

<p>Question 1 – 25%</p>	
<p>Introduction: The purpose of tort law. Address whether legislation should expand the duty of care and to cap damages on tort lawsuits.</p>	(1)
<p>a) The purpose of tort law is to compensate persons for private wrongs. These could be intentional wrongs, such as assault and battery or conversion of another’s property, or accidental wrongs in which someone suffered loss or damages because of someone not acting carefully.</p> <p>Other intentional torts: false imprisonment and deceit to obtain property under false pretense.</p> <p>Unintentional harm - voluntary act resulting in damage to property or person.</p> <ul style="list-style-type: none"> - A branch of civil law whose aim is to prevent harm or provide remedies for damage to a victim - A way of protecting people’s interests through looking at how people should (or should not) behave in relation to others - Notion of individual responsibility - Protected interests: <ul style="list-style-type: none"> - Bodily health - Bodily freedom and autonomy - Interests in property - Reputation / privacy <p>Different from criminal law where state seeks to punish/deter crimes that breach societal peace. Tort focuses on private wrongs where private person seek compensation for loss, whereas criminal law seeks to protect society.</p> <p>Legislation to expand duty of care in law of negligence.</p> <p>b) Elements of negligence to show that defendant is liable</p> <ul style="list-style-type: none"> • To establish negligence of defendant for causing someone damages one must show that they had a <u>duty of care</u> and that they breached or violated that duty • To establish to whom the duty of care was owed, the claimant must show that it was foreseeable (an objective test) if a reasonable person in the defendant’s position would have foreseen that the claimant might be injured or harmed by the conduct in question? If so, a duty of care exists. • Damage/Injuries + Causation The person injured would then have to show that their injuries (physical, property, emotional etc) were proximate (close enough, or “but for’ test) enough to have caused injuries suffered. <p>Seminal case: <i>Donoghue v Stevenson (1932)</i></p>	<p>2</p> <p>2</p> <p>(1)</p> <p>5</p> <p>(1)</p>

<p>The problem of determining Foreseeability as what limits the scope of the duty of care.</p> <p>Foreseeability determined by objective test Would a reasonable person in the defendant’s position have foreseen that the claimant might be injured or harmed? If a reasonable person would not have foreseen the possible injury or harm, then there is no duty of care owed. Real cases: Foreseeable that children would break into D’s closed cinema and start a fire that damaged other buildings? No. Foreseeable that a horse left alone in the street could get scared and run off, hurting people? Yes.</p> <p>Parliament could enact legislation that expands the duty of care to cover unforeseen circumstances that caused injury to third parties or others.</p>	<p>2</p> <p>(1)</p>
<p>Lord Atkin Caparo Industries plc v Dickman</p>	<p>(1)</p>
<p>Extra credit: Possibility that causation of negligent conduct is transferrable to another person who suffers losses if <u>she suffered injuries directly arising from defendant’s negligence</u>.</p>	<p>(2)</p>
<ul style="list-style-type: none"> • Alcock rule. Claimant who is a "secondary victim" must perceive a "shocking event" with his own unaided senses, as an eye-witness to the event, or hearing the event in person, or viewing its "immediate aftermath". • If the nervous shock is caused by witnessing the death or injury of another person the claimant must show a "sufficiently proximate" relationship to that person, usually described as a "close tie of love and affection". • It must be reasonably foreseeable that a person of "normal fortitude" in the claimant’s position would suffer psychiatric damage. 	<p>2</p>
<p>Pros and cons of how the duty of care is defined.</p> <p>Pro – sets an objective standard for determining who can reasonably expect to bring a claim for loss if they can show causation (proximate cause) of defendant’s conduct. Attempts to create legal certainty regarding whom a defendant can be liable to for irresponsible conduct. Promotes judicial efficiency.</p> <p>Con. The objective standard for determining duty of care and the foreseeability of careless behavior that causes injury to another person may not include situations where it is unusual or not ‘foreseeable’ based on past activity that the defendant should have been aware that his careless conduct could cause injury to someone who suffers losses because the way they</p>	<p>3</p>

