HONOUR SCHOOL OF JURISPRUDENCE
DIPLOMA IN LEGAL STUDIES
MAGISTER JURIS
Michaelmas Term 2018
TORT LAW

Wednesday, 28 November 2018, 9.30am – 12.30pm

Materials in the Examination Room:
The following will be supplied:

Tort Case List 2017-18 (attached at end of paper)
Blackstone’s Statutes on Contract, Tort and Restitution, 27th (2016-17) edition, ed. Francis Rose

Candidates should answer four questions including at least two of those marked with an asterisk, except for candidates for the Diploma in Legal Studies, who should answer three questions including at least one of those marked with an asterisk.

Do not turn over until told that you may do so.
1. ‘[W]herever there is a relationship equivalent to contract, there is a duty of care. Such a relationship may be either general or particular. Examples of a general relationship are those of solicitor and client and of banker and customer […] There may well be others yet to be established. Where there is a general relationship of this sort, it is unnecessary to do more than prove its existence and the duty follows. Where, as in the present case, what is relied on is a particular relationship created ad hoc, it will be necessary to examine the particular facts to see whether there is an express or implied undertaking of responsibility.’ (LORD DEVLIN, Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964))

Discuss.

2. Should the rules determining when a public authority will be liable in negligence be the same as the rules applying to a private body or individual? Are they?

3. To what extent do the rules of remoteness of damage in tort differ from those applied to a breach of contract? To what extent should they be?

4. Does the present law of vicarious liability provide an acceptable degree of certainty to potential litigants and their legal advisers?

5. Should the rule in Rylands v Fletcher be extended so as to impose liability for all damage caused by ultra-hazardous activities?

6. ‘Where there’s blame, there’s a claim.’ (Advertising slogan for ‘Claims Direct’)

Discuss.

7. ‘In Patel v Mirza the Supreme Court replaced one useless approach to the illegality defence in the law of torts with another.’

Do you agree?
The Wood Village School collaborates with the Kamikaze Touring Circus. The circus trains the children as different types of artistes, culminating in a circus performance at the end of the term.

During the training, Cody, aged 10, is hit by a juggling club which Dave, aged 12, throws towards him at the wrong time of the juggling sequence they are practising. Cody sustains a serious concussion and needs to be hospitalised.

For the end of term performance, each pupil is allotted two free tickets to distribute to family and friends. During the performance, a trapeze act is performed by Edna and Frank (professional trapeze artistes), George (aged 15) and Helena (aged 8). The two children are secured by a safety harness to the trapeze, but Helena’s safety rope is detached for the thrilling finale, during which Helena is thrown by George towards Edna, as Edna flies across the arena at a height of 10 metres. Edna pretends to miss Helena and the audience gasp as Helena seems to be falling towards her death. However, Frank, suspended from another trapeze, triumphantly catches Helena. The majority of the crowd loves it, but three audience members are not quite as appreciative.

Ines, Helena’s mother, panics when Edna appears to miss her daughter. John, Ines’s fiancé (who sneaked in without a ticket because Helena had given her second ticket to Karl, her father), realises the act was designed for maximum shock value and is outraged. He rushes from his seat down to the edge of the arena to confront the school’s headmaster, but trips on a slightly loose step and falls head-first down the stairs, sustaining serious head injuries that leave him permanently brain damaged.

Ines is later diagnosed with serious depression (which psychiatrists say might equally likely be attributable to fear for her daughter’s life, the impact of seeing her fiancé injure himself, or the prior acrimonious break-up of her marriage with Karl).

Karl himself sees Helena flying in his direction and is afraid for his own safety. He is a veteran of the Falklands war and prone to panic attacks as a result of being subjected to bombardment by the Argentine air force in 1982. The post-traumatic stress disorder which he had overcome following years of therapy and drug-treatment re-emerges as a result.

Advise Dave, the school and the circus on any liability in tort that they might face as a result of these events.
Laurent, an Erasmus student from France at Camford University, runs an online message board intended for a full and frank exchange of views amongst visiting EU students studying in the UK. He contributes many blogposts himself, but also commissions some from other students and academics.

