

Examiners Comments
The Law of Torts
March 2009

General Comment

Overall, students performed exceptionally well in the exam. Students displayed a good appreciation of the required principles in the answers that were attempted. The semester recorded the highest pass rate in torts since I started teaching the subject some 5 years ago with only 5 out of 156 students obtaining under 50%. The highest grade was 88%.

While the facts of question 1 seemed long (1 whole page), the question proved most popular. Nearly 90% of students answered it. Question 4 with its brief set of facts, was the least popular; only about 45% of students answered it.

Legibility was a clear challenge in about 10% of the scripts. While speed is obviously essential in any exam, so is accuracy and indeed legibility. It is essential that students take a great deal of care in ensuring that their handwriting is legible.

In spite of the clear instructions on the first page of the answer booklet for students to insert the question numbers in the special column provided, a significant number of students failed to do so. Students must follow the instructions on the first page of the answer booklet.

Specific comment

While students did generally better than in previous semesters, a distinct feature of most of the answers was the lack of a clear articulation of issues. In answering the questions, most students failed to clearly identify the issues. In question 3 for instance, most students correctly identified the issues of negligence and the potential liability of Kirk and the pub and the cause of action open to Scott's widow, but did not mention or discuss the relevance of the Compensation to Relations Act 1897. Similarly most students did not discuss the possible implications of the s3B(1)(e) of the CLA which excludes motor accidents except for instances involving negligence. The issue of contributory negligence was also hardly discussed.

In Question 2, a significant number of students failed to discuss the issue of vicarious liability of Grella Engineering Pty Ltd for Pim's actions in instructing Vinnie. More significantly, the issue of causation and the liability of the hospital was not clearly discussed in most answers. Hardly any students mentioned the relevance of workers compensation legislation or employers duties to employees.