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RECOGNISING ACHIEVEMENT

OXFORD CAMBRIDGE AND RSA EXAMINATIONS
General Certificate of Education Advanced Level

LAW 2579/RM

SPECIAL STUDY MATERIAL

PRE-RELEASE MATERIAL FOR JUNE 2005 EXAMINATION

Wednesday **22 JUNE 2005** Morning 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

This is a clean copy of the Special Study Material which you should already have seen.

You may **not** take your previous copy of the Special Study Material into the examination.

You may **not** take notes into the examination.

This paper consists of 9 printed pages and 3 blank pages.

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2579 LAW OF TORTS

SPECIAL STUDY MATERIAL

SOURCE MATERIALS

SOURCE 1

Extract adapted from Walker and Walker's English Legal System Richard Ward. Butterworths. pp 62–63, 75, 76, 34–36, 42, 218–219.

The traditional view of……

.....repercussions of law reform.

Where the words of.....

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.....left by the legislature.

SOURCE 2

Extract adapted from Street on Torts John Murphy. 11 th Ed. Butterworths. p 282

Establishing cause and effect.....

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Details:

An extract from 'Street on Torts' by John Murphy. ISBN: 978-0406946829

.....too remote to permit recovery).

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SOURCE 3

Extract adapted from the judgment of Neild J in Barnett v Chelsea Hospital Management Board [1969] 1 QB 428

Without doubt the casualty officer should have seen and examined the deceased. His failure to do either cannot be described as an excusable error as has been submitted. It was negligence. It remains to consider whether it is shown that the deceased's death was caused by that negligence or whether, as the defendants have said, the deceased must have died in any event.

Without going in detail into the considerable volume of technical evidence which has been put before me, it seems to me to be the case that when death results from arsenic poisoning it is brought about by two conditions; on the one hand dehydration and on the other disturbance of the enzyme process. If the principal condition is one of enzyme disturbance – as I am of the view it was here – then the only method of treatment which is likely to succeed is the use of the specific antidote which is commonly called B.A.L. Dr Goulding said this in the course of his evidence:

> "I see no reasonable prospect of B.A.L. being administered before the time at which he died."

and at a later point in his evidence:

> "I feel that even if fluid loss had been discovered death would have been caused by the enzyme disturbances. Death might have occurred later."

So, if damage would have occurred in any event without the breach of the duty of care on the part of the defendant, then the defendant will not be liable.

SOURCE 4

Extract adapted from the judgment of Lord Reid in Baker v Willoughby [1970] 2 WLR 50 HL

If the latter injury suffered before the date of the trial either reduces the disabilities from the injury for which the defendant is liable, or shortens the period during which they will be suffered by the plaintiff [claimant] then the defendant will have to pay less damages. But if the later injuries merely become a concurrent cause of the disabilities caused by the injury inflicted by the defendant, then in my view they cannot diminish the damages. Suppose that the plaintiff has to spend a month in bed before the trial because of some illness unconnected with the original injury, the defendant cannot say that he does not have to pay anything in respect of that month; during that month the original injuries and the new illness are concurrent causes of his inability to work and that does not reduce the damages.

SOURCE 5

Extract adapted from Modern Tort Law Vivienne Harpwood. 5th Ed. Cavendish Publishing. pp 146–150

Causation is a question.....

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An extract from 'Modern Tort Law'. ISBN: 978-1859419762 (Revised Edition)

.....upon by the claimant.

Some of the cases.....

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.....had caused the damage.

In this case the....

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.....contribution to the risks.

SOURCE 6

Extract adapted from the judgment of Lord Salmon in McGhee v National Coal Board [1973] 1 WLR 1 HL

I would suggest that the true view is that, as a rule, when it is proved, on a balance of probabilities, that an employer has been negligent and that his negligence has materially increased the risk of his employee contracting an industrial disease, then he is liable in damages to that employee if he contracts the disease notwithstanding that the employer is not responsible for other factors which have materially contributed to the disease.

SOURCE 7

Extract adapted from the judgment of Lord Reid in McKew v Holland & Hannen & Cubitts (Scotland) Ltd [1969] 3 All ER 1621 HL

The appellant's case is that the second accident was caused by the weakness of his left leg which in turn had been caused by the first accident. The main argument of the respondents is that the second accident was not the direct or natural and probable or foreseeable result of their fault in causing the first accident.

