

UNIVERSITY OF BOLTON

SCHOOL OF LAW

LLB LAW

SEMESTER 2 EXAMINATIONS 2018/2019

LAW OF TORT

MODULE NO: LAW5009

Date: Friday 24 May 2019

Time: 2.00 – 4.00

INSTRUCTIONS TO CANDIDATES:

The examination paper is divided into two sections.

- Part A - The initial multiple choice section contains 30 questions, all of which should be attempted. Please answer these within your exam booklet.
- Part B - There are 4 questions on this paper, you are required to answer 2 of the questions.

Part A of the paper provides 30% of the marks; Part B of the paper provides 70% of the marks, 35% per question.

The examination amounts to 70% of your mark in this module.

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PART A – MULTIPLE CHOICE QUESTIONS

**PLEASE ANSWER THESE WITHIN YOUR EXAM BOOKLET BY
SELECTING THE CORRECT ANSWER AND NOTING YOUR
RESPONSE WITH A CAPITAL A, B, C OR D**

EACH QUESTION IS WORTH 1 MARK

PAST EXAMINATION PAPER

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Within section A there is only **ONE** correct answer to each question. If you give more than one answer for any multiple choice question you will receive **NO** marks for that question.

Should you wish to qualify your multiple choice answer, please write your qualification in the answer book. Make it clear which question your qualification applies to. Only perform this task if you truly believe it to be necessary.

ANY ANSWERS NOT WRITTEN IN THE ANSWER BOOK WILL NOT BE MARKED.

Answers must be completed in the student answer book provided. For example for question 1 write 1 in the left margin followed by the appropriate letter which indicates your answer (a. to d.) on the lined page – the example below demonstrates:

1	a
2	b
3	c
4	d
5	a

Answers not entered in the answer book will be marked as incorrect. Please ensure that you write legibly so that there is no doubt what your answer is. It is advisable to answer in capital letters.

The answers expected refer to legal terms of art. Your answers should therefore relate to this professional vocabulary and not simply to the *general* meaning of words and expression.

Both question paper and answer book must be handed in at the end of the examination.

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- 1) Identify which type of damage from the following list would not be recoverable in a claim under tort:
 - a. Psychiatric injury
 - b. Physical injury
 - c. Compensation for defective goods
 - d. Economic loss

- 2) Identify which of the following statements is the most accurate:
 - a. Some torts are based on a requirement to prove fault
 - b. All torts are based on a requirement to prove fault
 - c. No torts are based on a requirement to prove fault
 - d. Only negligence is based on a requirement to prove fault

- 3) As Ranjiv was coming through a door, Sandra carelessly trapped his fingers when she shut the same door behind her. Select the statement from the four below which most accurately describes this incident.
 - a. Sandra cannot be liable in battery because her action was indirect
 - b. Sandra cannot be liable in battery unless Ranjiv was also injured
 - c. Sandra will be liable in battery because it is a strict liability tort
 - d. Sandra cannot be liable in battery unless she intended to impose force on Ranjiv

- 4) See below a list of possible defences to an action in assault or battery:
 - i. Consent
 - ii. Self-defence
 - iii. Necessity
 - iv. Lawful authority

Which of these are defences to an action in assault or battery?

- a. (i) only
- b. (ii) and (iii)
- c. (iii) and (iv)
- d. All are acceptable defences

