**Practice Essays**

**Introduction**

* What role do you think access to insurance should have on the development of tort law principles?
* What are the benefits and detriments of instituting a no-fault accident compensation scheme?

**Duty of Care**

* Does it surprise you that there is generally insufficient proximity between the police force and victims of crime? Do you think the current common law approach is defensible?
* Do you think the common law’s way of dealing with public authorities in negligence is justifiable? Is it easy to explain why such authorities are treated for these purposes in the same way as individuals when they do, in many cases, have the power to affect many lives?
* Do you think *Poole BC v GN* and *ABC v St George’s Healthcare* are reconcilable? Why or why not?
* What do you think of the argument that the existence of these common law principles can be explained on the basis that nobody has a basic right to be made better off?

**Pure Economic Loss**

* Do you agree with Lord Denning view in *Spartan Steel & Alloys v Martin & Co*? Do you think that the claimants’ lost future profits should have been recoverable?
* Do you agree that the development in *Hedley Byrne* was a necessary one?
	+ *Consider*: Over the last century, the financial services industry has grown dramatically. Without the *Hedley Byrne* exception, therefore, vast numbers of professionals would be effectively immune from negligence actions simply because of the type of loss they are likely to cause if they act without reasonable care
	+ *But*: Should the tort of negligence be the means by which this is addressed? Parties in situations involving financial dependence on professional services could, in most cases at least, protect themselves fairly easily by making their relationship a contractual one (that is, by insisting on some form of consideration, albeit minimal).
* Was the need for practical justice sufficient in *White v Jones* for the artificiality (at least some of) the judicial approaches to ‘voluntary assumption of responsibility’?
* What do you think? Is the type of loss suffered in *Anns v Merton LBC* and in *Murphy v Brentwood DC* really purely economic? Or is it something different?

**Psychiatric Injury**

* What do you think, if anything, should happen to the *Alcock v Chief Constable of South Yorkshire Police* criteria in the digital age? Do they, in your view, remain fit for purpose?
* Does the fact that there is now enormous potential for causing psychiatric harm through the transmission of digital images mean that the rules governing recovery for such damage should be more or less restrictive than those formulated in 1992?
* What do you think about the result in *White v Chief Constable of South Yorkshire Police*? Do you think the police officers who were working on the day, in the ground, should have been denied recovery?
* Do you think there is a legitimate distinction to be made between the police officers in *White v Chief Constable of South Yorkshire Police* and the rescuer in the rail crash in *Chadwick v British Railways Board*?
* Do you think the criteria proposed by the Law Commission in *Report on Liability for Psychiatric Illness* [1998] will be sufficient to guard against the spectre of indeterminate liability? Are they, in your view, better than the common law mechanisms that are currently in place?

**Breach of Duty**

* If we regard the principal objective of tort as aiming to compensate those who have been injured as a result of another’s breach of duty, do you think the allowance made for a defendant’s age is constructive? Why should a claimant bear her own loss because she happened to have suffered loss as a result of a child’s, rather than an adult’s, actions?
* Do you think the approach in *Montgomery v Lanarkshire Health Board* is a positive development in the doctor-patient relationship?
* Is it a good idea to prioritise the full autonomy of patients, even in a situation in which they might, through lack of specialist knowledge, not be able to judge what is in their best interests?
* If individual autonomy is so important, why does the law require people to wear seatbelts in cars?

**Causation**

* Do you think the claimants in *Hotson v East Berkshire Area Health Authority* and *Gregg v Scott* have lost anything? Are there any convincing arguments in favour of allowing recovery in cases like *Hotson*? Do you think the facts of *Hotson* are materially different from those of *Gregg*?
* Do you think it is justifiable for the common law to allow recovery for the lost chance of a financial gain, but not for the lost chance of avoiding an adverse physical outcome? Why or why not?
* Do you think the *Fairchild v Glenhaven Funeral Services* exception is defensible? Have *Sienkiewicz v Grief (UK) Ltd* and s 3 of the Compensation Act 2006 made it more or less so?

**Remoteness**

* Do you think that the common law is correct to distinguish between intentional and non-intentional torts for the purposes of deciding which damage is too remote?
* Does the fact that defendants take their victims as they find them lead to fair results? Two defendants could behave in identical ways and yet be liable for vastly different damages, simply by virtue of their moral luck. How can this be justified?
* In *SAAMCO*, do you agree with the House of Lords that the consequences of a market fall are not within the scope of a valuer’s duty of care?
* Do you think there is a problem with allowing claimants to recover more in tort than they would under a contractual claim on the same facts?

**Occupiers’ Liability**

* What do you think about visitors to a park being deemed to be non-visitors once they exceed their permission to be there? Do you think the balance of responsibility is properly achieved by *Tomlinson v Congleton BC*?
* Does it surprise you that there is no duty on an occupier to make premises safe? Why is this so?
* Do you think the presence or absence of insurance should have any bearing on liability in negligence? If it becomes relevant, could this be said to change the objectives of the tort as a whole?

**Product Liability**

* Do you think that the rule in s 5(2) of the Consumer Protection Act 1987 is anomalous and/or problematic? Why should it make a difference whether the component part is supplied at the same time as the product in which it is incorporated, or added at a later date?
* Do you think the limitation rules for product liability are too restrictive? Or are they appropriate for a strict liability regime? Bear the discussion below in mind when you conduct your analysis.

