

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR AWARD OF DIPLOMA
IN LAW (PARA-LEGAL STUDIES)

JULY, 2009

LAW OF TORT 1

Instructions

- (a) Answer QUESTION 1 and ANY OTHER THREE QUESTIONS
- (b) QUESTION 1 is COMPULSORY and carries 25 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (d) Time allowed is **Two (2) Hours**

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1. (a) "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do" *Alderson B. in Blythe vs Birmingham Waterworks Co. (1856) 11 Exc. 781 at 784*

Elaborate on the factors that would guide in deciding whether or not the conduct of a party in a lawsuit in tort was reasonable, having regard to the above statement by Alderson B.

(15 marks)

- (b) What are the considerations to be made in deciding remoteness of damages?

(10 marks)

2. (a) What is the aim and purpose of the Law of Tort?

(5 marks)

- (b) Distinguish between Tort and other branches of law.

(10 marks)

3. Write concise notes on the circumstances in which the following can be parties to a suit in tort:

- (i) The State/Republic
- (ii) Postal, Telecommunications and Highway Authorities
- (iii) Husband and wife
- (iv) Mentally unsound persons
- (v) Minors

(15 marks)

4. Outline the circumstances in which:

- (a) A master will be held liable for the acts of a servant
- (b) An employer will be held liable for acts of an independent contractor
- (c) A master will not be held liable for the acts of a servant.

(15 marks)

5. "Elements of wrongdoing: The common elements of wrongdoing may be reduced to (a) act or omission on the part of the defendant as a person for whom he is vicariously liable (b) mental element, whether of motive, intention (including recklessness), or negligence (c) damage" *Clerk and Lindsell on Torts, 14th Edition at page 27*

Outline how the above elements determine whether or not liability will be ascribed in the Law of Tort.

(15 marks)

6. Give the concise issues that were the subject of the following cases and distinguish the holding in the two cases, and give the reasons for such holding:

- (i) Re Polemis and Furness, Withy and Co. (1921) 3 KB 560
- (ii) Overseas Tankship (UK) v Morts Dock and Engineering Co. the Wagon Maund (1961) AC 388.

(15 marks)
