

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

TORTS

Time: Three Hours This paper consists of **three** questions.

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

Answer each question in a separate booklet, and indicate clearly on the front of the booklet the number of the question you are answering and also your student number.

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, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may 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.

Question 1

Paul owns a restaurant in Liverpool (Sydney) called "Cavern Club", which was licensed to serve alcohol between midday and 4am. The restaurant, on the 2nd floor of a building, has never had any violent incidents before, apart from one occasion three years ago when a bikie gang called "The Stones" yelled abuse at some patrons. No one was hurt.

On Australia Day Eve last year, the Cavern Club was open for a dinner and dance - 295 people booked in advance to attend. It was attended largely by groups of families, including children and grandparents. Alcohol was served to patrons. Paul thought there was no need to hire any security guards for the evening given there had never been any security-related incidents in the past, other than "The Stones" incident, mentioned earlier.

At 11.39pm, a fight broke out between two women, Linda and Yoko on the dance floor. Chairs, plates and bottles were thrown. Some onlookers joined in the fight.

One man, John, was hit in the face by a chair thrown by Ringo, drawing blood. John left and came back with a gun and he shot into the air a number of times on the dance floor. He turned to Linda, and screamed, "If you don't tell me where that worm who hit me went, I will shoot you in the head!" Linda started crying and saying, "I don't know! I don't know!"

John replied, "Tell me right now where he went or I will shoot you!" Linda pointed to the kitchen and said back, "In there! He went in there!" John looked towards the kitchen and walked away. Linda sank to the ground, crying uncontrollably as he left.

When another man, George, saw John come into the restaurant with a gun, he ran into the kitchen and slipped. John followed him into the kitchen, and despite George begging and pleading not to be shot, he was shot in the leg.

John found Ringo in the bathroom and shot him in the stomach. John then ran to his friend's house as he heard sirens approaching.

Sergeant Pepper arrived at the scene after a distressed patron called 000 reporting a crazed gunman had shot people at the Cavern Club. Sergeant Pepper was the first one at the scene following the shooting and was involved in the rescue operation by providing emergency first-aid and assisting the injured from the club.

Sergeant Pepper searched through the club where he saw badly injured people. He also saw Ringo on the ground unconscious, with blood all around him. Ringo was a great friend of Sergeant Pepper's from school.

Sergeant Pepper suffered post-traumatic stress syndrome, nervous shock and major depressive disorder after this event.

- (a) Advise what possible action or actions in tort Linda may take against John.**
- (b) Advise what possible action or actions in tort George may take against John.**
- (c) Advise what possible action or actions in tort George may take against the Cavern Club.**
- (d) Advise what possible action or actions in tort Sergeant Pepper may take against the Cavern Club.**

Do not discuss damages.

(30 marks)
(Question 2 follows)

Question 2

On 1 May 2009, Matt was playing rugby union as a member of the Randwick Rugby Union Club first grade team against Gordon Rugby Union Club. Kurt was a member of the Gordon team.

During the course of the game Matt, who was running with the ball, was tackled by Kurt, who lifted Matt and drove his head and neck into the ground. This kind of tackle, otherwise known as a “spear tackle” is extremely dangerous and lies well outside the rules of the game.

Matt sustained significant spinal cord injuries.

Advise Matt what possible action or actions in tort that he may take against Kurt.

Do not discuss damages.

(20 marks)

Question 3

Michael installed an in-ground swimming pool in his suburban home.

The redeveloped surrounds of the pool had inadequate drainage. This concentrated the flow of rainwater from his property on to that of his neighbour, Shane, who was the owner of his property. The water passed through a retaining wall between the two properties and penetrated Shane’s house causing flooding.

Michael had also erected floodlights to illuminate the pool area and security cameras. Some of the lights shone into Shane’s living room and two security cameras pointed into Shane’s yard.

Shane’s daughter, Nelly, also liked sun tanning in her father’s backyard and was intimidated by Michael’s lights and security cameras. This made her cohabitation with her dad unacceptable, and she moved out. This put Nelly under much financial difficulty as she now had to pay rent.

(a) Advise what possible action or actions in tort Shane may take against Michael.

(b) Advise what possible action or actions in tort Nelly may take against Michael.

Do not discuss damages.

(10 marks)

END OF PAPER