SAMPLE This sample shows only the first 6 of the 16 pages of the Torts Revision Map. The full Map is available to QLTS students.

QLTS SCHOOL

SQE1 · FLK1 · REVISION MAP

Torts

Your last mile to the exam.

Everything that matters, on one map. Built for the final week.

This Revision Map condenses the whole of Torts for fast, final-week recall. **Start with the distinctions panel below** — in Tort the exam builds its near-miss options out of paired regimes, not figures — then use the sections to fill the gaps.

The distinctions the exam turns into near-miss options

GET THE PAIRING WRONG AND EVERY ANSWER THAT FOLLOWS IS WRONG — DRILL THESE FIRST

PSYCHIATRIC INJURY — WHICH VICTIM?

Primary

- In the **zone of physical danger**
- Foreseeability of **physical** injury is enough
- No need to foresee psychiatric harm
- With physical injury: no recognised illness needed

Secondary

- Never at risk of physical injury
- Must have witnessed an **accident**, not a medical crisis
- Recognised psychiatric illness always required
- Unaided senses; no TV or third-hand reports

MEDICAL BREACH — WHICH TEST?

Bolam

- **Treatment and diagnosis**
- Not negligent if a responsible body of professionals accepts the practice
- Doctor-centred
- Also fixes what counts as a reasonable alternative

Montgomery

- **Advice, risks and options**
- Disclose material risks and reasonable alternatives
- Patient-centred
- Extended beyond medicine to financial advice

ECONOMIC LOSS — PURE OR NOT?

Consequential

- Flows from injury to the claimant or **damage to their own property**
- **Recoverable** as of course
- Lost earnings while off work; profit on goods damaged

Pure

- Free-standing financial loss
- **Not recoverable** unless Hedley Byrne applies
- Lost profit from a third party's damaged property; defective product value

CAUSATION — FACT OR LAW?

In fact

- The **but for** test
- Balance of probabilities
- Broken by a novus actus
- Claimant bears the burden

In law

- **Remoteness**
- Type of damage reasonably foreseeable
- Manner and extent need not be
- Defendant bears the burden

NUISANCE — PUBLIC OR PRIVATE?

Public

- Affects the public or a class of it
- Claimant needs **special damage**, not an interest in land
- Personal injury recoverable
- A single incident suffices
- No prescription defence

Private

- Affects a particular occupier
- Claimant needs a **proprietary or possessory interest**
- No personal injury damages
- Frequency and duration relevant
- Prescription available

PRIVATE NUISANCE OR RYLANDS?

Private nuisance

- **Continuing** state of affairs
- Reasonableness between neighbours
- Nothing need be brought onto the land
- Fault-based in substance

Rylands

- **Isolated escape**
- Thing brought and accumulated; non-natural use
- **Strict** liability
- Damage to land only, no personal injury

OCCUPIERS — WHICH ACT?

1957 (visitors)

- Express or implied permission
- Common duty of care
- Personal injury **and property damage**
- Duty **may be excluded**, subject to UCTA

1984 (trespassers)

- No invitation, or presence objected to
- Duty only if the three s. 1(3) conditions are met
- Personal injury **only**
- Duty **cannot** be excluded

DEFECTIVE PRODUCT — WHICH ROUTE?

CPA 1987

- **Strict** — no fault to prove
- Producer, importer, own-brander, unhelpful supplier
- Private property only, over £275
- Nothing for the product itself

Negligence

- **Fault** must be proved
- Anyone owing a duty
- No private-use or threshold limits
- Still nothing for pure economic loss

DEFENCES — COMPLETE OR PARTIAL?

Complete

- **Consent** (volenti)
- **Illegality** (ex turpi causa)
- Necessity
- Claim fails entirely

Partial

- **Contributory negligence**
- Damages reduced as is just and equitable
- Liability still established
- Mistake is **no** defence at all

PERSONAL INJURY — WHICH DAMAGES?

Special	General
• **Calculable** to the date of trial • Past loss of earnings • Medical expenses already incurred • Adaptations, property damage	• **Assessed** by the court • Future loss of earnings; lost years • Handicap on the labour market • Pain and suffering; loss of amenity

DEATH — WHICH ACT?

