

**Question 1**

**(a) Linda v John**

Assault: conditional threat

ISSUE	COMMENT
CLA	The student should mention that "intentional acts done with the intent to cause injury" are excluded from the operation of the CLA: s.3B(1)(a) CLA except Pt 7, which does <b>not</b> apply to the question
Assault- the threat	<ol style="list-style-type: none"> <li>1. Apprehension of immediate physical contact (here, the comment was "tell me NOW or I will shoot you"): <u>Stephens -v- Myers</u></li> <li>2. Act must be intentional: <u>Rixon -v- Star City</u></li> <li>3. Apprehension of contact was reasonable: <u>Barton v Armstrong</u></li> <li>4. Without lawful justification</li> </ol> <p>Can the threat actually be carried out? <u>Tuberville v Savage</u>.</p> <p>Could she comply with the condition? Here discussion needed-<u>Police v Greaves [1964] NZLR 295</u> (unacceptable demand)</p>

**(b) George v John**

Battery: shot in the leg

ISSUE	COMMENT
Battery	<ol style="list-style-type: none"> <li>1. Intentional or negligent act: <u>Morris -v- Marsden</u> or <u>Hart -v- AG of Tasmania</u>; 'meant to do it': <u>McNamara v Duncan</u></li> <li>2. Direct: <u>Scott -v- Shepherd</u> or <u>Hutchins -v- Maughan</u></li> <li>3. Physical interference: <u>Collins -v- Wilcock</u> or <u>Rixon -v- Star City</u></li> <li>4. Without lawful justification: <u>Wilson -v- Marshall</u></li> </ol> <p>This is not a contentious application at all. Clearly shooting someone in the leg will amount to battery.</p>

**(c) George v Cavern Club**

Negligence

ISSUE	COMMENT
DOC	- Define the duty: occupiers duty to entrants (extended to protecting lawful entrants from the criminal conduct of 3 <sup>rd</sup> parties): <u>Adeels Palace Pty Ltd v Bou Najem [2009] HCA 48</u>
Breach - look at way scope is defined - see way they run through calculus	<ul style="list-style-type: none"> <li>- Risk statement: That there is a risk that should reasonable care be not taken, a patron of the Cavern Club could be the victim of the criminal conduct of 3<sup>rd</sup> parties.</li> <li>- S5B(1)- was risk foreseeable and not insignificant? (apply Shirt) <ul style="list-style-type: none"> <li>o It can be unlikely yet still foreseeable.</li> </ul> </li> <li>- S5B(2)- would reasonable person take steps to avoid? <ul style="list-style-type: none"> <li>o perform calculus from s5B: likelihood and seriousness v cost of taking precautions: <ul style="list-style-type: none"> <li>▪ likelihood of incident- judgment affected by fact that there had not been any serious issues before, alcohol served, 295 people there .</li> <li>▪ seriousness- very serious.</li> <li>▪ precaution: no security guards at all were on duty. Precaution would have been to hire security guards for the event.</li> </ul> </li> </ul> </li> </ul>
Causation - contentious issue	- Apply Adeels - "Necessary condition" not established, as per the HCA. They held that the absence of the security guards was not a necessary condition for George being shot (having security guards there may have delayed a gunman, but not guaranteed safety). Section 5D(1) would not be satisfied

(d) Sergeant Pepper v Cavern Club  
Negligence: mental harm

ISSUE	COMMENT
DOC (s32)	- Person of normal fortitude test: s32(1) as applied in Wicks v SRA: [33] was it reasonably foreseeable that sights of the kind a rescuer might see, sounds of the kind a rescuer might hear, tasks of the kind a rescuer might have to undertake to try to ease the suffering of others and take them to safety, would be, in combination, such as might cause a person of normal fortitude to develop a recognised psychiatric illness?
Liability under CLA	- Application of s30- plaintiff witnessing "at the scene, the victim being killed, injured or put in peril." <ul style="list-style-type: none"> <li>o Facts state that he was there to rescue, which makes it similar to Wicks v SRA. HCA determined that <b>A person is put in peril when put at risk; the person remains in peril (is "being put in peril") until the person ceases to be at risk</b> (at [50])</li> <li>o Open to debate on the facts about whether there was a continuing risk, or whether Wicks should be distinguished on the facts.</li> </ul>
Must be a psychiatric illness	- s31: no issue here.