In my view the law is clear. If a man is injured in such a way that his leg may give way at any moment he must act reasonably and carefully. It is quite possible that in spite of all reasonable care his leg may give way in circumstances such that as a result he sustains further injury. Then that second injury was caused by his disability which in turn was caused by the defendant's fault. But if the injured man acts unreasonably he cannot hold the defendant liable for injury caused by his own unreasonable conduct. His unreasonable conduct is *novus actus interveniens*. The chain of causation has been broken and what follows may be regarded as caused by his own conduct and not by the defendant's fault or the disability caused by it.

So in my view the question here is whether the second accident was caused by the appellant doing something unreasonable.

He knew that his left leg was liable to give way suddenly and without warning. He knew that this stair was steep and that there was no handrail. He must have realised, if he had given the matter a moment's thought, that he could only safely descend the stair if he went extremely slowly and carefully so that he could sit down if his leg gave way, or waited for assistance. But he chose to descend in such a way that when his leg gave way he could not stop himself.

SOURCE 8

Extract adapted from the judgment of Lord Justice Stephenson in Knightley v Johns and Others [1982] 1 All ER 851

In The Oropesa Lord Wright … said:

"To break the chain of causation it must be shown that there is … something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or extraneous or extrinsic. I doubt whether the law can be stated more precisely than that."

Negligent conduct is more likely to break the chain of causation than conduct which is not; positive acts will more easily constitute new causes than inaction. Mistakes and mischances are to be expected when human beings, however well trained, have to cope with a crisis … if those that occur are natural the wrongdoer cannot, I think, escape responsibility for them simply by calling them improbable or unforeseeable.

In my judgment, too much happened here, too much went wrong, the chapter of mistakes was too long and varied, to impose on Johns liability for what happened to the plaintiff [claimant] in discharging his duty as a police officer, although it would not have happened had not Johns negligently overturned his car. The ordinary course of things took an extraordinary course. The length and the irregularities of the line leading from the first accident to the second have no parallel in the reported rescue cases, in all of which the plaintiff succeeded in establishing the wrongdoer's liability. It was natural … probable … foreseeable … indeed certain that the police would come to the overturned car … It was also natural and probable and foreseeable that some steps would be taken in controlling the traffic … and some things done that might be more courageous than sensible. The reasonable … observer would anticipate some human errors … perhaps even from trained police officers. But would he anticipate such a result as this from so many errors as these, so many departures from the common-sense procedure prescribed by the standing orders for just such an emergency as this? I can only say that, in my opinion, the judge's decision carries Johns' responsibility too far: in trying to be fair to the inspector the judge was unfair to Johns and gave the wrong answer …

SOURCE 9

Extract from the Law Reform (Contributory Negligence) Act 1945

1 Apportionment of liability in the case of contributory negligence

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An extract from the Law Reform Act 1945. Parts 1 and 2 of section1.

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SOURCE 10

Extract adapted from Casebook on Torts Richard Kidner. 5th Ed. Oxford University Press. p239

The principle of contributory.....

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Details:

An extract from 'Casebook on Torts'. ISBN: 978-1841740119

.....contribute to the accident.

SOURCE 11

Extract adapted from the judgment of Lord Denning in Froom v Butcher [1976] QB 286 CA

The accident is caused by the bad driving. The damage is caused in part by the bad driving of the defendant, and in part by the failure of the plaintiff [claimant] to wear a seat belt. If the plaintiff was to blame for not wearing a seat belt, the damage is in part a result of his own fault. He must bear some share in the responsibility for the damage and his damages have to be reduced to such extent as the court thinks just and equitable.

Whenever there is an accident, the negligent driver must bear by far the greater share of responsibility. But in so far as the damage might have been avoided or lessened by wearing a seat belt, the injured person must bear some share. But how much should this be? This question should not be prolonged by an expensive enquiry into the degree of blameworthiness on either side, which would be hotly disputed. Suffice it to assess a share of responsibility which will be just and equitable in the great majority of cases.

In such case I would suggest that the damages attributable to the failure to wear a seat belt should be reduced by 15%.

SOURCE 12

Extract adapted from Law of Tort John Cooke. 6 th Ed. Pearson Publishing. pp151–152

There are two possible.....

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An extract from 'Law of Tort'. ISBN: 978-0582473485

.....were reduced by 50%.

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