

**UNIVERSITY COLLEGE LONDON**

University of London

**EXAMINATION FOR INTERNAL STUDENTS**

For The Following Qualification:-

*LL.B.*

**LL.B. Intermediate: Contract and Tort I**

**COURSE CODE : LAWSINT1**

**DATE : 04-MAY-04**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## CONTRACT AND TORT I

Answer **FOUR** questions, at least **ONE** from each of Part A and Part B.

Where a question is divided into two or more parts, **ALL** parts must be answered unless otherwise indicated.

### PART A

1. Farmer Bill has carelessly allowed his cows to catch an infectious disease due to the bad hygienic conditions of his farm. The disease is rare but known within the farming trade, and other farmers take appropriate precautions against it as a matter of course. The disease can be carried between cows by air (no physical contact is necessary) and if a single cow contracts the disease, then the entire herd of which that cow is part has to be slaughtered, in case it passes on the disease to other cows. However, unlike foot and mouth or other cattle diseases, it is normal farming practice to inject cattle with the vaccine for the disease, which prevents infection or transmission. Farmer Bill had failed to do this.

Discuss Farmer Bill's possible liability in negligence to the following claimants:

- a) Farmer Palmer is Bill's neighbour, and he has been obliged to pay a vet to slaughter his entire herd after some of his cattle became infected, probably as a result of being exposed to airborne infection from Bill's herd. Farmer Palmer had also failed to inject his cattle with the vaccine.
  - b) Basil Fawltly, a local hotelier, asked Bill after news of the infection became public, "Is this like foot and mouth, then? Will the whole countryside close? In that case, I might as well just close my hotel for the winter. Nobody will want to come." Bill replied "Yes, you might as well do that: trust me." However, Bill, as a farmer, ought to have known that the disease is different from foot and mouth and that no part of the countryside will need to be closed on account of the outbreak of disease. Relying upon Bill's words, however, Fawltly closes his hotel and pays £5,000 damages for breaches of contracts already made with persons who had made bookings with him during the winter. He also estimates that he would have made £12,000 of profit had his Hotel stayed open.
2. "The use by the courts of the 'duty of care' concept to control the extent of liability in the English law of negligence is often based on policy considerations, and has lacked a clear or consistent basis in principle."

Discuss, with reference to specific cases.

**TURN OVER**

3. Alice owns a factory in which detergent products are manufactured, and which is located in a heavily industrialised area. From time to time, the factory emits fumes that are not harmful, but which produce an appalling smell. Bonnie owns a house near to Alice's factory, which her brother, Chris, and his family use in the summer holidays when Bonnie goes to Australia for an extended break. Last summer, the combination of the intense heat and the smells coming from Alice's factory made the house almost uninhabitable, and Chris's wife, Darina, suffered from recurring headaches as a consequence.

Then, in late August, a small fire in the factory caused the release of small quantities of a toxic gas. This gas is generally only harmful in large amounts, but unknown to Alice and her safety officers, has the potential to trigger a very serious allergic reaction in particular persons. Darina breathed in the fumes while walking in the garden trying to clear her head, and suffered this allergic reaction, which nearly killed her. Chris is furious, and wants to sue Alice. Bonnie on the other hand is friends with Alice, and wants Chris to refrain from taking any action.

Advise Chris and Darina.

4. Answer **BOTH** a) and b):

- a) Alison, Barbara and Carrie are all fifteen years old, and go to the same school. Alison and Barbara are bullies, and often harass Carrie. One day while Carrie is walking home, Alison and Barbara bump into her at the school gates and begin verbally to abuse her. Carrie gets mad and threatens that her brother, Dave, a policeman, will get them back. Alison and Barbara laugh this off. Carrie, enraged, flings her schoolbag at Alison, but hits Barbara in the face. Alison and Barbara, both stunned by this sudden display of anger, break into tears and run away, with Alison threatening that she will "get Carrie for this" the next day. That evening, Carrie reports all of this to Dave, who promptly drives to Alison's house, orders her into his police car, and drives her down to the police station. There, he shows her a police cell and says that she will be sleeping in there soon if she goes near his sister. Alison and Barbara want to bring a legal action.

Advise Alison and Barbara.

- b) If the school authorities had let the girls out early and unsupervised from classes without giving due warning to their parents, and Barbara had been injured in the fight, would any tortious action lie against the school?