A number of complaints have been made relating to statements in blogposts that have appeared on his board:

Mandy, a professor of European affairs at Oxbridge University, campaigned vehemently against the UK leaving the EU. In a recent lecture, she expressed the view that a second referendum to decide whether the UK might stay in the EU after all would not be in anybody’s interest. Laurent wrote a furious blogpost in which he referred to her as a ‘lily-livered closet Brexiteer’. Laurent’s blog is read by many of Mandy’s students who have now organised sit-ins outside her lectures. She has also received death-threats from radical pro-EU groups.

Laurent put on his message board a blog written by Olga, a leading Camford professor of political science, about an up-coming by-election in Camford. It makes a number of critical statements about Nancy, who is standing in the by-election and is a well-known Brexiteer. The blog post claims that ‘everybody knows that it is not nature but the surgeon’s knife that has given her the figure she so anxiously flaunts’, and that ‘she may well appear the glamorous granny, but underneath her tight-fitting blouse there is a heart of stone’. Nancy is now threatening to sue both Laurent and Olga. It appears that she has never had plastic surgery, apart from having a mole removed from her cheek when she was 12.

Laurent wrote a long blogpost about Pavel, a leading Brexiteer, in which he stated that Pavel had been married five times, and as a result he could not be trusted in his private life, and so should not be trusted in public life, either. In fact, Pavel has only been married four times. Pavel has commenced proceedings against Laurent.

Advise Laurent.
Quentin has rented a former blacksmith’s workshop in an inner-city area of considerable social deprivation. The workshop consists of the ground floor of an apartment block and includes use of a large inner courtyard surrounded by apartments on all sides. He has agreed with his landlord, Rob, that Quentin will use the workshop and courtyard as a ‘city farm’ for the benefit of disadvantaged local children, keeping sheep and chickens and growing vegetables. Quentin has been granted planning permission by the local authority permitting change of use of the premises from ‘light industrial’ to ‘agricultural’. The local authority also supports his endeavour with a generous grant.

Many local residents strongly support the new farm. They appreciate that they no longer have to put up with the noise of iron being worked, or with the putrid smells that come with a working blacksmith’s workshop. Others, however, complain about the – sometimes strong – farm smells and noises made by the animals. They also claim that some of the children who come to work at the farm after school sometimes vandalise cars parked in the street and are dealing drugs just outside the apartment building. The complaints become more insistent when Sam, a local farmer, donates a litter of piglets to the city farm – though cute to start with, these have now grown into a herd of substantial pigs, making rather more noise than the chickens and sheep and producing smelly manure and slurry. Not all of this manure and slurry can be used to fertilise the vegetable beds, and the excess is collected weekly by Sam in his tractor. Sam is not paid for this, but he can put the manure to good use on his large farm on the outskirts of the city. However, one day, as he is leaving the city farm with a trailer full of animal slurry, he suffers a fatal heart attack as he is reversing his tractor, smashing the trailer into the workshop. This causes the walls in Toby’s flat, immediately above the workshop, to crack. The sewage from the trailer leaks into Ulf’s basement apartment, rendering it uninhabitable.

Advise Quentin and Rob.
11*. Alan works as a car mechanic in three garages in succession, each for a period of five years. The garages are owned and operated by Bob, Carmel and Deepak respectively. In each garage, Alan is exposed to excessive noise and is not provided with ear protection. It is widely known that noise at these levels is likely to cause cumulative hearing loss, but nevertheless it is not usual for car mechanics to be provided with ear protection. Over the fifteen-year period in which he works in the three garages, Alan's hearing progressively deteriorates, and he now finds it difficult to hold a conversation if there is any background noise. Bob is no longer in business and his liability insurer is insolvent.

Advise Alan.

