

# LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2009

## TORTS

**Time: Three Hours**

This 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 Materials:**

**This is an open book exam. Apart from books borrowed from any University of Sydney library, candidates may refer to any other books and any printed or handwritten materials they have brought into the examination 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**

At about 4:00am on 23 June 2003, Michael broke into and entered the Jackson Park Sports Club. He was in the company of three others. They intended to steal cash from the club's gambling room.

At the time, Tito, a security guard, was in the club. He was the managing director and sole employee of the Motown Security Services Pty Ltd ("*Motown Security*"). Tito was guarding the premises in the course of his employment with Motown Security.

Shortly after Michael entered the club, Tito fired a Magnum revolver at him and wounded him. Tito then fired at the plaintiff's accomplices, who fled. The Magnum carried six bullets. Tito fired several shots. He did not know how many.

Tito proceeded to point the Magnum at Michael's head and chest and pressed the trigger repeatedly. Tito was then only a couple of metres away from Michael. The cartridges in the gun were, however, spent. Michael heard repeated clicks, caused by Tito pressing the trigger over and over again.

Tito attempted to eject the spent cartridges and fumbled in his pockets for bullets. While he was doing this, Michael ran out of the club and jumped into a car that he and his accomplices had parked in the parking area. As the car drove away, Tito fired a shot at it and then a further shot that caused the rear window of the vehicle to shatter. The car then drove away from the scene.

**What action(s) in tort law may Michael claim? (Do not discuss damages).**

**(Question 2 follows)**

## **Question 2**

Samu had worked as a security guard with Levuka Security Pty Ltd (the Employer) since 2001. On the evening of 29 June 2002, he was performing security duties in the course of his employment with three fellow security guards outside Rascals Night Club (the club) in Oxford Street, Sydney.

Apart from the three men performing security duties at the entrance to the club that night, there were others performing security duties of a different kind inside the club. It was a busy night and patrons were required to queue for entry in two lines of which the first was for VIP patrons and the second for non-VIP patrons.

At about 12.30am on 30 June 2002, a scuffle developed between Samu and several young patrons whom he had endeavoured to turn away from entering the club (the group). According to Samu there were approximately six men in the group who looked fit and strong and who had exhibited aggressive tendencies when standing in the queue waiting to enter the club. Punches were exchanged and Samu had buttons ripped from his shirt and sustained red marks on his face. Samu returned the punches and at least one of the men in the group sustained a bloody face. The scuffle eventually broke up after about 10 minutes and the men were told to leave. When they were a short distance away one of the group threw a bottle, which struck Samu.

A short time later Samu went on a break and he left the entrance to the club and walked around the corner where his new motor vehicle was parked. He found that it had been badly damaged – the front and rear windows had been smashed, as had the bonnet and roof.

After returning to the entrance to the club, three security guards, including Samu, remained on duty until about 2.40am when a male, dressed in a long black coat with a black beanie pulled down to his eyebrows, approached Samu, stared at him and then pulled out a handgun from inside his coat and started shooting at him. Six shots were fired of which three struck Samu in his left elbow, his chest and his left buttock.

As it turned out, the shooter was not one of the men involved in the original scuffle but the brother of the man who had been punched by the respondent and who had left the scene with a bloody face.

- (a) What action(s) in tort may Samu take against the shooter? (Do not discuss damages).**
- (b) What action(s) in tort may Samu take against the Employer? (Do not discuss damages).**

**(Question 3 follows)**

### **Question 3**

In the early hours of 16 June 2001, police received a report of a male and female fighting in a flat in suburban Sydney. Police treated the report as a "violent domestic" requiring available officers to attend as quickly as possible. Six police officers went to the flat.

Sirius and his then fiancée (now wife) Bellatrix who lived there had had a noisy argument, but, by the time police arrived, Bellatrix had left the flat with Sirius' sister. When police arrived, the front door of the flat was open. The police officers went into the flat. Sirius was taking a shower in the flat's bathroom.

When Sirius came out of the bathroom, he found that the police were in the flat. The police asked if they could "look around" and Sirius agreed. After the police had looked in the two bedrooms, they asked to see "the female that was here". Sirius said that she had gone to his sister's house. He asked the police to leave the flat. The police asked for the sister's address and telephone number. The appellant said he did not know the address but at some point he wrote a telephone number (presumably his sister's number) on a piece of paper. The appellant repeated his demand that the police leave. He did this several times, very bluntly and with evident anger. Still the police did not leave.

Sirius then jumped onto the kitchen bench to get the attention of everyone in the room. He got down from the bench moved towards the police, with his arms outstretched, and made contact with one of the officers. A violent struggle followed. Sirius was punched, sprayed with capsicum spray, and handcuffed. As he was led to a police vehicle, he twice fell down stairs leading from his flat to the ground floor. He was taken to a police station and lodged in a cell wearing nothing but his boxer shorts. He was released from custody some hours later without being charged.

**Advise Sirius on potential claims in tort and the types of damages he may receive. (Do not attempt to quantify damages).**

**(Question 4 follows)**

#### Question 4

Since 1988, Autumn Investments conducted a beef stud at its property Milton, near Deniliquin. From 1983 to 1993, the Milton stud was the most successful exhibitor of beef cattle at the Sydney Royal Easter Show and the Royal Melbourne Show. It had a very high reputation in the Australian cattle industry.

In July 2002, a number of animals on Milton tested positive for Bovine Johne's Disease ("BJD"). By this time, the New South Wales Department of Agriculture had adopted a policy for eradication of BJD by what was called "total herd depopulation", that is, slaughter of all cattle in herds found to contain infected animals. In terms of the Department's policy, owners of slaughtered cattle were paid compensation under the *Cattle Compensation Act 1951* (NSW) (now repealed). When the tests on Milton cattle proved positive, both Autumn Investments and the Department believed that the policy would apply and the entire Milton herd would have to be slaughtered.

In July 2002, the major part of the Milton herd was on the Milton property ("home herd"), but a substantial number of animals in the herd were at agistment properties. From time to time, Autumn Investments moved cattle from Milton to agistment properties and vice versa. The population of the home herd was therefore, to a degree, transient and continually changing.

In late August 2002, Slim from the Department sent a letter to Autumn Investments saying:

*"As the Milton herd has tested positive to BJD, the Department will probably require you to destroy the entire herd as part of our policy of "total herd depopulation". In return, you will receive compensation from the State Government."*

As it believed the herd would be destroyed, Autumn Investments allowed the home herd to remain in proximity with cattle infected with BJD ("reactors") and moved its agisted cattle to Milton where they, too, mixed with reactors. Eventually, the entire herd became, or was perceived to be, infected and lost all value as stud cattle.

However, a year passed and the Department did not apply the policy. The State did not require the destruction of the herd and did not agree to pay compensation in anything like the amount that Autumn Investments contends it was led to believe would be paid.

**What action in tort may Autumn Investments have against the Department? (Do not discuss damages).**

**END OF PAPER**