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- 5) Two union representatives get into an argument at work. The male rep tells the female rep that he is running for president of the local union in the next election. The female rep tells him that she had been planning to run. He then tells her, while pointing a finger in her face, "I could whip you in an election any time, or I could beat you silly right here and now." The female rep walks away, feeling very apprehensive about the male rep's threat. The next day, they discuss union politics again, and the male rep once again states that he could beat her "by votes or in a fight, whichever you prefer." She becomes very upset, and a few days later brings a claim against him for assault. Has the man committed an actionable assault?
- No, these were mere political arguments and the kind of heated things that might be said in a political context.
 - No, any apprehension would be of something too far in the future to constitute an assault.
 - Yes, the male rep made a movement by pointing his finger and threatening her with offensive imminent contact which she perceived with apprehension.
 - No, the correct claim should have been a claim for battery.
- 6) Identify which of the following four is NOT an essential element for a successful claim in false imprisonment:
- Imprisonment in a room
 - Total bodily restraint
 - No safe means of escape
 - No lawful justification for the restraint
- 7) A retail store sales person was accused of taking money from the cash register. She was taken into a back room and interrogated by the manager and two security guards. They told her that she was caught on camera, there was a customer who witnessed her theft, and she should confess. She refused, persisting in her claim of innocence. She became highly agitated and tried to leave twice, but each time the security guards stood in her way, saying they would call the police if she chose to leave. She eventually broke down and started sobbing, still claiming innocence. They then revealed that there was no customer witness and no video. It was simply a test to see if she was the thief. They now believed she was innocent and allowed her to go home. The hour-long ordeal caused her emotional trauma, headaches, and nightmares, all of which required medication and treatment. She has now sued for false imprisonment. Does she have a liability case for that tort?

Question 7 continued over the page

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Question 7 continued

- a. No, the store employees had no intent to confine her or to harm her.
 - b. No, the store employees did not intend to confine her and allowed her to leave at any time.
 - c. Yes, because an employer's interrogation of an employee for potential crimes is prohibited.
 - d. Yes, because the employer restrained her movement without reasonable cause to do so.
- 8) Lord Atkin, in *Sim v Stretch*, suggested that a defamatory statement is one that lowers the claimant in the estimation of which of the following?
- a. The reasonable man
 - b. The right thinking man
 - c. Right thinking members of society generally
 - d. Society generally
- 9) One of my law students writes to his friend at another university 'Law lecturers are incompetent idiots'. Why can I not bring an action for defamation against him?
- a. Because it is true, so the defence of justification applies
 - b. Because it is in the public interest and so the defence of fair comment applies
 - c. Because it refers to a class that is too wide for me to be recognised
 - d. Because it does not refer to me specifically by name
- 10) A patient calls his doctor and tells him personally on the phone that he is a "butcher" and one of the most incompetent money-grabbing doctors he has ever encountered. He accuses him of having botched the caller's recent appendectomy operation because the caller still has the same excruciating pain as before the surgery. He says that everyone knows that the doctor can't "hold a scalpel steady" anymore, and that everyone knows that his new home is the bar at the local golf club. The caller hangs up. The doctor brings a claim for slander against the patient based on the phone call. What is the likely outcome of the case?

Question 10 continued over the page

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Question 10 continued

- a. The case must be dismissed because there is no defamatory statement when there is no publication to a third person.
- b. There is no defamation because the patient has an absolute privilege to complain about matters within the doctor-patient relationship.
- c. The case will go to a jury to decide the existence and the extent of any defamation.
- d. This is a case of libel.

11) Below are a number of statements about the case of *Donoghue v Stevenson*:

- i. Prior to the case a duty of care was generally only owed in contractual relationships
- ii. A contractual duty was owed to Donoghue's friend who had bought the ginger beer for her
- iii. The friend could have sued the manufacturer, Stevenson, for the breach of duty
- iv. Donoghue was able to succeed because the ratio decidendi of the case established that a manufacturer owes a duty of care to the end consumer of his products

Which of these statements are accurate?

- a. (i) only
- b. (i) and (iii)
- c. (i), (ii) and (iv)
- d. (iv) only

12) Which of the following statements best describes the outcome of *Hill v CC West Yorkshire*?