How, if at all, would your answer differ in the EACH of following alternative circumstances:

a. As a result of Alan’s hearing loss, he fails to hear an oncoming ambulance (which is being driven carefully) while crossing a road, and suffers serious head injuries when the ambulance runs him over.

AND

b. Alan has not yet suffered any hearing loss, but has been advised that were he to continue to work as a car mechanic his prior exposure to excessive noise would mean that future hearing loss was highly likely.

AND

c. Alan was not exposed to excessive noise by his three employers, but to a toxic brake fluid that can cause dermatitis unless protective gloves are provided. None of his employers provided Alan with these gloves, and he has now contracted dermatitis, but it is unclear whether this was caused by the exposure to which he was subjected during one particular period of employment or a combination of two or all three periods of employment.
After suffering chest pain for some months, Ewan is advised by his GP to undergo a procedure whereby a stent (a small tube-shaped device) is inserted into one of his arteries to keep the artery open and reduce the chance of him suffering heart problems in the future. Ewan agrees to the procedure, and a stent is inserted into one of his coronary arteries in his local NHS hospital. The stent in question was manufactured by Farma plc in the United States and imported into the United Kingdom by Global Health Ltd, who sold the stent to Hallowfields NHS Trust, which operates the hospital where the procedure was carried out.

A year after the procedure is carried out, a routine scan reveals that the stent has collapsed and is blocking the artery completely. Ewan is advised that the stent cannot be removed and that as a result of the blockage the probability of his suffering a cardiac arrest is now much higher than it was before the stent was inserted. He is also told that a small number of stents collapse because of flaws in the metal that cause them to fracture. A test that it was claimed would enable manufacturers to identify these flaws had been described in an online industry forum before the stent had been sold by Farma plc to Global Health Ltd, but a peer-reviewed scientific paper that conclusively demonstrated the effectiveness of the test was not published until after the procedure on Ewan had been carried out.

Advise Ewan.

What difference, if any, would it make to your answer if the fracturing of the stent was not the result of a flaw in the metal but was instead an inherent risk of a new design developed by Farma plc, which they considered would on balance improve the effectiveness of their stents?
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FHS TORT
CASE LIST FOR THE EXAMINATION ROOM IN 2018

Donoghue v Stevenson [1932] AC 562
Caparo v Dickman [1990] 2 AC 605
Phelps v Hillingdon LBC [2001] 2 AC 619

Home Office v Dorset Yacht Co [1970] AC 1004
Stovin v Wise [1996] AC 923
Kent v Griffiths (No 2) [2001] QB 36
Barrett v Enfield LBC [2001] 2 AC 550
Robinson v Chief Constable of West Yorkshire Police [2018] UKSC 4

McLoughlin v O’Brian [1983] 1 AC 410
Alcock v Chief Constable of South Yorkshire [1992] 1 AC 310
Page v Smith [1996] AC 155
White v Chief Constable of South Yorkshire [1999] 2 AC 455
W v Essex [2001] 2 AC 592
Rothwell v Chemical & Insulating Co; Re Pleural Plaques Litigation [2007] UKHL 39, [2008] 1 AC 281

McKay v Essex Area Health Authority [1982] 2 All ER 771
McFarlane v Tayside Health Board [2000] 2 AC 59
Parkinson v St James & Seacroft University Hospital [2001] 3 All ER 97
Rees v Darlington Memorial Hospital NHS Trust [2003] UKHL 52, [2004] 1 AC 309

Bolton v Stone [1951] AC 850
Paris v Stepney Borough Council [1951] AC 367
Roe v Minister of Health [1954] 2 QB 66
Bolam v Friern Hospital Management Committee [1957] 1 WLR 582
The Wagon Mound (No 2) [1967] 1 AC 617
Goldman v Hargrave [1967] 1 AC 645
Nettleship v Weston [1971] 2 QB 691
Montgomery v Lanarkshire Health Board [2015] UKSC 11, [2015] 1 AC 1430
Mullin v Richards [1998] 1 All ER 920
Baker v Quantum Clothing Group [2011] UKSC 17
Hunter v Canary Wharf Ltd [1996] 2 WLR 348, 366
Rothwell v Chemical & Insulating Co Ltd [2007] UKHL 39, [2007] 4 All ER 1047
Greenway v Johnson Matthey plc [2016] EWCA Civ 408

