

UNIVERSITY OF BOLTON

SCHOOL OF LAW

LAW PATHWAYS

SEMESTER 2 EXAMINATION 2021/22

LAW OF TORT

MODULE NO: LAW5009

Date: Tuesday 17th May 2022

Time: 2.00pm – 4.15pm

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 100% 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

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.

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.

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.

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) See below a list of possible types of damage:

- i. Psychiatric injury
- ii. Physical injury
- iii. Compensation for defective goods
- iv. Economic loss

Identify which of the types of damage are recoverable in a claim under tort:

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

2) As Jeff was getting into a 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 the trapping of the fingers was an indirect consequence of shutting the car door
- b. Sam cannot be liable in battery unless she intended to impose force on Jeff
- c. Sam cannot be liable in battery unless Jeff was also injured
- d. Sam will be liable in battery because it is a strict liability tort

3) 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), (ii) and (iii) only
- c. (i) only
- d. (ii) and (iii) only

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- 4) Two University Lecturers, Tim and Steve, get into an argument at work. Tim tells Steve that he is writing a research paper on applied legal theory. Steve tells Tim that he has been planning to write a similar paper. Tim then tells Steve, 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." Steve walks away, feeling very apprehensive about Tim's threat. The next day, they meet in a corridor, and Tim once again states that he is writing the paper and that he will make sure that Steve never publishes his own paper. "Leave it alone or watch out, whichever you prefer." Steve becomes very upset, and a few days later brings a claim against Tim for assault. Has Tim committed an actionable assault?
- Yes, Tim made a movement by pointing his finger and threatened Steve with offensive imminent contact which Steve perceived with apprehension.
 - No, these were mere professional matters and the kind of heated things that might be said in an academic environment.
 - 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.
- 5) Identify which of the following is NOT an essential element for a successful claim in false imprisonment:
- Imprisonment in a room
 - No safe means of escape
 - No lawful justification for the restraint
 - The person's awareness of their imprisonment
- 6) 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 communication with a spouse does not count as a publication
 - Because it is true so the defence of justification applies
 - Because it is in the public interest and so the defence of fair comment applies
 - Because it is not defamatory

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- 7) The claimant is employed by a hospital as a biochemist. While conducting an experiment in the hospital laboratory, he/she lit a gas burner which led to a small explosion. As a result of the explosion, the claimant sustained burns to their right hand.

The gas burner has been inspected by an expert who has reported that it is in perfect working order.

Which statement best explains whether the claimant will be owed a duty of care by the hospital?

- a. Yes, because the type of harm was foreseeable, the claimant and the hospital were in a proximate relationship and it is fair, just and reasonable to impose a duty of care on the hospital.
 - b. Yes, because there is an established duty between the claimant and the hospital.
 - c. No, because the expert evidence suggests that it would not be fair, just or reasonable to impose a duty of care on the hospital.
 - d. No, because the expert evidence suggests that the harm suffered by the claimant was unforeseeable.
- 8) Which of the following is not one of the elements to be proven, as identified by Lord Atkin in *Donoghue v Stevenson* [1932] UKHL 100 or a successful claim in negligence?
- a. The existence of a duty of care owed by the defendant to the claimant
 - b. Malicious intent on the part of the defendant to harm the claimant
 - c. A breach of the duty owed by the defendant
 - d. Damage to the claimant caused by the defendant's breach of duty
- 9) Which of the following is not an element of the three-part test for determining a duty of care devised in *Caparo v Dickman*?
- a. Consideration must be given as to reasons why there should not be a duty of care
 - b. Harm must be reasonably foreseeable as a result of the defendant's conduct
 - c. It must be fair, just and reasonable to impose liability
 - d. The parties must be in a relationship of proximity

