

Learning Assessment Guide

Unit Standard 11636 – Version 2

Apply selected torts to a given fact situation

Level 5 – 1 Credit

Assessment Summary			
Learner to complete			
Learner's name:			
Employer:			
NSN no. (ROL):		DOB:	
Signed:		Date:	
Assessor to complete			
<input type="checkbox"/> Meets requirements <input type="checkbox"/> More training required <input type="checkbox"/> More evidence required			
Assessor's name:		Assessor's No.	
Signed:		Date:	

Before you begin...

- As well as this Learning Assessment Guide, you may also want to refer to the unit standard from the NZQA website (<http://www.nzqa.govt.nz>).
- Read the Trainee Information Kit. The kit contains important information and guidelines for Learners and can be found on the Learning State website (<http://www.learningstate.govt.nz>) under Learners, then Learning Assessment Guides.
- Check the learning resources available for this unit standard on the Learning State website (<http://www.learningstate.govt.nz>) under Learners, then Learning Assessment Guides.

This Learning Assessment Guide is made up of:

- Two assessment tasks for you to complete.
- Assessment results that the assessor will use to assess your competence.

The tasks in this assessment are designed to show your assessor that you can:

- Explain the nature and principles of the law of torts
- Show understanding of the nature and characteristics of the torts of defamation and negligent misstatement
- Describe the meaning of vicarious liability
- Describe the general defences for liability in tort
- Apply the law of negligence to a fact situation; and
- Understand the remedies and defences available in an action for negligence.

Legislation applicable to this unit standard includes but is not limited to: the Contributory Negligence Act 1947, and its subsequent amendments and regulations.

Assessment Task One – Element 1

This task is designed to show you are able to explain the nature and main principles applying to the law of torts by:

- Explaining the differences between a tort and a contract and a crime.
- Explaining the elements of the torts of negligence and negligent misstatement.

Question One

In your own words, please explain the main differences between a tort and:

- a) a contract
- b) a crime

Question Two

You have been harmed by the statement of another person and wish to sue for compensation. What would you need to show to demonstrate their liability in each of the following:

- a) defamation
- b) negligent misstatement.

(your answers should be no more than 200 words each)

Assessment Task Two – Element 2

In this task you will examine the law of negligence in the context of a fact situation. Your task will involve the noting of the applicable remedies and defences.

Scenario:

Sancho is the senior duty manager of Swallows Retreat which provides residential care and supervision for long term pre-release inmates of Straightways Prison. Sancho believes that the most recent group of inmates are well advanced in terms of rehabilitation and decides that the men should have some experience in the haulage and fork-lifting industry.

He negotiates a short-term contract with Josh who owns Mighty Movers to hire the men on a project involving the packing and loading of warehouse containers. When Josh asks Sancho if the men can be relied upon to carry out the anticipated tasks well, Sancho assures him that he will not be disappointed and describes the team as “a great bunch”.

The group perform their duties well on the first day but on the next day one of the group impulsively takes control of a forklift and attempts to manoeuvre it in a way he once saw demonstrated on television.

Sancho and Josh are alerted to the demonstration. Sancho suggests that Josh call to the man to stop. Josh nods in agreement but continues to watch the performance. Very soon he sees the forklift career into a row of containers generally wrecking havoc. Fortunately no-one is injured but the container owners and their insurers move to seek remedies for negligence.

Questions:

- a) Assuming that you are the owner of damaged container goods, what must you prove as the plaintiff in a negligence action on the balance of probabilities?
- b) Describe where these elements of negligence appear to be evident in the circumstances of the case.
- c) Which of the parties are most likely to be named as defendants to the action?
- d) Would Josh be vicariously liable for the harm caused?
- e) What defences are the defendants most likely to raise?
- f) Could the provisions of the Contributory Negligence Act 1947 apply to you as plaintiff in the situation?

Assessment Results

These are the judgements that your assessor will use to assess you.

Is the learner able to describe the main differences between a tort and a contract? The description will take account of the relationships formed between the parties in each and other differences.	Yes	No
Can the learner describe the differences between a tort and a crime? The account should note the sources of each; the parties involved and the levels of proof required when either is alleged.	Yes	No
Does the learner show good awareness of distinct features that the torts of defamation and negligent misstatement contain. Emphasis should be placed on what the plaintiff in each action will be required to show in order to establish liability.	Yes	No
From the given facts, is the learner able to correctly apply the law of negligence? The learner should be able to describe the elements of this tort and identify them within the fact situation. The learner will judge the parties on whom liability should fall and the particular defences they may raise.	Yes	No
Do the provisions of the Contributory Negligence Act 1947 apply?	Yes	No