

THIS PAPER IS NOT TO BE REMOVED FROM THE EXAMINATION HALLS

UNIVERSITY OF LONDON

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LLB EXAMINATION
for External Students

PART I EXAMINATION (Scheme A)
SECOND AND THIRD YEAR EXAMINATIONS (Scheme B)
GRADUATE ENTRY LEVEL II (Route A)
GRADUATE ENTRY SECOND AND THIRD YEAR (Route B)

BSc DEGREES
for External Students

MANAGEMENT WITH LAW, LAW WITH MANAGEMENT, ACCOUNTING
WITH LAW AND LAW WITH ACCOUNTING FOR STUDENTS IN THE
EXTERNAL PROGRAMME

Law of Tort

Wednesday 20 May 2009 : 10.00 - 1.15 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **EIGHT** questions.

Candidates should answer all parts of a question unless otherwise stated.

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1. Stephen works as a cab driver for Prang Ltd. There have never been any complaints about his work or behaviour. The Micawber Health Authority arranged with Prang for Stephen to work for the council for some weeks driving patients without transport of their own to and from hospital appointments. One morning Stephen was in a bad temper and, when a young patient, Toby, started teasing him about his appearance, Stephen stopped the cab, turned round and hit him very hard. Toby struck his head on the door handle and injured his eye. Stephen drove him to the Accident and Emergency Department at Micawber Hospital.

At the hospital a nurse, Jennifer, administered a dose of antibiotics. She did not ask Toby if he was allergic to the antibiotic and carried out no tests. Toby reacted very severely to the antibiotic, was unconscious for some days and has some permanent brain damage. He has also suffered permanent damage to his eye.

Advise Toby.

2. The Department of Law at the University of Toytown held a drinks reception in the foyer of the law building after a lecture. The catering was provided by outside caterers, Salmonella plc. During the reception three wine glasses accidentally fell to the floor and were smashed. Karl, a waiter provided by Salmonella, swept the glasses to the side of the foyer and left them for the cleaner to deal with in the morning.

The cleaning is carried out by Filthywipe plc under contract with the university. Lucia is employed by Filthywipe and her duties include cleaning the law building. She is a single mother with a year-old son called Marcus. She had been unable to find suitable child care arrangements for Marcus and very often had to bring him to work with her. This is contrary to the terms of her employment with Filthywipe, but some of the security staff employed by the university had seen Marcus with Lucia and had not stopped her.

On the morning after the party Marcus crawled round the foyer while Lucia was working. He crawled to the place where the broken glass had been left. He picked up and started to eat some crisps which had fallen to the floor but also picked up and swallowed a shard of broken glass. His mouth and throat were badly cut.

Discuss Marcus's possible claims in tort.

3. Slapdash Construction Ltd was carrying out road maintenance work. One of its employees, Liam, carelessly severed the electricity cable under the highway with a mechanical digger. The road is in an isolated rural area and the cable serves only a very small number of customers including Tumbledown Castle, the home of Lord Tumbledown.

The incident happened on the Friday before a bank holiday weekend, during which the castle was to be open to visitors to raise funds for a charity, the Society of Upright Gentlefolk (SUG), of which Lady Tumbledown is patron. Lord Tumbledown was advised by health and safety specialists that, because of the ruinous nature of parts of the castle, it would be dangerous to admit visitors until power had been restored. (This did not happen until the following Tuesday.) The castle was therefore closed and Lord Tumbledown had to refund money to visitors who had purchased tickets in advance.

At the time that power was cut off, Lady Tumbledown had been using a computer, which is linked to the castle's database. This caused considerable damage to the system. Lord Tumbledown has a contract with Megabyte Computer Specialists (MCS) to maintain the computer system for an annual fee. As a result MCS have to spend two days restoring the computer system under the terms of the contract.

Advise Lord Tumbledown, SUG and MCS as to any claims they may have against Slapdash Construction.

