which is so obvious that it doesn't really need any support); so all the time you spend on quoting those cases will be wasted. And don't repeat yourself – if you have made out a particular point, move on; resist the temptation to make the point over and over again in an attempt to impress the examiner that you know something about the area of law which is relevant to the problem he or she has set; you won't gain anything by it and will simply waste your time.

(5) Don't be afraid to say that no claim can be brought. There is an understandable temptation to think that if A has suffered some kind of loss at B's hands, he must be entitled somehow to sue B for compensation in respect of that loss. Resist this temptation – sometimes A will not be entitled to sue B or anyone else in respect of the loss that he has suffered and you must be alert to that possibility.

(6) If you are considering, say, whether A can sue B in negligence for compensation for the fact that his leg has been injured, *never ever* say "The facts here are very

similar to the case of X v. Y in which...and it was held that...so we can conclude here that...". There will almost certainly not be a direct correspondence between the facts of the case of X v. Y and the case you are considering in your answer which would allow you to do this. (The problem question wouldn't be a *problem* question if there were such a direct correspondence.)

Rather, deal with A and B's case by applying the *rules* that are applicable to the issue of whether A can sue B and only bring in case to interpret or illustrate the application of those rules. So you should say something like: "In order to sue B in negligence for compensation for injury to his leg, A will have to show that: (1) B owed him a duty of care; (2) B breached that duty of care; (3) B's breach caused A to suffer the leg injury for which he wants compensation; and (4) that loss is actionable (that is, not too remote, not the wrong kind of loss and not automatically non-actionable). On (1) the case of X v. Y supports the proposition that B owed A a duty of care. In that case... There is no real distinction between the case here and the case of X v. Y. On (2)..." and so on.

(Of course, you may not have time to set out patiently everything that A will have to establish in order to sue B in negligence and then see whether each requirement is made out. In that case, you should take a more direct approach and say (assuming that A can sue B in negligence): "A can sue B in negligence for compensation for the injury to his leg. The case of X v. Y indicates that B owed A a duty of care in this situation. In that case... B breached the duty of care he owed A and B's breach caused A to suffer the leg injury for which he wants compensation. This loss is actionable: it was not too remote (it was reasonably foreseeable that A's leg would be injured as a result of B's negligence) and there is no other reason why A should not be able to recover compensation in respect of the injury to his leg".)

(7) Pace yourself. If a problem involves six claimants and each claimant might be entitled to sue two people, then you are going to have to consider each claimant's case in a lot less detail than would be the case if you were doing a problem involving two claimants where each claimant might be entitled to sue one person. A good way of helping yourself pace yourself in doing a problem is when you are reading it through for the first time, jot down on a piece of rough paper the name of each possible claimant that you come across and the names of each person they might want to sue. By the time you have finished reading the problem, your piece of rough paper will tell you how many claims you will have to consider and therefore how much time you will have available to spend on each claim.

(8) Suppose that in a particular problem, A has suffered some kind of loss at the hands of B, an employee of C's. Before you consider whether C will be vicariously liable to compensate A for that loss, first of all consider whether A can bring an action in tort against B for compensation in respect of the loss that he has suffered – C can't be vicariously liable to compensate A for the loss that he has suffered unless B is liable to compensate A for that loss. So in considering who A can sue, deal with B first and then C – not the other way around. And in considering whether C can be sued, separate the issue of whether A can make out that C is *personally* liable to compensate him for the loss that he has suffered (in which case A will have to make out that C committed a tort in relation to him that caused him to suffer the loss for which he wants to be compensated) from the issue of whether A can make out that C is *vicariously* liable to compensate him for the loss that he has suffered (in which case A will have to make out that B committed a tort in relation to him that caused him to

suffer the loss for which he wants to be compensated; that he is entitled as a result to sue B for compensation in respect of that loss; and that B was acting in the course of his employment when he committed the tort in question).

(9) Students often find it difficult to handle fatal accidents situations. So – a brief recap. Suppose A has died as a result of something B did with the result that C, a dependant of A's, has suffered a loss of support. There will be two possible claimants in this situation: A's estate and C. If A suffered any losses *before he died* as a result of what B did, A's estate may be able to bring an action against B in tort for compensation in respect of those losses. If A didn't suffer any losses before he died as a result of what B did (which will be the case if B's actions resulted in A being instantaneously killed) then A's estate will have no claim against B. As to C, C will only be able to sue B for compensation in respect of his loss if: (1) B committed a tort in respect of A; (2) B's tort caused A to die; (3) had A not died as a result of B's tort but merely been injured, he would have been entitled to sue B for compensation in respect of those injuries. It probably makes sense to deal with whether A's estate can sue B before you deal with the issue of whether C can sue B.

(10) Finally, don't bother with a conclusion to your problem answer. If you have considered all possible claimants in the way described above, just leave your answer and move on to the next question in the exam – you have nothing more to say.