

**ADVANCED GCE
LAW**

Law of Torts

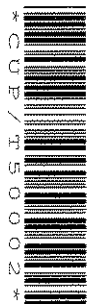
TUESDAY 29 JANUARY 2008

G147

Morning

Time: 2 hours

Additional materials: Answer Booklet (16 pages)



INSTRUCTIONS TO CANDIDATES

- Write your name in capital letters, your Centre Number and Candidate Number in the spaces provided on the Answer Booklet.
- Read each question carefully and 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.
- Write the numbers of the questions you answer on the front of your answer booklet.
- Write your answers in blue or black ink, in the answer booklet provided.
- If you use additional sheets of paper, fasten these securely to the answer booklet.

INFORMATION FOR CANDIDATES

- **Quality of Written Communication (QWC)**
Candidates are reminded of the need to write in continuous prose where appropriate. You will be assessed on your written communication and your use of appropriate legal terminology.
- The number of marks for each question is given in brackets [] at the end of each question.
- The total number of marks for this paper is **120**.

This document consists of 4 printed pages.

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 defences of *volenti non fit injuria* (voluntary assumption of risk) **and** contributory negligence are fair to both claimant **and** defendant. [50]

- 2 'Since the development of the principle in *Lister v Hesley Hall* the doctrine of vicarious liability has become even more unfair to employers.'

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

- 3 Discuss the extent to which the range of defences available under the Animals Act 1971 limits the effectiveness of an otherwise very effective tort. [50]

Section B

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

- 4 Heantun Wanderers play a football match against Midwich Albion away at Midwich's stadium. After the game Jay, a Wanderers' player, goes for a shower. Jay is electrocuted and badly burned when he turns on the shower control. The shower has recently been installed by a local plumbing company.

Rob, a Wanderers' player, is looking for the toilet. Rob goes through a door with a sign on which reads, "No admittance other than to Midwich Albion ground staff." The room is in darkness as a light bulb has not been replaced. Rob treads on a rake which swings up breaking Rob's nose.

Rob's son Matthew, aged eight, who has attended the game to watch his father play, goes in search of his father. Matthew walks into the players' changing room and slips on the wet floor. Matthew is unhurt but his expensive watch is broken beyond repair as he falls.

Advise Jay, Rob and Matthew of any claims that they may make against Midwich Albion in occupiers' liability. [50]

- 5 Twin sisters, Jenny and Kate, and their friend Leanne go to RaveOn Night Club. A fire starts and, owing to the negligence of the night club, only one narrow exit is unlocked. When the fire starts Kate is already outside taking a breath of fresh air. Jenny is overcome by the smoke while she and Leanne are trying to get out. Martin, a fire officer, who is also Jenny's and Kate's father, brings both girls out of the blazing club. Leanne is still conscious and unharmed but Jenny suffers severe burns and dies before Martin can get her outside. Kate becomes hysterical when she sees her sister's body brought out of the club by her father. Martin telephones his wife, Natalie, to tell her what has happened. Natalie goes to the hospital immediately and insists on seeing her daughter Jenny's body in the mortuary. Kate, Leanne and Natalie are all now suffering from post-traumatic stress disorder. Martin is grief stricken and is unable to go to work.

Advise Kate, Leanne, Martin and Natalie whether each of them will be able to bring successful claims for nervous shock (psychiatric damage) against RaveOn Night Club. [50]

- 6 The University of Midhampton Science Department occupies the ground floor of a building. Oddbridge College Electronics Department occupies the first floor. A fire is accidentally started during an electronics class on the first floor and escapes to the ground floor. The fire is put out but causes thousands of pounds worth of damage to University of Midhampton equipment. University staff members carry several containers of toxic chemicals outside to the back of the building during the fire and these are left outside overnight. Some Oddbridge students take the lids off these containers and knock them over. The chemicals seep from the containers and run along the ground escaping into the next door premises which are downhill from the building. These premises are occupied by Norton Riding School. Several of the horses come into contact with the chemicals and have to be killed.

Discuss the potential liability of Oddbridge College to the University of Midhampton and of the University of Midhampton to Norton Riding School, including any available defences. [50]

Section C

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

- 7 Tina, a keen animal rights activist, is walking along a country road and sees John and his son, Mark, fishing in the river. Tina leaves the road and, waving her walking stick at John, shouts, "Fish killer – I'd like to kill you!" Mark grabs Tina by her arm and slaps her face to make her be quiet. Tina has bruises on her arm for a week.

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: Tina is liable in assault for waving her walking stick at John.

Statement B: Tina is liable in assault for shouting at John.

Statement C: Tina can sue John and Mark in battery for the bruises on her arms.

Statement D: Mark is liable for the false imprisonment of Tina.

[20]

- 8 Colin wants to buy a barn to convert into holiday cottages. He pays Karen, a qualified surveyor, to check on planning permission and survey the barn. Karen says everything is fine so Colin buys and converts the barn. The local council says Colin cannot rent out the cottages because he does not have the correct planning permission. Basic tests by the council's surveyors show the roof beams are rotten and expensive repairs are needed to make the cottages safe.

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: Colin cannot claim from Karen for negligent misstatement as there is no special relationship.

Statement B: Karen is liable for negligent misstatement because Colin cannot rent out the cottages.

Statement C: Karen is not liable for negligent misstatement for repairs needed to make the cottages safe.

Statement D: Karen cannot avoid liability for negligent misstatement by saying that she did not think Colin was relying on her advice.

[20]