Examination Period 3: 2017/18

LAW200918N

Module Title  Law of Tort
Level  Five
Time Allowed  Two hours

Instructions to students:

- Enter your student number **not** your name on all answer books.
- Answer **three** out of **eight** questions.
- All questions are equally weighted.
- Begin each question on a separate page; label each page clearly with the number of the question you are answering.

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<table>
<thead>
<tr>
<th>No. of Pages</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Questions</td>
<td>8</td>
</tr>
</tbody>
</table>

Page 1 of 5
Answer **three** out of **eight** questions.

**Question 1**

Ann is the owner and captain of a ferry boat which she operates on the River Nene. Ann is steering the boat along the river one December morning, while using her mobile phone to order Christmas presents. She fails to notice that the ferry boat goes off course and it collides with a motor boat, owned by Bill. Bill is thrown into the water by the collision and his motor boat is smashed to pieces.

Chris, a passenger on the ferry boat, dives into the water to help Bill. Both of them are taken on board the ferry boat and flown to hospital by helicopter. Bill is found to be suffering from hypothermia as a result of being in the cold water.

When Chris dived into the water he hit his head on a piece of wood from the motor boat. Chris is examined by a doctor and found to have a cut to his head and to suffer from temporary blackouts as a result of his injury. He was kept in hospital for a few days and then allowed to go home but was told to rest, until he had fully recovered. A week after leaving hospital Chris decided to go for a ride on his bicycle. As he cycled along the road he suffered a blackout, rode into a ditch and broke his leg.

Diesel oil from the motor boat was washed 300 metres from the collision to a boat yard, owned by Dan, at the side of the river. The diesel oil covered the entrance to the boat yard. Dan was loading some crates of stolen whisky into his boat, at the entrance to the boat yard, when he slipped on the diesel oil, fell and broke several ribs.

Advise Bill, Chris and Dan of the claims they may make, if any, in negligence.

**Question 2**

Explain and analyse the factors the courts use to determine whether the defendant is in breach of the duty of care in negligence, including the subjective factors which are taken into account.
Question 3

Eric, aged 22, is a professional footballer and he lives in a large house with extensive grounds. He decided to have a swimming pool built. Eric looked on the Swimming Pool Association website, which provided a list of ‘approved installers’ and picked Bob, a builder. The website advised people to carry out their own checks. Eric met Bob, discussed his requirements with him and paid him a £40,000 deposit. A few days afterwards, Bob telephoned Eric and told him that his building business was being made bankrupt. As a result, Eric lost his deposit.

One of Eric’s team mates held a Christmas party. Eric went to the party and was introduced to Felix, a friend of his team mate. Felix was a sports agent but was also a successful amateur investor on the Stock Exchange. Felix told Eric that Felix was going to buy shares in a new computer games company, which he said would “Make you a millionaire”. Eric replied, “I think I’ll do it”. A few days later Eric bought £100,000 worth of shares in the company. One month later the company went into liquidation and Eric lost all his money.

Eric went to the Wessex Hospital, a private hospital, with his girlfriend Gina. He told the doctor that he wanted to have a vasectomy, as he did not wish to have any children. Eric paid for the operation which was successfully carried out and the doctor told Eric that he did not need to use contraception. Some months later Eric had a new girlfriend, Helen and told her about his vasectomy. In fact, the vasectomy was naturally reversed and Helen became pregnant and had a baby.

a. Advise Eric of the claims he may make for negligent misstatement, if any:

   i. against the Swimming Pool Association; and

   ii. against Felix

b. Advise Helen whether she can successfully claim against the Wessex Hospital.

Question 4

Explain the defences of volenti and illegality and consider whether they need reform.
Question 5

Ivy bought a luxury penthouse flat in a converted old dock building in Liverpool. Ivy's boyfriend Jack, moved into the flat to live with her. Jack, a nurse, suffers from asthma. Jack sometimes works night shifts at the hospital.

The council granted planning permission for the neighbouring old dock, which is owned by Ken, to be used as a container terminal. Dust from the renovation work caused Jack breathing difficulties. When the container terminal started operating, lorries going in and out of the terminal 24 hours a day disturbed both Ivy’s and Jack’s sleep.

Lil owns a factory near the docks and employs 100 people. Smoke and fumes from the factory chimney sometimes fill the nearby streets and surround the flats. The fumes have damaged the windows of Ivy’s flat and the paint work on her sports car, which was parked in the street.

One night vandals broke into the factory and damaged the oil tank which supplied fuel to the factory. Oil escaped, seeped through the ground and contaminated the water supply to a city farm, one kilometre away, which is owned by Mick. The sheep on the farm drank the contaminated water and they all died.

Advise Ivy, Jack, Mick and the residents of any claims they may make in tort.

Question 6

Lord Grantum owns Downtown Abbey, a mansion set in large grounds. He decides to give the public free admission to the mansion and the grounds.

Lord Grantum arranges for Nic, a local tree surgeon, to cut off rotten branches on trees in the grounds. Nic carries out the work. The following day, Olive, a visitor, is walking through the grounds when a rotten branch falls from a tree, on to Olive and breaks her arm.

Pam takes her children, Rose, aged 16 and Sara, aged 5, to Downtown Abbey. Pam forgets her handbag and returns to the car to collect it. Meanwhile Rose takes Sara for a walk through the grounds. While Rose is sending a text message to a friend, she does not notice Sara going into the bushes. Sara eats some red berries from a bush. The berries are poisonous and Sara becomes extremely ill and needs hospital treatment.

Lord Grantum leases a cottage in the grounds to Tracy, to run a tea shop. Tracy puts a notice at the entrance to the tea shop which states: 'No liability is accepted for any injury or damage'. Una visits the tea shop for a cup of tea and some cake. She then goes to the toilet but on the way back, Una takes a wrong turn. She goes through a door marked 'Private', falls down a steep flight of stairs and breaks her leg.

Advise Olive, Sara and Una of any claims they may make under the Occupiers’ Liability Acts.
**Question 7**

Explain the torts of assault, battery and false imprisonment and consider whether the law is satisfactory.

**Question 8**

Val opened a restaurant in Northtown called Meals4U and soon attracted lots of customers. Wendy went to the restaurant for a meal and had roast chicken, which did not taste very nice. The next day she became ill with salmonella poisoning as a result of eating the chicken.

Wendy emailed a letter to Boris, the editor of the local newspaper, the Northtown Post, stating, “The food at the Meals4U restaurant tastes like pigswill and makes you vomit”. The letter was published in the next edition of the newspaper. Since the letter appeared the number of customers at Meals4U has dropped sharply.

Wendy also sent a copy of her letter to Zac, the local Member of Parliament. Zac knows Val as they went to university together. Val refused to go out with Zac and he has never forgiven her. Zac repeated Wendy’s statement in the House of Commons. He also posted it on a website, ‘myfavouriterestaurant’ which is run by Alan.

Advise Val of any claims she may make for defamation.

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End of Paper