

ADVANCED GCE

LAW

Law of Torts

G157

Candidates answer on the Answer Booklet

OCR Supplied Materials:

- 16 page Answer Booklet

Other Materials Required:

None

Tuesday 2 February 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 for each question 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* Discuss the extent to which the rules on causation **and** remoteness of damage are fair to **both** parties. **[50]**

2* 'The Animals Act 1971 makes insufficient distinction between liability for dangerous species and for non-dangerous species and is therefore unfair to the majority of owners of pets.'

Discuss the accuracy of the above statement. **[50]**

3* 'The law on negligent misstatement is clearly based more on policy considerations than on the principles of negligence developed in *Donoghue v Stevenson*.'

Discuss how the law on negligent misstatement has developed in light of the above statement. **[50]**

SECTION B

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

- 4*** Ruben, Sarah and their eight-year-old son, Thomas, go to the Uffal Restaurant to dine. While they are eating a rat bites Sarah's ankle and she screams. Uffal, the restaurant owner, is aware that the restaurant is infested with rats but has done nothing about it. Sarah later suffers an infection from the rat bite.

Ruben reaches down under the table to hit the rat. As he does so he touches some bare live wires that are coming out of the wall. VoltsRus, electrical contractors are currently rewiring the restaurant and have failed to disconnect the wires. Ruben's hand is badly burned.

Thomas is so frightened by the events that he runs from the restaurant into the kitchen. The door to the kitchen has a sign which reads: 'Staff only. No admittance to the public.' The kitchen floor is covered in grease and Thomas falls injuring his wrist and breaking his expensive mobile phone.

Advise Sarah, Ruben and Thomas of any claims that they may make against the Uffal Restaurant in Occupiers' Liability. **[50]**

- 5*** In a cricket match between two teams, Wimville and Camburgh, a Wimville bowler, Perry, bowls a fast ball to a Camburgh batsman, Solomon. The ball bounces off the ground hitting Solomon in the face and causing a gash just under his eye.

Solomon storms towards Perry, waves his bat at Perry and shouts "You just wait!"

When Perry bowls the next ball, Solomon hits the ball with his bat and runs towards Perry. Although Solomon would naturally be running in the direction of Perry, Perry fears that Solomon is going to hit him with his bat. Because of this Perry punches Solomon in the face as Solomon runs near to him. Solomon is knocked unconscious by the punch.

The umpire instructs stewards to help Solomon off the field for treatment by a doctor. One of those stewards, Freddy, is worried that Solomon will be angry when he regains consciousness so he locks Solomon in the dressing room when he goes to fetch the doctor.

Advise Perry and Solomon of any claims that either of them may bring in the tort of trespass to the person. **[50]**

- 6*** Aiden and Eddy own neighbouring detached houses. Aiden wishes to replace his fence between the two houses with a wall. Aiden tells Eddy who says that he is happy for Aiden to come onto his land to do so. Aiden takes the fence down and stacks it on Eddy's front garden.

Aiden then digs a trench 50 centimetres wide for foundations for the wall, filling it with concrete. Half of the trench is actually in Eddy's garden. Aiden never builds the wall but he leaves the fence panels on Eddy's garden.

One day Aiden decides to have a barbecue in his back garden with friends. Because there is no longer any fence in the back garden Aiden places his barbecue onto Eddy's garden. Aiden's friends wander onto Eddy's garden, trampling Eddy's flowers and leaving food scraps and paper plates on Eddy's garden. As Aiden leaves the barbecue out, Eddy locks it in his garage in protest.

Aiden also erects new posts for a washing line near the boundary with Eddy's back garden. When the washing is on the line it regularly hangs over Eddy's garden when the wind blows.

Advise Eddy of any claims that he may have against Aiden and whether Eddy is entitled to keep the barbecue. **[50]**

SECTION C

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

- 7 Arthur has been given planning permission by his local council to build a brick extension on the back of his house. The extension is adjacent to his neighbour Connie's conservatory. Arthur places a large generator in the building which is extremely noisy and leaves it running all day and all night despite Connie's complaints. The noise of the generator eventually makes Connie go deaf.

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: Connie cannot sue in private nuisance because there is no unreasonable use of land by Arthur.

Statement B: Connie can sue in private nuisance to claim for her personal injury, going deaf as the result of the noise.

Statement C: If Connie sues in private nuisance Arthur has a defence because of the planning permission.

Statement D: If Connie deliberately lit a bonfire every time Arthur put washing out, Connie would still be able to claim in private nuisance. **[20]**

- 8 Jerry works as a machine operator for the Mockup Factory. Jerry's machine regularly gets blocked and it usually takes hours before the maintenance mechanic repairs the blockage and Jerry loses production bonuses as a result. There is a guard on the machine but Jerry is in the habit of removing the guard while the machine is still running and clearing the blockage by hand. Mockup Factory management knows of this. One day, while doing this, his hand gets caught and is ripped off by the machine.

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: Mockup Factory will not have a defence of *volenti non fit injuria* in a personal injury claim by Jerry.

Statement B: Mockup Factory will have a defence of *volenti non fit injuria* and if Jerry's claim is successful the court will reduce the amount of damages awarded to Jerry.

Statement C: Mockup Factory will not have a defence of contributory negligence.

Statement D: Mockup Factory will have a defence of contributory negligence and Jerry's damages will be reduced by 100%. **[20]**

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