1934 Act	FAA 1976
• Claim **survives for the estate** • Brought by personal representatives • Losses up to the moment of death • **No** future loss of earnings	• New claim for **dependants** • Loss of dependency and services • Bereavement award £15,120 • Funeral expenses if paid personally

FAULT OR STRICT?

Fault-based	Strict
• Negligence • Employers' liability • Occupiers' liability • Private nuisance, in substance	• **Vicarious liability** — employer at no fault • **Rylands v Fletcher** • **CPA 1987** • Public nuisance

TIME LIMITS AND FIXED SUMS

Tort generally, from accrual	**6 years**
Personal injury — accrual or date of knowledge, whichever is later	**3 years**
Claim under the Consumer Protection Act 1987	**3 years**
… long stop from first circulation of the product	**10 years**
Fatal Accidents Act — from death or the dependant's knowledge	**3 years**
Dependants may sue if the representatives have not acted	**6 months**
Property damage threshold under the 1987 Act, including interest	**£275**
Statutory bereavement award	**£15,120**
Cohabitant must have lived as spouse or civil partner for	**2 years**
Prescription in private nuisance — uninterrupted, as of right	**20 years**
Personal injury discount rate (from 11 January 2025)	**+0.5%**
Dependency deduction — no dependent children / with children	**33% / 25%**

COUNTING THE ELEMENTS — HOW MANY LIMBS?

Elements of negligence	**3**
Stages of the *Caparo* test	**3**
Exceptions to the no-liability-for-omissions rule	**3**
Factors fixing the standard of care	**7**
Conditions for *res ipsa loquitur*	**3**
Alcock requirements, as summarised in *Frost* and approved in *Paul*	**3**
Employer's non-delegable duties	**4**
Requirements for vicarious liability	**3**
Forms of actionable interference in private nuisance	**3**
Elements of the rule in *Rylands v Fletcher*	**5**
Conditions for a duty to a trespasser (s. 1(3))	**3**
Categories of person liable under the 1987 Act	**4**
Complete defences under s. 4 of the 1987 Act, plus one partial	**6 + 1**
Categories of exemplary damages (*Rookes v Barnard*)	**3**

PART 1 Duty of Care

What a tort is

A civil wrong giving rise to an action for damages, **independent of any agreement** between the parties. Liability arises from breach of a duty imposed by law, not from contract.

- **Protected interest** — an interest deserving legal protection: land, chattels, personal rights.
- **Attributable responsibility** — the defendant acted intentionally, recklessly or negligently.
- **Causation and remoteness** — the conduct factually caused the loss and the loss is not too remote.
- **Compensatory purpose** — restore the claimant to their pre-tort position.

The three elements of negligence

1. A **duty of care** was owed to the claimant.
2. The defendant **breached** it.
3. The claimant **suffered damage as a result** — caused in fact and not too remote.

Does a duty exist?

Is this an established category of duty?

Yes — apply the precedent directly. Ask only whether the facts fall within the category	**No** — a novel situation

Apply *Caparo*, incrementally and by analogy

1. Reasonably foreseeable harm · 2. Proximity · 3. Fair, just and reasonable — **all three** required

Established duties

- motorists to other road users;
- manufacturers to consumers;
- employers to employees;
- doctors to patients;
- teachers to students.

The courts have been far more cautious over psychiatric injury following disasters, and over negligent police investigations.

The general test and the incremental approach

The neighbour principle — take reasonable care to avoid acts or omissions you can reasonably foresee are likely to injure those closely and directly affected: *Donoghue v Stevenson* [1932].

The three-stage test — foreseeability, proximity, and whether it is fair, just and reasonable to impose a duty: *Caparo Industries plc v Dickman* [1990]. The third stage is where policy operates; in *Hill v Chief Constable of West Yorkshire* [1989] it defeated a duty on the police over the conduct of investigations.

Robinson v Chief Constable of West Yorkshire [2018] reaffirmed that **Caparo is for genuinely novel situations only**. Where authority exists, apply it. New duties emerge gradually, by analogy, not by broad abstract reasoning.

FORESEEABILITY

Objective — the foresight of the reasonable person in the defendant's position: *Bourhill v Young* [1943].

PROXIMITY

A relationship close in physical, circumstantial or causal terms.

