

THE STUDY OF LAW

Lead-in

The word *tort* is usually unfamiliar to learners of English. As with other legal English terms, many native speakers of English who do not work in the law would not know the word either. What do you think it means?

- 1 a The area of tort law covers a wide range of cases. Match these case descriptions (1–3) with the case names (a–c).
 - 1 A civil case for wrongful death which followed an unsuccessful criminal prosecution for murder (b)
 - 2 An urban legend about a woman who sued a company for damages because the instruction manual for her microwave oven gave no warning against the way she used it (c)
 - 3 A 1994 case in which \$2.7m in damages were awarded (a)
- a Liebeck v. McDonald's Restaurants
- b The People v. OJ Simpson
- c Hubbard v. Speedicook

b What do these cases have in common?

2 Complete the definition below using the words in the box.

act damages harm party

Tort: a wrongful ^{an illegal} 1) act that causes ^{injury =} 2) harm to another person for which the injured 3) party may request ^(ask for) 4) damages ^{remedies} possibility

Reading 1: Tort law

3 Read the text on page 29 on tort law and answer these questions.

- 1 According to the text, what are the two main objectives of tort law? { to give compensation, to deter other potential tortfeasors.
- 2 An injured party can *sue for damages* or *for an injunction*. According to the text, what types of loss can be compensated by an award for damages? P ≠ L ≠
- 3 What does the term *injunction* mean? Use the Glossary if necessary.
- 4 A manufacturer produces a dangerous toy train. What category of tort is this? P3 L3.

4 Match the adjectives (1–6) with the nouns (a–f) they collocate with in the text.

- | | |
|------------------------|---------------------|
| 1 civil b | a damages |
| 2 contractual e | b wrong |
| 3 injured d | c misrepresentation |
| 4 fraudulent c | d party |
| 5 medical f | e relations |
| 6 monetary a | f expenses |

Expertise medicale

Key terms 2: Defamation

- 32** If Charles does not sign the retraction, there is a chance that Carmecom might sue him for defamation. Complete the explanation of the tort of defamation using the words in the box.

libel slander statement tort

Defamation is the term used to describe the **1) Tort** of making a false **2) statement** of fact that injures someone's reputation. Common-law systems distinguish two forms of defamation. **3) Libel** describes the publication of false and malicious statements or pictures that cause injury to another person. **4) Slander** describes the use of spoken words to harm someone's reputation.

Speaking 3: Lawyer–client interview

- 33** After discussing the case with Charles, Nick decides to refer it to one of the volunteer lawyers. Work with a partner to conduct an initial lawyer–client interview.

Student A: You are Charles. Consider what you said during the initial lawyer–client interview, as well as the contents of the letter from Carmecom's lawyers. What really happened? Prepare yourself for an interview with the volunteer lawyer.

Student B: You are the volunteer lawyer. Consider what you have already been told about the case and prepare for your first interview with Charles. Use the WASP approach illustrated in Exercise 26.

- 34** Discuss in groups. What should the lawyer advise Charles to do?

Writing: Reply to a demand letter defending or denying the allegations made

- 35** Put the elements of a reply to a demand letter (a–e) into the order in which you would expect to see them. Note that this letter also includes a *counter-demand*.

a Reference to the claims made by the other side:

alleged ... / allegations made by ... **3**

b What you want the other side to do and the consequences if these demands are ignored (this would only be included if you decide to make a counter-demand, e.g. for your client to be refunded the money for his laptop):

We look forward to receiving ... by ...

... failing which, we will ... **5**

c Explanation of your role in the case:

We write to advise that we ...

... has been referred to us. **2**

d Reference to the case or client in question:

Re: ... **1**

e Your client's defence to the claim or denial of the allegations made:

Our client denies / accepts / refutes / contends ... **4**

- 36** Decide on the best defence for Charles and write a reply to Carmecom's demand letter using the guidelines in Exercise 35.

