

**UNIVERSITY OF BOLTON**

**SCHOOL OF LAW**

**LLB LAW**

**SEMESTER 1 EXAMINATION 2019/2020**

**LAW OF TORT**

**MODULE NO: LAW5009**

**Date: Monday 13 January 2020**

**Time: 2.00 – 4.00**

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**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.
- 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 PAPER BY  
SELECTING THE CORRECT ANSWER AND NOTING YOUR  
RESPONSE WITH A CAPITAL A, B, C OR D**

**EACH QUESTION IS WORTH 1 MARK**

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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 of the following types of damage are recoverable in a claim under tort:
  - i. Psychiatric injury
  - ii. Physical injury
  - iii. Compensation for defective goods
  - iv. Economic loss
  - a. (i), (ii) and (iv)
  - b. (i) only
  - c. (ii) and (iii) only
  - d. All are recoverable
  
- 2) Identify which one of the following statements is the most accurate:
  - a. All torts are based on a requirement to prove fault
  - b. Some 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 Ian was getting into the car, Sam carelessly traps his fingers when she shuts the car door. Select the statement from the four below which most accurately describes this incident.
  - a. Sam cannot be liable in battery because her action was indirect
  - b. Sam cannot be liable in battery unless Ian was also injured
  - c. Sam cannot be liable in battery unless she intended to impose force on Ian
  - d. Sam will be liable in battery because it is a strict liability tort
  
- 4) See below a list of possible defences to an action in assault or battery:
  - i. Self-defence
  - ii. Consent
  - iii. Necessity
  - iv. Diminished Responsibility

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

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

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- 5) Two University Lecturers, Ike and John, get into an argument at work. John tells Ike that he is writing a research paper on Flowers. Ike tells John that he had been planning to write a similar paper. John then tells Ike, while pointing a finger in his face, "This was my idea first and you had better not write one as well or else we are going to have a problem." Ike walks away, feeling very apprehensive about John's threat. The next day, they meet in a corridor, and the John once again states that he is writing the paper and that he will make sure that Ike never publishes his own paper, "leave it alone or watch out, whichever you prefer." Ike becomes very upset, and a few days later brings a claim against John for assault. Has John committed an actionable assault?
- No, these were mere professional matters and the kind of heated things that might be said in an academic environment.
  - Yes, John made a movement by pointing his finger and threatened Ike with offensive imminent contact which Ike perceived with apprehension.
  - No, any apprehension would be of something too far in the future to constitute an assault.
  - No, the correct claim should have been a claim for battery.
- 6) Assault is intentional ..... conduct by the defendant which causes the claimant to reasonably fear an imminent battery. Which is the missing word?
- Spoken
  - Physical
  - Direct
  - Lawful
- 7) Identify which of the following is NOT an essential element of battery:
- Directness
  - Intention
  - Unlawful Physical Conduct
  - Foreseeable Harm
- 8) Identify which of the following is NOT an essential element for a successful claim in false imprisonment:
- The persons awareness of their imprisonment
  - Imprisonment in a room
  - No safe means of escape
  - No lawful justification for the restraint

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- 9) Lord Atkin's judgement in the case of *Sim v Stretch*, suggested that a defamatory statement is one that lowers the claimant in the estimation of:
- Society generally
  - The reasonable man
  - Right thinking members of society generally
  - The right thinking man
- 10) A Lecturer tells his wife that a law student is involved in the supply of narcotics in a local nightclub even though he has no basis for the allegation and no evidence to support the claim. The student has never actually attended the nightclub in question. Why can the student not bring an action for defamation against the Lecturer?
- Because it is true so the defence of justification applies
  - Because communication with a spouse does not count as a publication
  - Because it is in the public interest and so the defence of fair comment applies
  - Because it is not defamatory
- 11) Why was the advertisement in *Tolley v Fry* defamatory?
- Because it implied that Tolley had infringed his amateur status
  - Because it implied that Tolley ate Fry's Chocolate Cream
  - Because it implied that Tolley agreed to the advertisement
  - Because it implied that Tolley ate chocolate to make him a better golfer
- 12) Which of the following is not an absolute defence to an action for defamation?
- Absolute Privilege
  - Fair Comment
  - Consent
  - Justification
- 13) Which of the following is not one of the elements to be proven, as identified by Lord Atkin in *Donoghue v Stevenson*, for a successful claim in negligence?
- The existence of a duty of care owed by the defendant to the claimant
  - A breach of the duty owed by the defendant
  - Malicious intent on the part of the defendant to harm the claimant
  - Damage to the claimant caused by the defendant's breach of duty

