

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

TORTS

TIME: Three Hours.

The paper consists of **four** questions.

Candidates are required to attempt **ANY THREE** questions.

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

No question is compulsory.

All questions are of equal value.

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 materials they have brought into the exam room.

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.

Cadel and Carlos were members of the local golf club and a competition was played over two days, 6 and 13 November 2007. At about 10am on 13 November Cadel and Carlos were playing in the competition.

During the course of the round Cadel was struck in the head, on the outer aspect of the orbit, just below the temple, by a ball hit by Carlos. Cadel sustained substantial injury to his right eye leaving with partial loss of vision.

The injury occurred on the second hole was 390 metres in length, from tee to green. It was relatively flat and straight. Its par rating was 4. The left-hand side of the fairway was planted with a substantial growth of Melaleuca trees. These appear from the photographic evidence to have been substantial in girth and height. Relevantly, the whole length of the fairway on the left was delineated by these lines of trees forming what was variously described as a grove, clump or stand.

Cadel hit the shortest drive. It was misdirected to the right and landed about 130 metres in front of the tee, in the rough to the right of the fairway. Carlos hit his drive furthest, about 200 metres, or a little more, onto the fairway, but to the left.

Cadel was the first to take his second shot and hit it well, but to the left, so that it entered the stand of Melaleucas planted along the left-hand side of the fairway. He thought it might be lost and set out to find it.

Cadel found his ball without difficulty. It was in a clearing just beyond the end of the line of trees closest to the fairway. The position where he found his ball and from which he intended to take his third shot was about 80 metres in advance of where Carlos' ball had come to rest from the drive.

Carlos struck his second shot well with a 3 wood but its line of travel was not that which he had intended. It was to the left of that line and struck one of the Melaleuca trees bordering the fairway. It struck towards the top, about 10 metres above the ground, and deflected, striking Cadel.

- 1. Advise Cadel on a claim for negligence against Carlos. [Do not discuss damages]**
- 2. What if any other action in tort law may Cadel make against Carlos?**

(Question 2 follows)

Question 2.

Since February 2007 Catherine visited her daughter, Maggie at a rented flat in Princes Street McMahon's Point. Catherine visited Maggie there about two or three times each week.

On the night of the accident, 16 October 2007, Catherine visited Maggie. Catherine parked in Princes Street about ten metres from the flat. It was dark when Catherine left the flat and she had some bags which she put into the boot of the car. Catherine was walking on the nature strip between the gutter and the footpath when all of a sudden there was no ground under her foot and she fell heavily onto the grass fracturing her left ankle.

Catherine said that in Princes Street in the vicinity Maggie's flat the lighting was poor and there were large trees which obscured the light further. Catherine said that when she was walking around to the passenger's side of the car on the night of the accident, she was looking where she was going but did not see the hole in the nature strip.

Photographs of the nature strip taken around the time of Catherine's fall showed a large hole in the nature strip. Catherine said and the photograph showed that the hole was about half a metre wide and about four to five inches deep.

Maggie had inspected the Princes Street flat before she moved in. On the day of the inspection and after she moved in, she saw the hole in which her mother later fell. When Maggie moved out of that flat in July 2008 the hole had since been repaired.

Maggie was aware and local council records confirmed that council workers mowed the subject nature strip every six months and had last mowed in and around the hole three weeks before Catherine's accident. When the nature strip was last mown, Maggie recalled seeing a council worker sustain serious lacerations when he fell into the subject hole whilst mowing. About a week before Catherine's accident, Maggie saw local council inspectors measure the subject hole.

Advise Catherine on the prospects of succeeding in a claim for negligence against the local council. [Do not discuss damages]

(Question 3 follows)

Question 3.

As a child, Alice developed complications from an appendectomy and her right ovary was removed. However, her right fallopian tube remained intact.

Years later, Alice married Bob and they had two children. As they lived in Sydney, Alice and Bob were concerned about the cost of a large family and they decided not to have any more children.

In February 2007, Alice underwent a tubal ligation performed by Dr Craig. During surgery, Dr Craig detected and clipped only the left fallopian tube. The right fallopian tube remained intact but it was obscured by scarring caused by the childhood operation.

Dr Craig was aware of the childhood operation but incorrectly formed the view that the right fallopian tube and ovary were removed. Following surgery, Dr Craig failed to warn Alice of the risks of further conception.

In May 2007, Alice fell pregnant. She bore a healthy son named Derrick in January 2008AUT. The consensus of expert medical opinion was that Alice conceived by transmigration of an ovum from the left ovary to the right fallopian tube.

- 1. Advise Alice on the prospects of succeeding on a claim against Dr Craig. If successful, what types of damages will Alice receive, if any? [Do not attempt to quantify damages].**
- 2. Assume Derrick is born with profound disabilities. Advise Derrick on the prospects of succeeding on a claim against Dr Craig. If successful, what types of damages will Derrick receive, if any? [Do not attempt to quantify damages].**

(Question 4 follows)

Question 4.

On 1 December 2007, Dulcie was a driver in a motor vehicle which was struck from behind by another vehicle driven by Engelbert. Immediately before the collision, Dulcie's attention was entirely focused on the road ahead. She was taken to hospital for treatment for significant injuries to her neck, back and legs.

A blood alcohol test taken at the hospital confirmed that Dulcie had not been drinking. However, Engelbert had a blood alcohol reading of 0.14, and it was clear that he was solely responsible for the accident.

On 8 January 2008, Dulcie instructed solicitors to act on her behalf in the motor vehicle claim against Engelbert. ABC Insurance handled the claim on behalf of Engelbert.

ABC Insurance obtained the Police Accident Report, which incorrectly showed that Dulcie had a blood alcohol reading of 0.14. Dulcie learnt of the mistake from her solicitor, and she became obsessed about the error and was ultimately diagnosed with psychotic depression.

Despite the mistake, neither the police nor ABC Insurance acted on the erroneous information. In fact, the New South Wales Police provided a written apology for the error.

Dulcie had a history which predisposed her to psychotic depression, including early childhood mistreatment, recent loss of a parent and marital problems.

- 1. Assuming ABC Insurance disputed liability, advise Dulcie on an action in negligence against Englebert? [Do not discuss the procedural requirements of motor accidents legislation or damages.]**
- 2. Advise Dulcie on the prospects of succeeding with a claim in negligence against the State of New South Wales.**