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**SCHOOL OF LAW**

**COURSE NAME:** LEGAL METHOD AND PROCESS

**COURSE NO:** LA 102

**TIME ALLOWED:** 3 hours

**READING TIME:** 10 minutes

**NUMBER OF PAGES:** 6 (including cover page)

**NUMBER OF QUESTIONS ON PAPER:** 7

**NUMBER OF QUESTIONS TO BE ANSWERED:** 6

**MARK ALLOCATED FOR EACH QUESTION:**

Part A:	20 marks
Part B:	20 marks
Part C:	30 marks
Part D:	30 marks

**TOTAL MARKS:** 100

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**MATERIALS PERMITTED IN EXAMINATION ROOM:**

1. No additional materials are permitted in the exam room.

**SPECIAL INSTRUCTIONS**

1. This exam is divided into 4 parts.
2. Answer any three questions in part A.
3. Answer all questions in Parts B - D.

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Please do not turn over any page until you are told to do so.

## **Part A: Short Answer Questions**

**Marks for section: 20**

*Answer any **three (3)** of the following 4 questions.*

*Your answer for each should be 2 – 3 paragraphs long.*

1. If you were asked to explain to other students what the main points of writing a good business letter are and why these points are important, what advice would your answer be?
2. Explain the difference between primary and secondary sources of law and how each should be used when solving a legal problem.
3. Why do lawyers need to have codes of professional conduct?
4. What do you think are the 5 most important qualities of a good lawyer, and why?

## Part B: Referencing

### Marks for section: 20

A class of students were asked to write an essay outlining the scope of occupiers' liability in the law of tort. All of the students read Michael A. Jones *Textbook on Torts* (4<sup>th</sup> ed, 1993). This book says the following at p 185:

Liability for dangerous premises is not a separate tort, but a compound of liability in negligence, nuisance, the rule in *Rylands v Fletcher* and breach of statutory duty. This reflects the historical development of the law of tort, and the fact that property rights were regarded as significant in determining the obligations that an owner or occupier ought to owe to others. The basic question to ask in order to determine the cause of action is: where did the damage occur? If it occurred off the premises (although arising from some event on the premises) the action will usually be in nuisance or *Rylands v Fletcher*. This chapter deals with liability for damage which occurs on the premises. Liability to third parties is commonly called 'occupiers' liability' and is usually, though not exclusively concerned with personal injuries. Occupiers' liability is further divided into liability to lawful visitors, which is governed by the Occupiers' Liability Act 1957, and liability to persons other than visitors under the Occupiers' Liability Act 1984. Although this legislation imposes statutory duties on the occupiers of premises with respect to the safety of entrants, the standard of care required is very similar to the common law of negligence. Indeed, the Occupiers' Liability Acts could be regarded as simply 'applied negligence.'

One of the students began her essay with the following paragraph. Correct the referencing, spelling and grammar mistakes in the paragraph. Use the style prescribed by the Australian Guide to Legal Citation and LA 102.

Do not reword the paragraph. Just rewrite a corrected version of it.

Owners of property can have liability for damage cause by events occurring on their property under a number of different torts, including Negligence, Nuisance, the Rule in *Rylands v Fletcher* and Breach of Statutory Duty. Nuisance and/or *Rylands v Fletcher* is used when the damage to the plaintiff occurs somewhere other than on the defendant's property. When damage occurs to the plaintiff when he or she is on the defendant's property then defendant may have liability under the Occupiers Liability Acts. These Acts are very similar to the common law of negligence and could be regarded as simply 'applied negligence.'

## Part C: Case analysis

Marks for section: 30

Read the following case and answer all of the questions. The marks for each individual question are stated at the end of each.

- a) What is the correct citation for this case?
- b) What was the accused charged with?
- c) Where was the case first heard?
- d) What was the outcome of the first hearing?
- e) How did the case come before the Supreme Court?
- f) Why did the case come before the Supreme Court?
- g) What was the outcome of the case?
- h) Why did the judge decide the case in this way?
- i) Why was the Interpretation Act [Cap 132] mentioned in the judgment?
- j) How did the judge deal with the Interpretation Act in his judgment?

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Appellate Jurisdiction)

Appeal Case No.5 of 2000

BETWEEN:  
**SOLIP AMOS**  
Appellant

AND:  
**THE PUBLIC PROSECUTOR**  
Respondent

Coram: Before Mr Justice Oliver A. Saksak  
Ms Cynthia Thomas – Clerk

### JUDGEMENT

The appellant was convicted in the Senior Magistrate's Court sitting in Santo on 13<sup>th</sup> October 2000. He was charged with careless driving contrary to section 14 and with drunk driving under section 16 of the Road Traffic Act CAP.29. The trial of the matter took place in Lakatoro, Malekula. The Appellant was fined VT15,000 or in default to imprisonment for 4 months on the first count. On the second count the Appellant was fined VT50,000 or in default to imprisonment for 10 months. In addition to those fines the Appellant was disqualified from driving for a period of 2 years. The Appellant appeals against those sentences on the grounds that they were manifestly excessive.