4. 'So it seems to me that there is good sense behind our present law that in general an innocent but negligent misrepresentation gives no cause of action. There must be something more than a mere misstatement. I therefore turn to the authorities to see what more is required.' (*Hedley Byrne v Heller* (1963) per Lord Reid).

Discuss this statement in the light of developments in the law since 1963.

5. In your view what are the principal criticisms that can be made of the present law concerning liability in tort for psychiatric damage? If there were to be a statutory reform of the law in this area, what would be your principal recommendations?

6. Dai is the publisher of 'Strong Acid', a satirical website. The website has a weekly feature called 'Pages from the Diary', which consists of a fictional journal of a featured celebrity. Last week the feature was 'Pages from the diary of Cerys Hughes'. Cerys Hughes is a well-known opera singer, who has a reputation for being rather emotional. In this feature, she was presented as slowly losing her sanity over the course of the week, until, in the final day's fictional entry, she was admitted to a mental hospital. She is very unhappy about the manner in which she has been portrayed.

'Strong Acid' has also been conducting an investigation into allegations of corruption within the Greenshire District Council. Last week, it published a feature written by Hamid, a freelance journalist. The feature included the following sentences:

We have it on good authority that, at a private meeting between a number of Greenshire's senior councillors last week, Councillor Jimmy Jones said to Councillor Sally Smith, 'Come on, Sally. You've been on the take for years. You're always interested in a bribe.'

The quoted words are taken from a transcript that was sent to Hamid by an undisclosed, but usually reliable, source. Dai has no other evidence to link Sally Smith with corrupt practices.

Cerys Hughes and Sally Smith are threatening to sue Dai for defamation. Advise him.

7. Hamish is the chairman of an organisation called the 'Stop the Nimby Development Committee', an organisation determined to stop the construction of a new bypass round the town. They co-ordinate the activities of environmental activists (concerned with the effect of the development on wildlife) and businesses in Nimby (concerned with the effect on their livelihood). Graft Construction Ltd has been appointed by the Department for Transport as main contractors for the development. The committee learns that several local firms, including Trough Ltd and Yuppy Ltd, have submitted tenders to Graft Construction for various parts of the work and resolves to get these tenders withdrawn.

Hamish tells Trough Ltd that, if it does not withdraw its tender, none of the local traders on the committee will ever do business with them again.

Hamish tells Yuppy Ltd that, if it does not withdraw its tender, the environmental activists will try to block the entrance to Yuppy Ltd's works so that no goods can be taken in or out. Yuppy Ltd withdraws its tender.

As a result of these withdrawals Graft Construction cannot start work on the proper date and incurs contractual penalties to the Department for Transport.

Advise as to any possible claims in tort.

8. Fred is a tenant farmer living and working at Wuthering Farm, a large arable farm in a remote agricultural area of Northern England. His landlord is Agricultural Entrepreneurs (North) Ltd. Wuthering Farm supplies a large proportion of the potatoes sold to greengrocers in that part of the country. Fred keeps a very large pile of manure, which is used to fertilise the soil in his fields once a year.

Fred's neighbour, Kieran, lives at Merrymeadows Manor, which he bought six months ago. This property had previously been derelict, but Kieran is converting it into a luxury country house hotel. However, his plans are being jeopardised by Fred's activities. The manure pile, which is only twenty metres from the lawn at Merrymeadows Manor, creates a strong smell. Kieran considers that this smell is likely to offend his guests, cause him to lose business and diminish the value of the house. The manure pile attracts rats, which come into Kieran's property, and eat the flowers in his decorative flower beds. Kieran considers that the rats present a risk to the health of his family and guests.

There is also a large oil drum on Wuthering Farm, which has recently been discovered to have been leaking for several years. The oil has seeped down through the ground into an underground watercourse. As a result, the ponds at Boris's neighbouring fish farm have been seriously contaminated. Evidence suggests that the leaking oil comes from a minute crack caused many years ago by the workers who installed the tank.

Kieran and Boris are threatening to sue Fred and his landlord in nuisance and/or the rule in *Rylands v Fletcher*. Advise them.

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