

**ADVANCED GCE****LAW**

Law of Torts

G157

Candidates answer on the Answer Booklet

OCR Supplied Materials:

- 16 page Answer Booklet

Other Materials Required:

None

Thursday 17 June 2010**Afternoon****Duration: 2 hours****INSTRUCTIONS TO CANDIDATES**

- Write your name clearly in capital letters, your Centre Number and Candidate Number in the spaces provided in the Answer Booklet.
- Use black ink. Pencil may be used for graphs and diagrams only.
- Read each question carefully and make sure that you know what you have to do before starting your answer.
- Answer **three** questions, **one** from Section A, **one** from Section B and **one** from Section C.
- If you use additional sheets of paper, fasten these securely to the Answer Booklet.
- Write the numbers of the questions you answer on the front of your Answer Booklet.
- Do **not** write in the bar codes.
- When answering Section A and Section B questions you are required to demonstrate some synoptic thinking. In Section A this is achieved by relevant reference to precedent and/or statutory materials including the development of law and comments on justice or morality where appropriate. In Section B this is achieved by relevant use of precedent and/or statutory materials in the application of legal reasoning to given factual situations including comment on the justice or morality of the outcome where appropriate. You are not required to demonstrate synoptic thinking in Section C.

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is **120**.
- Candidates are reminded of the need to write legibly and in continuous prose, where appropriate. In answering **Section A** and **Section B** questions you will be assessed on the quality of your written communication and your use of appropriate legal terminology (QWC). These questions are marked with an asterisk (*).
- This document consists of **4** printed pages. Any blank pages are indicated.

Answer **three** questions.

One from Section A, **one** from Section B and **one** from Section C.

You are advised to spend 50 minutes on Section A, 50 minutes on Section B and 20 minutes on Section C.

SECTION A

Answer only **one** question from this section.

- 1*** 'The tort of private nuisance is ineffective and has little relevance in the modern law of torts.'

Discuss the tort of private nuisance in the light of the above statement. **[50]**

- 2*** Discuss the extent to which the tort of trespass to the person is effective in protecting people from all unwanted personal interference. **[50]**

- 3*** 'Vicarious liability creates so much injustice to employers that it can never be justified.'

Discuss the way that the courts apply the rules of vicarious liability in the light of the above statement. **[50]**

SECTION B

Answer only **one** question from this section.

- 4* Kris works for Butch Builders as an industrial painter. Kris regularly asks for a protective hard hat and also complains to the managing director about work colleagues who play practical jokes and throw things down from the scaffolding above where Kris is working. Kris is merely told to 'act like a man and stop complaining'. One day a colleague throws a brick down which hits Kris on the head causing him to lose consciousness and to fall off the scaffolding so that he breaks both legs.

Kris is taken to Motley Hospital where a junior doctor diagnoses and treats Kris' broken legs but fails to examine Kris' head or to take X-rays. Kris suffers severe headaches for the next week and then suffers a cardiac arrest and cannot be revived. Doctors then carry out a post mortem which reveals that Kris had a fractured skull and a brain haemorrhage (internal bleeding). The tests also show that if his condition had been diagnosed at once he could have been treated and would not have died.

Discuss any liability in negligence of Butch Builders **and** Motley Hospital (do not discuss vicarious liability). **[50]**

- 5* Through the negligent maintenance of Bodgerbuses, a private bus company, the brakes fail on a bus driven by Sidney while going down a steep hill. The bus swerves off the road and crashes into a house. In the collision a passenger falls off the bus into the road and is badly injured. Tanya, who is walking on the opposite pavement, suffers post traumatic stress disorder as a result of seeing the passenger's dreadful injuries.

The petrol tank of the bus explodes setting fire to the bus and the house into which it crashes. Sidney quickly gets out of the burning bus. He is uninjured but suffers a recurrence of ME (chronic fatigue syndrome) as a result of the crash.

Vic, the only other passenger in the bus, is knocked unconscious in the crash and is in the bus as it burns. Unwin, one of the fire officers called to the scene, tries to get Vic out of the burning bus but is unsuccessful. As soon as he tries to get into the bus Unwin recognises that Vic is in fact his son. Unwin suffers severe clinical depression and can no longer work as a result of seeing his son burn to death.

Wanda, who lives alone in the house, returns from shopping and suffers post traumatic stress disorder after seeing her house burning down.

Advise Sidney, Tanya, Unwin and Wanda whether each of them will be able to bring successful claims for nervous shock (psychiatric damage) against Bodgerbuses. **[50]**

- 6* Alf walks into a pub with his pet horse, Bert. Alf goes to the bar with the horse and asks for a pint of beer for himself and a tray of water for Bert. Denis, the landlord, says "You cannot bring a horse in here. He will have to go." Alf says "There is no sign saying 'no horses'. So Bert stays." Denis comes around the bar to eject Alf and Bert. As Denis puts his hand on Alf's shoulder to escort him out Bert, the horse, rears up and kicks Denis causing Denis to fall over and break his wrist. Bert is a very placid horse and has never done this before.

Denis' ten-year-old daughter, Jenny, owns an American Eagle Owl, a bird of prey, called George. George is sitting on his perch behind the bar. When Denis falls over George flies up from his perch and attacks Alf, clawing Alf's eye out of its socket.

Consider any possible claims that can be made under the Animals Act 1971 by Alf **and** Denis in the above situation. **[50]**

SECTION C

Answer only **one** question from this section.

- 7 Manjit is a paying guest at the Holiday Hotel. At midnight Manjit goes to the hotel gymnasium. The door is not locked and she enters ignoring a sign on the door which states 'Opening hours are 8.00 am to 10.00 pm. Danger. No entry outside of these hours'. Manjit steps onto a treadmill and turns it on. Because of a fault in the machine that Holiday Hotel has failed to repair, the machine runs at three times its normal top speed. Manjit is thrown off the treadmill breaking her arm and ruining her expensive tracksuit.

Evaluate the accuracy of **each** of the four statements A, B, C and D individually as they apply to the facts in the above scenario.

Statement A: The Holiday Hotel is liable to Manjit under the Occupiers' Liability Act 1957.

Statement B: The Holiday Hotel is not liable to Manjit under the Occupiers' Liability Act 1984 because of its warning notice.

Statement C: Manjit will not succeed under the Occupiers' Liability Act 1984 because the Holiday Hotel will be able to use the defence of *volenti non fit injuria*.

Statement D: Under the Occupiers' Liability Acts Manjit will not be able to claim for the cost of her ruined tracksuit. [20]

- 8 Power Pak stores large numbers of car batteries outside in its back yard. After a month of heavy rain, some of the batteries become damaged and leak battery acid. The battery acid runs down a slope escaping into the next door premises, a garden centre. The battery acid kills the garden centre's plants worth £10,000. The acid also causes severe burns to Fred, a garden centre employee, who tried to save some of the plants.

Evaluate the accuracy of **each** of the four statements A, B, C and D individually as they apply to the facts in the above scenario.

Statement A: Power Pak will not be liable to the garden centre in *Rylands v Fletcher* because the batteries themselves did not escape.

Statement B: A claim in *Rylands v Fletcher* is not possible because Power Pak's use of land is natural and not non-natural.

Statement C: In a claim in *Rylands v Fletcher* Power Pak will not succeed in a defence of Act of God.

Statement D: In a claim in *Rylands v Fletcher* Fred can claim for his personal injuries. [20]

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