Bonnington Castings Ltd v Wardlaw [1956] AC 613
Performance Cars v Abraham [1962] QB 33
Barnett v Chelsea Hospital [1969] 1 QB 428
Baker v Willoughby [1970] AC 467
Jobling v Associated Dairies Ltd [1982] AC 794
Hotson v East Berkshire Area Health Authority [1987] AC 750
Wilsher v Essex Area Health Authority [1988] AC 1074
Allied Maples Group v Simons & Simmons [1995] 4 All ER 907
Banque Bruxelles Lambert v Eagle Star Insurance [1997] AC 191
Holtby v Brigham & Cowan (Hull) Ltd [2000] ICR 1086
Chester v Afshar [2004] UKHL 41, [2005] 1 AC 134
Barker v Corus plc [2006] UKHL 20, [2006] 2 AC 572
Heneghan v Manchester Dry Docks Ltd [2016] EWCA Civ 86; [2016] 1 WLR 2036
Williams v Bermuda Hospitals Board [2016] UKPC 4, [2016] AC 888

The Wagon Mound (No 1) [1961] AC 388
Smith v Leech Brain [1962] 2 QB 405
Hughes v Lord Advocate of Scotland [1963] AC 837
McKew v Holland Hannen & Cubitts [1969] 3 All ER 1621
Knightley v Johns [1982] 1 All ER 851
Page v Smith [1996] AC 155
Jolley v Sutton LBC [2000] 1 WLR 1082
Spencer v Wincanton Holdings [2009] EWCA Civ 1404
Wellesley Partners LLP v Withers LLP [2015] EWCA Civ 1146; [2016] 2 WLR 1351

Hedley Byrne v Heller & Partners [1964] AC 465
Smith v Bush [1990] 1 AC 831
Caparo Industries v Dickman [1990] 2 AC 605
Spring v Guardian Assurance [1995] 2 AC 296
Henderson v Merrett Syndicates [1995] 2 AC 145
White v Jones [1995] 2 AC 207
Williams v Natural Life Health Foods [1998] 1 WLR 830
Commissioner for Customs & Excise v Barclays Bank [2006] UKHL 28, [2007] 1 AC 181
Lejonvarn v Burgess [2017] EWCA Civ 254

Spartan Steel & Alloys v Martin [1973] QB 27
The Aliakmon [1986] 1 AC 785

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D & F Estates v Church Commissioners [1989] AC 177  
Murphy v Brentwood DC [1991] 1 AC 398  
Shell UK Ltd v Total UK Ltd [2010] EWCA Civ 180, [2011] QB 86

Simaan v Pilkington Glass [1988] 1 All ER 791  
Henderson v Merrett Syndicates [1995] 2 AC 145  

Jackson v Murray [2015] UKSC 5, [2015] 2 All ER 805  
Jones v Livox Quarries [1952] 2 QB 608  
Froom v Butcher [1976] QB 286  
Reeves v Commissioner of Metropolitan Police [2000] 1 AC 360  

ICI v Shatwell [1965] AC 656  
Nettleship v Weston [1971] 2 QB 691  
Morris v Murray [1991] 2 QB 6  
Reeves v Metropolitan Police Commissioner [2000] 1 AC 360

Hall v Herbert [1993] 2 SCR 159  
Delaney v Pickett [2011] EWCA Civ 1532; [2012] 1 WLR 2149  
Joyce v O’Brien [2013] EWCA Civ 546, [2014] 1 WLR 70  
Patel v Mirza [2016] UKSC 42; [2017] AC 467  