- a. The plaintiff was successful because the police ultimately prosecuted the murderer
- b. The plaintiff was unsuccessful because her claim was out of time
- c. The defendant was successful because they had not been in breach of duty
- d. The plaintiff was unsuccessful because there had not been proximity between the defendants and the victim

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- 13) Which of the following are not elements in the three-part test for determining a duty of care devised in *Caparo v Dickman*:
- Foreseeable harm as a result of the defendant's negligent acts or omissions
 - That it is fair, just and reasonable to impose a duty of care in the circumstances
 - That there are no policy reasons for not imposing a duty of care in the circumstances
 - That there was legal proximity between the parties
- 14) Identify which of the following statements is inaccurate in relation to sporting activities:
- The standard of care appropriate to a sporting competitor is the standard of a reasonable sportsman engaged in the sport in question
 - The standard of care does not vary between a professional sportsman and an amateur sportsman
 - A sports official may fall below the appropriate standard of care for failing to properly apply the rules of the sport
 - A sports association may fall below the appropriate standard of care for failing to provide appropriate facilities for the competitors
- 15) Select the pair of words from the list below that are missing from the following statement:
- The standard of care appropriate to doctors is the standard of the ordinary..... man exercising and professing to have that special
- 'reasonable' and 'knowledge'
 - 'reasonable' and 'skill'
 - 'skilled' and 'skill'
 - 'skilled' and 'knowledge'
- 16) Causation in fact is generally measured against which of the following tests:
- the 'reasonable man' test
 - the 'but for' test
 - the Caparo three-part test
 - the neighbour principle

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17) Which of the following statements is true of the current state of causation in relation to mesothelioma?

- a. It is governed by the law as stated in *Barker v Corus*
- b. It is governed by the 'but for' test
- c. It is governed by s 3 of the Compensation Act 2006
- d. It does not give rise to joint and several liability

18) *The Wagon Mound (No 1)* establishes which principle for determination of remoteness?

- a. Direct consequences
- b. Proximity
- c. Fair just and reasonable
- d. Reasonable foreseeability of the kind of damage

19) Below are listed possible classes of novus actus interveniens:

- i. a novus actus interveniens by a third party
- ii. a novus actus interveniens by the defendant
- iii. a novus actus interveniens by act of nature
- iv. a novus actus interveniens by the claimant

Which of these are accepted classes of novus actus interveniens?

- b. (ii) only
- c. (ii) and (iv)
- d. (i), (ii) and (iv)
- e. All of these are accepted classes

20) *Hughes v Lord Advocate* established which principle?

- a. That both the type of the damage as well as the manner in which it occurred must be reasonably foreseeable
- b. That the extent of the damage must be foreseeable
- c. That the type of the damage but not the manner in which it occurred must be reasonably foreseeable
- d. The defence of contributory negligence

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21) A waitress was opening a bottle of a popular soft drink to serve to a customer when the bottle broke into two jagged pieces and inflicted a deep and long cut that severed blood vessels, nerves and muscles of the thumb and palm of the hand. She later had to have several operations to restore use of and feeling in the hand. In a claim against the manufacturer, the waitress alleged negligence and strict liability in tort, but found it difficult to prove the nature of the defect. She presented several witnesses familiar with the fact that some of the bottles would explode, but the cause was unknown. She proved that she did nothing wrong with the bottle and that it remained in the same condition as when it left the manufacturer's plant. The defendant moved for summary judgment for failure to prove a defect and failure to show causation. What legal theory can the plaintiff rely on to establish liability in this kind of a situation?

- a. Strict liability
- b. Res Ipsa Loquitur.
- c. Novus actus interveniens
- d. Volenti non fit injuria

22) Identify from the list below the word or words missing from the following statement on contributory negligence:

Damages recoverable shall be reduced to such extent as the court thinks having regard to the claimant's share in the responsibility for the damage.

- a. reasonable
- b. right and proper
- c. just and equitable
- d. appropriate in the circumstances

23) Which of the following are recognised psychiatric injuries for the purposes of a claim in nervous shock (psychiatric damage)?