The maximum penalty under section 14 of the Act is VT50,000 fine or imprisonment not exceeding 6 months or to both. As regards the penalty under section 16 of the Act it was submitted to me that as no penalty was provided under that section that the Court should have applied section 36(3) of the Interpretation Act [CAP.132]. It reads:-

“Where an Act of Parliament omits to prescribe a penalty for an offence created by the Act or for a contravention of a provision of the Act the penalty shall be a fine of VT5,000 or imprisonment for 1 year or both”.

But I draw attention of both counsels to section 53(3) of the Act which reads:-

“Any person convicted by a competent court of offences against sections 16, 41(1), 51 or 52 shall be liable to a fine of not exceeding VT100,000 or imprisonment not exceeding 1 year, or to both such fine and imprisonment.”

It is clear to me that that is the provision used by the Senior Magistrate. Section 36(3) of the Interpretation Act is therefore irrelevant.

The Appellant is an Inspector in the Vanuatu Police Force. A character reference was produced on his behalf by Major J. S. Aru, Acting Commander of Northern District, Police. At the time of the accident the Appellant was Head of Traffic Section. This in my opinion weighed heavily against the Appellant so much so that the Senior Magistrate saw fit to award up to half of the maximum fine for drunk drive offence under section 16 of the Act. It is common knowledge that the Police have from time to time, over and over again advised the general public against driving whilst under the influence of alcoholic liquor. These advices have often come from the Traffic Section of the Police. For the Northern region, the Appellant being the Head of that section. If despite those advices the Police themselves go and do likewise, as here, the Head of the section itself, then a high degree of responsibility has to be imposed so as to deter others from doing the same thing.

For those reasons I see nothing excessive about the fine in respect of the careless driving charge. Further I see nothing manifestly excessive about the fine imposed in respect of the drunk and drive offence under section 16 of the Act. I accordingly uphold those fines and the period fixed in the event of default.

However, it is my opinion that the additional penalty of suspension of driving licence for a period of 2 years is excessive. For a first offender like the Appellant it was improper to impose this penalty. It is common knowledge that for the Police to carry out its duties effectively they have to be mobile. That involves driving of vehicles.

For this reason I allow the appeal and accordingly I vacate the additional penalty of suspension of licence of the Appellant.

I further order that the fines imposed by the Court below be paid within three (3) months from the date of the Appellant' re-instatement to police duties.

**DATED at Luganville this 20<sup>th</sup> day of February, 2001.**

## Part D: Problem analysis

### Marks for section: 30

Speedy Ships is based in Port Vila, Vanuatu. It employs people to work on its interisland passenger ships. It started operations in February of 2003.

In November of 2003 the employees asked the owners of the company for their free tickets so that they could visit family and friends who lived on other islands. The employees made this request as most of them had worked for other shipping companies in Port Vila who had provided free tickets to their employees at Christmas.

Of the other eight shipping companies in Port Vila all of them gave 2 free tickets to their employees at Christmas time. Each of them had been giving free tickets to their employees for over 10 years.

Speedy Ships refused to give its employees any free tickets, saying that the giving of free tickets at Christmas time was not part of the contract. The employees are arguing that the giving of free tickets at Christmas time is a customary practice, so Speedy Ships is bound to provide the tickets to them. Speedy Ships' defence is that it did not know about what other shipping companies in Vila did.

Your research has discovered the following information about customary practices:

Sometimes there may be a custom within an area or an industry that everyone follows. These customs may be implied into the contract if there are no express rules dealing with the matter. In other words, a customary practice can become binding even if they have not been agreed to, but only if the custom does not conflict with any terms of the contract.

The test from *Whitcombe & Tombs Ltd v Taylor* (1907) 27 NZLR 237 provides useful guidelines for when custom may form part of the terms of the contract:

1. The custom must be general and provable. This means that most people in the industry must follow the custom, that it must have been going on for some time and that most people must agree that the custom means the same thing.
2. The custom must be reasonable. This means that the custom must not place an unfairly heavy burden or expense on any of the parties.
3. The bound party need not have known of the existence of the custom if that party dealt in, or the contract was made in, or was to be performed in, the district or country where the custom prevails.

Write a memo using the IRAC style that analyses whether Speedy Ships is bound to give free tickets to its employees on the basis that there is a customary practice.