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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. Sheila, who lives in Australia, came in January 2009 for a two-month visit to her daughter Ruth and her family in England. She had not seen them for three years. In February she went to the children's playground, run by St John's Church, with her six-year-old granddaughter Linda. The local council, the Miserly District Council, had a statutory power to inspect such playgrounds but had not done so for six years. Linda played on a chute but on one descent her foot became trapped and she suffered a nasty gash on her ankle. Sheila managed to extricate her and took her to the Accident and Emergency Department at the Miserly Hospital. There were many patients waiting treatment. Hilda, the nurse who first examined Linda, classed her as being of low priority. Linda was not fully examined for eight hours. By that time Sheila had telephoned Ruth, who joined them at the hospital. When she was eventually treated, Linda's wound was found to have been very badly infected. The wound did not heal and, to save Linda's life, it was necessary to amputate her foot. If she had been seen immediately on arrival, the medical evidence is that she would have made a complete recovery after a few weeks.

Both Sheila and Ruth have suffered a recognised psychiatric injury.

Advise as to any claims in tort by Linda, Ruth and Sheila.

2. Mr and Mrs Jones were having substantial refurbishment work carried out at their house by Jerrybuilders Ltd. They went away for a weekend leaving their 17-year-old son Tom at home on his own. They told him that in no circumstances was he to invite any of his friends into the house. Tom went out with a group of friends on the Saturday night and took some of them home with him to play computer games.

One of the friends, Sam, had been playing football that afternoon and, without asking Tom, decided that he would take a shower. When he turned on the shower tap, the head of the shower (which had been installed the previous week by Jerrybuilders) fell off and hit him in the eye causing serious injuries. Sam had already lost the sight of the other eye as a baby and the injury in the shower has left him nearly blind.

Tom called an ambulance to attend to Sam. When Una, a paramedic, was pushing Sam out of the house in a wheelchair to the waiting ambulance, she fell into a trench alongside the front path. The trench had been dug by Jerrybuilders and covered with a sheet of metal, which was too flimsy to support the weight of the wheelchair. Una broke her leg and was off work for several weeks. Sam did not receive any further injuries.

Advise Sam and Una.

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 causes 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 Tumbledon, SUG and MCS as to any claims they may have against Slapdash Construction.

- 4 'My conclusion is that a duty to use care in statement is recognized by English law, and that its recognition does not create any dangerous precedent when it is remembered that it is limited in respect of the persons to whom it is owed and the transactions to which it applies.' (*Candler v Crane, Christmas and Co.* (1951) *per* Denning LJ.)

Discuss this statement in the light of subsequent developments. Could a judge express himself in the same words today?

- 5 'Recent decisions concerning vicarious liability were no doubt motivated by a desire to do justice, but have left the law in an unclear and unprincipled state.'

Discuss.

6. Basil runs *Straight to the Ear*, a ‘talking newspaper’ for blind people made available to subscribers as a digital audio file. The audio files are stored on a website hosted by Superhighway plc, an internet service provider. A new edition of *Straight to the Ear* is uploaded every week.

For the last few months, Basil has been running a campaign against Vizaid Ltd (“the company”), a small private company making and selling goods designed to assist blind people with everyday tasks. The company is controlled by its two leading shareholders, Henry and George. Basil dislikes Henry and George and considers that the company’s products are far too expensive. He also thinks that the company conducts its business in an exploitative manner. Last week, *Straight to the Ear* included the following passage:

It’s well-known to listeners to *Straight to the Ear* that the people involved in running Vizaid Ltd are crooked. Their products are over-priced and are much too expensive for most people with a visual impairment. However, we’ve now learned something else that is pretty disgraceful. Their employees are paid only the national minimum wage.

It is true that two of the company’s long-standing employees are paid only slightly more than the national minimum wage. However, a number of other employees are paid significantly more. Henry, George and the company are threatening to sue Basil and Superhighway plc for defamation over the words quoted above.

Discuss.

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. A charitable company, Second Chance Ltd, has recently opened Eskdale, a residential home for ex-offenders, in a large house at the centre of Brownville, a small commuter village. The company has planning permission for this use of the property. The first residents at Eskdale are all men who have served lengthy periods of imprisonment for very serious crimes. Local residents fear that these residents will cause personal injury and damage in the village at some point, although no such injury or damage has yet occurred.

Last month, the company held the annual Second Chance Ball at Eskdale. This caused significant problems for the other residents of Brownville. For a weekend, roads within the village were very congested and residents found difficulty in driving in and out of the village. Furthermore, on the night of the Ball, music was played at high volume, disrupting the sleep of Brownville's residents.

The company has obtained planning permission for, and erected, a wind turbine to generate electricity for Eskdale. When the turbine is running, it produces a very high-pitched sound, which is imperceptible to humans, but is very disturbing for dogs. Roderick's boarding kennels have lost a great deal of business as a result.

Last week, during a storm, one of the blades of the turbine blew off and landed on the home of Janice, a resident of Brownville. As a result, Janice suffered serious injuries. Scientific investigations have failed to discover the cause of the accident. The construction, assembly and maintenance of the turbine appear to have been in accordance with most advanced practice.

Consider whether the above facts disclose any potential actions in nuisance and/or under the rule in *Rylands v Fletcher*.

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