<p>suffered losses was wholly unexpected.</p> <ul style="list-style-type: none"> • Opening of floodgates argument • For example, Very careful with the police: difficult to establish duty of care, even harder to establish breach (or other example). <ul style="list-style-type: none"> - Duty of care of the police is general to society - Not to stop one crime on one specific person ok - Unless that person was in clear danger (Osman v UK) - Alternative example from police – EctHR case [1998] ECHR 101. <p>The ruling of the European Court of Human Rights was that such blanket immunity would be a breach of article 6 of the European Convention of Human Rights, but that there was no breach of articles 2 and 8</p> <ul style="list-style-type: none"> - “Fair, just and reasonable” useful test for judges to limit the scope of duty of care 	<p>2</p> <p>(1)</p>
<p>Possibly contributory negligence, used to relieve defendant of all liability but modified by statute.</p> <p>Contributory negligence – sharing of responsibility between defendant and claimant results in a proportionate sharing depending on the extent of the responsibility between the parties for damages suffered.</p> <p>The ‘but for’ test would show that there was proximate cause.</p> <p>Defendant can argue that <i>Novus actus interveniens</i>: action by third party/external factor caused most of claimant’s injuries.</p> <p>The evidence required to prevail against defendant is the ‘balance of probabilities’. Claimant must submit evidence first (burden of production) to show that defendant was liable. Defendant then must rebut this presumption of the established evidence by arguing his defences or that the claimant’s evidence is not adequate to establish presumption of liability.</p>	<p>(2)</p> <p>(1)</p> <p>(1)</p> <p>(1)</p>
<p>Legislation to limit damages.</p> <p>C) Damages. Discussion of the types of injuries suffered by claimant and whether they can serve as a basis for remedies against defendant</p> <p>Compensatory damages for damage to body, property, emotions or economic loss.</p> <p>Compensatory damages = compensation of the victim Specific performance (awarded at the discretion of the court) Injunction (more for intentional torts) Punitive damages available in US = vindication Threat of punishment to regulate society = deterrence</p>	<p>1</p> <p>4</p>

<p>Egg shell rule. How much in damages. Claimant injured by defendant. He suffers serious physical damages because of brittle bones. Egg shell skull rule applies – defendant must "take his victim as he finds him". That means that defendant must take claimant as they find him and compensate him for all the damages/losses arising from impact of defendant's careless behavior. Is this reasonable?</p> <p>Should legislation change this? The case of someone's intentional touching of someone who has brittle bones and they break. Should all damages resulting from brittle bones be compensated? Why or why not. Should legislation limit or codify egg shell rule?</p>	<p>(1)</p> <p>2</p>
<p>Role of legislation in common law systems Extra credit: Discussion of US states and UK adopting comparative negligence statutes to reduce the scope of contributory negligence defence.</p>	<p>(2)</p>
<p>Statute of limitations. claims for negligence would have to be brought within 6 years</p> <ul style="list-style-type: none"> • claim against defendant would have to be brought within 6 years of the date that her claim arose against defendant. • Should statute of limitations be changed by legislation? 	<p>(2)</p>
<p>Max Question 1</p>	<p>25</p>

Question 2 – 35%	
The rule of law	
Introduction. This essay will address the law of property, estates and wills allows the son Robert to recover on his petition to inherit his father’s home.	2
The law of UK inheritance and powers of testator	
After 1939 – Inheritance (family provision) Act 1938, and Intestates’ Estates Act 1952, gives to testator’s dependants and to dependants of Intestate <i>power to apply to court for a reasonable maintenance</i> ‘out of the estate, if such is not provided by will, or the law of intestacy,’ or the combined amount distributed by will or intestacy is partial.	2
Inheritance Act 1975. increases the range of dependents who may apply for provision on T’s death and gives the court wider powers so that it can make whatever order is appropriate in circumstances	2
Dependents under English/UK law. Wife or husband Former spouse not remarried Child of the deceased (including illegitimate or adopted child) Child of deceased or any person treated as dependent by deceased before death Any person wholly or partly maintained by deceased before death, for example, a mistress No qualifying period for receiving maintenance from deceased ‘Maintained’ means receiving a substantial contribution – and Testator did not receive ‘consideration’ for the maintenance provided	5
Will – specific requirements - Must be in writing. - Must be signed by T or by some person in her presence and by her express direction. - Signature must be made or acknowledged by T in presence of two or more witnesses, both present at the same time - Witnesses must attest and sign the Will in T’s presence	(2)
Will’s revocation Court’s equitable jurisdiction to attach conditions to any order approving disposition of property Lump sum payment from property, or transfer or variation of a settlement of specific property Payments to a spouse will end usually if she remarries, but child can take even after attaining majority age Court considers the nature of the T’s property and financial position of dependant, conduct to T, and other relevant issues, including T’s rationale or purpose of will	5