- 5 The tort of fraudulent misrepresentation occurs when one of the parties to a contract makes a false statement about a fact and knows it is not true, and this fact is acted upon. الغش / التزوير / Fraude.
- 6 When a person stops parties from entering into a contract, for example, this person is said to interfere in contractual relations.
- 6 What do you think these types of tort mentioned in the text mean: *assault, negligence, trespass*? What kinds of acts do they cover? Give examples of what someone has to do to be liable for each of these torts in your country.

x Reading 2: Case note نسخة في العربية = copy of the judgement. (نسخة الحكم)

Law students often read or write case notes¹ to prepare for classroom discussion at university. A case note is a short summary of the most important information about a case. As such, it is a useful study tool. The format and contents of a case note can vary, but usually it includes the following sections: case, facts, procedural history, legal issue, ruling and reasoning.

- 7 Quickly read through the case note below of an important tort law case and match the headings (1–6) in the brief with these descriptions (a–f).

- a relevant point of law
b information about the parties and the case
c what the court decided
d what happened
e why the court came to that decision
f how the lower courts decided

- 1 **CASE:** *Palsgraf v. The Long Island Railroad Company*, 248 N.Y. 339; 162 n.e. 99; Court of Appeals of New York [1928] b.
- 2 **FACTS:** Plaintiff² was standing on a platform of defendant's railroad when a train moved off from the platform. Even though it was already moving, a passenger ran to catch the train. The man, who was carrying a package wrapped in paper, appeared to lose his balance while trying to board the moving train. An employee of the railroad reached out to help him. This act caused the package in the man's arm to fall onto the rails. Unknown to the employee, the package contained fireworks. When it fell, the fireworks exploded, causing some large equipment on the platform to strike and injure the plaintiff. The plaintiff sued the railroad, claiming that her injury resulted from the negligence of the employee. d.
- 3 **PROCEDURAL HISTORY:** The trial court found for the plaintiff. Defendants appealed, and the appellate court affirmed the judgment. The railroad then appealed to this court. f.
- 4 **LEGAL ISSUE:** Did the railroad's negligence proximately cause plaintiff's injuries? a.
- 5 **RULING:** No. The Court of Appeals of New York reversed the decision. c.
- 6 **REASONING:** Negligence is not a tort unless it results in the commission of a wrong. If the harm was not deliberate, it must be shown that the act could have been dangerous. Since in this case the harm to the plaintiff was not wilful on the part of defendant, it had to be shown that the act of dropping a package had the apparent possibility of danger. As there was nothing on the outside of the package which would cause the reasonable person to believe it contained explosives, there was no negligence. It was the explosion that was the proximate cause of plaintiff's injuries, an act which could not have been foreseen. Therefore the railroad was neither negligent nor the proximate cause of plaintiff's injuries. The judgment of the appellate court was reversed. e.

¹ (US) case briefs ² (UK) claimant (The word *plaintiff* was also used in English law until the new Civil Procedure Rules (CPR) came into force in April 1999.)

8 Read sections 1 and 2 of the case note and answer these questions.

- 1 What is the name of the case?
- 2 Who is the defendant?
- 3 Who is the claimant?
- 4 What is the defendant alleged to have caused?

9 Read the rest of the note and answer these questions.

- 1 What was the lower court ruling?
= inferior (TPI)
- 2 What happened when the case was appealed?
- 3 The word *proximate* means 'direct' or 'immediate'. What did the court determine is the *proximate cause* of the injury?
Cause directe

Key terms 1: Reporting procedural history

10 The procedural history section tells what happened when the case was tried in the lower courts. Other sections of a case note give information about the decision of the highest court at which the case was tried. Which sections of the case note above contain this information?

