

**Chapter 12: Damages**  
**Extra Questions**

**Question 1**

Serena, aged 32, lived with her children, Tia and Timmy, along with her elderly father Olu. She was working as a taxi driver when, due to Peri's negligence, she was badly injured in a motoring accident. Serena was hospitalised at Edenvale NHS Trust, in a coma, until she died six weeks later.

What damages will Peri be liable for? Give details, including any deductions.

**Answer guidance**

Consider which losses might be considered pecuniary or non-pecuniary.

Go through relevant remedies and apply them to the question. Damages for personal injury are divided into pecuniary and non-pecuniary losses.

The courts have divided pecuniary losses made by claimants into the following 'heads of damage': Pre-trial expenses; Expenses incurred by another; Pre-trial loss of earnings; Future losses.

Non-pecuniary losses fall into the following heads of damage: The primary injury; Pain and suffering; Loss of amenity.

Most damages are in the form of a one-off payment after trial, but this can cause problems for claimants. There are three alternatives: interim, periodic and provisional damages.

Damages are designed to compensate for loss, not make the claimant richer, so other money paid as a result of the injury may be deducted from damages, including: Tax, payments by an employer and social security benefits. Disability pensions, insurance pay-outs and charitable payments are not deducted. Benefits provided by the tortfeasor cannot be compensated.

If a victim of tort dies, their estate inherits their claim. The Fatal Accidents Act 1976 creates two further claims for dependants: For the bereavement; For financial loss.

**Question 2**

Damages in tort are intended to put the claimant in the position they would have enjoyed if the tort had never been committed. How far does the law do this?

**Answer guidance**

Consider what the principle described in the question is called and where it comes from. Damages are designed to compensate for loss, not make the claimant richer, so other money paid as a result of the injury may be deducted from damages, including: Tax, payments by an

employer and social security benefits. Disability pensions, insurance pay-outs and charitable payments are not deducted. Benefits provided by the tortfeasor cannot be compensated.

Once liability has been established, the courts have to assess the amount of damages that an injured claimant should be awarded to compensate for loss. *Livingstone v Rawyards Coal Co* [1880] 5 App Cas 25 the principle is expressed in the term restitution in integrum. Per Lord Blackburn:

*"[W]here any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should nearly as possible get that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."*

The claimant should therefore be put in the position they were in before the Tort occurred. This is a principle that is difficult to apply, particularly where the damage to the claimant consists of personal injury.

Sometimes the law goes beyond this with punitive damages. These punish the defendant for their conduct and attempt to act as a deterrent to prevent others from behaving in a similar manner. *Rookes v Barnard* [1964] A.C. 1129, *Cassell v Broome* [1972] A.C. 102, *Watkins v Secretary of State for the Home Department* [2006] UKHL 170. These will be awarded in the following circumstances:

- Where there has been oppressive arbitrary or unconstitutional actions by the government or its agents;
- Where the conduct is calculated to make a profit for the defendant, which may exceed any compensation payable to the claimant;
- Where expressly authorised by statute.