**Nuisance and the Rule in *Rylands v Fletcher***

* How fair do you think the locality consideration is, given that, for many people, the location of where they live might not be a matter of pure choice, but dictated instead by financial demands and/or logistical work reasons?
* Should an injunction be the remedy for all private nuisances, other than in very exceptional circumstances? Or do you think defendants should be able to pay compensation and continue to cause a nuisance, effectively ‘buying’ the right to interfere with another’s property interest?
* Do you think that the House of Lords was right to retain the rule in *Rylands v Fletcher* as a separate tort, holding those who use their land in an ultra-hazardous way to a higher standard of liability than negligence? Imagine that your neighbour stores vast quantities of a harmful chemical which, if it escapes, will poison the contents of your garden: do you think liability should depend on how hard your neighbour tried to prevent the escape?
* Is it not the case that all cases in nuisance and *Rylands v Fletcher* are, to a greater or lesser extent, subject to geographical chance?
* Does it make sense to keep the rule in *Rylands v Fletcher* as a separate tort, or would it make more sense to do what Australia has done, and to subsume it with the tort of negligence?

**The Economic Torts**

* Do you think the distinction made between *Quinn v Leathem* and *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* is satisfactory? Does it really come down to the presence of malice? After all, could it not be argued that the defendants in *Quinn* were also trying to promote the interests of their union?
* Do you think it is justifiable to have a different test for intention across different economic torts?
* Do you think the threshold in lawful means conspiracy is too high? Or is it defensible on the basis that lawful means conspiracy is anomalous in other ways, i.e. for making something unlawful simply because it is done in combination with another party?
* Is the ‘economic torts’ label simply an umbrella term that has been applied to several different actions? Would it therefore be a case of the tail wagging the dog, were they to be developed in sync with one another just because they share a textbook chapter?

**Intentional Torts Against the Person**

* How should the courts approach the requirement of intent for trespass to the person torts? Does it make sense to have differing tests for different torts?
* Should hostility ever be a requirement for battery? What are the courts looking for when requiring that the touching be ‘hostile’ in nature?
* What challenges does the court need to address when considering whether a claimant has been falsely imprisoned whilst incarcerated? Is the law achieving the correct balance of the competing tensions?
* What role does the tort of intentional inflection of emotional distress have now that the Protection from Harassment Act 1997 has been passed? What are the key differences between these two causes of action?

**Defamation**

* Do you think there is ongoing utility in the distinction between libel and slander?
* Defamation is a cause of action designed to protect the claimant’s reputation and esteem. Can and should companies and public authorities be able to sue in defamation?
* Consider the statement, ‘Hannah has been arrested for serious criminal offences’. Is that defamatory? Think through whether it is capable of imputing guilty of the offences charged and whether an ordinary reasonable reader is likely to adopt the presumption of innocence (which is the basis of the criminal law).
* What do you think Lord Nicholls meant in *Reynolds v Times Newspapers Ltd* when he stated that the press discharges ‘vital functions as a bloodhound as well as a watchdog’? Do you agree?
* In light of the important #MeToo movement, should people being accused of sexual harassment and other offences be entitled to sue their accusers in defamation? How does this relate to the ongoing debate between protecting an individual’s reputation and encouraging freedom of speech?
* How should the law deal with defamation and social media? Should publications in these formats be considered as less credible than traditional forms of publication?
* How should the law determine what is defamatory? Should judges determine the impact of statements on the ‘general public’ or on a particular section of the community in which the claimant lives and whose estimation is important to the claimant?

**Privacy**

* Should public figures have different rights to privacy than ordinary individuals? If so, how would you define a ‘public figure’?
* Is the development of a freestanding tort protecting the invasion of privacy is a useful development for English tort law? Has the enrichment of the Human Rights Act 1998 has weakened the need for a freestanding tort of privacy? Or is it the opposite – that there is now a need to develop a tort that specifically protects the rights under the Human Rights Act 1998?
* If there is to be increased recognition of privacy rights, do you think that this should occur through the common law or by Parliament?
* Does privacy help or hinder the development of equality and women’s rights in the 21st century? What further reforms are appropriate or necessary?

**Vicarious Liability**

* Given that it is possible for primary liability to be joint, meaning that it can be imposed on several defendants at once, do you think it is right for the same to apply to vicarious liability? Does the Supreme Court’s recent prioritisation of the need for claimants to have compensation from some source have any bearing on your thinking?
* Do you think *Mohamud v WM Morrison Supermarkets Plc* expanded the close connection test too far? *Catholic Child Welfare Society v Various Claimants* and *Lister v Hesley Hall Ltd* can perhaps be justified on the basis that teachers are employer with an express objective to safeguard pupils’ welfare, but to what extent can this be said to apply to retail employees with customer-facing roles? Do you find the Supreme Court’s analysis of *Mohamud* in *WM Morrison Supermarkets Plc v Various Claimants* to be convincing, and do you think the approach taken in the latter case is to be preferred?
* Do you think the law is right to impose liability on one entity for wrongs committed by another? Can this be justified, given the emphasis placed by so much of the law of tort on principles of corrective justice?

**Defences**

* Why do you think that contributory negligence originally resulted in a complete defence to a cause of action in negligence? Do you agree with this principle?
* Should the courts engage with more empirical evidence when making determinations on contributory negligence? Would this provide more consistency in decision-making?
* What role does *volenti* play in modern day society? Do you think people should be able to voluntarily accept the risk of another person’s negligent actions?
* Does the defence of illegality involve injustice to the claimant, or are these concepts separate to the application of tort law?

**Damages**

* What do you think should be the main purpose (or purposes) of damages in tort law?
* In light of the access to the NHS, how should tort law deal with a claimant who elects to use private health services?
* How should the Fatal Accidents Act 1976 be updated to make it more accurately reflect modern-day families? If not, why not? If so, what amendments are necessary?