

**LEGAL PROFESSION ADMISSION BOARD**

**MARCH 2014**

**TORTS**

**Time: Three Hours**

This paper consists of **three** questions.

Candidates are required to attempt **all three** questions.

Mark allocations for the three (3) questions are:

**Question One:** 30 marks

**Question Two:** 10 marks

**Question Three:** 20 marks

Answer each question in a separate examination booklet and indicate which question you have answered on the front cover of each examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

**This examination is worth 80% of the total marks in this subject.**

**Permitted Materials:**

**This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.**

**As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.**

*This examination should not be relied on as a guide to the form or content of future examinations in this subject.*

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### Question 1

Lance was riding his bike along a pathway that followed the edge of the Parramatta River in Western Sydney. Lance was an experienced cyclist. Last Saturday he was towards the end of a 30 km ride, which he was undertaking with his wife, Cadella.

The path that Lance was riding on included a road crossing, at a street called Macquarie Avenue. The pathway ran downhill as it approached Macquarie Avenue. Lance braked as he got to the bottom of the hill and looked left and right to see if there were any cars on the road. As there was no traffic, he proceeded across Macquarie Avenue to the pathway leading into the park on the other side of the road.

It so happened that Parramatta Local Council had strung a chain across the pathway at the entrance to the park on the other side of the road. Lance did not see the chain until he was about 10-12 feet away from it. He braked, but not in sufficient time to stop before colliding with the chain. He skidded, and the front wheel of his bike caught in the chain. He was catapulted over the handlebars, landing on his head.

Lance was unable to estimate the speed that he was going at the point of collision with the chain. He said he braked as he came to the bottom of the hill.

Lance had cycled this particular route the previous Sunday, but there was no chain across the entrance to the park at that time. The chain had been placed across the pathway two days before the accident to stop cars from entering the park illegally. It was painted grey, the same colour as the footpath.

Lance understands that part of being an experienced cyclist was appreciating the environment in which the ride was taking place. An aspect of that appreciation was recognising that conditions sometimes change. Lance also understood that if he had been riding "*a bit slower*" the chances were he would have "*been able to stop before the chain*".

A couple of minutes later, Cadella arrived at the scene of the accident to see her husband sprawled on the ground. The scene was horrific. Her husband was on the ground unconscious, and he had blood pouring out of a deep cut in his head.

Lance was in hospital for a number of weeks after the accident, and it was only after the first week that Cadella thought he was going to survive. As a result, Cadella suffered nervous shock.

**Explain what action or actions Lance and Cadella could bring against Parramatta Council. Do not discuss damages.**

**(30 marks)**

**(Question 2 follows)**

**Question 2**

Roger owns a farm near Dubbo. The area is zoned semi-rural where allotments of land are a minimum of 2 hectares. Agricultural uses were permissible in the area without the need for approval.

Roger has a neighbor called Lleyton. Lleyton grows mushrooms in compost which is made from waste material containing stable straw saturated with urine and faeces from horses and other animals. Lleyton earns money from selling these mushrooms at a local market.

The compost gives off a smell that causes nausea and asthma-like symptoms. Often, the smell is so strong that Roger's daughter, Casey, chooses to sleep at her friend's places, and on warm days Roger has to cancel social barbeques at his house.

- a) **Explain what action or actions in tort Roger may have against Lleyton.**
- b) **Explain whether or not Casey would have standing to bring an action in tort.**

**(10 marks)**

**(Question 3 follows)**

**Question 3**

On Tuesday last week security officer Billy Sheers was on duty at the Broadway Shopping Centre, Sydney.

Sheers heard a lady scream out, "Someone stop that man and lady! They have stolen \$150 worth of perfume from my shop!"

The lady was pointing at two people, Scott and Lorraine, who were running through the shopping centre. Scott was holding two boxes of perfume.

As Scott was about to run past Sheers, Sheers stuck his foot out. This caused Scott to trip and hit his head on a marble ledge, resulting in him breaking his nose, and throwing the perfume in front of him. Lorraine picked the perfume up, and continued running. Sheers gave chase to Lorraine, but before he did, Sheers punched Scott hard in the head three more times, and said "I'll be back for you."

Sheers then chased Lorraine into the carpark where she got into a green car. He noticed that the back window was half open and tried to reach for the merchandise. In doing so, Sheers' arms and shoulders were inside the car.

Lorraine accelerated whilst Sheers was still half inside the car, dragging Sheers, who was holding the merchandise, along with the car. Lorraine then screamed, "Let go or I will cut your eyes out!" Sheers could not see any knives around Lorraine.

Sheers was unable to free himself and feared for his life as the vehicle continued through the carpark.

Lorraine slammed on the brakes and Sheers was thrown off the car. Sheers broke his arm when he hit the ground.

- a) **Explain what possible action or actions in tort Scott could bring against Sheers.**
- b) **Explain what possible action or actions in tort Sheers could bring against Lorraine.**

**(20 marks)**

**END OF PAPER**