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- 10) Which of the following statements best describes the outcome of Hill v Chief Constable of West Yorkshire [1987] UKHL 12, [1989] AC 53?
- a. The plaintiff was unsuccessful because there had not been proximity between the defendants and the victim
 - b. The plaintiff was successful because the police had breached their duty of care in failing to catch the murderer
 - c. The plaintiff was unsuccessful because her claim was out of time
 - d. The defendant was successful as the plaintiff was contributorily negligent in the matter.
- 11) After the case of Mullin v Richards [1998] 1 WLR 1304, the standard of care appropriate to a child defendant is:
- a. The standard of a reasonable child
 - b. The standard of a child sharing the same understanding as an adult
 - c. The standard of a reasonable man
 - d. The standard of a reasonable child of the same age as the defendant
- 12) A claimant was injured in a road traffic accident and taken by ambulance to the local hospital. The defendant (a newly qualified casualty doctor) incorrectly diagnosed the claimant as having merely sprained ankle ligaments and sent her home.

In fact, the claimant's ankle had been broken in two places. The failure to diagnose and treat the injury correctly subsequently lead to the claimant developing a permanent limp, which the claimant would not have had if the break had been treated correctly. Independent medical evidence has been obtained which shows that the broken ankle was clearly visible on the x-rays taken at the time.

Which of the following statements best explains whether the defendant breached the duty of care that they owed the claimant in negligence?

- a. No, because the defendant is a conscientious and careful doctor who only missed seeing the breaks on the X-rays due to the increased pressure of work and the fact that ward was understaffed at the time.
- b. No, because the defendant had only just qualified and was performing as well as any newly qualified doctor in their position.
- c. Yes, because the defendant failed to meet the standard of care expected of the reasonably competent newly qualified casualty doctor.
- d. Yes, because the defendant failed to meet the standard of care expected of the reasonably competent casualty doctor.

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13) Causation in fact is generally measured against which of the following tests?

- a. The 'reasonable man' test
- b. The Caparo three-part test
- c. The 'but for' test
- d. The neighbour principle

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

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

15) A claimant suffered a broken leg when they were a passenger on a motorbike driven by the defendant. The defendant pulled out of a side road into the path of an oncoming bus. The claimant feared that the bus would hit the motorbike. In order to avoid this, they jumped from the moving motorbike, landed awkwardly and broke their leg. In fact, the bus driver managed to swerve around the defendant's motorbike and avoid the collision.

Which of the following statements best explains how the claimant will be able to show that the fact that she jumped off the motorbike did not act as an intervening act that broke the chain of causation?

- a. Because the claimant's act of jumping off the bike ought to have been foreseen by the defendant as a likely consequence of their negligence.
- b. Because the claimant's act of jumping off the bike caused an injury that was reasonably foreseeable.
- c. Because the claimant's act of jumping off the bike caused an injury of a type that was reasonably foreseeable, even if the precise extent of the injury was not foreseeable.
- d. Because the claimant's act of jumping off the motorbike was entirely reasonable in the circumstances that she was in at the time.

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16) A man visits his aunt at her place of work. She works in a 20-storey office building in the centre of town. After 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. *Res Ipsa Loquitur*
- c. *Novus actus interveniens*
- d. *Volenti non fit injuria*

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17) A solicitor has been instructed by a mother and daughter for advice on potential claims that they may have against a cosmetic surgeon. The mother received cosmetic filler treatment to her lips in preparation for the daughter's wedding. This went wrong and caused substantial swelling, and pain, to her face. As a result of the treatment the mother was unable to work for three months. The mother is a beauty consultant in a high street pharmacy and has lost a significant amount of income as she was unable to work due to the disfigurement. The daughter felt that she had no choice but to cancel the wedding because her mother would have been unable to attend. The daughter has lost a substantial amount of money as a consequence of the failed treatment.

Which of the following statements best explains whether the clients would be compensated for their financial losses if the cosmetic surgeon's negligence was proven to have caused their loss?

