

ADVANCED GCE

LAW

Law of Torts

G157

Candidates answer on the answer booklet.

OCR supplied materials:

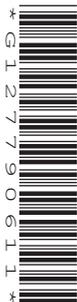
- 16 page answer booklet
(sent with general stationery)

Other materials required:

None

Wednesday 22 June 2011
Morning

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 extent to which the rules for proving a breach of a duty of care are **both** consistent **and** just. **[50]**
- 2*** ‘Judges have imposed strict limitations on those who can recover for nervous shock (psychiatric damage) ignoring the basic rules of negligence. This is because they are aware that disasters can lead to so many genuine claims by those suffering foreseeable harm.’
- Discuss the accuracy of the above statement. **[50]**
- 3*** Discuss the argument that in the tort of *Rylands v Fletcher* judges have created so many separate requirements and so many defences that there is little chance of pursuing a successful claim. **[50]**

SECTION B

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

- 4* During a professional boxing match between them, Ali lands a punch on Bruce's nose stunning Bruce momentarily. The round ends and Bruce shouts to Ali "You're dead, pal".

At the start of the next round Bruce charges wildly at Ali. Ali fears that Bruce is going to carry out his threat so he head butts Bruce. This knocks Bruce unconscious.

While still unconscious Bruce is taken to the local hospital. X-rays of Bruce's head reveal a fractured skull and bleeding. Doctor Crop performs an emergency operation to secure the fracture and stop the bleeding.

The next day Ali visits Bruce to apologise. Bruce shouts "If I was not in so much pain I would kill you". Doctor Crop, frightened that Bruce might turn violent, locks him in his hospital room until the next day.

Consider whether any successful actions could be brought in trespass to the person in relation to the events above. [50]

- 5* Colin, his wife, Daisy, and their four-year-old son, Ethan, are staying in a family room at the Superviews Hotel on a seaside holiday. At 10.00 pm on their first night Colin decides to go to the hotel gym. Although the door is not locked, a sign on the gym door reads 'No admittance between 8.00 pm and 8.00 am. Equipment is dangerous when used without proper supervision'. Colin ignores the sign and enters the gym. Colin is crushed whilst using faulty weightlifting equipment and suffers personal injuries as well as damage to his expensive watch.

While Colin is at the gym, Daisy takes a shower. Daisy is electrocuted when she turns on the shower which has recently been repaired by Pressure Plumbing.

With his father out of the room and his mother in the shower, Ethan leaves the room. Ethan is badly injured when he slides down the banister of the staircase and falls three floors.

Discuss the possibility of Colin, Daisy **and** Ethan making successful claims in occupiers' liability. [50]

- 6* Gurdeep and Harinder own adjoining semi-detached houses. Gurdeep has planning permission to build a conservatory on a brick base at the rear of his house. Harinder gives Gurdeep permission to take down the fence between the two properties and for the builders to walk on his back garden to do the work. The builders erect the brick base to the conservatory right on the boundary between the two properties. They dig a trench and put in foundations which extend thirty centimetres under Harinder's garden.

Whilst doing this work the builders throw fencing panels onto Harinder's garden, killing some expensive plants. The builders also walk over Harinder's garden placing building materials there until they are used. Harinder complains about this to Gurdeep. He also complains about a large sign advertising the builders' name that has been put in Gurdeep's front garden but which overhangs the fence into Harinder's front garden. Gurdeep ignores these complaints.

Advise Harinder of any claims that he may have against Gurdeep. [50]

SECTION C

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

- 7 Josie intends to buy a house and pays Kieran, a local, qualified surveyor, for a survey. The survey report states that there are no structural problems so Josie buys the house. After Josie moves in, large cracks appear in the ceilings and damp on ground floor walls. A building expert then identifies that the faults are due to the house having been built on a landfill site, a fact that should have been known to all local surveyors.

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: Josie cannot sue Kieran because the situation involves pure economic loss.

Statement B: There is no special relationship between Josie and Kieran so a claim for negligent misstatement is impossible.

Statement C: Josie can claim from Kieran even if there was no reason for her to rely on the advice given by Kieran.

Statement D: Josie can claim for Kieran's negligent advice under the normal rules on negligence from *Donoghue v Stevenson*. [20]

- 8 Louis is employed as a delivery driver by Monster Haulage. Louis smokes in the van despite being prohibited from doing so. Louis throws a lighted cigarette out of the van and burns a passer-by, Norah. After making a delivery Louis returns to his van and sees a youth, Owen, stealing from the van. Louis punches Owen in the face breaking Owen's nose.

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: Norah cannot claim against Monster Haulage for her burns because it was Louis' fault.

Statement B: Monster Haulage can claim any damages payable to Norah from Louis.

Statement C: Monster Haulage will not be liable to Owen because, by hitting Owen, Louis is not acting in the course of his employment.

Statement D: Owen cannot claim against Monster Haulage because Louis hitting Owen was a criminal act. [20]

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