11 Find words in the case note above to complete these definitions. You may need to change the verb forms.

- 1 The person who brings an action in a court of law is called the claimant.
- 2 The person against whom an action is brought in a court of law is known as the defendant.
- 3 When a case is decided in favour of a certain party, the court found for that party.
- 4 To bring a case before a higher court so that it can review the decision of a lower court is to try a case.
- 5 A court which hears appeals from lower courts is called an appellate court or a Court of appeal.
- 6 When a court states that a judgment of a lower court is true, it affirmed that judgment.
- 7 When a court changes the judgment of a lower court to its opposite, it reverte that judgment.

Speaking 1: Case discussion

12 With a partner, discuss the phases in the procedural history of the *Palsgraf v. The Long Island Railroad Company* case and agree on a simple account of what happened in the courts. *versus (Latin)*
(Internet)

13 Discuss what you think might have happened if this case had been brought to court in your jurisdiction.

Listening 1: Frivolous lawsuits

Law students are expected to know the most important facts of a large number of cases, as well as the legal issues involved and the procedural history of these cases.

14 You are going to hear a discussion between two law students, Maria and Fabio, about a well-known product liability case. Maria mentions compensatory damages and punitive damages. What is the difference between these types of damages? Which should be the highest in a case involving serious negligence?

homework.

15 Listen to the discussion and answer these questions.

- 1 What does Fabio mean by the words *frivolous lawsuit*?
- 2 What injury did the plaintiff suffer?
- 3 Why did McDonald's refuse to settle out of court?
- 4 How much did the court award Liebeck in compensatory damages? How much in punitive damages?
- 5 How much did Liebeck finally receive in damages?

16 Complete the procedural history section of this excerpt from a case note using words you have studied so far in this unit. Listen to the discussion again if necessary.

CASE: *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994) → Internet

legal english case
common english. (à imprimor)

FACTS: In 1992, Stella Liebeck, a 79-year-old woman from Albuquerque, New Mexico, bought a cup of coffee from the drive-through of a McDonald's restaurant. Liebeck placed the coffee cup between her legs and opened it. She spilled the entire cup of coffee on her lap. Liebeck was wearing cotton sweatpants which held the hot liquid against her skin, burning her lower body severely. At the hospital, it was determined that she had suffered third-degree burns on six per cent of her skin. She stayed in the hospital for eight days. Two years of treatment followed.

PROCEDURAL HISTORY: After several attempts to reach a 1) settlement failed, the claimant sued the 2) defendant for gross negligence. The jury 3) found for the claimant, determining that the defendant was 80% responsible and the claimant 20%. Claimant was 4) awarded \$200,000 in compensatory 5) damages, which was then reduced by 20% to \$160,000. \$2.7 million in 6) punitive damages were also awarded. These damages were then reduced to \$480,000.

The decision was 7) appealed by both claimant and defendant. However, an out-of-court settlement for less than \$600,000 was finally reached.

friendly.
R.A.

Speaking 2: Frivolous lawsuits

17 Discuss these questions.

- 1 The *Liebeck v. McDonald's* case inspired a journalist to create the Stella Awards, which are awarded to 'frivolous lawsuits'. They are meant to be amusing, but they also have a serious purpose. What do you think it might be?
- 2 Can you name any examples of cases from your jurisdiction which you think might be awarded a Stella?
- 3 What do you think of the *Liebeck v. McDonald's* case? Do you think it deserves its reputation as a frivolous case?

LAW IN PRACTICE ✗

Lead-in

Tort law covers many legal problems, from everyday accidents to deliberate attempts to harm a person's reputation or business interests. Because of this, tort is one of the most litigated areas of law.

Seeking the advice of a lawyer, taking a case to court or defending yourself in a lawsuit can be very expensive. Law clinics can provide a free alternative to consulting a lawyer in a private firm.