Omissions

There is **no general liability for a pure omission** — a failure to act to prevent harm: *Smith v Littlewoods Organisation Ltd* [1987]. Three exceptions:

1. **A positive duty arises** from a contractual or special relationship — employer and employee, school and pupil, doctor and patient.
2. **The defendant makes matters worse** by intervening and negligently increasing the risk: *East Suffolk Rivers Catchment Board v Kent* [1940].
3. **Control over another** who poses a risk: *Home Office v Dorset Yacht Co Ltd* [1970] — prison officers liable for negligently allowing young offenders to escape.

Public bodies

The dividing line is **positive acts** against **omissions**. A carelessly driven police car injuring a pedestrian is a straightforward positive act.

Police

- Liability for **positive acts**, not pure omissions. In *Robinson* [2018] the police owed a duty where their own actions during an arrest injured a bystander.
- A duty may arise on an **assumption of responsibility** for an individual's safety, or where the police **create a danger**: *Michael v Chief Constable of South Wales Police* [2015].
- A duty may arise where the wrongdoer was under police **control**.
- A public law duty is **not** a private tort duty to individual victims: *R v Dytham* [1979].

Fire service

- No general duty to individual members of the public.
- **Attending a fire does not, by itself, create proximity.**
- Liability where the service **creates or worsens** the danger: turning off a sprinkler system in *Capital and Counties plc v Hampshire County Council* [1997]. Making matters no better is not making them worse.

Ambulance service

Treated as part of the health service, so a duty is owed to the individual **once the call is accepted**: *Kent v Griffiths* [2001].

The interference principle: liability where a public authority makes a situation worse by preventing others from taking protective steps — *Tindall v Chief Constable of Thames Valley Police* [2022].

Scope of duty in professional negligence

A professional is liable only for losses **falling within the scope of the duty undertaken**, not for every loss factually caused.

- *South Australia Asset Management Corp v York Montague Ltd* [1997] — a negligent overvaluation made the valuer responsible for the inaccuracy of the valuation, **not for a subsequent fall in the market**.

- *Manchester Building Society v Grant Thornton UK LLP* [2021] — the rigid "advice" and "information" categories are not to be applied mechanically. Scope is fixed by the **purpose of the engagement, assessed objectively**, which widens the range of recoverable losses.

PART 2 Breach of Duty

The objective standard

The defendant must meet the standard of the **reasonable person**: *Blyth v Birmingham Waterworks* [1856]. The test is objective; the defendant's own limitations are irrelevant.

The seven factors

1. What a reasonable person would have **foreseen**.
2. The **magnitude of the risk**.
3. The **seriousness** of the potential injury.
4. The **purpose and utility** of the activity.
5. The **cost and practicality** of eliminating the risk.
6. **Common practice** in the field.
7. The **current state of knowledge**.

Special skill

A defendant claiming a special skill is judged by the standard of the **reasonably competent professional in that field**, not the ordinary reasonable person. A person is under a duty to apply the skill they claim to hold.

BOLAM — TREATMENT AND DIAGNOSIS

Not negligent if acting in accordance with a practice accepted as proper by a **responsible body** of skilled professionals: *Bolam v Friern Hospital Management Committee* [1957]. **Confined to treatment and diagnosis.**

Whether a treatment is a **reasonable alternative** remains a matter of professional practice: *McCulloch v Forth Valley Health Board* [2023].

MONTGOMERY — ADVICE AND RISKS

It is for **the patient** to decide which treatment to undergo: *Montgomery v Lanarkshire Health Board* [2015]. The doctor must:

- engage in **meaningful dialogue**;
- disclose **material risks**; and
- set out **reasonable alternatives**.

A risk is **material** if a reasonable person in the patient's position would attach significance to it, or the doctor should be aware that **this** patient would. Extended to financial advisers in *O'Hare v Coutts & Co* [2016].

Lack of skill

Without a special skill, the defendant must still meet the **minimum standard of reasonable competence** for the activity attempted: *Wells v Cooper* [1958]. Attempting a task needing specialist skill without it is strong evidence of negligence.