Roles v Nathan [1963] 1 WLR 1117  
Wheat v Lacon [1966] AC 552  
White v Blackmore [1972] 2 QB 651  
Ferguson v Welsh [1987] 3 All ER 777  
Portsmouth Youth Activities Committee v Poppleton [2008] EWCA Civ 646  
Harvey v Plymouth City Council [2010] EWCA Civ 860

Herrington v British Rail Board [1972] AC 877  

D & F Estates v Church Commissioners [1989] AC 177  
Murphy v Brentwood DC [1991] 1 AC 398  
Targett v Torfaen BC [1992] 3 All ER 27  
Nitrig Eireann v Inco [1992] 1 All ER 854  
St Helen’s Smelting Co v Tipping (1865) 11 HLC 642  
Bradford Corporation v Pickles [1895] AC 587
Hollywood Silver Fox Farm v Emmett [1936] 2 KB 468
Halsey v Esso [1961] 1 WLR 683
The Wagon Mound (No 2) [1967] 1 AC 617
Allen v Gulf Oil [1981] AC 1001
Hunter v Canary Wharf [1997] AC 655
Southwark LBC v Mills [1999] 4 All ER 449, 459-460, 464-466
Coventry v Lawrence [2014] UKSC 13, [2014] AC 822

Hunter v Canary Wharf [1997] AC 655

Sedleigh-Denfield v O’Callaghan [1940] AC 880
Leakey v National Trust [1980] 1 QB 485
Cocking v Eacott [2016] EWCA Civ 140; [2016] QB 1080
Lippiatt v S Gloucestershire Council [1999] 4 All ER 149
Holbeck Hall Hotel v Scarborough BC [2000] 2 All ER 705
Coventry v Lawrence (No 2) [2014] UKSC 46, [2015] 1 AC 106

Wringe v Cohen [1940] 1 KB 229
AG v PYA Quarries [1957] 2 QB 169
Tate & Lyle v GLC [1983] 2 AC 509

Rylands v Fletcher [1866] LR 1 Ex 265, [1868] LR 3 HL 330
Transco plc v Stockport MBC [2003] UKHL 61, [2004] 2 AC 1

Donoghue v Stevenson [1932] AC 562
Grant v Australian Knitting Mills [1936] AC 85
Muirhead v Industrial Tank Specialities [1986] QB 507
Hamble Fisheries v Gardner [1999] 2 Lloyds Rep 1
Howmet v Economy Devices [2016] EWCA Civ 847

C 300/95 Commission v UK [1997] All ER (EC) 481
A v National Blood Authority [2001] 3 All ER 289
Wilkes v Depuy [2016] EWHC 3096 (QB); [2017] 3 All ER 589
Tesco Stores Ltd v Pollard [2006] EWCA Civ 393, [2006] All ER (D) 186
Boston Scientific Medizintechnik GmbH v AOK Sachsen-Anhalt-Die Gesundheitskasse (C-503/13) (2015) 144 BMLR 255

Wilson & Clyde Coal Co v English [1938] AC 57
McDermid v Nash Dredging [1987] 2 All ER 878

Cassidy v Minister of Health [1951] 2 QB 343
Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd [2005] EWCA Civ 1151, [2006] QB 510

Armes v Nottinghamshire County Council [2017] UKSC 60, [2017] 3 WLR 1000

Rose v Plenty [1976] 1 WLR 141
Lister v Hesley Hall Ltd [2002] 1 AC 215
Mohamud v WM Morrison Supermarkets Plc [2016] UKSC 11, [2016] AC 677

Majrowski v Guy’s Hospital [2006] UKHL 34, [2007] 1 AC 224

CBS Songs Ltd v Amstrad Consumer Electronics Plc [1988] AC 1013
Credit Lyonnais Bank Nederland NV v Export Credits Guarantee Department [2000] 1 AC 486
Fish & Fish Ltd v Sea Shepherd UK [2015] UKSC 10; [2015] AC 1229

Monson v Tussauds [1894] 1 QB 671
Smith v ADVFN [2008] EWHC 1797 (QB)