Reading 3: The Kent Law Clinic

18 Read the online introduction to the Kent Law Clinic and answer these questions.

- 1 Who does the legal work at the Kent Law Clinic? *Law students*
- 2 Do clients have to pay for the advice given? *for free*
- 3 What kinds of practical skills can be learned at the law clinic? *interviewing / advocacy / negotiating*

The Kent Law Clinic

Kent Law School was the first in Britain to open a law clinic and to develop a 'clinical legal studies' programme as part of its undergraduate curriculum. A new Kent Law Clinic was established in 1992, and it offers a unique opportunity for law students to practise law while still undergraduates. Students regularly represent clients in a wide range of tribunals and have, in recent years, successfully assisted litigants-in-person¹ in the Court of Appeal. The clinic offers free legal advice to its clients, with all the legal work being done by law students under the supervision of qualified lawyers. You deal with real clients rather than with fictional seminar problems, which means you can develop and refine your legal skills and learn other practical skills, such as interviewing, negotiating and advocacy. Equally importantly, you have the opportunity to experience the actual (rather than the theoretical) way the law and the

¹ (US) *pro se*

19 Find words or phrases in the text to match these definitions.

- 1 A court or assembly with judicial (or quasi-judicial) functions *in a wide range of Tribunals*
- 2 Someone who represents himself or herself without a lawyer in a court *Litigants-in-Person*
- 3 When a lawyer acts on someone's behalf during proceedings

20 Would you be interested in working as a student lawyer in such a law clinic? Why (not)?

Listening 2: Student lawyer-client interview

Nick, a student lawyer, has decided to join his university's law clinic, and is about to conduct his first lawyer-client interview.

21 3.2 Listen to the first part of the interview and answer these questions.

- 1 What kind of product is at the centre of this dispute?
- 2 What was wrong with the product?
- 3 Why did Carmecom refuse to replace the product?
- 4 What options do you think Charles had after Carmecom had refused to replace the product? What would you have done in this situation?

22 Listen to the second part of the interview and answer these questions.

- 1 What did Charles threaten to do?
- 2 What did Charles do when he left the shop?
- 3 What did the letter that Charles received say?

Language use: Asking for information

23 Read the audio transcripts for audios 3.2 and 3.3 (pages 126–127) and highlight all of the questions that Nick and Charles ask each other.

24 Match the descriptions of the three main ways of asking for information (a–c) with the headings (1–3).

- 1 Open questions
- 2 Negative questions
- 3 Closed questions (asking for a yes or no response)

a Negative questions

We use these questions if we think the answer will be *no*:
Can't I just speak to a lawyer directly?

b closed questions

These questions use an auxiliary verb as the first word in the question. They require either a positive or a negative answer:

Did you leave the shop without the laptop?

We can also ask these kinds of question by making a statement and adding a question mark at the end (in writing) or using rising intonation (in speech).

They require either a positive or a negative answer.

You left the shop without the laptop?

c Open questions

We use these questions to find out more information, rather than a simple yes or no:

What did they say?

We do not need an auxiliary verb when *who*, *what* or *which* is the subject of the sentence:

What happened next? (Not: ~~What did happen next?~~)

25 Put these words in the correct order to form questions that Charles might ask Nick.

- 1 If / to / retraction, / have / I / sign / go / the / court? / don't / will / to / I
- 2 How / think / long / do / last? / would / you / a / trial
- 3 What / winning? / chances / would / of / my / be
- 4 Would / anything / have / defence? / to / pay / I / for / my
- 5 What / consequences / are / the / case? / lose / if / I / the
- 6 Do / computer? / me / chance / getting / think / you / is / a / of / there / a / new

- 1) If I don't sign the retraction, will I have to go to court?
- 2) How long do you think a trial would last?
- 3) What would be my chances of winning?
- 4) Would I have to pay anything for my defence?
- 5) What are the consequences if I lose the case?
- 6) Do you have a chance of getting me a new computer?

Text analysis: Initial lawyer–client interview

To conduct an effective initial lawyer–client interview, a lawyer must:

- put a client at ease
- listen to what the client has to say
- explain things clearly
- find out what action the client wants to take, not take decisions for the client
- tell the client what has to be done next.