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- 14) Which of the following statements best describes the outcome of Hill v CC West Yorkshire?
- The plaintiff was successful because the police had breached their duty of care in failing to catch the murderer
  - The plaintiff was unsuccessful because her claim was out of time
  - The defendant was successful as the plaintiff was contributorily negligent in the matter.
  - The plaintiff was unsuccessful because there had not been proximity between the defendants and the victim
- 15) Which of the following is not an element of the three-part test for determining a duty of care devised in Caparo v Dickman:
- Harm must be reasonably foreseeable as a result of the defendant's conduct
  - It must be fair, just and reasonable to impose liability
  - Consideration must be given as to reasons why there should not be a duty of care
  - The parties must be in a relationship of proximity
- 16) After the case of Mullin v Richards, the standard of care appropriate to a child defendant is:
- The standard of a reasonable child
  - The standard of a reasonable child of the same age as the defendant
  - The standard of a child sharing the same understanding as an adult
  - The standard of a reasonable man
- 17) 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
- 18) Which of the following statements is true regarding causation in relation to mesothelioma?
- It is governed by s 3 of the Compensation Act 2006
  - It is governed by the law as stated in Barker v Corus
  - It is governed by the 'but for' test
  - It does not give rise to joint and several liability

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

- a. But for
- b. Proximity
- c. Fair, just and reasonable
- d. Reasonable foreseeability of the kind of damage

20) In which of the following situations will a novus actus interveniens by the claimant break the chain of causation?

- a. when the defendant's negligent act is still an operating cause of the damage
- b. when the claimant's intervening act is reasonable
- c. when the claimant's intervening act is a foreseeable consequence of the defendant's negligent act
- d. when the claimant is actually responsible for his own damage

21) Hughes v Lord Advocate established which one of the following principles?

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

22) A man visits his Aunt at her place of work. She works in a 20-storey office building in the centre of town. After a spot of lunch, he gets in the lift to go down to the ground floor and presses the appropriate button. When the lift gets to the second floor it stops, judders and then goes into a freefall until it hits the ground in the basement. The man sustains a broken back and is permanently disabled. The injured man is unable to uncover any evidence proving what caused the collapse of the elevator. He sues the building owner for negligence. In order to be successful, what legal principle can he turn to for assistance

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

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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. Pathological grief
  - iv. Clinical depression
- a. (ii) only
  - b. (i), (iii) and (iv)
  - c. (iii) only
  - d. (i) and (ii)

24) Which of the following are primary victims?

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.

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.

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.

Dalvinder, a paramedic, who tends burn victims in his ambulance who had been 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 Brett
- b. Adrian and Callum
- c. Callum and Dalvinder
- d. All are primary victims

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25) Which of the statements below does not accurately reflect what is required of a secondary victim by the ratio of *Alcock v Chief Constable of S. Yorkshire*?

- a. Suffering nervous shock through what was seen or heard of the accident or its immediate aftermath
- b. Proximity to the accident, or its immediate aftermath, which was sufficiently close in time and space
- c. A sufficiently close relationship of love and affection with the injured party
- d. Reasonable foreseeability that they would be physically injured by the negligence

26) Which of the following are accurate statements about occupiers?

- i. an occupier is a person in control of the premises
  - ii. an occupier may be someone with legal rather than physical control of the premises
  - iii. there is no real statutory definition of occupier in either Act
  - iv. dual occupation is possible for the purposes of the Acts
- a. None of these statements
  - b. (i), (ii) and (iv)
  - c. (iii) and (iv)
  - d. All of these statements

27) 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 of entry

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28) In which of the following situations is there likely to be any liability under the Occupier's Liability Act 1957:

(i) Amanda, an electric meter reader, walks across Brenda's lawn to pick flowers from a flower bed and is injured when her foot catches in a hole, which is invisible because of the length of the grass.

(ii) Carter, a roofing contractor, is injured when he falls off the roof while repairing Delia's pitched roof. Carter has failed to put up safety rails or use roof ladders.

(iii) Ewan, a postman, is electrocuted when he rings the doorbell on Frank's house to get a signature for a recorded delivery letter. Frank has recently wired the doorbell himself.

(iv) As he is backing down his drive in his car, George fails to look behind him and carelessly runs over Helen, the paper girl who is delivering the evening paper.

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

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

- a. The owner of a neighbouring premises that is suffering damage due to vibrations
- b. A person with a legal or equitable right over land damaged by a neighbour's flood
- c. A son or daughter of an owner of land that has been damaged by a chemical leak
- d. An occupier of land affected by the neighbours noise levels

30) 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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**PART B – ESSAY QUESTIONS**

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

Past Examination Paper

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- 1) Wendy is shopping in her local branch of Bigl Supermarket. She has purchased a number of small items and is carrying them in a basket. She then decides to buy a kettle. She takes some of the smaller items out of her basket and puts them in her handbag, so that she can put the kettle into the basket. She carries on shopping and is approached by, John, the store detective. He taps Wendy on the shoulder to attract her attention.

