



SCHOOL OF LAW

COURSE NAME: TORTS I

COURSE NO: LA 203

TIME ALLOWED: 3 hours

READING TIME: 10 minutes

NO. OF PAGES: Three (3) including this one

NO. OF QUESTIONS ON PAPER: Four (4)

NO. OF QUESTIONS TO BE ANSWERED: Four (4) (choice within Q2 and Q3)

MARK FOR EACH QUESTION: Q1 - 20%; Q2 - 5%; Q3 - 10%; Q4 - 5%

TOTAL MARKS: 40% of course grade

MATERIALS PERMITTED IN EXAMINATION ROOM:

Case-list (supplied), pens, watch

(CLOSED-BOOK EXAM)

SPECIAL INSTRUCTIONS

- Be very aware of precisely what the question asks for.
- Make sure that every conclusion you come to, including those which are steps in your reasoning *within* your answer, is explicitly justified.
- If you cite a case, *use* it: explain how it affects the answer you are giving.
- Watch the time, so that you do not end up devoting too little time to the last question you do.

QUESTION 1 **Answer both A. and B.**

Lucifer applied for a job at Leviathan Pty., a Port Vila company. After the interview, Leviathan accepted him, subject to routine health check and police clearance. These were satisfactory and Leviathan hired him. A year later Leviathan realised that Lucifer was stealing from them – and the Vt 2 million already gone is not recoverable from him.

Now Leviathan learns that when they hired him, Lucifer was serving a suspended sentence on conviction, in Vanuatu, of misappropriation. They still have the police clearance form and it clearly says that on the date of issue, Lucifer had no criminal record in the country.

The form was dated the day it was issued, but in fact the police officer's files were only up to the previous month. Lucifer's conviction occurred two weeks before, on another island, which is why the officer was not aware of it.

Such police clearances are routine for many jobs in Vila. The fee for them is paid by the prospective employee, like Lucifer. Suppose too that the way this form was dated and researched was normal.

A. (value: 15 marks)

Should the police be held to owe a prospective employer a duty of care, in completing the form accurately, which would cover pure economic losses?

AND

B. (value: 5 marks)

In the event that a judge held that there was such a duty, should he or she hold that it was breached in this case?

QUESTION 2 **Answer either A. or B.** (value: 5 marks)

A.

Suppose the situation in *Vine v Waltham Forest LBC* [2000]4 All ER 169 (CA) arose in your jurisdiction, except that P *did* see the sign, which read 'Unauthorised vehicles are liable to be towed'. If P proved that her English was not good enough for her to understand the sign, should her action succeed?

OR

B.

Why did the court say in *Henderson v Merrett Syndicates* [1994]3 All ER 506 (HL) that on these facts, it was unnecessary to consider whether imposing a duty of care would be 'fair, just, and reasonable'?

QUESTION 3**Answer either A. or B.***(value: 10 marks)***A.**

Pami is the wife of an ex-soldier, Tim, employed by a private security company and posted to Iraq. Last week she was notified at her home in Suva that Tim had been killed. The information came to her as an email, sent from the email address Tim had used in Iraq. Only after repeated telephone calls was she able to get confirmation from a human voice. Her husband died in action, through no fault of the company or himself.

The company has paid her what she was due under Tim's contract. But the way she was informed of the death, Pami says, was unnecessarily and seriously hurtful. It caused her great distress – although nothing a psychologist would label as an 'illness'.

Should she have a cause of action against the company?

OR**B.**

Paul, a New Zealander, has a friend Sam from Vanuatu. On his first visit to Sam at his village, Paul takes his 6-year-old son Bobby. Paul and Bobby accompany Sam to Sam's wife's village on the coast where a marriage is being celebrated. There a woman says the kids are all playing by the beach, and Paul sends Bobby there with her.

An hour later Paul hears his name being yelled and runs to the beach, to find that Bobby had been seriously cut with a bushknife, during a game the kids were playing.

The kids, with rags tied around their eyes so that they cannot see, take turns trying to cut a live chicken down from a low tree-branch, where it's suspended by a string attached to its leg. They swing at the thing with a full-size bushknife, gripping it with both hands. The game is a traditional one, played this way since before the oldest villager was born, a fairly common source of fun for children and the watching adults. It is never played, however, with or before tourists.

Suppose Bobby (through his father) sues the village chief in negligence, who concedes that in his role, he was responsible for Bobby being allowed to play the game.

Should it be held to be a breach of a guardian's duty of care to children, to allow them to play this game? *(5 marks)*

Should Paul's behavior be considered implied consent to activities like this game, so that the defence of *volenti non fit injuria* applies? *(5 marks)*

QUESTION 4*(value: 5 marks)*

Should hospitals in your jurisdiction be given immunity by courts for negligence in medical decisions by the doctors who work for them?