- a. Only the mother would receive compensation for her financial losses because there is an established duty of care between doctors and patients. The daughter would not be owed a duty of care for her pure economic loss because there was not a 'special relationship' between her and the surgeon.
- b. Neither the mother nor the daughter would receive compensation for their financial losses because they have suffered pure economic loss.
- c. Both the mother and the daughter would receive compensation for their financial losses because there is an established duty of care between doctors and patients.
- d. Only the mother would receive compensation for her financial losses because there is an established duty of care between doctors and patients. The daughter's loss is too remote.

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18) See below a list of psychiatric injuries:

- i. post-traumatic stress disorder
- ii. claustrophobia
- iii. Pathological grief
- iv. Clinical depression

Which of the injuries listed are recognised psychiatric injuries for the purposes of a claim in nervous shock (psychiatric harm)?

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

19) 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 Callum
- b. Callum and Dalvinder
- c. All are primary victims
- d. Adrian and Brett

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20) A solicitor has been instructed by two work colleagues: an older man and a younger woman. They were both attending the company AGM when a car driver lost control of their vehicle and crashed into the queue of people waiting to get into the conference.

The older man was in the queue. He suffered a minor injury to his leg but has also been diagnosed with post-traumatic stress disorder (PTSD). The younger woman was on the other side of the road at the time and saw the accident take place. She has also been diagnosed with PTSD.

Which of the following statements best explains whether the clients would be compensated for their PTSD if the car driver's negligence was proven to have caused their loss?

- a. Only the older man would receive compensation for their PTSD because there is an established duty of care between road users and pedestrians. However, the younger woman would not be owed a duty of care for their pure psychological harm as she is neither a primary victim nor a secondary victim.
- b. Neither the older man nor the younger woman would receive compensation for their PTSD because they have suffered pure psychological harm.
- c. Both the older man and the younger woman would receive compensation for their PTSD because there is an established duty of care between road users and pedestrians.
- d. Only the older man would receive compensation for their PTSD because there is an established duty of care between road users and pedestrians. However, the younger woman's PTSD is too remote.

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21) A client has been diagnosed as suffering from post-traumatic stress disorder. This was caused when the client saw a lorry swerve out of control and crash from a nearby road through the park railings and onto the area of grass where children unknown to the client were playing together. The lorry hit one of the children who subsequently died.

The client was sitting on a park bench some distance away from the accident but they witnessed the whole horrific event. They also went to the scene immediately afterwards to try to help. The insurers of the lorry have admitted liability for the death of the child.

Which of the following statements best explains whether the client would be owed a duty of care for their post-traumatic stress disorder?

- a. A Yes, because the insurance company has admitted liability for the death of the child.
- b. Yes, because while the client was not in any physical danger, the lorry driver owed a duty of care to all foreseeable rescuers.
- c. Yes, because the client suffered a foreseeable psychiatric injury due to what they saw and heard.
- d. No, because the client did not have a close tie of love and affection with the dead child.

22) A client is a firefighter who has been diagnosed with depression. This was caused when the client attended an accident on a motorway. Two cars had collided and crashed into the central reservation. The fire engine arrived on the scene within five minutes of the accident. The client crawled into the wreckage to free a passenger in one of the cars. Petrol was leaking from the car during this event but it did not, fortunately, ignite.

Which of the following statements best explains whether the client would be owed a duty of care for their depression?

- a. Yes, because the client was in danger of suffering a physical injury during the rescue.
- b. No, because the risk of physical injury was low as the fuel did not actually ignite.
- c. No, because the client did not have a close tie of love and affection with the passenger in the car.
- d. No, because the client is a professional rescuer and they should be used to seeing horrific scenes as part of their job.

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23) See below a list of statements regarding 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

Which of the statements are accurate as regards occupiers?

- a. None of these statements
- b. All of these statements
- c. (i), (ii) and (iv)
- d. (iii) and (iv)

24) Which of the following types of visitors are not covered under the Occupiers' Liability Acts?

- a. Invitees
- b. Those using a public right of way
- c. Trespassers
- d. Those having a legal right of entry

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25) See below a range of scenarios:

- 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.

