

A

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)

B

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**.