**CONTINUED**

## PART B

5. In January 1998 Mary becomes an employee of Asha's business, which sells air conditioning units. Under her contract of employment Mary is the only sales representative. She is paid £20,000 per year plus a commission of 5% of the price of any orders she arranges.

In January 2000, a competitor enters the market, so Asha decides she must increase her sales activity by appointing another sales representative. Pending that appointment, Mary agrees with Asha to undertake the additional work involved for a payment of £5,000. Over the next three months, Mary works much longer hours and obtains a large number of sales above those that she might normally have expected. However, the additional payment is never made.

In 2001, there is a cold summer and the demand for air conditioning falls. Mary is aware that Asha's business is in serious financial difficulties and agrees to waive her salary and to work only for commission.

In 2002 business suddenly improves as a result of a warm spring and summer.

Can Mary claim:

- a) the payment of £5,000; and
- b) her salary of £20,000?

6. 'The decision of the Court of Appeal in *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* (2001) is to be deplored because it has removed a useful degree of flexibility which had been introduced into the law on mistake by the decision in *Solle v Butcher* (1950).'

Discuss.

**TURN OVER**

7. Jake and Sarah are marathon runners and members of the British team for the forthcoming Olympics. On 1<sup>st</sup> February, Fizz Drinks approaches Jake and Sarah about appearing in advertisements to promote a new range of health drinks for young people. Fizz Drinks tells them that the campaign will carry the slogan, 'A Healthy Body for a Healthy Life', and that they want to associate their drinks with the fitness and healthy lifestyle which Jake and Sarah represent. None of these issues is mentioned in the two documents (one between Jake and Fizz Drinks and one between Sarah and Fizz Drinks) that are drawn up and signed by the parties on 21<sup>st</sup> February. These documents state that, in exchange for a payment of £10,000 each, Jake and Sarah will be available for filming on specified dates. They also state that, in addition to the payments to Jake and Sarah, Fizz Drinks will pay the other members of the Olympic marathon squad £1,000.

On 10<sup>th</sup> February, Jake and Sarah were required by the governing body of their sport, the British Sports Organisation ('BSO'), to take a routine drug test. Jake refused without giving any reason. This is a breach of the rules of the BSO. Sarah tested positive for a banned substance and was told the result immediately. These incidents were not made public at that time and neither Jake nor Sarah told Fizz Drinks. On 1<sup>st</sup> April both are banned from competition for two years by the BSO. Their subsequent attempts to overturn these decisions fail. Jake continues to protest his innocence, but Sarah admits to having been a long-term user of banned substances.

Fizz Drinks are refusing to continue with the advertising campaign or to pay Jake or Sarah or the other athletes any money.

Discuss.

**CONTINUED**

8. Kay sells computers to businesses. She is anxious to sell off old stock. Consider all of the following situations:
- a) She posts a letter on Monday to Ted, a regular customer, 'I am willing to sell you a PX1000 laptop for £300. Please reply immediately.' Ted receives the letter on Tuesday and posts a reply accepting the offer at noon on that day. Later the same day, he changes his mind. He telephones Kay and tells her that he does not want the laptop. The next day, he decides that after all he does want the laptop and rings Kay to tell her this, but Kay replies that she sold it to another customer that morning.
  - b) On Monday, Kay also sends a letter to Jane, another regular customer: 'I am willing to sell you a JJ700 computer screen for £100. Please reply immediately.' Jane receives the offer on Tuesday and sends an acceptance by e-mail at noon on that day. Kay's computer is suffering from a defect that does not allow her to access her e-mails. Kay, thinking that Jane is not interested, sells the computer screen to another customer on Thursday.
  - c) Kay telephones Harry on Tuesday and offers to sell him a XX40 computer for £500. Harry says, 'It is a bit more than I can afford. Would you be prepared to take £450?' Before Kay can reply, Harry's mobile phone loses reception and this means that he is not able to ring Kay for some time. When he is able to use the phone and tells Kay he will buy the computer for £500, she tells him it has already been sold to another customer.
  - d) Sarah comes into Kay's shop. Kay shows her a computer desk and asks if she would like to buy it for £50. Sarah says, 'I'm fairly sure I want it. Look, if you do not hear from me by tomorrow evening then you can assume I will buy it at that price.' On returning home, Sarah decides she does not want the desk, but does not tell Kay.

Discuss.

**END OF PAPER**