

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

TORTS

TIME: Three Hours

This paper consists of **four** questions.

Candidates are required to attempt any **three** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **3** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Material:

This is an open book exam. Candidates may refer to any books and any printed or handwritten material they have brought with them.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Jelena and her father, Damir had a very close relationship until she commenced seeing her current boyfriend, Tim. Damir disapproved of Tim and ordered Jelena to end the relationship. However when Jelena refused, Damir slapped her in the face and locked her in the garden shed. Jelena escaped after 15 minutes by prising open a rusty piece of the roof and climbing out.

Since then, Jelena and Tim have rented premises as co-tenants about a block away from her family home. Jelena attempted to maintain contact with her family but Damir refused to let Jelena visit the family home or make any contact with her mother or younger brother.

Damir even refused to let Jelena take the motor vehicle registered in her name, which was given to her by the family as a 21st birthday present.

Despite the absence of direct contact with her family, Jelena received strange parcels placed at her front door without letters or notes identifying the sender. On her birthday in November 2008, Jelena found a parcel containing a voodoo doll resembling Tim with a toy dagger in the heart. On Christmas Day 2008, she found a parcel of rotting prawn heads.

On 1 January 2009 at 3 am, Jelena received the first of a series of anonymous telephone calls. In the first five calls from 3 am to 5 am, the caller did not speak but Jelena could hear breathing and caller ID confirmed the calls came from her family home.

Later that morning at 6am, Jelena answered a call and a person sounding like her father said:

“Leave that bastard or he is a dead man!”

Jelena ignored the warning and remained living with Tim.

On 20 January 2009, whilst Tim was away camping with friends in remote parts of the Northern Territory, Jelena received a call from Damir who said:

“That bastard is dead. I have paid people to make sure he goes swimming with the crocodiles!”

Tim was not due to return for a fortnight and in fact he did not make contact with Jelena for a month as he was stranded by unseasonably heavy rains. Tim was in perfect health and did not encounter any dangers whilst away. However during that prolonged period, Jelena was very distressed fearing for Tim’s safety and she suffered major anxiety and depression.

**What if any other action in tort law may Jelena make against Damir?
(Do not discuss damages)**

(Question 2 follows)

Question 2

Vinnie was a 16 year old apprentice welder working at Grella Engineering Pty Ltd. On 1 February 2007, Vinnie was directed by his foreman, Pim to manually lift a 50 kg piece of metal onto a table. Vinnie performed the unassisted lift and sustained a significant lower back injury rupturing several discs with compression on the sciatic nerve. Vinnie immediately experienced lower back pain radiating into the right leg and foot.

Following the above accident, Vinnie had difficulty finding suitable employment but he eventually found a lower paid job at a late night convenience store in mid 2008.

On 1 January 2009, Vinnie was working alone and two robbers entered the premises demanding cash. Vinnie was shot in the right leg and was taken to hospital. Unfortunately, due to miscommunication between the attending registrar in Emergency and the surgeon, Vinnie's symptom-free left leg was amputated instead of the right leg.

- (a) What actions in tort may Vinnie claim against his employer and the hospital?**
- (b) What types of damages may Vinnie claim against his employer and the hospital? (Do not quantify damages)**

Question 3

Scott lived in a very small rural community and rode his motorcycle to work. After work, Scott regularly drank at the local pub owned and operated by Kirk, who knew Scott well and afforded him credit. The pub was small and there were usually no more than 20 patrons at any time.

Scott usually drank heavily at the pub and later telephoned his wife to pick him up. Kirk let Scott park the motorcycle in a room which was locked and could not be accessed without Kirk's co-operation. Scott normally returned sober the next day and Kirk gave him the room key to gain access to his motorcycle.

On 1 June 2008 Kirk served Scott alcohol for about three hours and noticed Scott appeared quite inebriated. In fact, Scott was so drunk that it was obvious he should not ride home. Other patrons offered to drive Scott home but he refused. Kirk suggested to Scott that he call his wife to pick him up but Scott disagreed.

Scott demanded Kirk give him the room key to access his motorcycle. Whilst Scott used strong language, there was no threat made and Kirk did not feel that he would be in danger if he refused Scott's request.

Kirk took the room key from the petty cash tin and gave them to Scott.

(Question 3 continues)

(Question 3 continued)

Scott left the pub on his motorcycle to ride to his home and as he approached the Prosser River bridge, he lost control of his bike, collided with the bridge and was killed. Scott had a blood alcohol level of 0.253.

- (a) Advise the widow on a potential action in negligence against the pub.**
- (b) Assuming the widow can establish negligence, what types of damages may she claim from the pub? (Do not quantify damages)**

Question 4

Lois installed an in-ground swimming pool in her suburban home.

The redeveloped surrounds of the pool had inadequate drainage. This concentrated the flow of rainwater from her property on to that of her neighbour, Clark. The water passed through a retaining wall between the two properties and penetrated Clark's house causing flooding.

Lois had also erected floodlights to illuminate the pool area and security cameras. Some of the lights shone into Clark's living room and two security cameras pointed into Clark's yard.

- (a) What action in tort may Clark take against Lois?**
- (b) Assuming Clark succeeds, what remedies may he claim against Lois?**

END OF PAPER