

[REDACTED]
Bachelor of Laws

LAW: LAW OF TORT I AND II (LLAW [REDACTED])

[REDACTED]
5 pages, 10 questions

Time: 9:30am – 1:00pm
(including 30 minutes reading time)

Answer FOUR (4) Questions

Employer's Liability

- * 1. Buildco Ltd, the contractor in charge of the construction of a new warehouse and storage facility, sub-contracted the painting of the ceiling to Improvements Ltd. Chow, an experienced painter employed by Improvements Ltd, was assigned to the task. To reach the ceiling, Improvements Ltd provided a mobile platform. The platform did not contain a ladder, but consisted of a series of diagonal crosspieces, each crosspiece .5 metres above the other. Chow climbed the platform by stepping on the crosspieces. While doing so, he slipped and fell to the ground, suffering serious injuries. Chow, who was wearing rubber slippers, said he slipped because he is a short man and the crosspieces were too far apart.

Regulation 38C of the Construction Sites (Safety) Regulations provides:

“Where work cannot be safely done on or from the ground or from part of a permanent structure, the contractor responsible for the construction site concerned shall provide, and ensure the use of, a scaffold, ladder or other means of support, all of which shall be safe for the purpose, having regard to the work to be done.”

With reference to relevant case law, advise Chow regarding the possible tort actions that might be available. [Do not include a discussion of the Employees' Compensation Ordinance liability – you can assume that such advice has already been given]

239+

- * 2. Polly was not a customer of Denny's Cafe, but was shopping nearby. Polly often used Denny's Cafe's toilet when she was shopping in the area, ignoring the sign posted outside which read "For customers' use only – others use at your own risk". Polly was also aware of a notice permanently posted inside the toilet which read: "Caution - wet floor".

Occupier's Liability

Occupier:

Visitor/Trespasser

Permission

Independent Contractor

*Warnings
not soap*

When Polly entered the toilet, she noticed Nathalie, the toilet assistant, sitting in the corner on a stool. Nathalie was employed by Management Ltd, to whom Denny's Cafe had contracted the cleaning of the toilet once a day. A few minutes after entering a cubicle, Polly came out to ask Nathalie for some toilet paper. Polly stepped forward towards Nathalie and only then noticed that Nathalie was cleaning the floor, which was now completely soaked with soap and water. At that moment Polly slipped and fell to the ground, sustaining an injury to her left ankle.

With reference to relevant case law and legislation, advise Polly regarding any tort actions she may have.

Against Denny's Cafe

owner

ECO

3. Theo, aged 41, unmarried but living with his girlfriend Jane, is a scaffolding worker. His work involves the dismantling of bamboo scaffolding after the completion of small building projects. Under his contract with Tower Contractors, on whose construction projects he has been working for six months, Theo is required to work eight hours per day. Tower Contractors does not provide him with any equipment, in view of the simple nature of the work. Theo is paid according to the number of pieces dismantled. On average he is able to earn \$20,000 per month. In the contract he is designated as an independent contractor. On some days after his shift he does similar work for another construction company.

Theo was standing on the scaffolding when the cable which secured his safety harness malfunctioned. An investigation showed that the malfunction occurred as a result of a co-worker having deliberately tampered with the safety harness, whether as a joke or a malicious act is unknown. Theo was killed in the fall.

With reference to relevant case law and statutory provisions, advise Jane regarding her entitlement under the Employees' Compensation Ordinance, and the assessment of any compensation to be awarded.

Nuisance
Essay

4. "Given its technicalities, and the restrictions on its availability and the permitted remedies, the tort action in nuisance has lost most of its utility, to the point where it should be abolished."

Critically discuss this statement with reference to and discussion of relevant case law.

5. "That a tort of breach of statutory duty exists in Hong Kong is purely a historical oddity. There is nothing that the common law of breach of statutory duty contributes to Hong Kong law which cannot be achieved through recourse to the modern law relating to the tort of negligence".

Critically discuss this statement with reference to and discussion of relevant case law.

Vicarious
Liability
(do test)

6. "With only a few exceptions, the individualistic philosophy that underlies the common law is such that a person is not liable for the torts of another."

Identify the main exceptions (up to four is sufficient). With respect to each of these, explain by reference to and discussion of a case or cases the nature of the exception, the justification for the exception, and what the plaintiff must prove in order for that exception to operate.

429+>

p 464 - arrest

Vicarious Liability

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367

Trespass

7. George was hiking in a remote part of the New Territories, when he became lost. He spent the night wandering aimlessly, trying to stay warm. The next morning, he came upon some hikers, Janice and Ada, and he quickly approached them for water and to ask directions. Janice and Ada were frightened, and stepped back. George was able to reassure them of his intentions and his situation. Janice and Ada then explained to George how to walk back to the main road, and gave him some water and fruit. At that moment, Bill, an undercover police officer assigned to hiking trails to catch illegal immigrants, was nearby and tackled George from behind and pushed him to the ground. George was too weak to resist. Bill asked to see his ID card, and questioned him as to his activities. George could not produce his ID card, having lost it during his overnight wanderings.

