Tort 1: personal injury claim

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)

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**.

LIVEWORKSHEETS

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

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	

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) ..... .

LIVEWORKSHEETS