Jameel v Dow Jones & Co Inc [2005] QB 946

Huth v Huth [1915] 3 KB 32
Bryanston Finance v de Vries [1975] QB 703
Sliper v BBC [1991] 1 QB 283
Tamiz v Google Inc [2013] EWCA Civ 68, [2013] 1 WLR 2151

Derbyshire CC v Times [1993] AC 534

Cassidy v Daily Mirror [1929] 2 KB 331
Tolley v Fry [1931] AC 333
Byrne v Deane [1937] KB 818
Newstead v London Express [1940] 1 KB 377
Lewis v Daily Telegraph [1964] AC 234
Charleston v News Group [1995] 2 All ER 313
Berkoff v Burchill [1996] 4 All ER 1008

London Artists v Littler [1969] 2 QB 375
Hamilton v Al Fayed [2000] 2 All ER 224

Horrocks v Lowe [1975] AC 135

Reynolds v Times Newspapers [2001] AC 127

Charman v Orion Publishing Group Ltd [2007] EWCA Civ 792, [2008] 1 All ER 750

Milne v Express Newspapers Ltd [2004] EWCA Civ 664, [2005] 1 WLR 772

John v Mirror Group [1996] 2 All ER 35

Derbyshire County Council v Times Newspapers [1993] AC 534
Tolstoy v United Kingdom (1995) 20 EHRR 442
John v Mirror Group [1996] 2 All ER
Reynolds v Times [2001] AC 127

Joyce v Sengupta [1993] 1 All ER 897
Spring v Guardian Assurance [1995] 2 AC 296

Fowler v Lanning [1959] 1 QB 426
Lane v Holloway [1968] 1 QB 379
Wilson v Pringle [1986] 2 All ER 440
In re F (Mental Patient: Sterilisation) [1990] 2 AC 1
Non-Marine Underwriters, Lloyd's of London v Scalera [2000] 1 SCR 551

Bernstein v Skyviews [1978] QB 479
League Against Cruel Sports v Scott [1986] QB 240

Lumley v Gye (1853) 3 E&B 216
Hill v First National Finance [1988] 3 All ER 801
OBG v Allan; Douglas v Hello! [2007] UKHL 21, [2008] 1 AC 1

Rookes v Barnard [1964] AC 1129
OBG v Allan; Douglas v Hello! [2007] UKHL 21, [2008] 1 AC 1
Revenue and Customs Commissioners v Total Network SL [2008] UKHL 19, [2008] 1 AC 1174

Allen v Flood [1898] AC 1
OBG v Allan; Douglas v Hello! [2007] UKHL 21, [2008] 1 AC 1
Quinn v Leatham [1901] AC 495
Crofter Hand Woven Harris Tweed Co v Veitch [1942] AC 435
Revenue and Customs Commissioners v Total Network SL [2008] UKHL 19, [2008] 1 AC 1174
Derry v Peek [1899] 14 AC 337

Ashby v White (1703) 2 Ld Raym 938, 92 ER 126
Constantine v Imperial Hotels [1944] KB 693

Kralj v McGrath [1986] 1 All ER 54

Rookes v Barnard [1964] AC 1129
Cassell & Co v Broome [1972] AC 1027
Lim Poh Choo v Camden & Islington AHA [1980] AC 174
Heil v Rankin [2000] 3 All ER 138

Pickett v British Rail Engineering [1980] AC 136
Wells v Wells [1999] 1 AC 345

Davies v Taylor [1974] AC 207
The Mediana [1900] AC 113
Arthur v Anker [1997] QB 564
Hunter v Canary Wharf Ltd [1997] AC 655
Delaware Mansions Ltd v Westminster City Council [2001] UKHL 55, [2001] 4 All ER 737
Dimond v Lovell [2002] 1 AC 384
Lagden v O’Connor [2003] UKHL 64, [2004] 1 AC 1067
Coventry v Lawrence [2014] UKSC 13, [2014] AC 822
Coles v Hetherton [2013] EWCA Civ 1704, [2015] 1 WLR 160