When Wendy turns round, John puts his hand on her arm and says to her: "Please come with me to my office. I would like to ask you some questions." Wendy agrees to go with him. In his room John says to Wendy: "Show me what is in your handbag, or else." Wendy refuses. John becomes abusive and walks towards Wendy. Wendy is frightened and runs out of the room but slips and bangs her head, losing consciousness. John drags her back into his room and leaves her on the floor. He goes out and locks the door.

Meanwhile, the shop has closed and Zaman, a cleaner, employed by Bigl, is cleaning one of the toilets. He is contracted to work for two more hours but when he sees Ian, the manager of the shop, he tells him that he is not feeling well and asks Ian to unlock the main door, which had been locked for security reasons during cleaning.

Ian refuses to open the door, telling Zaman he must stay until the two hours have expired.

Advise Wendy, John, Zaman and Ian of their potential claims or liabilities in trespass to the person.

- 2) Edwin is a reporter with The Post, a local evening newspaper. He writes an article in this newspaper which says: "A member of a firm of solicitors in Swinnington (a small town) is being investigated by the police. It is believed that a well-known local lawyer is not qualified as a solicitor and has been paid by his clients under false pretences."

There is just one firm of solicitors in Swinnington, with a total of seven solicitors. The article does not reveal that Michael is the solicitor whose qualifications are being investigated. Michael is well-known in the area, as he had recently represented a client in a high profile divorce case and was interviewed on local television at the time.

**Question 2 continued over the page**

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**Question 2 continued**

James, the editor of The Post, telephoned to speak with Michael before publication but Michael was not available. James authorised the article to appear in the The Post that same evening. When James telephoned to speak with Michael, the call was taken by Michael's secretary. The conversation was overheard by Nazia, a cleaner who was working in the secretary's office at the time. When the article later appears in The Post, Nazia realises that it must be about Michael and she tells her friend that Michael is not qualified as a solicitor.

Advise Michael concerning any potential claims he may have in defamation against.

- 3) A party of schoolchildren has been selected to form part of a massed choir at the opening of a large structure called "The Dome". Some parents are able to get tickets for the event, while the remainder watch the live television broadcast from home.

During the performance one of the floodlights, which has been placed too close to the plastic material that coats the huge water tanks, melts the casings and a torrent of water floods into the Dome.

Bill, whose son is on stage, is at the edge of the auditorium. He is able to escape but hears the screams of the children. His son perishes. Bill is experiencing post-traumatic stress disorder and is unable to sleep at night.

Danielle was unable to obtain a ticket but is eagerly watching the performance on T.V. She catches a glimpse of her daughter on the screen as the flood hits the stage. The following day she identifies her daughter's body at the mortuary. Danielle is having recurrent nightmares and has been diagnosed as suffering from pathological grief.

Kevin is an employee of Dome plc and is engaged on crowd control duties. He is an eye witness to the disaster. Kevin is shocked when he recognises one of the victims as being his twin sister Kim. Kevin stays with Kim until she dies from her injuries. Kevin has not worked since the tragedy and is suffering from clinical depression.

Dome plc have accepted liability for the positioning of the floodlight and the flood that has followed.

Advise Dome plc of their potential liability for psychiatric harm to Bill, Danielle and Kevin.

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- 4) Blast and Dig Ltd operates a granite quarry in Bedrock. The area had been a mixed residential and light industrial area until Blast and Dig Ltd recently obtained planning permission to mine granite there. The quarry provides needed employment for many local residents and has boosted the local economy.

Janet has been living in Bedrock for 5 years -- long before Blast and Dig Ltd began operation. Now, vibration caused by Blast and Dig's quarrying operations has caused a section of the fence of Janet's premises to collapse. The vibration has also caused Janet's house to subside leading to deep cracks on the outside walls.

James frequently walks past Blast and Dig's premises on his way to and from work. One day as he walks past, large slates from the roof of one of Blast and Dig's buildings nearest to the road flew from the roof and one of them landed on James's head, severely injuring him. The slates were dislodged by vibration from the quarrying.

Bedrock Primary School is about 500 meters from Blast and Dig's quarry. The school authorities complain that a noxious dust cloud from the quarry makes it very uncomfortable for staff and pupils to use their outdoor facilities, especially during playtime.

Advise Janet, James and Bedrock Primary School if they have a cause of action against Blast and Dig's Ltd under the torts of private and public nuisance.

**END OF QUESTIONS**