<p>Will revoked by marriage of T</p> <p>Making of a new will or codicil. But codicil normally a supplement to existing will.</p> <p>Burning, destroying by T or person in direction of T</p> <p>A complete and intentional obliteration – but striking words through with pen not enough</p> <p>Effect of divorce or annulment – former spouse no longer executor</p> <p>Accidental loss or destruction no effect.</p> <p>Bequests of real estate are ‘devises’</p> <p>Bequests of personality are ‘legacies’.</p>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>(1)</p> <p>(1)</p> <p>(1)</p> <p>(1)</p>
<p>Elder John Waddell married Wendy Cook in 2013 after the execution of the first will in 2000. The marriage revokes the will. Ms Waddell lived with John Waddell for 5 years until elder Waddell’s death. Second will executed in 2015 leaving home and personal property to Ms Cook. The son Robert Waddell not dependent on father at the time of father’s death.</p>	<p>5</p>
<p>Critical discussion – which way should court decide?</p>	
<p>Should Robert Waddell (the son) petition succeed in inheriting the house as a matter of fairness? Court has discretion: the 2000 will was revoked by 2013 marriage and by the second will in 2015. Should Ms Cook succeed in inheriting the house and personal belongings based on the execution of the second will? What is fair? What is just?</p> <p>Discuss Robert Waddell’s circumstances (university professor) not dependent in the years before his death. But what about Ms Cook’s conduct and the facts of her relationship with the elder Waddell. Serial friendships of older men and becoming beneficiaries under their wills.</p>	<p>2</p> <p>2</p> <p>2</p> <p>2</p>
<p>Conclusion – The court has considered UK/English as providing that valid wills can bequeath property but unfairness can undo the Testator’s intent. This essay argues that it is fair and just to do (grant petition or deny petition)</p>	<p>2</p>
<p>Max Question 2</p>	<p>35</p>

Question 3 – 20%	
The question asks what the modern sources of common law. Which ones are primary and secondary? State that you will address whether Judges or Parliament should be supreme in determining the validity of laws.	1
<ul style="list-style-type: none"> – Magna Carta (1215) – for example, right to jury of peers for capital crimes – English law domestic sources – Judicial case law – Common Law v Statute Law – Primary and secondary legislation – <i>Common law pre-existing and determined through application of accepted principles to facts of case</i> <p>Coke v Hobbes</p>	<p>(1)</p> <p>2</p> <p>(2)</p> <p>(1)</p>
<p>Blackstone and Hale – first to codify common law in publications</p> <ul style="list-style-type: none"> • Emerged in England during the Middle Ages • Applied within British colonies across continents. • Generally uncodified (ie no comprehensive compilation of legal sources) • Largely based on precedent (authoritative judicial decisions) • Adversarial system (judge as moderator, jury without legal training) 	<p>(2)</p> <p>3</p> <p>(1)</p>
<p>Modern sources (including international/EU)</p> <ol style="list-style-type: none"> 1. Judicial Case law 2. Statute 3. European Law* (Brexit) 4. International Law 5. Transnational law <p>Example of parliamentary statute modifying principle of contributory negligence to be comparative negligence</p>	<p>5</p> <p>(2)</p>
<p>Elaborate on statutory law</p> <ul style="list-style-type: none"> • Acts of Parliament • Delegated Legislation - Statutory instruments - Orders in Council - Bye-laws <p>Extra credit. The History of the Common Law of England” (by Matthew Hale, 1713):</p> <p>Selected Chapters</p> <p>I. Concerning the Distribution of the Law of England into Common Law, and Statute Law.</p> <p>II. Concerning the Lex non Scripta, i.e. The Common or Municipal Laws of this</p>	<p>4</p> <p>(1)</p> <p>(1)</p> <p>(1)</p>

