

ADVANCED GCE

LAW

Law of Torts

G157

Candidates answer on the answer booklet.

OCR supplied materials:

- 16 page answer booklet
(sent with general stationery)

Other materials required:

None

Tuesday 1 February 2011
Afternoon

Duration: 2 hours



INSTRUCTIONS TO CANDIDATES

- Write your name, centre number and candidate number in the spaces provided on the answer booklet. Please write clearly and in capital letters.
- Use black ink. Pencil may be used for graphs and diagrams only.
- Read each question carefully. Make sure 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.
- 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.
- Do **not** write in the bar codes.

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 (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (*).
- This document consists of **4** printed pages. Any blank pages are indicated.

Answer **three** questions.

Answer **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* Discuss the argument that the Occupiers' Liability Act 1957 provides justice for all parties. **[50]**

2* 'The two main aims of the law of torts are to compensate the victims of wrongdoing and to deter wrongdoing.'

Discuss the extent to which the Animals Act 1971 achieves these aims. **[50]**

3* 'There are two main defences used in negligence actions: *volenti non fit injuria* and contributory negligence. However, there is really very little difference between the two.'

Discuss the two defences in the light of the above statement. **[50]**

SECTION B

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

- 4* Alan buys a large house which he converts into student flats to provide him with an income when he retires. Alan takes advice from his surveyor, Barnaby, that the house and the alterations that he is making are appropriate for such use. However, the local authority refuses to grant Alan permission to rent out the flats without making a further £50,000 of alterations, which Alan cannot afford and he has to sell the house at a loss.

Alan recently asked his friend Calum, an accountant, about investing in a company for which Calum prepares the annual accounts. Calum told Alan that it was a good investment which would give a high return. In fact Calum had failed to accurately prepare the company's accounts and the company went into liquidation soon after Alan invested in it, so that Alan lost most of his £60,000 investment.

Advise Alan of any claims that he may make against Barnaby **and** Calum in negligent misstatement. [50]

- 5* Ellis works as a driver for Fundrives, which provides stretch limousines to drive parties between different bars. Ellis is paid per trip but Fundrives deducts tax and national insurance from his pay. Fundrives owns the limousine. Under his contract Ellis is allowed to drive for other firms at times when he is not driving for Fundrives.

Ellis is not allowed to smoke while on duty. During one recent trip Ellis was smoking in the limousine. When his passengers came out of the bar he threw his cigarette out of the window and it landed on the dress of one of the passengers, Felicity, ruining it.

Under the contract Ellis is responsible for dealing with clients that get drunk. During another trip a passenger, Garth, got very drunk and was sick in the limousine. When Garth refused to get out of the limousine, Ellis hit Garth breaking Garth's jaw.

Advise Felicity **and** Garth of any actions that they may have against Fundrives. [50]

- 6* Len lives in a quiet country village. Len has local authority planning permission to convert an old brick outhouse in his back garden into an office. Len does the conversion himself. Since Len works long hours in his job, he works on the conversion until very late at night including at weekends.

Len uses powerful floodlights to work by. These are powered by a very noisy generator. Len's neighbour, Mary, complains that both the lights and the noise keep her awake at night. The more Mary complains to Len the later at night he continues to work on the conversion.

Vibrations from the generator also cause an ornamental bird house hanging from a branch in one of Mary's trees to fall, injuring Mary's aged mother, Nerys.

Len also has several bonfires to burn old timbers and other rubbish from the outhouse. Mary complains that smoke from the fires have killed some delicate Japanese plants in her garden.

Advise Mary of any claims that she may make against Len. [50]

SECTION C

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

- 7 At morning break Paul, a schoolboy, pushes another boy, Quentin, in the playground so that Quentin falls and breaks his wrist. Quentin shouts up at Paul “If my wrist was not broken I would punch your face in”. Ruth, their teacher, grabs Paul by the ear and drags him to a third floor office where she locks him in until the end of the day.

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: Paul is liable to Quentin in the tort in *Wilkinson v Downton*.

Statement B: Quentin is not liable for an assault on Paul.

Statement C: Ruth has not committed a tort by grabbing Paul by his ear.

Statement D: Ruth has falsely imprisoned Paul but has a defence. [20]

- 8 After a fall, Sven went to the hospital and complained of a dreadful headache. The doctor did not examine Sven or order an X-ray, but prescribed Sven pain killers and sent him home. Sven felt too ill to collect the painkillers from the chemist and died later that night. Tests showed that Sven had suffered a fractured skull and brain haemorrhage (internal bleeding) but Sven would have had a 75% chance of a full recovery if the doctor had examined him.

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 doctor will not be liable as he does not owe a duty of care to Sven.

Statement B: The doctor will not be liable for Sven's death because there is no liability for a failure to examine.

Statement C: The doctor will not be liable for Sven's death because there is no liability for a loss of a chance.

Statement D: The doctor is not liable to Sven because there was a *novus actus interveniens* when Sven failed to collect the painkillers. [20]

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