- i. post-traumatic stress disorder
- ii. claustrophobia
- iii. grief
- iv. pathological grief linked to severe depression

- a. (ii) only
- b. (i) and (iv)
- c. (iii) only
- d. (i), (iii) and (iv)

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24) Which of the following are primary victims?

- i. Adrian, who was involved in a car crash caused by the negligence of the other driver and who suffered a recurrence of clinical depression from which he had previously recovered. Adrian is otherwise unharmed.
 - ii. Brett, a fireman, who was called to cut the driver from a petrol tanker which had crashed and was likely to explode in flames at any moment. Brett has since suffered post-traumatic stress disorder as a result of the experience.
 - iii. Callum, a fireman, who was called to cut the passenger from a car that had crashed after being driven negligently by the driver. The passenger is Callum's son, and Callum suffers post-traumatic stress disorder after seeing the extent of his son's injuries.
 - iv. Dalvinder, a paramedic, who, in his ambulance, tends burn victims pulled from a burning house, and who suffers post-traumatic stress disorder as a result of seeing the extent of his patient's injuries.
- a. Adrian and Callum
 - b. Callum and Dalvinder
 - c. Adrian and Brett
 - d. All are primary victims

25) Which of the following types of visitor are not covered under the Occupiers' Liability Acts?

- a. Invitees
- b. trespassers
- c. those using a public right of way
- d. those having a legal right to enter

26) Which of the following is the most accurate paraphrase of the scope of the duty owed in s2 (2) of the 1957 Act?

- a. The occupier must make the premises reasonably safe
- b. The occupier must make the premises reasonably safe for the purpose of the visit
- c. The occupier must keep the visitor reasonably safe
- d. The occupier must keep the visitor reasonably safe for the purpose of his visit

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27) Three seven-year-old boys crawled through a hole in a fence at the end of a school playground and entered a railway yard. They climbed on top of a freight car where one of them was electrocuted by a high voltage wire. The fence they crawled through was owned and maintained by National Rail Infrastructure. The railway yard was also owned by National Rail Infrastructure. The deceased boy's father brought a claim under the Occupiers Liability Act 1957 action against National Rail Infrastructure. There were several holes in the fence that were used by children to come and go from the railway yard. There were four prior incidents at the yard where young children were electrocuted or seriously injured by high-tension wires. The defendants sought to dismiss the case as a matter of law because the children were trespassers to whom they asserted that they owed no duty of care. The trial court agreed and dismissed the claim against the defendant. An appeal was filed. Will the Court of Appeal uphold the first decision?

- a. Yes, the court will agree, as National Rail Infrastructure had no duty to trespassers on its land.
- b. Yes, the court will agree, as the defendant owed no duty to children trespassing on the land.
- c. No, the court will reverse, because it was foreseeable that children would come on the land and be exposed to a dangerous condition, triggering a duty to protect them.
- d. No, the court will reverse and enter judgment against the defendant for failing to use protective measures under the doctrine of strict liability to protect the children.

28) Which one of the following could not bring an action in nuisance?

- a. an owner of land affected by the nuisance
- b. a person with a legal or equitable right in the land affected by the nuisance
- c. a son or daughter of an owner of land that has been affected by the nuisance
- d. an occupier of land affected by the nuisance

29) An employer will not be vicariously liable for which one of the following actions of an employee?

- a. a criminal act which is closely connected with the employment
- b. a tortious act carried out while travelling to work
- c. an authorised tortious act carried out in an unauthorised manner
- d. an authorised tortious act

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30) A female driver is approaching a set of traffic lights when, as the lights begin to change, she decides to go through on amber. She accelerates to make sure she makes it through in time but actually crosses the line on a red light. She collides with a car driven by a male motorist coming from the side street who was getting a jump on the lights that had not yet turned green. The two cars collide, and the male motorist is seriously injured. He sues the female motorist for negligence. The court awards the man damages of £100,000. It found that female driver was 40 percent at fault whereas the male driver was 60 percent at fault. What, if anything, can he collect from this court decision?