A lawyer should not assume that he or she has all of the information needed from a first meeting. The WASP approach to planning, structuring and carrying out an interview helps ensure that nothing is left out. WASP is an acronym for:

- Welcome the client
- Acquire information
- Supply information and advise
- Part (leave)

26 This table gives some advice about conducting a WASP interview. Complete it using the points below (a–l).

1 Welcome	2 Acquire information	3 Supply information and advise	4 Part
<ul style="list-style-type: none"> • Meet, greet and seat your client. 	<ul style="list-style-type: none"> • Use open questions to encourage your client to tell you everything in his/her own words. <p><i>b-d-g-j</i></p>	<ul style="list-style-type: none"> • Consider the merits of the case. <p><i>a-c-e-h-i-k</i></p>	<ul style="list-style-type: none"> • Confirm that your client wishes you to act for him/her. <p><i>L-C-f-k.</i></p>

- a Explain what action must be taken.
- b Only use closed questions to confirm your understanding of what your client has already told you.
- c Explain that you will write to your client summarising what has been discussed within a certain number of days.
- d Use sympathetic body language and active listening techniques (for example, *go on, uh-huh, I'm listening*) to encourage your client to go on speaking.
- e Consider the legal and non-legal options.
- f Check that your client has no further matters or questions to discuss.
- g Avoid questions which only allow a restricted range of answers and leading questions which expect a particular answer (e.g. *I imagine simply replacing your computer would no longer be acceptable?*).
- h Explain the risks involved in taking legal action.
- i Explain the purpose of your meeting to get details of the situation from your client, give legal advice, discuss options and give information on costs.
- j Periodically summarise and confirm what your client has said so far.
- k Explain what your client has to do.
- l Confirm that your client understands the costs and risks involved.

27 What else is important for an effective lawyer–client interview?

28 Consider the points made in Exercises 26 and 27. How effective was Nick's first interview? Is there anything that he could have done differently?

Reading 4: Letter threatening legal action

29 Read the letter that Charles received from Carmecom and answer these questions.

- 1 What do you think *defamatory* means?
- 2 What must Charles do in order to avoid legal action?

Dear Mr Tholthorpe *Charles T*

Our client: George Hardy, Carmecom Ltd.
Your defamatory action of 25 November 2008

We represent George Hardy of Carmecom Ltd. in relation to an incident that took place at their store on 25 November 2008. *(on + Day)* *(in + Big "Place")*

According to our client, you visited his store in a state of some excitement and went directly to the front of a queue of shoppers. You then demanded a refund for a laptop computer you had bought earlier that day. *= eager* *with small*

Mr Hardy asked if you would mind waiting your turn. You then dropped a bag containing the computer onto the cash desk and threatened to send libellous postings to a number of Internet mailing lists. Following this, you left the store shouting various defamatory comments about our client. *= humiliating*

You remained outside the front entrance of Carmecom and harassed Mr Hardy's potential customers in an effort to convince them not to enter the store. Based on what our client has learned from some of these customers, it is our understanding that these efforts involved the repetition of a series of slanderous statements concerning both the quality of Carmecom's products and their business practices.

At this point, our client noticed that you were carrying a second bag of similar size and shape to the one containing the computer you had recently bought from Carmecom. The bag was from one of our client's competitors, who we have learned was selling the same laptop for £150 less than the price you paid for it.

Our client believes that he has lost a significant amount of business as a result of your actions. We have advised him that he would be successful in any action against you. In order to avoid such action, please sign and return the enclosed retraction by 15 December 2008. If you choose not to sign the retraction, we will be forced to commence proceedings immediately. *until 14*

We look forward to hearing from you.

Yours sincerely

J. Lott

Eastwood, Lott and McCarthy Solicitors *= Company Law.*

Charles' lawyer

30 Read the letter again and find any information that Charles did not give Nick during the interview.

31 Once Nick has read the letter, what questions would he need to ask to find out:

- 1 exactly what happened?
- 2 what action Charles now wants to take?