Question 2:

Matt v Kurt

ISSUE	COMMENT
Negligence or Battery	Facts are vague regarding the intention element. <ul style="list-style-type: none"> <li>- Intentional action with intention to do harm is excluded from application of the CLA: s3B. This would be straight out battery.</li> <li>- Intentional action without intention to do harm could still be negligence: s3B.</li> </ul> <p>"As <i>Williams v Milotin</i> [(1957) [1957] HCA 83; 97 CLR 465 at 470] makes plain, negligently inflicted injury to the person can, in at least some circumstances, be pleaded as trespass to the person, but the intentional infliction of harm cannot be pleaded as negligence [see also <i>Cousins v Wilson</i> [1994] 1 NZLR 463 at 468]." Per Gummow and Hayne JJ in <i>NSW v Lepore</i> (2003).</p>

(a) Causes of action

ISSUE	COMMENT
Battery	<ol style="list-style-type: none"> <li>1. Intentional or negligent act: <u>Morris -v- Marsden</u> or <u>Hart -v- AG of Tasmania</u>; 'meant to do it:' <u>McNamara v Duncan</u></li> <li>2. Direct: <u>Scott -v- Shepherd</u> or <u>Hutchins -v- Maughan</u></li> <li>3. Physical interference: <u>Collins -v- Wilcock</u> or <u>Rixon -v- Star City</u></li> <li>4. Without lawful justification: <u>Wilson -v- Marshall</u></li> </ol> <p>Defences: consent</p> <ul style="list-style-type: none"> <li>- Sportspeople consent to contact incidental to the game, and even to infringements of the rules: <u>Giumelli v Johnston</u> [1991]</li> <li>- No consent to deliberate acts of violence: <u>McNamara v Duncan</u></li> <li>- Here, not necessarily an act of violence. Consent may hold as an action. Would not preclude an action in negligence.</li> </ul>

<p>Negligence</p>	<p>1. Duty of Care</p> <ul style="list-style-type: none"> <li>- Sports players to competitors: <i>McCracken v Melbourne Storm</i> NSWCA 353</li> </ul> <p>2. Breach</p> <ul style="list-style-type: none"> <li>- Risk statement: That there is a risk that should reasonable care be not taken in the administration of a tackle, that serious injury could be sustained.</li> <li>- S5B(1)- was risk foreseeable and not insignificant? (apply Shirt)</li> <li>- S5B(2)- would reasonable person take steps to avoid?             <ul style="list-style-type: none"> <li>o perform calculus from s5B: likelihood and seriousness v cost of taking precautions:                 <ul style="list-style-type: none"> <li>▪ likelihood of incident- many tackles made in every game.</li> <li>▪ seriousness- very serious.</li> </ul> </li> <li>o precaution: tackle without driving head into the ground. No cost at all.</li> </ul> </li> </ul> <p>3. Causation: no issue here</p> <p>Defences: Assumption of risk in sports</p> <ul style="list-style-type: none"> <li>- s5K discuss whether this is a recreational or dangerous recreational activity.</li> <li>- S5G "obvious risk" (getting injured from an illegal tackle)</li> </ul> <p>a) Recreational activity</p> <ul style="list-style-type: none"> <li>- S5M- would need risk warning to avoid exclusion of liability</li> </ul> <p>b) Dangerous recreational activity</p> <ul style="list-style-type: none"> <li>- S5L: no duty for materialisation of obvious risk in dangerous recreational activity.</li> </ul>
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**Question 3:**

**(a) Shane v Michael**

ISSUE	COMMENT
<p>Establishing nuisance</p> <p>(a) Water damage first interference: water from the swimming pool causing flooding.</p> <p>(b) Security Cameras and floodlights</p>	<ul style="list-style-type: none"> <li>- unlawful interference in someone's land: <i>Halsey v Esso</i></li> <li>- Material interference: <i>P Baer Investments Pty Ltd v University of New South Wales</i> [2007] NSWLEC 128</li> <li>- No contentious issue of balancing rights here.</li> </ul> <p><u>Interference</u></p> <ul style="list-style-type: none"> <li>- No material interference, but rather loss of enjoyment of land: <i>Halsey</i></li> </ul> <p><u>Balancing rights (this is where the marks were mainly awarded)</u></p> <ul style="list-style-type: none"> <li>- Michael's right to peaceful enjoyment vs Shane's right to security measures. Are the interferences <b>unreasonable</b>?             <ul style="list-style-type: none"> <li>o Locality: Munro- neighbourhood. Lights and cameras pointing into yard.</li> <li>o Duration: Wherry. No factual detail on length of time.</li> <li>o Alternatives: could have changed where lights were erected.</li> </ul> </li> </ul>
Who can sue	No issue
Who can be sued	No issue
Remedies	Injunction, or self-help.

**(b) Nelly v Michael**

Establishing nuisance	<ul style="list-style-type: none"><li>- Oldham v Lawson</li><li>- Khorasandjian v Bush</li><li>- Hunter v Canary</li><li>- Not clear in Australia (other than Stockwell v Victoria)</li></ul>
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