- a. He cannot collect because he is more than 50 percent at fault.
- b. He can collect £40,000, representing the percentage of fault of the other driver.
- c. He can collect his full damages because the other driver was substantially at fault.
- d. He can collect £60,000.

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PART B – ESSAY QUESTIONS

CHOOSE 2 QUESTIONS FROM THE 4 PROVIDED
EACH QUESTION IS WORTH 35 MARKS

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- 1) Zaman, a law lecturer, is driving to University at speed as he forgot to set his alarm and fears that he will be late to give his Contract Law lecture. While driving, he calls his department with his mobile phone to let them know that he will be late. While on the phone, he suddenly swerves to avoid Sam, one of a group of students, who steps off the pavement. Zaman's car collides with a lorry bringing gas cylinders to the University science laboratory. The lorry is damaged and one of the cylinders is fractured and bursts into flames, as a result of which Sam suffers serious burns. Jethro, a final year student, runs to help Sam and is also burned. Jethro is unable to take up a highly paid job offer because of his injuries. Ike, who also gives assistance at the time, catches his foot in a loose paving stone and breaks his ankle before reaching the fire.

Sometime later, Ike receives further injuries when he falls off a ladder because his ankle had given way.

Advise Zaman of his potential liabilities in Tort to Sam, Jethro and Ike.

- 2) John is a self-employed minibus driver at a bird of prey experience centre called 'Chesney's Hawks'. He drives visitors between different areas of the park so that they can experience the majesty of a range of birds, from Owls to Eagles. As John drives between the Ossie the Ospreys area through to the area where Freddie the Falcon flies, he takes a bend and the minibus overturns. John admits that his driving was negligent as he took the bend too sharply and at too great a speed. The bus catches fire and the body of one of the injured passengers, Jeff, is badly burnt.

Jeff's daughter, Beverley, is also on the minibus. She escapes injury but she has now suffered the recurrence of a psychiatric condition from which she had been free for many years.

Paul, the police officer summoned to take charge at the accident scene, is shocked when he recognises one of the passengers on the bus, who has suffered severe burns, as his brother, Lee. Paul stays with Lee until he dies from his injuries. Paul is now suffering from post-traumatic stress disorder.

When Jeff's wife, Amy, is told of his injuries by police officers about two hours after the accident, she goes immediately to the hospital to which Jeff has been taken and sees him in a distressing condition. Jeff is suffering great pain from his burns and has not yet been given any pain killing treatment. Amy is now suffering from clinical depression.

Advise John of his potential liability in tort to Beverley, Paul and Amy.

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- 3) Bowden is the Chief Constable of Catchingham Police. He has admitted that his officers were negligent in that they failed to put proper systems in place to protect Danny, who was due to give evidence in court in a trial concerning the murder of Imran. Bowden has confirmed that they were aware that threats had been made to the life of Danny by known criminals, who had, in the past, been associated with Imran. Danny has now been attacked and killed before he could give his evidence.

Discuss the issues likely to arise in a claim by Danny's family that Bowden and Catchingham Police owed him a duty of care in the tort of negligence.

- 4) IPB Ltd owns a printing works, which it has operated for some years in the centre of Bolton, a locality that is partly residential and partly industrial. The following persons have made complaints about noise and vibrations emanating from IPB Ltd.'s premises:

- Rachel, who has recently come to live nearby in "Printers Cottage". She suffered head injuries when, because of the vibrations from IPB Ltd, a large chunk of plaster came loose from the ceiling of her home and fell onto her head.
- Kieran, who used to walk past IPB Ltd twice daily on his way to, and from, his place of work. The fumes emitted from the printing works have been aggravating his asthma and he has now been advised by his doctor to catch the bus.
- Jack, another local resident, works a night shift at another nearby factory. He complains that he is unable to sleep during the day due to the noise generated by IPB Ltd.

Advise IPB Ltd as to their potential liability in nuisance.

END OF QUESTIONS