Drivers	a duty is owed to passengers and others even where others contributed to the accident: *Booth v White* [2003]. **Learners are held to the standard of the competent experienced driver**: *Nettleship v Weston* [1971].
Junior doctors	judged against the reasonably competent doctor in the relevant post, **regardless of inexperience**: *Wilsher v Essex Area Health Authority* [1988].
Emergencies	action taken under pressure may be reasonable even if hindsight suggests better.
Children	the standard is that of an **ordinary child of the same age**: *Mullin v Richards* [1998].

Proving the breach

The **claimant** bears the burden, on the **balance of probabilities**, through witnesses of fact and, where needed, expert evidence.

Res ipsa loquitur — all three

1. The defendant was **in control** of the thing causing the damage;
2. the accident is of a kind that **would not ordinarily occur** without negligence; and
3. there is **no other plausible explanation**.

Under **s. 11 Civil Evidence Act 1968**, a criminal conviction is admissible in civil proceedings as evidence that the person committed the act, **unless rebutted on the balance of probabilities**.

PART 3 Causation and Remoteness

Causation in fact

The **but for** test: would the claimant have suffered the harm but for the breach? If the harm would have happened anyway, causation fails.

Multiple causes

Successive	resolved by factual analysis and expert evidence: *Performance Cars v Abraham* [1962].
Concurrent	the claimant must show the breach made a **material contribution**: *Bonnington Castings v Wardlaw* [1956]. Proof of a **material increase in risk** of indivisible harm sufficed in *Fairchild v Glenhaven Funeral Services Ltd* [2002], but *Sienkiewicz v Greif (UK) Ltd* [2011] confined this to exceptional cases of real scientific uncertainty.
Divisible injury	liability is **proportionate** to the harm each defendant caused: *Holtby v Brigham & Cowan (Hull) Ltd* [2000].
Indivisible injury	Under the **Compensation Act 2006**, defendants who materially increased the risk of mesothelioma are **jointly and severally liable**, so the claimant may recover in full from any one of them.
Contribution	the **Civil Liability (Contribution) Act 1978** lets the court apportion between defendants by relative responsibility.

Novus actus interveniens

The chain breaks where an intervening act makes the breach no longer an operative cause. The question is one of **reasonable foresight**: was the act truly independent of the breach?

MAY BREAK

- Careless or unreasonable conduct by the **claimant**.
- An independent **act of nature**.
- An **intentional or reckless** act of a third party.
- *Knightley v Johns* [1982] — an officer ordered to ride the wrong way through a tunnel: independent and unforeseeable.

LIKELY NOT TO BREAK

- An **instinctive** intervention: *Scott v Shepherd* [1773].
- A third party's **foreseeable negligence**: *Rouse v Squires* [1973].

Remoteness — causation in law

Liability extends only to **reasonably foreseeable** consequences: *The Wagon Mound (No 1)* [1961], where the fire damage was not foreseeable. **The burden of proving that a loss is too remote falls on the defendant**: *Armstead v Royal & Sun Alliance Insurance Co Ltd* [2024].

Type of damage

- The **type** of harm must be foreseeable; the precise **manner and extent** need not be: *Hughes v Lord Advocate* [1963].
- Harm of a **different kind altogether** is not recoverable: *Tremain v Pike* [1969].

The eggshell skull rule

Take the claimant as you find them. Where the **type** of injury is foreseeable, the defendant is liable for its **full extent**, however much a pre-existing condition worsens it. In *Smith v Leech Brain & Co Ltd* [1962] a foreseeable burn triggered fatal cancer; the defendant was liable for the death.

Loss of a chance

Where the loss depended on the hypothetical act of a **third party**, the claimant must show a **real or substantial chance**, not a speculative one: *Allied Maples Group v Simmons & Simmons* [1995].

PART 4 Psychiatric Injury and Pure Economic Loss

Primary victims

Directly involved in the incident and **exposed to the risk of physical injury**, whether or not physical harm actually occurs.

- Physical **and** psychiatric injury: both recoverable.
- No physical injury but placed in danger of it: pure psychiatric injury may still be recovered.

Page v Smith [1996] — a car accident causing no physical injury but chronic fatigue syndrome. Where **physical** injury is foreseeable, a duty is owed in respect of psychiatric injury, and **the primary victim need not show that psychiatric harm itself was foreseeable**.