<p>Question 4 - 20%</p>	
<ul style="list-style-type: none"> • Discuss the role of equity in common law. The essay will describe how equity historically evolved separately from common law and later merged, but 	<p>1</p>
<p>Common law and equity</p>	<p>4</p>
<p>Common Law (complete system of law) vs Equity (incomplete system) Equity is a separate system of law based not on formalities but on fairness and justice.</p>	
<p>English pragmatism: look beyond formalities to see the real situation</p>	
<p><i>He who comes in equity must come with clean hands</i></p>	<p>(1)</p>
<p>In conflict, Equity prevails</p>	
<p>Both product of judicial precedents</p>	<p>1</p>
<p>Advantages / Disadvantages of judicial precedent</p>	
<p>Medieval common law. Trust developed to address unfairness of man leaving property behind to go fight in the ‘crusades’.</p>	<p>1</p>
<p>- Trust created by settlor with trustee and designated beneficiaries.</p>	<p>(1)</p>
<p>Trust law evolves over time to apply to many different types of situations where the application of common law would prove to be unfair or unjust</p>	<p>2</p>
<p>Trust law and Courts of Equity</p>	
<p>But beneficial use of property requires the owner of property (trustee) to use the property for benefit of beneficiaries.</p>	<p>4</p>
<p>Enforcement of beneficiary rights – equitable action</p>	
<p>King’s courts only enforced actions at ‘law’ – contract, tort, property rights.</p>	
<p>Chancellor’s court – enforcing equitable claims only.</p>	
<p>Equity courts could override the Courts of law</p>	
<p>Courts of Equity – ‘Bleak House’ <i>Charles Dickens</i></p>	<p>(1)</p>
<p>1873 Judicature Acts – merge courts of law and equity from 1875 onwards.</p>	<p>(1)</p>
<p>Create Judicial Committee of House of Lords</p>	
<p>For example, how equity (ie., trusts) influence contract law</p>	<p>3</p>
<p>Trusts creation of equity – contracts an invention of law</p>	
<p>Contracts create personal rights – trusts create rights in property (proprietary rights)</p>	
<p>Contracts are enforceable only if supported by consideration, whereas beneficiary under trust can enforce the trust without providing consideration</p>	
<p>Contracts cannot usually be enforced by 3rd parties (limited statutory exceptions), whereas a beneficiary can enforce a trust where she not a party to the agreement between settlor and trustees</p>	
<p>Effect of bankruptcy on Trustee’s property held for beneficiaries</p>	<p>(1)</p>
<p>For example, doctrine of estoppel applied in contract law - Should be applied to the facts of the case.</p>	<p>(1)</p>

<p>Another example. <i>Volenti non fit injuria</i> - "to a willing person, injury is not done" claimant voluntarily walked into the street and did not look and was hit by the car as a result.</p>	<p>(2)</p>
<p>Law of Equity has always been used to apply principles of fairness and justice to the application of common law principles by the courts.</p> <p>Insolvency law (bankruptcy) was part of law of equity. Undoing contracts that were valid at common law.</p> <p>Examples of this include business law:</p> <p style="padding-left: 40px;">A person who is not otherwise liable as a party to a transaction purported to be done on his account, is nevertheless subject to liability to persons who have changed their positions because of their belief that the transaction was entered into by or for him, if -</p> <p style="padding-left: 40px;">A) he intentionally or carelessly caused such belief, or</p> <p style="padding-left: 40px;">B) knowing of such belief and that others might change their positions because of it, he/she did not take reasonable steps to notify them of the facts</p> <p style="padding-left: 40px;">Persons who have changed their positions include:</p>	<p>1</p> <p>1</p> <p>(1)</p> <p>(1)</p> <p>(1)</p>
<p>Persons who have changed their position as a result of valid legal agreements or transactions done pursuant to common law. Equity allows undoing of unfair or unjust results.</p> <p>For example, <i>Elements of estoppel</i></p> <ol style="list-style-type: none"> 1) A false representation of a fact to (or concealment from) a person ignorant of the truth; 2) intention to cause reliance 3) Actual reliance by innocent party <p>Other examples in business law: partnership and estoppel; De factor corporations</p>	<p>(1)</p> <p>(1)</p> <p>(1)</p>
<p>Equitable Remedies</p> <p>Constructive trusts</p> <p style="padding-left: 40px;">Knowing receipt or dealing Knowing assistance Profit from the trust Tracing of proprietary interests in property. For example, tracing the proceeds of crime through bank accounts and in other transactions Personal rights (contractual rights) not traceable</p> <p>Allowing for recovery of traceable assets event though the assets have been transferred through valid transactions.</p>	<p>2</p>
<p>Max Question 4</p>	<p>20</p>