Key terms 2: Defamation

- 32** If Charles does not sign the retraction, there is a chance that Carmecom might sue him for defamation. Complete the explanation of the tort of defamation using the words in the box.

libel slander statement tort

Defamation is the term used to describe the **1) Tort** of making a false **2) statement** of fact that injures someone's reputation. Common-law systems distinguish two forms of defamation. **3) Libel** describes the publication of false and malicious statements or pictures that cause injury to another person. **4) Slander** describes the use of spoken words to harm someone's reputation.

Speaking 3: Lawyer–client interview

- 33** After discussing the case with Charles, Nick decides to refer it to one of the volunteer lawyers. Work with a partner to conduct an initial lawyer–client interview.

Student A: You are Charles. Consider what you said during the initial lawyer–client interview, as well as the contents of the letter from Carmecom's lawyers. What really happened? Prepare yourself for an interview with the volunteer lawyer.

Student B: You are the volunteer lawyer. Consider what you have already been told about the case and prepare for your first interview with Charles. Use the WASP approach illustrated in Exercise 26.

- 34** Discuss in groups. What should the lawyer advise Charles to do?

Writing: Reply to a demand letter defending or denying the allegations made

- 35** Put the elements of a reply to a demand letter (a–e) into the order in which you would expect to see them. Note that this letter also includes a *counter-demand*.

a Reference to the claims made by the other side:

alleged ... / allegations made by ... **3**

b What you want the other side to do and the consequences if these demands are ignored (this would only be included if you decide to make a counter-demand, e.g. for your client to be refunded the money for his laptop):

We look forward to receiving ... by ...

... failing which, we will ... **5**

c Explanation of your role in the case:

We write to advise that we ...

... has been referred to us. **2**

d Reference to the case or client in question:

Re: ... **1**

e Your client's defence to the claim or denial of the allegations made:

Our client denies / accepts / refutes / contends ... **4**

- 36** Decide on the best defence for Charles and write a reply to Carmecom's demand letter using the guidelines in Exercise 35.

Language Focus

1 **Word formation** Complete these tables by filling in the correct noun and adjective forms of the verbs listed.

verb	noun
misrepresent	misrepresentation
interfere	interference
settle	Settlement
injure	injury
sue	Suit
award	award
rule	rule

noun	adjective
negligence	Negligent
liability	Liable = Responsible
intention	intentional
compensation	Compensatory
procedure	Procedural
reason	reasonable
appeal	appeal / appellate

2 **Legal verbs** Complete the excerpt below from a case brief using the verbs in the box.

affirmed appealed ^{extract} awarded found for found that reversed sued

CASE: *Ventricelli v. Kinney System Rent a Car, Inc.*

FACTS: Kinney rented a car that had a defective trunk¹. He and a friend were standing on the street, trying to get the parked car's trunk shut, when someone named Maldonado crashed his car into Ventricelli.

PROCEDURAL HISTORY: Ventricelli 1) sued Kinney for negligence. The Trial Court 2) found for Ventricelli and 3) awarded him \$550K. Kinney 4) appealed. The Appellate Court 5) reversed and dismissed the case. Ventricelli appealed. The New York Supreme Court 6) affirmed the Appellate Court and dismissed the case. The New York Supreme Court 7) found that while Kinney's negligence was a cause of the accident, it was not the proximate cause.

¹ (UK) boot

3 **Interview questions** Respond to these statements made by a client with an appropriate question that a lawyer might ask in an interview. Try to use the three question types you learned – open question, negative question, asking for a yes or no response – at least once each.

- The facts of the case are very simple.
- I rented a car with a broken trunk from Kinney System Rent a Car.
- The trunk of the car wouldn't close.
- I tried to close the trunk, and my friend helped me.
- Then we heard a crashing noise.