In which of the situations is there likely to be liability under the Occupier's Liability Act 1957?

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

26) 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. An occupier of land affected by the neighbour's noise levels
- d. A son or daughter of an owner of land that has been damaged by a chemical leak

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27) A solicitor's client is an employee of a plastics company and works in its factory as an operator of a machine that makes plastic cups. The plastics company has contracted with a maintenance company for the maintenance of its plant and equipment.

The maintenance company had installed a fence to guard the dangerous moving parts on the plastic cup machine. When the client first began to use the machine, they discovered that, although there was a safety guard over the dangerous moving parts on the plastic cup machine, the safety guard could easily be moved to one side. The client found that this made their work on the machine much quicker. Due to this, the client developed the habit of moving the safety guard to one side when they were working on the machine.

One day the client caught their hand in the machine and suffered severe injury, necessitating the amputation of their hand.

Which of the following statements best explains whether the plastics company has breached the duty of care that it owes to your client?

- a. Yes, because the duty to provide a safe system of work is relevant as the client should not have been able to move the safety guard and continue working on the machine.
- b. No, because the plastics company has supplied safe plant and equipment as there was a safety guard around the dangerous parts of the machine.
- c. No, because the client was at fault in moving the safety guard to one side.
- d. Yes, because the plastics company will automatically be found to be liable in negligence as there is a regulation under the Health and Safety at Work etc Act 1974 that covers safety guards.

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28) A claimant suffered a badly broken leg while being a passenger on a motorbike driven by the defendant. The defendant pulled out of a side road into the path of an oncoming car. The claimant feared that the car would hit the defendant's motorbike. In order to avoid this, they jumped from the motorbike and broke their leg in the fall. In fact, the car driver managed to swerve around the defendant's motorbike and avoided a collision. The claimant was not wearing a crash helmet. The Police Accident Report confirms that the defendant was required to undertake a breath test after the accident. This indicated that the defendant's blood alcohol level was in excess of the legal limit.

Which of the following statements best explains why the defendant may be able to successfully rely on an applicable defence?

- a. Because the defendant will be able to rely upon the defence of illegality as the claimant was not wearing a crash helmet.
- b. Because the defence of contributory negligence could be relied upon by the defendant if it can be proven that the claimant must have known that the defendant was intoxicated.
- c. Because the claimant was clearly contributory negligent by jumping off the motorbike.
- d. Because the claimant was clearly contributory negligent by not wearing a crash helmet.

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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

30) A solicitor's client owns and runs a clothes shop. They contracted with a known and reputable company to supply, and fit, new stairs to the second floor of the shop. The work was carried out one evening while the shop was closed to customers. The next day a customer trod on a long protruding nail in the middle of the bottom step, causing a severe injury to their foot.

Which of the following statements best explains whether the shop owner will be liable for the injury to the customer?

- a) Yes, because, despite the fact that the shop owner used a reputable company to carry out the work, it was reasonable to expect the shop owner to check the stairs before opening the shop to the public.
- b) No, because the shop owner used a reputable company to carry out the work and is therefore not at fault in any way. The customer should bring their claim against the company that installed the stairs.
- c) No, because the shop owner used a reputable company to carry out the work and it was not reasonable for the shop owner to check the stairs before opening the shop to the public. The customer should bring their claim against the company that installed the stairs.
- d) Yes, because the customer was injured due to a breach of the duty of care the shop owner owes their visitors. The shop owner cannot delegate this duty of care to the company that installed the stairs.

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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) 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 around, 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 office, 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 office and leaves her on the floor. He goes out and locks the door.

Advise Wendy of her potential claims 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.

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.

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- 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" owned by Dome plc. 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 now 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) 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.

A nationwide action group which is campaigning against factories which pollute local areas by the creation of excessive noise and vibration.

Advise IPB Ltd as to their potential liability in nuisance.

END OF QUESTIONS