Battery

was force?

False

Imprisonment

One hour later, after a telephone call to his supervising officer, Bill was instructed to release George. The police supervisor had been able to verify George's identity through a computer verification and telephone call to George's employer.

Assault

Later that day, Bill telephoned George to say that if he did not confess to an attempted robbery of the hikers, his family would "face the consequences". George was frightened, subsequently suffered illness, vomiting, and extreme nervous agitation for some time thereafter.

With reference to relevant case law and statutory provisions, advise George regarding actions that can be taken against Bill and the police department.

8. Matt, a businessman, was interested in purchasing a small residential building for investment and rentals. He came across the website of Jane's Commercial Realty, which advertised itself as "the best in the business, advising Hong Kong investors for more than 25 years". One of the buildings advertised was a small, 10 year old, three storey residential building owned by Ella. The advertisement on the website of Jane's Commercial Realty said that the building was a "solid, risk-proof investment for the careful investor". Before purchase and sale, Matt requested professional survey documents certifying the building as sound, and these were provided by Ella. They were prepared by Timothy, a professional surveyor appointed by Ella. In fact, the building foundations were defective.

Seven years after purchase, it became apparent that the foundations were sinking, very slightly, but enough to cause some of Matt's tenants to complain that the floor was uneven. Some of them moved out, leaving Matt with lower rents and less than full occupancy rates. The value of the building declined to a level below the purchase price. Worse, the foundation collapse caused damage to some water pipes in the basement, causing flooding, and damage to other parts of the building, including a storage room where Matt stored some of his own personal property.

With reference to relevant case law, advise Matt regarding any tort actions he may have.

9. It was 1 a.m. when Ben, an ambulance driver, was driving an ambulance back to the hospital after picking up a patient. The patient, Tom, was an elderly man who had reported heart pains, and had called the emergency department of Ben's hospital for help. As Ben approached a major intersection at normal speed the light changed from green to yellow. In the split second available for decision Ben decided to accelerate rather than slow down and stop. He was sure there would be little or no traffic at that hour, and he didn't want to waste time at an empty intersection waiting for the light to change back to green. By the time he entered the intersection the light was already red. At the same time, a vehicle driven by Mark entered the intersection from the intersecting street. Mark entered on the green signal, but he accelerated quickly because he was anxious to return home to avoid being stopped by the police (although an experienced driver, Mark's licence had recently been suspended because of his numerous traffic offences). Ben tried his best to swerve to avoid Mark, but due to their respective speeds, Ben could not avoid Mark, and crashed into Mark's vehicle.

Mark was killed in the crash. In the meantime, Tom suffered a complete heart failure and died. Tom's family alleges that if there had been no accident and no delay in reaching the hospital, Tom would have survived.

At the date of the accident Mark was unmarried but living with his girlfriend Jane. Tom was a widower who left behind three self-supporting adult children.

With reference to relevant case law and legislation, advise Jane and advise Tom's family in their tort actions against Ben, including the types of damages and method of assessment of the damages they can expect to receive.

Defamation

10. Professor Wong is the Dean of the Medical Faculty at the University of Kowloon. He recently published an article on Hong Kong's SARS epidemic, which included the following statement about the Government-appointed Hospital Authority (of which there are seven members):

Redo.

Fact

Opinion

“According to the Hospital Authority, in order to avoid alarming the public, it decided not to publicly disclose the extent and nature of the epidemic until three weeks after learning of the first cases. However, the crisis could have been averted but for the concern of the Hospital Authority to cover up the problem and avoid adverse publicity. Members of the Hospital Authority seemed more concerned about keeping their jobs than their duty to the public.”

Competence

On another occasion, Professor Wong made some adverse comments about members of the University of Kowloon's competitor faculty, the Faculty of Medicine at the University of East Hong Kong. These comments were not included in the article. In a meeting of some of the Chief Doctors of Hong Kong's leading hospitals, Professor Wong questioned the competence of the Dean of the Medical Faculty at the University of East Hong Kong's Hospital, Thomas Leung (with whom Professor Wong was in competition for the position of

Secretary for Health and Welfare in the HKSAR Government). At the meeting Professor Wong said that "Dr Leung has taken to alcohol as a way of coping with pressure".

And in yet another incident, in a television interview Professor Wong made the following statement about Dr Anne Chan of the University of East Hong Kong's Hospital:

"The number of SARS cases as reflected in the records kept by Dr Anne Chan is suspiciously low, given the large number of patients that died in the hospital during the relevant period."

Advise Wong in respect of his possible liability in the tort of defamation, including the defences that may be open to him.

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