Where a primary victim suffers **no** physical injury, the harm must be a **recognised psychiatric illness** — PTSD, a depressive disorder — or a recognised physical condition induced by the incident, such as the miscarriage in *Dulieu v White & Sons* [1901].

There is no separate requirement of "sudden shock". *Paul* [2024] held that the dicta in *Alcock* about a sudden assault on the nervous system rest on a discredited model of how psychiatric illness is caused, and impose no additional restriction.

Where the primary victim **does** sustain physical injury, no recognised psychiatric illness need be proved, and general damages for distress and anxiety may be added.

Secondary victims

Not personally at risk, but suffering psychiatric injury from **witnessing** injury to another. The starting point is that the law gives no remedy for the effects of injury to someone else; secondary victim claims are a narrow exception.

The threshold: there must have been an accident

Paul v Royal Wolverhampton NHS Trust [2024] — a claimant **cannot recover unless they witnessed an accident, or its immediate aftermath**. An accident is an **external event which causes, or has the potential to cause, injury by violent external means**. It is the event, not the injury: witnessing injury is neither necessary nor sufficient.

Witnessing a **medical crisis** — a relative suffering or dying from an undiagnosed or untreated illness — is **not** an accident, however shocking. All three appeals in *Paul* failed on this ground.

Then the Alcock requirements

As summarised in *Frost* (also reported as *White*) [1999] and approved in *Paul*:

1. A **close tie of love and affection** with the person killed, injured or imperilled. **Presumed** for spouses and parent and child; otherwise it must be proved by evidence.
2. **Presence at the accident or its immediate aftermath** — close in time and space.
3. **Direct perception** of the accident or its aftermath, not being told of it by someone else.

Alongside these: a **medically recognised psychiatric illness**, which is what separates the claim from ordinary grief; **reasonable foreseeability** of injury; and a **causal connection** between witnessing the event and the illness. **The claimant need not show the mechanism by which the illness was induced.**

Secondary victims — the further rules

- The accident must be perceived **with the claimant's own unaided senses**. Second-hand accounts, television, photographs and news reports are not enough.
- **Mere bystanders cannot claim.** Watching the Piper Alpha disaster, in which 167 people died, was insufficient: *McFarlane v EE Caledonia Ltd* [1994].
- Where the claimant was present at the accident or its immediate aftermath involving a loved one, a **causal link** suffices.
- **There is no requirement of "sudden shock", and none that the event was "horrifying".** *Paul* called these an unfortunate wrong turn: there is no available scale of horror against which to measure one family's ordeal against another's.
- Nor is there any test of what counts as **one event**, or of whether the accident was the **first manifestation of damage** to the primary victim. Both were rejected as unprincipled and unworkable.
- No claim lies for injury caused by a **separate event removed in time from the accident**: *Taylor v A Novo (UK) Ltd* [2013], confirmed as correctly decided in *Paul*. The claimant saw her mother collapse and die three weeks after the accident, and had not witnessed the accident itself.
- The gap between the negligent **act** and the accident is irrelevant. Proximity is measured to the **accident**, not to the breach.

Medical negligence

Paul [2024] — a doctor's responsibility does not extend to shielding a patient's close family from the experience of witnessing their relative's death or illness. Such an experience is **a vicissitude of life, not an insult to health from which doctors take care to protect us**. So there is **no duty**, and **secondary victim claims are now very unlikely to succeed in clinical negligence**.

What is not required

- No **sudden shock** to the nervous system.
- No requirement that the accident was **horrifying**.
- No test of whether the experience was a **single event**.
- No test of whether the accident was the **first manifestation of damage** to the primary victim.

If a source states any of these as a requirement, it pre-dates *Paul* [2024].

Rescuers

Rescuers get **no special status**. They must satisfy the same conditions as anyone else.

PRIMARY

Exposed to physical danger, or reasonably believing themselves to be. A volunteer at a train crash who suffered only psychiatric harm recovered because he had been at risk: *Chadwick v British Railways Board* [1967].

SECONDARY

Not exposed to risk. Police officers in the Hillsborough aftermath were denied recovery, whether framed as rescuers or as employees: *White v Chief Constable of South Yorkshire Police* [1998].